European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

REPORT

Project Team on

Development of Minimum Judicial Standards II

2011 – 2012

European Network of Councils for the Judiciary

(Indicators related to Minimum Standards regarding recruitment, selection, appointment and promotion of members of the judiciary)

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European Network of Councils for the Judiciary (ENCJ)

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REPORT

Project Team on Development of Minimum Judicial Standards

0. Abstract .-

This Report describes the identified and collected set of indicators referable to the minimum judicial standards defined in the previous Report on Development of Minimum Judicial Standards 2010-2011 drafted by the respective ENCJ Project Team. The Report focuses on indicators of standards regarding the specific topics considered by the Project Team during the meetings held in Vilnius, Brussels, and Palma de Mallorca (recruitment, selection, appointment and -where relevant- evaluation and promotion of members of the judiciary, including those related to the competent body to decide in this field).

The identified indicators of minimum judicial standards, which have been discussed and agreed upon by the members of the Project Team, have been classified in two chapters depending on the topic to which they refer: a) indicators of minimum standards regarding the recruitment, selection, appointment and (where relevant) the promotion of members of the judiciary; b) indicators of minimum standards in relation to the competent body to decide on the recruitment, selection, appointment and (where relevant) the promotion of members of the judiciary.

The work of the current Project Team has centred on the conviction that the identification of indicators related to minimum judicial standards in these particular fields provides a tool for self-evaluation of the respective judicial systems, which is also available for the subsequent evaluation of the compliance by the different European judicial systems with the minimum standards previously defined. In the view of the Project Team this will support the development of independent Councils for the

Judiciary and contribute to the attainment of a common European judicial culture. Furthermore, when identifying the indicators of minimum standards concerning the topics of recruitment, selection, appointment and -where relevant- evaluation and promotion of members of the judiciary, including those related to the competent body to decide in this field, the Project Team has tried to avoid any overlapping with the goals of other projects already or currently implemented by the ENCJ, in particular the different Project Teams dealing with the topic of Councils for the Judiciary.

1. Introduction.-

1.1. Background.-

The Project Team on the "Development of Minimum Judicial Standards II" was established by the European Network of Councils for the Judiciary (ENCJ) in September 2011 following the implementation plan for the period 2011-2012 approved by the General Assembly held in Vilnius on 8-10 June 2011. The Project, together with the other three major projects included in the implementation plan, was launched at a joint meeting in The Hague on 15-16 September 2011. The members of the Project Team comprised representatives of 15 member councils (Belgium, Bulgaria, England and Wales, France, Hungary, Italy, Lithuania, the Netherlands, Poland, Portugal, Romania, Scotland, Slovakia, Slovenia and Spain) as well as representatives of 2 observers (Austria and Turkey). The Project Team was chaired and coordinated by Judge Antonio Monserrat Quintana, a member of the General Council for the Judiciary of Spain.

The Project Team was established as a continuation of the work carried out by two former ENCJ Working Groups, the Working Groups on "Development of Minimum Judicial Standards" and "Mutual Confidence", in accordance with the conclusions and proposals made by the former in its Report 2010-2011 and by the latter in its Report and Recommendations 2009-2010. On the basis of the presentations by experts during its working group meetings, the replies to a questionnaire and the discussions in the

working sessions, the Working Group on Mutual Confidence had drafted a set of conclusions, which included, among others, the following:

1. The Judiciary in Europe should understand and accept its role and responsibility in developing minimum standards for the Justice Sector. A set of representative standards should be developed by the ENCJ.
2. The Judiciaries of Europe should also be prepared to take the next step for evaluating compliance with these minimum standards. These common minimum standards and their evaluation will contribute to mutual confidence. Councils for the Judiciary through the ENCJ should take the lead in this (when appropriate in cooperation with others).
3. Subjects that could be taken forward are amongst others competences/judicial appointments criteria, judicial training; process of information; judicial ethics (deontology). The process of developing these common standards is a goal in itself as well. The evaluation of these standards should be on the basis of dialogue and reciprocity recommendations stated above.

The Report of the Working Group on Mutual Confidence also contained some proposals for future action by the ENCJ, including:

1. The ENCJ should develop a set of representative minimum standards for the Justice Sector.
2. The ENCJ should study the feasibility of evaluating the compliance with these minimum standards. These standards should be evaluated on the basis of dialogue and reciprocity.

On the other hand, the Report of the Working Group on "Development of Minimum Judicial Standards" 2010-2011, which was approved at the General Assembly held in Vilnius on 8-10 June 2011, identifies minimum standards regarding the specific topics considered by the Working Group during its meetings (judicial recruitment, selection and appointment; judicial training and judicial ethics). The identified standards were

classified in three chapters depending on the topic to which they refer: a) proposals for minimum standards regarding the recruitment, selection, appointment and (where relevant) the promotion of members of the judiciary, including those related to the competent body to decide on this field; b) proposals for minimum standards in relation to judicial training, which deal with the role assigned to initial judicial training in the process of selection/appointment of members of the judiciary, the role assigned to continuing judicial training in the promotion or specialisation of members of the judiciary and the question whether judicial training (both initial and continuing) should be compulsory or voluntary; and c) proposals for minimum standards in the field of judicial ethics. These minimum judicial standards were identified and developed as a first step for a second phase, which -consistently with the Report and Recommendations 2009-2010 of the Working Group on Mutual Confidence- should consist in the evaluation of the compliance with these minimum standards by the different European judicial systems, by using a set of indicators previously defined or identified.

Therefore, the goal of the current Project Team is to identify and collect a set of indicators referable to the minimum judicial standards, which is meant as a tool for self-evaluation of the respective judicial systems, but not to represent an evaluation report of each particular judicial system in Europe. Besides, the Project Team decided to focus in depth on evaluation indicators related to minimum judicial standards in the fields of recruitment, selection, appointment and (where relevant) evaluation and promotion of members of the judiciary, and not to deal with the issues of judicial training and judicial ethics, given the time limits. This decision is also based, on the one hand, on the fact that judicial ethics have been studied by a previous working group of the ENCJ (as explained in the Report on Development of Minimum Judicial Standards 2010-2011) and, on the other hand, on the fact that not all members in the Project Team have full competences in the field of judicial training.

For the purpose of drawing up the current report the Project Team held a kick-off meeting in The Hague on 15-16 September 2011 (together with the three other Project

Teams established by the European Network of Councils for the Judiciary following the implementation plan for the period 2011-2012) and three additional meetings: in Vilnius on 2 December 2011, in Brussels on 16 January 2012, and in Palma de Mallorca on 5-6 March 2012.

During the kick-off meeting, the members of the Project Team discussed the goal of the project and the methodology to be followed. The members of the Project Team agreed to describe the main goal of the Project as "to identify indicators that can help evaluate the compliance of the respective judiciary systems with the standards already defined". It was also agreed that "mutual confidence in the judiciary of the various European countries will be increased by knowledge of the minimum standards applied by each country as regards (…) selection or appointment of judges and/or prosecutors (admission into the judiciary), judicial training (initial and continuing) and judicial ethics" and that "both the development of minimum standards and their evaluation will contribute to strengthen mutual confidence among European judiciaries".
Regarding the methodology and activities to be undertaken by the Project Team it was decided to structure these activities in the following way:

1) Collection and analysis of suggestions from members and observers present in the Project Team.
2) Compilation, classification and selection of suggestions about indicators, also taking into account any potential risks to the success of the Project.
3) Discussions during the several meetings of the Project Team about the suggestions of indicators regarding minimum standards in the fields of recruitment, selection, appointment and (where relevant) evaluation and promotion of members of the judiciary.
4) The preparation of a report of the Project Team's findings and proposals.

The draft Project Fiche resulting from the discussions of the Project Team was presented during the plenary session of the Project Teams held in the afternoon of Friday 16 September 2011.

The Report will be presented at the General Assembly of the ENCJ to be held in Dublin on 9-11 May 2012.

1.2. The Report

The aim of the Report is to describe the identified indicators regarding the minimum judicial standards in the fields of recruitment, selection, appointment and (where relevant) evaluation and promotion of members of the judiciary, which had been defined in the Report of the Working Group on "Development of Minimum Judicial Standards" 2010-2011. The identified indicators of standards have been discussed and agreed upon by the members of the Project Team during the meetings held in Vilnius, Brussels, and Palma de Mallorca. The identified indicators of minimum standards have been classified in two chapters depending on the topic to which they refer.

Chapter 2 describes the identified indicators for minimum standards regarding the recruitment, selection, appointment and (where relevant) the promotion of members of the judiciary. The indicators enumerated in this chapter refer to minimum standards on the criteria, competencies and procedure for the recruitment, selection, appointment and (where relevant) promotion of members of the judiciary, taking into account the two basic models of recruitment procedures for members of the judiciary among European countries which had been identified in the Report of the Working Group on "Development of Minimum Judicial Standards" 2010-2011, and also the system of promotion of members of the judiciary in those European jurisdictions (continental states, generally) where the judicial profession is considered to be a professional career and promotion of judges from lower posts and ranks to higher judicial offices is normally applied.

Chapter 3 is focused on indicators of minimum standards in relation to the competent body to decide on the recruitment, selection, appointment and (where relevant) the promotion of members of the judiciary. The definition of indicators of minimum standards concerning this topic have been made trying to avoid any overlapping with the goals of other projects already or currently implemented by the ENCJ, in particular the different Project Teams dealing with the topic of Councils for the Judiciary.

As in the case of the previous Report of the Working Group on "Development of Minimum Judicial Standards" 2010-2011, the work of the current Project Team has centred on the conviction that mutual confidence in the judiciary of the various European countries may be undermined by a lack of understanding of the minimum standards applied by each country in the selection or appointment of judges (i.e. admission into the judiciary) and in the promotion of members of the judiciary in those European jurisdictions where it applies. Furthermore, the identification of indicators related to minimum judicial standards in these particular fields provides a tool for self-evaluation of the respective judicial systems, which is also available for the subsequent evaluation of the compliance by the different European judicial systems with those minimum standards previously defined. This process of identification of indicators and subsequent evaluation will hopefully help increase mutual confidence in the judiciaries of the various European countries, support the development of independent Councils for the Judiciary in Europe and contribute to the attainment of a common European judicial culture.

2. Identified indicators related to Minimum Standards regarding recruitment, selection, appointment and (where relevant) promotion of members of the judiciary.-

The Report of the Working Group on "Development of Minimum Judicial Standards" 2010-2011 established a general Standard as regards recruitment, selection and

appointment of members of the judiciary, according to which **any system for the recruitment, selection and appointment of judges should be independent of political influence, fair in its selection procedures, open to all suitably qualified candidates and transparent in terms of public scrutiny. In other words, any system for the recruitment, selection and appointment of judges must be independent, fair, open and transparent**.

This general statement can be split in several individual standards in relation to which specific indicators have been identified by the Project Team:

2.1.- The formulation of the defined Standard regarding appointment based only on merit and capability is:

Judicial appointments should only be based on merit and capability.

In this respect the Project Team has identified two alternative indicators:

A) Does the relevant statute/regulation or other legal instrument for the appointment of judicial officers state in clear, unqualified terms that appointment to any judicial office is only to be based on merit and capability?
B) If there is no statutory (or similar) statement that appointment to any judicial office is only to be based on merit and capability, is there any statement to that effect in any other formal direction or guidance governing the judicial appointment process, which is published?

2.2.- The Standard regarding defined and published selection competencies in the process of judicial selection and appointment is formulated in the following way:

There requires to be a clearly-defined and published set of selection competencies against which candidates for judicial appointment should be assessed at all stages of the appointment process.

The Project Team has identified three basic indicators related to this Standard:

A) Is there a clearly-defined set of selection competencies against which candidates for judicial appointment are to be assessed at all stages of the appointment process?
B) Is the clearly-defined set of selection competencies published, for example by a website, and is an explanation of it available?
C) Is there an information point/office available in order to provide information about the selection competencies to candidates to judicial office and/or to the general public?

2.3.- The wording of the Standard as regards selection competencies is:

Selection competencies should include intellectual and personal skills of a high quality, as well as the proper work attitude and the ability of the candidate to express himself/herself.

The identified indicator concerning this Standard is as follows:

A) Do the clearly-defined and published selection competencies include intellectual and personal skills of a high quality, as well as the proper work attitude and the ability of the candidate to express himself/herself?

2.4.- The defined Standard concerning the intellectual requirements for access to the judiciary reads:
The intellectual requirement should comprise the adequate cultural and legal knowledge, analytical capacities and the ability independently to make judgments.

The identified indicator related to this standard, agreed upon by the members of the Project Team, is:

A) Do the clearly-defined and published competencies regarding intellectual requirements comprise the adequate cultural and legal knowledge, analytical capacities and the ability independently to make judgments or decisions relating to the functions of the judicial office?

2.5.- The Report of the Working Group on "Development of Minimum Judicial Standards" 2010-2011 defined the following Standard regarding personal skills of the candidates for the judiciary:

There should be personal skills of a high quality, such as the ability to assume responsibility in the performance of his/her duties as well as qualities of equanimity, independence, persuasiveness, sensibility, sociability, integrity, unflappability and the ability to co-operate.

Two indicators in relation to this standard have been identified.

A) Do the clearly-defined competencies regarding personal skills include skills such as the ability to assume responsibility in the performance of his/her duties as well as qualities of equanimity, independence, persuasiveness, sensibility, sociability, integrity, unflappability and the ability to co-operate?
B) Is there an effective process for assessing whether candidates possess the relevant personal skills?

2.6.- As regards the judicial appointment body, the general Standard previously defined indicates that:

Whether the appointment process involves formal examination or examinations or the assessment and interview of candidates, the selection process should be conducted by an independent judicial appointment body.

The identified indicator related to this standard is as follows:

A) Is the selection process conducted by a judicial appointment body that is independent from the Executive?

2.7.- The Standards regarding reports and comments in the selection process state that:

Where the appointment process includes assessment based on reports and comments from legal professionals (such as practising judges, Bar Associations, Law Societies etc) any such consultation must remain wholly open, fair and transparent, adding that **the views of any serving judge or Bar Association should be based on the relevant competencies, should be recorded in writing, available for scrutiny and not based on personal prejudice**.

In connection to these Standards the following indicators have been identified:

A) If the appointment process includes assessment based on reports and comments from legal professionals, does any such consultation remain wholly open, fair and transparent?

B) Do the arrangements in place for obtaining the views of any serving judge or Bar Association direct and ensure that such views are based on the relevant selection competencies, that they are recorded in writing, available for scrutiny and are not based on personal prejudice, and that they are reasoned?

2.8.- The Standard concerning the good character of candidates appointed to judicial offices specifies that:

Whilst the selection of judges must always be based on merit, anyone appointed to judicial office must be of good character and **a candidate for judicial office should not have a criminal record, unless it concerns minor misdemeanours committed more than a certain number of years ago**.

The indicators related to that Standard are as follows:

A) Generally, is there a system in place designed to check that anyone selected for judicial appointment is of good character, i.e. has no criminal record, has a good reputation, and so on?

B) Is there a particular system in place to ensure that an appointment to judicial office is not made of a candidate with a criminal record, unless the record concerns defined minor criminal offences committed more than a certain, defined number of years ago?

C) Is there any specific system in place to check, where necessary, whether a candidate for judicial office has a good reputation personally, professionally and financially – e.g. through professional bodies or reliable, verifiable references?

2.9.- The Standard regarding diversity in the selection and appointment process states that:

Diversity in the range of persons available for selection for appointment should be encouraged, avoiding all kinds of discrimination, although that does not necessarily imply the setting of quotas *per se,* adding that **any attempt to achieve diversity in the selection and appointment of judges should not be made at the expense of the basic criterion of merit**.

The following indicators have been identified in connection with that Standard:

A) Is there in place a written policy (whether in statutory or other form) designed to encourage diversity in the range of persons available for selection for appointment, avoiding all kinds of discrimination, although not necessarily implying the setting of quotas *per se*.

B) Is there any monitoring of appointments to check the operation in practice of the diversity policy?

C) Does the policy for encouraging diversity nonetheless ensure that there is no interference with the basic selection/appointment criterion of merit, albeit that there may be a policy of positive discrimination in relation to candidates of equal merit?

2.10.- As regards public scrutiny of the selection and appointment process the previously defined Standard indicates that:

The entire appointment and selection process must be open to public scrutiny, since the public has a right to know how its judges are selected.

The indicators related to the Standard are as follows:
A) Is there a system in place to enable the public to know in general how judges are selected?
B) Is there a system in place to enable the public to know how an individual candidate is selected for judicial appointment, such as through law or a website?

2.11.- The Report of the Working Group on "Development of Minimum Judicial Standards" 2010-2011 defined the following Standards regarding unsuccessful candidate's entitlement to information and challenge:

An unsuccessful candidate is entitled to know why he or she failed to secure an appointment; and there is a need for an independent complaints or challenge process to which any unsuccessful applicant may turn if he or she believes that he/she was unfairly treated in the appointment process.

The following indicators have been identified in relation to those Standards:
A) Is an unsuccessful candidate entitled to know why he/she failed to secure an appointment?

B) Is there a system in place to enable an unsuccessful candidate who wishes to know why he/she failed to secure an appointment to obtain information about the reason for that failure?

C) Is there an independent complaints or challenge process to which any unsuccessful applicant (or interested person in other way) may turn?

D) Is this process regulated by law and is there any legal possibility for an unsuccessful applicant (or an interested person in other way) to appeal the decision of the appointments body before an established court of law?

E) Is the body with jurisdiction to decide on the complaint or challenge by any unsuccessful candidate or interested person (whether or not that body is a court of law) able to examine the appointments process applied and to determine whether there was any unfairness shown to particular candidates, for example by having access to the files or asking for a report?

2.12.- Concerning the involvement of the Government or Head of State in the judicial appointment process the Standard previously defined specifies that:

If the Government or the Head of State plays a role in the ultimate appointment of members of the judiciary, the involvement of a Minister or the Head of State does not in itself contend against the principles of independence, fairness, openness and transparency if their role in the appointment is clearly defined and their decision-making processes clearly documented, and the involvement of the Government or the Head of State does not impact upon those principles if they give recognition to decisions taken in the context of an independent selection process. Besides, it was also defined as a Standard in this field that **where whoever is responsible for making the ultimate appointment (the Government or Head of State) has the right to refuse to implement the appointment or recommendation made in the context of an independent selection process and is not prepared to implement the appointment or recommendation it should make known such a decision and state clearly the reason for the decision**.

The identified indicators in this respect read as follows:

A) If a Minister or the Head of State plays a role in the ultimate appointment of members of the judiciary, is their role in the appointment clearly defined and are their decision-making processes clearly documented?
B) If a Minister or the Head of State plays a role in the ultimate appointment of members of the judiciary is it clear that judges are appointed on the basis of their professional qualifications and not with their political alignment in mind?
C) If a Minister or the Head of State plays a role in the ultimate appointment of members of the judiciary are appointments made only from a selection drawn up or approved by the independent selection body that includes the judiciary?
D) Where whoever is responsible for making the ultimate appointment (the Government or Head of State) has the right to refuse to implement the appointment or recommendation made in the context of an independent selection process and is not prepared to implement that decision or recommendation, is there a formal constitutional or statutory requirement that it must make known such a decision and state clearly the reason for the decision?

2.13.- The general Standard concerning promotion of members of the judiciary in those jurisdictions where such promotion applies specifies that:

Where promotion of members of the judiciary is based on the periodical assessments of professional performance the assessment process must be conducted according to the same criteria and with the same guarantees as those provided for the initial selection and appointment process (i.e. it should be independent, fair, open and transparent, and on the basis of merit and capability) and should be based on the judge's past performance.

The following indicator as regards this general Standard has been identified:

A) Are merit and capability stated clearly and without qualification in any relevant legislation, directions or guidance to be the sole criteria for judicial promotion?

3. Identified indicators related to Minimum Standards regarding the competent body to decide on recruitment, selection, appointments and (where relevant) promotion of members of the judiciary.-

The Report of the Working Group on "Development of Minimum Judicial Standards" 2010-2011 also defined a general standard as regards the competent body to decide on recruitment, selection, appointment and (where relevant) promotion of members of the judiciary. According to this general standard, **in order to avoid political influence, the procedures for the recruitment, selection or (where relevant) promotion of members of the judiciary ought to be placed in the hands of a body or bodies independent of government in which a relevant number of members of the judiciary are directly involved**. Furthermore, that Report specified that **the body in charge of judicial selection and appointment could be the appropriate national Council for the Judiciary (or a specific committee or department within the Council for the Judiciary) or an independent national judicial appointments board or committee**. Again, those general standards can be split in several individual standards in relation to which specific indicators have been identified by the Project Team:

3.1.- The first individual Standard previously defined in this field states that:

The procedures for the recruitment, selection or (where relevant) promotion of members of the judiciary ought to be placed in the hands of a body or bodies independent of government in which a relevant number of members of the judiciary are directly involved and that **the membership of this body should comprise a majority of individuals independent of government influence**.

These are the indicators identified by the Project Team in connection with the Standard:

A) Is there an independent national judicial appointments board or committee or is the appropriate national Council for the Judiciary (or a specific committee or department within the Council for the Judiciary) in charge of judicial selection and appointment?
B) Are the judges serving in that body directly elected by other judges or appointed otherwise, for example, by Parliament, the Minister of Justice, the President of the State, or the President of the Supreme Court (Chief Justice)?
C) Does the selection of judges to that body by other state institutions (for example, by Parliament) - and not directly by an assembly of judges - ensure their full independence as members of this body?
D) Is this body comprised solely of individuals who are selected in a process that is not influenced by the government?
E) Does the composition of this body consist of any *ex officio* members of government, such as the Head of State or the Minister of Justice?
F) Do the members of this body perform their functions on a permanent and exclusive basis or do they perform their functions along with other activities, such as judicial or parliamentary activities?

3.2.- The previously defined Standard concerning the proportion of members of the judiciary in the judicial selection and appointment body specifies that:

The judiciary must not necessarily have an absolute majority membership on such a selection and appointment body, since in some of the countries of the Project Team there is a perception that a selection body on which the existing judiciary have a majority membership leaves itself open to the criticism that it is a self-serving body merely recruiting those prospective judges whom it favours and promoting favoured judges from within its own ranks.

The identified indicators related to this standard are as follows:

A) What is actually the number of members of the body in charge of judicial selection and appointment and what is the proportion of judges serving in that body? Is it an actual majority?

B) Does the composition of this body include representatives of other core legal professions (i.e., representatives of bar associations, law societies, notaries), and the academia (i.e., law professors)?

C) What role do judicial associations play in the process of selecting and/or appointing members of this body?

D) Do the principles regarding the forming of the selection and appointment body imply or predetermine an absolute majority membership of the judiciary in that body?

3.3.- The previously defined Standard concerning guarantee of independence of the body in charge of judicial appointments states that:

In any case, the body in charge of selecting and appointing judges must provide the utmost guarantee of autonomy and independence when making proposals for appointment.

In this respect, the following indicators have been identified by the Project Team:

A) Does the relevant statute/regulation envisage any guarantee of independence from government in the appointment of every subject participating in the procedure of selection and appointment of members of the judiciary?

B) Is the procedure for the decisions of the body in charge of judicial appointments legally regulated?

C) Is the regulation regarding the procedure for the decisions of the body in charge of judicial appointments published in any way?

D) Does the regulation of the procedure for the decisions of the body in charge of judicial appointments comply with the principles of legal certainty, efficiency, judicial independence and other basic legal principles?

E) Is membership in the body in charge of judicial appointments limited in time (i.e, only for one term, or a maximum of two terms)?
F) Is the body in charge of judicial appointments assisted by external experts and consultants (such as psychologists, sociologists, lawyers, notaries public, academics, etc.) in the framework of the selection process?

3.4.- The previously defined Standard as regards freedom form external influences in the judicial selection and appointment process specifies that:

It must be guaranteed that decisions made by the body are free from any influences other than the serious and in-depth examination of the candidate's competencies against which the candidate is to be assessed.

The identified indicators in connection with this Standard are as follows:
A) Are the criteria for assessing candidates defined normatively (i.e., set specifically in the statute or regulation of the body in charge of judicial appointments), or in public guidance/resolutions issued by that body?
B) Is the whole selection and appointment process transparent and open to the public?
C) Is every step of the selection and appointment process published (for example, on the internet), including the results of the subsequent stages of the selection and appointment procedure?
D) Are all candidates assessed in accordance with the same criteria that are established beforehand and explicitly?
E) What specific objective and subjective criteria are applied in the judicial selection and appointment process? May additional criteria be applied, apart from the specifically published?
F) What is the quality or degree of reasoning of the decision to select a candidate for judicial appointment among several applicants? Are there clear and objective reasons provided in order to justify that the selected candidates have greater merits and capabilities than other applicants?

3.5.- The defined Standard as regards the composition of the body in charge of judicial appointments indicates that:

The body in charge of judicial appointments should comprise a substantial participation of legal professionals or experts (including experienced judges, academics, lawyers, prosecutors and other professionals) and could also include independent lay members representing civil society, appointed from among well known persons of high moral standing on account of their skill and experience in matters such as human resources.

In this respect the Project Team has identified the following indicators:
A) What are the number and the proportion of legal professionals or experts in the body in charge of judicial selection?
B) What are the number and proportion of lay members representing civil society in the body in charge of judicial selection?
C) In what manner are the individuals representing legal professions and civil society selected as members of the body in charge of judicial selection?

3.6.- The Standard defined in relation to the nature of the body in charge of judicial selection and the role assigned to the judicial training institutions in the context of the selection and appointment process states that:

The body in charge of judicial selection and appointment could be the appropriate national Council for the Judiciary (or a specific committee or department within the Council for the Judiciary) or an independent national judicial appointments board or committee and that **in those systems where the compulsory period of induction training is part of the recruitment and selection process, the relevant Academy, College or School of the Judiciary could play a major role by making**

recommendations in relation to the candidates which it considers should be appointed on the basis of their performance during the induction training.

The identified indicators in this respect are as follows:

A) Is there an independent national judicial appointments board or committee or is the appropriate national Council for the Judiciary (or a specific committee or department within the Council for the Judiciary) in charge of judicial selection and appointment?

B) Is the relevant Academy, College or School of the Judiciary entitled to make any recommendations in relation to the candidates which it considers should be appointed to the judiciary on the basis of their performance during the induction training?

C) Are the recommendations made by the relevant Academy, College or School of the Judiciary in the context of the selection process binding as regards the candidates to be appointed to the judiciary?

D) Is the relevant Academy, College or School of the Judiciary an independent body or is it linked to or under the supervision of the respective Ministry of Justice or Council for the Judiciary?

3.7.- The previously defined Standard in connection to the resources allocated to the body in charge of judicial selection and appointment specifies that:

The body in charge of the selection and appointment of judges must be provided with the adequate resources to a level commensurate with the programme of work it is expected to undertake each year and must have independent control over its own budget, subject to the usual requirements as to audit.

The identified indicators concerning that Standard read as follows:

A) Are the resources provided to the body in charge of judicial selection and appointment adequate to the activities the body is expected to undertake each year?

B) Does the body in charge of judicial selection and appointment enjoy full budgetary autonomy? Is its budget part of the budget of the general judiciary and court system or is it included in the budget of the Ministry of Justice?
C) Does the budget of the body in charge of judicial selection and appointment grow in the same proportion as the budget expenditure concerning the activities of government (i.e. government administration) and parliament?
D) Is the audit regarding the expenditure of the body in charge of judicial selection and appointment carried out by auditors independent of government control?

3.8.- As regards confidentiality of the deliberations of the body in charge of judicial selection and appointment the defined relevant Standard states that:

The body in charge of judicial selection and appointment must also have adequate procedures in place to guarantee the confidentiality of its deliberations.

The identified indicators in this respect are as follows:
A) Are there some standards of confidentiality of the deliberations of the body in charge of judicial selection and appointment (such as secret of the relevant session for deliberation or not allowance of external persons into the deliberation) established and guaranteed in the relevant statute/regulation governing the activities of that body?
B) Are confidentiality issues taken into account in the rules related to publishing minutes of meetings of the body in charge of judicial selection and appointment, during which deliberations about candidates for judicial office take place?

3.9.- The defined Standard concerning the records of the activities of the body in charge of judicial selection and appointment specifies that:

The body in charge of judicial selection and appointment must create a sufficient record in relation to each applicant to ensure that there is a verifiable independent, open, fair and transparent process and to guarantee the effectiveness of the

independent complaints or challenge process to which any unsuccessful applicant is entitled if he or she believes that s/he was unfairly treated in the appointments' process.

The Project Team has identified the following indicators in connection with that Standard:

A) Does the body in charge of judicial selection and appointment keep a sufficient record in relation to every candidate to the judiciary and does this record reflect the progress of that applicant's selection procedure?

B) Is the body with jurisdiction to decide on the complaint or challenge by any unsuccessful candidate or interested person (whether or not that body is a court of law) entitled to have access to the record kept in relation to that candidate in the context of the complaint or challenge procedure?

3.10.- The previously defined Standard regarding the complaint or challenge process of the decisions made by the body in charge of judicial selection and appointment specifies that:

The body in charge of judicial selection and appointment should guarantee the effectiveness of the independent complaints or challenge process to which any unsuccessful applicant is entitled if he or she believes that s/he was unfairly treated in the appointments' process.

The identified indicators in connection with this Standard are as follows (see § 2.11):

A) Is there an independent complaints or challenge process to which any unsuccessful applicant (or interested person in other way) may turn?

B) Is this process regulated by law and is there any legal possibility for an unsuccessful applicant (or an interested person in other way) to appeal the decision of the appointments body before an established court of law?

C) Is the body with jurisdiction to decide on the complaint or challenge by any unsuccessful candidate or interested person (whether or not that body is a court of law) able to examine the appointments process applied and to determine whether there was any unfairness shown to particular candidates, for example by having access to the files or asking for a report?

European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

Annex - Participants List – 2011/2012

COUNTRY – MEMBERS	NAME
Belgium - CSJ/HRJ - Conseil supérieur de la Justice - Hoge Raad voor de Justitie	Nicole Roland
Belgium - CSJ/HRJ - Conseil supérieur de la Justice - Hoge Raad voor de Justitie	François Libert
Belgium - CSJ/HRJ - Conseil supérieur de la Justice - Hoge Raad voor de Justitie	Geert Vervaeke
Belgium - CSJ/HRJ - Conseil supérieur de la Justice - Hoge Raad voor de Justitie	Ria Mortier
Bulgaria - JC - Supreme Judicial Council	Elga Venelinova Tsoneva
England & Wales – Judges' Council For England And Wales	Derek Searby
France – CSM - Conseil Supérieur de la Magistrature	Anne Coquet
France – CSM - Conseil Supérieur de la Magistrature	Jean-Pierre Machelon
Hungary – OIT - Csongrád County Court Hungarian National Judicial Council	Klára Czene
Italy - CSM - Consiglio Superiore Della Magistratura	Gabriele Fiorentino
Lithuania - The Judicial Council of Lithuania	Gintaras Kryzevicius
Lithuania - The Judicial Council of Lithuania	Laima Garneliene
The Netherlands - Rvdr - Raad Voor De Rechtspraak Council For The Judiciary The Netherlands	Willem F. Korthals Altes
The Netherlands - Rvdr - Raad Voor De Rechtspraak Council For The Judiciary The Netherlands	Eddy Bauw
Poland - NCJ - National Council For Judiciary (Krajowa Rada Sadownictwa	Lukasz Bojarski

Poland - NCJ - National Council For Judiciary (Krajowa Rada Sadownictwa	Katarzyna Gonera
Portugal – Conselho Superior da Magistratura	José Manuel Carvalho
Romania - CSM - Consiliului Superior al Magistraturii	Gratiana Isac
Romania - CSM - Consiliului Superior al Magistraturii	Ana Cristina Labus
Scotland - JC - Judicial Council For Scotland	Andrew Normand
Slovakia – S.R. Judicial Council of the Slovak Republic (Súdna Rada Slovenskej republiky)	Peter Hulla
Slovakia – S.R. Judicial Council of the Slovak Republic (Súdna Rada Slovenskej republiky)	Miroslav Slast'an
Slovenia – S:S. Republika Slovenija Sodni Svet	Majda Irt
Spain - CGPJ – Consejo General del Poder Judicial - Coordinator Project	Antonio Monserrat Quintana
Spain - CGPJ - Consejo General del Poder Judicial	Jose Miguel Garcia Moreno

COUNTRY - OBSERVERS	**NAME**
Austria – MoJ - Federal Ministry of Justice	Bernhard Hostek
Turkey – HSYK - High Council of Judges and Prosecutors of Turkey	Osman Nesuh Yildiz