

## UNIFIED PATENT COURT

### Recruitment of judges

#### Qualifications required<sup>1</sup> for and age limit of appointment to judicial offices in the Contracting Member States

##### Contracting Member States

AUSTRIA	ITALY
BELGIUM	LATVIA
BULGARIA	LITHUANIA
CYPRUS	LUXEMBOURG
CZECH REPUBLIC	MALTA
DENMARK	NETHERLANDS
ESTONIA	PORTUGAL
FINLAND	ROMANIA
FRANCE	SLOVAKIA
GERMANY	SLOVENIA
GREECE	SWEDEN
HUNGARY	UNITED KINGDOM
IRELAND	

##### Observers

POLAND

##### **Disclaimer:**

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<sup>1</sup> Agreement on a Unified Patent Court, (2013/C 175/01), Art. 15(2)



## AUSTRIA

The Austrian "Richter- und Staatsanwaltschaftsdienstgesetz" (RStDG) makes a distinction between judges working in civil or penal courts (see sections 2, 26 RStDG) and those working in administrative courts (§ 207 RStDG; see attachment), but both possess the qualifications required for appointment to "judicial offices" in Austria according to Art. 15(2) of the Agreement. Since the qualifications in § 207 RStDG are narrower, one can say that the criteria are basically:

- 1) Austrian citizenship
- 2) university degree in Austrian law
- 3) at least 5 years professional legal experience
- 4) personal and technical ability.

The Austrian law foresees no additional qualifications for becoming a judge in the second or third instance.

The mandatory retirement age for judges in Austria is 65 years (§ 99 RStDG).

There is no age limit for appointment of judges ruled out by law. On application of the judge, he can retire at the age of 61,5 (§ 87 RStDG).

### Eligibility criteria for Austrian judges

Persons wishing to become judges must apply for one of the established posts for trainee judges. Such vacancies are advertised by the presidents of the (four) Courts of Appeal. The requirements for being admitted to the preparatory service as a trainee judge are:

Austrian citizenship, full legal capacity, psychological aptitude, physical fitness and judicial ability, law degree as well as five month court internship.

Tests have to be passed on the psychological aptitude, physical fitness and judicial ability.

The preparatory service for becoming a judge generally takes four years. During this time the trainee judges are assigned to judges of a District Court, a Regional Court, Court of Appeal, to the Public Prosecutor's Office, to a prison. They also have to complete an internship with a lawyer or a notary public or with the Financial Procurator's Office and with a victim protection or public welfare institution.

Finally they have to take a written and an oral exam. Those having passed the exam and having completed the four years' traineeship may apply for a vacant established post.

Following the provisions of the Austrian Constitution (B-VG) and of the Austrian Judges and Public Prosecutors Service Act (Richter- und Staatsanwaltschaftsdienstgesetz = RStDG),

Austrian Federal Law Gazette No 305/1961, as amended by law Austrian Federal Law Gazette I 65/2015; link: Legal Information System of the Republic of Austria (=Rechtsinformationssystem = RIS) = <http://www.ris.bka.gv.at/Bundesrecht> ] the appointment and every further promotion of judges is task of the Austrian Federal President. According to section 30 RStDG vacant positions of judges as well as of managerial posts (these are the heads of the District Courts, the presidents and vice-presidents of the Regional Courts, Courts of Appeal, Supreme Court) have to be advertised.

The Federal President appoints the judges upon proposal by the Federal Minister of Justice who gets – non binding - proposals by staff panels. However, for most of the judges' posts the Federal President has delegated the right of appointment to the Federal Minister of Justice.

Judges are appointed for an indefinite period of time. Pursuant to Art 88 of the Austrian Constitution and to sec. 99 of the Austrian Judges and Public Prosecutors Service the tenure of judges is guaranteed until the mandatory retirement age of 65.

It starts with the permanent appointment to the post of a judge. The appointment of higher managerial positions – (presidents and vice-presidents of the Regional Courts, Courts of Appeal, Supreme Court) – remains with the Federal President.

Finally, the Austrian Prime Minister – with the exception of the positions of vice-presidents of the Courts of Appeal and Regional Courts – has also to assent to the appointment.

The proposals of the staff panels shall consist of at least three candidates, who have applied for the vacant position. There are certain – widely verbalized – criteria for the listing of the candidates: range and current status of judicial ability, industriousness, perseverance, diligence, dependability, decisiveness, social skills, expressive abilities (both oral and in writing), general conduct in office, in particular towards superiors, co-workers and the public, any conduct outside the office with repercussions to the service as well as the accomplishments of the position and the formal periodical assessment.

In case of equal qualification, women shall be preferred until a rate of 50% is reached in a certain group of positions. Should these criteria not enable the listing of the candidates, the seniority-principle is applied (Directive of the Ministry of Justice of February 2nd, 2015, Federal Law Gazette Volume II 2015/16).

Early retirement at the request of the judge (sec. 87, 87 a RStDG) as well as early retirement on medical grounds (sec 89 a RStDG) is possible. The decisions are rendered by the Courts of Appeal acting as Service Courts. The relevant provisions of the Austrian Service Act for Judges and Public Prosecutors read as follows:

## Section 2

(1) Requirements for being admitted to judicial preparatory service are:

1. Austrian citizenship;

2. Full capacity to act;
3. Unrestricted personal and professional qualification including required social skills (Section 14 (2)) for exercising the tasks connected with the judicial office;
4. a) Completed studies of Austrian law (Section 2a) or b) Graduation from law studies according to the Federal Act on University Studies, BGBl. I Nr. 48/1997, or according to the Federal Act on Law Studies, BGBl. Nr. 140/1978, and the academic Master's degree in law acquired by graduating from such studies or c) Completion of studies of law and political sciences according to the Regulation on Studies and State Examinations, StGBI. Nr. 164/1945, and
5. practical work as trainee at court for a duration of five months.

(2) The requirement of traineeship at court can be partially waived if the applicant has worked as Rechtspfleger. The extent of such waiver shall depend upon performance, field of work and duration of having been a Rechtspfleger.

Studying Austrian Law Section 2a (1) Studying Austrian law required for being admitted to judicial preparatory service shall be completed at a University and concluded with an academic law degree, whereby several studies may be completed (Sections 54 et seqq. University Act 2002, BGBl. I Nr. 120/2002).

Study duration shall be a minimum of four years, with a workload of at least 240 ECTS Credit Points (Section 51 (2) 26th alinea University Act 2002). (2) During the studies pursuant to (1), proficiency in the following knowledge areas shall have verifiably been acquired:

1. Austrian Civil Law and Austrian Code of Civil Procedure,
2. Austrian Criminal Law and Code of Criminal Procedure,
3. Austrian Constitutional Law including fundamental and human rights and Austrian Administrative Law including Code of Administrative Procedure,
4. Austrian Company Law, Austrian Labour and Social Law and Austrian Tax Law,
5. European Law; General International Law,
6. If required, other legal fields of knowledge and foundations of law;
7. Economic and business knowledge fields; other knowledge fields related to the law. Such knowledge field shall be covered to an extent adequate for acquiring the legal education required for exercising a judicial office.

The workload for these knowledge fields shall be at least 200 ECTS Credit Points, with at least 150 ECTS Credit Points acquired in jurisprudential fields. The knowledge shall be proven by positively passing examinations and/or positively appraised papers including work pursuant to (4), with the subject matter of the examination or paper being taken from various knowledge fields.

(3) In the framework of the studies a positively appraised written thesis has to be written, with thematic priority upon one or more of the jurisprudential knowledge fields mentioned in (2), serving to prove the ability to independently perform jurisprudential work.

(4) Any other jurisprudential studies completed at a University and concluded with an academic law degree by an Austrian citizen only meets the requirements of (1) if it is of equal value. Equivalence of educational content shall apply, if knowledge and abilities of the graduate correspond to the knowledge and abilities acquired by completing studies of Austrian law pursuant to (2) and (3).

Checking equivalence, and if necessary completing it in case of only partial compliance, shall be performed in conformity with the provisions of the first Chapter of the Act Recognising Education and Professional Examinations (ABAG), BGBl. Nr. 523/1987 Requirements of Appointment Section 26

(1) Only persons may be appointed as judges, who

1. Meet the admission requirements for the judicial preparatory service,
2. Have passed the judge's examination, and
3. Have performed a four-year judicial traineeship, thereof at least one year in preparatory service for becoming a judge.

The rest of the traineeship may be spent in any employments mentioned in Section 15. When calculating the time spent outside preparatory service, Section 13 shall apply.

(2) University professors at the law faculty of a domestic university, lecturing the subject matters mentioned in 16 (4), alinea 1 to 4, may be appointed judges even without meeting the requirements of (1).

(3) The requirement of spending one year as trainee in preparatory service for becoming a judge under (1), 1st alinea, may be waived by the Federal Minister of Justice, if no equivalent competing applicant meeting the requirements of appointment has appeared.

Shortlist of Recommendations Section 32

(1) For tenured positions at district courts and courts of first instance, with the exception of the tenured positions of Vice-President and President, the staff panel of the court of first instance shall compile a shortlist of recommendations. The shortlist shall be submitted to the higher regional court, whose external senate shall compile a further shortlist of recommendations. Both shortlists shall be forwarded to the Federal Ministry of Justice.

(2) For the tenured positions of Vice-President and President of courts of first instance, and for tenured positions at higher regional courts, with the exception of the tenured positions of their Vice-Presidents and Presidents, the staff panel of the higher regional courts shall compile a shortlist of recommendations. The shortlist shall be submitted to the Supreme Court, whose external senate shall compile a further shortlist of recommendations. Both shortlists shall be forwarded to the Federal Ministry of Justice.

(3) For tenured positions of judges for the circuit of higher regional courts only the external senate of the higher regional court shall compile a shortlist of recommendations to be submitted to the Federal Ministry of Justice.

(4) For the tenured positions of the Vice-President and President at higher regional courts and for tenured position at the Supreme Court, except for the Supreme Court's Vice-President and President, a shortlist of recommendations shall be compiled by the staff panel of the Supreme Court and submitted to the Federal Ministry of Justice.

(5) Every shortlist of recommendations shall be compiled and forwarded without delay.

(6) Job applications submitted after expiry of the tender period, or in the case of 31 (1) after expiry of the extension period, shall not be taken into consideration.

(7) Immediately upon receipt of the shortlists, such shortlists shall be posted on the Internet homepage of the Federal Ministry of Justice with the following information:

1. Broken down by gender, quoting the number of applicants deemed suitable to exercise the tendered function or to fulfil the tasks foreseen for the tendered position 2. The names of the members of the staff panel participating in compiling the shortlist of recommendations.

#### Hearing of Job Applicants Section 32a

(1) In the event that the members of the staff panel deem it necessary, applicants shall be summoned and heard. If one applicant has been summoned, all applicants not summoned shall be notified of the date of the meeting of the staff panel and advised that they are free to appear before such meeting and request being heard. Such a request shall be complied with.

(2) Minutes shall be taken of the content of such hearings and enclosed with the shortlist of recommendations. Rights of Equal Treatment Commissioners during the Appointment Procedure Section 32b (1) If persons of different sex apply, the Equal Treatment Commissioner (Section 26 Federal Equal Treatment Act), in whose scope of representation the tenured position is to be filled, has a right of access to all job applications received including the personal data sheets and the overview of job applicants. (2) In the case of (1), the Equal Treatment Commissioner shall upon request be heard by members of the staff panel and may make a statement. If an applicant is heard pursuant to Section 32a (1), the Commissioner is entitled to be present and question the applicant.

(3) Instead of being heard by members of the staff panel, the Equal Treatment Commissioner, prior to the staff panel deciding, may submit a written statement about the criteria to receive special consideration when ranking job applicants.

(4) The minutes on the Equal Treatment Commissioner's hearing or his/her statement shall be enclosed with the shortlist of recommendations.

#### Principles of Compiling Shortlists of Recommendations Section 33

(1) Each shortlist, provided there are enough suitable applicants, shall include at least three persons, if more than one tenured position is to be filled, it shall include at least double the number of judges to be appointed. For each applicant included in the shortlist, whose most recent appointment dates back less than 18 months, the minimum number of recommended applicants shall be increased by one.

(2) Inclusion in the shortlist of recommendations and ranking within such shortlist, in keeping with the criteria of Section 54 (1), shall be made in accordance with the qualifications of individual applicants for the tenured position to be filled.

Unless other legal provisions apply, the following factors shall decide in case of equal qualification

1. With first appointments, legal practice of longer duration (Section 26 (1)),
2. With subsequent appointments the longer service as judge or public prosecutor; with the tenured position of President of the Senate at a higher regional court or at the Supreme Court, the duration of service time as judge shall only be a determining factor between applicants already working at the respective courts of law, if such service time was spent at such court of law.

(3) When compiling shortlists of applicants of equal qualification for tenured positions at the Supreme Court, unless other legal provisions apply, applicants from underrepresented circuits of higher regional courts shall enjoy preference.

(4) Section 4 of the Federal Equal Treatment Act shall apply provided that “reduction of weekly working hours” shall also cover the “reduction of workload”, and part-time employment shall also cover “partial workload”.

(5) Staff panels shall substantiate their shortlists of recommendations and therein make a statement regarding the qualification of each individual applicant.

Obstacle of Kinship Section 34 (1) Judges and their relatives in ascending and descending lines, side-relatives, relatives by marriage to the third degree, spouses or adoptees or persons in any other relationship mentioned in Section 75c (2) may not be simultaneously appointed or employed at the same district court. (2) At courts of law, judges related in accordance with (1) may not be employed in the same chambers. Indicating Kinship in a Job Application Section 35 Applicants must provide information on any kinship pursuant to Section 34 with a judge of the court where a tenured position shall be filled. Involuntary Transfer to another Tenured Position Section 82 (1) Following a ruling by a Civil Service Tribunal, a judge shall be transferred to another tenured position of the same pay grade, if

1. circumstances prevail by no fault of such judge outside the exercise of his/her duties that have permanently damaged his/her reputation and are impairing the work at the tenured position in a way that the judge continuing to hold such tenured position would seriously prejudice the administration of justice;
2. the judge has entered into a relationship in the meaning of Section 34 with another judge appointed at the same district court or has been adopted by such judge;
3. any further activity as judge is not permitted under Section 6a (2) Incompatibility Act 1983, BGBl. No. 330. (2) If transferring a judge to another tenured position is not possible for the reasons mentioned in Section 6a (2), last sentence Incompatibility Act 1983, the Civil Service Tribunal shall pronounce an appropriate decision. The judge shall forthwith be relieved of duty for the duration of exercising such mandate. (3) The Supreme Court shall be

competent as Public Service Tribunal for any decision pursuant to (1), 3rd alinea or (2). (4) The provisions mentioned above shall apply to judges at the Supreme Administrative Court, provided the Public Service Tribunal is the plenary assembly of the Supreme Administrative Court.

#### Early Retirement because of Disability for Service Section 83

(1) A judge shall enter into early retirement, if

1. she or he has been absent from work because of illness for more than one year, or 2. she or he no longer meets the admission requirements pursuant to Section 2 (1), 2nd and 3rd alinea.

(2) Early retirement because of disability for service shall be ordered ex officio pursuant to Section 91 or upon request by the judge.

(3) When calculating the duration of absence from duty because of illness, intermittent absence for other reasons shall not be considered an interruption. Intermediate duty performance shall only be considered an interruption, if such performance lasted at least half the time of the previous period of absence from duty. In this case, the year shall be calculated from the end of such performance. In the case of intermediate duty performance of shorter duration, the one year absence shall be calculated by adding up the individual periods of absence. Suspension of Superannuation Section 84 As long as a judge in early retirement continues to be a member of an administrative court, any claim for superannuation shall be suspended. Such a judge shall not be entitled to receive severance payment, either.

#### Checking Continued Disability for Service Reactivation Section 85

(1) Prior to accepting any paid work, judges in early retirement shall notify thereof their last office of employment.

(2) Upon instruction by their last office of employment, judges in early retirement because of disability for service shall undergo a medical examination to check whether their disability for service continues. In checking this, also his/her activities during early retirement should be considered.

(3) If judges regain ability for service or if judges in early retirement withdraw from administrative courts, they may be reactivated and reappointed upon application or ex officio, but only after obtaining appropriate recommendations from the competent staff panels. Judges may only be reactivated ex officio by appointing them to a tenured position at their most recent place of work and in their last pay grade. The Federal Minister of Justice shall use his/her best efforts to make sure that a judge who entered early retirement from a position in an administrative court can return to a corresponding tenured position as judge.

#### Calculating the Time spent in Early Retirement Section 86



(1) The time spent in early retirement - by derogation from Section 14 Salaries Act 1956 - shall be only counted if such time was spent as temporarily appointed member of an independent administrative panel or an administrative court, and no claim for superannuation has resulted from such membership.

(2) If judges received severance payment when entering early retirement and was reactivated during the time period underlying the calculation of such severance payment, the overpayment shall be made up by reducing their salary during two years.

#### Entitlement to enter Early Retirement Section 87

(1) A judge shall enter retirement upon application when reaching his/her 738th month of life.

(2) An application pursuant to (1) may be submitted one year prior to reaching the 738th month of life. The judge may cancel such application one month at the latest before his/her retirement would become effective. Such cancellation shall not longer be permitted once the judge's tenured position has already been tendered in the Official Journal of the newspaper "Wiener Zeitung". [This provision will cease to be in force with the expiry of September 1st, 2017]

Early Retirement upon Application Section 87a (1) Judges shall be allowed to enter early retirement upon application, if they have reached 62 years of age and at the time of retirement have accumulated a total of 480 months of service eligible for superannuation.

(2) Section 87 (2) shall apply mutatis mutandis. Early Retirement ex officio Section 88 Judges have to be sent into early retirement, if their total performance appraisal for two consecutive calendar years fell short of requirements.

#### Medical Examination and Effectiveness of Early Retirement Section 89a

(1) In the event of early retirement because of disability for service – inasmuch as assessment of a legal term depends upon answering questions and falls into the scope medical and professional expertise – findings and expert opinions shall be provided by the Social Insurance Institution for Public Service Employees.

(2) Early retirement shall become effective at the end of the month when the decision or the ruling have become legally binding, or at the end of the month set forth in such decision or ruling.

#### Competence of the Civil Service Tribunal Section 90

The following courts are competent as Civil Service Tribunal - subject to the provisions of Section 82 (3):

1. A higher regional court relative to judges appointed within the circuit of such court with the exception of the Vice-Presidents and the Presidents of courts of first instance, and of judges appointed at the higher regional courts,

2. The Supreme Court for all other judges, and as appellate court for the judges mentioned in alinea 1. Formal Notice to the Judge Section 91

(1) If the total performance appraisal for a judge fell short of requirements for two consecutive years, or circumstances exist which confirm the assumption that the judge no longer fulfils the admission requirements pursuant to Section 2 (1), 2nd and 3rd alinea, he/she shall be given a formal written notice to apply for early retirement within one month after receipt of such notice to be effective at the earliest possible date (Section 89a).

(2) (Note: cancelled by BGBl. I Nr. 120/2012)

(3) The formal notice shall be issued by the President of the Higher Regional Court (President of the Supreme Court) relative to judges reporting to them, for all other judges by the Federal Minister of Justice.

Non-Compliance with Formal Notice Section 92 Should a judge not comply with the formal notice pursuant to Section 91

(1), the Civil Service Tribunal shall be seised by the body having issued such notice. Staffing of Civil Service Tribunal and Proceedings Section 93 (1) Sections 112 to 120, 123 to 136, 137 (3), 138 to 140, 142, 143, 146 (2), 157 and 161 to 165 shall apply mutatis mutandis for staffing the Civil Service Tribunal and for the relative proceedings.

(2) Against a ruling by the higher regional court as Civil Service Tribunal (Section 82 (1), 1st and 2nd alinea and Section 92), the judge involved and the Senior Public Prosecutor's Office may lodge a complaint to the Supreme Court as Civil Service Tribunal.

Curator Section 94

(1) When circumstances exist which confirm the assumption that the judge due to mental impairment is incapacitated to manage his/her own affairs, the higher regional court (Supreme Court) as Civil Service Tribunal shall during proceedings of involuntary early retirement ex officio appoint a curator from among the judges, unless the judge involved has an own legal representative.

(2) The Curator shall participate on behalf of the judge in court proceedings until a legal representative enters the proceedings, and if necessary submit appropriate applications for the appointment of a legal representative.

(3) A judge may refuse within two weeks to be appointed curator only for important reason. The higher regional court (Supreme Court) as Civil Service Tribunal shall decide whether a reason shall be deemed important. Otherwise, provision of Section 120 (3), second sentence and

(4) shall apply mutatis mutandis. Releasing the Judge from Duty prior to transferring him/her to another Tenured Position or sending him/her into Early Retirement Section 95 (1) The Civil Service Tribunal may upon hearing the Senior Public Prosecutor's Office (Procurator General's Office) without any further court hearings order the release of the judge from duty, if this is necessary considering the state of health of the person concerned.

(2) Any release from duty shall not result in any salary change. The release period shall be considered for the next increase in basic pay and for calculating superannuation.

#### Interim Release from Duty Section 96

In urgent cases both the direct superior court manager (President) and the President of the superordinate court of law may order an interim release; they are obligated to forward the case in due time directly to the competent higher regional court (Supreme Court) as Civil Service Tribunal, which after hearing the Senior Public Prosecutor's Office (Procurator General's Office) shall decide on the release without delay.

With such decision, the interim release shall cease to be in force. Cancelling the Release from Duty Section 97 The release from duty shall be cancelled as soon as the underlying reasons have ceased to exist.

The release from duty shall end at the latest with the final transfer decision. Legal Remedies against a Decision on Release from Duty Section 98 The judge concerned may lodge a complaint with the Supreme Court as Civil Service Tribunal against the decision by which a higher regional court as Civil Service Tribunal has ordered the release from duty, against a decision rejecting or cancelling the release from duty a complaint may be lodged by the Senior Public Prosecutor's Office with the Supreme Court as Civil Service Tribunal.

The following section is only available in German:

Sonderbestimmungen für Richterinnen und Richter des Bundesverwaltungsgerichts und des Bundesfinanzgerichts Ernennung der Richterinnen und Richter § 207. (1) Zur Richterin oder zum Richter des Bundesverwaltungsgerichts und des Bundesfinanzgerichts kann nur ernannt werden, wer 1. die österreichische Staatsbürgerschaft besitzt, 2. das Studium des österreichischen Rechts (§ 2a) abgeschlossen hat, 3. zumindest über eine fünfjährige juristische Berufserfahrung verfügt und 4. für die mit der Ausübung der Tätigkeit einer Richterin oder eines Richters des Bundesverwaltungsgerichts oder des Bundesfinanzgerichts verbundenen Aufgaben persönlich und fachlich geeignet ist. 5. Abweichend von Z 2 und 3 müssen die Richterinnen und Richter des Bundesfinanzgerichts ein einschlägiges Hochschulstudium, das dem Studium des österreichischen Rechts (§ 2a) in qualitativer und quantitativer Hinsicht entspricht, abgeschlossen haben und über eine fünfjährige einschlägige Berufserfahrung verfügen. (2) ...



## BELGIUM

1.

**a) A civil court of first instance (District Court):**

There are three ways to be appointed judge at the court of first instance:

- via the exam on the professional competence (art. 190, §§ 1 and 2, and art. 259bis-9, § 1, of the Judicial Code)

- a. the candidate has to hold a degree of doctor or licentiate in law (diploma);
- b. have passed the exam on the professional competence;
- c. - have worked as a lawyer at the bar for at least ten years without interruption (1°);  
or  
- have exercised an office of magistrate of the public prosecutor's office or judge or an office of state council, auditor, deputy auditor, legal secretary at the Court of Cassation, legal secretary, deputy legal secretary at the Council of State or an office of legal secretary at the Constitutional Court or an office of legal secretary or lawyer of the public prosecutor's office at the courts of appeal and the courts of first instance for at least five years (2°); or  
- have worked as a lawyer at the bar, have exercised the office of notary or have held an academic or jurisprudential position or have held legal positions in a public or private service for at least twelve years (3°).  
Where appropriate, the duration of the office mentioned in 2° is taken into account for the calculation of the period of twelve years as prescribed in 3°.

- via the court training (art. 190, §§ 1 and 2, and art. 259octies, § 2, of the Judicial Code)

- a. when enrolling, the candidates who enrol for the competitive entrance examination with a view to commencing the court training have to hold a degree of doctor or licentiate in law and, during at least one year of the period of three years prior to enrolling, their main professional activity must have consisted in a training at the bar or in holding other legal positions.

There is a long training (3 years) and a short training (18 months).

The training that gives access to the office of member of the "sitting judges" or of magistrate of the public prosecutor's office takes three years. After a training of three years, one can thus be appointed judge. (art. 259octies, § 2, of the Judicial Code);

If the short training is chosen, one can be appointed magistrate of the public prosecutor's office after eighteen months. (art. 259octies, § 3, of the Judicial Code).  
If, afterwards, a member of the public prosecutor's office wishes to be appointed judge, he or she must have exercised the office of magistrate of the public prosecutor's office for at least five years. (art. 191 of the Judicial Code)

- via an oral evaluation exam (art. 191bis of the Judicial Code)

- a. Anyone who has practised the profession of lawyer as main professional activity for at least twenty years or who has practised this profession as main professional

activity for at least fifteen years and has held a position which requires a thorough knowledge of law for at least five years, is exempt from the exam on the professional competence as mentioned in article 259bis-9, § 1, with a view to an appointment as mentioned in article 190, provided that the conditions mentioned in §§ 2 and 3 are met.

**- b) a civil court of second instance (Appeal Court);**

To be appointed judge of appeal at the court of appeal or the labour court, the candidate has to hold a degree of doctor or licentiate in law and:

1° have held legal positions for at least fifteen years, of which the last five years as a member of the "sitting judges" or as a magistrate of the public prosecutor's office; or

2° have passed the exam on the professional competence prescribed by article 259bis-9, § 1, and have worked as a lawyer for at least fifteen years without interruption or have an accumulated experience of at least fifteen years as a lawyer and as a member of the "sitting judges" or as a magistrate of the public prosecutor's office; or

3° have completed the court training prescribed by article 259octies and have exercised the office of member of the "sitting judges" or as a magistrate of the public prosecutor's office for at least seven years. (art. 207, § 2, of the Judicial Code)

**- c) the court of third instance (Supreme Court)**

To be appointed judge of appeal at the Court of Cassation, the candidate has to have held legal positions for at least fifteen years, of which the last ten years as a member of the "sitting judges" or as a magistrate of the public prosecutor's office. (art. 254, § 3, of the Judicial Code)

**2.**

The magistrates of the judiciary stop exercising their office and are pensioned at the end of the month in which they reach the age of:

- seventy for the members of the Court of Cassation;
- sixty-seven for the members of the other courts; or
- when they are no longer capable of duly exercising their office as a result of a serious and permanent infirmity. (art. 383, § 1, of the Judicial Code)

Nevertheless, the magistrates of the judiciary can, at their request and on the basis of a motivated advice of their corps chief, be authorized by the King to further exercise their office until they have reached the age of seventy or, as regards the Court of Cassation, seventy-three. The authorization is valid for one year and can be renewed. (art. 383ter, § 1, of the Judicial Code)

Moreover, there are possibilities for magistrates who are allowed to retire on the basis of their age (cf. supra) and magistrates who, at their own request, are allowed to retire before

the legal age and who, moreover, are authorized to carry the honorary title of their office, to exercise the office of substitute magistrate until they have reached the age of seventy. This authorization can be extended until they have reached the age of seventy-three. (art. 383, § 2, of the Judicial Code)

For the sake of completeness, it can be noted that it is also possible to retire before the legal retirement age pursuant to article 46 of the law of 15 May 1984 regarding measures to harmonize the pension.



## BULGARIA

The requirements concerning the substantive qualifications a candidate must fulfil at national level in terms of legal diplomas and relevant professional experience in order to become a judge in Bulgaria are stipulated by the Judicial System Act (the texts below are excerpts).

**“Article 162** An individual with only a Bulgarian citizenship may be appointed as a judge, prosecutor and investigating magistrate, provided he also meets the following conditions:

1. Has a higher education in the specialty area of law,
2. Has undergone the internship herein provided for and obtained legal competency,
3. Has got the required standard of ethics and professionalism complying with the rules of professional ethics for judges, prosecutors and investigating magistrates,
4. Has not been sentenced to imprisonment for a deliberate criminal offence, notwithstanding rehabilitation,
5. Has not been released as an elected member of the Supreme Judicial Council for undermining the prestige of the judiciary;
6. Does not suffer from a mental illness.

**Article 164** (1) An individual with at least three years of service record shall be appointed as a judge at a regional court, a prosecutor at a regional prosecution office and an investigating magistrate at a district investigation service.

(2) An individual with at least 8 years of service record shall be appointed as a judge with a district court and a prosecutor with a district prosecution office.

(3) An individual with at least 8 years of service record shall be appointed as a judge with an administrative court.

(4) An individual with at least 10 years of service record shall be appointed as a judge at an appellate court and as a prosecutor at an appellate prosecution office.

(5) An individual with at least 12 years of service record shall be appointed as a judge at the Supreme Court of Cassation and at the Supreme Administrative Court, as a prosecutor at the Supreme Prosecution Office of Cassation and at the Supreme Administrative Prosecution Office and as an investigating magistrate at the National Investigation Service.

.....

**Article 165** (1) A judge, prosecutor or an investigating magistrate shall be relieved from office upon:

1. Turning 65 years of age,

.....

(4) A judge, prosecutor and an investigating magistrate who have gone into retirement by virtue of Paragraph 1, item 1 shall not be entitled to occupying an office with judicial system bodies.“



## CYPRUS

Supreme Court Judges are appointed by the President of the Republic. According to Article 133.2 of the Constitution-

*“The President and the other Judges of the Supreme Constitutional Court shall be appointed jointly by the President and the Vice President of the Republic”.*

First instance judges are appointed, transferred and promoted by the Supreme Council of Judicature, which is composed of the members of the Supreme Court. According to Article 157.2 of the Constitution-

*“The appointment, promotion, transfer, termination of appointment, dismissal and disciplinary matters of judicial officers are exclusively within the competence of the Supreme Council of Judicature”.*

To be qualified for appointment to the Supreme Court one must have at least 12 years practice as a member of the Bar or a member of the judiciary or a combination of the two and be of a high moral standing [section 5 of the Administration of Justice Law of 1964 (L.33/1964), as amended].

Moreover, according to Articles 133.5 and 153.5 of the Constitution-

*“The President and the other judges of the Supreme Constitutional Court shall be appointed from amongst lawyers of high professional and moral standard”.*

To qualify for appointment as a District Judge, the lower level in the hierarchy of first instance courts, one must be registered as advocate with six years practice in the legal profession and of high moral standing. For appointment to the office of President of a District Court, one must be a qualified practicing lawyer for at least ten years and of high moral standing. Prior judicial service ranks as practice in law. According to Section 6 of the Courts of Justice Law of 1960 as amended (L.14/1960)-

*“No person shall be qualified to be appointed as a President of a District Court or as a Senior District Judge unless he is a qualified lawyer with at least ten years practice and of high moral standard and no person shall be qualified to be appointed as a District Judge unless he is a qualified lawyer with at least six years practice and of high moral standard. For the purposes of this subsection “practice” shall include service in a judicial office”.*

According to the Constitution, Supreme Court judges “shall be permanent members of the judicial service and shall hold office until they attain the age sixty-eight (Article 133.7). District Court Judges must retire at the age of 63 [Section 8(2) of the Courts of Justice Law of 1960 (Law 14/1960), as amended]. According to this section-



*“A President of a District Court, a Senior District Judge and a District Judge shall hold office until they attain the age of sixty-three”.*



## CZECH REPUBLIC

1) To be appointed as a judge a person must:

- be a Czech citizen
- enjoy full legal capacity,
- have no criminal record,
- be at least 30 years of age,
- have obtained a master's degree in law at a Czech university,
- have passed the special judicial examination,
- possess the moral qualities that guarantee they will exercise their function properly, and
- accept appointment as a judge and assignment to a specific court.

Judges are appointed by the President of the Republic and take office on taking the oath.

2) There are no additional / special requirements for the qualification of judges to be able to be allocated to the higher courts (except for the Constitutional Court).

3) Appointment as a judge is not limited in time, but there is an age limit. Judges' tenure ends at the latest at the close of the year in which they reach the age of 70.

As regards the voluntary retirement the details can be found here:

<http://www.cssz.cz/en/pension-insurance/old-age-pension.htm>.



## DENMARK

1. As regards qualifications for appointment of judges:

*"In Denmark "the necessary qualifications for appointment as a judge" is that he or she holds a Master of Law degree. It is a further condition that the person's suitability as a judge has been rated/evaluated in the High Court, or that "it otherwise can be proven unequivocally that the person is suitable to fill the judge position available"."*

It should be noted that only in extremely rare cases it has occurred that a position as a judge at the district court or the High Court has been occupied by a person whose suitability as a judge has not been evaluated in the High Court. This option for appointing a judge must hence be seen as a (rare) exception to the general procedure including the evaluation by the High Court.

2. As regards retirement age and age at the time of their appointment or reappointment:

*"In Denmark the mandatory retirement age for judges is 70 years. There is no age limit for appointment of judges. As a general rule, judges are entitled to a retirement pension at the age of 60 years."*



## ESTONIA

### 1. Qualifications for appointment of judges

The qualifications for appointment of judges are regulated in the Courts Act. The general requirements for becoming a judge in a court of first instance (County Court), in a court of second instance (Circuit Court) and in a court of third instance (Supreme Court) are the same. In addition, there are specified requirements for the judges of each instance.

The general requirements for judges are the following

A citizen of the Republic of Estonia may be appointed as a judge if he or she:

- 1) has acquired in the field of law at least an officially certified Master's degree, a corresponding qualification in Estonia or a corresponding foreign qualification;
- 2) has proficiency of the Estonian language at the level C1 or a corresponding level;
- 3) is of high moral character;
- 4) has the abilities and personal characteristics necessary for working as a judge.

The following shall not be appointed as a judge:

- 1) persons who are convicted of a criminal offence;
- 2) persons who have been removed from the office of judge, notary or bailiff;
- 3) persons who have been expelled from the Estonian Bar Association;
- 4) persons who have been released from the public service for a disciplinary offence;
- 5) persons who are bankrupt;
- 6) persons whose professional activities as an auditor have been terminated except termination on the basis of the application of an auditor;
- 7) persons who have been deprived of the qualification of a patent agent, except deprivation of qualification on the basis of the application of a patent agent.
- 8) who have been deprived of the profession of a sworn translator due to the fact that the sworn translator does not perform an obligation provided for in the law or performs it inadequately.

Requirements for becoming a judge of court of first instance (County Court)

A person who has undergone judge's preparatory service or is exempted therefrom and has passed a judge's examination may be appointed as a judge of a county court.

A person who has worked as a sworn advocate or prosecutor, except an assistant prosecutor, for two years immediately prior to passing the judge's examination and a person who has worked as a judge earlier and if not more than ten years have passed since his or her release from the office of judge need not have undergone judge's preparatory service.

#### Requirements for becoming a judge of court of second instance (Circuit Court)

A person who is an experienced and recognised lawyer and who has passed a judge's examination may be appointed as a judge of a circuit court. A person who worked as a judge directly before appointment shall be exempted from the judge's examination.

#### Requirements for becoming a judge of court of third instance (Supreme Court)

A person who is an experienced and recognised lawyer may be appointed as a justice of the Supreme Court.

#### 2. Mandatory retirement age of a judge

The maximum age of service of a judge is 67 years, unless otherwise provided for in this Act.

A judge shall be released from office if the judge has attained 68 years of age, unless the maximum age of the judge is increased. The Supreme Court may in exceptional case increase the maximum age of the judge of a court of the first instance and of a court of second instance up to two years at a time. In that case the judge shall be released from office after the judge has attained the increased maximum age.

The general retirement age in Estonia is currently 63 and as of 2017 it will be 65. Therefore, the judge may already retire when he/she has reached the general retirement age.

There is no age limit for the appointment of judges enacted in Estonian legislation.



## FINLAND

### **Qualifications for appointment of judges**

In Finland the required qualifications for appointment of judges (both for the general courts of first instance and for the courts of appeal), are as follows:

- the person must be a righteous Finnish citizen,
- who has earned a Master's degree in law, and
- who by his or her previous activity in a court of law or elsewhere has demonstrated the professional competence and the personal characteristics necessary for successful performance of the duties inherent in the position.

For appointment as a Market Court judge (Finnish Market Court is a specialized court with exclusive jurisdiction with all IPR civil disputes (e.g. all patent disputes)) there is an additional qualification that the person must be acquainted with competition or supervision matters or procurement cases, industrial property rights cases or market law cases.

For appointment as the President or a Justice of the Supreme Court there is an additional qualification to the "general qualifications" described above [in the first paragraph] according to which the person must easily meet those requirements.

[ NB In Finland the judgements and decisions of the Market Court in patent disputes are appealed directly to the Supreme Court, that is there is no courts of appeal "in the middle" ]

### **Retirement age**

At least currently in Finland a judge can retire at the age of 65 years, and he / she have to retire at the age of 68 years.

### **Age limit for appointment**

In Finnish legislation there no statutory maximum age limit for appointment of judges.



## FRANCE

### Criteria for the nomination of Judges and Prosecutors in the Courts of First Instance, Courts of Appeal and the Court of Cassation in France

These criteria are set by the Ordinance n° 58-1270 of December 22<sup>nd</sup> 1958 establishing the Organic Law concerning the Statute of the Judiciary (Judges or Prosecutors) and the Decree n° 93-21 of January 7<sup>th</sup> 1993 for the application of the Ordinance n° 58-1270 of December 22<sup>nd</sup> 1958.

Judges can formulate wishes for various positions via a “desiderata” list. The Department of Judicial Services then elaborates proposals for the nomination of Judges to Courts (or in an administrative position within the central government). These proposals are then submitted to the Supreme Council of the Judiciary. The Supreme Council of the Judiciary delivers either a favourable, or unfavourable, opinion (concerning prosecutors) and an assent, or a dissent (concerning judges). Certain positions can be filled only pursuant to a proposal by the Supreme Council of the Judiciary, for instance to the Court of Cassation.

A Judge can be called to hold his/her office in a Court of First Instance, Court of Appeal and the Court of Cassation (Supreme Court) either at Second or First Grade.

In order to obtain First Grade status, the Judge or Prosecutor must fulfil the requirements to be registered before the Promotions Committee in compliance with article 15 of the Decree which provides for a requirement of a seniority of 7 years in office, of which 5 in active service.

### PROFESSIONAL JUDGES AND PROSECUTORS RECRUITMENT IN THE FRENCH JUDICIAL BODY

	<b>General conditions concerning all recruitments</b>	<b>Specific conditions relevant to the concerned recruitment</b>	<b>Competitive examination or Promotions Committee based recruitment</b>	<b>- Training - Probative internship</b>	<b>Professional Capacity Jury</b>	<b>Final training prior to office appointment</b>
<b>1st entrance examination for the ENM art. 17 Ord. 1958 + Decree 4 May 1972</b>	Article 16 of the Ordinance of December 22, 1958: - French nationality,	Four years university degree (Baccalauréat + 4) A maximum age of 31 years	Competitive examination	31 months of training as an Auditor of Justice at the ENM (Ecole Nationale de la	Interview of the Auditor of Justice by a Jury, with an assessment of	3 months in-Court training

<p><b>2nd entrance examination for the ENM art. 17 Ord. 1958 + Decree 4 May 1972</b></p>	<p>- Benefit from their Civil Rights, - High morality</p>	<p>Civil Servant, Military or other Public Employee 4 years minimum of professional practice. In 2014: maximum age of 48 years and 5 months (due to 10 years commitment of practice after completing training at the ENM)</p>	<p>Competitive examination</p>	<p>Magistrature-National School for the Judiciary) and amongst other Institutions or Services (Lawyers, Police, Gendarmerie, Penitentiary ...)</p>	<p>professional capacity and ranking,</p>	
<p><b>3rd entrance examination for the ENM art. 17 Ord. 1958 + Decree 4 May 1972</b></p>		<p>At least 8 years of professional practice, or as an elected member of a local public body A maximum age of 40 years</p>	<p>Competitive examination</p>			
<p><b>Additional Recruitment examination in the 1st Grade of the Judicial body art. 21-1 ord. 1958 + Decree 22 November 2001</b></p>	<p>Article 16 of the Ordinance of December 22, 1958: - French nationality, - Benefit from their Civil Rights,</p>	<p>Four years university degree (Baccalauréat+4). At least 15 years of professional practice in the legal, administrative, economic or social field that qualifies for judicial office A minimum age of 50 years</p>	<p>Competitive examination</p>	<p>5 months of probative internship (including one month at the ENM and four months in Court)</p>	<p>Interview of the Intern and assessment of professional capacity by a jury at the end of the probative period</p>	<p>6 months in-Court training</p>
<p><b>Additional Recruitment examination in the 2nd Grade of the Judicial body art. 21-1 ord. 1958 +</b></p>	<p>- High morality</p>	<p>Four years university degree (Baccalauréat+4). At least 10 years of professional practice in the legal, administrative, economic or</p>	<p>Competitive examination</p>			



<b>Decree 22 November 2001</b>		social field that qualifies for judicial office A minimum age of 35 years				
<b>Nomination as an Auditor of Justice at the ENM art. 18-1 ord. 1958</b>	Article 16 of the Ordinance of December 22, 1958: - French nationality, - Benefit from their Civil Rights, - High morality	Four years university degree and 4 years of practice in the legal, economic or social field qualifying for judicial office. Or with a doctorate in law, in addition to the doctorate, hold another graduate degree. Or three years of teaching or research activity in a public institution of higher education after graduating with a Master of Law degree. A minimum of 31 years of age and a maximum of 40 years of age	Review of the Candidate's application by the Promotions Committee	Same as for the 1st, 2nd and 3rd entrance examination at the ENM as an Auditor of Justice.	Same as for the 1st, 2nd and 3rd entrance examination at the ENM as an Auditor of Justice	3 months in-Court training
<b>Direct access in the 2nd Grade of the Judicial body art. 22 Ord. 1958</b>		Four years university degree (Baccalauréat + 4) A minimum of 35 years of age 7 years of professional practice qualifying for judicial office, Chief clerk or	Review of the Candidate's application by the Promotions Committee. A first opinion will be given on the integration,	6 months of probative internship in Court, plus one week of theoretical training at the ENM.	At the end of the probative period, the candidate is assessed by a jury. The candidate is then presented to the	6 months in-Court training

		seven years of service as a clerk Class A or Officer of the Ministry of Justice with seven years of service.	followed by a probative period if the opinion is favourable.		Promotions Committee which will make the final decision.	
<b>Direct access in the 1st Grade of the Judicial body art. 23 Ord. 1958</b>		Four years university degree (Baccalauréat + 4), 17 years of professional practice qualifying for judicial office. Or 1st Grade Chief Clerk, currently employed, with specific responsibilities whose skills and experience qualify for judicial office				

## Concerning the age for asking a State pension:

### Minimum age for asking for a State pension:

- For those born after the 1<sup>st</sup> of January 1955 : **62 years**

It is possible to retire at this age even if one does not have all the necessary quarters for obtaining a pension at a full rate (75%). However, this would result in a reduction of the amount of the pension.

- For those born after the 1<sup>st</sup> of January 1955: **67 years**

### Judges have the possibility to continue to hold an office beyond 67 years pursuant to one of the following schemes:

- Extension up to ten quarters (Article 69 of the Law n° 2003-771 of August 21<sup>st</sup> 2003 for the Pension Reform and Article 4 of the Law of August 18<sup>th</sup> 1936 for Retirement): **a maximum age of 73 years**
- “surnombre”, “professional activity in surplus” (Art 76-1-1 of the Ordinance of December 22<sup>nd</sup> 1958 concerning the Statute of the Judiciary): **68 years**



## GERMANY

### German Regulations for Judges on Eligibility, Retirement and Payment of Pensions

In Germany, the judicial power is exercised by the Federal Constitutional Court, by the federal courts provided for in the Basic Law (German Constitution), and by the courts of the Länder (Article 92 Basic Law). Accordingly, there are both federal as well as Länder regulations for judges.

#### 1. Eligibility Criteria

The preconditions for the appointment of a judge are in general laid down in section 9 of the German Judiciary Act. These preconditions apply both to judges at federal courts and at courts of the Länder. According to section 9 of the German Judiciary Act, judicial tenure may only be given in case of a person who

1. is a German in terms of Article 116 of the Basic Law,
2. makes it clear that he will at all times uphold the free democratic basic order within the meaning of the Basic Law,
3. is qualified to hold judicial office (sections 5 to 7 of the German Judiciary Act), and
4. has the requisite social skills.

Under section 5(1) of the German Judiciary Act, whoever concludes his/her legal studies at a university by taking the first state examination and finishes the subsequent period of preparatory training by taking the second state examination shall be deemed to be qualified to hold judicial office. Moreover, under section 7, every full professor of law at a university in Germany applies shall be deemed to be qualified to hold judicial office.

One additional precondition is required to become a judge at the highest courts of the Federal Republic of Germany (i.e. at the Federal Court of Justice (Bundesgerichtshof), the Federal Administrative Court (Bundesverwaltungsgericht), the Federal Finance Court (Bundesfinanzhof), the Federal Labour Court (Bundesarbeitsgericht) and the Federal Social Court (Bundessozialgericht). There, a person may only be appointed if he has attained the age of thirty-five.

The judges of each of these courts are chosen jointly by the competent Federal Minister and a committee for the selection of judges consisting of the competent Land ministers and an equal number of members elected by the Bundestag (Article 95 para. 2 Basic Law)

#### 2. Retirement

Judges for life retire at the end of that month in which they reach the retirement age applicable to them. They generally reach retirement age on their sixty-seventh birthday

(standard retirement age). This retirement age applies in principle both for judges at the federal courts as well as at the courts of the Länder. Retirement may not be postponed.

On their application, judges for life who are severely disabled within the meaning of section 2 subsection (2) of the Ninth Book of the Social Security Code shall be retired on their sixty-second birthday. On their application, judges for life who are severely disabled within the meaning of section 2 subsection (2) of the Ninth Book of the Social Security Code and who were born before 1 January 1952 shall be retired on their sixtieth birthday. On their application, judges for life shall be retired on their sixty-third birthday. (See section 48 of the German Judiciary Act.

### **3. Payment of Pensions**

Judges do not receive a pension until they have reached the retirement age applicable to them (see answer to question 2 and section 46 and 71a of the German Judiciary Act in conjunction with section 4 para 2 of the Civil Service Pensions Act). Only if a judge is invalidated by an occupational accident and is therefore retired, he or she will receive a pension before reaching the standard retirement age ("Unfallruhegehalt", section 46 and 71a of the German Judiciary Act in conjunction with section 36 of the Civil Service Pensions Act).

As the amount of the pension is governed by the length of service, early retirement usually leads to a reduction.



## GREECE

1. Regarding the substantive qualifications a candidate must fulfil at national level for appointment to judicial office, please note:

The Greek judges and prosecutors are appointed after graduating from the National School of Judges. In order to participate in the contest for accessing the National School of Judges, the candidates must be graduates of a Law School and have a professional experience as lawyers for at least two years or for at least one year if they have a PhD in Law. Court officials can also be candidates, but apart from the graduation of a Law School, a professional experience of five years is required. No professional experience is required for candidates who are magistrates (Eirinodikes).

After graduating from the National School of Judges and completing training period of 10 months, the graduates become judges at a civil court of first instance (District Court).

- The judges of the court of first instance can become judges at a civil court of second instance (Appeal Court) after, at least, seven years
- The judges at a civil court of second instance (Appeal Court) can become judges at the Supreme Court, after, at least, three years, provided that there are vacant posts.

2. Regarding the age limits for judges, please note:

- The candidates for the National School of Judges, that offers initial training for judges of civil, criminal and administrative jurisdiction, must be at least 28 years old, but must not exceed the age of 45 at the 31<sup>st</sup> of December on the year the contest was announced.
- In principle, Judges are mandatorily retired at the age of 65 except for the Presidents of courts of Appeal, Judges and Presidents of the Supreme Court, who are mandatorily retired at the age of 67. Judges can be entitled to a retirement pension, depending on their work experience and accordingly to the legislation that is applicable to any official.



## ITALY

### 1) Qualifications for the appointment to judicial offices

Magistrates (judges and prosecutors alike) are recruited on the basis of a national competitive entrance exam pursuant to art. 106 of the Constitution (“judges are recruited by means of competitive examinations”). Rules have changed over the last few years. At present, the conditions for the admission to the exam are: a) Italian citizenship; b) five-year university degree in law; c) a diploma of specialization from a post-graduate law School or 18 months apprenticeship at either a Court or the State legal advisory service (Avvocatura generale dello Stato) or being a lawyer. The appointment to a judicial office follows a further two-year apprenticeship.

11 years of professional experience are required to be appointed at a court of second instance.

Further 7 years are required to be appointed at the court of third instance.

### 2) Mandatory retirement age and maximal age of appointment

Currently, the mandatory retirement age for magistrates (judges and prosecutors alike) is 70 (just lowered from 75) and a retirement pension after 42 years and 6 months (men) or 41 years and 6 months (women) worth of social contributions. No upper age limit for the appointment of judges is applicable.



## HUNGARY

### **1. Qualifications for appointment of legally qualified judges at national level**

In Hungary, *Act CLXII of 2011 on the legal status and remuneration of judges* (hereinafter: the Act) determines the terms and conditions of judicial appointments. Paragraph (1) of Section 4 of the Act sets forth the criteria to be met for judicial appointments, while Paragraph (2) of Section 4 of the Act defines those cases when persons may not be appointed as judges. The preliminary condition for becoming a judge is to be of Hungarian nationality and to have proper capacity.

Based on the provisions of the Act, only those can be appointed judges, regardless of whether they apply for a position at a court of first, second or third instance, who fulfil the following three criteria as regards **qualifications**.

- **Possessing a university degree in law.**

Even though Hungary participates in the so-called 'Bologna Process', legal education is an exception to this rule. Legal education is not divided into BA and MA levels; a law degree can only be obtained at the end of the five-year long (10 university semesters) law school education. The **level of the degree is equal to the MA level**; moreover, the title of 'Doctor of Law' is also awarded to students upon obtaining the degree.

- **Having passed the professional law examination.**

The Hungarian notion of professional law examination corresponds to the bar exam and is composed of three parts: 1. Criminal Law, Criminal Procedural Law and Penal Law 2. Civil Law and Civil Procedural Law 3. Constitutional Law, Administrative Law, Law of the European Union and Labour Law (including Social Security Law as well). Before applying for the examination, the candidate needs to have proven legal experience of at least three years.

- **For a minimum of one year, having**

- a) worked as an officer of the court, vice-prosecutor, attorney, notary, or legal counsel, or**
- b) worked as a government or civil servant at a central administrative body or in a position requiring an administration or legal examination, or**
- c) worked as a constitutional judge, judge, military judge or prosecutor, or**
- d) administered justice at an international organization or any body of the European Union, or have conducted activities related to the administration of justice.**

The Act does not contain any additional condition regarding the appointment of a judge to a civil court of second or third instance.



## **2. Mandatory retirement age**

Currently, the statutory retirement age for judges is **65 years**.

As set out in Point h) of Section 90 of the Act a judge **shall be exempted** if

- he/she has reached the applicable statutory retirement age or
- before reaching the statutory retirement age, he/she requests retirement. This may only be requested under special circumstances laid down by the Act LXXXI of 1997 on Social Security Pension Services.

## **3. Age of appointment**

In Hungary, only persons having **reached the age of thirty years** may be appointed judges according to Paragraph (1) of Section 4. Paragraph (2) of Article 26 of the Fundamental Law of Hungary stipulates that judges shall be allowed to **remain** in office up to the statutory retirement age for old-age pension.

Regarding the **upper age limit** for appointment, Paragraph (2) h) and i) of Section 4 sets forth that persons **may not be appointed** as judges

- for whom old-age pension is paid, or other benefits are provided before reaching the statutory age limit and that benefit, after reaching the statutory age limit, is continued to be paid in the form of old-age pension;
- who reached the **statutory retirement age** for old-age pension.



## IRELAND

There are differing qualification requirements within the first instance courts for appointment to judicial office, those for the senior first instance court (High Court) differing from the Circuit Court and District court. The requirements for appointment to the High Court and the two appellate jurisdictions (Court of Appeal and Supreme Court) are the same.

To qualify for appointment as a judge of the Supreme Court, the Court of Appeal or the High Court, a person not already holding judicial office must be, for the time being, a practising barrister or a practising solicitor of not less than 12 years standing who has practised as a barrister or a solicitor for a continuous period of not less than 2 years immediately before such appointment.

In addition

(a) a judge of the Circuit Court who has served as such a judge for a period of not less than 2 years shall be qualified for appointment as a judge of the Supreme Court or the High Court.

(b) a person who—

(i) is or was at any time during the period of 2 years immediately before the appointment concerned—

a judge of the Court of Justice of the European Communities,

a judge of the Court of First Instance attached to that Court, an Advocate-General of the Court of Justice of the European Communities,

a judge of the European Court of Human Rights established under the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November, 1950,

a judge of the International Court of Justice established under the Charter of the United Nations,

a judge of the International Criminal Court established under the Rome Statute of the International Criminal Court done at Rome on the 17th day of July, 1998, upon the entry into force of that Statute,

a judge of an international tribunal within the meaning of section 2 of the International War Crimes Tribunals Act, 1998, and

(ii) was a practising barrister or a practising solicitor before appointment to any of those offices shall be qualified for appointment as a judge of the Supreme Court, the Court of Appeal or the High Court.

To qualify for appointment as a judge of the District Court a person must be, for the time being, a practising barrister or a practising solicitor of not less than ten years' standing.

To qualify for appointment as a judge of the Circuit Court a person not already holding judicial office must be, for the time being, a practising barrister or a practising solicitor of not less than ten years' standing.

In the case of persons not already holding judicial office who seek appointment to such office, the Judicial Appointments Advisory Board may only recommend a person for consideration for appointment if the Board is of the opinion that the person—

has displayed in his or her practice as a barrister or a solicitor a degree of competence and a degree of probity appropriate to and consistent with the appointment concerned,

in the case of an appointment to the office of ordinary judge of the Supreme Court, of ordinary judge of the Court of Appeal or of ordinary judge of the High Court,

has an appropriate knowledge of the decisions, and an appropriate knowledge and appropriate experience of the practice and procedure, of the Supreme Court, the Court of Appeal and the High Court,

is suitable on the grounds of character and temperament,

has undertaken in writing to the Board his/her agreement, if appointed to judicial office, to take such course or courses of training or education, or both, as may be required by the Chief Justice or President of the court to which that person is appointed, and is otherwise suitable.

#### Retirement

70 years is the retirement age for judges of the Circuit and High Courts and the Court of Appeal and Supreme Court. The retirement age for District Court judges is 65, subject to the possibility of a yearly extension, grantable year to year, up to the age of 70.

#### Pension

Pension arrangements depend on the court and date of appointment. A judge of the Supreme Court, Court of Appeal, High Court or Circuit Court who, owing to age, vacates his or her office after 2 years or more of service is entitled to a pension for life of one-fortieth of his or her remuneration at the time of such vacation of office for each of the first 5 years of service with the addition of three-eightieths of such remuneration for every completed year of service in excess of 5 years of service, subject to a maximum pension of one-half of such remuneration.

A judge of the District Court who, owing to age, vacates his or her office after 2 years or more of service a pension for life of one-fortieth of his or her remuneration at the time of

such vacation of office for each of the first 5 years of service with the addition of one-fortieth of such remuneration for every completed year of service in excess of 5 years of service, subject to a maximum pension of one-half of such remuneration.

A judge appointed after the 1st January 2013 who has completed 24 months service (referred to in the Act as the vesting period) shall be entitled to receive a pension and lump sum if he or she either:

(a) attained the normal pension age and has ceased to be a holder of a judicial office before reaching the retirement age for such a holder prescribed by law, or

(b) has attained the retirement age for such a holder as so prescribed.

The maximum pension is equivalent to one half of salary and the maximum lump sum is equivalent to one and a half times salary. The annual pension will be equivalent to the sum of what are referred to as referable amounts in respect of each calendar year or part of a calendar of service. The referable amount is 2.5% of salary which means that twenty years' service would be required to qualify for the maximum pension ( $50\% / 2.5\% = 20$ ).

For qualifying requirements for a barrister or solicitor, please refer to the websites of the professional organisations concerned, given the level of detail and the options involved (see links below).

<https://www.kingsinns.ie/prospective-students/barristeratlaw-degree>

<https://www.lawsociety.ie/Public/Become-a-Solicitor/>



## LATVIA

According to the judicial system of Latvia there are different qualifications for appointment of judges of a District (City) Court, Regional Court and Supreme Court. In selecting a candidate for the office of a judge, the principle shall be observed that only Latvian citizens, who are highly qualified and fair lawyers, may work as judges. In the selection of judges, no discrimination based on origin, social and financial status, race or nationality, sex, attitude towards religion, type and nature of occupation, or political or other views is permitted. We do not have distinguish of qualifications between civil and criminal court.

### **1. Qualifications for appointment of judges of a District (City) Court:**

*As a judge of a district (city) court may be appointed a person who:*

- 1) is a Latvian citizen;
- 2) is fluent in the official language at the highest level;
- 3) has attained at least 30 years of age;
- 4) has acquired a higher vocational or academic education (except the first level vocational education) and a lawyer qualification, as well as a Master or Doctor degree;
- 5) has at least five years length of service in a legal speciality after acquiring a lawyer qualification or has been working in position of assistant to a Chief Judge or assistant to a judge for at least five years;
- 6) has passed qualification examinations (this qualification does not refer to the UPC judge candidate).

### **2. Qualifications for appointment of judges of a Regional Court:**

*To the office of a judge of the regional court may apply:*

- 1) a judge of a district (city) court who has at least six years total length of service in the office of a judge and who has received a favourable opinion from the Board of Justice in the extraordinary evaluation of the professional work of a judge;
- 2) a judge of a Land Registry Office, who has at least six years total length of service in the office of a judge and who has received a favourable opinion from the Board of Justice in the extraordinary evaluation of the professional work of a judge;
- 3) a judge of a district (city) court who has been approved to office with an unlimited term of office, who has a Master or Doctor degree and who has received a favourable opinion from the Board of Justice in the extraordinary evaluation of the professional work of a judge;
- 4) or a judge of a Land Registry Office, who has a Master or Doctor degree and who has received a favourable opinion from the Board of Justice in the extraordinary evaluation of the professional work of a judge.
- 5) a person who has ten years total length of service in a position as an academic personnel in the legal specialities at an institution of higher education, a sworn advocate, a prosecutor, or until 30 June 1994 as a deputy prosecutor, an

assistant prosecutor, or an investigator for the prosecution, and who has passed the qualification examination;

- 6) a person who has been in the office of a Constitutional Court judge, a judge of an international court or a judge of a supranational court.

### **3. Qualifications for appointment of judges of a Supreme Court:**

*To the office of a judge of the Supreme court may apply:*

- 1) a person who has reached the age of 40 years, and
- 2) a judge of a district (city) court or a judge of a regional court, who has at least ten years total length of service in the office of a judge and who has received a favourable opinion from the Board of Justice in the extraordinary evaluation of the professional work of a judge.
- 3) a judge of a district (city) court who has been approved to office with an unlimited term of office or a judge of a regional court who has a Master or Doctor degree and who has received a favourable opinion from the Board of Justice in the extraordinary evaluation of the professional work of a judge;
- 4) a person who has not less than fifteen years total length of service in a position as an academic personnel in the legal specialities at an institution of higher education, a sworn advocate or a prosecutor, and who has passed the qualification examination;
- 5) a person who had been in the office of a Constitutional Court judge, a judge of an international court or a judge of a supranational court.

A person who have reached the age of 65 years have a right to a retirement pension. This rule is applicable also for the judges, so judge's retirement age is 65 years. According to the Law On judicial Power the maximum age for holding the office of a judge shall be 70 years (this is age for mandatory pension). In some case judges is allowed to perform their duties after retirement pension until 70 years.



## LITHUANIA

	<b>Requirements for appointment to judicial offices under the Law on Courts</b>
<b>DISTRICT COURT JUDGE</b>	
Requirements for a Judicial Office of the <b>District court</b>	<p>The post of a district court judge may be filled by a:</p> <ul style="list-style-type: none"><li>• national of the Republic of Lithuania</li><li>• of good repute,</li><li>• having a university degree in law – the academic title of bachelor in law and master in law or the lawyer’s professional academic title (one-cycle university education in law)</li><li>• meeting the requirements established by law required for security clearance procedure or work permit or right of access to classified information,</li><li>• upon submitting a health certificate,</li><li>• having a record of at least five years of work in the legal profession and</li><li>• passing the examination for candidates to judges. A person having Doctor or Habil. Doctor of Social Sciences (Law) degree, also a person of at least five years standing as a judge, if not more than five years have lapsed since he last held that position, shall be exempt from sitting for the candidate examination.</li></ul>
<b>JUDGE OF REGIONAL COURT</b>	
Requirements for a Person Seeking Judicial Office the <b>Regional Court</b>	<ul style="list-style-type: none"><li>• A judge entered in the register of persons seeking judicial office or a person having Doctor of Social Sciences (Law) degree</li><li>• At least four years' standing as a judge and (or) university professor in law</li><li>• Submission of a health certificate.</li></ul>
<b>JUDGE OF THE COURT OF APPEAL OF LITHUANIA</b>	
Requirements of a Person Seeking Judicial Office of the <b>Court of Appeals</b>	<ul style="list-style-type: none"><li>• A judge entered in the register of persons seeking judicial office or a person having Doctor of Social Sciences (Law) degree</li><li>• At least eight years' standing as a judge or a university professor of law</li><li>• Submission of a health certificate.</li></ul>
<b>JUDGE OF THE SUPREME COURT OF LITHUANIA</b>	
Requirements for a Person Seeking Judicial Office of the <b>Supreme Court</b>	<ul style="list-style-type: none"><li>• A judge or a person having Doctor of Social Sciences (Law) degree</li><li>• At least ten year’s standing as a judge and (or) a university professor of law</li><li>• Submission of a health certificate.</li></ul>

### **Requirements for the retirement age (concerning Art. 23 of the Service Regulations)**

- The Law on Courts of the Republic of Lithuania sets out that the age limit for a person to be appointed as a judge – **65 years** of age.
  - The term of the office of judges finish once they reach **65 years** of age.
  - If the term of office finishes while the hearing of a case is not finished, they may be extended until the case is finished or postponed.
- The general retirement age set by law in Lithuania is 65 years. As the retirement age was set lower at the time of the enactment of this provision, there is a transitional provision concerning the application of this rule, whereby the retirement age is gradually extended every year until the target of 65 years is reached (at this moment it is around 63 years for men and around 61,5 years for women, and will be constantly extended for several more years until it reaches 65).





## LUXEMBOURG

In Luxembourg, the mandatory retirement age is 68 years for a judge, normal is 65 but they (the judge) can choose to stay until 68, but then that's final (literal translation of text would be "put into retirement").

Earlier retirement is possible, you are entitled to a pension after 40 years of service, here study years are taken into account, ie retirement can be possible after 60 or so.

Age limit to be nominated is 25 years (having fulfilled all other requirements and completed internship).

To be president of a superior court the age limit is 35.

### **Eligibility criteria (Law of 7 March 1980 on judicial organization)**

#### **Art 3**

To be appointed as Judge (or deputy judge or magistrate) a 2 year service as magistrate at a district court or at a substitute state prosecutor is required.

#### **Art 16.**

Conditions for appointment to judicial office

- 1) Luxembourg nationality,
- 2) enjoy civil and political rights,
- 3) be at least 25 years old,
- 4) hold a Luxembourg diploma of law corresponding to a master degree, or a master degree in law from a foreign university recognized and approved by the Luxembourg Ministry of higher education,
- 5) hold diploma sanctioning the final examination of judicial training of 2 years and
- 6) having fulfilled service as law clerk in accordance with the applicable rules.

#### **Art 17**

To be appointed President, State Attorney, vice President to a district court the candidate has to be at least 30 years old and having exercised judicial functions or been registered as a solicitor at the bar during at least 3 years. Are equivalent to judicial functions: member of the Government, Head of Administration and Adviser of the Government.

#### **Art 41**

Age limit to be appointed President at Superior Court, Court of Cassation, Appeals Court, State Attorney or General Counsel is 35 years minimum with at least 7 years' experience as a solicitor or other judicial functions.

**Art. 174**

Members of the Court and tribunals retire when they reach 68 years of age, or for other (health or other) reasons preventing them to fulfil properly their functions.



## MALTA

1. The minimum eligibility criteria to be appointed as a Judge in Malta is found in the Constitution of Malta, the relevant Article is being reproduced below:

*“Article 96 (2) A person shall not be qualified to be appointed a judge of the Superior Courts unless for a period of, or periods amounting in the aggregate to, not less than twelve years he has either practised as an advocate in Malta or served as a magistrate in Malta, or has partly so practised and partly so served.”*

This requirement is [irrespective of](#) the instance of the court that the Judge presides on.

2. To become a practicing lawyer the following extracts from Article 81 of the Code of Organisation and Civil Procedure, represent the key qualifications/experience required which are relevant to this question

*“(c) he has obtained the academic degree of Doctor of Law (LL.D.) in accordance with the provisions of the Statute, Regulations and Bye-Laws of the University of Malta, or such other qualification at masters level as the Minister, after consultation with the Senate of the University of Malta, may from time to time prescribe, or a comparable degree from such other competent authority in accordance with the principles of mutual recognition of qualifications, after having read law in Malta or in a Member State;*

*(d) he has, after satisfying the requirement of paragraph (c), or, in the case of persons regularly following the academical course of law in the University of Malta, at any time after the commencement of the last academic year of the said course, for a period of not less than one year regularly attended at the office of a practising advocate of the Bar of Malta and at the sittings of the superior courts;”*

3. The mandatory retirement age for judges also stems from the Constitution of Malta:

*“Article 97 (1) Subject to the provisions of this Article, a judge of the Superior Courts shall vacate his office when he attains the age of sixty-five years”.*



## NETHERLANDS

1:

In The Netherlands, in order to be appointed as a judge at a civil court of first instance (Rechtbank) aspiring judges must meet the following substantive requirements to be eligible to enter into the formal selection procedure:

1. Possess the Dutch nationality;
2. A LL.M. degree in Dutch law obtained from a Dutch university;
3. A qualification of prosecution capacity granted by a university (so called 'civiel effect').
4. At least 2 and maximum 5 years of relevant legal experience after graduation, of which at least 2 years of experience outside the judiciary, or
5. At least 5 years of relevant legal experience after graduation, of which at least 2 years of experience outside the judiciary or public prosecution office;

Aspiring judges with 2 to 5 years of legal experience enrol in the full training programme of 4 years. Aspiring judges with more than 5 years of legal experience enrol in the condensed training programme of 15 months to 3 years.

In addition to the qualifications under 1-3, at least 10 years of relevant legal experience after graduation is required for appointment as a judge at a civil court of second instance (Gerechtshof) and at the Dutch Supreme Court (Hoge Raad).

2:

In The Netherlands judges are generally appointed for life. Nevertheless, appointments are terminated when a judge reaches the age of 70. There is no formal limitation as to the age a judge may be appointed.

In 2016 the age from which judges are entitled to a retirement pension is 65 years and 6 months. In 2017 the age of entitlement to a retirement pension is increased to 65 years and 9 months.



## PORTUGAL

The qualifications for appointment of legally qualified judges at national level are the following:

- A law degree obtained or recognised by a Portuguese Law University is the substantive eligibility criteria for the three instances, as well as the completion of the training courses ministered in the Center for Judicial Studies.
- In the third instance (Supreme Court) - appointment is made through curricular exam and is open not only open to judges (mandatory candidates), but also to prosecutors and other jurists of merit (volunteer candidates). Regarding jurists, they need to have at least twenty years of exclusive occupation in a university teaching career or in law.

The qualifications for appointment of judges, as well as the rules regarding mandatory retirement age and maximal age of appointment are regulated by the Judicial Magistrates Statute (law 21/85, of 30 July) amended by the following provisions:

- Decree Law 342/88 of 28 September; Law 2/90 of 20 January; Law 10/94, of 5 May (according to Corrigendum 16/94 of 3 December); Law 44/96 of 3 September; Law 81/98 of 3 December; Law 143/99 of 31 August; Law 3-B / 2000 of April 4; Law 42/2005 of 29 August; Law 26/2008 of 27 June; Law 52/2008 of 28 August; Law 63/2008, of 18 November, and Law 37/2009, of 20 July. Law 55-A / 2010 of 31 December and Law 9/2011 of 12 April).

In Portugal the mandatory retirement age is 70 years and there isn't a maximum of years of age for appointment or reappointment.

Presently, in Portugal judges are entitled to a retirement pension at the age of 63 and after 39 years of service.



## ROMANIA

1. Eligibility criteria that a person has to comply with (education, experience etc.) for being able to apply for a position of judge at a court of first instance

Currently, in Romania admission to magistracy is possible only through open and transparent exams (competitions) and it is based on professional competence, aptitudes and good reputation.

There are 2 ways for being admitted to magistracy:

1. For persons with no legal seniority or with less than 5 years of legal seniority;
2. For persons with at least 5 years of seniority in a legal profession.

Both ways of admission to magistracy are subject to same type of competition in terms of test types and difficulty.

The conditions and standards for the organization of the competition are regulated in detail in Law no. 303/2004 on the statute of judges and prosecutors<sup>2</sup>. These conditions and standards are in compliance with the principles of transparency and equality.

### *1. Admission to magistracy for persons with no legal seniority or with less than 5 years of legal seniority*

Persons falling within this category shall meet, cumulatively, the following requirements, as stipulated in art. 14(2) of Law no. 303/2004:

*“a) they are Romanian citizens, they are domiciled in Romania and have full legal capacity;*

*b) they are bachelors of law;*

*c) they have no criminal record, no fiscal record and they enjoy a good reputation;*

*d) they speak Romanian;*

*e) they are able, medically and psychologically, to hold this office.”*

Persons meeting the cumulative requirements presented above *may apply to participate in the competition for admission to magistracy*. The competition and the initial professional training for the office of judge are organised by the National Institute of Magistracy (NIM).

The persons who pass the competition mentioned above shall attend the courses of the NIM in the capacity of *justice auditors*. The initial professional training organised by the NIM consists of academic education and practical training of the justice auditors with a view to their becoming judges.

The duration of the training courses of the auditors of justice is of 2 years. During the courses, auditors of justice shall participate in practical training in courts and in prosecutor's offices, attend court sessions and the activity of criminal prosecution, in order to become more familiar with the activities carried out by judges, prosecutors and by the specialized

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<sup>2</sup> Published in the Official Journal no. 826/13.09.2005, with subsequent amendments.

auxiliary personnel.

After graduating the 2 year training courses, the justice auditors become *junior judges (judecător stagiar)* for 1 year. During this year, they are allowed to hear cases of reduced complexity, expressly provided by the law.

When completing the 1 year period of junior judge, they have to pass a capacity exam, which entitle them to be *appointed as judges in first instance courts (judecatorii)*, by the President of Romania, at the proposal of the Superior Council of Magistracy (SCM).

## *2. Admission to magistracy for persons with at least 5 years of seniority in a legal profession*

According to art. 33(1) of Law no. 303/2004, “*persons who were judges or prosecutors and ceased their activity for reasons not imputable to them, law-specialised personnel [from the Ministry of Justice, the Public Ministry, the Superior Council of Magistracy, the National Institute of Criminology, the National Forensic Institute and the National Institute of Magistracy], lawyers, notaries, judiciary assistants, legal advisers, probation personnel with higher legal education, judiciary police officers with higher legal education, court clerks with higher legal education, persons who have held law-specialised offices within the apparatus of the Parliament, the Presidential Administration, of the Government, of the Constitutional Court, of the Ombudsman, of the Court of Accounts or of the Legislative Council, of the Juridical Research Institute within the Romanian Academy and the Romanian Institute for Human Rights, professors at law in accredited law faculties, as well as the assistant-magistrates within the High Court of Cassation and Justice with at least 5 years length of service within the specific field, may be appointed to magistracy, based on a competitive examination, if they meet the requirements in article 14(2).*”

If *admitted* after the competitive examination mentioned in Art. 33(1) of Law no. 303/2004, the SCM shall submit - to the President of Romania - propositions for the *appointment of the successful candidates* to judge offices (in first instance courts).

After appointment to the judge offices, these persons shall attend, for 6 months, a course of professional training with the NIM, which must include elements of EU Law.

## 2. Legal requirements for promotion to tribunals, courts of appeal and prosecutors' offices

According to art. 43 of Law no. 303/2004 the promotion of judges and prosecutors is carried out only following a competition organized at national level, in the limit of the vacant positions at the level of tribunals and courts of appeal, or, according to the case, at the level of prosecutors' offices thereof. The promotion competition is organized annually or, when necessary, by the SCM through the NIM.

Article 44 (1) of Law no. 303/2004 provides that the judges and the prosecutors who obtained the mark “very well” in the last evaluation, who weren't disciplinary sanctioned in the last 3 years before the competition and who comply with the following minimum seniority conditions, may participate in the competition for promotion to the courts or

prosecutor's offices immediately superior in hierarchy:

a) *5 years seniority* in the judge or prosecutor office , for promotion to the offices of judge in a tribunal or in a specialised tribunal and of prosecutor in the prosecutor's office attached to the tribunal or in the prosecutor's office attached to the specialised tribunal;

b) *6 years seniority* in the office of judge or prosecutor, for promotion to the offices of judge in a court of appeal and of prosecutor in the prosecutor's office attached to the court of appeal;

c) *8 years seniority* in the office of judge or prosecutor, for promotion to the office of prosecutor in the Public Prosecutor's Office attached to the High Court of Cassation and Justice (POHCCJ).

The SCM shall see that the conditions stipulated in paragraph (1) are met.

### 3. Legal requirements for promotion to the High Court of Cassation and Justice (HCCJ)

According to art. 52 (1) of Law no. 303/2004, the promotion to the office of judge at the HCCJ is carried out only following a competition organized any time it's necessary, in the limit of the vacant positions, by the SCM, through the NIM.

The judges and the prosecutors who have at least the professional degree of court of appeal or of prosecutor's office attached to a court of appeal, who actually held the office of judge at the court of appeal or of prosecutor at the prosecutor's office attached to the court of appeal or at the Prosecutors' office attached to the High Court of Cassation and Justice for at least 3 years, who obtained the mark "very well" in the last 3 evaluations, who have never been penalized before the competition and who have a seniority in the office of judge or prosecutor for at least *15 years*, may participate in the competition for promotion to the judge office at the HCCJ.

The SCM is verifying the compliance of the conditions set out in article 52.

### 4. The minimum age for appointment as a judge

Law no. 303/2004 does not provide for a minimum age for appointment in the office of judge or prosecutor.

### 5. The mandatory retirement age for judges

Art. 83 para (1) of Law no. 303/2004 provides that the judges, prosecutors, assistant magistrates from the HCCJ, as well as the law specialized personnel provided in art. 87 para (1) *may be kept in office after reaching the retirement age provided by the law until the age of 70. Until the age of 65, the magistrate may choose to stay in office, but after reaching this age, it shall be necessary the annual assent of the SCM for maintaining him/her in office.*



6. The minimum age that a judge has the right to retirement pension (if this age is lower than the mandatory retirement age)

*The age provided by law that a judge has the right to pension is 60. As an exception, the law also provides the sole condition of a seniority in magistracy of 25 years in order to receive a retirement pension (irrespective of the age)<sup>3</sup>, so, on the premise that a person passes the competition organized by the NIM right after graduating from Law School, at the minimum age of 22, and given the fact that the law requires a seniority in magistracy of 25 years (in order to receive a special pension), it results that the *minimum age that a judge has the right to pension/to retire is at the moment of reaching the age of 47.**

A judge may retire ahead of time, by reducing the retirement age provided by Law no. 303/2004 by up to 5 years, in case they exceed the seniority in magistracy provided in Article 82 (1) by at least 5 years<sup>4</sup>).

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<sup>3</sup> In practice, it may happen that the judges do not wait to reach the age of 60 years to retire and they retire at the moment they have 25 years of seniority.

<sup>4</sup> (1) The judges and public prosecutors may be retired ahead of time, by reducing the retirement age provided by this law by up to 5 years, in case they exceed the seniority in magistracy provided in Article 82 (1) by at least 5 years. The persons who satisfy both the conditions for granting the pension under the terms of this Article, as well as those provided in Article 82 (2) may choose between the two pensions. (2) The pension provided in paragraph (1) shall have the regime of an anticipated pension of service. (3) The beneficiaries of the pension of service provided in paragraph (1) cannot cumulate the pension of service with the incomes earned from a professional activity, regardless of the level of such incomes, until the age of 60.

(4) The amount of the anticipated pension shall be established according to the provisions of Article 82 (1) and (4).

Art. 82 (1) - The judges, the prosecutors, the assistant magistrates from the HCCJ and the law specialized personnel assimilated to judges and prosecutors, as well as the former financial judges and prosecutors and the accounts counsellors from the jurisdictional section who exercised these offices at the Court of Accounts, with a seniority of at least 25 years in the office of judge or prosecutor, assistant magistrate or law specialized personnel assimilated to judges and prosecutors, as well as in the office of financial judge or prosecutor or accounts counsellor at the jurisdictional section of the Court of Accounts, may retire at request and may benefit, when reaching the age of 60 years, of pension of service, in amount of 80% from the base of calculation represented by the monthly gross base line indemnity or by the gross monthly salary, according to the case, and by the benefits in the last month of activity before retirement.



## SLOVAKIA

1. Qualification for appointment of judges (substantive eligibility criteria, such as diplomas and relevant Professional experience, not evaluation procedures before a national appointment committee): - *Age: minimal age of 30 years;*

- *Diploma: a person has to have a university (not college) degree level in law (Slovak university or diploma accepted by Slovak authorities) ;*
- *Legal capacity: a person has to have a full legal capacity and be fit (sufficiently healthy) to perform a judicial function properly*
- *Clean record – a person has to have a clean criminal record*
- *Moral eligibility – an independent Judicial Council will consider possible connections (of commercial, property or financial character) with persons involved in organized crime, possible corruptional behaviour, substance (drugs, alcohol) abuse, ownership of property excessive to person's income if the person is unable to prove its origin, acceptance of unjustified gifts, payments or other advantages suggesting a misuse of person's position*
- *obligatory permanent residence in the Slovak Republic*
- *passing of judicial, barrister, notarial or prosecutor examination*
- *other two conditions are irrelevant here: to win a competitive examination and consent to the appointment to a predetermined specific court (in written form)*

2. Qualification for appointment of a judge to higher and highest judicial Office (Appeal and Supreme Court)

- *Appeal Court : minimal legal (not only judicial) practice for 10 years, successful competitive examination to such position*
- *Supreme Court: minimal legal practice for 15 years, successful competitive examination to such position*

3. Mandatory retirement age for judges: *none*

4. Other age limits for appointment of judges: *The president may remove from office a person older than 65 years following a suggestion by the Judicial Council. There are no other age limits for appointment or retirement for judges. The limits are formulated rather generally as a possibility or an obligation to remove a judge from Office if he/she is unable due to health reasons to perform judicial tasks. There are no specific provisions concerning the entitlement of judges to a retirement. A judge may retire in the same age as other persons, although there is a difference in height of his pension.*



## SLOVENIA

### **Slovenian Qualifications for appointment of legally qualified judges, Retirement and Payment of Pensions**

The judicial system of the Republic of Slovenia includes courts of general and specialised jurisdiction. The courts of general jurisdiction are: 44 local courts, 11 district courts (both courts of the first instance), 4 higher courts (courts of appellate jurisdiction) and The Supreme Court of the Republic of Slovenia (as the highest court in the state). Specialised courts of the first instance are competent for determination of labour disputes, and one of them also for determination of social security disputes. In administrative disputes first-instance decisions (as a rule) come under the jurisdiction of the Administrative court of the Republic of Slovenia as a specialised court. Court of appellate jurisdiction in cases of administrative review is The Supreme Court of the Republic of Slovenia (Administrative Review Department of The Supreme Court). In cases of asylum and taxes The Administrative Review Department of the Supreme Court decides in specialised panels.

The Constitutional Court in Slovenia is the highest body of judicial authority for the protection of constitutionality, legality, human rights and basic freedoms.

#### **1. Eligibility Criteria**

According to Article 7 of the Judicial Service Act, anyone who fulfils general conditions for election and special conditions for election or appointment to a judicial post set out by this Act may be elected a judge.

Article 8 of the Judicial Service Act provides general conditions:

1. he/she is a citizen of the Republic of Slovenia and has an active command of Slovenian language;
2. he/she has the capacity to contract and is generally in good health;
3. he/she is at least thirty years of age;
4. he/she has obtained the professional title of a graduate lawyer in the Republic of Slovenia or has acquired equivalent education abroad, recognised pursuant to the Recognition and Evaluation of Education Act;
5. he/she has passed the lawyer's state examination;
6. he/she is personally suited to holding judicial office.

According to Articles 9 – 12 of the Judicial Service Act persons who fulfil the general conditions may be elected to a judicial post at a Local Court (local court judge) if they have at least three years of working experience in legal work after passing the lawyer's state examination. Persons who fulfil the general conditions may be elected to a judicial post at a District Court (district court judge) if they have successfully held judicial office for at least three years or have at least six years of working experience in legal work after passing the lawyer's state examination.

Persons who fulfil the general conditions may be elected to a judicial post at a Higher Court (higher court judge) if they have successfully held judicial office for at least six years or have at least nine years of working experience in legal work after passing the lawyer's state examination. University lecturers in law who fulfil the general conditions may be elected higher court judges provided they have been elected to at least a title of assistant professor. Persons who fulfil the general conditions may be elected to a judicial post at the Supreme Court (supreme court judge) if they have successfully held judicial office for at least 15 years or have at least 20 years of working experience in legal work after passing the lawyer's state examination. University lecturers in law who fulfil the general conditions may be elected Supreme Court judges provided they have been elected to at least a title of associate professor.

According to Article 13 of the Judicial Service Act special conditions specified in Articles 9 to 11 of this Act apply to election to a judicial post in a court having special jurisdiction, with regard to the status of the court as set out in the Courts Act.

In respect of work experience, holding the office of state prosecutor, misdemeanours judge and state attorney and working professionally as a lawyer or a notary shall be deemed to be equivalent to holding judicial office.

## **2. Retirement**

Article 74 of the Judicial Service Act - Judges shall have their judicial office terminated upon retirement, but no later than upon reaching 70 years of age (at the end of the year in which the judge reached the age limit for retirement).

Upon the termination of judicial office on the following grounds:

- if they lose the capacity to contract or cease to be in sufficient health to perform judicial service
- if the court is abolished and it cannot be guaranteed that they will continue to perform judicial service at another court;

the judges shall acquire the right to early retirement provided they fulfil the conditions set out for early retirement by the regulations on pension and disability insurance.



## SWEDEN

The relevant provisions in the Swedish law to be eligible for a Swedish judicial office are the following:

### ***Rules of Procedure, Chapter 4 section 1***

The legally qualified judges shall be Swedish citizens, and shall have passed the professional examinations prescribed for qualification for judicial office. No person who is in the state of bankruptcy or has an administrator under the Code on Parents, Guardians and Children, Chapter 11, Section 7, may exercise the judicial office.

The professional examinations and other conditions for judicial office are prescribed by the government.

### ***The Government has issued the Regulation 2007: 386 with regard to the requirement of professional examination***

1 § Examinations that are required to be entitled to carry out a judicial function are a law degree as set out in annex 2 to the Higher Education Ordinance (1993:100) or equivalent older examination.

The Swedish law degree is equivalent to completed law education where the majority of the education has taken place in Denmark, Finland, Iceland or Norway. If this education is more than a year shorter than the Swedish education, the applicant shall undergo a supplementary course which culminates in an examination.

As to the question of retirement age it is mandatory from the age of 67. A judge may however ask for dispensation and thereby be entitled to prolong the judge appointment. Dispensation from the mandatory age 67 is granted in very limited situations. It is however quite common that retired judges in Sweden get limited appointments for certain periods to work at a Court – even after the age of 80. The common retirement age is 65, but judges may, subject to mutual agreement, retire earlier.



## UNITED KINGDOM

### **Eligibility**

Applicants from the UK for Legally Qualified Judiciary will be required to demonstrate that they would also be eligible for appointment to the High Court of England and Wales or Northern Ireland, or as Judge of the Court of Session (Civil) in Scotland.

Applicants will be aware that this is likely therefore to require a minimum 7 years, of relevant experience and qualification



## POLAND

The requirements for appointment of judges and the retirement age are regulated by the Common Courts Act of 2001. It states that:

I. To the position of district court judge can be appointed a person, who fulfils all of below mentioned criteria together:

- 1) has Polish citizenship and enjoys full rights of a citizen;
- 2) is of good character;
- 3) is a graduate of legal studies in Poland and obtained master's degree in law or is a graduate of law studies abroad recognized in Poland;
- 4) is capable, due to health condition, to perform the duties of a judge;
- 5) is at least 29 years old;
- 6) passed the state exam for a judge or prosecutor (it is also possible to apply for the position of a judge of the district court by persons performing other legal professions, provided that conditions described in points 1-5 are fulfilled).

II. To the position of regional court judge can be appointed a person, who:

- is a judge of a district court or a judge of a garrison military court, who has at least four years experience as a district court judge or a garrison military court judge or as a public prosecutor,
- is a prosecutor who has at least four years experience as a prosecutor or a judge (it is also possible to apply for the position of a judge of a regional court by persons performing other legal professions, provided that a number of conditions detailed in the Act is fulfilled).

III. To the position of a court of appeal judge can be appointed a person, who:

- is a common court judge or a military court judge, who has at least six years experience as a judge or prosecutor, including at least three years experience as a regional court judge, a regional military court judge or the prosecutor of a regional prosecutor office,
- is a prosecutor, who has at least six years experience as a prosecutor or a judge (it is also possible to apply for the position of a judge of a court of appeal by persons performing other legal professions, provided that a number of conditions detailed in the Act is fulfilled).

### Retirement

I. In general, judge retires at the age of 67 years (or earlier – women born before 09/30/1973, the men born before 09.30.1953), unless 6 months before reaching the required age they declare to the Minister of Justice the will to continue holding the office and present a certificate stating the capability, due to the health condition, to perform the duties of a judge.

II. Judges retire at their own request after the age of 55 for women, provided that they have worked as a judge or prosecutor for no less than 25 years, and 60 years for men, provided that they have worked as a judge or prosecutor for no less than 30 years.

III. If the declaration is submitted by a judge, they may hold the position until they are 70 years of age.