

The Supreme Court of Japan

Reply to Questionnaire for Annual Meeting of the International Association of Judges in Abidjan (Role and Function of the High Council of Justice or Analogous Bodies)

The system of a Superior Council of the Judiciary presumably has developed on the pretext that judicial administrative power belongs to the administrative government. In Japan, however, judicial administrative power belongs not to the administrative government but to the judiciary. Accordingly, in Japan it is the Supreme Court that has authority over matters relating to the power of the Supreme Council of Justice, which is the topic here. That is to say, for example, the Supreme Court has power over the nomination of inferior court judges (including the presidents of high courts and other courts; Constitution, Article 80 Paragraph 1), decisions on their transfer and promotion, the implementation of training, etc., and also has jurisdiction, as the adjudicative body, over disciplinary action against judges decided through judicial court procedures (Court Organization Law, Article 49; Law on Disciplinary Actions against Judges, Article 3).

Thus, since the location of judicial administrative power, which is the basic structure of the judicial system, is vastly different, it would be inappropriate to reply to individual questions. However, since, in view of the powers of the Supreme Court described above, it can be said that in Japan the Supreme Court virtually plays the role of the Superior Council of the Judiciary, we would like to give the following brief explanation of the Supreme Court on the points referred to in the questionnaire.

Based on such facts that the Supreme Court is vested with rule-making power regarding the internal regulations of courts and matters relating to judicial administration processing, administrative organizations cannot engage in disciplinary action against judges, the Supreme Court has the authority to make nominations for the appointment of inferior court judges, etc. (Constitution, Articles 77 Paragraph 1, 78, 80 Paragraph 1), it is understood that Constitution has vested judicial administrative power with the courts, with the Supreme Court at the top. (The objective of judicial administration is to supply and maintain the necessary human and material organization and ensure the rational and efficient operation of work so as to achieve the essential mission of the courts, which is the exercise of adjudicative power. For this reason, the judicial administration is closely related to the exercise of adjudicative power, and thus there is a possibility that in practice it could exert an influence over this power. Therefore, from the perspective of the independence of judicial power, the authority to exercise this judicial administrative power is vested not in the administrative government but in the courts.)

When the Supreme Court handles affairs relating to judicial administration, decisions are made through discussions in the Judicial Assembly, with the chief

justice of the Supreme Court exercising general command (Court Organization Law, Article 12 Paragraph 1). Both the Grand Bench of the Supreme Court as the adjudicative body and the Judicial Assembly have the same 15 members – that is, all the justices of the Supreme Court. Justices of the Supreme Court are appointed from among persons of broad vision and extensive knowledge of law, who are not less than forty years of age. The chief justice of the Supreme Court is appointed by the emperor as designated by the cabinet, and justices other than the chief justice are appointed by the cabinet and attested by the emperor (Constitution, Article 6 Paragraph 2, Article 79 Paragraph 1; Court Organization Law Article 39 Paragraph 1 and 3, Article 41 Paragraph 1). At present, 6 of the 15 members have their careers as inferior court judges, while 9 have other backgrounds.

Although the cabinet has the power to appoint justices of the Supreme Court (or the right of nomination in the case of the chief justice), from the viewpoint of the independence of judicial power, the influence of the legislative government and the administrative government is excluded in the exercise of judicial administrative power. In the sense that justices of the Supreme Court, who are selected from various fields, not only career judges, engage in decision making related to judicial administration as judicial officers, the system ensures both the independence of judicial power and the reflection of a variety of opinions.

Various committees have been set up in the Supreme Court to research and discuss individual issues relating to judicial administration (for example, the Advisory Committee on Civil Rules Enactment). Moreover, amid the current moves toward the judicial reform, the establishment of new committees is being considered.