



Strasbourg, 16 December 2011

CCJE(2011)7

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

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

Replies from Sweden

1. Specialisation of courts

There are three kinds of courts in Sweden: the general courts, which comprise district courts, courts of appeal and the Supreme Court; the general administrative courts, that is to say, administrative courts, administrative courts of appeal and the Supreme Administrative Court; and also the special courts, which determine disputes within special areas, for example, the Labour Court and the Market Court. The administrative courts deal with cases, relating among other things to disputes between private persons and the authorities.

If decision with rejection is stated from the Swedish Migration Board, the decision can be appealed to the Migration Courts, which reconsider aliens and nationality matters in full. The Migration Courts are located at three of Sweden's administrative courts.

The Market Court is a special court, which deals with cases relating to issues concerning whether various forms of marketing have been conducted in a proper manner. The Market Court consists of a chairman and a vice chairman plus five special members. The chairman, the vice chairman and one of the special members must be lawyers with experience as judges. The Labour Court is a special court with the function of considering labour law disputes. In the usual seven-member court there are three neutral members plus two members representing the interests of the employer and two representing employee interests. The latter two courts are not included in the organization of the other Swedish courts but are financed from public funds. Members of both courts are appointed by the government and The Code of Judicial Procedure is applicable on the disputes they handle.

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 GENERALIST COURTS	(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 JUDICIAL SYSTEM OF THEIR OWN ¹	(E) IF YES TO (A), TICK THE BOX IF THEY HAVE A COMPOSITION INCLUDING LAY MEMBERS OR ONLY OF LAY MEMBERS ²	(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)

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

² 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.

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 JUDICIAL FORMING A SYSTEM OF THEIR OWN ¹	(E) IF YES TO (A), TICK THE BOX IF THEY HAVE A COMPOSITION INCLUDING LAY MEMBERS OR ONLY OF LAY MEMBERS ²	(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)
Family courts							
Juvenile courts							
Administrative courts/council of state	X The courts are general dealing with cases relating, among other things, to disputes between private persons and the authorities.		X		X In most cases lay judges take part in the first instance decisions. If it is a dispute where the legality of a municipal decision is to be reviewed or a dispute concerning real property tax assessment, two so-called 'special members', and in tax assessment cases also a valuation technical expert member, will also participate in the final judgment.		X The procedure is regulated by the Administrative Court Procedure Act
Immigration/Asylum	X		X		X		X
Courts of Account							
Military Courts							
Tax Courts							
Labour/social courts	X				Se the text above		
Courts for agricultural contracts							
Consumers' claims courts							
Small claims courts							

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 JUDICIAL FORMING A SYSTEM OF THEIR OWN ¹	(E) IF YES TO (A), TICK THE BOX IF THEY HAVE A COMPOSITION INCLUDING LAY MEMBERS OR ONLY OF LAY MEMBERS ²	(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)
Courts for wills and inheritances							
Patent/copyrights/trademark courts							
Commercial courts							
Bankruptcy courts							
Courts for land disputes							
"Cours d'arbitrage"							
Serious crimes courts/courts of assize							
Courts for the supervision of criminal investigations (e.g. authorising arrest, wire-tappings, etc.)							

Courts for the supervision of criminal enforcement and custody in penitentiaries							
Other, please specify:							

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 studies and experience are considered when recruiting judges, but not specifically. Instead these circumstances are considered in the assessment of skill and merit.*

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. *A special area of knowledge can be considered but the promoted position must be through an open application procedure at the Judges Proposals Board.*

c) May a judge from a generalist court move to a specialised court, or from one specialisation to another: *The judge does not have to resign before application but has to go through the application system mentioned under b.*

<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 type="checkbox"/> by resigning from original post and participate to a new recruitment?	<input type="checkbox"/> by attending specialisation/reconversion courses?
<input type="checkbox"/> other?	<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)? *The Courts of Sweden Judicial Training Academy provides training for all permanent judges. The main purpose of the Academy is to give each judge the best conditions to meet the high quality requirements in his or her judicial capacity. Among other information The Academy publishes a catalogue twice a year to inform about all courses to come the next period.*

e) What are for judges the criteria for access to specialisation? *There are no special criteria to gain access to specialisation more than the criteria's that can be taken into account when evaluating the criteria's skill and merit.*

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, organized by an institution different from the judicial training institute? X *If the Chief Judge accepts it the judge is free to take part of courses given by other institutes such as other authorities.*

- No?

h) Are there training courses reserved only to specialised judges? *No, but to gain access to some courses the applicant has to have some previous knowledge such as participating in a lower level course.*

i) Are exchanges of judicial experiences between different specialisations and/or generalist groups of judges organised? *It is different between the courts how experiences are shared.*

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.)? *Not as a certain position for judges but a judge can have such assignments among there other tasks.*

k) If yes, is there a specific training for this type of posts? Please specify.

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). *There are some judge positions where the specialisation provides higher compensation. In other cases the specialisation can be a factor of skill and other criteria's when deciding the judge's compensation.*

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*

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. *All Swedish lawyers, advocates, are members of The Swedish Bar Association. The membership is not dependent on any specialisation, but in many advocates are specialised.*

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.

The Swedish Prosecution Authority is an independent organisation. It is independent from both the courts and the police. The operative prosecution activities are conducted at the country's 39 local public prosecution offices. In the largest cities there are several local public prosecution offices. The authority also has international public prosecution offices with specialist competence in order to combat organized cross-border crime and to permit international co-operation between prosecutors. In addition, there are three national prosecution offices – one for combating corruption, one for dealing with suspected offences committed by the police and one for security-related cases. The Prosecution Authority's three prosecution development centers are tasked with

conducting methodological and legal development within different criminal areas. Legal follow-up and inspection are also conducted here.

The Swedish Economic Crime Authority is a prosecuting authority where prosecutors, police officers, economic auditors and other experts work together in investigation teams. In this authority the prosecutors work exclusively with economic crime.

d) In order to practice before specialised courts, have prosecutors to be specialised (e.g. belong to specialised department of the prosecution service)? *Sweden does not have specialised courts in these matters.*

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.

The Swedish National Courts Administration does not have a certain mission to protect the judges independence even if that is a fundamental principle in the Swedish Judiciary which shall be considered in all the work of The Administration.

The Swedish Association of Judges is an independent organization for permanent and non permanent judges. One of its main tasks is to protect the judges independence.

5. Specialisation, professional associations of judges, judicial ethics

a) Are there in your country professional associations of specialised judges? *There are networks for judges such as those working with family related cases and civil commercial cases.*

b) Do specialised judges have separate or common “principles of judicial ethics”³ 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

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

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