



Strasbourg, 16 December 2011

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**CONSULTATIVE COUNCIL OF EUROPEAN JUDGES  
(CCJE)**

**Questionnaire with a view of the preparation of Opinion No. 15 on  
specialisation of judges and courts**

**1. Specialisation of courts – additionally please see explanatory note below**

TYPES OF COURTS/JUDGES	(A) TICK THE BOX IF YOUR COUNTRY HAVE SPECIALISED COURTS/JUDGES IN:	(B) IF YES TO (A), TICK THE BOX IF THEY ARE SPECIALISED JUDGES/CHAMBERS WITHIN A GENERALIST COURT	(C) IF YES TO (A), TICK THE BOX IF THEY ARE A SEPARATE INSTITUTION WITHIN THE GENERAL ORGANISATION OF THE JUDICIARY	(D) IF YES TO (A), TICK THE BOX IF THEY ARE A SEPARATE JUDICIARY FORMING A SYSTEM OF THEIR OWN <sup>1</sup>	(E) IF YES TO (A), TICK THE BOX IF THEY HAVE A COMPOSITION INCLUDING LAY MEMBERS OR ONLY OF LAY MEMBERS <sup>2</sup>	(F) IF YES TO (A), TICK THE BOX IF THEY HAVE A TERRITORIAL COMPETENCE DIFFERENT FROM GENERALIST COURTS (PLEASE SPECIFY IF APPROPRIATE)	(G) IF YES TO (A), TICK THE BOX IF THEY APPLY RULES (PROCEDURE, EVIDENCE, ETC.) THAT ARE DIFFERENT FROM THOSE APPLICABLE IN GENERALIST COURTS (PLEASE SPECIFY IF APPROPRIATE)
<i>ADDITIONALLY PLEASE SEE EXPLANATORY NOTE BELOW</i>							
Family courts	(x)						x
Juvenile courts	(x)						x
Administrative courts/council of state	(x) special boards				x		x
Immigration/Asylum	(x) a special board				x		x
Courts of Account							
Military Courts							
Tax Courts	(x) a special board				x		x
Labour/social courts	x		x	x	x		x
Courts for agricultural contracts							
Consumers' claims courts	(x) special boards				x		x
Small claims courts	(x)						x
Courts for wills and inheritances	x						x
Patent/copyrights/trademark courts	x		x		x		x
Commercial courts	x		x		x		x
Bankruptcy court	x						x
Courts for land disputes							
"Cours d'arbitrage"	(x)				x		x
Serious crimes courts/courts of assize	(x)				x		x
Courts for the supervision of criminal investigations (e.g. authorising arrest, wire-tappings, etc.)	(x)						x

<sup>1</sup> For example, appeals on decisions of the specialised court of first instance is filed with a specialised court of appeals, council of state, etc.

<sup>2</sup> For example, composition including lay members: jurors, psychologists, engineers; please specify qualifications and system of recruitment. For example composition of only lay members: representatives of labour organisations, aldermen-échevins, justices of the peace, magistrates etc.

Courts for the supervision of criminal enforcement and custody in penitentiaries	(x)						x
Other, please specify: <i>The Land Registration Court, Court of Housing, The Special Court of Indictment and Revision, etc. For various boards please see our explanatory note below</i>	x, (x)				x		x

To what extent specialisation of courts is relevant in your system?

## 2. Specialisation of judges

a) Does the recruitment procedure take into account the specialised studies accomplished after the university diploma in law? Does it take into account the specialised professional experience? Please specify. *The totality of qualifications is considered.*

b) Are judges promoted to a higher court, or assigned to a post of chief judge, on the basis of a procedure giving relevance to specialisation? Please specify. *The totality of qualifications is considered.*

c) May a judge from a generalist court move to a specialised court, or from one specialisation to another: except for The Maritime and Commercial Court in Copenhagen and The Labor Court all courts are generalist courts

<i>As to separate court systems:</i>	<i>Within the same court system:</i>
<input type="checkbox"/> by just filing an application examined on the basis of seniority and other criteria not including previous specialisation?	<input type="checkbox"/> by showing professional experience?
<input checked="" type="checkbox"/> by resigning from original post and participate to a new recruitment?	<input type="checkbox"/> by attending specialisation/reconversion courses?
<input checked="" type="checkbox"/> other? The judges in the Labor Court are Supreme Court judges, who have been appointed by the government and execute this duty alongside their permanent tenure	<input type="checkbox"/> by passing a specialisation exam?

d) Does the system ensure that all judges may access specialisation (e.g. by giving them the appropriate information)? *Yes*

e) What are for judges the criteria for access to specialisation? *The specialisation rests upon the court adopting special procedure for a given class of cases.*

f) Do financial provisions exist helping judges to transfer to other towns where specialisation may be acquired? *No*

g) Are there access/reconversion courses to specialised functions:

- Yes, within the judicial training institute ?
- Yes, organised by an institution different from the judicial training institute?
- No?

h) Are there training courses reserved only to specialised judges? *Yes*

i) Are exchanges of judicial experiences between different specialisations and/or generalist groups of judges organised? *No*

j) Do specialised positions exist in court for organisational purposes only (e.g., judge serving as spokesperson for the court; judge for the development of IT in court; judge co-operating with ADR services, etc.)? *Yes, but such functions are handled by a judge alongside his main job*

k) If yes, is there a specific training for this type of posts? Please specify. *For instance courses in mediation, IT, press contact*

l) Do specialised judges have a higher compensation than generalist judges? Please distinguish, if relevant, according to whether the specialist judges belong to the same court system or a separate court system (e.g., in some countries, depending on the distinction between ordinary judges and administrative judges). *No*

m) Are there special allowances, or benefits in kind, for specialised judges? *No*

n) Are specialised judges entitled to a preferential access to higher courts? If yes, is such access limited to the specialisation field of the judge concerned? *No, the totality of qualifications is considered*

### **3. Specialisation of courts vis-à-vis specialisation of other actors of justice**

a) Is the bar and/or professional associations of lawyers organised on a specialised basis in your country? Please specify. *Yes, but to a limited extent only*

b) In order to practice before specialised courts, have lawyers to be specialised (e.g. registered in special bar listings)? *No*

c) Is public prosecution organised on a specialised basis in your country? Please specify. *To a very limited extent only*

d) In order to practice before specialised courts, have prosecutors to be specialised (e.g. belong to specialised department of the prosecution service)? *No*

e) Are specialised judges assisted by specialised staff (clerks, technical staff, etc.) ? If yes, is this staff recruited on an *ad hoc* basis? *No*

### **4. Specialisation and governance**

Is your Council for the judiciary or other another equivalent independent body entrusted with the protection of the independence of judges competent for all specialised judges, as for all generalist judges? If not, please specify the specialised judges that are not under the governance of the Council. *Yes*

### **5. Specialisation, professional associations of judges, judicial ethics**

- a) Are there in your country professional associations of specialised judges? *No*
- b) Do specialised judges have separate or common “principles of judicial ethics”<sup>3</sup> with respect to generalist judges? If separate principles apply, please specify (i.e. separate principles needed by exposure of specialised judges to problems affecting juveniles, family problems, labour disputes, etc.). *No*

## **6. Conclusion**

- a) Please give your opinion on the advantages and disadvantages of special courts

*An official Danish opinion has not been drawn*

- b) Please give your opinion on the advantages and disadvantages of specialisation of judges

*An official Danish opinion has not been drawn*

### **Explanatory note:**

In question 1 box A has been marked with a tick placed in brackets in several instances (x). This is intended to signify that specialised courts/judges exist only in a limited sense.

The Danish delegation thereby saw an opportunity to answer the questionnaire based on the prevailing organisation of parts of the Danish judicial system. This may be implemented through special procedural rules. In several cases listed in question 1 the specialisation rests upon the court adopting special procedure for a given class of cases. In question 1 the box G has been ticked even if it is only in the minor details that different rules are applied.

Specialisation could also be implemented locally within the organisation of the courts. Cases are distributed between judges by the court president following negotiation and agreement with the judges. There are several occasions where a certain degree of specialisation emerges for the benefit of work-flow efficiency or preference or interest. Following our recent reform of the court system it was anticipated that larger units with larger number of judges would create an opportunity for increased specialisation. It has nevertheless materialised that courts generally have not seen their advantage in implementing specialisation to any significant degree.

In the courts of a few major cities with larger number of judges, a limited degree of specialisation between the judges is practised based on local agreement between the court president and the judges.

In reference to “administrative courts” no such court system exists in Denmark. Rather a system of boards on individual administrative fields is in place even if they do not have the status of a proper court. A great part of such boards are similar to a specialised administrative court. Almost exclusively the chairman of board is required to be a judge from the general court system. The boards work independently of the minister and other executives within the administrative field. The chairman executes his duties alongside his permanent tenure. Some of said boards might have competence to put prejudicial inquiries before The European Court of Justice.

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<sup>3</sup> See principles of judicial ethics as defined in CCJE’s Opinion No. 3 (i.e. rules having no disciplinary impact).

While the chairmanship in a board is held by an independent judge, differing principles apply to appointment of the remaining board members. Rules of appointment are typically laid down in law. In most boards the members are selected based on their specialist competences or political experience.

In reference to court specialisation in the field of immigration/asylum the relevant Danish body is The Refugee Appeals Board. Its decisions may be tried before a general court only in relation to judicial matters.

In the field of the administrative rule of law, certain powers are delegated to “The Ombudsman” who by own decision or by following a complaint from a citizen may issue opinions on any error or misconduct by administrative bodies.

Separate from the above mentioned administrative boards there are numerous other boards in the field of civil law, particularly in consumer and tenant law. Such boards are given official mandate by their approval by The Minister of Business and Growth or have been established by law. Generally the chairman of the board is required to be a judge from the general court system. The chairman executes his duties alongside his permanent tenure. The membership is typically composed of representatives for the interested parties, thereby bearing similarities to arbitration.

Whenever a case is raised before a general court and the case falls under the competencies of one of said boards, the general court often will refer the case to the board, but the decisions of the board can normally be brought before a general court for re-examination. Some cases, for example tax cases, have to be brought before an administrative board before a case can be raised before a general court.

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Submitted by The Danish delegation to CCJE on February 1<sup>st</sup>, 2012