

# **ASSOCIATION OF EUROPEAN ADMINISTRATIVE JUDGES**

## **WG Independence and Efficiency**

**Tallinn (Estonia) 14th and 15th of June 2018**

### **Questionnaire**

## **“The status of administrative judges in Europe”**

**20 years after publication of the European Charter on the Status of Judges**

### **Preamble**

#### **FOREWORD of the European Charter on the statute for judges**

The activities carried out in the Council of Europe for many years now, on the organisation of Justice in a democratic State governed by the rule of law, have allowed the various aspects of the issue of the status of judges to be addressed on numerous occasions. These meetings over the past years have been devoted to the recruitment, training, career and responsibilities of judges, as well as the disciplinary system governing them. The number of these meetings has increased since the end of the eighties due to the profound changes that have taken place in Eastern Europe.

In 1997, the idea developed to maximise the results of the work and discussions in order to give this work better ‘visibility’ and above all to give a new impulse to the continuing effort to improve legal institutions as an essential element of the rule of law.

The need to draft a European charter on the statute for judges was confirmed in July 1997, following a first multilateral meeting in Strasbourg devoted to the Status of Judges in Europe. The participants at this meeting came from 13 Western, Central and Eastern European countries, as well as from the *Ecole Nationale de la Magistrature* of France (ENM), the European Association of Judges (EAJ) and the European Association of Judges for Democracy and Freedom (MEDEL). The participants expressed a wish for the Council of Europe to give the necessary framework and support to the elaboration of the Charter.

On the basis of these conclusions, the Directorate of Legal Affairs entrusted three experts from France, Poland and United Kingdom with the realisation of a draft charter.

This draft, created in Spring 1998, was laid before the participants of a second multilateral meeting, also held in Strasbourg, on 8-10 July 1998. At the end of the three days of discussion, the text, after having been improved by a certain number of amendments, was unanimously adopted.

The value of this Charter is not a result of a formal status, which, in fact, it does not have, but of the relevance and strength that its authors intended to give to its contents. A thorough knowledge of its contents and a wide distribution of the Charter are essential for its goals to

be realised . The Charter is aimed at judges, lawyers, politicians and more generally to every person who has an interest in the rule of law and democracy.

**Council of Europe - Recommendation CM/Rec(2010)12 about « Judges: independence, efficiency and responsibilities »**

The Council of Europe has 47 member states, covering virtually the entire continent of Europe. It seeks to develop common democratic and legal principles based on the European Convention on Human Rights and other reference texts on the protection of individuals. Ever since it was founded in 1949, in the aftermath of the Second World War, the Council of Europe has symbolised reconciliation.

Recommendation CM/Rec(2010)12 on the independence, efficiency and responsibilities of judges updates a recommendation that the Committee of Ministers of the Council of Europe adopted in 1994. These new rules aim to promote the role of judges, improve both their efficiency and independence and clarify their duties and responsibilities. They take account of the new ideas and practices that have emerged in member states' judicial systems since 1994.

This recommendation places emphasis on the independence of every individual judge and of the judiciary as a whole. The notion of “internal independence”, which aims at protecting judicial decisions from undue internal influences, is one of the important new elements of the recommendation. Judicial “efficiency” is defined in a clear and simple manner. Additional measures on the selection and training of judges, their responsibility, and judicial ethics seek to strengthen the role of individual judges and the judiciary in general.

Overall, the recommendation represents a significant step forward in strengthening the protection of human rights and fundamental freedoms, as the manner in which judges exercise their judicial functions is crucial to the protection of these rights and freedoms.

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## QUESTIONNAIRE

### 1°) GENERAL PRINCIPLES

#### 1.1. General data

**1.1.1. Is there several categories of judges in your country? If so which categories?**

**1.1.2. Do the statutory guarantees applicable to administrative judges have specificities compared to those concerning other categories of judges?**

**1.1.3. Are the guarantees applicable to professional administrative judges applicable to non-professional administrative judges? If yes, how? Are there exceptions?**

**1.1.4. Are the requirements of competence, independence and impartiality expressly enshrined in the statute of administrative judges?**

**1.1.5. Do these requirements seem to be respected in your country?**

**1.1.6. Is there an evolution in this area since 1998? If so, in what way: progress or regression? What are the main problems and difficulties that you are able to identify?**

#### Austria

Is there several categories of judges in your country? If so which categories? Yes: civil, criminal, administrative judges in general. In all matters: administrative judiciary is separated from the criminal and civil judiciary.

Austrian constitution: is the basis for statutory guarantees for all judges. In the Austrian constitution there are different provisions concerning “ordinary judiciary “ (=civil and criminal judiciary) and “administrative judiciary”, giving competence to the provinces and to the federation to make laws concerning organisation of “their” courts.

On the level of simple legislation:

#### Courts of provinces + 2:

As far as visible: there are differences in between of them and also to the courts of the federation (but again: depends again on each of the 9 provinces), It is not really very clear and transparent. Therefore also the possible statutory differences is difficult to examine and to lay down.

#### Courts of provinces + 2:

It depends on the legislation in the substantive areas of laws (on the basis of which administrative decisions are controlled), if there are provisions that also expert lay judges are part of the deciding senate (in principle: administrative judges decide as single judges, foreseen in the Austrian constitution with possibility of the concrete legislators to foresee senates and also senates with expert lay judges) as exception to the rule.

Usually lay judges only sit in a small percentage of cases (e.g. in Vienna: only lay judges in minority of the senate in cases of public servants law of Viennese public servants). Once they are part of the judicial senate, obligations of judges also apply to them in the course of the specific hearing (most of all: partiality, confidentiality etc...)

The Austrian constitution foresees the basic requirements, e.g. competence: formal requirements for appointment and in order to be eligible to apply for the position as administrative judge (prerequisites) and provisions of exclusion (e.g. members of legislative power cannot be judges).

#### Courts of provinces + 2:

Requirements in addition to the basis and also the basis according to Art. 6 ECHR (which is part of the Austrian constitution) are derived from simple (also organisational) laws applicable to members of the courts of the provinces.

e.g. – competence: partly a regular evaluation of the judges work is foreseen in some view laws of some of the provinces (e.g. Vienna): this is done by a judicial committee (judges elected by general assembly of judges + in (more or less free) discretion by the administration (!) appointed president and vice-president (appointed as well in (more or less free) discretion by the administration).

- Independence: basis is Austrian constitution and requirements of Art. 6 ECHR (vis-à-vis persons seeking redress against administrative decisions/failures) as well as also simple laws, foreseeing that the judges is independent. Same applies to impartiality.

Difficult however to say in detail, as in detail and all aspects the 100%-fulfilment of requirements of full independence cannot be acknowledged (“grey areas”: e.g. that the “public prosecutor” in disciplinary cases is public servant of the province of Vienna (formally not obliged to take orders for these cases). This public prosecutor – on the basis of investigations of a judge of the court – decides to make a disciplinary accusation against a judge)

- in case of non-fulfilment of these duties: disciplinary and criminal responsibility (as well as possible in cases of gross failure: civil liability)

#### Supreme Court: No

#### Courts of provinces + 2:

From the side of the legislator: Basically: yes, but see above (“grey areas”)

From the side of the administrative judges: yes

#### Courts of provinces + 2:

Progress: to have a full administrative jurisdiction with first instance administrative courts and Supreme Administrative Court as a final legal control in cases with relevant questions of law: only since 1 January 2014.

Main problems concerning status of judges: diversity of organisational legislation and legislation concerning service regulations in detail.

### **Estonia**

In Estonia, we have separate administrative courts (2) on the level of first instance and administrative law chambers in appellate courts (circuit courts) and in Supreme Court, but there is no difference concerning the status of judges.

Estonian system doesn't include non-professional judges in administrative court procedure. In criminal matters we have non-professional judges in certain cases on the level of first instance.

Courts act<sup>1</sup> establishes the main guarantees for independence of judges (§ 3) and Requirements for judges (i.e educational and language requirements (§ 47). Justice shall be administered solely by the courts. No one has the right to interfere with the administration of justice. Acts which are directed at disturbing the administration of justice are prohibited in courts and in the vicinity thereof (§ 2).

Estonian Judges' Code of Ethics (Adopted by the Estonian Court en banc) establishes the rules of ethics.

Single actions have appeared in the speeches of parliament members or in media.

Parliament has cut down (in 2013) the social guarantees of judges (additional remuneration on the basis of length of service, retirement pension, length of annual holiday; pension in the case of sickness

### **Finland**

The profession of judges is the same for all judges but the salary can be different depending in which level they work.

We don't have non-professional judges.

The requirements are the same for all judges and the requirements are stated in the same Act. According to the Act a judge is independent in the administration of justice and in this activity, is subject only to the law. A judge has the responsibility to decide a case that has been allocated to him or her. In the exercise of his or her office, a judge shall be conscientious and careful. He or she shall consider and decide the case expeditiously.

### **Germany**

We have judges paid by the several states (Bundesländer) in Germany in first and second instance, whereas the Supreme Court judges for all branches of law are federal judges paid by the Bundesrepublik Deutschland.

Some Bundesländer allow professors at universities to have a second job as judges at the

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<sup>1</sup> <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/507022018003/consolide>

Administrative Court of Appeal. In first instance we sometimes have lay judges, especially in administrative law, civil law (in commercial matters), penal law, labour law and social law.

The requirements for competence, independence and impartiality are the same for all professional judges and are laid down in general statutes for all. They are the same since many years, unchanged also since 1998 and generally observed.

### **Greece**

There are two major categories: Civil and Penal judges on the one hand, Administrative judges on the other. Judges of the first category try both civil and penal cases, without distinction other than the functional necessities of each court. Administrative judges are divided to those serving the ordinary administrative courts, having jurisdiction over “substantive administrative disputes” and those serving in the Council of State, which functions both a Court of Annulment (in certain disputes) and a Court of Cassation.

There are no non-professional (lay) judges in Greece. In some penal courts there is a jury, but they do not consist lay judges.

Those requirements are expressly guaranteed in Articles 87-91 of the Greek Constitution.

Yes, they are fully respected. Nevertheless, during the last years, decisions of the Council of State with political consequences or ideological parameters were severely criticised by government officials or by the press.

### **Italy**

In Italy there are several categories of judges:

- ordinary judges (civil and criminal);
- administrative judges;
- judges of the public accounts;
- tax judges.

Tax judges are not professional judges.

There are some civil judges too who are not professional.

Do the statutory guarantees applicable to administrative judges have specificities compared to those concerning other categories of judges? No they do not.

In Italy there are no administrative judges who are not professional.

There has not been an evolution in this area since 1998. The administrative judge in the current configuration was created in the year 1971.

## **Lithuania**

There are different categories of courts (ordinary courts and administrative courts). The statutory guarantees applicable to administrative judges have no specificities compared to those concerning other categories of judges.

In Lithuania there are no the non-professional administrative judges.

The Lithuanian Law on Courts sets the rules regarding competence, independence and impartiality of judges. There is no special statute of administrative judges.

The Commission on Judicial Ethics and Discipline provide consulting on the matters of judicial ethics. Judges' requests for consulting on ethical matters shall be considered at the meetings of the Commission. A written reply signed by the Chairperson of the Commission shall be given to the judge's request for consulting.

Is there an evolution in this area since 1998? If so, in what way: progress or regression? What are the main problems and difficulties that you are able to identify?

Yes, it is in progress.

The main problems are in these fields: the reimbursement of judges, the evaluation of judges' activities, the selection procedure for judicial office, the regulation of the workload of judges (such regulation is missing).

## **Luxembourg**

There are no different categories of judges in Luxembourg.

Article 49 of the Constitution sets forth that: "Justice is rendered in the name of the Grand Duke by the courts". The Compendium of the Ethical Principles of Magistrates signed on 16 May 2013 by the Superior Court of Justice and the Administrative Court (hereinafter "the Compendium") provides for independence, impartiality and integrity of the judges. These duties apply thus both to "ordinary judges" and to administrative judges. In addition, upon taking office, the judge takes the constitutional oath to perform his duties with integrity, accuracy and impartiality.

As indicated, the Compendium was signed on 16 May 2013. It is the first document setting forth ethic rules applicable to judges.

## **Slovenia**

In Slovenia we do not have several categories of judges. We do have so called ordinary courts and specialized courts. The Administrative Court of the Republic of Slovenia is specialized court as is Labour and Social Court. We have different levels of judges: county judge, district judge, high court judge and supreme court judge. As Administrative Court of the Republic of Slovenia is considered as a high court we are high court judges.

In Slovenia we do not have non-professional administrative judges.

The Slovenian Constitution enacts the principle of separation of legislative, executive and judicial powers. The independence of the judges is ensured in Article 125 of Constitution - Judges shall be independent in the performance of the judicial function. They shall be bound by the Constitution and laws. The office of a judge is permanent. In Slovenia we have two laws: Judicial Service Act which defines election, appointment, promotions, duties, incompatibility, rights as well as termination of the office and post supervision for all judges and Court's Act which defines courts and also states that judges executive judicial power in Slovenia.

More or less; in past there were attacks on the judiciary through the public opinion as well as among the politicians.

The principles were already in place. The main problems in past years were in the politics and the government.

## **1.2. What is the legal level of the fundamental principles applying to the status of administrative judges: constitutional, legislative or regulatory**

### **Austria**

Constitution and on the basis of this. Legislation and regulatory provisions.

### **Estonia**

Estonian Constitution establishes the main principles like “Justice is administered exclusively by the courts. The courts are independent in discharging their duties and administer justice in accordance with the Constitution and the laws.” (§ 146). As well as the main principles of the status of judges, court system, appointment of judges and criminal liability.

Courts Act (parliamentary act) establishes the legal bases for courts administration and court service.

### **Finland**

The level is constitutional and legislative.

### **Germany**

The constitution gives independency to all judges (Art.97 GG).

There is no collegiate body independent of political authorities to guarantee the status of administrative or other judges nationwide, but there are different types of bodies to take part in the first selection of judges before appointed for lifetime in the states, like in my state Hessen (Richterwahlausschuss). Some of their members are selected by the judges, others by the parliament of the state.

In my state (Hessen) there is another body that is allowed to give its opinion (but not to decide in the end) about a promotion to a higher level of responsibility and payment (Präsidentialrat). There are elected judges in this body, as well as the president of the Appeals Court. The decision however is taken by the State Minister of Justice.



There is no right to appeal when a person is not selected to become a judge at the beginning of career, but after appointment for lifetime you can appeal to the Administrative Courts when another judge is promoted to a special position that you applied for, too.

### **Greece**

The status of administrative judges is guaranteed in Articles 87-91 of the Constitution. Statute 1756/1988 regulates the organization of courts (both civil/penal and administrative) as well as the professional status and liability of the Judiciary.

According to article 19 of statute 1756/1988, “any instruction, recommendation or suggestion to a judge in connection to a substantial or procedural question in a specific case or category of cases is inadmissible and constitutes a disciplinary offence”.

### **Italy**

It is the constitutional and the legislative level. The administrative judge is provided for in the constitution. There are in the constitution fewer principles as compared to ordinary judges, but the law has introduced the same principles that are established in the constitution for the ordinary judges.

### **Lithuania**

The system of courts, their competence and status of judges shall be regulated by the Constitution of the Republic of Lithuania, Law on Courts, Law on Remuneration of State Politicians, Judges and State Officials, Code of Ethics of Judges of the Republic of Lithuania, the different regulations of the Council of Judges and intern regulations in the courts.

### **Luxembourg**

Regulatory.

### **Slovenia**

The independence of the judges is ensured in Article 125 of Constitution. Judicial office is not compatible with office in other state bodies, in local self-government bodies and in bodies of political parties and with other offices and activities as provided by law (Article 133). The immunity of judges is also ensured in Article 134 of Constitution - no one who participates in making judicial decisions may be held accountable for an opinion expressed during decision-making in court. If a judge is suspected of a criminal offence in the performance of judicial office, he/she may not be detained nor may criminal proceedings be initiated against him/her without the consent of the National Assembly.

**1.3. Is there in your country a collegiate body independent of political authorities to guarantee the status of administrative judges? If so, what is its nature: a higher council of justice? If not, how is the independence of administrative judges guaranteed from political powers?**

**1.3.1. What is the composition of this independent body? How much do the judges elected by their peers represent in this body?**

**1.3.2. How are its members appointed or elected? Do political affiliations have an influence?**

**1.3.3. Does his field of intervention concern selection, recruitment, appointment, career and termination?**

**1.3.4. Does this body take decisions, or is it merely consulted, or only able to formulate proposals or recommendations?**

**Austria**

Courts of provinces + 2:

Difficult to say: Collegial judicial body for the evaluation and for the assignment of cases as well as for disciplinary proceedings against a judge. In so far: “guarantee of the status”, but not more.

Austria: we have no judiciary council. The ordinary judges and the two federal administrative courts resort to the Ministry of Justice, but not the 9 administrative courts of the 9 provinces.

Guarantees of independence: constitution and laws foresee se. Judges associations have a relevant standing and are highly important to detect problems, to tackle these problems and make them visible as well as to co-ordinate and to do networking. This is all informally and not officially foreseen by law.

Supreme Court: No

Judicial review concretely concerning “Status of a judge” not possible, only within cases pending in disciplinary/criminal proceedings, but not per se. see 1.3.1

Supreme Court:

Yes. For the judges of the Supreme Administrative Court the President, as an administrative authority, is competent to take decisions concerning f.e. salaries, annual leave, etc. Against such decisions an appeal is open to the Federal administrative Court whose decisions could then be challenged before the Supreme Administrative Court if an important question of law is at stake.

In other matters, like disciplinary proceedings or service description concerning judges of the Supreme Administrative Court there is a competence of the general assembly of the Supreme Administrative Court as a special tribunal. Its decisions cannot be appealed.

## Estonia

Courts of the first instance and courts of appeal are administered in co-operation between the Council for Administration of Courts and the Ministry of Justice. The Supreme Court provides its own administration. The most important decisions concerning the court system and relating to administration of courts are first discussed and approved by **the Council for Administration of Courts**. So far, Estonia does not have special state institution or administrative authority which would be responsible for the courts' administration as a whole.

The Council for Administration of Courts 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 (parliament),
- a sworn advocate appointed by the Board of the Bar Association,
- the Chief Public Prosecutor or a public prosecutor appointed by him or her,
- the Legal Chancellor 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.

Two members of Estonian parliament are the members of The Council for Administration of Courts. They don't influence the composition of the entire council or selection or nomination of other members of the Council

The Council shall

1) provide an opinion on the candidates for a vacant position of a justice of the Supreme Court (§ 55 (4));

2) provide an opinion on the release of a judge upon liquidation of the court or reduction of the number of judges; if after leaving the service in the Supreme Court, the Ministry of Justice, an international court institution or after returning from an international civil mission, a judge does not have the opportunity to return to his or her former position of judge, and he or she does not wish to be transferred to another court.; if a judge is appointed or elected to the position or office which is not in accordance with the restrictions on services of judges; if facts become evident which according to law preclude the appointment of the person as a judge.

**The Council grants approval for:**

- the determination of the territorial jurisdiction of courts, the structure of courts, the exact location of courts, the number of judges and the lay judges in courts,
- the appointment to office and premature release of chairmen of courts,
- the determination of the internal rules of courts,

- the determination of the number of candidates for judicial office,
- the appointment to office of candidates for judicial office,
- the payment of special additional remuneration to judges.

**The Council shall:**

- provide a preliminary opinion on the principles of the formation and amendment of annual budgets of courts,
- provide an opinion on the candidates for a vacant position of a justice of the Supreme Court,
- provide an opinion on the release of a judge,
- deliberate, in advance, the review to be presented to the Riigikogu by the Chief Justice of the Supreme Court concerning courts' administration, administration of justice and the uniform application of law,
- discuss other issues at the initiative of the Chief Justice of the Supreme Court or the Minister of Justice.

**Finland**

We don't have such collegiate body and we don't need it because administrative judges are definitely independent and the political authorities do not get involved in the profession of a judges.

**Germany**

...

**Greece**

According to Article 90 of the Constitution, "promotions, assignments to posts, transfers, detachments and transfers to another branch of judicial functionaries shall be effected by presidential decree, issued after prior decision by the supreme judicial council".

According to the above mentioned Article, the supreme judicial council is composed of the president of the respective supreme court and of members of the same court, chosen by lot from among those having served in it at least two years. In the supreme judicial council on the Supreme Administrative Court and on administrative justice shall also participate the General Commissioner of State, who serves in them on issues relating to judicial functionaries of ordinary administrative courts.

Although the presidents of the three Supreme Courts are appointed by the Government (Article 90 par. 5 of the Constitution), political affiliations have no influence whatsoever, neither formal nor "informal". To my knowledge, there has never been a case (or a rumor) of an erroneous decision, based on political affiliations, nor a decision based on criteria other than those specified by the legislation and its interpretation by the competent Judicial Council.

Judges are selected through a procedure regulated by statute 3689/2008, concerning the National School of Judges. This procedure encloses four phases: i. written and oral competition, ii.

courses in the National School of Judges, iii. training period in Administrative Tribunals of Athens and Thessaloniki and iv. final exams.

The appointment and career of administrative judges depends highly on the final grading. The Supreme Judicial Council rarely deviates from the order of precedence created by that grading. Assignments to posts may be a case of such a deviation, due to health issues of the judge or imperative needs of a certain court.

This body take decisions. Should the Minister of Justice, Transparency and Human Rights disagree with the judgement, they may refer the matter to the plenum of the respective supreme court, namely the Council of State. The decision of the plenum is binding upon the Minister.

### **Italy**

Yes there is. Its nature is an administrative authority. Its provisions can be challenged in the administrative court.

The composition of this independent body is the following:

- a) the President of the Council of State (Supreme Administrative Court);
- b) 4 Judges of the Council of State;
- c) 6 Judges of the administrative courts (courts of first instance);
- d) 4 Citizens appointed by the Parliament.

The representatives of the Council of State are appointed from all judges of the Council of State.

The representatives of the administrative courts are appointed from all judges of the administrative courts.

The political affiliations have an influence on the citizens who are appointed by the Parliament.

The representatives of the judges are colleagues who have normally been engaged in the activity of the category associations.

Does his field of intervention concern selection, recruitment, appointment, career and termination? Yes, it does, although they have to apply the legislation.

This body takes decisions and formulates proposals, but normally the Government doesn't provide differently.

### **Lithuania**

The Judicial Council and the Judicial Court of Honour.

The Judicial Council is an executive body of the autonomy of courts ensuring the independence of courts and judges.

The Judicial Council shall be composed of 23 members:

1. By virtue of their office – the Chairman of the Supreme Court, the Chairman of the Court of Appeal, the Chairman of the Supreme Administrative Court;
2. Judges elected by the General Meeting of Judges: three from the Supreme Court, the Court of Appeal, the Supreme Administrative Court each, one from each regional court, one from all regional administrative courts and one from all district courts located in the territory of each regional courts activities.

The candidates shall be nominated and elected during the General Meeting of Judges by the representatives of the relevant courts.

There is no political influence in the election proceedings of the Council of Judges.

### **The Council shall:**

1. elect the Chairman, the Vice Chairman and the Secretary of the Council by secret voting;
2. approve the Regulation of Work of the Judicial Council;
3. provide a reasoned advice to the President of the Republic in respect of the appointment of judges, their promotion, transfer and removal from office;
4. provide a reasoned advice to the President of the Republic in respect of the appointment and removal from office of Chairmen, Vice Chairmen and Chairmen of the divisions of courts;
5. provide a reasoned advice to the President of the Republic in respect of determining or changing of the number of judges in courts;
6. form the Examination Commission for Candidates to Judicial Office and from among its members appoint the Chairman, approve the regulations of this commission and the examination programme;
7. approve the Procedure of entering the candidates in the list of judicial vacancies at the district court and the Procedure of entering the candidates in the register of persons seeking judicial promotion;
8. form standing and ad hoc commissions, also other structures equal to commission by their functional purpose, which help to implement functions of the Judicial Council and approve legal acts regulating their activities;
9. elect by secret voting and appoint members (judges) of the Judicial Ethics and Discipline Commission and from all the commission members elect the Chairman of the

commission, on the grounds laid down in the Law on Courts withdraw them from the office; approve the regulations of the Judicial Ethics and Discipline Commission;

10. by secret ballot appoint members of the Judicial Court of Honour and withdraw them on the grounds laid down in the Law on Courts;

11. approve the Statute of the Judicial Court of Honour;

12. hear the activity reports of the Judicial Ethics and Discipline Commission and the Judicial Court of Honour;

13. be entitled to propose instituting a disciplinary action against a judge;

14. approve the Description of assessment of the judges' activities and the Regulations of the Permanent Commission of Assessment of the Judges' Activities, consider complaints regarding results of the assessment of the judges' activities;

15. form the Permanent Commission for the Assessment of the Judges' Activities;

16. set the procedure and grounds for establishing the judges' specialisation, approve the Regulations of the distribution of cases to judges and of forming the panels of judges;

17. approve the Regulations of the Administration in Courts, resolve other issues related to the administration in courts;

18. approve the Rules of organising the training of judges, the training programmes, the annual plans for the qualification improvement and qualification requirements to the lecturers;

19. approve model structures of district, regional and regional administrative courts, model lists of establishments and job descriptions;

20. consider and approve proposals on draft investment programmes for courts and proposals for the budgets of courts and submit them to the Government;

21. hear the activity reports of the National Courts Administration;

22. annually not later than by 31<sup>st</sup> March publish a review of the judicial activities on the previous year in the internet site of the National Courts Administration;

23. convene the regular and, when necessary, extraordinary General Meetings of Judges;

24. co-operate with other institutions and organisations of Lithuania on the issues of court self-governance, administration and other issues relevant for the activities of courts;

25. co-operate with institutions of other States and international bodies on the issues of court self-governance, administration and other issues relevant for the activities of courts;

26. have the right to receive information from State institutions required for performing the functions of the Council;

27. approve the health check forms for judges, candidates to judicial office in the district courts, persons who do not hold judicial office but who candidate to the judicial position of a higher court;

28. perform the control of administrative activities of all courts;

29. decide other issues defined in the Law on Courts and other laws.

### **Luxembourg**

A draft bill has been lodged with the parliament in order to establish such a body, the Supreme Council of Justice. Currently, independence of judges is guaranteed in the Constitution which establishes a clear distinction between executive, legislative and judicial powers.

Currently under discussion.

**Slovenia**

The Judicial Council is established under the Constitution (Article 131) and is independent body under the Judicial Council Act. The Judicial Council is composed of eleven members. The National Assembly elects five members based on the proposal of the President of the Republic from among university professors of law, attorneys and other lawyers, whereas judges holding permanent judicial office elect six members from among their own number. The members of the council select a president from among their own number.

The Judicial Council makes decisions in selection, nomination and dismissing of the judges and presidents of the courts; for questions regarding personal questions of the judges like incompatibility of judicial office, promotion of judges and disciplinary procedures.

**1.4. The right to appeal by administrative judges**

**1.4.1. Is there a right to appeal for administrative judges to this independent body? How can it intervene?**

**1.4.2. Is there a right to judicial review for administrative judges? If so, these claims are brought to which Court?**

**Austria**

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**Estonia**

A judge can bring an action to the administrative court, for example, against the administrative act of the chairman of the court, concerning his/her salary, vacation etc.

**Finland**

...

**Germany**

...

**Greece**

The judge concerned has as well the right of recourse and ask for the matter to be referred to the plenum of the Council of State.

According to article 90 par.6 of the Constitution, decisions of the Supreme Judicial Council are not subject to remedies before the Supreme Administrative Court.

**Italy**

This national independent body is an administrative authority and it can intervene if a judge



makes an application. For example a judge can give information about a bad working of a court.

Is there a right to judicial review for administrative judges? If so, these claims are brought to which Court? Yes, there is. These claims are brought to the administrative court in the first instance and to the council of State in the second instance.

### **Lithuania**

The Council of Judges shall hear appeals against the results of the assessment of judge's activities, appeals concerning the violation of judge's independence.

The Judicial Court of Honour is an autonomic authority of courts to hear judicial disciplinary cases and petitions of judges for defense of honor of the judge.

Is there a right to judicial review for administrative judges? If so, these claims are brought to which Court?

It is not regulated how the decisions of the Council of Judges can be appealed.

A decision of the Judicial Court of Honour may, within ten days after its adoption, be appealed to the Supreme Court. Such appeals shall be heard by a judicial panel of three judges of the Supreme Court.

### **Luxembourg**

...

### **Slovenia**

There is a right for the judge to appeal to Judicial Council when judge believes that his/hers independence was breached; judge can appeal to the judicial Council against decision of transfer or nomination to the judicial post, judicial title or nomination on the position of senior judge or against of decision classification in step on recruitment.

There is a right for the judge to judicial review to the Supreme Court.

## **1.5. The main duties of administrative judges**

**1.5.1. The obligation to devote all of one's time to the work as a judge**

**1.5.2. The obligation to maintain a high level of competence**

**1.5.3. The obligation to respect professional secrets**

**1.5.4. Other duties of administrative judges**

## Austria

### Courts of provinces + 2: Yes.

Courts of the provinces: as mentioned: some have a constant and regular evaluation by the (own) judicial committee. They make a court decision in case of failures.

The president has the power to ask from specific judges why he/she has been dealing with a case for more than 6 months (period of time which is foreseen by the law in order to decide a case). In case of three such formal requests by the president in a case: this could amount to disciplinary proceedings, therefore: e.g. Gross failures e.g. can result in disciplinary proceedings.

### Supreme Court:

There are no binding working hours for judges. They have to stay at office as far as it is necessary to fulfil their duties. This is – according to the relevant jurisprudence – also true for devoting one's time to the work of the judge. Sideline employments are only permitted if they do not jeopardize (also concerning the amount of necessary time) the official duties as a judge or alter the confidence in them.

### Courts of provinces + 2:

No sufficient continuous trainings are possible. Main problem in Austria: judicial trainings are not organized by judges themselves (or an independent judicial school), but only by the presidents of the courts in liaison with two Universities. This does not fulfil the requirements of judicial trainings according to European standards.

In some courts (Vienna) not even basic commentaries (concerning procedural law of administrative courts) is accessible for judges (“no budget”).

However, for sure high level of competence must be maintained by the judges.

### Supreme Court:

No explicit provision, but it is part of the duties a judge has to fulfill.

### Courts of provinces + 2:

Vis-à-vis parties to the case: yes there are procedural provisions and the duty of the judge to guarantee it adequately on a case by case basis

Rights of judges Vis-à-vis the society: yes also by constitution (professional confidentiality)

### Supreme Court:

Yes.

### Courts of provinces + 2:

To decide within certain time limits/to treat the parties to the case with due respect/partly to fulfil the certain time requirements to be present in the court/to be integer/to treat also co-workers in the court with due respect etc.. several duties listed in the disciplinary laws.

### Supreme Court:

To behave in compliance with the judges' duties and to maintain reputation of justice

### Estonia

A judge shall perform his or her official duties in an impartial manner and without self-interest and shall comply with service interests also outside service. (Courts Act § 70 (1)); a judge shall behave impeccably in service and outside service and refrain from acts which may damage the reputation of court (§ 70 (2)).

Upon appointment to office, a judge shall take the following oath: "I swear to remain faithful to the Republic of Estonia and its constitutional order. I swear to administer justice according to my conscience and in conformity with the Constitution of the Republic of Estonia and other Acts." (Courts Act § 56 (1)).

A judge is required to develop knowledge and skills of his or her speciality on a regular basis and to participate in training (Courts Act § 74 (1)). A judge of a court of the first instance and of a court of appeal who assumes office is required to undergo the professional skills training program approved by the Training Council at the time determined by the Training Council (§ 74 (2)).

A judge shall not disclose information which becomes known to him or her at a court session held in camera (Courts Act § 71 (1)). A judge may disclose facts to which the duty of confidentiality applies in judicial proceedings or pre-trial procedure in criminal matters only with the permission of the Supreme Court en banc (§ 71 (2)).

A judge shall not disclose discussions which take place at the time the decision is made (§ 72 (1)).

The duty of confidentiality applies for an unspecified term and remains in force also after termination of the service relationship.

A judge shall supervise judges of a court of first instance with less than three years length of service and persons completing the preparatory service plan of an assistant judge (§ 73 (1)).

### Finland

According to the Act judges may not accept or continue outside work unless the court, on application, grants permission to do so. The Act on Private Interests and outside Work of Judges (since year 2015) contains provisions on the registration of information on outside work of judges.

According to the Act judges are responsible for maintaining and developing their knowledge of law, legal skills and professional ability. Judges shall We have the obligation to maintain a

high level of competence. Judges shall be offered sufficient training and they shall have opportunity to participate in this.

Professional secrecy of a judge is in accordance with the Act on the Openness of Government Activities.

### **Germany**

There is the duty to devote all of your worktime to the work as a judge, as there is for all civil servants. But up to a certain amount other work (especially teaching or writing books on legal questions) is allowed if it is not keeping you from dealing with your cases in a qualified manner. At least you have to tell the Appeals Court president about your extra work and what you earn there, and in certain cases you even need an explicit permission.

You have to maintain a high level of competence, and therefore there are several possibilities for further professional education (for example Deutsche Richterakademie). Besides there are a lot of legal papers and sources of research that are provided in the court's library or in an electronical way.

Judges may freely join a union or professional organization and frequently do so, but they are supposed to stay politically neutral in office.

### **Greece**

As the infrastructure in administrative tribunals and (some) courts is insufficient, most judges are compelled to work at home. In the years following 2010, the workload has multiplied (for several reasons), so the vast majority of judges are obliged to devote all of their time to work.

The level of competence is required and evaluated (see Chapter 6).

Additionally, the National School of Judges organizes seminars –though not obligatory-, in order to promote the judges' efficiency and competence.

Yes, according to article 40 of statute 1756/1988. To my knowledge, there has not been a case of breach of that duty.

They were due to reside in the siege of the court they are appointed (Article 40 of statute 1756/1988). This provision has been recently modified to the effect that judges are allowed to have residence elsewhere.

### **Italy**

This obligation can be waived by authorizations given by the national independent body. It happens mainly for tasks in the Government or for teaching activity. There is a broader use of these authorizations for administrative judges compared to ordinary judges. This is a current question of debate in the category associations.

The obligation to respect professional secrets: Among these secrets there is not the possibility of revealing how the single judge has voted in the college that gave the decision. For the single judge who doesn't agree with the other members of the court it is only possible to put the dissenting opinion in an envelope which is kept secret in the chancellor's office.

Other duties of administrative judges: Among them, every judge in every court can be appointed (against the own will too) by the president of the court to take part in a commission (together with a representative of the lawyers) which decides whether the State has to pay a lawyer for people who do not have sufficient money.

The law has granted to the national independent body of self administration the power to run the whole amount of the expenses allocated in the financial budget of the State.

The involvement of the administrative judges is ensured by the representatives elected in the national independent body of self administration.

### **Lithuania**

1. A judge must abide by the Constitution and other laws of the Republic of Lithuania and comply with the requirements of the Rules of Judicial Conduct.
2. Apart from administration of justice, a judge shall also perform other duties assigned by law to the jurisdiction of the court where he works.
3. A judge must notify in writing the Chairperson of the court about judicial proceedings to which the judge himself is a party. The judge must also notify in writing the Chairperson of the court about judicial proceedings to which the judge's spouse, children/adopted children, parents/adoptive parents, brothers, sisters/adoptive brothers, sisters also the children/adopted children, parents/adoptive parents, brothers, sister/adoptive brother, sisters are a party if the court where the judge works has jurisdiction over the case.
4. A judge must continuously improve his professional qualifications.
5. A judge must undergo health examinations, following the procedure established in Article 531 of this Law.
6. A judge shall be held liable in accordance with the procedure defined in this Law for failure to perform his duties as a judge.

## **Luxembourg**

No legal provision. However the legislation establishing administrative courts sets forth that the administrative judge may not exercise certain functions (see below point 3.2)

No legal provision. The Compendium provides however that the judge has a duty to follow developments in legal matters and be informed of the developments of the case law both on national and international level. This can be ensured through continuous training.

No legal provision. The Compendium provides however that the judge has a duty to behave and expresses himself in public with caution. The judge must express reserve and must be discreet in order not to compromise the image of justice and not raise any question on his/her impartiality. The judge should avoid to exposing himself in matters incompatible with the dignity of his office. The obligation of reserve does not prohibit the judge from taking part in public collective positions taken by groups of legally constituted magistrates. The obligation of discretion forbids the judge to discuss cases in which he/she is involved. The judge may not publish documents which can potentially undermine the image of the judicial institution. These principles are also valid for retired judge

The Compendium sets forth the duties of probity, reserve and discretion

## **Slovenia**

In the year 2017 the Judicial Council has adopted the Code of Ethics for Judges which contains the most important principles for judges. They are: independence, impartiality, competence, commitment, compatibility, incompatibility, discretion, attitude and reputation. With the explanatory comments of the Commission for Ethic and Integrity of Judicial Council, the Code is binding for judges.

### **1.6. The State must allocate sufficient resources to administrative justice: how is this principle guaranteed?**

#### **Austria**

##### **Courts of provinces + 2:**

It is not really guaranteed on a formal basis.

Concerning courts of the provinces: depends on the legislator of each of the provinces. E.g. budget of Viennese Admin Court: not separated but part of the general budget plan of the province of Vienna. No transparency!

##### **Supreme Court:**

Concerning the Supreme Administrative Court, para 1 of the Supreme Administrative Court Act says that the Court has to consist of the necessary number of judges. This provision should bind the administration to provide for this “necessary” number. If it doesn’t, there is no legal protection. Moreover the possibility to appoint judges is restricted by the budget the budgetary legislator has foreseen for the Supreme Administrative Court. This budget has to be bargained between the President of the Court and the Officials from the Federal Ministry of Finances that

are competent to draft the budgetary law. Finally the amount of money devoted to the Supreme Administrative Court is decided by the Federal legislator.

### **Estonia**

The amount of resources depends on the state budget. The minister responsible for the area (minister of justice) shall approve the budgets of courts of the first instance or courts of appeal within two months after the state budget is passed as an Act, considering the opinion formulated by the Council for Administration of Courts

During a budgetary year, the minister responsible for the area 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. The budget of the Supreme Court shall be passed pursuant to the procedure provided for in the State Budget Act.

### **Finland**

In the state budget there is a special chapter for resources for administrative courts and salaries for the judges.

### **Germany**

The money for the courts must be foreseen by the state household. It is decided upon by state parliament and distributed by the State Minister of Justice. We cannot interfere in this process and even the presidents of the courts cannot do much about it. The judges themselves are not at all involved into that decision making.

### **Greece**

There is not a formal guarantee of that principal.

### **Italy**

...

### **Lithuania**

The financing of the courts is regulated by the Law of the State Budget which is adopted each year. There is a problem: the financing for the courts foreseen in this law is not enough.

### **Luxembourg**

...

### **Slovenia**

The state allocates financial resources to the Supreme Court which than allocates the resources to each of the courts. Each court has to prepare Annual Budget Plan in advance.

### **1.7. Can administrative judges freely join a union or a professional organization?**

#### **Austria**

Yes.

#### **Estonia**

Administrative judge can become a member of Estonian Judges Association (non-profit organisation) like all other Estonian judges or other non-profit organisation (for example Estonian Association of Lawyers).

A judge shall not be a member of a political party (Courts Act § 49 (2), p 2).

#### **Finland**

Yes.

#### **Germany**

?

#### **Greece**

According to art.89 of the Constitution “The establishment of an association of judicial functionaries shall be permitted, as specified by law”. The Greek “Association of Administrative Judges” was founded in November 1976.

#### **Italy**

?

#### **Lithuania**

Yes, they can join to the professional organizations. But they may not participate in the activities of political parties and any other political organisations.

#### **Luxembourg**

No legal provision but the Compendium sets forth that a judge, like any citizen, has the right to join a political party, a professional organisation and to follow the belief of his choice. He may join a trade union within his profession and to hold leadership positions. The judge must refrain from any proselytism and political, philosophical or religious involvement which could undermine the image of independence of the judicial authority. The judge must avoid to publically express his/her political commitments incompatible with the image of impartiality of the judiciary. The judge must ensure that his political, trade union, associative or religious commitments do not interfere with his area of competence within his jurisdiction. The judge may not join any body or group that does not recognize the fundamental rights guaranteed by the Constitution and international instruments



## Slovenia

There is no union of judges in Slovenia. We have a Association of Slovenian Judges which judges can join.

### **1.8. How are administrative judges involved into decision making about the management of courts and the allocation of their resources at national and local level?**

## Austria

### Courts of provinces + 2:

General: management of the court: done by the president and vice-president.

Courts of the provinces: usually laws foresee that the president can appoint a judge who is also doing management work. Vienna: ½ judge foreseen for management duties. Depends also on the way the laws foresee this possibility (right of the president to ask and relevant: to foresee also to which %-age this should take place OR if the judicial committee competent to allocate the cases can decide to which %-age the exemption of judicial work should take place....).

### Supreme Court:

Except of questions concerning recruitment and decisions taken by the General Assembly, there is no official participation of the members of the SAC in the acting of its President as the competent authority for court management of the SAC. Nevertheless the Association of Members of the SAC can be informally heard by the President. Concerning the allocation of Resources to the SAC see 1.6. How the means are finally allocated within the court is decided bya the President, acting as an administrative authority in this regard.

## Estonia

The Court en banc (comprising of all Estonian judges) elects 5 judges as the members of the Council for Administration of Courts (two from the first instance, two from appellate court level, one from Supreme Court). The Council shall provide a preliminary opinion on the principles of the formation and amendment of annual budgets of courts (Courts Act § 41 lg 2).

## Finland

Every court has a chief judge who is responsible for the management of the court. The chief judges negotiate with the ministry of justice about the budget and the sufficient recourses. The chief judge manages the work of the court and is responsible for its productiveness.

## Germany

Cf supra.

## Greece

The Tribunals of Athens, Pireus and Thessaloniki as well as the corresponding Courts are directed by a Committee, whose members are elected by the judges serving in those courts. The

rest of the Tribunals and Courts are managed by the most senior judge serving there. All members of administrative tribunals and courts have the right to regulate, by a “Charter” voted by the plenum, the internal function of the court. This regulation, however, should be ratified by the Supreme Judicial Council.

### **Italy**

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### **Lithuania**

The Council of Judges shall consider and approve proposals on draft investment programmes for courts and proposals for the budgets of courts and submit them to the Government. The courts can give their opinion for the Council of Judges. Usually only the presidents of the courts are involved into decision making about these issues.

### **Luxembourg**

Each year the State budget makes a provision for the court’s maintenance on the basis of the court’s estimates. This arrangement should ensure the independence of the court of from the executive power it is charged with controlling. However, the final budgetary decision is taken by the executive and approved by the legislative branch.

This system precludes furthermore the court leadership to autonomously allocate financial resources to specific, but not predetermined, court purposes, or to autonomously set priorities and manage competing demands within a given, approved budget.

### **Slovenia**

Not particularly; since the president of the court and the director of the court are responsible for judicial administration.

## **2°) SELECTION, RECRUITMENT AND INITIAL TRAINING OF ADMINISTRATIVE JUDGES**

**2.1. Who recruits and selects the candidates, then appoints them as administrative judges? How? Is there several procedures?**

**2.2. The conditions of diploma and / or previous experience, and other selection criteria to become an administrative judge? Is there a system of election of administrative judges?**

**2.3. Is there a system for initial training of administrative judges? If so, what is its nature, duration and terms? Is the independent body called to intervene on this matter?**

**2.4. Is there a special training or supervisory programme for newly appointed judges?**

### **Austria**

**2.1. Who recruits and selects the candidates, then appoints them as administrative judges? How? Is there several procedures?**

### Courts of provinces + 2:

In general: no initial training of administrative judges exists. Partly due to the fact that the Austrian constitution foresees that: in order to be eligible to apply for a judicial position as administrative judge you must have minimum 5 years work experience as lawyer. Therefore practical work experience is relevant and difficult.

In general: recruitment and selection of administrative judges is based on Austrian constitutional provisions (5 years work experience/ prohibitions to apply for members of legislative power or ministers/way to do the appointment.

The appointment of administrative judges of first instance is formally done by the federal government or the government of the respective province. Following provision is relevant according to Austrian Constitution for the procedure:

“to call for proposals of three candidates of the plenary assembly of the Administrative Court or of a committee to be elected among its members, consisting of the President, the Vice-President and the minimum of five other members of the Administrative Court of the province, listing three candidates. The members of the Administrative Courts of the provinces must have completed legal studies or legal- and political science studies and have had at least five years of legal professional experience.”

Judges of the Supreme Administrative Court are appointed by the President of the Federal Republic, based on a proposal of the Federal government. This MUST be based on a proposal of the general assembly of all Supreme Administrative Court Judges listing three possible candidates.

In detail different provisions based on the constitution. In Vienna once the local government did not follow the proposal of the judicial committee. However, in general in practise the proposals are followed by the appointing executive power.

### Supreme Court:

The General Assembly of the SAC proposes three candidates for each post to the Federal Government. The Government is only allowed to choose one of the three proposed candidates to propose him to the President of the Federation for appointment. In praxis, since decades they always proposed the one who was ranked in the first position by the General Assembly who was then also appointed by the President.

## **2.2. The conditions of diploma and / or previous experience, and other selection criteria to become an administrative judge? Is there a system of election of administrative judges?**

### Courts of provinces + 2:

See above, 2.1

### Supreme Court:

For the SAC you must have finished law studies and have 10 years experience in a legal profession.

**2.3. Is there a system for initial training of administrative judges? If so, what is its nature, duration and terms? Is the independent body called to intervene on this matter?**

Courts of provinces + 2: No, see general remarks, 2.1

Supreme Court: Not at the SAC.

**2.4. Is there a special training or supervisory programme for newly appointed judges?**

Courts of provinces + 2: No

Supreme Court: No.

**Estonia**

**2.1. Who recruits and selects the candidates, then appoints them as administrative judges? How? Is there several procedures?**

Judges shall be appointed to office on the basis of a public competition (§ 53 (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.

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.

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.

Justices of the Supreme Court shall be appointed to office by the Riigikogu (parliament) 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.

**2.2. The conditions of diploma and / or previous experience, and other selection criteria to become an administrative judge? Is there a system of election of administrative judges?**

A citizen of the Republic of Estonia may be appointed as a judge if he or she:

1) has acquired in the field of law at least an officially certified Master's degree, a corresponding qualification for the purposes of subsection 28 (22) of the Republic of Estonia Education Act or a corresponding foreign qualification;

2) has proficiency of the Estonian language at the level C1 provided for by the Language Act or a corresponding level;

- 3) is of high moral character;
- 4) has the abilities and personal characteristics necessary for working as a judge.

2.3. Is there a system for initial training of administrative judges? If so, what is its nature, duration and terms? Is the independent body called to intervene on this matter?

The following person may be appointed as a judge of a county or administrative court (county judge or administrative judge): 1) who has at least five years of work experience in an office or position, the prerequisite for working in which is the qualification specified in § 47 (1), p 1, or who has worked as a law clerk or judicial clerk for at least three years and 2) who has passed a judge's examination or who has been exempted therefrom.

The following person may be appointed as a judge of a circuit court (circuit court judge): 1) who is an experienced and recognized lawyer and 2) who has passed a judge's examination or who has been exempted therefrom.

The compliance of a candidate for judicial office with the above mentioned requirements shall be evaluated by the judge's examination committee.

A person who is an experienced and recognised lawyer may be appointed as a justice of the Supreme Court (Supreme Court justice).

The suitability of the personal characteristics of a candidate for judicial office shall be evaluated by the judge's examination committee. The judge's examination committee shall take into account in the evaluation of the personal characteristics of a candidate for judicial office the information which is important for the performance of the duties of a judge and the committee can make inquiries. The Estonian Internal Security Service performs the security check of a candidate for judicial office pursuant to the procedure prescribed in the Security Authorities Act.

A judge's examination shall evaluate the legal knowledge of a candidate for judicial office and the ability to use these. A judge's examination shall consist of a written and oral part.

2.4. Is there a special training or supervisory programme for newly appointed judges?

A judge of a court of the first instance and of a court of appeal who assumes office is required to undergo the professional skills training program approved by the Training Council at the time determined by the Training Council.

## **Finland**

According to the Act before a permanent position as a judge is filled, an announcement shall be made that the applications may be made to the court to fill the vacancy.

To be appointed as a judge, the candidate must be a Finnish citizen with integrity who has a Master's degree in law other than a Master's degree in international and comparative law, and who by his or her earlier service in court or in other position has demonstrated that he or she has the knowledge of the field in question and the necessary personal characteristics required for successful performance of the duties of the position to be filled. Separate provisions may

be issued on the qualifications required for judicial positions where expertise in a special field is necessary. There are also requirements of judges in the Finnish and Swedish languages. According to the Act no exemptions may be granted from the qualifications for a judicial position.

### **Germany**

New judges are recruited by the State Minister of Justice, with participation of the president of the Appeals Court for the branch of justice that the new judge is supposed to go to. For at least 3 years the young judge may be sent from one court to the other without his or her consent until he/she becomes a judge for lifetime. For administrative (and other) judges you need to have a certain result in both your legal exams to be taken into consideration. There is no election process, only an interview at the beginning, and the training is mostly “on the job” by your older colleagues. There are some courses for young judges nowadays that did not exist before. As administrative courts are working in chambers, it is mostly the presiding judge of such a chamber who overviews the work of the new judge.

After 3 to 4 years a judge is appointed for lifetime at a certain Administrative Court by the ministry of justice, after he or she was watched in the professional activities and got at least 3 positive reviews by the president of the court. Then he/she may only be transferred to another court with his/her consent, when being promoted or when a whole court has to be closed out of special reasons.

### **Greece**

As mentioned above, judges are selected through a procedure regulated by statute 3689/2008, on the National School of Judges. This procedure encloses four phases: i. written and oral competition, ii. courses in the National School of Judges, iii. training period in Administrative Tribunals of Athens and Thessaloniki and iv. final exams.

The Supreme Judicial Council decides on the appointment, which is then affected by presidential decree.

Candidates for the competition are accepted on the conditions that a. they have a diploma from a Faculty of Law and b. they are Magistrates of the Peace or attorneys for at least two years or civil servants in Courts’ Offices for at least five years or they have a doctorate from a Faculty of Law and have been attorneys for at least one year. Candidates should be between 28 and 45 years old.

The initial training is actually a part of the selection procedure. On the first stage, which lasts 12 months, training includes seminars, practical exercises, educational visits. The second stage, which lasts about 8 months and is more practically orientated, takes place in the Administrative Tribunals of Athens and Thessaloniki. During the second stage, trainees are expected to handle cases, participate in deliberations and write decisions, under the supervision of a President of the Tribunal, as if they were judges. For this part of the training, they are also evaluated.

Newly appointed judges must sustain a trial period of two years. During that period, they sit only in tribunals composed by three judges.

## Italy

We have to distinguish the administrative judges of the first instance (administrative courts) and of the second instance (council of State).

The recruitment of the judges of the first instance foresees only one way of selection: the competitive exam.

The exam regards the titles and written (4 exams) and oral exams.

The written exams are the following: administrative law, civil law, tax law, a draft of a ruling.

The exam can be taken only by some qualified members of categories with previous experience: ordinary judges, lawyers, officials of public administrations.

The commission is appointed together by the president of the council of the ministers and the independent body of self-administration and is composed of 5 members:

- a president of a chamber of the council of State or a president of an administrative court, who is president of the commission;
- a counselor of State;
- a counselor of an administrative court;
- two professors of the university.

In the second instance (council of State) there are three types of recruitment:

a) half of the vacant places are covered by counselors of the administrative courts who ask.

There must be a positive opinion of the independent body. The order of the appointment is the length of service;

b) a quarter of the vacant places are appointed with the discretion of the Government;

c) a quarter of the vacant places are covered by a direct selection similar to the one for the Administrative Court.

There is not a system for initial training of administrative judges, because they are qualified people with experience.

There is a special training or supervisory programme for newly appointed judges, but it is a soft program because they are qualified people.

### **Lithuania**

The formation and competence of courts shall be established by the Law on Courts of the Republic of Lithuania.

**The Selection Commission of Candidates to Judicial Office** in accordance with regulations of Article 55<sup>1</sup> of the Law on Courts is the Commission the aim of which shall be to help the President of the Republic in selecting the candidates for judicial office.

Administrative judges shall be appointed, and their places of work shall be changed by the President of the Republic.

In Lithuania, only citizens of the Republic of Lithuania may be judges.

#### **Requirements for a Person Seeking Judicial Office at the Regional Administrative Court:**

A judge entered in the register of persons seeking judicial promotion, of at least five years standing as a judge of a district court as well as a person having Doctor or Habil. Doctor of Social Sciences (Law) degree and of at least five years' standing as a university lecturer in law who has submitted a health certificate may be appointed a judge of a regional administrative court or a regional court.

#### **Requirements of a Person Seeking Judicial Office of the Supreme Administrative Court:**

A judge entered in the register of persons seeking judicial promotion, of at least four years standing as a judge of a regional administrative court or a regional court as well as a person having Doctor or Habil. Doctor of Social Sciences (Law) degree and of at least ten years' standing as a university professor of law who has submitted a health certificate may be appointed a judge of the Supreme Administrative Court or the Court of Appeals.

A judge of the Court of Appeals may be appointed a judge of the Supreme Administrative Court, and a judge of the Supreme Administrative Court may be appointed a judge of the Court of Appeals without regard to his record of work at the Court of Appeals or at the Supreme Administrative Court.

#### **Selection criteria for judges seeking appointment to judicial position in a court of a higher instance:**

##### **1. Length of service as a judge.**

**2. Performance and indicators of the last three years.** The Commission, having considered conclusions of the Permanent Commission for the Assessment of Judges' Activities, in the light of the results of previous periodical assessments of judges' activities, also the number and complexity of cases examined by the judge, workload, duration of proceedings, the



average duration of court proceedings in court and the Republic, reasons for amendments and abolition of judgments etc decide on the assessment.

3. **Personal qualities** of judge essential for taking judicial position in a higher instance court: organizational skills, compliance with the Code of Judicial Ethics, professional culture.

4. **Scientific degree of the judge, academic title, scientific activity** (if the judge is not assessed by criteria of the III Chapter); participation in the activities of self-governance institutions, participation in the drafting process of legal acts, conclusions regarding legal acts, participation in the Lithuania's and international working groups as an expert, and others.

5. **The opinion of the court** to which the candidate is claiming and which reflects the position of court judges. The opinion may be based on personal interview or candidate's position presented in a written form and etc.

6. **Candidate' internships, participation in the drafting of legal acts**, conclusions regarding legal acts, participation in Lithuania's and international working groups as an expert.

7. **Candidate's motivation** (presented at the meeting of Selection Commission verbally or in writing if the candidate cannot attend the meeting).

Initial training and obligatory in-service training shall be provided for judges.

Initial training shall be intended only for persons who have been appointed judges to the district court for the first time.

### **Luxembourg**

In Luxembourg, the courts are organized in two orders, namely the judiciary and the administrative order. This organization is based on the nature of the dispute. There are two ways of accessing the judiciary: (1) examination and (2) application

(1) Access to judiciary through examination: to be admitted to the examination, the following conditions must be fulfilled by the candidate: \* be of Luxembourg nationality; \* enjoy civil and political rights and provide the required guarantees of good repute; \* hold a Luxembourg diploma for university studies in law corresponding to the degree of recognized master or a foreign diploma at the end of university studies in law corresponding to the degree of master recognized and approved by the Minister of Education; \* have an adequate knowledge of the Luxembourgish, French and German languages; \* have attended the judicial or notarial internship for at least twelve months; meet the required physical and mental fitness requirements, which are verified by means of a medical examination and psychological examination.

(2) Access to judiciary by application: this is an alternative method of recruitment which can only take place in the event that the number of potential available positions as annually decided by the Minister of Justice is not reached though the examination procedure. The candidate must also meet certain conditions required for admission to the competitive examination, and be the holder of appropriate diploma in legal studies and have practiced the profession of lawyer for a total period of at least five years.

Candidates judges (so-called “attachés”) having successfully passed the examination or whose application has been successfully retained are selected by a Recruitment Commission. They are then appointed for a provisional service for a period of twelve months. The initial duration of the provisional service may be extended for a maximum of 12 months. The provisional appointment and the extension of the duration of the provisional service take place by Grand-Ducal Decree rendered after proposal by the Recruitment Commission.

The Recruitment Commission organizes and supervises the professional training of the attachés, which is dealt in two parts; (i) the professional training which has a minimum period of four months and includes teaching, written and oral tests as well as study visits and (ii) the practical service with a court or a public prosecutor's office. To be eligible for a definite final appointment, court attachés must have adequate notes.

### **Slovenia**

The Supreme Court, the court presidents and the Judicial Council all participate in the system for judicial selection. The Supreme Court screens applicants for formal eligibility requirements and then submits candidates to the court's presidents. The relevant court president carry out interviews and prepare the opinions of the candidate(s). Opinions are send to the candidates and in turn they have the right to append their own comments. After considering these comments, the president forms a final opinion and ranks all candidates in order of priority, with justifications; the Judicial Council then decides on appointment, though is not bound by the opinion of the president. Finally, a rejected candidate may file a lawsuit in an administrative dispute against the decision of the Judicial Council to the Supreme Court. The Judicial Council then send the final proposal (one candidate for one post) to the Parliament where the judges are selected through voting of members of the Parliament.

The president of the court is appointed by the Judicial Council for the term of 6 years. For the president of the court position, judges of the same or higher court may apply and must submit a 6 year strategic work plan for the court.

There is no difference in the selection process of administrative judges compared to other judges in Slovenia.

Candidates for administrative judge must be Slovenian citizens, possess a university law degree, have completed the state law exam, have a suitable personality, be at least 30 years of age, have at least 6 years in judicial office or 9 years of working experience after state law exam **or** fulfilment of general conditions (as above mentioned) and have 10 years' experience in administrative decision making. The appointment is for an unlimited time. A judge can stay in office until he/she reaches 70 years of age.

The age requirement and other conditions for election are determined by law. The retirement age of judges is determined by law (Article 129). Judges are elected by the National Assembly on the proposal of the Judicial Council (Article 130).

In Slovenia, there is no special training for judges (e.g. school for judges). The Centre for Judicial Training that is part of the Ministry of Justice is responsible for training judges, prosecutors and lawyers at the State Attorney's Office. Training in the Centre is available for all interested judges. Judges can participate in other forms and areas of education if it is for the benefit of their office.

There is no special training for newly appointed judges. There are a possibility for a mentor who can be a senior judge.

### **3. 9) THE APPOINTMENT OF ADMINISTRATIVE JUDGES AND THE PRINCIPLE OF INAMOVIBILITY**

**3.1. Who appoints and assigns administrative judges? Is the independent body called to intervene at this level?**

**3.2. Are there material or geographic incompatibilities for appointment as administrative judge due to past activities: at the time of initial recruitment or during the career**

**3.3. Does the tenure as an administrative judge come after a trial period? If so, how long is it? Which authority is appointing administrative judges? The independent body is called upon to intervene in this matter: if so, in what way?**

**3.4. The principle of irremovability of administrative judges and its limits**

#### **Austria**

**3.1. Who appoints and assigns administrative judges? Is the independent body called to intervene at this level?**

Courts of provinces + 2:: See 2.1

As there is only one possible court to be appointed for, the assignation to a concrete court is not relevant and no provisions therefore exist. Also movability is not given. No openness of the system (e.g. in between first instance administrative judges): you apply for one specific court and cannot change the court afterwards (or you apply totally anew at another administrative court: different organisational legislator!)

Supreme Court:

Appointment see 2.1. Case assignment within the SAC is done by the General Assembly.

**3.2. Are there material or geographic incompatibilities for appointment as administrative judge due to past activities: at the time of initial recruitment or during the career**

Courts of provinces + 2:: Yes by constitution:

“The following cannot belong to the Administrative Courts and the Supreme Administrative Court: members of the Federal Government, of a Land Government, of the National Council, of the Federal Council, of a Provincial Parliament or of the European Parliament; moreover, members of another general representative body cannot belong to the Supreme Administrative Court; for members of a general representative body or of the European Parliament who have been elected for a fixed term of legislation or office such incompatibility continues until expiry of that term of legislation or office.”

In addition for presidents of administrative courts and supreme administrative court:

“Who has exercised one of the functions specified in para 5 in the last five years cannot be appointed President or Vice-President of an Administrative Court or of the Supreme Administrative Court.”

Courts of the provinces: there might be some specific regulations of incompatibilities. However these must be based on the provisions in the constitution. I do not know of any further simple-law-exclusions (the legality of which would be doubtful).

Supreme Court:

Members of the Federal or a Regional Government, members of the national or federal council or the European Parliament cannot be members of the SAC. Even if they resign, the incompatibility lasts until the end of the legislation period.

For Presidents and Vice-Presidents the incompatibility always lasts for 5 years after the end of the functions mentioned above.

**3.3. Does the tenure as an administrative judge come after a trial period? If so, how long is it? Which authority is appointing administrative judges? The independent body is called upon to intervene in this matter: if so, in what way?**

Courts of provinces + 2: No trial period before, for no administrative judge

Appointment: see 2.1. above

Independent bodies:=general assembly of Supreme Administrative Court

and/or := legal committees of the courts: with majority of judges from this court (elected by majority of members of the general assembly of judges of this court)

Supreme Court: No.

**3.4. The principle of irremovability of administrative judges and its limits**

Courts of provinces + 2: Appointed for an indefinite period of time (until legal obligatory retirement age).

Limits: disciplinary sanction possible

Supreme Court:

Art. 88 para 1 provides that judges retire at an age fixed by law. Para 2 says:

(2) Otherwise judges may be removed from office or transferred against their will or superannuated only in the cases and ways prescribed by law and by reason of a formal judicial decision. These provisions do not however apply to transfers and retirements which become necessary through a change in the organization of the courts. In such a case the law will lay down within what period judges can without the formalities otherwise prescribed be transferred and

superannuated.

The respective law theoretically would allow the transfer of judges of the SAC, but only to the Supreme Court of normal justice and only under very restrictive conditions.

## **Estonia**

### 3.1. Who appoints and assigns administrative judges? Is the independent body called to intervene at this level?

Judges shall be appointed to office on the basis of a public competition. 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. Justices of the Supreme Court shall be appointed to office by the Riigikogu (parliament) on the proposal of the Chief Justice of the Supreme Court.

### 3.2. Are there material or geographic incompatibilities for appointment as administrative judge due to past activities: at the time of initial recruitment or during the career

The following person shall not be appointed as a judge:

- 1) persons who are convicted of a criminal offence;
- 2) persons who have been removed from the office of judge, notary or bailiff;
- 3) persons who have been expelled from the Estonian Bar Association;
- 4) persons who have been released from the public service for a disciplinary offence;
- 5) persons who are bankrupt;
- 6) persons whose professional activities as an auditor have been terminated except termination on the basis of the application of an auditor;
- 7) persons who have been deprived of the qualification of a patent agent, except deprivation of qualification on the basis of the application of a patent agent.
- 8) who have been deprived of the profession of a sworn translator on the basis of clause 28 (3) of the Sworn Translators Act.

### 3.3. Does the tenure as an administrative judge come after a trial period? If so, how long is it? Which authority is appointing administrative judges? The independent body is called upon to intervene in this matter: if so, in what way?

There is no special trial period. Courts Act only establishes, that a judge shall be released from office due to unsuitability for office when it becomes visible within three years after appointment to office.

### 3.4. The principle of irremovability of administrative judges and its limits.

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 (Constitution § 147).

A judge shall be released from office:

- 1) at the request of the judge;
- 2) due to age; (in principle 68 years);
- 3) due to unsuitability for office – within three years after appointment to office;
- 4) due to health reasons which hinders work as a judge;
- 5) upon liquidation of the court or reduction of the number of judges;
- 6) if after leaving the service in the Supreme Court, the Ministry of Justice, an international court institution or after returning from an international civil mission, a judge does not have the opportunity to return to his or her former position of judge, and he or she does not wish to be transferred to another court.
- 7) if a judge is appointed or elected to the position or office which is not in accordance with the restrictions on services of judges;
- 8) if facts become evident which according to law preclude the appointment of the person as a judge.

### **Finland**

According to the Constitution tenured judges are appointed by the President of the Republic in accordance with the procedure laid down by an Act. According to the Act permanent judges are appointed by the President of the Republic on the basis of a proposal by the Government. A reasoned proposal for all judicial appointments other than appointments of the presidents of Supreme and Supreme Administrative Court and justices of the Supreme Courts is made by the Judicial Appointments Board.

Before submitting a proposal for an appointment, the Judicial Appointments Board shall request a statement on the applicants from the court that had announced the vacancy.

The statement issued by a court shall contain a reasoned opinion on which of the applicants shall be appointed to the position. The statement of the court shall indicate the reasoned opinion of the court on the merits and qualifications of the applicants and their order of preference with regard to the position to be filled. The statement of the court that had announced the vacant position of judge shall include a summary of the official merits and other merits to be taken into consideration, drawn up in accordance with the instructions of the Board.

According to the Act provisions on the right of a judge to remain in office as a guarantee of

independence are provided in section 103 of the Constitution Act and, in more detail, in Chapter 16 of the present Act.

According to the Constitution of Finland a judge shall not be suspended from office, except by a judgement of a court of law. In addition, a judge shall not be transferred to another office without his or her consent, except where the transfer is a result of a reorganization of the judiciary. Provisions on the duty of a judge to resign at the attainment of a given age or after losing capability to work are laid down by an Act. More detailed provisions on the other terms of service of a judge are laid down by an Act.

Section 35 of the Public Officials Act contains provisions applicable to judges, on the general age of retirement of public officials and on the termination of public service. The general age of retirement is 68 years.

According to the Chapter 16 of the Act Judges are required to resign from a judicial position if they have lost their ability to work due to illness, infirmity or injury. If a judge who is no longer able to work does not himself or herself resign from office, the court decides on relieving him or her of his or her office. The matter shall be considered by the competent court as an urgent matter of administration of justice.

### **Germany**

...

### **Greece**

As above mentioned, according to Article 90 of the Constitution, “promotions, assignments to posts, transfers, detachments and transfers to another branch of judicial functionaries shall be effected by presidential decree, issued after prior decision by the supreme judicial council”.

There are both material and geographic incompatibilities, concerning place of birth and residence (for the judge and their spouse) and of exercising the profession of attorney at Law (both for the judge and their spouse).

A trial period lasts 2 years (article 88 par.3 of the Constitution). After that, the judge is evaluated by a judge of a Court of Appeal. This evaluation is taken into consideration but is not binding to the Supreme Judicial Council.

### **Italy**

The national independent body appoints and assigns the judges to the court. The president of the court assigns the judge to the chamber.

The judge cannot be assigned for two years to a court which has competence in the area where the judge practiced the previous activity.

There is not a trial period because they are qualified people.

The authority which is appointing administrative judges is formally the president of the republic, but substantially the national independent body. It is not possible to modify the result of the selection procedure which has been expressed by the commission.

The judges can be moved against their own will only in case of grounded environmental incompatibility because they are not able to exercise the functions with independence and serenity.

In every case the judge cannot remain in the same chamber for more than 5 years.

### **Lithuania**

A judge of a regional administrative court shall be appointed by the President of the Republic from among the persons entered in the register of persons seeking judicial promotion. And the President of the Republic shall be advised by the Judicial Council in respect of the appointment of a judge of a regional administrative court.

A judge of the Supreme Administrative Court shall be appointed by the President of the Republic from among the persons entered in the register of persons seeking judicial promotion. The President of the Republic shall be advised by the Judicial Council in respect of the appointment of a judge of the Supreme Administrative Court.

In Lithuania we don't have a trial period for administrative judges.

A judge of a regional administrative court may be transferred to another court of the same level subject to his consent. Consent of a judge shall not be necessary for a temporary transfer of a judge to another court of the same level in order to ensure the functioning of the court (in cases where the judge of this court is unavailable due to ill health, where there is a vacancy in the court or where the judge of this court is not able to carry out his functions for other reasons). Such a transfer of a judge may not last longer than six months and may not occur more frequently than once every three years.

A judge shall be transferred to another court without an examination and selection by a decree of the President of the Republic of Lithuania.

### **Luxembourg**

Administrative judges are appointed by the Grand-Duke.

Administrative judges are irremovable. They may only be removed from them functions or be suspended upon administrative court decision provided certain conditions are met.



## Slovenia

Slovenian judges are elected in the Parliament on the proposal of the Judicial Council. The already elected judges can be appointed to different court by the nomination of the Judicial Council.

In Slovenia we do not have a trial period for judges.

Judicial Service Act defines election, appointment, promotions, duties, incompatibility, rights as well as termination of the office and post supervision for all judges. Judge can be transferred from one division to another or to different court of law with his/her consent. Without consent, it is possible to be transferred in exceptional cases like closing of the court or if workload in the court declines. After transfer, the judge has to obtain the same position and same salary. Transferring without consent is not a practice. It is not possible to be transferred to government administration with the exception of the Ministry of Justice. Transfers have no explicit effect on career or promotion.

## 4 °) THE CAREER OF ADMINISTRATIVE JUDGES

**4.1. Which positions are filled with seniority or merit promotion? Criteria for assessing merits? The modalities of intervention of the independent body in this matter?**

**4.2. The limits to the freedom of expression of administrative judges**

**4.2 bis. Can administrative judges exercise outside activities? Is this possibility subject to prior authorization?**

**4.3. The prohibition for administrative judges of any conduct likely to alter confidence in impartiality and independence**

**4.4. Effective access to continuing training?**

## Austria

**4.1. Which positions are filled with seniority or merit promotion? Criteria for assessing merits? The modalities of intervention of the independent body in this matter?**

Supreme Court:

Within the SAC the position of Presidents of Chambers requires a new appointment procedure, which functions as reported in 2.1. In theory you can also apply for this position without being a judge of the SAC before. Nevertheless in praxis, seniority plays an important role in this context.

President and Vice-President of the SAC are appointed by the President of the Republic on proposal of the Federal Government without any involvement of judges' penal of the general Assembly. It is also not unusual to appoint persons who are not members of the Court so far.

**4.2. The limits to the freedom of expression of administrative judges**

**4.2 bis. Can administrative judges exercise outside activities? Is this possibility subject to prior authorization?**

Courts of the provinces: Outside professional activities must be reported to the respective judicial committee which allows or takes note of these activities and would be able to forbid in case this would be not compatible with judges duties/appearance. No case known in which it was forbidden (e.g. regularly: to give lectures, to write a commentary....).

Outside private activities: for sure private issue of the judge. Limits: ethics/integrity/ and relevant: disciplinary liability. :e.g. Vienna: In general there exists the obligation for civil servants not to do anything which would undermine the trust of the general society on the proper performance of the specific duties of service of the public servant are jeopardized or affected. This law is applicable for judges as well (recent disciplinary conviction of a judge colleague took place on this legal provision).

Supreme Court:

Sideline employments, see 1.5.1. If the activities are remunerated you have to inform the President who is entitled to forbid them, if they do not comply with the legal requirements.

**4.3. The prohibition for administrative judges of any conduct likely to alter confidence in impartiality and independence**

Courts of provinces + 2:

Vis-à-vis parties to the case: see Art. 6 ECHR. On the basis of this there might come up a disciplinary or criminal liability (based also on simple law provisions, like abuse of office or general provision for adequate behaviour, what was mentioned above in 4.2.)

Supreme Court:

See 1.5.1. for sideline employments, but it is a general duty, see 1.5.4.

**4.4. Effective access to continuing training?**

No

Courts of provinces + 2: There is offer of continuous training: different from province to province. But in general: no proper judicial school with adequate independence exists. The ways chosen by the presidents of the courts is training partly organized by them in cooperation with two universities (e.g. not clear who decides on relevant topics etc.... no transparency on this).

Supreme Court:

There are certain offers, also for members of SAC, but there are no obligations and no guarantees for participation.

## **Estonia**

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 (Courts Act § 49 (1)).

A judge shall not be § 49 (2):

- 1) a member of the Riigikogu (parliament) 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.

A judge shall perform his or her official duties in an impartial manner and without self-interest and shall comply with service interests also outside service. A judge shall behave impeccably in service and outside service and refrain from acts which may damage the reputation of court. (§ 70 (1) (2)). The judges has a duty of confidentiality and duty of Professional development (§§ 71, 72, 74)

A judge is required to develop knowledge and skills of his or her speciality on a regular basis and to participate in training (§ 74 (1)).

The Training Council is responsible for the training of judges. 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 responsible for the area and the University of Tartu. Support services shall be provided to the Training Council by the Supreme Court. The Training Council shall annually determine a part of the training program, the completion of which is mandatory to judges. Judges participate in training on the basis of an annual training plan § 44 (1), (4), (5).

## **Finland**

Before appointment of an applicant to a permanent position as judge, the applicant shall submit the declaration of his or her private interests referred to in section 8(a), subsection 1 of the Public Officials Act. The declaration shall be given to the appointing authority or, if the appointed authority is the President of the Republic, to the Ministry of Justice. A person appointed as judge shall, in addition, submit the declaration for the information of the court to which he or she is appointed.

## **Germany**

All judges start at a level called R 1 and are paid equally within their state, but different among the several states of Germany. The salary increases by professional experience (formerly by age).

A career position would be R 2, as a presiding judge at first instance or a regular judge at second instance, R 3 as a presiding judge at appeals court or president of a small court or R 4 as president of a bigger court. The president of the Appeals Administrative Court has R 6 to R 8, a federal judge (in the Supreme Court like the Bundesverwaltungsgericht) also.

To be promoted you have to work in several legal administrative subjects and chambers and to go to the appeals court (or another higher institution like the Federal Administrative Court or the Constitutional Court) for a sort of “third exam”, working there for 9 months and your working style and decisions being evaluated. Only if you get a good review for this time you have sufficient chances for further development.

## **Greece**

Access to the position of President of Tribunal and Judge of Court of Appeal is secured by criteria of seniority and merit. Access to the position of President of Court of Appeal and Councillor of State (according to art.88 par.6 of the Constitution) is secured solely on grounds of merit.

According to Art. 89 of the Constitution, it is prohibited to judicial functionaries from performing any other salaried service or practicing any other profession, from being assigned of administrative duties and from participating in the Government. Exceptionally, they may be elected members of the Athens Academy or teaching staff of university level institutions.

Continuing training –not obligatory, though- is organised by the National School of Judges. Judges are also encouraged to participate in the continuing training provided by the EJTN and the CoE.

Judges are entitled to leave of absence on educational purposes. The Minister of Justice decides, every year, how many such leaves will be granted (usually one or two) and the Superior Judicial Council decide on the candidates. In case there are more applications, seniority is usually the criterion of selection.

## **Italy**

Normally all positions are filled with seniority if there is not a reason for demerit because for example the judge has not timely delivered the rulings.

The appointments are substantially decided by the independent body.

The President of the Council of the Ministers has a limited discretion when he appoints the President of the Council of State. In this case the independent body presents to the Head of

the Government a list of three names, among which the choice has been made by the Government.

The heaviest limit to the freedom of expression is that there is not the possibility to reveal how the single judge has voted in the college that gave the decision. For the single judge that doesn't agree with the other members of the court it is only possible to put his dissenting opinion in an envelope which is kept secret in the chancellor's office.

For the rest the judge has to act in the social life so as not to seem to prejudice the independence of the functions.

Administrative judges can exercise outside activities and this possibility is subject to prior authorization. The activities cannot be authorized if they could be a prejudice of the independence and the impartiality of the judge or if they could be a prejudice to the prestige and the image of the administrative judiciary.

The principle should be that if a public administration intends to confer a task to an administrative judge, it has to ask not the judge, but the national independent body. The independent body has to confer the task to whichever judge, according to objective criteria.

The reality is that in many cases the public administrations confer the task to the single judge and the judge asks the independent body to obtain the authorization for them.

The national independent body of the administrative judiciary has always been broader than the national independent body of the ordinary judiciary in giving the authorization.

According to the general criteria of the independent body the possibility of exercising teaching activity is particularly broad.

A second activity which is always permitted to the administrative judge is the one of the tax judge. The tax judge is not an activity of public employment, but an activity of self-employment. Tax judges are, in addition to administrative judges, ordinary judges, lawyers and tax-advisers.

A recent case has been the dismissal of an administrative judge who ran a teaching school where he asked the female students to wear miniskirts; generally speaking, there is a prohibition to run teaching schools on an entrepreneurial basis.

The national independent body periodically organizes activities of continuing training. The limit of these activities is that only few judges can attend them because there is not enough money to pay the transfer for so many judges. As a balance the Administration has begun to broadcast the courses on the intranet channel.

The courses are not compulsory and there are no incentives to attend them.

### **Lithuania**

A person seeking judicial office at a court of a higher level shall be included in the register of persons seeking judicial promotion.

The register of persons seeking judicial promotion and the personal files of persons seeking judicial office at a court of a higher level shall be administered by the National Courts Administration.

The National Courts Administration shall communicate the information about the persons who have been included in the register of persons seeking judicial promotion to the President of the Republic of Lithuania and the Judicial Council.

Selection criteria for judges seeking appointment to the position of the court chairman, vice chairman or chairman of the division:

1. **Length of service;**
2. **Administrative skills of the candidate gained during the work in courts or in other legal institutions.**
3. **Performance and indicators of the last three years.** The Commission, having considered conclusions of the Permanent Commission for the Assessment of Judges' Activities, in the light of the results of previous periodical assessments of judges' activities, also the number and complexity of cases examined by the judge, workload, duration of proceedings, the average duration of court proceedings in court and the Republic, reasons for amendments and abolition of judgments etc. decide on the assessment.
4. **Personal qualities of judge essential for taking position of chairman of court, vice chairman position or position of chairman of the division:** organizational skills, compliance with the Code of Judicial Ethics, professional culture.
5. **The opinion of the court** to which the candidate is claiming and which reflects the position of court judges. The opinion may be based on personal interview or candidate's position presented in a written form and etc.

6. **Candidate' internships**, participation in the drafting of legal acts, conclusions regarding legal acts, participation in Lithuania's and international working groups as an expert, and others.
7. **Candidate's motivation** (presented at the meeting of Selection Commission verbally or in writing if the candidate cannot attend the meeting), and other criteria.

Freedom of expression is limited in the light of Code of Ethics.

No administrative measures may be taken against the judge. If the judge commits an administrative offence the matter shall be referred to the Commission of Judicial Ethics and Discipline.

A judge may not hold any other elected or appointed office, may not work in any business, commercial, or other private establishments or enterprises.

The judge may not receive any other remuneration except the judge's salary and remuneration for teaching or creative activities.

Under the Code of Ethics.

Training of judges shall be organised, programmes and methodological materials shall be developed by the Judicial Council and the Ministry of Justice.

Programmes for training of judges, regulations on training tests and schedules, types of training, its scope and financing, other teaching-related documents shall be approved by the Minister of Justice subject to the approval of the Judicial Council.

### **Luxembourg**

Promotions are automatic and not based upon merits.

The functions of administrative judges are incompatible with the mandate of deputy, with any public or private salaried function, with the functions of notary, usher with the military state and the ecclesiastical state, with the profession of lawyer, with the function of judge of the judicial order unless the magistrate exercises the functions of substitute member of the administrative courts. Administrative judges cannot be mayor, or municipality council. They cannot exercise a mandate within a body of a public institution. An administrative judge may not be member of the Council of State (Conseil d'Etat).

Effective access to continuing training: In theory yes but difficult to implement due to

### **Slovenia**

Position and promotion of the judge depends on his/hers evaluation merits.

Freedom of expression is not expressly limited in is limited in the light of Code of Ethics.

A judge can teach, can be active in science, publicises, performs research and is active in other similar areas that do not interfere with judicial office. A judge has to notify the president of court

of his/her sideline activities. When in doubt whether work could interfere with judicial work, the Judicial Council decides on the matter.

Under the Code of Ethics.

As already stated the Centre for Judicial Training that is part of the Ministry of Justice is responsible for training judges, prosecutors and lawyers at the State Attorney's Office. Training in the Centre is available for all interested judges. Judges can participate in other forms and areas of education if it is for the benefit of their office.

## **5. 9) THE CIVIL AND DISCIPLINARY LIABILITY OF THE ADMINISTRATIVE JUDGES**

### **5.1. Discipline**

**5.1.1. Are disciplinary offenses specifically defined?**

**5.1.2. The scale of sanctions**

**5.1.3. The procedure of enactment of the sanction and its author, and the modalities of intervention of the independent body**

**5.1.4. The possibility of a judicial remedy**

### **5.2. Is there a regime of State responsibility due to the functioning of administrative justice?**

**5.2 bis. Can the State exercise a recourse action against the responsible administrative judge? Does the independent body intervene in this matter?**

**5.3. The possibility or not for any person to seize the independent body in case of dysfunction of the administrative justice? This body can seize directly the disciplinary authority or give a recommendation about it?**

### **Austria**

Supreme Court: No

Courts of provinces + 2::

From a formal warning to loss of monthly income (also in different scales) to a dismissal.

Supreme Court:

Rebuke, financial penalty (up to five monthly salaries), dismissal

Courts of provinces + 2: again also here it is regulated differently:

e.g. In Vienna: Judges of the administrative court of Vienna are evaluated by a judicial committee once every three years. The majority of members of this judicial committee are judges



from the administrative court of Vienna, elected by the general assembly of all administrative judges from Vienna.

The role of the court president of Vienna by law is the general duty of “supervision” on his judge colleagues. Furthermore he has the competence to make formal requests from a certain judge once every 3 months on not yet solved and finalized cases and all relevant formal issues (like when the complaint was received, when the oral hearing took place etc...).

In case of “a charge against a judge” or in case of “a self-denunciation” as well as in case of “a justified suspicion of violations of official duties of judges” he has to ask a judge of the court (free choice who to ask) to investigate the relevant facts and he has to inform the disciplinary public prosecutor.

The disciplinary public prosecutor is a public servant of that administrative authority the decisions of which are legally controlled by the administrative court in general (= here of Vienna). The role of the disciplinary public prosecutor is to defend the public interests, i.e. to formally charge a judge of a disciplinary accusation and he/she is party to any disciplinary case. The disciplinary public prosecutor is formally not subordinated to directives in this specific function. Disciplinary charges as such are handled and decided by judge colleagues of this court (majority of them elected by the judges themselves).

The administrative authority is authority of the local government of the province of Vienna. This local government is organisational legislator for the whole organisation of the court as well as free to appoint a president of the court and is budgetary master of the courts budget.

#### Supreme Court:

The sanction is imposed by the general assembly after an oral hearing. No intervention of an independent body.

#### 5.1.4. The possibility of a judicial remedy

Courts of provinces + 2: Yes; for the time being: to the Supreme Administrative Court

Supreme Court: No

#### 5.2. Is there a regime of State responsibility due to the functioning of administrative justice?

Supreme Court:

Not for failures in decisions of the Supreme Administrative Court (except of severe violations of EU-law according to the Köbler-judgment).

#### 5.2 bis. Can the State exercise a recourse action against the responsible administrative judge? Does the independent body intervene in this matter?

Courts of the provinces:

In cases of gross negligence would be possible. So far no case known (yet).

Supreme Court:

Maybe in case of severe violations of EU-law (not yet adjudicated). No independent body

5.3. The possibility or not for any person to seize the independent body in case of dysfunction of the administrative justice? This body can seize directly the disciplinary authority or give a recommendation about it?

Courts of the provinces:

a) Concerning a person seeking a decision from the administrative court:

Firstly: there is legal redress possible: the courts first instance must decide within 6 months (in general). Otherwise a complaint can be made to the Supreme Administrative Court, which sets a deadline until when the case must be finished (not based on any evidence taking). Also the Austrian Ombudsperson is granted a right to make such complaints to the Supreme Administrative court (although they can never be party to a case, but to be kind of “adviser” of the persons seeking support).

For criminal complaints: statutory limitations give legal protection to the person who is charged.

Secondly: in case of gross failures to decide cases: evaluation can be negative and/or disciplinary proceedings.

Thirdly: in case of dysfunction (and non-decision therefore) because: lack of budget/lack of appointments of new judges by the executive power/lack of sufficient resources at the court (also other personnel, or e.g. rooms for oral hearings etc...): no direct responsibility of the executive power. The president would be liable in case of mis-management of the court. No case (yet) known.

b) Concerning judges or other personnel of the court:

No possibilities to make specific complaints. Limits. Mis-management of the president (to make disciplinary charges against him/her), to make adequate statements and request evidence taking in the evaluation procedures affecting the respective judge him/herself and in possible disciplinary proceedings (e.g. why backlog of cases? Because of no resources etc...). Judicial associations have an important function also in this respect to openly address such problems of dysfunctioning of courts.

Supreme Court:

No independent body

## Estonia

### 5.1. Discipline

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 (§ 87 (2)).

Disciplinary punishments: a reprimand; a fine in an amount of up to one month's salary; a reduction in salary; removal from office (§ 88 (1)). A judge's salary may be reduced by not more than 30 per cent and no longer than one year (§ 89).

Disciplinary proceedings shall be commenced if elements of a disciplinary offence become evident. Disciplinary proceedings are commenced by preparation of disciplinary charges.

The following have the right to commence disciplinary proceedings: the Chief Justice of the Supreme Court, against all judges; the Chancellor of Justice, against all judges; the chairman of a circuit court, against judges of courts of first instance in his territorial jurisdiction;) the chairman of a court, against the judges of the same court; the Supreme Court en banc against the Chief Justice of the Supreme Court.

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. The Disciplinary Chamber of the Supreme Court shall hear matters of disciplinary offences of judges and impose disciplinary punishments to judges. A five-member panel of the Disciplinary Chamber shall hear a disciplinary matter at a court session.

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 (§ 97(3)).

## 5.2. Is there a regime of State responsibility due to the functioning of administrative justice?

### 5.2 bis. Can the State exercise a recourse action against the responsible administrative judge? Does the independent body intervene in this matter?

A person may claim compensation for damage caused in the course of judicial proceedings, including damage caused by a court decision, only if a judge committed a criminal offence in the course of judicial proceedings. As well as for damage caused by a decision passed on the matter, if the European Court of Human Rights has satisfied the person's individual petition due to a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms or any of its protocols in the relevant proceedings, if the violation lead to incorrect adjudication of the matter, and the person has no other means to restore the person's rights.

State Liability Act § 15 (1)(3<sup>1</sup>).

## **Finland**

A written admonition referred to in section 24 of the Public Officials Act may be given to a judge by the chief judge of the court in which the judge is serving. However, a written admonition to the senior judge of a district court is given by the president of the court of appeal, to the president of a court of appeal and to the president of the Labour Court by the President of the Supreme Court, and to the chief judge of an administrative court, the Market Court and the Insurance Court by the President of the Supreme Administrative Court.

A decision to suspend a judge from office on the grounds referred to in section 40, subsection 2, paragraphs 1-3 of the Public Officials Act is made by the court in which the judge is serving. However, the decision to suspend the senior judge of a district court from office is made by the court of appeal, the decision to suspend the president of a court of appeal or of

the Labour Court is made by the Supreme Court, and the decision to suspend the chief judge of an administrative court, the Market Court or the Insurance Court is made by the Supreme Administrative Court.

Yes, a decision on suspension from office and a decision of suspension from office are subject to ordinary appeal. The matter shall be considered at the appellate court as an urgent matter of administration of justice. An appeal shall be submitted within 30 days of service of the decision, to the court at which the judge serves. The decision shall be followed notwithstanding an appeal, unless the appellate court decides otherwise.

According to the Act provisions on the responsibility of judges for their official acts are contained in section 118 of the Constitution Act and elsewhere in law. According to the Constitution A civil servant is responsible for the lawfulness of his or her official actions. He or she is also responsible for a decision made by an official multi-member body that he or she has supported as one of its members. A rapporteur shall be responsible for a decision made upon his or her presentation, unless he or she has filed an objection to the decision.

Everyone who has suffered a violation of his or her rights or sustained loss through an unlawful act or omission by a civil servant or other person performing a public task shall have the right to request that the civil servant or other person in charge of a public task be sentenced to a punishment and that the public organisation, official or other person in charge of a public task be held liable for damages, as provided by an Act.

### **Germany**

Not specifically defined offenses, but the same as any other civil servants.

The scale of sanctions goes from just an official reminder to do your work properly to removal from office. Judges against whom disciplinary measures were taken by the president of the court or the ministry of justice may appeal to a special court called Richterdienstgericht.

The system of State responsibility for the performance of judges in trial normally does not allow a personal recourse to the judge, similar as with all civil servants.

### **Greece**

#### **5.1. Discipline**

Article 91 of statute 1756/1988 cites the disciplinary offences. Although there seems to be a recitation, this provision is extremely vague. Example: “indecent or inappropriate contact, within or out of the limits of duty”.

Reprimand, fine, temporary or permanent dismissal.

According to art.91 par.3 of the Constitution, the disciplinary authority over judicial functionaries (other than the ones from and above the rank of member of the Supreme Civil and Criminal Court or Deputy Prosecutor of the same Court or a rank corresponding thereto) shall be exercised, in the first and second instance, by councils composed of regular judges chosen by lot; disciplinary action may also be initiated by the Minister of Justice.

Such a possibility is ruled out by article 91 par.1 of the Constitution.

5.2. Is there a regime of State responsibility due to the functioning of administrative justice?

According article 7 par. 4 of the Constitution, “unjustly or illegally convicted, detained pending trial, or otherwise deprived of their personal liberty” shall be indemnified. This provision affects only penal courts and procedures. On the other hand, state liability deriving from illegal acts of state functionaries is founded, on constitutional level, on the principle of equality (article 4 par.5). In a recent decision of the Council of State (48/2016), State responsibility due to the functioning of justice was, for the first time, acknowledged, on the condition that the damage is caused by manifest error of the judge.

Since the State can exercise a recourse action against the responsible civil servant, there could also be a similar recourse against the judge. The issue has not yet arisen.

5.3. The possibility or not for any person to seize the independent body in case of dysfunction of the administrative justice? This body can seize directly the disciplinary authority or give a recommendation about it?

There is not such a possibility.

**Italy**

The disciplinary offenses are not specifically defined. They are defined in the single case by the independent body.

The national independent body has in a general way decided the deadline for delivering a ruling only in the perspective of the disciplinary sanctions although the law establishes different deadlines.

So the law establishes a deadline of 45 days for delivering a ruling, while the independent body has established a deadline of 180 days.

The scale of sanctions:

- a) the admonition;
- b) the censure;
- c) the loss of the seniority;
- d) the transfer;
- e) the dismissal.

The procedure is begun by the president of the council of State or by the president of the council of the ministers. The independent body applies the sanction.

It is possible to challenge the sanction to the administrative court in the first instance and to the council of state in the second instance.

If someone has suffered an unjust damage due to a conduct or a provision of a judge who has acted intentionally or with serious negligence or due to denying justice, can claim against the State to attain compensation.

The president of the council of the ministers has to claim against the judge for the compensation which the State had to pay in case the judge caused damage with intention or unexcusable negligence.

Officially there is not the possibility for everyone to activate the disciplinary procedure. But the president of the council of the ministers or the president of the council of State can recognize the advisories which come from everyone. The independent body has the competence to decide the disciplinary sanction.

### **Lithuania**

**The Judicial Ethics and Discipline Commission** is an institution of autonomy of courts deciding the issues of instituting disciplinary actions against judges.

A disciplinary action may be instituted against a judge immediately after at least one of the violations specified in Article 83, paragraph 2 of the Law on Courts comes to light but not later than within three months from the day when this violation came to the notice of the Judicial Ethics and Discipline Commission which has the right to institute a disciplinary action. Excluded from this time period shall be the time when the judge was absent from work due to ill health or a vacation.

A disciplinary action may be brought against a judge:

- 1) for an action demeaning the judicial office;
- 2) for violation of other requirements of the Code of Ethics of the Judges;
- 3) for non-compliance with the limitations on the work and political activities of judges provided by law.

A disciplinary action may not be instituted after a lapse of more than three years from the moment of commission of the violation.

The instituted disciplinary action shall be transferred to the Judicial Court of Honour.

**The Judicial Court of Honour** is an autonomic authority of courts to hear judicial disciplinary cases and petitions of judges for defense of honor of the judge.

**The Court of Honor shall decide the disciplinary case by taking a decision.**

Having considered the disciplinary case, the Court of Honor can take **a decision** to:

1. dismiss the disciplinary case due to non-existence of the grounds for disciplinary responsibility;
2. dismiss the disciplinary case due to overdue dates for initiation of proceedings, as provided in the Law on Courts;
3. restrict to hearing of the disciplinary case;
4. impose to the judge one of the following disciplinary punishments:
  - 4.1. make a comment,
  - 4.2. give a reprimand,
  - 4.3. give a severe reprimand;
5. propose to the President of the Republic of Lithuania or the Seimas of the Republic of Lithuania to dismiss the judge in the manner prescribed by the Law on Courts;
6. propose to the President of the Republic of Lithuania to apply to the Seimas of the Republic of Lithuania for the impeachment against the judge.

Decision of the Court of Honor taken to settle the disciplinary case **can be appealed** against in ten days after it has been taken to the Supreme Court of Lithuania in the manner prescribed in the Law on Courts.

In principle the State can exercise action against the responsible judge.

The self-governance institutions and the officials of courts administration shall take necessary measures to ensure that the moral and ethics norms that are laid down in Code of ethics of the judges of the Republic of Lithuania, Law on Courts, international legal acts would be known to every judge and the candidate to a judge.

A reasoned proposal for the institution of a disciplinary case against a judge may be made to the Commission by: the Judicial Council, the President of the court employing the judge, the President of any court of a higher instance, another person who is informed about an offence specified in Article 83(2) of the Law on Courts.

### **Luxembourg**

A disciplinary offense is defined as any act committed in the exercise or out of the exercise of the functions, which can compromise the mission of the judge, give rise to scandal, hurt the conveniences and compromise the service of the justice, as well as any breach of the duties of a judge's office.

The disciplinary sanctions are: (1) the warning; (2) reprimand; (3) the fine which cannot be less than one-tenth of a gross monthly amount of the basic salary, nor greater than the same monthly payment. It is recoverable by means of a non-objectionable constraint, to be awarded by the recipient of the registration; (4) the temporary exclusion of the functions, with or without partial or total deprivation of remuneration for a maximum period of six months. The period of

exclusion does not count as service time for the calculation of the biennial increases and the pension; (5) retirement; (6) the revocation. The revocation entails the loss of employment, title and pension entitlement without prejudice to the rights arising from the retroactive insurance provided for the coordination of the pension plan

The warning is given by the President of the Administrative Court, either ex officio or at the request of the Minister of Justice. The application of the other disciplinary penalties is made by the Administrative Court, in the chamber of the council, on requisition of the Minister of the Justice.

### **Slovenia**

Special disciplinary proceedings for judges, with complete charges, oral hearing and decisions are defined in the new Judicial Council Act, which came into force on 20<sup>th</sup> of November 2017. Disciplinary responsibility and sanctions are part of the Judicial Service Act. The prosecutors are supreme court judges. The disciplinary (court) body has 9 members: 3 are members of Judicial Council (president and deputy president) and 6 judges (2 supreme court judges, 2 high court judges and 2 judges of first instance). Disciplinary body decides in panel of 3 members. Against the decision of the disciplinary body an administrative dispute is allowed to the Supreme Court.

The disciplinary sanction are: letter of formal notice; termination of promotion; salary cut; transfer to the other court and termination of judicial position.

There is a regime of State responsibility due to the functioning of administrative justice. Responsibility of the State is stipulated in the Article 26 of Slovenian Constitution.

In principle the State can exercise action against the responsible judge.

Any person can file supervisory appeal after 6 month since filing the suit if there was no activity from the court. The supervisory appeal is dealt by the president of the court after he or she gets the opinion of the judge.

There is possibility of post supervision which can be carried out by the president of the court or the president of higher court.

Motion to opening the disciplinary procedure have the president of the court, president of the higher court, president of the supreme court, Judicial Council and minister of Justice.

### **6 °) EVALUATION OF JUDGES' ACTIVITIES**

**6.1. Is the evaluation of the judges' activities foreseen?**

**6.2. Is it regular or only in the special circumstances? In which circumstances?**

**6.3. Is the evaluation based on some objective criteria? Which criteria?**

**6.4. Who is performing the evaluation? The president of the court, the special independent body?**

**6.5. What is the result of the evaluation (note, positive-negative findings etc.)?**



**6.6. How important is the result of the evaluation for the judge? For the career, salary, social guaranties etc.?**

**6.7. Is it possible to challenge the evaluation before the independent authority or a court?**

### Austria

Courts of provinces + 2:

Different in each of the provinces. E.g. Vienna: once every 3 years by the own judicial committee.

Supreme Court:

The legal situation for the SAC is unclear in this respect. In principle, the rules for the Supreme Court of normal justice apply. There an evaluation is foreseen under the conditions laid down in 6.2. But these conditions are made for judges of the Supreme Court of normal justice. They always have an evaluation, because they come from lower courts of normal justice (where they practically had the best mark). This is not necessarily the case for judges of the SAC, because some of them have not been judges before. So it would be unclear when there is a “change in performance”. Moreover the competent body for judges of the Supreme Court of normal justice is the “Personalsenat” of the Supreme Court of normal justice. The SAC does not have such a body. If one would nonetheless search for a competence (per analogiam) it would probably be the General Assembly. In praxis we never evaluated a judge of the SAC.

6.2. Is it regular or only in the special circumstances? In which circumstances?

Courts of provinces + 2: See above.

Supreme Court: Only if there is a change in the performance of the judge; then the mark can be changed ex officio or on application of the judge

6.3. Is the evaluation based on some objective criteria? Which criteria?

Courts of provinces + 2:

Yes: objective criteria, specified in simple (organizational) laws, like: knowledge of constant jurisprudence, efficient handling of cases, efficiency of the way to hold oral hearings, etc.

Supreme Court:

Knowledge, skills (also social and communication skills), business, interaction with parties, capacity to express oneself oral or in writing, success.

6.4. Who is performing the evaluation? The president of the court, the special independent body?

Courts of the provinces:

The judicial committee: majority judges (5) elected by the general Assembly of the judges of this court. And President and Vice President.

Supreme Court:

See 6.1.

6.5. What is the result of the evaluation (note, positive-negative findings etc.)?

Courts of provinces + 2::

Yes: from positive to negative: different possible scales (excellent, very good, good, sufficient, failed).

Supreme Court:

If applicable, it would be a note.

6.6. How important is the result of the evaluation for the judge? For the career, salary, social guaranties etc.?

No factual relevance for internal career as there is no internal career at all.

Courts of provinces + 2::

Two negative evaluations = dismissal.

Supreme Court:

In theory it could be of importance if a judge of the SAC wants to become President of a chamber.

6.7. Is it possible to challenge the evaluation before the independent authority or a court?

Courts of provinces + 2::

Yes, Supreme Administrative Court or/and Constitutional court.

Supreme Court:

If applicable, no.

### **Estonia**

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. 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. (§ 100 (1) (3).

Supervisory control over the administration of justice pursuant to the requirements, over the performance of duties by judges and over the forwarding of the data of the courts information

system pursuant to the established procedure shall be exercised by the chairman of the court. The chairman of a court has the right to demand explanations from judges, inspect compliance with the operations procedure and collect other necessary information. The manager of courthouse may, on the order of the chairman of a court of first instance or on his or her own initiative, demand explanations from judges of a courthouse and collect other necessary information to ensure the administration of justice in the court pursuant to the requirements. Chairmen of circuit courts shall also exercise supervisory control over judges of the courts of the first instance (§ 45 (1)).

### **Finland**

No such evaluation.

### **Germany**

An evaluation of activities is foreseen every year during the period till appointment for lifetime and then every 3 to 5 years till the age of 50 (in my state Hessen, can be different in other states). The evaluation is done by the president of the court and overviewed by the president of the Appeals court, according to certain criteria publicly laid down in a directive of the Minister of Justice. It ends with a note and is very important for the career, but not for the salary. Under a certain note there will be no promotion to R 2 or higher.

Evaluations are also possible out of special circumstances like maternal leave, change of the court and – of course – when applying for a promotional job.

If you do not agree with your evaluation you may contradict and eventually go before the Administrative Court.

### **Greece**

Evaluation (called “inspection”) is foreseen in article 87 par.3 of the Constitution and in articles 82-88 of statute 1756/1988.

Judges of the first instance are evaluated twice a year, while judges of the second instance are evaluated once a year.

The evaluation is based on: a. morals, character, resilience, b. scientific knowledge, c. ability to judge and awareness, d. diligence, industriousness, efficiency, e. ability in wording and structuring the text, f. social behavior and stance.

Judges of the first instance are evaluated twice a year, by a Councilor of State and a President of the Court of Appeal. Judges of the second instance (other than the Presidents of the Courts of Appeal) are evaluated once a year, by a Councilor of State.

The degrees of evaluation are: exceptional, very good, good, insufficient. Morals are evaluated as: appropriate or inappropriate.

The evaluation reports are taken into account to disclose if a judge is to be promoted to the next rank. They are also taken into account, in order to grant the judge an educational leave of absence (which is granted also by the Supreme Judicial Council).

The evaluation can be challenged only before the Council of Evaluation (art.89 of statute 1756/1988). This Council is composed by a Vice-President and two Councilors of the Council of State. Although it is not an independent authority “stricto sensu”, remedies –as far as I know- are impartially examined.

### **Italy**

The evaluation of the administrative judge is foreseen not so often as the evaluation of the ordinary judge.

The evaluation happens:

- when the judge has to be promoted. This happens twice: after 4 years after the first appointment and again after 4 years after the first promotion. These general promotions are not limited by a defined number;
- when the judge, normally after 15 - 18 years seniority, becomes a member of the council of state;
- when the judge is appointed as president of a chamber or president of a court;
- when an additional task is being conferred to the judge.

The criteria are the seniority and the non-demerit.

The non-demerit is based on: not significant and not repeated delayed delivering of the rulings, absence of disciplinary sanctions, absence of transfers grounded by environmental incompatibility, absence of violation of duties.

The evaluation is performed by the national independent body.

The result of the evaluation impedes the promotions, the appointments and the conferments above mentioned at the point 6.2.

As above explained the result of the evaluation is important for the career.

It is possible to challenge the evaluation before the administrative court (and in second instance before the council of State).

## **Lithuania**

Yes, it is foreseen in the Law on Courts and in the Rules for the Assessment of Judges' Activities.

The first assessment of the judge's activities shall be after a lapse of three years following his appointment to judicial office. After this assessment the assessment shall be performed every five years after the first assessment.

The extraordinary assessment of the judge's activities shall be carried out when deciding on the promotion of the judge or on the appointment for a new term of office of the Chairman, Vice Chairman, Chairman of the division of the court, on the request of the judge himself or when the judge's weaknesses have been determined more than twice under the control procedure of the administrative activities.

When assessing the activities of judges shall take into account the quantitative and qualitative professional performance indicators, personal and performance characteristics of a judge, jurisdictional and non-jurisdictional activities of judges. Jurisdictional and non-jurisdictional activities of judges shall be evaluated strictly in accordance with the principle of the judicial independence using the statistical data related to the administration of justice without checking the legitimacy and validity of separate procedural judgments.

Assessing the jurisdictional activities of judges the following factors directly related to the professional performance shall be analysed:

1. Statistical data about the procedural decisions adopted by the judge in cases and quashed by the court of a higher level due to obvious violations of the material and procedural law norms;
2. Instances related to the unjustifiable delays of case hearings;
3. The quality of managing the proceeding (e.g. perceptiveness, consideration, behaviour with parties of the proceedings and other participating persons, ability to hear speeches of every person participating in the proceeding, attentiveness);
4. The clarity, consistency and the expression of the procedural decisions adopted by the judge;
5. data concerning the concluded peace agreements while examining civil cases, number of cases transferred to the examination by way of judicial mediation and number of cases examined by the judge – the mediator by way of judicial mediation.

The Assessment Commission shall be formed for the term of office of the Judicial Council from seven members: three of them must be not judges. Four members of the Commission shall be elected from the judges by the Judicial Council, three members shall be appointed by the President of the Republic. The Chairman of the Commission from the appointed members shall be elected by the Judicial Council. The activities of the Assessment Commission shall be serviced by the National Courts Administration.

Commission draws up the conclusion in free from. In the conclusion the Commission shall state the deficiencies of the professional, organisational or administrative activities of the assessed

judge if they are found and present proposals concerning the elimination of these deficiencies, as well other information which according to the Commission is important.

There are no notes in the conclusion only the statement that the judge's activity is in compliance with the professional requirements.

There is a new proposal for the change of the rules of the assessment and the notes are foreseen in this project.

The result of the evaluation is important for the career of the judge (it is one of the criteria during the selection procedure).

The result of the evaluation may be grounds for starting a new separate investigation regarding the possibility to start a disciplinary proceedings against the judge, to dismiss the judge or remove him from office.

The judge, whose activities were subject to assessment, shall be entitled to be acquainted within one month of the day on which he was acquainted with the activities assessment results to appeal against the results to the Judicial Council.

It is not regulated to which court the decisions of the Judicial Council can be challenged.

### **Luxembourg**

.....

### **Slovenia**

Judges' performance is subject to regular monitoring and assessment. Judges are assessed every year during their first three years in office; thereafter, the personnel councils evaluate the professional performance of their colleagues every three years or upon the request of the Judicial Council, the court president or president of the relevant higher court or the judge himself.

The criteria under which the assessment of judge's work is assessed are:

1. work capability (number of cases finished in comparison to other judges, proceeding leading in a summary manner) and expertise (capability of solving legal problems/questions in particular in relation to the number of cases that are assessed by the higher court; judge's legal activity, postgraduate study and high standing in legal profession, work within the reasonable time and according to case priority, written and oral expression);
2. personal qualities (protection of the reputation of judge's office);
3. social skills (relations with co-workers);
4. management capabilities (for leading positions).

The Judicial Council's decisions on the personnel council assessments can affect the career path of judges such as promotions to higher courts and higher pay brackets; a negative assessment may result in removal from office by the Judicial Council. The Judicial Council adopted its Criteria for Determining the projected Scope of Judicial Work. In accordance with

this resolution, judges' performance is continuously monitored against pre-determined norms for dispositions of cases.

## **7°) REMUNERATION AND THE SCHEME OF SOCIAL PROTECTION APPLICABLE TO ADMINISTRATIVE JUDGES**

**7.1. The level of remuneration: at the beginning of career and at the end of career**

**7.2. The criteria for variation of remuneration - Is there a possibility of modulation of merit pay?**

**7.3. Is a payment of additional remuneration provided and on which bases (additional administrative or professional tasks, length of service etc.).**

**7.4. Administrative judges benefit from the guarantee of social risks: sickness, maternity, invalidity, old age and death**

**7.5. The level of the retirement pension**

**7.6. How long is judge's annual holiday? Is there any difference depending on the length of service, court instance or other criteria?**

### **Austria**

**7.1. The level of remuneration: at the beginning of career and at the end of career**

Courts of provinces + 2:

Also here: differs quite a lot between the different provinces. Also between “new” judges (since 2014) and “old” judges, namely those who had been members of the independent administrative tribunals before and have now been transferred to be judges of the administrative courts first instance (as also the independent administrative tribunals were transferred to be now the administrative courts) de facto (namely through time spans of prior work periods to be acknowledged for the new adjustment in the new remuneration scheme). Also the pension provisions for retired judges differ a lot.

Generally: progress once every 4 years (or 2 years) foreseen by law to get more remuneration of a certain amount. Based on laws. No additional remuneration/payments (what is correct!) for judges (e.g. “work more, get more” ....).

Supreme Court:

€ 7.500- € 10.000 per month before taxes, social contribution and pension contribution; net half of the amount.

**7.2. The criteria for variation of remuneration - Is there a possibility of modulation of merit pay?**

Courts of provinces + 2: No

Supreme Court:

Merit pays are in principle possible. They take place for extraordinary efforts on certain occasions. Practically they are only paid if a judge accepts additional work in justice administration, f.e. press contacts.

7.3. Is a payment of additional remuneration provided and on which bases (additional administrative or professional tasks, length of service etc.).

Courts of the provinces:

No. ONLY: by law: length of service: once every 4 years (different in each of the provinces) a next step of the remuneration scheme is reached automatically. Somehow not so clearly transparent legislation on remuneration for all judges (and president) exists in the province Vorarlberg, as far as it is known.

Supreme Court:

See 7.2.

7.4. Administrative judges benefit from the guarantee of social risks: sickness, maternity, invalidity, old age and death

Courts of provinces + 2: Yes!

7.5. The level of the retirement pension

Courts of provinces + 2:

65

Supreme Court:

Figured out in a very complicated procedure. For judges who are now around 60 it would be appr. 70% of the active salary.

7.6. How long is judge's annual holiday? Is there any difference depending on the length of service, court instance or other criteria?

Courts of provinces + 2:

Differs in detail in the provinces. Viennese legislation: from 43 years onwards: 6 weeks, and finally (with 60 years): 7 weeks per year. No other criteria.

Supreme Court:

At the SAC for all judges 6 weeks.



## Estonia

A judge's salary is provided by the High-Ranking State Public Servants Salaries Act. Every year the salary shall be indexed by an index the value of which depends to the extent of 20 per cent of the annual increase of the consumer price index and to the extent of 80 per cent of the annual increase in receipt of the pension insurance part of social tax.

The level of salary depends on the court instance where judge is working.

The salary of a judge of a court of first instance with less than three years length of service during the first six months as of the assumption of the office shall be 90% of the salary determined for a judge. § 75 (1) (2)

No supplementary remuneration depending on the length of service.

No merit pay; see also answer 7.3.

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 in the amount of 15-35 % of his or her salary (depending on the number of judges in the court) The chairman of Viru County Court shall be paid additional remuneration at twice the rate provided above. § 76 (1)(1<sup>1</sup>).

The manager of a courthouse shall receive additional remuneration for the performance of the duties in the amount of 5-15% depending in the number of judges in service in the courthouse (§ 76 (3)).

Judges supervising judges shall receive additional remuneration 5% of the salary for each supervised person (max 2) during supervision (§ 76 (4)).

If a judge is killed or deceases or a judge's capacity for work is reduced in connection with the performance of the judge's duties, the state shall pay a compensation on the basis and pursuant to the procedure of § 49 of the Public Service Act.

A judge who has been established to have a permanent loss of capacity for work on the basis of the State Pension Insurance Act before 1 July 2016, shall be entitled to apply for a pension for incapacity for work, which shall be determined on the basis of the version of the Courts Act in force until 1 July 2016. The others has right on for a pension for incapacity for work on general basis.

For judges, appointed since 01.07.2013, there isn't special retirement pension.

For judges appointed earlier, the retirement pension is 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. Pension shall be indexed by 1 April of each current year by the highest salary rate index specified in the High-Ranking State Public Servants Salaries Act (the value of index depends to the extent of 20 per cent of the annual increase of the consumer price index and to the extent of 80 per cent of the annual increase in receipt of the pension insurance part of social tax).

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

A judge's annual holiday is 35 calendar days. A judge shall be granted an additional holiday as follows: 1) two calendar days when five years length of service as a judge is reached; 2) four calendar days when ten years length of service as a judge is reached; 3) seven calendar days when fifteen years length of service as a judge is reached.

### **Finland**

7.1. At the beginning 4.546 euros at the end 6.233 euros. And even more if one is a justice of Supreme Administrative Court around 9.000 euros.

7.2. Yes, seniority allowance every 3-5 yerars.

7.3. Yes, on the length of service.

7.4. Yes, other than death.

7.5. Around 60 % of the salary.

7.6. The length of the annual holiday is the same for all civil servants, 30 working days and after 15 years 35 working days.

### **Germany**

Remuneration in Hessen (since February 2018) starts with about 3.900 € per month in R 1, rises every two years and ends at about 6.250 € (still in R 1) after 25 years of experience. R 2 is about 600 € more. R 3 gives you 7.500 € per month, and starting with R 3 there is no difference in remuneration according to your age respectively your level of experience. There is no possibility for modulation for additional tasks or other merits.

As all civil servants in Germany judges benefit from the guarantee of social risks: Payment continues despite of sickness for at least a year. Afterwards you may be sent to a special doctor to find out if it is to be expected that you can come back to work soon. If not you will be retired prematurely and get a (small) pension, depending on how many years you worked before. During maternal leave the full salary is paid for 12 weeks, afterwards you get – as all women who worked before pregnancy – a lesser amount (up to about 1000 € per month) for one year. If you decide to stay home longer, this is possible, but without any payment.

Insurance against illness is granted by the state for about 50 %, meaning that they pay half the sum of all medical bills. For the other half you have to pay a private insurance company. Retirement is between the age of 65 and 66, going up to 67 gradually just in these years. If you worked long enough (more than 40 years full time) you can reach a level of 70 % of your last wage as retirement payment.

Annual holiday for every judge is 30 days (6 weeks). In former times there were 3 days more for people over 50 years of age, and those who already got them before the law changed still get them till retirement.

## **Greece**

According to article 88 par.2 of the Constitution, the remuneration of judicial functionaries shall be commensurate with their office; disputes concerning all kinds of remunerations and pensions of judicial functionaries are tried by the special court of article 99 of the Constitution.

Salaries have suffered a severe reduction since 2010. Still, the basic salary of a newly appointed judge rises about to 2.000 euros while the salary of the President in an Appellate Court is about 3.300 euros. One must point out that the basic salary is increased by additional sums, according to family status, years of service etc. Tax, social security stamp etc. are subtracted, to almost a percentage of 40%, so that, at the end of the day, the final amount is not so impressive as at first sight seems.

Remuneration depends on the length of time in service, the rank of the judge, its personal condition (if they are married and have children). Post –graduate diplomas and doctorates add up to the basic salary. Merit pay is not a possibility. On the contrary, it is customary that the most complex cases are assigned to those judges who work most (and receive the same salary as those less overloaded).

Annual holiday is a long and sad story. According to article 44 of statute 1756/1988, a judge's annual holiday is one month per year. This holiday is attributed to them, by the Ministry of Justice, after a formal request and on the condition that the functioning of the court is not held back.

From the 1<sup>st</sup> of July till the 15<sup>th</sup> of September, there is the so-called “judiciary holiday”. That means that courts still function –of course- but judges are obliged to be present only during a period of time. This period depends on the court: in small courts, a judge might be “on duty” for more than a month, while in a bigger ones that period could last only a week.

## **Italy**

At the beginning of their career the administrative judges receive a net salary of around 3.000 Euro. At the end of their career they receive about 8.000 Euro.

The criteria for variation of remuneration are the attaining of 2 qualifications after a positive evaluation, as above mentioned in the point 6.2. There is not a merit pay.

The payment of additional remuneration is provided on the basis of the willingness to work more: writing more rulings than usual, according to a special program approved by the national independent body.

They benefit according to the general principles of the public employment.

The level of the retirement pension: normally with 70 years.

Normally the annual holiday is one month long for all judges (the month of August).

### **Lithuania**

The remuneration of judges shall comprise: 1) basic salary; 2) bonuses for the length of service to the State of Lithuania. The basic salary is different in different courts.

No. The level of the court and the length of service are significant for the calculation of the remuneration.

The basic salary of the president, vice-president of the court is higher as for other judges.

All judges have the guarantees foreseen in the Law on Courts and in the Labour Law (if the Law on Courts is not regulating some specific issues). There are guarantees of social risks: sickness, maternity, invalidity, death, transfer to another court. 4

For all judges the level of the retirement is 65 years (no possibilities to prolong).

Judges shall be entitled to the annual leave of 28 calendar days. Judges having a period of service in judicial office over five years shall be granted an additional calendar day for each subsequent year of service; however, the aggregate duration of the annual leave of the judge may not be longer than 56 calendar days.

### **Luxembourg**

The level of remuneration: at the beginning of career and at the end of career. Depends on the age and work experience at the date of entry.

Administrative judge has the status of civil servant benefiting from all guarantees offered by the state as to sickness, maternity, invalidity and old age pension.

The level of the retirement pension depends on the date of entry and the length of service

Summer recess is from 15.07-15.09. However, no backlog of more than three months is allowed. Therefore, summer recess time is often used to expedite backlog.

### **Slovenia**

The rights and obligations of judge are determined in Judicial Service Act. Within the Public Sector Wage System Act salaries are determined by salary grades: county court judge from 47 to 52 (judge councillor), district judge from 50 to 54 (judge councillor), high court judge from 55 to 58 (judge councillor) and supreme court judge from 60 to 61 (judge councillor). There are differences in the pay at the beginning and later in the career when there is a possibility for the promotion. After 9 years of office judge can become the councillor if all 3 evaluations of his/hers work are positive.

Additional remuneration is provided when judge has to work on urgent matters - (on call) duty chamber. For example administrative judges are paid additionally during the local elections, when decisions have to be delivered in 48 hours.

Yes: in sickness judges get 80% of the salary, maternity absences (12 month) is also paid as is invalidity. Pension is secured after the retirement, no benefits for the death.

No special provision for judges regarding the pension, The level of retirement pension depends on the salaries one earns during the years of work. It is cca 60% of the salary.

The judge's annual holiday is regulated in Rules on the criteria for the duration, cases and conditions for leave of judges. Judge has a right to annual holiday in duration of 40 working days and not less than 30 days. Criteria is as follows: years of service, judge's position, effective performance, management function, health conditions, age and disability.

## **8 °) THE TERMINATION OF THE FUNCTIONS OF ADMINISTRATIVE JUDGES**

### **8.1. The list of cases of termination of office of an administrative judge**

### **8.2. The need or not for an intervention of the independent body responsible for guaranteeing the status of judges in this matter?**

#### **Austria**

#### **8.1. The list of cases of termination of office of an administrative judge**

Courts of the provinces:

- Retirement
- When the judge declares his/her resignation by him/herself
- Disciplinary sentence
- Twice “failed” in the evaluation decision (different in the provinces, as the regular evaluation does not exist in all provinces).

Supreme Court:

Resignation, loss of citizenship, dismissal as a disciplinary sanction, certain criminal convictions, or retirement age which is 65.

#### **8.2. The need or not for an intervention of the independent body responsible for guaranteeing the status of judges in this matter?**

Courts of provinces + 2::

YES. Would be relevant. As it is visible for administrative judiciary in general: difficult because it decides against/pro executive power. At the same time this power gives budget, appoints judges (e.g. Vienna: problem that they did not appoint for one year, so vacancies for one year!), appoints president and vice-presidents (with more or less free discretion, mainly not being bound on any proposals by any judicial committees).

In addition in Austria: different legislation at different levels and with different legislators makes it all quite intransparent and could also amount to problems.

Supreme Court: No

### **Estonia**

A judge shall be released from office (§ 99 (1)):

- 1) at the request of the judge;
- 2) due to age (68 years);
- 3) due to unsuitability for office – within three years after appointment to office;
- 4) due to health reasons which hinders work as a judge;
- 5) upon liquidation of the court or reduction of the number of judges;
- 6) if after leaving the service in the Supreme Court, the Ministry of Justice, an international court institution or after returning from an international civil mission, a judge does not have the opportunity to return to his or her former position of judge, and he or she does not wish to be transferred to another court.
- 7) if a judge is appointed or elected to the position or office which is not in accordance with the restrictions on services of judges;
- 8) if facts become evident which according to law preclude the appointment of the person as a judge.

The Council shall provide an opinion on the release of a judge in certain cases (see points 5-8 answer under 8.1)

### **Finland**

...

### **Germany**

A judge leaves office for retirement or – theoretically - when she/he chooses to take another job outside jurisdiction. In reality nobody does so because you lose your pension and are not entitled to come back. On very grave offenses you may be dismissed, which has to be approved by the Richterdienstgericht (see 5.)

### **Greece**

The list of cases of termination of office of an administrative judge:

- a. Resignation
- b. Retirement from the service of the judicial functionaries is compulsory upon attainment of the age of 65 years for all functionaries up to and including the rank of Court of Appeal Judges (article 88 par.5 of the Constitution).

c. Judicial functionaries may be dismissed only pursuant a court judgement resulting from a criminal conviction or a grave disciplinary breach or illness or disability or professional incompetence (article 88 par. 4 of the Constitution). This is decided by a court of law (article 60 of statute 1756/1988).

As final dismissal of the judge is proclaimed by a court of law, there is no need for an intervention of a separate, independent body.

### **Italy**

Normally the termination of office is at the age of 70.

It is possible that a judge resigns ahead of time.

It is very rare that the national independent body dismisses a judge.

The competence of the termination of office always belongs to the national independent body.

### **Lithuania**

**Art. 90. Law on Courts:** The judge shall be dismissed in the following cases:

- 1) upon his resignation;
- 2) when his term of office expires or when he reaches the retirement age under law;
- 3) by reason of health;
- 4) when the judge has been elected to another post or when he has been transferred to another job subject to his consent;
- 5) when he engages in conduct discrediting the office of judge;
- 6) when a judgement of his conviction becomes effective.

**Art 90. Law on Courts:** A judge of the Supreme Court shall be dismissed by the Seimas on the motion of the President of the Republic. A judge of the Court of Appeal shall be dismissed by the President of the Republic subject to the approval by the Seimas. A judge of the Supreme Administrative Court, a judge of the regional court, the regional administrative court and the district court shall be dismissed by the President of the Republic. When a judge contests his dismissal from judicial office he shall be entitled to appeal within one month from the day of his dismissal to the Vilnius Regional Court.

**Article 91. Law on Courts:** A judge of the Supreme Court and of the Court of Appeal may be removed from office by the Seimas in impeachment proceedings for a gross violation of the Constitution or a breach of the oath also if it comes to light that the judge committed a criminal offence. Upon instituting impeachment proceedings at the Seimas by a resolution of the Seimas, the judge shall be suspended from office until the Seimas delivers a decision in impeachment proceedings. If the Seimas does not approve of impeachment, the judge shall be reinstated in office and shall be paid his salary due to him for the period of his suspension.

### **Luxembourg**

Judges are retired when they have reached the age of sixty-five, or if a serious and permanent illness no longer enables them to perform their duties properly or if they have behaved in an

not suitable fashion while exercising their mission as established in the forms prescribed by the disciplinary procedure

### **Slovenia**

The reasons are: taking the oath is not realised in 60 days after the election of the judge unless serious reasons; loss of nationality; loss of legal capacity or serious health problems; resignation from the office; in case of abolition of the court and if it is not possible to secure the judge another post; if judge undertakes the position, work or job which is not compatible with the position of the judge; if the judge's evaluation results that judge does not comply with the Judicial Service; termination of judicial office as a result of disciplinary measure.

The Judicial Council in the cases of the termination of the function of the judges always adopts the decision in writing.

### **9.º) THE ORGANIZATION OF WORK OF ADMINISTRATIVE JUDGES**

**9.1. Are there exceptions in the order of distribution of matters (cases) for newly appointed judges, i.e. lower workload, specialization on certain categories of cases etc.**

**9.2. Can judges organise their work independently? Is there any control over the working hours or managing of working time of judges?**

**9.3. Is the amount of working hours regulated? Is overtime work compensated and how?**

**9.4. Are there special cases or applications that must be solved urgently outside normal working hours (in weekend or holidays)? How are these cases designated and how this work is compensated (additional remuneration or rest time e.t.c)**

**9.5. Is the judge's physical working place fixed or is there obligation to move between different courthouses, for more convenient proceeding for the participants? Please elaborate how this is organized (costs, time management, staff)?**

**9.6. Is a payment of additional remuneration provided and on which bases (additional administrative or professional tasks, length of service etc.)?**

### **Austria**

9.1. Are there exceptions in the order of distribution of matters (cases) for newly appointed judges, i.e. lower workload, specialization on certain categories of cases etc.

Courts of provinces + 2::

No, full judge, immediately full work. No support.

Supreme Court:

At the SAC not.



9.2. Can judges organise their work independently? Is there any control over the working hours or managing of working time of judges?

Courts of provinces + 2:

again, different.

e.g. Vienna: Yes, only when you work in senates: more exchange with the judge colleagues relevant. Organisation depends on availabilities of resources (personnel, oral hearing rooms etc.). Vienna: control of working hours insofar as there is the obligation to be at the work place once per day between 9h00 and 15h00. For the rest: independent organisation possible.

Supreme Court:

Yes, they can. There is no such control.

9.3. Is the amount of working hours regulated? Is overtime work compensated and how?

Courts of provinces + 2:

See above. No overtime paid (correct).

Supreme Court:

No, overtime work is not compensated.

9.4. Are there special cases or applications that must be solved urgently outside normal working hours (in weekend or holidays)? How are these cases designated and how this work is compensated (additional remuneration or rest time e.t.c)

Courts of provinces + 2:

No. only in case of application for provisional measures: law says: as fast as possible to make a decision on this application.

Supreme Court:

No explicit provisions. In principal it is up to the judge within his/her independence to decide how urgent a certain case is. Of course it is necessary to decide rather quickly concerning applications for stay of execution.

9.5. Is the judge's physical working place fixed or is there obligation to move between different courthouses, for more convenient proceeding for the participants? Please elaborate how this is organized (costs, time management, staff)?

Courts of provinces + 2:

It is different in the provinces, but generally: no.

Some provinces: have two buildings, but not two separate "court houses".

Supreme Court:

In principle the judges work at the seat of the SAC in Vienna. They also can do part of their work at home.

9.6. Is a payment of additional remuneration provided and on which bases (additional administrative or professional tasks, length of service etc.)?

Courts of provinces + 2::

Different, but as far as generally known concerning all provinces: No, see above.

Supreme Court:

No, except 7.2.

### **Estonia**

There is a supervision over judges of a court of first instance with less than three years length. The chairman of a court shall appoint a judge's supervisor for one year upon the assumption of office by the judge (Courts Act § 73 (1) (2)). The supervising judge shall submit once a quarter until the expiry of the term of supervision to the chairman of a court a report regarding the supervised judge, assessing his or her suitability for the office of judge and the development of the proceedings management skills, and, if necessary, provide other information.

Judges shall organise their working hours independently. A judge shall perform his or her duties within reasonable time, having regard to the terms for proceedings prescribed by law (§ 6 (1)).

Court sessions shall be held on working days during the period between 9 a.m. and 6 p.m. A court session may continue after such time if the court finds it justified in the interests of administration of justice (§ 6 (2)).

A normal amount of working hours in Estonia (in general) is 40 hours (Employment Contracts Act § 43). It's not regulated specially for judges. The term "overtime work" is not in use concerning judges, it's not calculated and not compensated.

For the grant of permission to apply a preventive measure or to take an administrative measure (urgent need). Administrative court decides the grant of permission without delay in a written ruling. The grant of permission may, as an exception, be decided outside the working hours of the court.

No financial compensation or additional spare time.

The permanent place of service of a county court judge shall be in the courthouse where he or she is appointed by the Supreme Court en banc, the full court. A judge shall not refuse to hear a matter in another courthouse of the same administrative court. If a judge hears a matter in a courthouse which is not his or her permanent place of service, travel and accommodation expenses shall be reimbursed to him or her.

## **Finland**

- 9.1. No
- 9.2. Yes, no.
- 9.3. No.
- 9.4. No.
- 9.5. Yes, it is fixed.
- 9.6. No

## **Germany**

There is an elected body of judges at every court (Präsidium) who decides about the workload of the chambers. In administrative courts normally there is a scheme of distribution according to different legal subjects and – in asylum law – according to the country of origin. So it is never possible to have exactly the same figures.

For young judges it is up to their chamber if they arrange for them a smaller workload at the beginning or not. There is no binding rule on that from whomever.

The presidents of the courts and especially the president of the Administrative Appeals Court watch for the amount of cases judges solve per year and how long it takes to give a decision. If a case is looking too old (pending more than 3 years) you have to explain why it wasn't solved yet. Nobody cares for the working hours, but only how many cases you solve per year. It may happen (but quite rarely) that very urgent cases have to be ruled on weekends or late in the evening (for example if a foreigner is to be sent back to his home country), then you just have to do that and it is up to you to decide if you work less the next weekday. You organize your work totally independently, but – as we are chambers and not single judges – of course in accordance with your colleagues. We mostly work inside the court office (every judge has his own single office and a key for the building), but we can also work at home through electronical gateways. The hearings are always in the courthouse unless the judge decides to have it somewhere else. This happens for example in construction cases where it can be suitable to do it at the disputed building lot.

## **Greece**

Newly appointed judges enjoy lower workload and sit only in three-membered tribunals.

As most judges work at home, they may organise their work independently, without any control over the working hours.

Due to the above mentioned circumstances, the amount of working hours can not be regulated. Consequently, overtime work is not compensated.

There are several categories of special cases that must be solved urgently, such as disputes over municipal elections, applications concerning public contracts etc. These cases should be designated by rotation. The extra work is not compensated, because they are considered as a regular obligation.

Until recently, there were many “transitional courthouses”, in smaller towns, for more convenient proceeding for the participants. Judges sat in those “transitional courthouses” either

twice a year or more often than that. For these sittings, it was also necessary to transport all the files, a deed both straining and hazardous. Moreover, costs are mostly covered by the judges themselves, as the compensation is ludicrous and –in many cases- not even paid.

Most of these “transitional courthouses” have been discontinued, during the last 4 years.

### **Italy**

For newly appointed judges the assigned merit is matters are one third of the matters which are assigned to the other judges. The assignments of the precautionary matters are the same.

The judges organise their work independently. There is not any control over their working hours.

The amount of working hours is not regulated. The assignment of matters and the number of rulings are regulated.

If there are too many assignments, it is possible to compensate them. This means that fewer matters will be assigned to reach the compensation.

The courthouse is fixed. The working place is normally one's own home, because the judge studies the files on the internet and on their own computer. The judge works in the court only when there is the hearing. This means twice a month.

The national independent body sometimes organises extraordinary assignments of matters which are paid additionally. The remuneration is provided on the basis of the number of the assigned matters and on the number of the delivered rulings.

### **Lithuania**

#### **Article 36. Law on Courts:**

The cases shall be allocated to the judges and the judicial panel shall be constituted via the IT programme created pursuant to the rules of allocation of cases to judges and of forming the judicial panels of judges approved by the Judicial Council.

Usually the newly appointed judge does not have any special work requirements but the president of the court is able to allocate cases to the newly appointed judge in another way, e. g. it is possible to allocate all cases from the previous judge to the newly appointed judge.

The official work time of the courts is from 8 am to 5 pm (the lunch break from 12 to 12.45).

There are differences in the courts by organizing the work of judges: in some courts the judges are organizing their work independently (in agreement with the panel's members) by setting the dates of hearings, in deciding how many cases they will hear per week etc.; in other courts the president of the court is setting the date for the hearing etc.

Traditionally the working hours are calculated from 8 am till 5 pm (working time of the courts). But the overtime work is not compensated. The prevailing opinion is that the working hours for judges are not set because of the speciality of their functions.

There are cases in the field of the elections to Municipal Councils and Parliament, the referendum – the courts must be investigated within 48 hours of lodging them. Days off shall also be included in this period ; Presidential elections – within 72 hours. For the days off the remuneration is double or the judge can take free days.

The judge's physical working place is fixed.

The remuneration of judges shall comprise: 1) basic salary; 2) bonuses for the length of service to the State of Lithuania.

### **Luxembourg**

Judges are expected not to work below 40h/week which is the minimum legal working hours in Luxembourg.

Work place is fixed. However, a judge is allowed to work outside of building premises (telework). Absence of more than three days require pre approval of the President of administrative courts.

### **Slovenia**

Assignment of judges is fixed every year by the schedule of work, set by the president of the court, and corresponds with judge interest and previous experience.

Judges can organise their work independently, there is no control over the working hours of judges.

The amount of working hours is not regulated; it is considered that judge works full time, so no overtime work.

There can be some urgent cases which has to be decided during the weekend. For these time judges are extra paid.

In the period from 15<sup>th</sup> of July to 15<sup>th</sup> of August court is on holidays. In this period court is dealing only with urgent cases and on duty are judges determined in special president's order for this period. No additional remuneration for judges.

The judge's physical working place is fixed. Each judge has it's own cabinet with all necessary IT equipment. There is no obligation to move between different courthouses. The hearing rooms are in the building where judge sits.

Additional remuneration is provided only in cases where judge has to decide the urgent case (like in 48 hours).

## **10 °) THE IMPLEMENTATION OF THE RECOMMENDATION CM/REC(2010)12**

**10.1. Which deficits exist in your country with respect to implementation of the Recommendation?**

**10.2. What changes were made or what changes are planned to make with respect to implementation of the Recommendation?**

## **11 °) YOUR ADDITIONAL REMARKS**

### **Austria**

10.1. Which deficits exist in your country with respect to implementation of the Recommendation?

Courts of provinces + 2:

I want to make specific reference to the report of AEAJ to CCJE (see report of 2017 and of 2015) concerning Austria. See [www.aeaj.org](http://www.aeaj.org)

Supreme Court:

No independent body. Nevertheless the elements of self administration of SAC are rather strong and satisfactory.

The appointment of the President and the Vice-President without any interference of a (judicial) body that is independent from the Government (see 4.1.)

10.2. What changes were made or what changes are planned to make with respect to implementation of the Recommendation?

Courts of provinces + 2:

We do not know what the respective legislators plan....

Supreme Court:

None.

### **Estonia**

....

### **Finland**

Has been implemented in the ACT mentioned above.

## **Germany**

On paper German judges are not very independent because they are chosen and promoted by the Minister of Justice. The money for the courts must also be granted by the Ministers of Justice and Finance. There is no independent self governing body, and there is no alteration in leading positions because they are always transferred to a person till retirement.

But in practice judges are and (mostly) feel independent, because nobody tries to influence the results of any trial. Maybe the mentality of “Solve as many cases as possible and show how good you are” might be a danger, because especially young judges are told how important high numbers of solved cases are. It is up to each single judge, however, not to get “spoiled” by the idea of wanting to be promoted and therefore act differently from what he thinks is the appropriate way to deal with a certain case.

## **Greece**

I have addressed to the Ministry of Justice for information on that topic. As soon as I receive a reponse, I shall forward it (translated in English, of course).

### **Additional remarks**

The General Commission of the State for the Regular Administrative Courts is a constitutionally protected institution (art.90), which constitutes a separate branch of senior judges having their duty to monitor and control the operation of the regular administrative courts as well as to assist the same in their task. The General Commissioner, assisted by the Commissioner and the two Vice- Commissioners, exercises powers referring to the administration of administrative justice without interfering with the jurisdictional task, serving at the same time the operational needs of a connecting link between the Council of State and the administrative courts.

The creation of a database, containing all decisions of the Council of State and the ordinary administrative courts, has improved substantially the efficiency of our efforts. Access to this database is limited to judges. The search can be pursued using many different keys, such as the number of the statute, the name of the judge or the number or the decision.

## **Italy**

The administrative judiciary has the characteristic to work in chamber.

There is not an individual judge. Therefore the formation of the willingness of the chamber has to receive particular attention.

As mentioned above, the dissenting opinion is kept secret and is not revealed. This perhaps jeopardizes in part the independence and impartiality of the judge because the value of their own willingness is not sufficiently recognized.

The dissenting opinion should be published.

Moreover the adsignation of the matters to the single judges deserves particular attention.

In Italy the adsignation is made by the president. The assignments should be automatic and objective. Perhaps it sometimes happens that the president tries to find the most suitable judge for solving the case.

However this is not a criterium based on independence and impartiality but on skills and technical competences.

## **Lithuania**

### **a) remuneration of judges:**

Facts: Also Lithuania was forced to reduce remunerations of civil servants, including judges, due to the economic crises (in 2009).

However so far the remuneration of judges has still not re-gained the full amount of that remuneration, which they had received before 2009. It must be noted that the general price level has increased relevantly. The level of remuneration of judges ranks on the one but last position within the EU member states.

In addition, in practice, (other) civil servants, who had also been affected by the cuts, can receive additional remuneration (up to 50%) in case of good performance. This is – for sure - not applicable for judges. Thus for the time being, judges suffer more from the cuts of remuneration than other civil servants.

The remuneration of judges in Lithuania does not commensurate with the profession and responsibilities of Lithuanian judges, nor implies sufficient shields for their independence. This fact violates point 54 of the CM/Rec (2010)12.

### **b) Assessment of judges:**

Assessment of judges has consequences for a judge's career (higher court or to become chairperson of a court or to be renewed in this timely limited position) in Lithuania.

Assessment is made by a Assessment Commission, which is established in line with point 44 of the CM/Rec (2010)12. The decision of the Assessment Commission can be challenged before the Lithuanian Council of Judiciary. However, in practise appeal decisions are only based on formal grounds so far.

The Lithuanian laws concerning assessment of judges are clear, but they define the needs of assessing the level of professional skills and activities only in general terms. The criteria and the procedure to assess the level of professional skills and activities are not regulated in detail by law and remain unclear.



The assessment by the Assessment Commission is practiced only in an abstract and notional way. The level of skills and abilities is not clearly defined in the assessment. However, in practice the personal opinion of the chairperson of the court is resembled to be relevant in the assessment and selection procedure (in the selection procedure also the personal opinion of the colleagues).

The decision made by the Assessment Commission remains to the decisive basis and factor for the selection procedure for the higher level court position. The law provides that the candidate should be objectively compared to the other candidates. Because the level of skills and abilities is not clearly defined in the assessment it is not possible for the Selection Commission which is responsible for the selection procedure to compare candidates objectively.

Therefore the assessment concerning the career of judges is not based on objective criteria. This fact violates point 44 of the CM/Rec (2010)12 not guaranteeing individual independence properly (see also CCJE, opinion No. 17).

There is a new proposal for the change of the rules of the assessment and the notes are foreseen in this project.

#### Additional remarks

There is a new proposal for the amendments of the Law on Courts. Some proposals could be the object for the discussion:

- 1) In the new proposal there is set that the results of the exam for judges are valid 5 years, after this term the candidate should pass the exam again – is such rule measured?
- 2) There is set that during the selection procedure the personal qualities of the candidates shall be evaluated. It means, that the Selection Commission can evaluate personal internals of the candidate – is such rule measured?

#### Luxembourg

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#### Slovenia

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