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**COMPARATIVE STUDY
ON THE PROCEDURE OF SELECTION AND APPOINTMENT OF
JUDGES OF ADMINISTRATIVE COURT**

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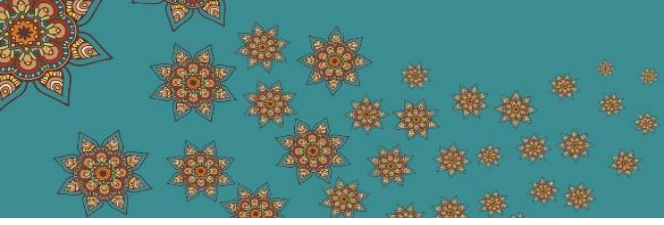


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Contents

Introduction	4
Overview of the procedure of selection and appointment of judges of administrative courts in France, Georgia, Latvia, Poland, Romania, Ukraine, by Mr George Papuashvili	5
I. Different models of administrative justice.....	5
1. Separate branch.....	5
Austria.....	5
Bulgaria.....	6
Lithuania.....	7
Poland.....	7
Spain.....	8
2. Specialised administrative chambers	9
Georgia.....	9
3. Other (combined systems).....	9
Estonia.....	9
France.....	11
Ukraine.....	13
II. Selection/appointment of administrative judges	14
Austria.....	14
Bulgaria.....	14
Estonia.....	15
France.....	15
Georgia.....	16
Lithuania.....	17
Poland.....	18
Spain.....	18
Ukraine.....	19
III. Measures to check/ensure the integrity of candidates	20
Conclusion and recommendations	21
Comparative study on the procedure of selection and appointment of judges of administrative courts in Bosnia and Herzegovina, Croatia, Germany, Italy, Serbia, and Slovenia, by Ms Slavica Banic	22
Croatia.....	22
Czech Republic.....	23
Finland.....	24
Germany.....	25
Italy.....	26
Romania.....	26
Serbia.....	28
Slovenia.....	29
Conclusion	31
Recommendations	32

Introduction

On 3 August 2020, the Chairman of the High Judicial Council of Kazakhstan, Mr Talgat Donakov asked the Venice Commission to provide an overview of international practice concerning the selection and appointment of judges of administrative courts.

This request was made after the adoption of the Administrative procedural code in June 2020, which is part of the reforms of administration and administrative justice in Kazakhstan.

The Venice Commission has invited Ms Slavica Banic, former Member of the Venice Commission for Croatia, and Mr George Papuashvili, former Member of the Venice Commission for Georgia, former President of the Constitutional Court to prepare this overview of the existing practice in European countries focusing on such questions as the existing models of administrative justice, selection and appointment of judges of the administrative courts and measures allowing to check and ensure the integrity of candidates. The reports of the experts include the information on the following countries: Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, France, Georgia, Germany, Italy, Lithuania, Poland, Serbia, Slovenia, Spain and Ukraine.

These reports were prepared by experts for the attention of the High Judicial Council of Kazakhstan and will be presented at the Online international roundtable «Modern digital and HR technologies in the selection of candidates for judges, assessment of work and promotion of judges» organised in Nur-Sultan city on 25 November 2020.

Overview of the procedure of selection and appointment of judges of administrative courts in France, Georgia, Latvia, Poland, Romania, Ukraine, *by Mr George Papuashvili*

I. Different models of administrative justice

The three main models of administrative procedural justice in Europe mainly derive from England, France, and Germany. In England, ordinary courts were in charge of hearing administrative cases, whereas this role was assigned to specialized state officials connected to the executive branch in France. The German model of judicial review is an alternative to the French and English models. During the nineteenth century, German liberals endeavored to implement legal structures that would limit state power by the monarchs of German states.¹

In the present report, the various models of administrative courts are discussed. Administrative courts in some countries act as a separate branch of the judiciary where the assembly of Administrative judges has special functions, like in Poland and Austria, or functions related to the selection of judges in other countries. In other countries the Administrative Courts act as chambers or collegiums in the general courts like in Georgia. There are also combined systems, where the administrative courts are separated from the general court system only on some levels of jurisdiction, for example in Estonia, where the first instance cases are decided by the separate administrative courts but ordinary courts act as the appeal instance.

1. Separate branch

Austria

Another example would be Austria where federal and Land administrative jurisdictional control is exercised by the administrative courts. Decisions or the exercise of direct administrative power of command and control as well as failures to take a decision, can be challenged before one of the eleven administrative courts. As an exception, a two-stage level of appeal within the administration is still used for some matters at the municipal level, such as building procedures. Depending on what kind of authority (Federal or Länder) is enforcing the law in question, either the federal courts or the courts of the provinces are competent. All administrative courts are equal and cannot overrule the decision of other administrative courts. A final decision by the administrative courts may be contested before the Supreme Administrative Court. However, access to the Supreme Administrative Court is restricted to the review of legal questions of essential importance.

The General Assembly (plenum) which is also to be found in administrative courts in Bulgaria, is not only as an actor in the procedure for selection of the members of the court, but also acts as a disciplinary court.

I. SECTION, § 7, (2) Act on Administrative Courts

For the disciplinary treatment of members of the Administrative Court and for their involuntary retirement, the provisions otherwise applicable to judges apply accordingly. Disciplinary court is the general assembly of the court...

¹ Administrative Courts - Sofia Amaral-Garcia Center for Law & Economics, ETH Zurich, Zurich, Switzerland

The administrative courts of first instance established on January 1, 2014 (nine in the federal states, one federal administrative court, one federal finance court) created a two-tier administrative jurisdiction.²

Bulgaria

One example, where the administrative courts are the separate branches of judicial system would be Bulgaria. Administrative matters in Bulgaria are dealt with by the Administrative Courts. The system of administrative justice encompasses 28 provincial administrative courts and the Supreme Administrative Court. Administrative courts have jurisdiction to review all actions seeking:

- to have administrative acts issued, modified, overturned or annulled;
- to have agreements under the Code of Administrative Procedure annulled;
- redress against unreasonable actions or omissions by the administration;
- redress against unlawful enforcement;
- compensation for damages resulting from any unlawful act, action or omission by administrative authorities and officials;
- compensation for damages resulting from enforcement;
- to have administrative court rulings annulled, invalidated or overturned;
- to challenge the authenticity of administrative acts under the Code of Administrative Procedure.

It has to be noted, that according to Article 10 of the Judicial System Act³ judicial proceedings in administrative cases are conducted before two instances, i.e. the first and the cassation ones. Article 61 states that the courts in the Republic of Bulgaria shall be district, regional, administrative, military, appellate, a specialized criminal court, an appellate specialized criminal court, a Supreme Court of Cassation and a Supreme Administrative Court. According to the law, the administrative court shall have jurisdiction as a first instance in all administrative cases except those in which the Supreme Administrative Court shall have jurisdiction by law.

It is important to note, that along with the Supreme Judicial Council the administrative courts govern themselves to some extent. According to law, the Administrative Court shall have a general assembly that shall consist of all judges. The general assembly shall: endorse on an annual basis the composition of divisions; discuss, at the end of each three-year period, the distribution of judges by divisions, if any have been set up, and make a proposal to this effect to the chairperson of the administrative court; analyze and summarize the jurisprudence of the administrative court; give opinions to the Supreme Administrative Court on requests for the adoption of interpretative judgements and interpretative decrees; adopt resolutions in other cases provided for by law.

Moreover, the chairperson can, to some extent, take part in the secondment of judges. For instance, Article 94 states that Where the position of a judge at an administrative court is vacant or a judge is prevented from discharging his office and cannot be replaced by another judge of the same court, the chairperson of the Supreme Administrative Court may second in his stead a judge from another administrative court.

² <https://www.vwgh.gv.at/gerichtshof/geschichte/index.html>

³ http://www.vss.justice.bg/en/root/f/upload/5/judiciary_system_act.pdf

Lithuania

Article 12.4 of the Lithuanian Law on Courts⁴ states that The Supreme Administrative Court of Lithuania and regional administrative courts shall be courts of special jurisdiction hearing disputes arising from administrative legal relations. The regional administrative courts are the first instance for administrative cases assigned to its jurisdiction by law.

A regional administrative court is the court of special jurisdiction established for hearing complaints (petitions) in respect of administrative acts and acts of commission or omission (failure to perform duties) by entities of public and internal administration. Regional administrative courts hear disputes in the field of public administration, deal with issues relating to the lawfulness of regulatory administrative acts, tax disputes, etc. Before applying to an administrative court, individual legal acts or actions taken by entities of public administration provided by law may be disputed in the pre-trial procedure. In this case disputes are investigated by municipal public administrative dispute commissions, district administrative dispute commissions and the Chief Administrative Dispute Commission.

The Supreme Administrative Court is first and final instance for administrative cases assigned to its jurisdiction by law. It is an appeal instance for cases concerning decisions, rulings and orders of regional administrative courts, as well as for cases involving administrative offences from decisions of district courts. The Supreme Administrative Court is also instance for hearing, in cases specified by law, of petitions on the reopening of completed administrative cases, including cases of administrative offences. The Supreme Administrative Court develops a uniform practice of administrative courts in the interpretation and application of laws and other legal acts.⁵

It is important to note that out of 23 members, the Chairman of the Supreme Administrative court is the ex officio member of the Judicial Council. Along with this, three members of the Council are chosen from the list of the judges in the Supreme Administrative Court and one member is selected from all judges of the administrative courts.

Poland

Article 1 of the law on the System of Administrative Courts states that administrative courts shall administer justice through reviewing the activity of public administration and resolving disputes as to competence and jurisdiction between local government authorities, appellate boards of local government, and between these authorities and government administration authorities.⁶ According to Article 3 of the same act Cases falling within the jurisdiction of administrative courts shall be heard, in the first instance, by voivodship administrative courts. The Supreme Administrative Court shall exercise supervision over the activity of voivodship administrative courts within the scope of adjudicating cases according to the procedure specified by statute and, in particular, shall hear means of appeal against the decisions of these courts and adopt resolutions explaining legal issues and shall hear other matters falling within the jurisdiction of the Supreme Administrative Court by virtue of other statutes.

⁴ https://www.teismai.lt/data/public/uploads/2020/06/11-teismu-istatymas_en.docx

⁵ <https://www.teismai.lt/en/courts/judicial-system/650>

⁶ <http://www.nsa.gov.pl/download.php?id=1294>

As in most other states, the administrative courts have the role in formation of the judicial council. Article 9a of the Act of 12 May 2011 on the National Council of the Judiciary states that The Sejm selects fifteen members of the Council from among the judges of the Supreme Court, common courts, administrative courts and military courts for a common four-year term of office. Moreover, article 7 of the same act states that The First President of the Supreme Court, the President of the Supreme Administrative Court and the Minister of Justice are members of the Council for the duration of holding these functions.

Along with the abovementioned, the administrative courts have the separate budget and the means of controlling it. Article 14 states that a draft revenue and expenditure budget of the Supreme administrative Court shall also include revenue and expenditures of voivodship administrative courts. The minister competent for matters of public finance shall include the draft revenue and expenditure budget, in the wording established by the President of the Supreme Administrative Court, into the State budget. According to the same article, the President of the Supreme Administrative Court shall have the powers of minister competent for matters of public finance in relation to the implementation of the budget of administrative courts.

It is important to note, that the President of the Republic of Poland appoints the President of the Supreme Administrative Court for a term of six years from among of two candidates presented by the General Assembly of Judges of the Supreme Administrative Court. It needs to be noted the two courts have separate General assemblies. Article 24 states that the general assembly shall consist of judges of the voivodship administrative court and that the general assembly shall: consider information from the president of the voivodship administrative court about annual activities of the court; present candidates for judges of the voivodship administrative court to the National Council of the Judiciary; provide opinion on the appointment or removal of the president of the voivodship administrative court and opinion on the appointment or removal of the vice-president of the voivodship administrative court; decide the number of members of the board of the court and elect its members as well as enact changes in its composition; consider and provide opinion on other matters submitted by the president of the voivodship administrative court and lodged by members of the general assembly.

Spain

In Spain in addition to the territorial aspect, the matters or issues that can come before the courts are of different kinds, and are dealt with by four systems of courts:

Administrative courts: examine the legality of acts carried out by the authorities and financial claims made against them.

According to Article 90 of the Organic Law of Spain 6/1985 On the Judiciary⁷, based in the capital, each province will have one or more Administrative Courts, with jurisdiction throughout the entire territory. Where required, in view of the number of cases, one or more Administrative Courts may be established in the municipalities that are determined by law. They will bear the name of the municipality in which they are based, and their jurisdiction will extend over the corresponding administrative area. The city of Madrid will house Central Administrative Courts, with jurisdiction throughout Spain, which will hear, at first or single instance, administrative appeals against the orders

⁷ https://www.legislationline.org/download/id/6791/file/Spain_law_judiciary_1985_am2016_en.pdf

and acts issued by public authorities, organizations, bodies and entities with competence throughout the national territory, in the terms established by law.

2. Specialised administrative chambers

Georgia

One example where we meet the specialized administrative chambers would be Georgia. According to article 30 of the organic law of Georgia on General Courts⁸ in a district (city) court composed of at least 2 judges, 1 judge shall examine criminal cases and the other judge shall examine civil and other categories of cases, except as determined in the procedural legislation of Georgia. Judges shall be specialised based on a decision of the High Council of Justice of Georgia. In a district (city) court of special caseload composed of more than 2 judges, a narrower specialisation of judges may be conducted or specialised judicial panels ('the judicial panels') may be set up by decision of the High Council of Justice of Georgia. The number of judges in the Panels and the composition of the Panels shall be determined by the High Council of Justice of Georgia. (There are narrow specializations only in Tbilisi City court and Tbilisi Court of appeals, for example for cases of administrative misconduct or social issues)

A judicial panel shall have a chairperson. The Chairperson of a judicial panel shall be appointed from among the panel composition for a five-year term by the High Council of Justice of Georgia. A judge assigned to the position for a three-year term may not be appointed as chairperson of a judicial panel, except when he/she has at least five years' experience of working as a judge. A judge assigned to the position for a three-year term may be appointed as chairperson of the judicial panel within his/her tenure.

Additionally, the law sets that there are specialized administrative chambers (composed of 3 judges) in the Court of Appeals (there are 2 such courts) and the Supreme Court of Georgia.

3. Other (combined systems)

Estonia

In Estonia, Judges, including Administrative judges shall be appointed to office on the basis of a public competition. The Minister of Justice shall announce a public competition for a vacant position of judge of a county court (first instance general courts), administrative court, and circuit court. The Chief Justice of the Supreme Court shall announce a public competition for a vacant position of justice of the Supreme Court. A competition for a vacant position of a judge shall be announced in the official publication *Ametlikud Teadaanded*. An application shall be submitted to the Chief Justice of the Supreme Court within one month after the publication of the notice concerning the competition.

Article 55 of the Courts Act states that Judges of a court of the first instance and judges of a court of appeal shall be appointed by the President of the Republic on the proposal of the Supreme Court chambers. The Supreme Court shall first consider the opinion of the full court of the court for which the person runs as a candidate. If several persons run as candidates for the vacant position of judge, the Supreme Court shall decide who to propose to the President of the Republic to be appointed to office as judge. The decision of the Supreme Court shall be communicated to the candidate. A judge

⁸ <https://matsne.gov.ge/ka/document/view/90676?impose=translateEn&publication=34>

of a court of the first instance or a judge of the court of appeal appointed to office by the President of the Republic shall be appointed to court service by the Supreme Court. Upon appointing a judge of a court of the first instance to service the Supreme Court shall also determine the courthouse which shall be the permanent place of service of the judge. Justices of the Supreme Court shall be appointed to office by the Riigikogu on the proposal of the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court shall first consider the opinion of the Supreme Court and the Council for Administration of Courts concerning a candidate. Upon the appointment of a judge of a court of the first instance as a judge of a court of appeal, he or she shall be paid no compensation for the unexpired unused annual holiday, and the calculation of the holiday shall be continued at the court of appeal.

Article 18 of the Estonian Courts Act⁹ deals with the issue of Administrative courts. According to the law, Administrative courts shall hear administrative matters placed within the jurisdiction thereof as courts of first instance. Administrative courts shall also perform other acts the performance of which is placed within the jurisdiction of the courts by law.

The law states that there are two administrative Courts:

- 1) Tallinn Administrative Court;
- 2) Tartu Administrative Court.

An administrative court has one or several courthouses. Courthouses shall be located in the territorial jurisdiction of the administrative court which shall be determined by the Minister of Justice. The Minister of Justice shall determine the exact location and service areas of courthouses. The location of every courthouse is also the location of the administrative court.

Article 18.4 states that the structure of administrative courts and the composition of the staff of court officers shall be determined by the director of court, except in the field related to the performance of the function of administration of justice. In such field, the structure of the court and the composition of the staff of court officers shall be determined by the chairman of the court. In determination of the structure of a court and the composition of the staff of court officers, the provisions of § 43 of this Act shall be taken into consideration.

The chairman of an administrative court is appointed from among the judges of the court for five years. The chairman of a court is appointed by the Minister of Justice after having considered the opinion of the full court. The chairman of an administrative court shall represent and direct the judicial institution within the limits of his or her competence. The chairman of a court is responsible for administration of justice in the court pursuant to the established procedure. The functions of chairmen of administrative courts include: organization of activities in the area of administration of justice; approval of the draft budget of the court prepared by the director of court; exercise of supervisory control prescribed by law; preparation of the draft of the training plan of judges and submit it for approval to the full court, organization and monitoring of compliance with the plan and present a review on compliance with the plan to the full court at least once a year.

Administrative Courts are courts of first instance, however, in case of the appeal the case goes to General Courts.

Courts Act

§ 22. Circuit courts

⁹ <https://www.riigiteataja.ee/en/eli/ee/514022014001/consolide>

(1) A circuit court is the court of appeal which reviews the decisions of county and administrative courts by way of appeal proceedings.

France

In France, acts of public administration are subject to review by administrative courts which are independent of the administration itself (separation of administrative and judicial functions) and distinct from the ordinary courts. Reviews may also be carried out by administrative bodies, but the decisions of these bodies are then subject to judicial review. The lower administrative courts (tribunaux administratifs) are the general courts of administrative law at first instance. But specialised administrative courts are numerous and varied, and they include: the financial courts (regional auditors' office (chambre régionale des comptes) and Court of Auditors (Cour des comptes)), the social welfare courts (commissions in the départements and central commission for social welfare), the professional disciplinary courts (Court of Budgetary and Financial Discipline, Supreme Council of the Judiciary, professional disciplinary bodies, university tribunals, etc.).

As a general rule, their decisions may be appealed before the Administrative Courts of Appeal (cours administratifs d'appel), whose decisions may in turn be reviewed on a point of law before the Council of State (Conseil d'État). In this role the Council of State only reviews the correct application of the rules of procedure and law by the court decisions contested before it, in the same way as the Court of Cassation does, but the Council of State is also the court of first and final resort for certain disputes, such as those relating to regulatory measures taken by ministers.

Conflicts of jurisdiction between the two systems of courts are settled by the Conflicts Court (Tribunal des conflits), made up of members of the Court of Cassation and the Council of State. The Constitutional Council oversees the compliance of statutes with the Constitution, and does not review measures or actions taken by public administration.¹⁰

Traditionally the members of the administrative courts are not described as 'judges' (magistrats) within the meaning given by the French Constitution, as this term is reserved for members of the ordinary courts. The members of the administrative courts have been governed by the general rules governing civil servants. For a long time, the legislation applying to members of the administrative courts did not include any special rules different from those which apply to other types of civil servant. However, over the course of the 1980s, the terms and conditions of appointment of members of the administrative courts have evolved to strengthen their independence, so that the general tendency today is to treat them as judges. This how some legal texts refer to them, and all the rules governing promotion and seniority ensure that de facto they enjoy complete independence.

While the judges of the ordinary courts form a single structure, the administrative judges belong to two different structures (corps), one for the members of the Council of State and one for the members of the lower administrative courts and the administrative courts of appeal.

The rules governing these two structures were for a long time laid down in separate bodies of legislation, but the members of the Council of State and the members of the lower administrative courts and the administrative courts of appeal are now subject to the same provisions of the Code of Administrative Justice (Code de justice administrative).¹¹

¹⁰ https://e-justice.europa.eu/content_specialised_courts-19-fr-en.do?member=1

¹¹ ibid

The administrative courts (42 in all since 2009, with the creation of the one in Montreuil, the 5th administrative court in the Paris region) and the administrative courts of appeal (eight in all) are organized in chambers, the number and specialization of which vary depending on the staff of the court and the internal organization choices made by the court administrator. The Council of State has only one division in charge of court matters, the Litigation Division. The other 'administrative' divisions as they are known assume the advisory functions of the Council of State. The Litigation Division of the Council of State is composed of 10 subdivisions that specialize in certain matters. Each of these has about a dozen members. Depending on the importance of the cases and their significance to case law, petitions that are examined by more than one judge are brought before the bench, the composition and staff of which vary.

The most restrictive of such benches is the subdivision that considers the matter alone and is composed of three members. At the immediately higher level two subdivisions sit jointly on a panel which is composed of nine members, generally presided over by one of the three deputy presidents of the division. If the case is more delicate or more sensitive, it may be examined by the Litigation Division, which is composed of 15 members as defined by Article R.222-18 of the code of administrative justice and is presided over by the president of the division. At the very highest level is the Judicial Assembly, the composition of which is laid down in Article R.122-21-1 of the same code. Presided over by the Vice-President of the Council of State and composed of 17 members, this tribunal hands down decisions with the highest authority in case law.¹²

Council of State

The formulation according to which the Council of State (Conseil d'État) is the supreme court of the administrative system (Cour suprême de l'ordre administratif) is not found in any official text. Various authors have called it the "Supreme Administrative Court." ¹ From a legislative point of view, article L. 111-1 of the Code of Administrative Justice, adopted through the ordinance of May 4, 2000, stipulated for the first time that "the Council of State is the supreme administrative court."¹³ It needs to be mentioned that the council of state acts both as legal advisor of the executive branch and as the supreme court for administrative justice. Article 38 of the French constitution states that Ordinances shall be issued in the Council of Ministers, after consultation with the Conseil d'État. Article 39 stipulates that Government Bills shall be discussed in the Council of Ministers after consultation with the Conseil d'État and shall be tabled in one or other of the two Houses. One councilor is the member of the Judicial council according to the French Constitution:

The High Council of the Judiciary shall consist of a section with jurisdiction over judges and a section with jurisdiction over public prosecutors. The section with jurisdiction over judges shall be presided over by the Chief President of the Cour de cassation. It shall comprise, in addition, five judges and one public prosecutor, one Conseiller d'État appointed by the Conseil d'État and one practicing lawyer, as well as six qualified, prominent citizens who are not Members of Parliament, of the Judiciary or of the administration. The President of the Republic, the President of the National Assembly and the President of the Senate shall each appoint two qualified, prominent citizens.

¹² http://www.aca-europe.eu/en/eurtour/i/countries/france/france_en.pdf

¹³ The Council of State, the Supreme Court of the French Administrative System Pierre Delvolvé In Pouvoirs Volume 123, Issue 4, 2007, pages 51 to 60

Council of State can hear all administrative cases. If, during these cases, it comes across issues which pertain to private law, some of them may fall outside its competence and have to be referred to the judicial system. The Court of Cassation rules on private law cases. In criminal matters, it can assess the legality of administrative decisions that the case for the prosecution or the defense is based on. Furthermore, it can, in all cases, interpret the administrative regulations whose application determines the solution to a legal dispute; otherwise, it cannot deal with administrative decisions nor, more generally, with the operations of administrative bodies.¹⁴

Ukraine

Ukraine has combined system, where only first and second instance administrative courts are separated from the rest of the court system and the Supreme Court acts as a cassation instance for administrative cases. According to the Law of Ukraine on the Judiciary and the Status of Judges, local administrative courts shall hear cases of administrative jurisdiction and the administrative cases can be appealed in the appellate administrative courts formed in relevant appellate districts.

The administrative courts have the role in formation of Council of Judges. Article 133 of the law stipulates that in between the Congresses of Judges of Ukraine, the supreme body of judicial self-governance shall be the Council of Judges of Ukraine. The Council of Judges of Ukraine shall elect the Congress of Judges of Ukraine. The Council of Judges of Ukraine shall include:

- 1) eleven judges of local general courts;
- 2) four judges of local administrative courts;
- 3) four judges of local commercial courts;
- 4) four judges of the courts of appeal for civil, criminal cases and cases on administrative offences;
- 5) two judges of administrative courts of appeal;
- 6) two judges of the commercial courts of appeal;
- 7) one judge of the high specialized courts;
- 8) four judges of the Supreme Court.

Cassation court for administrative matters is the Supreme Court. According to article 37 of the same law states that the Supreme Court shall consist of the Grand Chamber of the Supreme Court; Administrative Court of Cassation; Commercial Court of Cassation; Criminal Court of Cassation; Civil Court of Cassation. Each court of cassation shall consist of judges of the relevant specialization.

It is important to note that establishment of the Supreme Court was transitional in the sense, that several courts have been liquidated. Transitional provisions state that the Supreme Court shall be established on material and technical base of the Supreme Court of Ukraine, High Specialized Court of Ukraine for Civil and Criminal Cases, High Commercial Court of Ukraine, and High Administrative Court of Ukraine. The Supreme Court of Ukraine, High Specialized Court of Ukraine for Civil and Criminal Cases, High Commercial Court of Ukraine, and High Administrative Court of Ukraine shall operate within their powers determined by procedural law until the Supreme Court starts its operations in the composition determined by this Law and until relevant procedural law which regulates the procedure of case disposition by the Supreme Court in the composition determined by this Law comes into force.

¹⁴ Ibid

Starting from the day of commencement of the operations of the Supreme Court in the composition determined by this Law, the Supreme Court of Ukraine, High Specialized Court of Ukraine for Civil and Criminal Cases, High Commercial Court of Ukraine, and High Administrative Court of Ukraine ceased their operations and were dissolved within the procedure stipulated by law.

It needs to be noted, that the transitional articles stated that justices of the Supreme Court of Ukraine, judges of the High Specialized Court of Ukraine for Civil and Criminal Cases, High Commercial Court of Ukraine, and High Administrative Court of Ukraine had a right to participate in the competition for vacant positions of justices of the Supreme Court in relevant cassation courts within the procedure established by law.

II. Selection/appointment of administrative judges

Austria

Austrian Act on Administrative Courts¹⁵ state, that The President, the Vice-President, and the other members of the Administrative Court are appointed by the Federal President on the proposal of the Federal Government. In so far as the chamber presidents and the Court councilors are concerned the Federal Government submits its recommendations on the basis of recommendations listing three candidates for each vacancy submitted by the Administrative Court in plenary session (so-called three-party proposals)

I. SECTION, § 1, (4) Act on Administrative Courts

For the posts of the members of the Administrative Court, with the exception of the President and the Vice-President, three-party proposals are to be made by the General Assembly and submitted by the President to the Chancellor

Bulgaria

Formal Requirements for administrative judges are regulated within the different subsection of the relevant article. Moreover, the required term of tenure of the judge in the administrative courts exceed the ones, that are set by the law for judges in the district courts. In particular, article 164 states that an individual with at least three years of service record shall be appointed as a judge at a district court and an individual with at least **eight years** of service record shall be appointed as a judge in the administrative court.

It is important to note, that Administrative Court in Bulgaria **has special role in selection of members of the Supreme Judicial Council** which is a permanent body representing the Judiciary and securing its independence. It shall set the composition and organizes work of the Judiciary and manages its business without interfering with the independence of the bodies. According to Article 20 of the Judicial System Act The nominations for elected members of the Supreme Judicial Council shall be made at the assemblies. According to Article 21, The judges from the Supreme Administrative Court and the administrative courts shall nominate candidates for members of the Supreme Judicial Council and shall elect delegates for the general delegate assembly of judges at a separate general assembly.

¹⁵ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000795>

Estonia

Article 47 of the Courts Act sets the Requirements for judges in Estonia. Judges in Administrative Court and judges in General Courts have the Same requirement. According to the law, 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;
- 2) has the proficiency of the Estonian language at the level C1 provided for by the Language Act 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 offense;
- 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 offense;
- 5) bankrupt persons;
- 6) persons whose professional activities as an auditor have been terminated except termination based on the application of an auditor;
- 7) persons who have been deprived of the qualification of a patent agent, except deprivation of qualification based on the application of a patent agent.
- 8) who have been deprived of the profession of a sworn translator.

ქრეი

It is important to note, that according to article 74 of the Courts act, a judge is required to develop knowledge and skills of his or her specialization regularly and to participate in training. The Training Council is responsible for the training of judges. The Training Council is comprised of two judges of a court of the first instance, two judges of a court of appeal, two justices of the Supreme Court, and a representative of the Prosecutor's Office, the Minister of Justice, and the University of Tartu.

Training of all judges, including the administrative judges, is based on the strategies for training of judges, annual training programs and the program for judicial examination. The strategies for training of judges, annual training programs and the program for judge's examination are prepared by the judicial training department of the Supreme Court and approved by the Training Council. The study and methodological materials necessary for the training of judges are prepared and the agreements with the trainers are entered into by the judicial training department of the Supreme Court. The judicial training department of the Supreme Court organizes the trainings.

France

On joining the Conseil d'Etat, young recruits acquire the status of auditeur (trainee – literally, 'listener'); after a few years, they become maîtres des requêtes ('masters of requests') and, from the age of 45, they can aspire to become conseillers d'Etat ('state councilors').¹⁶

There are two sorts of procedures for recruiting administrative judges: recruitment by competition and recruitment by appointment. Since 1945, auditors (the top-ranked among Council of State members) have been recruited via the School of National Administration as are the judges in the administrative courts and the administrative courts of appeal.

¹⁶ Hugo Flavier, Charles Froger, Administrative Justice in France. Between Singularity and Classicism, 3(2) BRICS Law Journal 80–111 (2016).

In addition to recruitment by competition, there is an 'external round', which enables the government to appoint a limited percentage of members of its choosing to the administrative courts. The proportion of appointments via each of the two procedures varies depending on the court in question, the external round being more restricted in the supreme court. Some of the external appointments to the Council of State are reserved for members of the administrative courts and the administrative courts of appeal. The external round appointments are justified by a concern to recruit people who have gained professional experience in other civilian or military institutions (diplomats, prefects, officers, engineers, etc.), or in other, mainly legal professions (academics, lawyers, etc.), who can bring valuable skills to the administrative courts. Depending on the case, they are decided based on a proposal or pursuant to the opinion of the Vice-President of the Council of State.¹⁷

Provision is also made for a specific form of recruitment for judges of the administrative courts and administrative courts of appeal, in the form of an additional recruitment competition geared towards experienced law students. Originally designed as an exceptional device, temporary measure, it has been crucial in meeting the demand arising from an increase in litigation. It has become a regular method of recruitment and constitutes an important path, in terms of quality and quantity, to a career as an administrative judge.

The Superior Council of Administrative Courts and Administrative Courts of Appeal is consulted on questions concerning magistrates: individual measures concerning the career, promotion, discipline of judges, etc. Its composition ensures its independence and representativeness: the council is chaired by the vice-president of the Council of State and comprises 13 members including 5 elected representatives of the body of administrative tribunals and administrative courts of appeal and 3 qualified personalities, appointed respectively by the President of the Republic and by the Presidents of the National Assembly and the Senate.

Positions in administrative and administrative court of appeal are offered through the competition. The candidates can be:¹⁸

- A) holders of one of the diplomas required to sit for the first entrance examination to the National School of Administration, aged at least twenty-five years
- B) officials and other public officials, civilian or military, belonging to a body or framework of jobs in category A or similar and justifying seven years of effective public service including three effective years in category A
- C) and magistrates of the judicial order.

Georgia

A candidate for judge, including the administrative judge, shall be selected on the basis of two basic criteria – good faith and competence.

3. The characteristics of a good faith criterion shall be as follows:

- a) personal good faith, and professional conscience;
- b) independence, impartiality and fairness;
- c) personal and professional behavior;
- d) personal and professional reputation.

4. The characteristics of a competence criterion shall be as follows:

¹⁷ *ibid*

¹⁸ *ibid*

- a) knowledge of legal norms;
- b) ability of legal substantiation and competence;
- c) writing and verbal communication skills;
- d) professional qualities;
- e) academic achievements and professional training;
- f) professional activity.¹⁹

Lithuania

Articles 66 of Lithuanian law on Courts regulate the requirements for a person seeking judicial office at the Regional Administrative Court or the Regional Court. A judge entered in the register of persons seeking judicial office or a person having Doctor of Social Sciences (Law) degree, having at least four years standing as a judge or (and) having pedagogical work experience in law, who has submitted a health certificate may be appointed as a judge of a regional administrative court or regional court.

Article 67 deals with the requirements of a person seeking the judicial office of the Supreme Administrative Court or the Court of Appeal. A judge entered in the register of persons seeking judicial office or a person having Doctor of Social Sciences (Law) degree, having at least 8 years standing as a judge or (and) having pedagogical work experience in law, who has submitted a health certificate may be appointed as a judge of the Supreme Administrative Court or the Court of Appeal. If a person worked as a judge and pedagogical work in law at the same time, calculating the work experience mentioned in this article, the experience as a judge and pedagogical work in law acquired during this period is not summed up. A judge of the Court of Appeal may be appointed as a judge of the Supreme Administrative Court, and a judge of the Supreme Administrative Court may be appointed as a judge of the Court of Appeal without regard to his record of work at the Court of Appeal or the Supreme Administrative Court.

Administrative judges in Lithuania are selected using the criteria that are used for other judges as well. Persons seeking to become judges of a higher court shall be assessed according to: Record of work in the legal area; The nature and quality of the work; the professional activity (quality of legal work); the nature and quality of scientific-pedagogical work; professional competence and knowledge; knowledge of foreign languages; university education other than law; professional development and improvement (its intensity, purposefulness, validity); participation in expert activities (for example, in the process of drafting legal acts, expert evaluation of draft legal acts, participation in the activities of working groups, etc.); activities as a conciliator (mediator); research cooperation (does not apply to candidates with a doctorate in social sciences); the level of the candidate's current pedagogical duties and performed pedagogical activities; prepared scientific publications in peer-reviewed scientific publications; participation in public activities related to courts / justice; other activities of the candidate related to the acquisition and deepening of knowledge necessary for the work of a judge, etc. Personal competencies; constructiveness of the candidate's thinking, erudition; personality maturity, emotional balance, effectiveness, and objectivity of decision-making; duty and responsibility, the ability to effectively organize one's own and the work of others; communication and cooperation skills; strength and adequacy of motivation, the strength of professional identity, initiative, aspiration to learn and improve, activity in the legal/judicial community.²⁰

¹⁹ Article 35¹ of Organic law of Georgia on General Courts
(<https://matsne.gov.ge/ka/document/view/90676?impose=translateEn&publication=34>)

²⁰ https://www.teismai.lt/data/public/uploads/2020/06/8-teiseju-karjeros-siekianciu-i-kita-teisma-perkeliamu-ar-skiriamu-asmenu-vertinimo-kriterijai_en.docx

Poland

Articles 5-6 of the law on the System of Administrative Courts deal with the requirements of the judicial candidates to the administrative courts as well as the relevant procedure. According to the law, The President of the Republic of Poland, upon request of the National Council of the Judiciary, shall appoint judges of administrative courts to hold judicial office.

The law states that no person may be appointed as judge of a voivodship administrative court unless he/she meets the following requirements:

- 1) is a Polish citizen and fully enjoys civil and citizens' rights;
- 2) has a flawless character;
- 3) has graduated from law faculty at a university in Poland with a Master of Laws degree, or abroad with a degree recognized in Poland;
- 4) is due to the health condition capable of performing the functions of a judge;
- 5) has attained 35 years of age;
- 6) shows a high level of knowledge in the field of public administration and administrative law, as well as other legal disciplines connected with the functioning of public administration authorities;
- 7) for at least 8 years, has been employed or in service as a judge, public prosecutor, president, vice-president or counsel of the General Counsel to the Republic of Poland, or has performed for at least 8 years the profession of advocate, legal adviser or notary public, or has been employed for at least 10 years in public institutions at positions connected with application or making of administrative law or has worked as court assessor in a voivodship court for at least 2 years.

The law also stipulates that In particularly justified cases, the President of the Republic of Poland may, at the request of the National Council of the Judiciary, appoint as judge a candidate who has not met the requirements specified in § 1(7) concerning the terms of employment on positions mentioned in that provision or the performance of the provision of the lawyer, legal counsel or notary public.

The law sets different requirements for the candidates to the Supreme Administrative Court. Article 7 of the abovementioned law states that no person may be appointed as judge of the Supreme Administrative Court unless he/she meets the requirements specified in Article 6 § 1(1)–(4) and (6), has attained 40 years of age and has been employed or in service for at least 10 years as a judge, public prosecutor, president, vice-president or counsel of the General Counsel to the Republic of Poland, or has performed for at least 10 years the profession of advocate, legal adviser or notary public. The requirement of attaining 40 years of age shall not apply to the judges who have been employed as judges of a voivodship administrative court for at least 3 years.

Spain

Even though there is no distinct formal requirement for the candidate It is important to note, that within selection processes to assign posts in Central Administrative Courts in Spain, priority will be given to those who are specialized in this judicial sphere; where this is not possible, posts will be filled by those who have eight years of service within this judicial sphere during the twelve years immediately before the date of the announcement of the selection process; and, where such candidates are not forthcoming, posts will be filled by those who are highest ranked. With regards to the latter, those who are assigned a post, before taking office, must participate in any specific training activities determined by the General Council of the Judiciary (Article 329 of the Law).

Specialized training is offered by the Judicial Council. In the case of members of the Judicial Career who gain access to the administrative jurisdiction without passing the exams for Expert Magistrate, the General Council of the Judiciary has a “course conceived for those who change the area of legal expertise” through which minimum training is offered to them on administrative law matters.

Ukraine

According to article 80 of the law of Ukraine On the Judiciary²¹ and the Status of Judges, appointment to a position of a judge, including the administrative judge, shall be done by the President of Ukraine on the grounds and within the proposal of the High Council of Justice.

The same law states that Selection of candidates for a position of a judge consists of passing an eligibility assessment by the persons admitted to the selection, organization of a special verification procedure regarding the persons by the High Qualifications Commission of Judges of Ukraine in accordance with the laws on prevention of corruption, with account to the specifics stipulated by this Law; special training and preparation for the qualifications examination.

The High Qualifications Commission of Judges of Ukraine shall be obligated to ensure transparency of the eligibility assessment and qualifications examination. Mass media, NGOs, judges, lawyers, representatives of bodies of judicial self-government, and any candidate for the position of judge who participated in passing the relevant assessment, may be present at each stage and in the course of the review of works.

Before the appointment, there is the selection examination. Selection examination is conducted by the High Qualifications Commission of Judges of Ukraine in the form of anonymous testing to check the general theoretical knowledge of a candidate in law, their command of the official language of the country, personal moral and psychological qualities of the candidate.

There is an initial training requirement as well. According to article 77 Special training shall be conducted for twelve months (unless another term was determined by decision of the High Qualifications Commission of Judges of Ukraine) at the expense of the State Budget of Ukraine. For the training period, the candidates shall retain their main job, be paid a scholarship in the amount of the salary of a judicial assistant of a trial court. The term of special training at the National School of Judges of Ukraine shall be added to the record of professional activity in the field of law.

According to the decision of the HQC special training of candidates for the position of judge includes theoretical and practical training of a judge at the National School of Judges Ukraine and is carried out in accordance with the Program. The program is focused on quality training of candidates for the position judges before they perform the official duties of a judge.

The program includes theoretical and practical training; internship in local courts, study visits to the prosecutor's office, bodies that carry out pre-trial investigation, penitentiary service, executive services, law firms; control measures. The topics of the theoretical and practical part of the special training are combined in modules and blocks.

²¹

https://www.legislationline.org/download/id/7029/file/Ukraine_law_judiciary_status_of_judges_2016_en.pdf#:~:text=Justice%20in%20Ukraine%20shall%20be,stipulated%20by%20law%20judicial%20procedures.&text=Any%20persons%20that%20usurp%20functions,administration%20of%20justice%20through%20jurors.

The program provides following blocks:

- I. Fundamentals of court organization and judicial activity
- II. Civil proceedings
- III. Commercial litigation
- IV. Criminal proceedings and proceedings in cases of administrative offenses
- V. Administrative proceedings
- VI. Judicial competencies

Training period is followed by the qualifications examination, which is an evaluation of a person who took training and expressed an intention to be recommended for appointment to a position of a judge. The High Qualifications Commission of Judges of Ukraine shall conduct a competition for filling a vacant position of judge of a trial court based on a rating of judicial candidates and judges who want to be transferred to another trial court based on results of qualifications examinations passed under the procedure of judicial selection or under the procedure of qualifications evaluation respectively.

According to the decision of HQC Test questions are written in the state language and contain questions to identify the appropriate theoretical knowledge and level of professional training of candidates. The set of test questions is a test base, which should contain questions from the Administrative Law and administrative process, among other disciplines.

III. Measures to check/ensure the integrity of candidates

Two main measures to ensure the integrity of the candidates would be objective selection criteria and evaluation of the judge.

Promotion in France

At the Council of State, there are two levels in the grade of Councillor of State, eight in that of *maître des requêtes* (master of petitions), four in auditor first class, and seven in auditor second class. The promotion level is based on seniority. The grade promotion derogates from common law insofar as no list is established of officers slated for promotion. All promotions are made by decree, on a proposal from the Minister of Justice. Yet only those whose names are introduced by the Council of State's Vice-President deliberating with the section presidents may be promoted. Besides, the introductions must be submitted for the advisory commission's opinion. If, theoretically, the promotions within the Council of State are made by selection, in practice the introductions are made according to the order on the list, that is, by following the rule of seniority, which makes it possible to ensure the Council of State's members true statutory independence.

The single body of the administrative courts and administrative courts of appeal incorporates three grades: councilor, first councilor, president. Hierarchical advancement is achieved by seniority, except for access to the three last levels of the president's grade, which is made by selection, and after registration on an annual roster of eligibility, established by a proposition from the Higher Council of the Administrative Courts and Administrative Courts of Appeal. Grade promotion is made by selection through registration on the list of officers slated for promotion, which is established by a proposition from the Higher Council of Administrative Courts and Administrative Courts of Appeal.

Separate body dealing with Disciplinary issues

Administrative courts in Poland have separate body dealing with the disciplinary infractions of the judges of administrative courts. According to article 9 of the act The Supreme Administrative Court shall be a disciplinary court in cases involving judges and court assessors of administrative courts. The Disciplinary Prosecutor of the Supreme Administrative Court shall be the prosecutor in disciplinary proceedings.

Separate guarantees in Poland

Article 4 of law on the System of Administrative Courts states that Judges of administrative courts and court assessors, within the exercise of their office, shall be independent and subject only to the Constitution and statutes. The guarantees for the administrative judges are set in the different act from that of the general judges.

Conclusion and Recommendations

Based on the abovementioned practice of the Several EU and non-EU countries we would recommend the following:

- 1) The judges should be selected based on their knowledge in the relevant specialization - *The administrative courts come in different shapes and forms, however, the main reason for the existence of the separate branch or chamber is the fact that it consists of highly specialized Judges. It should be noted, that in many of the abovementioned countries, like in Spain, the specialization of the candidate is important requisite for the appointment of a judge.*
- 2) If the judicial council will have the role in the appointment, selection and disciplinary proceedings, some of its members should be appointed among the administrative judges – *Judicial self-governance is important part of independent and impartial specialized court*
- 3) The general requirements as well as selection criteria for all specialization judicial candidates can be the same, however, the initial training for the specialized court might be a good idea.
- 4) Administrative courts should have some participation in the disciplinary matters related to the administrative judges. It could happen through the Assembly of judges.
- 5) During the transitional period, new selection procedure can take place and the judges that have been deciding on the administrative cases should be given a chance to participate in the procedure.

Comparative study on the procedure of selection and appointment of judges of administrative courts in Bosnia and Herzegovina, Croatia, Germany, Italy, Serbia, and Slovenia, by Ms Slavica Banic

Croatia

I. Organization of the judicial system

The judicial System in Croatia²² is organized through the **courts of general jurisdiction** and **specialized courts**.

The courts of specialized jurisdiction²³ are administrative courts, commercial courts, The High Administrative Court of the Republic of Croatia, the High Commercial Court, the High Misdemeanour Court.

The Administrative courts decide²⁴, as the first instance courts on:

- actions taken against individual decisions of bodies governed by public law;
- actions taken against the actions of bodies governed by public law;
- actions for failure to adopt individual decisions or failure on the part of a body governed by public law to act within a statutory deadline;
- actions taken against administrative agreements and the execution of administrative agreements;
- in other cases prescribed by law.

The High Administrative Court decides on

- appeals against judgments of the administrative courts and appealable decisions;
- the legality of general acts;
- disputes concerning jurisdiction among administrative courts;
- in other cases prescribed by law.

The General Attorney's Office may submit the requirement to the Supreme Court of the Republic of Croatia to review the legality of the final judgement of the High Administrative Court.²⁵

II. Election of judges in Croatia

According to the Article 90 of the Courts Act, a judge may not be a member of the political party or conduct and political activity.

The election of judges in the Republic Croatia is regulated by the Courts Act²⁶.

The Courts Act does not differ the election of judges for courts of general jurisdiction and specialized courts.

For the election of judges, **the general condition** is Croatian citizenship.

²² The Article 14 of the Courts Act (Zakon o sudovima, Narodne novine, bro 28/13, 33/15, 82/15, 82/16, 67/18 and 126/19)

²³ Ibid

²⁴ The Article 22 of the Courts Act

²⁵ Article 78 of the Act on Administrative Disputes (Zakon o upravnim sporovima, Narodne novine 20/10, 143/12, 152/12, 94/16 29/17)

²⁶ Chapter II: Election to Judicial Office and Judicial Service Appointments (Article 7 – 23)

For all the courts', including the Administrative court's judges, may be elected a person who is Croatian citizen and who has finished the State School for Judicial Officials.

The State School is an organizational unit of the Judicial Academy in which the candidates will acquire the knowledge and skills for independent and accountable conduct of the judicial office at the courts of the first instance as well as deputy prosecutors. The education lasts one year and consists of the theoretical and expert workshops as well as practical work conducted on courts and prosecution office and by the need in other state bodies.

All persons who hold position of the judicial counsellor must attend the State School for Judicial Officials. Only those who finished the State School may apply to judicial office.

Czech Republic

I. Organization of the Judicial System

The judicial system in the Czech Republic is based on the special and ordinary court system²⁷.

The special court system relates to the Constitutional Court of the Czech Republic.

The ordinary court system consists of the Supreme Court, Supreme Administrative Court, high courts, regional courts and district courts.

The regional courts, among other jurisdiction and the Supreme Administrative Court offer the protection of the public subjective rights of physical and legal persons in the procedure against the decisions of the public administration, inactivity of the administrative authorities as well as in the cases of unlawful intervention, instructions and coercion of the administrative authorities. Regional courts decide in certain electoral cases and local referendums.

The regional courts are the courts of the first instance for judicial reviews of administrative decisions degree and the Supreme Administrative Court is the court of cassation.

The Supreme Administrative Court is authorized to conduct proceedings regarding political parties and political movements, in electoral matters, conflict of jurisdictions, disciplinary liability of judges and prosecutors.

II. Election of judges in Czech Republic

The election of judges in Czech Republic²⁸ is regulated by the Act on courts and judges²⁹.

The conditions for election are:

- Czech citizenship;
- legal capacity,
- no criminal record,
- age of at least 30 years,
- obtaining a master's degree in law at a Czech university,

²⁷ Information acquired at https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-cz-en.do?member=1

²⁸ A thorough review of the election of judges in Czech Republic can be read at Bobek, Michal, Judicial Selection, Lay Participation, and Judicial Culture in the Czech Republic: A Study in a Central European (Non)Transformation (November 17, 2014). In S Turenne (ed), Fair Reflection of Society in Judicial Systems - A Comparative Study (Springer, 2015) 121-146., Available at SSRN: <https://ssrn.com/abstract=2526112>

²⁹ Information acquired at <http://www.nssoud.cz/Memorandum-o-vyberu-kandidatu-na-soudce-pro-Nejvyssi-spravni-soud-zverejneni-pravidel/art/875?menu=382>

- passing the special judicial examination,
- possession of the moral qualities that guarantee that the judicial office will be will exercised properly, and
- acceptance of appointment as a judge and assignment to a specific court.

Preparation to become a judge involves three years' service as a trainee judge in the courts. On completion of their preparatory service, trainees sit a special judicial examination.

Next to these conditions, there is a prerequisite related to the length of the holding judicial office. For the regional court judge dealing with the administrative issues it is necessary to have at least five years of experience (legal practice or scientific or pedagogical activity) in the fields of the constitutional, administrative, or financial law. For the **Supreme Administrative Court** the length period is at least ten years of legal experience. It is also required to possess professional knowledge and experience as the guarantee for proper conduct of the office. The judge of the Supreme Administrative Court may be other expert who dealt with constitutional, administrative or financial law issues with at least of 10 years of legal, scholar or pedagogic experience.

Finland

I. Organization of judicial system in Finland

According to the Section 3 of the Finnish Constitution³⁰, the judicial powers are exercised by independent courts of law, with the Supreme Court and the Supreme Administrative Court as the highest instances.

In the Chapter 9 of the Constitution, Section 98, defines that the Supreme Court, the Courts of Appeal and the District Courts are the general courts of law, while the Supreme Administrative Court and the regional Administrative Courts are the general courts of administrative law. According to the Section 99, the justice in administrative matters is in the final instance administered by the Supreme Administrative Court.

The regional administrative courts, as general courts of administrative law, review the legality of the contested decision based on the appeal. The Supreme Administrative Court is the appeal court against the decisions of the regional administrative courts.³¹

The detailed provisions on the organization of judiciary is provided in the Courts Act³²

II. Election of judges in Finland

Election of judges in Finland is regulated by the Courts Act³³. In relation to general qualifications for judicial positions³⁴ the candidate must:

- be a Finnish citizen with integrity,
- who has a Master's degree in law other than a Master's degree in international and comparative law,

³⁰ The Finnish Constitution, <https://oikeusministerio.fi/en/constitution-of-finland>

³¹ The information acquired at: <https://www.kho.fi/en/index/organization.html>

³² Court Act available at <https://www.finlex.fi/fi/laki/kaannokset/2016/en20160673.pdf>

³³ Ibid

³⁴ Chapter 10, Section 1 of the Courts Act

- who by his or her earlier service in court or in another position has demonstrated that he or she has the knowledge of the field in question and the necessary personal characteristics required for successful performance of the duties of the position to be filled.

The law provides that the separate provisions may be issued on the qualifications required for judicial positions where expertise in a special field is necessary.

Additionally, to be appointed as a judge, the candidate shall have an excellent ability to speak and write in the language of the majority of the population in the judicial district in question: in a monolingual court, a satisfactory ability to understand and speak the other language and in a bilingual court, a satisfactory ability to speak and write in the other language.³⁵

The qualifications for judicial positions at the Supreme Administrative Court are that the candidate must be an eminent legal expert and fulfil the general qualifications.

Germany

I. The Organization of Judicial System in Germany

The German judicial system is organized through ordinary jurisdiction and specialized courts.

The specialized courts are labour, fiscal and social courts as well as administrative courts.

In relation to administrative courts, the administrative jurisdiction has a three-tier structure: administrative courts, as the first instance courts, the higher administrative courts in each of the federal states, though the federal states of Berlin and Brandenburg share a higher administrative court. Higher administrative courts adjudicate in appeals on points of facts and law against judgments, and complaints against decisions of the administrative courts.

The higher administrative courts are also the courts of first instance for certain matters, such as for judicial reviews that among other things assess the validity of land-use plans or other regulations at sub-legislative level.

Federal Administrative Court is the highest administrative court which decides on appeals on points of law, but also acts as the court of first and the last instance.

II. Election of judges in Germany

The Judiciary Act³⁶ regulates election of judges.

The general preconditions³⁷ are:

- German citizenship in terms of Article 115 of Basic Law
- make it clear that he/she will all times uphold the free democratic basic order
- has the requisite social skills
- is qualified to hold judicial office as following:
- whoever concludes his legal studies at a university by taking the first state examination as well as a subsequent period of preparatory training by taking the second examination shall be qualified to hold judicial office.

³⁵ Chapter 10, Section 9 of the Courts Act

³⁶ The German Judiciary Act, (The German Judiciary Act in the version promulgated on 19 April 1972 (Federal Law Gazette I p. 713), as last amended by Article 9 of the Act of 8 June 2017 (Federal Law Gazette I p.1570) https://www.gesetze-im-internet.de/englisch_drjg/englisch_drjg.html#p0029

³⁷ Section 9 of the German Judiciary Act

The first state examination comprises a university examination covering areas of specialization and a state examination covering compulsory subjects.

- the preparatory trainings lasts two years and is conducted through ordinary civil/criminal courts or public prosecutors office, administrative authority, with counsel and at one or mor optimal agencies.

Examinations (state and university ones) shall relate to practice in court adjudication, administration and in legal advice.

The written examination for the second state examination may be taken in the 1th month of training and at the latest at the 21st month.

(Full) University law professors are qualified to hold judicial office. ³⁸

Italy

I. Organization of the Judicial System in Italy

According to the Italian Constitution³⁹, Article 103, the Council of State and the other bodies of judicial administration have jurisdiction over the protection of legitimate rights before the public administration and, in particular matters laid out by law, also of subjective rights.

Furthermore, the Court of Accounts has jurisdiction in matters of public accounts and in other matters laid out by law.

The judicial system in Italy is organized through the ordinary courts (civil and criminal) and administrative courts, accounting courts, military courts and taxation courts.

The Administrative Courts of the first instance are the Regional administrative tribunals, and second instance is the Council of the State and it operates as the appellate court for the judgments issued by the regional administrative courts. The decisions of the Council of State (according to the Article 101 of the Constitution) may be appealed before the Court of Cassation in matters of jurisdiction.

The Court of Accounts deals with matters of public accounts, while taxation matters are exercised by the Provincial and District Taxation Commissions.

II. Election of judges in Italy

The Italian Constitution requires the election of judges through the public competitive examination.⁴⁰ The precise and accurate norms on elections of judges could not be found on public available data.

Romania

I. Organization of the Judicial System in Romania

The Romanian judicial system is organized in four levels⁴¹. At the first level are district courts. The second level form the tribunals, special tribunals, tribunal for Children and Family Matters. The third level form the Courts of appeal and at the fourth level is the High Court of Justice.

³⁸ Sections 5 to 7 of the German Judiciary Act

³⁹ The Constitution of the Italian Republic,

https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

⁴⁰ Article 106 of the Italian Constitution

⁴¹ Information acquired at https://e-justice.europa.eu/content_ordinary_courts-18-ro-en-do?member=1

All three level courts have mixed jurisdiction.⁴² The tribunals and courts of appeal act as courts of first instance, court of appeal and the court of review in the cases provided by the law.

The district courts have limited jurisdiction in relation to administrative matters.

The tribunals, among civil, criminal and family and children matters cases, decide on cases involving administrative or tax disputes, cases related to social insurance, etc.

The Courts of appeal decides also in civil, criminal, administrative and tax disputes, as well as labour disputes, social insurance etc. **In the administrative and tax dispute they act as the courts of the first instance.** As a court of appeal, they hear the appeals against judgments handed down by tribunals at first instance. As the **courts of review** – reviewing the applications for review against judgments handed down by tribunals on appeal or against judgments handed down at first instance by tribunals which, under the law, are not subject to appeal, and in any other cases expressly provided for by the law.

The High Court of Cassation and Justice has four sections, each having its own jurisdiction, among which is the Administrative and Tax Litigation Section. **This Section of the High Court of Cassation and Justice hears** applications for review against judgments handed down by courts of appeal and other court decisions, as provided for by the law, and applications for review against non-final judgments or judicial acts of any nature which cannot be appealed against by any other means, and in the case of which the legal proceedings before a court of appeal have been interrupted.

II. Election of judges in Romania

In Romania, the National Institute of Magistracy (NIM) is a public autonomous institution which carries out the initial training for future judges. It is coordinated by the Superior Council of Magistracy. There are two ways of joining the judiciary in Romania – by the admission to National Institute of Magistracy examination and by the admission examination targeted at law school graduates with at least 5 years of experience in practice of law.

Selection is made through competition and on the basis of the professional competence and good reputation. Successful candidates of the admission to NIM examination become *judicial trainees* and they follow the initial training programme for two years. In the first year, the judicial trainees attend various seminars, conferences and extra-curricular activities at NIM. The second year of training is mainly organized within first instance courts and prosecutor's offices attached to these courts. Initial training is mainly concerned with the acquisition of skills. The study of law is mainly practical, preparing future judges and prosecutors for an effective and responsible future participation in their profession. The assessment of the knowledge and skills acquired over the two years of initial training consists both of formative and final assessments.

Judicial trainees opt for their future profession – judge or prosecutor – at the end of the first year of training. After the initial training period the NIM graduation exam confers them the status of junior judges and prosecutors for one year at the end of which they are being assessed again – *the capacity exam* – and they become in-service judges and prosecutors.⁴³

According to the public available data, the judges in Romania specialize in administrative and fiscal/financial cases.

⁴² Information acquired at

⁴³ Information acquired at <http://www.ejtn.eu/About-us/Members/Romania/>

Serbia

I. Organization of the judicial system in Serbia

The judicial System in Serbia⁴⁴ is organized through **the courts of general jurisdiction and specialized courts.**

The courts of specialized jurisdiction⁴⁵ are Commercial Courts, Commercial Appellate Courts, and Administrative Court.

The Administrative Court decides on administrative disputes, it offers international legal aid in the frame of its jurisdiction and maintains other businesses provided by the law.⁴⁶

The Administrative Court decides in the administrative disputes about legality of the final administrative acts and about legality of acts for which there is not foreseen the different judicial protection. Also, the Administrative Court decides in administrative dispute about legality of other individual acts if it is expressly provided by law.

The Supreme Cassation Court decides against the decisions of the Administrative Court upon the requirement for the review of judicial decisions.

II. Election of judges in Serbia

According to the Article 146 and 147 of the Serbian Constitution, exceptionally, the judge who is elected for the first time is elected on three years. The election is made by National Assembly on the proposal of the High Judicial Council.

According to the Article 152 of the Serbian Constitution, the political activity of a judge is forbidden. The additional requirements in relation to compatibility of duties are provided by the Article 30 of the Act on Judges, by which the judge may not hold positions in the executive bodies and those who enforce regulations, public services, autonomous provincial bodies and local self-government. The election of judges is regulated by the Act on Judges.⁴⁷

The Article 43 of the Act on Judges provides that for a judge may be elected Serbian citizen who meets the general conditions for work in state bodies, who graduate from the Faculty of law, passed the state examination (bar exam), who is professional, qualified and worthy of a judicial position.

The general conditions for work in state bodies are prescribed in the Act on civil servants⁴⁸ and refer to adulthood, proper education, and conviction on at least 6 months prison.

In relation to the required working experience, the judge of the Administrative Court must have working experience of 10 years in legal profession after passed state (bar) exam.⁴⁹

⁴⁴ The Article 143 of the Constitution of the Republic of Serbia and Article 11 of the Act on Organization of Courts (Sl. glasnik RS", br. 116/2008, 104/2009, 101/2010, 31/2011 - dr. zakon, 78/2011 - dr. zakon, 101/2011, 101/2013, 106/2015, 40/2015 - dr. zakon, 13/2016, 108/2016, 113/2017, 65/2018 - odluka US, 87/2018 i 88/2018 - odluka US)

⁴⁵ Ibid

⁴⁶ Article 29 of the Act on the Organization of Courts

⁴⁷ Articles 43 – 45a of the Act on Judges (Zakon o sudijama (Sl. glasnik RS", br. 116/2008, 58/2009 - odluka US, 104/2009, 101/2010, 8/2012 - odluka US, 121/2012, 124/2012 - odluka US, 101/2013, 111/2014 - odluka US, 117/2014, 40/2015, 63/2015 - odluka US, 106/2015, 63/2016 - odluka US i 47/2017)

⁴⁸ Article 45 of the Act on civil servants (Zakon o državnim službenicima (S

⁴⁹ Article 44 of the Act on Judges

Other conditions for the elections are expertise, competence and dignity.⁵⁰ The Act provides that expertise implies the possession of the theoretical and practical knowledge needed for the judicial office. The competence means the skills which enable the efficient implementation of specific legal knowledges in judicial adjudication. Dignity requires moral qualities and behaving in accordance with them.

Moral qualities are: honesty, conscientiousness, fairness, dignity, perseverance and exemplary and *behaving in accordance with these qualities* means preserving the reputation of the judge and the court in and out of the office, awareness of social responsibility, maintaining independence and impartiality, reliability and dignity in the service and outside it and taking responsibility for the internal organization and positive image of the judiciary in public.

The High Judicial Council checks the expertise and competence of the first time judges candidates and evaluates their success by marks 1 to 5. The candidate who passed the initial training at the Judicial Academy is freed from the exam and the evaluation of skills is represented by the final result at the Judicial Academy.

Slovenia

I. Organisation of the judicial system in Slovenia

The judicial system in Slovenia⁵¹ is organized through **the courts of general jurisdiction and specialized courts**.

The courts of specialized jurisdiction are Labour and Social Courts⁵² and the Administrative Court.⁵³

1a. Labour and Social Courts

Labour and Social Courts are the courts of first instance.

Labour Courts decide in individual and collective labour disputes while Social courts decide in the field of pension, disability, health and unemployment insurance, parental and family issues as well as in the field of social benefits.

The decisions of the Labour and Social Courts are eligible for appeals before the Higher Labour and Social Court, as the court of the second instance.

The decisions of Higher Labour and Social Court may be appealed before the Supreme Court of the Republic of Slovenia, under the conditions provided by the law and the Supreme Court of the Republic of Slovenia decides on revision of such cases as well.

⁵⁰ Article 45 of the Act on Judges

⁵¹ The Article 97 of the Act on Courts (Zakon o sodiščih, Uradni list RS, št. 94/07 – uradno prečiščeno besedilo, 45/08, 96/09, 86/10 – ZJNEP, 33/11, 75/12 – ZSPDLS-A, 63/13, 17/15, 23/17 – ZSSve, 22/18 – ZSICT, 16/19 – ZNP-1 in 104/20): Judicial power in the Republic of Slovenia is exercised by judges in the courts referred to in the first paragraph of the Article 98 of this Act (courts with general jurisdiction). In courts established for cases in certain areas of law, judicial proceedings are conducted authority within the jurisdiction explicitly determined by law (specialized courts).

⁵² The Act on Labour and Social Courts (Zakon o delovnih in socialnih sodiščih, Uradni list RS, št. 2/04, 10/04 – popr., 45/08 – ZArbit, 45/08 – ZPP-D, 47/10 – odl. US, 43/12 – odl. US in 10/17 – ZPP-E)

⁵³ The Act on Administrative Dispute (Zakon o upravnem sporu (Uradni list RS, št. 105/06, 107/09 – odl. US, 62/10, 98/11 – odl. US, 109/12 in 10/17 – ZPP-E)

Ib. The Administrative Court

The Administrative Court is the first instance court which decides on administrative disputes related to:

- the legality of final administrative acts that interfere with the legal position of the plaintiff;
- on the legality of individual acts and actions that interfere with the human rights and fundamental freedoms of an individual, unless a different form of due process has been guaranteed;
- the legality of acts adopted by State bodies issued in the form of a regulation, where they regulate individual relationships,
- disputes under public law between the State and local communities et al.
- the legality of other acts specified by law.

According to the Administrative Dispute Act, the Supreme Court of the Republic of Slovenia is the first instance court in the administrative disputes related to the electoral matters⁵⁴.

The Supreme Court of the Republic of Slovenia is the appeal body in relation to decisions of the Administrative Court as well as it adjudicates on reviews. Also, the Supreme Court adjudicates on disputes regarding and conflict of jurisdiction between an administrative and other court.

II. Election of judges in Slovenia

According to the Article 133 of the Slovenian Constitution, referring to the incompatibility of Judicial Office, a judge may not hold an office in other state authorities, in local self- government authorities, and in bodies of political parties, and other offices and activities as provided by law.

The election of judges in the Republic Slovenia is regulated by the Judicial Service Act⁵⁵.

The Judicial Service Act does not differ the election of judges for courts of general jurisdiction and specialized courts.

For the election of judges, **the general and specific conditions** must be fulfilled.

General conditions are:

- Slovenian citizenship and command of the Slovenian language,
- legal capacity and good health condition;
- at least 30 years of age;
- relevant legal education, i.e. professional title of university graduate lawyer
- state judicial examination;
- non conviction of an intentional criminal offence or being under final indictment for a criminal offence

Specific conditions relate to legal work experience.

For the local court judge it is at least three years of experience in legal work after passing the state judicial examination. For a district court judge it is holding of a judicial office at least three years or at least six years of experience in legal work after passing the state judicial examination. For a higher court judge it is holding of judicial office for at least six years or at least nine years of experience in legal work after passing the state judicial examination. The Supreme Court judge may the person who has at least 15 years of experience as a judge or 20 years of experience in legal work after passing the judicial examination.

⁵⁴ The Article 12 of the Act on Administrative Dispute

⁵⁵ Chapter II: Election to Judicial Office and Judicial Service Appointments (Article 7 – 23)

The exception for the high court judge and Supreme Court judge is made for university lecturers in law. They may be elected for a judge of a higher court if they fulfil the general conditions and carry at least the title of assistant professor.

The judges of specialized courts must fulfil the special conditions depending of the ranking of a specialized court (either local, district or higher court). The person who runs for the office of a judge at the Administrative court must fulfil the conditions provided for a higher court judge.

Last, but not least, the working experience of state prosecutors, misdemeanours judges, state attorneys, attorneys at law and notaries is equalized with holding judicial position.

In selection and promotion procedure, the following criteria are taken into account:

- work competences and expert knowledge – especially ability to communicate orally and in writing; analytical thinking, ability to structure work and the extent of the judges' expert knowledge in respective field of work;
- personal characteristics (responsibility, reliability and prudence);
- social skills (communication skills and coping with conflict situations)
- ability to perform the functions of a managerial position.

Detailed conditions may be provided in the calls for selection or promotion procedure.

Conclusion

In relation to the organization of the administrative justice in reviewed countries, it can be concluded that there is a mixed approach.

Namely, certain countries opted for the administrative justice to be regulated through the specialized courts (such as Slovenia, Croatia, Serbia, Finland, Italy and Germany) while others (Romania and Czech Republic) opted for ordinary courts with specialized administrative chambers. However, the Czech example shows that the latter choice is not a completely clear. Namely, the Czech Supreme Administrative Court operates as separate specialized court.

Nevertheless, the analysis shows that it prevails the approach of organization of administrative justice through specialized court system.

Speaking about the selection/appointment of administrative judges, the review tells us that the analysed countries mostly have a general approach to the (s)election of judges, i.e. do not require special conditions related to administrative judges.

The provisions on election of judges also show diversity in approach in relation who can be candidate. Slovenia and Czech Republic require the least age of 30 years for holding judicial office. All of the reviewed countries require necessary education supported with state examinations and the most of countries require the certain work experience. The latter does not refer to those countries which impose the initial training or attendance at Magistrate Schools, which are the prerequisite for the appointment, such as it is the case in Croatia and Romania. However, in the case of holding a position of a higher court judge, the work experience is present.

Last but not least, the approach to the appointment procedure is mainly through the specific qualification competition. All of the countries require fulfilment of moral qualifications which ensure the integrity of the candidates. The most precise approach in relation to this is given in the Serbian legislation which defined these qualities.

Recommendations

Starting from the fact that in Kazakhstan the administrative justice is a young branch of judicial power with modest tradition in deciding the adjudicating the cases in administrative disputes, it is recommended to develop the administrative justice through specialized court system. I strongly believe that such approach will strengthen other dimensions of the state functioning –the rule of law and protection of human rights which in time will lead to the public trust in judiciary.

The judges should be selected on the merits. The initial recruitment will probably seek the candidates among the ordinary courts' judges. However, in time, there should be established the training for this branch of judiciary as the administrative procedure and justice are indeed rather different from civil and criminal procedure.

These recommendations and review are not final. Upon request all can be broadened and elaborated in wider context.