

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

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

ANSWERS FROM THE ADMINISTRATIVE LAW CHAMBER OF THE SUPREME COURT OF ESTONIA

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



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in a regulatory text

in a Charter of Ethics or a Collection of Ethical Principles

other

Please explain if necessary:

Overall ethical guidelines are stipulated in the law. According to the Civil Service Act¹ § 51 an official shall perform their functions honestly, competently, and diligently (section 1); also, impartially (section 2); an official shall behave respectably both in the service and outside the service, including refrain from actions which would discredit them as an official or harm the image of the authority (section 4). An official shall not disclose any information which becomes known to them due to their service during the period of the service relationship and after the release from service (§ 55).

There is a general Code of Ethics for Officials² adopted in the public service, which specifies the abovementioned ethical guidelines. However, the Code of Ethics is not a regulatory act, but more as a general guideline for officials. There are also specific, non-regulatory charters for certain public officials, for example in the military or for the prison officers.

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:

¹ <https://www.riigiteataja.ee/en/eli/522122023005/consolide>

² Available: <https://www.fin.ee/en/state-local-governments-spatial-planning/public-administration-and-personnel-policy/personnel> under the file Code of ethics on the bottom of the website.



Ethical guidelines for judges are established in the law and in the judge's Code of Ethics. According to § 70 of the Courts Act³, judges must perform their official duties in an impartial manner and without self-interest and comply with the interests of the service also outside the service (section 1); furthermore, behave impeccably in the service and outside the service and refrain from acts which may harm the reputation of court (section 2). Judges also must follow duty of confidentiality (§ 71) and duty of confidentiality of deliberations (§ 72).

Estonian Judges have their own Code of Ethics⁴, which is also a non-regulatory act, but considered as a general guideline for judges. It specifies the forementioned overall ethical guidelines, that judges are expected to follow.

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?

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

Yes

No

Please explain if necessary:

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

Yes

³ <https://www.riigiteataja.ee/en/eli/527022024006/consolide>

⁴ <https://www.riigikohus.ee/en/estonian-court-system/estonian-judges-code-ethics>



No

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

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:

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:

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:

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.

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:

Estonian Judges' Code of Ethics, as well as ethical obligations stipulated in the Courts Act, apply identically to the members of the Administrative Law Chamber of the Supreme Court and to the administrative judges of lower courts.

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:

Estonian Judges' Code of Ethics and ethical obligations stipulated in the Courts Act apply to all active justices.

Courts Act states specifically that judge's duty of confidentiality and confidentiality of deliberations applies for an unspecified term and remains in force also after termination of the service relationship (§ 71 section 4 and § 72 section 2) and when temporary not serving in the Supreme Court. Breach of these duties can be resulted in a disciplinary action against a retired judge (Courts Act § 88 section 2).

It is not directly stipulated in the law or in the code of ethics, whether other ethical rules also apply to retired or resigned judges. There is no practice considering described cases. Same answer applies concerning members temporary not serving in the Supreme Court. However, when serving in other administration, the general ethical rules for public officials apply to judge in that position as well.

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:



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:

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:

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.

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:

According to the Courts Act § 87 an indecent act of a judge can be a disciplinary offence. However, not every breach of ethical obligations is a disciplinary offence, but only the most severe ones. It is up to the disciplinary panel to decide, whether in a certain case, an indecent act is committed. Usually, the Code of Ethics is used in order to interpret the term „indecent act”. Code of Ethics itself is a non-regulatory act. Disciplinary panel has considered to be indecent act for example performing duties under the influence of alcohol or using insulting expressions towards colleagues and parties to the proceedings.

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?

Justices can participate in a training concerning ethics for judges. However, this training is foremost focused on newly appointed judges. There is no mandatory training upon appointing the justices.

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 Administrative Law Chamber of the Supreme Court does not have its own collegiate body, but there has been established an ethics council for judges, which deals with ethical questions concerning all the courts and judges in Estonia. It acts as an advisory body. Ethics council was established after the amendment of the Judges' Code of Ethics, confirmed on the 8th of February 2019 by the eighteenth regular court *en banc*. In this context under the term „court *en banc*” is meant the court *en banc* comprised of all the judges in Estonia, not the court *en banc* of the Supreme Court of Estonia, which comprises of justices of the Supreme Court.

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

Ethics council consists of five judges elected by the court *en banc*, which may include judge emeritus. The term of office of a member of the council is three years. The goal is to assure that judges from different court instances are represented, and one retired judge is also included.

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:

Judges may refer to the body only in ethical questions concerning themselves. It is not possible to ask an advisory opinion about other judges' (unethical) behaviour. Presidents of the court may also refer to the body when they are dealing with a concrete disciplinary case. Ethical council can give an opinion on their own motion as well, but there is no such practice so far.

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:

Ethical body gives only advisory opinions, and they are not legally binding.

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:

A declaration shall be submitted within four months from assuming an office and thereafter by 31 May each year. If a declarant assumes a new office, the declarant shall not submit more than one declaration during a calendar year (Anti-Corruption Act⁵ § 12 section 2). Declaration is submitted through an online system of Estonian Tax and Customs Board and is maintained in a special registry (controlled by the Ministry of Justice).

In a declaration shall be declared information concerning declarants' property and other circumstances with the aim of perceiving interests that may potentially have an impact on the performance of the official duties of the declarant and make these verifiable (Anti-Corruption Act § 12 section 1; see also § 14). For example, declarants must present information about their property ownership, vehicles entered in the state register and income received (in summary proprietary rights). Concealment of information significant for assessment of risks of corruption and submission of false information in the declaration is prohibited (Anti-Corruption Act § 12 section 4).

Declarations are supervised by the select anti-corruption committee of Riigikogu (Estonian Parliament) (Anti-Corruption Act § 9 section 1). The select committee has the right to summon persons (declarant or third person) and require documents and information for examination (Anti-Corruption Act § 9 section 2 and § 15 section 6).

Declaration is made public for three years. Everyone can read the declaration, having identified themselves in entering the online system of Estonian Tax and Customs Board.

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?

No.

1.8. The oath

⁵ <https://www.riigiteataja.ee/en/eli/519122023003/consolide>



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?

Justices take the oath upon appointment to office (Courts Act § 56 section 1). They swear to remain faithful to the Republic of Estonia and its constitutional order and to administer justice according to their conscience and in conformity with the Constitution and the laws of the Republic of Estonia. Justices of the Supreme Court take the oath before Estonian Parliament (Courts Act § 56 section 2).

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

According to the Code of Civil Procedure⁶ § 23, which also applies to administrative court procedure, a judge may not conduct proceedings and must self-recuse in the following situations: 1) the case is one in which they are a party to proceedings or a person against whom a claim may be filed as a result of the proceedings; 2) the case concerns their spouse, registered partner or cohabitee, or a sister, brother or direct blood relative of the spouse, registered partner or cohabitee – even where the marriage, registered partnership or permanent cohabitation has ended; 3) the case concerns a person who is the judge's direct blood relative or other close person (for example sister/brother, step parent, adoptive parent); 4) the case is one in which they are or have been a representative or adviser of a party to proceedings or in which they participated or had a right to participate as a statutory representative of a party to the proceedings; 5) the case is one in which they have been examined as a witness or have provided an opinion as the expert; 6) they have participated in rendering a disposition in the case – in the pre-action procedure, in

⁶ <https://www.riigiteataja.ee/en/eli/522122023001/consolide>



the preceding judicial instance or in arbitration proceedings; 7) in the presence of any other circumstances that cast a doubt on their impartiality.

In addition, a judge may not take part in dealing with an administrative case, and must recuse themselves, if they have participated in administrative proceedings which resulted in the dispute that is to be adjudicated in the case (Code of Administrative Court Procedure⁷ § 13 section 2).

Same principles are stated in the Estonian Judges' Code of Ethics. According to the code, a judge shall avoid conflicts of interests. They shall not allow family, social, or other relations to affect their work as a judge (p 20). A judge shall remove themselves from a case when their impartiality could be questionable, they have a prejudice concerning a party; when they have close relations with participants or when they have private information concerning the facts related to proceedings or when they have previously given legal counselling to the parties or when they are aware that the outcome may affect them or their family members (p 25).

The broadest ground to recuse is stipulated in the Code of Civil Procedure § 23 p 7 - in the presence of any other circumstances that cast a doubt on their impartiality - and must be assessed carefully case by case. However, it is not permitted to unjustifiably refuse to administer justice.

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:

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

⁷ <https://www.riigiteataja.ee/en/eli/520122023003/consolide>



- 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:

There are no specific ethical rules governing described situation (see also answer 1.3.2 of the questionnaire). When returning to the institution, the same self-recuse rules apply, as stated in the answer 2.1.1 of the questionnaire.

2.1.4. Can a member of your institution receive gifts?

- Yes
- Yes, under certain conditions
- No

Please explain if necessary:

According to the Estonian Judges' Code of Ethics it is prohibited for a judge to receive gifts or other favours in relation to what they have done, must do or avoid doing upon performance of judicial duties (p 26). Receiving gifts is only allowed, when it does not result in affecting the performance of judicial duties, for example gifts from visiting delegations of foreign countries.

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:



Justices are allowed to receive honorary decoration from their own country or from a foreign country. However, receiving honorary decoration must not affect the performance of their judicial duties.

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:

Justices are allowed to express their opinion and remain faithful to their opinions and beliefs (The Constitution of the Republic of Estonia⁸ § 41). However, they must bear in mind, that they are under public scrutiny and therefore must accept personal restrictions that may seem encumbering for an ordinary citizen. Therefore, their statements must not be indecent (p 6 of the Estonian Judges' Code of Ethics), they must always retain their indignity and act accordance to the dignity of the judicial office. Judges also shall refrain from statements reflecting their political countenance (p 7 of the Estonian Judges' Code of Ethics) and shall refrain from passing remarks concerning pending or forthcoming proceedings and the possible outcomes thereof and shall not criticize publicly the proceedings or decision of another judge (p 16 of the Estonian Judges' Code of Ethics). A judge shall preserve the confidentiality of information they have received in the course of court proceedings (p 17 of the Estonian Judges' Code of Ethics) and shall not inform the public of the conflicts between colleagues or other internal issues of the judiciary (p 19 of the Estonian Judges' Code of Ethics).

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

Yes

No

Please explain if necessary:

There are no special rules concerning the use of social media. Justices are expected to follow the same general ethical rules, that apply to their overall activities, including expressing their opinion.

⁸ <https://www.riigiteataja.ee/en/eli/530122020003/consolide>



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:

Justices are allowed to participate in public debates, but it is usually expected that these debates involve participating and expressing their opinion from an academical or legal point of view. Justices are expected to follow the same general ethical rules, that apply to their overall activities, including expressing their opinion.

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:

Justices are allowed to teach and research (Courts Act § 49 section 1 and Estonian Judges' Code of Ethics p 4). They are also allowed to publish an article or a book regarding their research or teaching activities. It is also allowed to publish a book or an article outside that scope, but when considering the context of a book or an article, general ethical rules must be born in mind.

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

Yes

No

Please clarify if necessary:

A judge must notify the chief judge of the court about their employment elsewhere than in the office of judge. Employment elsewhere than in the office of judge may not harm the performance of official duties of a judge or the independence of a judge upon administration of justice (Courts Act § 49 section 1). Therefore, justices must notify the Chief Justice of the Supreme Court.

However, it is to be specified, that there is no need for prior notification, when publishing a book or article related to research or teaching activities.

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

- Yes
- Yes, under certain conditions
- No

Please explain if necessary:

A judge may not be a member of the Estonian Parliament or member of a rural municipality or city council or a member of a political party (Courts Act § 49 section 2 subsection 1 and 2). According to the Code of Ethics a judge shall refrain from political activities and statements reflecting their political countenance (p 7).

2.2.7. Can members of your institution run for elections?

- Yes
- Yes, under certain conditions
- No

Please explain if necessary:

See the answer 2.2.6.

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:

See the answer 2.2.6.



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:

If a member of the Administrative Law Chamber of the Supreme Court is elected, they must resign from their current duties as justice. It is not possible to be elected and be in office as a justice at the same time, even if one's authority as justice is temporary suspended. After expiration of their mandate, it is theoretically possible to join the institution, but there is no practice concerning described case. However, in this highly unlikely event, the members must be re-elected through an ordinary selection process, and they must resign from the political party (see also answer 2.2.6).

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 direct prohibition to sign a petition, but the nature of the petition must be born in mind. Justices are expected to follow the same general ethical rules, that apply to their overall activities, considering their position in the society.

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

Yes

Yes, under certain conditions

No

Please explain if necessary:

There is no direct prohibition to participate in a demonstration, but the nature of the demonstration must be born in mind. Justices are expected to follow the same general ethical



rules, that apply to their overall activities, considering their position in the society. However, there is a general strike ban for public officials (Civil Service Act § 59), applying also to justices.

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. Justices are obliged to administer justice according to their conscience. However, they are also obliged to apply law in force and cannot abstain from it simply by applying the conscience clause. Unjustified refusal to administer justice is not permitted. But if in a case described, a justice finds the law to be unconstitutional, they can initiate a constitutional review procedure.

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](#))



The Supreme Court of Estonia does not have its own College of Ethics as explained before. However, as mentioned, there is an Ethics Council of Judges, which functions as an advisory body in ethical matters. The Administrative Law Chamber of the Supreme Court adds some examples of the matters discussed:

- 1) On restrictions of holding office of judge: Is a judge allowed to work as a trainer in a sports club? <https://www.riigikohus.ee/et/kas-kohtunik-voib-tootada-treenerina-spordiklubis> (available only in Estonian);
- 2) On restrictions of holding office of judge: If and on what conditions is a judge allowed to represent a non-profit organisation, when they are a member of the board in the organisation:
<https://www.riigikohus.ee/sites/default/files/t%C3%B6kuulutused/2023/Kohtunike%20eetikan%C3%B5ukogu%20arvamus%20nr%2012.pdf> (available only in Estonian⁹);
- 3) Communication with the media: Is it ethical for a judge to discuss publicly internal matters of the court system (for example discussed in the meeting); to reveal anonymously their concerns to media about the judicial system, not covered by facts; and appear anonymously on behalf of the entire courthouse?
https://www.riigikohus.ee/sites/default/files/elfinder/dokumentid/Eetikan%C3%B5ukogu/Eetikan%C3%B5ukogu%20arvamus_kohtunike%20suhtlemise%20kohta%20meediaga.pdf (available only in Estonian).
- 4) A short summary of overall positions of the Ethics Council on 2022-2023 can be found in the Yearbook of Estonian Courts 2022.¹⁰

⁹ A short summary of overall positions of the Ethics Council on 2022-2023 can be found in the Yearbook of Estonian Courts 2022: <https://aastaraamat.riigikohus.ee/en/ethics-council-in-2022-why-the-judiciary-needs-professional-ethics/> Summary also includes short answer to the second example about representing a non-profit organisation.

¹⁰ <https://aastaraamat.riigikohus.ee/en/ethics-council-in-2022-why-the-judiciary-needs-professional-ethics/>



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?

It is quite difficult to establish that. A new member of the Administrative Law Chamber of the Supreme Court is not recruited every year. Recruitment depends on the opening of the position since justices are appointed for life. There are currently five members in the chamber. Last time a new justice was appointed in 2018. There is currently an ongoing recruitment procedure for a new member of the Administrative Law Chamber of the Supreme Court. New member should be appointed in 2024.

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 new members are recruited at the same rank – justices of the Administrative Law Chamber of the Supreme Court.

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

Yes

No

Please explain if necessary:

The maximum age limit of a judge is 67 years (Courts Act § 48). In exceptional cases, the maximum age limit can be increased, but this applies when the judge is already appointed.

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

Yes

No

Please explain:

A candidate must have acquired at least an officially certified master's degree, a corresponding qualification for the purposes of subsection 2² of § 28 of the Republic of Estonia Education Act or a corresponding foreign qualification, in the field of law (Courts Act § 47 section 1 subsection 1).



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:

There is no direct prohibition, but as a justice of the Administrative Law Chamber of the Supreme Court can only be appointed a person who is an experienced and recognised lawyer. It is highly unlikely to fulfil that criterion directly after completing university studies.

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

Yes

No

Please explain:

As mentioned before, as justice of the Administrative Law Chamber of the Supreme Court can be appointed a person who is an experienced and recognised lawyer (Courts Act § 52). However, there is no certain condition for the duration of former professional work experience.

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

Yes

No

Please explain:

Members of the lower courts can become a member if they fulfil the condition of being an experienced and recognised lawyer. Of course, they also must fulfil the general requirements of becoming a judge. But as mentioned before, there is no certain condition for the duration of former work experience as a lower court judge.

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

It is quite hard to establish that. The newest member of the Administrative Law Chamber was appointed 2018 and a former member of lower court was last time appointed in 2014. Of currently active justices, two of them are former members of lower courts (the chamber has altogether five members). The other member was appointed in 2010.

3.1.8. How old is the youngest of your colleagues?

Youngest colleague is 45 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?

Justices are appointed for life (The Constitution of the Republic of Estonia § 147 and Courts Act § 3 section 1) in the sense that their career end with retirement.

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:

Justices are appointed to office based on a public competition, which is announced by the Chief Justice of the Supreme Court (Courts Act § 55 section 1 and 2). Justices of the Supreme Court are appointed to office by the Riigikogu (Estonian Parliament) on the proposal of the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court first hears the opinion of the Supreme Court *en banc* and the Council for Administration of Courts concerning a candidate (Courts Act § 55 section 4 and The Constitution of the Republic of Estonia § 150).

Although, it must be clarified that the minister in charge of the policy sector or a representative appointed by them participates in the Council for Administration of Courts, but only with the right to speak. Also, the final proposal of a candidate is made by the Chief Justice of the Supreme Court and the opinion of the council is not binding. Therefore the executive branch does not intervene in the procedure.

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:

Justices of the Administrative Law Chamber of the Supreme Court are appointed to office by the Riigikogu (Estonian Parliament) on the proposal of the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court first hears the opinion of the Supreme Court *en banc* and the Council for Administration of Courts concerning a candidate (Courts Act § 55 section 4).

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?

An appeal against the decision can be filed according to the Constitutional Review Procedure Act (3rd chapter)¹¹. Since the Supreme Court of Estonia also acts as the court of constitutional review, the Constitutional Review Chamber, formed of active members of the Supreme Court, reviews the matter.

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

In practice no one has filed an appeal against the decision of appointment by the Estonian Parliament, so currently it is all theoretical. Therefore, it is quite hard to establish, how a concrete proceeding would be conducted. In theory, the structural impartiality could be guaranteed by the fact that the members of the Constitutional Review Chamber have the possibility to remove themselves in the process of appeal (for example members of the Administrative Law Chamber in case an appeal concerns appointment of a new member of that chamber).

¹¹ <https://www.riigiteataja.ee/en/eli/512122019006/consolide>

