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COMPARATIVE NOTE ON INTERNATIONAL STANDARDS FOR SELECTION, COMPETENCIES AND SKILLS FOR JUDGES IN ADMINISTRATIVE JUSTICE

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*This Note is also available in Russian.
However, the English version remains the only official version of the document*

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I. INTRODUCTION

1. On 3 August 2020 the Chairperson of the High Judicial Council of Kazakhstan sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) a request for an overview of international practice relating to judges dealing with administrative justice issues, with particular focus on their selection, and required competencies.
2. On 11 August 2020, the OSCE/ODIHR responded to this request, confirming the Office’s readiness to prepare this overview of international practice relating to judges dealing with administrative justice issues. The overview will focus on administrative judges’ selection and required competencies and skills with references to appropriate examples of the best relevant practices on the selection of administrative judges, and their required competencies and skills.
3. This Note was prepared in response to the above request. The OSCE/ODIHR conducted this assessment within its mandate to assist the OSCE participating States with the implementation of their human dimension commitments.¹

II. SCOPE OF REVIEW

4. The scope of this Note on Selection Competences and Skills for Independent Administrative Judges (hereinafter referred to as “the Note”) in the OSCE-Region (hereinafter “the Region”) encompasses the relevant international human rights instruments (conventions, covenants etc. and protocols thereto), national laws and good legal practices in the Region pertaining to administrative justice.
5. The Note raises key issues and provides indications of areas that often cause concern. The Note also highlights, as appropriate, good practices from other OSCE participating States

¹ See OSCE Decision No. 7/08 Further Strengthening the Rule of Law in the OSCE Area (Helsinki 2008), point 4, where the Ministerial Council “[e]ncourages participating States, with the assistance, where appropriate, of relevant OSCE executive structures in accordance with their mandates and within existing resources, to continue and to enhance their efforts to share information and best practices and to strengthen the rule of law [on the issue of] independence of the judiciary, effective administration of justice, right to a fair trial, access to court, accountability of state institutions and officials, respect for the rule of law in public administration, the right to legal assistance and respect for the human rights of persons in detention [...]” [1] GENDER: The OSCE/ODIHR conducted this assessment within its mandate as established by the OSCE Action Plan for the Promotion of Gender Equality, which states that “[t]he ODIHR, in co-operation with other international organizations and relevant national bodies and institutions, will assist OSCE participating States in complying with international instruments for the promotion of gender equality and women’s rights, and in reviewing legislation to ensure appropriate legal guarantees for the promotion of gender equality in accordance with OSCE and other commitments” – See OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04,MC.DEC/14/04 (2004), < <http://www.osce.org/mc/23295>>.

in this field. When referring to national legislation, the OSCE/ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another country. Country examples should always be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

6. The Note will also focus both on the standards for judicial independence and standards for selecting judges.
7. Moreover, in accordance with the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, programmes and projects, the Note's analysis takes into account the potentially different impact on women and men.²
8. The Note is translated into Russian, but in case of discrepancies, the English version shall prevail.
9. In view of the above, the OSCE/ODIHR would like to make mention that this Note does not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on relevant legal acts or related legislation pertaining to the legal and institutional framework regulating administrative justice in Kazakhstan in the future.

III. EXECUTIVE SUMMARY

10. OSCE/ODIHR welcomes the willingness of the High Judicial Council of Kazakhstan to seek international expertise in relation to the international obligations on administrative justice and in particular standards for selecting judges. OSCE/ODIHR hopes that this Note will provide further guidance on how the relevant legislation could be brought in line with international human rights obligations and OSCE commitments.
11. The OSCE participating States have consistently indicated a strong commitment to protecting and guaranteeing the rights of individuals. This includes the right to a fair trial, by an independent and impartial tribunal. Therefore, committing to ensure that effective remedies, including the right to appeal to executive, legislative, judicial or administrative organs, are available to all individuals who claim their rights. OSCE Commitments will be referred to throughout the Note.
12. A functioning justice system is a fundamental element of rule of law. One of the key elements of the rule of law is an independent and impartial judiciary. Consequently, the proper selection of judges is essential to ensure the independence of the judiciary, including judges in the administrative jurisdiction. Both the United Nations and the Council of Europe have developed recommendations on the selection of judges. These

² See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), <<http://www.osce.org/mc/23295?download=true>>. Also: OSCE ODIHR Gender, Diversity and Justice https://www.osce.org/files/f/documents/3/4/419840_0.pdf and DCAF/ODIHR/UN WOMEN Justice and Gender Report <https://www.osce.org/files/f/documents/8/9/442525.pdf> and Annex thereto: International and Regional Laws and Instruments related to Gender Equality and the Security and Justice Sector” <https://www.osce.org/files/f/documents/f/7/461926.pdf>.

standards recognise that only an independent court is able to adequately redress a violation of individual rights and the law, including the acts of an administrative authority.

13. Through their commitments, OSCE Participating States have undertaken to “respect the international standards that relate to the independence of judges [...] and the impartial operation of the public judicial service” and to “ensure that the independence of the judiciary is guaranteed and enshrined in the constitution or the law of the country and is respected in practice”. Regardless of the legal tradition from which the administrative jurisdiction derives in a particular country, administrative judges are part of the judiciary. Therefore, they are required to meet the same standards of impartiality, have the same skills and capabilities as all other judges, and be able to impart justice in an impartial way.
14. In addition, regional case law and other authoritative recommendations offer useful guidance on the meaning and scope of the international norms and standards. Their proper interpretation contributes to an evolved understanding of the standard for selecting judges and an independent judiciary. This sets the backdrop for an analysis of the standards for administrative justice and the selection of judges through a review of legislation and practices in the participating States.

IV. ANALYSIS

1. Relevant International Standards on administrative justice

15. The independence of the judiciary is a fundamental principle. It is an essential element of any democratic state based on the rule of law and an integral part of the fundamental democratic principle of the separation of powers.³ This independence entails that both the judiciary as an institution, but also individual judges, must be able to exercise their professional responsibilities without being influenced or fearful of arbitrary disciplinary investigations and/or sanctions by the executive or legislative branches or other external sources. The independence of the judiciary is also essential to engendering public trust and credibility in the justice system in general, so that everyone is treated equally before the law and seen as being treated equally, and that no one is above the law. Public confidence in the courts as independent from political influence is vital in a democratic society that respects the rule of law. In short, a state is governed by the rule of law if, *inter alia*, an independent, impartial and accountable judiciary prevents the exercise of arbitrary power by the authorities and protects the rights of the individuals, so that public decision-making is predictable.

³ See UN Human Rights Council, [Resolution on the Independence and Impartiality of the Judiciary, Jurors and Assessors, and the Independence of Lawyers](#), A/HRC/29/L.11, 30 June 2015, which stresses “the importance of ensuring accountability, transparency and integrity in the judiciary as an essential element of judicial independence and a concept inherent to the rule of law, when it is implemented in line with the Basic Principles on the Independence of the Judiciary and other relevant human rights norms, principles and standards”. As stated in the [OSCE Copenhagen Document 1990](#), “the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression” (para 2).

16. The principle of the independence of the judiciary is also essential to upholding other international human rights standards.⁴ In particular, the right to a fair hearing, which can only be fully respected and protected if it takes place before an “independent and impartial tribunal”. This is articulated in Article 10 of the Universal Declaration of Human Rights, which reflects customary international law, and subsequently incorporated into Article 14 of the *International Covenant on Civil and Political Rights*⁵ (hereinafter “the ICCPR”). The institutional relationships and mechanisms required for establishing and maintaining an independent judiciary are the subject of the *UN Basic Principles on the Independence of the Judiciary* (1985),⁶ and have been further elaborated in the *Bangalore Principles of Judicial Conduct* (2002).⁷ International understanding of the practical requirements of judicial independence continues to be shaped by the work of international bodies, including the UN Human Rights Committee and the UN Special Rapporteur on the Independence of Judges and Lawyers. In its *General Comment No. 32 on Article 14 of the ICCPR*, the UN Human Rights Committee specifically provided that States should ensure “the actual independence of the judiciary from political interference by the executive branch and legislature” and “take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws, and establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them”.⁸
17. OSCE participating States have consistently indicated a strong commitment to protecting and guaranteeing the rights of individuals in the context of grievances against or disputes with the state. These have included, in particular, commitments to: ensure that individuals who claim that their human rights and fundamental freedoms have been violated have access to effective remedies, including the right to appeal to executive, legislative, judicial or administrative organs (Vienna Concluding Document 1989);⁹ guarantee for everyone effective means of redress against administrative decisions, which should be fully justifiable and which must as a rule indicate the usual remedies available (Copenhagen Document 1990);¹⁰ endeavour to provide for judicial review of administrative regulations and decisions ([Moscow Document 1991](#)).¹¹
18. To counter threats to security and prevent conflicts that may arise from practices that fall short of rule of law standards, OSCE participating States have also recognized that “[T]he development of societies based on pluralistic democracy and the rule of law are prerequisites for a lasting order of peace, security, justice and co-operation in Europe” (Moscow Document, 1991). This was reaffirmed at the 2010 Summit in Astana, where

⁴ See e.g., [OSCE Ministerial Council Decision No. 12/05 on Upholding Human Rights and the Rule of Law in Criminal Justice Systems](#), 6 December 2005.

⁵ UN International Covenant on Civil and Political Rights (hereinafter “ICCPR”), adopted by the UN General Assembly by the Resolution 2200A (XXI) of 16 December 1966. Kazakhstan ratified the ICCPR in 2006.

⁶ [UN Basic Principles on the Independence of the Judiciary](#), endorsed by UN General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

⁷ [Bangalore Principles of Judicial Conduct](#), adopted by the Judicial Group on Strengthening Judicial Integrity, which is an independent, autonomous, not-for-profit and voluntary entity composed of heads of the judiciary or senior judges from various countries, as revised at the Round Table Meeting of Chief Justices in the Hague (25-26 November 2002), and endorsed by the UN Economic and Social Council in its Resolution 2006/23 of 27 July 2006. See also [Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct](#) (2010), prepared by the Judicial Group on Strengthening Judicial Integrity.

⁸ UN Human Rights Committee, [General Comment No. 32 on Article 14 of the ICCPR: Right to Equality before Courts and Tribunals and to Fair Trial](#), 23 August 2007, para 19.

⁹ CSCE/OSCE 1989 Vienna Concluding Document 1989, para 13.9.

¹⁰ CSCE/OSCE, 1990 Copenhagen Document, para 5.10.

¹¹ CSCE/OSCE, 1991 Moscow Document, para 18.4.

OSCE participating States agreed that; “*Respect for human rights, fundamental freedoms, democracy and the rule of law must be safeguarded and strengthened.*”¹² Kazakhstan, as an OSCE participating State, has committed to ensure “*the independence of judges and the impartial operation of the public judicial service*” as one of the elements of justice (*1990 Copenhagen Document*).¹³ In the *1991 Moscow Document*,¹⁴ participating States further committed to “*respect the international standards that relate to the independence of judges [...] and the impartial operation of the public judicial service*” and to “*ensure that the independence of the judiciary is guaranteed and enshrined in the constitution or the law of the country and is respected in practice*”. Moreover, in its *Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area* (2008), the OSCE Ministerial Council called upon OSCE participating States “*to honour their obligations under international law and to observe their OSCE commitments regarding the rule of law at both international and national levels, including in all aspects of their legislation, administration and judiciary*”, as a key element of strengthening the rule of law in the OSCE area.¹⁵ Further and more detailed guidance is provided by the *ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* (2010) (ODIHR Kyiv Recommendations).¹⁶ While these recommendations have been formulated to address reform initiatives in a specific geographic region at the time, the guiding principles contained therein, can be analogously applied to the judicial administration of any OSCE participating State.

19. Furthermore, even though the Republic of Kazakhstan is not a Member State of the Council of Europe (hereinafter “the CoE”) and not party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “the ECHR”), the Convention and the ensuring case law of the European Court of Human Rights as well as other Council of Europe instruments, may serve as useful guidance on the issue. Furthermore, Kazakhstan is also co-operating with some CoE bodies, such as the Venice Commission for Democracy through Law.
20. Similarly, to Article 14 of the ICCPR, Article 6 of the ECHR provides that everyone is entitled to a fair and public hearing “by an independent and impartial tribunal established by law”. To determine whether a body can be considered “independent” according to Article 6 para 1 of the ECHR, the European Court of Human Rights considers various elements, among others, the manner of appointment of its members and their term of office, the existence of guarantees against outside pressure and whether the body has the appearance of independence.¹⁷ In other words, the manner of selection of judges is crucial to ensure their independence.¹⁸

¹² Astana Commemorative Declaration Towards a Security Community, 3 December 2010, point 7

¹³ *Op. cit.* footnote 10, paras 5 and 5.12.

¹⁴ *Op. cit.* footnote 11, paras 19.1 and 19.2.

¹⁵ OSCE, *Ministerial Council Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area* (Helsinki, 4-5 December 2008).

¹⁶ *ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* (2010) were developed by a group of independent experts under the leadership of ODIHR and the Max Planck Institute for Comparative Public Law and International Law – Minerva Research Group on Judicial Independence.

¹⁷ See European Court of Human Rights: *Campbell and Fell v. the United Kingdom* (Application nos. 7819/77, 7878/77, judgment of 28 June 1984), para 78. See also *Olujić v. Croatia* (Application no. 22330/05, judgment of 5 May 2009), para 38; *Oleksandr Volkov v. Ukraine* (Application no. 21722/11, judgment of 25 May 2013), par 103; *Morice v. France* [GC] (Application no. 29369/10, judgment of 23 April 2015), para 78; on the relation of the judiciary with other branches of power: *Baka v. Hungary* [GC] (Application no. 20261/12, judgment of 23 June 2016), para 165; *Ramos Nunes de Carvalho e Sá v. Portugal* [GC] (Application nos. 55391/13, 57728/13 and 74041/13, judgment of 6 November 2018), para 144; *Guðmundur Andri Ástráðsson v. Iceland* (Application no. 26374/18, judgment of 12 March 2019), paras 100-103.

¹⁸ *Ibid.* (*Campbell and Fell v. the United Kingdom*), para. 78.

21. The Council of Europe's Committee of Ministers also formulated important and fundamental principles on judicial independence in its *Recommendation CM/Rec(2010)12 on Judges: Independence, Efficiency and Responsibilities*, which, among others, expressly states that “[t]he authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers”.¹⁹
22. The Note will also make reference to the opinions of the Consultative Council of European Judges (CCJE),²⁰ an advisory body of the Council of Europe on issues related to the independence, impartiality and competence of judges, and to the opinions and reports of the European Commission for Democracy through Law (Venice Commission).²¹
23. Finally, it is worth mentioning that while classically, judicial independence has long been seen as the independence from other branches of power (external), more recently, independence of the judiciary has been recognized as also encompassing internal independence that is protection of judges from the pressure *within* the judiciary.

1.1. General standards for selecting judges

24. In general, the United Nations and the Council of Europe standards regarding selection of judges are comparable and consider judicial appointments as crucial component of judicial independence. While the UN Basic Principle on the Independence of the Judiciary state that judicial appointments should not be based on “improper motives”,²² the Council of Europe's stance is that recruitment of judges must be merit-based.²³ This applies to all judicial appointments, including appointment of judges to administrative courts.
25. Principle 10 of the United Nations' Basic Principles on the Independence of the Judiciary, state that:

*“10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.”*²⁴

¹⁹ Council of Europe, *Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities*, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies, para 46.

²⁰ Available at <http://www.coe.int/t/dghl/cooperation/ccje/textes/Avis_en.asp>, particularly CCJE, *Opinion No. 1 (2001) on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges*; and Opinion No. 10 (2007) on the Council for the Judiciary at the Service of Society.;

²¹ In particular European Commission for Democracy through Law (Venice Commission), *Report on Judicial Appointments (2007)*, CDL-AD(2007)028-e; *Report on the Independence of the Judicial System – Part I: The Independence of Judges (2010)*, CDL-AD(2010)004; and *Rule of Law Checklist*, CDL-AD(2016)007, 18 March 2016.

²² *UN Basic Principles on the Independence of the Judiciary*, endorsed by UN General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

²³ *Op. cit.*, footnote 19, para 44 states:

“Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.”

²⁴ Recommendation adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

26. Through its case law, the European Court of Human Rights has developed general principles on how to determine the independence and impartiality of a tribunal, of which an essential component is the manner of selection of judges. In *Findlay v. the United Kingdom*, the Court outlined the criteria that should be considered when establishing if a body should be considered to be independent, in particular it said: “... *in order to establish whether a tribunal can be considered as “independent”, regard must be had, inter alia, to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence...*”.²⁵
27. Various international soft law documents recommend that selection of judges should be based on objective and clearly defined criteria pre-established by law²⁶ to assess their ability, integrity and experience,²⁷ while ensuring that the composition of the judiciary reflects the composition of the population as a whole,²⁸ and is balanced in terms of gender.²⁹ The objective is to ensure that the respective selection decisions are based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law in conformity with human rights norms.³⁰
28. The Consultative Council of European Judges (CCJE) recommends that authorities responsible in member States for making and advising on appointments and promotions should introduce, publish and give effect to objective criteria, with the aim of ensuring that the selection and career of judges are “based on merit, having regard to qualifications, integrity, ability and efficiency”. Once this is done, those bodies or authorities responsible for any appointment or promotion will be obliged to act accordingly, and it will then at least be possible to scrutinize the content of the criteria adopted and their practical effect.³¹ Recommendation CM/Rec (2010)12 of the Committee of Ministers of the Council of Europe,³² on judges’ independence, efficiency and responsibilities, makes similar recommendations. It also specifically states that the scope of the recommendation extends to “all persons exercising judicial functions” and thus applies to “non-professional judges, “except where it is clear from the context that they only apply to professional judges”. This encompasses the specificities of the status of administrative judges which in some systems may be non-professional judges.

²⁵ European Court of Human Rights: *Findlay v. the United Kingdom* (Application no. 22107/93, judgment of 25 February 1997), para 73. See also *op. cit.* footnote 17 (*Guðmundur Andri Ástráðsson v. Iceland*), para 113-119 and *Guðmundur Andri Ástráðsson v. Iceland* [GC] Application no. 26374/18, judgment of 1 December 2020), paras 287-290.

²⁶ See e.g. 2007 UN Human Rights Committee General Comment No. 32, par 19; 2010 CoE Recommendation CM/Rec(2010)12, para 44; *Op.cit* footnote 16 (Kyiv Recommendations), para 21; Articles 4-1 and 5-1 of the Universal Charter of the Judge; 1998 European Charter on the Statute for Judges, paras 2.1 and 2.2 also para 1.3 ; *op. cit.* footnote 21 (Venice Commission’s Report on the Independence of the Judicial System) , par 27; 2007 CCJE Opinion No. 10, paras 5-51.

²⁷ *Op. cit* footnote 6, Principle 13; *op. cit.* footnote 20 (CCJE Opinion No. 1), paras 17 and 29.

²⁸ *Op. cit.* footnote 16, para 24; *op. cit.* footnote 20 (2007 CCJE Opinion No. 10), para 50.

²⁹ See par 190 under Strategic Objective G.1: “Take measures to ensure women’s equal access to and full participation in power structures and decision-making” of the [Beijing Platform for Action, Chapter I of the Report of the Fourth World Conference on Women, Beijing](#), 4-15 September 1995 (A/CONF.177/20 and Add.1); and [OSCE Ministerial Council Decision 7/09 on Women’s Participation in Political and Public Life](#), 2 December 2009, par 1. See also 2011 Annual Report of the UN Special Rapporteur on the Independence of Judges and Lawyers, par 81. OSCE/ODIHR Gender, Diversity and Justice https://www.osce.org/files/f/documents/3/4/419840_0.pdf and DCAF/ODIHR/UN WOMEN Justice and Gender Report <https://www.osce.org/files/f/documents/8/9/442525.pdf> and Annex thereto: International and Regional Laws and Instruments related to Gender Equality and the Security and Justice Sector” <https://www.osce.org/files/f/documents/f/7/461926.pdf>.

³⁰ *Op. cit.* footnote 19, para 44; *op. cit* footnote 21 ([Report on the Independence of the Judicial System – Part I: The Independence of Judges](#)), paras 4 and 10; and *op. cit.* footnote 6, Principle 10.

³¹ *Op. cit.* footnote 20 (CCJE Opinion No 1).

³² *Op. cit* footnote 19.

1.2. Role of bodies responsible for selection of judges and management of courts.

29. In practice, ensuring the independence and impartiality of a court or tribunal is as much a matter of principle as it is a matter of management. In this sense, the management of the judiciary acquires relevance as a guarantee to protect independence and impartiality. The powers attributed to a body managing the judiciary (High Judicial Councils or similar) is a determining factor to ensure independence and impartiality. The human resource management system is crucial to guarantee professionalism (selection and recruitment, promotion, immovability, remuneration, ethical codes and discipline of judges).
30. In principle, judicial councils or other similar bodies are crucial to support and guarantee the independence of the judiciary in a given country, and as such should themselves be independent and impartial,³³ i.e., free from interference from the executive and legislative branches. Indeed, interfering with the independence of bodies, which are guarantors of judicial independence, could as a consequence impact and potentially jeopardize the independence of the judiciary in general.³⁴
31. The bodies or councils mentioned here are responsible for key issues pertaining to the independence of judges, particularly judicial appointments and promotion. They also represent the interests of the judiciary as a whole, in particular vis-à-vis the executive and legislative powers. For this reason, while they should be free from executive and legislative control, these independent bodies should, not be composed completely or over-prominently by members of the judiciary, so as to prevent self-interest, self-protection cronyism and also the perceptions of corporatism.³⁵ In sum, the right balance needs to be struck. This applies in the same manner to appointments of judges to administrative courts, in particular in those national systems (described below) which have a single path for selection, appointment and promotion of judges.

2. ADMINISTRATIVE JUDICIAL REVIEW

32. The fact that a judge can annul an administrative decision, oblige the administrative authority to redress an unlawful situation, and compensate the wronged party is the utmost expression of the rule of law. It is also the most genuine means of ensuring that all public authorities are effectively subject to the law and that citizens have their rights guaranteed when facing governments and administrations.
33. A solid and effective judicial review serves the general interests of a country and OSCE countries have established varying systems for such administrative judicial review (see for instance in Section 5.1.3. on Belgium *infra*. When a judicial ruling annuls an illegitimate or illegal administrative decision or obliges the state to compensate a wronged citizen, it does not diminish the efficacy or prestige of the public authorities or of the government; on the contrary, such a ruling contributes to improving the quality of the public administrative action, asserts the legitimacy of the state, and helps to create public trust in state institutions.

³³ *Op. cit* footnote 7 (Bangalore Principles of Judicial Conduct), Preamble: which states that the Bangalore Principles “presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards which are themselves independent and impartial”.

³⁴ OSCE/ODIHR Final Opinion on Draft Amendments to the Act on the National Council of the Judiciary and Certain Other Acts of Poland, 5 May 2017 para 37, available here: <https://www.osce.org/files/f/documents/f/c/315946.pdf>.

³⁵ *Op. cit* footnote 16, para 2.

34. The European Court of Human Rights has stressed the importance of administrative proceedings and the judicial review of administrative acts in the protection of individual rights. *“The Court observes in this connection that the administrative authorities form one element of a State subject to the rule of law and their interests accordingly coincide with the need for the proper administration of justice. Where administrative authorities refuse or fail to comply, or even delay doing so, the guarantees under Article 6 enjoyed by a litigant during the judicial phase of the proceedings are rendered devoid of purpose”*.³⁶
35. The Council of Europe Committee of Ministers Recommendation (2004)20, states that all administrative acts should be subject to judicial review. An administrative act it is understood as any act, both individual and normative, as well as a physical act taken by administrative authorities in the exercise of public power prerogatives, which may unduly affect the rights or interest of natural or legal persons. An administrative act is also one in which the administrative authority refuses to act or to decide (administrative silence or inaction) about an application or request. Judicial review it is understood as the examination and determination by a tribunal of the lawfulness of an administrative act and the imposition upon the administrative authority of the adoption of appropriate measures.³⁷
36. While Council of Europe documents acknowledge that “other methods of control of administrative acts, which may include internal appeal to the administrative authorities and control by the ombudsman institution as well as appeal to alternatives to litigation, set out in Recommendation Rec(2001)9, are useful for improving the functioning of jurisdictions and for the effective protection of human rights”³⁸ – judicial review of administrative decision provides the requisite safety valve for ensuring fair trial rights.
37. Generally, the interested parties may be obliged to exhaust all available administrative remedies prior to redress before a court. In such cases, these prior procedures should not be lengthy and should not pre-empt recourse to court. In general, provisions on prior use of administrative remedies are regarded as positive because they can solve the issue more rapidly by allowing the administration to review its own decisions and make the redress less expensive for the aggrieved party. They also contribute to reducing the courts’ workload. The time limit to lodge an application before court should be reasonably long and should be explicitly indicated in the administrative act.³⁹ The recommendation suggests that the costs of access to judicial review should not be a deterrent to seeking effective legal protection and therefore it suggests some state-provided legal aid in legally determined cases.
38. Following exhaustion of all administrative remedies, a court shall have the power to redress unlawful administrative acts, including through interim relief (interim suspension of the effects of an administrative decision), and reinstate the factual and legal situation that existed prior to the unlawful administrative act (full jurisdiction),⁴⁰ including monetary compensation for damages or loss of property. At a minimum, the court should be empowered to repeal the unlawful administrative act and instruct the administrative

³⁶ European Court of Human Rights *Hornsby v. Greece* of 19 March 1997, para 41.

³⁷ See for instance: European Court of Human Rights: *Harabin v. Slovakia* (app. no. 58688/11, 20 November 2012), paras 111-113.

³⁸ Council of Europe Recommendation Rec(2004)20 of the Committee of Ministers to member states on judicial review of administrative acts, preamble. (Adopted by the Committee of Ministers on 15 December 2004 at the 909th meeting of the Ministers’ Deputies)

³⁹ *Ibid.*, Section B Principles, 2 b.

⁴⁰ *Op. cit.* footnote 17: (*Ramos Nunes de Carvalho v. Portugal* , paras 176-177, see also *Denisov v. Ukraine* [GC] (app. no. 76639/11), 25 September 2018), paras 73-74.

authority to dictate a new one which is in conformity with the law. The court should also be able to oblige the administrative authority to act when it shows passivity in front of an application or request. The court should be able to impose the costs of the proceedings to one of the parties or to make them share the costs incurred, as appropriate. The execution of the court's rulings should be guaranteed, including through the crime of contempt of court.

39. The execution of judgments is made even more important in the context of administrative proceedings since litigants often seek not only annulment of a decision but also the removal of its effects. Thus, the protection that a judicial proceeding may bring, and the restoration of legality, requires an obligation on the part of the administrative authorities to comply with the judicial decisions.

3. VARIOUS ADMINISTRATIVE JUSTICE SYSTEMS AND THEIR ORGANISATIONAL PATTERNS

40. Most OSCE and all EU countries have accepted the idea of judicial control over administrative decisions, which has led to strengthening the role and the powers of the courts in examining the decisions of administrative bodies.
41. In general, in most countries the court has substitutive powers over the administration, i.e. it can replace the administration and/or an administrative decision 'on the merits'. This can be seen in countries such as Australia, Austria, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Spain, Switzerland and Turkey which have some type of substitutive decision-making among the powers of their administrative courts. This power is not, however, to be interpreted in wide and open terms, but restrictively and its exact manifestation depends on each State. Thus, several degrees of the extent of substitutive judgements can be noted. On the contrary, Belgium, Canada, Finland, Ireland, Norway, Poland, and the United Kingdom preclude any form of substitutive decision-making: they assume that the court cannot replace the public administration in administrative decision-making – this kind of administrative review focuses on the process of the decision-making itself and assesses whether the public administration body in question has acted in an *ultra vires* manner, that is, exceeded their decision making powers, as delegated by the law.
42. The diversity of origins of judicial review systems can be roughly described as follows:
- a. Common law countries, where the focus of judicial review generally is procedural fairness or procedural correctness of the administrative decisions and review whether the administrative authority decided within its legal competences and without exceeding its legal mandate (*ultra vires*).
 - b. Countries having followed the post-revolutionary French model, where the focus is on protecting the objective legality of the actions and decisions of public administration.
 - c. Countries influenced by the post-war German tradition where the control hinges on the concept of protecting subjective rights of individuals.
43. What is important to bear in mind in a practical sense, is that administrative justice is not limited to the guarantee of citizens' rights. Its justification also lies in the necessity to defend the legality of administrative action as required by the public interest and to strike a balance between individual rights and the general interest. For example, in France, a

distinction is made between the protection of legality (*contentieux de la légalité*) and the protection of rights (*plein contentieux* or *pleine jurisdiction*).

44. The organisational pattern of the administrative justice in OSCE participating States is therefore varied. The traditional choice which classified these countries was between an administrative jurisdiction that is separated from the ordinary judicial system; and one that is integrated into it.
45. In systems that are integrated into the general judicial system, such as Norway, for example, administrative cases are treated as civil cases, and are as such subject to the ordinary court's jurisdiction even if certain specialised courts or bodies similar to courts exist. Likewise, in Denmark administrative questions are subject to judicial review by the ordinary courts at any level. In the United Kingdom, the United States, the Netherlands or Spain, specialised judges are made responsible for administrative litigation (specialised chambers in common law courts, special administrative appeals tribunals and commissions with judicial functions, or other types of bodies specialised in administrative litigation). The specialisation of judges in administrative law is increasingly recognised, although the features of that specialisation remain country specific.
46. The second kind of system is where the administrative law system is separate from the general judiciary and it requires a separate organisation. Austria, France, Finland, Germany, Greece, Italy, Japan, Portugal or Sweden follow this pattern.
47. In countries where separate administrative jurisdictions exist, a process of rapprochement with ordinary jurisdictions is progressively taking place. These courts are expected to provide the same guarantees of impartiality and independence: Administrative judges must be genuine judges, not civil servants examining formal administrative complaints.

4. MODELS FOR SELECTING JUDGES FOR ADMINISTRATIVE COURT

48. There is no typical or standard procedure for the appointment of judges in the Region. Methods of judicial appointment vary according to different legal systems and within the same legal system.
49. In some countries, however, special recruitment procedures and conditions apply to ensure that administrative judges know how the public administration bodies function. This is especially the case in France, where the rulings of administrative judges have traditionally been regarded as pronouncing administrative decisions not judgements. Therefore, the public administration shall not be reviewed by the judiciary but by the public administration itself for the sake of separation of powers.⁴¹ Progressively this French conceptual framework and tradition has been phased out by an administrative jurisdiction under the *juge administratif* which is more and more independent from the public administration.
50. In other countries, the previous experience in legal professions of an individual constitutes a condition for selection of judges to the administrative jurisdiction (Austria, Belgium, Finland, France, Italy and the United Kingdom). Such prior experience differs in length and other qualifying features from country to country. Portugal, Spain and Sweden recruit fresh university graduates, but they must undergo a rather lengthy in-service training period before becoming full-fledged judges.

⁴¹ « Juger l'administration, c'est encore une fois administrer ». Henrion de Pansey : De l'autorité judiciaire en France, 1827.

51. The recruitment procedure differs between recruiting fresh graduates and recruiting experienced professionals. The procedure for the former is almost exclusively based on competitive legal knowledge examinations, even if some countries (e.g. the Netherlands) are introducing testing knowledge beyond the pure text of the law (sociology, political science, history, economy, etc.). The procedure for experienced professionals may include exams, scrutinising the experience, written legal opinions, structured interview, etc.
52. The authority in charge of recruitment to administrative justice also varies from country to country. In some countries, it is one and the same for all judges. In Slovenia it is the Supreme Court, in Croatia it is the Judicial Academy, in Belgium it is the High Council of the Justice, which is the case also in Portugal and Spain. In England and Wales is the Judicial Appointment Commission and in Germany it is the Minister of Justice and a Parliamentary committee. In Austria, it is the Minister of Justice, who is not bound by the proposed appointment. It is quite common that the authority carrying out the selection process is different from the one effectively appointing the candidates as judges. This latter usually is the Minister of Justice or Attorney General or the President of the Republic or the King. The former may be a judicial council or a selection commission, such as in Finland, (see section 5.1.5 *infra*)
53. Overall, several basic models for appointing judges can be differentiated, applying *mutatis mutandis* to administrative judges:
- a. So-called **professional model** of recruiting experienced legal professionals, also through public competition;
 - b. A set up in which, political actors and professional judicial bodies are involved in the process of election/appointment of judges, especially with respect to higher courts.
 - c. So called **civil service model**, which implies recruitment of young, fresh university graduates through public competition.
54. In the so-called **professional model**, ordinary courts' judges are generally appointed or elected from among practising lawyers. As a rule, each judge is recruited to fill a vacancy and serve in a specific court, be it a trial court, an appellate court or a supreme court. Formal career advancement mechanisms are not provided; in other words, judges cannot formally apply to be promoted to a higher court and have a legitimate expectation to be recruited in competition with other candidate judges. Judges of a lower court may become members of a higher court only through an entirely new and specific procedure of recruitment.⁴²
- A model which involves political actors and judicial bodies in the process of judicial selections may further be divided into representative or co-operative models,(see section 5.1.8 on Italy *infra*) in which political institutions and judicial bodies select a certain percentage of the court or when two or more institutions cooperate to appoint members of the court, functioning somewhat like a supermajority (such as Armenia, see section 5.1.1 *infra*), and help to ensure that judges must have broad support (institutional or political) before appointment.

⁴² UNODOC (2011): “*Resource guide on Strengthening Judicial Integrity and Capacity*”. United Nations Office on Drugs and Crime, New York, 2011. Available here: https://www.unodc.org/ji/en/resdb/data/2011/ 80 /resource_guide_on_strengthening_judicial_integrity_and_capacity.html.

55. The **civil service model** is prevalent, for instance, in France, where it originates. It assumes that judges are civil servants with a specific legal status. In this system, low ranking judges (entry level) are appointed to the administrative jurisdiction. This model was born in Napoleonic France by taking inspiration from, among others, Montesquieu who in his chef-d'oeuvre, *L'esprit des lois* (1748), within the conceptual framework of the separation of powers, defined the role of the judges as the “mouth of the law”. His assumption was that judges do not to interpret the law, but simply and literally apply it to the case at hand (“mechanical jurisprudence”).
56. The civil service model has been widely followed across continental Europe. The fundamental feature of the model is its aim at a strict separation between law and politics. With national variations, in Western Europe, the civil service model can be found in Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Portugal, Spain, and Sweden.
57. The Netherlands and the European Nordic countries use a merit-based recruitment system while giving high importance to professional experience acquired prior to the moment of recruitment. These latter countries could be regarded as being variations of the civil service model. The Netherlands and Finland have moved progressively from recruiting almost solely fresh law graduates to opening a wider lateral entry into the judiciary by not only allowing, but actively seeking to recruit experienced legal professionals that have acquired their expertise outside the judiciary. The lateral entry of experienced jurists has gained some ground also in France and Spain during the last years, although it remains a less common way of entry.
58. The model is based on three fundamental elements. The first one is that entry is on merit-based recruitment in which assessing the theoretical legal knowledge and qualifications of candidates is central. This is one reason why candidates usually are recent, young law graduates. The second element stems from the fact that judges, after training and probationary period, will be tenured for life if no disciplinary or criminal action against them is undertaken with consequences. The third one is that judges are promoted through the ranks of the judicial hierarchy by means of seniority and the evaluation of professional merits, including performance in some national systems. In this regard, it is noteworthy that individual performance appraisal of judges is problematic, as it can imperil their independence if not carefully designed and done. Nevertheless, in civil service or bureaucratic models of selection, lateral entry of experienced lawyers into the judiciary is used to fill vacancies in higher courts.
59. The general requirements for participating in judicial recruitment processes are quite similar across the Region:
- a. Citizenship, being a national or citizen (although in Portugal, citizens of some Portuguese speaking countries are also admitted to participate in recruitment processes);
 - b. Age requirement (in some countries, a minimum age of 30 or 35 years is required);
 - c. A law degree or equivalent (e.g. in Turkey a diploma on political science is considered equivalent), but for administrative judges in some countries other diplomas are also admitted;
 - d. Professional experience in law-related matters is required in some countries to sit for the exam to be selected: e.g. in Belgium 10 years of experience is required for candidates coming from the public sector (12 years for those from the private sector). In Spain 10 year-experience is required to enter the so-called fourth track (*cuarto turno*), whereby one in four vacancies are reserved to professionals with more than 10 years of experience.

Other countries, such as France, Finland and Netherlands also require prior professional experience for some or all its recruitment tracks and clean criminal record from intentional offenses.

60. The selection systems seek therefore to ensure internal and external independence of sitting judges. It is understood that the confidence in an independent judiciary is essential for the functioning of the political system. Only independence can ensure impartiality, which is especially required where one of the parties in the litigation is the State.
61. In sum, it should be stressed that the judiciary cannot be equated with civil service, within executive structures; that is because a judge is appointed to deliver justice. Justice is imparted on the free personal interpretation of the law by the judge him/herself (except in countries with a strong *stare decisis* (binding value of precedents) tradition seen in common law systems where previous cases have a stronger binding effect than what is usual in civil law systems), adjudicated impartially, without any biases, for which he/she is not personally accountable. Nevertheless, the performance of a judge shall be appraised, even if how and with what consequences is a matter of debate. Judges cannot be transferred, removed or dismissed, except on hard to prove disciplinary grounds, a fact which gives them a solid tenure for life and great personal stability. These are major bedrocks to sustaining their independence.

5. COUNTRY SPECIFIC OVERVIEW OF ADMINISTRATIVE JUSTICE SYSTEMS AND SELECTION OF JUDGES IN VARIOUS COUNTRIES

62. A variety of country examples from across the Region are provided in this section. The OSCE/ODIHR is not presenting one model as superior to others, but rather describing the systems as they stand for comparative purposes and consideration.

5.1.1 Armenia

Structure of administrative courts

63. The Armenian judicial system consists of the Constitutional Court, the Court of Cassation, courts of appeal, courts of first instance of general jurisdiction, as well as the administrative courts as a separate branch of the judiciary with this structure:⁴³
- Administrative court /first instance court/, the judicial territory of which is the whole territory of the Republic with the central seat in the capital and seats in the “*marzes*” (territorial units).
 - Administrative court of appeal
 - Civil and administrative Chamber of the Court of Cassation.

The Civil and administrative of the Court of Cassation, is the “supreme court instance” for administrative matters, except in the field of constitutional justice where the Constitutional Court is the supreme body.⁴⁴

Selection/appointment of administrative judges

⁴³ Constitution of the Republic of Armenia (adopted 6 December 2015), Article 164.

⁴⁴ *Ibid*, Article 171.

64. Eligibility criteria and the process of selection and appointment of judges are identical in all jurisdictions, civil, criminal and administrative. However, judges of Administrative courts and the Administrative court of Appeal are required to be specialised in administrative law.
65. In order to be considered a candidate for a judge, an individual must be: aged 28 to 60; possess a Bachelor's degree in law; have at least five years of professional work experience; be eligible to vote; hold only Armenian citizenship; be proficient in the Armenian language; and know at least two of following languages English, German, Russian, and French.⁴⁵
66. The process of recruitment starts with the prospective candidates submitting applications to the Supreme Judicial Council (SJC). The SJC is responsible for creating reserve lists of judge candidates. Regular and extraordinary completion of the list of judge candidates performs according to criminal, civil and administrative specializations.
67. Qualification checks consist of submitting and checking applications, holding a written examination and an interview.⁴⁶ The results of the written test are checked by an evaluation commission, established by the SJC and composed of five judges and two legal scholars.⁴⁷ The results of the written examination may be appealed to the Appeals Commission. Candidates also have to undergo psychological testing prior to the interview.
68. The SJC by taking into consideration the results of the above steps and a consultative opinion of the Corruption Prevention Commission on the candidate's integrity; compiles and approves the list of candidates and submits it to the Academy of Justice for the purpose of organizing their training. The training lasts 7 to 10 months. Only candidates who successfully complete the practical legal training in the Academy of Justice may be appointed, except former judges who only have to pass an interview.
69. Judges of the courts of first instance and courts of appeal are appointed by the President of the Republic, upon recommendation of the SJC. Judges of the Court of Cassation are appointed by the President of the Republic upon recommendation of the National Assembly. The National Assembly elects the nominated candidate by at least three fifths of votes of the total number of Deputies, from among the three candidates nominated by the Supreme Judicial Council for each seat of a judge.

Measures to ensure the integrity of judges

70. The status of judges in all ordinary and specialised courts is the same. Judges hold office until attaining the age of 65. Any interference with the administration of justice is prohibited.⁴⁸ In view of ensuring the independence of judges, under the legislation of Armenia, criminal prosecution against a judge with respect to the exercise of his or her powers may be initiated only by the Prosecutor General, with the consent of the SJC. Furthermore, judges cannot be members of any party or otherwise engage in political activities.⁴⁹ The Commission for the Prevention of Corruption has power to check the financial declarations of judges.⁵⁰

⁴⁵ Judicial Code of the Republic of Armenia, (adopted 7 February 2018), Article 97.

⁴⁶ *Ibid*, Article 96.

⁴⁷ *Ibid*, Article 104.

⁴⁸ *Op. cit.* footnote 44, Article 162, para 2.

⁴⁹ *Ibid*, Article 46, para 2 and *op.cit.* footnote 46, Article 4, para 1.

⁵⁰ *Op. cit.* footnote 46, Article 145.

71. The Judicial Code defines grounds for disciplinary liability and types of disciplinary penalties for judges. The grounds for initiating disciplinary proceedings against judges may be: violations of laws, violation of the rules of conduct and failure to participate in mandatory trainings. The first two offences are to be committed intentionally or with “gross negligence”.⁵¹

5.1.2 Austria

Structure of administrative courts

72. In Austria, a federal state, a major reform of the system of administrative justice went into effect on 1 January 2014, based on the Administrative Justice Reform Act of 2012 (*Verwaltungsgerichtsbarkeit-Novelle 2012*), and on numerous implementation laws and regulations of the Federation and the Austrian provinces (*Bundesländer*). It also involved a major reform of the Federal Constitution that included a total rewriting of the Chapter on Administrative Justice.⁵²
73. The reform created eleven new administrative courts, one for each of the nine provinces, one for review of the decisions of federal agencies, and one for the review of administrative decisions in tax matters. The nine provincial courts provide judicial review over the acts of the administrative authorities of the provinces, in the implementation of both provincial law and federal law. Appeals from the decisions of these courts can go to the High Administrative Court (*Verwaltungsgerichtshof*), an appellate court of last resort that until the 2012 reform was the only administrative court in Austria. This appellate court, however, will review only important questions of law.
74. The reform abolished a system of more than one hundred independent quasi-judicial bodies within administrative agencies. These were the Independent Administrative Panels (*Unabhaengige Verwaltungssenate*). These administrative panels were established in 1991 in order to align the system with the European Convention of Human Rights, especially its Article 6, which demands at least two instances in judicial adjudication.⁵³ Subsequent to protracted legal arguing between Austria and the European Court of Human Rights, the panels were qualified as independent tribunals by the European Court of Human Rights, though they were not courts in terms of the Austrian Constitution.

Selection/appointment of administrative judges and measures to ensure their integrity

75. All administrative judges and all members of the High Administrative Court are professional judges/justices, who are not bound by any instructions and subject solely to the law. They are independent in exercising their judicial office and cannot be dismissed or transferred against their will.

5.1.3 Belgium

Structure of administrative courts

76. In Belgian law, the legality of administrative acts and regulations is verified by the ordinary courts and tribunals, as well as by administrative courts with special jurisdictions (e.g. Aliens Litigation Council) and by the Council of State, the only administrative court

⁵¹ *Ibid*, Articles 141 and 142.

⁵² Constitution of Austria, first adopted on 1 October 1920 (with later revisions), Section 8, Articles 129-136.

⁵³ Association of European Administrative Judges: Austrian Report 8 November 2012 <https://aeaj.org/page/Austrian-report>.

with general country-wide jurisdiction. Belgian law draws no distinction between administrative courts and administrative courts of appeal. Since 1831, the Belgian Constitution has granted the judicial courts and tribunals the power, established as a duty by the Supreme Court of Appeal, to prevent the application of any administrative act contrary to standards that are superior to it in the hierarchy of standards. This system is known as the “plea of illegality”.⁵⁴

77. The *Conseil d’Etat* (Council of State) is the supreme administrative court. There is no first or second degree of administrative courts in Belgium. When such courts are created in specific areas on the initiative of the federal entities or the federal State (e.g. the Aliens Litigation Council), the Council of State rules as the administrative *cour de cassation*. The composition of the Council of State is regulated by law, in accordance with Article 160 of the Constitution. Members of the Council of State are not part of the judiciary and form a *sui generis* (unique) body of magistrates.

Selection/appointment of administrative judges

78. The general requirements to become a judge in Belgium, including administrative judges, are to hold Belgian citizenship, to be older than 35 years, to have a law university diploma and a minimum of one-year professional experience in a legal profession acquired within the three years prior to the application for the judgeship. Most examinations are administered by the SELOR (the federal office for selecting public employees) under the aegis of the High Judicial Council.

Measures to ensure the integrity of judges/candidates

79. The Federal Institute for Judicial Training delivers the initial and continuous training for judges, prosecutors and other judicial officers. The Institute has an independent status, but the programme shall comply with the recommendations of the High Judicial Council. The latter is also independent as per the Article 151 para 2 of the Constitution of Belgium. Para 3 (1) of the same Article states that this Council is responsible to nomination of candidates for judges. The Judicial Council has 44 members who are appointed for four-year terms and it consists of two sections of 22 members: one French speaking section and one Dutch speaking section. Each section has 11 judges or prosecutors and 11 laypersons, appointed in Parliament by the Senate with a two thirds majority vote.

Appointments are for an indefinite period until retirement based on a motivated request by the High Judicial Council.

5.1.4 Estonia

Structure of administrative courts

80. According to the Constitution of Estonia has a three-level court system,⁵⁵ and as elaborated by the Courts Act, Special courts review administrative decisions. County courts and administrative courts adjudicate matters in the first instance. Courts of second instance, which are called courts of appeal (also called circuit courts), shall hear appeals against decisions or rulings of courts of first instance. Circuit courts have civil, criminal and administrative law chambers. Administrative acts can only be contested in an

⁵⁴ Constitution of Belgium (as per 22 April 2019), Article 159; see also Gosselin, Delannay and Lewalle (2018): The Council of State of Belgium and http://www.aca-europe.eu/en/eurtour/i/countries/belgium/belgium_en.pdf.

⁵⁵ The Constitution of the Republic of Estonia, adopted 22 June 1992, Article 148.

administrative court, and further in a circuit court (or in the administrative law chamber thereof) and then in the Administrative Law Chamber of the Supreme Court.⁵⁶

Selection/appointment of administrative judges

81. Judges reviewing administrative decisions have the same legal status as judges of ordinary courts. All judges have the same social guarantees and position. Judges, also administrative court judges, are appointed for life. They cannot be transferred from one court to another without their consent. Education and training, as well as other requirements to become a judge are the same for administrative court judges as for county court judges.
82. The same applies to the appointment of administrative court judges, however sometimes the background of a second or third instance administrative judge can differ from that of ordinary judges. For example, a person who has achieved a high ranking in civil service before their career as a member of the judiciary can also be appointed as a judge reviewing administrative acts in second and third instance courts without having been a judge before.
83. Recruitment procedures of administrative judges and judges of ordinary courts are the same. The Courts Act sets out general requirements for all Estonian judges as well as the path for becoming a judge. An Estonian citizen may be appointed as a judge if he/she: 1) has acquired in the field of law at least an officially certified Master's degree; 2) has proficiency in the Estonian language at the level C1 or a corresponding level; 3) is of high moral character; 4) has the abilities and personal characteristics necessary for working as a judge.
84. Judges are appointed to office based on a public competition. The Minister of Justice announces a public competition for a vacant position of judge in county courts, administrative courts and circuit courts. The Chief Justice of the Supreme Court announces a public competition for a vacant position of justice of the Supreme Court, including in the administrative branch. If several persons run as candidates for the vacant position of judge, the Supreme Court *en banc* shall decide who to propose to the President of the Republic to be appointed as judge. The Supreme Court *en banc* shall first consider the opinion of the full court of the court for which the person runs as a candidate.
85. Judges of first and second instances shall be appointed by the President of the Republic on proposal of the Supreme Court *en banc*. Justices of the Supreme Court (including members of the administrative law chamber) shall be appointed to office by the Parliament, on the proposal of the Chief Justice of the Supreme Court.
86. There are several paths for becoming a judge. A person, who has undergone the judge's preparatory service or is exempted therefrom and has passed a judge's examination, may be appointed as a county judge or administrative court judge. A person who has worked as a sworn advocate or prosecutor, except an assistant prosecutor, for two years immediately prior to passing the judge's examination and a person who has worked as a judge earlier and if not more than ten years have passed since his or her release from the office of judge need not have to undergo the judge's preparatory service.
87. A person who is an experienced and recognised lawyer and who has passed a judge's examination may be appointed as a circuit court judge. A person who worked as a judge directly before appointment shall be exempted from the judge's examination. A person

⁵⁶ ACA-Europe - Administrative Justice in Europe - Country Report on Estonia, section 1.

who is an experienced and recognised lawyer may be appointed as a Supreme Court justice.

Measures to ensure the integrity of candidates/judges

88. The suitability of the personal characteristics of a candidate for judicial office is assessed based on an interview. The judge's examination committee may consider also other sources of information concerning the candidate for judicial office, which is important for the performance of the duties of a judge, make inquiries and ask for the opinion of the candidate's supervisor.
89. A candidate for judicial office shall pass a security check before being appointed judge, excluding the case if he or she holds a valid access permit to state secrets classified as top secret or if at the time of becoming a candidate he/she occupies a position which provides the right by virtue of office to access all levels of state secrets.
90. Pursuant to Article 74 of the Courts Acts a judge is required to develop knowledge and skills of his/her speciality on a regular basis and to participate in training. The Training Council is responsible for the training of judges. The Training Council is comprised of two judges of a court of the first instance, two judges of a court of appeal, two justices of the Supreme Court, and a representative of the Prosecutor's Office, the Minister of Justice and the University of Tartu.
91. The training is based on the strategies for training judges, annual training programmes and the programme for judge's examination, which are prepared by the judicial training department of the Supreme Court and approved by the Training Council. The study and methodological materials necessary for the training of judges are prepared and the agreements with the trainers are entered into by the judicial training department of the Supreme Court. The judicial training department of the Supreme Court organises the trainings.

5.1.5 Finland

Structure of administrative courts

According to the Constitution of Finland there are administrative courts on two levels in Finland.⁵⁷ The Regional Administrative courts, seven in total, and the Supreme Administrative Court (SAC) on the national level. Appeals against administrative cases are first handled by the Regional Administrative Courts except in a few select cases, mainly decisions from the government and ministries which are appealed directly to the SAC.

Selection/appointment of administrative judges

92. In Finland there is no special category of judges for administrative courts. All judges have the same status. According to the Constitution Article 102, tenured judges are appointed by the President of the Republic on recommendation from the Minister of Justice, as advised by a Judicial Appointments Board and in accordance with the procedure laid down by law.⁵⁸ The appointment procedure of all judges (irrespective of the type of the court) is regulated by one single parliamentary Act (the Act on the appointment of judges, 205/2000). The independent Judicial Appointments Board shall do the groundwork for

⁵⁷ The Constitution of Finland (adopted 11 June 1999), Article 98.

⁵⁸ The Judicial Appointments Board is composed mainly of members of the judiciary, but three members come from outside the judiciary. One is a practising lawyer appointed by the Bar Association, another is a prosecutor appointed by the Prosecutor General, and the third one is an academic appointed by the Ministry of Justice.

the filling of positions in the judiciary and issue a reasoned proposal on an appointment to a position in the judiciary. The Board has no jurisdiction regarding the appointment of Judges to the Supreme Court and the Supreme Administrative Court. These courts of final instance make their own appointment proposals to the President of the Republic, who formally appoints these judges. All lawyers who meet the general qualifications set forth in the Act may apply. The Board is expected to promote the recruitment of judges from all walks of legal life, that is, from among legal advisers in the courts the civil service, academia and the legal profession.⁵⁹

93. The court announcement of a vacancy concerning the applicants' qualification and familiarity with the position shall be detailed. The applicants' qualifications should be assessed by looking at the knowledge and skills they have acquired through their education and earlier work experience. The focus is on the applicants' ability to perform the duties required in the position. Familiarity includes issues such as substantive and procedural legal knowledge, command of legal information, problem analysis and solving skills, ability to familiarise oneself with the facts and legal material of a case, process management skills, reasoning skills and language skills.
94. A person appointed for a position in the Finnish judiciary must be a Finnish citizen and possess a master's degree in law or another law degree with additional relevant experience and through previous legal experience has shown to be capable for work as a judge.⁶⁰

Measures to ensure the integrity of candidates

95. Finnish judges are irremovable according to Article 103 of the Constitution of Finland and can only be removed by a decision of a court. Furthermore, they cannot be moved to another court against their will.
96. Prior to the year 2017, Finland did not have compulsory in-service training for Judges. Judges participated in training on a voluntary and independent basis according to their personal needs and interest. A new Court Act came into effect in Finland on 1 January 1 2017. This changed the system and practices of judicial training and recruitment. The reform introduced Judge training positions called "Assessor Training Judge" and the creation of a Judicial Training Board. In addition, the training of Judges is now made compulsory and more systematic. The idea in the reform is to implement a training path, where all Judges would have a planned training program throughout their whole career based on their skills and needs.
97. The purpose of the independent Judicial Training Board is to plan and coordinate, jointly with the Ministry of Justice and the courts, the training of the staff involved in applying the law at the courts of law, from court traineeships to supplementary training. The Judicial Training Board implements the application procedure for the posts of Junior Judges candidates under the Courts Act and carries out the pre-selection. As part of the pre-selection process, the Board confirms and arranges the pre-selection exam. The Board grants the candidates who complete the training programme the title of Junior Judge. The Board also carries out the centralised application procedure for court traineeships and selects and appoints Trainees to District Courts, Administrative Courts and Courts of Appeal and grants the candidates who successfully complete the court traineeship the right to use the qualification of 'judicial training'.

⁵⁹ Referendaries are also called Assistant Judges or Senior Assistant Judges. Referendaries are responsible for the practical preparation work, case memorandums and proposed settlements under the supervision of the responsible Judge. Referendaries need to have finished a Master of Law degree and the practical court training.

⁶⁰ Finnish Act on the appointment of judges, (205/2000), Article 11.

98. The Government appoints the Judicial Training Board for a term of five years. The Board has ten members, six of which represent the court system. The Finnish Prosecution Service, members of the Finnish Bar Association, legal research and teaching, and the Ministry of Justice are each represented by one Board member. The appointment procedure for the Board members largely corresponds to the appointment procedure of the Judicial Appointments Board. The first Judicial Training Board took up its activities on 1 January 2017 when the Courts Act 673/2016 entered into force. The first five-year period of the Board will therefore run from 1 January 2017 to 31 December 2021.

5.1.6 France

Structure of administrative courts

99. The administrative jurisdiction is organised in three layers: the State Council (the highest jurisdiction with cassation powers), comprising about 300 State Councillors, the Administrative Appellate Courts (second instance courts) and the Administrative Tribunals (first instance courts where cases are generally handled by a single administrative judge) with some 1200 magistrates.

Selection/appointment of administrative judges

100. In France, there is a marked differentiation between the *juge judiciaire* (ordinary judge) and the *juge administratif* (administrative judge). The latter are civil servants governed by the general civil service status with specific legal provisions of the Code of Administrative Justice (CAJ)⁶¹ guaranteeing their independence and non-removability and detailing the rules governing their status and recruitment modalities.

101. There are several recruitment paths to the administrative jurisdictions, with separate modalities applying for State Councillors.⁶² The members of the Administrative Appellate Courts and Tribunals are appointed and promoted by decree of the President of the Republic (Article L.233-1 CAJ) according to one of the following modalities:

- a. most frequently, recruitment from among the former students of the *Ecole Nationale d'Administration* (ENA, National School of Administration) (Article L.233-2 CAJ): the ENA alumni choose the civil service corps they want to be integrated in, according to the order of their ranking based on their academic performance during their 27 months of study at the ENA (the highest ranked student chooses first).⁶³
- b. recruitment from among other civil servants from the highest category A, with required seniority and diplomas (Articles L.233-3 and 233-4 CAJ): following an open call, the applications are assessed by the *Conseil supérieur des tribunaux administratifs et cours administratives d'appel* (High Council of Administrative Tribunals and Administrative Appellate Courts)⁶⁴ in two stages:⁶⁵ a pre-selection

⁶¹ See the [French Administrative Justice Code](#), especially Articles 231-1 to 231-9. Even before the adoption of such provisions in 1986-1987, the French Constitutional Council had explicitly recognised the independence of the administrative jurisdiction (see [Decision n° 80-119](#) DC of 22 July 1980, para 6).

⁶² See: <https://www.conseil-etat.fr/recrutement-et-carrieres/dans-les-tribunaux-administratifs-et-cours-administratives-d-appel>.

⁶³ Admission to the ENA is itself granted based on a competitive examination.

⁶⁴ The Council is composed of 13 members including five members of tribunal or appellate administrative courts, one State Councillor, the Secretary General of the Council of State, the Director General of the Public Service, the director in charge of judicial affairs at the Ministry of Justice, three members who do not exercise an elective mandate nominated respectively by the President of the Republic, the President of the National Assembly and the President of the Senate, and is presided over by the Vice-President of the Council of State (Article L232-2 CAJ).

⁶⁵ See: <http://versailles.tribunaladministratif.fr/Tribunaux-Cours/Recrutement-Carriere/Recrutement-des-magistrats/Nomination-au-tour-exterieur>.

made by a sub-commission composed of a few members of the High Council followed by a structured interview based on a publicly available grading scale evaluating legal, professional and personal skills.⁶⁶

- c. secondment and potential subsequent integration after three years of service as administrative magistrate (Article L.233-5 CAJ): civil servants belonging to any corps recruited through the ENA, *juges judiciaires*, university professors and civil servants from the territorial and hospital civil services of the highest category (A) can be seconded to the administrative jurisdictions as magistrates.
- d. direct recruitment via internal or external competitive examination (Article L.233-6 CJA): anyone holding the university credentials needed to apply to the ENA (external) or *juges judiciaires* or civil servants of the highest A-category with at least 4 years of seniority in the public service (internal) may take the competitive examination, which modalities, including the substantive content, weighing and the composition of the evaluation panel, are detailed in published regulations and other documents.⁶⁷ The examination consists of an anonymous written test on public law matters followed by an oral interview,⁶⁸ open to the public (except this year due to Covid-19 crisis),⁶⁹ for those who passed the written test. Following the competitive examination, the evaluation panel publishes a report on the process, providing a detailed correction of the written test and relevant statistics disaggregated by sex.⁷⁰

Measures to ensure the integrity of candidates/judges

102. As mentioned above French judges are independent and irremovable. Since 2017, the administrative jurisdiction has also introduced specific measures to enhance gender equality and diversity including in relation to the selection and recruitment of administrative magistrates by reviewing the selection criteria for competitive examinations, recruitments and promotions to avoid discrimination and establishing a gender balanced pool of candidates for the next appointments of court presidents.⁷¹

5.1.7 Germany

Structure of administrative courts

103. As described above, in Germany, administrative courts are separated from the executive as well as from ordinary courts. Their jurisdiction includes all public law

⁶⁶ See:

<<http://versailles.tribunaladministratif.fr/content/download/162171/1641392/version/1/file/Mod%C3%A8le%20grille%20%C3%A9valuation%20TE%20TA%20mai%2019.pdf>>.

⁶⁷ See <<https://www.conseil-etat.fr/recrutement-et-carrieres/dans-les-tribunaux-administratifs-et-cours-administratives-d-appel/recrutement-des-magistrats/le-recrutement-direct-par-voie-de-concours-externe-et-interne>>; Ministerial *Decree* of 28 September 2012 fixing the program of the tests of the competitive examinations organized for the direct recruitment of the magistrates of the administrative courts and the administrative courts of appeal.

⁶⁸ The oral interview is divided into two parts: a presentation on a public law matter drawn by lot by the candidate for which s/he had 30 minutes to prepare followed by a discussion with the evaluation panel on legal questions (30 minutes in total); and an interview with the jury on the background and motivation of the candidate, as well as candidate's aptitudes to exercise the profession of administrative magistrate and ethics (20 minutes in total).

⁶⁹ Videoconferences may be organized for candidates with disabilities, pregnant women or candidates with health problems, at their request, in the conditions provided for by the Ministerial *Decree* of 22 December 2017 setting the conditions for resorting to videoconferencing for the organization of recruitment paths to the state civil service.

⁷⁰ See <<https://www.conseil-etat.fr/recrutement-et-carrieres/dans-les-tribunaux-administratifs-et-cours-administratives-d-appel/recrutement-des-magistrats/le-recrutement-direct-par-voie-de-concours-externe-et-interne>>.

⁷¹ See <<https://www.conseil-etat.fr/actualites/actualites/doublement-labellisee-la-justice-administrative-va-renforcer-ses-actions-en-faveur-de-la-diversite-et-de-l-egalite>>.

matters other than constitutional ones. Furthermore, various branches of administrative justice have been established for specific administrative matters, that is aside from general administrative law, there are courts dealing with taxation law, and social law. Common administrative jurisdiction is organized in three tiers: Administrative Courts, Higher Administrative Courts and a Federal Administrative Court. There are Higher Administrative Courts in each of the federal states. While Higher Administrative Courts serve as courts of first instance in some cases,⁷² they mainly decide appeals on points of facts and law against judgments of Administrative Courts and on complaints against their decisions. The Federal Administrative Court adjudicates appeals against points of law and, in some instances, serves as Court of first instance.

Selection/appointment of administrative judges

104. The educational background, the conditions of appointment as a judge and the legal status of a judge are identical in all jurisdictions, ordinary and administrative. Only persons having completed law studies with the first State Examination in a university and who completed the practical legal training phase of two years (*Referendariat*) followed by the second State Examination may carry out the duties of a judge.⁷³
105. The process of selection and appointment of judges varies depending on the respective *Land* (state) within the Federal Republic. Judges are selected by the relevant Provincial Ministry of Justice and appointed by the Minister depending on their aptitude, qualifications and professional achievements (Article 33 paragraph (2) of the Constitution or Basic Law); in practice, the performance in the State Examinations is of major importance. In certain federal states, judges are appointed by the state minister of justice after an election by a committee for the selection of judges consisting of judges and members of Parliament.
106. A committee consisting of the responsible state ministers and an identical number of members of the federal parliament (Bundestag) elect the federal judges. The elected candidates are appointed by the Federal Minister of Justice. Qualification, competence and professional performance are legally required criteria to be appointed as a judge. Up to a certain age limit, each German national having the required competence for the duties of a judge (jurist with two State Examinations) may be appointed. Typically, the federal judges are recruited out of the judges of the Higher Administrative Courts.

Measures to ensure the integrity of judges

107. The constitutionally guaranteed judicial independence means that judges appointed for a lifetime in an Administrative Court and cannot be transferred to another jurisdictional court against their will. Section 15 of the Code of Administrative Court Procedure provides that the judges in Administrative Courts of all levels shall be tenured for life.

5.1.8 Italy

Structure of administrative courts

108. The Italian judicial system is a complex one. It is divided into the ordinary courts and administrative courts. However, the very fact of one party to a case being a state entity or

⁷² Code of Administrative Court Procedure of Germany (adopted 19 March 1991, as amended 22 December 2010), Section 47.

⁷³ Carsten Günther: Administrative Justice in Europe – Report for Germany. At: http://www.aca-europe.eu/en/eurtour/i/countries/germany/germany_en.pdf.

a governmental authority does not automatically imply that it will fall into the jurisdiction of the administrative courts. Instead, the decision of whether a matter is deal with by ordinary courts or administrative courts depends on the entitlement claimed by the plaintiff. The complexity in lies in the establishment of jurisdiction as in each case, a determination must be made whether the plaintiff is seeking to satisfy ‘subjective rights’ which can be enforced by ordinary courts, or whether the case concerns ‘legitimate interests’ which must be claimed before administrative courts.

Selection/appointment of administrative judges

109. The status of the administrative judge is the same as that of ordinary judge and magistrates., There is however, a specific self-governing body for administrative judges, the Council of the Presidency of the Administrative Justice (*Consiglio di Presidenza della giustizia amministrativa*), which holds competence on appointment, transfer, promotion, discipline, etc of judges.⁷⁴
110. The recruitment of administrative judges of first instance (*Tribunali amministrativi regionali* or TAR) is only through public competition, consisting of written and oral exams on legal subject matters. Only ordinary judges, lawyers, state lawyers (*avvocati dello stato*) and civil servants (if they have sufficient seniority for their category) can participate.
111. Even if the status of civil and penal judges is the same, the recruitment process is different; the competitive exam is different and civil and penal judges are not required a previous practice/professional test and no previous work record is required, which is a distinctive requirement for administrative judges recruitment.⁷⁵
112. The recruitment of judges of the Council of State is provided partly by promotion from the TAR (50 per cent of vacancies), partly by the Government’s appointment (25 per cent of vacancies) and partly by a direct public competition (25 per cent of vacancies), which is reserved for judges of the TAR after completing one year of TAR duties, lawyers of State, ordinary judges, etc.
113. All administrative judges shall have previous experience as ordinary judges, lawyers, State lawyers or officials of the public administration. Hence, administrative judges assume their duties immediately, with no additional initial training period. Professional training courses of a few days each are made available on a continuous basis to update and integrate judicial skills and competences.
114. TAR judges start their career as *Referendaires* (first appointment), then, after four years, *First Referendaires*, after four more years *Counsellors* of TAR, and after a further four years Presidents of Section. Judges of the Council of State start as Counsellors of State and may then become Presidents of Section of the Council of State if they have sufficient seniority. Appointment to the position of TAR president or to a section of the Council of State requires an assessment, which is generally based on seniority.
115. The decisions on recruitment are made by a temporary, independent body, whose members are professors and administrative judges. The body is appointed by the President of the Council of State, after hearing the Council of the Presidency of the Administrative Justice.

⁷⁴ See: <https://www.giustizia-amministrativa.it/web/guest/normativa-e-criteri>.

⁷⁵ See: <https://www.aej.org/page/Questionnaire-on-the-Independence-and-Efficiency-of-administrative-Justice--Italy>.

5.1.9 Latvia

Structure of Administrative Courts

The Administrative Procedure Law stipulates that the decisions and acts of administrative authorities are reviewed by the Administrative District Court, the Administrative Regional Court and the Department of Administrative Cases of the Supreme Court.⁷⁶

Selection/appointment of administrative judges

116. The general prerequisites (education, conditions of nomination) for judges of administrative courts are like those for judges of ordinary courts. In the selection of a candidate for the judgeship, the principle shall be observed that only Latvian citizens, who are highly qualified and fair lawyers, may work as judges. A candidate should meet various other requirements, e.g., he/she is fluent in the official language at the highest level, he/she has attained the age of at least 30 years, he/she has acquired a higher legal education, he/she has at least five years length of service in legal profession and has passed qualification examinations.
117. According to the Law on the Judicial Power of 1993, last amended in 2020, the Judicial Council (*Tieslietu padome*) is a collegiate body involved in formulating court system policy and strategy and improving the way the work of the court system is organised but has no jurisdiction in judicial appointments, except in adopting procedural regulations for judicial selection and pronouncing an opinion on candidates to the Minister of Justice. The Courts Office (*Tiesu administrācija*) arranges and ensures performance of the administrative work of district and city courts, regional courts and land registry offices. It is under the authority of the Ministry of Justice.
118. The Minister of Justice shall nominate candidates to be appointed to or confirmed as district (city) judges or as regional court judges based on an opinion of the Judicial Qualification Committee. District Judges shall be appointed by the Parliament, upon the recommendation of the Minister of Justice, for three years. After a district judge has held office for three years, the Parliament, upon the recommendation of the Minister of Justice, and on the basis of a statement of the Judicial Qualifications Committee, shall confirm him/her in the office, for an unlimited term of office, or shall re-appoint him/her to the office for a period not exceeding two years. After the expiration of the repeated term of office, the Parliament, upon recommendation of the Minister of Justice, shall confirm a district judge for an unlimited term of office. If the work of a judge is unsatisfactory, the Minister of Justice, in accordance with a statement of the Judicial Qualification Committee, shall not reappoint or confirm him/her in office.
119. Judges of regional courts shall be confirmed by the Parliament, on recommendation of the Minister of Justice, for an unlimited term of office. Judges of the Supreme Court, on recommendation of the Chief Justice of the Supreme Court shall be confirmed in the office by the Parliament, for an unlimited term of office. Judges must resign from office on reaching the age of 70.
120. District or regional court judges, with at least 10 years of service and given a favourable opinion from the Council for the Judiciary in the “extraordinary evaluation” of the professional work, may apply to the Supreme Court. A person having at least 15 years total length of service in a position as an academic personnel in the legal specialities at an institution of higher education, a sworn advocate or a prosecutor having passed the

⁷⁶ The Civil Procedure Law of Latvia (entered into force 1 February 2004), Sections 122 para 1 (District) 290 para 1 (Regional) and 339 para 3. (Cassation Level).

qualification examination, as well as a person who had held the office of a judge of the Constitutional Court, a judge of an international court or a judge of a supranational court, may apply to the Supreme Court. A person who has reached the age of 40 years may apply for the office of a judge of the Supreme Court. Candidates for confirmation in Supreme Court shall be nominated by the Chief Justice of the Supreme Court, based on a statement of the Judicial Qualification Committee.

5.1.10 Lithuania

Structure of Administrative Courts

121. Lithuania has specialised administrative courts on a regional level. A regional administrative court is established for hearing complaints (petitions) in respect of administrative acts and acts of commission or omission (failure to perform duties) by entities of public and internal administration. Regional administrative courts hear disputes in the field of public administration, deal with issues relating to the lawfulness of regulatory administrative acts, tax disputes, etc. The system also provides for a step prior to application to the administrative court, whereby individual legal acts or actions taken by entities of public administration provided by law may be disputed in the pre-trial procedure. Pre-trial procedures are investigated and heard by municipal public administrative dispute commissions, district administrative dispute commissions and the Chief Administrative Dispute Commission.
122. The Supreme Administrative Court of Lithuania is the first and final instance for administrative cases assigned to its jurisdiction by law. It is also an appeals court for cases concerning decisions, rulings and orders of regional administrative courts, as well as for cases involving administrative offences from decisions of district courts. The Supreme Administrative Court is also instance for hearing, in cases specified by law, of petitions on the reopening of completed administrative cases, including cases of administrative offences.

Selection/Appointment of Judges

123. Administrative Judges do not belong to a specific category. According to the Law on Establishment of Administrative Courts, the legal position of administrative courts' judges shall be equal to that of general jurisdiction court judges.
124. Judges are appointed by the President of the Republic, except the judges of the Supreme Court of general jurisdiction, who are appointed by the *Seimas* (Parliament), upon the advice of the Judicial Council, which is the highest self-governance institution of the judiciary. General requirements for the candidates to the judgeship are nationality of Lithuania, high moral character, university degree in law, certain length of service in the legal profession (depending on the level of the court). A special judicial examination before the appointment is made unless a candidate has a doctor's or degree in social sciences (law).
125. If there are several candidates seeking to fill in a vacant judicial position, the selection of candidates for the judicial office is made by a special Selection Commission pursuant to the selection regulations, which are subject to the approval of the Judicial Council. When selecting candidates for judicial office, their skills, professional and personal qualities, general competence and prior professional achievements must be considered. The criteria for assessing the candidates for the judicial office are determined by the Judicial Council.

Measures to ensure the integrity of judges/candidates

126. Training of judges consists of initial training and obligatory in-service training. Initial training is intended for persons who have been appointed judges for the first time, with a view to expanding their knowledge and building professional skills. Obligatory in-service training involves the broadening of special professional knowledge and skill building. There is a special programme for the training of administrative courts' judges, approved by the Judicial Council.

5.1.11 Moldova

Structure of Administrative Courts

127. In Moldova the court system is organized in three tiers: The first instance ordinary courts, Court of Appeal and the Supreme Court.⁷⁷ For certain categories of cases specialised courts (economic, military) exist. No specialised administrative courts exist in Moldova and the public law matters also included into jurisdiction of ordinary courts. Boards or specialised panels of judges can operate in the courts and specialised judges may be appointed at the level of existing courts.⁷⁸

Selection/Appointment of Judges

128. In order to be appointed as a judge, the following is required: Citizenship of the Republic of Moldova, residency in Moldova, a Bachelor's or Master's Degree in Higher Education field of law, having graduated from the National Institute of Justice, five years of legal experience, no criminal record, knowledge the state language, medical requirements to hold the office, and an impeccable reputation.⁷⁹

129. The procedure of selection of judges is regulated by specific legislation, that is, the Law on the Selection, Performance Evaluation and Career of Judges. The selection of candidates is carried out by the Selection Board, which is formed by judges and civil society representatives appointed respectively by the General Assembly of Judges and Superior Council of Magistracy.⁸⁰ The main criteria for selection are mentioned above and established by law and special regulations developed by the Superior Council of Magistracy.⁸¹

130. The selection procedure must be transparent, and merit based. The relevant criteria are: level of legal skills and professional skills; capacity to apply knowledge in practice; previous experience as judge or in other relevant positions; qualitative and quantitative indicators from the activity of judges; observance of ethical standards; academic activity, and certified extrajudicial activity.⁸²

131. Judges are appointed by the President of Republic, upon proposal submitted by the Superior Council of Magistracy.⁸³ Those judges who have passed the entry test are

⁷⁷ Law (of Moldova) on the Organization of the Judiciary (No. 514-XIII of 06.07.1995), Article 15 (1).

⁷⁸ *Ibid*, Article 15 (2).

⁷⁹ Law of Moldova no. 544-XIII of July 20, 1995 on the Status of the Judge, Article 6 and Regulations on the criteria for the selection, promotion and transfer of judges, nr.613/29 20 December 2018, Section II, Article 8.

⁸⁰ Law (of Moldova) on the Selection, Performance Evaluation and Career of Judges no. 154 of 05.07.2012, Article 3.

⁸¹ *Op. cit.* footnote 80; the legal basis of the regulation is Law no. 947-XIII (July 19, 1996) on the Superior Council of the Magistracy, *op. cit.* footnote 81, *op. cit.* footnote 80 Law on the Status of the Judge and *op.cit.* footnote 77.

⁸² Law (of Moldova) on the selection, performance evaluation and career of judges no. 154 of 05.07.2012, Article 2 (2)

⁸³ *Op. cit.* footnote 81 (Law on the Superior Council of the Magistracy), Article 4 a)

appointed in their positions at first for a 5-year term. After 5 years judges are appointed for an unlimited term of office expiring with their reaching the age 65.⁸⁴

Measures to ensure the integrity of judges/candidates

132. Judicial independence is enforced by the procedure of justice administration, procedure of appointment, suspension, resignation and dismissal, inviolability, ensuring judges' material and social welfare and other measures under the law.⁸⁵ Judges are also irremovable.⁸⁶
133. Judges are obliged to submit a declaration of wealth and personal interest,⁸⁷ to inform in writing, the same day, the Superior Council of Magistracy about any communication or attempt to be influenced in the examination of cases by any of the trial participants or public officials.⁸⁸

5.1.12 Portugal

Structure of Administrative Courts

134. In Portugal The administrative courts include the first instance administrative and tax courts, the central administrative courts (North and South) and the Supreme Administrative Court (*Supremo Tribunal Administrativo*), covering the whole country.⁸⁹ The Supreme Administrative Court is the highest administrative and fiscal court in cases in respect of which the Constitutional Court has no jurisdiction. The administrative and fiscal courts hear cases for the settlement of disputes arising from administrative and fiscal relations (Article 212, Constitution of Portugal). This arrangement is enshrined in the Code of Administrative Litigation (*Código de Processo nos Tribunais Administrativos*, CPTA) and the Code of Judicial Procedure (*Código de Procedimento e Processo Tributário*, CPPT). The administrative courts operate in parallel – and are similar in structure – to the judicial courts, i.e. the ordinary civil and criminal law courts.

Selection/Appointment of Judges

135. Administrative judges have a special status. They may be seconded judicial judges or judges recruited directly by the Superior Council of Administrative and Fiscal Courts (*Conselho Superior dos Tribunais Administrativos e Fiscais*, CSTAF)⁹⁰, which is the management and disciplinary body for administrative judges. This Council is presided over by the president of the Supreme Administrative Court and is composed of 10 members: two appointed by the President of the Republic, four elected by the Assembly of the Republic, and four elected by their peers. The High Council for the Administrative and Tax Courts are responsible for appointing, assigning, transferring, promoting and taking disciplinary action in respect of judges of the administrative and tax courts.
136. Judges for the administrative courts of first instance are normally recruited via a competition open to citizens holding a degree in law (Article 60, ETAF). Judges for superior courts are also recruited through a competition and in accordance with their

⁸⁴ *Op. cit.* footnote, 79 (Law on the Status of the Judge) Article 11 (1)

⁸⁵ *Ibid.* Article 17

⁸⁶ *Ibid.* Article 18

⁸⁷ *Ibid.* Article 15 (1) g)

⁸⁸ *Ibid.* Article 15 (2)

⁸⁹ Status of the Administrative and Tax Courts [(ETAF) Estatuto dos Tribunais Administrativos e Fiscais], approved by the decree-law 13/2002, of February 19, 2002, amended by the Law 107-D/2003 of December 31, 2003 – the system of administrative courts is maintained, now with power of full jurisdiction.

⁹⁰ Superior Council of Administrative and Fiscal Tribunals: <http://www.cstaf.pt/>

qualifications. The candidates accepted must then undergo training at the Centre for Judicial Studies (*Centro de Estudos Judiciários, CEJ*).⁹¹

137. The judges of the civil and penal jurisdiction may carry out duties in the administrative jurisdiction, by way of secondment, but the contrary is not possible. All the magistrates may carry out duties in the public administration, by way of secondment, by means of an authorization from the relevant magistrate's advisors, but the number of magistrates in this case is very limited.

5.1.13 Romania

Structure of Administrative Courts

138. In Romania, there are no special administrative courts. Instead, chambers are set up within the ordinary courts according to the nature of the files (criminal cases, civil cases, administrative and tax suit cases).⁹²

Selection/Appointment of Judges

139. Judges of administrative courts have the same status and the same professional background as the other judges from the general justice. The judgeship is incompatible with any other public or private functions except for teaching at higher education and training within the National Institute of the Magistracy and the National School of Trial Clerks.⁹³

140. Judges are usually admitted to the Magistracy through public competition. The following criteria are established in the terms of reference of the competitions: professional competence, aptitude and good reputation. The competitive recruitment is carried out, as well as the initial professional training of judges, by the National Institute of the Magistracy, with the approval of the Superior Council of Magistracy. The National Institute of Magistracy organizes continuous training programs for magistrates, judges and prosecutors of all courts.

141. After graduating at the National Institute of Magistracy, the judges can be appointed as judges on probation only at the first level court, having a one-year probation period, after which they must take a capacity examination. Those succeeding are appointed by the President of Romania, at the proposal of the Superior Council of Magistracy, and they become irremovable.

142. The judges' promotion from one level court to another is made only by national competition to the limit of the vacant jobs existing at tribunals and court of appeal. Judges that fulfil certain conditions can participate to these contests, namely the quality of their professional activity and at least some years of service length, as follows: 5 years of length service as a judge or prosecutor for promotion to a tribunal; 6 years of service as a judge or prosecutor for promotion to the court of appeal. For the promotion at the High Court of Cassation and Justice 15 years of length service are requested as a judge or prosecutor and 3 years of effective service as judge or prosecutor at the level of the court of appeal. The appointment to the leading positions within the courts is made by competition or examination, for a period of 3 years, with the possibility of reinstatement

⁹¹ See: ACA-Europe: http://www.aca-europe.eu/en/eurtour/i/countries/portugal/portugal_en.pdf, Section D, point 13.

⁹² Administrative Justice in Europe, Romania Report, Section A, point 6 at http://www.aca-europe.eu/en/eurtour/i/countries/romania/romania_en.pdf.

⁹³ *Ibid.*, Section D, section 11.

only once, with the condition of fulfilling some length service conditions and professional competence.

5.1.14 Slovakia

Structure of Administrative Courts

143. In Slovakia, court review of decisions of administrative authorities (administrative justice) at the first-instance level is conducted by specialised three-member panels at eight regional courts. At the appellate level, by 3-member panels of the Administrative Division of the Supreme Court. The Supreme Court of the Slovak Republic has the position of the Court of Cassation in the administrative justice system.⁹⁴ This means that the system, much like in Romania, has special chambers or divisions within ordinary courts, rather than separate courts.

Selection/Appointment of Administrative Judges

144. Administrative judges (i.e. judges of administrative divisions of regional courts or the Administrative Division of the Supreme Court) have the same status as other judges of general courts and enjoy no special benefits, have no special characteristics and do not form any specific category of judges.

145. Administrative judges, prior to their appointment by the President of the Republic, must establish that they meet the general requirements demanded from any judge, i.e. that they are Slovak nationals, have obtained legal education in the Slovak Republic, are of the appropriate age, have no criminal record, are physically fit and have passed the special judicial examination.

146. Since judges in charge of administrative cases function at regional courts, naturally, they have been originally engaged in civil, commercial, or (very rarely) criminal cases at district courts. Any judge of an administrative division shall meet the following requirements for election of judges prior to joining the judicial profession:

- a. is aged at least 30 on the day of the appointment
- b. has obtained legal education by graduating from a master's programme at the law faculty of a university in the Slovak Republic or a nostrification of a foreign university diploma in law.
- c. has full legal capacity and is capable to hold the post of a judge as regards health
- d. has full integrity and his/her moral characteristics give a guarantee that he/she shall perform the post of a judge accurately
- e. has permanent residence in the Slovak Republic
- f. has passed special judicial examination, and
- g. has successfully passed the judicial selection procedure.

147. Under the Act on Judges, bar examination, prosecutor examination, notary examination, or special examination of commercial lawyers is also considered as special judicial examination. With the approval of the Judicial Council, the Minister of Justice may waive the requirement of special judicial examination for a person who is a specialist or other significant personality in the legal branch and has been active in the legal profession for a minimum of 20 years.

⁹⁴ Administrative Justice in Europe, Report from the Slovak Republic, Part I Section A, point 6 at: http://www.aca-europe.eu/en/eurtour/i/countries/slovakia/slovakia_en.pdf.

148. Since the career system dominates in Slovakia, the basic and natural requirement is that every judge begins his career at the lowest level of general justice – the district court. Nevertheless, district courts do not hear administrative cases; they deal with criminal, commercial and civil matters.

Measures to ensure the integrity of candidates/judges

149. Before being recruited, a district judge interested in administrative justice must succeed in the selection procedure for the administrative division of the relevant regional court, which includes a demanding interview. The lateral recruitment of lawyers with long-term specialisation in a certain field is not practised.

150. Judges of administrative divisions have the obligation to participate in trainings throughout their career. Training is provided in four directions: a) training organised by the Justice Academy, b) self-study (using available library resources and periodicals or by participating in seminars), c) training through internships at public administration authorities or other courts, and d) training of judges through the study of court files, including the exchange of experience within divisions or at meetings of administrative divisions with members of the academic community. The Justice Academy provides training in a variety of areas based on an approved training plan. The lecturers at the training activities are judges themselves or experts from the relevant sectors.

5.1.15 Spain

Structure of Administrative Courts

151. Legal control of administrative decisions is exerted by courts and unipersonal judges of the administrative courts, namely, judges (provincial) of administrative litigation, central judges of administrative litigation (regional), Chambers of administrative litigation of Higher Regional Courts (for autonomous Communities), Chamber of administrative litigation for the National Court (Audiencia Nacional) and Chamber of administrative litigation for the Supreme Court. Right of appeal and questions of unconstitutionality are referred to the Constitutional Court.⁹⁵

Selection/Appointment of Administrative Judges

152. There is no difference between administrative judges and ordinary judges. All are members of the same judicial career. The categories in Spain are Judges (lower courts) and magistrates (higher courts). Administrative courts are simply a specialization for judges depending on their professional leanings and they can be appointed to other jurisdictions as well. The recruitment of judges is regulated by the Organic Law on the Judicial Power,⁹⁶ as amended several times. The General Council of the Judiciary (*Consejo General del Poder Judicial*) manages the process and appoints the successful candidates as judges. There are chiefly two ways to be appointed as a judge:

- a. The selection of recent university graduates in law is based on an examination that has to be announced at least every two years (in practice it is called every year), followed by a two-year training course at the Judicial School, an institution attached to the Judicial Council and located in Barcelona. The subject matters are basically civil, penal, administrative, labour and procedural law. The examination has three

⁹⁵ Organic Law on the Judicial Power (adopted 1 July 1985) Articles 301 and following. See also http://www.aceeurope.eu/en/eurtour/i/countries/spain/spain_en.pdf, section 6.

⁹⁶ Text of law available here: <https://www.legislationline.org/documents/id/20381>

qualifying phases: 1) a multiple choice 100-question questionnaire; 2) five oral presentation on topics chosen by secret ballot of general law theory, constitutional law, civil law, and penal law; and 3) several presentations on topics, also by secret ballot on civil and penal procedures, commercial law, administrative law and labour law.

- b. A second track is the selection of experienced lawyers (more than ten years of experience). One of every four vacant positions is reserved for this track (so, it is called “fourth track” or *cuarto turno*). The procedure is through a competition on merits, without examination, evaluated against a pre-established set of scale weighting elements such as training, years of experience, publications. Candidates may be called for an interview with a recruiting panel. Successful candidates follow a one-month training course at the Judicial School.

153. There is a third possibility on discretion of the Judicial Council. Lawyers or university professors with more than 15 years of experience may be appointed as magistrates of the Supreme Court. It is a discretionary appointment, but it shall be based on professional achievements and merits of candidates. A maximum of 20 per cent of the vacant positions (one in five) can be filled through this procedure. Members of selection committees are judges, university professors, and lawyers with more than 10 years of experience. The candidates are chosen through a rather elaborate procedure. They are presided over by a Supreme Court judge.

Measures to ensure integrity of judges

154. The Constitution of Spain stipulates that judges and magistrates shall have permanent tenure and only be removed by following the procedures according to the law.⁹⁷ The General Council of the Judiciary adopted in 2016 the Principles of Judicial Ethics in the trail of the mainstream international principles on ethical standards for judges. They are not binding guidelines and their violation is not subject to disciplinary measures (these latter occur only out of breaches of the laws), but they provide a peer pressure for good ethical behaviour. The Judicial Ethics Committee may issue opinions and recommendations on specific ethical dilemmas.

5.1.16 Sweden

Structure of administrative courts

155. Sweden has three levels of administrative courts, the County Administrative Courts (*Förvaltningsrätten*), The four Regional Administrative Courts (*Kammarrätten*) handling appeals from the lower courts and the Supreme Administrative Court on the national level (*Högsta förvaltningsdomstolen*) handling appeals from the Regional Courts.⁹⁸ The procedure is mostly written in courts on all levels, but oral proceedings are also possible when deemed necessary.

Selection/appointment of administrative judges

156. In Sweden, all judges in the general and administrative courts, irrespective of the level of the court, belong to the same corps.⁹⁹ The judicial career for judges in the

⁹⁷ The Constitution of Spain (sanctioned on 27 December 1978), Section 117 paras 1. and 2

⁹⁸ Swedish Law on Administrative Courts (*Lag om allmänna förvaltningsdomstolar*), (1971:289), Article 1.

⁹⁹ See: Lars Wennerström and Annika Brickman: The Status of Administrative Judges in Sweden. At: <http://www.aihja.org/images/users/ARCHIVES/docutheque-docs/EReportSweden.pdf>.

administrative courts as well as in the general courts can be described as follows: To participate in a recruitment process, a candidate to judgeship must have a Master of Law degree (LL.M.), which will normally take four and a half years of university studies. Many of the law graduates subsequently serve as *law clerks* in a district court or county administrative court. These services are limited to a period of two years. Since the degree of LL.M. is purely academic, service as a law clerk constitutes a vital practical supplement to university studies. This training is undertaken irrespective of the area of law in which the law clerk intends to specialise in the future.¹⁰⁰

157. The law clerk assists the judges in various respects. Towards the end of the term of service, the law clerk is can adjudicate in uncomplicated cases. Law clerks may subsequently apply to become *reporting clerks* at a court of appeal or administrative court of appeal for a period of twelve months. After that period, reporting clerks may serve for at least two years as an *assistant judge* at a district court or county administrative court. The assistant judge is competent to deal with all but the most complicated cases. After a period of probation in the court of appeal or administrative court of appeal lasting about one year, during which time the junior judge is co-opted to the bench, he or she is approved as an *associate judge*. Assistant and associate judges are referred to as *non-permanent judges*. An associate judge may also serve as a non-permanent judge at a district court or county administrative court or as a *judge referee* to the Supreme Court or Supreme Administrative Court.
158. It is not unusual for an associate judge to serve outside the judiciary, for example as legal advisor in one of the ministries or as a permanent secretary in a government committee of enquiry. Such additional qualifications are in fact often necessary to qualify for a position as a *permanent judge*.
159. Most appointed permanent judges in the various courts have followed the career described above. Judges may also be recruited among, for example, lawyers, academics or public prosecutors. In recent years, partly due to the increasing difficulty for the judiciary to compete with salaries in the private sector, the way to appoint judges has been discussed. Some argue that the field of potential candidates should be widened.
160. The Swedish Judicial Training Academy provides initial and continuous training for judges and legal staff employed within the courts of Sweden. Teachers are chosen from courts, universities and elsewhere. Judges undergo continuous training during the whole career. By and large the training is carried on in line with a scheme worked out by National Court Administration (NCA) and most courses organized outside the courts are administrated by NCA. The associate judges are, throughout the approximately five years in this position, continuously reviewed by their superiors, who cannot, however, interfere with their authority to rule independently. While the focus is on the practice of adjudication, the need of judicial training is increasingly recognized. Associate judges should normally be able to participate in a one-week course approximately every six months. These courses are led by experienced judges, but external lecturers, often from the university or a ministry, are also used. The courses cover different aspects of courts proceedings in courts of first instance and appeal courts and certain areas of Swedish criminal, civil and administrative law, European law and human rights issues, court administration and media relations.
161. For newly appointed permanent judges there is an initial two weeks course. After that, on-going training is offered with the aim that every judge shall undergo training regularly.

¹⁰⁰ Association of European Administrative Judges (AEAJ): <https://www.aej.org/page/Questionnaire-on-the-Independence-and-Efficiency-of-administrative-Justice--Sweden>.

Most of the in-service training is provided by NCA. These courses focus on leadership issues, effective case management and sociological aspects, such as ethnicity. There are also optional shorter seminars on specific topics. Normally, seminars are designed for either the courts of the general jurisdiction or the administrative courts. Judges also attend seminars and courses arranged by private enterprises and open for everyone on a commercial basis.

162. Permanent judges are appointed by the Government on the proposal of a special board. Most of the members of this board are judges presided over by the President of one of the Supreme Courts (general or administrative). The trade unions of court personnel are also represented. Only objective factors such as the merits and competence of the candidates are considered. Swedish citizenship is needed to be appointed a judge. The suggestions of the board are made public. Judges of the supreme courts and judges in some other senior positions are appointed by the Government without prior application.
163. A judge must retire at the age of 67 but can choose to do so from the age of 65. A position as permanent judge cannot be upheld after the age of 67, but retired judges are frequently appointed as extra judges by the different courts when personnel scarcity so requires. They are also allowed to take any other position in the private or public sector.

Measures to ensure the integrity of judges

164. Rules concerning the independence of judges are found mainly in the Swedish Constitution. The independence of the courts is guaranteed. No public authority, nor the Parliament or the Government, can determine how a court shall adjudicate or apply a legal rule in a case.
165. Statutory obligations by which the judges are bound are mainly found in the Constitution and in codes of judicial procedure for general and administrative courts. There are regulations in labour laws that apply to judges in the Public Employment Act and in a special Act on Public Employment for certain appointed officials. There are also general provisions in criminal law and tort law that apply to judges. Judges are bound by secrecy on their deliberations.
166. A judge is not subordinated to any other judge or official in his adjudication of justice. He fulfils this task under constitutional law and other laws. In certain administrative matters the chief judge of his court has the competence to take decisions concerning his duties in general.
167. The impartiality of a judge can be called into question by the parties or the judge himself *ex officio*, according to rules set out in Swedish codes of judicial procedure for general and administrative courts.

5.1.17 Ukraine

Structure of Administrative Courts

168. Ukraine has a three-level system of justice based on the principles of territoriality and specialization. The jurisdiction of specialised administrative courts extends to cases in public law disputes. Trial (first instance) and Appellate administrative courts are separate from ordinary courts. The Administrative Cassation Court is within the Supreme Court, consisting of five internal bodies: the Grand Chamber and four specialised Courts of Cassation. The Supreme Court is the highest court in the courts system of Ukraine. Each Court of Cassation within the Supreme Court has chambers on separate categories of cases and the Administrative Cassation Court is divided in chambers for tax issues, social

rights, and political rights. Administrative cassation court includes judges of the respective specialization.¹⁰¹

Selection/Appointment of Judges

169. To be appointed as a judge a candidate must be a citizen of Ukraine, between 30 and 65 of age, possess a higher legal education and a least five years of professional legal experience, command of the state language and be “competent and honest”.¹⁰²

The Constitution envisages that the law may provide other requirements for the judges of specialised courts with regard to education and professional experience.¹⁰³

170. The Selection process of candidates consists of passing an eligibility assessment by the persons admitted to the selection; organization of a special verification procedure by the High Qualifications Commission of Judges (HQCJ) in accordance with the laws on prevention of corruption; special training and preparation for the qualifications examination.¹⁰⁴

171. The HQCJ conducts qualification evaluation in order to identify the capability of a candidate to render justice in a relevant court according to criteria determined by law. On the basis of the rating of the candidates who took part in that competition the HQCJ makes recommendations to the High Council of Justice (HCJ) regarding appointment of a candidate for a position of a judge. On submission of the HCJ the President of Ukraine formally appoints judge to office.

Measures to ensure the integrity of judges/candidates

172. Independence and inviolability of a judge are guaranteed by the Constitution.¹⁰⁵ Judges appointed for an unlimited term and cannot be transferred to another court without their consent. The grounds for dismissal of a judge are prescribed by the Constitution. Such grounds include health reasons, serious disciplinary offences and violation of the obligation to justify the legality of the origin of property.¹⁰⁶ A judge may be brought to disciplinary liability within the procedure of disciplinary proceedings. The grounds for the disciplinary liability are defined in the Law on the Judiciary and the Status of Judges.¹⁰⁷

173. A Judge shall not belong to a political party, trade union, or take part in any political activity, hold a representative mandate, occupy any other paid office, and engage in other remunerated work except academic, teaching or creative activity.¹⁰⁸

174. In order to verify whether the standard of living of the judge corresponds to his/her property and income (wealth and income of family included), the judge’s lifestyle shall be monitored.¹⁰⁹ Judges are obliged to submit a declaration of integrity in a form determined by the High Qualifications Commission of Judges.

¹⁰¹Code of Administrative Justice, (entry in to force October 7, 2012) Articles 22-24.

¹⁰² Constitution of Ukraine (adopted 28 June 1996, last amended 7 February 2019), article 127.

¹⁰³ *Ibid.*

¹⁰⁴ Law of Ukraine on the Judiciary and the Status of Judges (2 June 2016), Article 70. See also OSCE/ODIHR Opinion on Law of Ukraine on the Judiciary and the Status of Judges of 30 June 2017; available here:

https://www.legislationline.org/download/id/7363/file/298_JUD_UKR_30June2017_en.pdf

¹⁰⁵ *Op.cit.* footnote, 103, Article 126.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Op.cit.* footnote, 104, Article 106 (Law of Ukraine on the Judiciary and the Status of judges); See OSCE/ODIHR Opinion on Law of Ukraine on the Judiciary and the Status of Judges of 30 June 2017, paras 82-84.

¹⁰⁸ *Ibid.*, Article 54 para 2 and 4.

¹⁰⁹ *Ibid.*, Article 54, para 7.

5.1.18 United Kingdom

Structure of administrative courts

175. The United Kingdom, more specifically England and Wales, has seen considerable changes to its administrative justice system after the passing of the Tribunals, Courts and Enforcement Act in 2007,¹¹⁰ with the introduction of two stage system for administrative courts. The First Tier Tribunal is organised in several specialised chambers and handle cases concerning administrative decisions belonging under that chamber. The Upper Tribunal handle appeals of the First Tier Tribunals after permission is granted. Several specialised tribunals also exist outside this system. Appeals from the Upper Tribunal sort under the Civil Division of the Court of Appeals and lastly under the Supreme Court of the United Kingdom. It is important to note that civil disputes between individuals sort under the Magistrate Courts or Family courts depending on the nature of the matter. Appeals from such courts will be handled by the High Court, which consists of three divisions;¹¹¹ the Queen's Bench will hear appeals from the Magistrate Courts and the Family Division, will logically handle matters from the Family Courts. Appeals from the High Courts will proceed to the Court of Appeal and ultimately to the Supreme Court, with needed permissions.

Selection/appointment of administrative judges

176. In the United Kingdom judges are appointed to specific vacancies in a judicial office. They must be experienced professionals. There are statutory criteria for judicial qualifications. A Judicial Appointments Commission (JAC), was created by the Constitutional Reform Act of 2005. It replaced the so-called Westminster system whereby the Lord Chancellor (Minister of Justice) appointed all judges.
177. The statutory duties of the JAC are to select candidates for judicial office and recommend them to the Lord Chancellor for appointment. The Lord Chancellor, in accordance with the provisions of the Act, makes the appointments or recommends the appointments to the Prime Minister for the appointment to be made by the Queen. The JAC is responsible for selections in relation to all judicial offices, as well as to the offices of the Lord Chief Justice, Heads of Division, Lords Justices of Appeal and High Court Judges. In selections for the Supreme Court a member of the JAC is required to sit on the panel.
178. The JAC has extremely specific duties regarding the selection of judges. These statutory responsibilities are: 1) to select candidates solely on merit; 2) to select only people of 'good character'; and 3) to have regard to the need to encourage diversity in the range of persons available for judicial selection.
179. The JAC consists of 15 members: 12 members are selected by the Ministry of Justice; three members are selected from the judiciary by a Judicial Council. The Lord Chancellor, a member of the government, now has a limited authority to appoint judges, but may accept the selected or reject candidate if the candidate is unsuitable and refer the proposal back to the JAC.
180. The selection process is based on qualifying tests. These are online assessments used to shortlist candidates for some judicial vacancies. Qualifying tests are designed to assess a candidate's ability to absorb and analyse information quickly, identify issues and apply the law appropriately. Each test is designed to suit the specific post and they are

¹¹⁰ <https://www.legislation.gov.uk/ukpga/2007/15/contents>.

¹¹¹ <https://www.gov.uk/courts-tribunals/queens-bench-division-of-the-high-court>.

developed by experienced judges. The JAC determines the number of candidates who should be invited to the next stage. The JAC uses telephone assessments as a shortlisting tool, often in addition to other shortlisting tools before deciding who will advance to the 'selection day'. Unsuccessful candidates receive feedback to consider this for future applications.

181. Shortlisted candidates will be invited to a selection day, which can include: a) a panel interview; b) situational questioning about scenarios a candidate may face as a judge; c) role play, simulating a court or tribunal environment d) making a presentation.
182. The JAC also has a statutory duty to check the good character of candidates, including checks with external bodies¹¹² (for instance previous convictions, financial matters, disciplinary actions and professional conduct). Finally, the Committee will recommend candidates to the Appropriate Authority (Lord Chancellor, Lord Chief Justice or Senior President of Tribunals) for appointment. When reporting its final selection the JAC must reflect the comments of the statutory consultees and discuss any divergence of opinion.

Measures to ensure the integrity of judges

183. Both administrative and other judges are given immunity from prosecution for any acts they carry out in performance of their judicial function. They also benefit from immunity from being sued for defamation for the things they say about parties or witnesses in the course of hearing cases. However, judges are subject to the law in the same way as any other citizen. The Lord Chief Justice or Lord Chancellor may refer a judge to the Judicial Complaints Investigations Office in order to establish whether it would be appropriate to remove them from office in circumstances where they have been found to have committed a criminal offence.¹¹³ Furthermore, both Houses of Parliament have the power to petition The Queen for the removal of a judge of the High Court or the Court of Appeal. This power originates in the 1701 Act of Settlement and is now contained in section 11(3) of the Supreme Court Act 1981.

6. FINAL COMMENTS

6.1. Gender-neutral Legal Drafting

184. As referred to in Section 2.1 *supra* discrimination of any kind must not occur within the judicial system, but more acutely in selection of judges. In order to facilitate the respect of the prohibition of discrimination, the OSCE/ODIHR encourages all legislation, to use gender neutral terminology. Employing only the male form of a term that would imply that the position is occupied by a man only, should be avoided. Established international practice requires legislation to be drafted in a gender neutral manner.¹¹⁴ It is recommended that, whenever possible, the reference to post-holders or certain categories of individuals be adapted to use a gender neutral word, whenever possible.

¹¹² Judicial Appointments Commission: <https://www.judicialappointments.gov.uk/good-character>).

¹¹³ Courts and Tribunal Judiciary: <https://www.judiciary.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud-acc-ind/independence/>

¹¹⁴ See e.g., the UN Economic and Social Commission for Western Asia (ESCWA), Gender-Sensitive Language (2013), <https://unswap.unwomen.org/UNEntity/ViewDocument?FileName=Annex16__23201435437.pdf [copy and paste weblink in the browser]>.

Alternatively, the plural form of the respective noun could be used instead of the singular or it is recommended to use both male and female words.¹¹⁵

6.2. Impact Assessment and Participatory Approach

185. OSCE/ODIHR welcomes an approach in line with OSCE commitments, which requires legislation to be adopted “as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (Moscow Document of 1991, par 18.1).
186. In order to be effective, consultations on draft legislation and policies, need to be inclusive and to provide sufficient time to prepare and submit recommendations on draft legislation; the State should also provide for an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions.¹¹⁶ According to recommendations issued by international and regional bodies and good practices within the Region, public consultations generally last from a minimum of 15 days to two or three months, although this should be extended as necessary, taking into account, inter alia, the nature, complexity and size of the proposed draft act and supporting data/information.¹¹⁷ To guarantee effective participation, consultation mechanisms must allow for input at an early stage and throughout the process,¹¹⁸ meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before Parliament (e.g., through the organization of public hearings). Public consultations constitute a means of open and democratic governance; they lead to higher transparency and accountability of public institutions, and help ensure that potential controversies are identified before a law is adopted.¹¹⁹ Discussions held in this manner that allow for an open and inclusive debate will increase all stakeholders’ understanding of the various factors involved and enhance confidence in the adopted legislation. Ultimately, this also improves the implementation of laws once adopted.
187. In light of the above, the legislator is therefore encouraged to ensure that any new legislation is subject to further inclusive, extensive and effective consultations, according to the principles stated above, at all stages of the law-making process.

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¹¹⁵ See e.g., OSCE/ODIHR, Report on the Assessment of the Assessment of the Legislative Process in the Republic of Armenia (October 2014), paras 47-48, <<http://www.legislationline.org/documents/id/19365>>.

¹¹⁶ See e.g., Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes (from the participants to the Civil Society Forum organized by the OSCE/ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015, <<http://www.osce.org/odihr/183991>>.

¹¹⁷ See e.g., OSCE/ODIHR, Opinion on the Draft Law of Ukraine “On Public Consultations”, 1 September 2016, paras 40-41, <<http://www.legislationline.org/documents/id/20027>>.

¹¹⁸ See e.g., OSCE/ODIHR, Guidelines on the Protection of Human Rights Defenders (2014), Section II, Sub-Section G on the Right to participate in public affairs, <<http://www.osce.org/odihr/119633>>.

¹¹⁹ *Ibid.*