

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).

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.

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.

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.

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>).

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.

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.

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.

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.

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

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.

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, communiques...)?
- 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.

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 increased 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 shorten form 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 to 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 to 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.