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

1. In Sweden, an independent state authority called the Judges Proposals Board administers all matters regarding appointment, including promotion, of permanent judges. This follows from ordinary law (Section 2 of the Act [2010:1390] regarding appointment of permanent judges). The board submits proposals to the Government on which of the candidates who are best suited for a certain post. According to the Swedish constitution, the Government takes the final decision on which candidate to appoint (Chapter 11, Section 6 of the Instrument of Government).

The possibilities to transfer a judge are limited (see answer to question 3 d). The Government decides in matters regarding transfer of judges.

A matter of removal or suspension from office is handled by an independent state authority called the National Disciplinary Offence Board (Section 15 of the Letters Patent Act [1994:261]). However, regarding justices of the highest courts, the Supreme Administrative Court examines whether a justice of the Supreme Court shall be removed from duty and vice versa (Chapter 11, Section 8 of the Instrument of Government).

1. The Judges Proposals Board is composed of nine members which are elected for a period of four years. Two of these members are elected by the Swedish Parliament as representatives of the public. The remaining seven members are appointed by the Government and five of them must be or have been permanent judges and two must be lawyers active outside the judiciary, one of which shall be an advocate.

The Judges Proposals Board has a registry with one Administrative Director, two or three reporting clerks and two administrators. The Administrative Director shall be, or have been, permanent judge or have similar professional experience and competence. The authority’s annual budget for 2017 amounted to 9 321 000 SEK and to 8 140 000 SEK for 2018.

The National Disciplinary Offence Board is composed of five members. The chairman and the vice chairman shall be lawyers with experience as permanent judges. The members are appointed by the Government for a fixed period (three years according to established practice). The board has no employees. Instead a court of appeal performs administrative tasks on the board’s behalf. Preliminary, the authority’s expenditures for 2017 amounts to approximately 238 000 SEK (for 2016 approximately 175 000 SEK).

1. a) Under the Swedish Constitution appointments of judges must be based exclusively on objective considerations such as merit and competence (Chapter 11, Section 6 of the Instrument of Govern­ment). A judge shall be a Swedish citizen and have passed the professional examinations prescribed for qualification for judicial office. A person who is in the state of bankruptcy or has an administrator cannot be a judge. (Chapter 4, Section 1 of the Code of Judicial Procedure).

The procedure before the Judges Proposals Board for appointing judges involves a public call for candidates through advertisements in news­papers and on the Internet. Those who are interested in a vacancy can submit a written application to the board. The board obtains references from the applicant’s current and previous employments. The head of the court with the vacancy interviews the applicants and then leaves his or her comments to the board. The board submits motivated proposals to the Government on which of the applicants who are best suited for the post.

b) According to the Swedish Constitution judges enjoy a special kind of security of tenure. In principle, a permanent judge cannot be dismissed other than in cases specifically set out in Chapter 11, Section 7 of the Instrument of Government. According to this provision a permanent judge may be removed from office if he or she through a criminal act or through gross or repeated neglect of his or her official duties has shown himself or herself to be manifestly unfit to hold the office. A judge is also obliged to leave office when he or she has reached the age of retirement. There are also provisions about termination when a permanent judge due to loss or reduction of working capacity is permanently unable to satisfactory fulfil his or her assignments.

There are no rules in law regarding the salaries for judges. According to well established practice salaries in Sweden is a question for the parties on the labor market.

c) The legislation and procedure regarding promotion of judges are substantially the same as for appointment, see answer above.

d) There are limited possibilities to transfer a judge. According to the Swedish Constitution a transfer is possible only if organizational considerations so dictate and only to a judicial office of equal status (Chapter 11, Section 7 of the Instrument of Government). The condition that the judicial office shall be of equal status means that the salary and the tasks must be the same or substantially the same. The Government decides in matters regarding transfer of judges.

e) According to Section 14 in the Public Employment Act (1994:260) judges can be subject to disciplinary measures. Matters on disciplinary measures are tried by the National Disciplinary Offence Board. A disciplinary measure for misdemeanors/neglect of duty may be imposed upon a judge who intentionally or by carelessness neglects his or her duties in employment. A sanction may not be issued if the neglect is minor. There are two types of disciplinary measures; warning and deduction from wages. The board’s decision can be subject to labor disputes.

1. See above.