

Appointing of Supreme Court Judges
Examination of Situation in Individual Countries

Condition as of 30 May 2006

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Introductory Comments

1. Since certain terms in the catalogue of questions are not explicitly defined, and the answers were not provided according to the same schematic in every case, categorizing the systems is connected with a certain amount of uncertainty. For instance, it is not clear whether in question number 1 the term “candidates” applies to all the individuals applying for the post of a supreme court judge or includes only those persons whose selection or appointment was proposed by appropriate authority.

2. Institutions of judicial commission and other self-governing bodies of the judiciary are regarded, from the perspective of their involvement in the appointment procedure, as being functionally united, although their particular compositions differ from each other.

Examination of the situation with respect to the membership composition of these institutions is presented in point B of the review of the situation in individual countries.

3. The following countries provided answers to questions regarding appointment of supreme court judges forwarded earlier:

- Germany
- England and Wales
- Austria
- Belgium
- Bulgaria
- Cyprus
- Denmark
- Spain
- Estonia
- Finland
- France
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Norway
- the Netherlands
- Poland
- Portugal
- Romania
- Scotland
- Slovakia
- Slovenia
- Sweden
- the Czech Republic

The following countries did not respond to the questions:

- Iceland
- Liechtenstein
- Northern Ireland

A.

1. Competition for available posts is conducted, as far as it can be concluded from the reports on individual countries, in:

- England and Wales
- Belgium
- Denmark
- Estonia
- Hungary
- Norway
- Poland
- Scotland
- Slovakia
- Slovenia

2. Selection of candidates is conducted by:

- a) special bodies without the participation of supreme court (S.C.):

Germany	Commission for the Appointment of Supreme Court Judges
Norway	Recommendation Board ¹

- b) special bodies with the participation of S.C:

Spain	Assessing Committee (5 members of General Council) ²
Ireland	Judicial Appointment Advisory Board under direction of Chief Justice among those candidates who are not High Court judges
Latvia	selection is made by the S.C. President in accordance with recommendations of the Judicial Qualifications Committee ³
Portugal	National Judicial Council
Slovakia	Nomination Board

¹ It is not known whether the judges sitting on this Board are judges of the Supreme Court.

² However, based on the composition of the General Council (see B. 1.) one should presume that the Supreme Court is being directly represented in this body.

³ Lack of information on composition of the Committee as such.

c) special bodies with no detailed information about potential participation of S.C.⁴:

England and Wales	Judicial Appointments Committee
Scotland	Judicial Appointment Board

d) S.C. bodies

Austria	S.C."Internal Senate": president, first deputy president, three judges
Lithuania ⁵	S.C. President who consults with heads of sections
the Netherlands	Maintaining up-to-date list of candidates by S.C. internal committee
Poland	General Assembly of S.C. Judges – proposal of 2 candidates per 1 available judicial post
Romania	Directorate College of S.C. examines applications and submits report of recommendations to Supreme Judicial Council
Slovenia	S.C. "Board of Employees" conducts evaluations and forwards them accompanied with own opinion and optional commentary by S.C. President to Judicial Commission
Sweden	3 S.C. judges prepare a list of candidates
Hungary	preparing a list of candidates by judges of appropriate senate

3. Interview of Candidates

Germany	by S.C. Presidial Council
Austria	by Internal Senate?
Belgium	by General Assembly on motion of applicant; by Appointing Commission on the motion or ex officio
Estonia	by S.C General Assembly.
France	by Supreme Judicial Council
Greece	by Supreme Judicial Council
Hungary	by S.C. President
Italy	possibility of interview by Judicial High Council
Lithuania	by Parliament, parliamentary groups and commissions
Norway	by Recommendations Committee
the Netherlands	by S.C. President and Judicial Council

⁴ Lack of information on the composition of these bodies.

⁵ On 9 May 2006, the Constitutional Tribunal decided that the President of the Supreme Court does not have the exclusive right to submit proposals. The President of the Republic of Lithuania may put forward to the Parliament a different candidate. In the future, the President of the Republic will probably be advised in this respect by the Judicial Council.

Poland	by General Assembly of S.C. Judges
Romania	by Plenum of the Supreme Judicial Council
Scotland	by Judicial Appointments Board

4. Participation of S.C.

a) assumption of a position

Germany	adopting a position by Presidial Council (S.C. President, Deputy President , 5 chosen S.C. Judges -)
England and Wales	adopting a position by Lord Chief Justice
Belgium	adopting a position by S.C. General Assembly
Norway	adopting a position by S.C.
Scotland	adopting a position by Lord President
Slovenia	adopting a position by S.C. "Board of Employees" with optional commentary by S.C. President
Cyprus	consultations with S.C.

b) proposals, recommendations, requirement of approval

Austria	proposal by S.C. Internal Senate
Denmark	S.C. recommendations (S.C. President and General Assembly)
Estonia	proposal of S.C. President taking into consideration opinion of General Assembly
Finland	proposal of S.C. General Assembly
Latvia	proposal of S.C. President
Lithuania	proposal of S.C. President
Luxembourg	proposal of S.C. General Assembly
the Czech Republic	judge appointment only with approval of S.C. President

c) individual connections between S.C. and judicial commission etc.

Spain	S.C President is the President of the General Council; 2 members of the General Council are
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	S.C. judges
Ireland	Chief Justice as President of the Judicial Appointments Advisory Board
Italy	First President is member of the Judicial High Council
Portugal	S.C. President is the President of the National Judicial Council
Slovakia	Nomination Board (3 members recommended by the S.C. Judicial Council); S.C. President is the President of Judicial Commission of the Republic of Slovakia

d) participation in variety of ways

Bulgaria	Proposal put forward by S.C. President; appointment carried out by S.C. President
Greece	S.C. President is also the President of Supreme Judicial Council, 11 S.C. judges are also members of the Supreme Judicial Commission; S.C. General Assembly has resolving competence in the event of protest by Minister of Justice against decision of Supreme Judicial Council
Hungary	Preparing a list of candidates by judges of appropriate Senate; S.C. President decides on nomination
the Netherlands	Preparing a list of candidates by S.C. internal commission; S.C. President conducts detailed discussions regarding the list with the Judicial Council
Poland	S.C. Chamber; selection of candidates during General Assembly of S.C. Judges; S.C. First President and 2 S.C. judges are members of the National Council of the Judiciary
Romania	Directorate College of the Supreme Court examines applications and submits report of recommendations; S.C. President is a member of the Supreme Judicial Council
Sweden	3 S.C. judges constitute the preparatory group, which creates a list of candidates; proposal of S.C. General Assembly

e) no participation

France	-
Malta	-

5. Participation of other state authorities (not being: head of state, judicial commission, judge appointment commission etc.)

Germany	Commission for the Appointment of Supreme Court Judges, Federal Minister of Justice
England and Wales	Judicial Appointments Committee; Lord Chancellor
Austria	Minister of Justice
Belgium	Minister of Justice
Bulgaria	-
Cyprus	-
Denmark	Minister of Justice
Spain	-
Estonia	Council of Administration of Courts, Parliament
Finland	Minister of Justice, Council of State
France	Ministry of Justice
Greece	Minister of Justice
Hungary	National Assembly (at selection of S.C. President)
Ireland	Government
Italy	Minister of Justice
Latvia	Parliament
Lithuania	Parliament, committees and parliamentary clubs
Luxembourg	-
Malta	Prime Minister
Norway	Minister of Justice, Government
The Netherlands	House of Representatives, Council of Ministers
Poland	-
Portugal	-
Romania	-
Scotland	First Minister
Slovakia	Minister of Justice
Slovenia	Minister of Justice, Parliament
Sweden	Minister of Justice, Government
the Czech Republic	Minister of Justice

6. Decision reached by

Germany	Commission for the Appointment of Supreme Court Judges and Federal Minister of Justice
England and Wales	till October 2006 : Lord Chancellor; from October 2006 : Judicial Appointments Committee
Austria	President
Belgium	Appointing Commission of the Judicial Council
Bulgaria	Supreme Judicial Council
Cyprus	President of the Republic of Cyprus
Denmark	Minister of Justice
Spain	General Council
Estonia	Parliament
Finland	Council of State
France	Supreme Judicial Commission
Greece	Supreme Judicial Commission
Hungary	S.C. President
Ireland	Government
Italy	Judicial High Council
Latvia	Parliament
Lithuania	Parliament
Luxembourg	most probably Grand Duke
Malta	President of Malta in accordance with the proposal of Prime Minister
Norway	Government
The Netherlands	Council of Ministers
Poland	probably National Council of the Judiciary
Portugal	National Judicial Council
Romania	Supreme Judicial Council
Scotland	First Minister
Slovakia	most probably President of the Republic of Slovakia
Slovenia	Parliament
Sweden	Government
the Czech Republic	S.C. President, Minister of Justice

7. Appointment carried out by:

Germany	President
England and Wales	Queen
Austria	President
Belgium	King
Bulgaria	S.C. President
Cyprus	President of the Republic of Cyprus
Denmark	Queen
Spain	King
Estonia	Parliament
Finland	President of the Republic of Finland
France	President
Greece	?
Hungary	?
Ireland	President of Ireland
Italy	Minister of Justice or President of the Republic of Italy
Latvia	?
Lithuania	Parliament
Luxembourg	Grand Duke
Malta	President of Malta
Norway	King
The Netherlands	Queen
Poland	President of the Republic of Poland
Portugal	National Judicial Council
Romania	President
Scotland	Queen
Slovakia	President of the Republic of Slovakia
Slovenia	?
Sweden	Government
the Czech Republic	President of the Czech Republic

8. Appointment appeal action

- a) by whom
b) to what authority

Germany	a) candidate who was not appointed b) Administrative Court
England and Wales	a) candidate who was not appointed, Lord Chancellor b) ?
Belgium	a) candidate who was not appointed b) Conseil d'Etat (Council of State)
Bulgaria	a) candidate who was not appointed b) Supreme Administrative Court
Spain	a) most probably candidate who was not appointed b) S.C. (administrative section)
Estonia	a) most probably individual who was not appointed b) S.C. (constitutional review chamber)
France	a) most probably candidate who was not appointed b) Conseil d'Etat (Council of State)
Greece	a) candidate who was not appointed b) S.C. General Assembly
Italy	a) candidate who was not appointed b) regional administrative court
Lithuania	a) Parliament (1/5 MPs) b) ?
Luxembourg	a) most probably candidate who was not appointed b) administrative court
Portugal	a) candidate who was not appointed b) S.C.
Romania	a) candidate who was not appointed b) S.C.
Slovakia	a) ? b) Constitutional Tribunal
Slovenia	a) ? b) Judicial Commission and possibility of conducting administrative court action

B

1. Composition of judicial self-governing bodies (judicial commission, general council etc.)⁶

Belgium	Supreme Judicial Council Composed of French and Dutch speaking colleges with 28 members each, including 14 judges/prosecutor; group of judges/prosecutors: 1 S.C. judge or 1 prosecutor in the Supreme Court, 1 judge-member, 1 prosecutor + member from each district of the Appeals Tribunal; group of remaining members: 4 members of both genders, 4 barristers, 3 professors, 4 members with higher level of education (appointed by the Senate); Appointing Commission of the Judicial Council has 14 members
Bulgaria	Supreme Judicial Council term: 5 years; 25 members: S.C. President; President of Supreme Administrative Court; Attorney-General, 11 members selected by organs of the judicature (judges select 6 members, prosecutors 3 members, examining justices 2 members), 11 members are selected by the National Assembly; deliberations under the direction of the Minister of Justice who does not have the right to vote
Spain	General Council term: 50 years; 20 members selected by the Parliament, including 12 judges: S.C. President is also the President of the General Council + usually 2 S.C. judges
France	Supreme Judicial Commission
Greece	Supreme Judicial Council 15 members: S.C. President is also the President of the Supreme Judicial Council, Attorney General, 11 S.C. judges, 2 deputies of the highest representatives of the public prosecutor's office, chosen by a draw
Italy	Judicial High Council members: among others, S.C First President.
Lithuania	Judicial Council

⁶ If there is no data regarding composition, only name of appropriate body is given.

Poland	National Council of the Judiciary members: S.C. First President. Minister of Justice, President of Supreme Administrative Court, 1 person nominated by the President of the Republic of Poland; 15 judges (including 2 S.C. judges, as well as judges of general, administrative and military courts), 4 MPs, 2 Senators
Portugal	National Judicial Council S.C. President is also the President of the National Judicial Council
Romania	Supreme Judicial Council members: S.C. President, representatives of the public and of Minister of Justice
Slovakia	Judicial Commission of the Republic of Slovakia 18 members: S.C. President is the President of the Judicial Commission
Slovenia	Judicial Commission

2. Composition of commissions of recommendations, commissions for appointing supreme court judges etc., in the countries which do not have judicial councils, general councils etc.

Country	Commission of Recommendation etc.
Germany	Commission for the Appointment of Supreme Court Judges: 32 members, composed of 16 ministries of justice of union states, 16 members elected by the Parliament, headed by the Federal Minister of Justices;
England and Wales	Judicial Appointments Committee
Denmark	Council for the Appointment for Judges Since 1999; members: 1 S.C. judge, 1 judge of higher instance court, 1 regional court judge. 1 barrister, 2 representatives of the public nominated by the Ministry of Justice
Ireland	Judicial Appointments Advisory Board (in case of non-judges)
Latvia	Judicial Qualifications Committee
the Netherlands	Judiciary Commission
Norway	Recommendation Board

	7 members (3 judges, 1 barrister, 1 State attorney, 2 representatives of the public)
Scotland	Judicial Appointment Board 10 members (5 judicial, 5 non-judicial)

3. Composition of commissions of recommendations etc., which from the organizational perspective are part of the judicial council, general council etc.

Country	Commission of Recommendation etc.
Belgium	Appointing Commission of the Judicial Council 14 members, including 7 judges/prosecutors
Bulgaria	Proposal-Assessing Committee of the Supreme Judicial Council 7 members
Spain	Assessing Committee of General Council 5 members
Slovakia	Nomination Board 5 members (3 recommended by the S.C. Judicial Council, 1 by the Judicial Commission of the Republic of Slovakia, 1 by the Minister of Justice)