

## **Belgium/ The High Council of Justice**

### **Белгия/ Висш съвет по правосъдие**

#### **1. To which of the three classic branches of government does the respective Council belong**

The new Article 151 of the Constitution makes it clear that the High Council is not subject to the King and that it must not receive instructions from, or need to justify itself to, any existing administrative authorities. It is crystal clear that it does not belong to the executive branch.

Although the High Council might show certain affinities with the Parliament, it is certainly not an ad hoc institution of it, which can be said of the Court of Auditors, the P Committee, and I Committee, and the federal ombudsmen. Therefore, the High Council certainly does not belong to the legislative branch.

The High Council also does not belong at all to the judicial branch. The independence of the High Council, which is also manifest from its financial statute - it is funded in the budget of the grants, like that of the Court of Arbitration - excludes this possibility. Moreover, in the establishment of the High Council, its belonging to the judicial branch was expressly denied because half of it consists of non-magistrates and because it exercises no jurisdictional functions. Therefore, the High Council does not belong to any of the three branches.

This point of view has been expressly emphasized in Parliament in the establishment of the new Article 151 of the Constitution and of the organic law of 22 December 1998. Indeed, it has been repeatedly stated that the High Council of Justice is an institution sui generis that can be subordinated to none of the three branches of the State. In the explanatory memorandum accompanying the bill, which was approved on 22 December 1998, we read that the High Council must bridge the judicial branch, the independence of which it must respect, and the executive and legislative branches. The High Council can best fulfill this function as an institution that is completely independent of each of the three branches.

#### **2. Duration of the mandate of the members of the respective Council**

This term is set by the Judicial Code at a period of four years, which can be renewed once provided - depending on the case - there is a new election or appointment by the Senate.

#### **3. Powers, Functions, Services, Mission of the respective Council**

**The High Council has a three-faceted mission, which it has been fulfilling effectively since 2 August 2000 :**

To play a decisive role in the policy on appointment of members of the judiciary, acting objectively and in a non-party political way;

To exercise external oversight, of the operation of the judicial system, including the handling of complaints;

To submit advice and opinions , designed to improve the operation of the law, to the politicians responsible for policy-making.

#### **4. Criteria for nomination and appointment of the members of the respective Council**

**See Question № 5**

#### **5. Composition of the respective Council:**

- **How many magistrates and non-magistrates**
- **How many judges, prosecutors, etc.**

#### **Parity between magistrates and non-magistrates**

A significant presence of non-magistrates on the High Council was, according to the legislator, necessary not only to avoid a corporatist reflex on the part of the magistrates in the framework of the tasks of the High Council but also because the vision and experiences of the everyday "consumers" of the judiciary can constitute a very valuable contribution.

This general distribution formula, therefore, can also be found in the various organs that compose the High Council of Justice. More in particular :

- the full Council (44 members) must consist of 22 magistrates and 22 non-magistrates;
- in each of the two colleges of the Council the same parity must be observed per language role (11 magistrates and 11 non-magistrates);
- each of the two commissions (the nomination and appointment commission and the advisory and investigation commission) (14 and 8 members) is subject to the same obligation.

Finally, the law clarifies in this regard that the concept of "magistrate" here must be understood exclusively in the sense of working professional magistrates.

#### **Representation of the magistracy**

This representation must be assured both geographically and structurally. In order to achieve this twofold objective, the Judicial Code prescribes that each of the two colleges of the High Council consists of at least :

- of a magistrate of a court and a magistrate of the public prosecution service;
- of a magistrate of a higher court, irrespective of whether he or she is a magistrate of a court or the office of public prosecution of this higher court, and irrespective of whether this higher court is a Court of Cassation, a court of appeal, or a labor court;
- of a magistrate from each jurisdictional area of the five courts of appeal.

With this distribution formula, candidates who receive fewer votes than others can still be elected!

The election procedure for the magistrates is regulated by the Royal Decree of 15 February 1999. The Royal Decree prescribes that a polling station and a counting station be established in each court of first instance and that each voter must in principle go to the polling station of the judicial arrondissement in which he or she is appointed.

### **The external members**

A supplementary distribution formula was here established in order to form the group of non-magistrates: 11 members in each college per language role. According to the Judicial Code, it is required in this regard that each of these colleges consists of at least :

- four attorneys who have been members of the bar for at least 10 years;
- three professors of a university or college of higher education with professional experience of at least 10 years;
- four members who hold a university or equivalent diploma as well as 10 years of professional experience.

For the composition of the last category, the comment on the bill expressly refers to people from the media, the welfare sector, the governmental sector, the consumer sector, the business world, the management sector or specific professional groups such as clerks of courts, secretaries of public prosecution services, judicial officers, notaries, and so on.

### **Representation per language role**

This balance between Dutch-speakers and French-speakers is required both for the member magistrates and for the external members. In addition, the French-language college must have at least one member (magistrate or not) who must provide proof of knowledge of German.

### **Representation by sex**

It is required here that in each of the two colleges, the non-magistrate group (11 members) has at least four members of each sex.

In the elections of the magistrates, each voter must cast 3 votes, at least one for a candidate of the court, at least one for a candidate of the public prosecution service, and in addition at least one vote must be cast for a candidate of each sex.

## **6. Staff:**

- **Number**
- **Qualification**

The High Council has its own personnel for the administrative support of its activities. The High Council has established its staff at 45 units of which 17 belong to Level I. The personnel have its own status, approved by royal decree that is discussed in the Ministerial Council.

## **7. Structure**

The organs of the Council shall be: the Bureau, the General Meeting, the Colleges, the Appointment and Nomination Commissions, the Joint Appointment and Nomination Commission, the subcommittees of the Appointment and Nomination Commissions, the Advisory and Investigation Commissions and the Joint Advisory and Investigation Commission.

## **8. What different commissions do you have as part of the respective Council**

### **The nomination and appointment commissions**

Each college indicates by a two-thirds majority 14 people (7 magistrates and 7 non-magistrates) from its members to form the nomination and appointment commission.

The chairmanship of each commission is performed by a member of the bureau indicated by the general meeting.

### **The powers of the NACs**

- The nomination of candidates to the magistracy
- The nomination for an appointment of corps chiefs
- The regulation of the access to the office of judge or of the public prosecution service
- The training of the judges and the officials of the public prosecution service
- The organization of the examinations for prosecution service jurists and referendaries

### **The advisory and investigation commissions**

These commissions are also formed by the respective colleges and have each eight members.

In contrast to the NACs, the AICs work under the supervision of the general meeting, which, in most cases, makes the final decision.

De AICs are responsible mainly for the external supervision of the functioning of the judiciary. Article 151 of the Constitution provides for four forms of external supervision:

- The formulation of recommendations and proposals about the general functioning of the judiciary
- General monitoring of the internal supervision
- The follow-up and possible investigation of complaints
- The institution of investigations into functioning of the judiciary

## **9. Important historical events: creation of the respective Council, further changes in its structure, functions, etc.**

The Dutroux Case and the gigantic impact it had on the people were the direct cause of the formation of the High Council of Justice.

During the "White March" of 1996, the general public expressed its displeasure collectively and massively about many dysfunctional aspects of the operation of the judiciary and the lack of a coherent and global vision.

More concretely, justice was depicted as corrupt by reference to the more everyday and anonymous reality: the backlog in the administration of justice, the dilapidated buildings, the faulty infrastructure, and, in particular, the political appointments that gave rise to the impression on the part of the public that magistrates could no longer judge objectively and impartially.

With the formation of the High Council of Justice, the intention of the Parliament was to restore the confidence of the people in the operation of the Belgian judicial system.

Professor Storme wrote in the *Juristenkrant* that the formation of the High Council of Justice in Belgium must be considered the most important constitutional reformation since 1830.

The High Council was created by the constitutional legislator specifically on 20 November 1998 with the passage of the new Article 151 of the Constitution.

The political compromise consisted in placing the broad outlines of this new institution in the Constitution and in leaving the details to an implementation law. This law became the Law of 22 December 1998, which amended a number of stipulations of Part II of the Judicial Code concerning the High Council of Justice, the nomination and appointment of magistrates, and the introduction of an evaluation system.

## **10. Present and future important projects and events of the respective Council**

### **11. How is the independence of the respective Council guaranteed**

The High Council was created by the constitutional legislator specifically on 20 November 1998 with the passage of the new Article 151 of the Constitution. This constitutional foundation places the High Council beyond the reach of the ordinary legislator, which is intended to enable it to execute the assigned tasks in all independence.

### **12. Budget of the judiciary:**

- **What is the amount of the budget for 2011**
- **How is it divided for the different allocations**
- **Who manages the budget**

The autonomy of the High Council has been assured by the manner of its financing, that is, by the assignation of a grant that is registered on the grants budget. This grant is fixed by the High Council itself but must, of course, be approved by the Chamber of Representatives.

### **13. Present composition of the Council:**

- **Start/end of the mandate**
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