

## Study commission IV, answers from Finland

### **1. APPOINTMENT TO JUDICIAL OFFICE**

**A. Please describe the process by which a person is appointed to judicial office in lower courts, intermediate courts and superior courts pointing out any relevant differences between appointment in criminal civil or appellate courts.**

#### *General*

The method of appointment and selection of judges. The process of appointment of judges in Finland is the same for all judicial positions in lower courts and courts of appeal and also for all the positions, also positions as chief judges and president-positions.

#### *Lower courts and courts of appeal*

The President of Finland confirms the appointments and has the veto right to differ from the proposal. There is a special organ or board (Judicial Selection Board, tuomarivalintalautakunta) that appoints the judges. The organ or board consist of judges from all court instances and also contains delegates from attorneys, prosecutors and universities. Board is independent authority under the national office of the administration of court (tuomioistuinvirasto, TIVI).

All judges are recruited through an open application procedure. Applicants submit a written application to the court where the vacancy is open. The procedure for making permanent judicial appointments is the following: the court where a vacancy is open reports it and then publishes the vacancy notice. Applications are made on special forms that are used generally in appointment of state officials. The applicant list references and his/hers experience/work. The selection procedure is predominantly written. Interviews with the candidates are conducted by the court president at the court where the vacancy has been announced. The court president in the name of the court shall then give his or her opinion on whether the candidates are suitable as judges and how they should be ranked. Concerning lower court judges the court of appeal then gives its opinion of the applicants whether the candidates are suitable as judges and how they should be ranked. The Judicial Selection Board finally gives its statement and decides who is going to be appointed to the vacancy. The Judicial Selection Board takes into account the statements of the court president and the court of appeal, but has yet an independent competence to make the appointments. The President of Finland confirms the appointments and has the veto right to differ from the proposal. In the vast majority of cases, president appoints the candidate that the board placed first.

#### *The Supreme courts*

The appointment of supreme court judges differs from the appointment of other judges. Finland has two supreme courts, The Supreme court and The Supreme Administrative court. The supreme court has 15 judges and the Administrative supreme court 20 judges. Both courts have their own right to pick judges to permanent positions. The procedure is not open to public and is not made publicly. The President of Finland confirms the appointments of president of the court and the judges of the supreme courts. President has the veto right to differ from the proposal of the court.

#### *Critical points*

The amount of non-permanent judges in Finland is significant which constitutes a threat to the judges independence. There has not been any positive development during year 2022 concerning the amount of

non-permanent judges. The amount of non-permanent judges in Helsinki District Court increased from 30 percent to 41 percentage. From all the judges 34 percentage are in non-permanent. The number of non-permanent assistant junior secretaries is 76 percentage. The Chief Justice has the right to appoint and select the non-permanent judges with the duration of the position under six months.

In criminal cases there is the lay judge system in use in lower courts. The lay judges are elected and selected by through political nominations. The lay judge system has been widely criticized by the professional judges. Lay judges operate with full powers of a judge and their opinion can overrule the opinion of a professional judge. The use and the system of lay men was observed also in the EU Commissions Rule of law report 2023 concerning Finland. The report mentioned that GRECO has been observing the use of lay men in Finland earlier. Report said that even though the use of lay men has tradition in Finland, the question of nomination the lay men on political grounds is relevant and majority of professional judges considers the lay men system ineffective and outright risk to the reliability of the rulings of the professional judges.

***B. If applicable, please identify whether political influences of any description bear upon in any way the appointment of a particular person to judicial office.***

There is no political dimension to the appointment of judges in Finland.

***C. Is ethnic or gender diversity in any way relevant to appointment to judicial office, and if so, please describe why and in what respect each may be relevant.***

To become a judge in Finland you have to be a Finnish citizen with law degree, righteous and skillful person and you have to have the personal skills, but no other consideration as to ethnicity or gender is relevant in the appointment of judges.

***D. Describe whether and if so in what way the process of appointment to judicial office is independent of government.***

The state president is not bound by the proposal of the and therefore it can appoint a candidate of its own choice (veto-right). There have been very few cases where the president has considered it necessary to veto from the suggestions it has received from the board.

## **2. PROMOTION WITHIN THE JUDICIARY**

***A. Does scope exist for promotion within the judiciary and if so, please describe how and in what circumstances a magistrate or judge may be promoted.***

Judges in Finland are not promoted. Anyone can apply for a position as a chief judge or a president of a court, and their application will be reviewed and compared to the other applicants.

The number of judges has been increased during the year 2022. The retirement of judges has also increased. Especially due to the retirement the appointment of judges has been rapid and the appointment

age of judges is reasonably low. Retirement of judges has opened possibilities to judges to be appointed faster than before in higher positions.

***B. To what extent is political affiliation of political partisanship relevant to promotion within the judiciary.***

Political affiliation of political partisanship is not relevant to be appointed as a judge.

***C. Describe the transparency involved in the process of promotion within the judiciary.***

All applications to judicial positions are public, as are the statements or rankings done by the relevant court or its president. This also concerns the final appointment statement and the reasoning behind the appointment made by the Judicial Selection Board.

**3. WORKLOAD WITHIN THE JUDICIARY**

***A. In broad terms, what are the requirements for magistrates and judges in relation to the number of sitting days per year or other measurement of judicial workload requirements?***

There are no national standards regarding the workload of judges. A normal working week in Finland should be in average maximum 8 hours per day and 36 hours 15 minutes per week, but many judges work way more than that. The national association of judges made a poll last year and the result was that 2/3 of the judges haven't got enough time to write judgements and think that the workload is excessive. Over 50 percent of the judges are working 40 – 50 hours per week and 7,4 percent of the judges are working over 50 hours per week. Most district court judges have at least two or three days sessions per week.

***B. If a judge is encountering trouble keeping up with the workload, describe the regime that applies by which***

***(i) that judge's workload is allocated to other judges;***

The allocation of court cases is designated according the Forum rules and legislation. Because of the legislation of the Forum quantitatively cases are centered to the courts with most residents in the district. A higher-ranking judge can redistribute cases between judges with the permission of a judge concerned. This is very unusual and the workload is not allocated to other judges easily. Only in the case of a judge becoming sick and on a long sick leave, the cases might be reallocated to other judges.

Due to the Covid-19 pandemic the number of criminal cases and civil cases (especially cases related to family matters) has increased. Cases are allocated arbitrarily among judges in general courts, administrative courts and collegial courts (handling the cases in composition of judges). Cases related to family matters (statistics of the Helsinki district court) has increased 20 percentage since the beginning of the pandemic. There has been negative development concerning the case statistics. Judges have not been provided with case statistics during the last three years.

***(ii) the overloaded judge can recover from workload arrears and from any other disabling factor that led to overload.***

This would be an issue for the chief judge or court president that is the closest superior of the judge in question. The environment in workplace and also the health of the judges is in their responsibility in their departments. There is very little things that has been done for the judges to be able to recover from the extremely heavy work load.

**(iii) there are other mechanisms to address judicial delinquency.**

There are no other mechanisms to address judicial delinquency.

***C. Are judges expected or required to assist other judges who may be adversely affected from overload so as to ensure that the business of the court is discharged in a timely manner.***

Only a higher-ranking judge can order a judge to take over cases from another judge. It is the responsibility of the court president to make sure the cases are decided within the reasonable time frames and the judges decisions are given in a timeline set by the law (14 days in lower courts and 30 days in courts of first instance). If the workload is too great for the judges at the court to handle, the court president can ask for more resources from the National Court Administration. There are no extra resources available in general and it has been hard to recruit for example new district court judges.

**4. REMOVAL FROM JUDICIAL OFFICE**

***A. Does a regime currently exist in your country pursuant to which a sitting judge may be removed from office. If so, please describe any such regime, giving all relevant details including-***

***(i) who decides that the judge is to be removed from office;***

***(ii) does the judge have a right of audience on any such motion or otherwise possess a right to be heard against the removal and is there an appeal process if removed;***

***(iii) what are the grounds for seeking the removal of a sitting judge;***

***(iv) what is the relationship between violation of the ethics code/principles and removal;***

***and***

***(v) describe the transparency in the process.***

i – iii. There are no disciplinary proceedings against Finnish judges. Finnish judges are not protected from criminal prosecution after the ordinary criminal law. Judges are i.e. responsible for their acts as judges according to the criminal law related to misuse of their authority, corruption etc. A permanent judge may be removed from office only if he/she has committed a serious crime or repeatedly neglected his/her duties and thereby shown themselves manifestly unfit to hold the office. Removal from the office requires a decision from court.

The Chancellor of Justice serves as the supreme guardian of the law. The Chancellor of Justice oversees the legality of the activities of the Government and the President of the Republic. The Chancellor of Justice also oversees that the authorities comply with the law and fulfil their duties. Citizens can file complaints with

the Chancellor of Justice about an authority's activities that they suspect to be illegal. The Chancellor of Justice gives decisions concerning the procedure of Judges. These decisions can lead to remarks or warnings. Warning is the more serious one. Decision resulting to warning cannot result to removal of judge from office.

Procedural laws incorporates rules for a fair trial and these guarantees apply also to the cases handling judges conduct. Judges can be sued for their conduct in civil life or their procedures related to their use of law. Judges can be accused for behavior in their private life. This will lead to criminal prosecution (drunk driving etc).

iv. There is ethics code for judges in Finland. The Finnish Association of Judges (Suomen tuomariliitto – Finlands domareförbund ry) has approved ethical principles for judges with the purpose of setting out the views of the Finnish judiciary on how to administer justice in a manner that is sustainable in terms of professional ethics. These ethical principles correspond with the views of the Finnish judiciary at the time of their approval. These ethical principles can be seen as strengthening the public's trust in the administration of justice because they will ensure that justice will be administered in a proper manner. These ethical principles will also have an informative role; they will help the public to find out about the professional ethics that guide the administration of justice.

v. All sessions/hearings in courts are publicly open and all the dispute documents of are open to public.

***B. If removed from office, describe the adverse consequences that may affect the removed***

***judge including -***

***(a) financial (especially pension) consequences;***

***(b) future employment consequences following removal;***

***(c) societal consequences including loss of title or civic decorations; and***

***(d) disciplinary steps that may be taken against the removed judge***

- a. The removal from office means that the judge will no longer receive a salary from the state. Judges are part of the general pension system as everyone else working in Finland. The pension a person receives depends on the income you have during your entire period of working, and the pension that has already been earned is not affected.
- b. It is not forbidden for the judge removed from the office to work in other legal positions.
- c. If you are condemned with criminal conviction over two years of imprisonment, you will lose your (Criminal code) military rank. Civic decorations or awards would not be taken from the judge removed from his office.
- d. There are no other disciplinary measures taken against a judge than the removal from the office.