1. Protection of independence

Klaus Tolksdorf*

Question 1. What is the legal basis (constitutional, statutory, customary, judicial precedent) of the statutes or other statutory instruments safeguarding the independence of judges?

I. CONSTITUTIONAL SAFEGUARDS

For the vast majority of countries it is reported that their constitution guarantees judicial independence, while – as far as communicated – wording, content and comprehensiveness of the relevant constitutional provisions differ greatly.

The most commonly reported constitutional provisions state largely that judges shall be independent in exercising their judicial functions and subject only to the constitution and the law. Another frequent type of constitutional provision with regard to the independence of the judiciary stipulates that the judiciary is established as a separate power, independent of the executive and the legislative branch.

Some constitutions also contain provisions that:

- justice shall be administered only by independent and impartial courts;
- the organization and jurisdiction of courts are determined by law;
- laws on the structure and supervision of courts and on the legal status and remuneration of judges need a qualified majority vote in Parliament;
- the office of judge is permanent and/or that judges may

* President of the Federal Court of Justice, Germany.
not arbitrarily be transferred, dismissed or removed from office;
- judges must be provided with appropriate working conditions and/or a certain level of financial security;
- the function of judge is incompatible with being member of the government or legislative bodies;
- judges may not be members of political parties or trade unions and/or may not engage in political activities or public activities incompatible with the principles of independence.

Furthermore some constitutions also deal with the appointment and promotion of judges, set out rules for the allocation of judges to particular courts, state that cases cannot be removed from the competent judge, or guarantee a certain level of immunity for judges with regard to any opinion expressed during decision-making in court or with regard to criminal proceedings in general. In countries where the constitution does not contain such provisions, these issues often are set out in statutes. Finally some reports mention constitutional and/or statutory provisions related to the establishment and functioning of a Council of the Judiciary as safeguard for the independence of the judiciary.

Only a few countries lack a constitutional provision that guarantees the independence of justice as such. In Luxembourg no constitutional or other legal text explicitly safeguards judicial independence. A proposed constitutional reform is likely to fill this gap. However the current constitution states that judges have unlimited tenure, that the rules for the members of the judiciary will be fixed by law and that judges cannot be paid members of the government. Further aspects of judicial independence are dealt with by various Luxembourgian statutes. The situation in the Netherlands is similar. Articles 117 § 1 and § 4 of the Constitution read that judges shall be appointed for life and that their legal status shall in other respects be regulated by law. The Dutch report points out, however, that independence is secured by the Council for the Judiciary and through a provision of the Judiciary Act dealing with judicial impartiality.

In the United Kingdom the present legal basis safeguarding independence is merely statutory as well. The Constitutional Reform Act 2005 provides *inter alia* that members of the government and all those with responsibility for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued
independence of the judiciary. Finally the Norwegian report explains that although the principle of judicial independence is not explicitly laid down in the Norwegian Constitution of 1814, this has never given rise to doubt about its existence, the more so as the Courts of Justice Act 1915 declares that a ‘judge is independent in his or her judicial work’. Furthermore in order to safeguard judicial independence, courts are not administered by the Ministry of Justice but by a separate entity called the National Courts Administration.

II. HUMAN RIGHTS PROVISIONS ON NATIONAL AND INTERNATIONAL LEVELS

Few reports mention that human rights provisions on national and international levels may also contain indirect safeguards for an independent judiciary. An example is Article 6 § 1 of the European Convention on Human Rights (ECHR), which states that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Article 10 § 2 ECHR states that freedom of expression may be subject to such conditions as are prescribed by law and are necessary for maintaining the authority and impartiality of the judiciary.

III. ADDITIONAL STATUTORY SAFEGUARDS

Nearly all countries with constitutional safeguards report that the principle of independence is additionally specified and elaborated upon in procedural laws and in statutes such as a Law on the Judiciary, a Law on Courts, a Court Service Act, an Administration of Justice Act, a Judiciary System Act, an Act on the Legal Status and Remuneration of Judges, an Act on the Organization and Administration of Courts or a Law on Judicial Power. Those laws contain, for instance, rules on the self-administration of the judiciary, the separation of powers and the autonomy of the judicial decision-making process, guarantees as to the material security and job security of judges, the allocation of judges to particular courts and the distribution of cases among the judges, the appointment and promotion of judges or the termination of the judicial function, rules on conflicts of interest or on the immunity of judges and disciplinary action.
IV. JUDICIAL PRECEDENT

For some countries, e.g. the Czech Republic, Hungary, Ireland and Lithuania, it is also reported that case law plays an important part in defining and safeguarding the independence of the judiciary. Examples that have been given refer to cases dealing with the constitutional separation of judicial and legislative powers and the prohibition on removing jurisdiction from the courts, the courts’ power to review laws as to their compatibility with the constitution, the administration of justice, the process of nomination and dismissal of judges, the material security of judges or the legislative demand for speedy decision-making within a fixed period of time.

V. CUSTOM

The Irish report also underlines the customary basis for judicial independence, which consists of generally understood standards of behaviour expected of judges to maintain their independence and impartiality, both apparent and real.

Question 2. What are the requirements applying to the appointment (for example appointment by the government or by an independent body) and the guarantees regarding termination of the judicial function?

I. APPOINTMENT

While some reports restrict themselves to the question of who formally appoints judges, others only or additionally focus on the nomination process. As only few reports also deal with the legal and educational requirements for becoming a judge, these requirements are not summarized hereinafter.

1. Formal Appointment

As far as reported, in the majority of countries judges are formally appointed by the head of state.
(a) **Appointment by the head of state**  
*Austria* (for lower-level judges, the President has delegated appointment to the Minister of Justice); *Cyprus* (President appoints only Supreme Court judges); *Czech Republic, Estonia* (President appoints only lower-level judges); *France, Finland, Germany* (President appoints only judges at Federal Courts); *Greece, Hungary, Ireland, Luxembourg* (Grand Duke); *Malta, Poland, Romania, Slovakia and the Netherlands* (‘Appointment by Royal Decree by the executive branch’).

(b) **Appointment by (other) members of government**  
*Austria* (for lower-level judges: Minister of Justice); *Denmark* (Minister of Justice); *Germany* (for judges on state level: Minister of Justice of the relevant federal state); *Norway* (‘King in Council’ – cabinet); and *Sweden* (government).

(c) **Appointment by Parliament**  
*Estonia* (only justices of the Supreme Court); *Latvia, Lithuania* and *Slovenia*.

(d) **Appointment by the Council of the Judiciary**  
*Croatia*: State Judicial Council (composed of seven judges, two lawyers and two law professors); *Cyprus*: Supreme Council of Judicature (composed of the members of the Supreme Court), however Supreme Court judges are appointed by the President of the Republic; *Italy*: Judicial High Council; *Portugal*: Supreme Council for the Judiciary.

2. **Entities Taking Part in the Process of Selection and Nomination**

No matter who formally appoints judges, there has been reported an enormous variety of more or less formalized selection and nomination procedures, several of them including many different state entities or judicial institutions. The following summary is far from being complete. The pre-sorting according to the probably most relevant entities will have to remain very tentative.

(a) **Participation of courts or court presidents**  
In *Austria* all appointments – except for the president and the vice-presidents of the Supreme Court – must originate with the proposal
of qualified candidates pre-selected by a panel established at each
court.

In Cyprus the President of the Republic, before making an
appointment, seeks the opinion of the Supreme Court as to who
should be appointed. The suggestions of the Supreme Court are
almost invariably adopted.

In Estonia competitions for judicial positions are organized
and candidates are initially assessed by the Judges’ Examination
Committee, which is a self-management body of the judiciary. Then
the Supreme Court en banc shall choose between several candidates.
Judges for first and second instance courts shall be appointed on
proposal of the Supreme Court en banc. Justices of the Supreme
Court shall be appointed on the proposal of the Chief Justice after
having considered the opinion of the Supreme Court en banc.

In Finland judges of the Supreme Court are selected by the
Supreme Court itself. In practice the appointments are made in
accordance with the proposal of the Supreme Court.

In Luxembourg candidates file their application with the Attorney
General who – after seeking advice from the relevant judicial author-
ities – recommends candidates to the Grand Duke.

In the Netherlands the management board of the relevant court
presents recommendations to the government which, although non-
binding, are usually adopted.

(b) Participation of the Council of the Judiciary or other election
committees

In Bulgaria judges are appointed upon proposal of the Supreme
Judicial Council, which organizes and carries out competitions.

In Denmark a Judicial Appointments Council, composed of three
judges from different court levels, a lawyer and two public repre-
sentatives, nominates only one candidate. Although this nomination
is non-binding, the Minister of Justice so far has not departed from
this nomination.

In Finland judges of the lower courts are selected by an independ-
ent Judicial Appointments Board composed of judges and repre-
sentatives of the prosecution service, the Bar and academic circles. In
practice the appointments are made in accordance with the proposal
of this Board.

In France candidates for the judiciary are chosen mainly via a com-
petition run by the National School for the Judiciary. When judges
are to be appointed, the Minister of Justice recommends candidates but may forward only those nominations that are approved by the Supreme Council of Judiciary. For certain high-ranking positions, only the Supreme Council of the Judiciary may propose candidates.

In Germany judges of the Federal Court of Justice are elected by the Committee for the Election of Judges, which is made up of the Federal Minister of Justice, the Ministers of Justice of the 16 federal states and 16 additional members selected by Parliament. Before the election a committee of the Federal Court is heard. There have been very few cases in which the Committee for the Election of Judges has voted for a candidate that the Federal Court has declared unqualified. As for the appointment of judges on state level, some German states provide for election committees whereas in other states judges are chosen and appointed by the state Minister of Justice.

In Hungary recommendations for the appointment of judges are submitted by the National Council of Justice.

In Norway applications are made to the Judicial Appointments Board, composed of three judges, a lawyer, a representative from the public sector and two laymen. The Board recommends three candidates in order of preference. The report indicates that ‘Government often chooses another candidate than the preferred choice of the Board’. As for Supreme Court judges, the Chief Justice will, following the recommendation of the Board, give a written or oral opinion to the Minister of Justice.

In Poland judges are appointed on the motion of the National Council of the Judiciary. The question of whether the President is bound by such a motion is controversial. Before candidates are submitted to the National Council of the Judiciary, they are appraised and evaluated by the president, the board and the general assembly of the relevant court.

In Romania candidates are nominated by the Supreme Council of the Judiciary. The President of Romania may disapprove a nominated candidate only once. If so, the Supreme Council of the Judiciary may sustain its initial proposal through a reasoned opinion.

In Slovakia judges are appointed upon proposal of the Judicial Council of the Slovak Republic.

In Slovenia judges are elected upon proposal of the Judicial Council. Beforehand the president of the relevant court formulates a non-binding, reasoned opinion on the adequacy of the candidates.
He or she may also state which candidate should be considered most suitable. The Judicial Council proposes a single candidate. If this candidate is not elected, the Judicial Council either proposes another candidate or rules that the judicial position be re-advertized.

Sweden reports that ‘for the highest positions a proposal is made by a certain board’.

In the United Kingdom judges are appointed on the recommendation of the Prime Minister, who must recommend any person notified to him by the selection process laid down in the laws. There are a Supreme Court Selection Commission and Judicial Appointment Commissions.

(c) Participation of the President or the government

In Ireland the government decides who should be nominated for appointment to the Supreme Court. Although the government may also make appointments outside the regular procedure, a person who is not already a judge should apply to the Judicial Appointments Advisory Board, which consists of a majority of judges, two representatives from the legal profession and two non-lawyers. The role of this Board is purely advisory, but, generally speaking, the government is confined to appointing persons considered suitably qualified by the Board.

In Latvia the Minister of Justice proposes candidates to Parliament for an initial period of three years. After three years of professional experience, Parliament appoints the judges on the basis of a resolution of the Judicial Qualifications Committee upon proposal of the Minister of Justice.

In the Lithuanian Supreme Court judges are appointed on recommendation of the President of the Republic. The candidates are selected and nominated by the President of the Supreme Court, but this selection is not binding. Also, the Selection Committee renders non-binding advice to the President of the Republic on which candidates are regarded to be most suitable. Furthermore the President of the Republic receives advice from the Judicial Council.

In Malta judges are appointed in accordance with the advice of the Prime Minister. The Prime Minister is not obliged to consult anyone before advising the President. In practice, however, he or she confers with the Minister of Justice and may also confer with the cabinet. The Minister of Justice traditionally confers with the Chief Justice.
II. TERMINATION OF JUDICIAL FUNCTION

All reports that deal with the issue of termination of judicial function point out that judges are appointed for life, not only for a limited period of time.

1. Compulsory Retirement Age

The following countries have reported that the judicial function is terminated if the judge reaches the age limit of:

- 63 years: Cyprus (for judges at lower courts);
- 65 years: Austria, Germany (will be extended to 67 years by law within the next 24 years), Malta and Poland (may be extended to 70 years upon the judge’s request);
- 67 years: Sweden and Greece;
- 68 years: Cyprus (for Supreme Court judges), Estonia, Finland and Luxembourg (a special procedure for dismissal applies, if a judge at the age of 68 does not ask for retirement);
- 70 years: Croatia, Czech Republic, Denmark (from the age of 65, judges may be dismissed administratively but without any loss of income), Ireland (judges appointed prior to 1995 may continue in office until aged 72), Norway, Slovenia, the Netherlands and the United Kingdom (judges appointed prior to 1995 may continue in office until aged 75).

2. Termination for Other Reasons than Retirement Age

(a) Court ruling

In Austria, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Norway and the Netherlands, judges may be dismissed only by virtue of judicial decision on certain narrow grounds enumerated in the constitution or the applicable laws. In Sweden a court will decide on the matter of dismissal if the judge concerned so wishes.

Poland and Slovenia report somehow similar and very elaborate schemes. In Slovenia for instance, some grounds for termination need a court decision and the Judicial Council then issues a declaratory ruling on the termination. Other grounds, namely the assessment that the judge is unsuited for judicial service, are issued by the Personal Council and need confirmation by the Judicial Council.
Furthermore in some events, e.g. when the relevant court closes and assignment to another court cannot be guaranteed, the office is terminated by operation of law. Finally a judge convicted of a serious criminal offence can be dismissed by the National Assembly upon notification of the Judicial Council.

(b) Decision of Parliament

Ireland: a judge may be removed from office in case of stated misbehaviour or incapacity upon resolutions passed by both Houses of Parliament calling for his or her removal.

Latvia: Parliament may remove judges from office on grounds established by the law and on the basis of a decision of a court or the Disciplinary Committee of Judges.

Lithuania: the President of the Supreme Court and chairmen of court divisions are removed from office by Parliament on recommendation of the President of the Republic. The President of the Republic must seek advice from the Judicial Council.

Malta: the President of Malta may dismiss a judge in case of proved misbehaviour or inability to perform the functions of his or her office upon address of the House of Representatives supported by the votes of not less than two-thirds of all the members.

United Kingdom: a judge may be removed from office on the address of both Houses of Parliament.

(c) Decision of the Council of the Judiciary (executed by the head of state)

Bulgaria: judges are dismissed from office on the proposal of the Supreme Judicial Council.

Croatia: judges are dismissed from office only after disciplinary proceedings and a disciplinary decision by the State Judicial Council.

Cyprus: the Supreme Council of Judicature is in charge of the dismissal of judges and disciplinary matters of judges of subordinate courts. A judge shall be made to retire on account of such mental or physical incapacity or infirmity as would render him incapable of discharging his or her duties and may be dismissed for misconduct.

Hungary: judges are dismissed by the President of the Republic upon recommendation of the National Council of Justice.

Italy: the Judicial High Council decides on all disciplinary measures against judges.

Romania: the dismissal of judges is made by Presidential decree.
but only upon recommendation of the Supreme Council for the Judiciary.

Slovakia: judges are recalled by the President of the Slovak Republic upon proposal of the Judicial Council of the Slovak Republic.

Question 3. What are the requirements applying to the appointment of the President of the Supreme Court and what is the duration of his or her term of office?

I. APPOINTMENT

1. Countries That Have Clearly Indicated a More Than Advisory Role of Supreme Court Judges, the Supreme Court President or Judicial Councils in the Selection Process

Bulgaria: appointed by the President of the Republic upon proposal of the Supreme Judicial Council. The President may not reject a second proposal.

Italy: appointed by the Judicial High Council after consultation with the Minister of Justice and according to a competition based on merits.

Poland: appointed by the President of the Republic of Poland from among candidates nominated by the General Assembly of the Supreme Court justices. Candidates are chosen from among active Supreme Court justices.

Latvia: appointed by Parliament from among candidates nominated by the General Meeting of Supreme Court judges. Candidates are chosen from among the Supreme Court judges.

Luxembourg: appointed by the Grand Duke upon recommendation of the General Assembly of the Supreme Court. The assembly presents three candidates and – as a matter of fact – the candidate designated as most suitable will be chosen. Candidates must comply with the requirements set for Supreme Court judges.

Portugal: elected by secret vote of the Supreme Court judges.

Romania: appointed by the President of the Republic upon recommendation of the Supreme Council of the Judiciary. The President may refuse a candidate only once and only by reasoned opinion.

Slovak Republic: appointed by the President of the Slovak Republic
upon proposal of the Judicial Council. Candidates are chosen from among the Supreme Court judges.

2. **Countries Where Judges or Judicial Councils May Be Heard but Have No More Than Advisory Influence**

*Austria:* appointed by the President of State according to a recommendation submitted by the government.

*Croatia:* elected by Parliament upon proposal of the President of the Republic. The General Assembly of the Supreme Court is heard.

*Cyprus:* appointed by the President of the Republic from among the members of the Supreme Court. The Supreme Court is heard.

*Czech Republic:* appointed by the President of the Republic. Candidates must comply with the requirements for serving as judge.

*Estonia:* appointed by Parliament upon proposal of the President of the Republic. Candidates must comply with the requirements set for Supreme Court judges.

*Finland:* appointed by the President of the Republic on the basis of an open application procedure. Members of the Supreme Court are heard. The government presents the proposal to the President of the Republic for decision. Within the government, the matter is dealt with by the Minister of Justice. Candidates must comply with the requirements for serving as judge.

*Germany:* appointed by the President of the Republic upon recommendation of the Federal Ministry of Justice, which acts in agreement with the government. Candidates must comply with the requirements set for Supreme Court judges and must be – if they are not yet – elected Supreme Court judges.

*Greece:* appointed by Presidential decree on the advice of the Council of Ministers from among the members of the Supreme Court.

*Hungary:* elected by Parliament upon recommendation of the President of the Republic.

*Ireland:* appointed by the President upon nomination of the government. Chief Justices have always previously held office as a High Court judge or a Supreme Court judge (usually the latter).

*Lithuania:* appointed by Parliament upon recommendation of the President of the Republic. Candidates are chosen from among the Supreme Court judges. The Judicial Council gives advice on the candidate chosen at the President of the Republic’s own discretion.
Malta: appointed by the President of Malta acting on advice of the Prime Minister from among practising advocates, magistrates or servicing judges.

Norway: appointed by the King in Council (cabinet). Usually the government consults with Parliament on this issue.

Slovenia: appointed by the National Assembly on proposal of the Minister of Justice. The Minister must previously seek advice from the Judicial Council and the Plenary Session of the Supreme Court. Candidates are chosen from among the Supreme Court judges.

Sweden: appointed from among the Supreme Court judges.

The Netherlands: appointed from among the Supreme Court judges. The Supreme Court judges recommend a candidate. So far the government has always followed such recommendation.

United Kingdom: the first president was the senior Lord of Appeal in Ordinary. Future presidents will be selected by a selection commission following special provisions set out in the applicable statute.

II. TERM OF OFFICE

1. Unlimited Tenure Until Age of Retirement Is Reached

Austria, Cyprus, Denmark, Finland, Germany, Luxembourg, Malta, Norway, Sweden, the Netherlands and the United Kingdom.

2. Limited Period of Office Restricted to One Term Only

- five years: Portugal,
- seven years: Bulgaria and Ireland,
- nine years: Estonia (without possibility of serving two consecutive terms).

3. Limited Period of Office, But More Than One Term Is Admissible or Not Reported as Being Excluded

- three years: Romania (maximum of two terms);
- four years: Croatia (renewable), Greece and Italy (confirmation for further 4 years is possible);
- five years: Lithuania (maximum of two consecutive terms) and Slovak Republic (maximum of two consecutive terms);
Regulating judicial activity in Europe

● six years: Hungary, Poland and Slovenia (renewable);
● seven years: Latvia (renewable);
● ten years: Czech Republic.

Question 4. What are the conditions for voluntary temporary suspension of a judicial career and for the return of a judge to court? In particular may a judge return to the Bench after joining the Bar or after holding a political mandate (for example as an elected or unelected member of the legislature or the executive) or after working for the prosecution?

The conditions for voluntary temporary suspension of a judicial career vary significantly. Some reports describe highly detailed and precise sets of rules on this issue. Others portray a more discretionary approach and yet others are more or less limited to denying the possibility of temporary suspension with or without granting certain exceptions.

Several reports point out that even where a temporary suspension (e.g. in order to hold a political mandate or to join the Bar) is not admissible, nothing prevents candidates from resigning voluntarily and at a later time going through the application process for a judicial office again. Few reports mention that different procedural rules may apply for temporary suspension on the one hand and detachment or secondment to an institution outside the judiciary on the other hand.

Table 1.1 tries to stick closely to the answers given.

Question 5. How and by whom are the ethics of judges defined?

I. CODES OF JUDICIAL ETHICS

Table 1.2 shows how and by whom the ethics of judges are defined. In some jurisdictions committees that have defined ethical rules are also in charge of supervising compliance. In Bulgaria, for instance, a standing committee on professional ethics and prevention of corruption under the Supreme Judicial Council controls the implementation of the Code of Conduct and is under an obligation to periodically submit proposals on updates of the Code. In Poland
<table>
<thead>
<tr>
<th>Country</th>
<th>Voluntary temporary suspension possible?</th>
<th>Examples given</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Unpaid leave may be granted on important grounds only</td>
<td>– Judge may return to the Bench after joining the Bar (does not happen in practice)</td>
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<tr>
<td></td>
<td></td>
<td>– Restrictions after holding a political mandate exist only for (Vice-) Presidents of the Supreme Court</td>
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<td></td>
<td></td>
<td>– No restrictions for switching between the Bench and the prosecutor’s office</td>
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<tr>
<td>Bulgaria</td>
<td>No, except for duties related to electoral activities or civil service</td>
<td>Member of the National Assembly, mayor, member of a municipal council or (deputy) Minister</td>
</tr>
<tr>
<td>Croatia</td>
<td>No, except for very limited grounds</td>
<td>– Detachment to Ministry of Justice for up to four years</td>
</tr>
<tr>
<td></td>
<td></td>
<td>– Minister or State Secretary of Justice</td>
</tr>
<tr>
<td></td>
<td></td>
<td>– Judge in an international court</td>
</tr>
<tr>
<td>Cyprus</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>No</td>
<td>Detachment to the Ministry of Justice or the Academy of the Judiciary is admissible</td>
</tr>
<tr>
<td>Denmark</td>
<td>Unpaid leave is granted for up to one year at a time</td>
<td>During unpaid leave any appropriate position, including political work or legal practice, is permitted</td>
</tr>
<tr>
<td>Estonia</td>
<td>No</td>
<td>Detachment to the Ministry of Justice or to another court is admissible</td>
</tr>
<tr>
<td>Finland</td>
<td>Leave of absence may be granted if the temporary task is considered compatible with judicial career</td>
<td>For certain political positions (member of the national or European Parliament, member of the Government) leave has to be granted</td>
</tr>
<tr>
<td>Germany</td>
<td>Yes, on certain grounds</td>
<td>– Temporary detachment to civil service or international organisations is admissible</td>
</tr>
<tr>
<td>Country</td>
<td>Voluntary temporary suspension possible?</td>
<td>Examples given</td>
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<tr>
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<td>– Unpaid leave during an election campaign and while serving as elected member of the legislature or the executive has to be granted</td>
</tr>
<tr>
<td></td>
<td></td>
<td>– Switching between the Bench and the prosecutor’s office is admissible and quite common</td>
</tr>
<tr>
<td>Hungary</td>
<td>No, but after certain occupations the judge shall be reappointed upon recommendation of the National Council of Justice without advertising a vacancy</td>
<td>– After termination of a political mandate</td>
</tr>
<tr>
<td></td>
<td></td>
<td>– After having worked with consent of the National Council of Justice for an international organisation or EU entity and if such work was related to judicature</td>
</tr>
<tr>
<td>Ireland</td>
<td>No, except for appointment to certain commissions</td>
<td>Member of Law Reform Commission, Garda (police), Ombudsman Commission, Human Rights Commission</td>
</tr>
<tr>
<td>Italy</td>
<td>Leave may be granted by Judicial High Council on certain grounds set out by the law</td>
<td>Admissible grounds are health problems, a political mandate or work in governmental or supranational institutions</td>
</tr>
<tr>
<td>Latvia</td>
<td>Yes, on certain grounds, but only for up to three years and with the consent of the chairman of the court</td>
<td>Functions in other courts, Ministry of Justice, court administration or international organisations</td>
</tr>
<tr>
<td>Lithuania</td>
<td>Former judges may be reappointed; judges of certain higher level courts only if less than five years have passed since the voluntary dismissal</td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Leave of absence may be granted</td>
<td>For raising children, personal reasons or well-founded professional reasons</td>
</tr>
<tr>
<td>Malta</td>
<td>No, except for narrow grounds</td>
<td>– Judicial office in an international court or adjudicating body</td>
</tr>
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<td></td>
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<td>– Office of examiner at the University of Malta</td>
</tr>
</tbody>
</table>
Table 1.1 (continued)

<table>
<thead>
<tr>
<th>Country</th>
<th>Voluntary temporary suspension possible?</th>
<th>Examples given</th>
</tr>
</thead>
<tbody>
<tr>
<td>Netherlands</td>
<td>Unpaid leave may be granted; moreover former judges may return to the judiciary</td>
<td>Judges must not otherwise practise law, even during a period of leave</td>
</tr>
<tr>
<td>Norway</td>
<td>Yes, without any restrictions</td>
<td></td>
</tr>
</tbody>
</table>
| Poland        | No, but reappointment is facilitated on certain conditions | – Functions in state and local authorities or diplomatic or consular service for up to nine years  
– Functions in the bodies of international or supranational organisations  
– Detachment as undersecretary of state in the Ministry of Justice is admissible |
| Portugal      | Yes, if approved by the Supreme Council of the Judiciary | – Leave has to be one year minimum  
– Temporary service at the prosecutor’s office is not possible |
| Romania       | – No, except for teaching at certain institutions of the judiciary  
– Former judges may be reappointed |                                                                               |
| Slovakia      | Yes, on certain grounds:                 | – While running for elections or being elected as President of the Republic, member of the National Council or member of a body of regional administration  
– Functions in an international organisation or international judicial body  
– For serious private reasons (maximum of five years) |
| Slovenia      | Yes, on certain grounds upon decision of the Judicial Council and for a maximum of three years (renewable) | – Functions as President of the Republic, Member of Parliament, Judge of the Constitutional Court, Judge in an international judicial body, Prime Minister, Human |
### Table 1.1 (continued)

<table>
<thead>
<tr>
<th>Voluntary temporary suspension possible?</th>
<th>Examples given</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rights Ombudsman or Deputy thereto, Minister, President or member of the Commission on the Prevention of Corruption, member of the European Parliament, European Rights Ombudsman, member of the European Commission, member of an international civilian mission – Expert at higher level courts, the Judicial Council, the judicial education centre or the Ministry of Justice</td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>A judge may be reappointed after having worked in other careers</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>No</td>
</tr>
</tbody>
</table>

the National Council of the Judiciary also interprets and clarifies its rules of judicial ethics by issuing opinions on certain issues or putting forward demands for disciplinary action where it has received reliable information on any misdeed of a judge in connection with his or her professional behaviour.

Some reports point out that in addition to, and more important than, the above-mentioned codes or principles, statutes may stipulate ethical rules or define behaviour that triggers disciplinary action. For instance in Italy the relevant rules of conduct are mainly set forth in the legislation concerning disciplinary liability.

## II. ABSENCE OF A CODE OF ETHICS

Ten countries have indicated that at present they do not have a specific set of rules related to judicial ethics (Cyprus, Denmark, Finland, France, Germany, Ireland, Luxembourg, Norway, Sweden and Portugal).
### Table 1.2  Codes of judicial ethics

<table>
<thead>
<tr>
<th>Code Author</th>
<th>Code Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Declaration of Judicial Ethics (2007)</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Code of Conduct of Bulgarian magistrates (applicable for all judges, prosecutors, investigating magistrates etc.)</td>
</tr>
<tr>
<td>Croatia</td>
<td>Code of Judicial Ethics</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Deontological Code (2005)</td>
</tr>
<tr>
<td>Greece</td>
<td>Supreme Judicial Council and plenary session of all Supreme Court judges</td>
</tr>
<tr>
<td>Hungary</td>
<td>Code of Ethics (2005)</td>
</tr>
<tr>
<td>Italy</td>
<td>Deontological Code</td>
</tr>
<tr>
<td>Latvia</td>
<td>Code of Judicial Ethics</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Every court sets its own rules of ethical conduct, usually on the basis of the Impartiality Guidelines adopted by the assembly of the presidents of the courts. The presidents of the courts have also adopted guidelines on outside activities</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Author</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Association of Judges</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Supreme Judicial Council</td>
</tr>
<tr>
<td>Croatia</td>
<td>Judiciary</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Union of Judges of the Czech Republic Judges’ Council</td>
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<tr>
<td>England and Wales</td>
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<td>all Estonian judges</td>
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<td>Hungary</td>
<td>Association of Judges</td>
</tr>
<tr>
<td>Italy</td>
<td>National Judicial Association</td>
</tr>
<tr>
<td>Latvia</td>
<td>Committee of Judicial Ethics (set up by law)</td>
</tr>
<tr>
<td>Lithuania</td>
<td>Decision of the General Meeting of Judges</td>
</tr>
<tr>
<td>Malta</td>
<td>Commission for the Administration of Justice and Chief Justice</td>
</tr>
<tr>
<td>Netherlands</td>
<td>National Council of the Judiciary</td>
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Table 1.2 (continued)

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</tr>
</thead>
<tbody>
<tr>
<td>Romania</td>
<td>Deontological Code (2005)</td>
<td>Supreme Judicial Council</td>
</tr>
<tr>
<td>Slovakia</td>
<td>Code of Ethics (2001)</td>
<td>Judicial Council after agreement with Minister of Justice</td>
</tr>
<tr>
<td>UK Supreme Court</td>
<td>Guide to Judicial Conduct</td>
<td>President and all Justices</td>
</tr>
</tbody>
</table>

In Norway an expert group appointed by the National Courts Administration has presented a report on draft ethical rules for judges. In Sweden the Association of Judges is in the process of establishing ethical guidelines. Ireland and Luxembourg indicate that in the context of a Judicial Council to be established in the near future, some kind of code might emerge. In Cyprus regulation of such matters, if it were considered necessary, would fall within the jurisdiction of the Supreme Court and the Supreme Council of Judicature. In France the Supreme Council of the Judiciary decided in 2003 not to draft a code of conduct. But according to a more recent constitutional reform, the Council must respond to requests for advice from the President of the Republic on issues related to the ethics of judges or any matter relating to the functioning of the judiciary.

In countries where the national association of judges is a member of the International Association of Judges (IAJ), the national judges adhere to the Universal Charter of the Judge of the IAJ.

III. FURTHER DISCUSSION

With or without a code of ethics, most countries indicate that judicial behaviour and ethical principles are – whether comprehensively or fragmentarily – dealt with in various legislative instruments, namely in statutes with regard to disciplinary action. If they are not, ethics remain a matter of legal and judicial tradition.

It is also argued that it might make little difference or even be
of no importance at all whether there are written rules of ethics or not, as judges have or should have a common consciousness of the unwritten ethical rules applicable to all judges and regard themselves ethically bound in much the same manner as judges in countries that have drafted codes of conduct.

Furthermore, concern has been raised that judges would be reluctant to over-define ethical rules for fear that there would be a perception that any behaviour that did not strictly come within the definition would be treated as acceptable. On the other hand it is criticized that some deontological rules tend to have a very vague content, which makes it difficult to comply with those rules. Rules that merely repeat statutory provisions would not provide for additional guidance either.