



2014 - What a situation for Justice in Europe ?

November 27, 2013

For many years, in lots of countries in Europe, the situation of judiciary has deteriorated.

A working group within the EAJ in charge of the situation of Member Associations was established in order to examine these issues. Every year need to do so increased because it had to multiply its efforts in preparing reports and interventions.

Many international standards still exist. They determine precisely what, according to the rule of law, must be guaranteed for having a quality, effective and independent Justice, in the interests of litigants.

These standards are in particular:

- Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985;
- The European Charter on the Statute for Judges adopted by the Council of Europe on July 10, 1998;
- The Universal Charter of the Judge adopted in Taiwan November 17, 1999 by the International Association of Judges;
- The Magna Carta of European Judges adopted in Strasbourg November 17, 2010 by the Consultative Council of European Judges (CCJE);
- The Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities adopted by the Committee of Ministers on 17 November 2010;
- The conclusions of the report on the rule of law adopted by the Venice Commission at its 86th plenary session (Venice, 25-26 March 2011);
- The resolutions of ENCJ-RECJ (Budapest 2008 on the self-governance of the judiciary, Vilnius 2011 on challenges and opportunities for justice in the current economic climate, Dublin 2012 on recruitment and appointment of members of the judiciary, Sofia 2013 on independence and accountability).

The European Association of Judges has adopted several resolutions and organized visits in the concerned countries.

At its meeting of St. Gallen (Switzerland), EAJ has adopted an appeal for a Judiciary of quality, efficiency and independence in Europe, which was addressed to European and national authorities.

EAJ participated to the international conference "Les Assises de la Justice", organized by the European Commission, which took place in Brussels on November 2013

During its meetings in St. Gallen (Switzerland) in May 2013 and Yalta (Ukraine) in October 2013, the European Association of Judges decided to have a stocktaking of Justice in Europe.

The questionnaire has been developed and it is attached to this letter.

The presidency committee of EAJ asked the member associations to complete and return it (in a “word” document) to the General Secretariat of IAJ and/or to Christophe REGNARD, president of EAJ, before 15 January 2014.

The questionnaire consists of four parts. The first two parts are dealing with the guarantees of independence and resources for Judiciary and the situation of judges in each European country.

The third is more about the situation in member associations and the difficulties they may face in their efforts to improve justice in their country.

Finally, the fourth part will allow each association, freely, to explain the main problems in their country, to discuss the reforms and to specify the expected developments of the judiciary and the association.

A summary of these national reports could be presented and discussed at the EAJ meeting in Limassol (Cyprus) in May 2014.

Then, this synthesis could be adopted by EAJ and distributed in June to European and national authorities. A communication to the European media could be simultaneously considered.

The idea of a conference to present the work, however interesting it may be, seem to be ruled out. The budget of EAJ does not allow to organize such a conference without external funding.

Sincerely

Christophe REGNARD
President of EAJ
Vice President of IAJ

Questionnaire for Member Associations

1 - Regarding independence of judges

1-1. Recruitment

- Briefly describe the modes of recruitment of judges in your country (competition, election, appointment ...)
- Do you consider this recruitment procedure problematic or does it ensure a satisfactory recruitment in number and quality?

1-2. Initial and continuing training

- Briefly describe the training of judges at the beginning of the career and during this one
- Is there a school responsible for training judges?
- Do you consider the training satisfactory? If not, how could it be improved?

1-3. Appointment and career

- Briefly describe the procedures for appointment of judges
- Is there a Higher Council of Justice in charge of these issues? If yes, how is it composed? What are its powers (simple opinion or decision-making power)?
- What are the rules for promotion of judges?
- The tenure is it guaranteed to judges?
- Judges are they evaluated? If yes, by whom, on what basis and with what possible appeal?
- Do you consider these procedures satisfactory? If not, how could they be improved ?

1-4. Discipline and Ethics

- Describe briefly the ethical rules and disciplinary proceedings
- Is there a regime of incompatibilities and prohibitions of certain professions and positions for judges? Is there declaration of assets?
- Who is in charge of disciplinary procedures? What are the guarantees for judges involved (contradictory, rights of defense, appeal ...) ?
- Do you consider these procedures satisfactory? If not, how could they be improved?

1-5. Distribution of cases

- Describe briefly the distribution of cases between judges and the conditions for their eventual divestiture
- Do you consider these procedures satisfactory? If not, how could they be improved?

1-6. Recognition of the right of association

- The right to join or form associations/unions, is it recognized for judges?
- If so, what resources are allocated to the association / union in terms of grants, human resources?
- Do you consider these procedures satisfactory? If not, how could they be improved?

1-7. Protection of judges

- Are the judges frequently attacked in the media, by politicians or other people? Do they have special protection?
- Do you consider these procedures satisfactory? If not, how could they be improved?

2 - Regarding the means of Judiciary

2-1. Funding of the judiciary

- *Annual budget of Justice*
Specify the total annual allocation to the functioning of the courts budget (including expenses relating to judges, prosecutors and legal aid). Does this budget seem to you sufficient? Judges, or bodies representing judges, are they consulted during the elaboration / implementation of budget?
- *Operating budget of the courts*
How and on which criteria are distributed the funds to the different jurisdictions? Can the courts use freely their budgets? Is it organize before committing expenditure a consultation of judges?
- Do you consider these procedures satisfactory? If not, how could they be improved?

2-2. Salary

- Briefly define the scale of salaries of judges : at the beginning of the career, at the mid-term, at the end
- Who determines the salary of judges? Is there a system of “merit pay” (if so in what proportions? How the sums are assigned to judges?)
- Salaries are they likely to go down? If yes, have you met such cuts and in what proportions?
- Do you consider this situation and the guarantees for judges satisfactory? If not, how could they be improved?

2-3. Pensions

- At what age and how judges can they retire?
- Does the amount of the pension satisfactory ?
- Do you consider that improvements have to be done?

2-4. Accessibility and Efficiency of Justice

- Are there barriers to the defendant to access to justice? Are there mechanisms to provide access to justice for the most disadvantaged people (legal aid, Support to victims ...)
- Are there problems of deadlines in the treatment of cases ?
- Do you consider these procedures satisfactory? If not, how could they be improved?

3 - Regarding the national association

3-1. Representativeness of the association

- How many members does the association have? Has this number increased since the association became a member?
- Do other associations/organizations of judges exist?
- If elections are held in the country in question, please furnish statistical data relating to the extent to which the association is representative.
- Does the association include members who are independently elected and who oversee the judiciary? The discipline of the judiciary?

3-2. Modalities for appointment / election of its representatives

- How are the leaders of the association selected? Are they elected by the members? Are they appointed? If yes, by whom and by what process?
- How is the association organized? Is there a board of directors/association council? If yes, how are the members of the council appointed/elected? What powers does the council have?
- Does the association have regional representatives? If yes, how are they appointed/elected?

3-3. Financing Association

- What is the association's annual budget?
- What are the association's funding sources: membership dues, subsidies, other funding sources?
- What have been the principal expenses?

3-4. Relations association with public administration

- Does the association meet regularly with representatives of the executive? In particular with the Minister of Justice and his/her associates? Is the association consulted in advance of all government reforms?
- Does the association meet regularly with representatives of the legislature? Is the association asked to provide its opinion on projects and bills before they are examined by the parliament?

3-5. Actions undertaken by the association during the last 3 years

- What were the main actions undertaken in the previous year? In the previous three years? Since becoming a member?
- Has the association organized collective action (demonstrations, strikes ...)?

- Does the association have a media presence? Has the association published documents (books, reviews, communiqués...)?
- Did the eventual actions taken have a positive impact on judicial powers?

4 - Miscellaneous

- What were the main problems encountered by the judiciary in your country in recent years?
- Would you say that the situation for the judiciary has improved? decreased? has remained stable?
- What are the main reforms underway or planned? These reforms seem they go in the right direction?



2014 - Quelle situation pour la Justice en Europe ?

27 novembre 2013

Depuis des années, dans de nombreux pays, la situation de la Justice et des magistrats s'est dégradée.

Un groupe de travail chargé, au sein de l'AEM, de la situation des associations membres a été institué afin de pouvoir répondre à ces problématiques. Il a dû multiplier les rapports et interventions.

De nombreux standards internationaux existent qui déterminent précisément ce qui, dans un état de droit, doit être garanti afin que puisse être rendue une justice de qualité, efficace, et indépendante dans l'intérêt des justiciables.

Ainsi en est-il notamment :

- Des principes fondamentaux relatifs à l'indépendance de la magistrature, adoptés par le septième congrès des Nations Unies pour la prévention du crime et le traitement des délinquants qui s'est tenu à Milan du 26 août au 6 septembre 1985 et confirmés par l'Assemblée générale dans ses résolutions 40/32 du 29 novembre 1985 et 40/146 du 13 décembre 1985 ;
- De la Charte européenne sur le statut des juges adoptée par le Conseil de l'Europe le 10 juillet 1998 ;
- Du Statut universel du juge adopté à Taiwan le 17 novembre 1999 par l'Union Internationale des magistrats ;
- De la Magna Carta des Juges européens adoptée à Strasbourg le 17 novembre 2010 par le Conseil Consultatif des Juges Européens (CCJE) ;
- De la Recommandation 2010(12) du 17 novembre 2010 du Comité des Ministres aux Etats membres sur les juges : indépendance, efficacité et responsabilités ;
- Des conclusions du rapport sur la prééminence du droit adopté par la Commission de Venise lors de sa 86e session plénière (Venise, 25-26 mars 2011) ;
- Des Résolutions du ENCJ –RECJ – notamment Budapest 2008 sur la gouvernance autonome du pouvoir judiciaire ; Vilnius 2011 sur les défis et opportunités pour la justice dans le climat économique actuel ; Dublin 2012 sur le recrutement et la nomination des membres du pouvoir judiciaire ; Sofia 2013 sur l'indépendance et la responsabilité.

L'association européenne des magistrats a, elle-aussi, pris position en adoptant plusieurs résolutions et en organisant des visites dans les pays concernés.

Lors de sa réunion de Saint-Gall (Suisse), l'AEM a adopté un appel pour une justice de qualité, efficace et indépendante qui a été adressée aux autorités européennes et nationales.

Les 21 et 22 novembre 2013, elle a participé à la conférence internationale intitulée « les assises de la Justice », qui s'est tenue à Bruxelles, sous l'égide de la commission européenne.

C'est dans ce contexte qu'à l'occasion de ses réunions de Saint-Gall (Suisse) en mai 2013 et Yalta (Ukraine) en octobre 2013, l'association européenne des magistrats a souhaité que soit dressé un état de la Justice en Europe.

Un questionnaire (ci-joint) a été élaboré. Il est demandé aux associations membres de le remplir et retourner (sous un format de document « Word ») au secrétariat général de l'UIM et à Christophe REGNARD, président de l'AEM, avant le 15 janvier 2014.

Ce questionnaire comporte quatre parties. Les deux premières, sur les garanties d'indépendance et les moyens de la Justice, concernent directement la situation de la Justice et des magistrats dans chacun des pays européens.

La troisième concerne davantage la situation des associations membres et les difficultés qu'elles peuvent rencontrer dans leurs actions pour améliorer la Justice dans leur pays.

Enfin, la quatrième permettra à chaque association, librement, d'expliquer les principaux problèmes rencontrés dans leur pays, d'évoquer les réformes en cours et de préciser les évolutions attendues des magistrats et de l'association.

Une synthèse des rapports nationaux sera ensuite élaborée et présentée pour en débattre lors de la réunion de l'AEM à Limassol (Chypre) en mai 2014.

Cette synthèse pourrait alors être adoptée par l'AEM et diffusée courant juin aux autorités européennes et nationales. Une communication à destination des médias en Europe pourrait être concomitamment envisagée.

L'idée d'une conférence pour présenter ces travaux, pour intéressante qu'elle soit, nous semble devoir être écartée. Le budget de l'AEM ne permet en effet pas d'organiser une telle conférence sans financement extérieur.

Bien cordialement

Christophe REGNARD
Président de l'AEM
Vice président de l'UIM

Questionnaire à remplir par les associations membres

1 - Concernant l'indépendance des Magistrats

1-1. Recrutement

- Décrire brièvement les modes de recrutement des magistrats dans votre pays (concours, élection, désignation ...)
- Ces procédures de recrutements vous paraissent-elles poser des problèmes ou assurent-elles un recrutement satisfaisant en nombre et en qualité ?

1-2. Formation initiale et continue

- Décrire brièvement les modalités de formation des magistrats tant avant leur première prise de fonctions qu'en cours de carrière
- Existe-t-il une école chargée de former les magistrats ?
- Le dispositif de formation vous paraît-il satisfaisant ? Si non, comment pourrait-il être amélioré

1-3. Nomination et carrière

- Décrire brièvement les modalités de nomination et de déroulement de carrière des magistrats
- Existe-t-il un Conseil Supérieur de Justice chargé de ces questions ? Si oui, comment est-il composé ? Quels sont ses pouvoirs (simple avis ou pouvoir de décision) ?
- Quelles sont les règles applicables pour la promotion des magistrats ?
- L'inamovibilité est-elle garantie aux magistrats ?
- Les magistrats sont-ils évalués ? Si oui, par qui, sur quels critères et avec quels éventuels recours ?
- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

1-4. Discipline et éthique

- Décrire brièvement les règles éthiques auxquelles sont soumises les magistrats et la procédure disciplinaire
- Les magistrats sont-ils soumis à un régime d'incompatibilités et d'interdictions d'exercice de certaines professions et mandats ? Sont-ils soumis à des obligations de déclarations d'intérêts ?
- Qui exerce le pouvoir disciplinaire ? quelles sont les garanties pour les magistrats concernés (contradictoire, droits de la défense, recours ...) ?
- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

1-5. Modalités d'affectation des dossiers

- Décrire brièvement le mode d'affectation des dossiers aux magistrats et les conditions de leur éventuel dessaisissement

- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

1-6. Reconnaissance du droit d'association

- Le droit de s'associer, ou de se syndiquer, est-il reconnu aux magistrats ?
- Si oui, quels moyens sont alloués à l'association / au syndicat, en termes de subventions, de moyens humains ?
- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

1-7. Protection des magistrats

- Les magistrats font-ils fréquemment l'objet de mises en cause, de la part de l'opinion publique, des médias, des responsables politiques ... ?
- Bénéficient-ils de dispositifs de protection particuliers ?
- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

2 – Concernant les moyens de la Justice

2-1. Financement du système judiciaire

- *Budget annuel de la Justice*
Préciser le montant total annuel du budget affecté au fonctionnement des juridictions (incluant les dépenses relatives aux juges, aux procureurs et à l'aide juridictionnelle). Ce budget vous paraît-il suffisant ? Les magistrats, ou les instances représentatives de magistrats, sont-ils consultés au stade de l'élaboration du budget ? Au stade de son exécution ?
- *Budget de fonctionnement des juridictions*
Sur quels critères sont réparties les sommes aux différentes juridictions ? Les fonds sont-ils ensuite utilisés librement au sein des juridictions ? Existe-t-il des consultations préalables des magistrats avant l'engagement des dépenses ?
- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

2-2. Rémunération des juges

- Définir sommairement l'échelle des salaires des magistrats : en début, en milieu et en fin de carrière.
- Qui détermine la rémunération des magistrats ? Existe-t-il un système de rémunération au mérite (si oui dans quelles proportions ? et selon quelles modalités d'attribution ?)
- Les rémunérations sont-elles susceptibles d'évoluer à la baisse ? Si oui, avez-vous rencontré de telles baisses et dans quelles proportions ?
- La protection des magistrats, relativement à la question des rémunérations, vous paraît-elle assurée ? Si non, comment pourraient-ils être améliorés ?

2-3. Retraites

- A quel âge et selon quelles modalités les magistrats peuvent-ils prétendre prendre leur retraite ?
- Le montant de la pension de retraite est-il satisfaisant ?
- Des améliorations doivent-elles être apportées au dispositif ?

2-4. Accessibilité et efficacité de la Justice

- Existe-t-il des obstacles pour le justiciable à l'accès au juge ? Existe-t-il des dispositifs pour permettre l'accès à la Justice des plus défavorisés (aide juridictionnelle ; soutien aux victimes ...)
- Existe-t-il des problèmes de délais dans le traitement des affaires ?
- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?
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3 – Concernant l'association nationale

3-1. Représentativité de l'association

- Combien l'association compte-t-elle de membres ? L'association a-t-elle connu depuis son adhésion une évolution du nombre de ses adhérents ?
- Existe-t-il d'autres associations/syndicats de magistrats ?
- Dans l'hypothèse où des élections professionnelles seraient organisées dans le pays concerné, bien vouloir fournir les éléments chiffrés montrant la représentativité.
- L'association compte-t-elle des élus dans les instances indépendantes qui sont en charge de la gestion des carrières des magistrats ? De la discipline des magistrats ?

3-2. Modalités de désignation / élection de ses représentants

- Comment sont désignés les dirigeants de l'association ? Sont-ils élus par les adhérents ? Sont-ils nommés ? Si oui par qui et selon quelle procédure ?
- Comment est organisée l'association ? Existe-t-il un conseil d'administration/conseil syndical/conseil associatif ? Si oui, comment les membres de ce conseil sont-ils élus/nommés ? Quels sont les pouvoirs de ce conseil ?
- Existe-t-il des représentants régionaux de l'association ? Si oui, comment sont-ils nommés/désignés ?

3-3. Financement de l'association

- Quel est le budget annuel de l'association ?
- Quels sont les moyens de financement de l'association : cotisations des adhérents, subventions, autres sources de financement ?
- Quelles ont été les principales dépenses ?

3-4. Relations de l'association avec les pouvoirs publics

- L'association rencontre-t-elle régulièrement les représentants du pouvoir exécutif ? Plus particulièrement le Ministre de la Justice et ses collaborateurs ? L'association est-elle consultée avant toute réforme par le gouvernement ?
- L'association rencontre-t-elle régulièrement les représentants du pouvoir législatif ? L'association est-elle appelée à donner son avis sur les projets et propositions de loi avant leur examen par le parlement ?

3-5. Actions menées par l'association au cours des 3 dernières années

- Quelles ont été les principales actions menées au cours de l'année écoulée ? Dans les 5 dernières années ? Depuis l'adhésion ?
- L'association a-t-elle organisé des actions collectives (manifestations, grèves ...) ?
- L'association a-t-elle une présence sur le plan médiatique ? L'association a-t-elle publié des documents (livres, revues, communiqués ...) ?
- Les éventuelles actions menées ont-elles eu des conséquences positives sur la situation du pouvoir judiciaire ?

4 – Divers

- Quels ont été les principaux problèmes rencontrés par le pouvoir judiciaire dans votre pays ces dernières années ?
- Diriez-vous que la situation pour la magistrature s'est améliorée ? a régressé ? a restée stable ?
- Quelles sont les principales réformes en cours ou envisagées ? Ces réformes vous semblent-elles aller dans le bon sens ?

Questionnaire for Member Associations

Answers Austria

1 - Regarding independence of judges

1-1. Recruitment

- Briefly describe the modes of recruitment of judges in your country (competition, election, appointment ...)

Judges are appointed by the president of the state (higher ranks) or the minister of justice (lower ranks). They either have absolved four years of initial training and passed an exam (written or oral) or they have been lawyers or notaries (after they passed the respective exam for lawyers or notaries). It is very rare that lawyers or notaries apply for the position of a judge. To become candidate for judge (trainee judge) one is appointed by the minister of justice. The presidents of Upper Courts of Appeal provide a list of the candidates, which they –after a minimum initial training of 5 months an exam and an interview as best capable ranked according to their abilities.

- Do you consider this recruitment procedure problematic or does it ensure a satisfactory recruitment in number and quality ?

There is still space for improvement: the minister is not bound to the proposals; the proposal is made by the presidents of the Upper Court of Appeal alone without the Personalsenat.

1-2. Initial and continuing training

- Briefly describe the training of judges at the beginning of the career and during this one

The initial training for candidates (after finishing university study) is 4 years. Most of the time the candidates are assigned to a judge in different courts with different types of jurisdiction, they are also assigned to prosecutor offices, to a lawyer or notary, to prison service etc. In between these assignments they attend courses.

There is a large scale of in-service training provided, legal topics, soft skills etc. Training is organized by the ministry, by the presidents of the Upper Courts of Appeal and by the judges association.

- Is there a school responsible for training judges?

There are two locations where training is performed but these are no schools in the sense of a justice academy like in Bordeaux, Barcelona or Trier.

- Do you consider the training satisfactory? If not, how could it be improved?
The training is excellent.

1-3. Appointment and career

- Briefly describe the procedures for appointment of judges

If there is a vacancy it will be published. Everybody who fulfils the requirements to become a judge and every judge can apply for the vacant position. There are two proposals, which rank the best candidates, it has to exclude the candidates which are not capable and has to include at least three capable candidates. A first proposal is adopted by the Personalsenat of First Instance, a second proposal is adopted by the Personalsenat of the Upper Court

of Appeal. The minister of justice is not bound by these proposal but in practice – there are two exceptions only – he/she takes one of the two lists.

- Is there a Higher Council of Justice in charge of these issues? If yes, how is it composed? What are its powers (simple opinion or decision-making power)?

There is no Higher Council of Justice but there are Personalsenate at each Landesgericht (competent for this court and the District Courts of its jurisdiction) and at each Upper Court of Appeal and at the Supreme Court. They are composed of the president of the court, the older Vice-president of the Court and three judges elected by their peers.

- What are the rules for promotion of judges?

Regarding promotion in respect of level of income: Automatically every four years judges enter an higher class of income.

Regarding “promotion” to a court of higher instance: the same procedure as described under appointment above applies.

- The tenure is it guaranteed to judges?

Yes the tenure is guaranteed

- Judges are they evaluated? If yes, by whom, on what basis and with what possible appeal?

Judges are evaluated for the second year after they have been appointed to a new position by the Personalsenat. There is the possibility of an appeal to the Personalsenat of the next higher Court

- Do you consider these procedures satisfactory? If not, how could they be improved ?

The procedure is sufficient, a problem is seen in the fact that most of the judges are evaluated with the best possible mark (“excellent”). There is a debate going on. There is a proposal to substitute the final mark by a more detailed description.

1-4. Discipline and Ethics

- Describe briefly the ethical rules and disciplinary proceedings

Ethical rules are expressed in a declaration adopted by the judges association. Disciplinary offences are described in the law. Disciplinary procedure is performed by courts (first instance Upper Court of Appeal and remedy to the Supreme Court). It can be initiated by everybody but the Disciplinary Court decides if it really starts a procedure.

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Is there a regime of incompatibilities and prohibitions of certain professions and positions for judges? Yes

Is there declaration of assets? No

- Who is in charge of disciplinary procedures? What are the guarantees for judges involved (contradictory, rights of defense, appeal ...) ?

The procedure is exercised by a court (see above). All rights of defense are foreseen like in a criminal procedure.

- Do you consider these procedures satisfactory? If not, how could they be improved? They are more or less satisfactory.

1-5. Distribution of cases

- Describe briefly the distribution of cases between judges and the conditions for their eventual divestiture

Cases are distributed either according to criteria, which are pre-established in the beginning of the year by the Personalsenat (e.g. cases of a certain kind, or according to the initial letter of the name of the accused person etc.) or regarding in the order in which they come in, or randomly by computer program.

- Do you consider these procedures satisfactory? If not, how could they be improved? It is more or less satisfactory

1-6. Recognition of the right of association

- The right to join or form associations/unions, is it recognized for judges?

Yes it is

- If so, what resources are allocated to the association / union in terms of grants, human resources?

The association is mainly financed by the membership fees. The ministry of justice provided the bureau facility (room belonging to the palace of justice, possibility to use telephone, fax and computer, and there is a financial contribution to the publication of the journal of the association.

- Do you consider these procedures satisfactory? If not, how could they be improved?

At the moment there is no problem

1-7. Protection of judges

- Are the judges frequently attacked in the media, by politicians or other people? Do they have special protection?

There are attacks especially when politicians are involved in court proceedings. Regarding attacks by use of new media, there are considerations ongoing, how to better protect judges against undue attacks.

- Do you consider these procedures satisfactory? If not, how could they be improved?

- At the moment there are no problems

2 - Regarding the means of Judiciary

2-1. Funding of the judiciary

- *Annual budget of Justice*

Specify the total annual allocation to the functioning of the courts budget (including expenses relating to judges, prosecutors and legal aid). Does this budget seem to you sufficient? Judges, or bodies representing judges, are they consulted during the elaboration / implementation of budget?

The annual budget of justice (including expenses relating to judges, prosecutors and legal aid) sums up to around 1300 Million EUR, Due to the court fees the cost are lower than the income. But this is used for other parts of the budget. More judges and staff is needed, which would cause additional financial means. There is no official consultation during the elaboration and few consultation regarding the implementation of the budget

- *Operating budget of the courts*

How and on which criteria are distributed the funds to the different jurisdictions? Can the courts use freely their budgets? Is it organized before committing expenditure a consultation of judges?

The ministry distributes the funds to the superior courts of appeal which manage the budget for all courts in their district. Presidents of lower courts have only a very limited discretionary power how to use the budget assigned to their courts.

- Do you consider these procedures satisfactory? If not, how could they be improved?
No; Regarding to international standards, which propose that the judges should have a say regarding the elaboration and the allocation of the budget.

2-2. Salary

- Briefly define the scale of salaries of judges : at the beginning of the career, at the mid-term, at the end

The lowest (first) gross income of a judge of the first instance is 50.403 EUR a year, the highest (last) income of a judge of the first instance is 94707 EUR. The lowest gross income of a judge of the supreme court is 106.119 EUR, the highest income of a judge of the supreme court is 140.049 EUR a year. Presidents of courts have some additional remuneration.

In principle depending on the level of the court (first, second instance or supreme court there are three scales of salaries, each composed of 8 levels of salary. Within these scales the judge moves – in practice automatically - every four years from one scale to the next.

- Who determines the salary of judges? Is there a system of “merit pay” (if so in what proportions? How the sums are assigned to judges?)
The salaries are determined in the law. There is no system of “merit pay”

- Salaries are they likely to go down? If yes, have you met such cuts and in what proportions?

In the last ten years there was no cut down in the salaries.

- Do you consider this situation and the guarantees for judges satisfactory? If not, how could they be improved?

In general the system as such is more or less seen as o.k., but an increase of the salaries is necessary to cope with other professions in the legal field and comparable positions elsewhere, when one takes the responsibilities and reputation of the office of a judges into consideration.

2-3. Pensions

- At what age and how judges can they retire?

Judges retire at the age of 65.

- Does the amount of the pension satisfactory ?

Till recently the pension system was quite o.k. (the best possible pension was 80% of the last income). Due too several reforms in the last years, younger judges will get a pension which is calculated according to the general rules for everyone in the country, which among other things considers a maximum income as basis of the pension, which is much lower then the income of a judges when the judge retires. In addition the basis is not the last income any more but an average income of an increasing number of years, so that also lower income of past years are relevant for the calculation of the basis.

- Do you consider that improvements have to be done?

Yes. If the gap between the last income and the income in the pension is too big it somehow infringes the personal independence of the judge.

2-4. Accessibility and Efficiency of Justice

- Are there barriers to the defendant to access to justice? Are there mechanisms to provide access to justice for the most disadvantaged people (legal aid, Support to victims ...)

There are no barriers to access to justice ? There is legal aid and support to victims.

- Are there problems of deadlines in the treatment of cases ?

No

- Do you consider these procedures satisfactory? If not, how could they be improved?

There are no problems

3 - Regarding the national association

3-1. Representativeness of the association

- How many members does the association have? Has this number increased since the association became a member?

There are 2727 members (1861 active judges, which is more than 98% of all active judges, 176 candidates to become a judge and 690 retired judges); yes it increased

- Do other associations/organizations of judges exist?

Yes there exist four other associations for different types of administrative judges

- If elections are held in the country in question, please furnish statistical data relating to the extent to which the association is representative.

?? what is the meaning of this question ? (More than 98% of judges are member)

- Does the association include members who are independently elected and who oversee the judiciary? The discipline of the judiciary?

?? what is the meaning of this question ?

3-2. Modalities for appointment / election of its representatives

- How are the leaders of the association selected? Are they elected by the members? Are they appointed? If yes, by whom and by what process?

The board is elected by the assembly of delegates, which represent the (regional) sections of the association. These delegates are elected by the members of the respective section.

- How is the association organized? Is there a board of directors/association council? If yes, how are the members of the council appointed/elected? What powers does the council have?

See above (the board is composed of the president, three vice-presidents and 17 other members)

- Does the association have regional representatives? If yes, how are they appointed/elected?

Yes see above

3-3. Financing Association

- What is the association's annual budget?
Ca. 170.000.-EUR (2013)
- What are the association's funding sources: membership dues, subsidies, other funding sources?
The association is funded by membership fees (158.000.-EUR). To publish the Richterzeitung, a monthly magazine, the ministry of justice provides a subsidy of 12.000.-EUR.
- What have been the principal expenses?
Costs of staff (one secretary), organizing seminars and meetings, travel expenses, monthly magazine (46.000.-EUR)

3-4. Relations association with public administration

- Does the association meet regularly with representatives of the executive? In particular with the Minister of Justice and his/her associates? Is the association consulted in advance of all government reforms?
Yes there are regularly meetings with the Minister of Justice and the relevant persons in the ministry. The association normally is consulted on reforms which deal with the judges or with the justice field including substantial and procedural law, which they have to apply.
- Does the association meet regularly with representatives of the legislature? Is the association asked to provide its opinion on projects and bills before they are examined by the parliament?
Yes there are regularly meetings with deputies of all parties. The association normally is consulted on reforms which deal with the judges or with the justice field including substantial and procedural law, which they have to apply. Sometimes the association is asked to send experts to parliamentary committees, when they debate on such issues.

3-5. Actions undertaken by the association during the last 3 years

- What were the main actions undertaken in the previous year? In the previous three years? Since becoming a member?
Last three years:
Initiation and reform of the disciplinary procedure for judges; involvement in the reform of the court structure (merging of first instance district courts), permanent fight for sufficient number of judges and staff, debate on the criteria for the workload, change of jurisdiction in civil cases between first instance Bezirksgerichte and first instance Landesgerichte (rise in the amount of money, which is relevant for the jurisdiction of the Landesgerichte) etc.
Since becoming a member ? Hundreds of activities.
- Has the association organized collective action (demonstrations, strikes ...)?
Yes several times but not in the last three years
- Does the association have a media presence? Has the association published documents (books, reviews, communiques...)?

There are press conferences if necessary, The association runs a website. A few books were published (100 years of the association etc.). There is a monthly magazine. The Code of Ethics was published in a brochure etc.)

- Did the eventual actions taken have a positive impact on judicial powers?

Yes

4 - Miscellaneous

- What were the main problems encountered by the judiciary in your country in recent years?

A large number of high sensitive cases with the involvement of politicians came up. They were used as means of propaganda by politicians of every side. Judiciary was blamed how it deals with such cases. Some of them took very long time. The result was a decreasing trust in the justice system.

- Would you say that the situation for the judiciary has improved? decreased? has remained stable?

See above, but meanwhile some of these cases have been finished and the trust in the judiciary increased again to the old high level, so overall it is stable.

- What are the main reforms underway or planned? These reforms seem they go in the right direction?

The new minister of justice wants to reform the juvenile justice system especially the detention of juveniles. He also wants to transfer the head of the prosecution service from the ministry of justice to a person independent from the executive power. This is very much supported by the Association of Judges

Questionnaire for Member Associations

1 - Regarding independence of judges

1-1. Recruitment

- *Briefly describe the modes of recruitment of judges in your country (competition, selection, appointment ...)*

In order to organize selection of judges according to the modern demands the Judicial Legal Council adopted “Selection procedure of candidates who have not mastered for vacant judicial positions” in 2005. These rules have been examined by the influential experts of the Council of Europe and highly evaluated.

The selection of judges is implemented by the independent body - The Selective Committee of the Judges. The committee which more than half of the members are judges is formed by the Council in accordance with the laws "On Judicial Legal Council" and "On Courts and Judges". The committee accepts the documents of the candidates, organizes transparent examinations in written and oral form on test basis, engages them for a year-long training courses in order to dominate a profession, determines their profession utility according to the outcome of a course and presents them to the Judicial Legal Council.

According to the legislation selection procedure of candidates arranges examinations in written and oral form. The written examination has two phases – the test and answering essay topics.

In order to create equal conditions for the candidates both phases of examination – testing and written exams consisting of the solution of cases held in a single room for all candidates and it is used only personal codes. Also, all stages of the examination process - selection of topics, distribution of copies, checking answers and announcing the results are immediately implemented in front of the candidates in the examination room.

Candidates passing this stage take an oral examination. Achieving success at written and oral examination candidates are sent to a preliminary long-term training courses. After training courses candidates pass the written and oral examinations according to the results of training. After these examinations The Selective Committee of the Judges takes the final interview with each candidate in order to determine gaining qualities that are necessary to work as a judge. After the interview the selected candidates for the post of a judge are presented to the Judicial Legal Council. The Judicial Legal Council clarifies following the requirements of the legislation during the selection procedure and holds a discussion with candidates. Then The Judicial Legal Council in order to nominate candidates to vacant judicial post sends related offers to the Republic President.

Paying special attentions to ensure full transparency at all stages of the selection procedure, examinations and also in oral examinations the participation of international and local observers is provided and broadcast directly through the internet.

Till nowadays in selections procedure of judges took part 2600 lawyers. During the contests 307 persons among them, also 72 persons according to the direction of President dated in 4th October 2013 were appointed as judges. Currently, 60 percent of all judges (70% of first instance court judges) are the judges selected by the new rules.

- *Do you consider this recruitment procedure problematic or does it ensure a satisfactory recruitment in number and quality?*

Members of Association of Judges of the General Court of Azerbaijan took part at all stages of the examination procedures as observers and expressed their opinions about objectivity and transparency of examinations. We consider that, there is not any serious problems with the selection procedure applying in Azerbaijan. This is not only our Association's, but also specialized agencies' conclusion reflecting the reality. It is no coincidence that the Council of Europe's European Commission for the Efficiency of Justice (CEPEJ) was interested in the selection of candidates establishing the influential expert group and the members of this group directly followed the selection of candidates visiting to Azerbaijan. Highly appreciating multi-stage selection procedures, including examination of all candidates in a single room with the participation of local and international observers, detection of examination topics and checking answers immediately in front of the candidates and broadcasting live via the Internet all stages of the examination process European experts held numerous meetings discussing selection procedures with the representatives of local and international organizations and analyzed national legislation.

In a comprehensive report on the subject prepared by the CEPEJ experts was stressed the activity of institutional bodies formed in Azerbaijan in this area and the selection procedures of judges responding progressive European standards, the selection procedure was differentiated with honesty, objectivity, transparency.

A report on Azerbaijan prepared by the Commission have been widely discussed with the participation of representatives from all member states of the Council of Europe and making an appropriate decision that Azerbaijan developed the best practice in selection process of judges.

In a report of the project to strengthen judicial reforms in the Eastern Partnership countries carried out by the European Union and the Council of Europe a method of selection procedure of the candidates in our country assessed as a positive example and was advised to base on this experience in other member states.

1-2. Initial and continuing training

- *Briefly describe the training of judges at the beginning of the career and during this one*

The program of training courses for candidates prepared by the Academy of Justice and the Judges Selection Committee approves by the Committee with the agreement of the Judicial Legal Council. For a year-long training courses lays emphasis on teaching human rights, the

precedents of European Courts, the fight against corruption, judicial ethics and other current issues and organizes to pass a probation in the courts and abroad for all candidates.

Training of judges carries out on the basis of the 4th abandonment of the Consultative Council of European Judges about the initial and continuous training of judges at national and European level. So, at the end of each they survey for the next year about the need for training judges, as well as the calendar plan of prepared educational programs are coordinated with them. According to the programs are organized courses up to 20 every year.

- *Is there a school responsible for training judges?*

Training of judges and candidates carries out by the Academy of Justice, the training sector of judges and public prosecutors by the Judicial Legal Council and The Selective Committee of the Judges.

In the area of the training of judges Azerbaijan collaborates with the German Society for International Cooperation (GIZ), the OSCE Office in Baku, the U.S. and French embassies, ABA CEELI, the Turkish Justice Academy, the Council of Europe, the International Committee of the Red Cross and UNICEF.

In addition, Association as one of the main objectives giving particular importance to enlightenment regularly organizes training courses for judges on actual problems of enforcement of the law and court experience.

- *Do you consider the training satisfactory? If not, how could it be improved?*

We consider that forming training programs at present meet the interests of judges.

1-3. Appointment and career

- *Briefly describe the procedures for appointment of judges*

In accordance with the Constitution and laws above-mentioned persons passing transparent selection procedure are appointed for the post of a judge by the president for the first instance courts and by the National Assembly for high courts upon the recommendation of Judicial Legal Council.

- *Is there a Higher Council of Justice in charge of these issues? If yes, how is it composed? What are its powers (simple opinion or decision-making power)?*

Yes, there is a such body. As a result of the reforms in the judicial system on February 14, 2005, was established the Judicial Legal Council. In accordance with Article 1 of the Law "On the Judicial Legal Council" the Judicial Legal Council is a self-governing body carrying out the functions of the judiciary, providing to form the court system and the independence of judges, organizing the selection procedure of candidates who have not mastered for vacant judicial positions, evaluating activity, changing workplace, promotions and involving judges to disciplinary responsibilities and solving other issues related to the courts and the judges within the

competence in Azerbaijan Republic. Most of the members of the Judicial Legal Council are judges. (9 of 15 members)

The selections of judges implements by the independent body The Selective Committee of the Judges. The committee which more than half of the members are judges is formed by the Council in accordance with the laws "On Judicial Legal Council" and "On Courts and Judges" of the Azerbaijan Republic. The committee accepts the documents of the candidates, organizes transparent examinations in written and oral form on test basis, engages them for a year-long training courses in order to dominate a profession, determines their profession utility according to the outcome of a course and presents them to the Judicial Legal Council.

As mentioned, the appointment of judges is possible only on the basis of the proposal of the Judicial Legal Council.

- *What are the rules for promotion of judges?*

Promotion of judges depending on the results of their activity appraisal (appraisal, see the question below) carries out on the basis of the recommendations of the Judicial Legal Council.

The promotion of any judge cannot be resolved without the recommendations of the Judicial Legal Council.

- *The tenure is it guaranteed to judges?*

In accordance with the first part of Article 127 of the Constitution and the Article 100 of the Law "On Courts and Judges" judges are independent and are subordinate only to the Constitution and laws of the Azerbaijan Republic.

The independence of judges implements by the way of depoliticizing during their competent period, constancy and immunity, limitation of appointment, bringing to book, dismissal and termination of the powers, the independent functioning of the judiciary and the implementation of justice according the rules of law, intolerance limiting and intervention of legal proceedings by any person and providing personal security of judges, they are given financial and social security in accordance with their duties.

- *Judges are they evaluated? If yes, by whom, on what basis and with what possible appeal?*

In accordance with Article 13 of the Law "On the Judicial Legal Council" activity of the judges is estimated no less than once every five years by the Judicial Legal Council. Activity of judges is evaluated according to the opinion of The Supreme Court of Azerbaijan Republic, Courts of Appeal and Supreme Court of the Nakhchivan Autonomous Republic, also chairmen of their courts. In evaluation of their activity is taken into consideration opinion and collected information of relevant executive authority of the Azerbaijan Republic (Ministry of Justice) and the Judicial Legal Council, also can be used information collecting by separate members of the Judicial Legal Council.

- *Do you consider these procedures satisfactory? If not, how could they be improved ?*

We consider, although there are relevant provisions in the legislation about the evaluation of the activities of judges, the specific rules in this area should be developed. At present in most of European countries with a developed legal system the absence of a single experiment on evaluation activity of the judges creates a problem. Association is doing works in order to study foreign experience in this area.

1-4. Discipline and Ethics

- *Describe briefly the ethical rules and disciplinary proceedings*

In accordance with Part II of Article 127 of the Constitution judges try the cases impartial, fair, based on equality of the parties and facts according to the law.

In accordance with the requirements of Article 99 of the Law "On Courts and Judges" while administering justice the obligation of judges is to carry out the requirements of law accurately and steadily, to provide educational and spiritual impact of judicial activity, be impartial and fair, to avoid any action damaging justice authority, good name, honor and dignity of the judges.

Also, working group with the judge associations established by the Judicial Legal Council made out the project Code of Ethics regulating specific ethical requirements, also issues of professional ethics, out of activity behavior and determining regard to professional activity and this Code approved by the Council decision in June 22, 2007. While receiving this Code was followed Bangalore Principles of the Organization of United Nations by the behavior of judges aimed at independence, ensuring objectivity and prevention of corruption. (The code is attached).

In Article 1 of Law 111 "On Courts and Judges" as one of the basis of commencing the disciplinary responsibility of judges is considered a breach of ethics.

In addition, according to Article 24 of the Code violation of the requirements of 3rd (Execution of the duties on administration of justice is very important in activity of the judges), 4th (Judges trying the cases must do their duties with dignity and be impartial, fair and steady in his activity) and 15th (The judge must always develop his theoretical and practical knowledge necessary for the administration of justice) articles can be taken into account in evaluation of judges' activities.

- *Is there a regime of incompatibilities and prohibitions of certain professions and positions for judges? Is there declaration of assets?*

According to Article 126 of the Constitution of Azerbaijan Republic Judges may not hold any other elected or appointed position, except scientific, pedagogical and creative activity they may not be engaged in any other business, commercial and other paid activities, will not be involved in political activities and join political parties, may not get paid except their salary and the means for scientific, pedagogical and creative activity.

Persons appointed to the post of judge must terminate the membership of the political parties and other political organizations before the oath. An application to this effect attaches to the judges' files.

Persons appointed to the post of judge not allowed to execute before they quit the political parties and other political organizations.

According to Article 18 of the Code of Judicial Ethics, the judge trying the cases must not receive gift and present as a sign of gratitude and should avoid services that could affect the resolution of the case.

The 31th Article of the Criminal Procedural Code named "Intolerance of non-procedural relations in criminal justice proceedings" non-procedural relations not stipulated by this Code are unacceptable between the composition of the court and participants in the criminal process, also between the courts of first, appeals and cassational instances in connection with trying criminal cases and other cases of prosecutions of a crime.

In accordance with the 2nd Article of Law "On prevention of corruption" as the persons appointed to the state authority in the manner prescribed by the Constitution of Azerbaijan Republic and law judges are subjects of offenses related to corruption.

According to Article 5.1 of this Law officials must to provide informations in the manner prescribed by the legislation about their profit every year indicating source, type and amount, property which is subject to taxation, deposits in banks, securities and other financial assets, participation as a shareholder or founder in the activity of companies, funds and other economic entity, his ownership interests in these institutions, a debt over five thousand times of conventional financial unit of the amount, financial and property obligations over thousand times of conventional financial unit.

According to Article 3 named "Authorities receiving financial information" approval of a law on "The rules introducing financial information to the authorities the judges of the courts of Azerbaijan Republic present the financial information to the Anti-Corruption Commission of Azerbaijan Republic.

Financial information is presented in the form of a declaration. Declaration form and submission guidelines determines by the relevant executive authority taking into account the recommendations of the Commission. (Note: The declaration form has not been established up to now).

- *Who is in charge of disciplinary procedures? What are the guarantees for judges involved (contradictory, rights of defense, appeal ...) ?*

In accordance with Article 112 "On Courts and Judges" only the Judicial Legal Council may initiate disciplinary proceedings against the judges. Chairmen of the Supreme Court of the Azerbaijan Republic, the courts of appeal, the chairman of the Supreme Court of the Nakhchivan Autonomous Republic and the relevant executive power body of the Azerbaijan Republic (Ministry of Justice), are obliged to inform the Judicial Legal Council on initiation of disciplinary proceedings if there are reasons defined by this law and signs of basis for disciplinary action.

Natural and legal persons are able to apply to the Judicial Legal Council if there are signs of basis for disciplinary action determined for judges in the sixth paragraph of Article 111-1.

Chairman of the Supreme Court of Azerbaijan Republic apply to the Judicial Legal Council about initiation of disciplinary proceedings of judges of the courts of first, appeals and cassational instances.

Chairmen of the courts of appeal apply to the Judicial Legal Council about initiation of disciplinary proceedings of judges of the proper courts of appeals, also about the judges of the first instance courts relating to the territorial jurisdiction of the same court.

Chairman of the Supreme Court of the Nakhchivan Autonomous Republic apply to the Judicial Legal Council about initiation of disciplinary proceedings of the judges of the same court and about the judges of the first instance courts relating to the territorial jurisdiction of the Supreme Court of the Nakhchivan Autonomous Republic.

Relevant executive power body of the Azerbaijan Republic (Ministry of Justice) apply to the Judicial Legal Council about initiation of disciplinary proceedings of the judges of the courts of first and appeals instances.

Disciplinary proceedings can be initiated against a judge within a year of the date of disciplinary violations and can be initiated within three years after committing disciplinary violations.

Judges maybe engaged to disciplinary responsibility only according to the decision of Judicial Legal Council.

Applying on initiation of disciplinary proceedings of the judges is doing if there are one or more of the following reasons:

- complaints of physical and legal persons,
- the information published in the media,
- the detected irregularities trying the cases in the courts of appeal and cassational instances and particular orders about these judges determined by the same courts.
- violations reflected in the decisions of The Constitutional Court of the Azerbaijan Republic and the European Court of Human Rights;
- found violations during the evaluation of the activity of judges and summarizing judicial practice.
- other information of persons having right of access on initiation of disciplinary proceedings of the judges.

Judges are engaged to disciplinary responsibility when they violate cases of legislation, judicial ethics, labor and executive discipline repeatedly or flagrantly trying the cases, failure to comply with financial requirements defined in Article 5.1 "On Fight against Corruption" of the Law of the Azerbaijan Republic, commit any of the offenses referred in Article 9 "On Fight against Corruption" of the Law of the Azerbaijan Republic, actions unworthy of the name of the judge.

In accordance with a law "On Judicial-Legal Council" the Judicial-Legal Council investigates the matter and takes a decision as a rule in the presence of judge for a period of three months from the date of initiation of disciplinary proceeding (Article 21). By the Chairman of the Judicial Legal Council is appointed speaker among the judge members of Council on issue caused initiation of disciplinary proceeding. The speaker investigates materials involving officers of the Judicial-Legal Council, presents the prepared report on results and the proposals about the persons regarded advisable to be invited to to the meeting of the Judicial-Legal Council. Chairman raises the issue at the meeting. The members of the Judicial-Legal Council and invited persons are informed about the date, time and location of meeting no later than three days prior to the meeting. During this period, members of the Judicial Legal Council take cognizance with the meeting agenda and materials provided for review.

Judge considered disciplinary responsibility is informed about the date, time and place of meeting of the Judicial-Legal Council no later than five days prior to the meeting. If this judge is not informed in relevant rules about the date of meeting or he fails to attend for valid reasons the issue is postponed. If the judge informed in relevant rules about the date of meeting and looked

into materials fails to attend for not valid reasons the Council tries the issue without his presence. The refusal of judge to take cognizance materials or to attend the session is documented.

The disciplinary proceedings meeting of the Judicial-Legal Council is recognized with the participation of five members having the right to vote. Except the chairman of the Supreme Court of Azerbaijan Republic and the speaker judge only the judge members of the Judicial-Legal Council present while taking a decision vote on disciplinary proceedings. Chairman of the Judicial-Legal Council opens the meeting at the appointed time, announces the agenda, checks participation of invited people, investigates the reasons for non-appearance, discusses the possibility of reviewing the materials, determines whether appeal the members of council.

The consideration of disciplinary proceedings begins with the report of the speaker conducted an inspection of materials. Then the judge considered of disciplinary responsibility and invited persons to the meeting are listened, filing applications are considered, necessary documents and materials are studied, the investigation is underway, discussing the results they decide one of the orders provided in Article 112 of the law "On Courts and Judges". Arriving at a decision of disciplinary proceedings the Judicial-Legal Council bases on facts and important circumstances, the nature, gravity degree and the result of the act committed by the judge.

In accordance with Article 112 of the law "On Courts and Judges" the Judicial-Legal Council makes one of the decisions about proposing the relevant executive authority of Azerbaijan Republic on reprimanding of the judge, reprimand, termination of the disciplinary proceedings, also demote the judge, changing workplace and termination of the powers of judge.

If there is no appeal against disciplinary liability the decision takes effect after twenty days the date of adoption. During this period the decision about disciplinary proceedings of the Judicial Council may be appealed to the Plenum of the Supreme Court.

The Plenum of the Supreme Court considering the appeal within three months remain in force, overrule or make changes to the decision of the Judicial Legal Council and submit its decision to the Council. Plenum of the Supreme Court's decision is final. Considering appeals to the decisions of the Judicial-Legal Council on involving judges to disciplinary responsibilities in The Plenum of the Supreme Court presented members of Council while taking a decision vote in the meetings of the Judicial Legal Council don't present while taking a decision vote in the meetings of the The Plenum of the Supreme Court. If judges are not engaged to disciplinary responsibilities within one year from the date of sentence are recognized not engaged to disciplinary responsibilities.

It should be noted that some important safeguards are designed to ensure their own protection during the process of disciplinary proceedings. Thus, the judges considered of disciplinary responsibility have the right to:

- become familiar with the materials of the disciplinary proceedings;
- be defended by a lawyer or a judge of his own choosing;
- be informed about the date, time and location of the disciplinary proceedings meeting;

- protest a member of the Judicial Legal Council;
- attend at the disciplinary proceedings meetings and submit the explanations, applications and documents;

- get a copy of the decision of the disciplinary proceedings;
- file an appeal to the decision of disciplinary proceedings.

- *Do you consider these procedures satisfactory? If not, how could they be improved?*

We consider that a procedure for disciplinary proceedings of judges carried out by an independent body which majority of the members are judges, also participation of only judge members of the Council in decision-making on the issue is satisfactory in terms of the independence of judges.

Also it must be noted that, in accordance with the Charter of the Association its member judges have the right to apply the Association for assistance in protection of their own interests. Up to now judges considered disciplinary proceedings by the Judicial Legal Council repeatedly applied for the organization of their protection to the Council and the other judge members of Association participated in their defense.

1-5. Distribution of cases

- *Describe briefly the distribution of cases between judges and the conditions for their eventual divestiture*

The division of cases among judges is regulated by the “Instruction on conducting clerical works in the courts of Azerbaijan Republic” adopted in 2007.

In accordance with the instruction the name and surname of judges in the courts are encoded with the randomly chosen ordinal numbers in their general meeting. Coding of judges in the appeal and cassation instances is carried out on the collegiums.

In accordance with this document the division of cases among judges is carried out in the absence of chairmen of the courts, an automated way, based on a coding system. This system ensure equal distribution received court cases in the order of seen to the court among judges in accordance with their codes.

- *Do you consider these procedures satisfactory? If not, how could they be improved?*

We consider that this procedure provides transparent division of cases among the judges without any interference. In addition, measures are taken for the implementation of this division in automatic mode – through the computer in connection with the introduction of new information and communication technologies in the courts.

At the same time the Association regularly organizes courses on the application of the noted Instruction for the judicial officers and chancery managers.

1-6. Recognition of the right of association

- *The right to join or form associations/unions, is it recognized for judges?*

In accordance with the Charter of Association the judges of General Courts are accepted as a member only by applying in written form. Each judge may join or form associations/unions except political parties and other political organizations.

- *If so, what resources are allocated to the association / union in terms of grants, human resources?*

The resource allocated to the association is only membership fee.

- *Do you consider these procedures satisfactory? If not, how could they be improved?*

These procedures are satisfactory.

1-7. Protection of judges

- *Are the judges frequently attacked in the media, by politicians or other people? Do they have special protection?*

The Constitution of Azerbaijan Republic and relevant laws guarantees the independence of judges. But, sometimes judges also may be subjected to pressure by media without any major. There are no special defense techniques and in such cases judges have the right to defend their rights like other citizens by means provided in legislation. Such attacks take place in very few cases, that's why the judges demonstrate higher endurance and concludes that there is no need for additional special methods of protection.

- *Do you consider these procedures satisfactory? If not, how could they be improved?*

These procedures are satisfactory.

2 - Regarding the means of Judiciary

2-1. Funding of the judiciary

- *Annual budget of Justice*

Specify the total annual allocation to the functioning of the courts budget (including expenses relating to judges, prosecutors and legal aid). Does this budget seem to you sufficient? Judges, or bodies representing judges, are they consulted during the elaboration / implementation of budget?

According to the 2014 state budget for the judiciary, law enforcement and the prosecutor's office was allocated 1.240.642,0 pounds. The annual total budget allocated to the

courts amounted to 59,392,983 in 2014. These funds are sufficient. Judges, or bodies representing judges are consulted during the elaboration / implementation of budget.

- *Operating budget of the courts*

How and on which criteria are distributed the funds to the different jurisdictions? Can the courts use freely their budgets? Is it organize before committing expenditure a consultation of judges?

Ministry of Justice of Azerbaijan Republic in accordance with the legislation of the Azerbaijan Republic, except the judges of Supreme Court, for to strictly follow the judge's independence, deals with the improvement of professional skills of judges, the creation of the necessary conditions for the activities of first courts instance, and carries out the provision of normative and legal acts, financial and other logistical support.

The funds between various courts are distributed, taking into account the scope of work, jurisdiction the number of employees in the judicial apparatus.

- *Do you consider these procedures satisfactory? If not, how could they be improved?*

These procedures are satisfactory.

2-2. Salary

- *Briefly define the scale of salaries of judges : at the beginning of the career, at the mid-term, at the end*

In accordance with Article 106 of the law "On Courts and Judges" salaries of the judges is determined by the following amount:

Chairman of the Supreme Court in the amount of 1.785,0

Chairmen of the Supreme Court of the Nakhchivan Autonomous Republic and appellate courts in the amount of 90 percent of the wage the chairman of the Supreme Court.

Chairmen of the courts on grave crimes, court on grave crimes of the Nakhchivan Autonomous Republic, military courts and administrative-economic courts in the amount of 80 percent of the wage of the chairman of the Supreme Court.

Chairmen of the other courts in the amount of 60 percent of the wage of the chairman of the Supreme Court.

All vice-chairmen of the courts in the amount of 90 percent of the wage the chairman of the relevant courts.

Collegium chairmen of the Supreme Court, the Supreme Court of the Nakhchivan Autonomous Republic and the appeal courts in the amount of 85 percent of the wage the chairman of the relevant courts.

Judges of all courts in the amount of 80 percent of the wage the chairman of the relevant courts.

- *Who determines the salary of judges? Is there a system of “merit pay” (if so in what proportions? How the sums are assigned to judges?)*

Salary of the judges is determined by the legislative body of republic National Assembly by the law.

In addition to the exact amount prescribed under the law every month the judges are paid 15 percent of the wage for every 5 years of experience in judging and for the academic degree. Workers of Prosecutor appointed to the post of judge are extra paid same amount for every 5 years for service in the prosecution bodies.

To pay for expenditures associated with the fulfillment of responsibilities the judges of the Supreme Court of Azerbaijan Republic in the amount of 25 percent of the wage, judges of the courts of appeal instance in the amount of 20 percent of the wage, judges of the first instance courts in the amount of 15 percent of the wage are given the monthly tax-free allowance.

Persons appointed as a judge for the first time are paid twice the salary once in the first year of the judge activities, once a year for the next four years are paid one-time assistance in the amount of monthly salary.

According to the law judges are given leave forty calendar days every year. Judges taking a leave are given allowance in the amount of two months' salary (Article 107, 109 and 110). The life and health of Judges are insured from the state budget in the amount of their 5 years salary. In killing of judges (death) connection with the implementation of official duties or if they fall ill not allowing to continue the duties, are damaged (injury, trauma, contusion) they are paid lump sum allowance in accordance with legislation.

In addition, the Judicial Legal Council Judicial takes the encouragement measures as to proclaim appreciation and to give the award if the judges implement the duties exemplary, work perfectly for a long time and gain other achievements.

- *Salaries are they likely to go down? If yes, have you met such cuts and in what proportions?*

In order to reduce the salaries of the judges of the should be changed relevant article of the law by the legislative body, but up to now there were not such cases. Vice versa, improvement of material provision of the judges kept constant attention, compared to 2000 currently the salary of judges increased for 25 times.

- *Do you consider this situation and the guarantees for judges satisfactory? If not, how could they be improved?*

Formed practice in Azerbaijan and the developing country's economy year after year gives ground to come the conclusion that there is not any risk in order to reduce the salaries of the judge in the future.

2-3. Pensions

- *At what age and how judges can they retire?*

Pension provision of judges working at least 5 years and reached the age of retirement or former judges became disabled before reaching retirement age and their family members is carried out in accordance with the law "On Employment Pension".

By that law reached the retirement age (62 for men, 57 for women) and:

- former judges worked 5 years as a judge - 45 percent of average monthly salary of their 5 years;

- former judges worked from 5 to 10 years as a judge - 45 percent of the average monthly salary any 5 years, for each year over 5 years judging experience equal to 2 percent of the average monthly salary;

- former judges worked more than 10 years as a judge - 55 percent of the average monthly salary any 5 years, for each year of more than 10 years of experience equal to 5 percent of the average monthly salary pension are paid.

- *Does the amount of the pension satisfactory ?*

Pensions calculated as a ratio of the amount are stable and satisfactory.

- *Do you consider that improvements have to be done?*

We consider that increasing the amount of judges' pensions can be an important measure to strengthening of their independence.

2-4. Accessibility and Efficiency of Justice

- *Are there barriers to the defendant to access to justice? Are there mechanisms to provide access to justice for the most disadvantaged people (legal aid, Support to victims ...)*

According to Article 61 of the Constitution of Azerbaijan Republic everyone has the right to get high-quality legal assistance, and the legal assistance is carried out free, by the state in the cases of providing by the law.

In Article 20 of the law " On Advocates and Activity of Advocacy" based on the norms of the Constitution, considered that legal aid carried out by a lawyer without any limitation to low-income persons in need of legal assistance in court is provided by the state.

According to the Criminal Procedure Code and the Civil Procedure Code, the court can appoint a lawyer to provide free legal assistance to low-income individuals.

- *Are there problems of deadlines in the treatment of cases ?*

Trying the cases on criminal and administrative disputes is not limited to a defined period by the legislation, however, in any case, the judge must follow the effective and frequency principles of justice. On civil cases is taken 3 months time (1 month on certain categories of disputes) by the legislation. Sometimes, given time violations especially in the cases requiring

complex and more detailed research, which is necessary to interrogate a large number of participants (witnesses, victims, experts) are not systematic.

- *Do you consider these procedures satisfactory? If not, how could they be improved?*

Procedures provided by the law is satisfactory.

3 - Regarding the national association

3-1. Representativeness of the association

- *How many members does the association have? Has this number increased since the association became a member?*

At present Association has 377 members. Before becoming a member of the EAJ the Association had 66 members.

- *Do other associations/organizations of judges exist?*

Besides the Association of Judges of the General Courts there is a Association of Judges of Specialized Courts.

- *If selections are held in the country in question, please furnish statistical data relating to the extent to which the association is representative.*

The Association has no role in the selections held in the country.

- *Does the association include members who are independently elected and who oversee the judiciary? The discipline of the judiciary?*

In accordance with the Charter of Association of Judges of the General Court:

- the members of the Association may be only judges of the general courts, also the judges of the Supreme Courts, the courts of Appeal and judges of the other courts;

- members have equal rights. The relationships, rights and obligations of the members are determined by the legislation, according to the signed contract among them or by this Charter.

- setting of the members is carried out by Board of Directors.

- to join the association is applied in writing form to the Board of Directors. The application is reviewed within a month. More than half of the members of the Board of Directors expressed a positive attitude to this issue in the result of the voting the applicant is considered as elected member of the Association.

3-2. Modalities for appointment / selection of its representatives

- ***How are the leaders of the association selected? Are they elected by the members? Are they appointed? If yes, by whom and by what process?***

In accordance with the Article 6 of Charter of Association of Judges of the General Court:

- the supreme body of the Association is convened general assembly at least once a year.
- the general assembly shall be convened at the initiative of executive body, one of the founders or one-third of the members.
- founders and members of the association should be informed about the time and place of the meeting two weeks ago.
- General meeting have the following powers:
 - adoption and amendments of the Charter;
 - determining of the formation and use principles of the association's property;
 - creation of Association's executive bodies and early termination of their powers;
 - approval of the annual report;
 - participation in other organizations;
 - reorganization and liquidation of the Association;
 - listening to reports of the heads of the executive body of the Association.

- ***How is the association organized? Is there a board of directors/association council? If yes, how are the members of the council appointed/elected? What powers does the council have?***

In accordance with the Article 6 of Charter of Association of Judges of the General Court:

- current management of activities of the Association is carried out by the Board of Directors;
- the executive body of the Association is the Board of Directors, which is composed of chairman of Association, his deputies and other persons;
- the Board of Directors is a collegial executive body which have the following powers:
 - accepts and terminates membership;
 - suggests proposals and projects;
 - creates the branches and opens representative offices of the association;
 - solves the all issues not within the competence of other governing bodies.
- the Board of Directors is considered competent if more than half of the members participate and the decisions are taken by simple majority of votes.
- Chairman of the Board, his deputy and other members of the Association shall be elected by the general meeting for a period of three years.
- Chairman:
 - represents the union,concludes contracts on its behalf, gives power of attorney, organizes fulfillment of decisions of the General Assembly and the Board of Directors;
 - carries our other functions imposed on by the General Assembly and Charter.

- the Association's Control Auditing Committee carries out the control over the activities of officials and members of the Association in accordance with the Charter, also the financial activity of Association. The members of CAC determined by the General Assembly. The terms of office for 3 years. The decisions are taken by simple majority of votes.
- The Control Auditing Committee must look at received appeals from the bodies and members of Association and respond within a month.
- *Does the association have regional representatives? If yes, how are they appointed/elected?*

There are not any regional offices of the Association.

3-3. Financing Association

- *What is the association's annual budget?*
- *What are the association's funding sources: membership dues, subsidies, other funding sources?*

A source of funding of the Association is judges' membership fee.

- *What have been the principal expenses?*

The principal expenses of the Association are chairman business trip, action plan (meetings, receive guests, gifts, aids) and salary of staff members.

3-4. Relations association with public administration

- *Does the association meet regularly with representatives of the executive? In particular with the Minister of Justice and his/her associates? Is the association consulted in advance of all government reforms?*

The association does not meet regularly with the representatives, in particular with the Minister of Justice and his/her associates. Such meetings can occur only in any important events organized by any of the parties (or joint). Opinions and proposals on legal reforms, in particular the judicial legal reforms of the Association are listening.

- *Does the association meet regularly with representatives of the legislature? Is the association asked to provide its opinion on projects and bills before they are examined by the parliament?*

Association also doesn't meet regularly with representatives of the legislature. Before adoption legislation on legal reforms law project presents to Association for giving opinions and proposals.

3-5. Actions undertaken by the association during the last 3 years

- *What were the main actions undertaken in the previous year? In the previous three years? Since becoming a member?*

During the last 3 years since becoming a member the main undertaken actions are followings:

- Association participated in the following meetings:
 - The meeting of EAJ held in Bordeaux, may, 2011
 - The meeting of the participant countries of “Mutual understanding Memorandum on issues of multilateral cooperation” held in Kiev, June, 2011
 - The 53th annual meeting of IAJ held in Istanbul, September, 2011
 - The annual meeting held in Warsaw, December, 2011
 - The meeting of participant countries of “Mutual understanding Memorandum on issues of multilateral cooperation” of Association of Judges of Georgia and GTZ held in Tbilisi, march, 2012
 - The next meeting of EAJ held in the Netherlands, may, 2012
 - The next meeting of participant countries of “Mutual understanding Memorandum on issues of multilateral cooperation” of Association of Judges of Georgia and GTZ held in Kishinev, June, 2012
 - The 53th international conference of the judges of World High Courts held in Laknau, December, 2012
- Association held the annual general assembly in December of the years 2011, 2012 and 2013 as the previous years;
- The specialist of Association participated as an observer in the selection procedure of judges, in 2011;
- Association organized the protection of judges initiated administrative proceedings;
- Association held the training courses with the Judicial Legal Council on the issue "The role of courts in protecting human rights".
- Gave the opinions and suggestions on the projects “Modernization of the judicial activity”, “The Model Code on court structure and status of judges”, “To get information about the court activity”, “Administrative Procedure Code”.

- *Has the association organized collective action (demonstrations, strikes ...)?*

Association hasn't organized any collective action (demonstrations, strikes) since its activity.

- *Does the association have a media presence? Has the association published documents (books, reviews, communiques...)?*

Although, the Association has not published any books and magazines, association published booklets about its activity and distributed to the members of International Association

of Judges in Istanbul, 2011. In addition, members of the association frequently publish articles on various topics in press.

- *Did the eventual actions taken have a positive impact on judicial powers?*

Of course, actions undertaken by association gave and is giving a positive result. Such that, association unites judges more close around itself, helps strengthen the independence, carries out legal education. Connects with the judge associations existing in foreign countries, teaches judicial practice and promotes positive innovations.

4 – Miscellaneous

- *What were the main problems encountered by the judiciary in your country in recent years?*

The major problem existed in previous years in the court system was the less number of judges than the number received of cases that influenced to investigate cases efficient and qualitative. In addition, the working conditions of the courts were not satisfactory enough. At present, this problem is almost eliminated. Above-mentioned transparent and objective selection of candidates for the post of judge increased the interests of the young lawyers in this profession and the number of judges has grown significantly. The number of judges in order to reduce the workload of judges increasing 2 times in recent years, including a 25% increase in 2010 the number of judges reached 600. In addition, the number of court staff increased 75% and assistant staff is allocated to each judge.

Carried out jointly with the World Bank prepared more than 30 projects of modern buildings and complexes of the courts within Judicial Modernization Project jointly funded by the Government of Azerbaijan and World Bank. From these projects four were constructed and two of them were inaugurated by the opening by the President 2011-2012. From 2012 it was started the construction of next new buildings of Sabunchu and Sheki court complexes, and new building of Guba District Court.

- *Would you say that the situation for the judiciary has improved? decreased? has remained stable?*

As mentioned above, the result of the progressive reforms the status of judicial system in Azerbaijan has been significantly improved compared to previous years.

It is no coincidence that this case has been appreciated by the relevant international organizations. Thus, at a meeting of the Council of Europe's European Commission for the Efficiency of Justice (CEPEJ) held on December 7 and 8 in 2011 the prepared report on Azerbaijan was widely discussed and adopting a relevant decision on the issue our experience was assessed as a positive example. On the report was emphasized the activity of the institutional structures in this area and the selection of judges meeting to the European standards created in Azerbaijan and the process was differentiated with the progressivity, transparency and objectivity. Also, the development, modernization and the creation of new infrastructure of the judicial system in our country, large-scale works on the application of modern information and communication network caused great interest at this meeting and the representatives of separate states expressed the importance of benefiting from the Azerbaijan experience.

In the report of the project on to strengthen judicial reforms in the Eastern Partnership countries carried out by the European Union and the Council of Europe the activity method of selection procedure of candidates was highly valued and has been recommended as a positive example for other member states.

- *What are the main reforms underway or planned? These reforms seem they go in the right direction?*

Continuing of judicial reforms in Azerbaijan is constantly on the agenda. In the Concept approved by the head of the state "Azerbaijan 2020: Vision for the Future" is considered to improve court infrastructure, to incorporate electronic services into this activity, to increase access to justice for citizens.

At the moment the process of establishing of electronic court system is underway. The process of implementing of electronic document and case management systems is applying in pilot courts. Some steps have been taken in this area, the informing system the process participants about the time and location of judicial session through SMS-notices are being applied in some courts by pilot manner.

At present with the close participation of Association intensive measures are taken in the area of creation of the juvenile justice system by the relevant government authorities and carrying out specialization (civil, criminal, and so on. category of cases) in the courts of first instance.

BELGIUM

1 - Concernant l'indépendance des Magistrats

1-1. Recrutement

- *Décrire brièvement les modes de recrutement des magistrats dans votre pays (concours, élection, désignation...)*
- *Ces procédures de recrutements vous paraissent-elles poser des problèmes ou assurent-elles un recrutement satisfaisant en nombre et en qualité ?*

En Belgique il n'y a pas d'Ecole de la Magistrature.

Pour devenir magistrat en Belgique, on doit avoir un diplôme universitaire en droit (5 ans) et être Belge. Les autres conditions dépendent de la procédure qu'on veut suivre comme candidat magistrat. Il y a trois manières d'être nommé magistrat :

1. Via le stage judiciaire : la personne qui a exercé une fonction juridique pendant au moins un an, peut participer au concours d'admission au stage judiciaire. La personne qui effectue le stage de 18 mois peut ensuite être nommée magistrat de parquet. La personne qui effectue le stage de 3 ans peut ensuite être nommée juge ou magistrat de parquet ;

Le stagiaire judiciaire visite toute une série de services publics liés à la justice, pendant six mois : police locale, établissement pénitentiaire, étude d'huissier, service d'aide à la jeunesse... Ce tour d'horizon permet de se rendre compte que le magistrat est un rouage parmi d'autres et d'appréhender la portée de ses décisions. "

Le stage long (trente-six mois) accentue la formation du stagiaire pendant plus d'une année dans différents tribunaux. " Le stagiaire est donc formé d'une manière généraliste.

2. Via un examen d'aptitude professionnelle : les juristes plus expérimentés peuvent directement accéder à la magistrature en passant un examen. L'expérience qui est requise pour être nommé juge dépend de la profession juridique qu'on a exercée. Un avocat doit avoir dix ans d'expérience ; une personne ayant exercé une fonction juridique dans le secteur privé doit avoir douze ans d'expérience. La personne qui a au moins cinq ans d'expérience et qui réussit le l'examen peut être nommée magistrat de parquet ;

3. Via un examen oral d'évaluation : la personne qui a travaillé au moins vingt ans comme avocat ou quinze ans comme avocat et au moins cinq ans dans une autre profession nécessitant des connaissances étendues du droit peut participer à un examen oral. Les lauréats peuvent être nommés juges.

Les voies 2 et 3 donnent la possibilité d'avoir un magistrat plus spécialisé, mais ceci n'est pas toujours le cas.

Ces épreuves sont organisées par le Conseil supérieur de la Justice, un organe indépendant du ministre de la Justice.

Les examens visent à évaluer la maturité et la capacité nécessaires à l'exercice de la fonction de magistrat. On évalue non seulement les capacités intellectuelles du candidat, mais aussi d'autres aptitudes, comme la capacité d'écoute et la résistance au stress.

1-2. Formation initiale et continue

- *Décrire brièvement les modalités de formation des magistrats tant avant leur première prise de fonctions qu'en cours de carrière*
- *Existe-t-il une école chargée de former les magistrats ?*
- *Le dispositif de formation vous paraît-il satisfaisant ? Si non, comment pourrait-il être amélioré*

- Le Conseil supérieur de la Justice dispose de compétences en matière de formation. Il lui incombe d'élaborer les directives générales pour le stage judiciaire et la formation permanente des magistrats.
- Depuis le 2 février 2008, l'Institut de formation judiciaire, créé par la loi du 31 janvier 2007, est chargé de la formation initiale, de la formation permanente et de l'accompagnement de la carrière non seulement des magistrats et stagiaires judiciaires, mais également de tous les autres membres de l'organisation judiciaire

- L'institut organise :
 - des formations internes organisées pour les magistrats, les stagiaires judiciaires, les greffiers, les secrétaires de parquet et les autres membres du personnel de l'ordre judiciaire ;
 - des formations externes auxquelles les magistrats et les membres du personnel de l'ordre judiciaire peuvent participer, les frais d'inscription étant pris en charge par l'IFJ ;
 - des exposés sur le volet international de la formation judiciaire.

L'institut de Formation Judiciaire (IFJ) accorde, avec le soutien financier de la Fondation Roi Baudouin, des bourses à des magistrats qui souhaitent effectuer un stage à l'étranger.

L'institut de formation judiciaire attache beaucoup d'importance au développement d'e- Learning dans le cadre de la formation permanente des magistrats.

Dans l'offre de formation, l'accent est mis sur la pratique utile aux métiers du judiciaire et sur la formation continue. L'IFJ utilise ainsi diverses méthodes pédagogiques, sous forme de modules et de parcours de formation, afin de développer les connaissances, les attitudes et les compétences professionnelles du public cible. La formation continue fait donc partie des valeurs fondamentales.

Grâce à cette approche pratique, les formations correspondent à la pratique quotidienne et sont adaptées aux défis de demain. De cette manière, elles veulent contribuer au développement

d'une justice de qualité. (voyez en bas : les cours de management)

Une fois nommés les juges ont assez de possibilités de se former et de se spécialiser par exemple dans les formations pour échanger leurs expériences professionnelles avec leurs collègues actifs dans la même branche.

En Belgique on a donc assez de possibilités de se spécialiser aux frais du Ministère de la Justice. C'est dommage que les formations ne soient pas obligatoires pour les magistrats.

Les parquets sont organisés en cellules spécialisés (commercial, fiscal familial, etc.) et les magistrats doivent se former dans cette spécialisation.

1-3. Nomination et carrière

- *Décrire brièvement les modalités de nomination et de déroulement de carrière des magistrats*
- *Existe-t-il un Conseil Supérieur de Justice chargé de ces questions ? Si oui, comment est-il composé ? Quels sont ses pouvoirs (simple avis ou pouvoir de décision) ?*
- *Quelles sont les règles applicables pour la promotion des magistrats ?*
- *L'inamovibilité est-elle garantie aux magistrats ?*
- *Les magistrats sont-ils évalués ? Si oui, par qui, sur quels critères et avec quels éventuels recours ?*
- *Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?*

* Le conseil supérieur de la Justice est l'organe responsable pour la plupart des nominations et les désignations. (mandats des chefs de corps)

Le Conseil supérieur ne peut pas intervenir dans l'attribution de mandats adjoints ou de mandats spécifiques. Cette compétence relève toujours des instances judiciaires concernées et du Roi. Seule exception : les magistrats fédéraux doivent effectivement être présentés par la Commission de nomination et de désignation réunie (CNDR).

Le Conseil propose un candidat, après quoi le chef d'Etat (Ministre de la Justice, A.R signé par le Roi) peut nommer uniquement ce candidat, ou refuser la nomination, ce qui est exceptionnel.

Dans ce dernier cas le Conseil doit proposer de nouveau un candidat (éventuellement le même candidat) après quoi l'affaire retourne chez le Ministre de la Justice.

***Le Conseil supérieur de la Justice compte 44 membres**, qui exercent un mandat de 4 ans.

-22 magistrats

-22 non-magistrats (8 avocats, 6 professeurs d'université ou d'une école supérieure, 8 membres de la société civile)

Il y a 22 membres néerlandophones et 22 membres francophones

22 Tous les quatre ans, 22 magistrats sont élus par l'ensemble des magistrats de Belgique et non-magistrats sont désignés par le Sénat. Une majorité des deux tiers des voix est nécessaire à cet effet. Le CSJ a donc une composition mixte. Au terme de leur mandat de quatre ans, ils peuvent présenter leur candidature pour un seul nouveau mandat.

du Ils ne doivent pas rendre de compte à une autorité externe, mais à l'Assemblée générale du Conseil supérieur, notamment en ce qui concerne le respect strict de la déontologie.

Le Conseil supérieur de la Justice (CSJ) œuvre, depuis 2000, à un meilleur fonctionnement de l'ordre judiciaire en Belgique, et cela de trois manières.

3 tâches-clés

Carrière: Le CSJ organise les examens donnant accès à la magistrature et il présente les magistrats à la nomination au ministre de la Justice.

Contrôle: Le CSJ exerce un contrôle externe sur le fonctionnement de l'ordre judiciaire par le biais d'audits, d'enquêtes particulières et par le traitement des plaintes concernant ce fonctionnement.

Avis: Le CSJ prend des initiatives et rend des avis concernant l'amélioration du fonctionnement de la justice, au profit du citoyen.

*Le CSJ fonctionne de manière totalement **indépendante** du pouvoir exécutif, qui a renoncé à son immixtion dans les nominations judiciaires, depuis la création du CSJ. Il est aussi indépendant du pouvoir judiciaire. Depuis la création du CSJ, la magistrature est soumise à un contrôle externe pour la première fois dans son histoire.

Le CSJ est un organe fédéral, ancré dans la Constitution, autonome dans son fonctionnement et dans la prise d'initiatives.

*Le Conseil supérieur de la Justice (CSJ) joue également un rôle-clé dans la promotion des magistrats.

Le CSJ est notamment compétent pour sélectionner les chefs de corps au sein des juridictions et des parquets et pour les présenter à la désignation par le Roi.

Les chefs de corps sont désignés pour un mandat de cinq ans immédiatement renouvelable une seule fois au sein de la même juridiction ou du même parquet. C'est pour cette raison que l'on parle de désignation et non de nomination. En appliquant de manière permanente les techniques modernes de management, les chefs de corps doivent veiller à ce que les parquets et juridictions fonctionnent sans difficultés.

Les procédures pour la nomination de magistrats et la désignation de chefs de corps sont presque identiques :

- elles commencent avec un échange d'avis contradictoires,
- il faut procéder à une comparaison (objective) entre les candidats,
- la CND(R) doit présenter un candidat, à la majorité des deux tiers, au chef d'Etat,
- ce dernier ne peut refuser le candidat présenté que moyennant une motivation explicite.

Les magistrats sont nommés à vie.

L'inamovibilité est la garantie habituelle retenue pour l'indépendance de la justice. C'est une règle qui cherche à supprimer toute tentation de pression sur le magistrat par le biais de déplacement d'office ; elle est considérée comme une limite opposée traditionnellement à l'introduction de l'arbitraire dans l'administration de la justice.

La réforme du paysage judiciaire, qui est prévue pour le 1 avril 2014, est cependant interpellante sur ce point.

L'inamovibilité n'exclut pas les sanctions disciplinaires. Elle ne signifie nullement l'absolution pour l'avenir de tous les actes que le juge viendrait à poser ; elle n'implique donc pas l'impunité du magistrat du siège puisqu'il n'est pas affranchi de toute sanction. Ainsi, lorsque le magistrat commet une faute grave, il est passible de sanctions disciplinaires qui peuvent aller jusqu'à la révocation.

Les juges ne sont personnellement pas responsables des fautes professionnelles.

Les magistrats sont évalués. Seuls les chefs de corps du siège ne sont actuellement pas évalués à ce moment.

Il y a deux sortes d'évaluation :

- **L'évaluation des mandats** s'applique :
 - aux titulaires d'un mandat adjoint ou d'un mandat spécifique, qui, à l'expiration de leur mandat, souhaitent le renouvellement de celui-ci et
 - aux titulaires d'un mandat adjoint qui, après neuf ans, désirent être confirmés définitivement dans ce mandat.
- **L'évaluation périodique** vaut pour les magistrats professionnels actifs (à l'exception des chefs de corps) n'étant pas soumis à une évaluation de mandat.

L'évaluation des magistrats offre l'opportunité de maintenir la qualité des prestations des magistrats. Celui-ci peut y puiser la motivation nécessaire pour continuer à donner le meilleur de lui-même et, le cas échéant, améliorer son travail. Il s'agit essentiellement d'un dialogue entre évaluateurs et magistrats, afin d'assurer le fonctionnement optimal de ce dernier dans sa juridiction ou son parquet. L'évaluation n'a pas pour objectif de sanctionner. Seul le magistrat dont les collègues s'accordent à qualifier le travail de médiocre, pourrait en subir des conséquences négatives.

Il existe un questionnaire préalable, afin de guider évaluateurs et magistrats soumis à évaluation, tout au long des différentes étapes de l'évaluation.

L'égalité entre magistrats doit être respectée. En d'autres termes, les mêmes questions doivent être posées pour chaque magistrat, au même groupe cible, par exemple, les juges et greffiers ayant siégé en audience avec lui dans la même chambre, tous les magistrats du même corps, ...
Le magistrat doit pouvoir prendre connaissance de ces questions et réponses.
Le magistrat doit pouvoir en outre prendre connaissance de toutes les pièces pertinentes pour son évaluation, y compris son dossier personnel, conservé par son chef de corps

Les critères de l'évaluation périodique sont répartis en trois groupes A, B et C. On n'attribue pas de signification spécifique à l'ordre des critères au sein de chaque groupe.
Chaque critère est associé à un certain nombre d'indicateurs, correspondant aux comportements du magistrat dont on peut déduire si, et dans quelle mesure, il remplit le critère. On n'attribue pas de signification spécifique à l'ordre d'énumération des indicateurs par critère.
Les indicateurs peuvent varier d'une fonction à l'autre. Lorsque les indicateurs sont différents, le formulaire d'évaluation sera différent.

Le chef de corps notifie l'évaluation provisoire au magistrat, contre accusé de réception daté ou par pli recommandé avec accusé de réception.
Dans les dix jours qui suivent, à dater de la notification d'évaluation provisoire, le magistrat peut transmettre ses remarques par écrit à ceux dont émane la notification, contre accusé de réception daté ou par pli recommandé avec accusé de réception.

Addendum

En Belgique il y a une grande réforme du paysage judiciaire, prévue pour le 1 avril 2014.

Le nombre d'arrondissements judiciaires est fortement réduit.

Point important dans cette réforme, **les lieux d'audience existants seront maintenus**,

La mobilité des magistrats et du personnel administratif constitue un point important dans le cadre de la réforme judiciaire.

Plus concrètement, la mobilité des différents magistrats et membres du personnel se traduira comme ceci :

Magistrats (magistrature debout + magistrature assise)

A l'heure actuelle, les magistrats sont nommés au niveau du ressort (dans la pratique, généralement au niveau de la province), mais en même temps, ils sont affectés à seulement un (ou plusieurs) arrondissement(s). Une fois qu'ils ont leur affectation, ils continuent à y siéger, car s'ils souhaitent changer, il faut qu'un poste soit déclaré vacant dans l'autre arrondissement et qu'ils postulent pour ce poste.

C'est la raison pour laquelle ils seront nommés à l'avenir au niveau du ressort, mais cesseront d'être affectés à un arrondissement de manière définitive. De ce fait, l'actuelle mobilité apparente devient une mobilité réelle.

Les magistrats de complément seront intégrés dans le cadre fixe.

Comme les arrondissements passent au niveau provincial, la mobilité au sein d'un ressort peut

être réalisée beaucoup plus facilement parce que cela va faire tomber des barrières qui subsistent encore aujourd'hui en raison de la multiplicité des arrondissements dans un ressort.

La réforme implique la nomination des nouveaux chefs de corps dans les arrondissements agrandis.

1-4. C'est pourquoi l'Institut de formation judiciaire organise pour le moment beaucoup de cours de management.

1.4 – Discipline et éthique

Procédure disciplinaire

I. Procédure actuelle

S'agissant des poursuites disciplinaires, le Code judiciaire prévoit une série de procédures (articles 398 – 427quater CJ).

En principe, les peines mineures sont infligées directement par le chef de corps qui détient à la fois le pouvoir d'entamer la procédure disciplinaire et, le cas échéant en évitant tout cumul de fonctions, de mener l'instruction disciplinaire.

Les peines majeures sont infligées pour le ministère public par le chef de corps supérieur ou par le Roi pour la révocation et démission d'office et pour le siège par des juridictions supérieures. La procédure implique une phase d'instruction, qui relève du Conseil national de discipline (CND) « compétent pour instruire les faits susceptibles d'être sanctionnés disciplinairement par une peine disciplinaire majeure et pour rendre un avis non contraignant quant à la peine à infliger dans ce cas » (article 409 du Code judiciaire).

Le CND est composé de magistrats et de non-magistrats (avocats et professeurs d'université) et tient ses audiences à la Cour de cassation (cf article 409 du Code judiciaire). Le conseil n'est pas subordonné à un autre organe.

L'autorité disciplinaire compétente pour entamer une procédure disciplinaire connaît des plaintes de toute personne intéressée concernant un manquement aux obligations prescrites à l'article 404 du Code judiciaire commis par une personne soumise à sa compétence disciplinaire. Pour être recevables, les plaintes sont introduites par écrit, doivent être signées et datées et doivent contenir l'identité du plaignant. Dans le même temps, tant le Conseil supérieur de la Justice que les

évaluateurs des magistrats peuvent porter à la connaissance du chef de corps l'existence de manquements susceptibles d'engager la responsabilité disciplinaire d'un magistrat.

Aucune sanction ne peut être infligée sans que la personne concernée n'ait été entendue ou dument appelée (articles 421, 422, 423 du Code judiciaire). L'autorité peut soit n'infliger aucune peine, soit infliger une peine mineure ou majeure dans la limite de ses compétences. La décision motivée est notifiée par lettre recommandée à la poste dans le mois qui suit le prononcé de la décision par l'organe disciplinaire compétent, à la personne concernée. La décision fait mention du droit d'introduire un recours de pleine juridiction, du délai et de la procédure à respecter.

II. Procédure à partir du 1^{er} septembre 2014

La loi du 15 juillet 2013, modifiant profondément les dispositions du Code judiciaire, relative à la discipline entrera, en principe, en vigueur le 1^{er} septembre 2014.

Cette loi centralise la compétence disciplinaire entre les mains d'une juridiction non permanente à deux degrés.

Les chambres disciplinaires sont composées de 2 juges ou de 2 conseillers et d'un assesseur dont la qualité varie en fonction de celle de la personne mise en cause. En outre, un bâtonnier sera à chaque fois adjoint à la chambre disciplinaire avec voie consultative.

Les juges et les conseillers sont désignés parmi les magistrats du siège pour un mandat non renouvelable de 7 ans par les assemblées générales des différentes juridictions, les assesseurs seront désignés pour un mandat de 5 ans non renouvelable par les chefs de corps d'un arrondissement judiciaire après sélection des candidats par les assemblées des juridictions.

La nouvelle loi disciplinaire s'appliquera aux magistrats et au personnel de l'ordre judiciaire.

La personne mise en cause pourra introduire un appel.

Le chef de corps garde l'initiative de l'ouverture de la procédure disciplinaire, toutefois le ministère public pourra adresser des réquisitions à ces autorités.

Le tribunal pourra prononcer les peines suivantes : le rappel à l'ordre, le blâme, la retenue de traitement (de 15 jours à 1 an), la suspension disciplinaire, le retrait de mandat, la démission d'office, la destitution. La révocation des membres du ministère public reste de la compétence du Roi (ministre de la Justice).

Le tribunal pourra accorder des peines conditionnelles : suspension du prononcé de la sanction et sursis à exécution de la sanction, éventuellement avec conditions particulières.

La loi prévoit une procédure de suspension par mesure d'ordre de 3 mois maximum par l'autorité disciplinaire (chef de corps) avec avis du tribunal disciplinaire sur une éventuelle prorogation de 3 mois avec possibilité de recours en appel devant le tribunal disciplinaire d'appel.

Ethique

Il n'existe pas de code de déontologie, toutefois, en 2012, à l'initiative du Conseil supérieur de la Justice, et en coopération avec le Conseil consultatif de la magistrature un « Guide pour les magistrats – Principes, valeurs et qualités » a été établi et adopté par les organes du Conseil consultatif de la magistrature en juin 2012. Les principes, commentaires et recommandations contenues dans ce recueil ont pour objectif d'établir des lignes de conduite pour les magistrats. Ils ont été conçus pour les soutenir, les orienter et fournir à l'institution judiciaire un cadre permettant de mieux appréhender sa déontologie. Ils ont également pour finalité d'éclairer les représentants des pouvoirs législatif et exécutif, ainsi que les auxiliaires de justice et le public, afin de faire mieux connaître la complexité de la fonction des magistrats.

Le Guide fait une vingtaine de pages et il aborde divers aspects importants du point de vue de la prévention de la corruption : gestion des relations avec les personnes potentiellement liées à des parties, impartialité objective, non-interférence des convictions politiques ou d'intérêts personnels, interdiction de solliciter des interventions en sa faveur ou de recevoir toute forme d'avantage ou cadeau pour soi-même ou pour autrui, etc...

Tous les magistrats belges ont obtenu un exemplaire de ce guide.

Dans la pratique, c'est l'examen de la jurisprudence disciplinaire qui permet d'identifier les comportements prohibés.

Régime d'incompatibilité et d'interdiction

Interdiction ou limitation de certaines activités

Incompatibilités et activités accessoires

Les articles 293, 296 et 299 du Code judiciaire rendent en principe incompatible la fonction du juge avec toute autre activité professionnelle publique (élective ou salariée dans le secteur politique ou administratif, notariale, etc), commerciale (y compris la participation à la direction, l'administration ou la surveillance d'entreprises industrielles ou commerciales), ou encore en tant qu'avocat. Des exceptions sont prévues dans quelques hypothèses, dont celle de l'exercice de fonctions de professeur, chargé de cours et assistant dans les établissements d'enseignement (article 294 du Code judiciaire).

Il leur est par ailleurs fait interdiction d'assumer la défense des parties et de donner à celles-ci des consultations (article 297 du code judiciaire). Plus généralement, nul ne peut être, dans un procès, à la fois juge et partie. Enfin, les membres des cours, tribunaux, parquets et greffes ne peuvent faire d'arbitrage rémunéré (article 298 du Code judiciaire). En vertu de l'article 292, alinéa 1^{er}, du Code judiciaire, le cumul des fonctions judiciaires est également interdit sauf les cas prévus par la loi. En vertu de l'article 292, alinéa 2 du Code judiciaire, la décision rendue par un juge qui a précédemment connu de la cause dans l'exercice d'une autre fonction judiciaire est aussi frappée de nullité.

Des incompatibilités pour parenté ou alliance, sont aussi prévues (articles 301 à 304 du Code judiciaire) : par exemple, des personnes entre lesquelles existent une relation de conjoint-ménage ou de parenté ou alliés jusqu'au quatrième degré ne peuvent, sauf dispense du Roi, largement accordée. De la même manière, en vertu de l'article 304 du Code judiciaire, un magistrat doit s'abstenir, au risque de peine disciplinaire, s'il est conjoint, parent ou allié en ligne directe ou au second degré en ligne collatérale de l'avocat ou du mandataire de l'une des parties.

Qui exerce le pouvoir disciplinaire ?

La procédure disciplinaire sera ainsi qu'indiqué ci-avant, à partir du 1^{er} septembre 2014, de la compétence de juridictions disciplinaires qui présentent toutes les garanties habituelles des procédures judiciaires : respect du contradictoire, des droits de la défense, recours et possibilités d'interventions par voie de réquisition du ministère public en cas d'inertie de l'autorité disciplinaire initiale (chef de corps).

Ces dispositions ne sont pas encore entrées en vigueur, elles paraissent satisfaisantes.

1.5. Modalités d'affectation des dossiers.

Décrire brièvement le mode d'affectation des dossiers aux magistrats et les conditions de leur éventuel dessaisissement.

Mode d'affectation des dossiers.

En application du code judiciaire et du règlement particulier de la juridiction ainsi que du tableau annuel de service, le chef de corps est chargé de la distribution des affaires.

En pratique, il peut déléguer cette fonction soit à un autre magistrat soit au greffier en chef ou se faire aider par eux.

Dans des juridictions d'une certaine importance, là où il existe plusieurs chambres, des matières sont attribuées par priorité à certaines chambres afin d'assurer une certaine spécialisation des magistrats qui y sont affectés.

L'objectif poursuivi est de faire en sorte que la charge de travail soit équitablement répartie entre toutes les chambres.

Si pour une raison quelconque, par exemple un très gros dossier, une chambre est surchargée et des délais raisonnables par comparaison aux autres chambres sont dépassés, il est possible de redistribuer un dossier vers une autre chambre moins chargée tout en gardant à l'esprit les critères d'équilibre de la charge de travail.

Le dessaisissement.

En application de l'article 648 du code judiciaire, un juge peut être dessaisi d'un dossier lorsqu'il néglige pendant plus de six mois de juger la cause qu'il a prise en délibéré.

Par ailleurs, le dessaisissement du juge peut-être demandé:

- du chef de parenté ou d'alliance
- pour cause de suspicion légitime
- pour cause de sûreté publique

Ce sont les parties qui peuvent demander le dessaisissement du juge pour cause de suspicion légitime.

Par contre, seul le procureur général près la Cour de Cassation peut requérir le dessaisissement pour cause de sûreté publique.

Lorsque le juge néglige pendant plus de six mois de juger la cause qu'il a prise en délibéré, le procureur général près la cour d'appel ainsi que chacune des parties peuvent demander son dessaisissement.

Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

Les dispositifs existants manquent souvent de transparence et sont laissés à l'appréciation des chefs de corps. La généralisation des tableaux de bord et la communication des statistiques d'activité sont des moyens de contrôle utiles. Ils existent dans certaines juridictions. Ils devraient être généralisés.

1.6. Reconnaissance du droit d'association.

Le droit de s'associer, ou de se syndiquer, est-il reconnu aux magistrats ?

Si oui, quels moyens sont alloués à l'association/au syndicat, en termes de subventions, de moyens humains ?

Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

Le droit de s'associer ou de se syndiquer est reconnu aux magistrats. Cependant aucun moyen ne leur sont alloués ni en termes de subventions ni en termes de moyens humains.

Les dispositifs existants sont totalement insuffisants.

Ils ne pourraient être améliorés qu'avec un changement des mentalités. Il faudrait que cessent un individualisme forcené et une pratique, peut-être excessive, du devoir de réserve.

Des associations de magistrats existent, aucune ne remplit un rôle syndical en comparaison de ce qui existe en France ou en Allemagne.

1.7. Protection des magistrats.

Les magistrats sont-ils fréquemment l'objet de mises en cause, de la part de l'opinion publique, des médias, des responsables politiques... ?

Bénéficient-ils de dispositifs de protections particuliers ?

Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

il arrive mais ce n'est pas fréquent, que les magistrats soient l'objet de mise en cause de la part de l'opinion publique, des médias et des responsables politiques.

Ils ne bénéficient d'aucun dispositif de protection particulier sauf si leur sécurité est menacée, par exemple: s'ils sont l'objet de menaces de mort prises au sérieux.

les dispositifs de protection sont inexistant, ils ne sont donc pas satisfaisants.

2. Concernant les moyens de la justice.

3. Concernant l'association nationale.

Représentativité de l'association.

En Belgique, l'affiliation à la section belge de l'union internationale des magistrats se fait à titre individuel. Il n'y a donc aucune obligation d'affiliation ni aucune pression pour que celle-ci ait lieu.

L'association belge est apolitique et non syndicale. Il n'y a pas de syndicat de magistrats en Belgique.

Elle veut promouvoir l'indépendance de la magistrature et créer des liens entre les magistrats tant à l'intérieur qu'à l'extérieur des frontières. Aucune autre association ne poursuit ces objectifs.

C'est la seule association belge de magistrats qui regroupe des magistrats du nord et du sud du pays quels que soient leur régime linguistique et leur statut hiérarchique.

L'association est organisée en ASBL. Elle tient une assemblée générale annuelle et procède à des élections pour son comité tous les deux ans.

L'association compte des membres élus dans les instances comme le conseil de discipline des magistrats, le conseil supérieur de la justice, le conseil consultatif des magistrats,, mais elle n'y a aucune influence en tant que telle sauf au conseil consultatif des magistrats où elle a un représentant à titre officiel.

Modalités de désignation/élection de ses représentants.

Les dirigeants de l'association sont élus par le comité, lui-même élu par l'assemblée générale des membres.

Financement de l'association.

Le financement est assuré uniquement par les cotisations qui sont extrêmement modiques des membres. Par le bénéfice retiré de l'organisation de déjeuners- causerie reconnus par l'institut de formation judiciaire et dont les dépenses sont partiellement prises en charge par cet institut. Ainsi que par le solde éventuel de voyages d'études organisés à l'étranger tous les deux ans.

Les principales dépenses sont essentiellement la cotisation à l'union internationale.

Il y a par ailleurs quelques frais liés à la comptabilité et au respect des obligations légales de publications des ASBL ainsi que quelques frais de gestion courante.

Lors de la participation à des réunions internationales, chaque délégué supporte lui-même la totalité de ses frais de déplacement et de séjour. Parfois, si le déplacement est trop onéreux une petite quote-part est prise en charge.

Relations de l'association avec les pouvoirs publics.

L'association ne rencontre pas régulièrement les représentants du pouvoir exécutif bien que son existence soit reconnue.

L'association n'est jamais consultée. Par contre, elle a pris récemment des initiatives pour rendre des avis et être partie à un litige qui concernait le régime des pensions des magistrats.

Elle est appelée à donner son avis sur les projets et propositions de loi avant leur examen par le Parlement. Elle est représentée dans le conseil consultatif des magistrats.

les réunions de l'association ont lieu dans un local mis à sa disposition par le ministère de la justice. Un subside était précédemment alloué par le ministère et le ministre de la justice plus précisément, Pour des raisons budgétaires, il a été supprimé.

Jusqu'il y a peu l'association n'était tournée que vers l'international et ses actions au sein de l'union internationale des magistrats, notamment dans les commissions d'études ou des postes de présidents, vice- président etc. ont été confiés à des membres de l'association à différentes reprises.

À différentes reprises également, des membres de l'association ont occupé des postes de vice - président international. Il convient à cet égard de rappeler que la Belgique était membre associé lors de la fondation de l'union internationale en 1953. Elle représente l'union internationale des magistrats à Bruxelles, dans les différentes instances européennes et internationales, quand cela lui est demandé.

A l'heure actuelle, la section belge a rejoint diverses associations professionnelles et dans le cadre de la réforme sur les pensions de retraite a mené une action en interne, d'information et de défense des magistrats.

Sur le plan médiatique, l'association publiait antérieurement un magazine.

En raison de l'émergence de l'informatique, ce moyen de communication a été privilégié même si le site belge est actuellement en reconstruction.

Divers.

Une grande réforme du paysage judiciaire entre en vigueur le 1er avril prochain. Elle est source d'incertitudes et d'inquiétudes. Cette loi nouvelle fait déjà l'objet d'un projet de loi réparatrice qui contient pas moins de 65 pages.

À ce jour personne ne sait si ce projet deviendra réalité et dans l'affirmative quand il sera publié.

Il est également question de reporter l'entrée en vigueur de la loi nouvelle au 1er septembre mais le ministère de la justice communique peu...

D'une manière générale, la situation pour la magistrature a régressé principalement au niveau de l'assistance au juge.

le nombre de greffiers et de personnel administratif est en diminution. La charge du juge s'en trouve augmentée.

2 – Concernant les moyens de la Justice

2-1. Financement du système judiciaire

- *Budget annuel de la Justice*

Préciser le montant total annuel du budget affecté au fonctionnement des juridictions (incluant les dépenses relatives aux juges, aux procureurs et à l'aide juridictionnelle).

C'est impossible de vous donner des chiffres : tout est inclus dans le budget de justice et il n'y a pas de chiffres disponibles pour les juridictions. Cela va changer à partir du 1/4/2014 : les juridictions vont recevoir des fonds pour financer leur fonctionnement, comme aux Pays Bas. Le système ne commencera vraiment que fin 2015, quand tout le monde est prêt à rédiger des budgets.

Ce budget vous paraît-il suffisant ?

Pour l'instant, on ne peut pas trop se plaindre, mais la situation ne s'améliore pas.

Les magistrats, ou les instances représentatives de magistrats, sont-ils consultés au stade de l'élaboration du budget ?

Non

Au stade de son exécution ?

Non

- *Budget de fonctionnement des juridictions*

Sur quels critères sont réparties les sommes aux différentes juridictions ? Les fonds sont-ils ensuite utilisés librement au sein des juridictions ? Existe-t-il des consultations préalables des magistrats avant l'engagement des dépenses ?

Pas de réponse possible

- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

Si une amélioration s'imposerait, cela ne pourra se passer à partir de 2016, puisque le Ministre ne prend plus aucune initiative en vue de la réforme.

2-2. Rémunération des juges

- Définir sommairement l'échelle des salaires des magistrats : en début, en milieu et en fin de carrière.

Voyez les tableaux ci-joint. (ce sont des chiffres bruts : il faut en déduire 50% en moyenne pour obtenir le chiffre net)

- Qui détermine la rémunération des magistrats ?

Déterminé par la loi-le parlement.

- Existe-t-il un système de rémunération au mérite (si oui dans quelles proportions ? et selon quelles modalités d'attribution ?)

Non.

- Les rémunérations sont-elles susceptibles d'évoluer à la baisse ?

Non

Si oui, avez-vous rencontré de telles baisses et dans quelles proportions ?

- La protection des magistrats, relativement à la question des rémunérations, vous paraît-elle assurée ? Si non, comment pourraient-ils être améliorés ?

En principe, le rémunérations devraient rester autour de ceux des parlementaires, ce qui n'est déjà plus le cas depuis plusieurs dizaines d'années. A partir de 2000, on a pu obtenir une hausse fondamentale (et nécessaire) qu'on essaye de protéger dans ces temps de crise.

**438 - Conseiller ou Substitut de Procureur Général près d'une Cour d'Appel
Conseiller ou Substitut Général près d'une Cour du Travail**

	100%	COEFFICIENT 1,4859
MONTANT DE BASE	45.047,24	66.935,69
3 ans	47.401,69	70.434,17
6 ans	49.756,14	73.932,65
9 ans	52.110,59	77.431,13
12 ans	54.465,04	80.929,60
15 ans	56.819,49	84.428,08
18 ans	59.173,94	87.926,56
SUPPLÉMENTS		
21 ans	60.939,79	90.550,43
24 ans	65.380,49	97.148,87

**439 - Président et Procureur du Roi près le Tribunal de Première Instance
Président et Auditeur du Travail près le Tribunal du Travail
Président près le Tribunal de Commerce**

Au moins 250 000 habitants

	100%	COEFFICIENT 1,4859
MONTANT DE BASE	50.565,67	75.135,53
3 ans	52.920,12	78.634,01
6 ans	55.274,57	82.132,48
9 ans	57.629,02	85.630,96
12 ans	59.983,47	89.129,44
15 ans	62.337,92	92.627,92
18 ans	64.692,37	96.126,39
SUPPLÉMENTS		
21 ans	66.904,48	98.750,27
24 ans	69.116,59	102.700,34

Questionnaire for Member Associations

Answers: Croatia

1 - Regarding independence of judges

1-1. Recruitment

- Briefly describe the modes of recruitment of judges in your country (competition, election, appointment ...)

Only those candidates who successfully finish the so called "School for judges" can be appointed for the post of the judge of first instance courts. This is so far only way to enter the profession. School for judges operates under the Judicial Academy which is an independent institution governed by High Judicial Council.

- Do you consider this recruitment procedure problematic or does it ensure a satisfactory recruitment in number and quality ?

System in Croatia is very similar to the system which exists in France. But it is widely criticized because we are too small judiciary to have such high, long and difficult way to enter the judiciary. It is also unfair to those who would like to enter the profession as company lawyers, attorneys of law or from the academia. Now as it is regulated real chance to be accepted to the School are those candidates who are working in courts as assistants to the judge (court clerks)

1-2. Initial and continuing training

- Briefly describe the training of judges at the beginning of the career and during this one

Training for judges is organized through Judiciary Academy. There are different programs, for candidates for judges, for judges who are in first years of their career and for more experienced judges. The concept could be described as permanent education through the career.

- Is there a school responsible for training judges?

Yes.

- Do you consider the training satisfactory? If not, how could it be improved?

In general it could be considered as satisfactory.

1-3. Appointment and career

- Briefly describe the procedures for appointment of judges.

Besides what has been explained under section 1.1. judges are appointed by independent body – State Judiciary Council (SJC).

Vacancy is announced in Official Gazette by SJC. All candidates are evaluated by special bodies in the courts – Councils of Judges elected by judges and formed exclusively from judges. After the evaluation, and when decision on the performance of a candidate becomes final SJC performs the interview with the

candidates. Those who gain highest number of points through system of evaluation and through interview are appointed as judges for permanent mandate.

- Is there a Higher Council of Justice in charge of these issues? If yes, how is it composed? What are its powers (simple opinion or decision-making power)?

Judges are appointed by SJC (High Council for Judiciary). That body has exclusively authority to decide on appointment, promotion, dismissal and disciplinary responsibility of judges.

It is composed of 7 judges elected by judges, two professors of law elected by professors of law and two members of the parliament elected by the Parliament, one from majority and one from the opposition.

- What are the rules for promotion of judges?

Please see previous answer.

- The tenure is it guaranteed to judges?

Yes. Judges once appointed are appointed until age of retirement (70 years of age)

- Judges are they evaluated? If yes, by whom, on what basis and with what possible appeal?

Yes. Judges are evaluated when they apply for the post of the president of court and when they apply for the post at another court.

They are evaluated by Council of Judges. Criteria which is taken in account is proscribed by Law on Courts (quality of work, meeting the time frames for delivering decisions after the case is closed, quantity of work and other activities in connection with the work of a judge)

Result of the evaluation is stated in form of decision which judge can appeal on to the panel of five judges of Supreme Court.

- Do you consider these procedures satisfactory? If not, how could they be improved ?

We consider this system satisfactory from the point of autonomy and independence of judiciary and international standards in this area.

1-4. Discipline and Ethics

- Describe briefly the ethical rules and disciplinary proceedings

In Croatia breaches of ethical rules and disciplinary responsibility are divided.

Code of Ethic has been adopted in 2009. and as many European codes is more compendium of standards and goals to be reached than a Code in formal sense

Anybody can lodge a complaint against a judge if he/she breaches the standards of the Code. Opinion upon such complaint after a judge responds to it is given by Council of Judges (same body with authority to evaluate judges) .

Disciplinary offences are proscribed in the law and proceedings are held before SJC in the procedure with all guarantees which are given to the accused person in the criminal proceedings.

After the proceedings if a judge is found guilty and one of sanctions is imposed (warning, fine, suspended fine, dismissal and suspended dismissal) judge has a right to appeal to the Constitutional Court.

- Is there a regime of incompatibilities and prohibitions of certain professions and positions for judges? Is there declaration of assets?

Yes. Judges are not allowed to be involved in any activities which could compromise his/ her position. It is not allowed to be member of political party or to be part of executive or legislative power. Only exception is when judges are minister or deputy minister of justice, assistant minister or adviser to the Minister their judicial function is at ease during their involvement with the Ministry of Justice.

Association of Croatian Judges launched a motion before Constitutional Court based on the argument that such provision in the Law on Court is against principle of separation of powers.

Judges are obliged to declare their assets when entering the judiciary. Every year they have to report if there is any change or they have to declare if there were no changes. Report includes their partner and children if they are under age of 18 years.

Records are kept with SJC.

Recently with amendments to Law on State Judiciary Council public is entitled to have access to the assets report for judges.

- Who is in charge of disciplinary procedures? What are the guarantees for judges involved (contradictory, rights of defense, appeal ...) ?

Please see answer under 1.4.-section 1.

- Do you consider these procedures satisfactory? If not, how could they be improved?

Regarding the composition of SJC, procedural rules, guarantees which judges have including a right to appeal we think that this system is along lines with international standards.

1-5. Distribution of cases

- Describe briefly the distribution of cases between judges and the conditions for their eventual divestiture

Cases are distributed automatically by computer program which works in a way to ensure random distribution of cases. In the courts which do not have such system cases are distributed by alphabetic order of judges in the court.

Judge can be excused from a case on his/ her request if his/ her impartiality would be endangered but also on the request of the parties.

Rules are set up in procedural laws.

- Do you consider these procedures satisfactory? If not, how could they be improved?

Yes. It is satisfactory and there are no serious complains how it works.

1-6. Recognition of the right of association

- The right to join or form associations/unions, is it recognized for judges?

Yes. In Law on Courts it is stated that judges are free to associate in the associations of judges. Right to associate is also a constitutional right for all citizens.

- If so, what resources are allocated to the association / union in terms of grants, human resources?

None. Association is financing its activities only form the monthly fee from the members.

- Do you consider these procedures satisfactory? If not, how could they be improved?

No, because association of judges should be considered as a association of higher value to the society but several attempts to gain some help from the state as some other NGO failed, and is connected we believe with our strong position when anybody including two other powers of the state take steps to diminish independence of judges .

1-7. Protection of judges

- Are the judges frequently attacked in the media, by politicians or other people? Do they have special protection?

Yes they are and protection comes mostly from the Association and just recently very shayish from part of the media.

- Do you consider these procedures satisfactory? If not, how could they be improved?

Of course no. Message which is sent to the public when attacks are coming from the politicians and any person or organization with power and influence is that court are going to decide under such influence.

2 - Regarding the means of Judiciary

2-1. Funding of the judiciary

- *Annual budget of Justice*

Specify the total annual allocation to the functioning of the courts budget (including expenses relating to judges, prosecutors and legal aid). Does this budget seem to you sufficient? Judges, or bodies representing judges, are they consulted during the elaboration / implementation of budget?

In years of recession funds allocated to judiciary are not sufficient. When creating the annual state budget General Assembly of Supreme Court has only advisory role regarding budget to judiciary.

- *Operating budget of the courts*

How and on which criteria are distributed the funds to the different jurisdictions? Can the courts use freely their budgets? Is it organize before committing expenditure a consultation of judges?

Budget of courts are controlled by Ministry of justice and court have very limited freedom in spending funds

- Do you consider these procedures satisfactory? If not, how could they be improved?

Of course not. Judiciary should be autonomous in deciding how to distribute fund which is allocated to it from the state budget.

2-2. Salary

- Briefly define the scale of salaries of judges : at the beginning of the career, at the mid-term, at the end

First instance judge has a salary of cca 1.200,00 Euro, Appellate judge has a salary of cca 1.800,00 Euro and judge of Supreme Court has a salary of cca 2.200,00 Euro.

Every judge is entitled to a rise of his/ her salary of 0,5% each year but not more than 20%.

- Who determines the salary of judges? Is there a system of “merit pay” (if so in what proportions? How the sums are assigned to judges?)

Salaries are determined by law but salary of a judge is calculated in a formula where base is multiplied by a factor which depends of the rank of a judge.

As it is proscribed that base for calculation is determined by the Government in reality salaries of judges are completely in hands of the Government. Association challenged this provision before Constitutional Court.

- Salaries are they likely to go down? If yes, have you met such cuts and in what proportions?

Not yet, but it is likely to come in the near future.

- Do you consider this situation and the guarantees for judges satisfactory? If not, how could they be improved?

No. Salaries of judges should be regulated by law on the criteria which could be objectivized and set up in the law.

2-3. Pensions

- At what age and how judges can they retire?

70 years of age.

- Does the amount of the pension satisfactory ?

No because pensions of judges are calculated as to anybody else. It is roughly about 40% of last salary.

- Do you consider that improvements have to be done?

If salaries of judges should serve as protection of independence of judges pension should be a percentage of the last salary that status of the judge is not significantly endangered.

2-4. Accessibility and Efficiency of Justice

- Are there barriers to the defendant to access to justice? Are there mechanisms to provide access to justice for the most disadvantaged people (legal aid, Support to victims ...)
No. We are not facing such problems.
- Are there problems of deadlines in the treatment of cases?
Yes because there is no enough judges in various courts and our laws give right to protect almost all rights before courts
- Do you consider these procedures satisfactory? If not, how could they be improved?

3 - Regarding the national association

3-1. Representativeness of the association

- How many members does the association have? Has this number increased since the association became a member?
There is around 1.200 members of the association and number of members is rather stable not increasing or decreasing since Association become a member of LAJ (2000.)
- Do other associations/organizations of judges exist?
No.
- If elections are held in the country in question, please furnish statistical data relating to the extent to which the association is representative.
?????
- Does the association include members who are independently elected and who oversee the judiciary? The discipline of the judiciary?
Members of Association are only judges of all types of courts.

3-2. Modalities for appointment / election of its representatives

- How are the leaders of the association selected? Are they elected by the members? Are they appointed? If yes, by whom and by what process?
Leaders of the Association are elected for a term of four years by General Assembly of the Association.
- How is the association organized? Is there a board of directors/association council? If yes, how are the members of the council appointed/elected? What powers does the council have?
Bodies of the Association are: President of Association, Deputy President, Governing Board, and Audit Commission.

Governing board consists of the heads of each branch of Association and they are elected by judges from particular branch.

Between each General Assembly Governing Board is highest body of the Association.

- Does the association have regional representatives? If yes, how are they appointed/elected?

Association of judges is regionally organized in a way that judges in the territory of each County Court form a branch with its own bodies- General Assembly, Governing Board, and President of Branch.

3-3. Financing Association

- What is the association's annual budget?

Around 32.000,00 Euros

- What are the association's funding sources: membership dues, subsidies, other funding sources?

Only membership fees.

- What have been the principal expenses?

Travel expenses, communication expenses, organizing annual General Assembly, helping activities of each branch. Each fee is divided in half so one half stays with a branch and other half goes to central account of the Association.

3-4. Relations association with public administration

- Does the association meet regularly with representatives of the executive? In particular with the Minister of Justice and his/her associates? Is the association consulted in advance of all government reforms?

It mostly depends on the minister and the Government. Association is always free to give any opinion and sometimes we are consulted.

- Does the association meet regularly with representatives of the legislature? Is the association asked to provide its opinion on projects and bills before they are examined by the parliament?

Situation is similar as in relation with executive.

3-5. Actions undertaken by the association during the last 3 years

- What were the main actions undertaken in the previous year? In the previous three years? Since becoming a member?

We initiated several changes to the law, started three proceedings before Constitutional Court regarding Law on Court, Law on SJC and Law on Salaries for Judges, we are organizing workshops and seminars for judges, study visits, and we are trying to fulfill our obligations as members of EAJ. Each branch is trying to fulfill needs of the members of each branch, so activities of the Association on that level vary significantly.

- Has the association organized collective action (demonstrations, strikes ...)?

No.

- Does the association have a media presence? Has the association published documents (books, reviews, communiqués...)?

Yes. Representatives have good relations with the media and we react at any occasion when there is a need to publicly protect position of the judiciary or to explain to the public position of the judiciary and the rules which are governing the functioning of judiciary.

- Did the eventual actions taken have a positive impact on judicial powers?

It is difficult to say. Unfortunately other two state powers are regularly taking steps to deteriorate third power of the state.

4 - Miscellaneous

- What were the main problems encountered by the judiciary in your country in recent years?

Main problems is overburden of judges and courts with cases, lack of resources, laws which are changing and amended to often, misleading messages from politicians to the public regarding judiciary and unattractiveness of the profession to other legal professions.

- Would you say that the situation for the judiciary has improved? decreased? has remained stable?

In my opinion situation has lightly decreased.

- What are the main reforms underway or planned? These reforms seem they go in the right direction?

Main reform which has been announced at the beginning of this year is rationalization of number of first instant courts from 67 to 18. Reform is not going in right direction because lack of resources will not make this reform possible and if it will go on as it is planned it will effect negatively to the parties and judges as well.

*Duro Sessa
President of Association*

PS. Questionnaire is to long!!!!!!!

Questionnaire for Member Associations

1 - Regarding independence of judges

1-1. Recruitment

- Briefly describe the modes of recruitment of judges in your country (competition, election, appointment ...)
- Do you consider this recruitment procedure problematic or does it ensure a satisfactory recruitment in number and quality?

Except the Chief Justice of the Supreme Court, all judges and Supreme Court justices in Estonia are recruited as a result of public competition. Justices of the Supreme Court are appointed by the Parliament (*Riigikogu*) and all other judges are appointed by the President. This recruitment procedure itself has proven mostly adequate. Instead of the recruitment procedure, the main practical problems are connected with quite inflexible provisions of the preparatory service for judges (Chapter 8 of the Courts Act).

The Constitution of the Republic of Estonia

(<https://www.riigiteataja.ee/en/eli/ee/rhvv/act/530102013003/consolide>)

§ 150.

The Chief Justice of the Supreme Court is appointed to office by the Riigikogu on a recommendation of the President.

Justices of the Supreme Court are appointed to office by the Riigikogu on a recommendation of the Chief Justice of the Supreme Court.

Other judges are appointed to office by the President on a recommendation of the Supreme Court.

Courts Act

(<https://www.riigiteataja.ee/en/eli/ee/514022014001/consolide/current>)

§ 53. Public competition

- (1) Judges shall be appointed to office on the basis of a public competition.
- (2) The Minister of Justice shall announce a public competition for a vacant position of judge of a county court, administrative court and circuit court. The Chief Justice of the Supreme Court shall announce a public competition for a vacant position of justice of the Supreme Court.
- (3) A competition for a vacant position of judge shall be announced in the official publication *Ametlikud Teadaanded*. An application shall be submitted to the Chief Justice of the Supreme Court within one month after the publication of the notice concerning the competition.
- (4) If the vacant position of judge is filled pursuant to the procedure provided for in § 57 or § 58 of this Act, a competition shall not be announced.

§ 55. Appointment as judge

- (1) Judges of a court of the first instance and judges of a court of appeal shall be appointed by the President of the Republic on the proposal of the Supreme Court *en banc*. The Supreme Court *en banc* shall first consider the opinion of the full court of the court for which the person runs as a candidate.

- (2) If several persons run as candidates for the vacant position of judge, the Supreme Court *en banc* shall decide who to propose to the President of the Republic to be appointed to office as judge. The decision of the Supreme Court *en banc* shall be communicated to the candidate.
- (3) A judge of a court of the first instance or a judge of the court of appeal appointed to office by the President of the Republic shall be appointed to court service by the Supreme Court *en banc*. Upon appointing a judge of a court of first instance to service the Supreme Court *en banc* shall also determine the courthouse which shall be the permanent place of service of the judge.
- (4) Justices of the Supreme Court shall be appointed to office by the Riigikogu on the proposal of the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court shall first consider the opinion of the Supreme Court *en banc* and the Council for Administration of Courts concerning a candidate.

1-2. Initial and continuing training

- Briefly describe the training of judges at the beginning of the career and during this one
- Is there a school responsible for training judges?
- Do you consider the training satisfactory? If not, how could it be improved?

According to the Courts Act, one of the judges' self governmental bodies – the Judicial Training Council – is responsible for the training of judges (see below Section 44 of the Courts Act). There are no special school for training of judges. Training of judges is based on the strategies for training of judges and annual training programs. The judicial training department of the Supreme Court shall submit the training program for the next year to the Training Council. Judges' training includes mostly legal training and skills training. Legal training is divided into training for civil judges, criminal judges and administrative law judges. If judges are interested, they can participate in trainings of other areas as well. Training events are organized by the Judicial Training Department of the Supreme Court (<http://www.riigikohus.ee/?id=1445>). Lecturers are acknowledged specialists from Estonia and from abroad, as well. Judges can also participate in trainings abroad. International cooperation happens through the European Judicial Training Network (EJTN). Training of judges has been quite satisfactory and responsive for the needs of judges.

Courts Act

(<https://www.riigiteataja.ee/en/eli/ee/514022014001/consolide/current>)

§ 44. Training of judges

- (1) The Training Council is responsible for the training of judges. The term of the authority of members of the Training Council shall be three years. The Training Council shall be comprised of two judges of a court of the first instance, two judges of a court of appeal, two justices of the Supreme Court, and a representative of the Prosecutor's Office, the Minister of Justice and the University of Tartu. The Training Council shall approve its rules of procedure and elect the chairman. Support services shall be provided to the Training Council by the Supreme Court.
- (2) Training of judges shall be based on the strategies for training of judges, annual training programs and the program for judge's examination. The strategies for training of judges, annual training programs and the program for judge's examination shall be prepared by the Supreme Court and approved by the Training Council. The Supreme Court shall submit the training program for the next year to the Training Council no later than by 15 August.

Taking into consideration the training needs of judges and the state budget funds allocated for the training of judges, the Training Council shall approve the training program not later than by 1 October. The study and methodological materials necessary for the training of judges shall be prepared and the agreements with the trainers shall be entered into by the Supreme Court.

- (3) The basis for the preparation of the strategy for training of judges and the training programs is the training needs of judges and the analysis of the training results. The training needs of judges shall be determined and the training results shall be analysed by the Supreme Court. The methodology for determining the training needs of judges and analysing the training results shall be developed by the Supreme Court and approved by the Training Council. The Training Council shall provide on the basis of the annual overview submitted by the Supreme Court an assessment of the training results of judges.
- (4) The Supreme Court may, by a contract under public law, authorise another person or institution to partially or completely fulfil the duties imposed on the Supreme Court in this section if the Training Council has previously approved it.
- (5) The Training Council shall annually determine a part of the training program, the completion of which is mandatory to judges.
- (6) Judges participate in training on the basis of an annual training plan. The full court of a court shall approve the training plan for the court. Records of participation in training shall be kept concerning each judge in a court pursuant to the internal rules of the court. The chairman of a court shall monitor compliance with the training plan.
- (7) The funds intended for the preparation of the training program of judges and organisation of training shall be allocated in the budget of the Supreme Court.

§ 74. Professional development

A judge is required to develop knowledge and skills of his or her speciality on a regular basis and to participate in training.

1-3. Appointment and career

- Briefly describe the procedures for appointment of judges
 - Is there a Higher Council of Justice in charge of these issues? If yes, how is it composed? What are its powers (simple opinion or decision-making power)?
 - What are the rules for promotion of judges?
 - The tenure is it guaranteed to judges?
 - Judges are they evaluated? If yes, by whom, on what basis and with what possible appeal?
 - Do you consider these procedures satisfactory? If not, how could they be improved?
- The procedures for appointment of judges are stipulated in Section 150 of the Constitution and Section 55 of the Courts Act (see below). The Council for Administration of Courts has no decision-making power in this area, but the Council provides only an opinion on the candidates for a vacant position of a justice of the Supreme Court.
- There are no specific rules for promotion of judges.
- Estonian judges are annually evaluated only during the first three years of office (see Subsections 99 (1) 3 and 100 (2) of the Courts Act). All judges are appointed for life, but within the first three years a person may be released from the office of judge due to unsuitability for office if the judge has been declared unsuitable for office by a decision of the Supreme Court *en banc*. Once a year, chairmen of courts shall submit their opinion concerning judges of less than three years length of service employed in the corresponding courts to the judge's examination committee. Formal decision on judge's suitability is taken only in cases where his or her suitability has been disputed by the judge's examination committee or other bodies. Lately, this procedure

has been publicly criticized because of the lack of transparency. There are no specific criteria for assessment of suitability for the office of judge by the Supreme Court *en banc* or the judge's examination committee. As the ultimate decision of a judge's suitability is taken by the Supreme Court *en banc* (consisting of all 19 Supreme Court justices), appeal to that decision is not possible. The system of judges' evaluation clearly needs some rethinking (criterion-setting). However, a judge's release from office due to unsuitability for office has been extremely rare, meaning that this problem has not been the most essential.

The Constitution of the Republic of Estonia

(<https://www.riigiteataja.ee/en/eli/ee/rhvv/act/530102013003/consolide>)

§ 147.

Judges are appointed for life. The grounds and procedure for release of judges from office are provided by law.

Judges may be removed from office only by a court judgment.

/.../

§ 150.

The Chief Justice of the Supreme Court is appointed to office by the Riigikogu on a recommendation of the President.

Justices of the Supreme Court are appointed to office by the Riigikogu on a recommendation of the Chief Justice of the Supreme Court.

Other judges are appointed to office by the President on a recommendation of the Supreme Court.

Courts Act

(<https://www.riigiteataja.ee/en/eli/ee/514022014001/consolide/current>)

§ 40. Council for Administration of Courts

(1) The Council for Administration of Courts (hereinafter Council) is comprised of the Chief Justice of the Supreme Court, five judges elected by the Court *en banc* for three years, two members of the Riigikogu, a sworn advocate appointed by the Board of the Bar Association, the Chief Public Prosecutor or a public prosecutor appointed by him or her, and the Chancellor of Justice or a representative appointed by him or her. The Minister of Justice or a representative appointed by him or her shall participate in the Council with the right to speak.

/.../

§ 41. Competence of Council for Administration of Courts

/.../

(3) The Council shall:

- 1) provide an opinion on the candidates for a vacant position of a justice of the Supreme Court (subsection 55 (4));
- 2) provide an opinion on the release of a judge (clauses 99 (1) 4)-8));

/.../

§ 55. Appointment as judge

(1) Judges of a court of the first instance and judges of a court of appeal shall be appointed by the President of the Republic on the proposal of the Supreme Court *en banc*. The Supreme

- Court *en banc* shall first consider the opinion of the full court of the court for which the person runs as a candidate.
- (2) If several persons run as candidates for the vacant position of judge, the Supreme Court *en banc* shall decide who to propose to the President of the Republic to be appointed to office as judge. The decision of the Supreme Court *en banc* shall be communicated to the candidate.
 - (3) A judge of a court of the first instance or a judge of the court of appeal appointed to office by the President of the Republic shall be appointed to court service by the Supreme Court *en banc*. Upon appointing a judge of a court of first instance to service the Supreme Court *en banc* shall also determine the courthouse which shall be the permanent place of service of the judge.
 - (4) Justices of the Supreme Court shall be appointed to office by the Riigikogu on the proposal of the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court shall first consider the opinion of the Supreme Court *en banc* and the Council for Administration of Courts concerning a candidate.

§ 99. Release of judges from office

- (1) A judge shall be released from office:
/.../
- 3) due to unsuitability for office – within three years after appointment to office;
/.../

§ 100. Release from office due to unsuitability

- (1) A person may be released from the office of judge due to unsuitability for office only within three years after appointment to office if the judge has been declared unsuitable for office by a decision of the Supreme Court *en banc*.
- (2) Once a year, chairmen of courts shall submit their opinion concerning judges of less than three years length of service employed in the corresponding courts to the judge's examination committee. The standard format for submission of opinion shall be established by the judge's examination committee.
- (3) Upon assessment of suitability for the office of judge, the Supreme Court *en banc* shall consider the proposal of a person or body entitled to commence disciplinary proceedings, the opinion of the judge's examination committee and other information characterising the work of the judge.
- (4) The judge's examination committee shall hold a session where the judge whose suitability is assessed is heard.
- (5) At least ten days before the suitability of a judge is discussed at a session of the Supreme Court *en banc*, a reasoned proposal of a person or body entitled to commence disciplinary proceedings to release the judge from office and the opinion of the judge's examination committee shall be presented to the judge whose suitability for office is assessed, and he or she is allowed to examine the gathered materials.

1-4. Discipline and Ethics

- Describe briefly the ethical rules and disciplinary proceedings
- Is there a regime of incompatibilities and prohibitions of certain professions and positions for judges? Is there declaration of assets?
- Who is in charge of disciplinary procedures? What are the guarantees for judges involved (contradictory, rights of defense, appeal ...) ?
- Do you consider these procedures satisfactory? If not, how could they be improved?

- Ethical rules of Estonian judges are stipulated in Estonian Judges' Code of Ethics (see below the link to the English translation). It consist of general rules and specific provisions concerning court procedure, independence and impartiality, and extra-judicial activities.
- Disciplinary proceedings are regulated in Chapter 11 of the Courts Act. A disciplinary offence is a wrongful act of a judge which consists of failure to perform or inappropriate performance of official duties. An indecent act of a judge is also a disciplinary offence (Subsection 87 (2) of Courts Act).
- There are restrictions on holding office of judge (Section 49 of the Courts Act), and also declaration of assets (Sections 12 to 16 of Anti-corruption Act).
- The right to commence disciplinary proceedings have mainly the Chief Justice of the Supreme Court, the Chancellor of Justice, and chairmen of courts. Since 2002 the Minister of Justice has no right of command or disciplinary authority over the judges (Subsection 39 (3) of Courts Act). For the adjudication of disciplinary matters of judges, the Supreme Court shall comprise the Disciplinary Chamber which is comprised of five justices of the Supreme Court, five circuit court judges and five judges of courts of the first instance. A disciplinary case is adjudicated in a panel of five (consisting three Supreme Court justices, one circuit court judge and one county or administrative court judge). A judge on whom a disciplinary punishment is imposed may file an appeal to the Supreme Court *en banc*. The judge whose disciplinary offence is heard shall be summoned to the session of the Disciplinary Chamber. The judge may have a representative.
- Procedures of disciplinary liability of judges are quite satisfactory.

Estonian Judges' Code of Ethics (<http://www.riigikohus.ee/?id=842>)

Courts Act

(<https://www.riigiteataja.ee/en/eli/ee/514022014001/consolide/current>)

§ 49. Restrictions on holding office of judge

- (1) Judges shall not be employed other than in the office of judge, except for teaching or research. A judge shall notify of his or her employment other than in the office to the chairman of the court. Employment other than in the office of judge shall not damage the performance of official duties of a judge or the independence of a judge upon administration of justice.
- (2) A judge shall not be:
 - 1) a member of the Riigikogu or member of a rural municipality or city council;
 - 2) a member of a political party;
 - 3) a founder, managing partner, member of the management board or supervisory board of a company, or director of a branch of a foreign company;
 - 4) a trustee in bankruptcy, member of a bankruptcy committee or compulsory administrator of immovable;
 - 5) an arbitrator chosen by the parties to a dispute.

Anti-corruption Act

(<https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/530102013048/consolide>)

§ 12. Requirement to disclose interests

- (1) An obliged official (hereinafter declarant) shall declare in a declaration information concerning his or her property and other circumstances with the aim of perceiving interests that may potentially have an impact on the performance of the official duties of the declarant and make these verifiable.

- (2) A declaration shall be submitted within four months from assuming an office or from arise of the obligation to submit a declaration and thereafter by 31 May each year. If a declarant assumes a new office, the declarant shall not submit more than one declaration during a calendar year. For the purposes of this Chapter, an office is a position resulting in an obligation to submit declarations.
- (3) The obligation to submit declarations shall terminate when a declarant submits a declaration in a calendar year following the year when he or she leaves the office.
- (4) Failure to submit a declaration by the due date without a good reason, concealment of information significant for assessment of risks of corruption and submission of false information in the declaration is prohibited. Illness of an official or other circumstances independent of such official which prevent him or her from submitting the declaration by the due date are deemed to be good reasons. The declaration shall be submitted without delay when the hindering circumstances cease to exist.

§ 13. Submission and administration of declarations

- (1) A declaration shall be submitted by:
 - 1) the President of the Republic, members of the Riigikogu, members of the Government of the Republic, judges, Auditor General, Legal Chancellor, members of the managing body of Eesti Pank, Director of the Office of the President of the Republic, Secretary General of the Riigikogu, heads of government agencies, assistant ministers, Secretaries General of Ministries, director of the State Chancellery;

/.../

§ 14. Content of declaration

- (1) A declaration shall contain information as at the day of declaring about the following assets of the declarants:
 - 1) immovable property ownership and limited real rights established over the immovable property entered in land register in favour of the person. The location and intended purpose of the immovable property and the type of the right shall be set out in the declaration;
 - 2) vehicles entered in the state register. The type of the vehicle, its make and year of initial registration shall be set out in the declaration;
 - 3) securities for the purposes of the Securities Market Act, with the exception of mandatory funded pension units, holdings in companies and such holdings in companies in which at least 1/10 of the holding belongs to a company connected to the official. The name of each issuer, the type and number of the securities shall be set out in the declaration concerning securities, and the name of the company and nominal value of the holding concerning holdings in companies;
 - 4) proprietary claims against other persons, with the exception of credit institutions, which value exceeds four times the minimum monthly wages established by the Government of the Republic pursuant to the Employment Contracts Act; claims against one person shall be added. The value of the claims, names of debtors and the basis of the claims shall be set out in the declaration;
 - 5) proprietary obligations to other persons, which value exceeds four times the minimum monthly wages established by the Government of the Republic pursuant to the Employment Contracts Act; obligations to one person shall be added. The value of the obligations, names of creditors and the basis of the obligations shall be set out in the declaration;
- (2) A declaration shall contain information concerning the following in respect of the declarant during the year before the submission of the declaration:

- 1) received proprietary and other benefits, which market value exceeds the income subject to social tax received by the declarant in his or her office during the last four months, or if the income received is smaller, four times the minimum monthly wages established by the Government of the Republic pursuant to the Employment Contracts Act. The value of benefits from one source shall be added. Benefits which the declarant received from the persons specified in clause (6) 3) of this section shall not be declared. The persons who grant the benefits and the value thereof shall be set out in the declaration;
- 2) granted benefits, which market value exceeds the income subject to social tax received by the declarant in his or her office during the last four months, or if the income received is smaller, four times the minimum monthly wages established by the Government of the Republic pursuant to the Employment Contracts Act. The value of the benefits granted to one person shall be added. Benefits which the declarant granted to the persons specified in clause (6) 3) of this section shall not be declared. The persons who received the benefits and the value thereof shall be set out in the declaration;
- (3) A declaration shall contain the following information concerning the income of a declarant:
 - 1) income subject to income tax received in the office of the declarant during the previous year;
 - 2) income received by the declarant during the previous year and dividend income paid to the declarant during the same period in Estonia and abroad declarable in the income tax returns.
- (4) A declaration shall contain the information specified in subsection (1) of this section concerning the immovable property and vehicles entered in the state register which were in the possession of the declarant in total for at least two months during the previous year. The declaration shall not set out the information concerning any immovable property and vehicles entered in the state register which were transferred into the possession of the declarant by his or her employer.
- (5) The provisions of subsections (1) and (4) of this subsection shall also apply to accounts with credit institutions located in foreign states and holdings in companies and plots of land, construction works and vehicles located in foreign states.
- (6) A declaration shall set out:
 - 1) the name and information concerning the official title of the declarant;
 - 2) the personal identification code and residential address of the declarant;
 - 3) the name and personal identification code or date of birth of the person married to the declarant and of parents and relatives of the declarant in descending line and of persons who have a shared household with the declarant, and their relationship with the declarant.
- (7) A declaration shall set out the following information:
 - 1) concerning activities outside official duties based on a contract of employment or contract for provision of services or in an elected or appointed office during the year preceding the submission of the declaration, and concerning the operation as an undertaking or a general partner in a general or limited partnership or a member of the management or controlling body of a legal person or any other ancillary activities, if this involves receipt of income;
 - 2) concerning other circumstances, which to the declarant's knowledge may bring about breach of official duties, preclude the declarant's impartiality and objectivity or bring about the risk of corruption, provided that the collection of such information shall not violate the rights of the declarant.
- (8) Things, rights and obligations in joint ownership shall be declared, setting out, if possible, the share of the declarant in the joint ownership. If an official has entered into a marital

property contract, the information for the identification thereof shall be added to the declaration.

§ 16. Access to declarations and their depositing period

- (1) The declarations of the declarants specified in subsection 13 (1) of this Act shall be disclosed pursuant to the procedure provided for in the statutes of the register. In order to access the information of the declarations, persons shall identify themselves by digital identity cards. A declarant has the right to obtain information from the register about who accessed his or her declaration.
 - (2) A declaration is disclosed for a term of three years. A declaration is not disclosed and access to an already disclosed declaration is terminated, if a competent authority informs the register of cancellation of the obligation of the declarant to submit declarations or if the declarant is dead according to the data in the population register.
- /.../
- (5) Declarations are maintained for a period of seven years as of the submission of the declaration. Thereafter the declarations are destroyed pursuant to the procedure provided for in the statutes of the register.

Courts Act

<https://www.riigiteataja.ee/en/eli/ee/514022014001/consolide/current>

§ 39. Administration of courts

- (3) The Minister of Justice has no right of command or disciplinary authority over the judges.

§ 91. Commencement of disciplinary proceedings

- (1) Disciplinary proceedings shall be commenced if elements of a disciplinary offence become evident. Disciplinary proceedings are commenced by preparation of disciplinary charges.
- (2) The following have the right to commence disciplinary proceedings:
 - 1) the Chief Justice of the Supreme Court, against all judges;
 - 2) the Chancellor of Justice, against all judges;
 - 3) the chairman of a circuit court, against judges of courts of first instance in his territorial jurisdiction;
 - 4) the chairman of a court, against the judges of the same court;
 - 5) the Supreme Court *en banc* against the Chief Justice of the Supreme Court.
- (3) A person who commences a disciplinary proceeding may gather evidence and demand explanations which are necessary to adjudicate the disciplinary matter.

§ 92. Disciplinary charge

- (1) A disciplinary charge is a written document, which sets out:
 - 1) the name and position of the accused;
 - 2) the description and time of commission of the offence;
 - 3) the evidence proving commission of the offence;
 - 4) the name of the person who commences a disciplinary proceeding, and the date and place of the preparation of the charge.
- (2) The person who commences a disciplinary procedure shall forward the disciplinary charges and the related material to the Disciplinary Chamber, which shall immediately notify the judge against whom the disciplinary proceeding is commenced thereof.
- (3) A judge against whom a disciplinary proceeding is commenced shall be served the disciplinary charges at least ten days before the session of the Disciplinary Chamber. The judge or his or her representative has the right to examine the materials of the disciplinary charge.

§ 93. Disciplinary Chamber

- (1) For the adjudication of disciplinary matters of judges, the Supreme Court shall comprise the Disciplinary Chamber which is comprised of five justices of the Supreme Court, five circuit court judges and five judges of courts of the first instance.
- (2) The Supreme Court *en banc* shall appoint, for the term of three years, the chairman of the Disciplinary Chamber and other members of the Disciplinary Chamber who are justices of the Supreme Court.
- (3) The internal rules of the Supreme Court shall prescribe the procedure for the substitution of members of the Disciplinary Chamber who are justices of the Supreme Court.
- (4) Pursuant to the internal rules, the Supreme Court shall involve judges of courts of the first instance and judges of courts of appeal elected on the basis of clause 38 (3) 4) of this Act in the adjudication of disciplinary matters.
- (5) For the adjudication of a disciplinary matter of a judge, the chairman of the Disciplinary Chamber shall form a five-member panel consisting of three members of the Disciplinary Chamber who are justices of the Supreme Court, one judge of a circuit court and one judge of a court of first instance.

§ 94. Hearing of disciplinary matter

- (1) The Disciplinary Chamber of the Supreme Court shall hear matters of disciplinary offences of judges and impose disciplinary punishments to judges.
- (2) A five-member panel of the Disciplinary Chamber shall hear a disciplinary matter at a court session.
- (3) Upon hearing of a disciplinary matter, the chairman of the Disciplinary Chamber is the presiding judge. If the chairman of the Disciplinary Chamber does not participate in the hearing of a matter, he or she shall appoint a member of the Chamber as the presiding judge.

§ 95. Temporary removal from service

- (1) The Disciplinary Chamber may remove a judge from service during the hearing of a disciplinary matter by a ruling of which the Chamber shall immediately notify the judge and the chairman of the court. Upon deciding the removal from service, the Chamber shall consider the nature and gravity of the disciplinary offence of which a judge is accused.
- (2) If circumstances related to a judge exist which significantly damage the reputation of the court, the Disciplinary Chamber may remove the judge from service until the commencement of disciplinary proceedings is decided. If it is established that no basis exists for the commencement of disciplinary proceedings against the judge, the judge may resume service on a decision of the Disciplinary Chamber.
- (3) The Disciplinary Chamber may decide the removal of a judge from service without holding a court session.
- (4) If the Disciplinary Chamber removes a judge from service during the hearing of a disciplinary matter, the Chamber may reduce the judge's salary for such period. The salary shall be reduced by not more than a half.
- (5) The chairman of the court may assign duties other than the administration of justice to a judge who is temporarily removed from service.
- (6) A judge may file an appeal to the Supreme Court *en banc* against a ruling by which the judge is temporarily removed from service or his or her salary is reduced within ten days after the judge becomes aware of the ruling.

§ 96. Session of Disciplinary Chamber

- (1) The judge whose disciplinary offence is heard shall be summoned to the session of the Disciplinary Chamber. The judge may have a representative. If necessary, witnesses and other persons may be summoned to the session.
- (2) At the session of the Disciplinary Chamber, the presiding judge shall make a report on the offence in which he or she introduces the disciplinary charge.
- (3) The judge, against whom the disciplinary charge is brought, shall give statements with regard to the matter, and the statements from witnesses and other persons present at the session shall be heard. Members of the Disciplinary Chamber may question the judge against whom the charge is brought, the witnesses and other persons summoned to the session.
- (4) After examination of the evidence, the judge whose disciplinary matter is heard has the right to express his or her opinion with regard to the matter.
- (5) Minutes shall be taken of sessions of the Disciplinary Chamber.

§ 97. Decisions of Disciplinary Chamber

- (1) If the culpability of a judge is proved, the Disciplinary Chamber shall make a decision by which the judge is convicted of the commission of a disciplinary offence and a disciplinary punishment is imposed on the judge.
- (2) If the judge has not committed a disciplinary offence, the Disciplinary Chamber shall make a decision by which the judge is acquitted of the disciplinary charge.
- (3) A judge on whom a disciplinary punishment is imposed may file an appeal to the Supreme Court *en banc* within thirty days after the decision is pronounced.
- (3¹) The Supreme Court *en banc* may perform the following with regard to a decision of the Disciplinary Chamber:
 - 1) refuse amendment;
 - 2) amend and convict the judge of the commission of a less serious disciplinary offence and mitigate the disciplinary sanction imposed;
 - 3) refuse to make substantive amendments and mitigate the disciplinary sanction imposed;
 - 4) annul the decision and acquit the judge.
- (4) If the judge has not filed an appeal to the Supreme Court *en banc*, the decision of the Disciplinary Chamber shall enter into force after the expiry of the term specified in subsection (3) of this section. A decision of the Disciplinary Chamber appealed to the Supreme Court *en banc* shall enter into force as a decision of the Supreme Court *en banc* upon pronouncement thereof.

§ 98. Reimbursement of reduced portion of salary

- (1) If a judge is acquitted of a disciplinary charge, the reduced portion of salary related to the temporary removal from service and the interest provided by law shall be paid to the judge.
- (2) If the Disciplinary Chamber convicts a judge of the commission of a disciplinary offence which is considerably less serious than the act against which charge was brought against the judge and for which he or she was temporarily removed from service, the Chamber may decide that the reduced portion of salary shall be reimbursed to the judge in part or in full.
- (3) On the bases specified in subsections (1) and (2) of this section, the reduced portion of salary shall be paid to the judge within one month after termination of the disciplinary proceedings or entry into force of the decision of the Disciplinary Chamber.

1-5. Distribution of cases

- Describe briefly the distribution of cases between judges and the conditions for their eventual divestiture

- Do you consider these procedures satisfactory? If not, how could they be improved?

Cases are distributed between judges at random (but still allowing judges to specialize on certain matters) and on bases determined in the annual division of tasks plans of the courts of first and second instance. The division of tasks plan shall prescribe the procedure for formation of court panels and for the substitution of judges. Everyone can access the division of tasks plan in the court office. Circumstances when a judge shall remove himself or herself from adjudicating a case, are stipulated in codes of court procedure:

Section 13 of the Code of Administrative Court Procedure

(<https://www.riigiteataja.ee/en/eli/ee/527012014001/consolide/current>)

Sections 22 to 30 of the Code of Civil Procedure

(<https://www.riigiteataja.ee/en/eli/ee/514022014002/consolide/current>)

Sections 49 to 51 of the Code of Criminal Procedure

(<https://www.riigiteataja.ee/en/eli/ee/529012014005/consolide/current>).

Courts Act

(<https://www.riigiteataja.ee/en/eli/ee/514022014001/consolide/current>)

§ 37. Division of tasks between judges

- (1) The division of tasks between judges of courts of the first instance and courts of appeal shall be prescribed in the division of tasks plan.
- (1¹) A chairman of a court may, by a directive, reduce his or her workload in administration of justice to the extent necessary for performing the duties of the chairman.
- (2) Tasks shall be divided between judges on the basis of the following principles:
 - 1) each matter received by the court for hearing shall be divided between judges according to the division of tasks plan;
 - 2) matters shall be divided between judges at random and on bases determined in the division of tasks plan;
 - 3) in the distribution of matters, as many matters as possible shall be distributed between the judges serving in the courthouse where the matter will be heard.
 - 4) the distribution of the matters shall ensure equal workload of judges within a court;
 - 4¹) the distribution of the matters to a chairman of a court shall take into account the reduced workload in administration of justice on the basis of subsection (11) of this section;
 - 5) The Council for Administration of Courts may adopt additional principles for the preparing of the division of tasks plan of judges. When approving the division of tasks plan, courts shall be guided by the principles adopted by the Council for Administration of Courts.
- (3) The division of tasks plan shall prescribe the procedure for formation of court panels and for the substitution of judges.
- (4) The division of tasks plan shall be approved for one calendar year. During a working year, the full court may amend the division of tasks plan only with good reason.
- (5) Everyone can access the division of tasks plan in the court office.

1-6. Recognition of the right of association

- The right to join or form associations / unions, is it recognized for judges?
- If so, what resources are allocated to the association / union in terms of grants, human resources?
- Do you consider these procedures satisfactory? If not, how could they be improved?

Judges are free to join or form non-profit associations or unions. However, the Estonian Association of Judges is the one and only judges' association in Estonia. No particular grants or human resources are allocated to judges' associations, although, the Supreme Court and the Ministry of Justice may occasionally support some events (e.g. academic conferences) or other projects (certain publications *etc.*) of the association.

The Constitution of the Republic of Estonia

(<https://www.riigiteataja.ee/en/eli/ee/rhvv/act/530102013003/consolide>)

§ 48. Everyone has the right to form non-profit associations and federations. /.../

1-7. Protection of judges

- Are the judges frequently attacked in the media, by politicians or other people? Do they have special protection?
- Do you consider these procedures satisfactory? If not, how could they be improved?

Attacking of judges in the media is not common, but still happens sometimes. Politicians are generally quite modest in their public comments. Judges have no special protection, although defamation or insulting of a court or judge in connection with their participation in administration of justice is a criminal offence according to Section 305 of Penal Code (<https://www.riigiteataja.ee/en/eli/ee/530012014001/consolide/current>). Defamation or insulting of other persons may only lead to civil liability. Also, like every other person judges have the opportunity to file a complaint to the Press Council of the Estonian Newspaper Association. Considering the fact that attacking judges in the media by the politicians is rare, at present these procedures may be considered sufficient.

2 - Regarding the means of Judiciary

2-1. Funding of the judiciary

- *Annual budget of Justice*
Specify the total annual allocation to the functioning of the courts budget (including expenses relating to judges, prosecutors and legal aid). Does this budget seem to you sufficient? Judges, or bodies representing judges, are they consulted during the elaboration / implementation of budget?
- *Operating budget of the courts*
How and on which criteria are distributed the funds to the different jurisdictions? Can the courts use freely their budgets? Is it organize before committing expenditure a consultation of judges?
- Do you consider these procedures satisfactory? If not, how could they be improved?

State Budget of 2014

Total public expenditures: 7 846 643 628 euros;

The Supreme Court expenditures: 5 039 303 euros;

The Ministry of Justice total expenditures: 123 504 275 euros;

- I and II instance courts: 28 211 842 euros;

- prosecutors: 8 985 762 euros;

- state legal aid: 3 835 000 euros.

The budgets of the first and second instance courts are approved and amended by the Minister of Justice, considering the opinion of the Council for Administration of Courts. At present circumstances, the funding of the courts should be considered mostly sufficient. Recently there are also annually concluded target-based contracts between the courts of first and second instance, and the Ministry of Justice. The use of contractualisation is quite widely criticized by the judges, because the additional pay of the court employees is directly linked to the efficacy of the judge's activities, which put great pressure on judges. Overall, funding of the judiciary (first and second instance courts) by the Ministry of Justice, is often regarded as a major issue, because the independence and impartiality of the judiciary seems questionable, if the budgets of the courts are approved and amended by the executive power.

Courts Act

(<https://www.riigiteataja.ee/en/eli/ee/514022014001/consolide/current>)

§ 43. Budget of court

- (1) The Minister of Justice shall approve the budgets of courts of the first instance or courts of appeal within two weeks after the state budget is passed as an Act, considering the opinion formulated by the Council for Administration of Courts (subsection 41 (2)).
- (2) A budget of a county court shall set out the expenditure for the performance of the function of administration of justice separately from the expenditure of the land registry departments and registration departments.
- (3) During a budgetary year, the Minister of Justice may amend the budget expenditure of a court only with good reason after having considered the opinion of the chairman of the court and the director of the court and pursuant to the principles formulated by the Council for Administration of Courts.
- (4) The budget of the Supreme Court shall be passed pursuant to the procedure provided for in the State Budget Act.

2-2. Salary

- Briefly define the scale of salaries of judges: at the beginning of the career, at the mid-term, at the end
- Who determines the salary of judges? Is there a system of “merit pay” (if so in what proportions? How the sums are assigned to judges?)
- Salaries are they likely to go down? If yes, have you met such cuts and in what proportions?
- Do you consider this situation and the guarantees for judges satisfactory? If not, how could they be improved?

Since 1 July 2013 there are no differences between salaries of judges at the beginning or at the end of the career. Salaries of judges are provided by the Salaries of Higher State Servants Act. There is also additional remuneration for the performance of the duties of manager of the courthouse or chairman of the court or chamber (Section 76 of Courts Act). In Estonia, there is no system of “merit pay”.

Gross monthly salaries of judges:

- judge of county court or administrative court – 3380 euros;
- manager of the courthouse of county court or administrative court – 3718 euros;
- chairman of county court or administrative court – 4225 euros;

- judge of circuit court – 3900 euros;
- chairman of the chamber of circuit court – 4485 euros;
- chairman of circuit court – 4875 euros;
- justice of the Supreme Court – 4420 euros;
- chairman of the chamber of the Supreme Court – 5083 euros.
- the Chief Justice of the Supreme Court – 5200 euros.

Before 1 July 2013 the salaries of judges (and other public servants) were frozen at the level of year 2008, and were also reduced by 8 per cent on 2009 (gross monthly salary of a judge of the court of first instance was 2667 euros for the last four years, and salary of a judge of the court of second instance was 3000 euros). Although before 1 July 2013 there were also additional remunerations for experienced judges (up to 15 per cent, after 15 years of office). At the moment, the salaries are not likely to go down, but the law foresees an annual indexation of the salaries. Considering the past circumstances, most judges find the current situation acceptable.

Salaries of Higher State Servants Act

(<https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/506112013026/consolide>)

§ 1. Salary of higher state servants

The salary of higher state servants specified in this Act is the highest salary rate specified in subsection 2 (1) of this Act multiplied by the highest salary rate index specified in subsection (2) and the factor specified in § 3.

§ 2. Highest salary rate of higher state servants

- (1) The highest salary rate of higher state servants shall be 5,200 euros.
- (2) The highest salary rate specified in subsection (1) of this section shall be indexed by 1 April each calendar year with the highest salary rate index the value of which is 50 per cent of the arithmetic average of the annual change in the consumer price index and the annual change in the receipt of social tax. The index shall be given with the accuracy to three decimal places.
- (3) The annual change in the consumer price index shall be expressed by an index calculated by dividing the difference between the value of the consumer price index for the previous calendar year and the year before the previous calendar year with the value of the consumer price index for the year before the previous calendar year, on the basis of the value of the consumer price index officially published by Statistics Estonia. The index shall be given with the accuracy to three decimal places.
- (4) The annual change in the receipt of social tax shall be expressed by an index calculated by dividing the difference between the total amount of the receipt of social tax for the previous calendar year and the year before the previous calendar year with the value of the total amount of the receipt of social tax for the year before the previous calendar year, on the basis of the data of the Ministry of Finance concerning the receipt of social tax. The index shall be given with the accuracy to three decimal places.
- (5) The highest salary rate index specified in subsection (2) of this section shall be published by the Ministry of Finance on its web page by 15 March of each calendar year.

§ 3. Coefficients applicable to salaries of higher state servants

- (1) The coefficient for the salary of the President of the Republic shall be 1.0.
- (2) The coefficient for the salary of the President of the Riigikogu shall be 1.0.
- (3) The coefficient for the salary of the Prime Minister shall be 1.0.
- (4) The coefficient for the salary of the Chief Justice of the Supreme Court shall be 1.0.

- (5) The coefficient for the salary of the Vice-President of the Riigikogu shall be 0.85.
 - (6) The coefficient for the salary of the Auditor General shall be 0.85.
 - (7) The coefficient for the salary of the Chancellor of Justice shall be 0.85.
 - (8) The coefficient for the salary of a justice of the Supreme Court shall be 0.85.
 - (9) The coefficient for the salary of a minister shall be 0.85.
 - (10) The coefficient for the salary of the Secretary of State shall be 0.85.
 - (11) The coefficient for the salary of the chairman of a committee of the Riigikogu and the chairman of a fraction shall be 0.85.
 - (12) [Omitted]
 - (13) The coefficient for the salary of the deputy chairman of a committee of the Riigikogu and the deputy chairman of a fraction shall be 0.75.
 - (14) The coefficient for the salary of a judge of a circuit court shall be 0.75.
 - (15) The coefficient for the salary of a Member of the Riigikogu shall be 0.65.
 - (16) The coefficient for the salary of a judge of a county or administrative court shall be 0.65.
- /.../

Courts Act

<https://www.riigiteataja.ee/en/eli/ee/514022014001/consolide/current>

§ 75. Judge's salary

A judge's salary is provided by the *Salaries of Higher State Servants Act*.

§ 76. Additional remuneration of judges

- (1) A chairman of the court of the first instance or court of appeal shall receive additional remuneration for the performance of the duties of chairman of the court:
 - 1) in the amount of 15 per cent of his or her salary if the number of judges in the court is fourteen;
 - 2) in the amount of 25 per cent of his or her salary if the number of judges in the court is at least fifteen.
- (2) The chairman of a chamber of the Supreme Court or a circuit court shall receive additional remuneration for the performance of the duties of chairman of the chamber in the amount of 15 per cent of his or her salary.
- (3) The Minister of Justice may, on the proposal of the chairman of the court and with the consent of the Council for Administration of Courts, determine additional remuneration for a manager of courthouse in the amount of up to five per cent of the salary of a judge if there are three to ten judges in permanent service in the courthouse and in the amount of up to ten per cent if there are more than ten judges in permanent service in the courthouse.
- (4) Judges supervising candidates for judicial office, candidates for assistant judge or university student trainees shall receive additional remuneration for supervision equal to 5 per cent of the salary for each supervised person during supervision.

2-3. Pensions

- At what age and how judges can they retire?
- Does the amount of the pension satisfactory?
- Do you consider that improvements have to be done?

A judge can retire at the age of 63, and according to Section 48 of Courts Act a judge must retire at the age of 68, with a possible exception (see below Section 99¹ of Courts Act). The right to receive a judge's pension (75 per cent of judge's salary) is guaranteed only to those judges that held the office of judge before 1 July 2013. A person must have been employed as a judge for at

least fifteen years before retirement. There is no special pension for judges that are appointed after 1 July 2013. The amount of judge's pension is sufficient (2535 euros), but definitely not the amount of public pension (540-840 euros). There is an ongoing constitutional debate on the annulment of the provisions of judge's pension. The main improvement that the Estonian Association of Judges considers inevitable for the independence of the judiciary should be the restoration of judge's pension also for those judges that are appointed after 1 July 2013.

Courts Act

(<https://www.riigiteataja.ee/en/eli/ee/514022014001/consolide/current>)

§ 48. Judge's age

The maximum age of a judge is 67 years, unless otherwise provided for in this Act.

§ 99¹. Release from office due to age

- (1) A judge shall be released from office if the judge has attained 68 years of age, unless the maximum age of the judge is increased pursuant to the procedure provided for in subsections (2) and (3) of this section.
- (2) The Supreme Court *en banc* may, upon the consent of the Council for Administration of Courts and the judge and on the proposal of the chairman of the court, in exceptional case increase the maximum age of the judge of a court of the first instance and of a court of appeal up to two years at a time.
- (3) The maximum age of the judge may be increased in case of substantial public interest from the point of view of administration of justice.
- (4) The increase of the maximum age applies exclusively to the judge whose maximum age was increased.
- (5) In case of increasing the maximum age of a judge, the judge shall be released from office after the judge has attained the increased maximum age.

§ 132¹. Judge's pension

The following are judge's pensions:

- 1) judge's old-age pension;
- 2) judge's superannuated pension;
- 3) judge's pension for incapacity for work;
- 4) survivor's pension for judge's family members.

§ 132². Right to receive judge's old-age pension

- (1) The right to receive a judge's old-age pension shall be held by a person of pensionable age, who:
 - 1) has held the office of judge after 31 December 1991 and who by 1 July 2013 has been employed as a judge for at least fifteen years;
 - 2) holds the office of judge as at 1 July 2013 and who by the time of retirement has completed the pension qualifying period required for the grant of the old-age pension provided for in clause (1) 1) of this section;
 - 3) has held the office of judge after 31 December 1991 and who by 1 July 2013 has been employed as a judge for at least ten years and whose percentage of the loss of his or her capacity for work is 100, 90 or 80;
 - 4) holds the office of judge as at 1 July 2013 and who by the time of retirement has completed the pension qualifying period required for the grant of the old-age pension provided for in clause (1) 3) of this section and whose percentage of the loss of his or her capacity for work is 100, 90 or 80.

- (2) The right to receive a judge's old-age pension, irrespective of the age, shall be held by a person whose percentage of the loss of his or her capacity for work is 100, 90 or 80, and who:
 - 1) has held the office of judge after 31 December 1991 and who by 1 July 2013 has been employed as a judge for at least fifteen years;
 - 2) holds the office of judge as at 1 July 2013 and who by the time of retirement has completed the pension qualifying period required for the grant of the old-age pension provided for in clause 1) of this subsection.
- (3) The right to receive a judge's old-age pension shall be held by a person of pensionable age, who:
 - 1) has been the Chief Justice of the Supreme Court after 31 December 1991 and before 1 July 2013, or
 - 2) is the Chief Justice of the Supreme Court as at 1 July 2013, or
 - 3) holds the office of judge as at 1 July 2013 and who is appointed the Chief Justice of the Supreme Court after 1 July 2013.

§ 132³. Right to receive judge's superannuated pension

The right to receive a judge's superannuated pension, irrespective of the age, shall be held by a person, who:

- 1) has held the office of judge after 31 December 1991 and who by 1 July 2013 has been employed as a judge for at least thirty years;
- 2) holds the office of judge as at 1 July 2013 and who by the time of retirement has completed the pension qualifying period required for the grant of the superannuated pension provided for in clause 1) of this section.

§ 132⁴. Right to receive judge's pension for incapacity for work

The right to receive a judge's pension for incapacity for work in the case of permanent incapacity for work during his or her employment as judge shall be held by a person, who:

- 1) has held the office of judge after 31 December 1991 and whose permanent incapacity for work arose before 1 July 2013;
- 2) holds the office of judge as at 1 July 2013.

§ 132⁵. Right to receive survivor's pension for judge's family members

The right to receive a survivor's pension for judge's family members shall be held by a family member who has the right to receive survivor's pension, if:

- 1) the judge has held the office of judge after 31 December 1991 and before 1 July 2013 and the right to receive survivor's pension was created before 1 July 2013;
- 2) the judge who held the office of judge as at 1 July 2013 deceases during his or her employment as judge.

§ 132⁶. Amount of judge's pension

- (1) The amount of a judge's old-age pension and superannuated pension shall be 75% of the salary of his or her most recent position, which was in force on the day as of which the pension is granted.
- (2) The amount of the old-age pension of the Chief Justice of the Supreme Court or a person who has been the Chief Justice of the Supreme Court is 75% of the salary of the Chief Justice of the Supreme Court, which was in force on the day as of which the pension is granted, if he or she has been employed as the Chief Justice of the Supreme Court for at least five years, and 50% if he or she has been employed as the Chief Justice of the Supreme Court for less than five years.
- (3) The amount of a judge's pension for incapacity for work is:

- 1) 75% of a judge's recent salary, which was in force on the day as of which the pension is granted, in the case of a 100 per cent loss of capacity for work;
- 2) 70% of a judge's recent salary, which was in force on the day as of which the pension is granted, in the case of a 80 or 90 per cent loss of capacity for work;
- 3) 30% of a judge's recent salary, which was in force on the day as of which the pension is granted, in the case of a 40 to 70 per cent loss of capacity for work;
- (4) In case of a judge's death, a family member who has the right to receive survivor's pension shall be paid a survivor's pension of 30% of the judge's recent salary, which was in force on the day as of which the pension is granted, but in total not more than 70% of the judge's recent salary, which was in force on the day as of which the pension is granted.

§ 132⁷. Grant and payment of judge's pension

- (1) The grant and payment of a judge's pension shall be performed pursuant to the procedure provided for in the State Pension Insurance Act, unless otherwise provided for in this Act.
- (2) A judge's pension, except for pension calculated on the basis of the salary of the current year, shall be indexed by 1 April of each current year by the highest salary rate index specified in subsection 2 (2) of the *Salaries of Higher State Servants Act*.
- (3) The part of a judge's pension which exceeds the pension calculated pursuant to the State Pension Insurance Act shall be paid from the state budget through the budget of the Ministry of Justice and the Supreme Court.
- (4) A judge's pension shall not be increased on the bases provided for in the Public Service Act. If a person has the right to receive several classes of state pension, one pension shall be granted to the person at his or her choice.
- (5) A judge's pension shall not be paid during employment as a judge. If a retired judge is employed elsewhere, he or she shall receive the judge's pension in full regardless of the amount of the earnings.
- (6) A judge's pension shall not be granted to a person who has been removed from office for a disciplinary offence or who has been convicted of an intentionally committed criminal offence. The specified pension shall be withdrawn from a person who is convicted of a criminal offence directed against the administration of justice.
- (7) A person convicted for an offence provided for in Chapter 15 or Division 2 of Chapter 17 of the Penal Code, for which the Penal Code prescribes as at least up to five years' imprisonment, loses the right to judge's old-age pension and judge's superannuated pension.
- (8) If a person was paid a judge's old-age pension or a judge's superannuated pension provided for in this Act, the payment of the pension is terminated as of the month following the month of entry into force of the court judgment. In case of losing the right to pension provided for in this Act, the person retains the right to apply for pension pursuant to general principles.
- (9) The court shall notify the Social Insurance Board within 10 working days as of the entry into force of the court judgment in writing of the fact in connection with which the person loses the right to judge's old-age pension and judge's superannuated pension provided for in this Act.
- (10) The provisions of subsection (7) of this section apply to persons in respect of whom a judgment of conviction entered into force after 10 March 2009.

2-4. Accessibility and Efficiency of Justice

- Are there barriers to the defendant to access to justice? Are there mechanisms to provide access to justice for the most disadvantaged people (legal aid, support to victims ...)
- Are there problems of deadlines in the treatment of cases ?

- Do you consider these procedures satisfactory? If not, how could they be improved?

- In Estonia, there are no barriers to the defendant to access to justice. If it is compulsory to have a legal representative (advocate) in proceedings or when a person needs legal assistance, legal service might be granted at the expense of the state according to State Legal Aid Act. Victim support services are stipulated in Victim Support Act.

- According to the EU justice scoreboard (http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_communication_en.pdf), cases are mostly treated within reasonable time, although there are definitely some exceptions. The main problem seems to be linked with dealing of administrative cases in the second instance courts.

Average length of proceedings based on the statistical data of 2013:

a) *courts of first instance*

- civil cases – 138 days
- criminal cases (excluding simplified proceedings) – 233 days
- misdemeanor cases – 52 days
- administrative cases – 117 days

b) *courts of second instance*

- civil cases – 152 days
- criminal cases – 40 days
- misdemeanor cases – 26 days
- administrative cases – 302 days

State Legal Aid Act

(<https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/515112013006/consolide>)

Victim Support Act

(<https://www.riigiteataja.ee/en/eli/ee/521122013001/consolide/current>)

3 - Regarding the national association

3-1. Representativeness of the association

- How many members does the association have? Has this number increased since the association became a member?
- Do other associations/organizations of judges exist?
- If elections are held in the country in question, please furnish statistical data relating to the extent to which the association is representative.
- Does the association include members who are independently elected and who oversee the judiciary? The discipline of the judiciary?

Estonian Association of Judges has 202 active members (170 active judges; 32 retired judges) and 3 honourable members (non-judges). Number of active members has significantly increased since the Association became a member of IAJ in 1995. Estonian Association of Judges is the one and only judges association in Estonia. Currently there are total of 231 judges in Estonian judiciary, and 74 per cent of all judges are members of the Estonian Association of Judges. The Association does not include any independently elected members who oversee the judiciary.

3-2. Modalities for appointment / election of its representatives

- How are the leaders of the association selected? Are they elected by the members? Are they appointed? If yes, by whom and by what process?

- How is the association organized? Is there a board of directors/association council? If yes, how are the members of the council appointed/elected? What powers does the council have?
- Does the association have regional representatives? If yes, how are they appointed/elected?

Leaders of the Estonian Association of Judges are elected by the members during annually held general meetings. A member of the Association or representative of a member who is granted an unattested proxy may participate and vote in the general meeting. Only another member of the Association may be a representative. Between the general meetings the activities of the Association are governed by the management board, who shall decide on the issues which are not within the competence of a general meeting. The management board has 9 members (including the Chairman of the Association). There is also an internal audit committee that gives written opinions on annual reports drafted by the management board and, if needed, audit the organisational and financial activities of the management board. Members of the management board and internal audit committee are elected in the general meeting by secret ballot for the term of two years. Estonian Association of Judges has no regional representatives.

Statutes of Estonian Association of Judges

(<http://www.ekou.ee/eng-statute.html>)

3-3. Financing Association

- What is the association's annual budget?
- What are the association's funding sources: membership dues, subsidies, other funding sources?
- What have been the principal expenses?

Annual budget of Estonian Association of Judges is approximately 12 000 euros. According to Section 26 of the Statutes, the following are the sources of assets of the Association:

- joining fees and membership fees;
- income from publishing;
- other receipts.

In reality, the assets of the Association almost exclusively consist of membership fees (for active judges 64 euros per year; for retired judges 32 euros per year), and of some irregular target-based allocations from the Supreme Court or the Ministry of Justice (*e.g.* for organizing a conference within the network of the Baltic Association of Judges).

The principal expenses are connected with domestic events (annual general assembly with the presence of around 120 members, and typically at least one other meeting with up to 40 participants) and participation in the activities of international associations (membership fees, travel and accommodation costs of delegates of general assemblies). Estonian Association of Judges is a member of the International Association of Judges (European Association of Judges) and the Association of European Administrative Judges.

3-4. Relations association with public administration

- Does the association meet regularly with representatives of the executive? In particular with the Minister of Justice and his/her associates? Is the association consulted in advance of all government reforms?

- Does the association meet regularly with representatives of the legislature? Is the association asked to provide its opinion on projects and bills before they are examined by the parliament?

Estonian Association of Judges has been extensively involved in all governmental reforms that affect the judiciary, and within this field we have had quite regular meetings with the Minister of Justice and more frequently with the Deputy Secretary General on Judicial Administration. Representatives of the Association are also quite regularly invited to the meetings of Constitutional Committee and Legal Affairs Committee of the Parliament of Estonia (*Riigikogu*), if there are examined some bills concerning the functioning of the judiciary. The Association is often asked to provide its opinion on project and bills by the Ministry of Justice and by the parliament, especially if the projects and bills deal with the amendments of Courts Act or provisions of court procedure.

3-5. Actions undertaken by the association during the last 3 years

- What were the main actions undertaken in the previous year? In the previous three years? Since becoming a member?
- Has the association organized collective action (demonstrations, strikes...)?
- Does the association have a media presence? Has the association published documents (books, reviews, communiqués...)?
- Did the eventual actions taken have a positive impact on judicial powers?

The Estonian Association of Judges has organized several conferences (*e.g.* the international conference on “Constitutional Details of the Procedure of Exequatur and the Enforcement of Judgements in the Practice of Member States” on 9-10 September 2010) and regular meetings with judges associations of Latvia and Lithuania.

Estonian Association of Judges has not organized any collective actions in form of demonstrations *etc.* Judges has no right to strike (Section 59 of Civil Service Act). However, the Association had leading role in discussion about the independence of judges within the Estonian court *en banc* on 8 February 2013.

The media presence of the Association is quite limited, although journalists sometimes ask for our comment on topics concerning judges or court proceedings. The Association has published two bilingual (Estonian, English) book of Estonian judges (2006, 2011 – personal data and pictures of Estonian judges + statistical data + parallel texts of the Estonian judges’ code of ethics), and a compendium of the materials of the international conference (2010).

Actions of the Association have definitely had positive impact on strengthening the judicial power. The opinion of the judges is more widely heard and accepted. However, it must be admitted, that on several occasions the endeavours of the Association have had no outcome at all.

Civil Service Act

(<https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/530102013082/consolide>)

4 - Miscellaneous

- What were the main problems encountered by the judiciary in your country in recent years?

One of the main problems within recent years has been quite constant reduction of social benefits for judges. Yes, judge's salary did increase remarkably on 1 July 2013, but at the same time judge's pension was removed for new judges. Since 1 April 2013, the length of judge's holiday has been shortened from 49 calendar days (or from 56 calendar days for Supreme Court justices) to 35 calendar days for all judges and Supreme Court justices.

The other main problem has been the excessive pressure to shorten the average length of proceedings, almost at all costs. This has put an ever increasing workload on judges.

- Would you say that the situation for the judiciary has improved? decreased? has remained stable?

Overall, the situation for the judiciary has decreased by a fair amount because of the aforementioned changes in social guarantees for judges.

- What are the main reforms underway or planned? These reforms seem they go in the right direction?

There is an ongoing reform of preparatory service for judges, which seems to go in the right direction. Also, the Ministry of Justice has recently allocated significantly more funds for the recruitment of judicial clerks, this project has been widely acknowledged by the judiciary.

Questionnaire for Member Associations

Response from Georgia

1 - Regarding independence of judges

1-1. Recruitment

- Briefly describe the modes of recruitment of judges in your country (competition, election, appointment ...)
- Do you consider this recruitment procedure problematic or does it ensure a satisfactory recruitment in number and quality?

In accordance with the Article 86 of the Constitution of Georgia and the part one of the Article 34 of the Organic Law of Georgia on Common Courts, a legally capable citizen of Georgia can be appointed (elected) a judge over the age of 30, who has the higher legal education with a master's or equal academic degree / diploma of higher education, at least 5 years of practical experience in the field of law, speaks the state language, has passed the judges qualification exam, has completed the full training course at the High School of Justice and has been listed in the qualification list of the trainees of Justice.

The competition, recruitment and appointment of judges of trial and appellate courts are performed by the High Council of Justice, whereas the judges of the Supreme Court of Georgia are elected by the Parliament of Georgia upon submission of the President of Georgia (please see the Answer 1-3 for details).

The recruitment process is in fact satisfactory, but at some extent it is desirable to refine the selection criteria, and works are underway to this effect.

1-2. Initial and continuing training

- Briefly describe the training of judges at the beginning of the career and during this one
- Is there a school responsible for training judges?
- Do you consider the training satisfactory? If not, how could it be improved?

In accordance with the Law of Georgia on High School of Justice, professional development of the individuals to be appointed a judge within the system of common courts of Georgia – a justice trainee – is provided by the High School of Justice. The school aims to ensure deepening of theoretical knowledge and development of the skills necessary for practical work of justice trainees, also to facilitate cognizance of future responsibility and liberty of acting of justice

trainees within statutory frameworks, support gradual integration of justice trainees into the social environment in which they will have to work as judges in the future. Duration of training at the High School of Justice is usually 10 months. The full training course covers a theoretical course, internship and seminars.

Another goal of the High School of Justice is to retrain sitting judges for their professional development. Retraining takes place through providing various types of seminars, training courses and conferences, also theoretical and practical exercises, also through organizing discussions.

Training at the High School of Justice of Georgia is satisfactory for the justice trainees, also for the sitting judges as well.

1-3. Appointment and career

- Briefly describe the procedures for appointment of judges
- Is there a Higher Council of Justice in charge of these issues? If yes, how is it composed? What are its powers (simple opinion or decision-making power)?
- What are the rules for promotion of judges?
- The tenure is it guaranteed to judges?
- Judges are they evaluated? If yes, by whom, on what basis and with what possible appeal?
 - Do you consider these procedures satisfactory? If not, how could they be improved ?

In accordance with the Article 36 of the Organic Law of Georgia on Common Courts, the Chief Justice and members of the Supreme Court of Georgia are elected by the Parliament of Georgia for the term of 10 years, upon submission of the President of Georgia, with the list majority.

A judge of the appellate and district (city) courts is appointed by the High Council of Georgia. A judge of the appellate and district (city) court shall be appointed for the term of 3 years. No earlier than 2 months and no later than 1 month before expiration of this term, and on the basis of analyzing the monitoring results, the High Council of Justice of Georgia discusses and makes decision about appointment of the judge for life, until reaching the age specified by the law. If the judge is not appointed for life, then his judicial power will be terminated after expiration of the 3-year term of office, in accordance with the regulation established by this law. With the purpose of monitoring the performance of the judge who has been appointed for 3 years, after 1 year and 2 years since appointment, also 4 months before expiration of the 3-year term of judicial office, the High Council of Justice of Georgia will cast lots for selecting the Council member who shall evaluate the judge's performance for the respective period within 1 month. Besides, all the three monitoring rounds should be performed by different members of the Council. Each monitoring report will be delivered to the judge whose performance has been evaluated with this monitoring,

and will be sealed and attached to his/her personal file. These reports will be sent to the members of the High Council of Justice of Georgia for review for 1 month, 3 months before expiration of the 3-year term of office of the judge. If the High Council of Justice makes a decision on appointing the judge for life, then the judge will be appointed for life, until attaining the age stipulated by the law. If the High Council of Justice does not make a decision on appointing the judge for life, then it announces an opening for the judicial vacancy in accordance with the Article 35 of this law. If the High Council of Justice does not make a decision on appointing the judge for life, then this judge will be deprived of a possibility to participate in the competition announced for occupying the vacant judicial position for the next 3 years.

In accordance with the Article 47 of the Organic Law of Georgia on Common Courts, the High Council of Justice of Georgia shall be established for the purpose of ensuring the independence of court (judge), quality of justice and its efficiency, appointment and dismissal of judges, organization of qualification exams for judges, development of proposals for implementation of the judiciary reform, and for accomplishment of other tasks established by law. The High Council of Justice is composed of 15 members. 8 members of the Council are elected by the self-governing body of the judges of common courts, in conformance with the rule established by this law, 5 members are elected by the Parliament of Georgia, and 1 member is appointed by the President of Georgia. The High Council of Justice of Georgia is chaired by the Chief Justice of the Supreme Court, who is also an ex-officio member of the High Council of Justice.

Common courts of Georgia are represented at the High Council of Justice of Georgia by the Chief Justice of the Supreme Court and 8 members elected by the Conference of Judges of Georgia, among them, the secretary of the High Council of Justice of Georgia. A member elected by the Conference of Judges of Georgia can only be a judge of the common court. A member elected by the Conference of Judges of Georgia cannot be a member of the Disciplinary Chamber of the Supreme Court or a chairperson of any court. Neither can such member be the first deputy or a deputy chairperson of court, unless s/he occupies this position ex-officio, by virtue of being a chairperson of a panel or a chamber. Out of the members elected by the Conference of Judges of Georgia, maximum three of them can be a chairperson of a panel or a chamber.

The Parliament of Georgia elects 5 members of the High Council of Justice of Georgia through the selection process, with secret balloting. The candidate members of the Council are selected from among the professors and researchers working at the institutes of higher education of Georgia, also from the members of the Bar Association of Georgia and/or the persons nominated by the non-entrepreneurial (non-commercial) legal entities of Georgia, upon submission of the collegiate supervisory body of the respective organization.

A member of the High Council of Justice of Georgia is appointed by the President of Georgia based on the competition (the organization nominating the candidate member, and the candidate should meet the same criteria as it is the case of the Parliament of Georgia).

In accordance with the **Article 50 of the Organic Law of Georgia on Common Courts**, the High Council of Justice appoints a person on the judicial position, if s/he is supported by no less than 2/3 of the full composition of the Council through secret voting.

In accordance with the **Article 41 of the Organic Law of Georgia on Common Courts**, a judge of the district (city) court can be appointed at the Court of Appeal, if s/he has been performing the judicial authorities at the district (city) court for at least 2 years. The criteria for promoting the judges shall be developed by the High Council of Justice of Georgia. A judge can be promoted earlier than the timeframe set by the paragraph one of this Article, if s/he has made a significant contribution to the development of law, establishment of uniform judicial practice and implementation of speedy and efficient justice; besides, if s/he has demonstrated highly qualified judicial skills while performing his/her judicial authorities. The judges are evaluated against the promotion criteria by the High Council of Justice of Georgia.

It is important to point out in regards to the appointment procedures that according to the public opinion, a judge, who has been appointed for a trial period, may be under pressure, which will have negative impact on his/her independence and impartiality. Besides, it is noteworthy that in accordance with the Constitution of Georgia, introducing the regulation on appointment of a judge for a certain period does not represent a mandatory requirement.

There is a special caveat regarding the statutory mechanism of monitoring the judicial performance, which can be evaluated as a violation of the principle of judiciary independence due to its contents.

It is also necessary to extend the norm about the appointment for life to the judges of the Supreme Court of Georgia as well.

1-4. Discipline and Ethics

- Describe briefly the ethical rules and disciplinary proceedings
- Is there a regime of incompatibilities and prohibitions of certain professions and positions for judges? Is there declaration of assets?
- Who is in charge of disciplinary procedures? What are the guarantees for judges involved (contradictory, rights of defense, appeal...)?
- Do you consider these procedures satisfactory? If not, how could they be improved?

Based on the Organic Law of Georgia on Common Courts, upon submission of the High Council of Justice of Georgia, the Conference of Judges of Georgia has adopted the Judicial Ethics Rules of Georgia. The Judicial Ethics Rules of Georgia aim at strengthening the independence and impartiality of justice and strengthening the integrity of the judiciary power, enhancing the public confidence and trust in the judiciary power, protecting the prestige and authority of the judicial office. The Judicial Ethics Rules of Georgia consist of a preamble and four parts: I. Impartiality and Independence of a Judge; II. Competence and Diligence of a Judge; III. Relations of a Judge with the Media; IV. Non-Judicial Activities.

In accordance with the **Article 2 of the Law of Georgia on Disciplinary Responsibility of Judges of Common Courts and Disciplinary Proceedings**, a disciplinary responsibility and penalty shall be imposed on a judge of the common court for committing a disciplinary violation.

Types of disciplinary violations are:

- Corruption law violation, or a misuse of a public office doing harm to justice and official interests (any violation envisaged by the Law of Georgia on the Conflict of Interest and Corruption in Public Service shall be considered a corruption law violation, if it does not result in criminal or administrative responsibility.);
- Activity incongruent with the position of a judge or incongruence of interests with the duties of a judge;
- An action inappropriate for a judge, which damages the authority of a court or affects the confidence towards the judiciary;
- Groundless delay of a case consideration;
- Failure to perform the judicial duties or their improper performance;
- Disclosure of confidences of a deliberation of judges or professional secrets;
- Hindering the activity of bodies having disciplinary authority, or showing disrespect towards them;
- Other kinds of violation of norms of judicial ethics.

Besides, incorrect interpretation of law, which is based on the personal conviction of a judge, is not a disciplinary violation, and there is no disciplinary responsibility imposed on a judge for such activity.

In accordance with the Article 4 of the same law,

1. Types of disciplinary measures are: a) Notice; b) Reprimand; c) Strict reprimand; d) Dismissal of a judge; e) Removal of a judge from the reserve pool of the judges of common courts.
2. Types of disciplinary measures are: a) Sending a private letter of recommendation to a judge, b) Dismissing the Chairperson of the Court, first deputy chairperson or a deputy chairperson, and a chairperson of the Court Panel or the Court Chamber from the occupied position.

In accordance with the Article 6 of the same law, grounds for initiating a disciplinary proceeding against a judge can be: a) complaint or application of any person, except an anonymous complaint or application; b) report of another judge, or staff member of the court or the High Council of Justice of Georgia about the committing the disciplinary violation of a judge; c) notification from the investigation body; d) information disseminated by the media about commenting an activity by a judge which can be considered a disciplinary violation; e) submission by the Disciplinary Panel on initiating the disciplinary prosecution against a judge with new grounds.

In accordance with the Article 7 of the same law, disciplinary proceeding can be commenced by:

- a) Chief Justice of the Supreme Court of Georgia - against judges of the Supreme Court of Georgia, court of appeal, district (city) court;
- b) Chairperson of the Court of Appeal – against the judge of the respective court of appeal, also against a judge of the district (city) court functioning under the jurisdiction of the court of appeal;
- c) The High Council of Justice of Georgia – against all the judges of the common courts of Georgia.

The entity having the authority to initiate disciplinary proceeding, provides respective materials to the High Council of Justice of Georgia for ensuring the follow-up after the disciplinary prosecution.

Procedures of disciplinary proceedings against judges of common courts of Georgia (inquiry, etc.) are performed by the High Council of Justice of Georgia.

In accordance with the Articles 21, 60 and 68 of the same law, disciplinary cases against the judges of common courts of Georgia are heard by the Disciplinary Panel of judges of common courts of Georgia, though their decision can be revised through appealing it to the Disciplinary Chamber of the Supreme Court of Georgia. The decision of the Disciplinary Chamber is final and cannot be appealed.

In accordance with the Article 39 of the same law, a judge who has been subjected to disciplinary responsibility, has the right to defense. S/he can invite a lawyer, any judge or another representative as a defense counsel.

In accordance with the Article 60 of the same law, decision of the Disciplinary Panel can be revised through appealing it to the Disciplinary Chamber of the Supreme Court of Georgia. Parties to the disciplinary case, also the judge have the right to appeal. A judge against whom the disciplinary responsibility was imposed, appeals the decision of the Disciplinary Panel in person, or through his/her defense counsel and/or another representative.

In accordance with the Article 86 of the Constitution of Georgia and the Articles 39 and 68 of the Organic Law of Georgia on Common Courts, the position of a judge shall be incompatible with any other occupation and remunerative activity, except for teaching and scientific activities. A judge shall not be a member of a political party or participate in a political activity. Appointment of a person on a judicial position does not cause termination of this person's membership in a public union. A person, who has been appointed a judge, ceases to be a member of a political union.

In accordance with the Law of Georgia on the Conflict of Interest and Corruption in Public Service, a judge should submit an Asset Declaration for Public Officials within two months after his/her appointment to the judicial position to the Bureau of Public Service. Besides, during the tenure, a judge should fill out the Asset Declaration annually, within a week after a year of submitting the every declaration for previous year.

Within two months after leaving the position, a judge should file out and submit an Asset Declaration for Officials within two months. The Asset Declaration for Officials should contain the data about the official's property and revenues.

The above-mentioned procedures are mostly satisfactory, but it is necessary that only the violation of judicial ethics norms be the type of a disciplinary violation.

1-5. Distribution of cases

- Describe briefly the distribution of cases between judges and the conditions for their eventual divestiture
- Do you consider these procedures satisfactory? If not, how could they be improved?

In accordance with the **Articles 4, 5, 8 and 9 of the Law of Georgia on Case Distribution and Assigning the Authorities to Another Judge at the Common Courts**, cases at district (city) and appellate courts are distributed among judges based on the rule of sequence. Rule of sequence means that the cases are distributed among judges based on the order of case filed to the court, and the order of judges as well.

Criminal, civil and administrative cases and other materials are distributed among judges according to the order of case submission to the court. Each subsequent case, whichever filed to the court, shall be assigned to each subsequent judge whoever comes next.

With the purpose of distributing the cases among judges, the chairperson of the court determines the sequence of judges based on alphabetical order of their name and surname. In case of the same name and surname, the order of judges will be determined after casting the lots.

Besides, at the appellate and district (city) courts with more than two judges, if it is impossible to hear the case because of too much caseload or any other reason, the chairperson of the respective court, or his/her deputy and/or chairperson of a respective chamber of panel shall distribute cases under the instruction of the chairperson of the court, considering the workload of a judge.

In accordance with the Article 13 of the same law, if the judge is absent at the district (city) and appellate court, or if there is a significant increase of cases filed to the court, the High Council of Justice of Georgia is authorized to second another judge from the appellate or other district (city) courts for carrying out the judicial duties in this court. If needed, the seconded judge shall simultaneously carry out the judicial authorities in the court where s/he has been appointed pursuant to statutory regulations. On deciding the issue of assigning the authorities to another judge, the secondment of a judge to another court can take place with his/her consent, for the term of 1 year. If necessary, if so required by the interests of justice, the High Council of Justice of Georgia is authorized to make a decision on seconding a judge to another court, if this issue is supported by more than a half of the list majority of the High Council of Justice of Georgia. The term of assigning the authorities to another judge can be prolonged for no more than 1 year, for which the judge's consent is necessary.

In fact, these procedures are satisfactory.

1-6. Recognition of the right of association

- The right to join or form associations/unions, is it recognized for judges?
- If so, what resources are allocated to the association / union in terms of grants, human resources?
- Do you consider these procedures satisfactory? If not, how could they be improved?

In accordance with the Article 26 of the Constitution of Georgia, everyone shall have the right to form and to join public associations, including trade unions.

A registered non-entrepreneurial legal entity “Association of Judges of Georgia” represents a non-entrepreneurial (non-commercial) legal entity under the Civil Code of Georgia. The sitting judges of Georgia can become the association members. Membership to the association is directly linked to the professional activities of a person. It is not allowed to transfer-concede the association membership to the third party.

The association member confirms his/her participation in the union by paying an amount (membership fee) specified by the Board, which is a mandatory monthly payment. Property and assets of the association is created by the primary and subsequent membership fees of association members, the amount of which is 1% of the gross salary of a judge, also by targeted contributions and revenues received from all the other sources, whichever is not prohibited by the legislation of Georgia.

1-7. Protection of judges

- Are the judges frequently attacked in the media, by politicians or other people? Do they have special protection?
- Do you consider these procedures satisfactory? If not, how could they be improved?

Unfortunately, the judges are attacked by the politicians, also by other people in Georgia via press or various other media.

There was an especially noteworthy negative evaluations and insulting phrases expressed by the Minister of Justice of Georgia towards particular judges and the whole corps of judges in the first half of 2013. Such facts became even more frequent while electing the judge members of the High Council of Justice of Georgia (June, 2013), which aimed at attempted discretization of the judiciary system.

The judge (court) does not have any special safeguard in this respect; however, in accordance with the Article 84 of the Constitution of Georgia, a judge shall be independent in his/her activity and shall be subject only to the Constitution and law. Any pressure upon the judge or interference in his/her activity with the view of influencing his/her decision shall be prohibited and punishable by law. No one shall have the right to demand from a judge an account as to a particular case. All acts restricting the independence of a judge shall be annulled. Only a court

shall be authorized to repeal, change or suspend a court judgment in accordance with a procedure determined by law. In accordance with the **Article 8 of the Organic Law of Georgia on Common Courts**, a state or local governance body, an institution, a public and political union, an official, a legal entity or natural person are prohibited from violating the court's independence.

2 - Regarding the means of Judiciary

2-1. Funding of the judiciary

- *Annual budget of Justice*

Specify the total annual allocation to the functioning of the courts budget (including expenses relating to judges, prosecutors and legal aid). Does this budget seem to you sufficient? Judges, or bodies representing judges, are they consulted during the elaboration / implementation of budget?

- *Operating budget of the courts*

How and on which criteria are distributed the funds to the different jurisdictions? Can the courts use freely their budgets? Is it organize before committing expenditure a consultation of judges?

- Do you consider these procedures satisfactory? If not, how could they be improved?

In accordance with the Law of Georgia on State Budget of 2014, budget of the common courts of Georgia (including the Supreme Court of Georgia) totals 56,535,000.00 GEL in 2014 (approximately 23,884,665.00 EUR); budget of the Legal Aid Service totals 2,965,000.00 GEL in 2014 (approximately 1,252,640.00 EUR) and the budget of the Prosecutor's Office (supervision on investigation, support to the state prosecution, program for combating the crime and its prevention) for 2014 totals 32,500,000.0 GEL (approximately 13,730,460.00 EUR).

Besides, the Legal Aid Service and the Prosecutor's Office are not included within the judiciary system.

In accordance with the Article 67 of the Organic Law of Georgia on Common Courts, the common courts are funded with the means allocated from the state budget of Georgia. The expenses linked to the organization and activity of the Supreme Court is envisaged under a separate code of the state budget of Georgia. The High Council of Justice of Georgia submits to the Government of Georgia, based on the proposals submitted by the departments of the common courts, the draft proposal for allocating funds from the State Budget of Georgia to the common courts (except the Supreme Court) and the departments of common courts. Before reviewing the updated variant of the draft law on state budget at the Parliament of Georgia, the High Council of Justice of Georgia is authorized to submit its opinions to the Parliament of Georgia regarding the draft funding for the common courts and departments of common courts. The draft expenses related to the organization and operation of the Supreme Court is submitted to the Government of Georgia by the Chief Justice of the Supreme Court in accordance with the statutory regulation.

Besides, the costs, which have been envisaged for the common courts in the State Budget of Georgia, as compared to the respective volume of previous year, can only be cut with prior approval of the High Council of Justice of Georgia.

2-2. Salary

- Briefly define the scale of salaries of judges: at the beginning of the career, at the mid-term, at the end
- Who determines the salary of judges? Is there a system of “merit pay” (if so in what proportions? How the sums are assigned to judges?)
- Salaries are they likely to go down? If yes, have you met such cuts and in what proportions?
- Do you consider this situation and the guarantees for judges satisfactory? If not, how could they be improved?

Salary amounts for the judges of common courts of Georgia are specified by the Law of Georgia on Labor Remuneration of Judges of Common Courts of Georgia, according to which the salaries of judges are set based on the court instances (judges of upper instance courts have higher salaries). Besides, in accordance with the Article 69 of the Organic Law of Georgia on Common Courts, labor remuneration of a judge consists of the salary and additional allowance. Monthly salary rates of a judge and material privileges are defined by the legislation of Georgia. The salary of a judge may not be decreased within the whole period of his/her office. Additions to the salary of a judge (except the justices of the Supreme Court) are defined by the High Council of Justice of Georgia. Additions to the salary of the Chief Justice of the Supreme Court are determined by the Plenum of the Supreme Court.

Salaries have not gone down during the recent period. On the contrary, salaries of judges of all the instances have risen since January 1, 2014.

2-3. Pensions

- At what age and how judges can they retire?
- Does the amount of the pension satisfactory?
- Do you consider that improvements have to be done?

In accordance with the Article 70 of the Organic Law of Georgia on Common Courts and the Articles 7 and 12 of the Law of Georgia on State Compensation and State Academic Fellowships, a compensation shall be provided to a judge of the common court of Georgia (except the justice of the Supreme Court) upon reaching the age of 65, if: 1) the term of judicial office is over; b) judicial authorities were terminated in case of court liquidation or because of attaining the pension age. The compensation amount shall be determined by multiplying the number of years worked as a judge of the common court by 3% of the average salary for the last year by the

moment of terminating the judicial authority. Besides, the compensation amount shall not exceed 560 GEL (approximately 237 EUR). A state compensation with the amount of 1,200 GEL (approximately 507 EUR) shall be assigned to the justice of the Supreme Court of Georgia upon expiration of his/her tenure or reaching a pension age (65 years).

The judge's pension amount is not satisfactory.

It is necessary to improve the issue of judge's pension. Namely, the judiciary system is working towards having a merited pension amount for judges, and besides, to equally address the interests of the judges of all instances more or less.

2-4. Accessibility and Efficiency of Justice

- Are there barriers to the defendant to access to justice? Are there mechanisms to provide access to justice for the most disadvantaged people (legal aid, Support to victims...)
- Are there problems of deadlines in the treatment of cases?
- Do you consider these procedures satisfactory? If not, how could they be improved?

In accordance with the legislation of Georgia, there are no barriers to the defendant to have access to justice.

In accordance with the **Law of Georgia on Legal Aid**, there is a legal aid service functioning in Georgia, which provides access to legal consultations and legal aid.

Legal aid is provided in the cases directly envisaged by the law, also according to the regulation established by this law, if the defendant or convict and/or acquitted person are insolvent.

Legal aid is also provided in cases of having a defense counsel appointed by the state, as envisaged by the Code of Administrative Offenses of Georgia; whereas the legal aid shall be provided through the whole civil and administrative proceedings since July 1, 2015, if the person is insolvent and if this is required for the interests of justice.

Besides, on the basis of criteria determined in advance by the Legal Aid Council, the Director of the Legal Aid Service may decide to provide legal aid to those persons, who are not registered in the unified database of vulnerable families.

Cases are usually heard at the common courts of Georgia within statutory timeframes. Consequently, there is no problem of timeframes while hearing cases.

The above-mentioned procedures are in fact satisfactory.

3 - Regarding the national association

3-1. Representativeness of the association

- How many members does the association have? Has this number increased since the association became a member?
- Do other associations/organizations of judges exist?
- If elections are held in the country in question, please furnish statistical data relating to the extent to which the association is representative.
- Does the association include members who are independently elected and who oversee the judiciary? The discipline of the judiciary?

As of today, 240 judges are members of the Association of Judges of Georgia. In total, there are 247 judges within the judiciary in Georgia.

Number of members of the Association of Judges of Georgia is constantly increasing, especially after it became a member of the International Association of Judges.

There was an association “Union of Judges of Georgia” created in 2013, with a little number of members. Besides, majority of members of this new association is at the same time the member of the Association of Judges of Georgia as well.

In accordance with the Article 47 of the Organic Law of Georgia on Common Courts, the High Council of Justice of Georgia shall be established for the purpose of ensuring the independence of court (judge), quality of justice and its efficiency, appointment and dismissal of judges, organization of qualification exams for judges, development of proposals for implementation of the judiciary reform, and for accomplishment of other tasks prescribed by law.

Common courts of Georgia are represented at the High Council of Justice of Georgia by the Chief Justice of the Supreme Court and 8 members elected by the Conference of Judges of Georgia, among them, secretary of the High Council of Justice of Georgia. Members of the High Council of Justice of Georgia, among them the Secretary of the High Council of Justice of Georgia were elected in June, 2013 by the Conference of Judges of Georgia. Besides, all the eight member judges of the High Council of Justice of Georgia, who have been elected by the Conference of Judges of Georgia, are the members of the Association of Judges of Georgia.

3-2. Modalities for appointment / election of its representatives

- How are the leaders of the association selected? Are they elected by the members? Are they appointed? If yes, by whom and by what process?
- How is the association organized? Is there a board of directors/association council? If yes, how are the members of the council appointed/elected? What powers does the council have?
- Does the association have regional representatives? If yes, how are they appointed/elected?

In accordance with the bylaws of the Association of Judges of Georgia, the general meeting of the association members represents the higher governing body of the Association of Judges of Georgia.

The General Meeting elects the Board of at least 9 members for implementing the current activities of the Association. The Association management and representation takes place by the Board, which is accountable to the General Meeting. The Board leads and conducts the current activities of the Association in all the directions. The Board is elected by the General Meeting for the term of three years.

A Chairperson of the Board and an Executive Director are elected from the Board members, with the majority of attending members, through secret voting.

In accordance with the bylaws of the Association of Judges of Georgia, the General Meeting is authorized to form branches and representations. However, as of today, the Association of Judges of Georgia does not actually have regional representations.

3-3. Financing Association

- What is the association's annual budget?
- What are the association's funding sources: membership dues, subsidies, other funding sources?
- What have been the principal expenses?

Budget (revenue) of the Association of Judges of Georgia was 68,778.00 (approximately 28,994 EUR) in 2013/

As a rule, membership fees are the main source of funding of the Association of Judges of Georgia.

In 2013, the major expense of the Association of Judges of Georgia was co-funding of the legal magazine “Justice and Law”.

3-4. Relations association with public administration

- Does the association meet regularly with representatives of the executive? In particular with the Minister of Justice and his/her associates? Is the association consulted in advance of all government reforms?
- Does the association meet regularly with representatives of the legislature? Is the association asked to provide its opinion on projects and bills before they are examined by the parliament?

With the initiative of the Association of Judges of Georgia, there was a public review of legislative proposals (draft laws), which were related to the judiciary power, and future plans were set at the end of 2012 and at the beginning of 2013. Together with the Georgian judges, these meetings were attended by the representatives of the local NGOs and international sector, also the Speaker of the Parliament, and officials of the Ministry of Justice.

However, the representatives of executive power of Georgia usually do not seek prior consultations with the Association of Judges of Georgia regarding the government reforms.

Besides, representatives of the legislative power of Georgia do not ask the Association of Judges of Georgia to express its opinion on draft laws unless they are heard by the Parliament of Georgia.

3-5. Actions undertaken by the association during the last 3 years

- What were the main actions undertaken in the previous year? In the previous three years? Since becoming a member?
- Has the association organized collective action (demonstrations, strikes ...)?
- Does the association have a media presence? Has the association published documents (books, reviews, communiqués...)?
- Did the eventual actions taken have a positive impact on judicial powers?

The Association of Judges of Georgia always tries to take an active part in the processes that are significant for the judges of Georgia and of the judiciary power of Georgia in general.

With the initiative of the Association of Judges of Georgia, there was a public review of legislative proposals (draft laws), which were related to the judiciary power, and future plans were set at the end of 2012 and at the beginning of 2013. Together with the Georgian judges, representatives of local NGOs and international sector, also the Speaker of the Parliament, and officials of the Ministry of Justice were invited to these meetings.

The Association of Judges of Georgia participates in annual meetings of the International Association of Judges.

There was a Memorandum of Understanding about the multilateral cooperation at the joint meeting held in Tbilisi (Georgia) in October 2010, signed by the Association of Judges of Georgia, also by the representatives of association of judges of Armenia, Ukraine, Poland, Kazakhstan and Estonia. The Association of Judges of Moldova joined this memorandum later.

The Association of Judges of Georgia provides financial assistance to sitting and former judges, and to their family members, if necessary, and to the family members of deceased judges.

Professional day of judges has been marked annually on May 15 in Georgia since 2000. The Association of Judges of Georgia arranges various cultural and entertainment activities for the judges.

Various sports and cultural activities are performed on behalf of the Association of Judges of Georgia.

In accordance with the Article 28 of the rules of judicial ethics of Georgia, a judge is prohibited to strike.

The Association of Judges of Georgia does not have a media presence, but this does not create problem for them if they want to make a statement regarding an important issue or if they want to disseminate a press release.

The Association of Judges of Georgia has been publishing a news bulletin since 2000. The news bulletin has been replaced by the magazine "Judges of Georgia" since 2004. Volume and format of the magazine were changed in 2005 and the title was changed as well into "Justice and Law". The magazine has received number of international codification and a standardized international number of serial publications. Besides, the magazine "justice and Law" can be used as reference and it is published in Georgian and English languages. The magazine "Justice" of the Supreme Court of Georgia and the magazine "Justice and Law" were united in 2010 and it is now published jointly under the name "Justice and Law".

The Association of Judges of Georgia always does its best to support the protection of interests of judges and the judiciary power.

4 - Miscellaneous

- What were the main problems encountered by the judiciary in your country in recent years?
- Would you say that the situation for the judiciary has improved? decreased? has remained stable?
- What are the main reforms underway or planned? These reforms seem they go in the right direction?

After the parliamentary elections of October 2012, the Ministry of Justice stated that it was going to start the justice reform, according to their statement. As of today, according to the statement of the Ministry of Justice, the first stage of the reform is over and we are now expecting the second wave of the reform.

As for the legislative amendments taken place during the first stage of the reform, here the biggest concern for us is that the authorities of the absolute majority of member judges of the High Council of Justice of Georgia were terminated before the expiration of their tenure.

Within the frameworks of the first stage of the reform we need to point out the draft law on Temporary State Commission to Review Miscarriages of Justice elaborated by the Ministry of Justice, which initially envisaged the review of judgments passed by the common courts of Georgia in 2004-2012 regarding the criminal, civil and administrative cases.

The Ministry of Justice of Georgia did not take into consideration most part of the comments of judges during the review of this draft law.

The Association of Judges of Georgia responded to the draft law on Temporary State Commission to Review Miscarriages of Justice with its initiative, and started public discussions about this draft law.

The Association of Judges of Georgia sent this draft law to the International Association of Judges, and the member associations were asked to send their opinions about this. The regional group of the European Association of Judges has a negative evaluation to the draft law on Temporary State Commission to Review Miscarriages of Justice, about which the Venice Commission was also informed, as it was planned to review this issue pursuant to the request of the Georgian side.

The draft law on Temporary State Commission to Review Miscarriages of Justice was also negatively evaluated by the Consultation Bureau of the European judges and by the Venice Commission as well.

As of today, review of this draft law has been suspended. According to the Minister of Justice of Georgia, this is caused by the financial issues.

We should also point out the legislative amendments adopted by the Parliament, according to which the judges of appellate and district (city) courts are appointed for a trial period before their appointment for life. It is noteworthy that according to the public opinion, the judges, who have been appointed for a probation period, may find themselves under some pressure, which will be negatively reflected on his/her independence and impartiality. Besides, it is also noteworthy that in accordance with the Constitution of Georgia, introducing the regulation on appointing a judge for a fixed period is not binding.

The statutory mechanism for monitoring the judge's performance is especially dangerous, because, due to its contents, can be evaluated as a violation of the principle of independence of the judiciary.

It is also necessary to extend the rule on appointment for life to the justices of the Supreme Court of Georgia (see the Answer 1-3 for details).

According to the statement of the Ministry of Justice of Georgia, soon the 2nd wave of the reform will start; correspondingly, it will become clear in which direction the Ministry of Justice of Georgia is planning to make changes, and the Association of Judges of Georgia will express respective response to that.

Unfortunately, the judges are attacked by the politicians in Georgia via press or various other media.

There was an especially noteworthy negative evaluations and insulting phrases expressed by the Minister of Justice of Georgia towards particular judges and the whole corps of judges in the first half of 2013. Such facts became even more frequent while electing the judge members of the High Council of Justice of Georgia (June, 2013), which aimed at attempted discretization of the judiciary system.

Despite all the above mentioned, the Association of Judges of Georgia always tries to do its best for protecting the interests of the judge and the judiciary power as well.



2014 - What a situation for Justice in Europe ?

November 27, 2013

For many years, in lots of countries in Europe, the situation of judiciary has deteriorated.

A working group within the EAJ in charge of the situation of Member Associations was established in order to examine these issues. Every year need to do so increased because it had to multiply its efforts in preparing reports and interventions.

Many international standards still exist. They determine precisely what, according to the rule of law, must be guaranteed for having a quality, effective and independent Justice, in the interests of litigants.

These standards are in particular:

- Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985;
- The European Charter on the Statute for Judges adopted by the Council of Europe on July 10, 1998;
- The Universal Charter of the Judge adopted in Taiwan November 17, 1999 by the International Association of Judges;
- The Magna Carta of European Judges adopted in Strasbourg November 17, 2010 by the Consultative Council of European Judges (CCJE);
- The Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities adopted by the Committee of Ministers on 17 November 2010;
- The conclusions of the report on the rule of law adopted by the Venice Commission at its 86th plenary session (Venice, 25-26 March 2011);
- The resolutions of ENCJ-RECJ (Budapest 2008 on the self-governance of the judiciary, Vilnius 2011 on challenges and opportunities for justice in the current economic climate, Dublin 2012 on recruitment and appointment of members of the judiciary, Sofia 2013 on independence and accountability).

The European Association of Judges has adopted several resolutions and organized visits in the concerned countries.

At its meeting of St. Gallen (Switzerland), EAJ has adopted an appeal for a Judiciary of quality, efficiency and independence in Europe, which was addressed to European and national authorities.

EAJ participated to the international conference "Les Assises de la Justice", organized by the European Commission, which took place in Brussels on November 2013

During its meetings in St. Gallen (Switzerland) in May 2013 and Yalta (Ukraine) in October 2013, the European Association of Judges decided to have a stocktaking of Justice in Europe.

The questionnaire has been developed and it is attached to this letter.

The presidency committee of EAJ asked the member associations to complete and return it (in a “word” document) to the General Secretariat of IAJ and/or to Christophe REGNARD, president of EAJ, before 15 January 2014.

The questionnaire consists of four parts. The first two parts are dealing with the guarantees of independence and resources for Judiciary and the situation of judges in each European country.

The third is more about the situation in member associations and the difficulties they may face in their efforts to improve justice in their country.

Finally, the fourth part will allow each association, freely, to explain the main problems in their country, to discuss the reforms and to specify the expected developments of the judiciary and the association.

A summary of these national reports could be presented and discussed at the EAJ meeting in Limassol (Cyprus) in May 2014.

Then, this synthesis could be adopted by EAJ and distributed in June to European and national authorities. A communication to the European media could be simultaneously considered.

The idea of a conference to present the work, however interesting it may be, seem to be ruled out. The budget of EAJ does not allow to organize such a conference without external funding.

Sincerely

Christophe REGNARD
President of EAJ
Vice President of IAJ

Questionnaire for Member Associations

1 - Regarding independence of judges

1-1. Recruitment

- Briefly describe the modes of recruitment of judges in your country (competition, election, appointment ...)
- Do you consider this recruitment procedure problematic or does it ensure a satisfactory recruitment in number and quality?

German Answer:

Recruitment of judges is a task of the single federal states, as the judiciary of first and second instance is run by the states. Thus we have as many varying systems as we have states. Usually vacant posts for judges are published so that everybody can apply, although some states contact the candidates with excellent exam results directly, because they have the information in the department of justice, which as well is in charge of the relevant final state examinations.

In some federal states the candidates have to pass a parliamentary committee (judges election committee), in others it is just the executive in the person of the minister of justice, who employs and appoints young judges.

In practice these both methods have not led to mayor problems, because in the German Constitution there is the principle of election of the best for any state office and usually this functions well. Cases of nepotism or similar have not been heard of. If any then the problems arise later in promotion questions.

1-2. Initial and continuing training

- Briefly describe the training of judges at the beginning of the career and during this one
- Is there a school responsible for training judges?
- Do you consider the training satisfactory? If not, how could it be improved?

German answer:

There is no school or anything alike for the training of beginners. Usually young judges are sent either to the prosecutors office first (if they are interested in becoming a criminal law judge) or to the regional courts, where they are integrated into a body of (usually) three judges and start learning by doing. In some states the department of justice offers introductory courses. In some states the beginners have a reduced workload for a certain period of time.

Usually the system works out fine, especially as the young colleagues have already gone through an internship where they were supposed to learn some judges' skills.

1-3. Appointment and career

- Briefly describe the procedures for appointment of judges
- Is there a Higher Council of Justice in charge of these issues? If yes, how is it composed? What are its powers (simple opinion or decision-making power)?
- What are the rules for promotion of judges?
- The tenure is it guaranteed to judges?

- Judges are they evaluated? If yes, by whom, on what basis and with what possible appeal?
- Do you consider these procedures satisfactory? If not, how could they be improved ?

German answers:

A young judge in Germany at the beginning is appointed "judge on probation" for a certain period of time, maximum five years. During this time he has no lifetime appointment and tenure. In this period he/she will be evaluated every six to nine months and will have to change posts quite frequently (prosecution, civil and criminal cases at local and regional courts, family law and guardianship cases, social security court, administrative court). When the results of the evaluations are sufficient, a young judge will be appointed life-time judge either by the ministry of justice or - in other states - by a parliamentary committee.

There is no High Council for the Judiciary or anything similar in Germany.

Promotion of judges depends on their performance. Every judge up to the age of 49 is evaluated regularly, usually every four years. If the performance outstands the average, a judge usually is invited or can apply for a period of service as judge at the higher regional court (Oberlandesgericht). If his/her performance there is satisfying too he/she will get an adequate grade (Erprobungsnote) and can apply for a post as senior judge if there is a vacancy. There are few other ways as well as serving a certain time in court or departmental administration or at a federal court.

Lifetime tenure is guaranteed to judges, once they are appointed lifetime judges, but this does not mean, that salaries can not be reduced.

In general these procedures are considered satisfactory but there are opinions that the promotion procedure is influenced and dominated too much by court administration and the department of justice.

1-4. Discipline and Ethics

- Describe briefly the ethical rules and disciplinary proceedings
- Is there a regime of incompatibilities and prohibitions of certain professions and positions for judges? Is there declaration of assets?
- Who is in charge of disciplinary procedures? What are the guarantees for judges involved (contradictory, rights of defense, appeal ...) ?
- Do you consider these procedures satisfactory? If not, how could they be improved?

German answers:

There are no written ethical rules for judges, although the German Judges Association has recently been drafting a set of rules, which are not binding.

If there are disciplinary measures to be taken it is usually the respective court president to start disciplinary investigation. In minor cases he/she will finish the case by an admonition. In more severe cases he/she will inform the department of justice which will start formal investigations. The respective judge has the right to defense and has to be heard. There is a special jurisdiction for judges (Richterdienstgericht), this court is the only one allowed to impose disciplinary measures on a judge. The department of justice would be the plaintiff in these cases.

There is no declaration of assets of a judge in Germany. A judge is limited to his judge's profession, only in a few cases he/she may perform extraduty tasks or jobs which in advance have to be permitted by the court administration.

1-5. Distribution of cases

- Describe briefly the distribution of cases between judges and the conditions for their eventual divestiture
- Do you consider these procedures satisfactory? If not, how could they be improved?

German answers:

The distribution of cases is decided by a court committee, the so called presidency board, which is composed by a certain number of judges belonging to the respective court. These judges (their number depends on the number of judges assigned to the respective court) are elected by their peers for a certain period of time (four years).

The presidency board (Präsidium) in judicial independence distributes the workload in an annual distribution plan (Geschäftsplan), which is decided on at the beginning of every year and which can not be changed except for unforeseen circumstances.

1-6. Recognition of the right of association

- The right to join or form associations/unions, is it recognized for judges?
- If so, what resources are allocated to the association / union in terms of grants, human resources?
- Do you consider these procedures satisfactory? If not, how could they be improved?

German answers:

The right to form associations is recognized for judges.

The German Judges Association as the largest in Germany (but not the only one) is financed exclusively by membership contributions. There are no state or federal contributions, neither financial nor in human resources.

Concerning the independence of the association this is considered satisfactory.

1-7. Protection of judges

- Are the judges frequently attacked in the media, by politicians or other people? Do they have special protection?
- Do you consider these procedures satisfactory? If not, how could they be improved?

German answers:

No, attacks in the media happen by politicians as well as by the public, but not really frequently. Usually the department of justice or spokesmen of the respective court try to explain to the media what has happened, sometimes the German Judges Association is asked for further information (by the media) or support (by colleagues).

2 - Regarding the means of Judiciary

2-1. Funding of the judiciary

- *Annual budget of Justice*
Specify the total annual allocation to the functioning of the courts budget (including expenses relating to judges, prosecutors and legal aid). Does this budget seem to you sufficient? Judges, or bodies representing judges, are they consulted during the elaboration / implementation of budget?
- *Operating budget of the courts*

How and on which criteria are distributed the funds to the different jurisdictions? Can the courts use freely their budgets? Is it organized before committing expenditure a consultation of judges?

- Do you consider these procedures satisfactory? If not, how could they be improved?

German answers:

In our federal system this question can hardly be answered. Overall the budget of the judiciary in the state budget amounts to some 3 to 4 percent. Half of it is covered by court fees. The expenses for judges, prosecutors, legal aid are not known in detail.

Bodies of judges are not consulted during the elaboration/implementation of budget.

The funds are distributed between the courts according to their needs defined by the department of justice. Courts inform the department of justice of their need in human resources according to the number of cases which have up the anterior year and usually get the number of posts required with a certain discount.

Only a minor part of the budget is left to the courts to be used on their own decision.

2-2. Salary

- Briefly define the scale of salaries of judges : at the beginning of the career, at the mid-term, at the end
- Who determines the salary of judges? Is there a system of “merit pay” (if so in what proportions? How the sums are assigned to judges?)
- Salaries are they likely to go down? If yes, have you met such cuts and in what proportions?
- Do you consider this situation and the guarantees for judges satisfactory? If not, how could they be improved?

German answers:

The scale of salaries ranges between 3.420.-€/p.m. gross income for beginners and 9.650.-€/p.m. for presiding judges at the Federal Supreme Court.

The salaries are determined by law, each state has its own salary law. There is no system of merit pay, every judge of the same rank gets the same salary within one state.

Salaries have likely been to go down the last years. Usually the salaries have not been cut down but just not been raised although the inflation rate rose.

The salary situation is considered not to be satisfying at all, many judges are suing the state for higher salaries.

2-3. Pensions

- At what age and how judges can they retire?
- Does the amount of the pension satisfactory ?
- Do you consider that improvements have to be done?

German answers:

The retiring age in most states is 67, in some 65. The pension amounts to 71,35 percent of the last income/salary, which is considered to be sufficient.

2-4. Accessibility and Efficiency of Justice

- Are there barriers to the defendant to access to justice? Are there mechanisms to provide access to justice for the most disadvantaged people (legal aid, Support to victims ...)
- Are there problems of deadlines in the treatment of cases ?
- Do you consider these procedures satisfactory? If not, how could they be improved?

German answers:

Legally there are no barriers to access to justice. On the contrary there is legal aid that even supplies the means for legal representation if required. Victims of crime can also get legal aid.

There are deadlines for legal obligations. So if somebody wants to sue someone for something he/she has to make sure the deadline has not come into force.

In the civil procedure code there are regulations that judges can set a deadline to parties to produce their facts and evidences; if they come up with it after end of the deadline they will have to prove that the proceedings are not slowed down, otherwise the delayed facts and evidence will not be taken into consideration by the court.

3 - Regarding the national association

3-1. Representativeness of the association

- How many members does the association have? Has this number increased since the association became a member?
- Do other associations/organizations of judges exist?
- If elections are held in the country in question, please furnish statistical data relating to the extent to which the association is representative.
- Does the association include members who are independently elected and who oversee the judiciary? The discipline of the judiciary?

German answers:

The German Judges Association (DRB) has roughly 14.000 members. A relation between the membership in IAJ and the number of members can not be drawn.

Yes, there are two other associations of judges, the NRV, and a group within the union of public service (Ver.di). Besides there is an association of administrative court judges (BDVR) which is not member of DRB.

Questions 3 and 4 can not be answered, there are no data available. The German Judges Association represents almost 60% of all judges in Germany.

3-2. Modalities for appointment / election of its representatives

- How are the leaders of the association selected? Are they elected by the members? Are they appointed? If yes, by whom and by what process?
- How is the association organized? Is there a board of directors/association council? If yes, how are the members of the council appointed/elected? What powers does the council have?
- Does the association have regional representatives? If yes, how are they appointed/elected?

German answers:

The leaders of the association are elected by the Bundesvertreterversammlung, a congress of representatives of the member organisations of DRB, for a period of three years.

There is a presidency board consisting of 11 elected members (plus the president), all elected by the Bundesvertreterversammlung.

DRB has regional, state and branch member organisations. Their representatives are all elected according to the statutes of the respective organisations.

3-3. Financing Association

- What is the association's annual budget?
- What are the association's funding sources: membership dues, subsidies, other funding sources?
- What have been the principal expenses?

German answers:

The annual budget results exclusively from membership fees. Each member organisation has to pay a certain amount per year and member (around 40.-€).

Principal expenses are the staff at DRB headquarters in Berlin, travel expenses, because DRB activities cover the whole territory of Germany with visits to other European countries as well as international. Besides DRB organises major events like a judges congress every three years, events in the political field in Berlin like regular meetings with ministry and parliament members.

3-4. Relations association with public administration

- Does the association meet regularly with representatives of the executive? In particular with the Minister of Justice and his/her associates? Is the association consulted in advance of all government reforms?
- Does the association meet regularly with representatives of the legislature? Is the association asked to provide its opinion on projects and bills before they are examined by the parliament?

German answers:

See above question 3-3. Representatives of DRB regularly meet with members of the executive, ministers of justice (state and federal) and their staff. The association is consulted in all law projects concerning the judiciary.

The organisation regularly meets members of the legislative, above all the members of the law-making committee of the German Parliament. The opinions and comments of DRB are heard in the German Parliament.

3-5. Actions undertaken by the association during the last 3 years

- What were the main actions undertaken in the previous year? In the previous three years? Since becoming a member?
- Has the association organized collective action (demonstrations, strikes ...)?

- Does the association have a media presence? Has the association published documents (books, reviews, communiqués...)?
- Did the eventual actions taken have a positive impact on judicial powers?

German answers:

DRB is commenting all law making projects concerning the judiciary. DRB is recognised by the German government as a top level consultant so the law making agenda of the government requires the ministries concerned to contact and inform DRB of upcoming laws concerning the judiciary.

The association organises a congress of judges (members of the executive are invited off course) every three years.

DRB has a media presence. In all questions concerning the judiciary members of the media contact DRB for further information. Besides DRB is publishing a monthly publication, the "Deutsche Richterzeitung", a judicial paper with the second largest range among jurists in Germany at all.

Member associations of DRB have also organised demonstrations, above all in Northrhine-Westfalia. Strikes are not allowed for judges.

The impact can not be measured precisely.

4 - Miscellaneous

- What were the main problems encountered by the judiciary in your country in recent years?
- Would you say that the situation for the judiciary has improved? decreased? has remained stable?
- What are the main reforms underway or planned? These reforms seem they go in the right direction?

German answers:

Heavy workload, shortage of human resources.

The situation of the judiciary has decreased.

There are no main reforms underway. The new federal government has just been formed and not disclosed its legal projects yet.

Berlin, January 15th, 2014

Lothar Juenemann

On behalf of The German Judges Association (DRB)

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2014 - Quelle situation pour la Justice en Europe ?

Questionnaire à remplir par les associations membres
Réponse de la délégation Hellénique

1 - Concernant l'indépendance des Magistrats

1-5. Recrutement

- Décrire brièvement les modes de recrutement des magistrats dans votre pays (concours, élection, désignation ...)

Le recrutement des magistrats s'effectue par le biais de concours. C'est un concours au niveau national organisé par l'École de la Magistrature et sous l'égide des Cours Supérieures.

- Ces procédures de recrutements vous paraissent-elles poser des problèmes ou assurent-elles un recrutement satisfaisant en nombre et en qualité ?

Généralement, les principes de méritocratie et d'impartialité sont respectés. Le concours est écrit et oral. Sans doute le concours oral est moins vérifiable et ne garantit pas cent pour cent la performance des candidats. Seule valve demeure l'opération du concours oral par des membres des Cours Supérieurs.

1-6. Formation initiale et continue

- Décrire brièvement les modalités de formation des magistrats tant avant leur première prise de fonctions qu'en cours de carrière

La formation initiale des magistrats a lieu à l'École de la Magistrature (Loi 3689/2008), qui fonctionne sous la surveillance du Ministre de la Justice. La scolarité à l'École dure à peu près un an, suivi par un stage de six mois aux tribunaux. Mais cette période se prête à des modifications consécutives. Par exemple, cette année-ci il est décidé de raccourcir la durée d'études, pour compléter des postes vacants. En cours de carrière il n'existe pas de formation permanente, ni en vue de changement d'objet de travail, comme en France. Quelques séminaires organisés par l'École de la Magistrature sont occasionnels et surtout pas obligatoires.

- Existe-t-il une école chargée de former les magistrats ? Si, voir ci-dessus.
- Le dispositif de formation vous paraît-il satisfaisant ? Si non, comment pourrait-il être amélioré

Le cadre législatif de l'École est satisfaisant. Mais l'École de la Magistrature est excessivement couteuse et elle n'offre pratiquement rien en ce qui concerne la formation des magistrats durant leur carrière, comme souligné ci-dessus.

En plus il n'existe pas de cadre législatif pour l'échange des magistrats (pratiquement il n'y en a pas) et des permissions éducatives sont peu nombreuses.

1-7. Nomination et carrière

- Décrire brièvement les modalités de nomination et de déroulement de carrière des magistrats

Les magistrats sont nommés par décret présidentiel mais ils sont choisis par concours, comme décrit ci-dessus. Puis ils s'inscrivent à une liste d'annuaire qui assigne leur ancienneté. À la base de cette ancienneté se font les promotions. Récemment une nouvelle législation prévoit la nomination des magistrats sur dossier, mais conformément à mes connaissances elle n'est pas encore exécutée.

- Existe-t-il un Conseil Supérieur de Justice chargé de ces questions ? Si oui, comment est-il composé ? Quels sont ses pouvoirs (simple avis ou pouvoir de décision) ?

Un tel Conseil n'existe pas. L'École de la Magistrature est gérée par un Conseil auquel participent, sur décision du Ministre de la Justice, les Présidents des Cours Supérieures, des professeurs de Loi, les Présidents des Barreaux d'avocats et les Unions des Magistrats (consécutivement).

- Quelles sont les règles applicables pour la promotion des magistrats ?

Voir ci-dessus.

- L'inamovibilité est-elle garantie aux magistrats ?

Les magistrats ne peuvent pas être déplacés sans leur demande. Mais à chaque promotion (qui ne sont pas peu nombreuses) les magistrats sont postés sur décision du Conseil Supérieur de la Magistrature au poste qui sert les nécessités du service judiciaire. Les demandes à ce stade sont satisfaites seulement quand des postes vacants existent au tribunal demandé.

En plus le déplacement des magistrats peut être obligatoire quand il est infligé comme punition disciplinaire.

Enfin, quand des nécessités du service l'exigent (surtout à cause de postes vacants), et sur décision du CSM les magistrats peuvent être détachés sans leur demande à un autre tribunal pour une durée jusqu'à un an.

- Les magistrats sont-ils évalués ? Si oui, par qui, sur quels critères et avec quels éventuels recours ?

Il existe un système d'inspection. Les inspecteurs sont des Magistrats de la Cour Supérieure, élus par leurs collègues. L'inspecteur a le pouvoir d'effectuer son inspection ordinairement une fois par an ou extraordinairement, quand il le souhaite. Il examine les magistrats sur leur performance scientifique (en étudiant leurs décisions), leur capacité de gérer la procédure au tribunal, leur présentation sociale, leur productivité surtout sur le nombre des décisions publiées et sur la publication à point.

L'inspecteur prépare un rapport de graduation du magistrat. Si le magistrat conteste son résultat il peut former un recours devant la réunion plénière de la Cour de Cassation. Les points de ce rapport sont très importants pour la promotion et le statut en général du magistrat.

- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

L'inspection est nécessaire, même indispensable. Des critères d'évaluation plutôt objectifs et plus substantiels peuvent être projetés. Le poids pourrait être déplacé par la productivité quantitative à une performance qualitative.

1-8. Discipline et éthique

- Décrire brièvement les règles éthiques auxquelles sont soumises les magistrats et la procédure disciplinaire

La procédure disciplinaire est dans une large mesure concentrée sur la productivité quantitative. La plupart des sanctions disciplinaires (même de licenciement) s'infligent pour cette raison, conçue comme carence fonctionnelle. Pourtant, plusieurs sanctions disciplinaires sont prévues (art 91 du Code des Magistrats, Loi 1756/1983), qui imposent

au magistrat un comportement attentif. Par exemple : Comportement indigne, utilisation de sa qualité pour la poursuite de son propre intérêt, violation de la confidentialité du personnel, réticence de raison d'exclusion ou d'exemption, participation à une organisation dont les objets sont cachés.

Les sanctions disciplinaires sont :

- a) une réprimande écrite,
- b) une amende de bénéfice net de deux jours jusqu' au salaire total net de trois mois,
- c) hiatus temporaire de dix jours à six mois et
- d) l'arrêt.

La juridiction disciplinaire est fournie aux réunions plénières des Cours Supérieures pour les magistrats supérieurs et a des conseils de cinq membres aux Cours d' Appels pour les autres magistrats.

- Les magistrats sont-ils soumis à un régime d'incompatibilités et d'interdictions d'exercice de certaines professions et mandats ? Sont-ils soumis à des obligations de déclarations d'intérêts ?

Conformément à la Constitution les magistrats n' ont pas le droit d' exercer aucune profession sauf celle du professeur d' Université. Ils sont soumis à des obligations de déclarations d'intérêts. Il est aussi interdit aux magistrats de faire des opérations à la bourse.

- Qui exerce le pouvoir disciplinaire ? quelles sont les garanties pour les magistrats concernés (contradictoire, droits de la défense, recours ...) ?
Voir ci-dessus. Les magistrats peuvent embaucher un avocat. Les décisions des corps inférieurs peuvent être contestées devant la réunion plénière de la Cour de Cassation. Au delà il n' existe pas de contrôle judiciaire.
- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?
Un contrôle judiciaire substantiel serait souhaitable. Aussi, les décisions des organes disciplinaires devraient être officiellement motivées.

1-9. Modalités d'affectation des dossiers

- Décrire brièvement le mode d'affectation des dossiers aux magistrats et les conditions de leur éventuel dessaisissement
Les dossiers sont affectés aux magistrats par le principal, qui est le Président du tribunal. Conformément à la loi, après un délai de 8 mois, le dossier est supprimé par le magistrat qui n' a pas encore publié sa décision et est affecté à un autre.
- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?
La constitutionnalité de la dernière loi est contestable, car selon l'article 8 de la Constitution nul n'est dépourvu du juge qui lui est défini par la loi.
Les dossiers devraient être affectés aux magistrats à force d' un système plus objectif.

1-10. Reconnaissance du droit d'association

- Le droit de s'associer, ou de se syndiquer, est-il reconnu aux magistrats ?
Oui. Selon la Constitution les magistrats ont le droit de former des unions (mais pas des syndicats).
- Si oui, quels moyens sont alloués à l'association / au syndicat, en termes de subventions, de moyens humains ?
Les magistrats payent eux-mêmes leurs subventions.

- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?
La possibilité de former des syndicats serait souhaitable.

1-11. Protection des magistrats

- Les magistrats font-ils fréquemment l'objet de mises en cause, de la part de l'opinion publique, des médias, des responsables politiques ... ?
Si. Par exemple il y a 5-6 ans que les magistrats ont subi une grande attaque de la part de la presse et surtout de la télévision, qui a influencé l'opinion publique très négativement. De toute façon, la société hellénique est assez défiante même envers les magistrats. Il n'est pas impossible d'envisager un tel comportement de la part des avocats ou des justiciables dans la salle du tribunal.
- Bénéficient-ils de dispositifs de protection particuliers ?
Théoriquement le juge peut infliger une peine jusqu'à 1.500 euros ou rétention de 24 heures à ceux qui font du bruit dans le tribunal. Mais l'outrage verbal contre un magistrat n'est pas puni spécifiquement.
- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?
Les magistrats devraient être protégés à force de dispositifs pénaux (comme les parlementaires et les membres du gouvernement) et aussi exercer l'autorité disciplinaire contre les avocats (chose qui n'est pas le cas, car cette autorité est exercée par les avocats eux-mêmes).

2 – Concernant les moyens de la Justice

2-1. Financement du système judiciaire

- *Budget annuel de la Justice*
Préciser le montant total annuel du budget affecté au fonctionnement des juridictions (incluant les dépenses relatives aux juges, aux procureurs et à l'aide juridictionnelle). Ce budget vous paraît-il suffisant ? Les magistrats, ou les instances représentatives de magistrats, sont-ils consultés au stade de l'élaboration du budget ? Au stade de son exécution ?
L'Union n'a pas son propre budget. Le Ministère des Finances fournit une somme certaine chaque année et le Ministère de la Justice désigne les dépenses de la Justice en général, les coûts des prisons incluses. Nous n'avons pas en ce moment des données exactes concernant les déboursments des juridictions séparément. L'Union n'a pas un rôle consultatif quant à l'élaboration ou exécution du budget.
- *Budget de fonctionnement des juridictions*
Sur quels critères sont réparties les sommes aux différentes juridictions ? Les fonds sont-ils ensuite utilisés librement au sein des juridictions ? Existe-t-il des consultations préalables des magistrats avant l'engagement des dépenses ?
La répartition des sommes est décidée par le Ministre de la Justice, en raison du potentiel de chaque juridiction, c'est à dire en raison du nombre des magistrats et secrétaires et la dimension de ses installations. A chaque Cour d'Appel il existe une commission constituée de magistrats et de secrétaires qui gère ce budget.

- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

Le statut n'est pas satisfaisant. Tant la direction de la justice que l'Union demande un budget particulier pour la justice (les tribunaux) qui sera géré par les directeurs des tribunaux, chose qui n'est pas entendue jusqu'à présent.

2-2. Rémunération des juges

- Définir sommairement l'échelle des salaires des magistrats : en début, en milieu et en fin de carrière.

Après trois abaissements les dernières trois années le salaire des magistrats entrant est de 1800 net par mois, du président du tribunal de première instance (18 – 20 ans de service) de 2500 euros par mois net, du juge à la Cour d'Appel (25 ans de service) de 3000 euros par mois net et du magistrat à la Cour de Cassation de 4000 euros par mois net. Des recours de la part des magistrats sont déjà pendantes devant la Cour Spécifique de l'article 88 par. 2 de la Constitution. Quelques décisions cardinales de cette Cour sont encourageantes et nous sommes à l'attente de la réaction positive de l'Exécutif.

- Qui détermine la rémunération des magistrats ? Existe-t-il un système de rémunération au mérite (si oui dans quelles proportions ? et selon quelles modalités d'attribution ?)

La rémunération des magistrats est définie sur la base de la loi. Au Ministère de la Justice fonctionne une autorité de paiement. La rémunération est fixée sur la base du degré dans la fonction et du temps de service. Il existe une stipulation de sanction disciplinaire, qui prévoit la coupure du salaire pour une certaine période.

- Les rémunérations sont-elles susceptibles d'évoluer à la baisse ? Si oui, avez-vous rencontré de telles baisses et dans quelles proportions ?

Depuis 2011 le salaire des magistrats a été découpé trois fois (50 – 60%). Des recours ont été formés contre la dernière diminution du 2012, qui est jugée inconstitutionnelle.

- La protection des magistrats, relativement à la question des rémunérations, vous paraît-elle assurée ? Si non, comment pourraient-ils être améliorés ?

Seul débouché demeure le recours juridictionnel. Nous avons proposé la formation d'une commission interparlementaire, qui désignera à des intervalles ordinaires le salaire des magistrats, pour éviter l'abrasion avec l'Exécutif. Mais cette proposition n'est pas encore acceptée et en plus nous avons subi ces trois diminutions arbitraires.

2-3. Retraites

- A quel âge et selon quelles modalités les magistrats peuvent-ils prétendre prendre leur retraite ?

Les magistrats peuvent demander sortir en retraite après 25 ans de service mais ils sont éloignés à l'âge de 65 ans (67 pour les magistrats supérieurs)

- Le montant de la pension de retraite est-il satisfaisant ?

Le montant de la retraite intégrale est de 1800 euros (après les coupures mentionnées). Des recours sont pendantes devant la Cour des Comptes.

- Des améliorations doivent-elles être apportées au dispositif ?

Non. Seulement le montant de la retraite est diminué à cause des coupures des mémorandums des dernières années.

2-4. Accessibilité et efficacité de la Justice

- Existe-t-il des obstacles pour le justiciable à l'accès au juge ? Existe-t-il des dispositifs pour permettre l'accès à la Justice des plus défavorisés (aide juridictionnelle ; soutien aux victimes ...)

Des gisements sont imposés fréquemment, comme pour la portée d'une plainte de 100 euros, pour former un appel de 200 euros et un pourvoi devant la Cour de Cassation de 400 euros (qui est remboursé si la voie de recours réussit). Plusieurs autres obligations sont imposées pour former une action en justice, comme des confirmations de paiement d'impôts, de déclaration de biens au service de contrôle d'impôts (la plupart de ces obligations est jugée inconstitutionnelle par les tribunaux).

Les défavorisés peuvent demander une aide financière par l'Etat. Le Tribunal d'Athènes a donné ce bienfait à 260 personnes la dernière année. Alors l'Etat paye leur avocat et huissier.

- Existe-t-il des problèmes de délais dans le traitement des affaires ?
Conformément au Code d'Organisation des Tribunaux les jugements doivent être rendus (publiés) dans 4 mois en général. Au référé dans un mois.

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- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

Le nombre et la complexité des affaires est très élevé et les juges assez souvent dépassent ce délai, surtout dans les grands Tribunaux (par ex. d'Athènes). Si le système procédural ne change pas, et si les lois substantielles ne se codifient pas, ce délai doit se prolonger.

3 – Concernant l'association nationale

3-1. Représentativité de l'association

- Combien l'association compte-t-elle de membres ? L'association a-t-elle connu depuis son adhésion une évolution du nombre de ses adhérents ?

Les membres de l'Union sont 3000, juges judiciaires, procureurs et juges de paix (pas de juges administratifs, qui ont leur propre union). L'Union est fondée avant 55 ans et à son début elle numérotait 2000 membres (mais on doit prendre compte que les postes augmentèrent depuis lors). Tous les juges sont membres de l'Union

- Existe-t-il d'autres associations/syndicats de magistrats ?

Seulement des Unions des magistrats administratifs et aussi une Union de Procureurs.

- Dans l'hypothèse où des élections professionnelles seraient organisées dans le pays concerné, bien vouloir fournir les éléments chiffrés montrant la représentativité.

Comme précité, tous les magistrats sont membres.

- L'association compte-t-elle des élus dans les instances indépendantes qui sont en charge de la gestion des carrières des magistrats ? De la discipline des magistrats ?

Chez le CSM non, ni au Conseil Supérieur Disciplinaire. Le CSM est présidé par le Président de la Cour de Cassation et ses membres sont exclusivement des juges de la Cour de Cassation. De même au Conseil Supérieur Disciplinaire. Les membres sont élus par tirage au sort.

3-2. Modalités de désignation / élection de ses représentants

- Comment sont désignés les dirigeants de l'association ? Sont-ils élus par les adhérents ? Sont-ils nommés ? Si oui par qui et selon quelle procédure ?
Les dirigeants sont désignés par élections chaque deux années. Le bureau (présidence de trois membres) est élu par élections internes parmi tous les élus qui forment un conseil de 15 membres.
- Comment est organisée l'association ? Existe-t-il un conseil d'administration/conseil syndical/conseil associatif ? Si oui, comment les membres de ce conseil sont ils élus/nommés ? Quels sont les pouvoirs de ce conseil ?
La présidence gère l' Union, qui est selon son statut une association scientifique, mais qui manipule les affaires des magistrats en général.
- Existe-t-il des représentants régionaux de l'association ? Si oui, comment sont ils nommés/désignés ?
Ils existent des commissions aux Cours d' Appel, qui sont consistées de trois membres. Elles existent aux grandes Cours d' Appel et leur membres sont élus au suffrage universel direct.

3-3. Financement de l'association

- Quel est le budget annuel de l'association ?
Seuls revenus de l' Union sont le subventions de ses membres. Mensuellement de 19.000 euros.
- Quels sont les moyens de financement de l'association : cotisations des adhérents, subventions, autres sources de financement ?
o.c.
- Quelles ont été les principales dépenses ?
Colloques scientifiques, excursions, fetes, aides financieres a des membres malheureux.

3-4. Relations de l'association avec les pouvoirs publics

- L'association rencontre-t-elle régulièrement les représentants du pouvoir exécutif ? Plus particulièrement le Ministre de la Justice et ses collaborateurs ? L'association est elle consultée avant toute réforme par le gouvernement ?
L' Union entretient une communication fréquente avec le Ministre de la Justice et en plus les dernières années avec le Ministre des Finances et le Premier Ministre a cause des coupures des salaires. Elle consulte le Ministère de la Justice après sa demande.
- L'association rencontre-t-elle régulièrement les représentants du pouvoir législatif ? L'association est-elle appelée à donner son avis sur les projets et propositions de loi avant leur examen par le parlement ?
L' Union rencontre des parlementaires si besoin pour un cas particulier. Elle donne ses propositions au Législatif par le biais du Ministre de la Justice.

3-5. Actions menées par l'association au cours des 3 dernières années

- Quelles ont été les principales actions menées au cours de l'année écoulée ? Dans les 5 dernières années ? Depuis l'adhésion ?
L' Union a formé des recours pour des raisons de coupure des salaires il y a deux ans. L' Union participe régulièrement comme membre a plusieurs organes internationaux. L' Union forme des demandes constantes vers le Ministre de la Justice, pour les postes vacants et les carences de l' infrastructure.
- L'association a-t-elle organisé des actions collectives (manifestations, grèves ...) ?
L' Union a organisé depuis 20 ans quatre fois en mois des cessations d' audience, pour l' indépendance judiciaire et l' évolution du statut des magistrats. La dernière fois était l'année dernière, quand ces cessations quotidiennes durèrent plus de 4 mois (organisées contre les coupures des salaires).
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- L'association a-t-elle une présence sur le plan médiatique ? L'association a-t-elle publié des documents (livres, revues, communiqués ...) ?
Le Président se présente assez souvent a la télé et aussi ses membres donnent des entrevues aux journaux. L' Union publie un journal trimestriel «Les nouvelles de la justice », qui est distribué a tous les magistrats. Elle publie aussi une revue bimensuelle «La Justice Hellénique » qui est une collection de jurisprudence. Elle finance aussi l' édition de quelques livres scientifiques de ses membres.
- Les éventuelles actions menées ont-elles eu des conséquences positives sur la situation du pouvoir judiciaire ?
L' experience est positive.

4 – Divers

- Quels ont été les principaux problèmes rencontrés par le pouvoir judiciaire dans votre pays ces dernières années ?
Premièrement la coupure des salaires. Puis des déclarations injurieuses publiées par les médias de la part des politiciens contre la Justice et ses jugements qui n' étaient pas en faveur de leurs intérêts. L' Union répond ordinairement. L' Union réagit aussi contre les changements qui touchent les juges.
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- Diriez-vous que la situation pour la magistrature s'est améliorée ? a régressé ? a restée stable ?
On dirait que les dernières années la situation a tourné mal. C' est a cause de la détérioration économique, de carences d' infrastructure, de postes vacants de magistrats et de secrétaires, d' augmentation des affaires pénales a cause de la crise économique et sociale et, enfin, du grand nombre d' affaires en général. Par exemple, seul le Tribunal de Première Instance d' Athènes a publié en 2013 117000 jugements civils (actions formées 168000). Les 35 juges d' Instruction d' Athènes ont traité en 2013 8600 cas de crimes tandis qu' en 2008 ils étaient 4500. Aussi, au même tribunal, les ordonnances publiées en 2013 étaient 5500 tandis qu' en 2009 ils étaient 3800.
- Quelles sont les principales réformes en cours ou envisagées ? Ces réformes vous semblent-elles aller dans le bon sens ?
Un nouvel Code Civil et Pénal sont en cours. Ces textes ne sont pas encore élaborés.

**Answers to Questionnaire for Member Associations of EAJ
- Iceland -**

Reference is made to the Questionnaire for Member Associations of the EAJ circulated on 27 November 2014. Below are answers, as requested, from the Icelandic Judges' Association.

1 - Regarding independence of judges

1-1. Recruitment

Judges for the regular courts are appointed, either by Head of State upon appointment by the Minister (Supreme Court Judges) or by the Minister of Interior acting alone (District Court Judges). A position is publicly advertised. Applications are assessed by an evaluation committee of five members (two members nominated by the Supreme Court, one by the Judicial Council, one by the Icelandic Bar Association and one member elected by the Althing). The opinion of the evaluation committee shall state the board's position regarding which applicant is best qualified for the post; the board may rank two or more applicants equally. No applicant may be appointed to the office of judge which the evaluation committee has not designated as the most qualified of the applicants, whether alone or equally ranked with others. However, derogation from this condition is permitted if the Althing adopts a motion of the Minister to appoint another identified applicant who, in the opinion of the evaluation committee, satisfies basic requirements for office.

It is noted that this procedure is recent (Amendment of 2010) and there is so far no case of Minister trying to contest the opinion of the evaluation committee. It is also noted that this procedure was established after certain appointments by the Minister had come under criticism, inter alia by the Ombudsman of the Althing.

The procedure above does not apply to provisional appointments of District Court Judges which are made upon a recommendation from the Judicial Council by the Minister. These provisional appointments which can be as short as two months raise questions regarding independence and professional competence. There is also a system of ad-hoc judges in the Supreme Court which, however, does not involve the Minister.

The present procedure was established in order to de-politise the appointment procedure. That aim has been achieved. However, the present procedure confers considerable discretionary power to a committee which is not accountable vis-à-vis the Althing or other democratic institutions.

1-2. Initial and continuing training

Judges-Candidates must have completed a graduation examination in law, or graduated from a university with an education deemed equivalent thereto. They must also be deemed capable to hold the office in the light of their career and knowledge of law and have certain practical

experience. However, there is no special training for Judges upon appointment and training during the judge's career is scarce. We consider the lack of initial training and continuous education as unsatisfactory.

1-3. Appointment and career

The appointment-procedure has been described under point 1-1. The Judicial Council is not directly responsible for the recruitment procedure but appoints one member in the evaluation committee for candidate-judges. There is no specific system for the promotion of judges. However, District Court Judges may ask for being replaced after certain number of years. Judges are appointed for life (i.e. age of 70) and can only be removed by a court decision. However, there is also a practice of provisional appointments which raises questions.

There is no system for evaluating judges.

1-4. Discipline and Ethics

So far, there is no Code for Judicial Conduct in Iceland. Hence, rules concerning correct judicial conduct are to be found in the Judicial Act, Chapter IV, which, in turn, may indirectly refer to customary standards. In particular, it may be noted that one condition for tenure is that judge has not committed any criminal act considered to be infamous in public opinion, or evinced any conduct detrimental to the trust that persons holding judicial office generally must enjoy (Art. 12, indent 5, of the Judicial Act).

A Committee on Judicial Functions is appointed by the Minister for disciplinary issues (one member nominated by the Icelandic Association of Judges, another by the Law Faculty of the University of Iceland, and the third without a nomination). The decisions taken by the Committee on Judicial Functions can not be referred to any higher administrative authority.

Any person who considers that a judge has committed an infringement against his or her rights in the discharge of judicial functions can lodge a written complaint of the matter with the Committee on Judicial Functions. The events in question shall be described in the complaint, and reasons presented for the allegation that the rights of the complainant have been infringed upon. If the Committee, having received a complaint, immediately considers evident that it does not warrant any further action, it shall dismiss the complaint. If not, the Committee shall afford the judge, and the person in charge of the court in question, an opportunity to present their written observations within a specified period of time. The Committee may consider two or more complaints at once, if they relate to the same judge. If a complaint is considered worthy of consideration, the Committee on Judicial Functions shall bring the matter to a conclusion by a written and reasoned opinion. If the Committee considers that action should be taken on the matter, it may state in what manner the judge in question failed to observe his duties, or admonish the judge.

If the Head of a Court considers that the professional conduct or performance of a judge, or his private conduct, is worthy of censure, he/she may request, orally or in writing, that the judge correct the matter. If this request is not successful, or if the Head of Court considers the matter so serious that a request of this kind is not suitable, he/she shall refer the matter to the Committee on Judicial Functions in writing, stating the reasons. The Minister may also refer a matter to the Committee on Judicial Functions in this manner.

If the Committee on Judicial Functions receives a matter for consideration in the manner described in the second or third paragraphs, the Committee shall afford the judge in question an opportunity to reply to the allegations in a written exposition. The Committee shall in other respects collect evidence as it may consider necessary. The procedure shall in other respects be governed by the provisions of the Administrative Procedures Act, as applicable.

The Committee on Judicial Functions shall bring a matter to a conclusion by a written and reasoned opinion on whether the judge in question shall be admonished. An admonition shall be made in a manner offering proof, and a copy shall also be sent to the person in charge of the relevant court and to the Minister. If the judge is a district court judge, the Judicial Council shall also be sent a copy.

A judge who has been admonished may take legal action for its invalidation against the Minister on behalf of the State within one month from when the admonition was served the judge.

A judge may be relieved from his office temporarily if he/she has been admonished and fails to heed the admonition within a suitable period of time, or if his conduct provides an occasion for a new admonition within a period of three years. A judge may also be relieved from his office temporarily if he/she is no longer in possession of the general qualifications required for judicial office. This shall also apply if a judge is subject to a criminal investigation, or if a criminal action is brought against him where the charges, if sustained, would have the effect of depriving the judge of the general qualifications for judicial office.

The Head of State shall relieve a judge of the Supreme Court from office temporarily (upon proposal from Minister) and the Minister has this power with regard to District Court Judges. The Minister shall seek a written opinion of the Committee on Judicial Functions before a judge is temporarily relieved from office. If a judge has been relieved from office temporarily for reasons other than relating to criminal investigation legal action shall be brought against him within a period of two months. If the case is dismissed from court or the action is cancelled, the decision shall also be automatically cancelled unless a new action is brought within a period of two weeks; however, this may occur only once. A temporal removal based on criminal investigation shall be in force until the investigation is concluded with a decision not to prosecute the judge, six months have passed without an indictment having been issued, a criminal action is brought to a conclusion of final acquittal, or until two weeks have passed from the pronouncement of a final judgment finding the judge guilty.

When a judge has been temporarily relieved from office, the Minister, shall on behalf of the State, take legal action against him/her before the District Court of Reykjavík, requesting dismissal from office by judgment. The action shall be governed by the general rules on civil procedure, with the exception that expeditious procedure shall apply and that the case shall be handled by three district court judges. A final judgment on dismissal from office has automatically that effect. If the court denies a request for dismissal from office, the judge is automatically reinstated in office as from the date a rendered judgment enters finally into effect. The court-decision can be appealed to the Supreme Court.

A judge shall retain his official salary in full while temporarily relieved from office.

There is a regime of incompatibilities and prohibitions of certain professions and positions for judges. Hence Article 26 of the Judicial Act states the following: A judge may not accept an occupation or become the owner of a share in a company or enterprise if this is not compatible

with his office or carries a risk that he will not be able to discharge his official duties properly. The Committee on Judicial Functions shall issue general rules concerning which additional functions may be considered compatible with a judge's official functions. A judge shall report any additional functions to the Committee before accepting them. If the general rules issued by the Committee do not enumerate that function, a judge shall seek its permission in advance. The Committee on Judicial Functions shall issue general rules concerning the extent to which ownership of a share in a company or enterprise is compatible with the office of a judge. A judge shall report any share acquired by him in a company or enterprise to the Committee. If the general rules issued by the Committee do not provide for his right to own such a share, the judge shall seek its permission in advance. The Committee on Judicial Functions can, by a reasoned decision, prevent a judge from discharging an additional function or owning a share in a company or enterprise. A judge shall be obliged to heed such prohibition, but is entitled to seek a judicial resolution on its legality.

According to the Rules issued by the Committee on Judicial Functions certain outside activities, e.g. academic work, can be undertaken without special permission.

1-5. Distribution of cases

The Judicial Act states that when assigning cases to the various judges or chambers, the chief judge shall attempt to maintain, as far as possible, an even workload among them, while endeavouring to distribute assignments between judges on the basis of chance. The Judicial Council may issue guidelines on the assignment of cases. If a case is assigned to a chamber of the court, the judges of that chamber shall decide what judge shall handle the case.

In practice, cases in District Courts are not always assigned to judges on the basis of chance or allocated to chambers. In smaller courts (e.g. courts of one judge) this may be understandable. However, in larger courts we believe that a stronger effort should be made to organise a court in chambers to which cases would be assigned.

1-6. Recognition of the right of association

The right to join or form associations for judges is recognised. However, no particular resources are granted to the Icelandic Judges Association by the State.

1-7. Protection of judges

It is uncommon that judges are attacked in the media, by politicians or other people but not unheard of. In particular, there have been periods between the courts and the Government with regard to certain politically sensitive cases where Ministers have criticised the judiciary. Judges do not enjoy special protection with regard to label etc.

2 - Regarding the means of Judiciary

2-1. Funding of the judiciary

The Judicial Council is responsible for the budget of the District Courts whereas the Supreme Court is in charge of its own budget. The Judicial Council is responsible for distribution of resources between individual District Courts.

There is no fixed percentage or amount allocated to the Court System. This means that sufficient resources must be negotiated for every year, primarily by the Judicial Council with the Ministry of Interior which makes proposals to the Ministry of Finance which submits the draft-budget to the Althing.

The 2014 budget for the District Courts is 1.242,3 M IKR and the 2014 budget for the Supreme Court is 146,2 M IKR. For comparison the total budget is 612.135,9 M IKR. This means that the total budget of the Icelandic courts constitutes 0,22% of the total State Budget for 2014.

In our view the court system is underfunded. This is inter alia demonstrated by a deficit in training, continuous education and any sort of RD projects.

2-2. Salary

The Senior Civil Servants Salary Board decides on the remuneration of all judges.

There is no scale of salaries depending on age, experience etc. Supreme Court judges enjoy higher salaries as well as heads of courts. There is no “merit pay”. There are some extra payments, e.g. with regard stand-by shifts during evening and weekends.

We observe a slow deterioration of judges salaries in comparison to other civil servants professions not to mention the private sector.

2-3. Pensions

Judges can generally retire at the age of 67, Supreme Court judges however at the age of 65. There are nonetheless certain exceptions from this rule which may allow judges to retire earlier. In practice some judges choose to continue to work until the age of 70 when they are obliged to retire.

There are no serious concerns relating to pension rights.

2-4. Accessibility and Efficiency of Justice

We consider access to justice generally to be satisfactory.

There is an active mechanism for legal aid for underprivileged persons and the cost of legal proceedings is in any case not high.

Efficiency, so far, has been the bench-mark of the Icelandic system. This aspect is aided by the relatively simplicity of the two instance judicial system. However, there are plans to establish the third instance. Also, increased case-load may result in longer processing time.

3 - Regarding the national association

3-1. Representativeness of the association

All active and retired judges are members of the Association together. Icelandic International judges can become members (judges at the EFTA Court and the European Court of Human Rights are members). At present there are approximately 80 members.

There are no other associations/organizations of judges.

3-2. Modalities for appointment / election of its representatives

The Chair of the Association together with four members of the board (two alternates) is elected every two years in the general meeting of the Association.

3-3. Financing Association

The association's annual budget is approx. 500.000 IKR, financed by membership dues. The Ministry has financed individual projects on some occasions, e.g. participation in IJA Conferences.

Organisation of seminars and participation in international co-operation has constituted the main expenses.

3-4. Relations association with public administration

There are no regular meetings with the executive. However, we the Association would be consulted in advance of reforms relating to the judiciary.

There are no regular meetings with the legislature. However, the Association regularly receives requests for comments/opinions on projects and bills. Due to the lack of resources and infrastructure the Association can only contribute to those projects/bills which have a direct bearing on the judiciary.

3-5. Actions undertaken by the association during the last 3 years

The Association has not organized any collective action but makes an effort to keep the Senior Civil Servants Salary Board under scrutiny.

The Association could be more present in media and in public debate concerning the judiciary. This is at least partly due to lack of resources.

4 - Miscellaneous

A magnitude of difficult cases, both civil and criminal, resulting from the financial crisis in Iceland (and the fall of the three largest banks) has constituted a challenge for the judicial system. By and large, however, the system has managed to meet this challenge. During the aftermath of the crisis the courts were not subjected to cut-downs similar to other sectors. However, in this year this policy has been reversed and the courts could be foreseeing cut-downs which might affect their most basic functions. This, together with years of stand-still with regard to financial resources, creates a risk of a slow degradation of the court system.

In 2009 judges were forced to accept a cut-down in their salary together with certain civil servants. Irrespectively, we consider that Judges' remunerations have gradually been deteriorating

in comparison to other public servants. We worry that this development, together with higher case-loads, is already deterring optimal candidates to apply for judges' positions. This is taking us in the wrong direction with regard to public confidence and professional competence. Thus, in general, we would not say that the situation for judiciary has improved.

At present there are plans for the establishment of the third instance in the judicial system, i.e. a new High Court. The Association is in general in favour of the *rationale* underpinning these plans which remain to be concretised. Given the lack of financial resources to the judicial at the present, it also remains to be seen whether there is enough political commitment for the implementation of these plans.

Questionnaire for Member Associations

Reply on behalf of the Association of Judges of Ireland

1 - Regarding independence of judges

1-1. Recruitment

- Briefly describe the modes of recruitment of judges in your country (competition, election, appointment ...)

Response:

All judges of the ordinary courts (*viz.* the Supreme Court, High Court, Circuit Court and District Court) are appointed by the President on the advice of the Government. A Judicial Appointments Advisory Board (JAAB) was established by statute in 1995, charged with "identifying persons and informing the Government of the suitability of those persons for appointment to judicial office." The JAAB acts on the request of Minister for Justice and Equality where a judicial office stands vacant or before a vacancy in a judicial office arises, and advertises for suitable candidates in newspapers circulating nationally and other fora. The JAAB consists of the Chief Justice (Chairperson); the Presidents of the High Court, Circuit Court and District Court; the Attorney General; a practising barrister nominated by the Chairman of the Bar Council; a practising solicitor nominated by the President of the Law Society of Ireland; and not more than three persons appointed by the Minister for Justice and Equality engaged in or having knowledge or experience of commerce, finance, administration, or persons who have experience as consumers of the service provided by the Courts. Non *ex-officio* members are appointed for a period not exceeding three years and are eligible for re-appointment.

The JAAB must submit the names of at least 7 persons it recommends for appointment (unless less than 7 apply) together with particulars of their education, professional qualifications, experience and character.

When recommending a person to the Minister for consideration for appointment, the JAAB is required to indicate whether the person satisfies the eligibility requirements for the particular judicial office concerned (*viz.* the stipulated years of professional legal practice - 12 years for the Supreme Court and High Court, 10 years for the Circuit Court and District Court) and may not recommend a person to the Minister unless the person satisfies those requirements. The Board may only make a recommendation if it is of opinion that the person—

- (a) has displayed in his or her practice as a barrister or a solicitor a degree of competence and a degree of probity appropriate to and consistent with the appointment concerned,
- (b) in the case of an appointment to the office of ordinary judge of the Supreme Court or of ordinary judge of the High Court, has an appropriate knowledge of the decisions, and an appropriate knowledge and appropriate experience of the practice and procedure, of the Supreme Court and the High Court,
- (c) is suitable on the grounds of character and temperament,

(d) has undertaken in writing to undertake, if appointed to judicial office, such courses of training and/or education as may be required by the Chief Justice or the president of the court to which the person is appointed and

(e) is otherwise suitable.

In determining whether the requirements at (b) are satisfied, the JAAB is required to have regard, in particular, to the nature and extent of the practice of the person concerned insofar as it relates to his or her personal conduct of proceedings in the Supreme Court and the High Court whether as an advocate or as a solicitor instructing counsel in such proceedings or both.

Appointments of serving judges to more senior judicial office are made by the President on the advice of the Government as aforementioned and are not subject to the process conducted by the JAAB aforementioned.

In advising the President on the appointment of a person to judicial office the Government is required firstly to consider persons recommended by the JAAB to the Minister for Justice and Equality for that purpose.

The judges of the Special Criminal Court are appointed, and are removable at will, by the Government. Persons appointed to the Special Criminal Court under the Offences against the State Act, 1939 are, in practice, drawn from serving judges of the District, Circuit or High Court. The general approach has been to appoint a replacement to the court from the same court jurisdiction as the outgoing judge.

- **Do you consider this recruitment procedure problematic or does it ensure a satisfactory recruitment in number and quality ?**

Response

Heretofore, the system described above has in fact delivered sufficient numbers of suitably qualified applicants. However, it is nonetheless widely recognized amongst the Irish judiciary that the system of judicial appointment in Ireland is by now demonstrably deficient, fails to meet international standards of best practice, and must be reformed if in more challenging times it is to achieve the objective of securing the selection of the very best candidates for appointment to the Irish judiciary in the future and thus contributing to the administration of justice in a manner which will sustain and enhance public confidence.

The Association of Judges of Ireland has recently participated in a working group entitled the "Judicial Appointments Review Committee" established by the Chief Justice of Ireland for the purpose of making submissions to the government within a public consultation process currently underway in Ireland to examine how the current system of judicial appointments might be reformed. The JARC made its preliminary submission to the government on 31st January 2014 and made sixteen recommendations to the government. The recommendations stated:

1. The present system of judicial appointments is unsatisfactory. The opportunity should now be taken to appoint a high level body to carry out research, receive submissions and within a fixed timescale develop comprehensive detailed proposals

in a structured, principled and transparent way to make a radical improvement in the judicial appointments process in Ireland.

In advance of any such comprehensive review there are a number of steps which can and should be taken immediately:

2. As a matter of principle, political allegiance should have no bearing on appointments to judicial office. Early acceptance of this principle is essential to a transformation of the appointments process.
3. The merit principle should be established in legislation.
4. A properly resourced judicial education system should be established without delay with a mandate to provide education to members of the judiciary on all matters bearing on the administration of justice.
5. The creation of a Judicial Council is a much needed reform to support the judiciary. A Judicial Council should be established forthwith, with responsibility for representation of the judiciary, an independent disciplinary process, judicial education, and the judicial involvement in the appointment process. However, judicial appointments need not be part of a Judicial Council but can be conducted by a committee as envisaged in the European Network of Councils for the Judiciary “*Dublin Declaration*” of May 2012.
6. The key to reforming the judicial appointments system rests on reform and development of the Judicial Appointments Advisory Board.
7. The process of judicial appointments should first and foremost enhance the principle of judicial independence, upon which the rule of law in our democracy is built upon.
8. The Committee believes that all judges should be capable of performing and be seen to perform the full functions of their colleagues of the same court jurisdiction. Variations and inconsistency lead to lack of clarity and confusion where such should be avoided.
9. The number of candidates for a single judicial post submitted by the Judicial Appointments Board for Governmental decision should be reduced to three. Where there are multiple vacancies in a Court, the number of candidates should be increased by no more than the number of additional vacancies.

10. Where it is proposed to fill a judicial position by promotion, including the positions of Chief Justice and Presidents of the other Courts, the candidates should also be subject to the advisory process of the Judicial Appointments Advisory Board. Applications from serving judges to advance between different courts should be processed through application to the Judicial Appointments Advisory Board.
11. The Judicial Appointments Advisory Board should be empowered to rank candidates and to designate any particular candidate as “outstanding”.
12. The Judicial Appointments Advisory Board should be specifically empowered to inform the Government when it considers that there are either no, or no sufficient candidates of sufficient quality.
13. The Judicial Appointments Advisory Board requires adequate financial resources to enable it to carry out its functions. A reformed appointments system will require adequate resources. It is recommended that there be consultation with the Judiciary on this matter.
14. The current statutory minimum periods of practice as a barrister or solicitor for appointment to all Courts should be extended to fifteen years.
15. It is essential that high quality experienced candidates are attracted to the bench. Recent changes to pension provisions, both public and private, as they apply to entrants to the judiciary, may have little fiscal benefit to the State, yet create a wholly disproportionate disincentive to applicants for judicial posts, and deter high quality applicants from seeking appointment. It is desirable that such provisions should be immediately reviewed to assess the benefit if any to the State, and assessing their impact on the quality of candidates for appointment to the judiciary.
16. The current requirement for Judges of the District Court to apply for yearly renewal from age sixty five to age seventy should be abolished. Judges of all jurisdictions should have the same retirement age on judicial appointment.

1-2. Initial and continuing training

- **Briefly describe the training of judges at the beginning of the career and during a judge’s service on the bench.**

Response

Judicial education is overseen by a Committee for Judicial Studies chaired by the Chief Justice and consisting of the presidents of the various jurisdictions and other members of the judiciary

nominated for the purpose. Judicial education encompasses (a) induction and (b) continuing education.

The background to the establishment of the Committee for Judicial Studies (and its predecessor the Judicial Studies Institute) was the enactment of section 19 of the Courts and Court Officers Act, 1995, which provides that:

“A person who wishes to be considered for appointment to Judicial office shall undertake to the Board (The Judicial Appointments Advisory Board) his or her agreement, if appointed to Judicial Office, to take such course or courses of training or education, or both, as may be required by the Chief Justice or President of the Court to which that person is appointed.”

Section 48 of the same Act further provides that:

“The Minister [now the Minister for Justice & Equality] may, with the consent of the Minister for Finance provide funds for the training and education of Judges.”

As a result of these provisions of the Courts and Court Officers Act, 1995 coming into force, a Judicial Studies Institute was set up in mid 1996 to provide for the training and for the on-going education of the Judiciary. Initial funding for this project was provided by the Minister. It has since been re-constituted as the Judicial Studies Committee and it is now funded from within budget of The Courts Service.

The Judicial Studies Committee meets about five times per annum. Secretariat services for the Committee’s meetings are provided by The Courts Service.

(a) *Induction*

Each new appointee to judicial office is provided as part of his or her induction with briefing material which includes a copy of the Bangalore Principles of Judicial Conduct and United Nations-authored material on judicial ethics and standards of conduct. Under the auspices of the Committee on Judicial Induction and Mentoring" (CJIM) chaired by the Chief Justice, each new appointee is assigned a judicial colleague as mentor who is tasked to provide guidance and advice to the new judge on 11 matters including judicial ethics and standards in the first three months after the new judge's appointment, and to be available to give advice when needed during the course of the first 12 months after appointment. The judicial mentors have themselves received training for the purpose, including on the subject of ethics and standards.

A draft booklet outlining the role and functions of a Judge is currently in preparation under the supervision of the CJIM, which includes a consideration of a framework on judicial abilities and qualities along the lines of similar documents in England and Wales and the State of Victoria, Australia, and it is anticipated that this booklet will be finalised in the early part of 2014.

(b) *Continuing education*

The Judicial Studies Committee’s activities in the area of continuing education are confined to the organisation of annual one-day conferences for the Judges of the District Court, the Circuit Court, and the combined High and Supreme Courts, respectively. In addition there is a one day annual National Judges’ Conference at which topics relevant to judges of all jurisdictions are discussed. During these conferences speakers are invited to present papers on a range of subjects. Presentations on judicial ethics have been made at conferences for the purpose of continuing

education of judges, most recently a presentation on Judicial Ethics and Accountability" by a High Court judge at the District Court judges' conference earlier this year (2013). The Judicial Studies Committee receives some administrative support from The Courts Service in the making of arrangements for, and the organisation of, these conferences.

Apart from this the Judicial Studies Committee nominates Judges to attend international conferences on relevant legal topics, and some bench books and training in information and communications technology are also provided.

- **Is there a school responsible for training judges?**

Response

No

- **Do you consider the training satisfactory? If not, how could it be improved?**

Response

No. The Judicial Studies Committee has extremely limited financial resources and is accordingly unable to provide the type of continuing training and education that is common in other jurisdictions. It does the best it can, having regard to the resources available to it. Unfortunately it is an inadequate best. Ideally, a formal training program, properly staffed and resourced, should be established, perhaps along the lines of that run by the Judicial Institute for Scotland which is much admired by Irish judges. However, in circumstances where Ireland has only just emerged from an IMF program and its public finances remain under pressure it is unlikely that the additional resources needed will be provided in the short term.

1-3. Appointment and career

- **Briefly describe the procedures for appointment of judges**

Response

See the reply to 1-1 above.

- **Is there a Higher Council of Justice in charge of these issues? If yes, how is it composed? What are its powers (simple opinion or decision-making power)?**

Response

No, there is no Higher Council of Justice, or Judicial Council of any sort, in charge of judicial appointments in Ireland.

- **What are the rules for promotion of judges?**

Response

There is no promotional structure for judges in Ireland. It should be noted that judges in Ireland are independent office holders under statute and do not hold office under a contract of

employment - they are not classed as public or civil servants and are not subject to the management and reporting structures, or enjoy incremental salary scales, as apply to public or civil servants. Appointments of serving judges to other judicial offices are made by the President on the advice of the Government and are not subject to the process conducted by the JAAB aforementioned. Where the Government proposes to advise the President on an appointment to the office of Chief Justice, President of the High Court, President of the Circuit Court or President of the District Court it shall have regard first to the qualifications and suitability of persons who are serving at that time as judges.

- The tenure is it guaranteed to judges?

The tenure of judges of the Supreme Court and High Court is guaranteed by the Constitution. The retirement age of a judge of the Supreme and High Courts is 70 years, that of a Circuit Court judge 70 years and that of a District court judge 65 years. A District Court judge may be continued in office for successive periods of one year until the age of 70 years where a committee consisting of the Chief Justice, the President of the High Court and the Attorney General (if they think proper after consultation with the Minister for Justice and Equality) by warrant provide. The Constitution provides that a judge of the Supreme Court or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by each house of Parliament calling for the judge's removal. "Stated misbehaviour" would appear to extend beyond behaviour in the course of one's duties as a judge. In arriving at such a resolution, members of the Houses of Parliament would be required to act in accordance with the rules of procedural fairness guaranteed by the Constitution.

Judges of the lower courts have been given by statute tenure equivalent to that of their counterparts in the Superior Courts.

All judicial offices held currently in the courts are permanent. No judicial office in the Superior Courts may be held other than on a permanent basis. Primary legislation does allow for the possibility of temporary appointment of judges to the Circuit and District Courts. However, there are no temporary Circuit or District judges at the present time.

- Judges are they evaluated? If yes, by whom, on what basis and with what possible appeal?

Response

Judges in Ireland are not subject to performance evaluation.

- Do you consider these procedures satisfactory? If not, how could they be improved ?

Response

Not applicable in the circumstances.

1-4. Discipline and Ethics

- Describe briefly the ethical rules and disciplinary proceedings

Response

Standards of conduct for judges are not currently reflected in any formal document.

In Ireland, members of the Government are subject to the disclosure of interests requirements contained in the Ethics in Public Office Act 1995 as amended by the Standards in Public Office Act 2001 ("the Ethics Acts"). However, holders of judicial office are not subject to the Ethics Acts. A draft Judicial Council Bill is currently in preparation which envisages the establishment of a Judicial Council part of the mandate of which will be the adoption of guidelines concerning judicial conduct and ethics, to be prepared in draft by a new Judicial Conduct Committee. The Judicial Conduct Committee would also be tasked with the consideration of complaints of misconduct by individual judges, whether in the execution of his or her office or otherwise, and the undertaking of investigations into such complaints. The Government has indicated that legislation will be introduced to establish a Judicial Council in Spring of 2014.

Pending the introduction of such legislation, on foot of a decision made at a national conference of the judiciary on the 18th November 2011 an Interim Judicial Council was established on a non-statutory basis, consisting of all judges of the courts, tasked with preparing for the establishment of a Judicial Council on a statutory basis. The Board of the Interim Judicial Council is formed by the Chief Justice and Presidents of the High Court, Circuit Court and District Court, and a judge from each of those jurisdictions elected by his or her colleagues from the jurisdiction concerned. A Committee on Judicial Ethics, chaired by a judge of the Supreme Court, has been established by the Interim Judicial Council Board to consider the matter of the content of guidelines on judicial conduct and ethics. The proposed Judicial Council Bill envisages that the Judicial Conduct Committee to be established thereunder will have statutory responsibility for the submission to the Judicial Council Board, for adoption by the Judicial Council, of draft guidelines concerning judicial conduct and ethics.

It should be mentioned that in Ireland, in the absence of statutory provision, it is established practice for judges -a practice endorsed by the Irish Supreme Court in its jurisprudence -not to act as a judge in a case where they have an interest, or where there are grounds on which a reasonable person might fear that in respect of the issues involved he would not get an independent hearing.

- **Is there a regime of incompatibilities and prohibitions of certain professions and positions for judges? Is there declaration of assets?**

Response

The Constitution of Ireland prohibits judges from also serving as a member of the Irish parliament. In practice judges are considered to be precluded from serving in any elected political office, either at local or national level. In addition they are precluded from holding any other office or position of emolument (i.e., paid office or position).

- **Who is in charge of disciplinary procedures? What are the guarantees for judges involved (contradictory, rights of defense, appeal ...)?**

Response

At the moment the power to discipline a judge in Ireland is very limited. There is no statutory Judicial Council with a disciplinary remit.

Under the Irish Constitution, a judge who has been guilty of what the Constitution refers to as “stated misbehaviour” can be removed by Parliament. In arriving at such a resolution, members of the Houses of Parliament would be required to act in accordance with the rules of procedural fairness guaranteed by the Constitution. This power of removal for stated misbehaviour is a very blunt instrument, the use of which would be inappropriate in all but the most serious cases. Although a removal procedure on the basis of misbehaviour was initiated on one occasion, it did not proceed to a conclusion because the judge in question resigned before it reached that point.

Apart from the power of parliament to remove a judge for stated misbehaviour, only the Chief Justice has any other specific disciplinary power, and only with respect to District Judges. This power arises under s. 10(4) of the Courts (Supplemental Provisions) Act, 1961 which provides:

“Where the Chief Justice is of opinion that the conduct of a justice of the District Court has been such as to bring the administration of justice into disrepute, the Chief Justice may interview the justice privately and inform him of such opinion.”

- **Do you consider these procedures satisfactory? If not, how could they be improved?**

Response

The present situation is not at all satisfactory. The Association of Judges of Ireland fully supports the proposed establishment of a statutory Judicial Council with a range of disciplinary powers.

1-5. Distribution of cases

- **Describe briefly the distribution of cases between judges and the conditions for their eventual divestiture**

Response

Supreme Court

The Chief Justice or in his or her absence the senior ordinary judge of the Supreme Court is empowered to arrange the distribution and allocation of the business of the Supreme Court. The Chief Justice or, in his or her absence the senior ordinary judge of the Supreme Court for the time being available, may determine that an appeal to or other matter cognisable by that court may be heard and determined by a division of 5 or 3 judges of the Supreme Court. An appeal to or other matter cognisable by the Supreme Court under Article 12 or Article 26 of the

Constitution or a question of the validity of any law having regard to the provisions of the Constitution is required to be determined by not less than 5 judges.

High Court

The President of the High Court or, where he is not available, the senior ordinary judge of the High Court who is for the time being available, is empowered to arrange the distribution and allocation of the business of the High Court.

Circuit Court

Cases are required to be tried before the judge of a particular circuit according to territorial criteria fixed by statute - in the case of criminal proceedings, generally the judge assigned to the circuit in which the offence is alleged to have been committed or in which the accused was arrested or resides and in civil cases, generally the judge of the circuit in which the defendant/one of the defendants ordinarily resides or carries on, business.

The President of the Circuit Court is empowered, “[f]or ensuring an equitable distribution of the work of the Circuit Court amongst the several Judges thereof and the prompt despatch of the business of the Circuit Court in the several circuits thereof”, having first consulted the Circuit Judge permanently assigned to the circuit concerned -

- to fix from time to time, in respect of any circuit, the places therein at which sittings of the Circuit Court are to be held
- to fix from time to time, in respect of any circuit, the dates on which sittings shall commence at each place therein at which sittings are to be held.

The President of the Circuit Court may at any time temporarily assign any Circuit Judge - whether or not (s)he is permanently assigned to another circuit to any circuit (whether there is or is not a Circuit Judge permanently assigned to that circuit). Where two or more Circuit Court judges are assigned (whether permanently or temporarily) to a particular circuit, the President, after consultation with those judges, may, from time to time, allocate the business in that circuit among them. To enable the President to perform his functions under the functions aforementioned, the county registrar concerned is required, to furnish to the President at the latter's request such particulars of the Circuit Court business in the county or county borough concerned as the President requires.

District Court

Cases are required to be tried before the judge of a particular district according to territorial criteria fixed by statute - in the case of criminal proceedings, generally the judge assigned to the district in which the offence is alleged to have been committed or in which the accused was arrested or resides and in civil cases, generally the judge of the district in which the defendant/one of the defendants ordinarily resides or carries on any profession, business or occupation.

The Courts Service is authorised from time to time, as it considers it expedient, by order, inter alia, to vary the class(es) of business for which any District Court area is delimited and - after consulting with the President of the District Court - alter the places or vary the days or hours for the time being appointed for holding the District Court in or for any district court area. Insofar

as the Dublin Metropolitan District (DMD) is concerned, the Courts Service is authorised, after consultation with the President, to appoint and from time to time, as it thinks fit, to alter the places in the DMD for the transaction of the business of the District Court in that District.

The President of the District Court has the function of arranging the distribution of the business of the District Court in the DMD (after consulting with any Principal Judge of the DMD) or in such other District Court District where more than one judge is permanently assigned amongst the judges of the District Court assigned to the DMD or to such other District Court District, and determining the class or classes of business to be transacted in each of the places appointed for the transaction of the business of the District Court in the DMD and the days and hours at which such class or classes of business shall be transacted in the several places so appointed.

A District Court judge when sitting at a place, on a day, and at an hour appointed for the transaction of any particular class of business of the District Court, may transact at such sitting any other class of business of the District Court and transfer or adjourn the transaction of any business of the District Court in which (s)he has jurisdiction to another occasion at the same place (whether such occasion is or is not a day and hour appointed for transaction of such business) or to another occasion (whether such occasion is or is not a day and hour appointed) at some other place in his district which is a place appointed for the transaction of business of the District Court, whether such business does or does not include the said business so transferred or adjourned.

- **Do you consider these procedures satisfactory? If not, how could they be improved?**

Response

Yes, the Association of Judges of Ireland considers them to be satisfactory because they allow the judiciary to organise the business of the courts without extraneous interference, thereby respecting the right of the judiciary to institutional autonomy which is an important aspect of judicial independence.

1-6. Recognition of the right of association

- **The right to join or form associations/unions, is it recognized for judges?**

Response

Yes, the vast majority of Irish judges at every level are members of the Association of Judges of Ireland (AJI) which is a representative association but not a trade union. A trade union requires a negotiating licence, which the AJI has never sought. There is no bar in principle to judges forming a trade union, or to a judge being a member of a trade union. However in practice, no judge is or ever has been a member of a trade union.

Most District Judges are also members of the Association of District Court Judges, which represents judges in that jurisdiction in respect of issues of particular concern to that subset of the judiciary.

- **If so, what resources are allocated to the association / union in terms of grants, human resources?**

Response

None. The Constitution of the AJI provides that the Association shall not raise or attempt to raise funds from individuals, from government or its institutions, from public corporations or from private associations or companies. The AJI is entirely funded by its members subscriptions. The only external financial assistance accepted by the AJI is from The Courts Service which has for many years paid the annual contribution of the AJI to the IAJ/UIM, and the travel and accommodation expenses associated with attendance by two delegates at the annual meeting of the IAJ/UIM.

- **Do you consider these procedures satisfactory? If not, how could they be improved?**

Response

Yes, we regard these procedures as satisfactory.

1-7. Protection of judges

- **Are the judges frequently attacked in the media, by politicians or other people? Do they have special protection?**

Response

Yes, judges are frequently attacked in the media and by some politicians. No, they have no special protection. The general policy of the Irish judiciary is one of reticence and reluctance to be drawn into public controversy, lest to do so would cause damage to the judiciary as an institution, particularly having regard to its role under the Constitution as the third arm of government. Where it is necessary to engage with the executive branch of government on issues of mutual concern these engagements have been conducted through well established channels, i.e. via the Attorney General, who facilitates such communications.

- **Do you consider these procedures satisfactory? If not, how could they be improved?**

Response

The AJI does not consider that existing arrangements are wholly satisfactory and would welcome the establishment of an independent judicial council on a statutory basis, whose role would include defending the judiciary as an institution from unfair and unjust attack in circumstances where the judiciary is itself precluded by custom and convention from responding to such attacks.

2 - Regarding the means of Judiciary

2-1. Funding of the judiciary

- *Annual budget of Justice*

Specify the total annual allocation to the functioning of the courts budget (including expenses relating to judges, prosecutors and legal aid). Does this budget seem to you sufficient? Judges, or bodies representing judges, are they consulted during the elaboration / implementation of budget?

Response

It is very difficult to respond to this with specificity as different state or government agencies are responsible for courts infrastructure, the judiciary, prosecutors, civil legal aid and criminal legal aid, respectively, and they are all independent of each other and have separate budgets and budgetary allocations. In general, it can be stated that resources are greatly stretched on all fronts in the current financial difficulties in which Ireland finds itself. The principal agency responsible for courts infrastructure and day to day operations including judicial facilities, support services, expenses and allowances (but not judicial salaries) is The Courts Service. It has budgeted in 2014 for gross expenditure of €104,565,000. The Courts Service is experiencing its sixth consecutive year of funding reductions representing a 42% drop in real terms over that period.

- *Operating budget of the courts*

How and on which criteria are distributed the funds to the different jurisdictions? Can the courts use freely their budgets? Is it organized before committing expenditure a consultation of judges?

Response

All funding issues in relation to courts infrastructure, support services and administration are a matter for the Courts Service in accordance with policy guidelines dictated by the central exchequer (Dept of Finance/Dept of Public Expenditure and Reform). The Courts themselves (i.e. the judiciary) cannot freely access or use budgeted funds. However, the Courts Service regularly consults with the President of each court jurisdiction in regard to budgetary issues.

- **Do you consider these procedures satisfactory? If not, how could they be improved?**

Response

Yes, in general these procedures are satisfactory

2-2. Salary

- **Briefly define the scale of salaries of judges : at the beginning of the career, at the mid-term, at the end**

Response

As judges in Ireland are recruited from the ranks of solicitors and barristers, usually when they are in their 40's or 50's, we do not have career judges. The remuneration payable to judges is as set out in the tables below. Remuneration is based on a single point scale and does not vary according to function occupied, seniority or a periodic evaluation.

In accordance with Article 35.5.3 of the Constitution and the Financial Emergency Measures in the Public Interest (Amendment) Act 2011, as amended by the Financial Emergency Measures in the Public Interest Act 2013, a judge appointed to a judicial position after 1 January 2012 receives remuneration as set out in Table 2

Table 1 : Remuneration payable to a judge appointed to that judicial position prior to 1 January 2012

Chief Justice	€231,726
President of the High Court	€215,556
Judge of the Supreme Court	€202,622
President of the Circuit Court	€196,155
Judge of the High Court	€191,306
President of the District Court	€150,763
Judge of the Circuit Court	€145,686
Judge of the District Court	€127,234

Table 2 : Remuneration payable to a judge appointed to that judicial position after 1 January 2012 as of 1 July 2013

Chief Justice	€209,088
President of the High Court	€194,535
Judge of the Supreme Court	€182,895
President of the Circuit Court	€177,075
Judge of the High Court	€172,710
President of the District Court	€135,992
Judge of the Circuit Court	€131,373
Judge of the District Court	€114,711

- **Who determines the salary of judges? Is there a system of “merit pay” (if so in what proportions? How the sums are assigned to judges?**

Response

The salaries of judges are determined by the government. There is no system of merit pay for Irish judges.

- **Salaries are they likely to go down? If yes, have you met such cuts and in what proportions?**

Response

Security of remuneration is a key feature of judicial independence. Article 35.5 of the Constitution as originally enacted prohibited the reduction of such remuneration while the judge continued in office. Following the economic crash of 2008, this provision became one of some controversy, as judges were initially exempted from legislation providing for the compulsory

reduction of public service pay. Although the vast majority of judges paid an equivalent pension levy on a voluntary basis, the existing constitutional guarantee was seen by some as anomalous in an era of enforced austerity. The government therefore placed a proposal to amend Article 35.5 of the Constitution before the people in a referendum held in November 2011, which was passed.

The new Article 35.5 provides:

1. The remuneration of judges shall not be reduced during their continuance in office save in accordance with this section.
2. The remuneration of judges is subject to the imposition of taxes, levies or other charges that are imposed by law on persons generally or persons belonging to a particular class.
3. Where, before or after the enactment of this section, reductions have been or are made by law to the remuneration of persons belonging to classes of persons whose remuneration is paid out of public money and such law states that those reductions are in the public interest, provision may also be made by law to make proportionate reductions to the remuneration of judges.

The remuneration of judges was accordingly reduced following the enactment of the Financial Emergency Measures in the Public Interest Act 2011. The salaries of all judges appointed prior to 01.01.2012 have been significantly reduced. However, these represent a transitional arrangement as the salaries of judges appointed, or to be appointed, after 01.01.2012 are lower still.

Moreover, the following are the percentage reductions as of 1 July 2013 in salaries which have been effected by the introduction of the above salaries for appointees from 1st January, 2012.

- Chief Justice: 29.35%
- President of the High Court: 29.21%
- Judge of the Supreme Court: 29.08%
- President of the Circuit Court: 29.01%
- Judge of the High Court: 28.96%
- President of the District Court: 26.05%
- Judge of the Circuit Court: 26.01%
- Judge of the District Court: 24.49%

- **Do you consider this situation and the guarantees for judges satisfactory? If not, how could they be improved?**

Response

No, it is not regarded as satisfactory. The AJI would ideally like to see the constitutional guarantee reinstated in its former terms, but accepts that this is unlikely to be achieved. However, it is strongly pressing for the establish of an independent body to set judicial pay and allowances, similar to the system that operates in Canada.

In addition, it would like to see present salary levels significantly increased as soon as possible, if not completely restored, as current salary levels combined with recent changes to judges pension entitlements and other terms and conditions are considered to represent a significant disincentive to applications by good quality candidates for judicial office.

2-3. Pensions

- **At what age and how judges can they retire?**

Response

A judge can retire on full pension at age 60 if he has served the requisite number of qualifying years (recently changed to 20 years). The pension amounts to 50% of salary at date of retirement plus a lump sum.

- **Does the amount of the pension satisfactory ?**

Response

The judicial pension has to be acknowledged as being generous both within the public service (it is based on salary and judges are amongst the highest paid public servants), and compared to typical pensions accrued in the private sector.

However, the Irish government has recently introduced penal taxation measures in respect of high value pension funds (public and private pension funds are aggregated for this purpose), the effect of which is to saddle many judges with a substantial tax liability that will crystallise for them on the date of their retirement, thereby clawing back to the government a significant portion of any lump sum they will receive, and in some cases all of it. Moreover in cases where the lump sum is insufficient to discharge the tax liability the balance is then to be deducted from the annuity entitlement on an incremental basis over the next ten years. However, if the pensioner dies during this time the tax liability is written off and does not represent a liability for his estate. This taxation regime does not apply only to judges, but a very substantial number of judges are seriously affected by it. In consequence of this, and other significant cuts and reductions in judges pay and conditions, many judges are currently considering early retirement.

- **Do you consider that improvements have to be done?**

Response

The penal taxation provisions described above in very general terms require to be significantly ameliorated or it will prove impossible in the future to recruit high quality candidates to the Irish judiciary.

2-4. Accessibility and Efficiency of Justice

- **Are there barriers to the defendant to access to justice? Are there mechanisms to provide access to justice for the most disadvantaged people (legal aid, Support to victims ...)**

Response

Ireland has both civil and criminal legal aid schemes, and these are means tested.

Limited support for victims is provided through community-based organisations, consisting of mostly volunteers and a small number of professional staff. These organisations provide emotional and practical support to victims of crime and their families in Ireland. They also provide information about the victim's rights, represent the victim's interests and seek to raise public awareness about victim issues.

The following are some of the specialist services that are provided.

Victim Support at Court (VSAC) provides court accompaniment for victims of crime, their families and witnesses, regardless of the type of criminal offence. It provides information on the court setting, including visits to the court, before the trial and assistance and support during the trial process.

Advocates for Victims of Homicide (AdVIC) provides support for families and friends of the victims of murder or manslaughter. It provides information and assistance, including referral to appropriate services. It also provides a counseling service.

Rape Crisis Centres provide support to victims of rape and all forms of sexual violence.

The Irish Tourist Assistance Service (ITAS) provides support and assistance to visitors to Ireland who are victims of crime through such things as access to telephone and email facilities, interpreting and contacting embassies, Gardaí and other agencies.

- Are there problems of deadlines in the treatment of cases ?

Response

The nature of this query is not clearly understood. Like most countries, Ireland has a Statute of Limitations in respect of civil claims. There is no Statute of Limitations in respect of criminal cases, although criminal cases in which there has been substantial delay which prejudices the defendant, either specifically or generally, may be prevented by the courts from proceeding, particularly but not exclusively where there has been culpable prosecutorial delay.

If the query refers to delays in the hearing and processing of cases, it can be stated in general terms that the Irish courts are vested with jurisdiction to -

- (a) ensure that litigation is conducted in a timely and efficient manner so as to secure effective access to the courts; and
- (b) dismiss proceedings on grounds of inordinate and inexcusable delay

Where a case requires priority listing for hearing, an application may be made by any of the parties, in the case of the High Court to the judge in charge of the list for the category of litigation concerned or where that judge may not be in a position to accommodate early listing of the case, to the President of the High Court, and in the case of the Circuit or District Court, the judge of the Circuit or District concerned.

Under section 46 of the Courts and Court Officers Act 2002, as amended by section 55 (a) of the Civil Liability and Courts Act 2004, if judgment in court proceedings has been reserved and is not delivered before the expiration of 2 months from the date on which it is reserved, the President of the court concerned shall, as soon as may be after expiration of that 2 month period, and the expiration of each subsequent period of 2 months (if judgment is not delivered first), list the proceedings or cause them to be listed before the judge who reserved judgment therein and give notice in writing to the parties to the proceedings of each date on which the proceedings are listed.

- **Do you consider these procedures satisfactory? If not, how could they be improved?**

Response

In circumstances where we are unsure about what the query concerns, and what deadlines in the treatment of cases it refers to, we do not propose to offer any view.

3 - Regarding the national association

3-1. Representativeness of the association

- **How many members does the association have? Has this number increased since the association became a member?**

Response

The total membership of the AJI is 143, out of a total number of 154 judges in Ireland or 93% of the Irish judiciary. Yes, the number has increased somewhat, though this may be coincidental.

- **Do other associations/organizations of judges exist?**

Response

Yes, most District Judges are also members of the Association of District Court Judges, which represents judges in that jurisdiction in respect of issues of particular concern to that subset of the judiciary.

- **If elections are held in the country in question, please furnish statistical data relating to the extent to which the association is representative.**

Response

Does not apply in Ireland's case.

- **Does the association include members who are independently elected and who oversee the judiciary? The discipline of the judiciary?**

No, it is not a judicial council and has no independently elected members. The AJI has no disciplinary function.

3-2. Modalities for appointment / election of its representatives

- **How are the leaders of the association selected? Are they elected by the members? Are they appointed? If yes, by whom and by what process?**

Response

The general membership of the AJI is comprised of Members and Honorary Members. Any member of the judiciary appointed in the manner provided by the Constitution of Ireland may be

a Member of the AJI. The Association may invite retired judges to be Honorary Members of the AJI.

The day to day affairs of the AJI are managed by a nine person executive committee. Eight members of the executive consist of representatives elected annually at the A.G.M. by the AJI members belonging to each court jurisdiction, i.e. the Supreme Court, the High Court, the Circuit Court and the District Court respectively. Each court jurisdiction has two such representatives. The Presidents of each court are not eligible for membership of the executive committee. The ninth member, and chairperson of the executive committee, is the President of the Association who is elected by the general membership at the A.G.M. for a term of two years and who can hold office for no more than three consecutive terms. The executive committee meets frequently but irregularly as the needs arises.

- **How is the association organized? Is there a board of directors/association council? If yes, how are the members of the council appointed/elected? What powers does the council have?**

Response

The AJI has a short written Constitution setting out its organizational structure, funding rules and aims and objectives. The Executive Committee is in effect the Association's Board of Directors. At executive committee meetings the eight members of the executive committee elected by the various jurisdictions have one vote each and the President has a casting vote. If the President is not presiding at a meeting of the executive committee the person presiding has both an original and a casting vote.

Save to the extent that it is constrained by the provisions of the AJI's Constitution, the executive committee is free to determine its own procedures and to make such arrangements for the governance and the management of the day to day affairs of the AJI as it thinks fit. To that end the executive committee has established the additional non-constitutional offices of Secretary and Treasurer respectively.

- **Does the association have regional representatives? If yes, how are they appointed/elected?**

Response

No, as Ireland is geographically quite a small country there is no need for regional representation. Instead, each Court jurisdiction has separate representation.

3-3. Financing Association

- **What is the association's annual budget?**

Response

Approximately €5,000

- **What are the association's funding sources: membership dues, subsidies, other funding sources?**

Response

The AJI's sole funding source is membership dues. The Constitution of the AJI provides that the Association shall not raise or attempt to raise funds from individuals, from government or its institutions, from public corporations or from private associations or companies. We do, however, accept indirect external financial assistance from the Courts Service in one respect. The Courts Service has for many years paid the annual contribution of the AJI to the IAJ/UIM, and also the travel and accommodation expenses associated with attendance by two delegates at the annual meeting of the IAJ/UIM.

- **What have been the principal expenses?**

Response

The most significant items of expenditure incurred by the AJI are the costs of developing and maintaining the Association's website, and the seeking of independent legal advice (Counsel's opinion) on a range of issues affecting our members.

3-4. Relations association with public administration

- **Does the association meet regularly with representatives of the executive? In particular with the Minister of Justice and his/her associates? Is the association consulted in advance of all government reforms?**

Response

No, there are no such regular meetings. Indeed, relations between the AJI and the Minister for Justice have been strained for some time. The agreed protocol in this jurisdiction is that routine communications between the judiciary and the executive are channeled through the Attorney General. The AJI makes representations to the executive regularly, and on a wide range of issues, by means of this formal channel. There is sometimes, but not always, consultation by the executive with the judiciary concerning proposed reforms. Moreover, the consultation process is sometimes inadequate with a response being required within an unrealistically short timeframe.

- **Does the association meet regularly with representatives of the legislature? Is the association asked to provide its opinion on projects and bills before they are examined by the parliament?**

Response

There are no regular meetings with the legislature. Neither the Association, nor the judiciary more widely, is routinely consulted on projects and bills before they are examined by the parliament? However, the judiciary in Ireland is sometimes consulted (usually by a Minister in his capacity as a member of the executive, rather than as a member of the legislature, although there is an obvious overlap in that Ministers are also invariably members of the legislature) in respect of projects or bills that could impinge directly on the judiciary e.g., in respect of the proposal to establish a judicial council, in respect of the proposal to reform the system of judicial appointments, and in respect of the proposal to establish a new Court of Appeal.

3-5. Actions undertaken by the association during the last 3 years

- **What were the main actions undertaken in the previous year? In the previous three years? Since becoming a member?**

Response

As previously stated the AJI has made representations both to the executive, and at a level below that to the administration responsible for Court operations, i.e the Courts Service, on a wide range of issues affecting the judiciary.

These have included representations concerning salary cuts, cuts to pensions, taxation of pensions, cuts to expenses and allowances, operational issues, cutbacks in support services, the implications of proposed referenda for the judiciary, judicial recruitment, possible threats to judicial independence, the establishment of a new Court of appeal, proposals to reform the family law courts system, cost neutral early retirement, the creation of new specialist personal insolvency judges, security issues, the need for an independent commission to deal with judicial pay and conditions, how to improve existing poor relations between the judiciary and the executive, participation in a working group for renewal, the achievement of better efficiencies within the justice system, the age of retirement for some judges, and numerous other matters.

In addition we have been engaged in addressing a wide range of issues affecting individual member judges, including where necessary the procurement of financial and legal advice to enable use to address those issues.

- **Has the association organized collective action (demonstrations, strikes ...)?**

Response

No

- **Does the association have a media presence? Has the association published documents (books, reviews, communiques...)?**

No. It does, however, maintain an internet website with a news and communications section in which it occasionally issues public statements. This facility is used sparingly, having regard to the general policy of judicial reticence and our unwillingness to be drawn into public controversy that could damage the standing of the judiciary in the eyes of the public. The avenue of quiet diplomacy is in general the preferred route to achieving our aims and objectives.

- **Did the eventual actions taken have a positive impact on judicial powers?**

Response

We have had mixed results, sometimes achieving important gains for the judiciary, e.g., extension of the cost neutral early retirement facility to all members of the judiciary from age 60, but in other areas we have been less successful, notably with regard to our efforts to have cut backs in pay, pensions, allowances, expenses, support services and facilities either reversed or ameliorated. Our lack of success in these areas is perhaps unsurprising in circumstances where Ireland has, until just recently, been in an IMF program, which has forced the government to implement a very far reaching and severe austerity program.

4 - Miscellaneous

- **What were the main problems encountered by the judiciary in your country in recent years?**

Response

- poor morale amongst the judiciary due to a variety of factors
- the amendment of the Constitution of Ireland removing absolute prohibition on reduction of judicial salaries
- the imposition significant cuts to salaries, expenses, allowances, pensions, support services and facilities
- a general deterioration in relations with the executive
- a perception that judicial independence has been weakened by a series of executive actions
- lack of adequate consultation by the executive with the judiciary in regard to changes proposed and in some cases imposed
- unjustified attacks on the judiciary in some sections of the print and broadcast media and inability to respond adequately to them

- **Would you say that the situation for the judiciary has improved? decreased? has remained stable?**

Response

The perception of the judiciary in Ireland is that their situation has markedly disimproved in a variety of respects over the last five years

- **What are the main reforms underway or planned? These reforms seem they go in the right direction?**

There is a public consultation process underway that we hope will lead to a reform of the current system of judicial appointments which we consider to be seriously deficient in a number of respects.

The AJI has also participated over the last year in a program entitled “Working Group for Renewal” (WGR) which it had been hoped would result in improved relations between the judiciary and the executive, the development of new and improved protocols for communications between the executive and the judiciary, and possibly the establishment of an independent body to make recommendations in respect of pay and conditions for the judiciary. Unfortunately, this initiative is presently stalled and the working group has not met for some months.

Both of the initiatives described have the potential to deliver important reforms. It is early days in so far as the judicial appointments consultation process is concerned> The consultation process

is ongoing and so there are no specific proposals for reform of the judicial appointments process at this time.

However, in the case of the WGR, initial confidence that it would lead to desired improvements and reforms has been replaced with concern about lack of progress towards its desired objectives.



2014 - Quelle situation pour la Justice en Europe ?

ITALY

Questionnaire à remplir par les associations membres

1 - Concernant l'indépendance des Magistrats

1-12. Recrutement

- Décrire brièvement les modes de recrutement des magistrats dans votre pays (concours, élection, désignation ...)
- Ces procédures de recrutements vous paraissent-elles poser des problèmes ou assurent-elles un recrutement satisfaisant en nombre et en qualité ?

Les magistrats italiens sont recrutés par concours par examens.

La loi italienne établit un concours chaque année.

Le nombre de magistrats recrutés à chaque fois est compris entre 300 et 360.

La commission d'examen est composée de magistrats et professeurs universitaires, nommés par le Conseil Supérieur de la Magistrature

Ces procédures assurent un recrutement satisfaisant en nombre et en qualité parce que 10% sont sélectionnés parmi les participants.

1-13. Formation initiale et continue

- Décrire brièvement les modalités de formation des magistrats aussi bien avant leur première prise de fonctions qu'en cours de carrière.
- Existe-t-il une école chargée de former les magistrats ?
- Le dispositif de formation vous paraît-il satisfaisant ? Si non, comment pourrait-il être amélioré ?

Avant la prise de fonctions, les vainqueurs du concours doivent faire un apprentissage de la durée d'une année et demie auprès de l'École Supérieure de la Magistrature, qui se compose de périodes d'étude à l'école relayées par des périodes auprès des Cours.

Après la prise de fonctions, chaque année tous les magistrats doivent suivre un cours de formation de la durée de trois jours.

L'École chargée de former les magistrats se situe à Florence. L'École se sert de sièges secondaires auprès des Cours d'Appel pour la formation supplémentaire au niveau local.

Le dispositif de formation est satisfaisant.

1-14. Nomination et carrière

- Décrire brièvement les modalités de nomination et de déroulement de carrière des magistrats

- Existe-t-il un Conseil Supérieur de Justice chargé des ces questions ? Si oui, comment est-il composé ? Quels sont ses pouvoirs (simple avis ou pouvoir de décision) ?
- Quelles sont les règles applicables pour la promotion des magistrats ?
- L'inamovibilité est-elle garantie aux magistrats ?
- Les magistrats sont ils évalués ? Si oui, par qui, sur quels critères et avec quels éventuels recours ?
- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

Le déroulement de carrière des magistrats s'articule en sept évaluations de professionnalisme quadriennaux. L'évaluation de professionnalisme équivaut à un avancement de carrière. C'est le Conseil Supérieur de la Magistrature qui est chargé du recrutement, des déplacements et des évaluations finalisées à la promotion.

L'évaluation est rédigée d'abord par l'organisme local du Conseil Supérieur auprès des Cours d'Appel, le Conseil Judiciaire ; cette évaluation, élaborée au niveau local, est transmise au Conseil Supérieur, qui est chargé de la décision finale.

Le Conseil Supérieur de la Magistrature a un vrai pouvoir de décision. En cas d'évaluation négative, la promotion est niée ou retardée.

Les critères d'évaluation sont établis par la loi. Il y en a quatre : engagement, capacité, diligence et industrie. Le Conseil doit également tenir compte de toute sanction disciplinaire.

En ce qui concerne la nomination des chefs des bureaux, le Conseil choisit le magistrat le plus doué parmi ceux qui ont postulé pour le poste vacant, selon les critères indiqués par la loi secondaire.

Les déplacements sont volontaires ou disciplinaires.

Les dispositifs sont satisfaisants.

1-15. Discipline et éthique

- Décrire brièvement les règles éthiques auxquelles sont soumises les magistrats et la procédure disciplinaire.
- Les magistrats sont ils soumis à un régime d'incompatibilités et d'interdictions d'exercice de certaines professions et mandats ? Sont-ils soumis à des obligations de déclarations d'intérêts ?
- Qui exerce le pouvoir disciplinaire ? quelles sont les garanties pour les magistrats concernés (contradictoire, droits de la défense, recours ...) ?
- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

L'association Nationale des Magistrats a adopté un code éthique depuis le 13 novembre 2010 qui discipline le comportement du bon magistrat . Notamment, le magistrat travaille dans l'unique but d'assurer les droits des citoyens ; il doit respecter les personnes et les institutions ; il ne peut pas utiliser les informations confidentielles pour soi même ; il doit être réservé dans ses propos avec la presse ; il ne doit pas utiliser son rôle pour obtenir des avantages pour soi ; il n'adhère pas aux associations qui lui demandent fidélité et obéissance.

Les magistrats sont soumis à un régime d'incompatibilités et d'interdictions d'exercice de certaines professions et mandats, à des obligations de déclarations d'intérêts, dont la violation peut être sanctionnée en voie disciplinaire.

La violation du code éthique n'est pas nécessairement une violation disciplinaire parce que le code est une forme de autoréglementation. Les violations disciplinaires sont prévues par la loi n. 109 de 2006.

L'action disciplinaire est exercée par les Procureurs Généraux de la Cour de Cassation et par le Ministre de la justice. Le jugement disciplinaire est attribué au Conseil Supérieur de la Magistrature ; le magistrat peut présenter recours à la Cour de Cassation.

Les règles et les garanties du jugement disciplinaire –qui a nature juridictionnelle sont celles établies par le code de procédure pénale.

Les dispositifs existants sont satisfaisants.

1-16. Modalités d'affectation des dossiers

- Décrire brièvement le mode d'affectation des dossiers aux magistrats et les conditions de leur éventuel dessaisissement
- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

Les dossiers sont affectés automatiquement aux magistrats (juges et parquet) selon des critères prédéterminés. Les critères d'affectation et de dessaisissement sont préalablement établis par le Président et par le Procureur dans le projet d'organisation du bureau, appelés en italien « tabella » (tableaux). Les tableaux sont mis à jour tous les quatre ans.

Les dispositifs existants sont satisfaisants.

1-17. Reconnaissance du droit d'association

- Le droit de s'associer, ou de se syndiquer, est-il reconnu aux magistrats ?
- Si oui, quels moyens sont alloués à l'association / au syndicat, en termes de subventions, de moyens humains ?
- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

Les magistrats ont le droit de s'associer selon le principe général d'association reconnu par la Constitution. En Italie il existe une seule Association des Magistrats depuis 1909. L'association n'a aucune subvention ni publique ni privée. L'Association est financée uniquement par les cotisations des membres. Elle utilise gratuitement les pièces de la Cour de Cassation, où elle a son siège national, et les pièces des Cours d'Appel, où sont basées les décentralisations du ressort. Les dispositifs existants pourraient être améliorés en déchargeant les cadres nationaux de l'Association d'une partie de leur travail ordinaire afin qu'ils puissent s'occuper davantage de l'Association.

1-18. Protection des magistrats

- Les magistrats font-ils fréquemment l'objet de mises en cause, de la part de l'opinion publique, des médias, des responsables politiques ... ?
R : Oui, tant la magistrature en général que les magistrats individuellement à propos de leurs jugements ou de leurs enquêtes.

- Bénéficient-ils de dispositifs de protection particuliers ?

R : Oui. Le Conseil Supérieur de la Magistrature peut ouvrir des dossiers pour leur protection (en italien, « pratica a tutela »). De plus, l'Association intervient souvent avec des communiqués de presse ou avec des déclarations publiques du Président.

- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

R : C'est un problème assez discuté, celui du rapport avec la presse, parce qu'il concerne de nombreuses controverses liées à l'actualité (l'éthique du journalisme, l'éthique de la magistrature, l'utilisation des médias ...). Il est important surtout, de concilier le devoir d'information avec le devoir de discrétion du magistrat.

2 – Concernant les moyens de la Justice

2-1. Financement du système judiciaire

- *Budget annuel de la Justice*
Préciser le montant total annuel du budget affecté au fonctionnement des juridictions (incluant les dépenses relatives aux juges, aux procureurs et à l'aide juridictionnelle). Ce budget vous paraît-il suffisant ? Les magistrats, ou les instances représentatives de magistrats, sont-ils consultés au stade de l'élaboration du budget ? Au stade de son exécution ?
- *Budget de fonctionnement des juridictions*
Sur quels critères sont réparties les sommes aux différentes juridictions ? Les fonds sont-ils ensuite utilisés librement au sein des juridictions ? Existe-t-il des consultations préalables des magistrats avant l'engagement des dépenses ?
- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

2-2. Rémunération des juges

- Définir sommairement l'échelle des salaires des magistrats : en début, en milieu et en fin de carrière.

R : (s'il vous plaît, voir le rapport CEPEJ)

- Qui détermine la rémunération des magistrats ? Existe-t-il un système de rémunération au mérite (si oui dans quelles proportions ? et selon quelles modalités d'attribution ?)

R : la rémunération des magistrats est déterminée par la loi. Il n'existe pas un système de rémunération au mérite.

- Les rémunérations sont-elles susceptibles d'évoluer à la baisse ? Si oui, avez-vous rencontré de telles baisses et dans quelles proportions ?

R : en théorie, non, mais elles peuvent ne pas augmenter si les autres salaires du compartiment public n'augmentent pas (l'accroissement de la rémunération des magistrats est proportionnel à la moyenne de l'accroissement des salaires des autres employés publics). En tout cas, il faut remarquer que le gouvernement et le Parlement pourraient changer les lois qui déterminent la rémunération des magistrats, comme cela a été fait au mois d'avril 2014 en baissant le maximum de la rémunération de tous les employés du secteur public. C'est un risque actuel. Il y a deux ans, le Parlement avait déjà modifié les lois en diminuant la rémunération des magistrats, mais la Cour Constitutionnelle Italienne a rétabli le règlement précédent à la suite du pourvoi exercé par l'Association.

- La protection des magistrats, relativement à la question des rémunérations, vous paraît-elle assurée ? Si non, comment pourraient-ils être améliorés ?

R : C'est un problème discuté parce que l'Association Italienne n'est pas un syndicat.

2-3. Retraites

- À quel âge et selon quelles modalités les magistrats peuvent-ils prétendre prendre leur retraite ?
- Le montant de la pension de retraite est-il satisfaisant ?
- Des améliorations doivent-elles être apportées au dispositif ?

R : ci-joint la réponse de Fausto Zuccarelli à la question posée par l'un des membres de EAJ.

ITALY

1. Are there special state pensions for retired judges in your country?

No, there are not. The social security system provides ordinary pensions for judges and prosecutors as well. The connected amount is calculated according to the same method applied for other civil servants.

2. If yes, is the amount of state pension linked to salaries of judges?

The amount of pensions is linked to the remuneration for the amounts accrued up to 31.12.2010 (payroll system). From 1.1.2011 the amount of pensions is linked to the share of contributions paid (contributory system).

3. Does such pension depend on the judge's record of service?

The pensions are connected to actual record of service. Currently judge/prosecutor can receive the "early retirement" getting 42 years and six months of service (for men) and 41 years and 6 months (for women) or the completion of 63 years with at least 20 years of contributions. It is also possible to count the period of the degree course, paying the relevant contributions (redemption).

4. Were state pensions for judges reduced or reformatted in the last ten years in your country?

Since 2011 it has been envisaged reduction of the pensions for civil servants to 5% of amounts over € 90.000,00 gross per year and 10% of the sums up to € 150.000,00 gross per year. The pensions of judges/prosecutors were part of these reductions (Solidarity Contribution).

In 2013 the Constitutional Court decided that those reductions were contrary to the Constitution because it constituted a special form of taxation, limited to retirees and not extended to all taxpayers.

In 2014 it was scheduled a further reduction of pension amounts slightly higher (respectively, 6% and 12%), allocating the sums thus obtained to the national budget of the pension fund. Several judgments are pending in front of the Court of Auditors against this new reduction, with a request to submit again the case to the Constitutional Court because the new law reiterates that previous, already declared unconstitutional.

2-4. Accessibilité et efficacité de la Justice

- Existe-t-il des obstacles pour le justiciable à l'accès au juge ? Existe-t-il des dispositifs pour permettre l'accès à la Justice des plus défavorisés (aide juridictionnelle ; soutien aux victimes ...)

R : L'ÉTAT affranchit les justiciables économiquement en difficultés et les victimes des crimes sexuels de toutes frais de défense, se chargeant même des honoraires des avocats. L'institut s'appelle « gratuito patrocinio » (aide judiciaire).

- Existe-t-il des problèmes de délais dans le traitement des affaires ?

R : Le problème des délais est énorme à cause du grand nombre de dossiers.

- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

R : Le dispositif est suffisamment satisfaisant.

3 – Concernant l'association nationale

3-1. Représentativité de l'association

- Combien l'association compte-t-elle de membres ? L'association a-t-elle connu depuis son adhésion une évolution du nombre de ses adhérents ?

R : 90% environ des magistrats italiens sont membres de l'association. C'est une situation historiquement consolidée.

- Existe-t-il d'autres associations/syndicats de magistrats ?

R : Non, il existe une seule Association.

- Dans l'hypothèse où des élections professionnelles seraient organisées dans le pays concerné, bien vouloir fournir les éléments chiffrés montrant la représentativité.

R : -----

- L'association compte-t-elle des élus dans les instances indépendantes qui sont en charge de la gestion des carrières des magistrats ? De la discipline des magistrats ?

R : Non. Ce n'est pas prévu par la loi.

3-2. Modalités de désignation / élection de ses représentants

- Comment sont désignés les dirigeants de l'association ? Sont-ils élus par les adhérents ? Sont-ils nommés ? Si oui par qui et selon quelle procédure ?

- Comment est organisée l'association ? Existe-t-il un conseil d'administration/conseil syndical/conseil associatif ? Si oui, comment les membres de ce conseil sont ils élus/nommés ? Quels sont les pouvoirs de ce conseil ?

R : Les 36 dirigeants nationaux de l'Association sont élus par les adhérents tous les 4 ans. L'élection est nationale (collège électoral unique) par listes électorales opposées. Les listes sont l'expression des différents mouvements culturels. Les adhérents peuvent exprimer 5 préférences parmi les candidats de la même liste. Les 36 élus composent le COMITATO DIRETTIVO CENTRALE, l'organisme qui s'occupe de tout ce qui concerne l'Association. Le CDC désigne, parmi les 36 élus, les 9 membres de la GIUNTA ESECUTIVA CENTRALE. La GEC est l'organisme exécutif permanent.

- Existe-t-il des représentants régionaux de l'association ? Si oui, comment sont ils nommés/désignés ?

R : Il existe un organisme de l'Association dans chaque Cour d'Appel, nommés GIUNTA ESECUTIVA SEZIONALE. Les membres sont élus par les magistrats du ressort.

3-3. Financement de l'association

- Quel est le budget annuel de l'association ?

R : Le montant des cotisations en 2013 était de euro 1.017.239,77.

De Plus, l'Association a sa disposition la somme de 1 million d'euros environ en dépôt de banque, postal et valeurs d'État.

- Quels sont les moyens de financement de l'association : cotisations des adhérents, subventions, autres sources de financement ?

R : Le seul moyen de financement de l'Association est constitué par les cotisations des adhérents.

- Quelles ont été les principales dépenses ?

R : En 2013 la principale dépense a été le Congrès National (euro 430.000,00). Il s'agit d'un événement quadriennal. Parmi les dépenses ordinaires, la plus lourde est celle pour le personnel administratif (4 employés) montant en euros 253.000,00, ainsi que la dépense relative au remboursement des frais de voyage à Rome des dirigeants de l'Association.

3-4. Relations de l'association avec les pouvoirs publics

- L'association rencontre-t-elle régulièrement les représentants du pouvoir exécutif ? Plus particulièrement le Ministre de la Justice et ses collaborateurs ? L'association est elle consultée avant toute réforme par le gouvernement ?

R : Normalement, l'Association ne rencontre pas le premier ministre. Elle rencontre parfois le Ministre de la Justice et ses collaborateurs pour discuter de sujets juridiques d'actualité ou des projets de réforme, sur la demande du Ministre ou de l'Association. Les délégués de l'Association peuvent faire partie des Commissions Ministériels d'étude.

- L'association rencontre-t-elle régulièrement les représentants du pouvoir législatif ? L'association est-elle appelée à donner son avis sur les projets et propositions de loi avant leur examen par le parlement ?

R : L'association est habituellement consultée par les Commissions Justice du Parlement à propos des projets de loi des en matière de justice. C'est une tradition - pas un devoir - basée sur la représentativité et le prestige de l'Association.

3-5. Actions menées par l'association au cours des 3 dernières années

- Quelles ont été les principales actions menées au cours de l'année écoulée ? Dans les 5 dernières années ? Depuis l'adhésion ?

R : Il s'agit surtout d'actions d'opposition aux mauvais projets de loi, visées à les contraster, ou au soutien des bons projets, aucune action pour avoir recours au tribunal, exceptés les recours à la Cour Constitutionnelle en 2012 contre l'abaissement des rémunérations.

Au cours de l'année écoulée, l'association s'est opposée à la réforme du système disciplinaire en organisant, par exemple, un congrès d'étude. Il y a deux ans, et même encore à présent, l'association est fermement opposée au projet de loi qui intensifie la responsabilité civile des magistrats et qui prévoit la possibilité de traduire en justice directement les juges. Au cours de ces cinq dernières années, l'Association a soutenu et poussé le gouvernement à : 1) changer le système de sanctions pénales, dans le but aussi de résoudre le problème du nombre excessif de détenus en prison (c'est un problème à l'attention de la Cour de Justice) ; 2) prendre connaissance de la modifications des flux migratoires clandestins, qui sont trop nombreux en Italie en provenance de l'Afrique, s'agissant de réfugiés, de mineurs non accompagnés et non pas de prévenus, et changer par conséquent la loi (par exemple, abolition du délit d'immigration illégal), donner à la magistrature les ressources pour faire face à ce phénomène, demander une aide à l'Europe.

- L'association a-t-elle organisé des actions collectives (manifestations, grèves ...) ?

R : On n'a jamais organisé de manifestations parce que c'est une modalité étrangère à l'association. La grève est un choix extrême pour l'Association. Cependant, on a organisé deux grèves durant ces dix dernières années, grèves visant à contester la réforme du règlement judiciaire et à défendre l'indépendance de la Magistrature, attaquée par cette réforme.

- L'association a-t-elle une présence sur le plan médiatique ? L'association a-t-elle publié des documents (livres, revues, communiqués ...) ?

R : L'Association est présente sur les réseaux sociaux ; elle a un site internet ; publie la revue informatique « La Magistrature » et les documents des congrès et des réunions d'étude qu'elle organise ; a une liste de diffusion (mailing list) réservée aux adhérents ; le Président, le Vice Président et le Secrétaire Général peuvent participer aux émissions de télévision et de radio.

- Les éventuelles actions menées ont-elles eu des conséquences positives sur la situation du pouvoir judiciaire ?

R : Pour la plupart, oui.

4 – Divers

- Quels ont été les principaux problèmes rencontrés par le pouvoir judiciaire dans votre pays ces dernières années ?

R : Il y a un manque chronique de ressources, dû à un choix du gouvernement, qui détermine le mauvais fonctionnement général du système judiciaire. De plus, le pouvoir exécutif et le monde de la politique en général, ont une position d'opposition et de méfiance envers le pouvoir judiciaire.

- Diriez-vous que la situation pour la magistrature s'est améliorée ? a régressé ? est restée stable ?

R : La situation a régressé un petit peu. L'action de défense de l'Association a été efficace.

- Quelles sont les principales réformes en cours ou envisagées ? Ces réformes vous semblent-elles aller dans le bon sens ?

R : Les réformes visent à changer en pire le règlement de la magistrature plutôt qu'à améliorer le système. L'Association essaie de dialoguer avec les autres pouvoirs et de faire des propositions constructives, dans les limites de ses compétences. Par exemple, l'année dernière, l'association a publié un petit livre intitulé « Propositions pour la justice », qui a été présenté à la presse. Il y a quelques bonnes réformes.

Latvia answers

1 - Regarding independence of judges

1-1. Recruitment

- Briefly describe the modes of recruitment of judges in your country (competition, election, appointment ...)
- Do you consider this recruitment procedure problematic or does it ensure a satisfactory recruitment in number and quality?

The selection of candidates for the office of a judge shall take place in an open competition. Pursuant to the recommendation of the Minister for Justice and the Chief Justice of the Supreme Court, the Council for the Judiciary shall approve the competition by-law

Recruitment of judges prescribes special government rules - the procedures by which candidates for the position of a judge shall be selected, apprentice and take qualification examinations.

Candidate should conform with formal criteria as citizen ship, at least 30 years of age,) has at least five years length of service in a legal speciality after acquiring a lawyer qualification or has been working in position of assistant to a Chief Judge or assistant to a judge for at least five years

After positive training, judge candidate should pass exam that is held by judge qualification commission.

The final step is appointment to be confirmed by the parliament for 3 years. After judge should pass qualification exam and should be for second time confirmed by the Parliament.

1-2. Initial and continuing training

- Briefly describe the training of judges at the beginning of the career and during this one
- Is there a school responsible for training judges?
- Do you consider the training satisfactory? If not, how could it be improved?

At the beginning of career judge have more possibilities to attend training programs in Judges Training Center. After 3 years of serving, judge should pass qualification exam and after should be for second time confirmed by the Parliament for an unlimited term.

1-3. Appointment and career

- Briefly describe the procedures for appointment of judges
- Is there a Higher Council of Justice in charge of these issues? If yes, how is it composed? What are its powers (simple opinion or decision-making power)?
- What are the rules for promotion of judges?
- The tenure is it guaranteed to judges?
- Judges are they evaluated? If yes, by whom, on what basis and with what possible appeal?
- Do you consider these procedures satisfactory? If not, how could they be improved ?

The Minister for Justice shall nominate candidates to be appointed to or confirmed in the office of a judge of the district (city) court or of a judge of a regional court on the basis of the opinion of the Judicial Qualification Board.

A candidate for confirmation to the office of a Judge of the Supreme Court shall be nominated by the Chief Justice of the Supreme Court, on the basis of an opinion of the Judicial Qualification Board.

Judges of a district (city) court shall be appointed to office by the Parliament, upon the recommendation of the Minister for Justice, for three years. On the basis of the decision by the Parliament regarding the appointment of a judge to the office as a judge of a district (city) court, the Council for the Judiciary shall determine the specific district (city) court or the courthouse in which the duties of a judge shall be performed.

After a judge of a district (city) court has held office for three years, the Parliament, upon the recommendation of the Minister for Justice, and on the basis of the opinion of the Judicial Qualification Board in the evaluation of the professional work of the judge, shall confirm him or her in office, for an unlimited term of office, or shall re-appoint him or her to office for a period of up to two years.

The period of time when a judge is on continuous leave for justified reasons exceeding six months, shall not be included in the referred to periods of time.

After the expiration of the repeated term of office, the Parliament, on the recommendation of the Minister for Justice, shall confirm in office a judge of a district (city) court for an unlimited term of office. If the work of a Judge is unsatisfactory, the Minister for Justice, on the basis of an opinion of the Judicial Qualification Board in the evaluation of the professional work of the judge, shall not nominate the judge as a candidate for a repeated appointment to or confirmation in office. If a district (city) court judge is not nominated for confirmation in office, the term of office of this judge shall terminate on expiry of the term for which he or she was appointed to office.

Judges of a regional court shall be confirmed by the Parliament, upon a recommendation of the Minister for Justice, for an unlimited term of office. On the basis of the decision by the Parliament regarding the confirmation of a judge to the office as a judge of a regional court, the Council for the Judiciary shall determine the specific regional court or courthouse in which the duties of a judge are to be performed.

Judges of the Supreme Court, upon the recommendation of the Chief Justice of the Supreme Court, shall be confirmed in office by the Parliament, for an unlimited term of office.

The Parliament may remove judges from office against their will only in the cases provided for by law, based upon a decision of the Judicial Disciplinary Board or a judgment of the Court in a criminal case.

The Judicial Qualification Board shall perform the regular evaluation of the professional work of a judge once every five years following the approval of the judge for the office with an unlimited term of office.

A judge may appeal an opinion of the Judicial Qualification Board at the Disciplinary Court.

Judge has to be two times confirmed by Parliament and influence of Parliament is too big. Judge could be unconfirmed by Parliament without any options and has no right to appeal.

One of the functions of the Council for the Judiciary is: following the appointment or approval to office of a judge the Council for the Judiciary shall determine the specific court, courthouse or Land Registry Office in which the duties of a judge are to be performed, as well as deciding regarding the transfer of a judge to work in a court of the same instance.

In accordance to Law On Judicial Power the Council for the Judiciary is a collegial authority which participates in the development of the policies and strategies of the judicial system, as well as the improvement of the organisation of the work of the judicial system.

The composition of the Council for the Judiciary has the following permanent members: 1) the Chief Justice of the Supreme Court; 2) the Chief Justice of the Constitutional Court; 3) the Minister for Justice; 4) the Chairperson of the Judicial Committee of the Parliament; 5) the Prosecutor General; 6) the Chairman of the Latvian Council of Sworn Advocates; 7) the Chairman of the Latvian Council of Sworn Notaries; and 8) the Chairman of the Latvian Council of Sworn Bailiffs. The composition of the Council for the Judiciary shall have the following elected members: 1) a judge elected by the Plenary Session of the Supreme Court; and 2) six judges elected by a conference of judges. A conference of judges shall elect one member of the Council for the Judiciary from among the Land Registry Office judges, three from among the district (city) court judges and two from among the regional court judges. The Ombudsman and the Director of the Court Administration or the authorised representatives thereof, a representative delegated by an expert in jurisprudence approved by the Latvian Academy of Sciences, as well as representatives from judge associations may participate in the work of the Council for the Judiciary in an advisory capacity. A

permanent member (official) may authorise another person for the participation in a meeting of the Council for the Judiciary.

The powers of the Council for the Judiciary are too weak and have to be strengthened taking in account principle of division of power.

1-4. Discipline and Ethics

- Describe briefly the ethical rules and disciplinary proceedings
- Is there a regime of incompatibilities and prohibitions of certain professions and positions for judges? Is there declaration of assets?
- Who is in charge of disciplinary procedures? What are the guarantees for judges involved (contradictory, rights of defense, appeal ...) ?
- Do you consider these procedures satisfactory? If not, how could they be improved?

Main ethical rules are enclosed in Ethic Code of Judges. Bangalore principle are used as well.

Exist Commission of Judicial Ethics – a collegial administrative body the main objective of which shall be to provide opinions for the interpretation and violations of ethical standards, as well as to explain ethical standards of judges.

The Judicial Disciplinary Liability Law is applicable to judges of district (city) courts, regional courts and the Supreme Court, and to judges of Land Registry Offices of regional courts (hereinafter - judges), determines the basis of their disciplinary liability and regulates the procedures for initiating and examining disciplinary cases.

A judge may be subjected to disciplinary liability for:

- 1) *intentional violation of law during the adjudication of a matter in court;*
 - 2) *failure to perform his or her duties of employment or allowing gross negligence in the adjudication of a matter;*
 - 3) *dishonourable actions or gross violation of the norms of the Judges Code of Ethics;*
 - 4) *administrative violations;*
- refusal to discontinue his or her membership in parties or political organisations; and*
- 6) *failure to observe the restrictions and prohibitions provided for in the Law On Prevention of Conflict of Interest in Activities of Public Officials.*

The revocation or modification of an adjudication of a court shall not of itself be a reason for subjecting a judge, who has participated in its acceptance, to liability, if he or she have not allowed an intentional violation of law or negligence in the adjudication of the matter.

Matters concerning disciplinary and administrative violations by judges of district (city) courts, Land Registry Offices, regional courts and the Supreme Court shall be examined by the Judicial Disciplinary Board.

The composition of the Judicial Disciplinary Board shall be the Chief Justice of the Supreme Court and his or her deputy, three judges of the Supreme Court, two Chief Judges of regional courts, two Chief Judges of district (city) courts and two Heads of Land Registry Offices. The members of the Judicial Disciplinary Board (with the exception of the Chief Justice of the Supreme Court) shall be elected by secret ballot for four years at a conference of judges.

The following are entitled to initiate a disciplinary matter:

- 1) *the Chief Justice of the Supreme Court – concerning all judges in all the cases specified in Law;*
- 2) *the Minister for Justice – concerning all judges in all the cases specified in Law;*
- 3) *the Chief Judges of regional courts – regarding judges of district (city) courts and judges of the Land Registry Offices of regional courts – in the cases of intentional violation of law during the adjudication of a matter in court but regarding judges of regional courts – in all the cases specified in Law;*

4) the Chief Judges of district (city) courts – regarding judges of district (city) courts – in all the cases specified in Law;

5) the Heads of Land Registry Offices of regional courts – regarding judges of Land Registry Offices of regional courts – in all the cases specified in Law.

Commission of Judicial Ethics is entitled to initiate a disciplinary matter in case of violation of Judges Ethics Code.

A person, who is entitled to initiate a disciplinary matter, if there are grounds to initiate such matter, shall organize an exhaustive preliminary examination of the materials received and request a written explanation from the judge.

The Chief Justice of the Supreme Court, the Chief Judge of a regional court, the Head of the Land Registry Office of a regional court, or the Chief Judge of a district (city) court shall take a decision regarding the initiation of a disciplinary matter, but the Minister for Justice shall issue an order regarding such. The decision or the order shall indicate the circumstances of the disciplinary or administrative violation as determined in the preliminary examination, day of detection of the violation and the basis provided for by law for initiating the disciplinary matter. The decision or the order, together with the materials collected during the preliminary examination, shall be sent to be examined by the Judicial Disciplinary Board.

Before the materials of the disciplinary matter are sent to the Judicial Disciplinary Board, the judge against whom the disciplinary matter has been initiated shall be notified of the completion of the preliminary examination and of the time when he or she may become acquainted with the materials of the examination.

A judge against whom a disciplinary matter has been initiated has the right to become acquainted with the materials of the matter concerned, to provide explanations and to submit petitions.

Until the matter is examined by the Judicial Disciplinary Board, the decision or the order regarding the initiation of a disciplinary matter may be withdrawn, with a substantiated decision or order, by the person who initiated it.

A judge may appeal an opinion of the Judicial Disciplinary Board at the Disciplinary Court.

Judge like all state employments have to fill declarations of assets.

The office of a judge may not be combined with membership in a party or other political organization.

1-5. Distribution of cases

- Describe briefly the distribution of cases between judges and the conditions for their eventual divestiture
- Do you consider these procedures satisfactory? If not, how could they be improved?

A Chief Judge prior to the beginning of each calendar year shall approve a division of matters plan. A Chief Judge may amend the division of matters plan during the calendar year:

- 1) *due to the overload of work of judges;*
- 2) *due to an insufficient working load of judges;*
- 3) *in relation to a change of judges;*
- 4) *in relation to judges being unable to perform their duties.*

In the division of matters the workload of a judge when fulfilling duties in collegial administrative bodies shall be taken into account.

Distributions of cases have been managing by special system.

1-6. Recognition of the right of association

- The right to join or form associations/unions, is it recognized for judges?

- If so, what resources are allocated to the association / union in terms of grants, human resources?
- Do you consider these procedures satisfactory? If not, how could they be improved?

Judges may freely join together in organizations, which protect their independence, promote their professional development, and defend their rights and interests.

The office of a judge may not be combined with membership in a party or other political organization.

1-7. Protection of judges

- Are the judges frequently attacked in the media, by politicians or other people? Do they have special protection?
- Do you consider these procedures satisfactory? If not, how could they be improved?

The judges could be attacked by media or politicians without any reasonable reasons.

The judges do not have any special protection.

2 - Regarding the means of Judiciary

2-1. Funding of the judiciary

- *Annual budget of Justice*
Specify the total annual allocation to the functioning of the courts budget (including expenses relating to judges, prosecutors and legal aid). Does this budget seem to you sufficient? Judges, or bodies representing judges, are they consulted during the elaboration / implementation of budget?
- *Operating budget of the courts*
How and on which criteria are distributed the funds to the different jurisdictions? Can the courts use freely their budgets? Is it organized before committing expenditure a consultation of judges?
- Do you consider these procedures satisfactory? If not, how could they be improved?

There is difference in budget planning and organization between Supreme Court and other courts.

The draft budget requests of district (city) courts and regional courts shall be prepared by the Court Administration and submitted to the Ministry of Justice. The Ministry of Justice shall submit a summary of the budget request to the Council for the Judiciary for the provision of an opinion. Following the receipt of the opinion from the Council for the Judiciary, the Ministry of Justice shall submit the budget requests of district (city) courts and regional courts to the Ministry of Finance, appending thereto the opinion of the Council for the Judiciary.

As the draft budget requests of these courts budget have been prepared and presented by the Courts Administration (The Court Administration is a direct administrative institution subordinate to the Minister for Justice), these courts do not have enough serious impact to operation with budget.

The Supreme Court has own budget. The Supreme Court shall submit the budget request of the Supreme Court to the Council for the Judiciary for the provision of an opinion. The Supreme Court shall submit the budget request of the Supreme Court to the Ministry of Finance, appending the opinion of the Council for the Judiciary thereto.

It is not satisfactory that structure of court system regarding organization and budget drafting is divided. That leads to a distinction of opinions on budget matters, different budget planning and different salaries for court staff.

2-2. Salary

- Briefly define the scale of salaries of judges : at the beginning of the career, at the mid-term, at the end
- Who determines the salary of judges? Is there a system of “merit pay” (if so in what proportions? How the sums are assigned to judges?)
- Salaries are they likely to go down? If yes, have you met such cuts and in what proportions?
- Do you consider this situation and the guarantees for judges satisfactory? If not, how could they be improved?

Minimum salary in beginning of the career is 1647 euro (before taxes). At the midterm and end of career, judges salary increase, but depends on position – first, second or third instance, position in office.

The Chief of Justice of the Supreme court salary is 2799,90 euro (before taxes).

*Judges salaries are definite in special law for all state public servants - Law On Remuneration of Officials and Employees of State and Self-government Authorities. Before reform, judges salary was define in special law - Law of Judicial Power. In point of judges salary, law was never completely move in power and finally was canceled and changed to law for all public state servants.
Judges do not have merit pay.*

2-3. Pensions

- At what age and how judges can they retire?
- Does the amount of the pension satisfactory ?
- Do you consider that improvements have to be done?

Maximum age for judges in office is 70 years. Pension for judges, like for all other is possible starting from age of 62 years (in next years pension age will increase to 65 year).

Amount of pension depends on judges salary in last years before pension time. To qualify for judges pension, judge should be in office for minimum of 20 years. After serving of 20 years judges pension will by 65 % of judges salary in last 5 years. For serving more than 20 years, judges pension increase – 2% by every year, but not more than 80 % of salary.

2-4. Accessibility and Efficiency of Justice

- Are there barriers to the defendant to access to justice? Are there mechanisms to provide access to justice for the most disadvantaged people (legal aid, Support to victims ...)
- Are there problems of deadlines in the treatment of cases ?
- Do you consider these procedures satisfactory? If not, how could they be improved?

Generally there are no barriers to the defendant to access to justice.

Section 3 of State Ensured Legal Aid Law regulates right to Legal Aid.

The Paragraph one on this Section states that the following persons have the right to legal aid: 1) a citizen of Latvia; 2) a non-citizen of Latvia; 3) a stateless person; 4) a European Union citizen who is not a citizen of the Republic of Latvia, but resides legally in the Republic of Latvia; 5) a third-country national (including a refugee and a person who has been granted the alternative status in the Republic of Latvia) who is not a citizen of a European Union Member State, if he or she legally resides in the Republic of Latvia and has received a permanent residence permit; 6) a person who has the right to legal aid ensured by the Republic of Latvia in accordance with the international agreements entered into by the Republic of Latvia; 7) an asylum seeker; 8) a person whose permanent place of residence or domicile is one of the European Union Member States, in cross-boundary disputes; and 9) a foreigner who is subject to the forced return procedure in the cases and by the procedure specified by the Immigration Law (hereinafter – foreigner to be forcibly returned).

The natural persons referred to in Paragraph one, Clauses 1, 2, 3, 4 and 5 of this Section have the right to request legal aid if: 1) they have obtained the status of a low-income or needy person in accordance with the procedures specified in the regulatory enactments regarding the recognition of a natural person as a low-income or needy person; or 2) they find themselves suddenly in a situation and material condition which prevents them from ensuring the protection of their rights (due to a natural disaster or force majeure or other circumstances beyond their control), or are on full support of the State or local government (hereinafter – special situation).

The natural persons referred to in Paragraph one, Clauses 6, 8 and 9 of this Section have the right to request legal aid if these persons, taking into account their special situation or state of property and income level, are unable to ensure the protection of their rights. The Cabinet shall determine in which cases the state of property and income level of the persons referred to in Paragraph one, Clauses 6 and 8 of this Section shall be regarded as appropriate for the receipt of legal aid, and the procedures for the evaluation thereof.

In specific situations (for instance – persons with mental illness, etc.), exist mechanism how person get legal aid, if there are special conditions, for free.

Disadvantaged person have right for appeal, and this right every time have to be explain by official.

In all cases exist deadlines, but if there are objective circumstances, plaint could be submitted after deadline. In this situation if plaint refused, person have right to give one more plaint, what is decide by judge of next level.

3 - Regarding the national association

3-1. Representativeness of the association

- How many members does the association have? Has this number increased since the association became a member?
- Do other associations/organizations of judges exist?
- If elections are held in the country in question, please furnish statistical data relating to the extent to which the association is representative.
- Does the association include members who are independently elected and who oversee the judiciary? The discipline of the judiciary?

In Latvia exists two associations of judges – Association of Judges and Association of Administrative Judges. Association of Judges consolidate 175 (from 573) judges. Member of association could be any judge of Latvia. The association present all member judges.

Association of Administrative Judges consolidate 52 (from 70) judges. Member of association could be only Administrative Judge and association could present only administrative judges.

The member of judges association could be only judge and no other authorities could be the member of association.

3-2. Modalities for appointment / election of its representatives

- How are the leaders of the association selected? Are they elected by the members? Are they appointed? If yes, by whom and by what process?
- How is the association organized? Is there a board of directors/association council? If yes, how are the members of the council appointed/elected? What powers does the council have?
- Does the association have regional representatives? If yes, how are they appointed/elected?

Structure of Latvia Association of Judges consists of:

The President, three Vice Presidents (one Vice President come from the first instance, one from court of appeal, one from the Supreme court), eleven members of the board. The Board consists of members from different parts of country (should be presented all five regions and the Supreme court).

Every official of Latvia Association of Judges could be elected only in legal elections, and only by members of association.

In first step, members of association choose President, then Vice Presidents, and then, members of the board.

Regional parts of association could be established, but do not exist yet.

3-3. Financing Association

- What is the association's annual budget?
- What are the association's funding sources: membership dues, subsidies, other funding sources?
- What have been the principal expenses?

The budget consist only from member fee. The association could ask for financial support from Courts administration.

General expenses are organization members meetings and special events for members, fee for International Judges Association, trip for international meetings. As well as, financial support for members.

3-4. Relations association with public administration

- Does the association meet regularly with representatives of the executive? In particular with the Minister of Justice and his/her associates? Is the association consulted in advance of all government reforms?
- Does the association meet regularly with representatives of the legislature? Is the association asked to provide its opinion on projects and bills before they are examined by the parliament?

Delegates of association have meetings with executive and legislature, but position of association rarely have been taken in to account and have more formal meaning.

3-5. Actions undertaken by the association during the last 3 years

- What were the main actions undertaken in the previous year? In the previous three years? Since becoming a member?
- Has the association organized collective action (demonstrations, strikes...)?
- Does the association have a media presence? Has the association published documents (books, reviews, communiques...)?
- Did the eventual actions taken have a positive impact on judicial powers?

Last actions organized by association— meetings in regions with members and all regional judges to discuss actual problems. Electronic discussions for judges to figure out problem.

Every judge has been informed about all actions what have been taken by association board.

Association gather point of view of single judge and inform the executive and the legislative about problems.

4 - Miscellaneous

- What were the main problems encountered by the judiciary in your country in recent years?
- Would you say that the situation for the judiciary has improved? decreased? has remained stable?
- What are the main reforms underway or planned? These reforms seem they go in the right direction?

The main problem is reductions of salary (by changes in law). The salary have not been tempting for professionals, so, lot of the best candidates do not wants to by a judge.

All situation in legal field are not secure, still lot of changes in law could be made without enough discussions and evaluation of necessity.

Questionnaire for Member Associations

Slovenia

1. Regarding independence of judges

1.1. Recruitment

Vacant judicial posts shall be called by the Supreme Court of the Republic of Slovenia (RS) within 7 days of receipt of the reasoned proposal of the President of the Court (unless it is a Supreme Court judge's post). Tender shall be published in the Official Gazette, the deadline for application may not be less than 15 days. Candidates must submit a request proof that it meets both general and special conditions laid down in Articles 8 to 12 of Judicial Service Act. After the expiry of the deadline for application Supreme Court sent a timely and complete application to the President of the Court, in which the vacant judicial position exist. The President of the Court then within 20 days of receipt of material write a reasoned opinion on the suitability of each candidate. The opinion must be treated according to the criteria for the selection of a judge as provided for in Art 28 of the Judicial Service Act. Opinion served on all the candidates it may pass within 8 days reasoned comments. Upon receipt of comments, the president of the court within 8 days of reaching a final opinion and together with the entire written material and observations of candidates sent to the Judicial Council . The President may , in particular , indicate which candidates considered the most appropriate for filling a vacant judicial post and this also explains in its decision . Explanations should include assessment of the candidate's personal information and opinions on the skills and other abilities to perform the judicial function. For candidates who first time candidate for election to judicial office records of professional qualifications include data on student performance during the study of law, information and assessment of the candidate's training during the traineeship and assessment of the candidate's work in the course of the candidate's work , if in the course of her previous profession appeared before the courts. For candidates who are already judges, the Judicial Council has the right to inspect the personnel file of a judge.

Judicial Council is in the process of selecting candidates from the president of the court may request additional explanations opinion on candidates' suitability, as well as itself can obtain additional information and evidence. Judicial Council in the selection is not bound by the opinion of the President of the Court on the adequacy of the candidate, the Judicial Council may also take place with candidates for a personal interview. The Judicial Council is not obliged to choose a candidate who otherwise meets the formal requirements for the advertised judicial position.

In the case of a candidate who is a candidate for the first time in judicial office by the Judicial Council then proposed to the National Assembly (Parliament) for election. The Judicial Council makes a choice and the National Assembly still propose only one candidate. If the National Assembly fails to elect, the same candidate can be proposed by Judicial Council again, or can be carried out among the applicants new selection and propose a new candidate or decide to call judicial post again. In the case of a candidate who already has been elected to judicial office, by the Judicial Council shall be appointed for an advertised judicial position and transferred to the court in which the advertised vacant post exist.

If a higher judicial position, the appointment shall be considered for promotion to a higher judicial post.

If you decide on the appointment of the candidate to the post of Chief Justice but his secondment to decide (again) by the National Assembly on the proposal of the Judicial Council. The transfer shall take place on 30 day after the final decision on the appointment.

The process of publication of free judicial post and the selection procedure shall be the judge considers appropriate, on several occasions, we have already suggested that the first appointment of Judges to the judicial position should be within the jurisdiction of the Judicial Council, or at least the only act of the President of the Republic in order to minimize the possibility of influencing politics the selection of judges. Major complications in recent times did not say so. However, since it is the judges for professional work and not for political office, we see no reason to National Assembly as a legislative body should decide on who will be the judge, instead of being left to an independent body *sui generis* - the Judicial Council.

1.2. Initial and continuing training

In Slovenia we have no special education or school before the person is not elected and appointed to the judicial position in a particular court (like ENM in France).

Within the Ministry of Justice has established the Centre for Education in the administration of justice (Judicial Training Centre), some sort of educational centre which caters for the education of all employed in the Judiciary, the State Prosecutors, State Attorneys, for the education of forensic experts, appraisers, interpreters, bailiffs, and to some extent also lawyers (barristers). The program of the Judicial Training Centre established by the Minister for Justice on the proposal of the Programme Council (administrative authority), in which also has the Slovenian Association of Judges one representative.

What will be the program and to what extent will take place, depends solely on the volume of certain funds provided by the Ministry of Justice within their budget, and where education is not exactly one of the biggest priorities of the ministry. It is partly funded Center also from European funds.

When a person is elected to judicial office and appearances work but may attend trainings for judges beginners, such as the simulation of the hearings or methods of interrogation of witnesses course on how to write judgements and others. As a continuing training are the different fields of law for judges organized: from attending “school” once a year for two or three days. At these schools deal with a variety of content from presentation of new laws, current case law and accompanying content. These so-called schools should be mandatory for each judge. In addition to these schools, there are every year a number of other a few hours or one-day seminars that deals only narrowly specialized topics.

We believe that especially need to improve the method of initial training, as the judge at the beginning of his career left to himself. The fact is that Slovenia is a country with a large number of judges per 100,000 inhabitants, and that at least the last two years the trend of judges very present and the so-called judges beginners are only a few per year. Continuing training is at least as regards the judges' schools well organized. We would be happy to have a higher chance of getting to know judges from the experience of other countries, in terms of domestic law should be organized several workshops with a small number of participants rather than lectures. Otherwise, Slovenian Association of Judges has excellent cooperation with the JTC and jointly organize more trainings, which were among the judges very well accepted and estimated.

1.3. Appointment and career

As already mentioned in section 1.1. judges appointment is made by Judicial Council and either, if the candidates stand for the first time, they are proposed to the National Assembly for election, if they are already elected, they are appointed by Judicial Council and transferred to another judicial post.

With the onset of the judicial service judge shall acquire the right to promotion. Judge may progress every three years to a higher salary grade, but can also progressing to a higher judge's name (on the same jump), he/she can progress to a higher judicial position and the position of councillor (senior judge). About the selection and promotion of judges on the Judicial Council decides as a body established by the Constitution of the Republic of Slovenia in the 131 Article. The Judicial Council consists of 11 members. 5 members are elected on the proposal of the President of the Republic by National Assembly from among university professors of law, lawyers and other jurists, 6 members from among themselves elect the judges holding permanent judicial office. In Slovenia we don't have a special Law on the Judicial Council, which is referred to as a disadvantage. However, there are rights and obligations of the Judicial Council determined in the Courts Act, namely Articles 18 to 29 Jurisdiction of the Judicial Council are set out in Article 28 of the Courts Act, namely:

(Courts Act, Article 28)

The Judicial Council shall have the following competences:

- to propose to the National Assembly candidates to be elected to judicial office;
- to propose to the National Assembly the dismissal of a judge;
- to appoint and dismiss presidents of courts, except for the President of the Supreme Court of the Republic of Slovenia;
- to decide on promotion to a higher judicial title and on faster promotion within wage (salary) grades; on promotion to the title of senior judge or to a higher judicial post and on extraordinary promotion to a higher judicial title;
- to decide on an appeal against a decision on reassignment and/or appointment to a judicial post, a judicial title and/or a higher judicial title and against a decision on a classification into a wage grade;
- to decide on the incompatibility of a judicial office;
- to give an opinion on the budget proposal for courts and provide the National Assembly with an opinion on laws regulating the status, rights and duties of judges, as well as court staff;

- to adopt quality criteria for the work of judges for assessment of judicial performance and criteria for the work of courts;
- to specify the number of posts of judge in a particular court;
- to monitor, establish and analyse the efficiency and effectiveness of courts, and to produce an annual report on the efficiency and effectiveness of courts;
- to hear and decide on the justifiability of an appeal of a judge who believes that his/her legal rights, his/her independent position or the independence of the judiciary have been violated;
- to perform other matters, if so provided bylaw.

The Judicial Council is therefore crucial role in the selection and promotion of judges. Criteria for appointment or for promotion of judges are laid down in the Judicial Service Act and otherwise in Articles 28 and 29

Judicial Service Act (Article 28)

In selecting candidates for judicial service and deciding on promotion, the Judicial Council must act according to the criteria set out by this act for determining whether a candidate has the professional knowledge and capabilities for performing judicial service or fulfils the conditions for promotion.

Personnel councils shall also be bound by the criteria specified in the previous paragraph.

(Article 29)

The assessment of judicial service shall be compiled in consideration of the following criteria:

1. professional knowledge, whereby consideration shall especially be taken of the judge's professional activities, the judge's specialist and postgraduate studies, and the reputation achieved by the judge in the legal profession;
2. working capabilities, whereby consideration shall especially be taken of the ratio between the volume of judicial work performed and the expected volume, of whether the judge schedules and conducts hearings continually, of timeliness of drawing up judicial decisions and timeliness of proceeding with regard to applied legal remedies;
3. the ability to resolve legal questions, whereby consideration shall especially be taken of the level of correctness and legality achieved in the judge's decision-making as determined primarily in procedures with legal remedies, of whether the judge is taking into consideration good judicial practice and of judge's abilities to resolve complicated and complex cases;
4. work performed in elimination and prevention of the judicial backlog, especially processing of cases in the order they are being filed, taking into account the number of assigned cases as well as the ratio between the number of completed cases defined as judicial backlog and the number of

all completed cases, the ratio between the number of completed urgent cases defined as judicial backlog and the number of all completed urgent cases, and the number of concluded court settlements;

5. safeguarding of the reputation of the judge and the court as determined from the way in which procedures are conducted, communication with parties and other bodies, the preserving of independence, impartiality, reliability and uprightness, and behaviour inside and outside the service;

6. the ability of verbal and written expression, as proceeds from the records of the cases handled, judicial decisions drawn up and the judge's professional action;

7. additional work undertaken in holding judicial office, within the framework of mentorship, participation in education, professional training, preparation of regulations and carrying out other demanding professional tasks;

8. the attitude towards colleagues in performing judicial work;

9. the ability to perform the functions of a managerial position, if the judge is appointed to such a position, as shown by the work results in the area entrusted to the judge.

The assessment of judicial service must contain details on the fulfilment of all the criteria specified in the previous paragraph.

Judges in Slovenia have permanent tenure, which is set in 129 of the Constitution of the Republic of Slovenia.

Judges of the Republic of Slovenia shall be evaluated every three years, in the first three years of judicial service each year. Evaluation of judicial service personnel councils draw up, for local and district judges of the High Court personnel council, for high (appeal) court judges of the personnel council of the Supreme Court, the Supreme Court judges(justices) also personnel council of the Supreme Court. The assessment shall be filed in the personal file of the judge. The personnel council in making estimates of the judicial office has to follow the criteria as laid down in the above mentioned 28 and 29 Articles of the Judicial Service Act.

In principle, we believe that the procedure is good only in respect of the assessment period (three years), we believe that the period for regular assessment for each judge is too often and it would be prudent to extend this period, such as every 6 years, since they were so estimates may be considerably more depth and thus more credible.

1.4. Discipline and Ethics

The Code of Judicial Ethics in the Republic of Slovenia has been adopted by the Slovenian Association of Judges already in 1972 and updated in 2001 and a supplement to add a commentary. The Code of Judicial Ethics is a record of the most important principles according

to which shall act and behave each judge: independence, impartiality, competence, commitment, compatibility, incompatibility, attitude to other judges and court staff and to the participants in the proceedings and reputation. Certain provisions of the Code were in 1995 (when judicial reform) included in the Judicial Service Act (Articles 37 to 43). Since 1995 The Slovenian Association of Judges no longer has jurisdiction to conduct disciplinary proceedings. The Association has an advisory body - the Council of Judicial Ethics, which advises judges and accepts the views and recommendations regarding the conduct of judges.

Disciplinary liability, actions that constitute a breach of judicial duties, disciplinary sanctions, the disciplinary authorities and disciplinary procedure defines the Judicial Service Act in Articles 80 to 100.

The disciplinary court of first instance and the disciplinary court of second instance shall decide in disciplinary proceedings. The disciplinary court of first instance shall consist of eight judges: two judges of the Supreme Court, two higher court judges, two district court judges and two local court judges. One of the Supreme Court judges shall be the president of the disciplinary court of first instance and the other shall be his/her deputy who shall deputise for the president in his/her absence.

The disciplinary court of first instance shall decide in individual cases in a panel of three judges, at least one member of which must have a status equal to that of the judge against whom the disciplinary proceedings are being brought. The president of the disciplinary court shall determine the composition of the panel.

The disciplinary court of second instance shall consist of five Supreme Court judges. The disciplinary court of second instance shall have a president and a deputy-president who shall deputise for the president in his/her absence.

A panel consisting of the president and two other judges shall decide on appeals against decisions by the disciplinary court of first instance. The president of the disciplinary court shall determine the composition of the panel.

The proposal for disciplinary sanctioning shall be lodged and presented by the disciplinary prosecutor, who shall be deputised by his/her deputy in case of his/her absence; they shall both be judges of the Supreme Court.

The disciplinary bodies shall be based at the Supreme Court of the Republic of Slovenia, which shall also secure the funds and other conditions for their work.

The principal acts that entail a breach of judicial duties or irregular performance of judicial service are:

1. commission of an act that has the statutory definition of a criminal offence while holding judicial office;
2. failure to carry out judicial duties or unjustifiable refusal thereof;

3. unconscientious, late, inappropriate or negligent performance of judicial service;
4. illegal or inappropriate disposal of resources;
5. disclosure of official secrets and other confidential information defined by law or the Court Rules;
6. abuse of status or transgression of official authorisations;
7. abuse of the right to absence from work;
8. failure to achieve the expected work results for more than three months consecutively without justifiable grounds;
9. breach of the case roster or priority handling of cases defined by law or the Court Rules;
10. performance of functions, work or activities incompatible with judicial office pursuant to the Constitution and law;
11. failure to notify the president of the court regarding the acceptance of work assessed as incompatible with judicial office;
12. failure to report existing legal grounds for the exclusion of the judge or continuation of work on a case in which there are grounds for exclusion;
13. advance public expression in a judicial case that is *sub judice* or in a case in which extraordinary legal remedies have been lodged;
14. action or behaviour on the part of the judge that conflicts with the judge's impartiality or that damages the reputation of the judicial profession;
15. inappropriate, undignified or insulting behaviour or language towards individuals, state bodies and legal persons in relation to the performance of judicial service or outside it;
16. obstruction of the functioning of the court in order for the judge's own rights to be exercised;
17. acceptance of gifts or other benefits related to judicial service;
18. failure to submit information on financial status or late submission thereof;
19. breach or omission of mentoring duties;
20. failure to observe decisions issued on the judge's transfer or assignment;
21. prevention of obstruction of the implementation of the provisions of the act governing official supervision of judges' work and supervisory appeals;
22. dealings with parties, their representatives and other persons that are in conflict with the provisions of the Court Rules;
23. failure to observe measures for the regular and effective execution of judicial power;
24. breach or omission of measures pursuant to the programme for resolving the backlog at the court;
25. failure to fulfil the duties of professional education;
26. breach of safety at work regulations;
27. breach of the provisions of the Court Rules on the use of official robe.

Disciplinary sanctions pursuant to this Act are:

1. written warning;
2. suspension of promotion;
3. wage reduction;
4. transfer to another court;
5. termination of judicial office.

The final decision on the disciplinary sanction pronounced shall be sent to the president of the court, the ministry responsible for justice and the Judicial Council which shall be responsible for executing the disciplinary sanctions

The provisions of the act governing criminal proceedings that apply to the fast-track procedure before a local court shall apply in disciplinary proceedings *mutatis mutandis*, with the exception of the provisions relating to the injured party, to the announcement of appeal, to the request for protection of legality and to extraordinary mitigation of penalty.

The general public shall be excluded from disciplinary proceedings unless the judge in the proceedings expressly opposes the exclusion of the public.

Disciplinary proceedings shall be introduced upon the lodging of a proposal for investigative action or the direct lodging of a well-founded proposal for the pronouncement of a disciplinary sanction.

Upon the lodging of a proposal for the pronouncement of a disciplinary sanction the President of the Supreme Court of the Republic of Slovenia may, with regard to the nature and seriousness of the alleged breach of discipline, pronounce suspension from judicial service on the judge.

Already the Judicial Service Act provides that a judge may not engage lawyers or notaries' operations or business or other activities, also may not engage in the business of management, may not be a member of the administrative or supervisory board of a company or other legal entity which deals in gainful activity.

If the judge is elected as the President of the Republic, member of the National Assembly, Judge of the Constitutional Court, a judge of the International Tribunal, the Prime Minister, the Ombudsman or his deputy, appointed as the Minister or State Secretary, for the President or Deputy President of the Commission for Prevention of Corruption his/her judicial function and all rights and duties of judicial office remain stationary. They also remain stationary if the judge is elected as the Member of the European Parliament, the European Ombudsman, if appointed as a member of the European Commission or a member of the International civil Mission.

A judge shall not accept any employment or work which would interfere with his job or contrary to the reputation of the judicial service or conveys the impression that the performance of his duties is not impartial. The judge can carry out pedagogical, scientific, journalistic, research or other similar work in the legal profession, where that does not impede the performance of judicial office. In order to perform these works, the judge may not enter into an employment relationship.

If he/she is casting doubt on whether the judge should perform a particular job, the President of the Court, where the judge is employed, proposed Judicial Council to decide on the

incompatibility of work with the judicial function. If the Judicial Council determines that the work is incompatible with the judicial function, the judge is prohibited to perform it.

Judges in Slovenia are required to declare their assets within one month after the onset of the judicial function and each year thereafter for the duration of the judicial function and the change in property which is greater than € 10,000.00 within 8 days after the occurrence of such changes. Judges are obliged to submit a report on its property even after the termination of the judicial function. This announcement judges are obliged to submit to the Commission for Prevention of Corruption.

As already mentioned above, are to decide on the disciplinary responsibility of judges competent Disciplinary Commission I. and II. degree (level II shall decide on appeals against decisions of the Disciplinary Commission level I). In disciplinary proceedings are guaranteed to the judge all warranties as applicable to each defendant in criminal proceedings (Code of Criminal Procedure is intended to apply in disciplinary proceedings). Judge may counsel with the proponent judge who is entitled to reimbursement of necessary expenses. Disciplinary hearing is contradictory. About the hearing there is obligatory to write the minutes. Appeals against the decision of the Disciplinary Commission level I. are decided by the Disciplinary Commission level II., which consists of five Supreme Court judges.

We believe that the procedures regarding disciplinary actions and proceedings are satisfactory. We think that the suspension of judges' duties and rights for the time when the judge perform a political function (a member of the National Assembly, Minister, State Secretary, Prime Minister, Member of the European Parliament etc.) is too wide. One very important feature is the impartiality of the judge. This principle should also be reflected outwards so that the referee's performance is not only actual impartiality, but also the external appearance of impartiality. It is impossible to judge who was previously a political functionary, that he/she can satisfy the criterion of (external) appearance of impartiality in judicial proceedings.

1.5. Distribution of cases

Manner the caseload and who is legitimate judge sets already Courts Act, more specifically, the rules for allocating files are determined by the Court order. It is essential that the files are shared according to a pre-known key, namely the share issues in the order as they come, after the initial letters of the surnames of judges in alphabetical order. A deviation from this system occurs only in the case where the judge must exclude, for some reason in law (kinship, previous employment in a company that is a party to the proceedings, etc.) or if there is an overload or prolonged absence of certain judges, which is again necessary in a transparent way to distribute files evenly between the other judges.

Certain system for allocating cases it seems appropriate.

1.6. Recognition of the right of association

Judges in the Republic of Slovenia have the right to establish (their own) association and can be the members of the association(s).

This right has been used by Slovenian judges very early. The Slovenian Association of Judges was founded already in 1971 respectively.

Judges do not have rights to organize trade union, because we are functionaries and not officials or employees.

Essential tasks and activities of the Association are:

- strengthening and protecting the independence and sovereignty of judges in the exercise of the judicial function;
- protecting the reputation, professional and other interests of its members;
- commitment to respecting the values of law and achieving a higher level of democratic legal culture;
- provision of all-round professional training;
- developing collegial and friendly relations among colleagues;
- cooperating with other organisations of judges and lawyers at home and abroad;
- membership of such organisations at home and abroad.

The judges may also be members other associations, where their activity is such that it does not object to the reputation of the judicial service. Judges must not be members of organizations based on exclusiveness (Rotary, Lions clubs).

We believe that such an arrangement is entirely appropriate.

1.7. Protection of judges

Judges are often attacked in the media because of the issues to be considered by both the politicians and less by the other participants in the proceedings. The judges for this we have no special protection.

Judges are aware that our work is constantly under the watchful eye of the public, but we expect compliance with all generally accepted principles of judicial independence, compliance with the court's decision and, above all criticism be proved, but in defamation and generalization of the truism that a serious dialogue is not it belongs.

2. Regarding the means of Judiciary

2.1 . Funding of the judiciary

For 2013 , it was for the courts in Slovenia aimed cca 170 mio EUR . The budget for the court is separate from the prosecutor's office, but contains assets that are intended for legal assistance .

The budget for the judiciary in 2013 was due to the crisis considerably reduced, it is the same foreseen in 2014: 172.175.013 EUR. For the normal functioning of the judiciary it is lacking , about that the judiciary warned the other two branches of government. Both the Supreme Court and the Judicial Council shall be informed of the proposal of the State Budget, which is composed for the judiciary by the Ministry of Justice, but the National Assembly on the opinion of the Judicial Council is not bound. The Supreme Court just do not act in the process of adopting the State Budget, in which is the budget for the judiciary a part.

We are not aware what criteria are used to determine the budget of the judiciary within the integral state budget , despite the reasoned opinion of judiciary, the National Assembly ignore it.

Certain appropriations to individual courts and the judicial council of the key number of employees and the size of the court divided Supreme Court . Nevertheless, individual courts can not dispose freely of budgetary resources but everything is done through a centralized system MFRAC (governed by Ministry of finance for all budget users) . Individual court during the year , if there is a sudden increase in expenditure request for the allocation of additional funds , but only in very limited cases. Single judge has no direct impact on budgetary expenditure.

We believe that the judiciary should have a decisive influence in the provision of financial resources within the scope of the state budget or have a completely separate budget . However, it seems to us appropriate that the Supreme Court had redistributing funds within the resources that are intended for the judiciary in a given year .

2.2 . Salaries of judges

In Slovenia, the salaries of judges according to wage reform of the entire public sector are regulated by the wage system in the public sector and with various emergency law due to the financial crisis. The Judicial Service Act , where wages of judges (salaries or better judges remuneration) were regulated before judicial reforms in 1995 until the end of 2005 , it was determined that the salaries of judges shall be determined by law and that judges salaries may not be reduced , except in the case where specified in the Judicial Service Act . With the amendment of the Judicial Service Act in summer 2013, which entered into force on 10th August 2013 , this provision (procedural safeguards against the other two branches of government) was deleted , so now can every law reduced the salaries of judges .

In Slovenia, the salaries of judges are divided by salary grades (wage brackets) ranging from 47 up to 65 as the table below shows .

Senior Supreme Court Justice 61
 Supreme Court Justice 60
 Senior High Court Judge 58
 High Court Judge 55-57
 Senior District Court Judge 54
 District Court Judge 50-53
 Senior Local Court Judge 52
 Local Court Judge 47-51

President of the Supreme Court 65
 President of the High Court II 60 to 100 employees 60
 President of the High Court I, more than 100 employees 61
 President of the District Court III to 100 employees 56
 President of the District Court II from 101 to 300 employees 57
 President of the District Court I over 300 employees 58
 President of the Local Court IV to 50 employees 53
 President of the Local Court III from 51 to 100 employees 54
 President of the Local Court II from 101 to 300 employees 55
 President of the Local Court I over 300 employees 56
 Vice-president of the Supreme Court 62
 Vice President of the High Court II to 100 employees 59
 Vice President of the High Court I, more than 100 employees 60
 Vice President of the District Court III to 100 employees 55
 Vice President of the District Court II from 101 to 300 employees 56
 Vice President of the District Court I over 300 employees 57
 Vice-President of the Local Court I over 300 employees 54

Secretary General of the Supreme Court 57

Salary grade of the President of the Supreme Court is equal to the salary grade of Prime Minister and President of the National Assembly.

Pay scale valid from 1 6 2013 to 31 12 2014 - Law on salary system in public sector (ZSPJS)

Salary grade	basic salary	salary grade	basic salary
1	438.18 €	34	1,587.91 €
2	455.71	35	1,650.48

3	473.93	36	1,715.51
4	492.89	37	1,783.10
5	512.61	38	1,853.35
6	533.11	39	1,926.37
7	554.44	40	2,001.31
8	576.61	41	2,079.16
9	599.68	42	2,160.04
10	623.66	43	2,244.07
11	648.61	44	2,331.36
12	674.56	45	2,422.05
13	701.54	46	2,516.27
14	729.60	47	2,614.15
15	758.78	48	2,715.84
16	789.13	49	2,821.49
17	820.70	50	2,929.83
18	853.53	51	3,042.34
19	887.67	52	3,159.16
20	922.82	53	3,280.48
21	959.36	54	3,406.45
22	997.35	55	3,537.25
23	1036.85	56	3,673.08
24	1077.91	57	3,814.13
25	1120.59	58	3,960.59

26	1164.97	59	4,112.68
27	1211.10	60	4,270.61
28	1259.06	61	4434.60
29	1308.92	62	4604.89
30	1360.49	63	4781.71
31	1414.10	64	4965.33
32	1469.81	65	5156.00
33	1527.72		

Pay scale valid from 1 6 2012 to 31 5 2013 and from 1 1 2015 onwards. The Law on Public Finance Balance (ZUJF)

Salary grade	basic salary	salary grade	basic salary
1	440.38 €	34	1,606.68 €
2	458.00	35	1,670.94
3	476.31	36	1,737.79
4	495.37	37	1,807.29
5	515.18	38	1,879.59
6	535.80	39	1,954.78
7	557.21	40	2,032.98
8	579.51	41	2,114.29
9	602.70	42	2,198.84
10	626.81	43	2,286.81
11	651.88	44	2,378.28

12	677.95	45	2,473.41
13	705.06	46	2,572.34
14	733.27	47	2,675.25
15	762.60	48	2,782.25
16	793.10	49	2,893.54
17	824.84	50	3,009.28
18	857.83	51	3,129.66
19	892.13	52	3,254.84
20	927.82	53	3,385.03
21	964.94	54	3,520.44
22	1003.54	55	3661.25
23	1043.68	56	3807.69
24	1085.43	57	3960.02
25	1128.83	58	4118.41
26	1173.99	59	4283.14
27	1220.94	60	4454.47
28	1269.78	61	4632.64
29	1320.58	62	4817.96
30	1373.40	63	5010.67
31	1428.34	64	5211.10
32	1485.46	65	5419.54
33	1544.88		

The differences in the amount of wages is due to different tax burdens. Net earnings of a judge who has no children is 54% of gross salary, which is evident from the above table, net earnings of a judge who has two teenage schoolchildren, 65% of gross earnings.

The judge may periodically advancing every three years , but only within their wage group. The wage reform , which has been for judges completed in 2009 , the number of pay grades reduced , in particular, that the judges beginners may have a higher starting salary grade . In the transition from the old to the new salary system legislative and executive authorities refused to accept the arguments of judges , it is necessary when translating from one system to another system take into account the already achieved promotion. Both were nullified all achieved promotion of judges salary grade and is now the state so that the judge beginner is in the same individual salary group as salary group of a judge who performs judicial service for example, 20 years . In addition to these irregularities , which was by the other two branches of government under the pretext of the need to save out in contravention of the agreement , the judges despite the normative equalize pay grades of officials of all three branches of government , according to several decisions of the Constitutional Court , however, due to the effects of the crisis and consequently, a reduction in salary of a judge, yet judges did not get a salary like us go after the implementation of the reform .

Salaries of judges are thus determined by the law of " merit pay" we do not have , because we believe that the judge must decide in accordance with the Constitution , laws and international conventions at the order and dedicated . Reward for efficiency in our opinion, is not compatible with a judge's profession. (When it comes money, Justice goes.)

Recently, salaries decreased as shown in the table above . Wages are lower by about 8 % . As can be seen from another table to be assuming economic growth in 2015 earnings increased by , but according to the latest indicators, this is difficult to believe , soon is to expect further reductions.

We believe that such a state and guarantees for judges is not sufficient. We believe that it would be necessary to enter the fuse back in the Judicial Service Act, namely, that it may be determined when the referee pay may be reduced, while judges are aware and we judges are willing to share the fate, in which the state is, but at the same proportions as officials of the other two branches of government.

2.3. Pensions

For judges subject to the same possibility of retirement as is the case for all other employed workers , which is on the rise and will reach the 2018 final age, when both women and men can

retire when they reach the age of 65 and 40 years of pensionable service .

In 2014, the male judges can retire when they met 58 years and 8 months of age and 40 years of pensionable service, and female judges, if they meet 58 years and 4 months of age and 38 years and 8 months of pensionable service.

Judges for the special provision in the Judicial Service Act , the judge must retire no later than at the end of the year in which he/she reaches the age of 70.

In the pension base in 2014 is considered the sum of earnings in the last 19 years of work. The pension amounts for men 57.25% of the pension base (the average wage in the last 19 years) and for women 60.25%.

The amount of the pension is much lower than the judge's salary, which is not sufficient or at least not appropriate to his/her status or decent life after retirement.

In view of the poor financial situation of the country where the constant attempts to lower pension and not only wages , there is no realistic possibility that the system would be improved in any way .

2.4 . Accessibility and Efficiency of Justice

I believe that the accused has very well assured access to justice in the Republic of Slovenia. For all offences , which are punishable by a penalty of 5 years imprisonment or more, the defendant puts defence counsel ex officio , if he/she previously did not take it himself . At the first hearing has the right to counsel those deprived of their liberty, even before the detention. For those customers of judicial proceedings , which themselves can not afford a legal representative has provided free legal aid system , of course, subject to certain conditions (financial and substantive criteria) as defined by the Law on Free Legal Aid . The system provides free legal assistance even individual entrepreneurs and legal entities when it comes to bankruptcy proceedings, which would be without the mobilization of resources not able to start .

In the courts is not organized a special department to assist victims of crime , but such assistance is organized in such police stations , as well as in the centres for social work , and also in a number of non-governmental organizations .

The duration of the court proceedings was in Slovenia for some time one of the main problems , as the Courts , following the reform in 1995 and over the next few years, faced with a huge

number of pending cases and , on the other hand, the departure of experienced judges. The consequences of these reforms have not yet been fully resolved , but with many new particular organizational measures (such as the introduction of triage in economic , civil and criminal proceedings) , the time resolution of cases significantly shortens . It is because of the excessive length of time resolving issues and requirements of the European Court of Human Rights was established in 2007 Lukenda project , after which the system occurred over 250 new judges and a lot of new civil servants , so that in 2008 in the Republic of Slovenia was almost 1,200 judges. Even then , The Slovenian Association of Judges indicate that it is necessary to change the particular procedural legislation that will allow that some less demanding tasks performed clerks , judges' assistants or assistants , rather than judges , and to us too many judges in the future, just hurt . It was soon confirmed as a true and already in 2009 by the two other branches of government began to arrive requirements to reduce the number of judges . According to recent data should be in the Republic of Slovenia 970 judges (1.1.2014), the number is decreasing , on the one hand due to retirements and departures from the judicial service to better paid jobs , on the other hand, in exceptional cases only called by some new judicial position .

In June 2013, when , due to a lack of money Lukenda project finished and this meant that the court has left over 250 clerks and legal assistants , which is necessarily result that is very favorable trend of shortening the expected time resolving issues stopped . To try at least somewhat alleviate this situation , the Supreme Court was almost forced to be signed with the Government of the Republic of Slovenia Commitment to the citizens , in which he undertook to employees on the basis of this project in one year significantly reduced the expected time to solve individual cases (in some cases up to 50%). The judges we were to hold that Commitment because we believe that the only court to settle the matter and would need to do to create such conditions that the judge can really focus on their work , for example, administrative work is carried out to officers Judges helpers or assistants .

3. Regarding the national association

3.1. Representativeness of the association

Slovenian Association of Judges has at the date 1.1.2014 586 members, the whole number of judges in Slovenia at the date 1.1.2014 is 970 .

The number of judges, members of the Slovenian Association of Judges at the time of entering the Association into IAJ grew, but since then (1994) also increased the number of judges in the Republic of Slovenia.

Slovenian Association of Judges is the only association (organization) of Judges in the Republic

of Slovenia.

So is the 60,42% of all judges in the Republic of Slovenia, the members of the Slovenian Association of Judges. Membership is voluntary.

The manner of electing the administrative organs of the Association for the Rules. Members of the Association of Judges are judges , the presidents of the courts, judges members of the Judicial Council and those who are members of the disciplinary bodies, as well as members of personnel councils (in high courts and in the Supreme Court).

3.2. Modalities for appointment/election of its representatives

Bodies of the association are:

- General Assembly
- Main board
- President of the Association
- Executive Board
- Secretary-General of the Society
- Supervisory Board and
- Council for Judicial Ethics.

The term of office of the President of the Association and members of the Main Board, the Executive Board , Supervisory Board , Board of Judicial Ethics and the Secretary General of the Association shall be 4 years .

The Main Committee may in individual areas of interest and expertise of the members set up sections .

Main Committee may, for the implementation of specific short-term tasks of a working body.

Members can participate in several sections , namely: civil, commercial, criminal, juvenile criminal , investigative , and social work , administration , misdemeanors , sports section and section of retired judges.

Section is managed by its President, who shall also fix way of working sections .

The highest body of the Association is the General Assembly , composed of all members .

The General Assembly decides on the fundamental issues of the society , in particular:

- accepts the rules and their amendments and supplements ;
- adoption of a code of judicial ethics ;
- adoption of rules of procedure of the General Assembly , its amendments and supplements ;
- acceptance of the rules of honorary membership and granting of honorary awards ;
- elect and remove the members of the Main Board , the President of the Association and members of the Supervisory Board and the members of the Council for Judicial Ethics ;
- decides on reports of bodies of the Association;
- accepts the basic program guidelines of the Association of time until the next regular session ;
- approves the budget, the annual accounts and annual report of the Association;
- decides on the termination of the Association ;
- decides on appeals against the decisions of the Main Board;
- decides on joining the organization's of legal professionals at home and abroad ;
- decides on other issues relating to the functioning of the Association.

Main board shall consist of the President of the Association and elected members .

For election to the Main board societies suggest candidates as follows:

- the area of each district court in each started 40 judges - members of the Association according to one candidate ,
- Judges Labour and Social Court 2 candidate
- Judges of each High Court of Justice , the Higher Labour and Social Court and the - Administrative Court of the Republic of Slovenia by one candidate ,
- Judges of the Supreme Court and one candidate
- Retired Judges 2 candidates

Notwithstanding the provision of the preceding paragraph shall propose one candidate of local court judges - members of local court judges from the area of each of the High Court .

The members of the Main Board of the Association are elected directly . To ensure the best possible representativeness of the members of the Main Board , therefore, that the Main Board representing the judges of all courts of all levels and both regular and specialized courts , and that is also considered a balanced regional representation (ie , they come members of the Main Board of the whole area of the country) the rules the composition and the reference to that key also register the candidates , so that all types of courts and all regions of the Main Board representatives.

Main Board shall perform the following tasks :

- admission policies and positions for the realization of the purpose and tasks of the association of Article 4 Rules and organized forms of work for the implementation of activities of the Association and the realization of the Association;

- consider proposals and adopt positions on the request of its members in cases where the risk to their independence in the performance of judicial office or otherwise affected their rights and reputation ;
- adopt its rules of procedure ,
- adopt a program of work for the current term of office on a proposal from the President of the Association;
- gives statutory interpretation of the association ;
- appointed by the Secretary-General
- decides to expel a member from the Association ;
- decide on the amount of the membership fee .

Main Board elects and dismisses among its members, two Vice-Presidents and four members of the Executive Board .

The Main Board appoint Treasurer - Treasurer of the Association .

The Executive Board of the Association shall consist of the President of the Association, two Vice-Presidents of the Association and four elected members of the Main Board .

The Executive Board implements the decisions and decisions of the General Assembly and Main Board , to ensure regular execution of the tasks the association and keep a record of members of the society .

President of the Association represents the association .

President of the Association may be elected repeatedly .

President of the Association takes care that the work of bodies of the Association in accordance with the rules adopted programs and decisions , convenes and chairs meetings of the Executive Board and President and perform other tasks according to the resolution of the General Assembly or the Main Board of the Association.

The Supervisory Board has five members, from among themselves elect a president .

The task of the Supervisory Board is to monitor the physical and financial operations of the association. The Supervisory Board shall annually review the material and financial operations of the Association, of which reported at an ordinary general meeting .

Council of Judicial Ethics has five members, from among themselves elect a president .

Council of Judicial Ethics advises members of the Association on issues of judicial ethics and take a position on the Code of Judicial Ethics .

The work of the Association is entirely voluntary . The Association, therefore, has no Secretary-General nor does the staff coordinators or the Registry . We have signed a contract to perform administrative tasks with one administrator (mailing, e-mailing , writing minutes of meetings , etc.) . Even the leadership of the Association, the President and two Vice-Presidents are not exempt from the provision of judicial work , but they are all required to meet all of its judicial obligations and meet the required judicial norm (to solve a certain number of cases each month, respectively, annually) .

Association has no regional committees , acting as a whole throughout the entire country . How do we ensure regional representation , as described above in the composition of the Main Board .

3.3. Financing Association

The annual budget of the association is around € 35,000.00 .

The association is financed entirely from fees paid by members (6.00 per month or . € 72.00 a year) . Years ago we were on the basis of the present program of activities in a given year get by the Association of Lawyers of Slovenia as an umbrella organization of lawyers , some funds (approximately € 1,000.00 to € 2,000.00 per year) to co-organize trainings . A few years ago at the beginning of the introduction of mediation as a form of alternative dispute resolution in the courts, the Slovenian Association of Judges as a leading coordinator of this project received some funding from abroad (U.S. - State Department , of English and the Dutch Embassy in Ljubljana and from some European funds) .

The main costs each year represent the costs of organizing the Annual General Meeting , which is usually a two-day meeting of all the judges - members, which is partially Education or training, co-organized by the Judicial Training Centre and partly it comes to sports and social gatherings of all judges of the members of the Association. Other expenditure relating to other educational events organized by the Association either alone or in collaboration with the JTC , IAJ fees and costs of participation of representatives of the Association at the annual meetings of the IAJ and EAJ and any other international events . Otherwise , the resources do not allow for the financing of the representatives of the Association on several international meetings.

3.4. Relations association with public administration

Meetings of representatives of association with the representatives of the Government , especially the Minister of Justice are held occasionally. Certain constant meetings is not provided . As a rule , representatives of the Association requested a meeting with the minister or his deputy when it comes to pressing open questions (change in legislation that concerns the status of judges , judges' salaries , changes in relevant procedural laws , etc.) . As a rule, the association informed

of changes in legislation , repeatedly , at least in major legislation , the representatives of the association are also members of the working groups , but unfortunately the proposals of these working groups are not always taken into account , although they are argumentative .

Meetings between representatives of associations and representatives of the legislative branch is not , at least not regularly , over a long time we have reached at least the Slovenian Association of Judges invited to attend meetings of the Committee for Justice of the National Assembly (Parliament) , when the latter deals with laws relating to the status of Judge . Despite multiple attempts , we were unable to establish closer cooperation at least when it comes to dealing with relevant laws.

3.5. Actions undertaken by the association during the last 3 years

In the last 3 years, the Association has been deeply engaged in the preparation of important amendments to the Courts Act and Judicial Service Act and some other laws , for example: bankruptcy law, and some others, we organized a number of training in collaboration with the JTC, we organized several round tables on topical issues of judicial independence, to which we invited representatives of the other two branches of government and media representatives . Their views on issues of independence of the judiciary and the issues that are important for the development of the rule of law , we informed the public trough press releases .

The Association has in the past also organized collective actions, specifically in 2008, the first one-day token strike and then in 2009 the white strike , all in conjunction with wage reform , because the executive and legislative branches did not want to meet with the three decisions of the Constitutional Court .

Slovenian Association of Judges has issued several publications as codexes : "Five challenges for the European Courts : experience of the German and Slovenian courts " , issued some summaries of the discussions with the annual general meetings (for example, judicial independence) , on the occasion of 40th anniversary has issued a special code. Moreover, the association inform their members of important events via the website or via e-mails, newsletter the association does not issue . About his work but also informs the general public , mainly through press releases and reports about important events (round tables, trainings, visits of important guests, etc.) . We believe that the activities of the Association have a positive impact for better visibility of the judiciary in public and also improve the reputation of the judiciary in public.

4. Miscellaneous

As the Slovenian Association of Judges EAJ been briefed on the meeting in Yalta in October 2013 the executive authority wishes to obtain the opportunity to influence judicial decision-making through the creation of a new "department within the Ministry of Justice to supervise the

organization of management of the courts” (judicial inspection). Jurisdiction of this department is:

- to exercise control over the administration of justice, in particular with regard to the organization of the management of the courts,
- control of the fulfilment of quality standards of the courts in carrying out matters of the administration of justice,
- to carry out inspection concerning the application of the Courts Fees Act,
- to supervise the application of the Court order and carry out administrative supervision in accordance with the Court order.

In dealing with these matters inspectors (who shall not be judges, but officials - their qualifications are yet unknown) will be authorized to have an insight not only into registers and documents relating to the management of the courts, but also into open files of pending cases. Accordingly, the president of the court may be required or recommended to take certain measures (also not defined yet).

Given the bad experience we already have in the past , we believe that the establishment of such department is in contravention of applicable international instruments on the independence of the judiciary , of which we are informed by both the European Association of Judges as well as the Consultative Council of European Judges.

Although it is in accordance with the decision of the EAJ meeting, the President of the EAJ sent letters to the Minister of Justice as to the Prime Minister , both initially denied that such a letter ever got , and then below at least the Minister of Justice behaves as if that letter would not exist . Due to the recommendations of GRECO in September, the Ministry of Justice established a working group to prepare draft amendments to the Courts Act and Judicial Service Act , which is expected to open up the question at issue “judicial inspection. Despite the strong requirements of the Slovenian Association of Judges and the Judicial Council of the Republic of Slovenia , the two articles , which define the job of the Courts Act deleted (Art 65a and 65b) and despite the fact that it was on the working group also agreed to the proposal of amendments they were by the Ministry of Justice just before the end of 2013 sent in the cross-sectoral coordination , the " department to supervise the organization of management of the courts” remained in the Courts Act . Even more , instead of these two provisions deleted , it was the ministry even further. According to this proposal , the Department said now could lead not just like before , only the judge but also a civil servant of the Ministry of Justice . In so doing, to re- emphasize that the powers of those services are not clearly defined and widely opens the door to the possibility of inserting policy in the judiciary and to influence decision-making in concrete cases through the court presidents , under the threat to a recalcitrant president can dismiss . Such an arrangement is also contrary to the recommendations of GRECO .

Still, due to the economic and financial crisis, there is no definitive about a reform with regard to judges' salaries.

Unfortunately, I can not say that the state of the judiciary in relation to the other two authorities has improved. The fact is that reducing the backlog of cases that the expected time to solve matters considerably reduced in the last two years that judges and courts in the recently completed several high-profile cases, including criminal, where they were convicted of prominent politicians and businessmen. Therefore, at least the reputation of the judiciary in public improved slightly. I believe that we referees proved that no longer untouchable and that we are all equal before the law and that is a very serious offence may be sentenced as political or economic gentleman that was a few years ago may be very rare.

A major problem with which the Slovenian judiciary faces is constantly changing legislation, too often without a broad debate and usually without any preliminary analyses. The problem is that such rapid change as the most important laws that affect the protection of human rights (Penal Code , Code of Criminal Procedure , Code of Civil Procedure , bankruptcy law , different rules in the field of property law) , which significantly affect the position and rights of every individual . These changes have recently been joined by a number of changes to tax legislation .

A number of changes have recently undergone a fundamental judicial legislation : Courts Act and Judicial Service Act . The changes were of such a nature that does not affect only the area of the status of judges , but they have a significant impact on legal certainty for citizens . One of them is certainly the introduction of " department to supervise the organization of management of the courts " inside the Ministry of Justice in August 2013 , the changes that are now in the pipeline, do not constitute such an improvement on the one hand, the position of judges , as on the other hand, the rights of citizens , as we would like . The plan also change the organization of the courts , which indeed may mean streamlining the costs of operating the courts , but on the other hand can also mean significantly more difficult access to justice for citizens of many groups or other participants in judicial proceedings . We lack a clear strategy for the development of the judiciary and the respect for and implementation of the principle of the rule of law . There is still a problem in non-compliance with judgements by the state or the other two branches of government, which sets a bad example for citizens and gives them the signal that such behaviour is permissible and acceptable , thus probably trying to deliberately , undermine public confidence in the judiciary , which is a prerequisite for the proper functioning of the rule of law . Even the crisis of the economy can not be a reason for failure to comply with generally accepted international standards of judicial independence and the rule of law , it is the work of the Association and constant warning the public of the importance of the principle of the independence of the judiciary and rule of law and that the respect for the judgements is necessary and important .

Challenging and important task of the Association for the future are also questions of judicial ethics and integrity. An important task for the proper functioning of the Association in the future will be the integration of younger judges, in particular in the work of the Association. Voluntary, unpaid work in their free time younger colleagues are not interested, although at the same time they demand and expect to provide any possible benefits, offering the trade union

protection for conduct that the judge is not affluent. In order to increase public confidence in the judiciary is essential that the judges themselves respect the principle of independence in the broadest sense of the word, and the principle of the rule of law.

Ljubljana, January 18th 2014

SPAIN

1 - Concernant l'indépendance des Magistrats

1-19. Recrutement

- Décrire brièvement les modes de recrutement des magistrats dans votre pays (concours, élection, désignation ...)

La carrera judicial consta de tres categorías. Jueces, que son los de ingreso ; magistrados y magistrados del Tribunal Supremo.

El ingreso a la carrera a la primera categoría se efectúa mediante oposición. Convocatoria pública, examen general de todas las materias del Derecho y acceden los que obtienen las mejores calificaciones.

A la categoría de magistrado se puede acceder por antigüedad, la mayoría, por concurso entre los jueces, los menos, y por concurso entre juristas con más de diez años de ejercicio profesional, no más del 25%.

Los magistrados del Tribunal Supremo son todos de libre designación y se guarda siempre una proporción análoga a las anteriores.

- Ces procédures de recrutements vous paraissent-elles poser des problèmes ou assurent-elles un recrutement satisfaisant en nombre et en qualité ?

Es un sistema de reclutamiento mixto aunque siempre se considera más satisfactorio el de examen o el de antigüedad pues es más objetivo.

1-20. Formation initiale et continue

- Décrire brièvement les modalités de formation des magistrats tant avant leur première prise de fonctions qu'en cours de carrière.

Tras aprobar el examen que les posibilita acceder a la carrera judicial los aspirantes reciben un curso académico, aproximadamente nueve meses, de formación específica y un mínimo de otros diez meses de prácticas en distintos órganos judiciales tutelados por magistrados.

Está previsto que incluso después continúen su formación mediante sustituciones en sedes en las que el titular está ausente por enfermedad u otras causas, dependiendo en estos casos de la Escuela Judicial. Esta fase es muy cuestionada al entender que puede atentar contra la independencia judicial al no estar plenamente integrados en la carrera judicial y pudiendo ser calificada su actuación por órganos distintos a los integrados en el poder judicial.

- Existe-t-il une école chargée de former les magistrats ?

Sí.

- Le dispositif de formation vous paraît-il satisfaisant ? Si non, comment pourrait-il être amélioré

Los alumnos piensan que es más eficaz la formación práctica que efectúan en los órganos judiciales que la formación que reciben en la Escuela Judicial no tanto por su importancia sino por su contenido especialmente teórico.

Debería reducirse la formación en la Escuela Judicial e incrementarse el periodo de prácticas bajo la tutela de magistrados profesionales.

Existe un desacuerdo generalizado en toda la carrera judicial, por entender que puede atentar a la independencia judicial, el incluir una etapa en la que los jueces alumnos dependientes de la Escuela Judicial y sometidos a evaluación puedan realizar trabajos como jueces sustitutos, con plena jurisdicción.

1-21. Nomination et carrière

- Décrire brièvement les modalités de nomination et de déroulement de carrière des magistrats.

Fundamentalmente a la carrera se accede mediante examen de los aspirantes, siendo nombrados los que obtienen las mejores calificaciones en esos exámenes

Un máximo de un 25% puede acceder a la categoría de magistrado con una experiencia profesional como jurista de diez años, mediante un concurso de méritos y entrevista en la que se pregunte al aspirante sobre cuestiones jurídicas. También a esta categoría y en un porcentaje similar pueden acceder los jueces a través de exámenes de especialización. El resto se complementa con los jueces mediante antigüedad.

A la categoría de magistrados del Tribunal Supremo se accede de forma similar si bien el nombramiento es por el Consejo General del Poder Judicial, en una proporción de un 80 % entre magistrados y un 20 % de juristas de prestigio, catedráticos de asignaturas jurídicas, profesionales del derecho, etc..

- Existe-t-il un Conseil Supérieur de Justice chargé des ces questions ? Si oui, comment est-il composé ? Quels sont ses pouvoirs (simple avis ou pouvoir de décision) ?

El artículo 122 de la Constitución atribuye las competencias en materia de nombramientos y ascensos al Consejo General del Poder Judicial.

Este órgano está integrado por doce jueces y magistrados (En un principio se entendió y así se hizo, elegidos por los mismos jueces y magistrados de forma directa; en la actualidad elegidos por el poder legislativo) y otros ocho elegidos igualmente por el poder legislativo pero entre abogados y otros juristas de reconocida competencia y con más de quince años de ejercicio en su profesión.

- Quelles sont les règles applicables pour la promotion des magistrats ?

Principalement la antigüedad, si bien la mayoría de los cargos en los que también concurren funciones gubernativas son de libre designación por el Consejo General del Poder Judicial de entre los peticionarios.

- L'inamovibilité est-elle garantie aux magistrats ?

En España la inamovilidad de los Jueces y Magistrados es una garantía reconocida en la Constitución.

- Les magistrats sont-ils évalués ? Si oui, par qui, sur quels critères et avec quels éventuels recours ?

La evaluación de los Jueces y Magistrados se efectúa por el servicio de inspección dependiente del Consejo General del Poder Judicial y sólo sobre la cantidad de trabajo desarrollado y el tiempo de respuesta, no sobre el contenido de las resoluciones para no perturbar la independencia judicial.

El contenido de las resoluciones solo puede ser objeto de valoración por los Tribunales superiores o por denuncia de quienes hayan sido parte en el procedimiento.

- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

Parece que es el más objetivo, no obstante sería deberían valorar otras cuestiones como son la complejidad del trabajo.

1-22. Discipline et éthique

- Décrire brièvement les règles éthiques auxquelles sont soumises les magistrats et la procédure disciplinaire.

En la actualidad se ha constituido una comisión con objeto de promulgar unas normas éticas.

Existe un régimen disciplinario en el que se distinguen las faltas muy graves, graves y leves, un total aproximado de cuarenta, y las correspondientes sanciones que pueden imponer los órganos judiciales gubernativos que son los Presidentes de los Tribunales Superiores de Justicia, de la Audiencia Nacional y del Tribunal Supremo así como sus respectivas Salas de Gobierno y el Consejo General del Poder Judicial.

Las sanciones pueden oscilar desde la advertencia hasta la separación del servicio.

- Les magistrats sont-ils soumis à un régime d'incompatibilités et d'interdictions d'exercice de certaines professions et mandats ? Sont-ils soumis à des obligations de déclarations d'intérêts ?

El régimen de incompatibilidades de los Jueces es muy severo. El ejercicio de la función judicial solo es compatible con la docencia y previa autorización del Consejo General del Poder Judicial.

- Qui exerce le pouvoir disciplinaire ? quelles sont les garanties pour les magistrats concernés (contradictoire, droits de la défense, recours ...) ?

Las sanciones disciplinarias sólo pueden imponerse mediante un procedimiento administrativo en el que se garantizan los derechos de defensa y contradicción y en cualquier caso la resolución que recaiga puede ser recurrida ante la jurisdicción contencioso-administrativa.

- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

En principio no se concibe un sistema menos malo.

1-23. Modalités d'affectation des dossiers

- Décrire brièvement le mode d'affectation des dossiers aux magistrats et les conditions de leur éventuel dessaisissement

Los dossiers se asignan a los magistrados de acuerdo con normas previas y de forma aleatoria sin que pueda apartarse al magistrado del caso que conoce.

- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

Difícilmente puede pensarse una forma de adjudicación más objetiva.

1-24. Reconnaissance du droit d'association

- Le droit de s'associer, ou de se syndiquer, est-il reconnu aux magistrats ?

La Constitución Española reconoce el derecho de asociación de los magistrados.

- Si oui, quels moyens sont alloués à l'association / au syndicat, en termes de subventions, de moyens humains ?

Las Asociaciones se mantienen fundamentalmente por las aportaciones de los asociados y por las subvenciones que reciben en proporción al número de asociados y actividades que desarrollan.

Existe la previsión de que sólo subsistan con las cuotas de los socios. Esta limitación de la financiación supondría un considerable debilitamiento del movimiento asociativo. La práctica desaparición de las asociaciones.

- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

Las subvenciones se han ido reduciendo paulatinamente y la tendencia a que los ingresos de las Asociaciones sean exclusivamente las cuotas de sus socios puede limitar muy seriamente la actividad de las Asociaciones.

La dependencia del ejecutivo en materia de subvenciones supone una limitación a la libertad de actuación de las asociaciones y a su independencia.

1-25. Protection des magistrats

- Les magistrats font ils fréquemment l'objet de mises en cause, de la part de l'opinion publique, des médias, des responsables politiques ... ?

Sí.

En la mayoría de los casos con inexactitudes tanto respecto de los hechos como respecto de la aplicación del derecho e interpretación de la norma, haciéndoles responsables de los resultados a los jueces cuando se aplica la ley deficiente o cuando no admite otras interpretaciones.

- Bénéficient-ils de dispositifs de protection particuliers ?

Raras veces se acude a la especial protección que le otorga el Código Penal y si se hiciera a instancias del propio juez se tendría que abstener de continuar en el conocimiento del dossier, ya que la Ley Orgánica del Poder Judicial establece como causa de abstención el haber sido denunciante.

La Ley prevé igualmente la obtención del amparo del Consejo General del Poder Judicial cuando un juez se encuentre inquietado en su independencia, sin embargo esta institución prevista a instancia del juez inquietado sería deseable pudiera igualmente regularse a instancia de terceros, como las asociaciones judiciales incluso de oficio por el propio Consejo.

- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

Las normas que protegen la actuación de los jueces son suficientes pero su aplicación es complicada y rara vez se aplican.

Debería actuarse al margen del juez inquietado ante un ataque contra su independencia.

2 – Concernant les moyens de la Justice.

2-1. Financement du système judiciaire

- Budget annuel de la Justice
Préciser le montant total annuel du budget affecté au fonctionnement des juridictions (incluant les dépenses relatives aux juges, aux procureurs et à l'aide juridictionnelle). Ce budget vous paraît-il suffisant ? Les magistrats, ou les instances représentatives de magistrats, sont-ils consultés au stade de l'élaboration du budget ? Au stade de son exécution ?

Los magistrados no son escuchados en la elaboración de los presupuestos.

En ocasiones se depende hasta de tres administraciones distintas y sobre todo resultan insuficientes los presupuestos relativos a material y medios.

- Budget de fonctionnement des juridictions
Sur quels critères sont réparties les sommes aux différentes juridictions ? Les fonds sont-ils ensuite utilisés librement au sein des juridictions ? Existe-t-il des consultations préalables des magistrats avant l'engagement des dépenses ?

No.

Se realiza al margen del Poder Judicial que no tiene posibilidades de administración.

- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

Es complicado al depender de tres administraciones distintas.

El ideal sería la autonomía presupuestaria siempre que fuese suficiente en relación con el total de los presupuestos del Estado.

2-2. Rémunération des juges

- Définir sommairement l'échelle des salaires des magistrats : en début, en milieu et en fin de carrière.

Los salarios de los magistrados dependen por una parte de la categoría profesional, jueces, magistrados y magistrados del Tribunal Supremo, por otra parte del órgano en el que se desempeñan la función, según sean órganos unipersonales o colegiados y por otra de la ciudad en la que se encuentran y por último de la cantidad de trabajo desarrollado.

- Qui détermine la rémunération des magistrats ? Existe-t-il un système de rémunération au mérite (si oui dans quelles proportions ? et selon quelles modalités d'attribution ?)

Las únicas diferencias salariales en relación con el mérito son en consideración a la cantidad de trabajo realizado y en el órgano en el que se desempeña la función.

- Les rémunérations sont-elles susceptibles d'évoluer à la baisse ? Si oui, avez-vous rencontré de telles baisses et dans quelles proportions ?

Los jueces y magistrados hemos sufrido en España las consecuencias de la crisis generalizada, pero con el agravante de que no se cumplió cuando esto no era un problema las revisiones que estaban previstas.

Se han reducido los salarios y no se han revisado cuando estaba previsto legalmente las revisiones al alza.

- La protection des magistrats, relativement à la question des rémunérations, vous paraît-elle assurée ? Si non, comment pourraient-ils être améliorés ?

Las remuneraciones de los magistrados sufren las mismas consecuencias que la de los funcionarios públicos. Parecía imposible que disminuyeran sin embargo recientemente así ocurrió.

2-3. Retraites

- A quel âge et selon quelles modalités les magistrats peuvent-ils prétendre prendre leur retraite ?

La jubilación de los Jueces y Magistrados españoles es similar al Régimen Especial de la Seguridad Social de Clases Pasivas, regulado en un antiguo Real Decreto Legislativo, 670/1987. Los parámetros que determinan el importe de la pensión de jubilación son el tiempo de servicios efectivos en la Carrera Judicial y el haber regulador. El haber regulador viene fijado anualmente en la Ley de los Presupuestos Generales del Estado.

Existen tres modalidades de jubilación, a saber, la jubilación ordinaria, la jubilación anticipada y la jubilación por incapacidad. El artículo 386 Ley Orgánica del Poder Judicial, contempla la jubilación voluntaria ordinaria de los Jueces y Magistrados a la edad de 65 años y la forzosa al cumplir los 70 años. Por su parte, de acuerdo con la remisión del artículo 119 del Reglamento 1/95 al régimen de Clases Pasivas, puede afirmarse que cabe la posibilidad de la jubilación voluntaria a los 60 años cuando se hubieren prestados treinta años de servicios efectivos al Estado, conforme dispone el artículo 28 del Real Decreto Legislativo 670/1987, y que expresamente respeta el artículo 386.2 de la Ley Orgánica del Poder Judicial al dejar a salvo de su regulación "los demás supuestos de jubilación voluntaria legalmente previstos". Y, de conformidad con el artículo 28.2 c) del Real Decreto legislativo 670/1987, la jubilación por incapacidad es la derivada de la incapacidad permanente para el servicio, que se declarará de oficio o a instancia de parte, cuando el interesado venga afectado por una lesión o proceso patológico, somático o psíquico que esté estabilizado y sea irreversible o de remota o incierta reversibilidad, cuya lesión o proceso le imposibiliten totalmente para el desempeño de las funciones propias de la Carrera Judicial, de acuerdo con el dictamen preceptivo y vinculante del órgano médico que en cada caso corresponda. Este apartado fue redactado por el apartado uno de la

disposición final primera de la Ley 2/2008, de 23 de diciembre, de Presupuestos Generales del Estado para el año 2009 («B.O.E.» 24 diciembre).

Por tener derecho a la pensión de jubilación, deberá acreditarse, al menos, quince años cotizados a la Seguridad Social. Este es el periodo mínimo de carencia. Ahora bien, puede haberse cotizado sólo al Régimen Especial de Clases Pasivas o también a otro régimen cualquiera de la Seguridad Social. Pues bien, -acreditando este periodo mínimo de carencia-, para el cálculo de la pensión de jubilación, se le aplica al haber regulador, el porcentaje que se indica a continuación en la tabla, -que contempla desde 1 a 14 años, también, para los casos de cotizaciones a la Seguridad Social en otros regímenes-.

Años de servicio	Porcentaje del regulador	Años de servicio	Porcentaje del regulador
1	1,24	19	41,54
2	2,55	20	45,19
3	3,88	21	48,84
4	5,31	22	52,50
5	6,83	23	56,15
6	8,43	24	59,81
7	10,11	25	63,46
8	11,88	26	67,11
9	13,73	27	70,77
10	15,67	28	74,42
11	17,71	29	78,08
12	19,86	30	81,73
13	22,10	31	85,38
14	24,45	32	89,04
15	26,92	33	92,69
16	30,57	34	96,35
17	34,23	35 y más	100,00

18	37,88		
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Debe resaltarse que, para el cálculo de la pensión de jubilación por incapacidad permanente, se entenderán como servicios efectivos prestados los años completos que faltaran al interesado para alcanzar la correspondiente edad de jubilación forzosa, y se tendrán en cuenta, a los efectos oportunos, para el cálculo de la pensión que corresponda. Y, asimismo, que en la pensión de jubilación anticipada, no se aplican coeficientes reductores como en el Régimen General de la Seguridad Social, sino que sólo computa el tiempo de servicios efectivos prestado hasta la edad de la jubilación anticipada.

A la cuantía resultante de aplicar el correspondiente coeficiente de la tabla al haber regulador, debe aplicársele el tope máximo de pensiones, por lo que el Magistrado jubilado pasará de percibir neto unos 4.000 o 4.500 € en activo, a cobrar una pensión de unos 1.800 €. En cualquier caso un importe inferior al cincuenta por ciento de lo que cobraba cuando estaba en activo.

- Le montant de la pension de retraite est-il satisfaisant ?

No.

No guarda en absoluto proporción con el trabajo, responsabilidad desarrollada, incompatibilidades a las que han estado sometidos y periodo de cotización.

- Des améliorations doivent-elles être apportées au dispositif?

Hay posibilidades de acogerse a mejoras a título individual y con carácter voluntario.

2-4. Accessibilité et efficacité de la Justice.

- Existe-t-il des obstacles pour le justiciable à l'accès au juge ? Existe-t-il des dispositifs pour permettre l'accès à la Justice des plus défavorisés (aide juridictionnelle ; soutien aux victimes ...)

No existen obstáculos.

Está garantizado constitucionalmente el acceso a la justicia de los más desfavorecidos.

La ley regula la asistencia jurídica gratuita y la ayuda a las víctimas.

- Existe-t-il des problèmes de délais dans le traitement des affaires ?

Los retrasos en la tramitación de los asuntos se deben esencialmente al exceso de carga de trabajo sobre los jueces y a la falta de medios.

- Les dispositifs existants vous paraissent-ils satisfaisants ? Si non, comment pourraient-ils être améliorés ?

Se entienden suficientes e incluso a veces se provocan abusos.

3 – Concernant l'association nationale

3-1. Représentativité de l'association

- Combien l'association compte-t-elle de membres ? L'association a-t-elle connu depuis son adhésion une évolution du nombre de ses adhérents ?

El número de los miembros de cada una de las cuatro asociaciones es controlada por el Consejo General del Poder Judicial ya que las aportaciones de los asociados y las subvenciones que de momento aun se reciben se distribuyen según el número de asociados, sin que ninguno de ellos pueda pertenecer a más de una asociación.

- Existe-t-il d'autres associations/syndicats de magistrats ?

En España existen cuatro asociaciones que aglutinan entre todas ellas aproximadamente el 50% de los miembros de la carrera judicial.

La Asociación Profesional de la Magistratura es la más numerosa y comprende aproximadamente el 25% de toda la carrera.

- Dans l'hypothèse où des élections professionnelles seraient organisées dans le pays concerné, bien vouloir fournir les éléments chiffrés montrant la représentativité.

Sí, pues más de la mitad de los integrantes de la carrera judicial se encuentran asociados.

- L'association compte-t-elle des élus dans les instances indépendantes qui sont en charge de la gestion des carrières des magistrats ? De la discipline des magistrats ?

Una de las formas de acceder a los órganos gubernativos de los jueces, Consejo General del Poder Judicial y Salas de Gobierno es a través de las asociaciones.

3-2. Modalités de désignation / élection de ses représentants.

- Comment sont désignés les dirigeants de l'association ? Sont-ils élus par les adhérents ? Sont-ils nommés ? Si oui par qui et selon quelle procédure ?

Los directivos de las Asociaciones son elegidos democráticamente por todos los asociados.

- Comment est organisée l'association ? Existe-t-il un conseil d'administration/conseil syndical/conseil associatif ? Si oui, comment les membres de ce conseil sont ils élus/nommés ? Quels sont les pouvoirs de ce conseil ?

La asociaciones, según el número de sus integrantes, se encuentra organizado a través del Congreso Nacional, constituido por todos los asociados o por sus compromisarios, se reúne cada dos años.

Comisión permanente, que es el máximo órgano intercongresos, que se reúnen periódicamente todos los años.

Comité Ejecutivo, integrado por los miembros elegidos en el Congreso y cuya actividad es permanente.

Todos estos órganos ejercen su responsabilidad a nivel nacional.

- Existe-t-il des représentants régionaux de l'association ? Si oui, comment sont ils nommés/désignés ?

Sí.

Son nombrados por los asociados de ese ámbito territorial.

3-3. Financement de l'association

- Quel est le budget annuel de l'association ?

La financiación actualmente está integrada por las aportaciones mensuales de los asociados, por las subvenciones recibidas del poder ejecutivo en proporción al número de asociados y de acuerdo con las actividades que desarrollen.

También se reciben subvenciones de fundaciones y de entidades privadas destinadas para el ejercicio de actividades concretas de formación.

En la actualidad existe un proyecto dirigido a la restricción de la percepción de ingresos distintos a las cuotas de los socios lo que haría disminuir considerablemente la operatividad de la asociación.

- Quels sont les moyens de financement de l'association: cotisations des adhérents, subventions, autres sources de financement ?

Respondida en la cuestión anterior.

- Quelles ont été les principales dépenses ?

Los gastos más importantes son consecuencia de las reuniones periódicas de los órganos de dirección de la asociación y programas de formación de los asociados.

3-4. Relations de l'association avec les pouvoirs publics

- L'association rencontre-t-elle régulièrement les représentants du pouvoir exécutif ? Plus particulièrement le Ministre de la Justice et ses collaborateurs ? L'association est-elle consultée avant toute réforme par le gouvernement ?

Sí.

Antes de las reformas son oídas las asociaciones.

- L'association rencontre-t-elle régulièrement les représentants du pouvoir législatif ? L'association est-elle appelée à donner son avis sur les projets et propositions de loi avant leur examen par le parlement ?

Sí.

La petición de informes a las asociaciones son habituales si bien no son preceptivas.

3-5. Actions menées par l'association au cours des 3 dernières années

- Quelles ont été les principales actions menées au cours de l'année écoulée ? Dans les 5 dernières années ? Depuis l'adhésion ?

La asociación organiza un Congreso Nacional cada dos años.

Se ha participado en la elaboración de informes de todos los anteproyectos legislativos en materia relacionada con la Administración de Justicia.

Anualmente organiza diversos cursos de formación para sus asociados, bien de ámbito territorial bien de ámbito regional.

Ha recurrido algunas disposiciones en materia de retribuciones y descanso de los jueces y magistrados tras la jornada de guardia.

Ha participado activamente en una huelga de carácter nacional.

Ha intervenido en los Congresos internacionales organizados en el seno de la UIM.

Se adjunta documento de las actividades de la asociación en el último año.

- L'association a-t-elle organisé des actions collectives (manifestations, grèves ...) ?

Sí.

Organizó una huelga de jueces y magistrados y ha participado en algunas manifestaciones públicas de protesta.

- L'association a-t-elle une présence sur le plan médiatique ? L'association a-t-elle publié des documents (livres, revues, communiqués ...) ?

El portavoz de la Asociación interviene en los medios de comunicación dando la opinión de la Asociación en materias de interés y actualidad judicial.

La Asociación tiene una publicación periódica cuyos contenidos materias que afectan tanto al régimen de los jueces como de cuestiones jurídicas de actualidad.

- Les éventuelles actions menées ont-elles eu des conséquences positives sur la situation du pouvoir judiciaire ?

Los resultados de las anteriores actuaciones han tenido distintas repercusiones.

4 – Divers

- Quels ont été les principaux problèmes rencontrés par le pouvoir judiciaire dans votre pays ces dernières années?

Falta de medios humanos y materiales.

Excesiva carga de trabajo.

Desajustes en las remuneraciones consecuencia de la actual crisis económica y de la demora en las revisiones de las remuneraciones en momentos en los que no existía crisis.

Ausencia de la participación directa de los jueces y magistrados en el nombramiento de los jueces y magistrados integrantes del Consejo General del Poder Judicial.

- Diriez-vous que la situation pour la magistrature s'est améliorée ? a régressé ? a restée stable ?

En lo que se refiere a retribuciones y medios materiales ha disminuido a causa de la crisis económica.

Por lo que respecta a la intervención de los jueces y magistrados en el nombramiento de los órganos de gobierno, el actual sistema ha supuesto un retroceso porque se ha incrementado la dependencia de los poderes políticos y desvinculación de los jueces y de las asociaciones en su nombramiento.

- Quelles sont les principales réformes en cours ou envisagées ? Ces réformes vous semblent elles aller dans le bon sens ?

Las próximas reformas son fuertemente criticadas por los jueces en cuanto que suponen un incremento del poder ejecutivo en el nombramiento de los órganos de gobierno de los jueces y disminución de la intervención de los jueces en el nombramiento de sus representantes, siendo prácticamente testimonial su intervención y no vinculante.

Por otra parte disminuye igualmente la intervención de los jueces en órganos técnicos del Consejo estando previstos que estos se ocupen por funcionarios dependientes del poder ejecutivo

ASAMBLEA O CONGRESO NACIONAL.

Congreso Nacional. Madrid, 10 de enero de 2013

Congreso Nacional. Jerez de la Frontera, 6-8 de noviembre de 2013

**REUNIONES DEL COMITÉ NACIONAL, SECRETARIADO NACIONAL U
ÓRGANO ASOCIATIVO DE REPRESENTACIÓN NACIONAL ANÁLOGO.**

9 de enero de 2013

Reunión del Comité Ejecutivo Nacional

24 de enero de 2013

Reunión del Comité Ejecutivo Nacional

14 de febrero de 2013

Reunión del Comité Ejecutivo Nacional

6 de marzo de 2013

Reunión del Comité Ejecutivo Nacional

3 de abril de 2013

Reunión del Comité Ejecutivo Nacional

2 y 3 de mayo de 2013

Reunión del Comité Ejecutivo Nacional.

5 de junio de 2013

Reunión del Comité Ejecutivo Nacional.

8 de julio de 2013.

Reunión del Comité Ejecutivo Nacional

19 de septiembre de 2013

Reunión del Comité Ejecutivo Nacional

15 de octubre de 2013

Reunión del Comité Ejecutivo Nacional

6 de noviembre de 2013

Reunión del Comité Ejecutivo Nacional

21 de noviembre de 2013

Reunión del Comité Ejecutivo Nacional

16 de diciembre de 2013

Reunión del Comité Ejecutivo Nacional

**REUNIONES DE CARÁCTER SUPRATERRITORIAL DE LOS ÓRGANOS
ASOCIATIVOS**

14 de febrero de 2013

Reunión de la Comisión Permanente

9 de julio de 2013

Reunión de la Comisión Permanente en Madrid

6 de noviembre de 2012

Reunión de la Comisión Permanente en Jerez de la Frontera

ASAMBLEAS O CONGRESOS DE ÁMBITO TERRITORIAL (SECCIÓN TERRITORIAL DE LA ASOCIACIÓN)

1.- Andalucía Occidental

Sevilla, 4 de febrero de 2013

Sevilla, 2 de mayo de 2013

Sevilla, 4 de julio de 2013

1 bis Andalucía Oriental

Almería, 1 de febrero de 2013

Antequera, noviembre de 2013

2.- Aragón

8 de febrero de 2013

31 de mayo de 2013

3.- Asturias

12 de febrero de 2013

24 de julio de 2013

4.- Baleares

21 de febrero de 2013

5.- Canarias

7 de junio de 2013

22 de julio de 2013

6.- Cantabria

15 de mayo de 2013

19 de abril de 2013

16 de septiembre de 2013

7.- Castilla La Mancha

10 de mayo de 2013

25 de julio de 2013

8.- Castilla León

19 de julio de 2013

23 de septiembre de 2013

9.- Cataluña

Enero de 2013

Febrero de 2013

25 de septiembre de 2013

10.- Extremadura

16 de mayo de 2013

11.- Galicia

23 de enero de 2013

8 de mayo de 2013

10 de septiembre de 2013

12.- La Rioja

5 de junio de 2013

23 de julio de 2013

13.- Madrid

18 de enero de 2013

12 de abril de 2013

8 de julio de 2013

9 de septiembre de 2013

14.- Murcia

19 de febrero de 2013

4 de julio de 2013

25 de julio de 2013

15.- Navarra

16.- País Vasco

17 de julio de 2013

16 de septiembre de 2013

17.- Valencia

4 de enero de 2013

12 de julio de 2013

27 de septiembre de 2013

INFORMES EMITIDOS A INSTANCIA DEL CONSEJO GENERAL DEL PODER JUDICIAL O DEL MINISTERIO DE JUSTICIA.

1.- Informe de la APM solicitado por el CGPJ al Estudio de Carga de Trabajo.

2.- Propuesta de Instrucción relativa a la determinación de los supuestos de carácter excepcional y debidamente justificados a que se refiere el artículo 375.3 de la LOPJ para el establecimiento de un complemento que permita alcanzar el cien por cien de las retribuciones en supuestos de incapacidad temporal por contingencias comunes de los miembros de la carrera judicial solicitado por el CGPJ

3.- Informe de la APM sobre reforma del art. 103.2 del Reglamento General de Mutualismo Judicial.

4.- Informe de la APM sobre el Real Decreto 431/2004 por el que se regula las retribuciones previstas en la disposición transitoria tercera de la Ley 15/2003, de 26 de mayo, reguladora del régimen retributivo de las carreras judicial y fiscal, solicitado por el Ministerio de Justicia.

5.- Informe de la APM sobre RD de órganos de gobierno, administración y representación de la Mutualidad General Judicial solicitado por la Secretaria de Estado de Justicia del Ministerio de Justicia.

6.- Informe de la APM sobre la integración y funciones de los consejos de la Magistratura en sus respectivos países solicitado por el Grupo Iberoamericano de la Unión Internacional de Magistrados.

7.- Informe de la APM sobre el proyecto de Decreto por el que se regula la estructura y organización de las Oficinas Judicial y Fiscal solicitado por la Junta de Andalucía.

8.- Informe de la APM sobre el Proyecto de modificación del Reglamento 1/2005, de 15 de septiembre, de aspectos accesorios de las actuaciones judiciales solicitado por el CGPJ.

REUNIONES Y ENCUENTROS DE LOS ÓRGANOS DE REPRESENTACIÓN NACIONAL DE LAS ASOCIACIONES JUDICIALES CON OTRAS ASOCIACIONES U ORGANIZACIONES REPRESENTATIVAS DE INTERESES GENERALES O COLECTIVOS SOBRE CUESTIONES DE INTERÉS PARA LA JUSTICIA.

2 de octubre

Reunión de un representante de la FJM con la Viceconsejera de la CAM. 1.

Reunión con el Ministro de Justicia. 2

Reunión con la CIC. 3

3 de octubre

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2.-Asamblea 5 de julio de 2013 : Consulta a los asociados sobre postura relativa a la presentación por parte de la APM de candidatos a Vocal en CGPJ .

3.- Asamblea 19 de septiembre de 2013, Elección de compromisarios para el XX I Congreso APM .

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1.- Asamblea 12 de diciembre de 2012 .Elección de compromisarios para el XX Congreso APM. (Congreso Extraordinario)

2.- Asamblea 30 de septiembre de 2013, Elección de compromisarios para el XXI Congreso APM.

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1.- Asamblea 13 de Diciembre de 2013

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2.- Que el día 11 de enero de 2013 tuvo lugar en la ciudad de Zaragoza la entrevista del Presidente de la Sección Territorial con la Excmo. Sra. Presidenta de la Comunidad Autónoma de Aragón, Dña. Luisa Fernanda Rudi Úbeda, en la que se abordaron temas de interés general sobre la situación de la Administración de Justicia en la Comunidad Autónoma.

3.- Que el día 30 de octubre de 2012 el Presidente de la Sección Territorial participó en la Comisión Técnica de Puesta en Funcionamiento de la Ciudad de la Justicia de Zaragoza que se reunió en la sede del Gobierno de Aragón.

4.- Que el día 5 de diciembre de 2012 el Presidente de la Sección Territorial participó en la Comisión Técnica de Puesta en Funcionamiento de la Ciudad de la Justicia de Zaragoza que se reunió en la sede del Gobierno de Aragón.

5.- Que el día 11 de enero de 2013 el Presidente de la Sección Territorial participó en la Comisión Técnica de Puesta en Funcionamiento de la Ciudad de la Justicia de Zaragoza que se reunió en la sede del Gobierno de Aragón.

6.- *Que el día 1 de marzo de 2013 el Presidente de la Sección Territorial participó en la Comisión Técnica de Puesta en Funcionamiento de la Ciudad de la Justicia de Zaragoza que se reunió en la sede del Gobierno de Aragón.*

7.- *Que el día 17 de mayo de 2013 el Presidente de la Sección Territorial participó en la Comisión Técnica de Puesta en Funcionamiento de la Ciudad de la Justicia de Zaragoza que se reunió en la sede del Gobierno de Aragón.*

8.- *Que el día 5 de diciembre de 2012 el Presidente de la Sección Territorial se reunió en la sede del Gobierno de Aragón con la Directora General de Relaciones con la Administración de Justicia del Gobierno de Aragón para tratar asuntos relativos a la situación de los Juzgados y Tribunales en el territorio.*

9.- *Que el día 5 de diciembre de 2012 el Presidente de la Sección Territorial se reunió en la sede del Gobierno de Aragón con la Directora General de Relaciones con la Administración de Justicia del Gobierno de Aragón para tratar asuntos relativos a la situación de los Juzgados y Tribunales en el territorio.*

10.- *Que el día 12 de febrero de 2012 el Presidente de la Sección Territorial se reunió en su despacho profesional con la Directora General de Relaciones con la Administración de Justicia del Gobierno de Aragón para tratar asuntos relativos a la situación de los Juzgados y Tribunales en el territorio.*

11.- *Que el día 9 de abril de 2012 el Presidente de la Sección Territorial se reunió en su despacho profesional con la Directora General de Relaciones con la Administración de Justicia del Gobierno de Aragón para tratar asuntos relativos a la situación de los Juzgados y Tribunales en el territorio.*

12.- *Que el día 29 de octubre de 2012 el Presidente de la Sección Territorial en compañía de la Directora General de Relaciones con la Administración de Justicia del Gobierno de Aragón visitó las obras de la Ciudad de la Justicia de Zaragoza.*

13.- *Que el día 13 de mayo de 2013 el Presidente de la Sección Territorial asistió a la inauguración oficial de la Ciudad de la Justicia de Zaragoza.*

14.- *Que el día 9 de mayo de 2013 se reunió en Zaragoza la Comisión para el Estudio de la Reforma de la LOPJ, grupo de trabajo integrado por asociados de la APM en Aragón bajo la coordinación del asociado D. Emilio Molins.*

15.- *Que el día 16 de mayo de 2013 se reunió en Zaragoza la Comisión para el Estudio de la Reforma de la LOPJ, grupo de trabajo integrado por asociados de la APM en Aragón bajo la coordinación del asociado D. Emilio Molins.*

16.- *Que el día 23 de mayo de 2013 se reunió en Zaragoza la Comisión para el Estudio de la Reforma de la LOPJ, grupo de trabajo integrado por asociados de la APM en Aragón bajo la coordinación del asociado D. Emilio Molins*

17.- *Que el día 18 de enero de 2013 el Presidente de la Sección Territorial asistió en la sede del Real e Ilustre Colegio de Abogados a la imposición de la Medalla del Colegio al Ilmo. Sr. Juez Decano de los Juzgados de Zaragoza.*

18.- *Que el día 16 de noviembre de 2012 el Presidente de la Sección Territorial se reunió en Zaragoza con representantes de Foro Judicial Independiente, Asociación Francisco de Vitoria y Jueces para la Democracia para tratar asuntos relativos a la situación de los Juzgados y Tribunales en el territorio.*

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- *Reunión con la vocal del Consejo general del poder judicial Doña Concepción Espejel Jorquera el día 12 de Septiembre de 2013;*
- *Reunión con las vocales del Consejo general del poder judicial Doña Concepción Espejel Jorquera y Doña Inmaculada Montalbán el día 16 de Mayo de 2013 para preparar el Encuentro de Jueces canarios de 2013;*
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Cataluña (18). 165-183

1. Comisión de estudio de reformas legales en Ciudad Judicial Octubre 2012.
2. Asistencia al día de la policía nacional 2/10/12.
3. Asistencia al día de la guardia civil 12/12/12.
4. Reunión CIP catalana en Noviembre 2012.
5. Reunión de la directiva de la APM CATALUÑA noviembre 2012.
6. Asistencia Parlamento Catalán reformas legales diciembre 2012
7. Encuentro con Conseller de Justicia febrero 2013
8. Reunión y comida con ERC y CIP catalana en febrero 2013 (17 de enero de 2013)
9. Directiva en marzo 2013
10. Concentración judicial. ACTA DE LA ASAMBLEA GENERAL ORDINARIA DE LA SECCIÓN TERRITORIAL DE LA APM CATALUÑA
- 11-14. Cuatro Reuniones con otras asociaciones de Cataluña: JD, AFV, foro: reformas consejo, LOPJ, códigos, enjuiciamientos.
15. Reunión comisión estudio reforma LOPJ
16. Entrega despachos jueces
17. Cena Apm en junio con estudio de futuro judicial
18. Reunión directiva septiembre 2013

Galicia (4). 184-188

17 de enero de 2013. Reunión del Presidente y secretaria de la Sección con el Alcalde de A Coruña.

23 de enero de 2013. Reunión del Presidente de la Sección con representantes del grupo parlamentario autonómico AGE en el Parlamento de Galicia.

6 de junio de 2013. Reunion de la Junta directiva de la Sección Territorial con jueces de nuevo ingreso en la Comunidad Autónoma.

6 de junio de 2013. Comparecencia ante la Mesa de la Comisión de estudio para la elaboración del plan de medidas de prevención y erradicación de la corrupción política del Parlamento de Galicia.

La Rioja (1). 189

10 de mayo de 2013. *Reunión en la sede del gobierno de la Comunidad Autónoma de La Rioja con el Presidente de la misma, D. Pedro Sanz y Consejero de Presidencia, D. Emilio del Río.*

Madrid (23). 190-212

9 de enero de 2013. *Conferencia sobre “El sumario” en el Colegio de Abogados de Alcalá de Henares.*

15 de enero de 2013. *Asistencia a la Constitución del Observatorio de la Justicia en la Real Academia de Jurisprudencia y Legislación.*

23 de enero de 2013. *Reunión de la CIM en la sede de la asociación Jueces para la Democracia.*

19 de febrero de 2013. *Conferencia sobre “Exhumaciones e identificación” en el Hospital Fundación Jiménez Díaz.*

20 de febrero de 2013. *Reunión de asociados seguida de cena.*

21 de febrero de 2013. *Conferencia sobre los principios generales del derecho comunitario en la Real Academia de Jurisprudencia y Legislación.*

6 de marzo de 2013. Reunión de los miembros de la Junta Ejecutiva de la APM con los jueces de la periferia pertenecientes a la Asociación.

19 de marzo de 2013. Conferencia sobre Formas de Gobierno en la Real Academia de Jurisprudencia y Legislación.

20 de marzo de 2013. Intervención en defensa de la ponencia sobre “La responsabilidad Penal de las Personas Jurídicas: Socios y Consejeros Delegados” en la Sociedad de Altos Estudios Internacionales.

15 de abril de 2013. Asistencia al Observatorio de la presunción de inocencia y los juicios paralelos sobre “El caso Wanninkhoff” en el centro de Estudios Políticos y constitucionales.

16 de abril de 2013. Conferencia sobre Principios de la política en España en la Real Academia de Jurisprudencia y Legislación.

23 de abril de 2013. Conferencia sobre Principios de derecho Administrativo en España en la Real Academia de Jurisprudencia y Legislación.

30 de abril de 2013. Conferencia sobre Principios de las Fuentes Normativas en la Real Academia de Jurisprudencia y Legislación.

7 de mayo de 2013. Conferencia sobre Principios del ordenamiento jurídico en la Real Academia de Jurisprudencia y Legislación.

9 de mayo de 2013. Asistencia al homenaje al Excmo.Sr.D. Javier Delgado Barrio en la Universidad Complutense de Madrid.

21 de mayo de 2013. Conferencia sobre Principios de Derecho Penal en la Real Academia de Jurisprudencia y Legislación.

28 de mayo de 2013. Conferencia sobre Principios Administrativos del Derecho en la Real Academia de Jurisprudencia y Legislación.

4 de junio de 2013. Conferencia sobre Víctimas del Terrorismo en la Real Academia de Jurisprudencia y Legislación.

5 de junio de 2013. Conferencia sobre Seven & Children en la Entidad Legalitas.

7 de junio de 2013. Asistencia a la entrega de Despachos a los alumnos de la Universidad Alfonso X el Sabio.

10 de junio de 2013. Asistencia a la conferencia sobre “El código procesal penal de Chile” en el Ministerio de Justicia.

20 de junio de 2013. Conferencia sobre “La estructura de los principios” en la Real Academia de Jurisprudencia y Legislación.

25 de septiembre de 2013. Junta General ordinaria.

Murcia (1). 213

18 de febrero de 2013. Encuentro informativo entre miembros de la Junta Directiva de la Sección Territorial y los medios de comunicación.

País Vasco (1). 214

3 de octubre de 2013. Apertura del año judicial en el País Vasco.

Comunidad Valenciana (7). 215-221

9 de noviembre de 2012. Reunión Directiva territorial.

7 de marzo de 2013. Asistencia apertura año judicial eclesiástico.

8 de marzo de 2013. Asamblea provincial de Castellón

6 de mayo de 2013. Participación en la mesa redonda de la Facultad de Derecho sobre la ejecución penal.

14 de junio de 2013. Asamblea provincial de Alicante

1 de julio de 2013. Participación en la inauguración de un curso del CGPJ

20 de septiembre de 2013. Asistencia al acto de apertura de tribunales del TSJCV

REUNIONES Y ENCUENTROS INTERNACIONALES DE ÁMBITO JURÍDICO.

Reunión del Grupo Iberoamericano de la UIM en Chile

5-9 de mayo de 2013

Reunión del Patronato de la Fundación Justicia en el Mundo de la Unión Internacional de Magistrados en Madrid.(5)

10 de mayo de 2013

Recepción a la delegación de magistrados de Beijing High People's Court.(6)

13 de mayo de 2013

Reunión del Grupo Europeo de la UIM en St. Gallen (Suiza). (7)

24-26 de mayo de 2013

Asistencia de un magistrado de la APM a la reunión del Comité de Presidencia de la Unión Internacional de Magistrados en Nápoles (8)

Asistencia de la delegación española a la 56 reunión anual de la Unión Internacional de Magistrados, en Yalta, Ucrania.

5-10 de octubre de 2013

Reunión del Patronato de la Fundación Justicia en el Mundo de la Unión Internacional de Magistrados en Madrid

10 de diciembre de 2013

Ceremonia de entrega del XIII premio Justicia en el Mundo de la Fundación Justicia en el Mundo de la Unión Internacional de Magistrados.

ACTIVIDADES DE FORMACIÓN Y ESTUDIO JURÍDICO, TALES COMO JORNADAS O CURSOS.

Madrid, 6 de febrero de 2013

Fuerzas Armadas y ordenamiento constitucional.

Organizado por la Fundación para la Magistratura

105 asistentes

Madrid, 15 y 16 de abril de 2013

Programa de las V Jornadas sobre Responsabilidad Civil y Seguro. La Reforma del Código Penal y Ley de Enjuiciamiento Criminal. Últimas tendencias jurisprudenciales sobre responsabilidad Civil. El régimen de cláusulas limitativas en la ley de contrato de seguro.

Organizado por la Fundación para la Magistratura y Mutua Madrileña.

50 asistentes

Málaga, 17 al 19 de abril de 2013

XI Jornadas Jurídicas por el Diálogo.

Organizadas por la APM de Málaga y la Cátedra de Derecho Procesal de la Universidad de Málaga, con el patrocinio de Unicaja.

400 asistentes

Valencia, 23 y 24 de mayo de 2013

VI Foro Encuentro de Jueces y Profesores de Derecho Mercantil

Organizado por la Fundación para la Magistratura.

40 asistentes

Aranjuez, 1 y 2 de julio de 2013

Crisis del modelo de estado: Crisis económica y crisis de la justicia

Organizado por la Fundación para la Magistratura.

40 asistentes

San Lorenzo de El Escorial, 22 al 26 de julio de 2013

Cursos de Verano de la Universidad Complutense de Madrid

Justicia y sociedad

30 asistentes

Zaragoza, 19 y 20 de septiembre de 2013

IV Encuentro Interterritorial de Jueces. Justicia y realidad social: El Juez ante una sociedad globalizada.

80 asistentes

Madrid, 28 de noviembre de 2013

La utilización de los medios telemáticos en el proceso penal.

Organizado con el patrocinio del despacho Garrigues y la Fundación 3M

100 asistentes

REUNIONES PRESENCIALES DE ESTUDIO JURÍDICO O Y DE AMBITO SUPRATERRITORIAL, DESARROLLADAS EN EL AMBITO DE LAS COMISIONES CORRESPONDIENTES CONVOCADAS AL EFECTO, DE LAS QUE RESULTE ELABORACIÓN Y DIVULGACIÓN DEL CORRESPONDIENTE ESTUDIO JURÍDICO.

1.- Reunión de Estudio sobre “Estudio de Carga de Trabajo”. 29 de octubre de 2012

2.- Reunión de Estudio sobre “ Anteproyecto de Reforma del CGPJ”. 9 de enero de 2013

3.- Reunión de Estudio sobre el “Real Decreto 431/2004 por el que se regula las retribuciones previstas en la disposición transitoria tercera de la Ley 15/2003, de 26 de mayo, reguladora del régimen retributivo de las carreras judicial y fiscal”. 3 de abril de 2013

4.- Reunión de Estudio sobre “Instrucción relativa a la determinación de los supuestos de carácter excepcional y debidamente justificados a que se refiere el artículo 375.3 de la LOPJ para el establecimiento de un complemento que permita alcanzar el cien por cien de las retribuciones en supuestos de incapacidad temporal por contingencias comunes de los miembros de la carrera judicial”

2 de mayo de 2013

5.- Reunión de Estudio sobre reforma del art. 103.2 del Reglamento General de Mutualismo Judicial. 3 de mayo de 2013

6.- Reunión de Estudio sobre “Ley de Transparencia”. 5 de junio de 2013

7.- Reunión de estudio sobre RD de órganos de gobierno, administración y representación de la Mutualidad General Judicial. 19 de septiembre de 2013

8.- Reunión de estudio sobre el Proyecto de modificación del Reglamento 1/2005, de 15 de septiembre, de aspectos accesorios de las actuaciones judiciales. 20 de septiembre de 2013

PUBLICACIONES PERIÓDICAS DE DIVULGACIÓN NACIONAL, LLEVADAS A CABO POR LAS ASOCIACIONES JUDICIALES.

Deliberación nº15

PUBLICACIONES PERIÓDICAS DE CONTENIDO ESTRICTAMENTE JURÍDICO DE DIVULGACIÓN GENERAL, INCLUIDAS LAS DE MEDIOS DIGITALES, A RAZÓN DE CINCO PUNTOS POR PUBLICACIÓN, CON UN LÍMITE DE SESENTA PUNTOS ANUALES

Boletín digital de la Sección Territorial de Galicia (1)

Boletín digital de la Sección Territorial de Madrid (2)

Boletín digital de la APM en Málaga (3)

Boletín digital de la Fundación Justicia en el Mundo de la UIM (4)

***INSTAURACIÓN Y MANTENIMIENTO DE LA PÁGINA WEB DE LA ASOCIACIÓN
JUDICIAL, PLENAMENTE OPERATIVA Y DEBIDAMENTE ACTUALIZADA.***

A nivel nacional (1)

TURKEY

Questionnaire for Member Associations

1 - Regarding independence of judges

1-1. Recruitment

-Briefly describe the modes of recruitment of judges in your country (competition, election, appointment ...)

After graduating law school, there is a written and oral exam for nominee judgeship/prosecutorship ensuing two years nominee-ship period. One must be under 30 years old in order to be entitled to take the exams. After the completion of these two years training, there is another written exam and if one is successful at this final written exam, becomes judge/prosecutor and work with full capacity if High Judicial Council accept them for the profession.

Aside from the general requirements for becoming public servants/public employees, the additional requirements are being a law school graduate for general courts of justice, being a graduate of a political science school that includes law courses in its curriculum for administrative courts (20 % of appointees), and having worked for five years in their professions and being younger than forty-five years of age at the time of the entry exam for attorneys who wish to become a candidate. Those who fulfill the above requirements are required to pass a central written exam and be successful in the subsequent interview. Those with a PhD degree in law may directly apply to the oral examination.

The Interview Committee (for oral exam) consists of seven members. It is chaired by the Undersecretary of the Ministry of Justice, or a Deputy Undersecretary to be chosen by him/her, and includes the Chairperson of the Inspection Committee, the General Directors for Penal Affairs, Legal Affairs, and Human Resources, as well as two members appointed for each exam by the Board of Directors of the Justice Academy of Turkey among its own members. Where the Board of Directors of the Justice Academy of Turkey includes a member each from the Court of Appeals and the State Council, these two members assume principal memberships of the Interview Committee. As it can be discerned from this composition, the bureaucrats of the Ministry of Justice, which is at the same time a political establishment, have a disproportionate weight in the Interview Committee that says the last word on this subject.

Complaints about the oral examination process regarding partial conduct and arbitrariness are common because of lack of assessment criteria which would guarantee objectivity in the evaluation of the qualifications of candidates, such as argumentation ability, skills of discerning,

summarizing and articulating a subject matter, general and physical look, the appropriateness of behaviors and reactions toward the profession, competence, abilities and cultural values, and openness to modern scientific and technological developments. The fact that some of those who score high points in the written exam receive very low grades in the oral exam justifies these complaints. Lawsuits are often filed about the said oral exams at administrative courts. In these cases, the oral examination committee generally can not explain the reasoning behind its low grades.

Summarily, following their two years of internship, on the condition that they succeed in the written proficiency exam that follows, High Judicial Council decides on their acceptance to the profession, and they are appointed to their new places of duty determined by drawing of lots.

-Do you consider this recruitment procedure problematic or does it ensure a satisfactory recruitment n number and quality?

The First part of the selection process, namely written exam, does not crate much problem but as it can be discerned from the composition of the interview committee, the bureaucrats of the Ministry of Justice, which is at the same time a political establishment, have a disproportionate weight in it and their discretional power has been used subjectively.

In the same vein, High Judicial Council of Judges and Prosecutors grand acceptance to those who completed training period at the end of the process but their decisions are marred due to subjectivity.

Quantitatively there is no much problem. More or less, the process produces necessary number of judges. On the other hand qualitatively speaking, training period is not satisfactory due to the fact that relevant institution which is charged for training of judges, namely Justice Academy, acts towards judges as if they are there to memorize regulations and case law of supreme courts. As an organization, we believe that training period must contain lots of elements beside teaching regulations and case law.

1-2. Initial and continuing training

-Briefly describe the training of judges at the beginning of the career and during this one

Judges have two years of internship training. Their pre-qualification preparatory and final trainings, in which both theoretical and practical matters are covered, are carried out at the Training Center of the Justice Academy of Turkey. Additionally, during their internship, they work at ordinary and administrative courts and the Court of Appeals and the Council of State.

During judge's career, in-service training is staged by High Judicial Council and judges take part

in it which lasts couple of days or so.

-Is there a school responsible for training judges?

Justice Academy which is an independent body is responsible for judicial training both pre-service and in service training.

-Do you consider the training satisfactory? If not, how could it be improved?

Training is not satisfactory. Additional elements must be added in addition to teaching laws, case laws.

1-3. Appointment and career

-Briefly describe the procedures for appointment of judges

This question is answered above under 1.1.

-Is there a Higher Council of Justice in charge of these issues? If yes, how is it composed? What are its powers (simple opinion or decision-making power)?

Yes. Amended Article 159 of the Constitution of the Republic of Turkey reads as follow: *The HCJP shall be composed of twenty-two regular and twelve substitute members and shall comprise three chambers.*

The President of the HCJP is the Minister of Justice. *The Undersecretary to the Minister of Justice shall be an ex-officio member of the Council.*

For a term of four years, four regular members of the Council, the qualities of whom are defined by law, shall be appointed by the president from among academicians in the field of law, and lawyers; three regular and three substitute members shall be appointed by the plenary assembly of the Supreme Court from among members of the Supreme Court; two regular and two substitute member shall be appointed by the plenary assembly of the Council of State from among members of the Council of State; one regular and one substitute member shall be appointed by the plenary assembly of the Turkish Justice Academy from among its members; seven regular and four substitute members which are first category judges and maintain the qualifications for being first category judges shall be selected by civil judges and public prosecutors from among civil judges and public prosecutors; three regular and two substitute members which are first category judges and maintain the qualifications for being first category judges shall be selected by administrative judges and public prosecutors for four years from among administrative judges and public prosecutors.

The administration and the representation of the Council are carried out by the President of the Council. The President of the Council shall not participate in the work of the chambers.

It shall take final decisions on proposals by the Ministry of Justice concerning the abolition of a court or an office of

judge or public prosecutor, or changes in the jurisdiction of a court.

A Secretariat General affiliated with the Council shall be established.

HCJP is the decision making body for any issue which relates to judges such as; acceptance to profession, appointment, relocation, jurisdiction, disciplinary actions etc.

-What are the rules for promotion of judges?

There are no objective rules for promotion. HCJP evaluates judge's performance and decide on promotions. Procedure is to some extent arbitrary.

-The tenure is it guaranteed to judges?

Yes. Constitutionally. **Article 139/1 of Constitution.** *Judges and public prosecutors shall not be dismissed, or retired before the age prescribed by the Constitution; nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of court or post.*

-Judges are they evaluated? If yes, by whom, on what basis and with what possible appeal?

Evaluation of performance of judges and its effect on judicial independence is a burning issue in our country. Performance evaluation is a fundamental part of supervision of judicial function as a whole. Thus supervision of judiciary, evaluating judicial performance, transparency, accountability in relation with independence etc. are main topics on this subject and discussed widely.

In our country evaluation of judicial performance is a part of supervision of judges'/prosecutors' work. Judges'/prosecutors' work under the supervision of two constitutional bodies which are High Judicial Council of Judges and Prosecutors and Supreme Courts. Supreme Courts, namely Council of State (for administrative judiciary) and Supreme Court of Appeals (civil/criminal judiciary) scrutinize judges' work from the legal perspective and substantive aspects. They decide whether or not final judgment is compatible with relevant written law/case law etc. Substantive aspects of the judicial work such as facts, law, final and interim judgments are being review by supreme courts. At the end of this supervision final judgment may be upheld/quashed, legal/factual errors may be indicated in appellate courts' reasoning. This process provides an idea and evidence about judges' work qualitatively. Quantity of upheld/quashed judgments and their percentage, constitute another indication in the evaluation process and substantive aspect of judge's work are evaluated in this way. This is the one side of the evaluation.

Other side of the evaluation process is realized by inspectors who work under the Inspection Board which is a part of the High Council of Judges and Prosecutors (HCJP). High Council of Judges and Prosecutors Inspection Board, which is a constitutional body, is empowered to

supervise judges' and prosecutors' (j/p) function and decide whether or not j/p act in accordance with relevant regulations when they perform their duties, procedurally, and if necessary investigate relevant accusations of misconduct/malfunction/corruption. In the present system, j/ps' performance are evaluated by inspectors who work under HCJP Inspection Board and pre-prepared documents which are called Performance Evaluation and Development Form (the Form) and Performance Evaluating Report (the Report) are filled out by said inspectors. Inspection Board Bylaw article 33. states that these documents are filled out in the name of evaluating j/ps' work and enhancing their performance. Roughly speaking every two years, inspectors go to previously planned jurisdictions/locations and appraise judges work who reside in there. Real authority of evaluating judges and prosecutors work, making decisions about it, affecting j/ps' career by virtue of above mentioned supervisions rests with HCJP which uses the form and the report as main indicators. On the other hand these documents are not binding, HCJP is not under the obligation to follow findings of these documents and decide accordingly. HCJP appreciates how these documents/findings will affect j/p's career freely. Questions arise when HCJP uses its discretionary power selectively (favoring like-minded people/punishing those who is know as a dissident).

The form consists of two main parts. First part is under the heading of Administrative Competency Areas, that of second is Functional Competency Areas. These two main headings have their own subheadings which include numerous obscure criteria. Examples of questions which will be answered by inspectors are as follows; How judge treats auxiliary staff, is division of labor done justly by judge among them, is he capable of supervise them, is there a harmony at work place, does he encourage his staff to make them work efficiently/swiftly, does he abide by working hours (8:30 to 5:30 pm), does he act in civilized way towards his staff/colleague/citizens, is he gentle and respecting others, is he open to criticism and different opinions, how is his dialogue, cooperation and harmony with co-workers (staff and colleagues), is he a good observer/listener, does he work swiftly, does he work in accordance with time limits that certain regulations stipulates, does he write reasoning of interim/final judgments in due time, is there sufficient reasoning in interim/final judgments, does he follow case law of supreme courts, does he pay due attention to his work, when he works as a member of a committee (there are courts which consist of three judges) does he contribute to the work of committee, how he behaves towards auxiliary staff and petitioners, is his written and oral language understandable by others, does he protect reputation of judgeship towards other institutions, when he appoint experts, are they suitable for the purpose, is subject-matter of the case written correctly, are minutes and judgments compatible with relevant procedural law, does he work by taking into consideration

his work load as a whole, are necessary notifications in judicial process done in due time, does he supervise registry of court efficiently and correct their mistakes, hinder possible delays, are hearings carried out efficiently and as per relevant procedural regulations, do formal aspects of interim/final judgment meet relevant criteria, etc... These are sample questions from the form. As evidenced by wording of above questions, these criteria are profoundly vague, obscure, and difficult to be substantiated and can easily be used against j/p at hand detrimentally, may pave the way for achieving any kind of pre-arranged desired result also.

Main goals for inspection as indicated by relevant regulations may be summarized as follows; to determine whether or not j/ps act as per law, bylaw, regulations, circulars etc, indicate malfunctions, reveal corruption, to have an opinion about j/ps' individuality, knowledge, performance, success, filling out relevant forms which shows inspectors opinions about j/ps' work concerning all issues that mentioned above, obtaining indicators for j/ps' promotion, relocation, jurisdiction, reappointment etc...

Both private and professional life of a j/p at hand is examined. Professionally every kind of legal text, e.g. case files, interim/final judgments, court orders, expert appointment procedures, etc. which is dealt by judge are examined. All kinds of documents that are inside the case file are subject to supervision. Inspectors, when they examine judges/prosecutors' work and fill out the Form, take into consideration documents such as; all case files which are both concluded and not concluded, beside case files, all other acts and duties that a judge/prosecutor at hand carry out as a part of his/her job, relevant statistics about judge's work (number of cases which are dealt by judge, timing of decisions, work load, time frame which is necessary for relevant judge to conclude a case, writing reasoning. Judge's behavior towards staff/petitioners/co-workers/colleagues is another aspect of professional life of a judge that will be reviewed by inspectors. Above mentioned question samples would provide sufficient ground to establish an accurate opinion about different aspects that will be supervised.

Another source of information for an inspector is private life of j/p. Needless to say that if private life of a j/p affects his work, this may constitute a concern for an inspector and justify scrutiny over j/p's private life. Nonetheless, at present situation, it is common knowledge that inspectors try to obtain information about j/p's personal life in order to draw right picture about j/p's world views, political inclinations, mind set etc. It is also common knowledge that HCJP uses this kind of informal qualities of j/p's when it considers appointment for critical positions. When one considers HCJP's discretionary power over nearly everything about j/p's career, it is safe to say that informal information about j/p's personality and private life may provide sufficient ground for HCJP to favor someone or take selective measures against others. All in all,

the form includes vague concepts which can easily be used as a pretext for selective justice. Suffice to say that these inspections are not just about performance evaluation but also for getting to know relevant judge from all aspects in every possible way.

Inspectors use every possible way to obtain information not just about judge's work but also about his personality. Inspectors try to extract information about judge in every possible way. Consulting colleagues/staff/co-workers/law enforcement officers etc. is common source of information and even ordinary citizens who has legitimate connection with judge is asked to give information about judge time to time. Work place, general situation in court house, is monitored. This creates problems since when an inspector arrives at a court house all judges and prosecutors are alarmed because they perfectly well know that any behavior that is shown by them may be construed as an offense by inspectors and reported back to HCJP. J/ps try hard to not to offend inspectors in any way and show grate undeserved respect towards them. There are over 100 inspectors who work at Inspection board and their rank in judicial profession varies. In fact problem begins with the fundamental part of the supervision which are inspectors. Only criteria for to be appointed as an inspector is 5 years work experience. HCJP freely chooses inspectors among judges and prosecutors who work at least 5 years. We argue that HCJP creates its own inspection team by choosing them among like-minded colleagues. Another problem stems from the fact that sometimes 30-35 years old inspectors carry out inspection against 50-55 years old senior judges, this situation makes senior j/p's feel humiliating sometimes because bossy attitude of some inspectors who are heavily criticized because of their subjective, biased opinions on judges' performance and personality. Generally speaking one of the main deficiencies of the evaluation system is the lack of objective criteria for evaluation process.

Taking into consideration above all, inspector writes down opinions about j/p, indicates their administrative and functional competency as per his observation, strong and weak sides of j/p's work and personality, areas of possible progress, his own recommendation.

Inspectors who work under the HCJP Inspection Board fill out the Form and the Report after inspection is completed and send these forms and reports to HCJP's relevant division, as per evaluation forms and reports, Second Chamber of HCJP decide on promotions, First Chamber decide on reappointment and jurisdictional/locational issues. If there is an act and omission which require judges/prosecutors' legal/criminal/disciplinary responsibility, Third Chamber decide on initiating criminal/disciplinary investigation.

After the form having been filled out, inspector gives judge a score between 0-100. Numbers between 95-100 "*Excellent*" means that highest degree performance, lack of smallest fault,

extraordinary talent. 80-94 “Above average” means that duties carried out perfectly, minor mistakes occur very rarely, performance is beyond expectation. 70-79 “Average” means qualitatively and quantitatively judges work meets expectations, small mistakes occur but not in the amount of hindering effective functioning of judicial process. 40-69 “Progress is needed” means mistakes occur frequently and cause failures, hinder efficiency, expectations and requirements are met at minimum level or just above the minimum, there is a possibility of progress which is much needed by judge at hand. 0-39 “Not adequate” means duties are neglected and not fulfilled, expectations and requirements are met below the minimum level, mistakes occur continually, mistakes cause work disruptions and plaintiffs are affected badly, performance is needed to progress, measures must be taken,

A judge or prosecutor who is graded below 70 may not be promoted to higher posts and this may constitute a ground in order them to be relocated or alteration of jurisdiction.

After inspection is completed inspectors prepare a recommendation list which will be submitted to relevant parties of inspection. Judges/prosecutors that are under inspection have a right to object inspectors’ findings and recommendations in a time frame of 15 days to the Inspection Board Presidency. Objections must be supported by reasoning and dully substantiated. If objection has a merit, Presidency may decide to struck out or alter the relevant recommendation. Presidency has total discretion over deciding on the fate of an objection. Recommendations and Performance Evaluation Form must comply each other Performance and Evaluation Form may be brought to judicial review. Affected judge may initiate legal procedure at administrative courts and challenge substantive aspects of the Form. However this remedy has little chance of success because of the fact that administrative courts are reluctant to confront with HCJP and annul the form partly or wholly.

Accountability and transparency require some sort of evaluation of judges’ work. This is a necessity for our system of professional judiciary which meant that we start our career at the age of 25 or so after; finishing law school, taking written and oral exams, spending two years as a nominee judge/prosecutor, taking another exam and at the end of this process become a judge/prosecutor and work with full capacity. It is similar to any other public office which may be assumed through similar procedures. For the sake of accountability and transparency, judges professional life, his work and behaviors may be evaluated but method, style and manner of inspectors are of utmost importance from the perspective of judicial independence. Our system creates above mentioned conflicts because of vague concepts, subjective criteria, manner that is assumed by inspectors, biased and partial reports, hidden motives behind inspectors mind, inadequate reasoning in the process of filling out the form and reports, bossy attitude of

inspectors towards judges, judges vulnerability and susceptibility towards inspectors/inspection, selective measures which are taken by HCJP against dissident judges, selective justice, inspectors qualifications, their work experience...

Answer to this question “externally” is formally no informally yes, reasons are as follows; these system more or less does not create external influence over judiciary thanks to the fact that HCJP is independent constitutional body which is mandated to carry out all kinds of activities which relate to judiciary. Thus broadly speaking, formal external influence over judiciary can not be exerted by other appearances of government namely parliament and incumbent party. On the other hand informal influence is always a case because of the fact that elected members of present HCJP have very close personal links to the ruling party. Some of them worked at justice ministry for a long time, others are know as having conservative background and share the same mentality with incumbent party. HCJP Members who are appointed by President of Turkey have also very close link to the government. It is safe to assume that government and HCJP are like-minded. Hence exerting informal influence over HCJP by government is not just a possibility, but also a reality. On the other hand formally speaking, there is no link between government and HCJP which is totally independent from the others. Inspectors work under HCJP which is an independent body legally thus external independence is ensured at least in appearance.

Internally; the answer is yes. Internally speaking judges and prosecutors are so vulnerable towards HCJP because of its powers and mandates. There are periodical and exceptional inspections which are carried out by HCJP inspectors. There is no objective criterion for inspectors to follow; as a result an inspector can prepare any kind of report about relevant judge or prosecutor positive or negative. Judges/prosecutors' heavy work load make them prone to make mistakes and inspectors, by exaggerating these small issues, can create very bad image for a j/p. We argue that inspectors have all means to evaluate judges' work subjectively and interpret their behaviors biasedly. Vague concepts which are used by inspectors against judges make it easy to write bad reports about them and preferential treatment is always a case. If HCJP wants to demote someone or change location/jurisdiction, HCJP inspector may be sent to j/p's working place and reasons for the action which is hidden inside their mind can easily be extracted due to systematic deficiencies within Turkish legal system such as heavy work load, constant change of laws, regulations etc. Even j/ps' private or daily life are not exempted from inspectors scrutiny. From the perspective of internal independence, inspection process is like Damocles' sword hanging over j/ps' head reminding them their vulnerability. Proponents of this system argue that what if a judge/prosecutor oversteps his boundary? Answer to this question is, in that case details of the case may be revealed by inspectors and everyone will be satisfied with the reasoning of the action

that may be taken against a colleague. But generally, we are not talking about serious mistakes or corruption. On the contrary we are talking about small issues which are really difficult to notice by others but have detrimental affect on career of relevant judge. In this system you can easily promote and favor someone by harming damaging others. No one will read the details of why “A” appointed as chief prosecutor and “B” relocated to remote part of country. If a judge is not qualified for this profession personally or professionally that means judges appointment system is at fault. Pro-system people say they ensure responsibility and accountability of judiciary by ensuring public trust towards judiciary through inspections. But their inspection goes beyond this aim and reaches even irrelevant aspects of j/p's life. Public trust towards judiciary is ensured by good reasoning, paying due diligence to timing, supreme courts' review over judgments. If there is a judge who betrays public trust there are legal remedies for this problem. We must emphasize that what we object here is the fact that inspection process can easily be misused by HCJP and any desired result may be motivated. We are not objecting revealing corruption by inspectors or punishing those who betray public trust or misuse judicial powers. Ensuring accountability and transparency is one thing, evaluation of judges' performance and affecting his career is another. We claim that inspectors mix these two different things.

Advantages, as claimed by some; Ensures uniform application of procedural rules, Constitute an incentive to know that someone will come and review procedures, makes j/p work more carefully, diligently, Common mistakes are identified and different recommendation reports help j/ps to understand possible solutions, Junior judges learn possible source of problems before hand and do not make similar mistakes, enhances competency, Creating the notion that “I will be held accountable for a delay or mistake” and steer judges towards working diligently

Shortcomings, as indicated by our colleagues; Subjectivity, Impossibility to take a right picture of judges/prosecutors for 30 days that inspectors spend at court houses, How can an inspector would know that a j/p function the rest of the year, Inspectors, when they mark judges success, use different marks as per their subjective understanding, Some inspectors give 70 at best others 70 at least, J/ps are treated like they are school child, Before coming to inspect j/ps, inspectors read previous reports about j/p and gets information about them, so he has prejudice before even see them, Like-minded judges get good marks, judges who have different life style (most commonly leftists) get low marks, Inspector does not evaluate the reality of the situation but how it is shown to him by others. Inspectors have huge discretionary power, If he likes the person omits small mistakes, but if he dislikes him/her small mistakes will become enormous. Common mistakes are exaggerated by inspectors, Inspectors meddle with substantive aspect of j/ps' work and interfere issues such as how prosecutors will value the evidence before them and

how prosecutors classify evidence, System does not have the capability of separating hard-working and lazy in practice, Inspectors' bossy attitude, acting like they are superior to judge, Inspectors' recommendations contradicts with supreme court case law and laws, bylaws time to time, Auxiliary staff are reprimanded openly and this is done as if giving warning to j/p. Humiliating for both j/p and staff members, Inspectors are welcomed by red carpet treatment by chief prosecutors, Inspection process hinder efficient functioning of relevant court, Objection system is not efficient, Inspection Board rarely accept objections. It is ineffective, Filing an administrative law suit is not a remedy also because judges in administrative courts do not want to be at odds with HCJP. It is understandable because after all same institution will say the final word for their appointment, promotion etc. System, in its present form, is against independence of judiciary, System creates the feeling that judges and prosecutors are like competitors for each other, Heavy work loads, constant change of regulations make judge/prosecutors vulnerable to inspection, Supreme courts already evaluate judges' work, and inspection is not needed.

-Do you consider these procedures satisfactory? If not, how could they be improved?

Above details would be satisfactory answer for this question as well.

1-4. Discipline and Ethics

-Describe briefly the ethical rules and disciplinary proceedings

There are no professionally accepted ethical rules for judges. Work in progress on this subject. As to disciplinary proceedings the system is as follows;

In our country the disciplinary regime implemented for judges and the public prosecutors is the same. Not only the same legislation applies to judges and public prosecutors, they also do not have separate committees, but are all attached to HCJP. Where the actions and behaviors of judges and public prosecutors constitute a crime in terms of the penal law, a disciplinary investigation shall be carried out parallel to the criminal investigation.

The Law of Judges and Public Prosecutors specifies 7 types of disciplinary sanctions for judges and public prosecutors: warning, reprimand, deduction from monthly salary, stage advancement halt, rank advancement halt, relocation, and removal from profession.

The warning penalty is the lightest and the penalty of removal from profession is the most severe sanction. A judge or public prosecutor, who has been sentenced to the penalty of removal from profession, may not work afterwards even as a defense attorney.

According to our legislation, a disciplinary investigation shall be commenced and conducted by the Third Chamber of HCJP and the inspection committee attached to that Chamber. Where it is

decided to open an investigation, the investigation file shall be forwarded to the Second Chamber of HCJP, and the Second Chamber shall request the defense of the judge or public prosecutor in question within 10 days. The Second Chamber of HCJP decides on the disciplinary investigation, concerning whether a disciplinary penalty is required or not, and if so, which penalty should be given. The Second Chamber of HCJP has 7 members and can make decision by majority of vote.

The judge or the public prosecutor in question may request within 10 days a reexamination of the disciplinary penalty given by the Second Chamber of HCJP. In such a case, the same Chamber shall meet once again with the same members to evaluate the request for reexamination. Where the request is rejected, the judge or the public prosecutor again has a right to object within 10 days upon the receipt of the decision to the General Assembly of HCJP. Where the General Assembly of HCJP rejects the objection made, no legal action can be taken against this, and the disciplinary penalty shall become final upon the decision of the Committee. This is because taking legal action against all decisions of the Committee is blocked, with the exception of the penalty of removal from profession. The right to legal action only against the penalty of removal from profession is granted. One of the fundamental reasons for why judicial independence cannot be ensured in real terms in our country is the fact that legal action cannot be taken against the decisions of HCJP.

-Is there a regime of incompatibilities and prohibitions of certain professions and positions for judges? Is there declaration of assets?

Apart from judicial activities and assuming positions of bureaucratic nature at Justice Ministry, HCJP, Justice Academy judges can not assume any other duties. Regime of incompatibilities applies to judiciary.

In every two years and whenever a judge acquire something worth more than five times his salary judges fill out declaration of assets form.

-Who is in charge of disciplinary procedures? What are the guarantees for judges involved (contradictory, rights of defense, appeal ...)?

These questions are answered above under 1.4.

-Do you consider these procedures satisfactory? If not, how could they be improved?

We consider these procedures are arbitrary and devoid of any transparent supervision. It must be objective and transparent with relevant judicial safeguard.

1-5. Distribution of cases

-Describe briefly the distribution of cases between judges and the conditions for their eventual divestiture

National judicial informatics system (UYAP) distributes cases digitally among courts, but inside a court if there is more than one judge, president of the court distribute cases according to her own accord.

-Do you consider these procedures satisfactory? If not, how could they be improved?

Digital distribution of cases is satisfactory but in-court distribution is problematic due to the fact that president of a court decides on this arbitrarily, there must be objective distribution system for in-court case allocation.

1-6. Recognition of the right of association

-The right to join or form associations/ unions, is it recognized for judges?

Thanks to more than 7 years struggle for this end by YARSAV, judicial associations are recognized by State. Judicial unions are still suffering from legal technical difficulties and State creates obstacles for this kind of endeavors. Being a member of these organizations time to time creates obstacles for judges.

-If so, what resources are allocated to the association / union in terms of grants, human resources?

There is no financial support for associations from the State; judges create their own associations without any grants from government.

-Do you consider these procedures satisfactory? If not, how could they be improved?

As always the case, government tries to discourage judges who want to establish this kind of organizations formally and informally. Both government (incumbent party) and judicial authority (HCJP) and supreme courts try to avoid any cooperation with judicial associations. For them we are invisible. As a sine qua non for true independence of judiciary, judicial associations and their opinions must take into consideration in the decision making process.

1-7. Protection of judges

-Are the judges frequently attacked in the media, by politicians or other people? Do they have special protection?

Judges and judicial procedures are protected by law formally against attacks. But informally, we see attempts to affect judges' opinions by politicians' especially incumbent party members and prime minister by giving public speeches about controversial issues.

-Do you consider these procedures satisfactory? If not, how could they be improved?

Any attempt to exert undue influence over judiciary by politicians must not be allowed. First and

foremost, politicians must show respect towards judiciary.

2 - Regarding the means of Judiciary

2-1. Funding of the judiciary

This question could not be answered due to lack of information. Relevant information is requested but request is declined by authorities.

- *Annual budget of Justice*

Specify the total annual allocation to the functioning of the courts budget (including expenses relating to judges, prosecutors and legal aid). Does this budget seem to you sufficient? Judges, or bodies representing judges, are they consulted during the elaboration / implementation of budget?

- *Operating budget of the courts*

How and on which criteria are distributed the funds to the different jurisdictions? Can the courts use freely their budgets? Is it organized before committing expenditure a consultation of judges?

- *Do you consider these procedures satisfactory? If not, how could they be improved?*

2-2. Salary

-*Briefly define the scale of salaries of judges : at the beginning of the career, at the mid-term, at the end*

At the beginning of their career, judges are paid about 3.000 Turkish liras. That is equal to 1.500 US dollar. At the top of their career they get 7.000 TL or so. But in terms of purchase power 1 TL is equal to 1 euro in our Country.

-*Who determines the salary of judges? Is there a system of "merit pay" (if so in what proportions? How the sums are assigned to judges?)*

Parliament enacted relevant law which regulates judges' salary. There is no system of merit pay.

-*Salaries are they likely to go down? If yes, have you met such cuts and in what proportions?*

No

-*Do you consider this situation and the guarantees for judges satisfactory? If not, how could they be improved?*

We consider that this situation is not satisfactory and salary must be raised.

2-3. Pensions

-*At what age and how judges can they retire?*

At the age of 65 retirement is compulsory, but prior to that date is optional.

-Does the amount of the pension satisfactory?

Amount is 3.000 TL and not satisfactory.

-Do you consider that improvements have to be done?

Improvements must be done in order retired judges to live according to their customary life style.

It must be in line with the reputation of their former profession.

2-4. Accessibility and Efficiency of Justice

-Are there barriers to the defendant to access to justice? Are there mechanisms to provide access to justice for the most disadvantaged people (legal aid, Support to victims ...)

We have legal aid scheme for people who has not got necessary financial means to initiate or pursue judicial process.

-Are there problems of deadlines in the treatment of cases?

Due to heavy work load, sometimes it is difficult to meet deadlines but self-sacrificing colleagues of ours work really hard.

-Do you consider these procedures satisfactory? If not, how could they be improved?

Real solutions for heavy work load must be found by both judiciary and government.

3 - Regarding the national association

3-1. Representativeness of the association

- How many members does the association have? Has this number increased since the association became a member?

We have 1600 members so far. We have not witnessed any such increase.

- Do other associations/ organizations of judges exist?,

Yes. "Judges and Prosecutors Union", "Democratic Judiciary Association", but their members are less than 80.

- If elections are held in the country in question, please furnish statistical data relating to the extent to which the association is representative.

We represent 1600 judges and prosecutors out of 13.000

- Does the association include members who are independently elected and who oversee the judiciary? The

discipline of the judiciary?

No

3-2. Modalities for appointment / election of its representatives

- *How are the leaders of the association selected? Are they elected by the members? Are they appointed? If yes, by whom and by what process?*

Plenary Assembly of our Association which is consisted of all our members elects board members by casting vote for their favorite candidates.

- *How is the association organized? Is there a board of directors/association council? If yes, how are the members of the council appointed/ elected? What powers does the council have?*

Our organization has administrative council consists of 13 members elected by General Assembly through voting. As an administrative board it carries out administrative duties.

- Does the association have regional representatives? If yes, how are they appointed/elected?

We are in the process of establishing regional representatives. Work in progress.

3-3. Financing Association

- *What is the association's annual budget?*

Roughly 100.000 TL equal to 33000 euro

- *What are the association's funding sources: membership dues, subsidies, other funding sources?*

Membership fees only.

- *What have been the principal expenses?*

Attending international meetings, organizing internal and international events, regular office and staff expenditures, publications etc...

3-4. Relations association with public administration

- *Does the association meet regularly with representatives of the executive? In particular with the Minister of Justice and his/ her associates? Is the association consulted in advance of all government reforms?*

We do not hold meeting with executive due to executive's hostile attitude towards us. We are not consulted by them for the same reason. We are open to any kind of collaboration but they refuse our attempts.

- Does the association meet regularly with representatives of the legislature? Is the

association asked to provide its opinion on projects and bills before they are examined by the parliament?

Formally there is no this kind of cooperation between legislature and us. But informally members of parliament time to time ask about our opinion on judicial matters.

3-5. Actions undertaken by the association during the last 3 years

- *What were the main actions undertaken in the previous year? In the previous three years? Since becoming a member?*

We issue press statements about judicial matters, hold meetings, attend internal and international meetings, follow important court cases which relate to judicial independence and rule of law, publish documents, issue reports etc.

- *Has the association organized collective action (demonstrations, strikes ...)?*

As per relevant law, we are not allowed to stage demonstrations, strikes etc.

- *Does the association have a media presence? Has the association published documents (books, reviews, communiques...)?*

Turkish media is so timid even afraid to allocate time for us due to self-censorship and government pressure. On the other hand time to time we publish said documents.

- *Did the eventual actions taken have a positive impact on judicial powers?*

4 - Miscellaneous

-*What were the main problems encountered by the judiciary in your country in recent years?*

Incumbent party (AKP) holds the majority of the Parliament and the Prime Minister's authority over executive and legislative is absolute. Political elites lack of a tradition of mutual respect, restraint, co-operation and democratic culture. Checks and balances that restrict executive power do not work in practice. The principle of "Separation of powers" has lost its meaning. Executive dominates the Parliament. If PM wills any kind of text can easily become law, the legal supremacy of the legislature has been used against independence of judiciary. Thus parliamentary guarantee against arbitrary interference of executive, in reality, does not exist. Democratic institutions have lost their meaning with PM's attitude and mentality since posts in these institutions have been filled according to PM's preferences. Prime Minister has considerable informal influence over judicial council (HCJP). Majority of the members belong to same world view (conservative) and act accordingly as a block. Basic principles on this subject which are indicated by international text such as, "pluralistic composition" and "widest representation in judicial council" have not

been realized. In the process of selection HCJP members (10 of them out of 22 is selected by judges and prosecutors through voting) the list which was belonged to Justice Ministry was imposed on judges and prosecutors and the names in the list, as a block, has been selected as council members. When the nature of other 11 is taken into consideration (ex-officio members Minister of Justice, Undersecretary of Justice Ministry, 4 people appointed by President of the Republic, who is an ex-member of incumbent party and very close friend of PM, 3 members from Supreme Court, 2 members from Council of State which are newly rearranged by HCJP, one can say executive has overwhelming influence of HCJP and can motivate any desired result. In high profile cases, after judges and prosecutors having been replaced, process is stalled and judicial process bears no fruit. Public are under the impression that against PM's will no one can be brought to justice. Executive (Prime Minister) has been using any means necessary (enacting or amending laws, or exerting pressure over judicial council, intimidating judges and prosecutors via comments which are published by newspapers etc.) to avoid any negative outcome of the relevant judicial process. New proposal for new constitution: Presidency System: In the process of drafting new constitution, AKP proposes to switch from parliamentary system to presidency system in which the president will be the owner of the absolute power. There will not be a system of checks and balances as in the US presidency system but the president will have nearly absolute power. One of the proposals is that of the Supreme Board of Judges and Prosecutors that was altered just two years ago. If accepted, the AKP (incumbent party) proposes that the president should have the authority to appoint 7 members of the HCJP. 8 members of the Constitutional Court, . of members of the to-be established Court of Cassation (According to government proposal Council of State and Court of Appeals will be merged into one institution).

- Would you say that the situation for the judiciary has improved? decreased? has remained stable?

Situation has worsened since prime minister has consolidated his power on judiciary. HCJP has no pluralistic nature and under the influence of PM. Media is not free. Self-censorship is widespread,

- What are the main reforms underway or planned? These reforms seem they go in the right direction?

No reforms on the horizon.

Questionnaire for Member Associations

1 - Regarding independence of judges

1-1. Recruitment

- Briefly describe the modes of recruitment of judges in your country (competition, election, appointment ...)

Judicial appointments are primarily made by **The Judicial Appointments Commission**¹ for England and Wales², **The Judicial Appointments Board** for Scotland and those in Northern Ireland by **The Northern Ireland Judicial Appointments Commission**.

England & Wales:

The Judicial Appointments Commission (JAC) oversees the selection of candidates for judicial office in courts and tribunals in England and Wales, and for some tribunals whose jurisdiction extends to Scotland or Northern Ireland³. The selection process typically starts when the JAC receives a vacancy request from Her Majesty's Courts and Tribunals Service or the Ministry of Justice⁴. The vacancy request includes the number of vacancies, a job description and the eligibility requirements set by statute for the post. It may also contain additional selection criteria set by the business area. The recruitment process is set out below:

Stage 1 – Application:

Advertising

The JAC advertises all selection exercises on their website and in their email newsletter Judging Your Future⁵.

Applications

The JAC tailors the application form for each selection exercise and prepares an information pack. The pack includes information about the post concerned, the selection process to be used, and the qualities and abilities⁶ (competencies) against which an assessment will be made. When they receive the completed application form, they check that the candidate meets the entry requirements. They also make an assessment of good character.

¹ <http://jac.judiciary.gov.uk/>

² The JAC does not select Magistrates or judges for the UK Supreme Court.

³ The judicial appointments for which the JAC makes selections are set out in Schedule 14 to the CRA as amended by the Crime and Courts Act 2013.

⁴ <http://www.justice.gov.uk/contacts/hmcts>

⁵ <http://jac.judiciary.gov.uk/about-jac/judging-your-future.htm>

⁶ http://jac.judiciary.gov.uk/static/documents/00850_Qualities_and_Abilities.pdf

Shortlisting

The purpose of shortlisting is to identify candidates to proceed to a selection day. It is either undertaken on the basis of a test or by a paper sift.

- **Tests** - online tests designed to assess candidates' ability to perform in a judicial role, by analysing case studies, identifying issues and applying the law. They are usually prepared by judges from the relevant jurisdiction. The JAC uses qualifying tests for larger selection exercises; generally those below Senior Circuit Judge.
- **Paper sift** - undertaken by the selection panel - consisting of a lay panel chair, judicial member and independent member - and based on written evidence, including the candidate's self-assessment and references.

The JAC prefer to use tests for making shortlisting decisions in the majority of exercises. They tailor their processes appropriately, however, so may not use them when there are small numbers of applicants, for example.

Stage 2 - Assessment

References

Personal and professional references are required either before a paper sift, or after the qualifying test. The JAC seek information from people who are well placed to comment on how the candidate meets the qualities and abilities.

Candidate selection day

If shortlisted, candidates are invited to a selection day, which may consist of a panel interview, interview and role play, interview and presentation or interview and situational questioning. Candidates will be expected to demonstrate the qualities and abilities required, using appropriate examples.

- **Interviews** - Interview panels consist of three to five panel members including a Chair, a Judicial Member and an Independent Member.
- **Role play** - Role play usually simulates a court or tribunal environment. Candidates are asked to take on the role of judge and respond to a simulated situation.
- **Situational questioning** - Situational questioning focuses on what a candidate would do in a specific situation. This technique involves questions concerning a hypothetical situation based on challenging, real-life, job-related occurrences and asks the candidate how they would handle the problem. Candidates are given material related to the hypothetical situation before the interview starts so they have time to think and prepare their responses.

Panel report

Panel members assess all the information about each candidate (their performance in the interview and any role play, the candidate's self-assessment and references) and agree which candidates best meet the required qualities. The panel chair then completes a report providing an overall panel assessment. This forms part of the information presented to the JAC.

Statutory consultation

As required by the Constitutional Reform Act (CRA) 2005⁷, the JAC will carry out consultation

⁷http://www.legislation.gov.uk/ukpga/2005/4/pdfs/ukpga_20050004_en.pdf

as part of each selection exercise unless it is agreed in advance between the JAC Chairman⁸ and the Appropriate Authority (Lord Chancellor⁹, Lord Chief Justice¹⁰ or Senior President of Tribunals¹¹) not to do so. When consultation is taking place, they are required to consult a person (other than the Appropriate Authority) who has held the office for which the selection is to be made or who has other relevant experience. This individual will be identified in the information pack for the selection exercise and summary reports will be sent to them for comment. The JAC may also consult another person who has held the office for which the selection is to be made or has other relevant experience. For High Court selection exercises for example, this is likely to include the Lord Chief Justice, and one other person.

Stage 3 – Selection and Recommendation

Checks

In accordance with the JAC's statutory duty, the good character of the candidates is also assessed.

If the potential recommendation includes an existing salaried judicial office holder, the Judicial Conduct Investigations Office is asked to check whether there are complaints outstanding against them. For other potential recommendations financial, criminal and professional background checks are carried out.

Selection decisions

JAC Commissioners make the final decision on which candidates to recommend to the Appropriate Authority (Lord Chancellor, Lord Chief Justice or Senior President of Tribunals) for appointment. In doing so, they consider those candidates that selection panels have assessed as the most meritorious for the role, having been provided with information gathered on those individuals during the whole process.

Report to the Appropriate Authority

When reporting its final selections to the Appropriate Authority, the JAC must reflect the comments of the statutory consultees and discuss any divergence of opinion.

Quality assurance

Quality assurance measures are applied throughout the process to ensure that the proper procedures are applied and the highest standards are maintained. The quality checks include:

- Assigning a Commissioner to each exercise, who works closely with the JAC selection exercise team to ensure standards are met. For example, the Assigned Commissioner will oversee development of tests and role plays, review results to check for anomalies or signs of bias, and help brief panel members to ensure they are fully prepared.
- Reviewing the progression of candidates through each stage of the process for any possible unfairness.
- Observing interviews to share good practice across panels; and overseeing the operation of tests and the results of panel assessments to ensure consistency (because of the number of candidates, many exercises will use more than one panel).

⁸ <http://jac.judiciary.gov.uk/about-jac/commissioners.htm>

⁹ <http://www.parliament.uk/about/mps-and-lords/principal/lord-chancellor/>

¹⁰ <http://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-in-detail/judicial+roles/judges/lord-chief-justice>

¹¹ <http://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-in-detail/judicial+roles/tribunals/senior-president-tribunals>

Stage 4: Appointment

The JAC, or selection panel, recommend to the Appropriate Authority,¹² one candidate for each vacancy. Through a transparent, three-stage process, the Appropriate Authority can accept, ask for a reconsideration of, or reject recommendations. He/ she is required to provide his/ her reasons to the JAC in the case of any requests for reconsideration or rejections. Although, if the JAC still put forward the same candidates, the Appropriate Authority ultimately must accept the recommendation. The power to reject, or seek reconsideration, is a very limited one. He/ she cannot select alternative candidates to those advanced by the JAC, or selection panel.

Once the Appropriate Authority has approved the selection, the candidate is then formally appointed. The Appropriate Authority is responsible for confirming some appointments. However, the Queen makes a number of appointments, on the advice of the Lord Chancellor (or in the case of the most senior judiciary the Prime Minister). The Queen plays an important role in the appointments process from a constitutional perspective, all judges swear an oath of allegiance to the Crown. Under the British constitution, all jurisdiction derives from the Crown, and the administration of justice is carried out by members of the judiciary acting in the Queen's name, and deriving their authority from the Crown.

Following appointment, judges are required to be sworn in - to take the judicial oath and oath of allegiance - before they can commence sitting. Sections 2 and 4 of the Promissory Oaths Act 1868¹³ provide for the oath of allegiance and the judicial oath. Section 7 of that Act says that if any person declines or neglects to take such an oath then he/she must, if he or she has already entered on his office, vacate it and if he or she has not entered office, he/she must be disqualified from entering it.

All judges, when they are sworn in, take two oaths/affirmations. The first is the oath of allegiance and the second is the judicial oath¹⁴. Lord Justices and Heads of Divisions are members of the Privy Council and also take that oath¹⁵.

Recruitment of Magistrates:

Magistrates¹⁶ are recruited by 47 local advisory committees. The committees are non-departmental public bodies composed of existing magistrates and at least one third non-magistrates. Recruitment is based on the needs of the local bench and takes into account factors such as predicted workload and forthcoming retirements. As with all judicial offices, appointment to the magistracy is strictly on merit.

Applicants do not require legal qualifications or experience, but must be able to demonstrate the six key qualities required of all magistrates: Good Character; Commitment and Reliability; Sound Judgement; Social Awareness; Understanding and Communication; Maturity and Sound Temperament.

¹² The Appropriate Authority is **either** the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals, depending on the judicial office being filled

¹³ http://opsi.gov.uk/RevisedStatutes/Acts/ukpga/1868/cukpga_18680072_en_1

¹⁴ <http://www.judiciary.gov.uk/about-the-judiciary/introduction-to-justice-system/oaths>

¹⁵ <http://privycouncil.independent.gov.uk/wp-content/uploads/2011/02/privy-counsellors-oath.doc>

¹⁶ <http://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-in-detail/judicial+roles/magistrates>

Applicants complete a detailed application form and must visit a Magistrates Court to observe the proceedings at least once before submitting their application. They must also provide the names of three referees and confirm that (if they are employed) they have secured their employer's agreement to allow them time off work to fulfil their judicial duties. All candidates undergo an enhanced level Disclosure and Barring Service¹⁷ check prior to appointment.

Magistrates can be appointed from the age of 18 and retire at 70.

Selection of Magistrates:

Applicants who meet the basic eligibility criteria for appointment (e.g. age) undertake a two stage interview process. The first interview tests the qualities of good character and commitment and reliability and allows a provisional assessment of the remaining key qualities. Candidates who proceed to the second interview are further assessed against the remaining key qualities, for example through the discussion of case studies. Interviews are conducted by a panel of three advisory committee members, one of whom should be lay member.

Appointment of Magistrates:

Candidates who successfully pass the interview stage of the process are recommended for appointment. Appointments are made by the Senior Presiding Judge on behalf of the Lord Chief Justice.

Scotland

In Scotland professional judges (there are also courts composed entirely of magistrates who deal with minor criminal offences) are appointed following public advertisement seeking applications from candidates legally qualified to hold judicial office. The applications are considered by the Judicial Appointments Board¹⁸ for Scotland, which is a committee consisting of nominated representatives from (a) the judiciary (sheriff, sheriff principal, and Court of Session – i.e. all levels of the professional judiciary within Scotland), (b) both branches of the legal profession, that is to say, the Law Society of Scotland¹⁹ and the Faculty of Advocates²⁰ and (c) lay members, nominated by the executive whose number, five, equals the total number of members under (a) and (b). The lay members include the chairman of the Board

An application for appointment requires, among other requirements, the candidate to obtain a reference from an existing judicial office holder describing in detail the candidate's qualities under an extensive catalogue of intellectual and personal attributes²¹ thought to be appropriate to holding judicial office.

On consideration of the applications on paper, a short list of candidates is invited for oral interview by the Board

The Board then submits its recommendations to the executive branch of government, for the essentially formal appointment, on the recommendation of that branch, by the Queen.

There are also a number of part-time sheriffs who, on the recommendation of the Board, are appointed by the Scottish ministers.

¹⁷ <https://www.gov.uk/government/organisations/disclosure-and-barring-service/about>

¹⁸ <http://www.judicialappointmentsscotland.org.uk/Home>

¹⁹ <http://www.lawscot.org.uk/>

²⁰ <http://www.advocates.org.uk/>

²¹ [http://www.judicialappointmentsscotland.org.uk/Guide to Appointment Process/Judicial Qualities](http://www.judicialappointmentsscotland.org.uk/Guide%20to%20Appointment%20Process/Judicial%20Qualities)

Northern Ireland

The judicial appointment process in Northern Ireland is analogous with the process set out for England and Wales. The Judicial Appointments Commission²² publishes an Annual Report on its work which is available on its website.

- Do you consider this recruitment procedure problematic or does it ensure a satisfactory recruitment in number and quality?

England & Wales

The appointment of judges in England and Wales, whether lay, legal or professional, is based solely on merit, and the recruitment processes described in question 1.1 results in sufficient numbers of appointments of the right quality.

Scotland

Opinions vary as to whether this procedure produces satisfactory results in Scotland. Traditionally judges, particularly in the superior courts, were selected from leading, senior advocates with many years' experience of practice at the Bar. There is some anecdotal evidence that some such practitioners, well suited for appointment, are unwilling to apply for judicial office in part because of the Board's procedures.

Northern Ireland

The judicial appointment process in Northern Ireland is not thought to be problematic.

1-2. Initial and continuing training

- Briefly describe the training of judges at the beginning of the career and during this one
-

England & Wales

On first appointment, new judges go through a programme of induction. These are mostly residential seminars of 3-5 days in duration. Many new judges, magistrates and tribunals members are assigned a mentor (usually an experienced judicial office holder) to support them during the first few years. Subsequent authorisations to hear particular cases e.g serious sexual offences, jurisdictions will usually require attendance at the corresponding induction seminar.

Continuing education and specialist training is delivered via a mixture of residential and non-residential seminars supplemented by e-learning. For example, magistrates' training is proportionate to their volunteer sittings and often delivered in their local area whilst the professional courts judiciary (salaried/fee-paid)

Members of the courts judiciary may select seminars from the Courts Judiciary Prospectus enabling them to plan the training that best meets their needs.

²² <http://www.nijac.gov.uk/>

Tribunal judges and members are also required to undertake a programme of regular continuation training designed to meet the needs of the jurisdiction/s in which they sit and ensure that they keep up to date with changes/developments in law and practice.

Most judicial posts require a relevant legal qualification that has been held for either five or seven years and so training is tailored mindful of their pre existing knowledge of the legal field, known well from practice in the profession.

Scotland

Following appointment, the appointee will spend one or two weeks sitting with a judge of equivalent rank. The appointee also undertakes an initial induction course provided by the Judicial Institute for Scotland (which is the body responsible for providing continuing training and professional education for the judiciary in Scotland). All judges participate at regular intervals in courses or seminars organized by the Judicial Institute. In the case of judges in the Court of Session, it has recently been the custom on a biennial basis to allocate three full days when all of those judges attend together for lectures, seminars, and discussions with speakers invited from various expert fields and from members of the judiciary from outwith Scotland.

Northern Ireland

Every new judge, on appointment, is provided with tier appropriate induction training, mentoring from a peer and the opportunity to shadow a colleague.

Judicial Studies Board for Northern Ireland²³ (JSB) organises a series of training events (a mixture of seminars and workshops) throughout the legal year and also facilitates, through funding provision and logistical support judicial attendance at conferences, induction training and training events organised by judicial training bodies in GB, Ireland and Europe. Judges are invited to JSB training events that are appropriate to their tier. The programme in any given year will reflect the perceived needs for judicial training in that year and is determined by a number of factors including: developments in case law; newly commenced legislation; feedback from the judiciary; and, initiatives of the Lord Chief Justice²⁴ (LCJ). Attendance at continuous training events is voluntary.

JSB provides specialised training for Judges who are selected to be ticketed for Homicide Trials, Extradition Cases and Serious Sexual Offences.

Most continuous training events are approximately one and a half hours duration. Induction training will cover a range of topics delivered over a sequence of days, some of which will involve residential attendance.

JSB is a member of the UK & Ireland Judicial Studies Council (UKIJSC), European Judicial Training Network (EJTN) and The International Organisation for Judicial Training (IOJT). Judges are invited to make applications for funding to attend external conferences and training courses that are relevant to their area of work.

- Is there a school responsible for training judges?

²³ <http://www.jsbni.com/Pages/default.aspx>

²⁴ <http://www.courtsni.gov.uk/en-GB/AboutUs/OrganisationalStructure/Pages/Judiciary-of-Northern-Ireland.aspx>

England and Wales

The Lord Chief Justice is responsible for arrangements for training the courts' judiciary in England and Wales under the Constitutional Reform Act 2005. The Senior President of Tribunals has an equivalent responsibility in relation to judges and members of the tribunals within the scope of the Tribunals, Courts and Enforcement Act 2007. These responsibilities are exercised through the **Judicial College**²⁵.

Scotland

The Lord President of the Court of Session became Head of the Scottish Judiciary on 1 April 2010, with the implementation of the Judiciary and Courts (Scotland) Act 2008²⁶. That legislation placed upon the Lord President responsibility for “making and maintaining appropriate arrangements for the welfare, training and guidance of judicial office holders.” This involves the making and maintaining of arrangements which are sufficient for the needs of an independent judiciary in a modern Scotland. The Lord President delegates responsibility for judicial training to the **Judicial Institute**²⁷, of which he is President.

Northern Ireland

JSB is the body responsible for training judges in this jurisdiction, Northern Ireland. It does not have a designated training centre but uses a variety of venues for judicial training purposes. 7 full-time staff are permanently employed within the JSB Office and are largely devoted to judicial training.

- Do you consider the training satisfactory? If not, how could it be improved?

England and Wales

The Judicial College for England and Wales offer a diverse schedule of training opportunities, tailored to the needs of the judiciary. Judges are allocated 5 protected days to undertake training per year. The Judicial College review the schedule of training annually and the training is considered satisfactory. The position is different in tribunals and it would be best to get a line from the Judicial College

For more information on the range of activities undertaken by the Judicial College in 2012-13

see: <http://www.judiciary.gov.uk/publications-and-reports/judicial-college/2013/Review+of+Activities/Review+of+Activities+2012-2013>

Scotland

The training provided by the Judicial Institute for Scotland is of a high standard. The Institute has a special partnership arrangement with its Canadian counterpart, which is thought to be a leader in the provision of training for judges. The facilities available to the Institute include

²⁵ <http://www.judiciary.gov.uk/training-support/judicial-college>

²⁶ <http://www.legislation.gov.uk/asp/2008/6/contents>

²⁷ <http://scotland-judiciary.org.uk/59/0/Judicial-Training>

“learning suites” equipped with modern electronic equipment. In addition to courses, the Institute provides manuals for court use in both traditional form and in e-book form.

Northern Ireland

There is no judicial evaluation in this jurisdiction. The training is considered to be satisfactory. After every event JSB requests that the Judges complete Evaluation Questionnaires or a conference report. This information is considered and discussed by the Board.

1-3. Appointment and career

- Briefly describe the procedures for appointment of judges

The generally process for the recruitment and appointment of judges in **England and Wales, Scotland** and **Northern Ireland** is set out in section 1.1.

- Is there a Higher Council of Justice in charge of these issues? If yes, how is it composed? What are its powers (simple opinion or decision-making power)?

No

- What are the rules for promotion of judges?

In **England and Wales, Scotland** and **Northern Ireland**, both currently serving judges (salaried and fee-paid), and those not yet appointed to a judicial office, may apply for any post advertised by the Judicial Appointments Commission/Judicial Appointments Board provided they satisfy the statutory and non-statutory eligibility requirements outlined for the post.

Essentially, neither system see the holding of judicial office as a career with ordinary promotional prospects such as might be found in the civil service. Thus, in Scotland for example, should a sheriff (a local judge at a lower level in the court hierarchy) wish to be appointed as a judge in the Court of Session (the superior civil court), he or she would require to respond to public advertisement of a vacancy in the Court of Session by submitting an application and would be in competition with all other applications for that post by lawyers, or other sheriffs, or sheriffs principal.

- The tenure is it guaranteed to judges?

For salaried judges in **England and Wales** and **Northern Ireland**, appointments to judicial office are intended to be for the remainder of a person's professional life, and in any event until their 70th birthday.

Both Houses of Parliament have the power to petition the Queen for the removal of a judge of the High Court or the Court of Appeal. This power originates in the 1701 Act of Settlement and is now contained in section 11(3) of the Supreme Court Act 1981²⁸. It has never had to be exercised in England and Wales.

²⁸ http://www.legislation.gov.uk/ukpga/1981/54/pdfs/ukpga_19810054_en.pdf

In **Scotland**, the principle of *Ad vitam aut culpam* (a latin phrase found in Scottish Law which means "for life or until fault") applies, which guarantees the right of a Sheriff Depute (judge) to hold office permanently or until they forfeit such by misconduct. Once a judge is appointed, he or she is eligible to be a judge until the age of retirement. The statutory retirement age is set by the Judicial Pensions and Retirement Act 1993²⁹, which came into force on 31 March 1995. All judges appointed to full-time judicial office after the Act came into force must retire from office at the age of 70.

A full time salaried judge may be removed from office only if unfit for office by reason of inability, neglect of duty or misbehaviour. A judge of the Supreme Courts of Scotland may be removed from office only by Her Majesty on a recommendation made by the First Minister³⁰. The First Minister may make such a recommendation if (and only if) the Scottish Parliament³¹, on a motion made by the First Minister, resolves that such a recommendation should be made. The First Minister can make such a motion to the Scottish Parliament only if a tribunal, constituted in terms of section 35 of the Judiciary and Courts (Scotland) Act 2008³², has provided the First Minister with a written report concluding that the judge in question is unfit and giving reasons for that conclusion. A sheriff may be removed from office only if a tribunal constituted under section 12A of the Sheriff Courts (Scotland) Act 1971³³ has provided the First Minister with a written report concluding that the sheriff is unfit and giving reasons. The First Minister must lay the report before the Scottish Parliament and may lay a statutory instrument before Parliament for the removal of the sheriff. Parliament may resolve not to allow the removal to take effect.

- Judges are they evaluated? If yes, by whom, on what basis and with what possible appeal?

England & Wales

Several appraisal schemes are in operation across courts and tribunals:

- Magistrates are appraised after 15 sittings and thereafter once every three years, against a competency framework and are supported by mentoring on an ongoing basis;
- Deputy District Judges (magistrates' courts) are appraised once per year against the JAC selection exercise competencies;
- Deputy District Judges in the civil courts are appraised once per year and are supported by mentoring, and the material generated from the appraisal is used as part of the JAC's competitions for selection processes for full time civil District Judges;
- there are a number of appraisal schemes for fee paid and salaried judges and members within the tribunals which vary at jurisdictional level. Appraisal is not universal.
- A pilot is currently underway for introducing appraisals of Recorders (fee-paid Crown Court Judges).
-

There is currently no formal system in place to monitor the individual performance or workload of the judiciary in **Scotland** or **Northern Ireland**.

- Do you consider these procedures satisfactory? If not, how could they be improved ?

²⁹ <http://www.legislation.gov.uk/ukpga/1993/8/section/26>

³⁰ <http://www.scotland.gov.uk/About/People/14944/Scottish-Cabinet/First-Minister>

³¹ <http://www.scottish.parliament.uk/>

³² <http://www.legislation.gov.uk/asp/2008/6/notes/contents>

³³ <http://www.legislation.gov.uk/ukpga/1971/58>

It is not possible to assess the position as each of the appraisal schemes that are in operation are individually managed by each area, so no national picture exists. A full review will take place of the pilot scheme currently being undertaken.

1-4. Discipline and Ethics

- Describe briefly the ethical rules and disciplinary proceedings

England and Wales

The Lord Chief Justice and the Lord Chancellor share responsibility for judicial discipline. They are supported in this function by the officials in the Judicial Conduct Investigations Office³⁴. The processes which are to be followed when considering a complaint about judicial conduct are governed by the *Judicial Discipline (Prescribed Procedures) Regulations 2013*³⁵ and supporting rules (*Judicial Conduct (Judicial and other office holder rules) 2013*³⁶; *the Judicial Conduct (Tribunals Rules) 2013*³⁷; *the Judicial Conduct (Magistrates Rules) 2013*)³⁸.

The *Guide to Judicial Conduct*³⁹ provides guidance to judges in respect of appropriate conduct.

Scotland

Since 2010, the Lord President of the Court of Session has published, and from time to time revised, a “Statement of Principles of Judicial Ethics for the Scottish Judiciary⁴⁰” in order to give guidance to judges and to inform the public of the principles whereby judges are guided in their professional and private lives. The document draws on the *Bangalore Principles of Judicial Conduct*⁴¹ endorsed at the 59th session of the United Nations Human Rights Commission at Geneva in April 2003. In addition there are unwritten understandings of appropriate deontological standards for judges.

As respects disciplinary proceedings, a judge may not be dismissed from office except following the establishment of a tribunal to investigate and establish that the judicial officer holder in question is unfit to hold judicial office; the removal from office then requires to be endorsed by the legislature. (It is believed that in the last one hundred years or so, two sheriffs have thus been removed from office by decision of Parliament; no proceedings have ever been taken against a judge of the Court of Session.) Full rights of defence are available at any such tribunal.

Lesser disciplinary measures may be imposed by the Lord President – such as counseling – in the event that a complaint of misconduct is established under the Complaints about the Judiciary (Scotland) Rules 2013⁴². Complaints relating to any judicial decision, or the judicial management or conduct of the case are excluded. The procedures make provision for the judge concerned to present his position, both at the stage of investigation by a judge and before the Lord President.

³⁴ <http://judicialconduct.judiciary.gov.uk/>

³⁵ <http://www.legislation.gov.uk/ukxi/2013/1674/made>

³⁶ [http://judicialconduct.judiciary.gov.uk/documents/Judicial_Conduct_\(Judicial_and_other_office_holders\)_Rule_s_2013.pdf](http://judicialconduct.judiciary.gov.uk/documents/Judicial_Conduct_(Judicial_and_other_office_holders)_Rule_s_2013.pdf)

³⁷ [http://judicialconduct.judiciary.gov.uk/documents/Judicial_Conduct_\(Tribunals\)_Rules_2013.pdf](http://judicialconduct.judiciary.gov.uk/documents/Judicial_Conduct_(Tribunals)_Rules_2013.pdf)

³⁸ [http://judicialconduct.judiciary.gov.uk/documents/Judicial_Conduct_\(Magistrates\)_Rules_2013.pdf](http://judicialconduct.judiciary.gov.uk/documents/Judicial_Conduct_(Magistrates)_Rules_2013.pdf)

³⁹ <http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf>

⁴⁰ <http://www.scotland-judiciary.org.uk/Upload/Documents/Principles.pdf>

⁴¹ <http://euromed-justice.eu/document/un-2002-bangalore-principles-judicial-conduct-2002>

⁴² [http://www.scotland-judiciary.org.uk/24/1105/Complaints-About-The-Judiciary-\(Scotland\)-Rules-2013](http://www.scotland-judiciary.org.uk/24/1105/Complaints-About-The-Judiciary-(Scotland)-Rules-2013)

Northern Ireland

The Lord Chief Justice for Northern Ireland has published a Protocol on Judicial Discipline⁴³ as well as a Statement of Ethics⁴⁴ for the judiciary. Both these documents are available on the website of the Northern Ireland Courts and Tribunals Service⁴⁵.

Is there a regime of incompatibilities and prohibitions of certain professions and positions for judges? Is there declaration of assets?

England and Wales

The Guide to Judicial Conduct, and the paragraphs on *Outside Activities and Interests* quoted from the Circuit Judge Memorandum on conditions of appointment and terms of service, provides general advice to judges about conflict of interest issues, and the mechanisms aimed at preventing them.

So far as magistrates are concerned, the Lord Chancellor publishes Directions to advisory committees containing policy on a range of issues including some of those listed below. Additionally, magistrates are advised about a range of matters, such as avoiding potential conflicts of interest, by their local justices' clerk. The justices' clerk is a trained legal advisor and occupies a unique position as both an employee of the court administration and a provider of independent legal advice to magistrates. This advice may be in relation to individual cases but also covers general issues such as the appropriateness of magistrates undertaking certain paid or unpaid activities in their lives away from the court.

For salaried judges, appointments to judicial office are intended to be for the remainder of a person's professional life. Salaried judges who accept appointment do so on the understanding that following the termination of their appointment they will not return to private practice as a barrister or a solicitor, and will not:

- a) provide services, on whatever basis, as an advocate (whether by way of oral submissions or written submissions) in any court or tribunal in England and Wales;
- b) in return for remuneration of any kind, offer or provide legal advice to any person.

For the avoidance of doubt, former judges may provide services as an independent arbitrator/mediator and may receive remuneration for lectures, talks or articles. In cases of any doubt, the advice of the Lord Chief Justice should be sought before undertaking any services.

⁴³

<http://www.courtsni.gov.uk/SiteCollectionDocuments/Northern%20Ireland%20Courts%20Gallery/About%20Us/Protocol%20on%20Discipline%20-%20Revised%205%20August%202011.pdf>

⁴⁴

<http://www.courtsni.gov.uk/sitecollectiondocuments/northern%20ireland%20courts%20gallery/about%20us/statement%20of%20ethics%20revised%205%20august%202011.pdf>

⁴⁵ <http://www.courtsni.gov.uk/en-GB/pages/default.aspx>

If a judicial office holder becomes bankrupt he/she will need to inform the relevant senior judicial authority – and in some cases this might be grounds for removal from office by the Lord Chancellor. Otherwise, there is no requirement generally, for a judge to declare his/her assets or liabilities.

Scotland

The general rule is clear. A professional judge appointed on a full time basis may not carry on any other remunerative activity. There is an exception for fees or royalties derived from writing or editing legal textbooks or giving a lecture to a professional legal audience – but in the latter case it is generally regarded as a lecture to be given *pro bono publico*. A further, curious exception is made in the case of a sheriff or judge who resides on a farm owned by the judge. He or she is permitted to operate commercial agricultural or horticultural activities on that farm, as an adjunct to that residence. The exception no doubt reflects much earlier, pre-industrial, times when judges generally had country properties.

There are temporary judges (both sheriff and Court of Session) who are practising lawyers. Their professional practice is necessarily not treated as being incompatible with holding judicial office.

Judges are not required to make any general disclosure of their capital assets. But there is obviously a clear obligation on a judge to disclose any potential patrimonial or other personal interest in the particular case before him or her, and, in the event of objection, to withdraw from the case.

Northern Ireland

The position in Northern Ireland is analogous with that set out for England and Wales for salaried judicial office holders. Separate guidance has been published for magistrates in Northern Ireland. (Magistrates sit with salaried judicial office holders in Youth Courts and Family Proceedings Courts.)

Who is in charge of disciplinary procedures? What are the guarantees for judges involved (contradictory, rights of defense, appeal ...) ?

The Lord Chief Justice and the Lord Chancellor are responsible for Judicial Discipline in **England and Wales**. The procedures to be followed are set out in statute as described above. The process is administered by an independent group of officials in the Judicial Conduct Investigations Office.

In respect of **Scotland and Northern Ireland**, see 1.4.

- Do you consider these procedures satisfactory? If not, how could they be improved?

The procedures are not frequently invoked. Such experience as there has been has not revealed any clearly unsatisfactory feature.

In **England and Wales**, the rules and regulations governing judicial discipline have recently been reviewed and were implemented on 1 October 2013. The aim of the review was to provide a more streamlined and efficient process for dealing with complaints about judicial conduct.

The Annual Report⁴⁶ sets out the performance in relation to conduct and discipline for the year 2012/2013.

Northern Ireland

The procedures are not frequently invoked in Northern Ireland. Such experience as there has been has not revealed any clearly unsatisfactory feature. Furthermore The Lord Chief Justice has published a Code of Practice for the handling of complaints about judicial conduct. This is available on the website of the Northern Ireland Courts and Tribunals Service.

1-5. Distribution of cases

- Describe briefly the distribution of cases between judges and the conditions for their eventual divestiture

England and Wales and Northern Ireland

The Lord Chief Justice has responsibility for the listing practice of the courts as a whole. This is delegated in practice to other Judges who have responsibility for the listing practice in individual courts. Presiding Judges have an important role, as they are responsible for allocating cases between different courts on circuit. Their work is overseen by the Senior Presiding Judge.

In practice “routine” cases are allocated administratively dependant upon the level of the case, the specialism of the judicial office holder (e.g. a judge who was nominated to deal with serious sexual offence cases would be allocated such cases) and their availability, with guidance from the Judges with responsibility for supervising the lists. Where the case is one of difficulty or particular sensitivity the matter is referred to the relevant supervisory judge or, in the most serious cases, to the relevant Head of Division.

Scotland

In the Court of Session, and in some of the larger sheriff courts, a judge or a sheriff may be nominated to hear a particular class of case, for example commercial cases or family cases or intellectual property cases. But that apart, there are no particular rules governing the allocation of cases among judges of a given court, or even among the judges nominated to hear particular types of cases. Allocation is largely a matter for the court officials, but with some input from the effective president of the court, or the division of the court, where the case is one of difficulty or delicacy in order to select a judge or judges with the most appropriate personal attributes.

In tribunals cases are allocated under the direction of the chamber/tribunal presidents

- Do you consider these procedures satisfactory? If not, how could they be improved?

England & Wales

⁴⁶ http://judicialconduct.judiciary.gov.uk/documents/OJC_Annual_Report_2012_-_2013.pdf

Whilst these procedures are considered satisfactory, there is regular liaison between the Judiciary and officials to consider where improvements can be made. Lawyers and other stakeholders are also able to make suggestions through user groups and other forums and Practice Directions are kept under review and modified where necessary to improve procedure.

Scotland

There is no doubt always some room for improvement, but there are arguments – reflected in the German principle of “der gesetzliche Richter⁴⁷” – that selection of a small number of particular judges to hear a particular type of case may result in the impression that they have been so selected to advance a particular policy and approach their task with a subconscious sense of “mission”.

Northern Ireland

These procedures are considered satisfactory and are subject to annual review.

1-6. Recognition of the right of association

- The right to join or form associations/unions, is it recognized for judges?

The collective views of judges (in courts and tribunals) are represented through their respective judicial associations such as the High Court Judges’ Association, the Association of Her Majesty’s District Judges, HM Council of Circuit Judges, the Association of High Court Masters and the Council of Appeal Tribunal Judges. Magistrates are represented by the National Bench Chairmen’s Forum and the Magistrates’ Association. These associations are officially recognised and are non-political.

There is no impediment to the formation of associations in Scotland. Most sheriffs belong to the Sheriffs’ Association. Since the number of judges in the Court of Session is very small – 32 – there is no call for a formal association.

Northern Ireland

In Northern Ireland the number of senior judges is small – Lord Chief Justice, 3 Lord Justices of Appeal, 10 High Court Judges and as in Scotland there is no call for a formal association especially as these judges are all based in the Royal Courts of Justice in Belfast. There are judicial associations for each of the other judicial tiers – County Court Judges, District Judges and Magistrates.

- If so, what resources are allocated to the association / union in terms of grants, human resources?

⁴⁷ Parties to judicial proceedings have a right to have their case considered and decided by the judge designated or appointed by law

There is no formal allocation of resources from public funds in **England and Wales, Scotland or Northern Ireland**.

The respective judicial associations referred to above are generally self financing, usually through membership fees, and are run by volunteers elected or nominated from among their membership.

- Do you consider these procedures satisfactory? If not, how could they be improved?

There is no general feeling that change is required in these matters.

1-7. Protection of judges

- Are the judges frequently attacked in the media, by politicians or other people? Do they have special protection?

Inevitably, some judicial decisions, sentences and remarks are from time the subject of attack in the media. Commonly this is done not by the journal or broadcaster itself advancing criticism but by the reported outrage or discontent of a party to the proceedings – the “Fury at..” headline is a way of indirectly criticizing the judicial decision; similarly, “soundbite” comments by politicians may be elicited by the press on an inaccurate representation of the judicial decision in question.

There is no special, legal protection for judges against such attacks. **England and Wales, Northern Ireland** and the **Scottish** courts service have a press information officer to liaise with the media and to provide assistance to the judiciary in the event of media harassment of the judge or his family. If they are seriously misrepresented the Judiciary press office may seek a correction or clarification from the media outlet, or in very extreme cases through the Press Complaints Commission. By convention judges do not comment on cases outside court. The Press Complaints Commission has a longstanding guideline for journalists which recognises this principle; if a judge is approached outside court or at home and asked for comment on a case, the journalist will go away as soon as told by the judge that he or she has no comment to make.

By convention Ministers should not criticise the decisions of judges, whose independence is recognised as a safeguard of liberty. In England and Wales, this principle was codified in the 2005 Constitutional Reform Act, which provides that Ministers must uphold the continued independence of the judiciary. In most cases, the appropriate course of action is for a Minister to appeal a decision of the court with which he or she disagreed.

If a Minister did publicly criticise a judicial decision, this could be raised as part of the regular dialogue between the Lord Chief Justice of England and Wales (who since 2005 has been the head of the judiciary in England and Wales), and the Lord Chancellor.

- Do you consider these procedures satisfactory? If not, how could they be improved?

It is natural that some judicial decisions will provoke criticism from a discontented party to the proceedings or the uninformed member of the public and it is right that they should be public and subject to scrutiny and debate in newspapers, on radio, television and online. It is also natural that some such decisions raise general points of debate. The latter is not something to which any objection may be taken. As respects the former, judges simply have to have the moral courage and resistance to criticism to take the decisions which they think right.

The judicial press office in **England and Wales** seeks to maximise the number of written judgments and sentencing remarks published and disseminated as early and as widely using the latest information channels to help ensure as much discussion and debate as possible is on the accurate and correct facts, circumstances and reasoning in the case and carries out a very helpful function in explaining judicial decisions to the press. The position is the same in **Northern Ireland**.

It may also be appropriate to mention that there is a body of court reporters from the principal members of the media in **Scotland** who cover the proceedings of the Court of Session/High Court of Justiciary and do so with careful attention to accuracy.

2 - Regarding the means of Judiciary

2-1. Funding of the judiciary

- *Annual budget of Justice*
Specify the total annual allocation to the functioning of the courts budget (including expenses relating to judges, prosecutors and legal aid). Does this budget seem to you sufficient? Judges, or bodies representing judges, are they consulted during the elaboration / implementation of budget?

England and Wales

The gross resource allocation for Her Majesty's Courts and Tribunals Service (HMCTS) for 2013/14 was £1,548 million, of which around £461 million was allocated to payroll costs for salaried and fee paid judges and members⁴⁸.

The allocation for the Legal Aid Agency⁴⁹ was for a total of £1,925 million, split between the Legal Aid Fund (£1,828m) and the operation and administration of the Fund (£97.2m). The Fund is split between criminal legal aid (941m) and civil legal aid (£887m).

This information is set out in the Main Estimate⁵⁰ which is part of the Supply & Appropriation Act 2013 which is laid before Parliament so that Parliament can approve the funding for each Government Department.

⁴⁸ The Judicial Pensions Scheme has its own estimate and accounts, which are separate from those of the Ministry of Justice - <http://www.official-documents.gov.uk/document/hc1314/hc00/0044/0044.pdf>

⁴⁹ <http://www.justice.gov.uk/forms/legal-aid-agency>

The Lord Chancellor has a statutory duty to ‘ensure that there is an efficient and effective system to support the carrying on of the business of the courts in England & Wales’ and ‘that the appropriate services are provided for those courts’ and for tribunals⁵¹. This duty included the provision of financial resources. The Concordat⁵² provides for the judiciary to be involved in the resource planning of HMCTS and for the Department to ensure that the Judiciary can engage on a range of issues, including on issues concerning resource plans and bids. The HMCTS Framework Document⁵³ further provides for the Lord Chancellor ‘to endeavor to reach agreement with the Lord Chief Justice in relation to the allocation’ to HMCTS.

The Senior President of Tribunals and the Senior Presiding Judge are currently assisted in their capacity as HMCTS Board members by an additional judicial Board member.

The Crown Prosecution Service is separate from Her Majesty’s Courts and Tribunals Service and has an entirely separate budget. For more information see: http://www.cps.gov.uk/publications/docs/annual_report_2012_13.pdf

Scotland

In the year to 1 April 2013, the total expenditure of the Scottish Courts Service⁵⁴ was £99,626,000. This does not include judicial salaries, the determination of those salaries being reserved to the United Kingdom government. Net expenditure on both civil and criminal legal aid was £150 million. Expenditure by the prosecuting authority amounted to £108 million. The population of Scotland is approximately 5 million.

The Board of the Scottish Courts Service has seven judicial members and six non-judicial members.

Northern Ireland

The Agency Board of the Northern Ireland Courts and Tribunals Service has 4 members, a Department of Justice Representative, two independent members and 4 judicial representatives. Judicial representatives also attend the NICTS Audit and Risk Committee and the NICTS Finance Committee. The Courts and Tribunals Service is responsible for providing administrative support to the Northern Ireland Judiciary. An Annual Report on the work of the Service and its accounts is laid before the Northern Ireland Assembly. The Report is available on the website of the Courts and Tribunals Service. NICTS is funded by monies voted by the Department of Justice for Northern Ireland and by income generated from court fees. Overall total expenditure in 2012/13 was £53m (judicial costs amounted to £14.4m)

The budget allocated to **judicial training** in 2012 was €130,000. Judges are not consulted on allocation or management of this budget.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197760/moj_mainsupplyestimates_201314.pdf. The areas for which Parliament agree expenditure or income can be raised are set out in pages 258-260.

⁵¹ Part 1, Courts Act 2003; S39 Tribunals, Courts and Enforcement Act 2007; The Lord Chancellor’s oath of office, S17 of the Constitutional Reform Act 2005

⁵² <http://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-in-detail/jud-acc-ind/justice-sys-and-constitution>

⁵³ <http://www.justice.gov.uk/downloads/publications/corporate-reports/hmcts/2011/hmcts-framework-document.pdf>

⁵⁴ <http://www.scotcourts.gov.uk/>

- *Operating budget of the courts*
How and on which criteria are distributed the funds to the different jurisdictions? Can the courts use freely their budgets? Is it organized before committing expenditure a consultation of judges?

England and Wales

Allocation of budget to HMCTS regions is dependant upon workload. For each jurisdiction the key workload proxies are captured e.g. sitting days and/or caseload information and translated into staffing/judicial requirements. Each staffing/judicial post has a salary attached to it. Budgetary distribution to regions and jurisdictions is aligned to the workload proxies that have been identified in each jurisdiction.

This system is further used to as a guide to allocate to individual courts and tribunals and it is at this stage that local variations are taken into account to inform the necessary budget allocation. The courts and tribunals are required to expend their budgets on activities identified as key workload proxies.

The judiciary are consulted on the higher level budgetary decisions but the resource allocation is ultimately a matter for HMCTS to decide.

The allocation process is the same in **Scotland and Northern Ireland**.

- Do you consider these procedures satisfactory? If not, how could they be improved?

The procedures for the agreement to the adequacy of the overall annual budget and for its allocation across the various regions are generally considered satisfactory because of the various levels of consultation in place. However, like in many other countries, the overall resourcing of the courts and tribunals has been the subject in recent years of significant budgetary cuts; in consequence, the adequacy of the operating budget is currently giving rise to serious debate.

2-2. Salary

- Briefly define the scale of salaries of judges : at the beginning of the career, at the mid-term, at the end

See: <https://www.gov.uk/government/publications/judicial-salaries-and-fees-2013-14>

- Who determines the salary of judges? Is there a system of “merit pay” (if so in what proportions? How the sums are assigned to judges?)

Judicial salaries are decided following the recommendation of the Senior Salaries Review Body (SSRB), and are a matter of public record.

The SSRB provides independent advice to the Prime Minister, the Lord Chancellor and the Secretary of State for Defence on the remuneration of the judiciary⁵⁵, senior civil servants, senior officers of the armed forces, Members of the House of Commons, Members of the House of Lords and other groups that are referred to it from time to time.

For more information see: <https://www.gov.uk/government/publications/ssrb-report-number-81-2013> (chapter 5)

- Salaries are they likely to go down? If yes, have you met such cuts and in what proportions?

There have been no cuts in judicial salaries, as these are prevented by statute.

The pension provision for younger judges will, however, be reduced in common with all public service pension schemes, with effect from 1st April 2015. Judges within 10 years of their normal retirement date as at 1st April 2012 will be transitionally protected from these changes.

The “take home” pay of judges has reduced over the last 4 years, because there was a freeze on judicial salaries for 3 years, followed by 2 years of increases at only 1% per annum (one year of which begins on 1st April 2014).

- Do you consider this situation and the guarantees for judges satisfactory? If not, how could they be improved?

There are differences of view. Generally, it is important that judges are not disproportionately affected by Government austerity.

2-3. Pensions

- At what age and how judges can they retire?

Under the provisions of the Judicial Pensions and Retirement Act 1993 (JUPRA), most salaried and fee-paid judges will normally be required to vacate their office on their 70th birthday. Those who were appointed prior to the commencement of JUPRA’s retirement provisions (the end of March 1995) retain their original compulsory retirement date.

Whilst a judge is not required to provide notice of their pending retirement, judges are asked to provide a minimum of three months notice of an early retirement to enable their pension to be paid on time.

Judges are encouraged to discuss and agree a retirement date with their business area (unless retiring on their compulsory retirement date).

In **England and Wales**, once the retirement date (last day of service) has been agreed this information is forwarded to the Judicial Office (Post Appointments Team) who in turn confirm this to the Ministry of Justice Judicial Reward and Pensions Reform (JRPR) team. It is this action that triggers the JRPR team to start the administration process in relation to salaried judges pension award. The JRPR would then write to the judge with details of their respective pensions benefits approximately two months prior to the retirement date.

⁵⁵ Not all of the recommendations made by the SSRB in the 2013 Report were adopted by the UK Government

Valedictory letters are drafted and sent on behalf of both the Lord Chief Justice and Lord Chancellor just before the judge retires. A public announcement for each retirement is published on www.judiciary.gov.uk on the day of retirement.

A pre-retirement course is available to all retiring salaried JOHs in **England and Wales and Northern Ireland**.

- Does the amount of the pension satisfactory - Do you consider that improvements have to be done? ?

As mentioned above, the Government intends to reform judicial pensions alongside all other public service pension schemes. Approximately 75% of existing judges as at 1st April 2012 will retain their existing pension arrangements. 25% will be required to join the new less generous pension scheme with effect from 1st April 2015 or some other later date. The change has provoked controversy.

2-4. Accessibility and Efficiency of Justice

- Are there barriers to the defendant to access to justice? Are there mechanisms to provide access to justice for the most disadvantaged people (legal aid, Support to victims ...)
- Are there problems of deadlines in the treatment of cases ?
- Do you consider these procedures satisfactory? If not, how could they be improved?

The Government is committed to ensuring that all defendants receive a fair trial, and a variety of measures are available to courts to secure this basic right for vulnerable defendants. There is no evidence to suggest that the available measures, which include giving evidence by live link and, where necessary, the assistance of an intermediary, fail to achieve that objective. Courts have a responsibility to check throughout a case that the defendant understands what is going on. Much can be done by the defendant's own legal representative. Vulnerable defendants should always be represented, as one of the criteria in the Interests of Justice test is that the defendant may not otherwise be able to understand the court proceedings. It is generally through the defence that courts are alerted to the fact that a defendant may be vulnerable and may need support

The Legal Aid Agency (LAA) is responsible for operating the criminal legal aid scheme across England and Wales. In practice, under a service level agreement between the LAA and Her Majesty's Courts and Tribunals Service (HMCTS) much of the day to day operation of the scheme is delegated to HMCTS staff.

The annual criminal legal aid budget is approximately £1 billion (Financial Year 2012/13)

The following mechanisms are in place to provide access to justice:

(a) At the police station

- A police station duty solicitor scheme provides free legal advice and assistance to suspects arrested and taken to the police station for questioning in relation to an alleged criminal offence.
- In some less serious cases, advice and assistance is provided to the suspect through a quality assured legal advice telephone service.

(b) At the magistrates' court

- For defendants facing trial at the magistrates court (the lower criminal court), any defendant is entitled to apply for criminal legal aid in order to fund their defence costs. A decision on whether or not a defendant qualifies for criminal legal aid depends on the individual passing both an 'Interests of Justice' (merits) test and a financial eligibility assessment.
- In essence, the merits test seeks to determine whether a defendant needs the services of a publicly funded lawyer whilst the means assessment is used to determine whether those defence services should be funded by the state or the individual. An individual who does not pass the merits test may ultimately appeal that decision to the court.
- Under the financial means test, if the applicant's gross annual income ('weighted' to reflect family size) exceeds £22,325, they do not qualify for criminal legal aid on means; if this figure is £12,475 or less, they do qualify. For those applicants whose weighted annual income falls between these two thresholds, a more detailed assessment of their annual disposable income is carried out; if this figure does not exceed £3,398, they do qualify for legal aid on means.
- If an individual is held to be financially ineligible for criminal legal aid, a hardship review mechanism acts as a safety net for those individuals who still maintain that they are unable to pay privately for their defence costs.
- Individuals in receipt of specific welfare benefits are automatically passported through the means assessment.

(c) At the Crown Court

- For defendants facing trial at the Crown Court (the higher criminal court), all individuals who apply for criminal legal aid are passported through the merits test.
- Regarding the means assessment for Crown Court defendants:
 - (i) Defendants whose disposable annual income exceeds £37,500 do not qualify for criminal legal aid, subject to a hardship review of their application.
 - (ii) Defendants whose 'weighted' gross annual income is less than £12,475 do qualify for free criminal legal aid.
 - (iii) As at the magistrates' court, individuals in receipt of specific welfare benefits are automatically passported through the Crown Court means assessment.
 - (iv) Those defendants whose weighted gross annual income exceeds £12,475 (but whose disposable annual income is less than £37,500) do qualify for criminal legal aid but may be liable to pay a contribution towards their publicly funded defence costs from their income and, if convicted, from their capital assets. Please note that if an individual is subsequently acquitted, any income contributions are automatically refunded.

(d) Criminal Court of Appeal and the Supreme Court

- Non means tested criminal legal aid is freely available to all appellants appearing before the Criminal Court of Appeal or the Supreme Court.

(e) Cases funded by criminal legal aid - volumes

In 2012/13, criminal legal aid funded approximately:

- 735,000 acts of assistance at the police station
- 450,000 acts of assistance at the magistrates' court, and

- 120,000 acts of assistance at the Crown Court

Every effort is made to ensure that criminal legal aid applications are processed as swiftly as possible so that legal aid representation, where appropriate, is in place by the time the defendant appears before the court.

In practice, more than 90% of all correctly completed criminal legal aid application forms are processed within 2 working days

The criminal legal aid provision across England and Wales fully meet the UK Government's international obligations under the European Convention on Human Rights

The above is all about criminal justice. Historically many tribunals have been fora at which parties could present their own cases. Users have not had access to free representation (although some help with case preparation has been available) and tribunals have generally developed as inquisitorial rather than adversarial hearings. In addition the jurisdictions are relatively narrow (for example social security benefits, employment, mental health) so that judges are expert within that field and panels often include specialist non legal members able to understand and question the evidence put to them by the parties. The legislative framework⁵⁶ requires tribunals proceedings to be accessible and fair, to be handled quickly and efficiently and for the rules to be simply expressed and simple.

3 - Regarding the national association

Please see below for response to questions 3.1-3.5

3-1. Representativeness of the association

- How many members does the association have? Has this number increased since the association became a member?
- Do other associations/organizations of judges exist?
- If elections are held in the country in question, please furnish statistical data relating to the extent to which the association is representative.
- Does the association include members who are independently elected and who oversee the judiciary? The discipline of the judiciary?

3-2. Modalities for appointment / election of its representatives

- How are the leaders of the association selected? Are they elected by the members? Are they appointed? If yes, by whom and by what process?
- How is the association organized? Is there a board of directors/association council? If yes, how are the members of the council appointed/elected? What powers does the council have?

⁵⁶ Tribunals, Courts and Enforcement Act 2007 section 22(4)

- Does the association have regional representatives? If yes, how are they appointed/elected?

3-3. Financing Association

- What is the association's annual budget?
- What are the association's funding sources: membership dues, subsidies, other funding sources?
- What have been the principal expenses?

3-4. Relations association with public administration

- Does the association meet regularly with representatives of the executive? In particular with the Minister of Justice and his/her associates? Is the association consulted in advance of all government reforms?
- Does the association meet regularly with representatives of the legislature? Is the association asked to provide its opinion on projects and bills before they are examined by the parliament?

3-5. Actions undertaken by the association during the last 3 years

- What were the main actions undertaken in the previous year? In the previous three years? Since becoming a member?
- Has the association organized collective action (demonstrations, strikes ...)?
- Does the association have a media presence? Has the association published documents (books, reviews, communiqués...)?
- Did the eventual actions taken have a positive impact on judicial powers?

The United Kingdom is in a peculiar situation in many respects. First, it contains three distinct legal systems, which operate independently of each other. Thus in terms of private international law, English law regards Scots law as a foreign legal system and *vice versa*. Northern Ireland is similarly apart. It is consequently not possible for there to be a United Kingdom wide national association of judges in the way in which such an association might be organized in a unitary state. It must also be recognized that in each of its separate jurisdictions, the judiciary in the United Kingdom has never been organized in a uniform way, with promotional prospects across the hierarchical arrangements of courts. Consequently such associations as have been formed operate at a particular level in the hierarchy of the court or tribunal structure. Thus in England and Wales there is, at the level of the district courts, the District Judges' Association; at circuit court level, the Circuit Judges' Association; and at High Court level, the High Court Judges' Association. In UK wide tribunals associations have the same geographic remit and there are some additional associations for non legal members of tribunals. In Scotland, there is the Sheriffs' Association, to which most sheriffs belong. At the higher instances in the court hierarchy the number of judges concerned becomes sufficiently small that there is no apparent need for a formal association. But there are some structures of an informal nature in those higher instance courts.

In order to contribute to the working of the International Association of Judges – and hence the European Association of Judges – the various judicial associations and the higher judiciary within the United Kingdom created the informal, but practical, association known as the “United Kingdom Section of the IAJ”. It brings together, as best we can, the judiciary of the United Kingdom for those purposes.

4 - Miscellaneous

- What were the main problems encountered by the judiciary in your country in recent years?

The Judiciary of England and Wales, the Scottish judiciary and the Judiciary of Northern Ireland has probably been fortunate in only encountering the problems of coping with seemingly increasing workloads and the essentially minor problems that beset any system of court and tribunal administration; it has not had to confront any major challenge to its independence, such as has, regrettably, occurred in some other countries within the Association.

- Would you say that the situation for the judiciary has improved? decreased? has remained stable?

In common with the experience of many of the working population, since the advent of the financial crisis in 2008, salaries for judges have not increased to any material extent, whereas inflation has decreased their purchasing power. There are concerns that changes to the pension arrangements for recently appointed judges and for new appointees may have made judicial office less attractive.

- What are the main reforms underway or planned? These reforms seem they go in the right direction?

England & Wales:

On 26 March 2013 the Lord Chancellor, the Rt Hon Chris Grayling MP made a Written Ministerial Statement (WMS) setting out his plans for court reform in England and Wales. The text of the WMS was as follows:

“...I am today announcing that I have asked my Department to explore proposals for the reform of the resourcing and administration of our Courts and Tribunals.

The Courts and Tribunals are at the centre of our justice system, relied on by the public to enforce their rights and uphold the rule of law. As in other areas, we need to look at the way we deliver our services to provide a more efficient service that delivers access to justice quickly and effectively, while delivering value for money for the taxpayer. At the same time, we must preserve the independence of the judiciary which lies at the heart of our constitutional arrangements.

Our Courts and Judiciary command great respect around the world and we should be proud of their international reputation and the contribution they already make to our economy. This country is a major centre for legal services and dispute resolution. I want to explore how we can further enhance the position of the UK at the centre of the international legal market and the revenue it can generate.

I also want to ensure that those who litigate in our courts pay their fair share, and that it is possible to raise the revenue and investment necessary to modernise the infrastructure and deliver a better and more flexible service to court users. I have therefore asked my Department to consider appropriate vehicles to achieve these aims, and the organisational structures that might best support this. I am clear that any new model must support the administration of justice as a core pillar of our constitution and its effective delivery will remain an important responsibility of the State.

I have discussed these ideas in outline with the Lord Chief Justice and the Senior President of Tribunals and will continue to work closely with the judiciary as to the detail of these reforms, as well as work with the relevant Parliamentary Committees.”

The then Lord Chief Justice’s comment in response to the Secretary of State’s Written Ministerial Statement was as follows:

“The rule of law and access to justice are fundamental to our society; it is increasingly difficult to secure adequate funding to support and develop the Courts and Tribunals. The Senior President of Tribunals [Sir Jeremy Sullivan] and I recognise the wisdom of exploring ways in which to achieve funding arrangements which are consistent with the independence of the judiciary, the responsibility of the State to provide access to justice and the need for appropriate accountability. We will work with the Lord Chancellor over the coming months as the review considers the options.”

The Crime and Courts Act 2013 which was given Royal Assent on 25 April 2013 provides for greater flexibility in the deployment of members of the judiciary across the courts and tribunals service.

Scotland

There are in Scotland legislative proposals for a re-organization of the civil courts which include the introduction of a new, lower level, judge – at a presumably lower level of salary than the existing sheriffs- to deal with low level cases. In the respect that those proposals are intended to reduce the costs to the State of litigation of such low level claims and to aid access to justice, it is difficult to identify any fundamental objection to the direction which is being pursued.

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