

**International Association of Judges
First Study Commission; Annual Meeting in Abidjan (October 28-31 2002)
Questionnaire**

Answers of Austria

The role and function of the High Council of Justice or analogous bodies in the organisation and management of the national judicial system

Introductory remarks:

In many Civil Law Countries there is a body (institution) known as the Superior Council of the Judiciary or with a similar title (e.g. "Judicial Service Commission"). Where such a body exists its composition and functions will vary to some extent from country to country but the concept is essentially the same and there are core elements common to them. Generally speaking they are composed entirely of Judges or by a majority of Judges. Such Councils have a role in the appointment of Judges, the promotion of Judges, the appointments of Presidents of Courts and the further education of Judges. In some cases they also have functions regarding the discipline of Judges, the evaluation of the work of Judges, the budget of the judiciary and the allocation of resources to the judiciary. As stated, not all such Councils have the same functions or the same composition but the foregoing general statement of the role of such Councils is intended to enable countries who do not have a Council of the Judiciary, so called, to identify to any analogous body or bodies in their system for the purpose of replying to the questionnaire.

1. Constitution/Composition

- 1.1 Is there a Superior Council of the Judiciary or an analogous body, or bodies, in your Judicial System? (Please state title)

There is no Superior Council of the Judiciary but there are Personalsenate

- 1.2 Give a brief summary of the role or function of such body or bodies.
There is a Personalsenat at every country court (for this court and all district court in the district of the country court), at every court of appeal and at the supreme court. The most important tasks are the distribution of cases, the evaluation of judges and the elaboration of proposals on appointments of a judges to a certain position. (a certain court or a position of a president of a certain court)
- 1.3 Who are members of the body? (number, composition and qualifications of the members).The president and the oldest vice-president ex officio and 3 judges elected by all the judges of the courts concerned
- 1.4 How is the body constituted and what are the procedures for the appointment of members?

See 1.3.

1.5 Is there a majority of Judges on the body?

Only judges see 1.3.

1.6 Are any of the members of the body elected by Judges and if so how many? What is the period of office of a member of the body and under what conditions does the term of office come to an end?. May a member be removed from office against his will and if so under what circumstance

Two ex officio three elected see 1.3.

1.7 To what extent is there a *de facto* influence on the work of the body by the Executive (Government) or the Legislature, with particular regard to its composition, its judicial functions and non-judicial responsibilities.

There is no real chance of any influence because of the composition mentioned above see 1.3.. The influence of the executive power strongly is exercised by the allocation of resources, where this bodies have no influence at all.

2. Responsibilities of the Superior Council or the analogous body

(If the Superior Council or the analogous body does not have responsibility in a particular field referred to below, please indicate, by reference to it's name only, the authority, which has responsibility.)

2.1 Is the Supreme Court subordinate to the Superior Council of the judiciary? If yes, describe in what respect.

The Supreme Court has its own Personalsenat

2.2 In so far as the role of the Superior Council or analogous body involves a sharing of judicial power with non-judicial persons or representatives, does the functioning of the Council/body conflict with a strict separation of powers between the judiciary and other state powers, the Executive and Legislative.

2.3 Does the Council/body have responsibility for the nomination or appointment of a judge? If yes, give a brief description.

There is no influence at all, who becomes candidate for the office of a judge.

- 2.4 Does the Council/body have responsibility for the promotion of judges? If yes, give a brief description.

At every other appointment than those mentioned under 2.3. (except president and vice-presidents of the Supreme Court) there are proposals of (one or two) Personalsenate. For each position the Personalsenat has to propose at least three candidates (if there are enough applicants). The appointing organ (minister of justice or president of the republic) is not bound to these proposals.

- 2.5 Does the Council/body have responsibility in the appointment of Presidents of Courts? If yes, give a brief description.

The same as described under point 2.4.

- 2.6 Does it have responsibility for organising the training or continuing education of judges? If yes, give a brief description.

There is not any competence. Their competence totally lies upon the presidents of the courts of appeal and the ministry of justice.

- 2.7 Does the Council/body have responsibility for the initiation or conduct of a disciplinary procedure against a judge? If yes, give a brief description.

No there is no competence; there exist special chambers at the courts of appeal

- 2.8 Does such Council/body have responsibility in the evaluation of the work of a judge? If yes, give a brief description.

Yes, it lies upon the Personalsenat to evaluate the work of a judge after the first full year when he was appointed to a new position.

Implicitly of course it has to evaluate the work of the judge whenever he/she applies for a new position and is to be compared with the other applicants.

- 2.9 Does it have responsibility for the drafting or preparation of the budget of the judiciary? (If yes, describe).

Not at all. Budget drafting almost exclusively lies upon the hand of the minister of justice.

- 2.10 Does it have responsibility concerning the allocation of resources (personnel and financial) within the budget approved by Parliament or Government? If yes, give a brief description.

No not at all

- 2.11 Are there any other significant responsibilities of the Council/body not already mentioned? (e.g. the drafting of a judicial code of ethics).

No

3. Superior Council and (a) the independence of the judiciary and (b) its advantages and disadvantages

(Note: In some countries the question whether a Superior Council should be created is the subject of continuing debate. In this respect the experience of judges associations of other countries may be of interest. One of the key issues may be the independence of the judiciary).

3.1 If you have such a body, please list, very briefly the advantages and disadvantages.

The advantage of the Personalsenate is their very direct way of election by the colleagues concerned, without any possibility of influence by the executive power. Their competence is too unimportant for the politics. Till now there were no political influences at all. On the other hand some very important competencies are missing and lie fully in the influence of the executive power

3.2 If you do not have such a body:

(a) Is the creation of such a body contemplated?

Form time to time discussion starts in this direction. The main question is how to avoid that such a body includes too much influence from outside the judiciary.

(b) How do you view the advantages and disadvantages of such a body?

See above 3.1.

4. Particularities/Criticisms

4.1 Are there some special features concerning the Superior Council or body in your country which might be of special interest to others from a comparative point of view? If yes, describe.

4.2 Are there particular fundamental problems concerning the role of the Council/body in your country? If yes, describe.

4.3 Are reforms of such a Council/body under discussion or proposed? If yes, describe briefly.

See point 3

5. Topics

5.1 What topics do you propose for next year's meeting of the I st Study Commission?

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