

ENGLISH

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)?

The candidates to judicial vacancies are appointed by the way of selection. For considering the issues of appointment to vacancies at a district court the President of the Republic composes the Selection Commission of Candidates (hereinafter – Commission) to Judicial Offices and establishes (together with Judicial Council) the working procedure of the Commission and the criteria of selection of candidates to judicial office.

Article 112 of the Constitution of the Republic of Lithuania states that a special institution of judges, as provided for by law, shall advise the President of the Republic on the appointment, promotion, and transfer of judges, or their release from duties. Article 120 of the Law on courts establishes that the Judicial Council gives a motivated advice to the President of the Republic in respect of the appointment of judges, their promotion, transfer and removal from office. Such institution is indicated in the Law on Courts – the Judicial Council.

In such cases, when the President of the Republic applies to the special institution of judges provided for by law specified in Paragraph 5 of Article 112 of the Constitution (the Judicial Council) for advice regarding the appointment, promotion or transfer of a judge, and this special institution of judges advises to appoint the person as a judge, to promote the judge or to transfer him, such advice is not binding on the President of the Republic. This means that the President of the Republic (inter alia, if certain circumstances significant to such appointment or release from office become clear) might decide not to appoint that person as a judge, not to promote the judge, or not to transfer him (and if a judge of the Supreme Court or the Court of Appeal is appointed, promoted or transferred—might decide not to submit his candidature to the Seimas). Under the Constitution, in such cases, the President of the Republic may apply to the special institution of judges provided for by law specified in Paragraph 5 of Article 112 of the Constitution for advice regarding the appointment of another person as a judge, the promotion or transfer of another judge.

Different legal effects of the advice of the special institution of judges provided for by law specified in Paragraph 5 of Article 112 of the Constitution (the Judicial Council) to the President of the Republic appear when the President of the Republic applies to this special institution of judges for it to advise him on the appointment, promotion or transfer of a judge, and it either expressis verbis advises the President of the Republic not to appoint that person as a judge, not to promote a judge or not to transfer him or it replies to the President of the Republic that it does not advise him to appoint that person as a judge, promote a judge or transfer him. It should be emphasised that such “non-advice” to the President of the Republic to appoint a person as a judge, promote a judge or transfer him, no matter in what way it is expressed in the corresponding act of the said special institution of judges, is legally equal to the expressis verbis formulated advice that the President of the Republic not appoint a person as a judge, nor promote a judge, nor transfer him. In such cases, under the Constitution, the President of the Republic may not (correspondingly) appoint that person as a judge, nor

promote, nor transfer a judge (and if a judge of the Supreme Court or the Court of Appeal is appointed, promoted or transferred—he may not submit his candidature to the Seimas). A different construction (inter alia, such that the President of the Republic may disregard the said advice and still to appoint that person as a judge, transfer or promote a judge (and if a judge of the Supreme Court or the Court of Appeal is appointed, promoted or transferred—may submit his candidature to the Seimas)) of the legal force and legal circumstances of the advice of the said special institution of judges not to appoint the person as a judge, not to promote or transfer the judge would mean that the special institution of judges provided for by law specified in Paragraph 5 of Article 112 of the Constitution which is formed only on the professional basis is not a balance to the President of the Republic—a political institution of the state power—in the area of the formation of the corps of judges. Such construction would also be inconsistent with the principle of independence of the judge and courts, nor with the balance of state powers entrenched in the Constitution.

Legal basis: the Constitution of the Republic of Lithuania, The Constitutional Courts' of the Republic of Lithuania rulings, the Law on Courts Articles, The President of the Republic of Lithuania decrees; The Judicial Council decisions.

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).

Judges shall be appointed to the office by the procedure set in the Law on Courts of the Republic of Lithuania.

Candidates to the office of a judge have to fulfil the following requirements:

A national of the Republic of Lithuania of high moral character, having a university degree in law and meeting the requirements established by law, upon submitting a health certificate, having a record of at least five years of work in the legal profession has a right to pass the examination for candidates to judges.

A person having Doctor or Habil. Doctor of Social Sciences (Law) degree, also a person of at least five years standing as a judge, if not more than five years have lapsed since he last held that position, shall be exempt from sitting for the candidate examination.

Applications for the examination shall be presented according the procedure established by the National Courts Administration. The Director of the National Courts Administration shall decide whether a person is allowed to take the examination for candidates to judicial office.

The Selection Commission in accordance with regulations of Article 55¹ of the Law on Courts is the Commission the aim of which shall be to help the President of the Republic in selecting the candidates for judicial office (Chairmen of courts, Deputy Chairmen of courts, Chairmen of the Divisions).

The Selection Commission shall be composed of seven persons and formed for a period of three years by the President of the Republic. Three members of the Selection

Commission shall be judges and four members shall be the representatives of the public. The President of the Republic shall appoint the Chairman of the Selection Commission from among the members of the Commission. Members of the Judicial Council may not be appointed members of the Selection Commission. The National Courts Administration shall provide services to the Selection Commission. The Selection Commission in its activities shall follow the Constitution of the Republic of Lithuania, the Law on Courts, other laws and legal acts of the Republic, the description of the procedure of Selection Commission, the selection criteria for candidates to the judicial office at a district court approved by the President, the selection provisions for persons seeking judicial promotion approved by the Judicial Council and the assessment criteria for persons seeking judicial promotion.

Activities of the Selection Commission shall be based on the principles of collegiality, impartiality, independence, objectivity and legality.

The Commission shall be liable for the following selection procedures:

- *Selection of candidates to the judicial office at a district court;*
- *Selection of persons seeking judicial promotion i.e. candidates to the judicial office at regional court, regional administrative court, the court of appeal and the supreme administrative court of the Republic of Lithuania;*
- *Selection of judges seeking judicial promotion at a court of the same level, i.e. candidates to the judicial office of Chairman, Vice Chairman or Chairman of the division at district court, regional court, regional administrative court, the supreme administrative court and the court of appeal of the Republic of Lithuania;*
- *Selection of judges willing to be transferred to another court of the same level or a court of the same level but another jurisdiction;*
- *Selection of judges willing to be appointed a judge of any lower court or a court of the lower level but another jurisdiction: any judges of higher courts who were dismissed on their request, appointed to other judicial office or transferred to other office on their request, willing to be appointed to court of the same level or court of a lower level if less than five years have lapsed from the end of his service as a judge.*

***The Examination Commission of Candidates to Judicial Office** (hereinafter – the Examination Commission) is a Commission formed under the provisions of Part 1 of Article 54 of the Law on Courts.*

The Examination Commission composed of seven persons shall be formed for a period of three years by the Judicial Council. At least four members of the Commission must be judges. The Chairman of the Judicial Council shall nominate to the Examination Commission two judges and one academic having a law degree, whereas the largest judicial organisation and the Minister of Justice shall each nominate one judge and one academic having a law degree. The Judicial Council shall appoint one member from the Commission the chairman of the Commission.

The National Courts Administration shall provide technical services to the Commission.

The examination for candidates to judicial office shall be set at least one every half year, except cases when there are no candidates able to take the examination. The Chairman of the Commission shall nominate the date, time and place of the examination of candidates to judicial office and also the number of persons taking the examination.

The candidates to the judicial office shall have a written examination. The examination shall consist of two parts: theoretical part and practice. Examination papers are updated at least once a year, except cases when during that period there were no candidates able to take the examination.

A decision of the Commission about the results of the examination may be appealed to the Judicial Council within ten days after its announcement.

If the complaint of a person was met and the decision of the Commission concerning the examination results was quashed a person during the nearest meeting of the Commission has a right to take the examination for candidates to judicial office once again.

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);

According to Article 51 of the Law on Courts “the post of a district court judge may be filled by a national of the Republic of Lithuania of good repute, having a university degree in law – the academic title of bachelor in law and master in law or the lawyer’s professional academic title (one-cycle university education in law) meeting the requirements established by law required for security clearance procedure or work permit or right of access to or exchange in classified information, upon submitting a health certificate, having a record of at least five years of work in the legal profession and passing the examination for candidates to judges. A person, having Doctor or Habil. Doctor of Social Sciences (Law) degree, also a person of at least five years standing as a judge, if not more than five years have lapsed since he last held that position, shall be exempt from sitting for the candidate examination. Legal education obtained abroad shall be recognised in accordance with the procedure established by the Government.”

A judge entered in the register of persons seeking judicial office or a person having Doctor of Social Sciences (Law) degree, having at least four years standing as a judge or (and) having pedagogical work experience in law, who has submitted a health certificate may be appointed as a judge of a regional administrative court or regional court.

Requirements of a Person Seeking Judicial Office of the Supreme Administrative Court or the Court of Appeal (Article 67 of the Law on Courts):

1. A judge entered in the register of persons seeking judicial office or a person having Doctor of Social Sciences (Law) degree, having at least 8 years standing as a judge or (and) having pedagogical work experience in law, who has submitted a health certificate may be appointed as a judge of the Supreme Administrative Court or the Court of Appeal. If a person worked as a judge and pedagogical work in law at the same time, calculating the work experience mentioned in this Article, the experience as a judge and pedagogical work in law acquired during this period is not summed up.

2. A judge of the Court of Appeal may be appointed as a judge of the Supreme Administrative Court, and a judge of the Supreme Administrative Court may be appointed as a judge of the Court of Appeal without regard to his record of work at the Court of Appeal or at the Supreme Administrative Court.

Requirements for a person seeking judicial office of the Supreme Court: judge or a person having Doctor of Social Sciences (Law) degree, having at least 10 years standing as a judge or (and) having pedagogical work experience in law, who has submitted a health certificate may be appointed as a judge of the Supreme Court. If a person worked as a judge and pedagogical work in law at the same time, calculating the work experience mentioned in this Article, the experience as a judge and pedagogical work in law acquired during this period is not summed up.

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

Firstly, Article 45 “Permanence of the Judicial Authority” of the Law on Courts establishes that a judge may be appointed, transferred, suspended or removed from office only on the grounds and in accordance with the procedure specified in the Constitution. A person shall be appointed to hold the post of a judge for a definite period of time. The term of office of an appointed judge may not be shortened. A judge may be appointed to a court of a lower level or of a different jurisdiction only upon his consent, except when a person is appointed a judge of a lower level when applying a disciplinary measure.

Also, other Articles of the Law on Courts are important to mention:

Article 46. Prohibition of Interfering with the Judge

1. *It shall be prohibited to interfere with a judge in order to exert influence on the course or outcome of a case.*

2. *Rallies, pickets or any other actions of individuals or their groups, taking place at a distance closer than 75 meters from the court building or inside the court building if they are intended to influence a judge or the court shall be regarded as interference with a judge or the court.*

3. *Persons who, by act or omission, obstruct the course of justice by the court, exert unlawful influence on the course or outcome of the case shall be held liable under law.*

Article 47. Immunity of the Judge

1. *Criminal proceedings may be instituted against the judge, he may be subject to detention or any other restriction of his freedom only by and with the consent of the Seimas, and during the period when the Seimas is not in session - by and with the consent of the President of the Republic, with the exception of cases.*

2. *It shall be prohibited to enter the residential or office premises of the judge, to carry out examination, search or seizure therein or in his personal or official car or any other personal vehicle, to carry out his personal examination or body search, examination or seizure of his personal belongings except in the cases established by law.*

3. *Operational investigation of the criminal activity likely committed by the judge may be opened only by the head of the entity of operational activity on the consent of the Prosecutor General and the pre-trial investigation may be commenced only by the Prosecutor General. The powers of the judge suspected or accused of the commission of criminal act may be suspended by the Seimas and in the period between the sessions of the Seimas by the President of the Republic. The judge shall be suspended from office until the final judgement in the criminal proceedings is adopted. If during the pre-trial investigation the circumstances are disclosed which prove that that the proceedings are impossible or that not enough*

evidence has been collected to prove the judge's guilt in committing criminal act or the judge has not been convicted guilty by court decision in a criminal case, the powers of the judge shall be renewed and he shall be paid the salary due to him during the period of his suspension.

4. The judge who commits an administrative offence punishable by a non-custodial penalty shall be held administratively liable according to the general procedure. The officer who recorded the administrative violation committed by the judge shall within 3 days notify thereof the Judicial Council.

5. The judge who commits an administrative violation punishable by a custodial penalty shall be held administratively liable upon receipt of the consent of the Seimas and in the period between the Seimas sessions – of the President of the Republic.

6. The judge detained without any personal documents and brought to any law enforcement institution shall be released immediately after his identity has been established.

7. The judge or the court shall not be liable for the damage caused to a party to the proceedings because of an unlawful or ungrounded decision. The damage shall be compensated by the State in the cases and in accordance with the procedure prescribed by law. Property and moral damage caused to an individual by a criminal act of the judge when administering justice and compensated by the State shall be recovered from the judge by recourse.

Article 49. Protection of the Judge, Members of His Family and Their Property

1. Physical protection of the judge and members of his family when there is real threat to their life, health or their property connected with the discharge of judicial duties shall be guaranteed in accordance with the procedure established by the Government or an institution authorised by it.

2. Damage caused by injury, by destroying or stealing the property belonging to the judge or members of his family connected with the discharge of judicial duties shall be compensated for by the State following the procedure established by the Government.

Article 50. Other Guarantees of Judicial Independence

1. The State shall guarantee, by financial and organisational technical measures, adequate conditions of work for the judges and courts.

2. The State shall also provide other guarantees of judicial independence set forth in statutes and other legal acts.”

(c) Promotion of judges;

Requirements are laid down in the Law on Courts and other legal acts of the Judicial Council - Rules for the selection of persons seeking judicial promotion, Criteria for the selection of persons seeking judicial promotion, Selection criteria for candidates to the judicial office at district court, Description of the procedure of entering persons in the Register of Persons Seeking Judicial Promotion (available also in English: <http://www.teismai.lt/en/self-governance-of-courts/selection-commission-of-candidates-to-judicial-office/about-comission/673>).

All the information is available at the website: <http://www.teismai.lt/lt/teismams/siekiantiems-teisejo-karjeros/informacija-apie-laisvus-ir-atsilaisvinsiancius-etatus/1839>, where all the information concerning the selection procedures, requirements for candidates, laws and etc. are public and easily available.

Article 112 of the Constitution of the Republic of Lithuania states that a special institution of judges, as provided for by law, shall advise the President of the Republic on the appointment, promotion, and transfer of judges, or their release from duties. Article 120 of the Law on courts establishes that the Judicial Council gives a motivated advice to the President of the Republic in respect of the appointment of judges, their promotion, transfer and removal from office.

According to Article 69¹ of the Law on Courts, the same Commission is responsible for selection of judges to be promoted: the Selection Commission shall be liable for selection of persons seeking judicial promotion i.e. candidates to the judicial office at regional court, regional administrative court, the court of appeal and the supreme administrative court of the Republic of Lithuania; the Selection Commission shall be liable for selection of judges seeking judicial promotion at a court of the same level, i.e. candidates to the judicial office of Chairman, Vice Chairman or Chairman of the division at district court, regional court, regional administrative court, the supreme administrative court and the court of appeal of the Republic of Lithuania.

The extraordinary assessment of the judge's activities shall be carried out on the request of the judge himself or when the judge's operational weaknesses have been recurring. The extraordinary assessment of the judge's activities shall also be carried out when deciding on the promotion of the judge or Chairman of the court or Deputy-chairman of the court, Chairman of the division of the court or of his appointment for a new term of office, except occasions then the last ordinary assessment of the judge's activities or the extraordinary assessment of the judge's activities have been carried out less than three years ago.

(d) Transfer of judges;

Article 63 of the Law on Courts describes transfers of a judge to another court of the same level or a court of the same level but another jurisdiction:

1. A judge of a district court, a regional administrative court or a regional court may be transferred to another court of the same level after the lapse of not less than three years from his appointment to judicial office or the Chairperson of a district court, a regional administrative court or a regional court, may after the expiration of his term of office as the Chairperson of the court be transferred to, subject to his consent, another court of the same level or the court of the same level but of different jurisdiction.

2. In cases provided in paragraph 1 of this Article the selection procedures established in Article 55(1) of this Law shall apply when deciding the issue of transfer of the judge to another court.

3. When courts are reorganized or liquidated under the Law and after the reorganization the number of judges participating in the reorganization is reduced the judges of this court are transferred to other courts of the same level or upon their consent to the courts of lower level. Judges can apply to be transferred and appointed to the respective court. When there are two or more judges, who wish to be transferred or appointed to same court of lower level, the procedure laid down in Article 551 is applied. Only judges, who applied with the request for transfer and appointment to the respective court, participate in the selection.

4. After the statement of the Judicial Council about the need, judge of the district court, regional administrative court or regional court with his consent can be transferred on

constant basis to the court of the same level or to the court of the same level of other jurisdiction. In case there are two or more judges to one place of a judge, the selection procedure as laid down in Article 551 is applied in the transfer procedure. Only judges, who applied with the request for transfer to the other court, participate in the selection.

5. After the statement of the Judicial Council about the need, judge of the district court, regional administrative court or regional court without his consent can be transferred on constant basis to the court of the same level or to the court of the same level of other jurisdiction in the same locality and when there is no judge who consents to be transferred according to paragraph 4 of this Article. In this case the judge with the lowest seniority from the court with the lowest workload is transferred.

6. The consent of a judge shall not be necessary for a temporary transfer of a judge to another court of the same level or the court of another jurisdiction of the same level in order to ensure the functioning of the court (the judge is ill, there is a vacancy in the court or where the judge of this court is not able to carry out his functions for other reasons). By the procedure laid down in this paragraph a judge can be temporary transferred to the other court of the same level or to a court of another jurisdiction of the same level, a judge of the regional court to the district court, a judge of the Court of Appeal – to the regional court, a judge of the Supreme Administrative Court – to the regional administrative court, a judge of the Supreme Court – to the Court of Appeal. After such a transfer the earlier salary should be paid to him, working experience is counted and other social guarantees of judges, mentioned in this Law are left. Such a transfer of a judge may not last longer than one year and may not occur more frequently than once every three years.

7. In cases provided by paragraphs 5 and 6 of this Article, a judge shall be transferred to another court by a decree of the President of the Republic of Lithuania without applying the selection procedure established in 551 of this Law.

8. When deciding on the transfer of the judge in cases provided in paragraph 6 of this Article, the length of service of the judge being transferred, the specialisation, family situation, the distance to the locality where there is the court with a vacancy in judicial office, the judge's opinion and arguments concerning possible transfer and other essential facts shall be evaluated.

9. The President of the Republic shall be advised by the Judicial Council in respect of the transfer of the judge.

10. The judge shall be considered transferred to another court from the day of entry into force of the decree of the President of the Republic of Lithuania on the transfer of the judge.

A judge may be appointed, transferred, suspended or removed from office only on the grounds and in accordance with the procedure specified in the Constitution, the Law on Courts and other legal acts.

A judge who is transferred to another court of the same level under paragraph 6 of Article 63 shall be compensated according to the procedure established by the Government the transfer expenses.

(e) Disciplinary proceedings against judges.

The Judicial Ethics and Discipline Commission is an institution of autonomy of courts deciding the issues of instituting disciplinary actions against judges.

The Judicial Ethics and Discipline Commission shall be composed of seven members. Two members of the Commission shall be appointed by the President of the

Republic, one candidate to the commission shall be appointed by the Speaker of the Seimas, four candidates – by the Judicial Council. The President of the Republic and the Speaker of the Seimas shall appoint members of the public to members of the Commission. The Judicial Council shall approve the composition of the Judicial Ethics and Discipline Commission and the Chairman of the Commission from the appointed members of the Judicial Ethics and Discipline Commission.

A disciplinary action may be instituted against a judge immediately after at least one of the violations specified in Article 83, paragraph 2 of the Law on Courts comes to light but not later than within three months from the day when this violation came to the notice of the Judicial Ethics and Discipline Commission which has the right to institute a disciplinary action. Excluded from this time period shall be the time when the judge was absent from work due to ill health or a vacation.

A disciplinary action may be brought against a judge:

- 1) for an action demeaning the judicial office;*
- 2) for violation of other requirements of the Code of Ethics of the Judges;*
- 3) for non-compliance with the limitations on the work and political activities of judges provided by law.*

A disciplinary action may not be instituted after a lapse of more than three years from the moment of commission of the violation.

The instituted disciplinary action shall be transferred to the Judicial Court of Honour.

The Judicial Court of Honour is an autonomic authority of courts to hear judicial disciplinary cases and petitions of judges for defense of honor of the judge.

The Court of Honor shall be constituted from ten members for the period of commission of the Judicial Council. Two candidates to the members of the Court of Honor shall be appointed by the President of the Republic of Lithuania, two candidates – by the Speaker of the Seimas of the Republic of Lithuania, six candidates to this Court – by the Judicial Council. The President of the Republic of Lithuania and the Speaker of the Seimas of the Republic of Lithuania shall appoint the representatives of public to the members of the Court of Honor. The Judicial Council shall elect one member from each the Supreme Court of Lithuania, the Court of Appeal of Lithuania, and the Supreme Administrative Court of Lithuania, three members from the judges of all regional courts, regional administrative courts, and district courts to the Court of Honor by secret ballot as well as revoke the same in the manner prescribed by the Judicial Council.

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- 1) for an action demeaning the judicial office;*
- 2) for violation of other requirements of the Code of Ethics of the Judges;*
- 3) for non-compliance with the limitations on the work and political activities of judges provided by law.*

After review of a disciplinary action the Judicial Court of Honour may, by its judgement:

- 1) *dismiss a disciplinary action because of the absence of grounds for disciplinary liability;*
- 2) *dismiss a disciplinary action because of lapse of time;*
- 3) *limit itself to the review of a disciplinary action;*
- 4) *impose a disciplinary sanction.*

The Judicial Court of Honour may impose one of the following disciplinary sanctions:

- 1) *censure;*
- 2) *reprimand;*
- 3) *severe reprimand.*

The Judicial Court of Honour may, by its judgement:

- 1) *suggest the President of the Republic or the Seimas to dismiss the judge from office according to the procedure established by law;*
- 2) *suggest to the President of the Republic to apply to the Seimas to institute impeachment proceedings against the judge.*

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

Please see the answers above

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 of judges;**
- (c) Disciplinary proceedings against judges**

Not applicable. The detailed information on legal basis and procedures is provided above.