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FAIR JUSTICE PROJECT

SOME PROCEDURAL ASPECTS OF TRANSFERRING JUDGES:

**A COMPARISON BETWEEN FRANCE, SWEDEN, LITHUANIA, GERMANY,
AND POLAND**

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I. INTRODUCTION

The USAID Fair, Accountable, Independent, and Responsible (FAIR) Judiciary Program in Ukraine is designed to support legislative, regulatory and institutional reform of judicial institutions to build a foundation for a more accountable and independent judiciary. To achieve this objective the project coordinates with Ukrainian partners, other U.S. Government supported programs, and international donors to design and implement activities that support Ukrainian governmental and nongovernmental efforts to strengthen the rule of law. Based on an assessment of continued political will to pursue meaningful reforms in the judicial sector, a re-affirmation of the United States Government priorities in the sector and an evaluation of the program performance in the Base Period (October 1, 2011-September 30, 2013), on September 19, 2013 FAIR was extended for an additional three years. In its Option Period (October 1, 2013 – September 30, 2016), FAIR will build upon the advances made during the previous period and continue providing focused technical assistance to Ukrainian counterparts in the judicial reform process.

FAIR main objectives are to support the: 1) development of a constitutional, legislative and regulatory framework for judicial reform that is compliant with European and international norms and supports judicial accountability and independence; 2) strengthening of the accountability and transparency of key judicial institutions and operations; 3) strengthening of the professionalism and effectiveness of the Ukrainian judiciary; and 4) strengthening of the role of civil society organizations as advocates for and monitors of judicial reform.

Pursuant to Expected Result 2.1, FAIR is assisting the High Qualifications Commission of Judges of Ukraine (HQC) in developing and implementing transparent, objective, knowledge- and performance-based judicial selection criteria. Part of judicial selection involves the transferring or promoting of judges who have already been appointed to a court. In supporting this goal, Task 2.1.2. envisions, jointly with the HQC, the establishment of clear standards for transferring judges and drafting recommendations on improving the process as a whole.

The intention of this paper is to assist in FAIR's cooperation with the HQC by providing diverse answers to questions that are of particular importance to the work of the HQC in transferring judges and to assist in their efforts to move Ukraine towards meeting European norms with regards to appointing judges. These questions have been developed together with the legal experts at FAIR and are intended to reflect real issues within the current Ukrainian system.

The consultant has chosen to present the findings as a series of questions and answers. This is to facilitate the use of the report by making the information easily searchable and to allow for additional information to be easily added to the text in the future.

The countries here, France, Sweden, Lithuania, Germany, and Poland, were not selected at random. Sweden was chosen because the consultant is a trained Swedish lawyer and it seems natural to include it. Poland and Lithuania are two former Communist countries that have struggled with many of the

same issues that Ukraine is struggling with today, providing important insight on possible ways of resolving problems in common. France and Germany are two of the most widely emulated legal systems in the world, making them powerful sources of inspiration. Arguments could be made for choosing other countries, but the consultant leaves this to be done by others.

This report has made use of a two-part methodology. The first was an open-source, internet-based research. The consultant examined the primarily legislation and the work of the various bodies responsible for judicial ethics. The amount of available information varied between the country and no country lack transparency entirely.

The second part of the methodology involved discussing these issues with judges from each of the countries represented here. This was done in order to collaborate the open-source findings and to amend them with practical experience.

It is possible to identify a number of problems with regards to the consultant's methodology. These include the dependence upon unofficial translations of many of the relevant legislative acts. The accuracy of the translation is difficult to assert. In order to overcome this deficiency, the consultant has attempted to identify a systematic thinking in all of the various countries that can be deduced via study which makes the exact wording of the legislation less relevant. Each country has a particular system for transferring judges, but that system reflects a general system of the judiciary. For example, countries with a tradition of judges as civil servants (like Sweden and Germany) are typically going to have a different, but similar to each other, system, whereas countries that do not have that tradition (Poland and Lithuania) look at judges differently than as civil servants, thus transferring them differently.

There is also the problem associated with the fact that procedures with regards to transferring judges are not always transparent. Each of the systems examined here have to greater or lesser extent a procedure based on law. This is to ensure the transparency of the procedure, not least because of democratic considerations (courts should be fair and based on meritocracy in all of the countries). But the cultural traditions associated with the judiciary cannot be overlooked, no matter how transparent the procedure looks on paper. The consultant hoped to overcome this problem by talking directly to judges from each of the studied countries. Judges understand better than anyone else the issues associated with transfers within the judiciary and have firsthand knowledge of ways of resolving those issues.

The goal of the consultant has been to produce a living document that was adapted to the needs of the end-users, the experts at FAIR and HQC.

The consultant is neither an expert on judicial ethics nor an expert on all the judicial systems looked at here. The consultant's expertise lies in the collecting of the relevant materials and presenting them in a concise manner. The consultant makes no claims that the answers presented here are complete in their entirety. This has not been goal. Rather, the answers are to be seen as sources of inspiration for reformers. The proverbial wheel need not be reinvented, but rather adapted, for the needs of Ukraine.

A few observations can be made after a review of the information here. One is that all of the countries have attempted to make the process of appointing judges as transparent as possible by placing judges within a special category of civil servants. Judges are given seats that cannot be transferred, meaning

that if a judge wishes to move between courts, an empty seat must be available at the other court. The seat is not merely given to the judge; the judge must qualify for it, most times in competition with other applicants. This depoliticizes the appointing system because politicians cannot merely move judges about without using the official appointing process. This is not to say that the process is entirely depoliticized, as politicians still have the final say as to who will be appointed.

The format of the report is as follows. It begins by providing a list of the questions to be answered. It then proceeds to answer the questions. The report ends by giving some recommendations and conclusions. Excerpts from relevant domestic legislation can be found in an appendix to the report.

II. QUESTIONS EXAMINED

The following are the questions that have been examined in preparing this report. There has been an attempt to tailor the questions to the needs of the Ukrainian judiciary as there has been a lack of transparency as to the procedure of transferring judges.

1. Is there a possibility for transferring at all?
2. Which act(s) regulate such a procedure (Laws, internal regulations etc.)?
3. What is the status of the body that decides on judicial appointments?
4. Does the procedure for transferring to another court (the same jurisdiction), to the court of other specialization and the court of another jurisdiction differ? What are those possible differences?
5. What are acceptable reasons (circumstances) for transferring? Does the list of acceptable reasons exist in law or any other regulations?
6. Are there any restrictions for transferring (for example - within a certain time period after appointment)?
7. Does the judge who is transferred have any obligations to the court from which he/she is transferred (for example - finish all cases that are on his/her docket)?
8. How are vacant positions accounted for within the court system? What is the procedure for occupying vacant positions (including the requests for transferring)?
9. In the situation where several judges are applying for a transfer to the same court, how is a competition held between them? Who is given preference? What are the criteria?
10. Is the total professional experience of a judge who is transferred assessed during the competition for the occupation of the vacant position, or is only the experience as a judge taken into account (as in Ukraine)? What are the criteria for evaluating the professional experience of a judge?

III. COMPARING PROCEDURAL ASPECTS OF TRANSFERRING JUDGES

1. Is there a possibility for transferring at all?

Judges are given special constitutional status in all of the countries examined here. While judges are allowed to be transferred in all of the countries, most of the countries have provided a constitutional irremovability to judges (the exception would be Lithuania which does not explicitly provide for irremovability in the Constitution). Judges are protected from being moved arbitrarily, requiring a court decision to move a judge against their will.

The word transfer is defined in a broad sense here. Transferring can include promotion, as well as judges moving between courts on their own initiative and because of a decision of the state (disciplinary sanction or court reorganization, for example).

France

Judges are constitutionally irremovable. Judges are not to be transferred without their consent. Judges can request to be transferred. Judges can be demoted or moved as result of disciplinary sanction, but only according to the procedure established by law. Judges are also transferred when courts are reorganized, also following a procedure established by law.

Sweden

Judges have the right to transfer in Sweden. Judges cannot be transferred against their will, but can apply for promotions or horizontal transfers within the same level of the hierarchy of the judiciary. Judges can be moved within the hierarchy of the judiciary as result of disciplinary sanctions, but only according to the procedure established by law.

There are two types of judges in Sweden, generally speaking; permanent and non-permanent judges. The difference between the two is significant for understanding the right for judges to transfer. Permanent judges have what is known as a power of attorney appointment which is regulated according to Article 11 of the Instrument of Government (part of the constitution of Sweden) and the Power of Attorney Employees Act. Permanent judges can only be transferred without their consent if it is required by the reorganization of a court and only to another permanent seat at another court with similar responsibilities and only after a decision by the National Disciplinary Offence Board. Judges cannot be transferred without their consent for any other reason.

Non-permanent judges can be transferred without their consent. To a larger extent non-permanent judges are comparable to other civil servants. Non-permanent judges can be transferred for personal organization reasons (problems between judges); permanent judges cannot. This happens very rarely in practice, however.

Lithuania

Judges have the right to transfer in Lithuania. Judges can be moved as a result of reorganization and as a disciplinary sanction, but only according to the procedure established by law.

Germany

Judges have the right to transfer in Germany. Judges are constitutionally irremovable except during judicial impeachment proceedings (Article 98 paragraphs 2 and 5 of the Basic Law), in formal disciplinary proceedings, in the interests of the administration of justice, and on changes being made in the organization of the courts. Forcing judges to transfer must be instigated by a decision by a court according to the procedure established by law.

Germany has a system of probationary judges as well. These are judges at the beginning of their career, who do not have a seat assigned to them permanently. These judges do not have the same protections as permanent, non-probationary judges. More information concerning the differences between probationary judges and regular judges will be provided later on.

Poland

Judges have the right to transfer in Poland. Judges are constitutionally irremovable, but can transfer upon their consent.

The Polish Constitution provides for the irremovability of judges in Article 180, while at the same time allowing for the forced transfer of judges when “there has been a reorganization of the court system or changes to the boundaries of court districts”. The same Article also provides for other transfers against the will of judges, but only according to the Law on Common Courts Organization, which states that judges can be transferred in the case of inadmissibility of holding the post of judge in a given court as a result of entering into the state of matrimony between judges or creation of family connection, referred to in Article 6 of the same Law, when the transfer is required, as regards the authority of the post, under the decision of a disciplinary court, issued at the request of the board of a competent court or of the National Council of the Judiciary, or if the transfer is a result of a disciplinary penalty.

2. What is the status of the body that decides on judicial appointments?

France

It is the Ministry of Justice that appoints most judges in France. The Supreme Council of the Judiciary is responsible for appointing the presidents of courts and gives its opinion on the appointment of other judges. The courts themselves have committees responsible for recommending judges for promotion.

Sweden

The Judges’ Proposals Board is part of the judiciary of Sweden. It is responsible for recommending to the government who should be appointed to a judgeship, at all levels within the Swedish judiciary. It is the government, the Ministry of Justice, that officially decides who receives an appointment.

Lithuania

The President of Lithuania appoints judges on the recommendations of a Selection Committee of Candidates to Judicial Offices and the Judicial Council.

Germany

Which body that is responsible for appointing judges depends on the legislation of the *land*. In some instances it is the Ministry of Justice of the *land*, other instances it is the parliament of the *land*. Federal judges are appointed by the federal Ministry of Justice after recommendations from the court where the vacancy has occurred.

Poland

The Ministry of Justice decides who receives a judicial appointment. The Council of the Judiciary and the court which has a vacancy provide the Ministry with the candidate they feel most appropriate for the seat, though the Ministry is not bound by their opinion.

3. Which act(s) regulate such a procedure (Laws, internal regulations etc.)?

France

The Constitution, the Law on the Status of the Judiciary, the Law on the Supreme Council of the Judiciary and the internal regulations of the Promotions Commission of the Supreme Council of the Judiciary regulate the procedure for transferring judges.

Sweden

The Instrument of Government, the Code of Criminal Procedure, the Act on Appointing Permanent Judges, and the Act on Power of Attorney Employees regulate the procedure for transferring judges

Lithuania

The Constitution and the Law on Courts regulate the procedure for transferring judges.

Germany

The Federal Basic Law and the Federal and Land Judiciary Act, as well as the Law on Public Employees, stipulate how judges are transferred.

Poland

The Constitution and the Common Courts Act regulate how judges are to be transferred.

4. Does the procedure for transferring to another court (the same jurisdiction), to the court of other specialization and the court of another jurisdiction differ? What are those possible differences?

France

There are no real differences with regards to the procedure for judges transferring between and within jurisdictions.

There are, however, a few special cases that should be taken into account. For instance, it should be pointed out that judges and prosecutors are part of the same body of magistrates in France. Because of this fact, it is not possible for an individual to be transferred from the position of a prosecutor to the position of a judge, or vice versa, within the same jurisdiction.

Another special situation could consist in the case of a specialized judge who wishes to be discharged of their specialization and applies for a seat within the same jurisdiction (for instance an instruction judge who wants to be a simple judge). In this case the discharge is statutory, meaning that the procedure for changes in specialization is determined by a separate law then the one applied in other transfers.

Sweden

The application process to transfer from one court to another common court in another jurisdiction is the same as within the same jurisdiction, the same goes for those wishing to transfer to specialized courts. In other words, the requirement to fulfil a given seat has specific requirements and may require specialized knowledge or experience that a transferring judge may or may not possess. (look, for example, at §1 of the Act on Appointing Permanent Judges in the Appendix to this report which gives the list of the various positions a judge might apply for under the law. In other words, the law applies to many different types of judges, not just standard, permanent ones)

Lithuania

Judges moving down within the hierarchy of the judiciary have the right to transfer to any vacant position below them and are given priority over other applicants. If no such judge exists, then judges wishing to transfer to the same level, but different jurisdiction are given priority, so long as they fulfill the requirements of the Law on Courts.

Germany

The German Federal system complicates the transfer of judges. Each of the *länder* have slightly different procedures of promotion. The system is, on the other hand, well established. Judges can be seconded from Federal service to a seat on courts within the *Länder* and vice versa. The movement of judges up within the hierarchy of the judiciary is based largely on the evaluations that are done during the career of the judge. Transfers are for the most part based on the same criteria as for initial appointment, with the exception of the use of evaluations of their work as judges, not as other types of civil servants.

Poland

According to Article 56 §4 of the Law on Common Courts Organization, a vacant post can be filled by the transfer of a judge from another court of the same competence without going through the usual procedure for filling a court vacancy. Transferring to specialized courts requires specialized knowledge (labor, economy, etc.) and transferring outside of one's jurisdiction requires specific lengths of service that are different for different levels within the hierarchy of the judiciary.

5. What are acceptable reasons (circumstances) for transferring? Does the list of acceptable reasons exist in law or any other regulations?

France

There are no legally acceptable reasons for wishing to transfer. Judges wishing to transfer must be sure to find an available vacancy at the court they wish to transfer. There is no guaranteed right to move between courts for judges. The judges receive new positions based on various criteria, particularly based upon the evaluations of their work that are generally done once every two years.

Judges are transferred after a hearing of the disciplinary session of the Supreme Council of the Judiciary. The right to transfer judges for reorganization or for disciplinary reasons are found in the Law on the Status of Judges.

Judges must choose a court with the same competence (See Article 31 of the Law on the Status of Judges) nine months prior to a reorganization of a court. Judges can give three wishes regarding other jurisdictions where they would like to work if they do not wish to choose a court with the same competence. Judges that choose a court of the same competence then they are given a seat in that court, regardless of if the court already has a sufficient number of judges or not. In cases where judges have not chosen a court, they are placed in a court of the same competence.

Sweden

There is no legislated list of acceptable reasons for wishing to transfer. Judges can attempt to transfer for personal reasons, but they must receive an appointment at another court through the usual application procedure for a vacant seat. There is no requirement for the court system to accommodate the wishes of judges to transfer and they are not given preference over other applicants.

The Instrument of Government provides for judges to be transferred against their will only in cases where there has been a reorganization of courts. While rare, this does occur. In this case, judges are shifted within the re-organized system after a given court has been closed. Judges cannot lose employment as a result of the reorganization of a court.

Non-permanent judges can in addition, according to Public Employees Act, be transferred because of workplace related issues. This does not happen regularly.

Lithuania

There is no legislated list of acceptable reasons for wishing to transfer. Judges apply to vacancies as they become available.

When the Judicial Council has reorganized a court, a judge may request a transfer to a specific court with a registered vacancy, in which case the transferring judge is given priority. Judges that do not request a transfer to a specific court because of a re-organization are placed regardless, even if this means the judge moves down within the hierarchy of the court.

A judge can be transferred against their will as a disciplinary measure. This means that the usual transfer procedure is not applied, and that the President of Lithuania transfers the judge by decree after the decision of the Judicial Court of Honor.

The Judicial Council can request the transfer of a judge without the judge's consent. This can occur in a district court, regional administrative court, or regional court. Judges can be forced to transfer to courts of the same level or to the court of the same level of other jurisdiction in the same locality and when there is no judge who consents to be transferred to the court in question. In this case the judge with the lowest seniority from the court with the lowest workload is transferred. The chosen judge is then transferred by Presidential decree.

Germany

There are no formal requirements with regards to reasoning behind a voluntary transfer. Judges are required to give their consent to a transfer in writing. Judges are given permanent seats after their probation period has ended. This means on the one hand that they cannot be removed and on the other it means that an empty seat must be available at another court in order for them to be able to transfer.

Judges cannot be transferred without their consent, unless by virtue of a judicial decision. The Basic Law also stipulates that if a judge, either on the bench or off it, infringes on the principles of the Basic Law or the principles of the basic law the land that the court has been established in, then that judge may involuntarily be transferred with the 2/3 majority of the Bundestag.

Judges can also be transferred against their consent when they are on probation. Probation means a judge that has been hired, but not as a permanent judge, but rather a judge on a probationary period of up to 5 years. Procedures for transferring probationary judges differ between the *Länder*. Generally speaking, southern *Länder* have a system where judges are first given a position at a court for one year, then are moved to another court, then are made prosecutors. Only after being a prosecutor for a number of years can they become eligible to be permanent judges. In Northern Germany this requirement to be a prosecutor does not exist and judges stay at a court until eligible to receive a permanent position.

A judge may also be transferred without consent where a change is made in the organization of the courts. The Judiciary Act even allows a judge to be transferred to a lower bench “[w]here employment is not possible in a judicial office with the same final basic salary.” The salary of the judge is to remain the same even in cases where the judge has moved down in the hierarchy of the court system.

Poland

There is no legislated list of acceptable reasons for wishing to transfer. Judges who wish to transfer may apply to vacant seats as they become available.

The Law on the Common Courts Organization has four acceptable reasons for transferring judges without their consent. The first is a reiteration of the Constitution that the right to transfer judges without their consent occurs when courts are reorganized. The second concerns judges who marry judges of the same court. Third involves transfers as a result of a decision of a disciplinary court and fourth as a result of a disciplinary penalty.

6. Are there any restrictions for transferring (for example - within a certain time period after appointment)?

France

Judges can transfer vertically after a given number years, depending on the level in which the judge is currently serving. For example there are requirements for moving from a judge of the first grade to a judge of the second grade. In order to do this the judge must have been working in a judicial capacity a minimum of five years if they have undergone training at the School of Magistrates, or seven years if they have not before moving to a higher grade. Another example is that after ten years of service a

judge is entitled to apply to higher level within the judiciary (from a local court to a court of appeal). There is a Committee for Advancement that is responsible for deciding on the promotion of judges.

Sweden

Non-permanent judges who are following the judge apprenticeship program are required to sit at an assigned post for a given time before they are allowed to transfer. A non-permanent judge must first serve one year at a Court of Appeal as a legal clerk, then two years as an assistant judge at a District Court, then one final year again at a Court of Appeal as an associate judge. Non-permanent judges are not appointed according to merits but rather according to seniority. The longer one has been an assistant judge, the easier it is to move to another court on the same level within the hierarchy of the judiciary. Non-permanent judges cannot transfer freely up or down within the judiciary before the end of their first four years.

Permanent judges have no requirements with regards to transferring. There must be a vacancy at the court they wish to transfer to, but there is nothing that holds them to their seat if they have been appointed to another court. Judges may apply to transfer as often as they like.

Lithuania

Already sitting judges are given preference to appointment to another vacancy within the same judicial hierarchy. In order to receive preference the judge must have been sitting at their current seat a minimum of three years. If there are no other judges applying for the vacant seat, then the transferring judge is given the new position.

There is a register over judges wishing to transfer to a higher position within the judicial hierarchy. The judge who wishes to be transferred to a higher court must fulfill specific requirements. For example, a district judge wishing to be transferred to a regional court must have worked within the district court system four years and have pedagogical work experience in law. Then each higher position at each court (Chairperson and Deputy Chairperson) has a specific statute within the Law designating who has the right to be appointed to such positions.

Germany

The ability to transfer is based on the evaluations of each judge. Every court has a certain number of seats allocated according to case load and budgetary considerations. A judge wishing to transfer from one court to another, within the same *land* and level within the judiciary, must find a vacant seat and apply directly to it according to the standard appointment procedures.

Poland

The Law on the Common Courts Organization stipulates who may transfer up within the hierarchy of the court system. In order to be a regional court judge a district court judge must have worked at least four years as a district judge or prosecutor. A common court and military court judge who has held the post of judge or the post of public prosecutor for at least six years, including at least three years as a regional court judge, military judge in a regional court or regional public prosecutor may be appointed a court of appeal judge.

7. Does the judge who is transferred have any obligations to the court from which he/she is transferred (for example - finish all cases that are on his/her docket)?

France

There are no formal requirements established by law. It is assumed that any outstanding cases will be resolved by the remaining judges in a given court or by the replacement judge. The court must take into consideration that a judge is transferring when distributing casework.

Sweden

There are no formal requirements established by law. Judges are expected to fulfill their obligations as long as they are sitting in a given court. A judge does not take cases with them when transferring.

Lithuania

There are no formal requirements established by law. It is a matter of agreement between the judge and the chairman of the court from which judge is transferred. If there are a lot of cases that are in his/her proceedings, the chairman may ask to stay and finish part of these cases. Also the chairman may distribute these cases to other judges of the court.

Germany

There are no formal requirements established by law. Judges have procedural requirements that involve case load. A judge is expected to complete a certain number of cases every year and is evaluated according to the ability to achieve this goal effectively. Judges that are promoted or choose to transfer leave unfinished cases and it is up to the president of the court that the judge has left to reassign unfinished cases.

While a judicial decision is being made about the transfer of a judge, the court can decide to prohibit the transferring judge from hearing cases. Otherwise, there are no formal, legal requirements that judges must complete before moving between courts.

Poland

There are no formal requirements established by law.

8. How are vacant positions accounted for within the court system? What is the procedure for occupying vacant positions (including the requests for transferring)?

France

There is a Committee for Advancement within the court system. Judges transfer within the hierarchy of the judiciary upon the consent of the Committee.

About three times a year, vacant seats are announced on the intranet of the Ministry of Justice, and transmitted to the trade unions.

Proceedings for applying to vacancy are described in the circular letters of the Department of Judiciary Services of the Ministry of Justice. Much weight is given to the assessments that are made on each judge biannually. The aim of the appraisal system is to evaluate professional and personal abilities of

the magistrate, his/her suitability with certain kind of functions, and to give an opinion on his/her formation needs and his/her capacity to occupy others functions.

The relevant committee of the Supreme Council of the Judiciary gives an opinion on every nomination.

Sweden

Judges themselves can take the initiative to transfer by applying to openings at other jurisdictions that are announced via an open application process that is run by the National Courts Administration. The judge competes with other applicants for the various positions in the same way that the judge might have received their first appointment. There is no official distinction between the various positions within the hierarchy of permanent judges. Whether a judge is applying of a judge at a District Court or the Supreme Court, the system is to be the same.

The process of appointing a judge to a new position begins with a decision of the National Courts Administration to announce an open seat. The Judges' Proposals Board (the Board) is informed and announces the position and will be responsible for the process. Previously there were positions that the National Courts Administration merely appointed judges, but that is no longer possible.

Judges provide references which are reviewed by the Board. The Senior Judge of the court then interviews each of the applicants for the vacant position. Then together, the Senior Judge and the Board, they create an ordered list of applicants, with their recommendation at the top of the list. The Board then meets again and decides who on the list will go through a personality test, as well as an interview with a member of the Board. The Board then meets again, where the member who completed the interviews presents their view of the applicants and Board decides on what name to send to the Ministry of Justice, who makes the official appointment.

On rare occasions that Ministry of Justice appoints someone that was not recommended by the Board. This can happen, for example, when the Board feels that none of the applicants are sufficiently capable to fill a vacant position. The Board can then choose not to recommend any of the applicants. The Ministry of Justice can then appoint one of the applicants despite the protests of the Board. This has to do with the different priorities between the Board and the Ministry. The Ministry wants to makes sure that there are enough bodies within the system, whereas the Board would rather less bodies then appoint someone they feel might not live up to the Boards high standards.

Lithuania

Vacancies are announced by the National Courts Administration, following a procedure established by the Administration and the President. The normative goal is that a position should be announced six months in advance, baring the sudden departure of a judge.

The final responsibility for the positioning of judges lies with the President of Lithuania. This responsibility, however, has been delegated to the National Court Administration who is responsible for checking the validity of the merits of the applicant, a Selection Committee of Candidates to Judicial Offices (Committee) who is responsible for providing a list of candidate and the Judicial Council (Council) which gives its opinions on who is the best candidate for each judicial seat.

The Committee of Candidates is made up of seven people, three members are to be judges and four are to be members of the public. The President of the Republic appoints the Chairperson of the Commission from the members of the Selection Committee.

A judge who wishes to transfer is to submit to the National Court Administration documents certifying that he meets the requirements established in paragraph 1 of Article 51 of the Law on Courts. These requirements are that the applying judge must be of good repute, having a university degree in law – the academic title of bachelor in law or master in law or the lawyer’s professional academic title (one-cycle university education in law) meeting the requirements established by law required for security clearance procedure or work permit or right of access to or exchange in classified information, and upon submitting a health certificate. In addition, the candidate is to submit the completed questionnaire of the form set by the commission of the protection of secrets of the Republic of Lithuania and agree in writing to the check of his candidature.

The Committee can recommend more than one person to be appointed to a particular seat. The judge wishing to be transferred has ten days to give a written opinion of the conclusions of the Committee and the conclusions are not binding to the President.

The President then has 30 days to decide on whom to nominate to a specific seat. A list of nominees is then submitted to the Judicial Council, who gives the President advice on a definite nominee for a specific seat within five days. The President then nominates the judge to the new position.

Germany

Judges can voluntarily to transfer between courts of the same jurisdiction or courts of other jurisdictions at their own behest. There must be a vacant seat at the court that the judge wishes to transfer to, whether within the same jurisdiction or outside the judge’s current jurisdiction. A Council for Judicial Appointments is created at each court in which there is a current vacancy. A judge wishing to transfer applies to the highest service authority at the court in which the judge wishes to transfer. This authority might be the Ministry of Justice of a given land or another agency that the land has created.

This application is then shared, upon the consent of the applying judge, with the Appointments Council at the court. The Appointments Council then has one month to give an opinion on the applying judge to the highest service authority. The work of the Appointments Council is paid for out of the general budget of the court.

Poland

The president of a given court notifies the Minister of Justice when there is a vacancy at their court. The Minister then decides who will fill the post, or if the post should be moved (judges receive posts, but the seat of their post may be shifted) or canceled all together.

If a vacant post is to be filled then it is to be without delay announced in the Official Gazette of the Republic of Poland. The Gazette is published on-line and open to everyone to look to see which posts are open.

Applicants then apply to the president of the court within a month of the official announcement. The president then reviews the applications and presents their findings to the board of judges of the court. The president, together with the board, calls a general assembly of the judges to present the candidates. The president of the court sends the decision of the general assembly of the judges with regards to the applicants. The applications are sent to the Council of the Judiciary via the Minister of Justice. The Minister of Justice enquires about the candidates with the Police Commander in Chief to see instances of behavior indicating violation of legal order by a candidate, contacts with criminal environments or groups of social pathology and the nature of such contacts, and circumstances indicating addiction to alcohol or other substances.

The Minister of Justice then recommends an applicant to fill the vacant post. According to Article 59 of the Common Court Act the Minister can skip the president of the court and recommend an individual to fill the vacant position.

The Minister of Justice has the final say with regards to non-consenting transfers, except with regards to transfers as a result of reorganization, where placement is the result of a judge refusing a position offered to them. The decision to transfer a judge against their will with regards to reorganization and matrimony can be appealed to the Supreme Court.

9. In the situation where several judges are applying for a transfer to the same court, how is a competition held between them? Who is given preference? What are the criteria?

France

There are no formal preferences to be found in the legislation. Rather, preference is given by the Supreme Council of the Judiciary during the meeting of the relevant committee. Individual opinions on a nomination are not motivated. On the other hand, the Council publishes an annual report which includes the nominations and thus highlights the reasons (or lines) for nomination or refusal of a nomination, according to the previous jurisprudence of the Council.

Some examples of established rules coming from the precedence of the Council include the necessity to have worked at least 2 years in a job before changing seats, or that a judge cannot become a prosecutor in the same court (and vice-versa) for reasons of impartiality and in order to be promoted, a magistrate must change jurisdiction.

Other criteria that have not been established via precedence or law include a comparison of the judges' biannual evaluations, the ability of a given judge to occupy a seat as timely as possible, the seniority of the judge, as well as the special competencies of each judge.

Sweden

One judge is not given legal asserted priority over another judge, as is the case in Lithuania, although more experience is a merit when attempting to transfer. If two judges have the same merits, then the judge that has served longer is given the position over the judge that has not served as long. The possibility of this happening is low because the Board places emphasis on ability in determining merit. A comparison of abilities rarely leads to equivalencies. And in such a case, the Board would present the

candidates as equal to the Ministry of Justice and let the Ministry decide which judge should be appointed.

This final point leaves open the possibility of political interests affecting judicial appointments. Perhaps the government wants to be seen as appointing more people with immigrant backgrounds, so they will choose one candidate over another despite them having the same merits.

Lithuania

If more than one judge applies to a vacant position then the standard appointment procedure is applied. Here a distinction is even made between judges wishing to move up or diagonally within the judicial hierarchy and those judges wishing to move down. A judge wishing to move down in the hierarchy is given preference to a position before a judge wishing to move diagonally into the same position. In the case where a judge wishes to transfer below a current judicial appointment, then the appointment procedure is not applied and the judge merely receives the appointment to the lower court.

Judges wishing to be transferred to higher or diagonal positions are interviewed by the Committee, who then give recommendations concerning the transfer of the judge to the President of Lithuania. The recommendations are based on the professional knowledge and skills, the capacity to apply in practice theoretical knowledge and skills, the length of service as a judge, other quantitative and qualitative indicators of legal activity, observance of ethical requirements in professional and other activities, scientific and pedagogical work, as well as the opinions of the court the judge currently sits, as well as the court to which the judge wishes to transfer.

Germany

Vacant seats are filled according to the merits of the applicants. Merits are based on the evaluations that all state civil servants go through on a regular basis. This means that if a judge has been a prosecutor before being judge, then those evaluations are a part of their merits. If two judges apply to the same vacant seat, then the judge with the best evaluations is appointed, regardless of how long one or the other judge has been sitting.

Poland

A transferring judge is given priority when appointing a new post. This priority is assured by the Minister of Justice by not officially announcing the vacancy that the judge is transferring to. The National Council of the Judiciary considers the appointment of judges in council. According to the Act on the National Council of the Judiciary Article 35, if more than one candidate has applied for the same judicial post, the team draws up a list of recommended candidates. When determining the order of the candidates on the list the team relies, above all, on the assessment of the qualifications of the candidates, and, moreover, takes into account: professional experience, opinions of the superiors, recommendations, publications and other documents attached to the registration card, opinion from the board of a competent court and evaluation of a competent general assembly of judges.

10. Is the total professional experience of a judge who is transferred assessed during the competition for the occupation of the vacant position, or is only the experience as a judge taken into account (as in Ukraine)? What are the criteria for evaluating the professional experience of a judge?

France

The professional skills of a judge are evaluated every two years. The evaluation takes into account quantitative criteria such as number of hearings, number of decisions, etc. and qualitative criteria such as quality of written judgments (meaning quality in the actual decision, not in the merits of the decision), participation committees, the minutes of meetings that the judge has participated in, etc. The findings of the evaluations then play a big part in the decisions of the Supreme Council of the Judiciary with regards to transferring judges.

Evaluations are made in the following way. The judge first gives a written description of his/her activities. The judge is then interviewed by the chief of their court on issues such as the conditions of the exercise of judicial functions by the judge, qualitative and quantitative results of the judge and objectives of his/her activities, his/her training needs, and the next responsibilities or functions that the judge desired. The chief of the court then fills in a very detailed questionnaire about the professional competencies according to the position held, in fields as various as legal, managerial, and human competencies (more than 30 items to evaluate on a five level scale). The chief of the court then produces a report of their findings concerning the most important points: general competencies, legal and technic competencies, specific competencies, and a global appraisal. The judge is then allowed to respond to the evaluation, with a chief of the court taking into considerations the judge's response in the final evaluation. The judge is allowed to comment upon the final evaluation as well.

Sweden

Judges moving vertically within the judicial system must fulfill the qualification requirements for each judgeship. Traditionally judges have been appointed within the judicial system, but there are ways of becoming a higher judge outside of the traditional system.

The Judges Proposals Board has criteria for appointing non-permanent and permanent judges and chief judges (including members of the Supreme Court). Some of the criteria are legally binding, others are not. With regards to the former, judges must be Swedish citizens, have a degree in law, not personally financially bankrupt or under legal guardianship (criteria established according to the Code of Criminal Procedure and the Act on Appointing Permanent Judges).

Besides the above mentioned formal qualifications, there are subjective criteria. Chapter 11 §6 of the Instrument of Government states that all state employees are to be recruited according to their merits and ability alone. Preferences are not to be given for any other reason. The Government Employees Act goes further by stating that ability should go before merits. It has been left up to the National Court Administration to determine what ability is meant to mean. The Administration has in its criteria for receiving a judgeship included good legal knowledge, analytical thinking, emotional maturity, self-assurance, integrity, good stress response, and a good ability to communicate both verbally and on paper.

Lithuania

Officially there is no final list over judging the professional experience of a judge. Judges wishing to transfer are judged, for example, for their professional knowledge and skills, their capacity to apply in

practice theoretical knowledge and skills, their length of service as a judge, other quantitative and qualitative indicators of legal activity, observance of ethical requirements in professional and other activities, scientific and pedagogical work, in addition the opinion of the court where the judge works and where he is a candidate may be taken into account.

In Lithuania the term of working as a judge is important when considering whether a judge is able to apply for vacant position or not, because a judge can apply to a higher position must have worked as a judge for a certain period of time. Professional experience is taken into account during the competition for the occupation of the vacant position when deciding which judge from the applicants is the most appropriate for the position.

Germany

Papers supporting the judge's application as well as the evidence of previous career and qualifications are appended to the application. Judges are continually evaluated with regards to the quantity and quality of their work. It is these evaluations that are the grounds for appoint. Evaluations are also made when judges act as prosecutors or at federal or *länder* ministries.

Poland

There are different requirements for different seats, depending on where on the hierarchy the court is. For example, Article 64. § 1, the Law on Common Courts, states that a common court and military court judge who has held the post of judge or the post of public prosecutor for at least six years, including at least three years as a regional court judge, military judge in a regional court or regional public prosecutor may be appointed a court of appeal judge. Please see the Appendix for more examples.

IV. RECOMMENDATIONS AND CONCLUSIONS

Judges are civil servants in the sense that they are government employees. They are not like other civil servants, however. The information provided by this report proves this. It is this special position within the state system that becomes very apparent when looking at the questions and the answers provided here.

On the one hand, there is a connection between the irremovability of the judges and transfers. While some of the countries examined here have established the irremovability of judges in their constitutions, others have not. This point is relevant while looking at the position of judges within the greater system of civil servants. Whether or not judges are constitutionally protected from being removed, they exist outside, but parallel to, the civil servant system. All of the countries have attempted to balance the need for judicial independence with a need to set higher standards for judges. Too much independence and public perceptions of the judiciary risk becoming negative because judges are seen as being above the law. Too little independence, and public perceptions of the judiciary risk to become negative because judges are seen as being controlled by the other branches of the government. Even in established democracies this is problematic.

Judges are generally expected to stay in a position some time before being allowed to transfer. This is generally based on legislation, but it can also be the result of precedence set by the body responsible for appointing judges. This gives stability to the judicial hierarchy and promotes the belief that judges are not arbitrarily promoted.

Legislators have chosen not to regulate acceptable reasons for wishing to transfer. On the other hand they have regulated minimum criteria for being promoted. This appears to be reasonable from an institutional standpoint. Judges should be able to move between courts within the same level of the judicial hierarchy for personal reasons that need not be of interest to the public or the judiciary itself. Judges should not be transferred up in a hierarchy to positions of greater importance without some form of public scrutiny.

The countries examined here also make a distinction between judges at the beginning of their careers and those that have served a longer period of time. It appears that this is acceptable from a democratic standpoint, as exists in countries with long traditions of democratic rule. The question then is how these countries have been able to avoid the problems that Ukraine has had with the same system.

This problem has been resolved in some countries by removing politics as much as possible from judicial transfers. Legislators and governments have had a say in the formation of qualifications and terms, but are not appointing judges directly. Judges are appointed via a standard procedure, whether it is a lower or higher court, whether it is a judge's first seat, or the judge wishes to be promoted.

In the end one can see a desire to make the appointment of judges as meritocratic as possible. Judges are to receive appointments based upon their professional merits, not for any other reason. This is done in the interest of the judges themselves and in the interest of the end users of the judicial system, the public.

ANNEX A: EXCERPTS FROM RELEVANT LEGISLATION

Here are excerpts from the domestic legislations from the states examined in this report. The quality of translation is subpar in some of them. Providing the legislation here was meant to give an idea of different legal solutions to common problems associated with transferring judges, not to provide binding legal acts.

French Constitution

...

Article 64

The President of the Republic shall be the guarantor of the independence of the Judicial Authority. He shall be assisted by the Supreme Council of the Judiciary. An Institutional Act shall determine the status of members of the Judiciary. Judges shall be irremovable from office.

Article 65

The Supreme Council of the Judiciary shall consist of a section with jurisdiction over judges and a section with jurisdiction over public prosecutors.

The section with jurisdiction over judges shall be presided over by the Chief President of the *Cour de cassation*. It shall comprise, in addition, five judges and one public prosecutor, one *Conseiller d'État* appointed by the *Conseil d'État* and one practicing lawyer, as well as six qualified, prominent citizens who are not Members of Parliament, of the Judiciary or of the administration. The President of the Republic, the President of the National Assembly and the President of the Senate shall each appoint two qualified, prominent citizens. The procedure provided for in the last paragraph of article 13 shall be applied to the appointments of the qualified, prominent citizens. The appointments made by the President of each House of Parliament shall be submitted for the sole opinion of the relevant standing committee in that House.

The section with jurisdiction over public prosecutors shall be presided over by the Chief Public Prosecutor at the *Cour de Cassation*. It shall comprise, in addition, five public prosecutors and one judge, as well as the *Conseiller d'État* and the practicing lawyer, together with the six qualified, prominent citizens referred to in the second paragraph.

The section of the Supreme Council of the Judiciary with jurisdiction over judges shall make recommendations for the appointment of judges to the *Cour de cassation*, the 28 Chief Presidents of Courts of Appeal and the Presidents of the *Tribunaux de grande instance*. Other judges shall be appointed after consultation with this section.

The section of the Supreme Council of the Judiciary with jurisdiction over public prosecutors shall give its opinion on the appointment of public prosecutors.

The section of the Supreme Council of the Judiciary with jurisdiction over judges shall act as disciplinary tribunal for judges. When acting in such capacity, in addition to the members mentioned in the second paragraph, it shall comprise the judge belonging to the section with jurisdiction over public prosecutors.

The section of the Supreme Council of the Judiciary with jurisdiction over public prosecutors shall give its opinion on disciplinary measures regarding public prosecutors. When acting in such capacity, it shall comprise, in addition to the members mentioned in paragraph three, the public prosecutor belonging to the section with jurisdiction over judges.

The Supreme Council of the Judiciary shall meet in plenary section to reply to the requests for opinions made by the President of the Republic in application of article 64. It shall also express its opinion in plenary section, on questions concerning the deontology of judges or on any question concerning the operation of justice which is referred to it by the Minister of Justice. The plenary section comprises three of the five judges mentioned in the second paragraph, three of the five prosecutors mentioned in the third paragraph as well as the *Conseiller d'État*, the practicing lawyer and the six qualified, prominent citizens referred to in the second paragraph. It is presided over by the Chief President of the *Cour de cassation* who may be substituted by the Chief Public Prosecutor of this court.

The Minister of Justice may participate in all the sittings of the sections of the Supreme Council of the Judiciary except those concerning disciplinary matters.

According to the conditions determined by an Institutional Act, a referral may be made to the Supreme Council of the Judiciary by a person awaiting trial.

The Institutional Act shall determine the manner in which this article is to be implemented.

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French Law on the Supreme Council of the Judiciary

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Article 10-1

The members of the Council shall perform their duties in compliance with the requirements of independence, impartiality, integrity and dignity. They ensure compliance with these requirements by the people they attach services in the exercise of their functions.

If a member of the Council identified by the chairman of a section of the Supreme Council of Judiciary, has failed to fulfill that which is mentioned in the first paragraph, then plenary of a majority of its members should be called. If, depending on the severity of the breach, a warning or removal from office then it is pronounced by the plenary.

Article 10-2

No member of the Council may deliberate or make preparatory acts when their presence or involvement could damage or cause doubt on the impartiality of the decision.

Regarding the member of the Council appointed as counsel pursuant to the second paragraph of Article 65 of the Constitution, this requirement extends to opinions or decisions relating to a judge before whom he has appeared since his appointment to Board of Governors, and the appointments of judges in the courts in whose jurisdiction the bar is from which it is registered.

The formation to which the case is submitted is to ensure compliance with these requirements.

...

Article 11-1

The members of the judiciary are only responsible for their misconduct.

Responsibility of judges who have committed misconduct connected with the public service of justice cannot be held liable solely on the recourse of the state.

This recourse is exercised before the Civil Chamber of the *Cour de cassation*.

...

Article 12

Budgetary autonomy of the Council is assured under the conditions determined by the Finance Act.

...

Article 18

Complaints which individuals submit to the Supreme Council of the Judiciary are examined by one or more of the committees responsible for judging the admissibility of complaints. Each admissibility committee is composed for each of the Supreme Council formations of four members, two judges and two from outside the judiciary, appointed annually by the President of the formation.

The Chairman of the admissibility committee is appointed by the President of the formation.

Members of the admissibility committee cannot sit in the formation deciding disciplinary cases when the member was responsible for requests to which they belong or the Higher Judicial Council is seized by the authorities referred to in Articles 50-1, 50-2 and the first two paragraphs of section 63 of Ordinance No. 58-1270 of 22 December 1958 Organic Law on the Status the judiciary, identical to those relied on by an individual whose admission queries commission dismissed the complaint made.

The admission queries commission investigates complaints submitted by individuals under the conditions laid down in Articles 50-3 and 63 of the Law

The admission committee requests a quorum if three members are present.

It shall act by majority vote. In case of a tie, the examination of the complaint is sent to the relevant section of the Supreme Council.

Article 19

The organic law on the status of the judiciary fixes penalties and disciplinary procedure applicable to judges.

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French Law on the Status of the Judiciary

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Chapter VII: Discipline

Section I: General Provisions.

Article 43

Any failure by a judge towards the duties of state, honor, tact or dignity, is a disciplinary offense.

A breach of the duties that constitutes a serious and deliberate violation by a judge of a rule of procedure constitutes an essential guarantee of the rights of the parties, evidenced by a court decision that has become final.

Fault is assessed for a member of the prosecutor or a judge of the part of the central administration of the Ministry of Justice taking into account the obligations arising from its hierarchical subordination.

Article 44

Apart from disciplinary action, the Inspector General of Judicial Services, the first presidents, attorneys general and directors or department heads at headquarters have the power to give a warning to judges under their authority.

The warning is automatically cleared the file after three years if no new warning or no disciplinary action has occurred during this period.

Article 45

Disciplinary sanctions for judges are:

1. Blame recorded in the file;
- 2 Transfer of Office;
- 3 The removal of certain functions;

3 *bis* ban to be appointed or designated to the functions of acting as an individual judge for a maximum period of five years;

4 Lowering within hierarchy;

4 *bis*. Temporary exclusion of functions for a maximum period of one year, with total or partial treatment;

5. Demotion;

6 compulsory retirement or admission to cease functions when the judge has no right to a retirement pension;

7 Dismissal.

Article 46

If a judge is investigated simultaneously for several facts, it cannot be pronounced against him as one of the penalties prescribed in the preceding article.

A disciplinary offense may give rise to only one of these penalties. However, the penalties provided for 3, 3 bis, 4, 4 and 5 bis of Article 45 may be applied in addition to a transfer. Applying compulsory retirement outweighs the application of the honorary functions under the first paragraph of Article 77.

...

Section II: Discipline of judges.

Article 49

The Disciplinary Board of Judges is composed in accordance with Article 65 of the Constitution and Article 14 of the Organic Law n ° 94-100 of 5 February 1994 the Supreme Council of the Judiciary.

Article 50

If the Keeper of the Seals, Minister of Justice, receives a complaint or is informed about facts appearing likely to result in disciplinary proceedings may, if there is urgency and after consultation with the leaders of the affected court, propose to the Superior Council of the Judiciary to prohibit the judge, whose seat is covered by the administrative or criminal investigation, from performing the duties of the court until a final decision on disciplinary proceedings has been made. First appellate court presidents and the presidents of the upper appeal courts that have been informed of facts appearing likely to result in disciplinary proceedings against a judge may also, if there is urgency, request of the Supreme Council for same purpose. The latter decision must be made within fifteen days of referral.

The temporary prohibition ruling, taken in the interest of expediency, may not be made public, as it does not include deprivation of the right to salary.

If, on the expiry of a period of two months following the notification of the temporary prohibition imposed by the Disciplinary Board, the Supreme Council of the Judiciary has not been provided in accordance with Articles 50-1 and 50-2, the temporary ban automatically ceases to have effect.

Article 50-1

The Supreme Council of the Judiciary is provided with facts justifying disciplinary proceedings by the Keeper of the Seals, the Minister of Justice.

Article 50-2

The Supreme Council of the Judiciary is also provided with facts justifying disciplinary proceedings by the first presidents of the court of appeal or the presidents of the upper appeal court.

Copies of the documents shall be sent to the Keeper of the Seals, the Minister of Justice, who may request an investigation to the General Inspectorate of Judicial Services.

Article 50-3

Any litigant who believes that during judicial proceedings the conduct of a judge in the exercise of the judge's functions is likely to receive disciplinary sanction may apply to the Supreme Council of the Judiciary. Referral to the Supreme Council of the Judiciary is not a cause for disqualification of the judge.

The complaint is reviewed by an admission commission composed of members of the competent authority with jurisdictions over judges, as provided by Article 18 of the Organic Law n ° 94-100 of 5 February 1994.

To be admissible, the complaint:

- May not be directed against a judge who remains a part of the proceedings [Provisions declared constitutional by the Constitutional Council decision n ° 2010-611 DC of 19 July 2010];
- Can be made after the expiry of a period of one year following an irrevocable decision to terminate the proceedings;
- Must contain a detailed statement of the facts and alleged grievance;
- Must be signed by the defendant and indicate his identity, address, as well as the elements to identify the case in question.

The president of the admissibility committee can dismiss complaints manifestly unfounded or manifestly inadmissible. When the admissibility committees of the Supreme Council declared the complaint admissible, the committee shall inform the judge in question.

The president of the admissibility committee can dismiss complaints manifestly unfounded or manifestly inadmissible. When the admissibility committees of the Supreme Council declared the complaint admissible, the committee shall inform the judge in question.

The admissibility committee asks the first president of the Court of Appeal or the President of the upper appeal court who is responsible for the judge in question for comments and all relevant facts. The first president of the Court of Appeal or the President of the High Court of Appeal asks the judge to send observations. Within two months of a request made by the admissibility committee of the Supreme Council of the Judiciary, the first president of the Court of Appeal or the President of the High Court of Appeal shall provide all information and comments to the Supreme Council of the Judiciary, and the Keeper of the Seals, Minister of Justice.

The admissibility committee can hear the judge in question and, where appropriate, the litigant who has made the request.

If it considers that the facts are likely to end disciplinary sanctions, the admissibility committee defers the complaint to the Disciplinary Board.

In case of rejection of the complaint, the authorities referred to in Articles 50-1 and 50-2 retain the right to submit to the Supreme Council of the Judiciary the allegations.

The judge referred to in the complaint, the complainant, the chief of the court referred to in the ninth paragraph of this section and the Keeper of the Seals, the Minister of Justice, are notified of the rejection of the complaint or the initiation of disciplinary proceedings.

The rejection is subject to appeal.

Article 51

Upon referral to the Supreme Council of the Judiciary, the judge has the right to comment on his case and parts of the preliminary investigation, if any was taken.

The First President of the Supreme Court, as Chairman of the Disciplinary Board, appoints a rapporteur from among the board members. The rapporteur, if any, proceeds to conduct an investigation. When the Supreme Council of the Judiciary has acted at the initiative of a concerned party, the appointment of the rapporteur takes place only after consideration of the complaint by the admissibility committee of the Supreme Council referred to in Article 50-3.

The Supreme Council of the Judiciary may prohibit the judge in the complaint, even before the deciding of his case, from exercising judicial functions until a final decision. This prohibition does not include deprivation of the right to salary. This decision cannot be made public.

Article 52

During the investigation, the rapporteur may request that the judge in question be questioned by a judge of a rank at least equal to that of the latter and, if necessary, question even litigants and witnesses. The rapporteur performs all acts useful to the investigation and can even appointment of an expert.

The offending judge may be assisted by one of his peers, by the *Conseil d'Etat* and the *Cour de Cassation* or by a barrister.

The procedure should be available to the person or his counsel forty-eight hours at least before each hearing.

Article 53

When an investigation is not necessary or when the investigation is complete, the magistrate is summoned to appear before the Disciplinary Board.

When the Board is referred to on the initiative of a concerned party, the disciplinary hearing must be held before the expiration of three months after the Keeper of the Seals, the Minister of Justice, was notified as provided in the penultimate paragraph of section 50-3.

Article 54

The judge cited must appear in person. He may be assisted and, in case of illness or incapacity recognized justified, be represented by one of his peers, by the *Conseil d'Etat* and the *Cour de Cassation* or by a barrister.

Article 55

The judge has the right to comment on his case, all parts of the investigation and the report prepared by the rapporteur. The Board has the right to communicate on the same documents.

Article 56

On the day determined by the summons, after hearing the director of judicial services and after reading the report, the magistrate referred is requested to provide explanations and defenses on the facts alleged.

In the absence of the director of judicial services, he is to be supplemented by a judge of a rank at least equal to that of deputy director.

Article 57

The hearing of the Disciplinary Board shall be public. However, if the protection of public order or privacy is required, or if there are special circumstances likely to prejudice the interests of justice, access to the courtroom may be prohibited to the public during all or part of the hearing, upon motion of the Disciplinary Board.

The Disciplinary Board shall deliberate in private.

The decision, which must be justified, shall be made publicly.

If the accused judge fails to appear, the hearing nevertheless can be held, except in cases of force majeure and the decision made against the judge.

Article 57-1

When deciding on the existence of a disciplinary offense, the relevant section of the Supreme Council refers, in case of a tie, the magistrate concerned for prosecution.

When the competent formation confirms the existence of a disciplinary offense, the penalty imposed in respect to the sitting judge is taken by majority vote. In case of a tie vote on the choice of the penalty, the chairman of the formation takes precedence.

Article 58

The judge concerned shall be notified of the decision in the administrative form. The decision takes effect from the date of such notification.

The appeal against the decision of the Disciplinary Board is not available for the author of the complaint.

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Swedish Instrument of Government (Constitution)

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Chapter 11

§7 A person who has been appointed a permanent salaried judge may be removed from office only if: he or she has shown himself or herself through a criminal act or through gross or repeated neglect of his or her official duties to be manifestly unfit to hold the office; or he or she has reached the applicable retirement age or is otherwise obliged by law to resign on grounds of protracted loss of working capacity.

If organizational considerations so dictate, a person who has been appointed a permanent salaried judge may be transferred to another judicial office of equal status.

...

§9 If a permanent salaried judge has been removed from office by means of a decision of a public authority other than a court of law it shall be possible for him or her to call for the decision to be examined before a court of law. A court conducting such an examination shall include a permanent salaried judge. The same applies to any decision as a result of which a permanent salaried judge is suspended from duty, ordered to undergo examination by a medical practitioner or subject to a disciplinary sanction.

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Swedish Penal Code

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Chapter 20, On the Misuse of Office, etc.

§1 A person who in the exercise of public authority by act or by omission, intentionally or through carelessness, disregards the duties of his office, shall be sentenced for misuse of office to a fine or imprisonment for at most two years. If, having regard to the perpetrator's official powers or the nature of his office considered in relation to his exercise of public power in other respects or having regard to other circumstances, the act may be regarded as petty, punishment shall not be imposed.

If a crime mentioned in the first paragraph has been committed intentionally and is regarded as gross, a sentence for gross misuse of office to imprisonment for at least six months and at most six years shall be imposed. In assessing whether the crime is gross, special attention shall be given to whether the offender seriously abused his position or whether the crime occasioned serious harm to an individual or the public sector or a substantial improper benefit.

A member of a decision-making national or municipal assembly shall not be held responsible under the provisions of the first or second paragraphs of this Section for any action taken in that capacity.

Nor shall the provisions of the first and second paragraphs of this Section apply if the crime is subject to a punishment under this or some other Law.

§2 An employee who receives, accepts a promise of or demands a bribe or other improper reward for the performance of his duties, shall be sentenced for taking a bribe to a fine or imprisonment for at most two years. The same shall apply if the employee committed the act before obtaining the post or after leaving it. If the crime is gross, imprisonment for at most six years shall be imposed.

The provisions of the first paragraph in respect of an employee shall also apply to:

1. a member of a directorate, administration, board, committee or other such agency belonging to the State, a municipality, county council, association of local authorities, parish, religious society, or social insurance office,
2. a person who exercises an assignment regulated by statute,
3. a member of the armed forces under the Act on Disciplinary Offences by Members of the Armed Forces, etc. (1986:644), or other person performing an official duty prescribed by Law,
4. a person who, without holding an appointment or assignment as aforesaid, exercises public authority, and
5. a person who, in a case other than stated in points 1-4, by reason of a position of trust has been given the task of managing another's legal or financial affairs or independently handling an assignment requiring qualified technical knowledge or exercising supervision over the management of such affairs or assignment.

§3 A person who discloses information which he is duty-bound by Law or other statutory instrument or by order or provision issued under a Law or statutory instrument to keep secret, or if he unlawfully makes use of such secret, he shall, if the act is not otherwise specially subject to punishment, be sentenced for breach of professional confidentiality to a fine or imprisonment for at most one year.

A person who through carelessness commits an act described in the first paragraph shall be sentenced to a fine. In petty cases, however, punishment shall not be imposed.

§4 A person elected to a national or local government assignment involving the exercise of public authority may be removed therefrom by a court if he has committed a crime for which the punishment is imprisonment for two years or more and, through the crime, has proved manifestly unsuited for the assignment.

An assignment with such other employers as are referred to in Section 2, second paragraph, point 1, shall be considered equivalent to a national or local government assignment.

§5 A prosecutor may, without hindrance of other provisions which may exist, prosecute crimes through which a national or local government employee or other person referred to in Section 2, second paragraph, points 1-4, has neglected his obligations in the exercise of his appointment or assignment. However, notwithstanding what is said in the first paragraph, the following shall apply:

1. the provisions of this Code specifying that prosecution may not take place without the authority of the Government or by a person empowered by the Government, and
2. the provisions of any other statute or statutory instrument concerning prosecution of an act for which a punishment may be imposed only if the act is committed by a holder of an appointment or assignment as defined in the first paragraph.

If a crime of taking a bribe has been committed by a person not covered by the first paragraph, a prosecutor may bring an action only if the crime is reported for prosecution by the employer or principal or if prosecution is called for in the public interest.

Unless otherwise prescribed for a given case, a prosecutor may prosecute a breach of professional confidentiality existing for the benefit of an aggrieved person only if the latter reports the crime for prosecution or if prosecution is called for in the public interest

Prosecution for crimes committed in the exercise of the appointment or assignment by a Member of Parliament, Minister, Justice of the Supreme Court, Justice of the Supreme Administrative Court or holder of an appointment or assignment with the Parliament or its organs is subject to separate provisions.

...

Swedish Public Employment Act

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Disciplinary liability, Neglect of duty

§14 A disciplinary sanction for neglect of duty may be imposed upon an employee who intentionally or by carelessness neglects his duties in employment. If the neglect, having regard to all the circumstances, is minor, a sanction may not be issued.

A disciplinary sanction may not be imposed upon an employee because he has participated in a strike or industrial action comparable thereto.

Disciplinary sanctions

§15 Disciplinary sanctions are a warning and deduction from pay. Several disciplinary sanctions may not be imposed on an employee simultaneously.

Deduction from pay may be made comprising at most thirty days. The deduction from pay per day may amount to at most 25 per cent of the daily pay.

§16 Deviations from Section 15 may be made by collective bargaining agreements. Such collective bargaining agreements may also be applied for employees who are not members of the contracting employees' organization, provided they are engaged in such work as is referred to in the agreement. Impediments to disciplinary proceedings

§17 A disciplinary sanction may be issued only if the employee within two years of the neglect has been notified in writing about that alleged against him.

§18 When a measure has been implemented for the institution of a prosecution against an employee, the employer may not commence or continue with disciplinary proceedings relating to that which caused the measure.

If an act has been considered under the criminal law system, a disciplinary measure may only be commenced or continued if the act, for some other reason than inadequate evidence, was not considered to comprise an offence.

§19 A disciplinary sanction may not be issued after when the employee's employment ceased or notice of termination has been given.

That stated in the first paragraph does not apply if the employee transfers from one authority to another authority within the judicial, prosecutor or police service respectively.

...

§34 National Disciplinary Offences Board

The National Disciplinary Offences Board decides on matters concerning disciplinary liability, report for prosecution and summary dismissal, as regards

1. employees who are employed by a decision of the Government, 2. employees who without being employed by a decision of the Government have a managerial position or positions comparable thereto. The Government may prescribe that the Board shall decide on such issues also as regards other employees.

Enforcement of decision

§35 A decision concerning deduction from pay under Section 15 may not be enforced before the decision has been finally considered or the right of action has lapsed.

§36 A decision concerning suspension from employment under Section 33, first paragraph, applies immediately.

A decision concerning transfer under Section 33, second paragraph, may not be enforced before the decision has been finally considered or the right of action has lapsed. However, the decision may be given immediate effect if there are extraordinary reasons for so doing.

Judicial proceedings

§37 Cases concerning the application of this Act shall be dealt with in accordance with the Labor Disputes (Judicial Procedure) Act (1974:371).

§38 In a dispute concerning a decision under Section 7 c, 31 or 36, the court may, for the period pending a determination that has entered into final legal force, decide that the decision shall not apply until further notice. (SFS 2001:1016)

§39 If an employee seeks an amendment of a decision under Section 14 or 33, he shall institute proceedings within three weeks of the date on which he received the decision. Section 40 Actions by the Parliamentary Ombudsmen or the Chancellor of Justice concerning amendments of a decision on disciplinary liability under Section 14 shall be instituted within three weeks from when the decision was issued.

...

§41 Actions concerning damages under Section 28 or 29 shall be instituted within three months from when the industrial action was concluded.

Instrument of Government, Sweden (part of the Constitution, which is made up of three other documents)

...

Swedish Act on appointing permanent judges

Scope

1 § This law concerns the appointment of ordinary judges. These are

1. chief justice, department chairs as well as the other justices of the Supreme Court as well as same at the Supreme Administrative Court ;
2. president, chief judge and vice chairman, as well as the other judges of the Court of Appeal and the Administrative Court of Appeal ,
3. department chief judge, senior district court judge and judges of the district courts and the administrative courts,
4. technical councils,
5. chair of the Market Court,
6. chair and other chairman of the Labor Court,
7. chair, department chair, deputy chair and other judges of the Patent Court of Appeals;
8. chair of the Defense Intelligence Court.

Judges' Proposals Board

2 § Materials concerning the appointment of judges should be prepared in a Government committee (Judges' Proposals Board).

3 § The Board will submit proposals to the Government in respect of appointing judges. The Council will also pursue an active and long-term effort to meet the recruitment of permanent judges. Government issues regulations on the other tasks for the Board.

4 § The Commission consists of nine members. Five members must be, or have been, a regular judge. Two members must be lawyers active outside the court system, one of whom shall be an *advokat*. Two members shall represent the public. For each member, there shall be a personal alternate. Members and alternates are appointed for a maximum period of four years. The members and alternates representing the public are to be appointed by the *Riksdag*. Other members and alternates are to be appointed by the Government. Members and alternates that are, or have been, permanent judges are to be appointed on the proposals of the general courts and the administrative courts. Members and alternates that are to be lawyers working outside the judiciary are appointed on the proposal of the authorities or organizations identified by the Government. The Board elects a Chairman and a Vice Chairman.

5 § The Board shall have an official office. The head of the office should be, or have been, a regular judge or have similar experience and skills.

Judges' Proposals Board handling

6 § The Board shall provide appropriate information about a vacant position as a permanent judge.

7 § Anyone who wants to apply for a vacant position must submit a written application to the Board. In addition, a general expression of interest for employment as specified in § 1 must be made to the Board.

8 § A representative of the Courts Administration may attend and speak at Board meetings.

9 § Board proposals to the Government shall be justified.

Appeals

§ 10 The Board's recommendations on matters concerning appointments may not be appealed.

Government handling

11 § The Government is not bound by the Board's proposal. Before the Government appoints someone who has not been proposed by the Board, the Board shall have the opportunity to give opinions concerning him or her.

Swedish Power of Attorney Employees Act

...

§3 Employment with power of attorney

A permanent judge shall be employed with a power of attorney. §1 of the Law (2010:1390) on Appointing Permanent Judges defines which judges are permanent.

The government is to decide which other employees are to be employed with a power of attorney.

...

§8 Transfers

An employee may be transferred to another state position with a power of attorney. A transfer to another position at another state agency is only possible if the work is similar or if the employee with regards to his/her education is appropriate for the position.

The Instrument of Government shall be applied with regards to transferring permanent judges.

...

Lithuanian Constitution

...

Article 115

Judges of courts of the Republic of Lithuania shall be dismissed from office according to the procedure established by law in the following cases:

- 1) of their own will;
- 2) upon expiration of the term of powers or upon reaching the pensionable age established by law;
- 3) due to the state of health;
- 4) upon the election to another office or upon their transfer, with their consent, to another place of work;
- 5) when by their behavior they discredit the name of the judge;
- 6) upon coming into effect of court judgments convicting them.

...

Lithuanian Law of Courts

...

Article 10. Self-governance of Courts

1. Independence of courts determines their organizational self-sufficiency which shall be realized through self-governance of courts.
2. Self-governance of courts is founded on the representation, elections, accountability of their executive bodies as well as on responsibility of institutions of judicial self-governance for a proper performance of their functions.
3. Institutions of judicial self-governance shall report periodically about their activities to the highest body of self-governance – the General Meeting of Judges.

...

Article 47. Immunity of the Judge

1. Criminal proceedings may be instituted against the judge, he may be subject to detention or any other restriction of his freedom only by and with the consent of the *Seimas*, and during the period when the *Seimas* is not in session - by and with the consent of the President of the Republic, with the exception of cases.
2. It shall be prohibited to enter the residential or office premises of the judge, to carry out examination, search or seizure therein or in his personal or official car or any other personal vehicle, to carry out his personal examination or body search, examination or seizure of his personal belongings except in the cases established by law.
3. Operational investigation of the criminal activity likely committed by the judge may be opened only by the head of the entity of operational activity on the consent of the Prosecutor General and the pre-trial investigation may be commenced only by the Prosecutor General. The powers of the judge suspected or accused of the commission of criminal act may be suspended by the *Seimas* and in the period between the sessions of the *Seimas* by the President of the Republic. The judge shall be suspended from office until the final judgment in the criminal proceedings is adopted. If during the pre-trial investigation the circumstances are disclosed which prove that that the proceedings are impossible or that not enough evidence has been collected to prove the judge's guilt in committing criminal act or the judge has not been convicted guilty by court decision in a criminal case, the powers of the judge shall be renewed and he shall be paid the salary due to him during the period of his suspension.
4. The judge who commits an administrative offence punishable by a non-custodial penalty shall be held administratively liable according to the general procedure. The officer who recorded the administrative violation committed by the judge shall within 3 days notify thereof the Judicial Council.
5. The judge who commits an administrative violation punishable by a custodial penalty shall be held administratively liable upon receipt of the consent of the *Seimas* and in the period between the *Seimas* sessions – of the President of the Republic.
6. The judge detained without any personal documents and brought to any law enforcement institution shall be released immediately after his identity has been established.
7. The judge or the court shall not be liable for the damage caused to a party to the proceedings because of an unlawful or ungrounded decision. The damage shall be compensated by the State in the cases and in accordance with the procedure prescribed by law. Property and moral damage caused to an individual by a criminal act of the judge when administering justice and compensated by the State shall be recovered from the judge by recourse.

Article 48. Work and Activity outside the Court

1. The judge may not hold any other elective or appointed posts, work in business or any other private offices or enterprises, the only exception being teaching or creative activities.

2. The judge shall be free to participate in the activities of the institutions of judicial self-governance. During his work at the institutions of judicial self-governance the workload of the judge at the court where he works shall be reduced accordingly.
3. The judge may be a member of committees/groups which are drafting laws, international agreements and other legal acts if such activities do not interfere with his judicial duties. The judge shall inform the Chairperson of the court where he works about such activities. The judge may, in accordance with the procedure prescribed by law, act as a representative of the Republic of Lithuania at international organizations.
4. The judge may not receive any other remuneration except the judge's salary and remuneration for teaching or creative activities.
5. The judge may not participate in the activities of political parties and any other political organizations.
6. The judge shall be immune from conscription.

...

Article 83. Disciplinary Liability of Judges

1. A disciplinary action shall be brought against a judge by the Judicial Court of Honor.
2. 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 Judges;
 - 3) for non-compliance with the limitations on the work and political activities of judges provided by law.
3. An act demeaning the judicial office shall be an act incompatible with the judge's honor and in conflict with the requirements of the Code of Ethics of Judges whereby the office of the judge is discredited and the authority of the court is undermined. Any misconduct in office - negligent performance of any specific duty of a judge or omission to act without a good cause shall also be regarded an act demeaning the office of a judge.

Article 84. Instituting a Disciplinary Action

1. A disciplinary action may be instituted against a judge immediately after at least one of the violations specified in paragraph 2 of Article 83 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.
2. A disciplinary action may not be instituted after a lapse of more than three years from the moment of commission of the violation.
3. A disciplinary action may be instituted against a member of the Judicial Council or the Judicial Court of Honor only subject to the consent of the Judicial Council.
4. The Judicial Council, the Judicial Ethics and Discipline Commission and the Chairperson of the court where a judge is employed or the Chairperson of any court of a higher level or any person knowledgeable of the action provided for in paragraph 2 of Article 83 of this law shall have the right to make a motion for instituting a disciplinary action. The party having the right to make a motion for instituting a disciplinary action shall submit a reasoned petition for bringing a disciplinary action against the judge to the Judicial Ethics and Discipline Commission.
5. A disciplinary action against Chairpersons, Deputy Chairpersons of courts, Chairpersons of court divisions and other judges may be instituted by the Judicial Ethics and Discipline Commission. If a

motion for instituting a disciplinary action is made by a member of the Judicial Ethics and Discipline Commission, the issue in respect of instituting a disciplinary action shall be considered by the Judicial Ethics and Discipline Commission without participation of this member.

6. The instituted disciplinary action shall be transferred to the Judicial Court of Honor. Refusal to institute a disciplinary action shall be communicated to the party that has made a motion to institute a disciplinary action.

7. Where a disciplinary action is instituted against a judge in respect of a concrete case he is hearing, he shall be disqualified from the hearing.

Article 85. The Judicial Ethics and Discipline Commission

1. The Judicial Ethics and Discipline Commission shall be an institution of judicial self-governance deciding the issues of instituting disciplinary actions against judges.

2. The Judicial Ethics and Discipline Commission shall be composed of seven members. Two members of the Commission shall be appointed by the President of the Republic, one candidate to the commission shall be appointed by the Speaker of the *Seimas*, four candidates – by the Judicial Council. The President of the Republic and the Speaker of the *Seimas* shall appoint members of the public to members of the Commission. The Judicial Council shall approve the Chairperson of the Commission from the appointed members of the Judicial Ethics and Discipline Commission. A member of the Judicial Ethics and Discipline Commission may not be a member of the Judicial Council, an official having the right of initiative to institute disciplinary action, a member of the Judicial Court of Honor as well as the judge on whom the disciplinary penalties have been imposed.

3. The decision of the Judicial Ethics and Discipline Commission shall be considered adopted if voted for by not less than 4 members of the Commission.

4. The activities of the Judicial Ethics and Discipline Commission shall be regulated by the Rules of the Judicial Ethics and Discipline Commission approved by the Judicial Council. Work payment procedure of the members of the Judicial Ethics and Discipline Commission, except judges, determined by the Government.

5. The term of office of a member of the Judicial Ethics and Discipline Commission shall expire when:

1) his term of office as the judge expires;

2) the term of office to which he was appointed member of Judicial Ethics and Discipline Commission expires;

3) he resigns on a voluntary basis from the office of the Judicial Ethics and Discipline Commission;

4) the decision of the Judicial Court of Honor to impose a disciplinary penalty on him becomes effective;

5) he is withdrawn from his post in the Judicial Ethics and Discipline Commission.

6. A member of the Judicial Ethics and Discipline Commission shall be withdrawn from his post as the Judicial Ethics and Discipline Commission member if the entity which appointed him adopts a well-reasoned decision that the member of the Commission fails to perform the functions of the member of Judicial Ethics and Discipline Commission assigned to him.

Article 86. Decisions of the Judicial Court of Honor

After review of a disciplinary action the Judicial Court of Honor may, by its judgment:

1) dismiss a disciplinary action because of the absence of grounds for disciplinary liability;

2) dismiss a disciplinary action because of lapse of time;

3) limit itself to the review of a disciplinary action;

- 4) impose a disciplinary sanction.
2. The Judicial Court of Honor may, by its judgment:
 - 1) suggest the President of the Republic or the *Seimas* to dismiss the judge from office according to the procedure established by law;
 - 2) suggest to the President of the Republic to apply to the *Seimas* to institute impeachment proceedings against the judge.
3. When the President of the Republic or the *Seimas* refuses to apply disciplinary measures provided for in paragraph 2 of this Article, the Judicial Court of Honor shall restart the hearing of a disciplinary action and adopt one of the decisions pursuant to paragraph 1 of this Article.
4. A decision of the Judicial Court of Honor 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. An appeal may be filed by the judge and the party which instituted the disciplinary action.
5. A disciplinary action disposed by the Judicial Court of Honor shall be kept along with the judge's personal file.
6. The decisions adopted according to the procedure established by this Article which have become effective shall be published in disciplinary cases in a separate column of internet web site of the National Court Administration, except where this would prejudice state, official, commercial secret or the protection of the person's private life.

Article 87. Disciplinary Sanctions Imposed by the Judicial Court of Honor

1. The Judicial Court of Honor may impose one of the following disciplinary sanctions:

- 1) censure;
- 2) reprimand;
- 3) severe reprimand.

2. The Judicial Court of Honor shall notify the Judicial Council about the dispositions made.

Article 88. Effect of a Disciplinary Sanction

A disciplinary sanction imposed by the Judicial Court of Honor shall become effective ten days after it was imposed and shall be effective one year.

...

Article 120. Competence of the Judicial Council

The Judicial Council shall...

... 12) hear reports of the Judicial Ethics and Discipline Commission, reports on the activities of the Judicial Court of Honor;

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

...

Article 122. Judicial Court of Honor

1. The Judicial Court of Honor shall be the body of judicial self-governance hearing disciplinary cases of judges and petitions of judges against defamation.

2. The Judicial Court of Honor shall be formed for four years and shall consist of nine members. The Supreme Court, the Court of Appeal and the Supreme Administrative Court shall each appoint two members to the Judicial Court of Honor. Three members shall be elected by the Judicial Council to the Judicial Court of Honor from all regional administrative courts, regional courts and district courts. Usually at least two candidates shall be nominated to a vacancy of a member of the Judicial Court of Honor. A member of the Judicial Council or an entity having the right of initiative to institute a disciplinary action, a member of the Judicial Ethics and Discipline Commission as well as the judge on

whom disciplinary penalty has been imposed may not be elected a member of the Judicial Court of Honor. Members of the Judicial Court of Honor shall elect the Chairperson and Deputy Chairperson of the Judicial Court of Honor.

3. A meeting of the Judicial Court of Honor shall be valid if attended by not less than seven members of the Judicial Court of Honor. The decisions of the Judicial Court of Honor shall be taken by a simple majority vote of the members of Judicial Court of Honor attending the meeting. If there is a tie, the decision voted in favor of by the Chairperson of the Judicial Court of Honor shall be deemed adopted.

4. The Judicial Court of Honor shall hear the cases publicly except where this would prejudice state, official, commercial secret or the protection of the person's private life. The operative parts of the decisions adopted by the Judicial Court of Honor after a not public hearing of the case shall be in all cases publicized.

5 The information about the issues to be considered at the sessions of the Judicial Court of Honor shall be published in the internet web site of the National Court Administration not later than 3 working days before the session. Information about the decisions adopted by the Judicial Court of Honor shall be published in the internet web site of the National Court Administration within 10 days after the session.

6. The term of office of the member of the Judicial Court of Honor shall expire when:

- 1) his term of office as the judge expires;
- 2) the term of office to which he was appointed member of the Judicial Court of Honor expires;
- 3) he voluntarily resigns from the Judicial Court of Honor;
- 4) the decision of the Judicial Court of Honor to impose on him a disciplinary penalty becomes effective;
- 5) he is withdrawn from his post as Judicial Court of Honor member.

7. The Judicial Court of Honor member shall be withdrawn from his post as Judicial Court of Honor member if the Judicial Council adopts a well-reasoned decision that the judge fails to perform the duties of the Judicial Court of Honor member assigned to him.

Article 123. Sessions of the Judicial Court of Honor

The Judicial Court of Honor shall hear disciplinary cases of judges and petitions of judges against defamation in accordance with the provisions of this Law and the Statute of the Judicial Court of Honor. The Statute of the Judicial Court of Honor shall be approved by the Judicial Council.

See the Statute of the Judicial Court of Honor for more detailed procedures.

...

Basic Law of the Federal Republic of Germany

...

Article 97 [Judicial independence]

(1) Judges shall be independent and subject only to the law.

(2) Judges appointed permanently to full-time positions may be involuntarily dismissed, permanently or temporarily suspended, transferred or retired before the expiration of their term of office only by virtue of judicial decision and only for the reasons and in the manner specified by the laws. The legislature may set age limits for the retirement of judges appointed for life. In the event of changes in the structure of courts or in their districts, judges may be transferred to another court or removed from office, provided they retain their full salary.

...

German Federal Judiciary Act

...

Section 12 Appointment on probation

(1) Whoever is later to be employed as a judge for life or as a public prosecutor may be appointed as a judge on probation.

(2) Five years at the latest after his appointment, a judge on probation shall be appointed a judge for life or, on being given civil service tenure for life, he shall be appointed a public prosecutor. This time-limit shall be extended for any unpaid leave taken.

...

Section 19 Revocation of an appointment

(1) An appointment shall be revoked

1. where the appointee was not qualified to hold judicial office,
2. where participation of a judicial selection committee, as required by statute, was omitted and where the judicial selection committee refused subsequent confirmation of the appointment,
3. where the appointment was procured by coercion, wilful deceit or bribery, or
4. where it was not known that the appointee had committed a serious or a minor criminal offence that makes him seem unworthy of holding judicial tenure and where, on account of the criminal offence committed, he was, or will be, sentenced to a penalty with final and binding effect.

(2) An appointment can be revoked where it was not known that an order had been made in court proceedings removing the appointee from office or from his profession or withdrawing his pension rights.

(3) In the absence of the judge's written consent an appointment as a judge for life or for a specified term can only be revoked on the strength of a judicial decision that has entered into final and binding effect.

...

Section 22 Dismissal of a judge on probation

(1) A judge on probation can be dismissed on expiry of six, twelve, eighteen or twenty-four months following his appointment.

(2) A judge on probation can be dismissed on expiry of the third or fourth year

1. where he is not suited to hold judicial office, or
2. where a judicial selection committee refuses to give him judicial tenure for life or for a specified term.

(3) A judge on probation can in addition be dismissed where he has conducted himself in a manner which would lead, in the case of a judge for life, to a disciplinary measure imposable in formal disciplinary proceedings.

(4) The time-limits stipulated in subsections (1) and (2) shall be extended to cover any period of unpaid leave.

(5) In the cases under subsections (1) and (2) the judge shall be notified of the dismissal order at least six weeks before the day of dismissal.

...

Section 26 Supervision of service

(1) A judge shall be subject to supervision only in so far as there is no detraction from his independence.

(2) Subject to the provision in subsection (1), supervision shall also include the power to censure an improper mode of executing an official duty and to urge proper and prompt attention to official duties.

(3) Where a judge contends that a supervisory measure detracts from his independence a court shall, on application being made by the judge, give a ruling in compliance with this Act.

...

Section 30 Transfer and discharge from office

(1) A judge for life or for a specified term can only be transferred to another office or discharged from office without his own written consent

1. in judicial impeachment proceedings (Article 98 paragraphs 2 and 5 of the Basic Law),
2. in formal disciplinary proceedings,
3. in the interests of the administration of justice (section 31),
4. on changes being made in the organization of the courts (section 32).

(2) Save in the case of subsection (1) number 4, a transfer or discharge from office can only be ordered on the strength of a judicial decision that has entered into final and binding effect.

(3) Where a judge who holds several judicial offices is discharged from an office, such discharge shall be equal to a transfer.

Section 31 Transfer in the interests of the administration of justice

A judge for life or for a specified term can be

1. transferred to another judicial office with the same final basic salary,
2. provisionally retired, or
3. retired

where facts unconnected with his judicial occupation make a measure of this kind imperative in order to avoid grave prejudice to the administration of justice.

...

Section 35 Provisional prohibition from carrying out official duties

In proceedings under section 18 subsection (3), under section 19 subsection (3), under section 21 subsection (3) or under sections 30 and 34 the court can, on application being made, provisionally prohibit the judge concerned from carrying out his official duties.

...

Section 46 Application of federal civil service law

Except as otherwise provided in this Act the provisions applying to federal civil servants shall apply *mutatis mutandis* to legal relations of judges in federal service until special provision is made.

...

Section 49 Council of judges and council for judicial appointments

For the representation of judges the following bodies shall be established at the federal courts:

1. councils of judges for participation in relation to general and social matters,
2. councils for judicial appointments for participation in appointing judges.

Section 50 Composition of the council of judges

(1) The council of judges shall be composed of

1. five elected judges at the Federal Court of Justice and at the Federal Patent Court,
2. three elected judges at the Federal Administrative Court, the Federal Finance Court, the Federal Labor Court, the Federal Social Court.

(2) A council of judges consisting of three elected judges shall be established for the judges of the military service courts. The council of judges shall specify its seat to be at one of the military service courts.

(3) The president of the court and his permanent deputy may not be members of the council of judges.

Section 51 Election of the council of judges

(1) The members of the council of judges as well as an equal number of deputies shall be elected for a term of four years in a secret and direct election.

(2) In order to prepare for the election the president of the court, or in the case of the military service courts the oldest judge, shall convene a judges' meeting. Under the chairmanship of the oldest judge procedure for the election shall be determined at the meeting.

Section 52 Duties of the council of judges

Section 2 subsection (1), sections 66 to 74, section 75 subsections (2) and (3) numbers 1 to 5, and numbers 11 to 16, section 76 subsection (2), section 78 subsection (1) numbers 1 and 2, and subsections (2) to (4), and sections 80 and 81 of the Federal Personnel Representation Act of 15 March 1974 (Federal Law Gazette Part I p. 693) shall apply *mutatis mutandis* to the powers and obligations of the council of judges.

...

Section 60 Recourse to the courts in matters concerning the representation of judges

Recourse to the administrative courts shall be available for legal disputes resulting from the formation or the activity of bodies representing judges. In legal disputes resulting from joint involvement of the council of judges and of the body representing staff (section 53 subsection (1)) the administrative court shall hear the matter in accordance with the rules of procedure and in the composition laid down in section 83 subsection (2) and in section 84 of the Federal Personnel Representation Act.

Third Chapter, Federal Service Court

Section 61 Constitution of the service court

(1) A special division of the Federal Court of Justice shall be established as a Federal Service Court for judges in federal service.

(2) The Federal Service Court shall conduct its proceedings and give its decisions sitting with a presiding judge, two permanent associate judges and two non-permanent associate judges. The presiding judge and the permanent associate judges shall be members of the Federal Court of Justice, and the non-permanent associate judges shall, as judges for life, be members of the jurisdiction to which the judge concerned is attached. The president of a court and his permanent deputy may not be members of the Federal Service Court.

(3) The presidium of the Federal Court of Justice shall appoint the presiding judge as well as the associate judges and their deputies for five business years. When bringing in the non-permanent associate judges the presidium shall be bound to follow the order on the list of nominations drawn up by the presidiums of the supreme courts of the Federation.

(4) The Federal Service Court shall be deemed to be a criminal division within the meaning of section 132 of the Courts Constitution Act.

Section 62 Jurisdiction of the Federal Service Court

(1) The Federal Service Court shall give a final decision

1. in disciplinary matters, relating to judges in retirement as well;
2. on a transfer in the interests of the administration of justice;
3. in the case of a judge for life or for a specified term in respect of
 - a) nullity of an appointment,
 - b) revocation of an appointment,
 - c) dismissal,
 - d) retirement on account of unfitness for service,

- e) limited employment on account of limited fitness for service;
- 4. on a challenge being made to
 - a) a measure taken in view of a change in the organization of the courts,
 - b) the secondment of a judge pursuant to section 37 subsection (3),
 - c) an order by virtue of which a judge on probation or a judge by commission is dismissed, or by virtue of which his appointment is revoked or the nullity of his appointment is established, or by virtue of which he is retired on account of unfitness for service,
 - d) procurement for an additional activity,
 - e) a supervisory measure taken for the reasons stated in section 26 subsection (3),
 - f) an order concerning limitation of service or leave pursuant to section 48a to section 48c.
- (2) The Federal Service Court shall also hear appeals on points of law from the judgments of the service courts of the *Länder* (section 79).

Section 63 Disciplinary proceedings

- (1) The provisions of the Federal Disciplinary Act shall apply *mutatis mutandis* to proceedings in disciplinary matters.
- (2) Upon application being made by the highest service authority, the service court shall give a ruling on a provisional discharge from office, on the withholding of remuneration for service or on the revocation of any of these measures. The ruling shall be served on the highest service authority and on the judge concerned.
- (3) Section 78 of the Federal Disciplinary Act shall be applicable with the proviso that the provisions in respect of fees for appeal proceedings shall apply *mutatis mutandis* to disciplinary proceedings before the Federal Service Court. Proceedings on the imposition of a regulatory fine by the service court shall be equivalent, in respect of fees, to proceedings on the appeal from a corresponding disciplinary ruling by the supervisor. In proceedings concerning an application for the ordering of the provisional discharge from office or the withholding of remuneration, the provisions in respect of fees for the proceedings on the application for the suspension of these measures shall apply *mutatis mutandis*.

Section 64 Disciplinary measures

- (1) Only a reprimand can be given in a disciplinary ruling.
- (2) Only a reprimand, a regulatory fine or removal from office can be imposed on a judge of one of the supreme courts of the Federation.

...

Section 77 Establishment of service courts

- (1) Service courts shall be established in the *Länder*.
- (2) The service courts shall give their decisions sitting with a presiding judge and with an equal number of permanent associate judges and non-permanent associate judges. All members shall be judges appointed for life. The non-permanent members shall be members of the jurisdiction to which the judge concerned belongs.
- (3) The members of a service court shall be appointed by the presidium of the court at which the service court has been established. *Land* legislation can bind the presidium to follow the list of nominations drawn up by the presidiums of other courts. The president of a court or his permanent deputy may not be members of a service court.
- (4) Notwithstanding subsection (2), second sentence, provision may be made under *Land* law to the effect that honorary judges who are lawyers admitted to the bar shall participate as permanent associate

judges. A practicing lawyer may only be appointed as a member of the service court if he can be elected to the Board of Directors of the bar association concerned. The members of the service court may not concurrently be members of the Board of Directors of the bar association or the statutory assembly concerned or be employed on a full-time or part-time basis in the bar association or the statutory assembly concerned. The members who are practicing lawyers shall be appointed for a term of five years by the presidium of the court at which the service court has been established; they may be re-appointed after the end of their term of office. The presidium shall be bound by the list of nominations drawn up by the Board of Directors of the bar association concerned in respect of the participation of permanent associate judges who are lawyers admitted to the bar. Where there are several bar associations in the jurisdiction of the service court, the number of members who are practicing lawyers shall be proportional to the number of members of the individual bar associations. The presidium shall determine the required number of members who are practicing lawyers. The lists of nominations must contain the names of at least one-and-a-half times the required number of practicing lawyers. *Land* legislation shall make provision for further procedure in respect of the appointment of members of the service court who are practicing lawyers.

Section 78 Jurisdiction of a service court

(1) The service court shall give a decision

1. in disciplinary matters, relating to judges in retirement as well;
2. on a transfer in the interests of the administration of justice;
3. in the case of a judge for life or for a specified term in respect of
 - a) nullity of an appointment,
 - b) revocation of an appointment,
 - c) dismissal,
 - d) retirement on account of unfitness for service,
 - e) limited employment as a result of limited fitness for service;
4. on a challenge being made to
 - a) a measure taken in view of a change in the organization of the courts,
 - b) the secondment of a judge pursuant to section 37 subsection (3),
 - c) an order by virtue of which a judge on probation or a judge by commission is dismissed, or by virtue of which his appointment is revoked or the nullity of his appointment is established, or by virtue of which he is retired on account of unfitness for service,
 - d) procurement for an additional activity,
 - e) a supervisory measure taken for the reasons stated in section 26 subsection (3),
 - f) an order concerning limitation of service or leave.

Section 79 Instances

- (1) Proceedings in the service courts may be taken before at least two instances.
- (2) In the cases referred to under section 78 numbers 2, 3 and 4, the participants are entitled to lodge an appeal on points of law to the Federal Service Court pursuant to section 80.
- (3) In respect of the cases referred to under section 78 number 1, *Land* legislation can make provision for an appeal on points of law to the Federal Service Court.

...

Section 81 Admissibility of an appeal on points of law in disciplinary proceedings

(1) In so far as *Land* legislation has made provision for an appeal on points of law to the Federal Service Court in disciplinary matters (section 79 subsection (3)) such appeal can only be lodged, subject to subsection (3), where leave has been granted by the *Land* service court concerned. Leave to lodge such an appeal shall only be granted where

1. the case concerned is of fundamental importance, or
2. the judgment deviates from a decision of the Federal Service Court and is based on such deviation.

(2) A refusal to grant leave to appeal on points of law can be challenged independently through the lodging of a complaint within two weeks after service of the judgment. The complaint shall be lodged with the court whose decision is to be challenged. In the notice of complaint the fundamental importance of the case shall be expounded or reference shall be made to the decision of the Federal Service Court from which the judgment deviates. The lodging of a complaint shall prevent the judgment from entering into final and binding effect. Where relief is not given in the light of the complaint, a decision shall be given by the Federal Service Court in the form of a ruling. Where the complaint is unanimously dismissed on the ground of inadmissibility or of ill-foundedness, the court shall not be required to give reasons. On rejection of the complaint by the Federal Service Court the judgment shall become final and binding. Where the complaint is accepted the time-limit for lodging an appeal on points of law shall run from the time when notification is served concerning the outcome of the complaint.

(3) Leave to appeal shall not be necessary where, as material procedural defects, it is objected that

1. the court hearing the case was not sitting in the prescribed composition,
2. there was participation in the decision by a judge who was disqualified by statute from exercising judicial office or who was successfully challenged for fear of bias, or
3. reasons were not given for the decision.

Section 82 Appeal on points of law in disciplinary proceedings

(1) An appeal on points of law shall be lodged with the court whose judgment is being contested within two weeks after service of the judgment or after service of the ruling on leave to appeal on points of law in writing or through a statement which shall be taken down in writing at the court registry, and reasons shall be given therefor within two weeks at the latest. The reasons shall contain an indication of the extent to which the judgment is being contested, of the amendments to the judgment that are being applied for and of how these applications are substantiated. Section 80 subsection (3) shall apply *mutatis mutandis*.

(2) The Federal Service Court shall adhere to the findings of fact made in a contested judgment unless admissible and substantiated grounds are submitted for an appeal on points of law against such findings.

(3) Section 144 subsection (1) and section 158 subsection (1) of the Rules of the Administrative Courts shall apply *mutatis mutandis*. The judgment can only provide for the dismissal of the appeal on points of law or for the quashing of the contested judgment.

Section 83 Procedural provisions

Disciplinary proceedings, transfer proceedings and scrutiny proceedings shall be regulated in accordance with section 63 subsection (2), section 64 subsection (1) and sections 65 to 68. Provision may be made under *Land* legislation in respect of court fees for disciplinary matters pertaining to judges in the service of a *Land*.

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Constitution of the Republic of Poland

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Article 180

1. Judges shall not be removable.
2. Recall of a judge from office, suspension from office, transfer to another bench or position against his will, may only occur by virtue of a court judgment and only in those instances prescribed in statute.
3. A judge may be retired as a result of illness or infirmity which prevents him discharging the duties of his office. The procedure for doing so, as well as for appealing against such decision, shall be specified by statute.
4. A statute shall establish an age limit beyond which a judge shall proceed to retirement.
5. Where there has been a reorganization of the court system or changes to the boundaries of court districts, a judge may be allocated to another court or retired with maintenance of his full remuneration.

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Polish Common Courts Organization Act

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Article 37.

§ 1. Persons appointed to manage courts and supervise the administrative activity of courts have the right to inspect courts acts and request explanations and the removal of irregularities. Tasks within the scope of supervision over administrative activity of courts are performed by presidents of courts in person or by persons designated for that purpose.

§ 2. The Minister of Justice and presidents of courts reverse administrative orders inconsistent with the law.

§ 3. Persons referred to in § 2, may reverse administrative orders that disturb the efficiency of court proceedings or are ineffective for other reasons.

§ 4. Should irregularity in court proceedings efficiency be identified, the Minister of Justice and presidents of courts may make a written comment on the irregularity and request the removal of results of such irregularity. The judge to whom the comment refers may within seven days submit a written reservation to the body that made the comment, which however, shall not exempt the judge from the obligation to remove the results of the irregularity. Provisions of Article 108 § 1 apply accordingly.

§ 4a. Should a reservation be submitted, the body referred to in § 4 reverses the comment or passes the case to a disciplinary court for hearing.

§ 4b. A copy of a letter including the identification of irregularity and the written comment is enclosed to the judge's personal files.

§ 4c. Upon the lapse of five years from making the written comment, at the request of the judge, the Minister of Justice or the president of a competent court orders the removal of the copy of the letter referred to in § 4b from the personal files of the judge, if during that period no subsequent irregularity was identified in court proceedings efficiency resulting in a written comment or no irregularity provided for in Article 40 § 1 was identified. In such an event, only simultaneous removal of copies of all letters and rulings referred to in § 4b and Article 40 § 3 from the personal files of the judge is permissible.

§ 5. The Minister of Justice may make a written comment to the president or the vice president of a court if irregularity is identified in the court management or in supervision over the administrative activity of courts exercised by the president within his/her authority.

§ 5a. Entitlements referred to in § 5 may also be exercised by the president of the court of appeal towards presidents or vice presidents of regional and district courts acting within the area of appellate jurisdiction and to the president of a regional court towards presidents and vice presidents of district

courts acting within the court circuit. Presidents of competent courts notify the Minister of Justice about the written comment.

§ 6. The president of the superior court immediately notifies the president of the competent court about any irregularity in the activity of the court. Should material irregularities in the activity of a court be identified, the president of such court immediately notifies the president of the superior court about such irregularity and the president of the court of appeal notifies the Minister of Justice; at the same time the competent president informs about actions taken with the aim of removing such irregularities.

§ 7. Persons referred to in § 1 may be present at a trial closed to the public.

Article 38.

§ 1. Duties within the scope of supervision over the administrative activity of courts include in particular:

- 1) the inspection of a court or some of its organizational units,
- 2) vetting in a court,
- 3) verifying the course and efficiency of proceedings in particular cases,
- 4) inspection of the activity of the secretariat in a court.

§ 2. The inspection covers the entire activity of the court or its organizational unit.

§ 3. Vetting includes selected issues related to the activity of a court.

§ 4. Duties referred to in § 1 item 1-3 may be performed exclusively by judges.

§ 5. The Minister of Justice, upon consultation with the National Council of the Judiciary, specifies, by regulation, detailed procedure for exercising supervision over the administrative activity of courts by bodies and persons designated thereto and distribution of tasks among the presidents of courts.

Article 39.

Duties within the scope of supervision over the administrative activity of courts shall not violate the scope in which judges are independent.

Article 40.

§ 1. Should the court of appeal or a regional court as an appellate court identify an obvious violation of provisions at the hearing of a case, notwithstanding other entitlements, the court raises the irregularity to a competent court. The court of appeal or a regional court, prior to raising the irregularity, may request explanations from a judge that presides over the bench adjudicating in the lower instance. The identification of and raising the irregularity shall not influence the resolution of a case.

§ 2. The court of appeal or a regional court notifies the president of a competent court about the raising of the irregularity referred to in § 1, and in the event of more serious irregularities - it also notifies the Minister of Justice.

§ 3. A copy of a ruling of the court of appeal or a regional court as an appellate court, including the fact of raising irregularities, is enclosed to the personal files of a judge.

§ 4. Upon the lapse of five years from raising the irregularity as provided for in § 1, at the request of the judge, the president of a competent court orders the removal of the copy of the ruling referred to in § 3 from personal files of the judge, if during that period no subsequent obvious violation of provisions at the hearing of a case by an appellate court was identified resulting in raising irregularity or no written comment provided for in Article 37 § 4 was made. In such an event, only simultaneous removal of all letters and provisions referred to in § 3 and Article 37 § 4b from personal files of the judge is permissible.

Article 41.

§ 1. The Minister of Justice, upon consultation with the National Council of the Judiciary, issues, by regulation, internal common courts regulations that specify internal organization and order of functioning of courts, the order of acts in courts, the order of performance of official duties and performance of tasks by judges holding managerial positions, the course of administrative acts in matters within the competence of courts, acceptable systems and hours of the performance of official duties and particular terms and conditions with respect to providing access to premises to participants of proceedings, witnesses and other persons who stay in courts. At the issuance of a regulation the following shall be taken into consideration: principles of efficiency, principles of reason, principles of economical and fast acting, as well as the need to ensure reliable performance of tasks courts are entrusted with.

§ 2. The Minister of Justice specifies, by regulation, detailed acts of courts with respect to matters within the scope of international civil and criminal proceedings in international relations, including: certifying documents to be used abroad, procedure of performance of acts related to persons using immunity and diplomacy and consular privileges as well as acts involving participation of such persons, acts related to appearance before courts, procedure for determining nationality, detailed procedure for applying for legal assistance and provision of such assistance to courts and other bodies of foreign countries and detailed procedure for applying for handing over of wanted or convicted persons as well as other forms of cooperation in criminal matters.

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Article 68.

§ 1. The service relationship of a judge terminates under the law if the judge resigns. Resignation of a judge becomes effective upon three months from the date of submitting the declaration to the Minister of Justice, unless the Minister of Justice fixes a different date of expiration of the service relationship, at the request of the judge. The Minister of Justice notifies the National Council of the Judiciary and the President of the Republic of Poland about the resignation of a judge.

§ 2. A valid disciplinary court decision on dismissal of a judge from the office and a valid judicial decision to impose on the judge a penalty in the form of depriving him/her of public rights or putting a ban on his/her occupying judicial positions, results under the law, in the loss of the position and post of judge; service relationship of a judge expires upon the decision becoming valid.

§ 3. Service relationship of a judge expires upon the day of loss of Polish nationality by the judge.

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Article 79.

A judge shall not, quoting the principle of judicial independence, avoid the fulfilment of orders within the scope of administrative acts if, under the provisions of the Act, such acts constitute judicial duties, or of orders concerning the efficiency of court proceedings. He/she may, however, request the order to be issued in writing.

Article 72.

The Minister of Justice notifies the judge about the termination of the service relationship referred to in Article 68 § 1 or about the expiry of the service relationship referred to in Article 68 § 2, or about the retirement under Article 69.

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Article 79.

A judge shall not, quoting the principle of judicial independence, avoid the fulfilment of orders within the scope of administrative acts if, under the provisions of the Act, such acts constitute judicial duties, or of orders concerning the efficiency of court proceedings. He/she may, however, request the order to be issued in writing.

Article 80.

§ 1. A judge may not be detained or called to criminal responsibility without the permission of a competent disciplinary court. The foregoing shall not concern detention if a judge was caught red handed, should such detention be necessary to ensure the appropriate course of proceedings. By the time of issuance of a resolution, which permits calling, the judge to criminal responsibility, only acts requiring urgent attention are permitted.

§ 2. The president of the court of appeal having jurisdiction over the place of detention shall be immediately notified about the detention of a judge. The president may order an immediate release of the detained judge. The president of the court of appeal immediately notifies the National Council of the Judiciary, the Minister of Justice and the First President of the Supreme Court about the fact of detention of a judge.

§ 2a. A motion for the permission to call the judge to criminal responsibility, if not lodged by a public prosecutor, should be executed by an attorney at law or a legal counsel being an attorney in fact.

§ 2b. Should the motion for calling the judge to criminal responsibility not correspond to the formal terms of a pleading specified in the Code of Penal Procedure or be obviously groundless, the president of a disciplinary court refuses to accept the motion. Decision on refusal to accept the motion may be appealed against with a disciplinary court competent to consider the motion.

§ 2c. The disciplinary court issues a resolution, which permits calling the judge to criminal responsibility if a reasonable suspicion exists that the judge has committed the offence. The resolution resolves the issue within the scope of permission to call the judge to criminal responsibility and includes the statement of grounds.

§ 2d. The disciplinary court considers the motion for permission to call the judge to criminal responsibility within fourteen days from the date of lodging it to the disciplinary court, subject to Article 80a § 1.

§ 2e. Prior to the issuance of the resolution, the disciplinary court hears the disciplinary commissioner, as well as the judge, representative of the body or a person who moved for the permission, if such appear. The failure of the foregoing persons to appear shall not withhold the consideration of the motion.

§ 2f. The judge, whom the proceedings concern, has the right to access documents enclosed to the motion. However, when bringing the motion to the disciplinary court, the public prosecutor may reserve that such documents or a part thereof, may not be disclosed to the judge due to the interest of preparatory proceedings.

§ 2g. If the public prosecutor made the reservation referred to in § 2f, the presiding judge of the disciplinary court shall immediately delegate the case to be heard at the session. The disciplinary court may refuse a judge the access to documents enclosed to the motion.

§ 2h. Should a public prosecutor who lodges the motion for permission to call the judge to criminal responsibility at the same time move for permission to provisionally arrest the judge, the resolution, which permits calling the judge to criminal responsibility also includes permission to detain the judge and apply provisional arrest, unless the disciplinary court decides otherwise.

§ 3. (repealed).

§ 4. When deciding in the case referred to in § 1, the disciplinary court may be satisfied with the statement of the judge that he/she moves for the issuance of a resolution on the permission to call him/her to criminal responsibility.

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Article 81. For committing petty offences a judge is liable only on disciplinary grounds.

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Chapter 3

Disciplinary Responsibility of Judges

Article 107.

§ 1. A judge takes disciplinary responsibility for misconduct in service including a gross violation of the provisions of law and for breach of the authority of the office of judge (disciplinary misconduct).

§ 2. A judge also takes disciplinary responsibility for his/her conduct before taking his/her post if he/she failed in the duty of a civil servant or appeared to be unworthy to hold a judicial post.

Article 108.

§ 1. Disciplinary proceedings may not be initiated upon the lapse of three years from the time of committing the act.

§ 2. Should disciplinary proceedings be initiated prior to the lapse of the term referred to in § 1, the period of disciplinary limitation lapses upon five years from the time of committing the act. However, should the case not be validly closed before the lapse of the term referred to in § 1, the disciplinary court adjudicates about the disciplinary misconduct and discontinues the proceeding with respect to imposing the disciplinary penalty.

§ 3. The period of disciplinary limitation with respect to disciplinary responsibility for an offence lapses at the same time as the period of limitation for offences.

§ 4. However, should the disciplinary misconduct include attributes of an offence, the period of disciplinary limitation may lapse earlier than the period of limitation stipulated in the Penal Code.

Article 109.

§ 1. Disciplinary penalties include:

- 1) an admonition,
- 2) a reprimand,
- 3) the dismissal from the function held,
- 4) the transfer to another place of service,
- 5) the dismissal from the office.

§ 2. A court may make a valid disciplinary decision public.

§ 3. A judge penalized as referred to in § 1 item 3 or 4 is deprived for the period of five years of the possibility to be promoted to a higher judicial post, to sit in the board of the court, to adjudicate in the disciplinary court and to perform the lost function .

§ 4. The disciplinary penalty referred to in § 1 item 5 excludes the reinstatement of the person subject to it in the judicial post.

§ 5. In case of a disciplinary misconduct or an offence of lesser gravity, the disciplinary court may refrain from imposing a penalty.

Article 110.

§ 1. The following disciplinary courts are set up to hear disciplinary cases against judges:

- 1) in the lower instance - courts of appeal,
- 2) in the higher instance - the Supreme Court.

§ 2. Disciplinary courts are furthermore competent to adjudicate in cases referred to in Article 37 § 4a, Article 75 § 2 item 3 and in Article 80-80c.

§ 3. The disciplinary court having jurisdiction over the circuit where the judge subject to proceedings performs the service is competent to hear cases referred to in § 1 and 2. Should a case concern a court of appeal judge or a regional court judge, another court, indicated at the request of a disciplinary commissioner by the First President of the Supreme Court, is competent to hear the case.

§ 4. Disciplinary courts adjudicate in the bench of three judges. All judges of a given disciplinary court are entitled to adjudicate, with the exception of the president of the court, vice presidents of the court and the disciplinary commissioner.

§ 5. A disciplinary court in the lower instance may adjudicate in off-site sessions in a regional court, within the area of jurisdiction of which the accused holds the post of judge, unless the interest of the justice opposes thereto.

Article 111.

The composition of the disciplinary court is decided by a draw from among the judges of a given court, provided, however, that at least one of the disciplinary court judges permanently adjudicates in criminal cases. The judge who permanently adjudicates in criminal cases and has been on service the longest is the presiding judge of the disciplinary court.

Article 112.

§ 1. The disciplinary commissioner is the entitled prosecutor before a disciplinary court, in cases of court of appeal judges, as well as in cases of presidents and vice presidents of regional courts; in all other cases - the entitled prosecutor is the deputy of the disciplinary commissioner.

§ 2. The disciplinary commissioner is selected by the National Council of the Judiciary from among candidates presented by the general assembly of court of appeal judges. The disciplinary commissioner acts at the National Council of the Judiciary. The term of office of the disciplinary commissioner is four years.

§ 3. Assemblies specified in § 2 select from among court of appeal judges one candidate each to perform the function of the disciplinary commissioner and propose the selected candidates to the National Council of the Judiciary, three months before the lapse of the term of office of the previous disciplinary commissioner at the latest or within a month upon the resignation thereof.

§ 4. Boards of courts of appeal select deputies of a disciplinary commissioner for each appeal and boards of regional courts select deputies from among judges of a given court for each circuit. The term of office of deputies of a disciplinary commissioner is two years.

§ 5. Within the scope of conducting explanatory proceedings the disciplinary commissioner and his/her deputies are bound by instructions of an authorized body.

§ 6. The disciplinary commissioner is entitled to take over each case conducted by the deputy disciplinary commissioner if he/she deems it is justified by the interest of the justice.

§ 7. Should a competent deputy of the disciplinary commissioner not be able to conduct a case, the disciplinary commissioner designates a deputy disciplinary commissioner from another circuit to conduct the case.

§ 8. Should any obstacles occur preventing the performance of duties by the disciplinary commissioner, the deputy disciplinary commissioner who has longest been on service takes over the case until the obstacles cease to exist.

§ 9. Provisions on the disciplinary commissioner apply accordingly to the deputies of the disciplinary commissioner.

Article 113.

The accused may appoint a defense counsel from among judges or attorneys at law.

Article 114.

§ 1. The disciplinary commissioner acts in this capacity at a relevant request of the Minister of Justice, the president of the court of appeal or of the regional court and the board of the court of appeal or regional court, at the request of the National Council of the Judiciary or on his/her own initiative, upon preliminary clarification of the circumstances indispensable for establishing the attributes of misconduct, and after the judge has made explanations, unless making such explanations is impossible.

§ 2. Upon the proceedings referred to in § 1, there being grounds for instituting disciplinary proceedings, the disciplinary commissioner institutes disciplinary proceedings and provides the judge concerned with written charges. At the same time, with respect to cases referred to in Article 110 § 3 second sentence, the disciplinary commissioner requests the First President of the Supreme Court for indication of competent disciplinary court to hear the case in the lower instance. The court should be indicated within seven days. § 3. After being presented with the charges, within fourteen days, the accused is entitled to make explanations and to apply for hearing the evidence.

§ 4. Upon the lapse of the period referred to in § 3 and, if necessary, after hearing further evidence, the disciplinary commissioner applies to a competent court for hearing the disciplinary case. The motion should specify the committed act being the subject of the proceedings and include the statement of grounds.

§ 5. Should the disciplinary commissioner not find sufficient grounds for instituting the disciplinary proceedings requested by an authorized body, he/she issues a ruling to refuse the institution thereof. The copy of the ruling is served on the body who lodged the motion for initiation of proceedings, on the board of the appropriate regional court or court of appeal and on the accused.

§ 6. Within seven days following the service of the ruling referred to in § 5 or of the ruling to discontinue the disciplinary proceedings, the accused, the body which moved for initiation of disciplinary proceedings and the competent board are entitled to lodge a complaint with the disciplinary court.

§ 7. The complaint should be examined within fourteen days upon the date of lodging thereof.

Article 115.

§ 1. Upon lodging the motion for hearing the disciplinary case, the president of the disciplinary court fixes the dates for the trial.

§ 2. The date of the trial shall not be later than a month from the date of lodging the motion.

§ 3. An unjustified failure to appear of the accused or of the defense counsel shall not adjourn the hearing of the case.

Article 116.

§ 1. Disciplinary proceedings are open to the public.

§ 2. The disciplinary court may hear the case at a non-public session for reasons of morality, state security and public order as well as for the reason of the protection of private life of the parties or significant private interest.

§ 3. Should the case be heard at a non-public session the disciplinary decision is made public.

Article 117.

If in the course of the trial another instance of misconduct is revealed, in addition to the one included in the motion for hearing the disciplinary case, the court may render a judgment with respect to such misconduct only upon the consent of the disciplinary commissioner and of the accused or his/her defense counsel; should no consent be granted, the disciplinary commissioner conducts separate disciplinary proceedings with respect to such misconduct.

Article 118.

Should the service relationship of a judge expire or terminate in the course of the disciplinary proceedings, the proceedings shall still continue. If the accused undertook employment in a state office, General Public Prosecutor of the State Treasury, an attorney at law office or as a legal counsel or notary, the court sends the judgment to such an office, General Public Prosecutor of the State Treasury, the Chief Council of the Attorneys at Law, the National Council of Legal Counsels or the National Council of Notaries.

Article 119.

Should the misconduct include attributes of an offence, the disciplinary court hears the case *ex officio* within the scope of granting a permission to call the judge to criminal responsibility and issues a resolution referred to in Article 80 § 1, which shall not discontinue the disciplinary proceedings.

Article 120.

§ 1. Upon valid closing of the criminal proceedings against the judge, the court or the public prosecutor sends the files of the case to a competent disciplinary commissioner. If no disciplinary proceedings were initiated, the disciplinary commissioner undertakes disciplinary actions, even if the judgment of acquittal was rendered in the criminal proceedings.

§ 2. If a valid judgment was rendered with respect to the judge, which, pursuant to the Act, resulted in the judge's dismissal from the post, the disciplinary court notifies the Minister of Justice, who orders the dismissal of the judge subject to the penalty, even if the disciplinary judgment convicting the judge to a penalty more lenient than the dismissal from the post had already been executed.

Article 121.

§ 1. The accused, the disciplinary commissioner, as well as the National Council of the Judiciary and the Minister of Justice may appeal against the disciplinary court judgments rendered in the lower instance and against decisions and orders closing the procedure to render the judgment. § 2. The appeal should be considered within two months from the date of lodging thereof with the disciplinary court of the higher instance.

Article 122.

The judgment of the disciplinary court of the higher instance is not subject to cassation.

Article 123.

§ 1. Should the dismissal from the office be adjudicated, and the disciplinary court fail to suspend the performance of service duties by a judge earlier, the judgment results in the suspension of the performance of service duties by the judge and in the reduction of his/her remuneration by 50 percent for the period of suspension. Article 129 § 3 applies accordingly.

§ 2. The presiding judge of the disciplinary court in the lower instance sends a copy of the valid judgment of the disciplinary court to the National Council of the Judiciary and to the Minister of Justice, as well as to the president of a competent court and the board of such court.

§ 3. The Minister of Justice executes the judgment as regards penalties specified in Article 109 § 1 items 4 and 5, and the president of the regional court and the president of the court of appeal execute judgment as regards penalties specified in Article 109 § 1 item 3, with respect to judges of such courts.

Article 124.

§ 1. A copy of a valid disciplinary penalty judgment is enclosed to the personal files of the accused.

§ 2. Upon the lapse of five years from the validation of the judgment adjudicating a penalty stipulated in Article 109 § 1 items 1-4, the Minister of Justice orders the removal of the judgment from the personal files of the judge if within that period no convicting judgment was rendered against the person subject to the penalty. In such an event, only simultaneous removal of copies of all convicting judgments from the personal files of the judge is permissible.

Article 125.

The National Council of the Judiciary, the First President of the Supreme Court and the Minister of Justice may move for resuming the disciplinary proceedings.

Article 126.

§ 1. The disciplinary proceedings to the disadvantage of the accused may be resumed if the proceedings were discontinued or the judgment was rendered as a result of an offence or if within five years from the discontinuation or rendering of the judgment, new circumstances or evidences are discovered, which could constitute the grounds for conviction or the imposition of a more severe penalty.

§ 2. The disciplinary proceedings may be resumed for the benefit of the convict also upon his/her death if new circumstances or evidence is discovered, which could constitute grounds for acquittal or imposition of a more lenient penalty.

§ 3. In the event of the death of the convict, the motion for resuming the proceedings may be lodged by his/her spouse, relatives in linear kinship, siblings, an adopter, an adoptee and the disciplinary commissioner.

Article 127.

Resolutions made in the course of disciplinary proceedings require, *ex officio*, a written statement of grounds and shall be served on the parties. Judgments and rulings as well as orders closing the procedure to render a judgment are also served on the National Council of the Judiciary and on the Minister of Justice.

Article 128.

To matters not regulated herein the provisions of the Code of Penal Procedure apply.

Article 129.

§ 1. The disciplinary court may suspend a judge in the performance of service duties against whom the disciplinary proceedings or the proceedings for incapacitation have been initiated.

§ 2. Should the disciplinary court issue a resolution permitting to call the judge to criminal responsibility, the judge is suspended in the performance of service duties *ex officio*.

§ 3. The disciplinary court, when suspending a judge in the performance of service duties, reduces his/her remuneration by 25 to 50 percent for the period of the suspension; the foregoing shall not concern persons with respect to whom the proceedings for incapacitation have been initiated.

§ 4. Should the disciplinary proceedings be discontinued or the judge be acquitted, he/she is paid the withheld remuneration.

Article 130.

§ 1. If a judge is detained due to being caught red handed when committing an intentional offence or if due to the type of the act committed by the judge the authority of the court or significant interests of the service require an immediate withdrawal from the performance of service duties, the president of the court or the Minister of Justice may order an immediate break in service duties until the time of the issuance of resolution by the disciplinary court, however, no longer than a month.

§ 2. If the judge referred to in § 1 performs the function of the president of the court, the Minister of Justice orders the break in the performance of service duties.

§ 3. The president of the court or the Minister of Justice notify the disciplinary court about the issuance of the order referred to in § 1 within three days from the date of the issuance thereof, and the court immediately, not later than before the lapse of the term for which the break was ordered, issues a resolution on the suspension of the judge in the performance of service duties or reverses the order concerning the break in the performance of the duties. The disciplinary court, notifies the judge about the session if the court deems it reasonable.

Article 131.

§ 1. In cases provided for in Article 37 § 4a or Article 75 § 2 item 3 and in the case of the suspension of the judge in the performance of service duties or reversal of the order concerning the break in the performance of duties referred to in Article 130 § 1 the disciplinary court, upon hearing the disciplinary commissioner out, issues a resolution. The court also hears the judge out if he/she appeared at the session.

§ 2. The National Council of the Judiciary and the board of the court which lodged the motion referred to in Article 75 § 2 item 3 may complain against the resolution refusing to consider the motion. § 3. A judge may lodge a complaint against the resolution refusing to consider the reservation referred to in Article 37 § 4a.

§ 4. A judge may lodge a complaint against the resolution concerning the suspension in the performance of service duties, and the disciplinary commissioner may lodge a complaint also against the resolution reversing the order concerning the break in the performance of the duties referred to in Article 130 § 2; the complaint shall not adjourn the enforcement of the resolution.

§ 5. The complaint is considered by the disciplinary court of the higher instance, and in cases referred to in § 3, by the same disciplinary court in a different bench of the same competence.

Article 132.

The suspension in the performance of service duties ceases at the time of valid closing of the disciplinary proceedings, unless the disciplinary court had reversed it earlier.

Article 133.

Costs of disciplinary proceedings are covered by the State Treasury.

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Article 135.

§ 1. The Minister of Justice may, upon the consent of the board of the regional court, entrust the assistant judge with the performance of judicial duties in a district court for a specified period, not exceeding four years. The period may be extended until the time the assistant judge attains 29 years of age, or until closing of the proceedings referred to in Article 58 § 4-6.

§ 2. Within the scope of adjudicating assistant judges are independent and are bound only by the Constitution and Acts.

§ 3. An assistant judge who has not been entrusted with the performance of judicial duties is authorized to perform the duties of a court referendary.

§ 4. At taking up the post, the assistant judge makes the solemn affirmation before the Minister of Justice, according to the following formula:

"I affirm solemnly, holding the post of assistant judge entrusted to me, to serve faithfully to the Republic of Poland, to perform scrupulously the official duties, to guard the law, to act in accordance with the principles of dignity and honesty, keep the State and professional secrets, and if entrusted with judicial duties, to administer justice, without any bias, according to my conscience and to the rules of law "; the person taking this affirmation may finish it by saying the words: "So help me God."

§ 5. An assistant judge, for the period of the performance of judicial duties, remains under the care of a judge designated to perform the function of consultant.

§ 6. A judge performing the function of consultant assists the assistant judge, at his/her request, within the scope of judicial work techniques and the performance of court administrative acts. Furthermore, the consultant judge inspects the court sessions presided over by the assistant judge under his/her care and prepares quarterly reports on the function performed.

§ 7. A regional court judge adjudicating in cases, the hearing of which was entrusted to the assistant judge, is designated for the function of consultant.

§ 8. The Minister of Justice, upon consultation with the National Council of the Judiciary, specifies, by regulation, the procedure for performing the function of the consultant.

Article 136.

§ 1. The remuneration of an assistant judge is determined as specified in Article 91 § 1 first sentence, and in accordance with the procedure specified in Article 91 § 8.

§ 2. Provisions concerning judges, with the exception of Article 66, Article 68 § 2, Article 69-74, Article 77 § 1-5 and § 7, Article 91 § 1 and § 2-4 and § 9-11, Article 94a, Article 94b, Article 98 and Article 102 apply to assistant judges entrusted with the performance of judicial duties.

§ 3. Provisions of Article 82a apply accordingly to assistant judges.

...

Polish National Council of Judiciary Act

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Article. 3....

... 2. Moreover, the Council performs other tasks stipulated in Acts, in particular...

4) it appoints the Disciplinary Ombudsmen of common courts' judges and Disciplinary Ombudsmen of military courts' judges;

...

Article 6.

The Council chooses a Disciplinary Ombudsman of common courts after candidates are put forward by general assemblies of judges of courts of appeal and a Disciplinary Commissioner of military courts after candidates are put forward by the Assembly of Judges of Military Courts. The provisions of Article 18 apply accordingly.

...

Article 19. 1.

The Council appoints permanent commissions from among its members:

1) commission for disciplinary liability of the judges, whose task is to analyze the rulings of disciplinary courts, petition the Council to take disciplinary measures, appeal the rulings of disciplinary courts and disciplinary ombudsmen and to make requests to re-commence disciplinary proceedings;

2) budgetary commission, whose task is to annually:

a) draw up the draft resolution containing a plan of revenues and expenses of the Council and resolutions containing the petitions referred to in Article 178 § 3 of the Act of 27 July 2001 - Law on the organization of common law courts (Journal of Laws No. 98, item 1070, as amended²) and Article 4 § 4 of the Act of 21 August 1997 - Law on the organization of military courts (Journal of Laws of 2007, No. 226, item 1676, as amended³),

b) examine the data contained in the declarations of the presidents of courts of appeal and the presidents of military circuit courts concerning their financial status for the purpose of the Council analyzing these declarations by 30 June of each year;

3) commission for visitation and inspection, whose task is to draw up draft resolutions concerning visitations at the court or its organizational unit, inspection at the court or inspection of the judge's work;

4) commission for judges' professional ethics, whose task is to draw up draft resolutions concerning the collection of the principles of judges' professional ethics and observance thereof.

2. The Council may appoint other issue commissions.