



NETWORK OF THE PRESIDENTS
OF THE SUPREME JUDICIAL
COURTS OF THE
EUROPEAN UNION

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INTRODUCTORY REPORT

Session II

**The nomination of judges to the supreme court
(Questions 6-10 of the questionnaire)**

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Report on the questionnaire regarding appointment of judges to the Supreme Court¹

Questions 6-10

6. Is there transparency of the selection process (a.) number of applicants, (b.) selection criteria? And of the appointment process (c) publicity of the list candidates, (d), public hearing?
7. (a) Who reaches the decision to appoint among the selected candidates? (b) On which criteria (merit, representativeness of the society, professional experience, etc.)
8. Can the selection of an Applicant at the Supreme Court be appealed? By whom? To whom? And regarding the decision to appoint the selected candidate?
9. (a) Who carries out the appointment (Head of State...)? (b) May the appointing authority refuse to appoint?
10. Are you satisfied of the prevailing conditions in your country? Which modifications would you suggest?

Summary of the answers

6 (a). In a small majority of the countries the number (and names) of applicants are not made public. Whether or not the number of applicants and their names are made public depends, among other things, on whether the candidates themselves have to take the initiative to apply or the selecting organ will take the initiative to approach possible candidates. In countries where the selecting organ takes the initiative, there are no applicants in the sense that the initiative to apply comes solely from the candidates themselves. In countries where the initiative rests with the candidates themselves a consideration not to publicize the number and names of applicants might be to protect applicants from public disgrace of applying but not being nominated, and to prevent the chilling effect this might have.

(b). In most, if not all, countries certain conditions a candidate must fulfill to be eligible are laid down in legislation. In most countries these legal conditions/criteria are quite formal and of a minimal nature (age, nationality, degree in law). In some other countries, these conditions are more detailed. In countries where the criteria laid down in legislation are formal and basic, a set of more detailed criteria is used in the selection process. In roughly two thirds of the countries all the relevant criteria are publicized.

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(c). In a small majority of the countries, the list of candidates that will go further in the nomination- and appointment-process is made public. Most countries that do not publicize the number of applicants and their names do also preserve confidentiality with regard to the candidates that are in the nomination- and appointment-process.

(d). In an overwhelming majority of the countries, no public hearings are held. One of the exceptions in this regard is Portugal where recent changes in the procedure provide for a public hearing by a jury, but – judging by the Portuguese reply to the questionnaire – this does not seem to be seen as an improvement, since it does not achieve the goal which was aimed at by adding this new element to the procedure. An interesting alternative might be seen in the Romanian procedure, where the interviews that are held with the candidates are published on the website of the Conseil Supérieur de la Magistrature.

7. On the question who reaches the decision to appoint among the selected candidates the answers vary to a large extent. Some countries use a procedure in which the judiciary explicitly plays a crucial role, while other countries rely more heavily on bodies dominated by other branches of government (parliament, president). In several countries the balance of powers between the branches of government involved in the process of selecting and appointing judges to the supreme court seems to be struck by leaving the selection to a body dominated by the judiciary, while leaving the appointment of the selected candidates to a representative of the executive branch of government.

In most countries the criteria that are used for selecting candidates are no other criteria than the ones that are being used for nominating and appointing candidates.

8. In most countries the selection of an applicant can not be appealed. In countries where such a possibility does exist, it seems to be a theoretical possibility that is not used in practice.

9. In most countries, a high official on the side of the government (president, minister) carries out the appointment (though in some countries formally the Queen does). In several countries parliament carries out the appointment. In both these countries, the high official or parliament

can refuse to carry out the appointment. Though in practice in most countries this does not or most seldom occur.

In some other countries, a high judicial organ carries out the appointment. Because in these countries this organ is also in charge of the selection-process, there is no need for a possibility to refuse to carry out the appointment.

10. In most countries, the process of selection and appointment of candidates is satisfactory to the respondents. The remarks that were made about possible improvements concentrate on two subjects: (i) the level of transparency of the procedure from the perspective of the general public ('could be better', but might not lead to 'les buts envisagés') and (ii) the influence of the executive and legislative branches government ('should be less', but 'might diminish legitimacy').

Overview of the answers

6. Is there transparency of the selection process (a.) number of applicants, (b.) selection criteria? And of the appointment process (c) publicity of the list candidates, (d), public hearing?

	6a	B	c	d
Austria	no	no	no	no
Bulgaria	yes	yes	yes	no
Croatia	yes/no	yes/no	yes/no	yes/no
Cyprus	no	no	no	no
Czech Rep.	no	no	no	no
Denmark	no	no	no	no
Estonia	yes	yes	yes	no
Finland	yes	yes	yes	no
France	no	no, the criteria used by the Conseil supérieur de la magistrature are not published, only the legal criteria are	yes, nomination is published	no
Germany	no	no, the criteria used by the Election Committee are not published, only the legal criteria are	no	no
Hungary	yes	yes	no	Hearings before the departments and the Judicial Council can be public
Ireland	yes	yes	no	no
Italy	no	yes	no	no

Latvia	no	yes	no	no
Lithuania	yes	yes	yes	yes
Luxembourg	no	no	no	no
Netherlands	no	yes	yes	no
Norway	yes	no	yes	no
Poland	no	yes	yes	no
Portugal	yes	yes	yes	yes
Romania	yes	yes	yes	Les interviews sont publiées sur la page Internet du CSM.
Slovakia	yes	yes	yes	yes
Slovenia	yes	yes	yes	no
Spain	Media receive information they demand			
Sweden	yes	yes	yes	no
United Kingdom	no	yes	no	no

7. (a) Who reaches the decision to appoint among the selected candidates? (b) On which criteria (merit, representativeness of the society, professional experience, etc.)

	7a	b
Austria	The Federal Government nominates a candidate to be appointed by the Federal president (who, in theory, could refuse the appointment). In practice, the Supreme Court, by making the proposal plays a decisive role in the appointment procedure (with the exception of the appointment of the President and the Vice-Presidents)	Qualification
Bulgaria	The resolution of the Supreme Judicial Council (SJC) for choosing candidates and their appointment shall be passed in a sitting by a secret ballot by a majority of SJC's members	See answer to question 3 + The SJC takes account of the compiled examination marks given by the Committee on the proposals and assessment and the Committee on professional ethics and corruption prevention to the SJC
Croatia	State Judicial Council	See answer to question 3 + Detailed criteria stipulated in the The Rule Book of the evaluation in the procedure of appointing the judges
Cyprus	President of the Republic in practice in accordance with recommendation by the Supreme Court	See answer to question 3
Czech Rep.	President of the Supreme Court after consultation of the Judicial Council of the Supreme Court makes a proposal to the Minister of Justice	See answer to question 2 and 3
Denmark	Judicial Appointments Council	See answer to question 2 and 3
Estonia	The General Assembly of the Supreme Court selects from the list one candidate to be presented to the parliament by the Chief Justice	See answer to question 2. The candidate has to be an experienced and recognized lawyer
Finland	President of the Republic makes the formal appointment. In practice, the appointment is made in accordance with the Supreme Court's proposal	See answer to question 3: qualification
France	Le Conseil supérieur de la magistrature	See answer to question 3
Germany	Election Committee (32 members: composed of the Ministers of Justice of the 16 federal states and another 16 members who are selected by and usually but not necessarily are members of the Bundestag (German federal parliament). The Committee is	Aptitude, qualifications and professional achievements

	chaired by the federal minister of Justice. He or she will convene the Committee if an election is necessary, in practice once a year. Both the Ministers and the Election Committee members are entitled to nominate candidates.)	
Hungary	President of the Curia	See answer to question 2 and 3
Ireland	Minister for Justice and Equality	
Italy	Conseil Supérieure de la Magistrature	See answer to question 3
Latvia	Competition committee (the Chief Justice of the Supreme Court, Heads of Departments of the Senate, the Head of the Administration)	Professional skills; Knowledge of case-law; Understanding of court system in general; Personal features (communication skills, politeness, precision, honesty, ability to establish/maintain communication); Educational and scientific activities; Motivation to work in the Supreme Court; References from previous places of work
Lithuania	The decision to appoint concrete nominated person is made by the Parliament; but the decision to nominate a concrete selected candidate from among several candidates is made by the President of the Republic	See answer to question 3
Luxembourg	La Cour supérieure de justice	Les critères principaux sont le rang ainsi que l'expérience professionnelle du candidat.
Netherlands	The Supreme Court provides the Lower House of Parliament with a recommendation of candidates. The Lower House of Parliament nominates candidates and the Minister of Justice and Security appoints	See answer to question 3
Norway	Judicial Appointments Board submits its recommendation to the Ministry of Justice	See answer to question 2
Poland	National Council of the Judiciary	See answer to question 2 and 3
Portugal	Conseil supérieur de la Magistrature	See answer to question 2 and 3
Romania	Conseil Supérieur de la Magistrature	See answer to question 2 and 3
Slovakia	Selection Committee (its members are appointed by the Court President from the database of candidates to the selection committee always after promulgation of the selection process, whereas: one member shall be from the candidates elected by the Parliament, one member shall be from the candidates elected by the Judicial Council, two members shall be from the candidates appointed by the Minister of Justice. The fifth member of the selection committee shall be elected by the council of judges of the Supreme Court (body of judicial self-administration). Members shall elect the committee president from among them.)	See answer to question 2 and 3
Slovenia	Judicial Council decides on which candidate to propose to the National Assembly for election	See answer to question 2 and 3 and in art. 28 and 29 of the Judicial Service Act
Spain	Council of the Judiciary	Merits in general and professional experience, specially in order to the post to be selected
Sweden	Judges Nomination Board	See answer to question 3
United Kingdom	Selection commission (President and Deputy President of the Supreme Court, a representative of the Judicial Appointments Commission in England and Wales, the Judicial Appointments Commission in Northern Ireland, and the Judicial Appointments Board in Scotland. At least one of those representatives must be a lay person i.e. not legally qualified) When a selection commission has completed its process a recommendation is made to the Lord Chancellor, in effect the Minister of Justice. The statutory regime provides for certain circumstances in which the Lord	See answer to question 2: merit

	Chancellor can either reject a recommendation or invite a reconsideration. Once a recommendation has been accepted the Lord Chancellor notifies the recommendation to the Prime Minister who makes the formal recommendation to Her Majesty The Queen	
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8. Can the selection of an Applicant at the Supreme Court be appealed? By whom? To whom?

And regarding the decision to appoint the selected candidate?

9. (a) Who carries out the appointment (Head of State...)? (b) May the appointing authority refuse to appoint?

10. Are you satisfied of the prevailing conditions in your country? Which modifications would you suggest?

	8	9a	B	10
Austria	no	Federal President	yes	The appointment practice for Supreme Court judges is quite satisfying. However, this practice could easily be changed by a political decision of the Government. So it would be preferable if the proposal of the Supreme Court committee were formally binding. As to the appointment of the President and the Vice Presidents, consideration should be given to the idea of an election or at least of a formal proposal by the Court
Bulgaria	The resolution of the SJC refusing the appointment of a candidate based on non-compliance with the relevant requirements is subject to appeal by any person concerned. The term for lodging an appeal is 7 days following the resolution's publication. The appeal is heard by a three-member panel at the Supreme Administrative Court and its decision is final and binding	SJC		-
Croatia	Any selection of the applicants can be appealed by any of the applicants through the Claim to the Constitutional Court.	President of the State Judicial Council		-
Cyprus	no	President of the Republic		-
Czech Rep.	Decision to appoint and assign a judge (generally) can be appealed before the administrative courts.	President of the Czech Republic	yes	Conditions on the selection process, appointment of the judges and their assignment to the concrete court have been subjects of wide discussions over

	Selection process of a judgeship at the Supreme Court can not be appealed			the years. A solution that would fit the best seems to be in introducing a Supreme Judicial Council as a body competent in the processes described above. The creation of such a body is a continuous point of discussion between the government and the representatives of the judiciary in the Czech Republic
Denmark	no	Queen of Denmark (formally) Minister of Justice	yes	-
Estonia	Theoretically, a person who finds that his or her rights have been violated by a resolution of the parliament (the Riigikogu) may submit a request to the Supreme Court (acting in Estonia also as a constitutional court) to repeal the resolution of the Riigikogu. Since the adoption of Estonian current constitution in June 1992, the resolution of the parliament nominating a justice has never been challenged in the Supreme Court	Parliament		-
Finland	No	President of the Republic	yes	-
France	La seule voie de recours est le recours pour excès de pouvoir devant le Conseil d'Etat du décret du Président de la République de nomination des magistrats de la Cour de cassation	Président de la République	yes	-
Germany	No	Federal President	yes	-
Hungary	An applicant who participated in the call for applications can submit an objection within 15 days after the publication of the decision on the appointment of the successful applicant if the successful candidate did not meet the conditions listed in the call for applications or did not meet the requirements for becoming a judge laid down in law. The objection shall be submitted to the President of the Curia, who shall forward the objection within five working days to the Administrative and Labour Court with jurisdiction for Budapest that has exclusive jurisdiction to hear the case. The Administrative and Labour Court shall adjudicate	President of the Republic	yes	-

	the objection within fifteen days. If the Administrative and Labour Court finds that the successful candidate cannot become a judge or does not meet the conditions of the call for applications, the decision shall be communicated to the candidate who submitted the objection, to the President of the Curia and the President of the Republic. If the objection is unfounded, the Administrative and Labour Court shall reject it and shall communicate the decision to the candidate who submitted the objection and to the President of the Curia			
Ireland	no	President of Ireland		Since 2002, the Judicial Appointments Advisory Board has recommended in its Annual Report that the Government consider amending the legislation so as to enable the Minister for Justice and Equality to require any person whom the Government proposes to advise the President of Ireland to appoint to judicial office to undergo a medical examination before his/her appointment is finalised. The Minister for Justice and Equality, Mr. Alan Shatter TD has indicated that he will be reviewing the position of the Judicial Appointments Advisory Board and the method of appointment, with particular reference to the practice in other jurisdictions
Italy	La décision du Conseil Supérieure de la Magistrature sur la nomination des magistrats de cassation peut être contestée avant le juge administratif (Tribunal Administratif Régional)	La nomination des juges effectuée par le Conseil Supérieur de la Magistrature, est formellement proclamée par un décret du Ministre de la Justice. Au contraire la nomination des présidents de chambres, effectuée par le Conseil Supérieur de la Magistrature, est proclamée par un décret du Président de la République		L'institution récente de la Commission Technique a amélioré la sélection des juges pour la Cour de cassation. Ce choix, auparavant, était effectué par le Conseil Supérieur de la Magistrature sans l'aide d'aucun organe externe chargé de l'évaluation des candidats. Le système précédent a donné des résultats négatifs car il privilégiait excessivement l'ancienneté des candidats. Les premières applications du système actuel sont positives
Latvia	no	Parliament		-
Lithuania	no	Parliament	yes	-
Luxembourg	Les candidats évincés peuvent attaquer l'arrêté grand-ducal de nomination du candidat choisi.	Le Grand-Duc procède à la nomination du candidat choisi par le	yes	On considère actuellement que la procédure de sélection et de nomination des magistrats manque de transparence et elle sera prochainement complètement

	Un arrêt de la cour administrative du 20 décembre 2001 a, par confirmation d'un jugement du tribunal administratif, déclaré irrecevable le recours d'un candidat, présenté comme troisième candidat par la Cour pour un poste à la Cour supérieure de justice, contre l'avis de cette Cour et, par réformation du jugement, dit non fondé le recours en annulation de l'arrêté grand-ducal de nomination du candidat choisi	Gouvernement		modifiée. Les instances politiques ont décidé la création d'un « Conseil supérieur de la Justice ». Un projet de loi est en phase d'élaboration. Ce Conseil, composé non pas exclusivement de magistrats, sera compétent pour les nominations aux différents postes dans la magistrature. La nouvelle loi énoncera des conditions et des critères précis pour le recrutement à la base des magistrats et elle réglementera en détail les modalités d'appréciation de la qualification et de l'expérience professionnelle des candidats en cas d'avancement
Netherlands	no	Queen of the Netherlands (formally) Minister of Justice and Security	yes	-
Norway	no	the King in Council (the Government).	yes	-
Poland	Maybe, a case is pending at the Constitutional Tribunal on the question whether a candidate to be appointed as judge of a common court is entitled to a legal remedy when the President refuses to appoint a candidate	President of the Republic of Poland	yes	Perhaps more emphasis should be placed on enabling the public opinion to become familiar with the candidatures, which would contribute to dismissing (sometimes repeated) accusations that the representatives of the third power have no democratic legitimisation
Portugal	La délibération du CSM peut faire objet d'un recours contentieux de légalité pour vérification de la légalité. Le jugement de l'action est de la compétence de la Cour suprême de justice, qui décidera en chambre spécifique qui a la compétence pour décider les pourvois des délibérations du CSM	Conseil supérieur de la Magistrature (CSM)		Le modèle de sélection et nomination des candidats à la Cour suprême de la compétence et responsabilité du CSM est appliqué depuis 1978 avec succès et avec acceptation généralisée. En 2008, toutefois, des modifications ont été introduites par la loi n° 26/2008, de 27 juin : la constitution d'un jury pour l'appréciation et discussion publique du curriculum de chaque candidat en introduisant publicité et possibilité pour le candidat de l'exercice du contradictoire en public, notamment sur la discussion du curriculum. L'application du nouveau modèle, qui a eu lieu seulement une fois au concours de 2010-2011 (valable pour les postes vacants pour 2011-2014), a suscité des critiques, puisque il n'a pas atteint les buts envisagés. Il y a des opinions qui défendent le retour au modèle de concours antérieur
Romania	No	Président de la République	yes	-
Slovakia	No	Judicial Council		Judicial Council of the Slovak Republic, the Supreme Court of the Slovak Republic, but also courts at lower levels and professional association of judges have already indicated (the new

				regulation of the selection process came into force on 1th of May, 2011, respectively, 1th of January, 2012) that the submitted drafts of the status Acts as well as the drafts of the Acts governing the organization of the judiciary are steps back; they increase the impact of the executive power and weaken and in some cases even completely eliminate the independence of the judiciary and its separation from other state powers (state authorities).
Slovenia	In connection to the procedure of promotion to the position of a Supreme Court judge and the assessment described under the previous question, an appeal can be made to the personnel council of the Supreme Court. According to Article 15 of the Judicial Service Act, it is possible to lodge an administrative dispute against the decision of the Ministry of Justice to reject a late or incomplete application	National Assembly	yes	Given the fact that there have been occasions, when the National Assembly did not support the proposal of the Judicial Council and the proposed candidate was not elected for the position of Supreme Court judge it would be more suitable to exclude the Legislative Branch from the procedure of election of Supreme Court judges. An advisable modification would include the opinion of the Joint Session of the Supreme Court that would propose the candidate to the Judicial Council. The Judicial Council would then in turn propose the candidate for nomination to the President of the Republic
Spain	Yes, the decision may be appealed by the other candidates by lack of enough supporting statement	Head of State	no	-
Sweden	No	Government	yes	-
United Kingdom	No	Her Majesty The Queen (formally)	no	Some aspects of the system for making judicial appointments are currently under review
