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INTRODUCTION

While there are more commonalities between countries than is usually assumed, it is true to say that no country is exactly the same as another. An analysis of the national reports produced by different countries in preparation for the 9th IASAJ Congress and the arguments and comments gathered from the 3 commissions clearly show that administrative judges are not the same in one country or another.

In some countries, the role of administrative judge does not exist as such. In such countries, administrative judges are common law judges that deal with litigation of an administrative nature. In other countries, there is an autonomous administrative jurisdiction, but judges dealing with cases in that jurisdiction do not have a different status from those who handle civil or criminal matters. Then there are countries in which administrative judges have an autonomous status, different from that of other judges. Furthermore, in this latter case, there may be differences between the status of members of a first instance tribunal and those of appeal jurisdictions which may have the very specific status of a supreme jurisdiction. When public prosecution or advocate general functions are exercised before a judge in an administrative court, which is not very common, the status of the judges who exercise this function is, in most cases, also specifically defined.

This report aims to draw from the wide variety of situations contained in the national reports and presentation of participants in different commissions, in order to reach some helpful comparative conclusions. What are the main points of convergence? What are the major differences that one finds when examining the different legal systems? What are the emerging trends in recent times?

These are the questions that this summary report tries to elucidate. The first part deals with the issues of recruitment and training of judges. The second looks into the manner in which their careers develop, from the start until the end of their services. The third part examines the rights and guarantees of judges and, in general, the ethical standards that nowadays govern the profession of administrative judge.

I. RECRUITMENT AND TRAINING OF ADMINISTRATIVE JUDGES

1. RECRUITMENT OF ADMINISTRATIVE JUDGES

1.1 The recruitment pool

The type of persons that may be recruited depends on the kind of jurisdictional setup of each country. There are, however, some common traits.

In countries with a multi-tiered administrative jurisdictional order, in which candidates can perform their whole career as administrative judges, the general rule is to recruit young law graduates, whether or not they are specialised in public law. In this case, judges are recruited young for local first instance administrative tribunals. As their career develops, they may move to an appeal court and finally the supreme court. In some countries, candidates are recruited immediately upon graduation from university. In others, they are recruited later, when their initial legal training, which gives access to all legal professions, has been completed by a series of compulsory internships in different tribunals or law firms, as is the case in Germany and Hungary. Other countries, such as Sweden, recruit their judges only after a lengthy initiation period which gives them an opportunity to get acquainted with all aspects of the jurisdiction.

In countries where career progression is not the guiding principle for the operation of administrative jurisdictions, the issues of recruitment are usually found only at the level of the supreme administrative court. In these countries, experience is the determining criterion.

Here we find two basic trends: usually, for recruitment, a minimum of ten-years experience is required in the fields of law or administration and, secondly, many jurisdictions recruit mainly or exclusively from among lawyers.

To the contrary, in some countries like Norway, recruitment of supreme judges is guided by the philosophy that the courts must be representative of a wide scope of professional experiences. Therefore, the pool of candidates is quite large: State administrations, local administrations, public prosecutors, law chambers, university lecturers, etc.

Some countries also allow for the possibility that people with no legal background may become members of an administrative court, to cater for the specific needs of certain litigations. Thus, in Australia, tribunals may have judges who were formerly commissioned army officers (for litigations relating to the functioning of military institutions), experienced pilots (for litigation related to aviation), auditors (for complex litigation on accounting matters), actuaries, scientists or doctors. The composition of the recruitment pool may, in some cases, be defined by law. This is the case in Turkey, where one quarter of the membership of the State Council must, according to law, be recruited from amongst ministers, secretaries general of ministries, ambassadors, provincial governors, generals or admirals or, particularly, university professors.

There are very few countries, however, where young graduates may be directly recruited for the supreme jurisdiction. The most notable examples where this does occur are in Belgium

and France, where candidates may be selected from members of l'auditorat or when they graduate from the Ecole Nationale d'Administration.
Although there is a perceptible trend towards the recruitment of more women in many countries, none of the national reports mentions the existence of women quotas for recruitment of judges.

1.2 Recruitment procedure

1.2.1 Becoming a member of the administrative jurisdiction

There is no jurisdiction that has a single-track method of recruitment. Usually there are several ways of recruiting. Thus, even in countries where the career model is most prevalent, such as Portugal or Lithuania, there is always the possibility of an outside recruitment for the appeal jurisdictions or the supreme court.

In jurisdictions which recruit young graduates, the predominant practice is to require passing of a test or, even more common, a competitive examination. Such an examination usually comprises written tests mainly on legal issues, followed by oral tests. Admission of candidates to a competitive examination sometimes is subject to a prior screening by an admissions committee, as is the case in Italy. Minimum academic qualifications vary from country to country – in some cases only a basic legal training is the norm, while in others a doctoral thesis in law is necessary. Candidates who succeed in a competitive examination must usually then go through a period of training at a "school for judges" or, in a few cases, a "public administration school", with a specialisation in jurisdictional matters at the end of the training period.

Part of the judges recruited for the appeal courts and for the supreme courts, in integrated jurisdictional systems, always comes from the immediately lower tribunals, in proportions that may vary from country to country but are rarely less than 50%. Selection modalities for such career promotions are usually left entirely up to the appeal courts or the supreme courts, which establish criteria to select the best candidates through assessment of their files.

Appeal and supreme jurisdictions have varying degrees of autonomy to complete their recruitment or, if there is no multi-tiered jurisdiction, to do their entire recruitment. The analysis of national reports does, however, suggest the outline of a basic model. This model is based, in principle, on the underlying assumption of cooperation between the political authority with the power to appoint judges and the employing jurisdiction. Recruitment procedures for judges often start off with an open call for applications, in an official journal or, sometimes, in mainstream newspapers or even on the internet. The decision to start procedures may sometimes be in the hands of the tribunal, thus giving it the tools to forecast and manage its staff.

In some countries, the court also has the competence to put forward its own candidates. In that case, it does its own selection of candidates through a more or less elaborate procedure. The minimum standard is that the court will examine application files and submit a written appraisal. This stage is longer in some countries, entailing interviews with members of the court, as well as public hearing. The procedure usually ends with the court putting forward a short list of names from which the nominating authority must choose, without proposing alternative candidates.

When it is not the court itself that conducts recruitment of judges, certain safeguards must nonetheless be observed. In most cases, the political authority assesses several candidates on the basis of a formalised file assessment. Sometimes, recruitment is entrusted to a selection committee comprising political representatives as well as members of the court concerned. Even if a political authority has some measure of discretionary power to appoint judges, at least the opinion of the court or that of its president is sought. In some countries, practice varies according to the type of post to be filled. The political authority usually has greater leeway in appointing heads of a jurisdiction than in appointing mere members.

All countries require that appointees be nationals of the country. In most countries there are also age conditions: maximum age (between 27 and 30 years) to participate in a competitive examination as students; minimum age for direct appointments as member of the supreme court (from 35 to 45 years, according to countries and to grades).

As to a probation period at the start of a judge's career, however, practices vary a lot. In some countries, such a period is considered as an initial compensation for appointment to a life-long job. It can thus be quite a long period: three years in Hungary, up to five years in Germany. In other countries, this probation is viewed more as a test period and is limited to one year. In most countries, however, new judges are not subject to such a period, especially not judges appointed directly to the supreme court. Some countries have an alternative mechanism: newly appointed judges are not permitted to exercise their full powers during the first year of their appointment.

1.2.2 Who appoints judges?

Whatever the procedure for recruitment of judges, the rule generally found is that appointment of judges is a prerogative of the Executive Power, at least formally. This could be a national authority, e.g. the President of the Republic (usually through the offices of the Minister of Justice), the King sitting in council, a Governor General, or it may be a local authority in federal States. Appointment by Parliament is rare, although this possibility exists, depending on the country's constitutional setup. This is the case in Slovenia and in Switzerland, where administrative judges are elected at the local level by cantonal parliaments, after being put forward by political parties.

1.2.3 Can judges be appointed for a limited time period?

In most countries the rule is that judges are appointed indefinitely, which fits with the predominant view of a life-long appointment. A few countries, however, also allow for the temporary recruitment of civil servants from other areas of public life. Thus, in Portugal, ordinary judges may be temporarily assigned to an administrative court, or in Germany and in France civil servants from any other departments may temporarily be seconded to an administrative court. They may not, however, keep such positions in the long term.

2. TRAINING OF ADMINISTRATIVE JUDGES

The majority of countries provide for an initial training of newly recruited judges. Most jurisdictions also offer ongoing training programmes, even if none of the countries surveyed makes this type of training a formal obligation for members of jurisdictions.

2.1 Training institutions

Some countries chose to concentrate all types of training in one overall institution which provides courses for all kinds of jurisdiction or may even have courses for several professions. In countries where career systems that recruit young judges are dominant, there is usually also a school or institution that provides the initial training, either specialised or generalised. This model, already prevalent in African countries and in France, seems now to be spreading: Turkey adopted this model in 2003 and Hungary set up a specialised training school in 2006.

Such schools usually also provide ongoing training for members of courts, who supplement it with work done in the courts themselves. There are very few examples of institutions established only for ongoing training, with the exception of the "Judges Academy" ("*Deutsche Richterakademie*") established in Germany.

2.2 Trainers

The national reports clearly point to two different types of trainers: "external trainers" and peers. In the first group we usually find lawyers, university professors and civil servants specialised in a particular field, such as insurance, banking law, marketing of medicines, etc. Peer training as a daily activity is also widely practiced. Sometimes it is even formalised, as is the case in Australia and in France, through the appointment of "mentors" who become the reference and counsel for new judges.

2.3 Training content

Training for new or existing members of courts covers three main areas.

New judges learn, first and foremost, procedural techniques. Some countries, for instance, have developed training modules on the drafting of rulings, the handling of public hearings and generally, on the management of cases.

There are two other kinds of training offered to all members of courts, whatever their status. Firstly, courses on material or substantive law, dealing mainly with subject matter that is evolving constantly, such as competition law, environmental law, financial accounting and taxation legislation. There is a new type of training which is being developed more and more, particularly in English-speaking countries, for attitudinal and behavioural skills in the exercise of the profession of judge, rather than in technical subjects. Nowadays we thus

increasingly find, in addition to conventional modules of human resources management, modules on peer management, morality, professionalism and ethics.

II. CAREER PATH OF ADMINISTRATIVE JUDGES

1. ASSESSMENT OF ADMINISTRATIVE JUDGES

1.1 Inde*pendence of administrative judges*

Some countries do not have any system for the assessment of their judges. This is justified, as is the case in Italy, by the argument that an assessment would be contrary to the principle of independence of judges. In Italy, legislation did provide for an assessment procedure until the 1960s, but it was abandoned for this very reason. So there is only a last resort disciplinary procedure to sanction a judge's possible breach of duty.

As the report from Germany shows, this touches upon a very sensitive issue of law. All judges, even junior judges in initial probation, enjoy the independence granted them by the constitution in each country. It would, therefore, hardly seem possible for any authority to pronounce an assessment of the core of a judge's work, which is the substance of rulings. One could, however, envisage that the principle of independence leaves scope for some general comment on the manner in which a judge accomplishes his tasks, without basing it on any particular case; for instance by appreciating the accuracy of his legal knowledge, the speed with which he finds solutions to the problems raised by a case or his style of decision drafting. It would also seem possible, as explained in the Nicaragua report, to assess freely "outer aspects" of his work, such as his organisational and planning abilities, work completion or his relationship with peers and subordinates.

In summary, it might be said that the principle of independence of judges does not formally prohibit any kind of assessment, but that it puts limits on it. As the Belgian law of 15 September 2006 on administrative litigation states, an assessment of judges is possible, but neither its purpose nor its effect can affect their independence and impartiality.

In any event, even if no individual assessment is done, there are very few countries in which the jurisdiction itself is never assessed. There is also a trend to implement public management and budget programmes by means of which the government, or an independent public authority, outline long-term projections on the volume of cases and transposes these into goals that are to be met by the administrative jurisdiction. The latter is then assessed on its ability to achieve such goals, in particular regarding the output of cases dealt with compared to the input and stock of cases pending, as well as on the average time spent on each case. Results of such overall assessments can be used by individual judges for self-evaluation.

There are, however, very few countries which translate goals set for the jurisdiction into individual objectives for the presidents of courts or the rapporteurs. Such countries include Slovenia and France.

1.2 Possible assessment criteria

When there is an assessment of judges, it usually deals with a judge's quantitative output and her or his ability to process the cases in a reasonable time frame; in other words, it assesses organisational abilities which are more readily translatable into objective indicators. Sometimes, it also includes an assessment of intellectual and professional skills; e.g. diligence, work attitudes, respect of the obligation of restraint in public expression and behaviour.

1.3 Assessment procedure

1.3.1. Timing of assessments

There appear to be four moments or events when an assessment is appropriate.

If a probationary period after taking office is provided by law, there is always some kind of assessment at the end of this period. When the probation is long, as in Germany, assessment is performed annually.

The frequency of periodic assessments in a judge's career is highly variable. When judges have a specific term of office, the minimal requirement is that they should be appraised at least once during their term. Some countries prescribe a specific frequency. The period between one assessment and the next can be fairly short (two years in Colombia and Portugal), average (five years in Germany) or long (ten years in Lithuania).

In some countries a particular event gives rise to an assessment. Thus, there usually is an appraisal when a judge applies for a promotion or requests renewal of her or his mandate. In this case, the appraisal is part of the candidate's file.

Finally, judges herselves or himselves may request an assessment, in order to freely make a point on the manner in which her or his work is appreciated or the way in which his contribution to the jurisdiction is perceived.

1.3.2 Who carries out assessments?

There are three possible scenarios, in general, according to the grade or the functions of the judge: the assessment is made by the head of the jurisdiction, or by the direct superior of the person concerned, or it is done under the responsibility of a judge who exercises the role of assessor and who, in some countries, can be an honorary judge.

1.3.3. Methods of assessment

The most elaborate assessments combine at least three elements: written documents, an interview with the assessor, and a discussion on the appraisal made by the assessor.

To illustrate the most innovative methods used in this area, the box below presents the assessment procedure followed in Australia.

Assessment procedure in the Australian Administrative Appeals Tribunal

The Australian Administrative Appeals Tribunal has recently introduced an Appraisal Scheme which assesses members' competence across seven key competencies: law and procedure; fair and equal treatment; communication; conduct of hearing; evidence handling; decision-making; and facilitation and case management. The appraisal scheme is aimed at identifying current competency and devising a self-development plan to enhance it.

The scheme involves self-appraisal and peer review. The appraisal is conducted by a member at an equivalent or more senior level from another State.

Appraisers review a wide range of material relating to the member being appraised, including three recent decisions, the most recent appraisal report, training record, internal and external tribunal activities and a range of statistics relating to matters such as workload and appeals processed. The appraiser then observes the member conducting a hearing and prepares a draft report having regard to quantitative and qualitative performance indicators for each of the seven key competencies.

Finally, the appraiser invites the member to an appraisal meeting where they discuss the report and whether the member is either competent or in need of further guidance and training. The appraiser and member formulate a self-development plan for the achievement of the member's short and long-term goals within the tribunal. The process is confidential. Only the President has access to the material relating to each appraisal.

1.3.4 Consequences of an assessment

In most countries, the assessment of judges is aimed only at encouraging them to enhance their strengths and to decide on possible ways to improve performance. It is, therefore, a tool meant only for them and does not have any consequences on their career development.

In countries where being a judge is a career, the outcome of an appraisal can have more important consequences. It sometimes leads to a grade being given to the judge, or to ranking in a table of categories of evaluation, going from "mediocre" to "exceptional". In some countries, this kind of classification may have a direct impact on the possibilities for promotion, which may be faster or slower according to the ranking. When poor marks stem from more serious failings, they can also result in a disciplinary procedure.

However, it is exceptional that the assessment of a judge has any influence on remuneration. This is a possibility in Belgium, if the assessment leads to a persistent "insufficient" mark. Generally, the remuneration of judges, in the vast majority of countries, is in no way connected to the volume or quality of their work. This issue is, however, dependent on constitutional norms which, in some cases, provide for some form of modulation of remuneration, upon recommendation of a constitutional court, as is the case in Slovenia. It is to be noted, nonetheless, that in general the new trend towards public sector employees' remuneration to be composed of three parts, namely one related to the grade occupied, one to the function and one to how it is exercised, has hardly affected the judicial sector as yet.

2. RULES FOR PROMOTION

The rules for promotion of judges within jurisdictions are no doubt the subject on which countries most differ. Overall, two trends can be discerned:

In countries where being a judge is a career, the rule of promotion by seniority is usually considered a guarantee of independence, even if there are some nuances among different systems. In some countries, promotion is based exclusively on seniority, at least up to certain grades. This is the case for the Conseil d'Etat in Luxemburg and the Conseil d'Etat in France, where promotions occur in order of a "ranking" or "table" that sets the formal order of members from the time they enter a jurisdiction. Access to certain functions or specific jobs is, however, not dependent on the order of such a list, but takes into account the qualities of each individual member.

In most countries, promotion is automatic only for the level of salary. It does not include promotion to a higher grade or to certain functions. The latter follows two different patterns: either at the discretion of the employing authority, after registration on a promotion list, or by open application for a vacancy.

The latter method is the one most commonly practiced. It makes it easier to recruit the candidates best suited to a job. Rules for appointment to vacancies are usually set in general guidelines or in basic texts. For instance, in Germany, promotion criteria are set by the Constitution – namely aptitude, ability and performance. When such a promotion-by-merit rule exists, the criterion of seniority of judges plays only a subsidiary role, if the appraisal of individual qualities of various candidates does not allow a clear choice. This is the case, most notably, in the Thai administrative jurisdiction. The age criterion, sometimes used (for instance in Mali), only plays a role after assessment of merit and seniority has not yielded an adequate choice.

The degree of centralisation is strongly linked to the administrative setup of a country (unitary State or federal system) and to the existence or not of a multi-tiered integrated jurisdiction. The union or organisation representing staff, on the other hand, ubiquitously play only a marginal role in promotion procedures for members of a jurisdiction.

3. RULES FOR RETIREMENT

3.1. *Age limitation*

The overwhelming majority of countries have an age limit for services as administrative judge, even though, in some countries they are appointed for life. In those countries that belong to IASAJ, judges must usually retire at 65, 68 or 70 years of age; in other words at an age well beyond that at which most civil servants retire.

In some countries it is not possible to serve beyond the age limit. In some countries, however, judges may continue to work, normally under lighter conditions or on contractual basis, up to the age of 73 or even 75, as can be seen in Italy for instance. Such an extension is generally not granted as a right to judges. It must be requested from the head of corps or the management body of the jurisdiction. In Thailand, remaining active as a judge beyond the age

of 65 is subject to a positive assessment of physical and intellectual ability to serve up to the age of 70.

3.2. Serving as a retired judge

When such a possibility exists, the range of opportunities for judges who have reached the mandatory retirement age is very wide. Some countries, however, do limit the range of possible activities. In Colombia, for example, a retired judge can continue to lead a very active professional life, but not within a jurisdiction. Teaching is a very frequent activity. On the other hand, some countries have a policy to continue employing their retired administrative judges in roles which, while not strictly jurisdictional, do maintain a link to administrative litigation. One may find honorary judges, for example, in the role of members of a parole board (as in New Zealand), or that of member or president of an organisation providing jurisdictional aid to plaintiffs. Also honorary judges are often members of regulatory bodies of formerly State-run economic sectors (such as banking, insurance, telecommunications and energy). They are sometimes entrusted with inspection or appraisal missions of members of a jurisdiction, as is the case in Portugal.

3.3. Access to retirement

The procedures for retirement of administrative judges are, generally speaking, the same as those of civil servants, in those cases where a jurisdiction follows the career system. They generally contribute to a special or general retirement fund. When they serve by virtue of a specified mandate, they sometimes have access to non-contributory legal retirement schemes.

4. CAREER MOBILITY

4.1 Transfers within a jurisdiction

In the overwhelming majority of countries, the principle of independence of judges is enshrined most visibly in their irremovability. Any mobility within the jurisdiction, and all the more so outside the jurisdiction, depends on the initiative or at least on the agreement of the judge concerned[1].

Some countries, nonetheless, allow for a very limited form of automatic transfer, which is stipulated by the management body of the jurisdiction. Reasons for automatic transfer are always objective and serve the smooth conduct of business; among them are the need to solve cases of family-related incompatibility which may arise in the course of a career (for example, when two brothers are judge and solicitor in the same jurisdiction, or in the case of marriage of two judges); the possibility of resolving issues of private behaviour that could harm a court's reputation; the need to temporarily strengthen an overworked jurisdiction or, inversely, to shrink the size of an idler jurisdiction; and, more generally, the possibility of planning transfers when jurisdictions are reorganised.

As a general rule, such automatic transfers in the interest of smooth conduct of business are only temporary, for a limited time. In Lithuania, for instance, they can occur for a maximum period of six months only and not more than once in three years.

[1] In Portugal, an interesting system for exchange of posts, under some conditions, has been introduced.

No law or constitutional provision mitigates the principle of irremovability by any rule of compulsory legal mobility between courts or tribunals, barring which access would be closed to certain functions within a jurisdiction. In Germany, however, even if there is no written rule, a secondment from a local court to an appeal court is a de facto precondition for any later appointment to an appeal court. Ironically, this obligation is called the "third State examination" of members of the administrative jurisdiction.

4.2 Serving outside the jurisdiction

The possibility of temporarily serving outside the jurisdiction exists in most countries. Following are the main features of such service.

Temporary external service is usually subject to the authorisation of the head of corps or the management body. A full secondment is possible in some countries only for a limited number of positions, such as becoming a member of government or of Parliament.

Some countries also place a limitation on the scope of functions a judge is allowed to perform outside the jurisdiction. A judge may be allowed to leave her or his jurisdiction temporarily only to serve in an international jurisdiction.

In some countries, like Belgium, not all members of a jurisdiction have the right to leave temporarily. Members who have a leadership or management role may not do so. Other countries, such as Algeria, set a maximum of 5 to 10% of all their members who are able to serve outside their jurisdiction.

Apart from *ratione materiae* and *ratione personae* limitations, most countries also have *ratione temporis* limitations to such secondments.

Authorisations for secondment outside the jurisdiction are generally given only for a limited time. They are usually granted for a period of one year, renewable for limited periods of up to five or six years. There is also a variable system in some countries like Portugal, depending on the nature of the secondment, with a distinction being made between an "ordinary" secondment within the jurisdiction and a "possible" secondment outside it. Some countries also have a minimum seniority rule before allowing a first secondment; others require a minimum time of service in the jurisdiction between two secondments.

III. RIGHTS, GUARANTEES AND DUTIES OF ADMINISTRATIVE JUDGES

1. SOURCE OF RIGHTS AND GUARANTEES

While in most countries the rights and guarantees of administrative judges have their source in the constitution, the latter usually contains only some fundamental principles. The most often mentioned of these principles are the separation of powers and the irremovability of judges. These principles are, in most countries, the basis for statute law establishing the detailed elements of effective protection accorded to administrative judges.

A great variety of situations can be observed. In some countries, the same statute law applies to administrative judges and to judicial judges. In others, a specific statute law replicates for administrative judges the constitutional guarantees afforded to judicial judges. A third option is a special law referring to the general provisions of the statute on civil servants and adding elements derived from the principle of hierarchy. Thus, in Germany for example, the legal provisions covering judges are based largely on the laws governing civil servants as a whole. In this latter system, the differences are explained by the principle of independence of judges. Thus, the duties of a civil servant deriving from the obligation to obey superior authority are limited to a minimum.

Some countries provide stronger constitutional protection for the statute law governing rights and guarantees of administrative judges. This is the case in Senegal, where such statute law can be modified only by an absolute majority of Parliament and can be promulgated only if the Constitutional Council, to whom the adopted law must be submitted, declares the said law to be in conformity with the constitution.

2. NATURE AND EXTENT OF RIGHTS, GUARANTEES AND DUTIES

2.1 Guarantees enjoyed in all countries

2.1.1 Irremovability

The first guarantee which is common to all countries is the principle of irremovability, a direct consequence of the independence of administrative judges. This means that a judge cannot be in effect dismissed nor transferred, even to a better position, without her or his consent. This protection is usually granted right from the entry into service. In Algeria, it is secured only after ten years of service.

In many countries, this formal principle naturally entails consequential material guarantees. Except where judges have a time-limited mandate, appointment as judge is often a life-long appointment which can only end when the judge reaches the legal retirement age. Judge's salaries cannot be reduced and must be paid always, even in cases where the reorganisation of an administrative jurisdiction leads to the closing of a court or of positions in that court. In many countries, Parliament directly sets the level of salaries for judges, assuring complete independence from budgetary authorities which usually are under the Executive Power.

2.1.2 Special disciplinary regime

The existence of a special disciplinary regime for administrative judges is another common trait of their rights and guarantees.

A main aspect of such a regime is its limited number of sanctions. In some countries, like New Zealand, there is in fact one single possible sanction, which is removal. A very restricted list of sanctions with heavy consequences is intended to ensure that legal action can be taken against a judge only in case of serious breach. A venial misdemeanour, in practice, could never lead to removal of a judge. This de facto jurisdictional protection constitutes one of the most tangible aspects of the independence of administrative judges. It is further strengthened in some countries' constitution or legal statute by an explicit limitation on reasons which may lead to disciplinary procedures applied to a judge because of professional breach of conduct.

Another major characteristic of the disciplinary regime is that sanctions can never be issued by the Executive Power, especially those that lead to the above-mentioned consequences. In some countries, only Parliament has the power to sanction an ill-performing judge. In other countries, this role is restricted to a jurisdictional authority, which can be the court in which the judge works. In this case the court must sit in plenary session, as it does in Austria for example. In other countries, the management authority of the corps, which is separate from the political power, must sit as a jurisdictional disciplinary body, to decide on sanctions. When the power to apply sanctions resides exclusively with the head of corps, no sanction can be pronounced without a peer body composed of members of the jurisdiction having met to give its opinion on the alleged breach.

There are, furthermore, countries in which administrative judges enjoy "jurisdictional privilege" for acts committed away from work, in civil or criminal matters for example. In Poland, this privilege even extends to immunity. It may also be limited to restricting the power to initiate legal action to the highest public prosecution authority, as is the case in Belgium and Mali.

2.2 Special guarantees for some national jurisdictions

In countries where the multi-tiered administrative jurisdiction is based on the career system, management of the corps by an independent body in which members of the jurisdiction participate is normally considered to be a necessary and tangible condition of independence.

This is the case in some European jurisdictions, such as Italy, Portugal and France. It is also the case in Thailand, where the Judicial Commission of the Administrative Court, presided over by the President of the Supreme Administrative Court, and composed of six judges of this court, three judges from the Administrative Courts of First Instance and three persons appointed by the Senate and Council of Ministers, is responsible for the management of judges' careers, in terms of appointment, assignments, transfers and implementation of disciplinary procedures.

In such jurisdictions too, advancement only by seniority is often considered to be a concrete guarantee of independence. In some countries, like Germany, guaranteed advancement by seniority concerns only remuneration. A federal law establishes that for the first two grades, progressive steps of remuneration are linked exclusively to age. This takes into account the fact that the majority of judges will never be effectively promoted.

In the majority of countries, the existence of unions or bodies representing judges, even if viewed as something very positive, is never considered to be a fundamental guarantee of the exercise of their profession.

2.3 Possible limitation of some fundamental rights as 'a price to pay' for independence

The national reports reveal two main approaches, with almost philosophical differences, to this question.

The first approach is based on the premise that the position of judge must bear higher moral responsibility, reflected in a number of additional duties, as compared to those of an ordinary civil servant, yet that this must not entail any restriction of the fundamental rights enjoyed by all citizens.

The second approach considers that the principle of independence must go hand in hand with certain obligations which, in the higher interest of the jurisdiction, impose limitations on the scope of expression or of outside activities of administrative judges.

Depending on which approach a country adopts, membership in a political party or election to a local political post may be allowed or strictly prohibited. The same kind of distinction shows up in the right of judges to strike or to join a union. A judge's activities outside the jurisdiction can also be analysed likewise. Some countries strictly ban any outside activities of judges, so as to reserve their full working capacity for the jurisdiction. Other countries limit such activities to teaching. Elsewhere, only voluntary non-paid outside activities are allowed, so as to avoid any kind of financial dependence of judges. Some countries, however, have a very liberal attitude and only forbid the holding of a national political office, working as a lawyer or having a management role in a private company.

A middle path between these divergent options would be a list of ethical rules governing the behaviour of judges at work in a jurisdiction and in their professional relations outside it, as well as in private life.

The aim and effect of listing of such rules should be to preserve the independence, impartiality and honour of administrative judges.

3. PROFESSIONAL ETHICS OF ADMINISTRATIVE JUDGES

3.1 A new trend – drafting ethical guidelines for administrative judges

All jurisdictions have rules of professional ethics that administrative judges must abide by. Such rules may, however, be scattered in different legal texts. They also often mix together general obligations which are sometimes sanctioned in criminal law, such as professional secrecy, with statutory obligations, the non-observance of which may entail disciplinary sanctions, as well as with practices evolved from custom.

In order to create awareness of these rules and standards of behaviour among judges and also the general public, some countries have embarked on an exercise to draft guidelines on ethical behaviour and good practice. New Zealand has a very complete set of guidelines. The President of the Supreme Administrative Court of Thailand issued guidelines for this kind in the early 2003. Similar drafts are being prepared, adopted or published in other countries, such as Algeria, Norway and France.

3.2 Basic rules of behaviour for administrative judges

A reading of the national reports shows that there are several rules observed in most countries.

3.2.1 Professional secrecy and secrecy of deliberations

There is a universal obligation of professional secrecy which imposes on judges utmost discretion on matters dealt with by a jurisdiction and, in particular, the obligation to preserve the secrecy of deliberations. Some jurisdictions admit a limited waiver of this principle, by allowing a dissident vote. However, such a dissident vote and the identity of the judge can only be revealed with her or his consent.

3.2.2 Preventing and resolving conflicts of interest

Prevention and solution of conflicts of interest, be they professional or private, is another objective that all jurisdictions pursue.

Prevention of conflicts is usually dealt with by rules of incompatibility between the role of judge and certain situations. Some rules excluding or limiting outside professional activities have been mentioned. When such activities are permitted, they may require authorisation by the head of jurisdiction or, at least, must be declared. Some countries, while not requiring a public declaration of interests of judges, do provide, upon request, a list of the interests which each judge must maintain. Incompatibility may also arise from the private sphere. Many countries have restrictions because of kinship or marriage. In Belgium and in other countries, two spouses cannot sit on the same bench. And generally it is not acceptable for a judge to be sitting on a bench in whose jurisdiction a member of his family acts as lawyer.

The solution of conflicts of interest is mainly handled through rules on withdrawal from a decision-making sitting. In most jurisdictions, judges have the right to choose, on their own initiative, not to sit in a case where they believe to have a family, friendly, financial or professional interest. In countries where the supreme jurisdiction also has a role as government counsel, the rule is that a member who sat on an advisory body when a text was being studied cannot be part of the jurisdictional body that is called upon to decide on the legality of such a text. In some countries, the decision to withdraw a judge can also be taken by the president of the corps. In most countries, a plaintiff may also request that a judge be disqualified.

3.3 Increasingly sophisticated rules of behaviour

The national reports reveal some emerging issues in the area of ethics.

The first is that of relationships with the media. It is customary in most countries that judges involved in a decision do not comment, favourably or unfavourably, on the case to general press journalists. In view of the universally felt need for better communication on certain decisions which necessarily have strong media impact, most jurisdictions have opted to entrust this role to the president of the jurisdiction or a judge specialised in media handling. Some countries have also felt the need to establish rules of conduct for dealing with lawyers, before and after judgement has been passed on a matter.

The second issue of growing interest is the use of the real or future influence that a judge may exert by virtue of being a judge. Some ethical manuals provide guidelines for the use of professional premises for private purposes, the use of the power to make professional recommendations, the possibility of payment for articles written, lectures at seminars, or meetings with other members of the legal professions. Some countries have also decided to regulate the scope of involvement in the private- or public-sector market after retirement. They may ban a former judge who has decided to practice as a lawyer from pleading before his own previous jurisdiction, at least for a certain time, or to plead against the State.

Conclusion

Each national jurisdiction has its own specific characteristics which are the result of history, tradition and the rules of each country's legal system. A reading of the national reports together with comments from participants in the 3 commissions, however, does reveal that, despite borders, there is a common core of statute law or rules of behaviour.

This general report tries to capture the similarities and differences in various countries, in the areas of recruitment, training, career development, rights, guarantees and duties of judges, to draw the outline of a living and evolving administrative jurisdiction.

Bangkok, November 24th, 2007.