**SEMINAR ORGANISED BY THE FRENCH COUNCIL OF STATE
IN COOPERATION WITH ACA-EUROPE**

***ETHICS AND RECRUITMENT
OF MEMBERS OF THE SUPREME ADMINSTRATIVE COURTS AND COUNCILS OF STATE***

***Questionnaire***

*The Versailles seminar will address two related topics: ethics and recruitment.*

*The first topic will be discussed on Friday morning, 29 November, in two round tables. The first will focus on the legal and institutional framework. The second, based on practical cases, will address the content of ethical rules.*

*The second topic will be addressed on Friday afternoon during the third round table.*

*Ethics for magistrates was discussed at the seminar organised by AIHJA/IASAJ in September 2020 in Athens. It was also discussed at a meeting of the European Association of Administrative Judges (AEAJ) in May 2023 focusing on the freedom of expression of magistrates. Some of the questions below repeat those asked in the Athens questionnaire. You can, of course, use the answers you provided in 2020 to respond to this questionnaire.*

# I Ethics: Legal and institutional framework

## 1.1. General framework

1.1.1. Are the ethical obligations of public officials in general enshrined in your country's positive law?

☒Yes

☐No

If yes, they are enshrined (please check all applicable answers):

☒in the Constitution

☒in the law

☒in a regulatory text

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☒in a Charter of Ethics or a Collection of Ethical Principles

☐other

Please explain if necessary:

In Austria, there are two categories of federal public officials: federal civil servants are persons appointed by decisions of the Federal Government, whereas contractual employees enter into contractual employment relations with the Federal Government. Ethical obligations of federal civil servants may be derived from their official duties which are laid down in sec. 43 et seqq. of the Public Officials Service Law Act (Beamten-Dienstrechtsgesetz 1979, BDG 1979). The majority of these rules also apply to contractual employees within the meaning of the Contractual Employees Act (see sec. 5 Vertragsbedienstetengesetz 1948, VBG). Official duties are also enshrined in the constitution, such as official secrecy (see art. 20 para. 3 Federal Constitutional Act, Bundes-Verfassungsgesetz, B-VG). Specific duties can in addition be found in regulatory texts, such as the Regulation on the Private Use of the Federal Information and Communication Technology Infrastructure by Federal Employees (IKT-Nutzungsverordnung).

The Ministry for Civil Service together with other experts in the field, have worked out a Code of Conduct for Preventing Corruption in the Civil Service applicable to all federal civil servants and contractual employees. The Supreme Administrative Court (SAC) regularly refers to this Code of Conduct in its seminars and training events for public officials. In the framework of their basic training, all judicial clerks have to complete a course on the organisation of the SAC, where the ethics governing public service are discussed and an online e-learning module on the Code of Conduct for Preventing Corruption in the Civil Service has to be completed. This e-learning module is available to all public officials employed by the Federal Government.

1.1.2. Are the ethical obligations of members of your institution specifically enshrined in your country's positive law?

☒Yes

☐No

If yes, they are enshrined (please check all applicable answers):

☒in the Constitution

☒in the law

☐in a regulatory text

☒in a Charter of Ethics or a Collection of Ethical Principles

☐other

Please explain if necessary:

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|---|
| Provisions laying down the ethical rules, principles and obligations of members of the judicial body (= the justices) of the SAC can be found in the Judges- and Prosecutors Service Law Act (Richter- und Staatsanwaltschaftsdienstgesetz, RStDG). Sec. 57 et seqq. stipulate general and specific rules of conduct, such as the obligation to respectful treatment or to secrecy. The constitutional obligation to remain independent arises from art. 87 B-VG.<br><br>The SAC does not have a specific Charter of Ethics. However, in 2007, the Association of Austrian Judges adopted the non-binding Wels Declaration of Ethics, and in 2020 the Ministry of Justice adopted Compliance Guidelines for members of the ordinary judiciary (i.e. civil and criminal courts). Both may serve as reference documents for the members of the SAC. |

## 1.2. Charter of Ethics

1.2.1. Does your institution also have a Charter of Ethics or a Collection of Ethical Principles?

☐Yes

☒No

If the answer is yes: On which date was this document adopted?

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| n.a. |

1.2.2. Is the adoption of this document an obligation for your institution?

☐Yes

☐No

Please explain if necessary:

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|---|
| n.a. |

1.2.3. Was this document adopted in response to a particular event that stirred public opinion?

☐Yes

☐No

If yes, please explain the legal and political context that led to the adoption of this text:

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|---|
| n.a. |

1.2.4. Who drafted this document?

☐A working group composed exclusively of members of your jurisdiction

☐A working group expanded to include outside persons

☐A working group involving associations of administrative judges

☐Other

Please explain if necessary:

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|---|
| n.a. |

1.2.5. Which authority signed and enacted this document?

☐The president of your institution

☐A collegiate body of your institution

☐Other

Please explain if necessary:

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| n.a. |

1.2.6. Has this document undergone one or more revisions?

☐Yes

☐No

Please explain the purpose of these revisions if necessary:

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|---|
| n.a. |

1.2.7. What is the legal value of this document?

☐This document contains binding legal rules (hard law)

☐This document contains soft law standards

☐Other

Please explain if necessary:

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|---|
| n.a. |

1.2.8. Please attach this document to your response, if possible in a French or English translation, in the form of an attached document or a web link.

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| n.a. |

**1.3. Scope of application of ethical rules:**

1.3.1. Whether a Charter of Ethics or equivalent text has been adopted or not, do the ethical rules applicable to members of your supreme court apply identically to magistrates in the lower courts of your judicial system?

☐Yes

☒Partially

☐No

Please explain if necessary:

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|---|
| The Austrian legal system has two separate jurisdictional orders: the ordinary courts, ruling over civil and criminal law matters, and the administrative courts, ruling over administrative matters. The Austrian administrative procedural system is composed of three instances - firstly the administrative authorities, secondly the first instance administrative courts, and finally the Supreme Administrative Court. Following the so called "9+2 model", nine administrative courts of the provinces were established. In addition, two federal administrative courts were created: the Federal Administrative Court reviewing decisions of federal authorities, and the Federal Fiscal |

Court reviewing decisions in financial matters. The SAC is empowered to review the rulings of all first instance administrative courts, thus retaining final jurisdiction in all administrative matters.

The RStDG, which entails the obligations applicable to the judges and candidate judges of ordinary courts and to prosecutors, also applies to justices of the SAC (see sec. 7 of the Supreme Administrative Court Act 1985, Verwaltungsgerichtshofgesetz 1985, VwGG) as well as to the judges of the Federal Administrative Court and the Federal Fiscal Court, unless otherwise stipulated (see sec. 209 RStDG). Separate ethical rules apply to members of the regional administrative courts and public servants employed by the provinces (see, for example, sec. 18 Vienna Service Act, Wiener Dienstordnung 1994).

1.3.2. To whom do these ethical rules apply?

☒To members of your institution who are active within it

☒To members of your institution who are temporarily not serving there, under secondment or availability arrangements, in other administrations or in the private sector

☒To resigning members

☒To retired members

☒To administrative staff (referendary judges, legal assistants, clerks, interns, etc.) assisting members of your institution

☐Other

Please explain if necessary:

Pursuant to sec. 57 para. 3 and 4 RStDG justices must conduct themselves in and out of office in such a way as not to jeopardise confidence in the administration of justice or the reputation of their profession. Even after retirement, justices shall maintain an appropriate level of professional integrity. Sec. 58 para. 4 RStDG provides that the obligation to maintain secrecy continues to apply out of office and during retirement as well as to judges/justices who have left the judicial body.

Pursuant to sec. 43 para. 2 BDG 1979, federal civil servants must ensure, in all of their conduct, that public confidence in the objective performance of their official duties is maintained. Similar to sec. 58 para. 4 RStDG, sec. 46 para. 2 BDG 1979 explicitly stipulates that the obligation to maintain secrecy also applies after the termination of the employment.

1.3.3. In the event that your institution exercises both a judicial and a consultative function, do the ethical obligations imposed on members exercising one or the other of these functions differ?

☐Yes

☐No

☒Not applicable

Please explain if necessary:

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|---|
| The SAC does not exercise any consultative functions. |

1.3.4. If there is a duality of jurisdiction in your country distinguishing an administrative jurisdictional order and a judicial jurisdictional order, are the ethical rules applicable to magistrates of these two orders different?

☐Yes

☒Partially

☐No

Please explain if necessary:

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|---|
| See 1.3.1. |

1.3.5. If the ethical rules are wholly or partly different for magistrates of these two orders, please indicate one or more examples of obligations that apply to magistrates of only one order or that apply differently to magistrates of each order of jurisdiction:

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| As outlined in 1.3.1, the RStDG, which entails the obligations applicable to the judges and candidate judges of ordinary courts, and to prosecutors, also applies to justices of the SAC as well as to the judges of the Federal Administrative Court and the Federal Fiscal Court. Differences in ethical rules may therefore only exist between judges working at federal courts and those working at the regional courts of the provinces. The main difference thus are the different legal provisions applicable to these two groups as different legislative authorities (Federation or Provinces) are competent to adopt such rules. The content of the ethical rules is largely the same, for example provisions on the obligation to respectful treatment, to maintain secrecy, prohibition from accepting gifts etc. |

1.3.6. If the magistrates who make up your institution belong to several different categories (for example, a bench and a public prosecutor's office), are they subject to different ethical rules?

☐Yes

☐No

☐Partially

☒Not applicable

If these ethical rules are wholly or partly different for magistrates of different categories, please give an example.

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| Members of the SAC are full time justices. As a result, they are subject to the rules applicable to justices at the SAC. Different ethical rules may only apply in the context of secondary employment (see 1.7.1., 2.2.4.). |

**1.4. Relationship between ethical and disciplinary rules:**

Is a breach of ethical obligations necessarily an offence that may result in disciplinary action?

☐Yes

☒No

If not, please give an example:

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| In principal, culpable breaches of ethical obligations enshrined in positive law may result in disciplinary action. Pursuant to sec. 101 RStDG, a disciplinary penalty shall be imposed on a judge/justice who violates their professional or official duties, if the violation, considering the nature or seriousness of the misconduct, its repetition or other aggravating circumstances, constitutes an official misconduct. Possible consequences are a reprimand, a fine of up to five monthly remunerations or dismissal. Disciplinary proceedings are conducted by an independent disciplinary tribunal. The competent body at the SAC is the Plenary Assembly.<br><br>Special provisions apply, for example, in the area of information and communication technology use. In order to safeguard the right to privacy and data protection of employees, a stage-to-stage intensifying control system has been adopted in relation to the use of internet at the workplace (see sec. 79 lit. e to g BDG 1979). |

**1.5. Training on ethical rules:**

Are members of your institution made aware of or trained in ethics?

☒Yes

☐No

If yes, how and how often?

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|---|
| The justices of the SAC may choose from a variety of seminars and trainings on different subjects, including ethics, offered by national and international institutions, such as the Austrian Academy |

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| of Administrative Jurisdiction ("Österreichische Akademie der Verwaltungsgerichtsbarkeit"), the EJTN, IASAJ or ACA. |

**1.6. The College of Ethics**

1.6.1. Has your institution created or does it have a collegiate body or a single authority responsible for answering ethical questions that may arise for members of your institution?

☐Yes

☒No

1.6.2. If yes, how is it appointed?

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|---|
| n.a. |

1.6.3. If yes and in the case of a collegiate body, how is it composed?

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| n.a. |

1.6.4. Who can refer to this body?

☐A member of your institution for an ethical question concerning them

☐A magistrate from the lower courts for an ethical question concerning them

☐The president of your institution

☐Other members of your institution

☐A litigant who believes that a magistrate has disregarded their ethical obligations

☐This body can refer to itself

☐Others

Please explain if necessary:

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|---|
| n.a. |

1.6.5. Are the opinions given by this body made public?

☐Yes

☐No

1.6.6. If yes, are the published opinions anonymised?

☐Yes

☐No

1.6.7. Can these opinions be challenged before the court?

☐Yes

☐No

Please explain the legal scope of these opinions:

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|---|
| n.a. |

**1.7. Declaration of interests**

1.7.1. Must members of your institution complete a declaration of interests?

☐Yes

☒No

If yes, please briefly describe the modalities of its submission:

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| Even though members of the SAC do not have to sign a declaration of interests, there are strict rules on impartiality (see 2.1.1) and the obligation for justices and federal civil servants to report to the SAC the commencement, nature and extent of a gainful secondary employment. A secondary employment which interferes with the duties of the main employment must not be taken up.<br><br>Furthermore, a "cooling-off period" exists for the President and Vice President regarding specific elected offices: The President and the Vice President of the SAC are not permitted to have held an elected office as member of the Federal Government or a Provincial Government, of the Federal or Regional Parliament, or the European Parliament or any other political representative body in answer within the last five years preceding their appointment (see art. 134 para. 6 B-VG). |

1.7.2. Is there a specific procedure or *ad hoc* body responsible for examining conflicts of interest that may arise when a member of your institution leaves for the private sector?

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| No. |

**1.8. The oath**

Do members of your institution have to take an oath?

☒Yes

☐No

If yes, what does this oath consist of and how is it taken?

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| Pursuant to sec. 2 para. 2 VwGG, upon entering their office, the members of the SAC solemny vow, in the presence of the Plenary Assembly, to unconditionally observe the laws of the Republic of Austria and to diligently comply with the duties of their office. |

# II Ethics: Content of rules

**2. 1. Independence, impartiality and prevention of conflicts of interest**

2.1.1. In which circumstances should a member of your institution abstain from sitting or risk being disqualified from a judgement panel?

☒In cases of familial ties that may link the magistrate with a party

☒In cases of friendly ties that may link the magistrate with a party

☒Due to previous functions performed by the magistrate

☒Other

Please explain, citing any relevant jurisprudential examples

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| According to sec. 31 para. 1 VwGG members of the SAC as well as recording clerks shall abstain from exercising their office in matters in which they themselves, one of their relatives or a person entitled to their protection are involved (lit. 1); in matters in which they were or are appointed as representative of a party (lit. 2); if they have participated in proceedings preceding the proceeding before the SAC (lit. 3); or if there are any other important reasons resulting in doubts on their complete impartiality (lit. 4). Pursuant to sec. 31 para. 2 VwGG parties may challenge members of the SAC as well as recording clerks for the aforementioned reasons.<br><br>In its jurisprudence the SAC has pointed out that the proceedings referred to in lit. 3 only cover proceedings which were conducted before an administrative authority or a first instance administrative court, whose decision is then subject to review by the SAC (see SAC 13.9.2016, 2016/03/0003). Therefore, the SAC has also stated, that the fact that a justice participated in a former decision of the SAC does not constitute a basis for the assumption of partiality of this justice in another case regarding the same party in the future (see SAC 22.1.2018, |

Ra 2017/05/0220). Also, the fact that a justice responsible for an application for legal aid subsequently participated in the decision on the appeal as a member of the panel does not constitute impartiality, as impartiality within the meaning of lit. 3 cannot be derived from the participation of a justice in a decision already made by the SAC (see SAC 14.4.2021, So 2021/03/0002-0004).

Regarding lit. 4 the SAC has also stated that a party must substantiate the relevant reasons; this substantiation must concern the personal circumstances and interests as well as the personal behaviour of the justice (see SAC 30.4.2021, So 2021/05/0001). The fact that a party considers a former decision of the SAC to be incorrect, in general does not provide a sufficient basis for the assumption of impartiality (see SAC 1.7.2020, Ra 2020/08/0033; 22.10.2019, Ra 2019/10/0128). The fact that legal views expressed in a legal commentary are not shared by all legal practitioners is in the nature of things and does not in itself constitute a sufficient basis for assuming that the justice in question is partial (see again SAC 22.1.2018, Ra 2017/05/0220). Even the fact that a party has filed a criminal complaint against a justice, does not – without further justified circumstances – constitute a reason to assume the justice's partiality, as each party would otherwise be able to evade the legally competent justice by lodging such legal remedies (see SAC 12.10.2017, Ra 2017/08/0067-0069).

2.1.2. If your institution exercises both a jurisdictional function and an advisory function, what individual measures does it implement to comply with the *Procola* case law of the European Court of Human Rights dated 28 September 1995, according to which the fact that certain members successively exercise, regarding the same decisions, advisory and jurisdictional functions is likely to compromise the structural impartiality of the institution?

☐Prohibition of a member's participation in the judgement of an appeal directed against an act taken after advisory opinion from your institution if they participated in the deliberation of that opinion

☐Prohibition for members of a judgement panel to consult the files of advisory panels

☐Other

Please explain if necessary:

n.a.

2.1.3. If your country allows members of your institution to temporarily leave to take up other functions in the public or private sector, what ethical rules govern such a departure and, when the time comes, such a return?

☐Obligation to abstain, before departure, from participating in any deliberation involving a future employer from the moment the individual enters into negotiations with them

☒Prohibition for the members concerned, during this temporary period outside the institution, from intervening in cases they became aware of in the exercise of their jurisdictional activities

☐Prohibition for a member practising as a lawyer from submitting requests and briefs and appearing in court before your institution for a specified period

☐Obligation to abstain, if applicable for a specified period after the return, from participating in the judgement of disputes concerning decisions taken by the authority with which the member previously served

☒Other

Please explain if necessary:

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2.1.4. Can a member of your institution receive gifts?

☐Yes

☒Yes, under certain conditions

☐No

Please explain if necessary:

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|---|
| According to sec. 59 para. 1 and 2 RStDG justices are prohibited from demanding or accepting gifts or other advantages for themselves or third parties with regard to their official position or performance of their duties. Likewise, the justices are prohibited from procuring or allowing a third party to procure or promise themselves a gift or other advantage with regard to their official position or performance of their duties. However, small customary gifts of little value (for example calendars, pens, gimmicks) are not considered gifts under the aforementioned definition if the justice does not intend to procure continuous income for themselves or third parties through these gifts.<br><br>According to sec. 59 para. 3 to 5 RStDG justices may accept gifts of honour, but have to inform the SAC immediately. The latter then registers the gift of honour as federal property. Gifts of honour shall be sold or be otherwise disposed of in accordance with the principles of cost effectiveness, efficiency and expediency. The proceeds are to be collected and used for charitable purposes for the benefit of employees or other charitable purposes. However, honorary gifts of small or merely symbolic value may be given to the justice for personal use. |

2.1.5. Can a member of your institution receive an honorary decoration from their country or a foreign country?

☒Yes

☐Yes, under certain conditions

☐No

Please explain if necessary:

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| Honorary decorations for services to the Republic of Austria are awarded by the Federal President on the recommendation of the Federal Government to persons who have performed outstanding public service and rendered excellent services to the Republic of Austria.<br><br>Members of the SAC may receive such honorary decorations, for example the Grand Silver Decoration of Honour for Services to the Republic of Austria or the Grand Golden Decoration of Honour for Services to the Republic of Austria. |

## 2.2. Exercise of individual liberties

2.2.1. Are there limits placed on the freedom of expression and opinion of members of your institution?

☐Yes

☒No

Please explain if necessary:

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|---|
| There are no general restrictions regarding the freedom of expression and opinion of justices of the SAC.<br><br>However, pursuant to sec. 57 para. 3 and 4 RStDG justices must conduct themselves in and out of office in such a way as not to jeopardise confidence in the administration of justice or the reputation of their profession. Even after retirement, justices shall maintain an appropriate level of professional integrity.<br><br>Justices are also – with the exception regarding individuals to whom they are obliged to make official disclosure of such facts – bound to secrecy regarding all facts of which they become aware of in the course of their official duties, whose secrecy is required in the interest of maintaining public peace, order and security, the defence of the country, foreign relations, the economic interest of a public body, the preparation of a decision or in the predominant interest of the parties (see sec. 58 para. 1 RStDG). |

2.2.2. In particular, is the use of social media by members of your institution regulated?

☐Yes

☒No

Please explain if necessary:

See 2.2.1.

2.2.3. As an example, can a member of your institution participate in a public debate of general scope (for example, on immigration or euthanasia), provided that they do not specifically mention a particular case they may have been involved in judging?

☐Yes

☒Yes, under certain conditions

☐No

Please explain if necessary:

See 2.2.1.

2.2.4. Can a member of your institution write and publish an article or a book? Can they teach at a public university or a private educational institution?

☐Yes

☒Yes, under certain conditions

☐No

Please explain if necessary:

See 2.2.1.

In general, justices of the SAC are not allowed to exercise secondary employment which is contrary to the dignity of the office or which could obstruct justices in the performance of their official duties or gives rise to a presumption of impartiality in the performance of their duties or jeopardises other essential interests of the service. Except secondary scientific occupations, justices shall refrain from any reference to their office and shall ensure that no such reference is made by any other party (see sec. 63 para. 2 RStDG).

2.2.5. If yes, must they seek prior authorisation from the head of your institution?

☐Yes

☒No

Please clarify if necessary:

Justices planning on exercising a secondary employment do not necessarily have to seek prior authorisation from the SAC. Nevertheless, directly after starting the employment, the

commencement, nature and extent of any gainful secondary employment, as well as its termination, must be reported immediately to the SAC. Significant changes to the employment must also be reported without delay (see sec. 63 para. 6 RStDG).

The exercise of a secondary employment by a justice which is contrary to the dignity of his office or which could hinder him in the fulfilment of his official duties or give rise to a presumption of partiality in the performance of his duties or jeopardise other essential official interests, must be prohibited immediately by the SAC (see sec. 63 para 2 and 7 RStDG).

2.2.6. Are members of your institution allowed to engage in political activities?

☐Yes

☒Yes, under certain conditions

☐No

Please explain if necessary:

See 2.2.1.

In addition to that, in the non-binding Wels Declaration of Ethics Austrian judges declared that being a member of a political party or being politically active within such a party can be detrimental to the credibility of an independent jurisdiction that is unswayable by political parties and not bound by interest groups and lobbies.

2.2.7. Can members of your institution run for elections?

☐Yes

☒Yes, under certain conditions

☐No

Please explain if necessary:

Members of the Federal Government or a Provincial Government, of the Federal or Regional Parliament, or the European Parliament or any other political representative body cannot be justices of the SAC (see art. 134 para. 5 B-VG). In case a justice is elected for any of these offices, the justice will be suspended for the duration of such election (see sec. 3 para. 1 VwGG).

2.2.8. If a member of your institution is elected, can they continue to perform their functions in your institution?

☐Yes

☐Yes, under certain conditions

☒No

Please explain if necessary:

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|---|
| See 2.2.7. |

2.2.9. If a member of your institution is elected, can they, in the event of full-time elective office, rejoin your institution upon the expiration of their mandate?

☒Yes

☐Yes, under certain conditions

☐No

Please explain if necessary:

| |
|---|
| See 2.2.7. |

2.2.10. Can a member of your institution sign a petition?

☒Yes

☐Yes, under certain conditions

☐No

Please explain if necessary:

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| |

2.2.11. Can a member of your institution participate in a demonstration?

☐Yes

☒Yes, under certain conditions

☐No

Please explain if necessary:

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|---|
| See 2.2.1. |

2.2.12. Can a member of your institution invoke a "conscience clause" to refuse to apply the law – for example, by refusing to sanction a doctor who, in violation of the provisions obliging him to do so, failed to inform his patients about the possibility of terminating their pregnancy?

| No. |
|---|

## 2.3. Case studies

To add substance to our discussion, the organisers of the symposium would like to discuss specific questions that you have encountered and on which your College of Ethics, if you have one, would have pronounced.

The French Council of State proposes four questions to you, as an example:

1. On impartiality: Can a consultant judge (*rapporteur public*) of the Council of State [responsible for presenting to the members of the judgement panel the case before them, the legal issues it raises, and proposing a solution] receive a gift from a third party, not a party to the litigation, for the direction of the findings he has made in a case concerning the euthanasia of an elephant? (Opinion no. 2013/4 of 17 June 2013)

2. On conflicts of interest: Which cases can a head of jurisdiction assign to a magistrate whose spouse is one of the most important members of the French Government? (Opinion no. 2017/4 of 18 September 2017)

3. On conflicts of interest: Under what conditions can a former administrative magistrate practise as a lawyer? (Recommendation no. 2017-1 of 15 November 2017)

4. On the obligation of discretion and freedom to produce intellectual works: Can a judicial magistrate seconded to the Council of State, during their secondment period, publish a historical essay on the *Ranucci* case, which had caused a stir and led to one of the last capital executions in France in 1976? (Opinion no. 2016/4 of 17 January 2017)

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# III. Recruitment of members

## 3.1. Who can be recruited in your institution?

3.1.1. How many members do you recruit on average each year in your institution?

The number of new members differs from year to year as recruitment depends on the number of members leaving the office. The SAC has recruited between two and six new members over the past six years, on average three new members per year.

3.1.2. Are all new members recruited at the same rank, or are the members of your institution divided into several ranks for which different recruitment methods exist? Please explain:

With the exception of the President and Vice President, differences in the recruitment of justices do not exist. Members of the SAC are the President, Vice-President, panel presidents and the other justices ("Hofräte"). Each of the 22 court panels has a panel president who leads sessions and deliberations. Upon the vacancy of a panel presidency, typically, the longest serving member among the SAC's justices is appointed as panel president.

3.1.3. Are age conditions set for the recruitment of these new members?

☐Yes

☒No

Please explain if necessary:

There are no specific age conditions, however indirect ones result from the requirement under art. 134 para. 4 B-VG that new members must have completed their legal studies and have had at least ten years of professional legal experience.

3.1.4. Are diploma conditions set for the recruitment of these new members?

☒Yes

☐No

Please explain:

According to art. 134 para. 4 B-VG, members of the SAC need to have completed law studies.

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3.1.5. Is it possible to become a member of your institution directly after completing university studies or, if applicable, after a training college?

☐Yes

☒No

Please explain:

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| Pursuant to the above-mentioned art. 134 para. 4 B-VG, a minimum of ten years of professional legal experience is required in order to become a justice of the SAC. |

3.1.6. Are conditions of prior professional experience required to become a member of your institution?

☒Yes

☐No

Please explain:

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| See 3.1.3. and 3.1.5. |

3.1.7. Can members of the lower courts become members of your institution?

☒Yes

☐No

Please explain:

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| In the past years, members of first instance administrative courts, such as the Federal Administrative Court, as well as members of ordinary courts, who have fulfilled the requirements set out in art. 134 para. 4 B-VG have become justices of the SAC. |

If yes, what is their proportion in the number of new members?

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| Over the past years, the majority of new members came from first instance administrative courts. Art. 134 para. 4 B-VG also stipulates that at least a quarter of the members should come from professional positions in the provinces, preferably the administrative service of the provinces. |

3.1.8. How old is the youngest of your colleagues?

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| The youngest justice of the SAC is currently 39 years old. |

3.1.9. Are the members of your institution recruited without a time limit - that is, for a career that will end with retirement - or for a fixed-term contract?

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|---|
| Members of the SAC are recruited without a time limit and retire after reaching the age of 65. |

**3.2. How does the recruitment procedure work in your institution?**

3.2.1. Does the executive branch intervene in the recruitment procedure for members of your institution?

☐Yes

☐No

Please explain:

| |
|---|
| Partially. Justices are appointed to the Supreme Administrative Court by the Federal President based on a proposal by the Federal Government, which must correspond to a proposal for nominations drawn up by the Plenary Assembly of the SAC (or a committee to be elected among its members). This proposal for nominations (three candidates per position) is binding, but not the order in which the candidates were ranked. This means that the Federal Government cannot propose a candidate who was not ranked on the list by the SAC, but is not obliged to choose the candidate ranked first. No proposal from the plenary assembly (or a committee) is necessary for the appointment of the President and the Vice-President. |

3.2.2. Does the recruitment procedure for members of your institution involve an individual interview?

☒Yes

☐No

3.2.3. If yes, is this interview an opportunity to assess the candidate's motivation as well as their legal knowledge?

☒Yes

☐No

3.2.4. Does the recruitment procedure vary depending on the rank the candidate is applying for - in the event that recruitments in your institution may be made at different ranks (cf. above 3.1)?

☐Yes

☐No

Please explain if necessary:

| See 3.2.1. |
|---|

**3.3. What is the procedure for appointing members of your institution?**

3.3.1. The appointment of members of your institution results from a decision:

☒by the executive branch (for example, a presidential decree)

☒by the judicial branch (by the president of your institution or a panel of independent judges)

☐other

Please explain if necessary:

| See 3.2.1. |
|---|

3.3.2. Can the appointment of members of your institution be challenged in court?

☒Yes, through an action at the time of the appointment of said members

☐Yes, as an exception regarding the regularity of the composition of the members of the judgement panel

☐No

If yes, before which judge?

| The Federal Equal Treatment Commission, a body set up at the Federal Chancellery, may be called upon regarding all matters pertaining to the equal treatment of women and men, the advancement of women and to equal treatment irrespective of ethnic origin, religion or belief, age or sexual orientation in public employment (see sec. 23 para. 1 Federal Equal Treatment Act, Bundes-Gleichbehandlungsgesetz, B-GlBG). |
|---|

3.3.3. If your institution is competent to hear this litigation, how does it ensure respect for the right to a fair trial?

| |
|---|
| n.a. |

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