



CCJE-BU(2020)1

Strasbourg, 29 January 2020

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

Questionnaire for the preparation of the CCJE Opinion No. 23 (2020):

“The role of the Associations of Judges in supporting the judicial independence”

RESPONSE FROM FINLAND

General

1. How many Associations of Judges (please note that they can have different names) exist in your country?
 - a) For judges of all jurisdictions and all court levels 1 (The Finnish Association of Judges)
 - b) For judges of certain jurisdictions only __1 or 4 (see explanations)
 - c) For judges of certain court levels only __5 or 6 (see explanations)
 - d) Are there Associations of Judges on some other criteria (i.e. women judges) no__

Total number of all types of Associations of Judges __7__

Other objectives _____

In Finland there are general courts on three levels: the district courts, the courts of appeal and the Supreme Court. There are also courts for administrative affairs on two levels: the administrative courts and the Supreme Administrative Court. The third group of courts is the special courts (three in all): the Insurance Court (a court for cases concerning various social benefits), the Market Court (a court for cases concerning competition law, public procurement, IPR civil cases and market law) and the Labour Court (a court for cases concerning collective agreements in the labour market).

The Finnish Association of Judges represents judges and referendaries (a kind of assistant judges) of courts of appeal, administrative courts and special courts, judges of the district courts and the referendaries of the (both) supreme courts. The

Finnish Association of Judges has five member associations which represent the above-mentioned groups: (A) the association of judges and referendaries of courts of appeal, (B) the association of judges and referendaries of administrative courts, (C) the association of judges and referendaries of special courts, (D) the association of judges of district courts and (E) the association of referendaries of the supreme courts.

The activities of the above-mentioned member associations in all the relevant matters (terms of employment including wages, working premises and other working conditions, resources of the Judiciary, legal policy i.e. legislative matters etc.) are concentrated in the Finnish Association of Judges. Therefore, unless otherwise stated, the answers given using the expression “the Association” refer to the Finnish Association of Judges.

The judges of the supreme courts have an association of their own which is not a member of the Finnish Association of Judges. For the name of this association there is obviously no established translation to English. Translation “Association of the Members of the Supreme Courts” is used in the answers to the questions of this questionnaire.

Explanations:

Question b: Depending on what is meant by “For judges of certain jurisdictions only” the answer could be one (1) or it could be four (4). As already explained above, there is an association which represents the judges and referendaries of all the special courts (marked above with C, three different jurisdictions in all). On the other hand, there are two associations which represent the legal staff of the courts of general jurisdiction only (associations marked above with A and D) and one association which represents the legal staff of the courts of administrative jurisdiction only (marked above with B).

Question c: Depending on what is meant by “For judges of certain court levels only” the answer could be five (5) or it could be six (6). The special courts in Finland all operate on a certain (one) level in their jurisdiction. Therefore, the association representing the legal staff of special courts is in a way “for judges of certain court levels only”. However, the Labour Court differs from the other special courts in that there is no ordinary appeal from any of its decisions or judgments. Therefore, it could be argued that the special courts are not all on the same level. If the association in question is regarded to represent “judges of certain court level only”, then the answer is six (6) because all of the other member associations of the Finnish Association of Judges and the Association of the Members of the Supreme Courts belong to the group of associations “for judges of certain court levels only”.

Membership

2. What are the requirements for membership in the Associations of Judges?

As already mentioned, the Finnish Association of Judges is an association of associations of judges and referendaries. Its rules would allow also the Association of the Members of the Supreme Courts to be a member the Finnish Association of Judges. The said Association has, however, preferred not to join the Finnish Association of Judges.

As members in the member associations of the Finnish Association of Judges may be admitted persons who work in the positions (of judges and/or referendaries) in the courts of whose judges and/or the referendaries the respective association represents. The formulations in the rules of the member associations differ slightly from each other but the main rule is that the members of the associations may (if they wish) maintain their membership also after retirement.

The requirement for membership in the Association of the Members of the Supreme Courts is a post as a judge in the Supreme Court or in the Supreme Administrative Court.

3. Are prosecutors members of the Associations of Judges?

No.

Legal framework / objectives

4. Which is the legal framework of the Association of Judges? Are there specific legal regulations (law, by-laws) which deal with the Associations of Judges in your country?

There are no specific legal regulations. The general Associations Act of Finland applies to the Associations of Judges as well as all the other associations in Finland. Each association must also have officially registered rules under the Associations Act.

5. According to their statutes, what are the main objectives of the Associations of Judges? (please mark yes or no and indicate by "1", "2" and "3" the three most important objectives)

The answers to these questions are different depending on the association in question. For the **Finnish Association of Judges** is used an abbreviation **FAJ** and for the **Association of the Members of the Supreme Courts** an abbreviation **AMSC**.

| | |
|---|---|
| Defending and fostering the independence of judges and the judiciary | x yes (both) 1 (FAJ) |
| Defending and fostering the rule of law | x yes (both) |
| Fighting for economic safeguards of judges | x yes (both) 2 (FAJ), 2 (AMSC) |
| Fighting for social and physical security of judges | x yes (both) |
| Contribution to the development of the law | x yes (FAJ) 3 (FAJ) x no (AMSC) |
| Training of judges | x no (FAJ) x yes (AMSC) 3 (AMSC) |
| Ethics and accountability of judges | x yes (both) |
| Involvement in judicial self-government, especially influencing the election of officers of self-government | x yes (FAJ) x no (AMSC) |
| Media work | x yes (FAJ) x no (AMSC) |

| | |
|---------------------------------------|---|
| Organising conferences | x yes (FAJ) x no (AMSC) |
| International contacts and networking | x yes (FAJ) x no (AMSC) |
| Other objectives (which) | x yes (AMSC) The Association is mainly a meeting and discussion forum for the Judges of the Supreme Courts on topical legal issues. 1 (AMSC) |

We would like to point out that whereas the training of judges does not belong to the main objectives of the Finnish Association of Judges this does not mean that the Association were not interested in the questions related to the training of judges. The Association has participated in the preparatory work for introducing the current training system for judges. The Association has also consistently stressed on the importance of allocation of adequate resources for the training system.

Support of individual judges

6. a) How do the Associations of Judges interact with individual judges?

As mentioned above, the main activities of the member associations of the Finnish Association of Judges in relation to the society are concentrated in the Finnish Association of Judges.

Individual judges (members of the Associations) elect the Board of each of the member Associations of the Finnish Association of Judges in the annual meetings of the Associations. The individual judges may contact either the Board members of their own Association or the Board members of the Finnish Association of Judges when they wish to bring forth their opinion on something that affects their work as judges or the Judiciary in general.

The Finnish Association of Judges sends information bulletins (through e-mail) on topical matters to the members of its member associations with regular intervals. The information bulletins are sent approximately 5 – 10 times a year, depending on the matters that require attention. The Association has also through questionnaires and sometimes through special member meetings called for discussion sought to acquire knowledge of the views of the judges on certain important questions (e.g. relating to the wages system or the working premises).

The Association of the Members of the Supreme Courts interacts with its members by organising bi-annual meetings to discuss some current judicial topics.

b) Can judges get assistance from the Association (which kind)?

They cannot get any financial or legal assistance from the Finnish Association of Judges or its member associations. See also the answer to question 7.

Regarding the members of the Association of the Members of the Supreme Courts the answer is also “no”.

c) Do the Associations of judges defend individual judges (against what)?

Neither the Finnish Association of Judges nor its member associations or the Association of the Members of Supreme Courts have such economic resources that they could

provide assistance to their member judges e.g. if these are facing legal action (either criminal charges or action for damages). See also the answer to question 7.

7. If there is an infringement of the independence of a judge or of the judiciary, by what means do the Associations of Judges react?

It depends on the infringement in question. The Finnish Association of Judges or its member associations could try to use media to express their opinion on the infringement and on the ways to rectify it. They might also try to influence the Executive (e.g. the Ministry of Justice) or Members of Parliament through direct contacts or releasing formal statements in the media or through e-mail network.

8. Is there any influence of the Associations of judges on appointment or promotion of judges?

No.

9. Is there any influence of the Associations of Judges in disciplinary procedures?

No.

10. Is there any influence of the Associations of Judges on training?

No.

Resources

11. Are there membership fees?

Yes. All the Associations have membership fees.

12. What other resources are available for the Associations of Judges?

The Finnish Association of Judges arranges every other year a special event called "A Day of the Judges". The Association has been able to finance its activities through the participation fees of this event. It has previously (until 2016) received financial assistance from the Ministry of Justice for its international co-operation. Since then (i.e. from 2017 to this date) all the applications for financial assistance have been rejected by the Ministry of Justice.

The member associations of the Finnish Association of Judges may also have minor investments (e.g. in shares of various companies) that may produce certain income through small annual dividends.

Administration of the Associations of Judges

13. How are the governing bodies, the secretariat and officers of the Associations of Judges selected? What is their term of office?

The Finnish Association of Judges and each of its member associations elect a Board on an annual basis. The Boards of the Associations are elected by the annual meetings of the Associations (i.e. by the members of the Associations). At least the President of each Association is elected by the annual meeting. The Vice-President is in some of the associations elected by the annual meeting (e.g. the Finnish Association of Judges and

the Association of District Court Judges) whereas in some of the associations the Vice-President is chosen by the Board of the Association amongst the Board members (e.g. the Association of the Referendaries of the Supreme Courts). The secretaries of the Associations are selected by the Boards. The terms of office of the secretaries vary a lot. The term may be e.g. one year (at a time) or until further notice.

The members of the Association of the Members of the Supreme Courts elect the members of the Board of Directors in the annual meeting for the term of one year.

14. Are there restrictions as regards the number of terms of office for members of the governing bodies of the Associations of Judges, and if yes, how many terms and for how long?

No.

15. Are there restrictions to become an officer of an Association of Judges?

There are no other restrictions than that the Board members must be members of the association in question.

The chief judges cannot, however (because of their position; the chief judges represent the employer in relation to the other judges), take part in such decisions or actions of the Finnish Association of Judges (or its member associations) which have to do with judges' terms of employment (e.g. wages).

Interactions with state institutions and political parties

16. How do the Associations of Judges interact with the parliament?

Aside from interaction relating to the process of law-making (see the following answers) the Finnish Association of Judges has tried to influence the decisions of the Parliament especially in matters relating to structures and resources of the Judiciary, normally through contacts with the Legal Affairs Committee of the Parliament or, especially in budgetary matters, with the Finance Committee of the Parliament. These contacts are often handled by sending written statements or by being formally heard in the Committee meetings. Sometimes – rather seldom – the Association has, however, had an opportunity to discuss some important matters with the Legal Affairs Committee and even invited the Legal Affairs Committee to visit the Association for such discussions. Relating to above-mentioned matters the Association has also had informal contacts with individual members of the Legal Affairs Committee and occasionally also with the representatives of the Parliamentary groups of different parties (either MPs or various assistants of the Parliamentary groups).

The Association of the Members of the Supreme Courts have no official contacts with the Parliament.

Are Associations of Judges involved in the process of law-making?

Yes. The Finnish Association of Judges is sometimes invited to nominate members in working groups set up by ministries (first and foremost the Ministry of Justice) that draft proposals for legislation. More often the Association takes part in the legislative process through statements on the draft legislative proposals to the ministries in charge of preparation of those proposals. The Association also gives written statements and/or its

representatives are heard in the committees of the Parliament about (formal) legislative proposals of the Government.

The Association of the Members of the Supreme Courts is not involved in the process of law-making.

If yes, how (is this formal or informal)?

The involvement of the Associations in the legislative process is mostly formal (see answer to the previous question). Relating to some very important legislative projects the Finnish Association of Judges has also tried to influence the outcome of the process through informal contacts (or – if you prefer the word – lobbying) the Members of Parliament, especially the members in the Legal Committee of the Parliament.

17. How do the Associations of Judges interact with the government, especially with the ministry of justice?

The representatives of the Finnish Association of Judges (most often the President and the Vice-President of the Association) have met the Minister of Justice approximately once a year. The representatives of the Association (especially the Vice-President who is in charge of matters relating to representation of interests) have more frequent contacts with special advisers to the Minister of Justice.

The representatives of the Association have regular contacts with the leading civil servants of the Ministry in formal meetings arranged in the scope of legislation concerning the co-operation in the offices of the State or in special projects (e.g. relating to premises policy of the Ministry). They also keep contact with the civil servants of the Ministry in individual matters affecting the Judiciary, should the need for such contacts arise.

The Association has also had contacts with the Ministry of Finance in matters relating to e.g. resources and the project to establish an independent National Courts Administration (which was established and started to operate in the beginning of this year).

The Association of the Members of the Supreme Courts may invite the representatives of the Ministry to discuss some matters.

18. a) How do the Associations of Judges interact with political parties?

The most important contacts between the Finnish Association of Judges and the political parties are connected with the preparation of the Government Programme (after the General Election held every four years) which the Association tries to influence in order to promote adequate resources and other important strategic goals for the Judiciary. The Association sends all the political parties (offices of and/or the parliamentary groups of the parties) written statements including its goals for the Government Programme. Its representatives may also at this stage try to contact individual influential politicians to promote these goals.

Otherwise the contacts with the political parties are mainly kept in ways described in answers to previous questions (see especially 16).

b) Are certain Associations of Judges connected with certain political parties?

No.

c) Is there an influence of party politics within the Associations of Judges?

No.

19. a) How do the Associations of Judges interact with the Council for the Judiciary?

An independent National Courts Administration has been established in Finland in the beginning of this year (2020). The Board of this organ can be regarded as the equivalent to the Council for the Judiciary. At this stage it is too early to say how the interaction between the Associations and the National Courts Administration will function. The Director-General of the National Courts Administration is, however, a former member of Board of the Finnish Association of Judges. Furthermore, of the members of the Board of the National Courts Administration six are judges. The Finnish Association of Judges is therefore confident that the interaction in question can be fruitful.

b) What is the role, if any, of the Associations of Judges in the selection of members of the Council for the Judiciary and/or presidents of courts and judges (please describe)?

The Finnish Association of Judges is heard in the nomination process of the candidates for the Board of the National Courts Administration.

The Associations (neither the Finnish Association of Judges or its member associations nor the Association of the Members of the Supreme Courts) do not have any kind of role in the selection of either court presidents or other judges.

20. How do the Associations of Judges interact with the court administration and what, if any, are the problems in these relations?

See the answer to question 19 a.

Interactions with other organisations

21. a) If there is more than one Association of Judges, how do they interact with each other?

As was previously mentioned, the Finnish Association of Judges has five member associations. Each member association is represented in the Board of the Finnish Association of Judges and its committees (one for the legal policy i.e. legislative affairs and the other one for the representation of interests, e.g. wages and other terms of employment).

The Finnish Association of Judges and the Association of the Members of the Supreme Courts have had one important common project i.e. the drafting and adoption (in 2012) of the Ethical Principles for Judges.

Since the Association of the Members of the Supreme Courts is mainly a meeting and discussion forum for the Judges of the two Supreme Courts, there are not any active contacts to other Associations of Judges.

b) If there is more than one Association of Judges, how other stakeholders deal with this fact?

At least the understanding of the Finnish Association of Judges is that other stakeholders regard it as the self-evident representative of judges in our country whereas the Justices of the Supreme Courts get their voice heard in the society mainly through the courts in question i.e. the Supreme Court and the Supreme Administrative Court.

22. How do the Associations of Judges interact with NGOs?

The Finnish Association of Judges has co-operation mainly with the NGOs working within the sector of the Ministry of Justice, e.g. the associations of prosecutors and of execution officers. These associations have common interests especially in matters relating to resources, working premises and prevention of undue influence on official activities (of judges, prosecutors and execution officers). These associations interact with each other both through personal contacts between board members and (more seldom) through common formal meetings in connection with certain matters (e.g. above-mentioned prevention of undue influence).

The Finnish Association of Judges and its member associations also interact with the Association of Finnish Lawyers (see below the answer to question 24) especially in trade union matters. These associations also have co-operation in such matters of legal policy where they have common interests. Both associations have committees of legal policy affairs which adopt or prepare the associations' statements on various kinds of legislative proposals. It has not been uncommon that some persons have been members of these committees in both associations.

23. How do the Associations of Judges interact with foreign or international organisations?

The Finnish Association of Judges is a member of the International Association of Judges (IAJ) and its regional organization European Association of Judges (EAJ) and furthermore of the Association of the European Administrative Judges (AEAJ). Its representatives take part in the meetings of these organizations and the special meetings of the working groups of AEAJ.

24. Is there a trade union, in which judges can be members? If so, what are the relations between this trade union and the association of judges?

Yes, there is. The trade union is the Association of Finnish Lawyers which largely operates as a trade union through the negotiating organization it belongs to (called JUKO). The member associations of the Finnish Association of Judges are also member associations of the Association of Finnish Lawyers. Most of the members of its member associations are also individual members in the Association of Finnish Lawyers. Many of the persons active in the Finnish Association of Judges and its member associations are also active in the organs of the Association of Finnish Lawyers. There have regularly been (and at the moment are) e.g. same persons in the Boards of both the Finnish Association of Judges and of the Association of Finnish Lawyers. The relations between both organizations can be described as good and well-functioning. It may be added that in practice the delegation negotiating (from the employees' side) about the so-called specified collective agreements (concerning allocation of certain wage-rises of the Judiciary) normally include one or more representatives of the Finnish Association of Judges.

The salary of the Supreme Court Judges is regulated by law. Therefore, not all the judges of the highest courts are members of the trade union. For the same reason the Association doesn't have active relations to the trade union.

Ethical standards

25. Is there any influence of the Associations of Judges in establishing ethical standards?

The Finnish Association of Judges and the Association of the Members of the Supreme Courts have jointly adopted a document titled "The Ethical Principles for Judges" in 2012.

26. Do the Associations of judges contribute to a further improvement of the justice system? How?

The Finnish Association of Judges is for the moment considering the possibility to establish a special committee of ethical affairs. However, the final decision to establish such a committee has not yet been made.

Perception

27. How does the public at large see the Associations of Judges?

The Finnish Association of Judges has not had extensive presence in the national media. It is therefore not easy to say how the public at large sees the Association. The general understanding within the Association is, however, that it is generally regarded as the legitimate representative of the judges and referendaries in Finland.

The 19th of February, 2020

Kimmo Vanne
Judge in Court of Appeal

Päivi Hirvelä
Justice of the Supreme Court