**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***

Summary of responses to the 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 the International Association of Supreme Administrative Jurisdictions (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: the legal and institutional framework

A. General framework

1. Ethical obligations of public officials (Q.1.1.1)

The **ethical obligations of public officials in general are enshrined in positive law in 90% of countries**. They are not in Poland, Sweden or the United Kingdom.

They are enshrined at the top of the hierarchy of standards **in the Constitution in 32% of countries** (Austria, Cyprus, Finland, Germany, Hungary, Lithuania, Portugal, Serbia, Slovakia), **in law in 93%** (with the exception of Luxembourg and Norway) and **in regulations in 57%** (Austria, Belgium, Bulgaria, Croatia, Cyprus, France, Germany, Ireland, Latvia, Lithuania, Luxembourg, Portugal, Slovakia, Spain, Switzerland, Republic of Türkiye). These rules are set out **in a charter of ethics or a compendium of ethical principles in 86% of countries** (except the Czech Republic, Finland, Germany, Luxembourg, Slovakia and Switzerland) and in 11% elsewhere (Hungary, Portugal, Romania).

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In 4 countries (Austria, Cyprus, Lithuania and Portugal), these obligations are enshrined **in the Constitution, in law, in a regulatory text and in a charter**.

Austria points out that the **official duties of public officials** are also enshrined in the Constitution, such as official secrecy. While the Court (SAC) does not have a specific charter of ethics, in 2020 the Ministry of Justice adopted **compliance guidelines** for members of the ordinary judiciary (i.e. the civil and criminal courts), which can serve as a reference for SAC members.

Unlike the **majority of other countries, which report the existence of multiple charters of ethics**, in Italy a charter of ethics applies to all public officials and in Norway guidelines apply to all public officials. Estonia states that there is a **General Code of Ethics for Civil Servants**, which does not have regulatory status but rather provides a **general guideline** for civil servants, as well as **specific charters** for certain civil servants such as military personnel and prison officers. Belgium also points out that the rules applicable in this area are not harmonised at federal level. Finally, in Ireland, although there are laws on ethics and a civil service code, these do not apply to members of the judiciary in accordance with the independence conferred on them by the Constitution. However, on appointment, Irish judges are required to comply with the **Guidelines for the Judiciary on Conduct and Ethics** (2022), a set of principles designed to enable judges to make their own decisions on the ethical and conduct issues they face and to help the public understand the role of the judiciary and its professional standards.

2. Ethical obligations of members of supreme administrative courts (Q.1.1.2)

More specifically, the **ethical obligations of members of supreme administrative courts** are enshrined **in the positive law of 81% of respondent countries**. This is not the case in the Czech Republic, Germany, Poland, Slovakia, Sweden and the United Kingdom.

In the countries that responded in the affirmative, these obligations are enshrined **in the Constitution in 36% of countries** (Austria, Croatia, Cyprus, Greece, Italy, Malta, Portugal, Serbia, Spain), **in law in 88% of countries** (with the exception of Italy, Luxembourg and the Republic of Türkiye), and **in regulatory texts in 36% of countries** (Belgium, Bulgaria, Croatia, Cyprus, France, Ireland, Lithuania, Portugal, Spain). They are set out **in charters of ethics or compendiums of ethical principles in all countries except Finland**. Cyprus, Lithuania and Romania indicate that they are also included elsewhere.

Portugal states that the **principles of judicial ethics and the professional duties that guide the exercise of jurisdiction** - independence, impartiality, integrity, incompatibilities, prohibition of political activities, duty of trust, duty of cooperation, duty of civility, duty to submit incomplete statements - are **constitutionally and legally recognised**. **Italy** indicates that the **fundamental values concerning the judiciary and the conduct expected of judges** are enshrined in the Italian **Constitution**, which defines in general terms the exercise of the function in complete independence and specifies that citizens invested with public functions have a duty to carry out those functions with discipline and honour, taking an oath in the cases provided for by law.

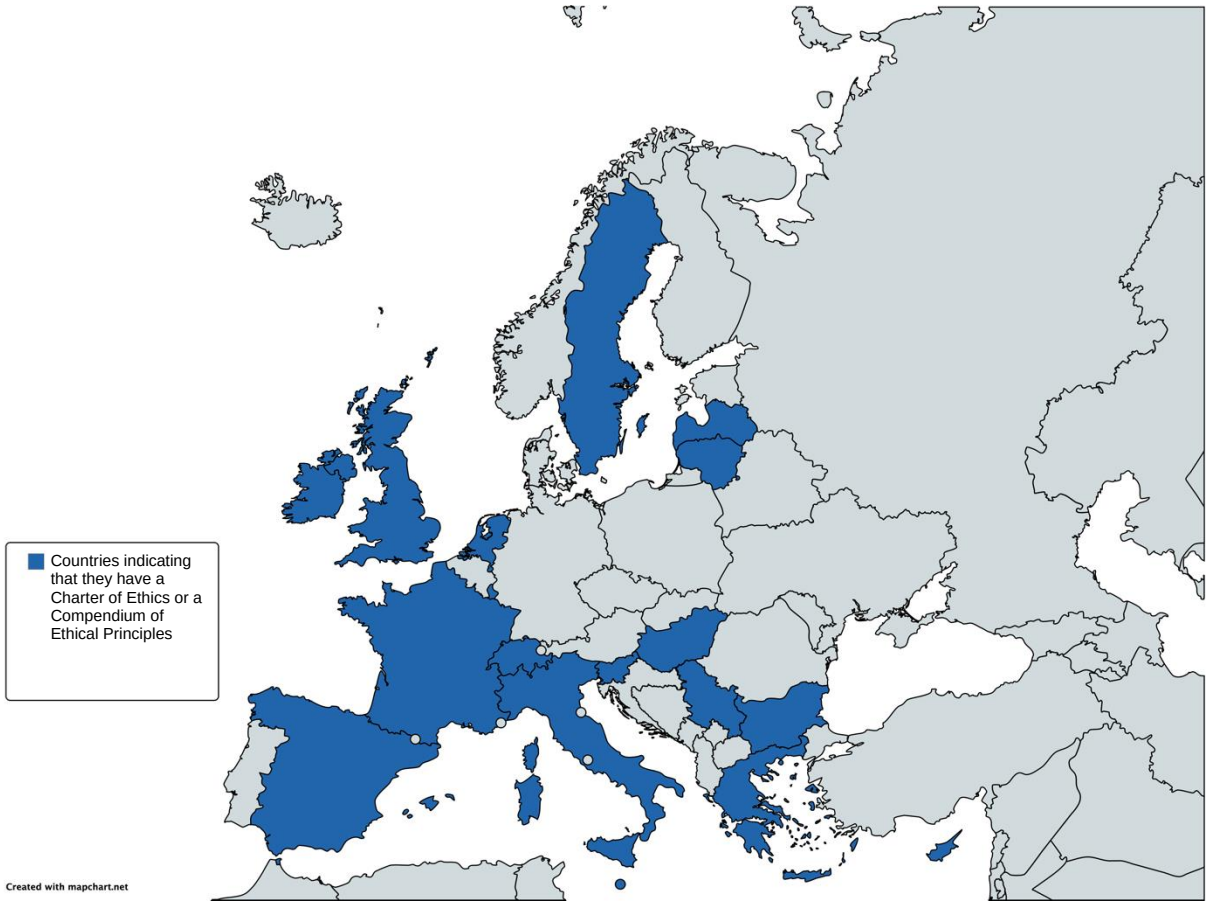
Sweden points out that the guidelines are **not legally binding** as such, so it is not obligatory per se to apply them, but that **good practice** dictates that there should be good reasons for not **following**

them at a general and institutional level. It should also be noted that in 2013 in **Lithuania**, the Judicial Council approved a **Practical Guide to the Code of Ethics for Judges**, updated in December 2022 on the basis of an evaluation, appended to the Code of Ethics for Magistrates, which addresses each principle and gives **practical examples and recommendations** based on the decisions of the Judicial Ethics and Discipline Committee, the Judicial Court of Honour and the Supreme Court.

3. Charter of Ethics of the Courts

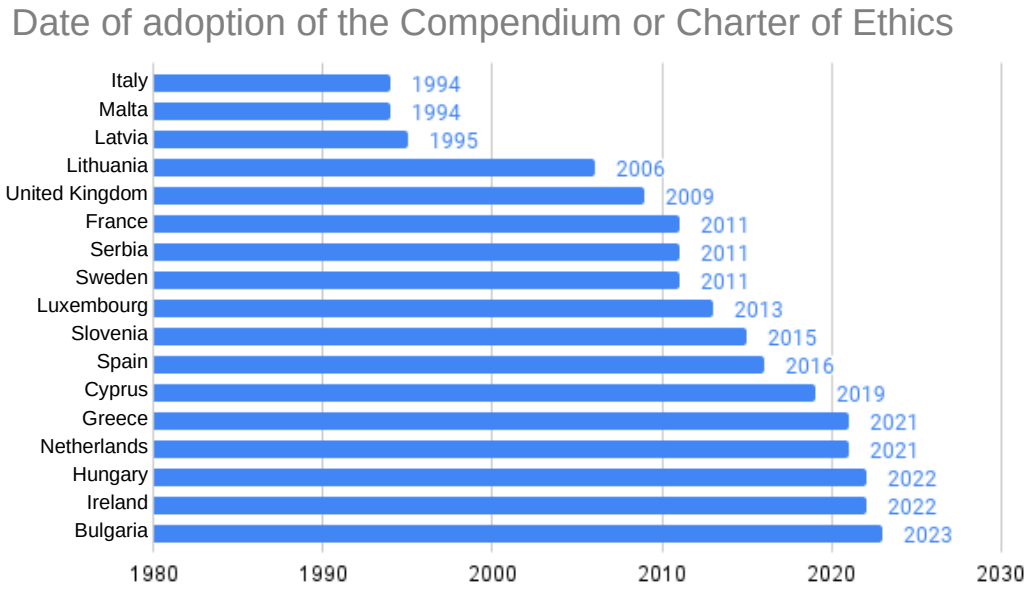
a) Existence (Q.1.2.1)

58% of respondents say that **the supreme administrative courts have a Charter of Ethics or a Compendium of Ethical Principles** (this is the case in Bulgaria, Cyprus, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Serbia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom), unlike the other countries (Austria, Belgium, Croatia, Czech Republic, Estonia, Finland, Germany, Norway, Poland, Portugal, Romania, Slovakia and the Republic of Türkiye).



This charter or compendium was sometimes adopted **in the 1990s** (Italy in 1994, Latvia in 1995, Malta in 1994 with more recent amendments), **in the 2000s** (Lithuania in 2006, France in 2011, the United Kingdom in 2009), **in the 2010s** (Serbia and Sweden in 2011, Luxembourg in 2013, Slovenia

in 2015, Spain in 2016, Cyprus in 2019) **or very recently** (Greece and the Netherlands in 2021, Hungary and Ireland in 2022, Bulgaria in 2023).



b) Mandatory or optional (Q.1.2.2)

The adoption of such a document was **not an obligation for the courts according to 58% of respondents**. However, this was **an obligation in 26% of countries** (Cyprus, France, Hungary, Ireland, Italy, Lithuania, Malta and Serbia).

In **Italy**, the General Law on Public Employment (No 165/2001) delegated to the Government the approval of a General Code of Ethics, the principles of which also apply to judicial staff. In **Hungary**, a 2011 law on the legal status and remuneration of judges stipulated that the National Judicial Council must accept the judges' code of ethics and publish it on its central website. In **France**, it was a 2016 law that required the establishment of such a charter.

68% of respondents say that this document was **not adopted in response to a particular event that stirred public opinion**. In contrast, **Luxembourg** states that the adoption of the Charter was triggered, not by a particular event, but in the **context of the evaluation of the GRECO reports** (European group against corruption operating within the framework of the Council of Europe), where the absence of a charter of ethics for the Luxembourg judiciary was highlighted several times. This is why the heads of the two jurisdictional systems took the initiative of setting up a working group to prepare the compendium of ethics finally adopted in 2013 by the joint assembly of the Superior Court of Justice and the Administrative Court. (Q.1.2.3.)

c) Drafting (Q.1.2.4)

45% of respondents indicate that this charter or compendium was **not drafted by a working group made up exclusively of members of the court**. However, this is **the case for 23% of respondents**, in

Cyprus, Greece, Ireland, the Netherlands, Spain, Switzerland and the United Kingdom. According to **13% of respondents** (France, Malta, Slovenia, Spain), this document was drafted by a **working group extended to include external figures**. Only **10% of respondents** indicate that the working group **involved associations of administrative judges** (Italy, Slovenia, Spain).

35% of respondents mention other arrangements (Bulgaria, Croatia, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Portugal, Romania, Serbia, Sweden), in particular **specific working groups**.

Thus, **Hungary** points out that it was the working group of the National Judicial Council that drafted the code of ethics, but not alone. For the purposes of revising the code of ethics for judges, a consultation body was set up comprising members of this Council, the National Office of the Judiciary and the Hungarian Association of Judges. In addition, the president of the service court of first instance (operating in parallel with the Budapest Regional Court of Appeal) and the president of the service court of second instance (operating in parallel with the Curia) were also involved in the work of this body.

In **Ireland**, a human resource management working group set up as part of the strategic management initiative gave high priority to the development of a Code of Standards and Behaviour for the Civil Service when it began its deliberations. In **Lithuania**, a working group was set up, comprising representatives of the Supreme Court of Lithuania, the Supreme Administrative Court of Lithuania, the Court of Appeal of Lithuania, the Vilnius Regional Court, the Vilnius Regional Administrative Court, the Vilnius Second District Court and a representative of the Association of Judges of the Republic of Lithuania. In **Luxembourg**, the Charter was prepared by a working group made up of representatives of both the judicial and administrative systems, including judges from the supreme courts and lower courts as well as representatives of the Public Prosecutor's Office.

d) Issuing (Q.1.2.5)

According to **23% of respondents, it was the president of the court who signed and issued this document** (in Cyprus, France, Germany, Ireland, the Netherlands, Spain and the United Kingdom). According to **23% of these respondents, it was a collegiate body of the court** (in Cyprus, Greece, Italy, Portugal, Spain, Switzerland and the United Kingdom). **39% of respondents mention other arrangements** (Bulgaria, Croatia, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Romania, Serbia, Slovenia, Sweden).

Bulgaria states in this respect that the Code of Ethical Conduct for Bulgarian Judges is adopted by a decision of the Judicial College of the Supreme Judicial Council and approved by a decision of the Plenum of this Council. In **Luxembourg**, the document was adopted at a joint meeting of the members of the Superior Court of Justice and the Administrative Court, while in **Malta** it was adopted by the Parliament.

e) Revision (Q.1.2.6.)

In **42% of respondent countries, the charter has been revised one or more times** (Bulgaria, Cyprus, France, Ireland, Italy, Latvia, Malta, Netherlands, Romania, Serbia, Sweden, Switzerland, United Kingdom). In Latvia, the revisions were aimed at updating the **language and structure of the codes**

and **reinforcing the general principles** of the new code of judicial ethics. In the Netherlands, after a periodic assessment of the need to add other rules of conduct, the text was amended to reflect the fact that the Council of State has an **integrity policy** and publishes an annual justification of its implementation in its annual report. Additions were made to the list of undesirable acts of behaviour by members and to the list of **ancillary activities** by members. Sweden points out that the guidelines were revised in 2023 due to the **impact of social media on judges**. In **France**, the Charter has been revised three times to include good practices to be implemented during **election campaigns**, the conditions for **practising as a lawyer** or holding **local political office** (2017), to take account of **the use of social networks** (2018), and to specify the precautions to be taken when organising meetings in response to requests from parties who are **interest representatives**. It could soon be revised to integrate values such as integrity and probity or duties, particularly in management matters.

f) Legal value: hard or soft law (Q.1.2.7)

This document does **not include binding 'hard law' rules according to 45% of respondents.** However, it does so in Bulgaria, Cyprus, France, Ireland, Malta, Romania and Slovenia (26% of respondents). **39% of respondents say that the document contains 'soft law' standards** (Bulgaria, Croatia, Cyprus, France, Greece, Ireland, Luxembourg, Netherlands, Serbia, Slovenia, Spain, Sweden).

In Hungary, the code of ethics for judges is a **'quasi-source of law'** because the courts can monitor compliance with these rules in the course of their proceedings. In Belgium, the High Council of Justice (CSJ) has drawn up a **non-binding** guide setting out the general principles governing the activities of magistrates, **which the Council of State has largely drawn on**. In Italy, it is a non-binding instrument that does not have the nature and effectiveness of legal rules, does not entail the application of sanctions and is an expression of the administration's tradition of ethics and, as such, an ideal and practical heritage entrusted exclusively to the **individual consciences of the judges themselves, who adhere to it of their own accord**.

4. Scope of application of ethical rules:

a) Courts of first instance and supreme courts (Q.1.3.1)

Whether a charter of ethics or equivalent text has been adopted or not, **84% of respondents** indicate that the **ethical rules applicable to members of their supreme court apply identically to magistrates in the lower courts** of their jurisdictional system. This is not the case in the Netherlands and the United Kingdom, and is so only to a limited extent in Austria and Greece.

In **Austria**, given the dualism of jurisdiction and the existence of different administrative jurisdictions, different ethical rules apply in different jurisdictions. In **Greece**, the charter does not apply to administrative judges, but the fundamental ethical principles governing the exercise of judicial power, as set out in the Constitution and the statute governing the judiciary, are common to all judges. In the **United Kingdom**, the guide applies only to judges of the Supreme Court.

b) Position of judges (Q.1.3.2)

These ethical rules **apply in all countries to the members of the courts working** within them. **According to 58% of respondents**, they apply **to members who are not serving temporarily, on secondment or availability, in other administrations or in the private sector** (Austria, Belgium, Croatia, Czech Republic, Estonia, France, Germany, Greece, Italy, Latvia, Luxembourg, Malta, Norway, Portugal, Romania, Serbia, Slovenia, Spain).

According to only 26% of respondents (Austria, Czech Republic, Estonia, France, Germany, Greece, Norway, Slovakia), they apply **to members who have resigned**, **to members who have retired according to 35%** of respondents (Austria, Belgium, Croatia, Estonia, France, Germany, Greece, Norway, Poland, Portugal, Slovakia), **to administrative staff** (legal secretaries, legal assistants, registrars, trainees) who assist the members of the institution according to **26% of respondents** (Austria, Belgium, Finland, France, Germany, Ireland, Latvia, Romania), and to other staff according to Bulgaria, Cyprus and Luxembourg.

Principles vary from country to country. Thus, specific ethical rules **apply only to judges in certain countries** such as Croatia, Greece, the Netherlands and Ireland, while other rules are specific to civil servants. France specifies that the provisions of the Charter apply **both to members** of the Council of State (in active service, having left it, on secondment) and to persons **temporarily assigned** to it, and to any other **person authorised to attend or participate in the work of the administrative courts**. Germany also states that the general ethical rules apply to the entire public service, including judges. However, **in the event of the resignation or retirement** of members, the rules are relaxed, for example in the area of complementary activities and secondary employment. The rule governing the integrity of magistrates **continues to apply after their retirement** in Austria, where ethical rules apply to civil servants even after they have been dismissed or resigned. In the Czech Republic, on the other hand, the obligations apply **only to 'active' judges** who have not retired. The same applies in Hungary. Specific provisions apply to former members of the Greek Council of State. In Spain, the ethical principles are designed for the exercise of judicial functions and therefore do not apply to members of the judiciary who are not currently in office or who hold positions outside the judiciary.

c) Dual functions and dual jurisdiction (Q.1.3.3 to 1.3.5)

In the event that the court exercises **both a jurisdictional and a consultative function**, the **ethical obligations** imposed on members exercising one or the other of these functions are **always the same**. This is the case in Belgium, France, Greece, Italy, Malta, the Netherlands, Spain and the Republic of Türkiye.

In countries where there is a duality of jurisdiction between an administrative court system and a jurisdictional court system, the **ethical rules applicable to magistrates from these two systems are the same according to 55% of respondents**. They are different, sometimes partially, in Austria, Croatia, Italy, Greece, France and the Netherlands.

In **Austria**, the Law on the Status and Function of Judges (*Richterdienstgesetz*), which sets out the obligations applicable to judges and candidate judges of the ordinary courts and to public prosecutors, also applies to judges of the Supreme Administrative Court and to judges of the Federal

Administrative Court and the Federal Tax Court. Separate ethical rules apply to members of regional administrative courts and to civil servants employed by the provinces. In **Belgium**, ethical rules can be adapted to the specific tasks and responsibilities of each type of magistrate. In **France**, judicial and administrative magistrates are recruited through different channels and are subject to different statutory rules. **Italy** states that the rules of disciplinary procedure laid down for ordinary magistrates essentially apply to administrative magistrates.

Even when the ethical rules are wholly or partly different for magistrates from these two systems, it is **rare for certain obligations to apply to magistrates from only one system or to apply differently to magistrates from both systems**. The examples provided are few and far between. For example, in Greece, the Charter of Ethical Obligations of Judges and Public Prosecutors does not provide for a college of ethics. France points out that although the compendium of ethical obligations for judicial magistrates deals with subjects that are not mentioned as such in the Charter of Ethics for Administrative Jurisdictions, for example good practice and obligations in terms of management, this does not mean that they only apply to one system, even if they are worded differently or more or less explicitly.

d) Judges and public prosecutors (Q.1.3.6)

In a few courts, magistrates fall into several different categories, such as the judiciary and the Public Prosecutor's Office. Of these, **Belgium, Finland, Italy, Luxembourg and the Republic of Türkiye indicate that these magistrates are not subject to different ethical rules**. These rules **may vary in whole or in part**, particularly in Bulgaria, Slovakia and Portugal.

In **Bulgaria**, the Code of Ethical Conduct for Bulgarian judges applies to all judges and the Code of Ethical Conduct for Bulgarian Prosecutors applies to prosecutors and investigators. In **Portugal**, the Code of Conduct for Public Prosecutors applies to judges of external service committees, with the exception of guidelines and rules which, by their very nature, are inapplicable to them due to their specific situation. In **Slovakia**, associate judges of the Supreme Administrative Court generally practise other legal professions, for which they are also bound by different ethical standards. Thus, a public prosecutor who is also an associate judge of the Supreme Administrative Court is also bound by the ethical standards of the profession of public prosecutor.

5. Coordination of ethical and disciplinary rules (Q.1.4)

According to 68% of respondents, a breach of their members' ethical obligations does not necessarily constitute misconduct liable to result in disciplinary action (in Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Italy, Latvia, Luxembourg, Malta, Poland, Portugal, Romania, Serbia, Slovenia, Spain, Sweden, Switzerland, United Kingdom). **In contrast, this is the case in 29% of respondent countries** (Bulgaria, Croatia, Germany, Hungary, Ireland, Lithuania, the Netherlands, Norway and Slovakia).

A number of interesting details and examples are provided.

In **Austria**, breaches of ethical obligations enshrined in positive law may give rise to disciplinary sanctions when a judge **breaches his or her professional or official obligations** and this breach,

taking into account the **nature or seriousness of the breach, its repetition or other aggravating circumstances**, constitutes **official misconduct**.

In **Sweden**, as the ethical guidelines are not binding as such, acts in breach of them can only give rise to disciplinary sanctions if there is an **additional factor of conduct contrary to the duties of a judge**. For example, it may be considered **ethically inappropriate** for a judge to comment on judgments (his or her own or those of others) on social networks, but such comments cannot lead to any disciplinary action, as they are protected by judges' freedom of expression.

In **France**, a distinction can be made between the principles set out in the Charter with regard to breaches and the recommendations. For example, the ban on heads of court presenting motions or briefs, or appearing in court, for 10 years, before the court over which they presided gives an **ethical recommendation, the disregard of which does not *ipso facto* constitute a disciplinary offence**.

Spain for its part **distinguishes ethics** from the disciplinary system. Ethics can only be conceived in terms of **strict voluntary compliance and the absence of legal liability**, unlike discipline.

In the **Czech Republic**, a judge's disciplinary liability can only be incurred in the event of a **culpable** – i.e. intentional or negligent – **breach** of duty or other conduct. If the judge is not culpable, the breach or conduct in question does not constitute a disciplinary offence. According to the case-law of the Court, the breach must be of a **certain intensity** and likely to **undermine the dignity of the judicial function** or to **compromise public confidence in the decision-making process of the courts**.

In **Estonia**, not every breach of ethical obligations constitutes a disciplinary offence, only **the most serious ones**. An **indecent act** committed by a judge may constitute a disciplinary offence. It is the disciplinary committee that decides whether, in a given case, an indecent act has been committed. For example, this includes carrying out duties under the influence of alcohol or using insulting language towards colleagues or parties to the proceedings.

Cyprus states that the Guide stipulates that a judge must not comment publicly on politically sensitive or controversial issues. If he or she **expresses an opinion** at a conference on a controversial subject, this will not necessarily lead to disciplinary action. On the other hand, if he or she makes **racist comments on a social network**, he or she will certainly be subject to disciplinary action.

In **Italy**, the Council for Administrative Justice (*Consiglio di presidenza della giustizia amministrativa*), when it receives a report of behaviour that does not comply with the code of ethics, has the authority to determine its **disciplinary 'relevance'** by assessing whether it is **prejudicial to the prestige and honour of the administrative magistrate**.

In **Slovenia**, after two judges appeared in **photographs of a public demonstration in support of a political party's candidates for the 2019 elections**, the Committee for the Ethics and Integrity of the Judiciary considered that this was a violation of the principles of impartiality and incompatibility of the judicial function, governed by the Code of Ethics for the Judiciary, although it did not constitute a violation that could lead to disciplinary measures.

In **Belgium**, a **delay in processing a case** does not necessarily give rise to disciplinary proceedings, and if the delay occurs repeatedly, **non-disciplinary measures** may be implemented.

6. Training in ethical rules (Q.1.5)

90% of respondents state that members of the courts are **made aware of or trained in ethics**, either during their **initial training when they are first appointed** (Belgium ; Cyprus ; France ; Lithuania: initial ethics training; Latvia: at the judicial training centre; Greece: ethics course at the National School for the Judiciary, administrative justice section; Romania: training at the Higher Institute of the Judiciary on Ethics), **which is not necessarily compulsory** (optional in Estonia), **or as part of in-service training** during judges' term of office (Bulgaria: training on ethics and judicial integrity organised by the National Institute of Justice; Croatia: annual seminar on judicial ethics organised by the Judicial Academy; Cyprus ; Czech Republic: lectures and seminars on ethics at the Judicial Academy ; France ; Greece ; Latvia ; Lithuania ; Romania), **sometimes compulsory** (Germany: training on corruption issues every 2 years).

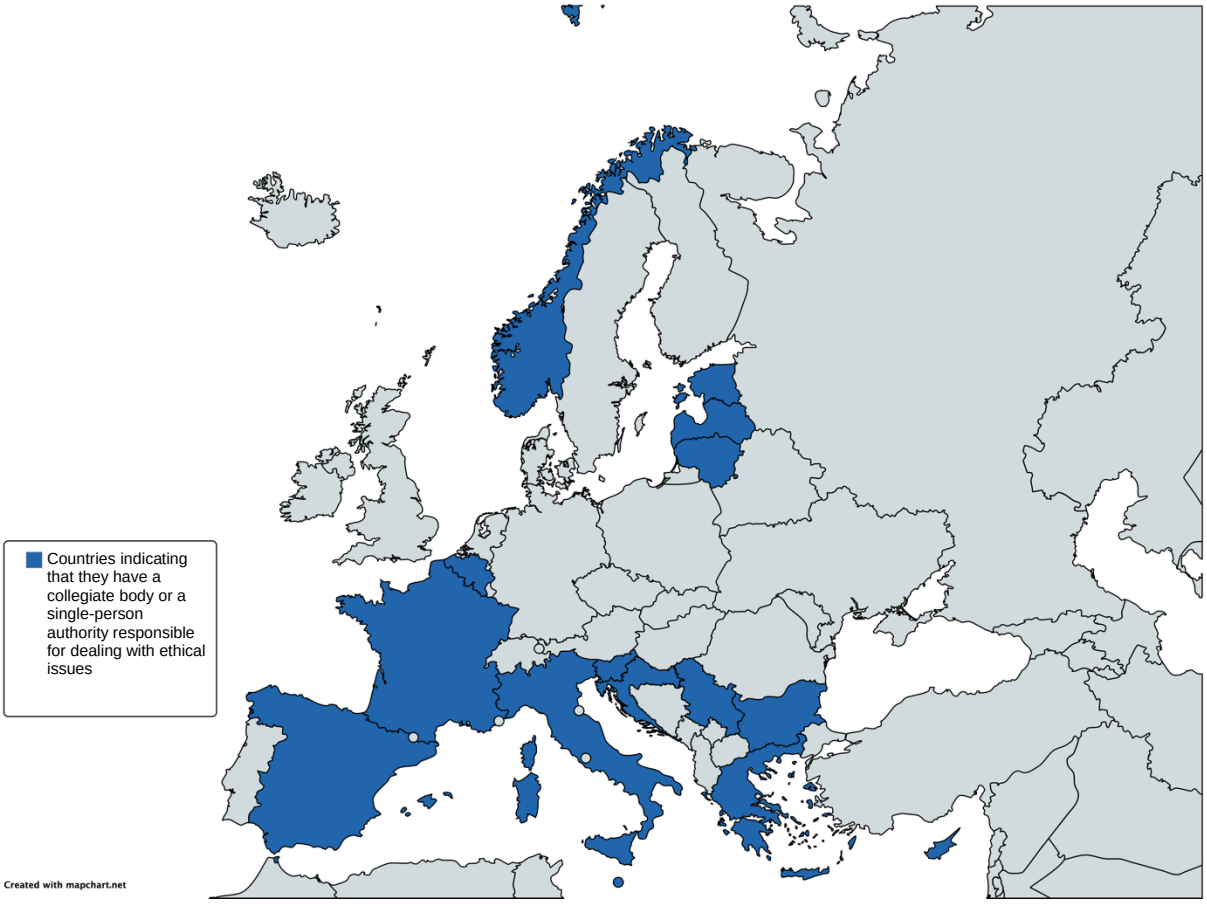
In **Serbia**, the judges of the Administrative Court, the judicial assistants and all the employees of the Administrative Court have taken the training course entitled 'Ethics and Integrity', organised by the Agency for the Prevention of Corruption, thereby obtaining certification in this field. In addition, the Administrative Court organises training on the subject of the code of ethics for judges for all newly appointed judges and judicial assistants.

Sometimes **ethics can even be a condition for selecting new judges**. In the **Czech Republic**, personal qualities and character (moral integrity, objectivity, courage, humility, etc.) as well as an immaculate and transparent career are among the 'soft' criteria for selecting new judges to the Court. In **Romania**, information on ethics is a prerequisite for becoming a magistrate and is one of the aspects examined on entering the profession. In **Norway**, ethical rules are addressed in the process leading up to the appointment of judges.

7. Colleges of ethics (Q.1.6)

Nearly half of the courts state **that a collegiate body or a single-person authority is responsible for answering ethical questions that may arise for their members** (Belgium, Bulgaria, Croatia, Cyprus, Estonia, France, Greece, Italy, Latvia, Lithuania, Malta, Norway, Serbia, Slovenia, Spain).

Its composition, whether collegiate or single-person, and the procedure for referring matters to it vary from country to country.



a) Composition (Q.1.6.1 to 1.6.3)

- **Collegiate bodies:**

In **Bulgaria**, **each administrative court** has an **Ethics Committee** made up of four judges from the court.

In **Estonia**, an **Ethics Council for Judges** has been set up to deal with ethical issues concerning all courts and judges in Estonia. It is made up of five judges elected by the Court *'en banc'*, who may include an *emeritus* judge. The aim is to ensure that judges from different jurisdictions are represented and that a retired judge is also included.

In **France**, the **College of Ethics of the Administrative Jurisdiction** comprises a member of the Council of State elected by the General Assembly; a magistrate from the administrative tribunals and administrative courts of appeal elected by the High Council of Administrative Tribunals and Administrative Courts of Appeal; an outside person appointed alternately by the First president of the Court of Cassation from among the magistrates in office at the Court of Cassation or honorary magistrates, and by the First president of the Court of Audit from among the magistrates in office at the Court of Audit or honorary magistrates; a qualified person appointed by the President of the Republic, from outside the members of the Council of State and the magistrates of the

administrative tribunals and administrative courts of appeal, on the proposal of the Vice-President of the Council of State.

In **Greece**, the **College of Ethics** has three members: a Vice-President of the Council of State, who chairs the Council, and a councillor of state, who are appointed by the Assembly, and a Council magistrate appointed by the Association of Judges of the Council of State.

In **Latvia**, there is no institution specifically set up for Supreme Court judges to deal with ethical issues. However, there is the **Judicial Ethics Committee**, which is made up of 10 members drawn from all the courts. The Conference of Judges elects five members of the Judicial Ethics Committee from among the candidates nominated by the judges of the district (city) courts, three from among the candidates nominated by the judges of the regional courts, and two from among the candidates nominated by the Supreme Court.

In **Lithuania**, the **Judicial Ethics and Discipline Committee** is one of the courts' self-governing bodies, which decides on the initiation of disciplinary proceedings against judges, but also provides consultation on issues of judicial ethics. Two members are appointed by the President of the Republic, one by the Speaker of Parliament and four by the Judicial Council.

In **Slovenia**, there is a **Special Committee for Ethics and Integrity**, appointed by the Judicial Council for a 6-year term. There is also an **informal adviser** appointed by the Judicial Council, but who does not hold a professional position.

In **Spain**, there is an **Ethics Committee** comprising seven members who are completely independent in the performance of their duties (six members in active service in the judiciary, including one judge, three magistrates and two Supreme Court magistrates; the seventh member is a person of recognised prestige with a proven track record 'in the academic fields of ethics, legal philosophy or moral philosophy').

In **Serbia**, the **Ethics Committee**, made up of five members appointed from among the judges by the Council of the High Court, is a working body of the Council of the High Court that ensures compliance with the code of ethics and its application.

In **Norway**, the Supervisory Committee, made up of two public representatives, a lawyer, two ordinary court judges and a land court judge, is appointed by the King in Council.

- **<u>Single-person authorities backed up by collegiate bodies:</u>**

In **Cyprus**, the **President of the Court** has the power to hear such matters and, if the case is serious, this falls to the **full Court**.

In **Belgium**, each **head of the council and the auditor's office** ensures that the professional ethics of its members are respected. However, if a head believes that an ethical problem has arisen that deserves to be dealt with in a uniform manner, he or she may ask the **College of Heads** to adopt a common position.

In **Croatia**, the High Administrative Court has a **confidential adviser** responsible for ensuring compliance with the code of judicial ethics, appointed by the President of the Court. Breaches of

the code are decided by **judicial councils**. The **Judicial Council of Administrative Tribunals** has 15 members, nine of whom come from the ranks of the judges of the High Administrative Court and six from the ranks of the administrative tribunals.

b) Referrals (Q.1.6.4)

This body responsible for dealing with ethical issues in the courts **may be approached by a member of the court on an ethical issue concerning him or her**, according to **39% of respondents** (Bulgaria, Croatia, Cyprus, Estonia, France, Greece, Italy, Latvia, Lithuania, Serbia, Slovenia, Spain), **by a magistrate in the lower courts on an ethical issue concerning him or her**, according to **35% of respondents** (same countries except Greece), **by the President of the court**, according to **42% of respondents** (Bulgaria, Croatia, Cyprus, Estonia, France, Italy, Latvia, Lithuania, Malta, Norway, Serbia, Slovenia, Spain), **by other members** of the institution, **according to one quarter of respondents**, and **by a member of the public who believes that a magistrate has breached his or her ethical obligations**, according to **one quarter of respondents** (Croatia, Cyprus, Italy, Latvia, Lithuania, Norway, Serbia, Slovenia). Lastly, this body can **examine cases on its own initiative**, according to **one third of respondents** (Belgium, Bulgaria, Cyprus, Estonia, France, Italy, Latvia, Norway, Serbia, Slovenia).

The possibilities for referring cases to this body are **sometimes very broad**: in addition to all the possibilities mentioned above, **the Norwegian Bar Association** can refer cases to the body in Norway. In Malta, the **Ministry of Justice** can refer cases to the competent body.

In **France**, referrals may be made by a member in his or her personal case, but also by the Vice-President of the Council of State, the Section Presidents, the Secretary General, the head of the administrative courts inspection mission, the Presidents of the administrative tribunals and administrative courts of appeal, and the President of the High Council of Administrative Tribunals and Administrative Courts of Appeal in relation to a member.

In **Lithuania**, the Committee examines requests for consultation made by judges, self-governance institutions and court committees, as well as by public organisations that bring judges together at Committee meetings. The consultation is published on the website of the National Courts Administration within 10 days of its signature, without infringing the requirements for the protection of state, official, commercial and professional secrets and secrets protected by other laws, and in compliance with the other restrictions and prohibitions provided for by law.

In **Cyprus**, **any person** may refer a case to the Court, whether it be one of its members, a judge of a lower court, **a lawyer, a litigant or any other civil person**. If the referral concerns a serious matter or a matter of public importance, the President may refer it to the plenary session of the Court for consideration. In Ireland, too, a complaint may be lodged by **any person directly affected by, or who has witnessed, conduct that may constitute judicial misconduct**. In Serbia, **any person** may submit an initiative to the ethics committee in order to obtain a **primary opinion on whether a judge's behaviour** complies with the judges' code of ethics.

In **Slovenia**, a request for an opinion on the application of the code of judicial ethics may be submitted by **any natural or legal person**. The Committee decides whether such an initiative is

justified on the basis of the importance of the issue raised. **Individuals are empowered by law** to request that a **question be decided on its merits**: any member of the Committee, any member of the Judicial Council, the president of the Supreme Court and the Minister for Justice.

In **Greece**, the matter may be referred to the panel by a sitting or **retired judge** of the Council**.**

The possibility of referral is **sometimes more limited**: in Estonia, judges may only refer **ethical issues concerning themselves** to the competent body, to the exclusion of requests for an advisory opinion on the conduct of other judges. The presidents of the courts may also refer cases to this body when they are dealing with **a specific disciplinary case**. The Ethics Council can also give an opinion on its own initiative, but this has never been the case to date.

In **Italy**, only **complaints of conduct considered relevant from a disciplinary point of view** can be raised by an ordinary citizen, the disciplinary procedure then being 'promoted' by the President of the Council of State.

c) <u>Publication of opinions and decisions (Q.1.6.5 and 1.6.6)</u>

The **opinions formulated by this body are made public** according to **39% of respondents** (Croatia, Estonia, France, Greece, Italy, Latvia, Lithuania, Norway, Romania, Serbia, Slovenia, Spain). They are **anonymised according to 42% of respondents** (Bulgaria, Croatia, Estonia, France, Greece, Italy, Latvia, Lithuania, Norway, Romania, Serbia, Slovenia, Spain).

d) <u>Challenges (Q.1.6.7)</u>

These opinions can only be **challenged in court in Ireland, Italy, Malta, Norway and Romania**.

In **Ireland**, a judge concerned who receives a draft report from the registrar to a commission of enquiry and who considers that the commission of enquiry has not followed fair procedures in relation to him or her may, within a specified period, submit to the commission of enquiry registrar a written statement setting out the reasons for his or her opinion and a request that the commission of enquiry review the draft report having regard to his or her statement. The Judicial Council Act does not provide for a right of appeal against a decision of the ethics committee on the recommendation of the commission of enquiry, but a judge may apply to the High Court for a **conventional judicial review** of the decision-making process (appeal possible to the Court of Appeal and the Supreme Court).

In **Norway**, decisions of the Supervisory Committee are not subject to administrative appeal, but the judge or the complainant may request a **judicial review** of the decision by bringing an ordinary legal action before the district court.

In **Italy**, decisions of the Council for Administrative Justice are considered to be **administrative acts that may be challenged before the administrative courts** (administrative courts of first instance and the Council of State as an appeal court).

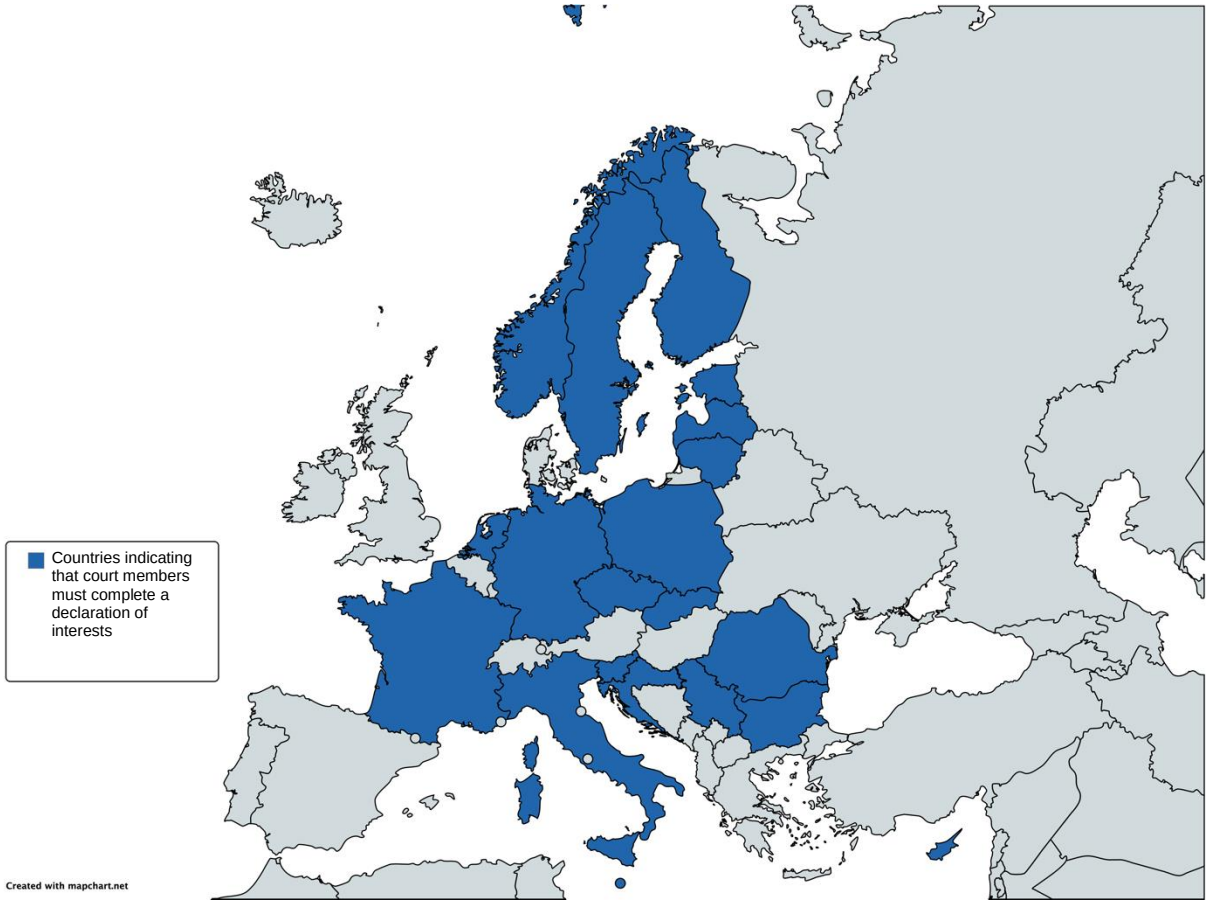
In **Malta**, decisions of the Committee for the Administration of Justice concerning the dismissal of a judge or magistrate may be **appealed to the Constitutional Court**.

In **Slovenia**, this issue is still the subject of pending administrative litigation.

8. Declarations of interests and assets (Q.1.7)

a) Procedures and content (Q.1.7.1)

Court members must **complete a declaration of interests according to 65% of respondents** (Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Malta, Netherlands, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Sweden).



The content and procedures for the declaration of interests **vary from country to country**, but in most cases this document must be produced **shortly after taking up office**.

In **Bulgaria**, all magistrates must submit a **two-part declaration of assets and interests** to the Inspectorate of the Supreme Judicial Council.

In **Croatia**, judges must submit a **report on their inherited or acquired assets and those of their spouse, partner or life partner and minor children** to the State Judicial Council. These data are **public and published** on the Council's website, with the exception of protected data.

In **Greece**, magistrates and public prosecutors are required to file a **detailed declaration of their assets** with a parliamentary committee every year.

In **Cyprus**, the president and members of the Court must make a written declaration of all their **assets and economic interests, links with legal entities or affiliations with law firms**.

In the **Czech Republic**, judges must make **declarations of personal interests, activities, assets, income and liabilities**.

In **Romania**, at the start of their work at the Supreme Court and every year thereafter, **all categories of staff working at the Court** are required by law to complete a **declaration of interests**, to be submitted to the National Integrity Agency. This obligation also applies if the person concerned stops working for the Court.

In **Lithuania**, judges must submit three declarations, in accordance with the Law on the Declaration of Residents' Assets, the Law on Personal Income Tax and the Law on the Adjustment of Public and Private Interests. They cover the **judge's interests and those of his or her spouse or partner**, unless they are not cohabiting, and are **published on the website** of the Ethics Committee for Senior Civil Servants.

In **Poland**, within 30 days of their appointment, all judges must submit a declaration concerning their **financial situation** (made **annually**), their **membership of a political party prior to their appointment** or their **membership of an association or foundation** (made each time they change their appointment). The declarations are submitted to the president of the Court and analysed by the College.

In **Sweden**, **new members** of the Supreme Administrative Court submit a **full declaration of interests to the chief of staff**, which is continually updated and contains information about **people (family, friends, etc.) and legal entities closely connected** to the member, as well as **interests that could affect the member's (apparent) impartiality**.

In **Germany**, all **economic activity is subject to declaration or authorisation** by the president of the Court. Only the administration of one's **own assets is exempt** from this obligation. Before the initial appointment to the post of judge, the candidate must make a **declaration concerning his or her private debts and relatives in the judiciary (including lawyers)** in order to avoid any conflict of interest.

In **Slovenia**, judges are required to **declare private property, income and potential conflicts of interest** to the Commission for the Prevention of Corruption.

In **Estonia**, the declarations, which are supervised by Parliament's select anti-corruption committee and made **public for 3 years**, cover **assets and interests** likely to have an impact on the performance of the declarants' official duties.

In **Slovakia**, a judge must regularly submit a written declaration to the Judicial Council in which he or she indicates the **circle of people close to him or her who work in the judiciary**. This declaration and the **declaration of assets** are **published** on the Council's website.

In **Finland**, when appointed to a permanent position, a judge must submit a **declaration of interests** to the appointing authority or the Ministry of Justice.

In **France**, within 2 months of their assignment, members of the Council of State submit a comprehensive, accurate and sincere declaration of their interests to the president of the division to which they have been assigned, which is then forwarded to the Vice-President of the Council of State. The declaration, **which is confidential**, mentions **the links and interests** held that could influence or appear to influence the independent, impartial, and objective exercise of functions, whether the declarant has had them or not **during the 5 years preceding** his or her assignment or assumption of duties. The opinion of the College of Ethics of the Administrative Jurisdiction may be sought on the declaration when there is a doubt about a possible **conflict of interest**.

In the **Netherlands**, councillors of state are **not required to complete a formal declaration of interests**, but rules on (financial) conflicts of interest apply and they must specify any ancillary functions or activities performed outside the Council and seek the permission of the vice-president to perform new functions or activities.

In **Italy**, at the beginning of **each year**, each magistrate must **indicate the subjects or issues on which there is a potential conflict** with the cases assigned to him or her. He or she must abstain in individual cases of incompatibility and the applicant may challenge a judge who has not abstained if he or she considers that he or she is in a potentially incompatible position.

In **Serbia**, a judge is required **to inform** the Council of the High Court **in writing** of any other **office, employment or private interest that may be incompatible** with the office of judge.

In **Norway**, a judge must apply for authorisation to carry out **certain extra-judicial activities** and **be entered in an open register**. In addition, investments representing **holdings in companies** must be recorded when they exceed certain limits.

b) Verification of declarations (Q.1.7.2)

In some countries, there is a **specific procedure, or an *ad hoc* body, responsible for examining conflicts of interest** that may arise **when a member of the Court leaves it for the private sector.**

In **France**, the **Supreme Authority for Transparency in Public Life** is responsible for issuing an opinion on any plans by members of the Council of State to engage in gainful private activity if they wish to cease their functions temporarily or definitively (compatibility of functions, conflict of interest, questions of public-to-private sector crossovers).

In **Croatia**, the **State Judicial Council** is responsible for approving the performance of **other work in addition to the duties of a judge**, and for examining any possible conflicts of interest.

In **Cyprus**, any former judge wishing to work within **2 years of resigning or retiring** must apply to an **ad hoc body** and obtain its authorisation. Failure to comply with this obligation constitutes a

criminal offence. In addition, in the year after leaving office, for whatever reason, a judge cannot work as a lawyer and appear in court.

In **Lithuania**, the Law on the Adjustment of Public and Private Interests contains general restrictions that apply to judges when they leave judicial office. Exceptions to the restrictions may be made by the **Chief Official Ethics Commission**.

In **Romania**, **the National Integrity Agency** is the body that verifies declarations submitted and identifies potential conflicts of interest. When a member of the Supreme Court leaves the public sector to work in the private sector, it is no longer necessary to submit the declarations required by law (of assets and interests) and there is no longer a review of conflicts of interest. The Law on the Organisation of the Legal Profession lays down certain prohibitions applicable to lawyers who have held the position of magistrate in the last 5 years.

In **Slovenia**, the **Commission for the Prevention of Corruption** monitors compliance with legal restrictions on judges working for public bodies in a professional capacity for up to 2 years after leaving public office.

9. Oath (Q.1.8)

Members of all courts, with the exception of the Republic of Türkiye, **must take an oath**.

This oath is sometimes **very old** (since 1878 in Bulgaria) **or very recent** (since the end of 2023 at the French Council of State).

It is **taken, sometimes publicly** (Spain, France, etc.), **before various authorities**: **before the President** of the Council of State in Italy and the President of the court in Latvia, before the Vice-President of the Council of State or his or her representative in France, with the President of the Administrative Court or his or her representative in Luxembourg, **before the court of employment** or a district court in Finland, before the court of performance in Portugal and Spain, **in the presence of the Plenary Assembly** in Austria, before the Assembly of the Council in Greece, before the Plenary Court in Switzerland, **before the President of the State Judicial Council** or a member of the Council appointed by him or her in Croatia, **before the President of the Republic** in Cyprus, Poland, Slovakia and the Czech Republic, **before Parliament** in Estonia, **before the President of the National Assembly** in Slovenia, before the President of the Supreme Court and the President of the National Assembly in Serbia, before the President of the Republic or Parliament in Lithuania, **before the King** in the Netherlands.

Its content also varies from country to country. In Greece, the oath is **similar to that of civil servants**. In France, the members of the Council of State and the magistrates of the administrative jurisdictions (tribunals and courts) take an oath to **fulfil their duties with complete independence, probity and impartiality**, to **maintain the secrecy of deliberations** and to **conduct themselves in all matters with honour and dignity**. In Belgium, the members of the Council of State swear **loyalty to the King and obedience to the Constitution and the laws of the Belgian people**. Since 2023, the oath **of loyalty to the Grand Duke has been removed** from the oath of judges in Luxembourg. In the Netherlands, **allegiance is sworn to the King** and the oath is taken not to have given or promised

anything to anyone to obtain the office and not to have received or promised anything to anyone to do anything in connection with the office. In Spain, the oath includes **loyalty to the Crown**.

It **sometimes includes a reference to God**: in Germany (where it may be omitted), Malta, Hungary, Lithuania, Switzerland (where the religious act may be replaced by a solemn promise) and Romania (depending on the judge's religion, the reference to God may be omitted). In the United Kingdom, judges take **two oral oaths** on appointment, an **oath of allegiance to the monarch and a judicial oath**, either with their hand placed on a holy book of the judge's religion, or in the form of an affirmation, the precise wording varying according to the judge's religion or whether it is an affirmation.

The text of the oath is sometimes signed by the judge (as in Lithuania). In Norway, judges must give a **written undertaking** to exercise their functions **conscientiously**.

Refusal to take the oath automatically renders **the appointment null and void in Romania**.

II. Ethics: the content of the rules

Independence, impartiality and prevention of conflicts of interest

1. Family ties, personal relationships and previous positions (Q.2.1.1)

All Courts indicate that **one of their members must refrain from sitting or risk being disqualified** from a judicial panel in the event of **family and/or friendly ties** likely to link the magistrate with a party, due to the **previous positions held** by this member. **Other scenarios** were cited by the vast majority of respondents.

Several **examples of case-law** are provided by the Courts, which make it possible to outline the circumstances in which their members may or may not participate in jurisdictional activities.

In **Bulgaria**, a judge who has **participated in a judicial decision as president, judge-rapporteur or consultant, or who has been heard as a witness or expert**, may not be called upon to examine an appeal, an appeal in cassation or a request for correction of a material error against that decision. On the other hand, **Austria** points out that there is no presumption of partiality on the part of a judge who has participated in a court decision in **future cases involving the same party**, as is the case in **Switzerland**.

In **Cyprus** and **Luxembourg**, **personal animosity** or **strong enmity** towards a party is also a compelling reason for disqualification.

In the **Czech Republic**, **professional friendship** cannot in itself constitute grounds for disqualifying a judge, unless there are special circumstances preventing the judge from maintaining sufficient distance from the party involved in the case. The same is true in **Finland** with regard to a judge's **academic collaboration** with professors or on the basis of publications or academic work that are not sufficient to give reason to believe that this judge would have prejudices on a case on the same theme. In **Portugal**, **friendships between judges and lawyers**, which often date back to their

academic or professional life before joining the judiciary and are therefore inevitable, do not in themselves constitute grounds for excuse. The Council of State in **Greece** has imposed a register at the court registry in which judges must indicate the **involvement of their parents or other relatives** in law firms and the cases in which these relatives are actively involved in order to assess whether they are prevented from taking part.

Norway mentions incompatibilities if a judge is a **member of the board of directors of a company, cooperative, association, savings bank, foundation or government body**, or if he or she is **mayor of a municipality** that has a link with the case.

In **France**, when a member enters into **discussions with a future employer outside** the Council of State, the Charter of Ethics recommends that he or she refrain from taking part in any deliberations in which he or she is involved. The same applies in **Luxembourg**.

Spain cites abstentions by judges **denounced or accused by one of the parties as being responsible for a crime or misdemeanour**, under certain conditions, or when they are **in dispute with one of the parties**.

Romania points out, however, that judges must **avoid repeated and unjustified abstentions**.

2. Dual jurisdictional and advisory functions (Q.2.1.2)

Where the Courts perform both a jurisdictional and an advisory function, they have sometimes **implemented individual measures to comply with the *Procola* case-law of the European Court of Human Rights** of 28 September 1995, according to which the fact that certain **members perform both advisory and jurisdictional functions** in relation to the same decisions may **call into question the structural impartiality** of the institution.

Belgium, **France** and the **Netherlands prohibit the member** concerned from **participating in the judgment of an action brought against an act adopted after an advisory opinion** of the institution if he or she **took part in the deliberation** of this opinion, which is not the case in the other countries concerned (**Bulgaria, Greece, Italy, Latvia, Luxembourg, Portugal, Switzerland**).

France and the **Netherlands prohibit members of a judicial panel from consulting the files of advisory panels, and vice versa in the Netherlands, where the rule also applies to administrative staff**. This is not the case in Belgium, Bulgaria, Greece, Italy, Latvia, Luxembourg, Portugal and Switzerland.

Bulgaria, Greece, Italy, Latvia, Luxembourg, Portugal and Switzerland report that they have implemented **other measures**. In **Greece**, while there is no formal prohibition on participating in the judicial panel after having been involved in an advisory decree, it is a **well-established practice**, as in **Bulgaria**. In the **Netherlands**, although the law still allows councillors of state to perform both advisory and jurisdictional functions, **in practice, this dual mandate no longer exists**, as each councillor is only **appointed to one of the** advisory or judicial **branches and, in order to move to the other branch, requires** a **recommendation from the Council, government approval and a royal decree**.

In **Italy**, the issue is resolved **by procedural rules** concerning **the assignment of councillors** to the various advisory or jurisdictional divisions, by rules on abstention and disqualification, and by the **'internal' rules laid down by the Presidential Council for Administrative Jurisdiction**. On the other hand, the case is not settled when a government regulation has been the subject of a **binding opinion issued by the General Assembly** made up of all the magistrates of the Council of State.

In **Luxembourg**, since the *Procola* judgment, the **newly created administrative courts** have **an exclusively jurisdictional function**. Furthermore, in terms of **incompatibilities**, a member of the Administrative Court may not at the same time be a member of the Council of State, and when he or she has given an opinion, in any capacity whatsoever, in relation to a standard that he or she is called upon to apply within the Court, he or she must refrain from sitting on the Court.

3. Departure to the public or private sector (Q.2.1.3)

In two thirds of the countries **that allow members of the institution to leave temporarily to take up other duties in the public or private sector**, **ethical rules govern such a departure** and, when the time comes, **such a return**.

In Bulgaria, Croatia, Finland, Portugal, Hungary, Latvia, Norway and Slovenia (i.e. 26% of all respondents), there is **an obligation to abstain prior to departure from taking part in any deliberations involving a future employer** as soon as the person concerned enters into talks with that employer. **The members concerned are** also **prohibited, during this temporary period outside the institution, from intervening in cases of which they have become aware in the exercise of their jurisdictional activities** (29% of respondents: same countries as above, plus Estonia). There is also **the obligation to abstain, where appropriate for a specified period after return, from participating in the adjudication of disputes concerning decisions taken by the authority to which the member previously reported** (29% of respondents: same countries as for abstention before departure to a future employer and Italy). **The prohibition on a member practising as a lawyer from submitting applications and pleadings and appearing at a hearing before the court for a specified period** is mentioned only by Portugal, Hungary, Norway and Slovenia.

42% of all respondents give further details.

In **France**, while **holding successive posts within the Council of State and outside it, in the public or private sector, is not prohibited, and is even encouraged**, **precautions** are taken **before, during and after** the move, which is organised in such a way as to avoid situations in which a legitimate doubt could arise, even on the face of it, as to the independence or impartiality of the members of the Council of State.

In **Spain**, while judges may be granted temporary leave to perform other functions outside the judicial system, **in the public sector** (such as government agencies) **or in the private sector** (such as law firms or companies), they must **comply with ethical standards** (impartiality, confidentiality, avoidance of influence, disqualification). In **Finland**, although it is **not formally prohibited**, members are **in practice not allowed** to intervene outside the institution in cases of which they were aware before taking up their duties outside the court, or to file pleadings or appear before a court as a practising lawyer shortly after leaving their jurisdictional activity.

In the **Czech Republic**, while judges may be seconded temporarily to other ordinary courts, to the Constitutional Court or to an international court, without this raising any particular ethical issues or entailing the application of specific rules, judges **may not hold any other remunerated post or engage in any other gainful activity in the private sector**. In **Romania**, magistrates can **only** be seconded **to the public sector** and, in **Norway**, members of the Court are only granted temporary leave to perform a **very small number of public functions**. In **Serbia**, a judge may be assigned to work **for the Ministry of Justice**, the Judicial Academy or an international judicial organisation for a **limited period of time**. He or she is **relieved of his or her duties as a judge** when assigned to the Ministry of Justice. The same applies in **Croatia**. In **Latvia**, a judge, with his or her consent and the authorisation of the president of the Court, may be appointed to work in another jurisdiction or for a 'mandate' which is not that of a judge, within the Ministry of Justice, the administration of the Court, an international court, an international organisation or another institution as part of an international project, for an **equally limited period of time**.

In **Slovakia**, holding the office of judge is **incompatible with holding office in any other public authority**, but a judge may be **temporarily assigned or transferred to another court** under certain specific conditions or may be entrusted with tasks within a **body of the European Union** and be sent as a **civilian expert** to work in a crisis management activity outside the territory of the Republic.

In **Germany**, for an administrative judge, **only secondment to a public body is a realistic option** for temporary leave, with the sole restriction that he or she must not sit on a case in which he or she has been involved at an earlier stage in the preparation of the administrative act within an administrative authority or within a lower court. In **Italy**, an **internal rule prohibits, for a certain period of time after returning to jurisdictional activity, the handling of cases concerning the ministry or administration** to which the member was seconded or provided legal support.

Luxembourg has **no specific rules** governing administrative magistrates who leave their posts to take up other duties in the public or private sector, but they may **not sit on a case they have previously heard**, and **in practice it is very rare** for members of the Court to leave before retirement.

In **Belgium**, Council of State magistrates seconded to ministerial cabinets **remain subject to their status as magistrates**.

4. Gifts (Q.2.1.4)

According to **87% of respondents**, a member of the Court may **receive gifts under certain conditions**. **Members of the Court in Latvia, Poland and Serbia are not allowed** to receive gifts**.**

Common considerations emerge depending on the nature of the gifts in question.

Generally speaking, the respondents state that it is **prohibited in principle for members of the Courts to accept a gift or any other advantage or liberality in the exercise of their functions**, granted in order for a judge to perform or not to perform an act in the context of his or her jurisdictional powers or in order to curry **favour with the judge or to exert influence over him or her** (in particular Luxembourg, which specifies that gifts that undermine impartiality or place the

judge in a position of obligation are prohibited; Austria, Croatia, Estonia, France, Greece, Ireland, Lithuania, Malta, Poland, Slovakia, Switzerland and the United Kingdom, which specify that this applies to **family members**, or Slovenia, which specifies that this applies to family members and **persons residing in the same household**). In **Bulgaria**, the code of ethical conduct for judges prohibits them from receiving an advantage from a third party that could reasonably be perceived as resulting from an **attack on their integrity and fairness in the performance of their professional duties**. **Croatia** stresses the special attention paid to **lawyers and their clients**, and Sweden **the absolute prohibition on accepting a gift from a party before the court**. In **Portugal**, the acceptance of gifts or **donations before or after the commencement of legal proceedings** may be a **reason for disqualifying** a judge who has received a contribution of any kind. **Gifts are generally permitted** on the occasion of an **official mission, a visit by a foreign delegation or a trip abroad** if they are not in return for a service rendered in connection with the examination of a case **(Belgium, Estonia, Luxembourg)**. **In Serbia**, official and occasional gifts are permitted, except in the case of money or securities.

Judges may sometimes accept any **advantage or benefit from the executive** if it **is addressed to the judiciary collectively** (Malta).

The same applies to **symbolic advantages** (Ireland), **protocol gifts during a visit between courts or public authorities** (Poland), gifts of lesser value exchanged during **representation missions or in the context of international relations** (Luxembourg), **tokens of courtesy linked to functions** (Spain), **tokens of hospitality** (Cyprus, Greece, Hungary), gifts on the occasion of **traditional festivities** (Italy), **small customary or honorary gifts** on condition that the Court is informed (Austria) and **meals or benefits granted to a judge for reasons of etiquette**, as long as **their value** does not exceed generally accepted limits (Cyprus, Germany, Greece, Hungary).

The modest nature of the donation is therefore important, according to the respondents. There is **not always a legal limit on the value of gifts**, but it must be limited (Poland, Slovenia, United Kingdom). A **maximum value for authorised gifts is sometimes stipulated**: a donation in kind of up to 200 Swiss francs or gifts received during official visits are not considered as acceptance of gifts in **Switzerland**; a limit of up to 100 euros on the acceptance of gifts in **France**; up to 50 euros in the **Netherlands** for gifts offered as a token of good relations, with **entry in the register of gifts**, and a prohibition beyond that except for gifts that cannot be refused for social or diplomatic reasons and which are presented by their recipients to the Council of State. In **Germany**, gifts of up to 5 euros may simply be accepted by judges; a declaration is required for gifts of 5 to 25 euros, and authorisation is required for gifts of more than 25 euros. If the gift is refused, it is either **returned or given back to the institution if returning it would be impolite**. In **Lithuania**, exceptions to the prohibition are provided for gifts of a value not exceeding 150 euros, accepted in accordance with international protocol or customs normally associated with official functions, and gifts for representational purposes. Above a value of 150 euros, the gift is considered to be the **property of the state or the municipality**.

In the **Czech Republic**, judges are not explicitly prohibited from receiving gifts, but they must be included in their **declaration of interests**, depending on their nature and/or amount. In **Slovakia**,

these donations are **supervised by the Judicial Council** as part of its **monitoring of the assets** of judges. In **Romania**, magistrates are required by law to **declare** and present to the head of the institution, within 30 days of receipt, any goods they have received free of charge in the course of protocol activities in the exercise of their mandate or office, with the exception of medals, decorations, badges, orders, sashes, chains and other items received in the exercise of their 'dignity' or office, as well as office supplies with a value of up to 50 euros. **Goods received in the course of a calendar year are valued by a committee** set up within the institution and, if the value of the goods exceeds 200 euros, the person who received the goods may ask to keep them and **pay the difference**. If the value of the goods as determined by the committee is less than 200 euros, the goods are retained by the recipient. If the recipient does not intend to keep the goods, they **remain the property of the institution, which may dispose of them**.

5. Decorations (Q.2.1.5)

A member of the institution may **receive an honorary decoration from his or her country or from a foreign country without conditions according to half of the respondents** (Austria, Belgium, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Norway, Portugal, Romania, Slovenia, Spain, Sweden), **and under certain conditions for one third of the respondents** (Czech Republic, Estonia, Ireland, Lithuania, Malta, Netherlands, Poland, Serbia, Slovakia, United Kingdom). This is **not possible in Bulgaria, Croatia or Switzerland**.

According to the majority of respondents, **general rules that do not only concern members of the institution apply** to decorations.

It should be emphasised that in **Switzerland**, **federal judges are prohibited** from performing an official function for a foreign state or accepting **titles or decorations awarded by foreign authorities** in order to guarantee their independence in relation to other states and the reputation of the office of federal judge.

In France, the Charter of Ethics simply states that members of the Council of State **may not apply for** honorary **decorations for themselves** from France or a foreign country, which they may otherwise receive. Judges in **Ireland** must receive **prior government approval** before receiving such decorations. In **Romania**, these decorations are **exempt from the obligation to be presented to the head of the institution** in which the magistrate performs his or her duties. In **Slovakia**, a judge may accept a prize from another state, provided that the **state in question is not one that does not respect the rule of law and human rights.**

In the **United Kingdom**, all Supreme Court judges are granted **the judicial courtesy title of Lord or Lady by royal warrant** and also receive the title of 'The Right Honourable' when appointed by His Majesty to the Judicial Committee of the Privy Council. In general, British citizens can only accept a decoration from a foreign state with **the authorisation of His Majesty the King**.

B. Exercise of individual liberties (Q.2.2)

1. Freedom of expression and opinion (Q.2.2.1)

According to **84% of respondents**, **there are limits to the freedom of expression and opinion of the members** of their institution. This is not the case in **Austria, Finland, Serbia, Sweden - the Republic of Türkiye** did not respond.

In **general**, the respondents emphasise that **while there are no general restrictions on the freedom of expression and opinion of judges of the Courts**, they stress the need for them to **conduct themselves in such a way as not to jeopardise confidence in the administration of justice** or **the reputation and dignity of their office**, **their profession and judicial authority** (Croatia, Czech Republic, Estonia, France, Netherlands), even after retirement (Austria), and **not to jeopardise the confidence of litigants in magistrates who must be independent and impartial** (Belgium, Greece, Luxembourg) and to **respect the right to a fair trial** (Bulgaria). They are also bound by **professional secrecy** (Austria), the **confidentiality of information received during legal proceedings** (Estonia, Portugal), the **duty to act in a reserved manner** (Belgium, France, Portugal), **to express themselves with discretion, prudence and moderation** (Luxembourg), and **may not make statements reflecting their political opinions** (Estonia). In this sense, they **may not make public statements or comments, in particular via the media**, concerning **cases pending** before them or discuss the proceedings before the parties and third parties and **express opinions on decisions handed down** (Bulgaria, Croatia, Estonia, Italy) or **politically sensitive or controversial issues** (Czech Republic, Luxembourg). In **Spain**, from a disciplinary point of view, it is a **serious offence to congratulate or criticise** powers, authorities, civil servants or official companies for their actions, **invoking or using the status of judge**, as it is to **exceed or abuse one's authority**, or to **show a serious lack of consideration** for citizens, institutions or lawyers.

In **France**, members of the Council of State **may not refer to this status when speaking publicly in a personal or any other capacity**. In **Switzerland**, according to the case-law of the Federal Supreme Court, members of the authorities may **individually exercise their freedom of expression** to participate actively and even **intervene directly in election and referendum campaigns**. When the members of an authority speak as private individuals, they can freely express their personal opinion on the subject being put to the vote and take part in the campaign by joining an initiative committee, for example. They **may refer to their official function** in this context but must not give a misleading impression that they are expressing the official position of the authority to which they belong. The reserve that is imposed on judges in public life does not prevent all political activity, within the **limits of the requirements of the jurisdictional function**.

The **freedom of members is more important** when they are also professors, in the name of **academic freedom** (Belgium). They can thus **take part in legal discussions for educational or teaching purposes** (Croatia). In **Lithuania**, the **president of the Court** must be **informed** of any **participation in a media** or radio **programme**. In the **Netherlands**, members must take into account the fact that their external expression, particularly on social media, is perceived as an **expression of the Council of State itself**.

2. Use of social networks (Q.2.2.2)

The use of social networks by members of the Courts is regulated according to 39% of respondents (Belgium, Bulgaria, Cyprus, France, Hungary, Italy, Lithuania, Malta, Poland, Portugal, Slovenia, United Kingdom).

Members of the courts **are not prohibited from using social networks**, but they must, **in accordance with the general principles set out in the previous point** concerning **the framework for their freedom of expression, be careful in their communications and, in particular, not jeopardise the dignity of their office, the image and reputation of their institution and of justice and their duties of impartiality, independence and reserve** (Belgium, Cyprus, Czech Republic, Hungary, Italy, Portugal), in accordance with the principle of **'judicial restraint'** (Bulgaria, Poland).

However, **Malta** points out that **membership of social networking websites** is **incompatible with a judicial mandate** as it exposes judges to disregarding their obligations. In **Cyprus**, the Guide specifies that judges must **not maintain blogs or publish comments identifying themselves as members of the judiciary**. **Slovakia** states that judges **may not use social networks** or other means of communication to **incite hatred or intolerance, disseminate false or misleading information, misinform or insult anyone**, including other public officials or the judicial system, or **encourage extremism**.

In **France**, the **Charter recommends the utmost restraint in the use of social networks** when access to these networks is not exclusively reserved for a private circle with protected access. Members of the Council of State who are present on digital social networks are advised **not to mention their status as members** of the Council of State when filling out their profiles, for those present on social networks under a pseudonym likely to be re-identified, only to make **comments that they could make publicly under their real identity** and **not to use these media to comment on political and social events**. Greece stresses the **risks posed by technological advances** (possibility of identification, cross-checking, indefinite storage and subsequent processing of members' data and contacts by authorised or unauthorised third parties), as does the United Kingdom (non-private online discussions, risk of copying comments with unintended readership and longevity, risk of gathering information on judges), which must **lead to the application of the ethical principles set out in the Charter in the use of social networks** (Greece) and to the **utmost caution** (United Kingdom).

Failure to comply with these principles may have **certain consequences**. In **Switzerland**, a federal judge **can be disqualified** if he or she makes comments on a social network that create an appearance of bias in a court case. **Disciplinary sanctions** have been imposed in **Romania** for disseminating private information in a way that could harm the dignity of magistrates and justice in society. In **Lithuania**, the Committee on the Ethics and Discipline of Judges, asked to assess whether a judge had breached the rules of the ethical code by communicating on Facebook and publicly expressing opinions, found that the judge, given his or her duties as a magistrate, should have assessed the impact of his or her statements on the public's perception of the authority and impartiality of the judiciary, and had expressed his or her opinion, commented on and assessed public events in an insolent, impolite, incorrect, tactless, disrespectful and even abusive manner, in

disregard of the requirements of the Ethical Code regarding respect for human dignity, decency and the principles of exemplarity.

3. Participation in public debate (Q.2.2.3)

68% of respondents indicate that **members of their institution may participate, under certain conditions, in a public debate of a general nature** (for example on immigration or euthanasia), **provided that they do not specifically refer to a particular case in which they were involved**. They may participate **without conditions in Italy, Serbia, Spain and Sweden**. They **may not do so in Cyprus, Ireland, Malta, Romania and the United Kingdom**.

Where such participation is permitted, it must **not compromise the dignity, independence and impartiality of the judicial function** (Slovenia). It sometimes relates to the **scientific or academic freedom of the members** in question, who are professors or university assistants (Belgium, Estonia, Slovakia), **by following the ethical rules** applicable to them (Estonia), by **avoiding political or polemical comments** (Slovakia, Romania) in programmes and **media that provoke heated debate or sensationalism** (Spain), and by **avoiding commenting on decisions or opinions in which they have participated as magistrates** (Belgium). In **France**, it is not inherently forbidden for a member of the administrative jurisdiction to participate in a public debate of general scope, but the College of Ethics recommends **ensuring that his or her remarks cannot be interpreted as committing the Council of State** and that they are **expressed with caution and in compliance with the obligation to act in a reserved manner**. There is no objection in principle to members attending meetings, events or colloquia whose purpose is to **report on recent case-law** and to submit it to debate, insofar as it contributes both to the reputation of the court and to the proper administration of justice and insofar as the members **respect the secrecy of the deliberations** (as in Sweden, where judges may only quote the court's decisions, without commenting on current cases, and participate in the debate in their own name) and **do not take a position on current cases or questions of principle** (as in Greece). In Hungary, judges are **not allowed to comment publicly on any ongoing or concluded case**, particularly cases over which they have presided; similarly in Latvia, where a judge may only take part in a public debate on a particular case if it has already been heard. In the Netherlands, members are required **to convey the same message to the outside world about the broad outlines of the Council of State's policy**, and **to refrain from commenting** on the opinions of the Advisory Division and on decisions in contentious cases. In Poland, the National Council of the Judiciary stated in a 2016 opinion that a judge as a citizen has the right to participate in public debate with such **restraint** as not to create grounds for accusations of lack of impartiality, political involvement or violation of public decency.

In **Luxembourg**, the obligation to act in a reserved manner does not prevent magistrates from **taking part in collective public statements by legally constituted groups of magistrates**.

4. Teaching and intellectual works (Q.2.2.4 and 2.2.5)

All the Courts state that their members may write and publish articles or books and teach at a public university or private teaching establishment, 45% without conditions, 55% with certain conditions.

These activities are authorised as long as they do **not undermine the dignity of jurisdictional functions or the impartiality and independence of the institution** (Cyprus, Czech Republic, Finland, France, Hungary) or **interfere with the exercise of these functions** (Cyprus, Hungary) or **hinder them** (Poland). **Limits, particularly in terms of time**, are sometimes imposed on scientific teaching activities (Belgium, Italy, Poland, Malta), and **authorisation is required** (Finland, Spain, the Republic of Türkiye). In Switzerland, occasional teaching at universities or other training or continuing education institutions may be authorised, but **not permanent teaching mandates**, which involve regular commitment and are similar to employment. It is sometimes not possible to carry out these teaching or legal scientific research activities on a **paid** basis (Portugal, Malta). However, it is not always necessary to obtain authorisation, and educational and scientific activity outside working hours can be remunerated (Serbia). Finally, it is sometimes possible to **take advantage of the fact of being a member** of the institution in the exercise of these activities without committing it (France).

According to **just over half of respondents** (52%), **no prior authorisation from the head of the institution is required**. **In contrast, 42% of respondents** (Belgium, Estonia, France, Germany, Hungary, Italy, Lithuania, Malta, Netherlands, Poland, Spain, Switzerland) **require** such authorisation.

Authorisation is sometimes **required for any activity ancillary** to the duties of a judge (Switzerland), or **for teaching duties only**, but **not for writing a book or an article, which are 'productions of intellectual works'** (Belgium, France). In Germany, writing is only subject to a declaration requirement, while teaching requires authorisation, which can only be refused if the proper performance of the judge's duties is threatened. Where authorisation is not required, it is often **compulsory or advisable to inform the head of the institution** (Poland, Slovenia). When **authorisation is refused**, it is for **reasons related to the jurisdictional service to be performed** (Portugal) or because of an **undermining of the dignity of the office of judge or of impartiality and independence** (Poland).

5. Political activities (Q.2.2.6)

61% of respondents say that **members of the institution are not allowed to engage in political activities.** This is possible **without conditions in Sweden and subject to conditions in one third of the courts** (Austria, Czech Republic, France, Germany, Italy, Luxembourg, Netherlands, Norway, Slovenia, Switzerland).

Political activities, and even passive participation in political meetings by members, must **be avoided in some countries so as not to undermine the independence and impartiality of judges** (Croatia, Czech Republic, where judges may not join political parties; Finland; Slovenia). In France, members of the Council of State are **free to join a political party** by virtue of their freedom of opinion, as in Italy (freedom of expression and association).

Where political activity is possible, members of the Courts must be **careful not to undermine the credibility of an independent and impartial jurisdiction** (Austria, Germany, Luxembourg, Netherlands, Switzerland).

6. Electoral office

a) Standing for election (Q.2.2.7)

Half of respondents say that **members of their institution cannot stand for election.** This is **the case without conditions for 23%** of respondents (Belgium, France, Latvia, Netherlands, Poland, Slovenia, Sweden), and **with conditions for 23%** (Austria, Germany, Hungary, Italy, Luxembourg, Norway, Portugal).

A number of **negative responses** indicate that members of the Court must **resign before standing for election** (Czech Republic).

Certain **elected offices are incompatible with that of judge of the Court**: member of the Senate or the House of Representatives/national parliament and the European Parliament in the Netherlands and France; member of the national parliament and European Parliament in Austria; member of the House of Representatives or senator in Belgium; member of the national and European parliament, regional councillor, mayor or town councillor in Italy; office of town councillor and member of parliament in Luxembourg).

In **France**, members of the Council of State are **free to stand as candidates in any election**, but members of the administrative jurisdiction **may not use their membership of the institution to support a political activity**. The member/candidate must **inform the vice-president in advance**. The duty of reserve remains and the campaign must **not affect the member's availability to carry out his or her duties**. In **Hungary**, any judge wishing to stand as a candidate in parliamentary or local elections, or in elections to the European Parliament, **must notify his or her employer beforehand**. The **judge's service relationship is then suspended** from the date of notification until the election results are published or, if he or she is elected, until his or her mandate is verified. In **Poland**, a judge standing for election as a Member of Parliament, senator or councillor is entitled to **unpaid leave for the duration of the election campaign**. Failure to inform the president of the Court of one's intention to stand in legislative elections constitutes a disciplinary offence. In **Romania**, judges of the administrative and fiscal courts may stand for election if they apply for **long-term leave of more than 1 year and less than 15 years**. During this period, they are not subject to the status of magistrate and may under no circumstances rely on their status as judge.

b) Exercising elected office and judicial functions (Q.2.2.8)

If a member of the institution is elected, according to three quarters of respondents, he or she may not continue to carry out his or her duties. **Only France indicates that this is possible**.

In **France**, members of the Council of State can, in principle, like any civil servant, **combine an elected office with their functions (except as a senator, member of parliament or member of the European Parliament), a local elected office**, therefore. When not affected by an incompatibility, the accession of a member of the Council of State to a **significant local executive mandate**, such as president of a regional or departmental council or mayor of a large city, **justifies, for reasons of availability, the member's secondment** or, at the very least, his or her **placement on a part-time basis**. In a recommendation, the College of Ethics considers that holding the office of deputy

councillor, and a fortiori holding the office of municipal, departmental or regional councillor without executive responsibilities, does not in itself raise any ethical objections.

In **Latvia and Belgium**, judges may be nominated as candidates in elections, but **lose their position as judge if elected**. In **Austria, Hungary and Slovenia**, they are **suspended** from office **for the duration of the electoral term**. In **Luxembourg**, due to the incompatibility of the functions of member of the Court with the mandates of municipal councillor and Member of Parliament, in the event of election, the magistrate would have to choose whether to remain a magistrate and therefore **renounce his or her electoral mandate or** accept the latter and **renounce his or her position as magistrate.**

In Sweden, certain **positions within local municipalities are held on a part-time basis** and can be **maintained while working as a judge**. In contrast, if a judge is elected as a **Member of Parliament, he or she must resign, at least for the duration of his or her term of office**, and may then reapply for a judicial post once his or her political mandate has expired. **The election of the Parliamentary Ombudsman** (*Justitieombudsmannen*) has been the subject of debate. He or she is elected by Parliament, but more often than not, interim judges are selected, sometimes from the highest courts. To take up this position, the judge must resign from the court in question and, if he or she is not re-elected after 4 years, must look for a new position, like any other unemployed person.

In Italy, during their term of office as a national or local elected official, members of the judiciary must necessarily be **placed in a waiting situation, in a position 'outside their role'. Magistrates who are candidates** in European, political, regional or administrative elections and **who have not been elected are reinstated in a different jurisdiction** from the one in which they were candidates in the elections **and are excluded from certain functions for a period of 3 years** (Public Prosecutor's Office, managerial functions, preliminary investigation judge). Italian law also provides for the **reinstatement under certain conditions** (outside the court system, in non-jurisdictional functions) **of magistrates who have held an** electoral **mandate** in the European or national Parliament or as a member of the Government, regional or provincial councillor, president or councillor in the Council of Regions, mayor or municipal councillor, regardless of the duration of the mandate or assignment.

c) Return to the jurisdiction after an elected office (Q.2.2.9)

If a member of the institution is elected, he or she may not, in the event of full-time elective office, return to the institution on expiry of his or her term of office, according to one third of respondents (35%): in Luxembourg, Bulgaria, Cyprus, the Czech Republic, Estonia, Latvia, Malta, Serbia, Sweden, Slovakia and Switzerland. **This is possible without conditions in Germany, Luxembourg, Slovenia and Spain**. This is **possible under certain conditions according to one third of respondents** (Croatia, Hungary, Italy, Luxembourg, Netherlands, Norway, Poland, Romania, United Kingdom).

Some Courts indicate that judges must, **after an elective mandate, undergo a new ordinary selection procedure in order to resume judicial functions** (Estonia, Netherlands, Slovakia, United Kingdom, which specifies that there is no such practice and that the person concerned should resign from his or her political party). In **Croatia**, after the expiry of their elective mandate, former judges must, in order to be reinstated on the High Administrative Court, reapply for the notice announced

by the State Council of the Judiciary and **follow the entire electoral procedure** as if they were standing for the post for the first time, due to the lack of distinction between registered candidates. In **Hungary**, on expiry of their term of office, former members who wish to be re-appointed as judges, if they meet the necessary conditions, must be **appointed by the President of the Republic, on the recommendation of the president of the National Office of the Judiciary**.

Luxembourg points out that, while it cannot be ruled out that elected magistrates who have been granted unpaid leave during their term of office would subsequently return to the court of which they remained a member, this **would be an unhealthy situation that circumvents certain incompatibilities provided for by law**.

A **return to the jurisdiction after an elective mandate is possible under certain conditions in several countries**. In the Czech Republic, on expiry of their term of office, former judges must be **reappointed by the President of the Republic**. In Poland, it is possible to return to judicial office after an elective term **if the interruption in judicial duties does not exceed** 9 years, unless they have been judges or prosecutors in international or supranational judicial bodies.

With regard to the **conditions for returning to the Court**, France states that in a 2013 opinion, the College of Ethics specified that a **period of 5 years elapsing** since the cessation of elective functions was sufficient for there to be, in principle, **no further general obligation to dismiss** the member concerned, subject however to cases of particular sensitivity, in particular electoral disputes.

7. Signing a petition (Q.2.2.10)

One **third of respondents** say that a **member of the institution may sign a petition without conditions** (Austria, Croatia, Latvia, Netherlands, Norway, Portugal, Serbia, Slovakia, Sweden, Republic of Türkiye). **Half** of them (55%) say that this is **possible under certain conditions**. This is **not the case in Greece and Malta**.

Respondents mentioned **a number of conditions** under which a member could sign a petition: the requirement that this manifestation of freedom of expression and thought be compatible with the **duty to act in a reserved manner** (Belgium); the **absence of any mention of the member's position** (France) or **status** (Bulgaria); the **requirement to safeguard the court's reputation and to respect the principles of independence and impartiality** (Croatia, Finland, Italy, Lithuania, Serbia, Sweden, United Kingdom); the requirement not to sign a **petition relating to a matter connected with the member's duties as a judge** (Italy, Luxembourg). Spain states that it is not possible for a judge to sign a petition when it is a question of getting involved in political matters, but that on the contrary it is possible when it is for the benefit of his or her office.

8. Taking part in a demonstration (Q.2.2.11)

A member of the institution may take part in a demonstration under certain conditions, according to 71% of respondents, and without conditions in the Netherlands, Slovakia and Sweden. This is **not the case in Croatia, Ireland, Latvia and Malta**.

The respondents mention **conditions similar to the previous point regarding the exercise of freedom of demonstration, a corollary of freedom of opinion**: ensuring that there are no **repercussions for the cases being heard** (Belgium, Luxembourg) and the requirement of **impartiality** (Croatia); preserving the **confidence of litigants** in the integrity of the Court, not giving rise to any **suspicion of partiality and not undermining the dignity of their office** (Cyprus, France, Greece, Netherlands, Portugal, Serbia, Romania, Slovakia, Spain); showing **reserve and discretion and not proselytising** (Luxembourg).

The **United Kingdom** says that the ability to demonstrate depends on the circumstances, but that **in most cases it is not appropriate** for judges, who must refrain from taking part in public demonstrations that could **diminish their authority** as judges or create a perception of bias in subsequent cases. It is up to the judge to assess whether or not a particular activity or behaviour is appropriate.

In **Spain, while the Ethics Committee has advised judges against attending political demonstrations and rallies** because of the impact on the image of the judiciary, it has **approved their participation in demonstrations called 'in response to threats to democracy, the rule of law and fundamental freedoms'**.

However, **political demonstrations are sometimes prohibited** for members of the Court: **Cyprus, Romania**. They are **also forbidden to strike**, particularly in **Estonia** and the **Czech Republic**.

9. Application of the law and the 'conscience clause' (Q.2.2.12)

Finally, all Courts indicate that one of their members **cannot 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 or her to do so, failed to inform his or her patients about the possibility of terminating their pregnancy.

The responses make it clear that **the judges of all the Courts must apply the law**.

In France, although this rule appears in the Compendium of Ethical Obligations for Judicial Magistrates but not expressly in the Charter of Ethics of Administrative Jurisdiction, the members of the Council of State **may not, without breaching their duty of neutrality and loyalty, give precedence to their personal convictions, whether political or religious, over the law**, which is the expression of the general will and which they are responsible for applying.

In the **Czech Republic**, judges are bound by the law and cannot refuse to apply it, but they must interpret it according to their conscience. In a 2018 decision, the Disciplinary Chamber of the Court mentioned **conscientious objection** as one of the **reasons that may justify failure to comply with binding legal advice and instructions from a higher court**, which generally constitutes disciplinary misconduct. However, this conscientious objection has never actually been invoked.

See appendix entitled 'Case studies'

III. Recruitment of members

A. Who can be recruited by the Supreme Administrative Courts? (Q.3.1)

1. Number of Court members recruited each year (Q.3.1.1)

Some Courts indicate that the average number of members recruited each year **varies and depends more on vacancies and member retirements** (Austria, Belgium, Croatia, Czech Republic, Cyprus, Hungary, Italy, Ireland, Netherlands, Poland, Portugal, Serbia, Slovenia, United Kingdom).

Recruitment is therefore not always organised on a regular, pre-established basis. In **Italy**, there is no rule on the chronological timing of recruitment to the Council of State, which is carried out in three separate ways (competitive examination; career development of regional administrative court magistrates; government appointments) depending on vacancies and available funding. In **the Republic of Türkiye**, when the number of vacancies on the Council of State reaches four, the Presidency of the Council of State informs the Presidency of the Republic and the Ministry of Justice. In **Romania**, recruitment is planned every year to balance staff turnover, but not all posts offered through competitive examinations are always filled.

The arrival of new judges is **necessarily more limited in Courts with few members**. In **Cyprus**, it is only if the post of one of the 9 permanent members of the Court becomes vacant that the President of the Republic appoints a new member. In **Estonia**, the last appointment of a new judge among the 5 members of the Court dates back to 2018. Recruitment is also necessarily limited in **Luxembourg**, where the Court has only 6 members (seven from 2025). In **Switzerland**, where federal judges have a **6-year term of office**, posts may be filled again if a vacancy occurs during the term of office, for the remainder of the term.

However, the **statistics for the last few years** allow us to identify **trends in new recruitments in countries where the number of recruitments is not organised in advance** (on average 3 new members to the Court in Austria over the last six years; 1 to 2 in Belgium; 3 in Poland in 2023; 1 or 2 in the Czech Republic and Slovenia; 1 or 2 in Sweden as well as 5 to 10 assistant judges). In **Slovakia**, where the Court was created as recently as 2021, a single judge was recruited in 2022, then 3 in 2023.

The **number of recruitments per year is relatively fixed and up to 3** in some Courts (3 in Germany; 3 new auditors on average in Greece; less than one in Finland; 1 in Latvia and Norway). **France** states that the Council of State, which has more members than some other Courts, recruits **between 21 and 30 new members each year** (5 to 6 auditors, 4 or 5 masters of requests, between 7 and 10 masters of requests in extraordinary service, 2 to 5 councillors of state and 3 to 4 councillors of state in extraordinary service).

2. Recruitment grade for members (Q.3.1.2)

In **many countries, new members of the Courts are recruited at the same grade**, but this is **not the case in certain countries**.

In **France**, the Council of State can be accessed through a number of different routes, **at different grades**, either as an **auditor**, a **master of requests** or a **councillor of state**. In **Belgium**, the Council of State also recruits **assistant auditors and councillors** according to different procedures. In **Greece**, the principle is recruitment at auditor level and 1/5 of the posts of councillors of state are filled by judges from the courts of appeal. In **Italy**, half of the councillors of state are **appointed from among the councillors of the regional administrative courts** on the basis of their qualifications following a procedure to assess their activity, one quarter are recruited by **resolution of the Council of Ministers** and appointed by decree of the President of the Republic and a final quarter of the members are recruited **by competitive examination**.

In **Luxembourg**, recruitment to the Administrative Court is also carried out **by grade** (president, vice-president, first councillors and councillors) according to vacancies. In the **United Kingdom**, Supreme Court judges have **three ranks**, in descending order of seniority (president, vice-president and other judges). **Spain** states that members of the Supreme Court are appointed on the basis of **both seniority and merit** for judges or magistrates with at least 15 years' seniority, and that a **quota is set for lawyers with recognised prestige** and an outstanding professional career in the field of law.

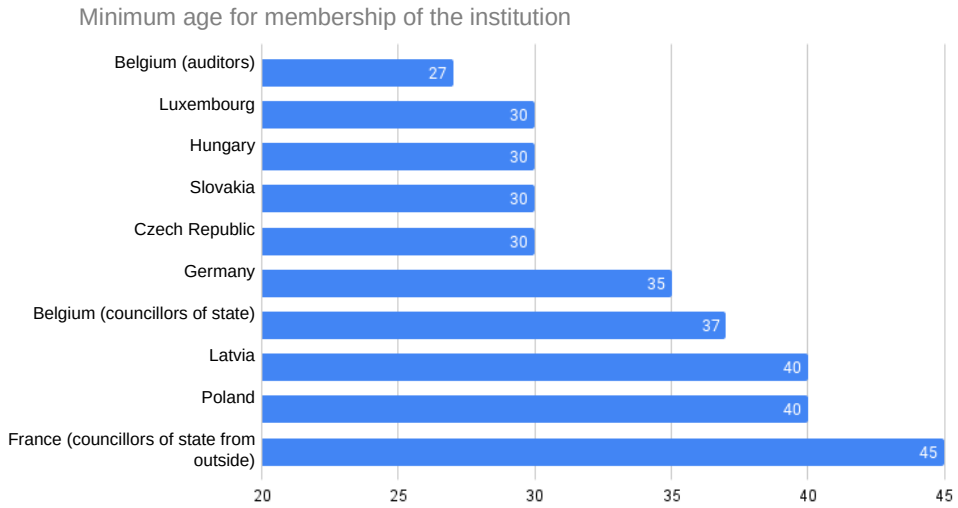
In some countries, **only the recruitment of the president or vice-president differs** from that of the other members of the institution (Austria, Netherlands, Norway).

Finally, in **Germany**, **'junior' federal judges are elected** by the **Electoral Committee of the Judiciary** (made up of the 16 justice ministers of the federal states (*Länder*), 16 members of the Federal Parliament (*Deutscher Bundestag*) and the Federal Justice Minister). **Senior judges, known as presiding judges**, are appointed by the Federal Justice Minister on the basis of merit from among the judges of the Federal Court who have been practising there for at least 5 years. The **President and Vice-President** are also chosen by the Federal Justice Minister and approved by the Federal Government, in practice with the prior support of the parliamentary factions in power. The designated court president has often previously been a member of the court, but in some cases an external appointment is possible.

3. Age requirements for recruited members (Q.3.1.3)

Age requirements are imposed on the recruitment of new members **according to half the respondents** (52%), in Belgium, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Latvia, Luxembourg, Norway, Poland, Portugal, Slovenia, Switzerland and Slovakia.

The minimum age for membership of the institution varies from country to country (e.g. **30** in Luxembourg, Hungary, Slovakia and the Czech Republic; 27 for auditors and 37 for councillors of state in Belgium; **35** in Germany; **40** in Latvia and Poland; **45** for councillors of state appointed from outside in France). A **maximum age is sometimes stipulated**: for example, in **Greece**, appeal court judges cannot be promoted to the rank of councillor of state if they are over 64; in **Italy**, councillors of state can only be appointed from the age of 55 until they are 67.



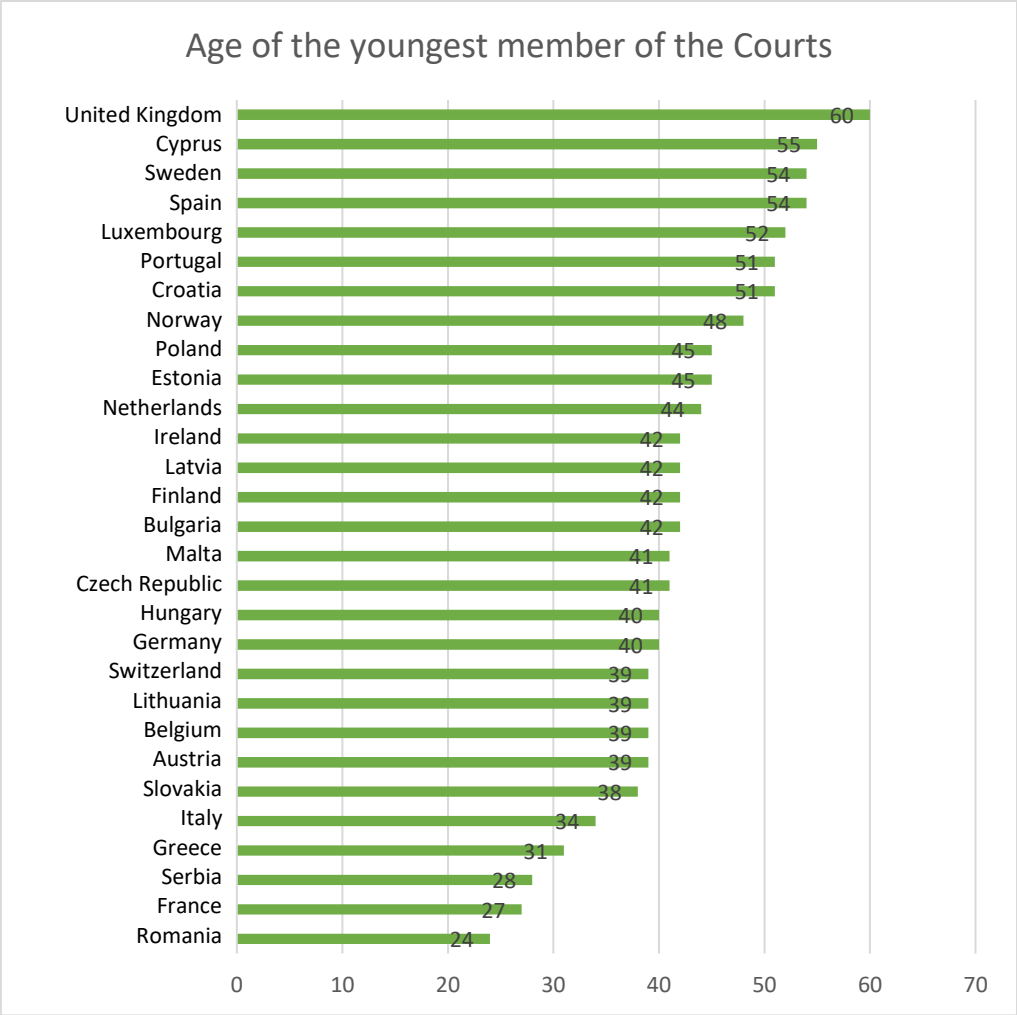
Where there is no age requirement, **experience in the legal field may be required**, averaging around 10 years in Austria, Bulgaria, Cyprus, Malta and Serbia. In the **Netherlands**, there is no explicit age requirement, but new members must be able to work for the Council of State for at least 8 to 10 years and are selected on the basis of their specialist knowledge and professional experience. In **Finland** too, there is no age requirement as such, but to qualify for appointment as a member or President of the Supreme Court or the Supreme Administrative Court, you must be an eminent lawyer with significant professional experience.

The majority of respondents indicate that there is an **upper age limit for membership** of the Courts, which can be placed at the **upper end of the sixties, around 68 to 70 years of age**.

4. Age of the youngest members of the Courts (Q.3.1.8)

The age of the youngest members of the Courts varies considerably from one institution to another, **given the recruitment methods** described above.

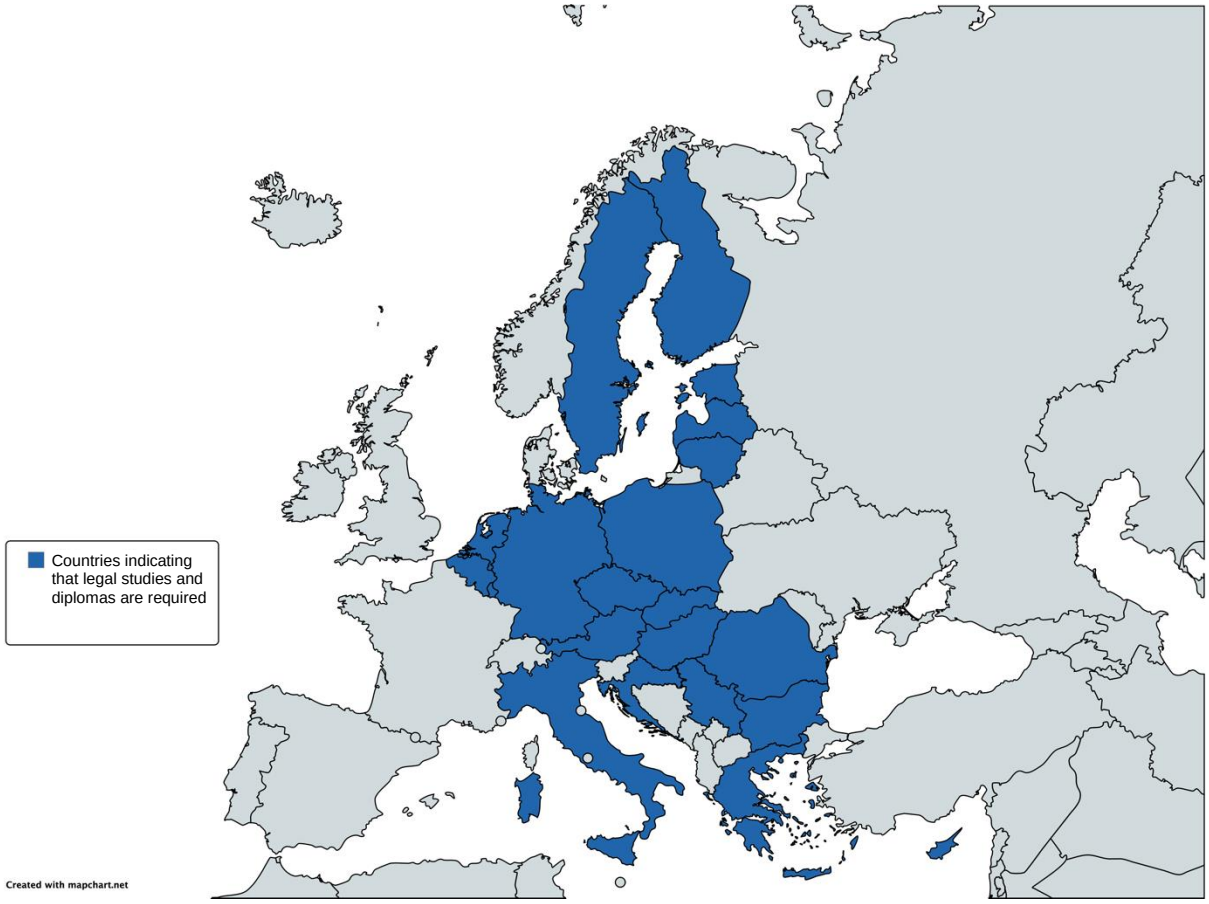
The youngest member is **24 in Romania**, 27 in France and 28 in Serbia. These members are in their **thirties** in Austria, Belgium, Greece, Italy, Lithuania, Slovakia and Switzerland, and in their **forties** in Bulgaria, the Czech Republic, Estonia, Finland, Germany, Ireland, Hungary, Latvia, Malta, the Netherlands, Norway and Poland. They are **over fifty** in Croatia, Cyprus, Luxembourg, Portugal, Spain, Sweden, and the **United Kingdom, where the youngest member is 60**.



5. Qualifications of recruited members (Q.3.1.4)

Qualification requirements are imposed on the recruitment of new members in 81% of Courts. This is **not the case in Bulgaria, Ireland, Norway, Spain and the United Kingdom** (no response from the Republic of Türkiye).

Law studies and diplomas are required in a large number of countries (Austria, Belgium, Bulgaria on first appointment, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Romania, Sweden, Serbia, Slovakia, Netherlands). The **Netherlands** stipulates that members of the **Administrative Claims Division** must hold a **master's degree in law** and that members of the **Advisory Division** must have demonstrated **exceptional competence or expertise** in law, administration, justice or related fields. In **Germany**, in addition to the requirement to have studied law, two **state examinations** are necessary for any post as judge or lawyer, the first taken after a career in law at university, the second after completion of the two-year '*Referendariat*'.



In **Portugal**, candidates are ranked on the basis of **their relative merit, taking into account an assessment of their entire career** (past service, marks obtained in competitive examinations or judicial training courses, university and post-graduate studies, scientific work, activities in the field of forensic science or legal education and any other factors indicating the candidate's suitability). In **France, certain access routes to the Council of State are subject to qualification requirements**. While, in law, **appointments from outside to the rank of councillor of state** are not conditional on possessing a diploma, these appointments are made after consulting an integration committee of six members chaired by the Vice-President of the Council of State, which 'takes into account the **functions previously performed by the person, their experience, and the needs of the body**'.

Where there is no requirement for initial professional training, a compulsory aptitude test or a requirement to hold a diploma for recruited members, **significant professional experience is required** (**United Kingdom, Switzerland**).

6. Recruitment on completion of university or training school studies (Q.3.1.5)

It is **not possible to become a member of the Supreme Administrative Courts directly after completing university studies or, where applicable, after attending a training school, except in Germany**. In Germany, however, this possibility is rather theoretical, given the requirement for candidates to be at least 35 years old, to have passed two state examinations and to have had their

professional abilities assessed by the Presidential Council of the Federal Administrative Court prior to election, which necessarily takes into account significant professional experience.

In **France**, it used to be possible to become a member of the Council of State after graduating from the *Ecole nationale d'administration*, but this **will no longer be possible following a reform of the senior civil service in 2022.**

7. Professional experience of recruited members (Q.3.1.6)

With the exception of Switzerland, all the Courts indicate that **prior professional experience is required** to become a member of the institution.

If **Switzerland's** answer is in the negative, given that a Federal Court judge was appointed without any prior practical experience in the courts or at the bar, but did have a bachelor's degree, a doctorate and an accreditation, this is **not the general rule**.

Prior professional experience is required, **albeit of no particular length** in Estonia, Finland, Germany, Hungary, the Netherlands and Norway (where this is not a statutory requirement). A **minimum period of prior professional experience is sometimes set for members, ranging from 1 to 20 years**: 1 year in Luxembourg as a lawyer; 2 years in France for new auditors, 4 to 10 years for masters of requests and 20 to 25 years for councillors of state; 8 years in Lithuania; 10 years in Austria, the Czech Republic, Poland, Serbia, Slovakia and Belgium for councillors of state (3 years for auditors); 12 years in Croatia and Cyprus; 15 years in Spain and the Republic of Türkiye (3 years for judges already in practice); 12 years in Croatia and Cyprus; 15 years in Spain and the Republic of Türkiye (3 years for judges already in practice); 18 years in Romania; even 20 years in Slovenia and Sweden (where 15 years of judicial service or 20 years' professional experience are required).

The **United Kingdom** specifies that a person may be appointed to the Court if they have held **'senior judicial office'** for at least 2 years, if they meet the **'eligibility requirement for judicial appointment' on a 15-year basis** (qualified lawyer) or if they are a **'qualified practitioner'** (solicitor). In **Greece**, entry by examination to the School for the Magistracy requires 2 years' practice as a **lawyer**, a **doctorate in law with one year's legal practice**, a degree in law and 3 years' service as a **civil servant in the registry**, or being a **justice of the peace or a member of the** State **Legal Council**. In **Malta**, in order to be a magistrate, it is necessary to have practised as a **lawyer** for a period of at least 7 years, and in order to be a judge of the Court, it is necessary to have practised as a **lawyer** in the courts of Malta for a period of at least 12 years, or **to have been a magistrate**, or to have practised **partly as a lawyer and partly as a magistrate** for a period of at least 12 years. In **Latvia**, it is necessary to be a **judge of a** district (city) **court** of a regional court with at least 10 years' total seniority in the position of judge, or to have at least 15 years' seniority as a member of the **teaching staff of a higher legal education establishment**, as a **sworn lawyer** or as a **prosecutor**, or to be a **former judge of the Constitutional Court, or a judge of an international or supranational court**. In **Portugal**, **judges of the Central Administrative Courts** with 5 years' service in that category, **deputy public prosecutors** with 5 years' service in that category, provided that they have worked for 10 years in the administrative and tax jurisdiction, on the public prosecutor's advisory board, or as a legal auditor, as well as **lawyers of recognised merit with at least 20 years' proven professional**

experience in the field of public law, in particular through public office, higher education or research, or in the service of the public administration, may be judges at the Court. Lastly, in **Belgium**, councillors of State must either have succeeded in the **competitive examination** for deputy auditors, the competitive examination for law clerks at the Constitutional Court, the competitive examination for law clerks at the Court of Cassation, the competitive examination for deputy auditors at the Court of Audit or the professional aptitude test, or have held a **senior administrative position in a Belgian administration or public body**, or hold a **doctorate in law or be an associate professor** of law, or have worked as a **magistrate in the judiciary or at the Aliens Litigation Council**, or hold a **law teaching post at a** Belgian **university**, or lastly have practised as a **lawyer** for at least 20 years as their main occupation or have practised for at least 20 years a **profession that requires a very good knowledge of the law**, including at least 15 years as a lawyer.

8. Access for members of lower courts (Q.3.1.7)

The **vast majority of respondents (87%)** say that **members of the lower courts can become members of the Supreme Administrative Court**. This is **not the case in Portugal** and **Slovenia**.

It is even clear from the Courts' responses that **their members generally come from the lower courts**. This is the case **for all members in Cyprus** and **Luxembourg** (with the exception of the first recruitments in 1996 in Luxembourg), and for almost 100% of members in **Germany**. **In Romania**, all Supreme Court judges have previously worked for a court of appeal. In **Spain**, **four out of five positions** on the Supreme Court are awarded to judges with 10 years' seniority and a legal career of at least 15 years. In the **United Kingdom**, it has become very common in recent years for Supreme Court judges to have significant experience in the lower courts - **11 out of 12 judges at present**.

Half of the members are appointed from among the councillors of the regional administrative courts in **Italy** and from among the administrative divisions of the regional courts in the **Czech Republic**.

In **Slovenia**, **all members of the lower courts may be appointed** to the Supreme Court as part of their career advancement, on condition that they **pass a public competitive examination** organised by the Judicial Council, as is the case for all other candidates for these posts.

In **Croatia**, **judges of lower courts** may be **temporarily appointed** to the High Administrative Court **for a period of 4 years**, if the court's workload so requires. They are then assigned as specialist senior councillors and are currently two in number.

In **France**, where a majority of members of the lower courts are not recruited to the Council of State, **a president of the body of magistrates** of the administrative tribunals and administrative courts of appeal is nevertheless appointed to the grade of councillor of state in ordinary service **for each 2-year period**. In addition, **each year, at least two members of this body who have reached the grade of first councillor** are appointed master of requests to the Council of State if they are at least 35 years old and have completed 10 years of actual public service. Administrative magistrates called upon to perform the duties of **President of an Administrative Court of Appeal or the National Court of Asylum** are appointed to the grade of councillor of state, '*hors tour*'.

9. Terms of office of members of the Courts (Q.3.1.9)

As a general rule, members of the Courts are **recruited for an unlimited period**, i.e. **until retirement**. In **the Republic of Türkiye**, by contrast, members have a **12-year term of office**, and in **Switzerland a 6-year term**, **renewable** without limitation up to the age of 68.

B. Recruitment procedure for the Courts (Q.3.2)

1. Intervention of the executive branch in the recruitment and appointment process (Q.3.2.1 and 3.3.1)

The **executive branch does not intervene in the procedure for recruiting members of the Courts, according to 58% of respondents**. **On the other hand, this procedure is used according to 39%** of the Courts, in Belgium, Bulgaria, Cyprus, the Czech Republic, Finland, Germany, Ireland, Italy, Lithuania, Poland, Sweden and the Republic of Türkiye.

The appointment of the members of the Courts results from a decision of the executive branch according to half of the respondents (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, France, Ireland, Lithuania, Luxembourg, Netherlands, Norway, Sweden, The Republic of Türkiye, Slovakia). It **also depends on the judicial branch** (the president of the institution or a panel of judges) according to **one third of countries** (Austria, Bulgaria, Croatia, Czech Republic, France, Greece, Latvia, Malta, Romania, the Republic of Türkiye) or takes place **in other ways according to half of the respondents** (Cyprus, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Serbia, Slovenia, Spain, United Kingdom).

It is the **legislative branch** that intervenes in the recruitment process in **Switzerland**. The appointing authority is **the Parliament in Estonia and Latvia**, on a proposal from the president of the Court, and in **Slovenia**, on a reasoned proposal and by a two-thirds majority of the Judicial Council following an open competitive examination.

It sometimes involves a collegiate body. In **Croatia**, the appointment procedure is carried out by the **State Judicial Council**, an autonomous and independent body. In **Portugal**, the appointment of judges to the administrative and tax courts is the responsibility of the **High Council**, a collegiate body made up of two members appointed by the President of the Republic, four members elected by Parliament and four judges elected by their peers.

The executive branch, the government and the President of the Republic sometimes intervene to varying degrees in the recruitment and appointment of members, although it is usually specified that the executive branch has **rather formal powers** and **does not really interfere in the selection process**.

The appointing authority for members is **quite often the President of the Republic**: in **Italy**, one quarter of the members are appointed after being identified by a resolution of the Council of Ministers; in **Lithuania**; in **Poland**, on the basis of **motions by the National Council of the Judiciary**; in **Cyprus**, on the advice of the Judicial Advisory Council; in **Finland**, on a proposal by the plenary assembly of the Court; in **Hungary**; in **Slovakia,** after a selection committee including a representative of the Ministry of Justice; in **Greece**, where it is a formality, the administration being

required to appoint the students of the School for the Magistracy and the persons chosen by the Council of the Administrative Magistracy. In the **Czech Republic**, the President of the Court proposes potential candidates to the Ministry of Justice for approval by the government and subsequent submission to the President of the Republic. Both the **Ministry and the President of the Republic**, who has discretionary powers of appointment, can block the selection of a particular candidate. **In practice**, however, the Ministry, which merely checks that the legal requirements for appointment have been met, the government and the President of the Republic have **never rejected a candidate selected by the President of the Court**. In **Ireland**, the process involves an independent Advisory Committee for Judicial Appointments, chaired by the president of the Supreme Court, which proposes a list of candidates to the Minister for Justice, who then proposes an appointment to the government, before the official appointment is made by the President of Ireland.

In **France**, councillors of state, whether in ordinary or extraordinary service, are appointed **to this grade by decree of the Council of Ministers**, on the recommendation of the Minister for Justice, while masters of requests are appointed by decree, on the recommendation of the Minister for Justice, and masters of requests in extraordinary service and auditors **by the Vice-President of the Council of State**. While the Vice-President and Section Presidents of the Council of State are appointed to **these positions** by the President of the Republic, the Deputy Presidents of the Litigation Section and the Chamber Presidents of the Litigation Section are now appointed to these positions by the Vice-President.

In **Germany**, the appointment is the responsibility of the **Federal President**, who has delegated it to the Federal Justice Minister, who appoints the candidates previously elected by the Electoral Committee of the Judiciary. In **Austria**, judges are appointed to the Court by the Federal President on the basis of a proposal from the Federal Government, which must correspond to a proposal of three nominations drawn up by the plenary assembly of the Court or a committee elected from among its members. The Federal Government may not propose a candidate who has not been ranked on the list, but is not obliged to choose the candidate ranked first.

The government is sometimes responsible for appointing members. In **Sweden**, in the same spirit as in **Finland**, the government does not, however, participate in the preparation of decisions and is presented with a binding proposal from an independent appointments committee, which has ranked the candidates deemed suitable. In practice, the government, which can choose not to follow the commission's classification, almost never does so. In **Norway**, the president of the Supreme Court submits a proposal to the ministry and the official appointment is made by the King in Council, i.e. the government. To date, the government has never gone against the recommendation of the Judicial Appointments Council for a Supreme Court judge.

It is sometimes the King, as in the **United Kingdom,** who appoints the members of the Supreme Court, after the Lord Chancellor has convened a statutory selection committee in the event of a vacancy, consulted the First Ministers of Scotland and Wales, the Northern Ireland Judicial Appointments Commission and senior judges, approved the proposal by the Lord Chancellor and then notified the Prime Minister of the name of the successful candidate. In the **Netherlands**, the executive branch plays no role in the selection of new members, who are appointed by **royal decree**.

In **Luxembourg**, the appointment is made by decree of the Grand Duke under the countersignature of the Minister for Justice, following a proposal for a candidate from the National Council for the Judiciary, which he is required to follow.

There are also **mixed processes**. In **Belgium**, councillors of state are selected by the General Assembly of the Council of State, which draws up a list of three candidates, which is then forwarded to Parliament, which in turn can interview the candidates and draw up its own list. The Minister for the Interior may reject a candidate who does not meet all the required conditions or if he or she considers that the number of councillors of state coming from the Auditor's Office is too high in relation to the number of councillors coming from outside. Parliament may also object. In the event of a rejection, the General Assembly of the Council of State must make a new nomination. In **Germany**, the right to present candidates to the electoral committee of the judicial branch belongs to the members of this committee, who are Justice Ministers and Members of Parliament. Many ministers base their proposals on the recommendations of the presidents of the higher administrative courts of the *Länder*.

2. Personal preliminary interview (Q.3.2.2 and 3.2.3)

The recruitment procedure for members of the Courts involves a **personal interview, according to 81% of respondents**. This is not the case in Bulgaria, Greece, Ireland, Poland and the Republic of Türkiye. All the Courts state that when a personal interview is scheduled, it is designed to **assess the candidate's motivation and legal knowledge**.

3. Recruitment procedures according to grade (Q.3.2.4)

In the case of recruitment to the institution at different grades, the **procedure varies according to the grade for which the candidate is applying in only one third of countries** (France, Greece, Italy, Luxembourg, Malta, Norway, Romania, Serbia, Spain, United Kingdom).

Some **examples of procedures** are provided by the Courts. In **France**, access to the functions of auditor, decided by the vice-president of the Council of State, is subject to the opinion of an advisory committee. Appointments to the grades of master of requests and councillor of state are generally proposed by the integration committee, as is the case for councillors of state appointed by the government from outside. Lastly, members from the administrative courts are appointed on the recommendation of the Vice-President in consultation with the Section Presidents. The composition of the advisory committee and that of the integration committee differ, as do the evaluation grids used. In **Greece**, auditors are recruited after leaving the School for the Magistracy, while the promotion of appeal court judges is decided by the High Council of Administrative Jurisdiction. In **Italy**, the recruitment process differs depending on whether it involves a competitive examination or appointment by the government. In the latter case, a special committee is responsible for assessing candidates' suitability for the post, as well as their educational background, before giving its opinion on the proposal for appointment submitted by the Council of Ministers. In **Luxembourg**, candidates for the post of President of the Court are subject to a compulsory profile and personal interview, whereas these are optional for the recruitment of candidates for other posts at the Court.

4. Challenging the appointment of members (Q.3.3.2)

a) Competent court

The appointment of members of the Courts **may be challenged by legal action at the time of appointment according to 55% of respondents** (Austria, Belgium, Bulgaria, Estonia, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Norway, Portugal, Romania, Serbia, Slovenia, Spain. Only in **Luxembourg, Malta and Norway** is such a challenge possible **by way of exception on the grounds of the regularity of the composition of the members of the panel**.

Where it is possible to challenge the appointment of members, it is **generally the Supreme Administrative Court that is itself competent** to hear the case (Belgium, Bulgaria, France, Greece, Estonia, where the Supreme Court also acts as a court of constitutional review and whose Chamber of Constitutional Review, made up of active members of the Supreme Court, examines the case); in **Lithuania**, a candidate may lodge a **complaint with the Supreme Court** within 7 days of being notified of the results of his or her **individual assessment** by the selection committee or after the announcement of the committee's conclusions, concerning significant breaches of procedure that may have influenced the objective assessment of the candidates who took part in the selection). In Germany, the challenge is brought before the **administrative court of first instance** in whose jurisdiction the federal court concerned is located.

In **Croatia, only the Constitutional Court** can hear a constitutional complaint against a decision to appoint a judge. In **Slovakia**, a candidate who is not nominated by the President of the Republic may lodge a constitutional complaint with the Constitutional Court.

In some countries, **no challenge is possible**: in **Finland**, where the **decisions of the President of the Republic** cannot be appealed; in **Latvia**, where the **decision of Parliament** cannot be appealed, but a candidate may appeal against the appointment procedure to the Judges' Disciplinary Committee. In **Sweden**, the procedure is entrusted to a special appeals committee and its decision cannot be appealed. However, an unsuccessful candidate can **sue the government for damages before a general court**, even if the chances of winning such proceedings are slim.

In **Slovenia**, **judicial review is limited** to formal, material and procedural aspects, since the Judicial Council has discretionary powers with regard to the choice of candidates.

b) Right to a fair trial where the Courts themselves have jurisdiction (Q.3.3.3)

Scenarios in which **the Court itself hears appeals against the appointment of its members are rare in practice**. In any event, the Courts ensure that **the right to a fair trial is respected**.

In **France**, this difficulty is overcome in the following way: the Litigation Section has jurisdiction to hear applications challenging the appointment of one of the members of the Council of State, which have been prepared by the **departments of the General Secretariat of the Council of State**, **which are structurally separate from the Litigation Section**. In addition, **the member** whose appointment is being challenged **may not sit on the panel**. In **Portugal** and **Italy**, **persons involved in the recruitment process or who have given their opinion may not sit** on the panel. In **Belgium**, each time a new councillor of state is nominated, the general assembly sets up a **board of appeal made**

up of three sitting councillors of state, who may not take part in the selection procedure for the new councillor of state and **will rule on the legality of the appointment** in the event of an appeal.

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