

Study commission IV, answers from Sweden

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.

The process of appointment of judges in Sweden is the same for all judicial positions in all courts – from the lower courts to the supreme courts, and also for positions as chief judges and court presidents.

The government has the power to make judicial appointments. All judges are recruited through an open application procedure. Those who are interested in a particular vacancy need to submit a written application to the Judges Proposals Board (Domarnämnden) which is an independent authority under the government. This board conducts the application procedure and makes proposals for the government's appointments.

The procedure for making judicial appointments is the following: the court where a vacancy is open reports this to the Swedish National Courts Administration (SNCA) which decides if the position should be declared vacant. The SNCA reports the vacancy to the Judges Proposals Board, and the board then publishes the vacancy notice.

Applications are made on special forms that are supplied by the Judges Proposals Board and which request the applicant to list references from recent years' practical work experience. The selection procedure before the board is predominantly written. Interviews with the candidates are conducted by the court president at the court where the vacancy has been announced.

If the vacant position is that of a senior judge, the interviews are conducted by a member of the board, but the court president is also present at the interviews. The court president shall then give his or her opinion on whether the candidates are suitable as judges and how they should be ranked. The proposal of the Judges Proposals Board to the Government normally consists of three candidates, placed in a non-binding order of preference. In the vast majority of cases, the government appoints the candidate that the Judges Proposals Board placed first.

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 Sweden.

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.

No. To become a judge in Sweden you have to be a Swedish citizen, 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 government is not bound by the proposal of the Judges Proposals Board and therefore it can appoint a candidate of its own choice. In such cases, however, the government is obliged to seek an opinion of the board on the new candidate. Overall, there have been very few cases where the government has considered it necessary to deviate from the suggestions it has received from the board. There is now a suggestion to change the law so that the government will be formally bound by the proposals of 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 Sweden 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 (see the answer to 1 A).

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

Not at all.

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

All applications to judicial positions are public, as are the rankings by the Judges Proposals Board and the reasoning behind this ranking.

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 Sweden should be in average 40 hours, but many judges work more than that (some a lot more).

Most district court judges (first instance in the general courts) sit on average two-three days per week in court.

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;

A higher-ranking judge can redistribute cases between judges. Judges can also agree between themselves to help out and take over cases from one another.

(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. They are in charge of the work environment and therefore also for the health of the judges in their department.

(iii) there are 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.

Yes, but as stated above 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 time standards set by the government. If the workload is too great for the judges at the court to handle, the court president can ask for more resources from the Swedish National Court Administration. There is a "resource team" available with judges that can help out in any court in Sweden for a shorter or longer period of time.

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.

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. There is no ethics code for judges in Sweden.

Should the decision to remove the judge from office have been made by another authority than a court (in practice by the Government Disciplinary Board for Higher Officials), the judge concerned may call upon a court to review that decision. The decision can be challenged in the district court by the judge on his/her own or, with a support of the trade union, in the labour court as a first instance court. Disciplinary Board for Higher Officials examines matters concerning disciplinary responsibility, reports for prosecution, dismissal, suspension and compulsory medical examination regarding judges. The Board consists of five members. The chair and the vice chair must be lawyers and have experience as a judge, then there are a chief lawyer and two other members.

All hearings in courts are public and transparent.

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

The removal from office means that the judge will no longer receive a salary from the state. Judges are part of the same pension system as everyone else in Sweden. The pension a person received depends on the income you have during your entire worklife, and the pension that has already been earned is not affected.

To be removed from office because of misconduct of course means that it is hard to find another job, but there are no legal barriers for an ex-judge to work in the legal field.

We do not really have any civic decorations in Sweden, but if there would be any such award given out it would not be taken back.

There are no other disciplinary measures taken against a judge than the removal from office.