

Judicial Independence (2015)

Objective

The objective of this updated questionnaire is to collect factual information on structural guarantees for judicial independence, which cover certain guarantees for the independence of judges and for the independence of the judiciary.

The updated judicial independence questionnaire maintains almost all questions from the 2014 questionnaire and is already prefilled with the replies you have provided. If a reply was later adapted following clarifications you have provided, these replies are highlighted. Please review these modifications and feel free to adapt other 2014 replies, if the legislation or practice in your country has changed or if you believe the replies should be clarified. Please highlight any such additional changes red.

New or modified questions are highlighted. These mostly concern questions regarding the composition and powers of Councils (prefilled with your replies in 2014), and the appointment of judges. The questionnaire containing replies could later be published.

Respondent's Information

Member State	Council for the Judiciary
Ireland	An tSeirbhís Chúirteanna / The Courts Service

Additional Information

For additional information regarding the questionnaire, please contact the Directorate-General for Justice and Consumers of the European Commission.

1. AUTHORITIES WITH POWER TO DELIVER THE MAIN DECISIONS ON HUMAN AND FINANCIAL RESOURCES IN THE JUDICIARY¹

Which authorities or bodies have the power to deliver the following decisions in the judiciary?

1.1. Selection, appointment and dismissal of judges and court presidents

[Please insert an "x" into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country; if relevant, you can additionally insert the following explanations: "FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding or not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the proposal to appoint or dismiss a judge.]

- x) decision establishing there is a vacant judicial position
- a) proposal of candidates for the appointment as first or second instance judges
- b) decision on the appointment of a first or second instance judge
- c) proposal for the dismissal of a first or second instance judge
- d) decision on the dismissal of a first or second instance judge
- e) proposal of candidates for the appointment as court presidents
- f) decision on the appointment of a court president
- g) proposal for the dismissal of a court president
- h) decision on the dismissal of a court president

	x)	a)	b)	c)	d)	e)	f)	g)	h)
President of a court:									
Special chamber of a court:									
Higher court:									
Supreme Court:									
Council for the Judiciary²:									
Judicial inspection body:									
Other independent body (specify): See comment		X							
Ministry/Minister of justice/ Government		X							
Other ministry than min. of justice (specify): ...									
Parliament:				X	X			X	X
Head of state: See comment			X				X		
Other (specify): See comment	X					X			

¹Cf. European Network of Councils for the Judiciary, [Resolution of Budapest on Self-Governance for the Judiciary: Balancing Independence and Accountability](#), May 2008, at 2).

² Council for the Judiciary is a national institution that is independent of the executive and legislature, or which is autonomous, and that ensures the final responsibility for the support of the judiciary in the independent delivery of justice.

COMMENT Q. 1.1.

As to (a), the Judicial Appointments Advisory Board selects candidates not already holding judicial office and recommends them to the Government as being suitable for appointment to judicial office. Serving judges may be selected for appointment to higher judicial office by the Government.

As to (a), (b), (e) and (f), the President of Ireland makes all appointments of persons to judicial office but does so in accordance with the advice of the Government.

As to (x), the total complement of judges for each jurisdiction is set by Act of Parliament. Where a vacancy arises on retirement, the vacancy is filled in the manner abovementioned.

1.1.1. If any other authority, body or agency is involved in the procedure for appointment of judges, please describe its involvement:

N/A

1.1.2. What is the procedure for selecting candidates for becoming judges? [several answers possible]

Recruitment through a vacancy notice without a specific exam

1.1.3. If a candidate judge is not appointed, is the appointing authority/body required to provide him/her the reasons (e.g. a reasoned explanation)?

No

1.1.4. If a candidate judge is not appointed, can he/she appeal or request a review?

No

1.1.4.1. If yes, which authority or body decides on such an appeal/review?

N/A

1.1.4.2. What was the total number of appeals or requests for a review by unsuccessful candidate judges in 2014?

N/A

1.2. Selection, appointment and dismissal of Supreme Court judges and the President of the Supreme Court

[Please insert an "x" into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country;

if relevant, you can additionally insert the following explanations:

"FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding or not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the proposal to appoint or dismiss a judge.]

- a) proposal of candidates for the appointment as Supreme Court judges
- b) decision on the appointment of a Supreme Court judge

- c) proposal for the dismissal of a Supreme Court judge
- d) decision on the dismissal of a Supreme Court judge
- e) proposal of the candidate(s) for the appointment of the President of the Supreme Court
- f) decision on the appointment of the President of the Supreme Court
- g) proposal for the dismissal of the President of the Supreme Court
- h) decision on the dismissal of the President of the Supreme Court

	a)	b)	c)	d)	e)	f)	g)	h)
President of a court:								
Special chamber of a court:								
Supreme Court:								
Council for the Judiciary:								
Judicial inspection body:								
Other independent body (specify): see comment	X							
Ministry/Minister of justice/ Government	X				X			
Other ministry than min. of justice (specify): ...								
Parliament:			X	X			X	X
Head of state: see comment		X				x		
Other (specify) see comment								

COMMENT Q. 1.2.

As to (a), (b), (e) and (f), the Judicial Appointments Advisory Board selects candidates not already holding judicial office and recommends them to the Government as being suitable for appointment to judicial office. Serving judges may be selected for appointment to higher judicial office by the Government. The President of Ireland makes all appointments of persons to judicial office but does so in accordance with the advice of the Government.

1.2.1 . If the procedures mentioned above are different for the judges and/or the President of the Supreme administrative court or the Council of State, please describe these differences:

1.3. What was the total number of all judges that were dismissed in 2014 (e.g. as a consequence of disciplinary proceedings or criminal conviction; excluding other grounds such as incompatibility, illness, resignation, retirement)?

[if only an estimate is available, add "approx. ..." or "fewer than ...".]

In all courts: Nil

1.4. Can a judge appeal if he/she is dismissed?

X No – Vote of Parliament – there is no appeal.

1.4.1. If yes, which authority or body decides on such an appeal?

N/A

1.4.2. What was the total number of appeals against dismissals of judges in 2014?

[If only an estimate is available, add "approx. ..." or "fewer than ...".]

In all courts: Nil

1.5. Evaluation, promotion, disciplinary measures and training of judges

[Please insert an “x” into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country; if relevant, you can additionally insert the following explanations:

"FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding or not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the opinion given.]

- a) decision on the evaluation of a judge
- b) evaluation of the performance management of courts
- c) decision on the promotion of a judge

COMMENT Q. 1.5 (c).

Serving judges are selected for recommendation for appointment to higher judicial office by the Government. The President of Ireland makes all appointments of persons to judicial office but does so in accordance with the advice of the Government.

- d) adoption of ethical standards
- e) application of ethical standards
- f) proposal for the appointment of a member of the disciplinary body for judges

COMMENT Q. 1.5 (f)

- g) Judges are not subject to a disciplinary body or disciplinary regime apart from the procedure under the Constitution under which a judge may be removed from office for stated misbehaviour or incapacity upon resolutions passed both Houses of Parliament calling for his/her removal. Hence, “Not Applicable” has been entered in respect of (f), (g), (h) , (i) and (j).decision on the appointment of a member of the disciplinary body for judges
- h) proposal for a disciplinary decision regarding a judge
- i) disciplinary decision regarding a judge (all bodies issuing disciplinary decisions)
- j) decision on the follow-up to a complaint against the judiciary/a judge
- k) decision on the program/content of training for judges

	a)	b)	c)	d)	e)	f)	g)	h)	i)	j)	k)
President of a court:	X	x		X	X	N/A	N/A	N/A	N/A	N/A	
Special chamber of a court:											
Higher court:											
Supreme Court:											

Council for the Judiciary:													
Judicial inspection body:													
Other independent body (specify): ...													
Ministry/Minister of justice:													
Other ministry than min. of justice													
Parliament:													
Head of state: if applicable- on advice of Government			X										
Other (specify):													
Judicial Studies Committee													X

1.6. Financial resources

1.6.1. Authorities and bodies responsible for financial resources
 [Please insert an “x” into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country; if relevant, you can additionally insert the following explanations:
 "FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding or not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the opinion given]

- a) involvement in the preparation of the "budget allocated to courts"³
- b) formal proposal on the budget allocated to courts
- c) adoption of the budget allocated to courts
- d) management of the budget allocated to courts
- e) evaluation/audit of the budget allocated to courts
- f) definition of criteria for determining financial resources (see 1.6.2.)

	a)	b)	c)	d)	e)	f)
President of a court:						
Special chamber of a court:						
Higher court / President of the Higher court:						
Supreme Court/ President of the Supreme Court:						
Council for the Judiciary:						
Judicial inspection body:						
Other independent body : Comptroller & Auditor General					X	
Ministry/Minister of justice:	X	X			X	X

³ General government total expenditure on COFOG (classification of the functions of government) group 03.30 'Law courts', which includes "financial resources allocated to the "administration, operation or support of civil and criminal law courts and the judicial system, including enforcement of fines and legal settlements imposed by the courts and operation of parole and probation systems; legal representation and advice on behalf of government or on behalf of others provided by government in cash or in services. Includes: administrative tribunals, ombudsmen and the like. Excludes: prison administration." This is National Accounts data currently provided under the ESA95 framework.

Other ministry: DEPT. OF PUBLIC EXPENDITURE & REFORM						x
Parliament:			x			
Head of state: if applicable- on advice of ...						
Other (specify): The Courts Service Board	x			x		

1.6.2. What are the prescribed methods or criteria for determining financial resources for the judiciary? [several answers possible] [Please electronically tick the checkbox (" ") next to the corresponding reply (by clicking on it in Microsoft Word for Windows), or (in case of difficulties with the checkboxes) by marking relevant reply in bold or highlighting it.]

x amount based on historic and/or realised costs

1.6.3. Where have these criteria been defined? [several answers possible]

x In well-established practice

x In law YES

x Other (specify): ... Annual estimates process under which resourcing needs for courts are identified by the Courts Service and estimates are determined by Department of Public Expenditure and Reform on proposal of department of Justice and Equality.

1.7. Governance of the Judiciary

[Please insert an "x" into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country; if relevant, you can additionally insert the following explanations:

"FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding or not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the opinion given.]

- a) general management of a court
- b) adopting press guidelines for relations between courts and the media
- c) communicating with the media (e.g. on questions regarding judgments, court functioning)
- d) decisions regarding the implementation and use of Information and Communication Technology in courts
- e) decisions regarding court buildings
- f) decisions regarding court security

	a)	b)	c)	d)	e)	f)
President of a court:	x					
Higher court / President of the Higher court:						
Supreme Court/ President of the Supreme Court:						
Court Service Board:				x	x	x
Council for the Judiciary:						
Judicial inspection body:						
Other independent body (specify): ...						
Court service governed by the Ministry of justice:						

Ministry/Minister of justice:						x
Other ministry than min. of justice (specify): See below *						
Other (specify): Courts Service management				x	x	X
Other (specify): Police (An Garda Síochána)						X
Judge responsible for media relations - NONE						
Press officer at a court - Courts Service Press Officer		X	X			

1.7.1. Authorities and bodies responsible for court staff (other than judges)

[Please insert an "x" into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country; if relevant, you can additionally insert the following explanations: "FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding or not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the opinion given.]

- decision regarding the total number of court staff (other than judges) at all courts
- decision regarding the number of court staff at particular courts
- appointment and dismissal of court staff
- decisions regarding the transfer of court staff from one court to another
- decisions regarding the promotion/disciplinary matters concerning court staff
- other human resource management decisions on court staff (e.g. holidays)

	a)	b)	c)	d)	e)	f)
President of a court:						
Higher court / President of the Higher court:						
Supreme Court / President of the Supreme Court:						
Court service governed by the Judiciary:						
Council for the Judiciary:						
Judicial inspection body:						
Other independent body (specify): ...						
Court service governed by the Ministry of justice:						
Ministry/Minister of justice:	x					
Other ministry: DEPT. PUBLIC EXPENDITURE & REFORM	x					
Other (specify): ... COURTS SERVICE	x	x	x	x	x	x

COMMENT Q. 1.7.1.

The courts are administered by the Courts Service, which employs and manages court administration and support staff. As the Courts Service is an independent courts administration agency not governed by the Ministry of Justice, its functions in respect of (a) to (e) have been recorded under "Other".

1.8.1 Composition of the Councils for the Judiciary according to the nomination process

	Total	Court presidents (ex officio)	Judges (appointed or proposed by their peers)	Judges (elected by their peers)	Prosecutors (elected by their peers)	Prosecutor General (ex officio)	Appointed by associations of lawyers / legal practitioners	Elected/appointed by the Parliament	Appointed by the Head of State / Prime Minister / Government / Minister of justice	Minister of justice (ex officio)	Appointed/nominated by other bodies/authorities
BE	44			22				22			
BG	25	2		6	5	1		11			
DK	11		6				1				4
IE	18	5		5			2		3		3
ES	21	1	12					8			
FR	22	1		6	6	1	1	4	2		1
HR	11			7				2			2
IT CSM	27	1		12	4	1		8	1		
IT CPGA	15	1		10				4			
LV	15	2		7		1	3	1		1	
LT	23	3		20							
HU	15	1		14							
MT	10	1		4		1	1		2		1
NL	4		2						2		
PL	25	2		15				6	1	1	
PT	17	1		7				7	2		
RO	19	1		9	5	1		2		1	
SI	11			6				5			
SK	18			9				3	6		
UK (EN + WL)	29	9	19								1
UK (NI)	11		11								
UK (SC)	16	4	12								

1.8.2. Powers of the Councils for the Judiciary

	Providing opinion on draft laws relating to the judiciary	Training of judges (providing guidelines/supervising or deciding on the program/content)	Proposing candidates for appointment as judges (courts of first instance)	Appointing judges (1st instance courts)	Proposing dismissal of judges (courts of first instance)	Dismissing judges (courts of first instance)	Transferring judges (without their consent)	Taking disciplinary decisions on judges	Adopting ethical standards	Promoting a judge	Advisory body / court management	Deciding on evaluation of a judge	Decision regarding number of court staff at particular courts	Allocating budget to particular courts	Decisions on implementation & use of ICT in courts
BE	1	1	1						1						
BG	1	1		1	1	1	1	1	1	1		1	1	1	1
DK	1	1									1		1	1	1
IE	1										1		1		1
ES	1	1	1		1		1	1	1	1		1			1
FR	1		1	1	1	1	1	1	1	1					
HR	1	1		1		1	1	1		1		1			
IT	1	1	1	1	1	1	1	1		1	1	1			1
LV	1	1			1										
LT	1	1		1		1	1			1	1	1	1	1	1
HU	1	1	1						1	1					
MT	1				1				1			1			
NL	1	1							1	1				1	1
PL	1	1	1		1				1						
PT	1	1	1	1	1	1	1	1	1	1		1			
RO	1	1	1	1	1		1	1	1	1		1	1		
SI	1	1	1	1	1	1	1		1	1		1			
SK	1	1	1		1				1	1					
UK (EN+WL)										1	1				
UK (NI)											1				1
UK (SC)											1				

2. PROCEDURES AND SANCTIONS FOR PROTECTING JUDICIAL INDEPENDENCE⁴

2.1. When a judge or an authority considers that independence of an individual judge or of the judiciary is threatened, are there any specific procedures, other remedies or sanctions⁵ for protecting it?

No

2.1.1. If yes, who can launch such a request or a procedure?

N/A

2.1.2. What was the total number of such complaints in 2014?

[If only an estimate is available, add "approx. ..." or "fewer than ...";

Please specify for each authority or body (please add more than two, if necessary)]

N/A

2.1.3. If yes, which authority or body has the power to react to such complaints from judges or authorities for protecting judicial independence? [several answers possible]

N/A

2.1.4. If yes, what are the measures that these authorities can take on the basis of a request in order to protect judicial independence?

What was the total number of such measures in 2014?

[[several answers possible; if only an estimate is available, add "approx. ..." or "fewer than ...".]

N/A

3. IMPARTIALITY –WITHDRAWAL AND RECUSAL⁶

3.1. Is a judge obliged to withdraw from adjudicating a case if the judge believes that impartiality is in question or compromised or that there is a reasonable perception of bias?

Yes

3.1.1. If yes, what is the source of the obligation to withdraw from adjudicating a case?

A well-established practice of judges

Set in law - CASE-LAW, FOUNDED ON CONSTITUTIONAL GUARANTEES OF INDEPENDENCE OF JUDICIAL FUNCTION AND DUE PROCESS.

3.1.2. If a judge disrespects the obligation to withdraw from adjudicating a case, could the judge be subject to a sanction?

No - SUBJECT TO APPEAL (OR JUDICIAL REVIEW IF JUDGE BELONGS TO DISTRICT OR CIRCUIT COURT).

⁴[Recommendation CM/Rec\(2010\)12](#) of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, paras. 8, 13 and 14. *See also* European Network of Councils for the Judiciary, Distillation of ENCJ Guidelines, Recommendations and Principles, Report 2012-2-13, para. 7.

⁵"Sanctions against persons seeking to influence judges in an improper manner", Recommendation CM/Rec 2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 14.

⁶Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, paras. 59-61. *See also* European Network of Councils for the Judiciary, [London declaration on judicial ethics](#), June 2010; and European Network of Councils for the Judiciary, [Judicial Ethics Report](#) 2009-2010

3.2. Which authority or body takes the first decision on a request for recusal by a party who considers that a judge is partial / biased? [several answers possible]

The single-judge who is adjudicating in the same case
(when a recusal request is directed against this judge)

3.2.1. In case a different authority or body decides in different types of proceedings (civil, administrative...), please describe the differences and specify for which proceedings the replies under 3.2. refer to:

N/A

3.3. If available what was the total number of successful recusal challenges by parties in 2014 in which a lack of impartiality or a reasonable perception of bias was established?

[If only an estimate is available, add "approx. ..." or "fewer than ...".]

Unavailable

3.4. Is an appeal against a decision on a request for recusal possible?

Yes

3.4.1. If yes, which authority or body decides on such an appeal?

Higher court

3.4.2. What was the total number of appeals against decisions on recusal requests in 2014?

[for example, when a party to the case requested a judge to be recused but this request was rejected, and then this party appealed against the rejection; if only an estimate is available, add "approx. ..." or "fewer than ...".]

Unavailable

4. IRREMOVABILITY - TRANSFER OF JUDGES WITHOUT THEIR CONSENT⁷

4.1. Can a judge be transferred (temporarily or permanently) to another judicial office (to other judicial duties, court or location) without his/her consent?

No

4.1.1. If yes, which authority or body decides on a (temporary or permanent) transfer of a judge without his/her consent? [if several authorities are responsible and have different powers depending on the ground for transfer, please write "for disciplinary reasons", "for organisational reasons" or "for other reasons" next to the relevant authority]

N/A

4.2. For what reasons can a judge be transferred without his/her consent? [several answers possible]

N/A – see answer to 4.1 above

⁷ Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 52. See also European Network of Councils for the Judiciary, Development of Minimal Judicial Standards III, Minimum Standards regarding evaluation of professional performance and irremovability of members of the judiciary, Report 2012-2013, pp. 18-20, 23 (point 4.21.)

4.2.1. At what level are these reasons prescribed?

N/A – see answer to 4.1 above

4.3. In case a judge is transferred without his/her consent is he/she guaranteed an equivalent post (in terms of a position, salary...)?

N/A – see answer to 4.1 above

4.4. What was the total number of judges transferred without their consent in 2014?

[if only an estimate is available, add "approx. ..." or "fewer than ...".]

N/A – see answer to 4.1 above

4.5. Can a judge appeal if he/she is transferred without his/her consent?

N/A – see answer to 4.1 above

4.5.1. If yes, which authority or body decides on such an appeal?

N/A – see answer to 4.1 above

4.5.2. What was the total number of appeals against transfers of judges without their consent in 2014?

N/A – see answer to 4.1 above

5. ALLOCATION OF CASES⁸

5.1. Are the criteria for allocating cases within a court defined?

Yes

5.1.1. If yes, where have these criteria been defined? [several answers possible]

In well-established practice of the court

5.2. How are cases assigned to judges at the first instance courts?

President of the court assigns cases

5.3. Is the allocation of cases subject to supervision (e.g. regular checks of the practice of allocation)?

Yes

5.3.1. If yes, by whom? [several answers possible]

By court staff – e.g. Court Registrar

By the President of the court

⁸ Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 24.

5.3.2. In the last five years, has the system for the allocation of cases been subject to a general review or assessment to check for any potential deficiencies?

No

5.3.2.1. If yes, what was the follow-up to the findings of such a general review/assessment? [several answers possible]

N/A

6. INTERNAL INDEPENDENCE⁹

6.1. In your system, are there hierarchically superior courts/judges with the power to ensure on their own initiative the uniformity or consistency of judicial decisions delivered by the courts/judges under their supervision (outside of an appeal system, the precedent doctrine or a preliminary ruling system)?

No

6.1.1. If yes, which courts/judges have such a power?

N/A

6.1.2. If yes, what kind of decisions can hierarchically superior courts/judges deliver on their own initiative to ensure the uniformity or consistency of judicial decisions outside of an appeal system or the precedent doctrine?

N/A

6.1.3. If yes, what was the total number of such decisions in 2014?

[If only an estimate is available, add "approx. ..." or "fewer than ..."]

N/A

⁹ Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 22.