

International Association of Judges
First Study Commission; Annual Meeting in Vienna (November 9-13 2003)
Questionnaire

Icelandic Report

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)

Yes, the Judicial Council.

1.2 Give a brief summary of the role or function of such body or bodies.

According to the Act on the Judiciary no. 15/1998, Section 14 the functions of the Judicial Council are mainly the following:

- 1. To control the financial affairs of the district courts on its own responsibility, make proposals to the Minister of Justice on financial appropriations to them, and to distribute among them the funds to be appropriated to them in a single sum under the Budget Act.*
- 2. To determine the number of judges and staff members at each district court, and to issue rules applying generally to transfers of judges between the district courts.*
- 3. To organise continuing education for district court judges and other lawyers in service of the district courts.*
- 4. To issue rules on co-ordinated judicial practice, which the Council may give binding effect to the extent they do not relate to the handling of a court case for which a judge is solely responsible, as provided for in Section 24, first paragraph.*
- 5. To collect information on the number of cases in the district courts, and the conclusions of cases, and make, as necessary, any proposals related thereto, and to otherwise promote efficiency and expediency in the handling of cases in the district courts.*
- 6. To issue, as necessary, general rules on the presence of district court judges in their workplaces and their vacation arrangements, including whether, and if so how, the activities of the district courts may be limited on account of any vacations of judges and staff members.*

7. *To represent the district courts collectively to executive authorities and others.*
8. *To make proposals on any matter conducive to improving the functions of the district courts, or amending the legislation applicable to them.*
The Judicial Council shall annually publish a report on its own functions and those of the district courts.

1.3 Who are members of the body? (number, composition and qualifications of the members).

The Judicial Council shall be composed of five members appointed by the Minister of Justice. Two shall be elected by district court judges from among their group, two by the chief judges of the district courts from among their group, and the Minister shall appoint one member, who is not an active judge, without a nomination. The period of appointment to the Judicial Council shall be five years, with the provision that the term of one member shall expire each year. Each of the five members shall have an alternate who is appointed, and, as the case may be, nominated, in the same manner as a principal. A principal member of the Judicial Council shall not be appointed more than twice in succession.

If a district court judge or a chief judge with a seat on the Judicial Council ceases to hold office as such before the his term of appointment is concluded, or if he is relieved from his duties as a member of the Council, another member shall be elected and appointed in his place to serve until the end of the term. The Minister shall appoint a new member of the Judicial Council if the member appointed by him without a nomination leaves the Council before the end of his term.

The Judicial Council shall elect its chairman as from the beginning of each calendar year. The Council shall decide at what location its functions shall be performed.

The State Salaries Arbitration Tribunal shall determine the remuneration of the members of the Judicial Council.

1.4 How is the body constituted and what are the procedures for the appointment of members?

Ref. question 1.3.

1.5 Is there a majority of Judges on the body?

Yes, four out of five, ref. question 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 circumstances.? *Ref. question 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.

The functions of the Judicial Council are stated in Act on the Judiciary no. 15/1998, Section 14, ref. question 1.2. The influence on the work of the body by the Executive or the Legislature is probably reflected in the financial appropriations to the district courts, under the Budget Act., to be distributed among them by the Judicial Council.

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. *No, the Judicial Council has only responsibility concerning the district courts.*

- 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. *It does not, the role of the Judicial Council is described in answer to question 1.2.*
- 2.3 Does the Council/body have responsibility for the nomination or appointment of a judge? If yes, give a brief description. *No.*
- 2.4 Does the Council/body have responsibility for the promotion of judges? If yes, give a brief description. *No, but it shall determine the number of judges and has issued rules applying to transfers of judges between the district courts.*
- 2.5 Does the Council/body have responsibility in the appointment of Presidents of Courts? If yes, give a brief description. *The general rule is that the Minister of Justice shall appoint a chief judge to each district court for a period of five years at a time. Where three or more judges are engaged with the same district court, they shall elect one of their number for the office, but where there are two judges, the Judicial Council shall nominate one of them for the office if they are not in agreement.*
- 2.6 Does it have responsibility for organising the training or continuing education of judges? If yes, give a brief description. *Yes, it has the responsibility for organising continuing education for district court judges and other lawyers in service of the district courts. It has done so for example by organising seminars for judges and assistants lawyers working at the district courts*
- 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. *Yes, if the Judicial Council considers that a chief judge has evinced conduct unbecoming his office as chief judge, he shall be afforded an opportunity to express himself on the matter. If the Council considers the chief judge's explanations unacceptable, the Council may admonish him in writing. In case of a serious or repeated breach, the Council may, in a reasoned proposal, propose that the chief judge be relieved. The Minister of Justice shall decide whether a chief judge shall be relieved, but the provisions of the Administrative Procedures Act shall apply in other respects on the handling of the matter.*
- 2.8 Does such Council/body have responsibility in the evaluation of the work of a judge? If yes, give a brief description. *No.*
- 2.9 Does it have responsibility for the drafting or preparation of the budget of the judiciary? (If yes, describe). *Yes, it is obliged to control the financial affairs of the district courts on its own responsibility, make proposals to the Minister of Justice on financial appropriations to them, and to distribute among them the funds to be appropriated to them in a single sum under the Budget Act.*
- 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. *Ref. question 2.9.*
- 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.

Considering the advantages of the Judicial Council it overlooks the district courts and takes care of collective tasks as organising continuing education for judges, determining the number of judges and staff members at each district court and has the power to transfer judges between the district courts. As stated before the Judicial Council has the role to control the financial affairs of the district courts. With the establishment of the Judicial Council the power has been moved from the executive to the judiciary which increases the independence of the judiciary.

The disadvantages are mainly that the cost to operate the Judicial Council is included in the budget of the judiciary which reduces the sum to be distributed to the district courts. It is also a disadvantage that the Supreme Court is outside the Judicial Council.

3.2 If you do not have such a body:

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

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

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. *No.*

4.2 Are there particular fundamental problems concerning the role of the Council/body in your country? If yes, describe. *No.*

4.3 Are reforms of such a Council/body under discussion or proposed? If yes, describe briefly. *No.*

5. Topics

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

The appointment/election of judges. Rules about reducing the workload on judges before retirement.

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