**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:

There is no General Code of Public Service containing provisions on the ethics of public officials. But, there are specific provisions for certain public officials in legislative and regulatory texts (see, for example, regarding the science and universities, Article 112. Paragraph 1. of the Act of Scientific Activity and Higher Education, and regarding police officers, Article 30. of the Law on Police). Also, there is no charter of ethics applicable to all public officials, but rather a multiplicity of charters specifying the ethical rules applicable to public officials of certain State administrations, certain public institutions, certain local authorities (an example of this is the Charter of Ethics for officials of the City of Zagreb, the Charter of Ethics of the Croatian Institute for Pension Insurance), with the exception of persons with the status of civil servants and state employees, to whom the unified Code of Ethics of civil servants applies.

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:

The ethical obligations for the members (judges) of the High Administration Court of the Republic of Croatia are set, in very general terms, in Article 120 par. 7 of the Constitution of the Republic of Croatia, which defines: "*A judge cannot perform a service or job that the law has determined to be incompatible with the duty of a judge*."

Article 106 par. 1 of the Law on Courts (LC) defines that The Code of Judicial Ethics (the Code) establishes ethical principles and rules of conduct for judges in order to preserve the dignity and reputation of the judicial office, and in par. 2 that judges, when performing their duties and in their free time, are obliged to respect the law and the Code.

Therefore, there is also the Code, which is defined as a set of ethical principles necessary for the successful performance of judicial duties, whose stated ambition in its preamble, among others, is to "*achieve the independence, impartiality, expertise, equality and dignity of the judicial profession; strengthen awareness of personal and professional responsibility, conscientiousness and efficiency in the performance of judicial duties*".

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

☐Yes

☒No

Please explain if necessary:

For all courts in Croatia, therefore judges, the same general Code is applicable.

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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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:

The Code is adopted on October 26th 2006 by the Ethics Commission, which consists of the presidents of all judicial councils in the Republic of Croatia (Art. 107 par. 1 LC), and the commission is convened and chaired by the President of the Judicial Council of the Supreme Court of the Republic of Croatia (Art. 107 par. 1 LC). Notably, the composition of the judicial councils of courts in Croatia is prescribed by Articles 50 and 51 of the Law on Courts.

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:

The Code takes the form of a decision by the President of the Judicial Council of the Supreme Court of the Republic of Croatia - who, in Croatia, presides over the Ethics Commission (Article 170 par. 2 LC).

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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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:

On February 4th 2016 Council of Presidents of all Judicial Councils of the Supreme Court of Croatia adopted *The Guidelines for the interpretation and application of the Code of Judicial Ethics*. In these Guidelines is stated that "*The Code establishes the standards of ethical behaviour of judges and determines the criteria on the basis of which behaviour is measured, and formulates the professional obligations and duties of judges. The ethical principles contained in the Code were created as a guide for judges and a framework for the judiciary to regulate the actions of judges. The Code also has the purpose of helping the executive and legislative authorities, lawyers and the public as a whole, to better understand and support the judiciary. Default ethical principles are a prerequisite for the establishment of standards of behaviour of judges in the performance of their constitutional and legal obligations by acting in and out of court*."

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.

The Code is accessible in English on the following website: https://www.pak.hr/cke/propisi,%20zakoni/en/CodeofJudicalEthics/EN.pdf

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:

The Code applies to all judges of all courts in the Republic of Croatia, therefore to all members (judges) of the administrative jurisdiction.

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:

The Code applies to members (judges) of the High Administrative Court who are active within it. However, some of its provisions also apply to members who have left it, either because they temporarily hold other positions outside the High Administrative Court or because they have reached retirement age, if their situation or activity could undermine the dignity of their former positions or affect the functioning and independence of the administrative jurisdiction. It also applies to all judges temporarily assigned there, for a specific period of time. When it comes to judicial advisors or, sometimes, interns, the Code does not apply to them, as they have the status of civil servants, the Code of Ethics for Civil Servants is binding on them.

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:

Members of the High Administrative Court are only performing jurisdictional 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:

In the scope of the administrative law, Croatia has a complete jurisdictional dualism – administrative (different public law bodies depending on the legal subject in question) and judicial (with the High Administrative Law as its head). It is important to mention, that in administrative jurisdictional order decisions are not made by judges. Therefore, both orders are subjected to the different ethical rules, as it is explained in answers of the questions above.

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:

In administrative jurisdictional order decisions are made by civil or public servants, and in judicial jurisdictional order only by judges. Even though some ethical principles are formulated in the same or similar way, no parallel can be drawn between the two before mentioned orders in application.

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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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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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?

Members of the High Administrative Court can participate every year in the seminar about the judicial ethics, the Code and application of the Code in practice, provided by Judicial Academy. This seminar is available to members/judges as part of continuing education.

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?

The High Administrative Court of the Republic of Croatia has a Confidential adviser for acting according to the Code of Judicial Ethics, who is appointed by the President of the Court. According to Art. 107.a LC, violations of the Code are decided by judicial councils. The judicial council of

Administrative Courts is elected by the judges of the High Administrative Court and administrative courts in Zagreb, Split, Rijeka and Osijek.

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

The Judicial Council of Administrative Courts has 15 members, of which nine members are from the ranks of judges of the High Administrative Court of the Republic of Croatia, and six are from the ranks of administrative courts (Art. 51 par. 4 LC).

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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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:

The judge and the complainant have the right to object against the decisions of the judicial councils on violation of the Code within eight days from the day of delivery of the decision, which is decided by the Ethics Council (Art. 107.a par. 2 LC). The Ethics Council has five members. Four members of the Ethics Council are elected by the members of the Commission from among themselves, and the President of the Ethics Council is the President of the Judicial Council of the Supreme Court of the Republic of Croatia (Art. 107.a par. 3 LC).

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:

As it was mentioned before (question 1.1.2. above), a judge can not perform a service or job that the law has determined to be incompatible with the duty of a judge. The Law on the State Judicial Council stipulates that a judge is obliged to submit a report to the State Judicial Council on his assets and the assets of his spouse, partner, or life partner and minor children within 30 days from the day of his first assignment (assets card of the judge). If during the year there was a significant change in the assets of the judge, spouse, partner, or life partner and minor children, the judge is obliged to submit a report on the changes in assets to the Council no later than March 1st of the following year. Data on the judge's assets include data on the inherited assets and data on the acquired assets of the judge, spouse, partner or life partner and minor children. Information on inherited assets includes information on the type and total value of the inheritance and information from whom the inheritance was inherited. Data on the judge's assets are public and are published on the Council's website. Data protected by regulations on the protection of personal data are not published.

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?

In order to perform another service or work in addition to the duties of a judge, a judge must first request and receive the approval of the State Judicial Council (Art. 42 par. 1 of The Law on the

State Judicial Council). Therefore, the Council examines eventual breach of the law or possible conflicts of interest.

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?

Before taking office, the judge takes an oath before the President of the State Judicial Council or a member of the Council appointed by him.

The oath given and signed by the judge is:

»I swear that in the performance of my duties as a judge I will adhere to the Constitution, laws, international treaties and other valid sources of law, to judge to the best of my knowledge, conscientiously and impartially, and to protect the integrity, sovereignty and state structure of the Republic of Croatia and the freedoms and human rights established by the Constitution and the law and citizen".

This oath, applicable to all appointed judges in Croatia, was established by Art. 59 of The Law on the State Judicial Council.

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

Article 15 of the Law on Administrative Disputes stipulates that a judge may not decide and take part in the dispute:

1. if he is a party, legal representative or power-of-attorney holder of the party or if he is in the relationship of co-authorised person or co-obligor with the party;
2. if the party or the legal representative or power-of-attorney holder of the party is related to him by consanguinity in the direct line up to any degree, and collaterally up to the fourth degree or if they are spouses, life partners or related by kin up to the second degree, regardless whether the marriage was dissolved or not;
3. if he is the caretaker, adopted parent or adopted child of the party, his legal representative or power-of-attorney holder;
4. if in the same matter he participated in the taking the decision in the administrative procedure or in the first-instance administrative dispute;
5. if there are other circumstances which bring into question his impartiality.

A judge, as soon as he learns of a reason for disqualification, shall terminate any work on the matter and notify the president of court accordingly, who shall then issue a decision on disqualification of the judge and assign another judge to the matter.

Disqualification of a judge may also be requested by the party.

The president of the higher court decides on the dismissal of the president of the court, and the president of the Supreme Court of the Republic of Croatia decides on the dismissal of the president of the High Administrative Court.

This was stated in accordance with the Code of Judicial Ethics, which seeks to promote independence, impartiality, expertise, equality and the dignity of the judicial profession, to strengthen awareness of personal and professional responsibility, conscientiousness and efficiency in the performance of judicial duties, the principles of high ethical standards, and to strengthen the public's trust in the fairness and efficiency of the judiciary calls.

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:

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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:

In accordance with Article 88 of The Law on Courts a judge can be appointed as a state official in the Ministry responsible for judicial affairs or elected as a judge of the Constitutional Court of the Republic of Croatia, or with his consent he can be assigned to other jobs in the Ministry responsible for judicial affairs, the Judicial Academy and the State Judicial Council for a period of up to four year, and during the performance of the aforementioned duties, his judicial duties are suspended.

A judge can be reassigned to work in these bodies after having held judicial office in proportion to the time spent in the ministry responsible for judicial affairs, the Judicial Academy, or the State Judicial Council. A judge who, at the proposal of the Government of the Republic of Croatia, is appointed as a judge of an international court or to some other position in international courts, international missions or international organizations shall have all rights and duties arising from the performance of judicial duties in the judicial authorities of the Republic of Croatia suspended.

The rights and duties arising from the performance of judicial duties also rest with a judge who is appointed or elected to work in institutions, agencies, bodies, offices, missions and projects of the European Union or to work in other international organizations, institutions, bodies, missions and projects during to which he was appointed or elected.

Judges who participate in exchange programs or are seconded to institutions, agencies, bodies or offices of the European Union or other international organizations, institutions, bodies, missions and projects during the duration of the exchange or secondment are also suspended from their judicial duties.

This mobility is organised in such a way as to avoid situations where a legitimate doubt could arise, even from the standpoint of appearances, regarding the independence or impartiality of the judges (Code of Judicial Ethics).

These precautions lead to the adoption of the limitations at the three stages of mobility:

- Before mobility: in the case of an imminent departure from the High Administrative Court to take up functions outside it, the Code of Judicial Ethics or The Law on Administrative Disputes recommends abstaining from participating in any deliberation involving a future employer from the moment the individual enters into negotiations with them, particularly regarding the conditions of employment for which they are being considered;

- During mobility: the Code of Judicial Ethics or The Law on Administrative Disputes forbids members to intervene in cases they had knowledge of in the exercise of their jurisdictional activities;

- Upon return from mobility: upon the return to the High Administrative Court of a judge who has performed functions outside the institution (in a central or decentralised administrative service, in a ministerial cabinet, Constitutional Court...) or the appointment within the jurisdiction of a person with previous professional experience, the same precautions are taken regarding cases involving the former direct employer.

2.1.4. Can a member of your institution receive gifts?

☐Yes

☒Yes, under certain conditions

☐No

Please explain if necessary:

According to the Code of Judicial Ethics, with regard to the realization of the principle of the dignity of the judicial profession, special attention should be paid when receiving gifts, services or loans to a judge or a member of his family (household). Of course, there is no need to emphasize the law-prohibited acceptance of a gift or any other benefits in order for a judge to perform or not perform an action within the scope of his powers, which behaviour is not only a criminal offense, but a serious and dishonourable violation of the high standards set by the Code.

The judge must avoid receiving gifts, favours, loans or any other benefit from persons for whom it can be reasonably expected that these persons or their relatives or close friends will appear before the judge as a participant in the proceedings, and not even before him in the proceedings but and in the same court where the judge performs his duties. This prohibition applies, therefore, especially to lawyers and their clients. The judge should encourage the members of his family (household) to avoid receiving gifts, services, loans or any other benefit from the persons listed here. At the same time, the suggestion should be based on ethical principles, especially those stemming from the Code.

Occasional gifts from relatives or friends (birthdays, family and other anniversaries, weddings, etc.) should be excepted from this prohibition. In doing so, one should also take into account the proportionality of the gift according to the occasion and the relationship that the judge has with the person giving the gift. Namely, receiving a gift of excessive value can cast doubt on the impartiality and integrity of the judge and create doubt as to whether the gift was made for certain unethical reasons. Attention should be paid to such disproportionality especially if the gift is intended for a close member of the judge's family (household member). It is not unacceptable for a judge and a close member of his family to receive a gift, award or any other benefit that is related to the extrajudicial activity of a judge that is legal and in accordance with the Code (e.g. published professional work, teaching activity of a judge at a university, etc.) or that is related to the regular and legal professional activity of a close member of his family.

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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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:

Members of the High Administrative Court enjoy the freedom of opinion granted in accordance with Article 10 of the European Convention on Human Rights and Article 38 of the Constitution of the Republic of Croatia, but this freedom has some restrictions.

According to Article 89 of the Law on Courts, a judge must behave in such a way as to preserve his reputation and the reputation of the judicial authority and not call into question his impartiality and independence in the trial and the independence of the judicial authority.

According to the Code of Judicial Ethics, the judge is obliged to promote the reputation of the judicial profession in public appearances. A judge is prohibited from expressing an opinion on

certain ongoing court proceedings and court decisions in those proceedings. A judge can participate in public debates about law, the legal system and the functioning of the judiciary.

When appearing in public or when commenting on social phenomena through public media, written articles, radio or television programs, at public gatherings, lectures and etc., the judge must strive for his performance to be based on regulations, and the views expressed and his overall behaviour in accordance with the provisions of the Code. The judge should avoid highlighting his personality and expressing his views and opinions during and during the proceedings, especially through the media.

The aforementioned restrictions are at large interpreted in the Guidelines for the interpretation and application of the Code.

A judge, like any other citizen, has the right to publicly express his opinion, but he must promote the reputation of the court, as well as its independence and impartiality. With his appointment, the judge does not have to renounce his political, religious and other beliefs, but in his public appearance he must take into account the role of the judge's profession in society. Judges should not get involved in public political polemics. The basis of a judge is to be impartial and objective, but also to be seen as such in the eyes of the public. If a judge enters the political arena, either publicly expressing an opinion on a political topic or publicly criticizing other authorities (most often individual ministers or the entire government), he will not leave the impression of impartiality even in the courtroom, solving specific cases, especially if it is about cases that are in any way connected with his public appearances, or if persons from political structures or government structures appear as a party, about which the judge has made a public statement.

Judges are expected to refrain from responding to public criticism. Sometimes individuals, as well as members of the executive and legislative authorities publicly express their opinion about the mistakes and limitations of judges and their individual final decisions, that is, they criticize the work of judges. Judges should refrain from getting involved in public debates about their work, because by accepting "political silence" they also accept that they will not publicly respond to provocative criticism. It is a much better and smarter way to ignore the scandalous attack, than to generate the power of the launched "action" by your involvement. In particular, judges must not criticize their colleagues, individual court decisions or the judiciary as a whole in their public appearances. This, of course, does not mean that they should close their eyes to irregularities that threaten the functioning of the judiciary. If a judge or the president of the court notices illegality or irregularities in the work of their colleagues, they have at their disposal the prescribed mechanisms of action. A judge is prohibited from commenting on ongoing proceedings, regardless of whether it is a case in which the judge appears as a party or participant, or any other ongoing case.

On the other hand, there are issues on which a judge can engage in public discussion and express his opinion on the judiciary, namely those concerning the functioning of the judiciary as such, the independence of the judiciary (including the issue of salaries and other rights), the basic aspects of the proper and fair provision of judicial protection, and the general protection of the personal integrity of judges. It is especially emphasized that a judge, when he appears in public or when he comments on social phenomena through public media, written articles, radio or television programs, at public gatherings, lectures and the like, must strive for his performance to be based on regulations, and the views expressed and his overall behaviour in accordance with the provisions of the Code. In every public appearance, the judge must take care that his publicly

expressed opinion can be interpreted as the opinion of the judiciary as a whole, even when the judge emphasizes that it is his personal opinion. The judge is authorized to participate in discussions about the law, either for educational purposes or with the aim of avoiding misinterpretation of the law. At the same time, he must avoid discussions involving political controversies regarding the (un)constitutionality of a regulation. Remarks of this kind can be made by a court or a special institutional judicial body, and not by an individual judge.

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

☐Yes

☒No

Please explain if necessary:

Although there are no regulations in relation to social media, all the restrictions set out in question 2.2.1 above, apply with respect to the use of social media.

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:

The answer to this question is also given in the question 2.2.1 above.

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:

According to Art. 93 par. 4 of the Law on Courts, a judge can write professional and scientific works, publish the content of final court decisions, participate as a lecturer at the Judicial

Academy and as a teacher or associate in law classes at university and professional studies, participate in the work of professional or scientific gatherings and commissions, as well as in the preparation of draft regulations and to receive compensation for said work.

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

☐Yes

☒No

Please clarify if necessary:

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

☐Yes

☐Yes, under certain conditions

☒No

Please explain if necessary:

According to Article 90 par. 1 of the Law on Courts, a judge may not be a member of a political party or engage in political activity. In connection with the above mentioned, according to The Guidelines for the Interpretation of the Code of Judicial Ethics, which prescribes freedom of association as one of the principles, the association of judges must not have a political connotation. The legal ban on membership in political organizations, in the light of the Code, does not mean only a formal ban, but also a restraint from any activity that represents any political activity, regardless of the fact that the judge is not a member of a political organization. In this sense, attending gatherings that have a political connotation or a political message could easily be interpreted as a show of support or as an expression of disagreement with a certain political idea or message, which undermines independence and impartiality of the judge. That is why any political activity, and even passive attendance at political gatherings, should be avoided.

2.2.7. Can members of your institution run for elections?

☐Yes

☐Yes, under certain conditions

☒No

Please explain if necessary:

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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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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:

A judge who ran for office in the elections must request from the State Judicial Council to be relieved of his duties as a judge before the candidacy, and from the day of the Council's decision, he is no longer a judge, and therefore not a member of the High Administrative Court of the Republic of Croatia. If, after the expiration of the mandate to which he was elected in the elections, a person wishes to become a judge of the High Administrative Court again, he or she must apply again for the notice announced by the State Judicial Council and go through the entire election procedure as if he was applying for that position for the first time due to the non-existence of a distinction among the registered candidates.

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

☒Yes

☐Yes, under certain conditions

☐No

Please explain if necessary:

There is no legal ban for the judges to sign a petition, but at the same time they must always promote the reputation of the court, and take into account their independence and impartiality.

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

☐Yes

☐Yes, under certain conditions

☒No

Please explain if necessary:

According to Article 90 par. 1 of the Law on Courts, a judge may not be a member of a political party or engage in political activity, and Article 91 par. 3 of the Law on Courts, a judge may not perform any other service or work that could affect his independence, impartiality and independence or diminish his social reputation or otherwise be incompatible with the exercise of judicial duties. Impartiality can also be influenced by certain life attitudes, motives, and especially the political beliefs of the judge. This is precisely why the legal provision, that judges may not be members of political parties, should be highlighted as necessary for achieving and preserving judicial impartiality. Any membership in a political organization or participation in public demonstrations may cast doubt on the judge's bias.

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?

There is no such clause, in relation to judges, provided by the Croatian Constitution, laws or the Code of Ethics for Judges, which means they are not allowed to refuse to apply the law in case that is assigned to them.

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:

- 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)

- 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)

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

- 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)

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?

There is no pre-determined number of judges who are recruited each year. According to Art. 52 of The Law on the State Judicial Council, vacant judicial positions can only be filled in accordance with the plan for filling vacant judicial positions. The president of the court is obliged to inform the Ministry responsible for judicial affairs about the number of judges who meet the conditions for retirement in the next calendar year and about the need to fill the judicial positions that will become vacant, taking into account the workload of the court. By the end of the calendar year at the latest, the Ministry responsible for judicial affairs adopts a plan for the next calendar year to fill vacant judicial positions in all courts and submits it to the President of the Supreme Court of the Republic of Croatia and the President of the Council. The plan will be amended if the facts on the basis of which it was adopted change significantly during the 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:

All the members, in our case judges, are at the same rank.

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

☐Yes

☒No

Please explain if necessary:

-

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

☒Yes

☐No

Please explain:

All positions are subject in law to diploma conditions. This is implicitly but necessarily the case for judges appointed in High Administrative Court, whose skills and activities in the field of law

particularly qualify them for the performance of these functions and who have at least twelve years of professional experience.

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:

Explained in the question 3.1.4. above

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

☒Yes

☐No

Please explain:

A person who has worked as a judicial official for at least twelve years can be appointed as a judge of the High Administrative Court of the Republic of Croatia (Art. 51 par. 4 of The Law on the State Judicial Council).

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

☒Yes

☐No

Please explain:

Persons who have worked as a judge of a lower court for at least twelve years can submit an application to the notice for the vacancy of a judge published by the State Judicial Council, and after the procedure before the Council, they can be appointed to the position of a judge. In addition, if the workload of the court requires it, judges of lower courts can be temporarily appointed to work in the High Administrative Court of the Republic of Croatia, for a period of four years, in which case they are assigned as a senior court advisor - specialist. This is in accordance with Article 61 of the Law on the State Judicial Council, which stipulates that a judge may, with his consent, be temporarily sent to work in another court for a period of up to four years, with the fact that this period can be extended by another four years.

A judge can be temporarily sent to work in another court when there is a need for a judge in that court due to an increased influx of cases or a longer absence from work of the judges who perform judicial duties in that court.

The decision on the transfer of a judge to another court is made by the Council with the prior opinion of the president of the court to which the judge is transferred, the president of the court where the judge performs judicial duties and the opinion of the president of the Supreme Court of the Republic of Croatia.

A judge who is temporarily assigned to work in a higher court has the rights and obligations as a senior court advisor - specialist in proceedings and case work.

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

Currently there are two first instance judges temporarily appointed in the High Administrative Court.

3.1.8. How old is the youngest of your colleagues?

The youngest member of the High Administrative Court of the Republic of Croatia is currently a judge. She was born in 1973.

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?

Judges are recruited / appointed without a time limit.

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:

The whole appointment procedure is done by the State Judicial Council, as an autonomous and independent body that ensures the autonomy and independence of the judiciary in the Republic of Croatia.

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:

-

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:

As it was mentioned before in question 3.1.1. above, vacant judicial positions can only be filled in accordance with the plan for filling vacant judicial positions. The president of the court is obliged to inform the Ministry responsible for judicial affairs about the number of judges who meet the conditions for retirement in the next calendar year and about the need to fill the judicial positions that will become vacant, taking into account the workload of the court. By the end of the calendar year at the latest, the Ministry responsible for judicial affairs adopts a plan for the next calendar year to fill vacant judicial positions in all courts and submits it to the President of the Supreme Court of the Republic of Croatia and the President of the Council. After that, the State Judicial Council publishes a notice to fill a vacant judicial position, which is the beginning of the procedure for appointing a judge to the High Administrative Court.

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?

A constitutional complaint can only be submitted to the Constitutional Court of the Republic of Croatia against the decision on the appointment of a judge.

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

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