|  |  |
| --- | --- |
| Office of the United Nations High Commissioner for Human Rights  51 rue des paquis  Office 3.021  1211 Geneve 8 | Ministry of Justice |
| Date: 15 January 2018  Office: Procesretskontoret  Contact: Jesper Aagaard  Our ref.: 2018-0092-0351  Doc.: 630163 |

**Questionnaire of the Special Rapporteur on the independence of judges and lawyers**

*1. Please indicate whether there is a national body or mechanism in charge of selecting, appointing, promoting, transferring, suspending or removing judges in your country. What is the exact denomination of this body or mechanism? What are the legal basis for its establishment (e.g. constitutional provisions; ordinary law or other)?*

Regarding the selection, appointment, promoting and transferring of Judges:

In Denmark we have The Judicial Appointments Council, which is an independent council that handles applications for vacant positions as judges. The only exception is the President of the Supreme Court, who is appointed by the Court’s own judges. When decided on a candidate the Council, makes a recommendation to the Minister of Justice. Only one candidate is nominated for each position. In this regard it is presupposed that the Minister follows the recommendation from the Council. The Minister of Justice has never rejected a candidate proposed by the Judicial Appointments Council. The legal basis is the Administration of Justice Act.

Regarding the suspending or removing of judges.

The Special Court of Indictment and Revision considers requests for a new trial in criminal cases. It also handles dismissal cases and disciplinary cases relating to judges and other jurists employed by the courts. Additionally, the Court processes cases in which a defence counsel has been excluded from a criminal case. The legal basis is also the Administration of Justice Act.

*2. Please provide information on the composition of the body or mechanism (number and qualifications of members), the procedure for the appointment of its members and the duration of their term of office. Please also provide information on the human and financial resources of this body or mechanism (e.g. number of employees and their  qualifications; annual budget).*

The Judicial Appointments Council

The following is stated in the Administration of Justice Act.:

* The Judicial Appointments Council consists of 6 members: one Supreme Court judge (chairman), one High Court judge, one District Court judge, one lawyer and two representatives of the public.
* The judges shall be appointed by the Minister of Justice on the recommendation of the Supreme Court, the High Courts and the Association of Danish Judges.
* The lawyer is appointed by the Minister of Justice, following the recommendation of the Council of The Danish Bar and Law Society.
* The two representatives of the public shall be appointed by the Minister of Justice, on the recommendation of KL (Local Government Denmark, an association and interest organisation of the 98 Danish municipalities) and The Danish Adult Education Association.

The members are appointed for 4 years. Re-election cannot take place. An alternate shall be appointed for each of the members of the Council. The alternates will be appointed in the same way as the members. The secretarial duties are carried out by the Danish Court Administration. One employee works part time as secretary for the Council. For 2018 the budget for the Council is 800.000 dkr. in total.

The Special Court of Indictment and Revision

The following is stated in the Administration of Justice Act.:

* The Special Court of Indictment and Revision consists of 5 members who, after the appointment of the Minister of Justice, are appointed by the King (now Queen) for a period of 10 years. The members of the court can only be resigned by judgment. A member resigns when the conditions for being a member expire. The appointment ends by the end of the month in which the person turns 70 years old. Re-election cannot take place.
* The members shall be a Supreme Court Judge (chairman), a High Court judge and a District Court judge appointed by appointment to the Minister of Justice from the Supreme Court, the High Courts and the Association of Danish Judges, as well as a lawyer appointed by appointment to the Minister for Justice from the Council of The Danish Bar and Law Society and a university teacher in jurisprudence or other lawyer with a special scientific education.
* For each of the members of the court, the King appoints, in accordance with the same rules as for the relevant member, a first and second deputy. The alternates will, if necessary, join the court. The first deputy will be in favor of the deputy alternate.

The secretarial duties of the special court are carried out by the Supreme Court by agreement between the President of the Supreme Court and the President of the Special Court of Indictment and Revision. The budget is an integrated part of the budget for the Supreme Court.

*3. Please provide detailed information on the legislation and practice existing in your country in relation to:*

*(a) The selection and appointment of candidates for judicial offices and the criteria used for their selection and appointment (e.g. qualifications, integrity, ability and efficiency); *

*(b) Condition of service and security of tenure of judges;*

*(c) Promotion of judges; *

*(d) Transfer of judges;*

*(e) Disciplinary proceedings against judges.*

*What is the role played by the national organ or mechanism with regard to the issues referred to above?*

The criterias regarding appointment of new judges, promotion and transfer of judges are described in the Administration of Justice Act:

* Permanent Judges at the General Courts are appointed by the King (now Queen).
* Only one who has a degree in master of law (candidatus juris) can be appointed.
* Appointment as a judge generally requires that the suitability of the person as a judge has been judged by the High court.

The occupation of judicial posts must be based on an overall assessment of the qualifications of the candidates for the post in question. This will place a decisive emphasis on the applicants' legal and personal qualifications. The breadth of the applicants' legal basis of experience must also be emphasized, and it should be included in the assessment that judges should be judges with different legal business backgrounds.

The Councils recommendations must be justified. The Council can only point at one applicant for a vacancy. If there is no agreement in the Council as to which of the candidates to be appointed, the question will be decided by a vote. In the event of a tie, the chairman shall cast the decisive vote. It must be stated in the Council's appointment if there has been disagreement about the recommendation and the views of individual members must be stated.

**The Danish Constitution** provides the judges against interference with the exercise of the judicial function and gives the judges a special protection against dismissal and relocation. Judges can only be resigned by judgment of the Special Court of Indictment and Revision. Judges cannot, as a rule, be relocated against their wishes. However, administrative resignation and transfer may occur if a change is made to the courts, for example reduction of jurisdictions.

The following is stated in the Administration of Justice Act.:

**The Special Court of Indictment and Revision** processes complaints against judges and deputy judges, applications for resumption of criminal cases, appeals regarding refusal of resumption of a judgement given in default and complaints about the courts exclusion of an appointed defense lawyer in criminal cases. The Special Court of Indictment and Revision also acts as a disciplinary court in cases of suspension or removal of a judge from office.

The Special Court of Indictment and Revision cannot review a judge’s judicial decisions. In cases of complaints against judges The Special Court of Indictment and Revision can state criticism or issue a fine, if it is found that the judge has behaved improper or unseemly in his acts in office. A complaint regarding improper or unseemly behavior of a judge or deputy judge has to be filed within 4 weeks after the incident has occurred or has been known to the complainant. A judgment in these cases can be appealed to the Supreme Court.

An application for resumption of a criminal case can be filed to The Special Court of Indictment and Revision when there is no possibility of appeal left. The decision of The Special Court of Indictment and Revision cannot be appealed.

An appeal regarding exclusion of an appointed defense lawyer from a criminal case has to be filed within one week from the exclusion to the court where the decision of exclusion has been made. The decision of The Special Court of Indictment and Revision cannot be appealed.

*4. If the national organ or mechanism does not have a role to play in relation to any of these issues, please provide detailed information on legislation and procedure for:*

*a) Judicial selection and appointment;*

*b) Transfer and promotion ofjudges;*

*c) Disciplinary proceedings against judges*

See the answers above.