

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

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

Questionnaire

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

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

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

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

Swedish answers in blue below!

I Ethics: Legal and institutional framework

1.1. General framework

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

☒ Yes

☒ No.

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

☐ in the Constitution

☒ in the law



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☒ in a regulatory text

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

☐ other

Please explain if necessary:

There is no regulation in Swedish positive law concerning the ethical obligations of public officials. However, in the constitution (The Instrument of Government/Regeringsformen) there are provisions on the obligations of all public official to follow the law, to treat like cases alike and always only take objective factors into account when doing their duties. It is also mentioned that they should always be neutral and impartial. (Chapter 1 § 1 and § 9.)
There is a document addressing general issues of ethical nature in relation to public service in the text *Den gemensamma värdegrunden för statsanställda*, (The common ethical foundation for public officials) from 2009, published by the government but authored by an independent expert group. In addition to this there are non-binding ethical guidelines sectors-wise and this is also true for judges, for whom such guidelines were introduced in 2011 (Good judicial practice/God domarsed) and revised in 2023.

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

☒ Yes

☒ No

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

☐ in the Constitution

☒ in the law

☒ in a regulatory text

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

☐ other

Please explain if necessary:

The ethical obligations incumbent upon members of the Council of State are set out in the legislative and regulatory provisions of the Code of Administrative Justice (CJA), particularly in the first chapter of title III of its first book. Article L. 131-2 of this code defines, in very general



terms, the professional ethics of members of the Council of State:

"The members of the Council of State perform their duties with complete independence, dignity, impartiality, integrity and probity and behave in a manner to prevent any legitimate doubt in this regard.

"They refrain from any public act or behaviour that is incompatible with the reserve that their role requires.

"They cannot invoke, in support of a political activity, their membership of the Council of State. " Furthermore, there is a Charter of Ethics for the administrative jurisdiction, whose stated ambition in its preamble is to "outline the guidelines of the ethics of our professional practices".

1.2. Charter of Ethics

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

☒ Yes

☐ No

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

A general guideline on ethics for all judges in Sweden was adopted in 2011.

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

☒ Yes

☒ No

Please explain if necessary:

The guidelines of 2011 are not legally binding as such, so it is not mandatory to apply them but good practice would suggest that there should be strong reasons for not following them on a general, institutional, level.

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

☐ Yes

☒ No



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

1.2.4. Who drafted this document?

☐ A working group composed exclusively of members of your jurisdiction

☒ A working group expanded to include outside persons

☐ A working group involving associations of administrative judges

☒ Other

Please explain if necessary:

The guidelines were developed by a working group chaired by the former President of the Svea Court of Appeal. It included judges from all types of courts as well as representatives from the association of judges.

1.2.5. Which authority signed and enacted this document?

☒ The president of your institution

☐ A collegiate body of your institution

☒ Other

Please explain if necessary:

As the guidelines are just that, there is no formal endorsement of them, but the national Swedish Authority for Court Administration (Domstolsverket), which provides services to all courts, informs of them on its home-page and they are used in training of new judges.



1.2.6. Has this document undergone one or more revisions?

☒ Yes

☐ No

Please explain the purpose of these revisions if necessary:

The guidelines were revised and expanded in 2023 by the adoption of some further texts, mostly due to the impact of social media on judges.

1.2.7. What is the legal value of this document?

☒ This document contains binding legal rules (hard law)

☒ As before, the document is non-binding guidelines.

☐ Other

Please explain if necessary:

The Charter of Ethics of the administrative jurisdiction is a document subject to judicial review (Council of State, 26 March 2020, *Syndicat de la justice administrative*, n° 421149, in Lebon). Its "justiciability" does not *ipso facto* mean that it is an act of hard law; because, since the significant decision of the Litigation Assembly on *Société Fairvesta* of 21 March 2016, the Council of State has expanded the admissibility of appeals on the grounds of ultra vires to acts that, without being decisions, can produce notable effects or influence behaviour.

A closer analysis of the content of the Charter shows that it contains both binding legal rules and soft law standards.

We will see, in response to question 1.4. below, that the consultant judge (*rapporteur public*) Raphaël Chambon, in his conclusions under the aforementioned case *Syndicat de la justice administrative*, makes the distinction between the principles recalled by the Charter - to which he attributes binding value - and its recommendations - which, for him, fall under soft law.

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

The guidelines are available at the judges association:
<https://domareforbundet.se/index.php?pageId=550>



The Charter is accessible in French on the website of the Council of State: <https://www.conseil-etat.fr/qui-sommes-nous/deontologie>

1.3. Scope of application of ethical rules:

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

☒ Yes

☐ Partially

☐ No

Please explain if necessary:

As mentioned above, the guidelines are directed at all judges of all jurisdictions in Sweden.

1.3.2. To whom do these ethical rules apply?

☒ To members of your institution who are active within it

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

☒ To resigning members

☒ To retired members

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

☐ Other

Please explain if necessary:

The guidelines are only applicable to serving judges or junior judges under training/education. For judges who are temporarily (or for a longer time) serving in other functions in the public sphere the above-mentioned (1.1.) "The common ethical foundation for public officials" is relevant and for those serving in private sector the guidelines do not apply, but can of course be of importance if such a person would return to judging.



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

☐ Yes

☒ No

☒ Not applicable

Please explain if necessary:

The Supreme administrative court does not have a consultative function.

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

☒ Yes

☐ Partially

☒ No

Please explain if necessary:

Sweden has a dual judicial system, with a full 3-tier court-system of general courts and administrative courts. However, there has not been any need for different sets of ethical standards for judges in the two courts system, as the same constitutional and ethical demands are applicable to all judges irrespectively of where they serve.

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

If the "collection of ethical obligations for (judicial) magistrates" differs from the Charter of Ethics of the administrative jurisdiction, the principles listed in these two texts are similar. The Collection of Ethical Obligations for magistrates addresses topics not explicitly mentioned in the Charter of Ethics of the administrative jurisdiction, such as best practices and management obligations (see question 1.2.6 on this subject). However, it does not seem that certain obligations apply only to one order, even if they are formulated differently or more or less explicitly.

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

☐ Yes

☐ No

☐ Partially

☒ Not applicable

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

1.4. Relationship between ethical and disciplinary rules:

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

☐ Yes

☒ No

If not, please give an example:

As the ethical guidelines are not binding as such, acts against them cannot result in disciplinary actions without there being an additional factor of conduct that is contrary to the duties of a judge. For example, it might be considered ethically inappropriate for a judge to comment on judgements (their own or others) in social media but such comments cannot lead to any disciplinary action, as it is protected by the judges freedom of speech.

1.5. Training on ethical rules:

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

☒ Yes

☐ No

If yes, how and how often?

All professional judges in Sweden have a basic training program on judges' ethics as part of their professional education. Newly appointed members of the Supreme administrative court who does not have a background as a judge are made aware of the guidelines mentioned above. The Court has since a few years back a series of seminars by and for the members of the court dealing exclusively with ethical issues as part of living dialogue on the subject. Different subject-matters

are discussed, but the idea is not to decide anything but rather to give voice to different conception of how to deal with difficult situations that may occur.

1.6. The College of Ethics

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



☒ No

1.6.2. If yes, how is it appointed?

See below the response to question 1.6.3.

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

1.6.4. Who can refer to this body?

- ☒ A member of your institution for an ethical question concerning them
- ☒ A magistrate from the lower courts for an ethical question concerning them
- ☒ The president of your institution
- ☒ Other members of your institution
- ☐ A litigant who believes that a magistrate has disregarded their ethical obligations
- ☒ This body can refer to itself
- ☐ Others

Please explain if necessary:

A member of the administrative jurisdiction can refer to the College for any ethical question concerning them personally.

In addition, the following authorities can refer to the College on any ethical question personally concerning a member of the administrative jurisdiction:

- The Vice-President of the Council of State,
- A Section President of the Council of State,



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- The Secretary-General of the Council of State,
- The President of the Mission for the inspection of administrative courts,
- The President of an administrative court of appeal or administrative tribunal,
- The President of the High Council of Administrative Tribunals and Administrative Courts of Appeal.

The same authorities listed above as well as a trade union or an association of members of the administrative jurisdiction may also request the College - which can do so on its own initiative - to make recommendations to clarify the application of ethical principles and the Charter of Ethics.

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

☒ Yes

☐ No

1.6.6. If yes, are the published opinions anonymised?

☒ Yes

☐ No

1.6.7. Can these opinions be challenged before the court?

☐ Yes

☒ No

Please explain the legal scope of these opinions:

A court ruled that the opinions of the College are not subject to appeal (TA Paris, 5 March 2020, No. 1709595/4-1). However, the issue has not been settled by the Council of State.

1.7. Declaration of interests

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

☒ Yes

☐ No

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

At the earliest convenient, new members of the Supreme administrative court submit a full declaration on interest to the chief of staff at the court.

It can contain information on persons (family, friends, etc) and legal entities that are closely connected to the member, as well as interests that could affect the (appearance) of impartiality of the member, such as being part of a board of an authority, a company or an organisation. This declaration is continuously updated. It is used when cases are allotted to judges in order to avoid any issues of partiality.

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

No. But that is very unusual, as the post of a judge of the Supreme administrative court is one of the highest judicial positions in the country. As such, it is usually held until retirement.

1.8. The oath

Do members of your institution have to take an oath?

☒ Yes

☐ No

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

The oath is the general oath of all judges in Sweden, sworn at the first position within the court-system and regulated in the General Act of Procedure (*Rättegångsbalken*), Chapter 4 § 11.. It stipulates, in a traditional and somewhat elderly language, that the judge will do his or her best to always follow the law, always be impartial and never do wrong for any reason and never disclose what has been revealed under secret deliberations at court.

II Ethics: Content of rules

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

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

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

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

☒ Due to previous functions performed by the magistrate

☒ Other



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Please explain, citing any relevant jurisprudential examples

Rules on impartiality are found in the procedural legislation, the Administrative procedural act 41 § refers to the General procedural act, Chapter 4 § 13 in some particular cases:

1. If him- or herself is involved in the case or had an interest in its outcome.
2. If married (or formerly married) to a part, child or parent to a part or otherwise in a close family relationship with any of the parts to a case.
3. If him- or herself or someone mentioned in 2 (above) is legal custodian or likewise to a part.
4. If he or her is accused by a part in a case, however not if that obviously is to try to make the judge partial.
5. If he or her as a judge or other decision-maker has decided on something that relates to the case or at another institution than a court taken part in such a decision.
6. If he or her has provided legal assistance to a part, given evidence or been an expert witness.
7. If there is any other special circumstance that would cast a doubt upon the impartiality of the judge.

The last case is somewhat of a “catch-all” and is the one most relevant in practice since it can include many different issues and different judges may have different opinions on when there is a “special circumstance” and whether it casts doubt upon the impartiality.

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

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

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

☐ Other

Please explain if necessary:

Not applicable, since the Supreme administrative court does not have these double functions.

However since 2 judges from the Supreme court and the Supreme administrative court serve in the consultative Council of Legislation for a period of one or two years, the issue of impartiality, in cases where a judge has been advising on a legislative product before it was adopted, has been up for discussion. However, judges in the supreme courts have not been considered as partial in

a particular case just because they have been involved in the general legislative process at the Council of legislation, maybe years before the case came before a court. The reasons for this are, among others, that the Council only gives advice, it is a totally open procedure where the opinions of the council are published and it precedes the adoption of the legislation, which might include several changes from the proposal the council discussed. Furthermore, the members of the council have no personal stake in the adoption of the proposed legislation.

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

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

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

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

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

☐ Other

Please explain if necessary:

It is not allowed to take a leave for other functions.

2.1.4. Can a member of your institution receive gifts?

☐ Yes

☒ Yes, under certain conditions

☐ No

Please explain if necessary:

Within the ethical standards established by the guidelines and rules of impartiality it is acceptable to receive gifts. This means, for example that it is of course not allowed to take a gift from a party before the court in a case you are involved in.

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

☒ Yes

☐ Yes, under certain conditions

☐ No

Please explain if necessary:

2.2. Exercise of individual liberties

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

☐ Yes

☒ No

Please explain if necessary:

As judges, members of the Supreme administrative court have the same constitutional protection of freedom of speech as all other citizens of Sweden. They also enjoy the protection of the freedom of opinion granted to all in accordance with Article 10 of the European Convention on Human Rights.

As for all public servants, certain restrictions on this freedom are necessary and these rules are found in the Public access to information and secrecy Act of 2009. These rules are not particular to the members of the Supreme administrative court, but are instead focused on the kind of information dealt with and the particular context in which it is handled, i.e. in a court, in a social service office, in the military, etc.

Furthermore, from the above-mentioned guidelines, there follows an obligation to take special care in expressing political views, commenting on ongoing events that may appear in court and otherwise involve in public debate, but it is not forbidden and some judges do involve themselves in public discussion.

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

☐ Yes

☒ No

Please explain if necessary:



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

☒ Yes

☐ Yes, under certain conditions

☐ No

Please explain if necessary:

As explained above, Swedish judges in general can participate in all or most debates as long as they do not go against the regulation in the secrecy act. There is no hinder to mention a specific case as long as information covered by secrecy is not disclosed. This can in practice lead to that a judge is only free to quote the court's decision (in recent times judges has been more free with trying to, for example, simplify the reasoning of a judgement in order to make it more accessible to the public). Ongoing cases can of course not be commented on other than to confirm that they are under review.

A given is that any judge participating in a debate does so only in his or her own name, not as a representative of the court.

Many of the members of the Supreme administrative court participate in professional and/or academic discussions on case-law and legislation in seminars etc. This is valuable both for the court that gets an impression of if there are practical or theoretical issues with our cases and for the other participants. Of course, the rules on the secrecy of deliberations must be followed at such occasions, so there are limits to what a judge may contribute.

The answer to this question is not straightforward.

While it is not inherently forbidden for a member of the administrative jurisdiction to participate in a public debate of general scope, the College of Ethics recommends ensuring that their remarks cannot be interpreted as committing the Council of State. They are asked to express themselves with caution and to respect the obligation of discretion (see in this regard opinion no. 2021/3 of 15 October 2021, from the College). Regarding a debate on sensitive subjects such as euthanasia or immigration, great caution seems advisable in general, and the College takes a very strict approach regarding members of the judiciary who deal with the law governing these sensitive subjects on a daily basis. Thus, opinion no. 2023-11 of the College of Ethics, in which the College was asked by an administrative magistrate about the compatibility of their functions relating to the law on foreign nationals with the expression of private opinions on social networks or in a public space, concludes that a magistrate primarily working in the field governed by the law on foreign nationals must refrain from any comments that could suggest that the nature of their convictions would be an obstacle to impartial justice in the service of the law.

The participation of members of the administrative jurisdiction in meetings, events, or symposiums aimed at reporting on recent case law and subjecting it to debate does not, in principle, raise any objections. It contributes both to the prestige of the court and to good administration of justice. It is only necessary to ensure that, in their expression, those concerned stick to explanations of the decisions rendered and their significance, not only respecting the secrecy of deliberations but also refraining from taking a position on ongoing cases or even on questions of principle that may arise in these cases.

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

☒ Yes

☒ Yes, under certain conditions

☐ No

Please explain if necessary:

As mentioned above, freedom of expression is the same for judges as for all others with a few exceptions. The rules of impartiality may set some practical limits to such activities, as close connections to a certain institution or strong opinions on certain (legal) topics may call the judge's impartiality in question if later being involved in a case concerning the same specific issue.

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

☐ Yes

☒ No

Please clarify if necessary:



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There is no legal basis for that. If a judge has some minor sideline tasks – teaching or writing for legal commentary – this is something that the President of the court should be informed of but there is no basis for forcing a judge to not do such activities as long as they do not infringe on his or her ability to fulfil the duties of their position. Judges in Sweden can not have other employers so this kind of activities must be of a minor type.

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

☒ Yes

☒ Yes, under certain conditions

☐ No

Please explain if necessary:

See above.

2.2.7. Can members of your institution run for elections?

☒ Yes

☐ Yes, under certain conditions

☐ No

Please explain if necessary:

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

☐ Yes

☒ Yes, under certain conditions

☐ No

Please explain if necessary:

It would depend upon the position they are elected to, some local municipality positions are only part-time and may be possible to uphold while acting as a judge. Otherwise, it is not allowed to



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have other full-time engagements while at the same time acting as a judge. If judge would be elected as a member of parliament, he or she would have to resign from court, at least for the duration of the mandate. A resignation for a specific period of time is only possible for rather short-term functions and a regular position as – for example – member of parliament would not be possible to limit in such a way. A judge would therefore have to step down, having the option to seek position as a judge again after expired term of office in politics.

A practical example when this has been up for discussion is the election of the Parliamentary ombudsman (*Justitieombudsmannen*). That position is elected by parliament but most often acting judges are selected, sometimes from the highest courts. In order to take up the position as an ombudsman such a judge must resign from the court in question. Should the ombudsman not be re-elected after four years he or she must seek a new position as any person without a job.

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

☐ Yes

☒ Yes, under certain conditions

☒ No

Please explain if necessary:

See above.

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

☒ Yes

☒ Yes, under certain conditions

☐ No

Please explain if necessary:

All judges have full freedom of expression, as mentioned above. The ethical guidelines would however stress that some activities may bring concerns about the impartiality of a judge or the authority of the position, so some concern should be exercised when deciding to join petitions or similar activities.

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

☒ Yes

☒ Yes, under certain conditions

☐ No

Please explain if necessary:

See above.

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

No. Judges do however have the opportunity to write separate opinions and can then express their view on the legislation applied and its consequences and even call for new legislation.

2.3. Case studies

The Swedish Supreme administrative court these questions:

- On impartiality: Can a judge take on a public inquiry for legislation as a task from the government without compromising his or hers impartiality?
- On conflicts of interest: Can a judge who decide on issues of tax law and corporate finance deal with shares in public share-holders companies?
- On the obligation of discretion: Can a judge in general terms describe a legal problem to a friend – for example a professor of law – and ask for his or her's opinion while, without mentioning it – having a pending case that raises those same questions before the court?

III. Recruitment of members

3.1. Who can be recruited in your institution?

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

The Supreme administrative court annually recruits:

- One or two judges
- Five to ten law clerks (junior judges assisting the justices of the court)
-

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

All are the same rank and there is only one way to become judge of the Supreme administrative court.

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

☒ Yes

☐ No

Please explain if necessary:

There are no formal age conditions for the recruitment judges or law clerks.

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

☒ Yes

☐ No

Please explain:

For judges of the court, a university law degree is obligatory. For law clerks the same apply and they should have relevant practical experience either from courts or from public administration.

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

☐ Yes

☒ No

Please explain:

Judges of the court have seldom less than 20 years of experience from other courts, public administration, university or governmental functions. Many times a judge will have a mix of two or more of such backgrounds. Law clerks have typically about five years of experience as a junior judge in a lower court before working 2-5 years in the Supreme administrative court and most often after that receiving their appointment as an ordinary judge at a lower court.

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

☒ Yes

☐ No

Please explain:

See above.

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

☒ Yes

☐ No

Please explain:

When a position is free at the court, anyone qualified can apply. It is common that experienced judges of the lower courts do so and some of the members of the court do always have this background.

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

There is no set ration among the 16 judges of the court. At present at least 4 of the judges have extensive experience from working as judges in the lower courts, but almost all judges of the court have spent some years doing such work.

3.1.8. How old is the youngest of your colleagues?

The youngest member of the court was born I 1970.

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

Judges of the court are recruited without a time-limit.

Law clerks are recruited for a fixed time of, typically, four years, renewable for another two years.

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

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

☒ Yes

☒ No

Please explain:

The appointment of judges is formally a decision by the government and in that sense it "intervenes". The government does not, however, take part in the preparation of such decisions and it is presented with a binding proposal from a free-standing Board of appointments, which has ranked applicants that have been deemed suitable. The government can chose not to follow the ranking of the Board, but does (almost) never do that.

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

☒ Yes

☐ No



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

☒ Yes

☐ No

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

☒ Yes

☒ No

Please explain if necessary:

Recruitment of a judge to the court is always done in the same way.

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

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

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

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

☐ other

Please explain if necessary:

See above, the government takes to formal decision to appoint a judge. This is the same for all positions as an ordinary judge.

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

☐

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

☒ No



If yes, before which judge?

There is a special procedure for challenging appointments by the government in Sweden. It is done to a special Board of appeal and its decision cannot be appealed. However an applicant that did not get a position could always sue the government for damages in a general court, even if the chances of winning such a procedure is low.

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

The Supreme administrative court is not involved in this type of cases.