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# STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)

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## Recognition of service in international courts in national legislation

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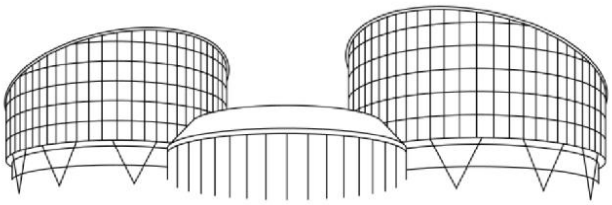
In the 90th CDDH meeting, the Registry of the Court was invited to submit to the CDDH an updated report on the situation of judges of the European Court of Human Rights after the end of their mandate for the CDDH's follow-up work to the Copenhagen Declaration (see document CDDH(2018)R90, §§ 26-29).

The present document contains the report sent by the Registry.



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

**DIVISION DE LA RECHERCHE**
**RESEARCH DIVISION**

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# *Recognition of service in international courts in national legislation*



The first edition for this text has been finalised on 22 August 2013. This update was finalised on 30 November 2018

## SUMMARY

The report examines the possibility for judges and public officials in the Council of Europe member States to 1) interrupt their national career in order to work at the international level; 2) regain their previous status; 3) have the time spent in the international bodies counted for career advancement purposes and pension rights.

The study finds that 33 countries out of 47 provide for the possibility for holders of judicial office to interrupt their national career to take up a post at an international court or body and to return subsequently to their previous or equivalent post in the national judiciary. The time spent working for an international institution is generally taken into account for career purposes, but with respect to pension rights the regulations differ. In 14 countries there are no provisions allowing a judge to interrupt his national career to take up an international post. However, in some of them the period of international judicial service will be taken into account for career advancement and/or pension rights.

As regards public officials, the possibility of undertaking international service (mainly by secondment or leave) is recognised essentially in all the countries examined, including those which do not offer this opportunity to members of the judiciary. The situation of university professors is rarely specifically regulated, falling generally under the provisions of public service or labour law which may provide for suspension of duties in general terms or subject to specific arrangements with the employer.

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## INTRODUCTION

1. This report is an updated version of the study prepared in August 2013 for the Court's Committee on the Status of Judges, providing a comparative survey of national laws and regulations concerning the recognition of service of judges in this Court or in any other international jurisdiction or body. It covers all 47 Council of Europe member States, including Armenia and San Marino which were not part of the initial study. The report includes any recent developments in national law and practice and provides with respect to certain countries also additional or more detailed information on previously existing regulations.

2. More specifically, the report examines the possibility for public officials: 1) to interrupt their national career in order to work at the international level and then regain their previous status; and 2) to have the time spent in the international jurisdictions or bodies counted for career advancement purposes or pension rights

3. While the main focus of the report is on judicial office, for a number of countries it provides information also on civil servants in general or a particular category of such servants (such as prosecutors, diplomats, university professors).

4. The study is based on the contributions of the Registry lawyers/trainees/judges which are reproduced in the Annex, where they can be consulted for more detailed information concerning each country.

5. It is recalled that in its Resolution 1914 (2013), adopted on 22 January 2013, the Parliamentary Assembly called on States Parties to strengthen legal guarantees of independence of the Court's judges by:

> "a) securing that, after the replacement of a judge on the Court, the former judge be entitled to a similar position, if he or she has not yet reached retirement age;
>
> b) including a judge's term of office at the Court in his or her national employment record in judicial or other occupations;
>
> c) securing that, when the former judge reaches retirement age, he or she is entitled to a pension equivalent to that of judges of the highest courts or that of State agents of a similar position."[1]

6. Following the letter of the Court's President of 22 November 2013 voicing concerns about the situation of judges upon expiry of their term of office, the matter was taken up by the Committee of Ministers which in its decisions adopted on 19 and 20 March 2014 called on the States Parties.

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[1]. Point 7.6 of the Resolution on "*Ensuring the viability of the Strasbourg Court: structural deficiencies in State Parties*": http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19396&Language=EN.

> "to address appropriately the situation of judges of the Court, once their term of office has expired, by seeking to ensure, to the extent possible within the applicable national legislation, that former judges have the opportunity to maintain their career prospects at a level consistent with the office they have exercised."

The Committee further invited the member States to provide any relevant information on the follow-up given to this decision.[2]

7. The Parliamentary Assembly reverted to the issue in its Resolution 2009 (2014), adopted on 27 June 2014, where it considered as follows in the context of additional measures to be taken to reinforce the Court's independence:

> "-in so far as the status of judges at the end of their term of office is concerned, to ensure that improvements to the present situation are made at national level. Appropriate measures should be considered by member States to assist former Court judges to find employment upon the expiration of their term of office. These measures may differ depending on the position that the person had occupied before election as a judge to the Court."[3]

8. Currently, the question of recognition of service as a judge and post-mandate employment is under consideration by the Steering Committee for Human Rights (CDDH) whose work could possibly lead to a Committee of Ministers' recommendation on the subject.[4]

# I. SERVICE IN INTERNATIONAL COURTS FOR HOLDERS OF NATIONAL JUDICIAL OFFICE

## *A. Countries expressly recognising service in international courts or bodies*

### (1) Possibility to interrupt career

9. The majority (33) of the countries covered in the survey provide for the possibility for national judges to interrupt their career in order to work for an international organisation – **Andorra**, **Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Norway, Poland, Portugal, Romania,**

2. CM/Del/Dec(2014)1195/4.3. As of January 2018 only 4 states had provided information in response to the Committee of Minister's invitation.

3. Point 4.3 of the Resolution on "*Reinforcement of the independence of the European Court of Human Rights*." http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21086&lang=en

4. See the CDDH report on the process of selection and election of judges of the European Court of Human Rights. CM(2018)18-add1, 29 January 2018, paras. 156-159.

**Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia**, **the United Kingdom** and **Turkey**. The arrangements for work at the international level can take different forms (special or unpaid leave, suspension of the mandate, missions, secondment) and vary from country to country. It appears however that not all these arrangements may be applicable to the election of a national judge to the Strasbourg Court (e.g. because of the time-limits which are shorter than the international mandate, the need for authorisation of extensions, or the nature of suspension of duties (secondment)).

10. In **Andorra**, the 1993 Law on judiciary provides that in case of their appointment/election to the European Court of Human Rights or another international judicial institution, first instance judges and magistrates are placed on leave. Upon termination of their mandate, they have their right to return to their previous position, provided that they give timely notice.[5]

11. In **Austria**, a judge who has been appointed to an international organisation on proposition or consent of the Republic of Austria is granted special leave ("*Karenzurlaub*") up to ten years or until the age of sixty-four.[6]

12. In **Belgium**, magistrates can be authorised to carry out missions at international or supranational institutions during which they are placed on leave. An initial authorisation of one year can be extended at the request of the judge or the institution.[7] The opportunity is available also for the judges of the Council of State, who are placed "*hors cadre*" during their international mission.[8]

13. In **Bulgaria**, according to the provisions of the Labour Code of 2008, the employer is under a duty to allow the employee a one-off unpaid leave if the employee enters into a "*legal relation*" with an institution of the EU, UN, OSCE, NATO or "*other international governmental organisation*". Moreover, an employee may be seconded to an institution of the European Union for a period of up to four years, during which time he or she remains in employment and receives his or her base remuneration.[9] By the recent amendment to the Judiciary Act in August 2017, judges, prosecutors and investigators are entitled to receive remuneration for participation in European and international programmes and projects.[10] This may be construed to include temporary work or secondment at international level.

14. Under **Croatian** legislation, judges that have been appointed by the Croatian Government as judges of an international court or to any other

5. Article 68 quarter of the Law on judiciary.
6. Federal Law on the Service of Judges and Prosecutors (RStDG), Section 75 §§ 2 and 3. However, the regulations do not apply to judges of the Constitutional Court.
7. Article 308 of the *Code Judiciaire.*
8. Art. 112 *lois coordonées sur le Conseil d'Etat le 12 janvier 1973.*
9. Articles 160 § 2 and 120a §§ 1 and 2 of the Labour Code.
10. Section 195, subsection 2(2) of the Judiciary Act 2007.

duty in international courts or organisations are entitled to obtain a special type of temporary leave of absence.[11]

15. In the **Czech Republic**, the Act on the Courts and Judges provides for a temporary allocation or temporary release of a judge (other than a judge of the Constitutional Court) in order to work at the international level. The Minister of Justice *must* temporarily release a judge from his/her office if he/she has been appointed to serve as a judge or an assistant to a judge at an international tribunal.[12] In addition, the Minister of Justice *may* temporarily send a judge to work for an international organisation for a maximum period of five years.[13] By contrast, the Constitutional Court Act does not contain any specific provisions concerning a temporary allocation or temporary release of a judge in order to work at the international level. A judge of the Constitutional Court may thus need to resign in order to accept a position at the international level.

16. In **Denmark,** public officials, including judges, have a right to unpaid leave in order to work for the ECHR and other international institutions.[14]

17. In **Estonia**, the recognition of service of national judges in international courts came about as a result of amendments to the Courts Act which entered into force on 1 April 2011. In particular, a new paragraph 58¹ was added to the Act entitled "*Employment of judges in international court institutions and participation as experts in international civil missions*". The term "*international court institution*" expressly includes the European Court of Human Rights and European Court of Justice (§ 12(4), subsection 3 of the Courts Act). Upon election or appointment of a judge as a judge of an international court institution the authority and service relationship of the judge is suspended.

18. Under **Finnish** legislation it is possible for judges to apply for unpaid leave under Section 23 of the State Public Service Act, but the employing authority has discretion to decide whether to grant the leave or not.

19. In **France,** magistrates can work at an international organisation in the form of "*détachment*" (the most frequently used form), or "*mis à disposition*".[15] In the latter case it is the State which continues to pay the judge's salary. It is also possible to resort to the procedure of "*mise en*

[11]. Article 88 of the Law on Courts.
[12]. Section 99 § 1 (b) and (d) of the Act no. 6/2002 Coll., on the Courts and Judges.
[13]. Section 68 in conjunction with section 70a of the Act on the Courts and Judges.
[14]. Section 58(a) of the Act on Civil Servants (no. 678 of17 September 1998), and executive order 518 of 3/7/1991.
[15]. Articles 67 and 68 of the *Ordonnance n°58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature.*

*disponibilité pour convenances personnelles*", but this is mainly used for a private sector activity.[16]

20. In **Germany**, the situation of judges is covered to a large extent by the federal laws on civil servants. Public officials *seconded* to international organisations are entitled to special leave without pay under Section 6 § 1(1) of the Decree on Special Leave. [17] According to Section 2 § 4 of the Guidelines on Secondment of Public Officials of the Federal State to Public Interstate or International Organisations,[18] the duration of the special leave is limited to five years. Only under exceptional circumstances can it be prolonged to a maximum of ten years. Public officials in the service of international organisations *outside a secondment* can be awarded special leave up to one year on the discretion of the highest supervisory authority and when permitted under functional considerations of the service.[19]

21. In **Greece**, according to law 1756/1988, judges may apply for and be granted a special unpaid leave in order to take up duties "*in the EU or other international organizations*". This leave is initially granted for three years, with the possibility of extension for another three years (Article 44 § 6).

22. In **Hungary**, judges can also interrupt their carrier in order to work at international level. However, according to Section 90(g) of the Act no. CLXII of 2011 on the Legal Status and Remuneration of Judges, judges shall be *dismissed* from service, if they, with the consent of the President of the National Office of Justice, enter into employment at an international body or EU agency in order to perform there judicial or judiciary related activities. Nevertheless, they can regain their former positions upon request and the time spent in international institutions counts for their career advancement and public pension rights.

23. In **Iceland,** according to the Act on the Judiciary, the Minister may grant a District Court or a Supreme Court judge a leave for up to six years, upon his request, in order to enable him to become a member of an international tribunal or to serve at an international institution.[20]

24. In **Italy**, judges can interrupt their career in order to work at international bodies, except in case of reasoned denial delivered by their administration body. They are put on leave without pay.[21] It is also possible

[16]. A detailed overview of the domestic rules applicable to service at the Strasbourg Court can be found in France's submission to the Committee of Ministers of 5 January 2016: http://rm.coe.int/09000016805afb66
[17]. *Sonderurlaubsverordnung* – SurlV
[18]. *Entsendungsrichtlinien* - EntsR
[19]. Section 6 § 2 SurlV.
[20]. Sections 18, 26 and 35 of the Act on the Judiciary No. 50/2016.
[21]. Article 23bis of the Legislative decree no. 165/2001.

for judges to be seconded to international organisations in which case they are placed "*out of position*", but maintain their pay.[22]

25. In **Liechtenstein**, judges and other public officials can be granted leave for three years in order to serve in an international organisation, provided that the deployment is in the interest of the state. The leave can be prolonged up to six years.[23] The Council of Europe is explicitly mentioned as an international organisation in the Public Officials Regulation.[24]

26. In **Lithuania**, under the Law on Courts a judge can be elected, transferred or appointed to perform legal work at international level, including in EU and Council of Europe bodies.[25]

27. In **Luxembourg**, public officials, including judges, who accept an international post, can obtain special leave for an initial period of 4 years which can be extended up to ten years in total. When the term of office at an international institution is a fixed period, the leave is granted for the duration of the term.[26] Under the law concerning specifically the judiciary, judges can also work for an international organisation in the form of temporary secondment (*détachement temporaire*).[27]

28. **Maltese** law recognises that judges and magistrates can take up posts in international courts or tribunals.[28] In this case the practice has been to request leave of absence from the Ministry of Justice.

29. In **Monaco**, the judiciary law of 2009 contains express provisions on the arrangements available to judges for undertaking work at international organisations and their subsequent reintegration.[29]

30. In **Norway**, international assignments are not covered by the statutory rules on leave of absence contained in the Work Environment Protection Act. However, when the Norwegian Administration of Courts or the President of the Court in question (depending on the duration of the leave of absence) decides on an application for leave made by a judge, the application will in practice be granted.

31. In **Poland**, the Law on the Supreme Court provides that a Supreme Court judge may be appointed or elected to exercise functions in the

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22. Art. 210 of the Royal decree 30/01/1941, no. 12, on "*Judicial system*".
23. Article 33 of the Public Officials Act (*Staatspersonalgesetz*, StPG).
24. Article 24 of the *Staatspersonalverordnung*, StPV.
25. Article 61 of the Law on Court.
26. Articles 1-3 of the *Loi du 27 août 1977 concernant le statut des fonctionnaires entrés au service d'Institutions internationales.*
27. *Loi du 7 mars 1980 sur l'organisations judicaire, art. 149-2.*
28. Article 16 of the Code of Organisation and Civil Procedure (Cap. 12).
29. The arrangements take the form of « *détachement* », « *disponibilité* » or « *affection* ». *Loi no. 1364 du 16 novembre 2009 portant statut de la magistrature, art. 60*.

organs of international or supranational organisations.[30] In such a case the judge is required to *resign* from his judicial office. This provision would apply to election to the ECHR and the Court of Justice of the EU. However, a Supreme Court judge has a right to return to his previous judicial office following the expiry of his term of office. The right to be elected to an international court and to regain the former position applies also to judges of ordinary courts.[31] For judges of the Constitutional Court, the issue is not regulated.[32]

32. In **Portugal**, under the law concerning public officials, including judges, the employer may grant an employee at the latter's request unpaid leave in order to exercise functions at an international organisation.[33]

33. **Romanian** law currently allows a secondment of judges and prosecutors to international organisations or EU institutions for a period between six months and three years, which can be prolonged up to three years.[34] However, this possibility will be removed as from 30 June 2019. At the same time, the law will provide expressly that judges and prosecutors can hold positions within EU institutions or international organisations. They will be released from their functions at national level but their posts will be reserved during their international service.[35]

34. **Serbian** law similarly provides for a possibility for judges and prosecutors to be seconded to an international judicial organisation, for a maximum of three years.[36]

35. In **Slovakia**, the mandate of a judge is to be suspended by a decision of the Minister of Justice if the judge sits in an international organisation or an international tribunal established under an international treaty binding upon the Slovak Republic, provided that that function prevents the judge in question from exercising his or her mandate.[37]

36. In **Slovenia**, similarly, if a judge is elected as judge of an international court, or for any other international judiciary function, his function as well as all rights and obligations deriving from the judicial service are suspended.[38]

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30. Section 52 § 1 of the Law on the Supreme Court, as amended in December 2017.
31. Section 98 §§ 2-3 of the Law on the Organisation of Courts.
32. Under the previous law on the status of judges of the Constitutional Court, in force until November 2016, judges could be elected to an international court, but they had to resign and had no right to come back.
33. Article 283 § 1 of the Law no. 35/2014 of 25 June 2014.
34. Article 58 of Law no. 303/2004 on the statute of judges and prosecutors.
35. Article 58, Section 1 of the above law (with amendments effective on 30 June 2019).
36. Article 21 of the Judges Act; Article 64 of the Public Prosecutions Act.
37. Section 24(3) of the Judges and Assessor Judges Act - Law no. 385/2000 as amended. A similar regime applies to prosecutors, under the relevant provisions of the Prosecutors and Trainee Prosecutors Act – Law no. 154/2001.
38. Section 40 of the Judicial Service Act.

37. In **Spain,** the Organic Law on the Judicial Power recognises the right of judges, including those of the Supreme Court, to be granted a "*special services*" leave when they are elected members of high international courts.[39]

38. In **Sweden**, judges can be granted a leave of absence in order to work in the UN, EU or in an international court. Such leave can normally last no longer than three years, following which the judge can regain his/her previous position. However, if there are special reasons for it and provided that a judge's absence will not cause inconvenience for the public authority employing him/her, leave of absence can be granted also for a longer period.[40] By contrast, judges of the Supreme Court and the Supreme Administrative Court do not have a right to obtain a leave of absence for the purpose of working at international level. In such a case, they have to resign and will not be able to regain their previous position once their international mandate is completed.[41]

39. In **Switzerland**, employees of the federal administration, including judges, can obtain unpaid leave if their work at an international organisation is deemed to serve the interests of Switzerland. The duration of the leave cannot exceed five years.[42]

40. In **the former Yugoslav Republic of Macedonia**, if a judge is appointed or elected as judge of an international court, her/his judicial function is frozen for the duration of the international office.[43]

41. In **Turkey**, Article 50 of the Law no. 2802 on judges and prosecutors provides for the possibility of deployment of judges to international institutions and courts. They will be placed on unpaid leave which can be renewed every three years for up to twenty-one years.

42. Finally, in the **United Kingdom**, service on the European Court of Human Rights is expressly recognised in Section 18 of the Human Rights Act 1998, which deals with appointment to the Strasbourg Court. According to Section 18(2), a holder of judicial office in the United Kingdom may become a judge of the European Court of Human Rights without being required to relinquish his office. Under Section 18(3), he is not required to perform the duties of his judicial office while he is a judge of the Court.

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39. Article 351(a) of Act 6/1985. The law applies also to prosecutors.
40. Sections 3 and 8 of the Decree of Leave for Judges.
41. Section 1 of the Decree of Leave for Judges; Section 3 of the Supreme Administrative Court Act; Chapter 3, Section 4 of the Code of Judicial Procedure.
42. *Ordonnance du DFAE sur les prestations accordées aux employés de l'administration fédérale en vue de leur engagement par les organisations internationales*, du 8 mars 2002; art. 3 and art. 5 § 2. At the cantonal level, there is no uniform legislation on public employment matters.
43. Article 53(1) of the Law on the Courts.

(2) Possibility to regain former or equivalent position

43. As can be seen from the above overview, in case a judge takes up an international judicial post, his/her relationship of employment at the national level is generally not terminated. In most countries such judges can obtain a special leave or their duties are suspended during their service at the international level. They therefore maintain the right to be reintegrated in their national judicial system following the completion of their international mandate.

44. In a number of countries, the law guarantees the right for such judges to regain their former post. These countries include **Andorra**, **Belgium**, **Bulgaria**, **Croatia**, **the Czech Republic (**except for judges of the Constitutional Court**), Denmark**, **Greece**, **Finland**, **Iceland**, **Italy**, **Spain**, **Serbia, Sweden** (except for judges of the Supreme Court and the Supreme Administrative Court) and **the United Kingdom**. It appears that this is also the case in **Austria**[44] and **Slovenia**[45], although there is no explicit provision in law to that effect. In **Hungary** and **Poland**, although a judge has to resign when taking up an international post, he/she is entitled to regain his/her former judicial office upon request. In **Malta**, the practice in three cases where members of the judiciary accepted service in international judicial capacity was to request leave of absence with the possibility of returning to the substantive post in Malta after the termination of the mandate overseas. In countries such as **Germany** and **Romania**, which use secondment as the main arrangement for allowing judges to work in international institutions, judges maintain their status and position during their service in those institutions.[46]

45. Several countries guarantee a right of return not to the same post but the same service or court. Under the law of **the former Yugoslav Republic of Macedonia**, a judge has the right to return to the court where he worked before he left for other duties.[47] In **Slovakia**, a judge whose mandate has been suspended may restart exercising it at the court where he/she had been exercising it prior to the suspension, unless the Judicial Council decides to assign him/her to another court.[48] In **Portugal**, a person taking unpaid leave has the right to return to the entity or service where he

[44]. The Federal Law on the Service of Judges and Prosecutors provides that a judge can only be employed at the court to which he/she was appointed (Section 77 § 1 RStDG). Moreover, the law does not apply to judges of the Constitutional Court.

[45]. In Slovenia, the Constitutional Court Act provides for a right of return of its judges to their previously held public positions after the termination of their term of office, and for the payment of an annuity to those who for objective reasons cannot return to their previous post or find other suitable employment. However, the law is silent on the right of a judge to return to the Constitutional Court following a period of international service.

[46]. In Romania, after 30 June 2019 secondment to international institutions will no longer be provided for in the law. Judges, taking up employment at international organisations will have their posts reserved.

[47]. Article 53(2) of the Law on the Courts.

[48]. Section 24(7) of Law no. 385/2000 (Judges and Assessor Judges Act).

worked before the leave.[49] Similarly, in **France**, a magistrate has the right to be reintegrated in the judicial service. In **Turkey**, judges can return to the judiciary provided they submit such a request with the Higher Council of Judges and Prosecutors within fifteen days of the end of their employment with the international court or institution. The latter will appoint them to a relevant post within thirty days. Judges who submit their request after that deadline can be re-appointed to another post if the Higher Council of Judges and Prosecutors consider that they have not lost the required criteria for becoming a judge.

46. Finally, some countries provide for several ways to reemploy a returning judge. In **Belgium**, a magistrate will either be reintegrated in the former service or nominated afresh to his previous post or another judicial post of equal or higher rank.[50] Judges of the Council of State, placed "*hors cadre*" also have the right to recover their previous position.[51] In **Estonia**, a judge may return to the same court if there is a vacant position, by giving an advanced notice in writing.[52] If there is no vacancy, he/she may be appointed by the Supreme Court with his/her consent to work as a judge also at another court of the same instance or a lower instance, while maintaining his former salary for a period of six months. If there is no vacancy in the judge's former court and he/she does not agree to be transferred to another court, the judge will be released from office and will receive compensation in the amount equal to his or her six months' salary.[53]

47. In **Lithuania** too, following completion of their international duties, judges can be appointed to their former position or to another court of the same or lower instance within two years of their return.[54] What is more, since October 2013 the law grants a possibility to a former judge of the European Court of Human Rights to be appointed without an exam and selection procedure to the position of judge in the Supreme Court of Lithuania, the Supreme Administrative Court, the Appeal Court, regional courts, regional administrative courts and district courts.[55]

48. The question is regulated in detail also in the law of **Luxembourg**. Upon return from a special leave or secondment, a judge will be reintegrated in his former service and has the right to a post which is equivalent to the functions he exercised prior to the leave. In the absence of a vacant position, the person will be nominated "*hors cadre*" to a post

[49]. Article 281 of the Law no. 35/2014 of 25 June 2014.
[50]. Article 395 of the *Code Judiciaire*.
[51]. Article 112 *des lois sur le Conseil d'État, coordonnées le 12 janvier 1973*.
[52]. The proposal to preserve a post for a judge serving at an international court and to appoint a substitute judge in the interim was initially included in the draft law. However, the proposal was not accepted by parliament due to consideration relating to autonomy of the judicial administration.
[53]. Article 58[1] (sections 2-4) of the Courts Act (as amended in 2014).
[54]. Article 61 of the Law on Courts.
[55]. Article 60 of the Law on Courts (as amended in 2013).

with the same rank and salary as in his previous job.[56] In **Monaco**, similarly, if there is no appropriate vacancy for the returning judge, the latter will be reintegrated in the judiciary as surplus personnel and given a post corresponding to the judge's rank.[57] In **Switzerland**, a judge is reintegrated in the post he/she occupied before leaving or offered a post which he/she could reasonably expected to fill taking into account, as far as possible, the experience gained and the duties fulfilled.[58] In **Liechtenstein** too, the returning public officials are either offered a position they held before they took their leave or they are placed in another appropriate position where, if possible, the obtained experience and the previous functions are taken into account.[59]

(3) Career advancement

49. In the majority of the countries examined above, the law expressly recognises service in international institutions as work which counts for career advancement purposes.

50. In **Austria**, the time spent on special leave for the purposes of employment at an international organisation is taken into consideration for up to 10 years in terms of career advancement.[60]

51. In **Belgium**, magistrates undertaking an international mission maintain their right to salary increases and other benefits during the mission period.[61] It appears that also for the judges of the Council of State the period of a mission is taken into account for certain nominations.

52. Under **Bulgarian** law, the time spent in an international jurisdiction or organisation set up under a treaty to which Bulgaria is a party counts as experience for the purpose of judicial and prosecutorial appointments.[62]

53. In **Croatia**, the international mandate of judges is calculated towards the overall duration of their judgeship.

54. **Estonian** law also provides that the period of employment in the service in an international court institution shall be included in the period of

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[56]. Article 6 of the *Loi du 27 août 1977 concernant le statut des fonctionnaires entrés au service d'Institutions internationales ; Article 149-2 de la Loi du 7 mars sur l'organisation judiciaire.*

[57]. *Loi no. 1364 du 16 novembre 2009 portant statut de la magistrature, art. 60* (« *à l'expiration du détachement … en l'absence de vacance d'emploi dans son grade, le magistrat est réintégré en surnombre dans un emploi correspondant audit grade* »).

[58]. *Ordonnance du DFAE sur les prestations accordées aux employés de l'administration fédérale en vue de leur engagement par les organisations internationales*, du 8 mars 2002; art. 13(1).

[59]. Art. 24 (6) of the Public Officials Regulation.

[60]. Section 75(a) § 2 No. 2 c) RStDG.

[61]. Article 308 of the *Code Judiciaire.*

[62]. Section 164(9) of the Judiciary Act 2007.

employment as a judge.[63] As regards career choices for former international judges, it is of interest to note that by a recent amendment to the Bar Association Act which entered into force on 1 April 2013, persons who have served as judges in the European Court of Human Rights, the General Court of the European Union or the European Court of Justice for at least 3 years can be admitted to the Bar Association as a sworn advocate without having to pass an exam or fulfil some other requirements, provided that an application for admission is made within 5 years from the termination of the judicial mandate.[64]

55. In **France**, magistrates who have exercised international functions either under the "*détachment*" or "*mis à disposition*" procedure maintain all their employment and advancement rights. However, in case of "*mise en disponibilité pour convenances personnelles*", the person ceases to benefit from career advancement rights.

56. In **Germany**, a secondment is deemed to be in the interest of the service or the general public and shall therefore not interfere with career advancement chances.[65]

57. In **Hungary**, as noted above, judges have to resign when taking up an international post. Following the expiry of their mandate at an international body or EU agency, they will be reemployed in their former positions upon request. In this case the period of work at the international level will be taken into consideration as service time.

58. In **Italy**, the time spend in international service is considered for the purposes of career progression.

59. In **Luxembourg**, if a person is reintegrated in his former service, he may be nominated to a higher position than his original post if the nature of the tasks performed and the experience gained at the international level justify such nomination.[66]

60. In **Poland**, the term of serving as judge on an international court would normally count as a period of employment in judiciary.

61. In **Portugal**, the time spent in an international organisation counts for career purposes.[67]

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[63]. Article 581(5) of the Courts Act.
[64]. Article 26, Section 31 of the Bar Association Act (as amended in 2018).
[65]. Section 27 § 3 and Section 28 § 5(2) of the Law on the Remuneration of Public Officials [*Bundesbesoldungsgesetz* – BBesG]; Section 3 § 3 of the EntsR.
[66]. Article 6(1) of *Loi du 27 août 1977 concernant le statut des fonctionnaires entrés au service d'Institutions internationales.*
[67]. Article 281 § 3 of the Law no. 35/2014.

62. In **Romania***,* the time spent on secondment represents seniority time (*ancienneté*) as judge or prosecutor.[68]

63. In **Slovakia**, the period of time when the judge's mandate is suspended due to his work in in international institution is considered as "*recognisable practice*" which in turn is determinative for the amount of the salary of the judge concerned.[69]

64. In **Spain**, the time spent away on "*special services*" leave will count for the purposes of seniority and career promotions.[70]

65. In **Liechtenstein**, **Switzerland** and **Monaco** the law expressly stipulates that the experience gained at the international level are to be taken into account during the reintegration of judges in the national judicial system.[71]

66. In **Turkey** the time spent working at the international court or institution is also taken into account for career advancement.

67. Countries which do not appear to recognise such service for judges' career include **Andorra**, **Iceland**, **Slovenia, Serbia, Denmark, Finland** and **Sweden**, although work at an international institution will in practice count as part of professional experience. In **Andorra,** the non-recognition results from the fact that judges placed on leave during their international mandate are not considered to be in active duty giving rise to seniority rights. Under **Slovenian** law, there is no automatic counting of time spent in the international bodies which can be taken into account as experience for career advancement purposes under the general rules for judges.[72] In **Iceland**, **Serbia** and **Sweden** the law contain no specific provisions on the subject. In **Denmark**, while the period of unpaid leave spent in international institutions is taken into account for salary calculation, the regulations are silent on the issue of career advancement. In **Finland,** there is no system of automatic career advancement based on the length of service in the judiciary or in the civil service. Acquired professional experience (including international service) is nonetheless taken into account in appointments and promotions. In terms of salaries, length of service has an impact in the lower levels of the judiciary, but in the Supreme Court all judges receive a uniform remuneration the level of which is determined by statute.

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68. Article 59(4) of Law no. 303/2004 on the statute of judges and prosecutors.
69. Sections 67 and 82(2)(d) of Law no. 385/2000 (Judges and Assessor Judges Act).
70. Article 354 § 2 of Organic Law on the Judicial Power.
71. The law of Monaco is exemplary in this respect :
« *Lorsqu'un magistrat a exercé une fonction juridique auprès d'une organisation internationale, en situation de détachement, de disponibilité ou d'affectation, il est tenu compte du temps passé dans cette fonction et de l'expérience acquise en vue du reclassement de ce magistrat lors de sa réintégration au sein du corps judiciaire monégasque* » - *Loi no. 1364 du 16 novembre 2009 portant statut de la magistrature, art. 60.*
72. Sections 4 and 24 to 29 of the Judicial Service Act.

(4) Pension rights

68. The question of maintaining or accruing pension rights for the service performed in international institutions is a more complex one. As will be seen below, a number of different factors enter into play here, such as a concern to avoid parallel accumulation of pension rights, payment of contributions, the existence of international agreements, etc.

69. Several countries appear to count international service for national pension purposes without further conditions. In **Austria**, the period of special leave is, upon application, considered as a period of service entailing pension rights.[73] In **Belgium**, the amount of the pension is calculated as if the magistrate in question never left the domestic service.[74] The period of an international mission counts for pension rights also for the judges of the Council of State. In the **Czech Republic,** those officials who are considered to remain in their office during their international assignment (e.g. temporarily released or allocated judges) are also insured under the national scheme and the years served abroad would count for pension purposes. By contrast, a public official who resigns in order to accept an international post would no longer be participating in the national pension scheme.

70. In **Estonia**, service in an international court counts towards the period of employment as a judge, and consequently also for the purposes of the judge's service pension. Under **French** law, magistrates who have exercised international functions either under the "*détachment*" or "*mis à disposition*" procedure retain their pension rights, unlike those who have opted for the "*mise en disponibilité pour convenances personnelles*". In **Hungary**, similarly, the period of service at the international level is taken into account for public pension rights following the judge's reinstatement in his former position. Under **Spanish** law, the time spent on special leave counts for the purposes of the judge's social security rights.

71. In **Lithuania**, judges appointed or elected to any international courts are entitled to the judicial state pension on conditions which include at least 5 years of service as a judge and residence in Lithuania.[75]

72. In certain countries the accruing of pension rights is conditional on the payment of contributions during the international mandate. In **Bulgaria**, persons working in international organisations can insure themselves under the general domestic pension scheme for the period of their mandate. In **Croatia**, the time spent on the temporary leave of absence would not count towards the judges' years of service for the domestic pension purposes, unless they contribute to the domestic pension scheme via the so called

[73]. Section 4 § 1 of the Law on Pensions ('Allgemeines Pensionsgesetz') in conjunction with Section 75a § 3 RStDG.
[74]. Article 395 of the *Code Judiciaire*.
[75]. Articles 1 and 3 under the Law on the Judicial State Pension.

extended pension insurance.[76] Similarly, the time spent outside the **Slovenian** judiciary does not count for pension purposes, since no contributions are paid by the foreign employer. In **Greece**, judges continue to pay contributions to the usual pension fund while on special leave. Ministerial decision n° 41/1989 defines how contributions are paid during the leave. In **Italy, Liechtenstein**, **Monaco** and **Portugal**, the period of leave or secondment also counts for pension rights on the condition that the beneficiary continues to pay his national contributions. In **Malta**, in order not to prejudice pension rights under the Social Security Act, the practice followed when a member of the judiciary or a diplomat is granted leave of absence to take up any appointment abroad is to apply, with the consent of the Director General (Social Security), Article13 of that Act. This means that for the duration of the mandate overseas, a reduced contribution is paid on behalf of the insured person (i.e. on behalf of the member of the judiciary or on behalf of the diplomat, as the case may be) by the employer (the Government department concerned). As of 3 October 2016, members of the judiciary can have a service pension. The period of "*pensionable service*" includes expressly service performed in any international court, unless that service gives right to a pension from an institution outside Malta.[77]

73. In **Slovakia,** while a national judge sits on an international tribunal, he or she may opt to make voluntary contributions to the Slovakian pension scheme. In such a case, these contributions would be taken into account when calculating the amount of the judge's pension. Moreover, a judge who is entitled to a payment of the old-age pension, early retirement or disability pension under the Social Insurance Act, has the right to a "*supplementary pension for the exercise of the mandate of a judge*" for each year of his office.[78] The years spent on service on an international organisation would count in for the calculation of this supplement.[79]

74. In **Switzerland,** a federal employee can remain insured under the domestic pension scheme during the unpaid leave if he pays not only his contributions but also those of his employer.[80] The employee can also obtain an allowance to buy back years of insurance which were missing because of the leave. Contributions which he had made to the international organisation and were returned to him must be handed over to the federal fund.[81]

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[76]. If the judges' mandate abroad was long enough to make them eligible for a foreign pension scheme, their foreign pensions are subject to taxation under Croatian law.

[77]. Article 2 of Act XLIV of 2016.

[78]. Section 95 (1) of the Judges and Assessor Judges Act.

[79]. Section 62 (m) and Section 24 (3) of the above Act.

[80]. *Ordonnance du 8 mars 2002, article 7*.

[81]. Ibidem:

« *Une prestation équivalente au maximum à la moitié du montant nécessaire au rachat, auprès de la Caisse fédérale de pensions, des années d'assurance manquantes du fait du congé peut être allouée par la Confédération à l'employé qui rachète ces années d'assurance (art. 8 § 2) – sans cumul possible avec des prestations similaires accordées*

75. As regards the **United Kingdom**, Schedule 4 to the Human Rights Act 1998 provides that an ECHR judge who was, immediately before his appointment as an ECHR judge, a member of a judicial pension scheme is entitled to remain as a member of that scheme and the terms on which he remains a member of the scheme are those which would have been applicable had he not been appointed as an ECHR judge. Entitlement to benefits payable in accordance with the scheme continues to be determined as if, while serving as an ECHR judge, his salary was that which would have been payable to him in respect of his continuing service as the holder of his judicial office.

76. Some countries exclude the counting of international service for domestic pension rights if the person concerned benefits from the pension scheme of an international organisation. For example, in **Finland**, according to Section 87 § 5 of the Pension Act for Public Sector, no pension accumulates for the time worked for an international or regional organisation which provides for its own pension scheme (like the Council of Europe). The **Danish** legislation similarly excludes pension rights for the period worked at the international level in respect of those public servants who obtained pension rights from an international organisation. In **Germany**, although the time spent in the service of an international organisation is counted for federal pension rights,[82] the pension paid by the German state is, however, possibly subject to deduction in case of an entitlement to a parallel pension paid by the international organisation in question.[83] Returning judges of international courts and other officials report having faced problems with lacking transparency of the procedure applied for this kind of deductions.

77. In **Luxembourg**, the period of special leave to work in international institutions is taken into account for the determination of national pension rights only if the international organisation or the beneficiary redeems the contributions and pays to the public revenue office (*le Trésor)* a sum calculated according to a formula fixed by law.[84] The law also provides for

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*par l'organisation internationale (art. 8 § 3). Si l'employé est réintégré dans une unité de l'administration fédérale après son congé, les cotisations qu'il a versées à la caisse de pension de l'organisation internationale et qui lui sont restituées à la fin de son congé doivent être versées à la Caisse fédérale de pensions (art. 7 § 2).* »

82. Section 6 § 3 No. 4 of the Law on the Maintenance of Public Officials, *Beamtenversorgungsgesetz* - BeamtVG).

83. Section 56 BeamtVG. On the level of the *Länder* there may be different approaches. For example in Bavaria, the time spent at an international organisation counts for pension rights when the service is deemed to be in the public interest and a corresponding supplement is paid by the official (Article 141 No. 4, 2 of the Bavarian Law on the Maintenance of Public Officials).

84. Article 7 of the *Loi du 27 août 1977 concernant le statut des fonctionnaires entrés au service d'Institutions internationales* reads as follows:
« *La période de congé spécial du fonctionnaire qui réintègre le service de l'Etat …, est mise en compte, comme temps de service pour la détermination du droit de la pension nationale et pour le calcul du montant de celle-ci conformément à la loi modifiée du 26 mai 1954 réglant les pensions des fonctionnaires de l'Etat à condition que l'institution*

the conclusion of agreements with international organisations for the transfer of pension rights. In case of temporary secondment of judges, the period would normally count towards pension rights as they remain affiliated to the national system.[85]

78. In **Poland***,* there is no specific rule governing the situation of judges sitting on international courts. However, under the general rules applicable to all persons, for the purposes of determining pension rights and calculating the amount of the pension due, the periods when a person has been insured abroad are taken into account if so provided by international agreements.

79. In **Romania**, **Serbia** and the **former Yugoslav Republic of Macedonia**, there are also no specific provisions concerning the pension rights of those returning from work in international institutions.

80. In a few countries, such as **Andorra, Iceland** and **Sweden** the time spent in international bodies does not count for pension rights. In **Iceland,** however, according to the Act on the Pension Fund for Employees in the Public Sector, the board of the fund can, with the approval of the minister, give a member of the fund, who is granted leave from his office to work for an international body, the right to continue to pay to the fund while he is working for the international body. In **Andorra,** only work for which the person is paid salary at the national level counts for pension purposes. In **Sweden,** while there is no express recognition of the time of international service for pension rights, if the employee, within the framework of his or her employment, is stationed to work abroad (e.g. as a seconded lawyer at an international level), the terms of employment including pension rights are generally covered by a special agreement.[86]

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*internationale ou le fonctionnaire verse au Trésor une somme de rachat. Cette période est complétée, le cas échéant, par des périodes mises en compte par l'institution internationale et réalisées par l'intéressé en dehors d'un congé spécial tel que prévu à l'article 3.*

*Le montant du rachat est fixé par annuité rachetée à seize pour cent du traitement que le fonctionnaire obtient lors de sa réintégration, majoré des intérêts composés de quatre pour cent l'an. Le taux de seize pour cent, étant égal à la somme des parts de l'intéressé et de l'employeur qui aurait été versée sous le régime général de pension, suivra l'évolution des taux fixés pour ces parts.* »

85. Loi du 3 août 1998 instituant des régimes de pension spéciaux pour les fonctionnaires de l'Etat et des communes ainsi que pour les agents de la Société nationale des Chemins de Fer luxembourgeois (art. 8):

« *Les fonctionnaires normalement occupés au Grand-Duché de Luxembourg qui sont détachés temporairement à l'étranger par leur employeur restent affiliés au présent régime*. »

86. Agreement on overseas contracts and guidelines on employment conditions in service abroad (so-called URA-agreement).

### *B. Countries with no specific provisions for interruption of career for service in international courts*

81. In the following 14 countries there are no provisions which would allow a judge to interrupt his national career in order to work in an international organisation and to regain his former position: **Albania**, **Armenia**, **Azerbaijan**, **Bosnia and Herzegovina**, **Cyprus**, **Georgia**, **Ireland**, **Latvia**, **Moldova**, **Montenegro**, **the Netherlands**, **Russia**, **San Marino,** and **Ukraine.** Except in **Armenia, Azerbaijan** and **Moldova,** there is also no acknowledgement of the time spent at the international level for career advancement or pension rights. Nonetheless, a short overview of the situation in some of the named countries could be of interest.

82. In **Armenia**, under the Constitutional Law on the Judicial Code, a period of service in an international jurisdiction will be included in the seniority of the judge and taken into account for judicial appointments and career advancement.[87] What is more, at least one year of service in an international court entitles the judge to a State pension after reaching the age of 65.

83. In **Azerbaijan**, the Law on Courts and Judges and the Law on the Constitutional Court are silent about the judges' work in international institutions, both as regards their election/appointment and secondment. Relationships with foreign courts and international bodies are confined to sharing and developing the judges' professional experience (study visits, traineeships). However, on 13 February 2018 the Law on the Constitutional Court was amended to provide that the status of the judge elected to the European Court of Human Rights will be considered equal to that of the judge of the Constitutional Court and that the guarantees stipulated in the law in respect of the judges of the latter court are also applicable to the judges elected to the Strasbourg Court.[88] That would mean that the period of service at the European Court of Human Rights will be taken into account for pension rights.[89]

84. **Ireland** does not recognise service on the European Court of Human Rights or any other international jurisdiction or body in terms of allowing judges to interrupt their career in order to work at international level and then regain their previous status once their mandate is completed. Irish judges must leave their posts when they take up a position at an international court. They do not remain "*seconded*" members of the Irish bench and the time spent in international jurisdictions would not count towards career advancement or pension rights. After their international

87. Currently, a case involving a former Strasbourg judge is pending before the administrative court concerning an issue whether international judicial service can be taken into account for the provision of a salary supplement.
88. Article 73.9 of the Law on the Constitutional Court.
89. Article 73.7 of the above Law.

service they may be appointed to the Irish bench in accordance with the usual procedure. It is of interest to note that in setting out eligibility conditions for appointment to the Superior Courts, the law expressly includes "*a person who is or was at any time during the period of 2 years immediately before the appointment concerned …. a judge of the European Court of Human Rights*."[90]

85. In **Latvia**, according to Sections 53(3) and 54(3) of the Judiciary Act 1992, a former judge of "*an international or supranational court*" may apply for the post of the judge of a regional court or of the Supreme Court. If he/she wishes to apply for the post of a Supreme Court judge, he/she has to obtain a positive opinion of the general assembly of the respective department of the Supreme Court as well to pass an examination according to criteria set by the Council of the Judiciary (Section 54-1(2)). This will be seen as the beginning, not the continuation, of his/her judicial career in Latvia. Section 36 of the Prosecutors' Office Act 1994 allows a former judge of "*an international or supranational court*" to apply for the post of Prosecutor General, provided that he/she meets other conditions listed therein. Finally, according to Section 86-1, a judge may be seconded to, *inter alia*, an international court or organisation, with the authorisation of the president of the respective court and for a period of time not exceeding three years. As regards pension rights, Section 3 of the Judges' Service Pensions Act 2006 contains a list of professions and posts which are included in the overall working period taken as a basis for the calculation of pension rights of a judge; i.e., they are legally assimilated to a judge's work for this purpose. These professions are the following: judge (including judges of the Constitutional Court), Ombudsman, prosecutor, investigating officer, judge of the former State Arbitration Court. The post of a judge of an international or supranational court is not included. Moreover, this provision concerns only a person who has worked as a judge during the last ten years and having either resigned or left the office after having reached the retirement age.

86. In **Moldova**, judges are not allowed to interrupt their judicial career other than for secondment to the National Institute of Justice and to the Higher Council of Magistrates. In other cases, they have to resign.[91] The time spend with international organisations is included in the officially recognised work of judges, both for the advancement of their career and for pension rights.[92] For instance, judges at international courts running for the position of judge in domestic courts are dispensed from taking a

[90]. Section 5(2)(b) of the Courts (Supplemental Provisions) Act, 1961, as amended. The law also refers to judges of other international courts. In practice

[91]. Judge Stanislav Pavlovschi resigned his position with the General Prosecutor's office in 2001 and Judge Mihai Poalelungi resigned his judicial position with the Supreme Court of Justice in April 2008, in order to take up duties as judge at the European Court of Human Rights. Judge Mihai Poalelungi ran as candidate for a vacant position of judge with the Supreme Court of Justice in 2012 before being appointed as President for the same court.

[92]. Article 24[1](6) of the Law on the status of judges.

qualification exam before the National Institute of Justice and are dispensed from the appraisal of their performance.[93] As regards pension rights, since 2011 the time spent as an international judge is assimilated to work as a domestic judge, and the pension is calculated from the salary of judges at the Supreme Court of Justice, according to the case-law of the latter court.

87. In the **Netherlands,** judges and advocates-general who apply for a long-term international post may, when elected, have to resign from office without the guarantee to return. Their pension rights are at best frozen. It may be that individual return arrangements will be conditionally accepted when requested. As judges are not civil servants, they cannot benefit from the possibility available to the latter to take unpaid leave to work for an international organisation. As for judges being detached to another organisation for a relative short fixed period of time, e.g. a government branch or an international organisation, they will normally continue to build pension rights and can have the time thus spent counted for advancement in their judicial career (albeit only within the function held).

88. In **Russia** too, a judge who gets a position in an international court has to resign, the law making no provision for suspension of judicial duties in this context. The period of international service is not taken into account for career and pension purposes. However, the status of judges of particular international courts may be determined by inter-governmental agreements, which is the case for the CIS Economic Court of (1992) and the Court of the Eurasian Economic Union (2014). According to the Rules on Social Guarantees, Privileges and Immunities of the latter Court, the period of service as a judge of the Court of the Union is to be taken into account when calculating the length of pensionable service in Russia. It is the Union, rather than the judges, which pays pension contributions to the pension funds of the member States. The Decree of the Present of 22 November 2016 no. 617 "*On Financial and Social Assistance of Judges Elected by Russian Federation for the Court of the Eurasian Economic Union and the Economic Court of the Commonwealth of Independent States and Removed from their Office*" provides for the conditions of payments for loss of employment and life annuity payments for judges who left these international courts for reasons listed in the Decree.

89. In **San Marino**, there is no ordinary law regulating the legal status of judges; nor are there any other rules dealing with a suspension of judicial duties when assuming another office.

[93]. Articles 6 and 13 of the Law on the status of judges.

## II. PUBLIC SERVANTS (INCLUDING DIPLOMATS, PROSECUTORS)[94]

90. It could be noted that countries that allow their judges to interrupt their career to work in an international institution generally authorise this also for public servants. Indeed, in a number of countries the laws concerning civil servants are either applicable also to judges, or they contain regulations which are similar to those in the laws regarding the judiciary.

91. In **Austria**, the Federal Law on the Service of Public Officials (BDG) contains regulations similar to those found in the Federal Law on the Service of Judges and Prosecutors, discussed above, except as regards the right of return to one's former position. Under the BDG, public officials do not have a right to go back to the same post after the special leave. They continue their employment with the State, but may be nominated to a different post. The period of special leave taken for the purposes of employment with an international organisation is taken into consideration for career advancement up to ten years and also counts towards pension rights.[95]

92. In **Bulgaria**, the provisions of the Civil Servants Act concerning unpaid leave and secondments are equivalent to those contained in the Labour Code which is applicable also to judges on questions not regulated in the Judiciary Act. In **Croatia**, civil servants seconded to international organisations and missions abroad by the Republic of Croatia have similar rights as judges appointed to international courts. They are entitled to a temporary leave of absence, to return to their post after the expiry of the international mandate and to have that period counted for career advancement purposes.

93. In **Denmark** and **Finland**, the Act on Civil Servants and the State Public Service Law, respectively, apply to judges. The regulations for civil servants working at the international level are the same as for judges also in **Germany**, **Liechtenstein**, **Luxembourg**,[96] **Portugal, Slovakia, Switzerland** as well as in **France** although here they are governed by a separate law.[97] In the **Czech Republic**, the rules concerning the suspension and resumption of a judicial mandate following a temporary

[94]. Information regarding the situation of public servants was provided with respect to 39 countries.

[95]. Section 75a § 2 No. 2 c) BDG; Section 4 § 1 of the Law on Pensions read together with Section 75a § 3 No. 2 c) BDG.

[96]. In Luxembourg, the situation of judges is in addition governed by a specific law – *Loi de 7 mars 1980 sur l'organisation judiciaire.*

[97]. *Loi n. 84-16 du 11 janvier 1984 portant dispositions statutaires relatives à la fonction publique de l'Etat.*

allocation to an international organisation apply, mutatis mutandis, to public prosecutors.[98]

94. In other countries the situation of public servants is governed by specific laws which may differ from those regarding the judiciary.

95. In **Andorra**, the Law on public service of 2000 is in fact more favourable than the Law on Judiciary in that under the former act the period of leave during an international assignment is considered as active service with full rights (including seniority advancement).[99] However, similarly to the situation of judges, public servants accrue no pension rights under national law during the period of leave.[100]

96. In **Belgium**, public servants can obtain leave to carry out an international mission for a renewable period of two years.[101] There is no limit to the overall length of the mission. They can return to their former positions if they have not been replaced. If the employee has been replaced, he or she will be reallocated. Periods of service at the international level are taken into account for the advancement of career and salary as well as for pension rights, but only if the work is recognised as being of general interest.[102]

97. In **Greece,** according to law 3528/2007 ("*Code for public civil servants*"), a public servant who accepts a post in the European Union or an international organisation, in which Greece is a member state, may be granted an unpaid leave for up to five years, after the relevant approval of the "*service board*". The leave may be extended for five more years. The time the public servant has served in the relevant post at the international organisation is counted as "*years of actual service*". During the time of the unpaid leave, the public servant is obliged to pay "*the legal deductions for the main and supplementary insurance and welfare funds*"[103]

98. In **Hungary**, the situation of public prosecutors and civil servants differs from that of judges who can interrupt their carrier in order to work at international level and then regain their previous status. According to Act no. CLXIV of 2011 on the Status of the Chief Prosecutor, Prosecutors and Prosecution Employees and the Prosecution Career, public prosecutors may be **assigned to a long term mission** at an international body or EU agency in order to fulfil duties of judicial cooperation. After the expiry of their mandate they shall be reemployed in their original position automatically. In addition, the Chief Prosecutor may authorise fix-term

98. Section 19a(1) and (2) of the Public Prosecutor's Office Act.
99. Article 43.1b of the Law on public service.
100. The situation is different with respect to those civil servants who are seconded to an international organisation and who continue to receive salary from their national employer.
101. *L'arrêté royal du 19 novembre 1998 relatif aux congés et aux absences accordés aux membres du personnel des administrations de l'Etat.*
102. An international mission is not automatically recognised as serving the public interest, except in the region of Wallonia.
103. Article 51 §§ 4-6 of the law.

**unpaid leave** for public prosecutors in order to work at an international body or EU agency in a position which requires prosecution expertise and is compatible with the prosecutor's office. An authorised public prosecutor shall not be entitled to the rights arising from the service relationship during the unpaid leave.[104] As regards civil servants, the law stipulates that if a civil servant enters into any kind of employment in an international body or EU agency, his public service relationship **terminates** on the day preceding the beginning his employment at the international body or EU agency, without any obligation to reemploy him later in the public service.[105]

99. **Italian** law provides both for secondment of public officials and civil servants to international organisations and for the opportunity to take a leave of absence for employment with international bodies. At the end of their mandate they are entitled to recover their previous post and the time spent in international service will be taken into account for their career advancement and pension rights, provided that they continued to pay social security contributions.[106]

100. In **Lithuania**, civil servants and prosecutors can be temporarily transferred to work at an international institution, for a maximum period of 3 years, unless otherwise provided for by an international treaty or EU act. They maintain their current post and the period of work is taken into account for both career advancement and pension rights.[107]

101. In **Monaco**, the regulations governing public servants include provisions on secondment of civil servants to other posts, for a renewable period of up to 5 years, without mentioning specifically international organisations.[108] They will be reintegrated in their former posts as soon as a vacancy arises. In the meantime, they are offered a job which corresponds to their grade.

102. In **Montenegro**, under the Labour Law, the Law on Government Officials and Employees and the Law on Foreign Affairs the employment relationship of the employees who have been sent to work abroad is frozen. They have a right to return to the same or another position corresponding to their level of competence.

103. In **Norway,** the State Civil Service Handbook provides as follows in Chapter 10.8.7.1 (Introduction):

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104. Section 30(1) and (4) and Section 31 of the Act.
105. Section 62 of the Act no. CXCIX of 2011 on the Public Service Officials.
106. See in particular, Article 32 of the Legislative decree no. 165/2001 (General rules on the employment by public administrations); Law 27/07/1962, no. 1114 (concerning the legal and economic position of State employees authorised to take up employment with international bodies); and Article 23bis of Legislative decree no. 165/2001.
107. Article 37¹ (1) and (2) and Article 28 (2.4) of the Law on Prosecutors; Articles 19, 42 and 43 of the Law on the Civil Service.
108. *Loi no. 975 du 12/07/1975 portant statut des fonctionnaires de l'État; Ordonnance no. 6365 du 17/08/1978 fixant les conditions d'application de la loi no. 975.*

> "An application for leave of absence without remuneration shall be decided in each case by the employer or appointment authority, which is to assess whether it is feasible in view of the interests of the service to grant leave. In the assessment weight should be attached inter alia to whether it is possible to hire a replacement or to otherwise organize the services in a responsible manner. This applies also to applications for leave concerning Norwegian and international assistance.
>
> In view of the expansion and strengthening of international cooperation and relations, civil servants should be given an opportunity to work in the administration in other countries or in international institutions and organizations. Through this kind of work national civil servants are able to acquire valuable knowledge and experience, which it will be beneficial to the national civil service to use."

While being on leave for working in an international organisation, civil servants are secured a pensionable period of service for five years with the Norwegian Public Service Pension Fund.[109]

104. In **Romania**, under the Statute of the Public Civil Servant, which applies also to diplomats, the posts of employees are maintained as such in order to work in an international organisation. When suspended from duty, the time spent at the international level is to be considered as seniority time as a civil servant and thus taken into account also for pension purposes.[110]

105. In **Slovakia**, civil servants and diplomats have, like judges, an opportunity to suspend their duties in order to take up a post in international organisations.[111] However, their career advancement and pension rights are not expressly set out in law.

106. In **Slovenia**, Section 152.b of the Civil Servants Act provides for the possibility of consensual agreement on the suspension of rights in case of conclusion of a work contract with another employer. This is reflected in the specific legislation regulating the status of diplomats and professors.

107. In **Spain**, civil servants can interrupt their career in order to perform a service for a period of more than 6 months at an international organisation, when they are elected members of the institutions of the EU or other international organizations, or when they become international civil servants. In these cases, they are granted "*special services*" leave. They have the right to return to the same post under the same conditions, and the time spent away from the national civil service will count for the purposes of civil service seniority, career promotions as well as for pension

[109]. Section 20d of the Norwegian Public Service Pension Fund Act.
[110]. Articles 94(c), 95(c) and 96(4) of the Statute of the Public Civil Servant.
[111]. Section 102(6), (8) and (9) of the State Service Act and Section 25 of the Foreign Service Act.

rights, except for those civil servants who joined the EU civil service and asked for a transfer of their pension rights to the respective EU fund.[112]

108. In **Sweden**, all government employees are entitled to take a leave of absence in order to work temporarily in EU institutions or organs. Although normally such leave can be granted up to 3 years, in exceptional cases the period can be longer.[113] After their international service, the employees are reintegrated in their previous posts. In case of secondment, the terms of employment, including pension rights are generally covered by a special agreement.

109. In **Turkey**, Article 77 of Law no. 657 on Public Servants provides for the possibility for public servants, upon the approval of the relevant Minister, to serve at international institutions. The Minister's approval is subject to renewal every three years for up to twenty-one years. Public servants are considered to be on unpaid leave and their posts are reserved. The time spent working at an international institution is counted for career advancement purposes and pension rights.

110. In **Iceland** and **Malta**, there are no laws which specifically deal with the interruption of career in the civil service to work for an international institution. However, in practice the interested person can request unpaid leave.

111. In **Azerbaijan**, public servants may be allowed to work for an international organisation only for the purposes of additional professional training or education. The period of work will count for career development and pension rights.[114]

112. Among the countries which do not provide for the interruption of judicial career there are those which nevertheless recognise this possibility for (certain) civil servants.

113. In **Armenia**, the secondment of civil servants is regulated by governmental decrees for each particular case. The seconded persons will be considered in a State service and preserving all the benefits, including the retention of their previous position, pension benefits and career advancement. The Law on State Pensions expressly provides that the period of service at international organisations is to be taken into account for pension purposes, but on the condition that mandatory pension contributions are paid to the State budget by an international organisation for the person concerned, as specified under an international treaty.

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[112]. Law 5/2015 on the basic statute of the public employee (Article 87); Law 30/1984 on the measures to reform the civil service (Article 29 § 2); See also Royal Decrees 898/1985 and 365/1995 regulating the procedural aspects of reintegration of civil servants.

[113]. Sections 5(a) and 10(b) of the Decree on Leave of Absence.

[114]. Article 22-1 of the Law on State Service.

114. In **Cyprus**, civil servants are able to apply for unpaid leave for the purpose of working at an international level. The Council of Ministers can grant permission by a special decision.[115] A civil servant can be granted unpaid leave, not on grounds of public interest, up to a maximum of two years, for service on international bodies or foreign Governments. However, General Directors and Heads of Departments/Services whose absence may cause operational problems are not entitled to such leave as a rule. They may be granted such leave only in exceptional circumstances and for a very short period. Furthermore, a civil servant can be granted unpaid leave on grounds of public interest when an international organisation or a foreign Government require technical assistance or experts in a particular field, if the Ministry of Foreign Affairs considers that this will not cause any problems to the particular public body. Once the mandate is completed, civil servants may regain their post in the public service. There is no provision in the domestic law concerning a calculation of pension rights for civil servants who have interrupted their careers to work in an international organisation. The Pension Law provides for transfer of pension rights only in the event of resignation/retirement from the public service for taking up a post in the EU.[116]

115. In **Ireland,** according to the Civil Service Circular 33/91 on "*Special leave without pay to take up an appointment with an institution of the European Communities or other international organisation of which Ireland is a member*", civil servants may request special leave to serve with the EU for a maximum of ten years or with an international organisation of which Ireland is a member for up to of five years. A civil servant on special leave will be allowed to return to the Irish Civil Service on giving adequate notice. Service with an EU institution, but not with another institution, can count towards a qualifying service period for promotion. Judges are not considered to be civil servants and, as noted above, there are no provisions in Irish law allowing them to interrupt their career to take up an international post.

116. Under **Moldavan** law, prosecutors and other public officials may be seconded to international organisations with the preservation of their previous status.[117] Outside secondment, international careers are not expressly considered as relevant professional experience for the advancement of to be considered for the advancement of a prosecutor's career.[118] Diplomats are also expressly allowed to work in international

[115]. Circular No. 1205 referring to Regulation 20 of the Public Service (Granting of Leave) Regulations of 1995-1999 and the Council of Ministers decision of 7 February 2001 (dec. no. 53.115).

[116]. Section 26A and 26B of the Pension Law 1997 as amended by Amending Law 31(I) 2012.

[117]. Article 54(4) of the Law on prosecutor's office no. 3/25.02.2016 and Article 47 of the Law on public service no. 158/04.07.2008.

[118]. Before 2011, a year when international service was recognised for pension rights, Judge Stanislav Pavlovschi, who had resigned from the General Prosecutor's office,

organisations with their previous status guaranteed upon expiry of their mission. However, this guarantee is effective only if the Ministry of Foreign Affairs has vacancies; otherwise, the former diplomat is transferred in the reserve of the Ministry of Foreign Affairs, which *de facto* means no employment with the MFA.[119]

117. Secondment of public servants (including diplomats) to international organisations is provided for also in **Ukraine** by the 2015 Law on Public Service.

118. In the **Netherlands**, civil servants may make use of the extraordinary leave regulations, allowing them to take unpaid leave in order to perform temporary jobs at an international organisation. [120] During this time the civil servant is responsible for the continuation of his pension rights. There is a possibility to continue using the government pension fund, but the civil servant may have to pay both the employer's and the employee's contribution. Civil servants can also be seconded to an international organisation, in which case they maintain their salary and pension rights.

119. In **Russia**, the Federal Law "*On State Civil Service*" provides for a possibility for civil servants to take unpaid leave for a period up to 1 year which may be extended at the employer's discretion. This period counts for career and pension rights. The status of diplomats is in addition governed by the Federal Law "*On Particularities of Federal State Civil Service in the Foreign Ministry of the Russian Federation*". Article 7 provides for a possibility to suspend a service contract if a diplomat is sent to work for an international organization. In this case, the period of "*external*" office counts for career and pension purposes.

120. In **San Marino**, while the law of 22 December 1972 contemplates some form of suspension from service for civil servants (including diplomats and professors, but not judges), there is no mention in this connection of an international post.

## III. UNIVERSITY PROFESSORS

121. Among the 22 countries which have provided information regarding university professors (see below), only a few have specific regulations regarding the possibility for academic staff to interrupt their career and to regain subsequently their former position either by taking some form of leave or through some other arrangement. In several

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obtained an acknowledgment of his work at the European Court of Human Rights for pension purposes only by a judgment of the Chisinau Court of Appeals (30 October 2008).

[119]. Articles 15(2) and 17 of the Law on diplomatic service no. 761/27.12.2001.

[120]. The regulation is entitled "*Extraordinary leave for fulfilling a function at an international legal organisation*."

countries, professors fall under the regulations applicable to civil servants, while in others their employment conditions are regulated by private (labour) law or university regulations which may provide for suspension of duties in general terms or subject to specific arrangements with the employer.

122. In **Greece**, Law 4009/2011 stipulates that university professors who hold positions in international organisations are suspended from the exercise of their duties.[121] The decision is taken by the Minister of Education, Lifelong Learning and Religious Affairs. Having completed their mandate at an international organisation, professors may return to their previous post. The time worked in international organisations is counted towards retirement, provided that the university professor concerned continues to pay the contributions to the relevant pension fund. According to Law 2703/1999, professors may choose to remain insured in the same pension fund as before their suspension. In that case, the service at their new posts will be considered as "*actual and pensionable service*" in the post held before their departure.[122]

123. In **Italy**, university professors and researchers can interrupt their career in order to work at international bodies and, once the mandate is completed, they have right to return to their previous working positions.[123] The time off work is considered for the purposes of career progression[124] as well as for pension rights provided that they continue paying their contributions to the national pension scheme.

124. Under **Romanian** law, professors can suspend their activity in order to work in an international organisation and their posts are maintained. The period of suspension is taken into consideration for seniority and pension calculation.[125]

125. In **Belgium**, academic staff can take up an international post under regulations which allow them to change their status from full time to part time employees.[126] Return to full time status is not guaranteed if the employee has been absent for more than 8 years or has reached the age of 60.[127]

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[121]. Article 24 § 4(c) of Law 4009/2011.
[122]. Article 5 § 11(a) of Law 2703/1999.
[123]. Article 7 of the Law no. 240/210 (Rules on the organisation of universities, academic staff and recruitement). The rules and principles are similar to those contained in Article 23bis of the Legislative decree no. 165/2001 in respect of judges, prosecutors and diplomats.
[124]. Article 13.5 of the Presidential decree no. 382/1980 "*Riordinamento della docenza universitaria*".
[125]. Articles 304(8) and 304(12) of Law no. 1/2011 on National Education.
[126]. *Art. 75 décret flamand du 12 juin 1991 relatif aux universités dans la Communauté flamande; art. 21 § 4 loi du 28 avril 1953 sur l'organisation de l'enseignement universitaire par l'Etat (loi applicable aux universités ressortissant de la Communauté française)*.
[127]. The right to return is explicitly recognised in the Flemish, but not the French, community.

126. In several countries the situation of professors is covered by laws applicable to public servants, which allow interruption of career for international work. For example, in **Luxembourg** the relevant law[128] specifically includes *"les membres du corps enseignant."* In **Spain** and **Portugal**, university professors are also covered by the general legislation on civil servants.[129] In **Turkey**, the Higher Education Staff Law refers to the Law on Civil Servants for all situations which are not specifically governed by the former.

127. In a number of countries professors are not civil servants and their situation is not directly regulated by public law. In **Malta**, it is covered by a collective agreement for academic staff of the University of Malta, which allows such staff to request special leave without pay for a maximum of 8 years during the whole duration of their employment.

128. In **Cyprus**, professors working at the University of Cyprus have the possibility of taking either sabbatical or general leave for the purposes of working outside the University. Having completed their leave, professors may return to their previous post. Private universities or universities partially funded by the state have their own regulations.

129. In **Armenia**, professors can be seconded to international organisations, retaining all the benefits and rights under the Labour Code and the Law on State Pensions.

130. In **Austria,** university professors are employed by civil law labour contracts and do not fall under the regulations applicable to state officials concerning interruption of service.

131. In **Croatia**, university professors may under Article 66 of the Labour Act request a temporary leave of absence from their employer. However, during that time all rights and obligations from the employment are set aside. It appears that a decision on whether or not to count the international mandate for career advancement purposes falls within the employer's discretion. The matter is specifically to be governed by the relevant university regulations under the principle of university autonomy guaranteed by the Scientific Activity and Higher Education Act.

132. In **Montenegro**, it is possible under the Labour Law for professors to freeze their labour status in case they take up international employment.[130] Their pension rights continue to run without interruption as

[128]. *Loi du 27 août 1977 concernant le statut des fonctionnaires entrés au service d'Institutions internationales.*

[129]. Spanish Law 5/2015 on the basic statute of the public employee; Royal Decrees 898/1985 and 365/1995.
Portuguese law no. 35/2014 of 25 June 2014 on public servants.

[130]. Articles 2 § 1 and 76 § 1 of the Labour Law.

long as they pay their monthly contributions. Upon completion of their international mandate they are entitled to return to their previous position.

133. In **Slovenia**, professors have the possibility of concluding an agreement on the suspension of rights in case of conclusion of a work contract with another employer. In **Russia** too, their contract may be suspended subject to the employer's consent. Similarly, in **Slovakia,** professors may be able to secure specific arrangements with their employer. General labour legislation applies also to university staff in **Serbia**.

134. In **Lithuania**, the Law on Science and Studies contains general provisions applicable to scientists and lecturers concerning the possibility to interrupt a career and regain their previous status.

135. In **Ireland** and the **United Kingdom**, the situation of professors wishing to take up an international post is not specifically addressed in the law. **Ukrainian** law also does not contain any provision for career interruption of professors.

## CONCLUSION

136. The following general conclusions can be drawn from the above study of the laws and regulations in the Council of Europe member States. The conclusions take into account the recent developments in the laws of some countries with respect to the recognition of service as an international judge, in particular in Azerbaijan, Bulgaria, Lithuania, Malta and Romania.

137. For **holders of judicial office**, 33 countries provide for the possibility to interrupt one's national career to work at an international court or body. A number of them allow a judge to take a special or unpaid leave (**Andorra, Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, Germany, Greece, Iceland, Luxembourg, Malta, Norway, Poland Portugal, Spain, Sweden, Turkey**), others provide for the suspension of the judicial duties (**Estonia, the Czech Republic, Slovakia, Slovenia, the former Yugoslav Republic of Macedonia, the United Kingdom**) or secondment (**France, Monaco, Romania, Serbia**). In **Hungary**, **Poland**, judges have to relinquish their office, but have the right to regain it upon request without any adverse effect on their career or pension rights. In **Romania**, too, starting in June 2019, judges will be released from their duties when taking up a position at an international organisation, but their position will be reserved at national level.

138. It should be noted that the position of the judges of the superior courts and that of the judges in the ordinary courts varies in several countries. For example, in **Austria**, **the Czech Republic** and **Poland**, the provisions allowing judges to interrupt their career are not applicable to the judges of the Constitutional Court. In **Sweden**, judges of the Supreme

Court and the Supreme Administrative Court cannot benefit from the opportunity of leave, available to other judges, to work at an international organisation.

139. Although a judge's absence is normally authorised for the duration of the international mandate, in some countries it appears to be limited to a maximum of six years, extensions including (**Iceland**, **Greece**, **Liechtenstein**, **Romania** (under current law), **Serbia** and **Switzerland**).

140. Since generally judges do not need to resign from their office, they have the right to be integrated in the national judiciary upon completion of their international mandate, either in their former or equivalent post.

141. The time spent working at an international institution counts, as a rule, for career advancement purposes, although in several countries this is not expressly set out in the law.

142. As regards pension rights, some countries accept the period of international service for the purposes of national pension rights, while others require the payment of contributions during the international mandate or take into account any pension schemes offered by the international organisations.

143. In 14 countries there are no provisions allowing a judge to interrupt his national career to take up an international post. However, in some of them, notably **Armenia**, **Azerbaijan** and **Moldova**, the period of international judicial service will be taken into account for career advancement and/or pension rights.

144. Although this study did not specifically address the question whether work as a judge at the European Court of Human Rights would give rise to the right of access to domestic judicial positions for those persons who held no such position prior to their election to the Strasbourg Court, the information provided in respect of some countries nonetheless touched upon this question as well. The recent **Lithuanian** law of October 2013 is exemplary in that allows a former ECHR judge to be appointed without the usual selection procedure to the courts of all levels, including the Supreme Court. **Irish** law also mentions specifically judges of the ECHR as persons qualified to apply to the superior courts, but their appointment is carried out in accordance with the usual procedure. Similarly, in **Latvia** the law states that a former judge of an international court may apply to the post of a judge in the regional or the Supreme Court, or to the post of the Prosecutor General, but they will not benefit from any special treatment during the selection process. The fact of having served as a judge at the Strasbourg Court gives also no special right of access to

the national judiciary in **Belgium**. In **Greece**, nomination to a high judicial office is reserved only to the national judges.[131]

145. As regards **other public servants**, information was available with respect to 39 countries. In general, countries which recognise international service for judges accept it also for other public servants. In a number of countries the regulations are the same for both of them. Only in **Hungary** are civil servants treated less favourably than judges. When they take up employment at an international institution, their work relationship at the national level is terminated without any obligation to reemploy them later in the public service. By contrast, in **Andorra**, civil servants have more favourable regulations that the judiciary concerning the possibility to interrupt their career as they will be considered on active duty during their international service.

146. Out of countries which do not recognise work at the international level for judges, there are nonetheless those which provide for the possibility to work for international bodies for civil servants (**Armenia, Cyprus, Ireland, Moldova, the Netherlands, Russia, San Marino and Ukraine**).

147. Concerning **university professors,** only a few of the 22 countries for which information was available have specific regulations regarding the possibility for academic staff to interrupt their career and to regain subsequently their former position either by taking some form of leave or suspending their duties (in particular, **Greece**, **Italy**, **Romania**). In other countries, professors fall under the general regulations applicable to civil servants or their situation is regulated by labour law, university regulations or collective agreements, which may provide for suspension of duties in general terms or subject to specific arrangements with the employer.

148. Finally, it could be observed that while in general domestic laws in countries recognising service at the international level refer to "*international courts*" or "*international organisations*", some countries such as **Andorra, Estonia, Lithuania** and **the United Kingdom**, refer expressly to the European Court of Human Rights. Judges of the Court are also mentioned in the law of **Ireland** and **Azerbaijan** in the context of their post-mandate judicial career opportunities and status, respectively. Countries with exemplary laws further include **Belgium**, **Greece**, **Luxembourg**, **Monaco** and **Spain** which all have detailed provisions concerning an interruption of one's judicial career or other public employment to work at international level and the effect of such work on one's career and pension rights.

[131]. See information provided by Greece to the Committee of Ministers on 7 December 2015. http://rm.coe.int/09000016805afb66, page 12.

## ANNEX – CONTRIBUTIONS COUNTRY BY COUNTRY

## QUESTIONS

**Does your country's legislation expressly recognise service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or* pension rights?**

## *Albania*

**Current situation (2018)**

The report in respect of Albania is up to date.
In fact, there is no law regulating the recognition of service in any international court, including the ECHR.

**2013 situation**

To the best of my knowledge, there appears to be no relevant provision in the Albanian legislation in respect of the research request.

## *Andorra*

**Current situation (2018)**

**Does your country's legislation expressly recognise service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

**Interruption de la profession nationale afin de travailler dans une organisation internationale, et possibilité de réincorporation à la fin du mandat**

En ce qui concerne les juges de première instance (dénommées *batlles*) et les magistrats, la loi sur la justice est applicable (*Llei qualificada de la justícia, del 3 de setembre del 1993*). L'article 68.3 quater précise que ceux-ci sont en situation de congé forcé en cas de désignation pour le poste, entre autres, de juge de la Cour Européenne des Droits de l'Homme ou d'une autre organisation judiciaire internationale. Quand cette situation arrive à sa fin, en raison soit de la fin du mandat, soit de sa cessation, les *batlles* et magistrats agissant en cette qualité ont

le droit de rejoindre le poste qu'ils occupaient préalablement à leur désignation dans les 15 jours. Dans ce cas, ils doivent demander la réincorporation avant, lors ou dans les deux mois qui suivent la fin de leurs fonctions. Dans le cas contraire, ils perdent leur poste judiciaire. La réincorporation opère pour le temps qu'il reste du mandat de juge/magistrat (6 ans de mandat complet), tel qu'il l'avait laissé, tout en préservant les droits qu'il avait en ce moment. Pendant la période de congé forcé, ils ne perçoivent aucun salaire de l'administration nationale.

Dans le cas d'autres fonctionnaires publics, la loi sur la fonction publique est applicable (*Llei de la funció pública, del 15 de desembre del 2000*). L'article 42 dispose que les fonctionnaires publics se trouvent en situation de congé, avec réserve de leur poste, quand, entre autres, ils sont désignés comme ambassadeurs de la Principauté d'Andorre, au sein d'organisations internationales ou de gouvernements étrangers pour le déroulement de programmes ou projets d'une durée supérieure à six mois. Dans ce cas, la personne concernée ne perçoit pas son salaire de fonctionnaire, et la réserve de son poste est maintenue jusqu'à l'extinction des motifs pour lesquels le congé avait été octroyé.

Ensuite, l'article 43 expose les circonstances de rentrée au poste, précisant que le fonctionnaire doit faire la sollicitude dans les trois mois à compter de la date de la cessation des fonctions. À compter de la date de la sollicitude, l'intéressé doit se réincorporer au service actif dans les trente jours calendriers. Ne pas demander la réincorporation en les termes exposés se traduit en une renonciation au poste de la part du fonctionnaire. De plus, la durée de la période de congé est prise en compte en tant que service actif à plein effet.

Ainsi, dans le cas des fonctionnaires publics, il arrive que le fonctionnaire soit déplacé au sein d'un autre organisme dans le cadre d'une mise à disposition (dénommée *comissió de serveis*), situation différente de celle du congé. La possibilité figure à l'article 54 de la même loi, précisant que selon les nécessités du service et pour une période maximum de deux ans, l'administration andorrane peut désigner un fonctionnaire, si ce dernier y est d'accord, à un poste autre que celui qu'il occupe. La personne en question perçoit les honoraires correspondants au nouveau poste, sauf s'ils sont plus bas. Le terme de la mise à disposition peut être prolongé d'un an, uniquement une fois et avec le consentement du fonctionnaire. Ainsi, la mise à disposition peut impliquer le déplacement du fonctionnaire au sein d'une autre administration publique, soit nationale ou étrangère, afin de développer ou apprendre des fonctions d'intérêt public, et cette pétition peut être formulée tant par le fonctionnaire que par l'administration.

En outre, il existe une régulation spécifique (mais quasiment identique en son contenu) pour les fonctionnaires dépendants de l'administration de justice, mais qui n'est pas applicable aux juges, procureurs ou membres du Conseil Supérieur de la Justice (organe directeur de la justice). Cette régulation s'appliquerait aux greffiers et autres travailleurs du Tribunal de Justice de la Principauté d'Andorre (*Batllia del Principat d'Andorra*). Concrètement, ce sont les articles 21 et 38 de la loi du service public de l'administration de justice (*Llei 9/2004, del 27 de maig, de la funció pública de l'Administració de Justícia (LFPAJ)*).

**Considération du temps dédié à une organisation internationale aux fins d'avancements professionnels ou de droits à la pension**

D'abord, dans le cas des juges de première instance et magistrats, le temps passé au poste de Juge de la Cour Européenne des Droits de l'Homme ou une autre

position, supposerait que l'intéressée n'est pas en service actif (68.2 quater, loi sur la justice), car cette situation est réservée aux professionnels occupant une place judiciaire, que ce soit en qualité de renforcement ou substitution. Donc, malgré ces derniers se trouvent en situation de congé avec réserve de poste, ils ne génèrent pas de droits d'ancienneté pendant cette période. Cette situation se traduit par une interruption de leur mandat de juge, qu'ils pourront reprendre à la fin du congé dans les mêmes conditions existantes au moment du départ.

Néanmoins, la situation est différente en ce qui concerne les fonctionnaires publics, pour lesquels la durée du congé avec réserve de poste est prise en compte comme service actif à plein effet (article 43.1b de la loi sur le service public). La même situation surgit pour les mises à disposition, car la personne concernée ne cesse pas de travailler pour l'administration, il ne se produit uniquement qu'un changement de destination temporaire.

Quant aux droits de pension, en ce qui concerne la situation de congé forcé (tant celle des juges/magistrats comme celle des fonctionnaires), on devrait s'attendre à la régulation concrète de l'organisme international en question. Dans ce cas, l'intéressé ne perçoit aucun salaire de l'administration andorrane pendant la période du congé, donc il ne cotise pas auprès de la sécurité sociale andorrane (*Caixa Andorrana de Seguretat Social*).

En ce qui concerne les mises à disposition, étant donné que le fonctionnaire est toujours lié à l'administration publique andorrane, il continue à cotiser auprès de la sécurité sociale andorrane selon la proportion établie.

**Extraits de la législation nationale susmentionnée :**

**Llei qualificada de la justícia, del 3 de setembre de 1993**

Article 68 quater

1. Els batlles i els magistrats estan en una de les situacions següents:
a) Servei actiu.
b) Excedència forçosa.
c) Excedència voluntària.
d) Suspensió de funcions.
e) Jubilació.

2. Els batlles i els magistrats estan en situació de servei actiu quan estan en possessió d'una plaça judicial, incloses les de suplència i reforç, o bé quan han estat adscrits a una plaça en règim de substitució.

3. Els batlles i els magistrats estan en situació d'excedència forçosa quan hagin estat nomenats per algun dels càrrecs següents:

a) Magistrat del Tribunal Constitucional.
b) Jutge o magistrat del Tribunal Europeu de Drets Humans o de qualsevol altre organisme judicial internacional.
c) Fiscal General.
d) Raonador del Ciutadà.
e) Cap de la Unitat d'Intel·ligència Financera.
f) Cap de l'Agència Andorrana de Protecció de Dades.

El Consell Superior de la Justícia pot declarar en situació d'excedència forçosa als batlles i magistrats que siguin nomenats per a altres càrrecs relacionats amb l'Administració de Justícia o que puguin contribuir a millorar-la, atenent les necessitats del servei.

Una vegada cessats en el càrrec que va originar l'excedència forçosa, o al final de l'exercici d'aquest càrrec, els batlles o magistrats declarats en aquesta situació tenen dret a reincorporar-se en el termini màxim de quinze dies a la plaça que ocupaven en ser nomenats per al càrrec esmentat, sempre que ho sol·licitin amb anterioritat al seu cessament o a la finalització del càrrec i, en qualsevol cas, en el termini màxim de dos mesos a partir del cessament o la finalització referits. En cas que no sol·licitin la reincorporació en aquest termini, causen baixa en la carrera judicial. La reincorporació es produeix pel temps que resta del seu mandat judicial amb el manteniment dels drets que els corresponien.

El Batlle o el magistrat que, si escau, ocupava la plaça, si no ho feia en règim de substitució, queda adscrit a la Batllia o al Tribunal corresponent, i el president li assigna les funcions que ha de realitzar. Pot optar a una plaça quan es produeixi una vacant en els termes que estableixen els articles 51.1, 54.4 o 58.6, segons escaigui.

Els batlles i els magistrats en situació d'excedència forçosa no perceben retribució com a membres de la carrera judicial.

**Llei de la funció pública, del 15 de desembre de 2000**

Article 42. Excedències

1. Els funcionaris es troben en situació d'excedència quan se separen temporalment del servei actiu per alguna de les circumstàncies que s'estableixen en el present article.

2. Els funcionaris han de sol·licitar l'excedència amb reserva de plaça:

a) Quan són nomenats membres del Govern, cònsol major i cònsol menor o per als càrrecs de secretari general de Govern, secretaris d'Estat, cap de Gabinet del Cap de Govern, interventor general, director d'un organisme autònom o entitat parapública, ambaixadors del Principat d'Andorra, secretaris generals dels comuns o quan el Govern els designi davant organismes internacionals o governs estrangers per al desenvolupament de programes o projectes de duració superior a sis mesos.

b) Quan accedeixen a la condició de conseller general o hagin estat escollits directament per a càrrecs el nomenament dels quals correspon, per atribució constitucional, al Consell General.

c) Quan són designats membres del Consell Superior de la Justícia o magistrats del Tribunal Constitucional.

d) Quan són nomenats personal de relació especial en l'Administració general, en l'Administració de justícia o en els comuns.

e) Quan són nomenats per ocupar un càrrec de naturalesa política.

Per a tots els supòsits anteriors, mentre dura l'excedència el funcionari rep la retribució assignada pel càrrec, i deixa de percebre la que li corresponia per la plaça que ocupava com a funcionari; així mateix, la reserva de la plaça es manté fins que cessi la causa objecte de la concessió de l'excedència. La plaça reservada pot ser coberta per un funcionari, o un agent de l'Administració de caràcter indefinit o eventual, pel temps que duri l'excedència.

3. Els funcionaris tenen dret a excedència sense reserva de plaça quan, de forma voluntària, ho sol·licitin:

a) Per interès particular:

Aquesta excedència pot sol·licitar-se quan s'hagin prestat almenys cinc anys consecutius de serveis en l'Administració general des de l'ingrés, o bé des del reingrés des d'una altra excedència de la mateixa naturalesa; la concessió de l'excedència per interès particular està supeditada a l'interès públic, després de l'informe del director del departament.

b) Per plans de reestructuració:

Aquesta excedència pot sol·licitar-se quan, per causa del canvi de titularitat d'un servei, una unitat o un programa, bé a una altra entitat pública bé a una entitat privada, el funcionari opti o no per incorporar-se a aquesta entitat.

La duració màxima de l'excedència sense reserva de plaça és de tres anys i el reingrés al servei actiu pot sol·licitar-se abans que s'acabi el període atorgat.

Si en el moment de sol·licitar el reingrés no hi ha cap plaça vacant o de nova creació d'un lloc de treball del mateix nivell de classificació que el que va deixar en el moment de l'excedència, i no vol quedar en situació de reserva, el funcionari pot optar per:

a) Presentar-se, per promoció interna, a una plaça vacant o de nova creació d'un lloc de treball de nivell de classificació superior al lloc de treball que va deixar en el moment de l'excedència.

b) Sol·licitar el reingrés en una plaça vacant o de nova creació d'un lloc de treball de nivell de classificació inferior al lloc de treball que va deixar en el moment de l'excedència. En aquest supòsit, el funcionari percep les retribucions corresponents al lloc de treball de classificació inferior.

Per als casos de l'excedència sense reserva de plaça, durant el període atorgat el funcionari no té dret a percebre cap retribució com a funcionari.

4. Els efectes de l'excedència es computen a partir de les dates següents:

a) Per als supòsits d'excedència amb reserva de plaça, des de la data en què el funcionari prengui possessió del càrrec de què es tracti.

b) Per a l'excedència sense reserva de plaça, des de la data que indiqui la resolució que atorga l'excedència.

5. La declaració de la situació d'excedència i les resolucions sobre el reingrés dels funcionaris en situació d'excedència són aprovades per la Secretaria d'Estat de Funció Pública, després de l'informe del director del departament.

Article 43. Reingrés al servei actiu dels funcionaris en excedència

1. Reingrés de funcionaris en situació d'excedència amb reserva de plaça:

a) En el termini de tres mesos, a partir de la data de cessament en el càrrec que va motivar l'excedència amb reserva de plaça, el funcionari ha de sol·licitar el reingrés al servei actiu. Dins els trenta dies naturals següents a la sol·licitud de reingrés, el funcionari pot reincorporar-se al servei actiu. Si la plaça reservada ha estat ocupada per un funcionari o agent de l'Administració de caràcter indefinit o eventual, aquest ha de cessar per a la reincorporació del funcionari titular de la plaça.

Transcorreguts els tres mesos sense que s'hagi produït la sol·licitud de reincorporació, o els trenta dies posteriors sense que s'hagi fet efectiva aquesta reincorporació, es considera que la persona interessada renuncia a la condició de funcionari.

b) El temps d'excedència amb reserva de plaça es computa com de servei actiu a tots els efectes.

2. Reingrés de funcionaris en situació d'excedència sense reserva de plaça:

a) El funcionari en situació d'excedència sense reserva de plaça ha de sol·licitar el reingrés abans de l'acabament del temps de l'excedència. Si no ho fa, o si al cap de trenta dies naturals des de la data prevista del reingrés al servei actiu no s'incorpora a la plaça que li ha estat assignada, es considera que la persona interessada renuncia a la seva condició de funcionari.

b) El temps d'excedència per interès particular no es computa a cap efecte.

c) El temps d'excedència per plans de reestructuració es computa com de servei actiu a tots els efectes.

[...]

Article 54. Comissió de serveis

1. Per necessitats del servei i per un termini no superior a dos anys, l'Administració general pot adscriure un funcionari, sempre que hi estigui d'acord, a una plaça diferent d'aquella de què sigui titular. Quan es produeix aquesta adscripció la persona interessada percep les retribucions del lloc de treball a què correspon la plaça que passa a ocupar, excepte si aquest lloc de treball té assignada una retribució inferior.

Si el termini màxim de la comissió de serveis s'ha de prorrogar, aquesta pròrroga pot fer-se efectiva una única vegada, per un període no superior a un any i amb l'acceptació del funcionari afectat.

2. Es pot autoritzar com a comissió de serveis, amb el consentiment previ de les persones interessades, l'adscripció de funcionaris, per un temps determinat, en altres administracions públiques, tant nacionals com estrangeres, per al desenvolupament o l'aprenentatge de funcions d'interès públic.

L'adscripció temporal pot ser sol·licitada o bé pel funcionari interessat o bé per l'administració corresponent, i les condicions de l'adscripció s'han d'establir en la mateixa resolució que l'autoritzi.

3. Les comissions de serveis són resoltes i autoritzades, després de l'informe del director del departament, per la Secretaria d'Estat de Funció Pública.

**Llei 9/2004, del 27 de maig, de la funció pública de l'Administració de Justícia (LFPAJ)**

Article 21

Excedència amb reserva de plaça

1. Els funcionaris de l'Administració de Justícia tenen dret a demanar l'excedència amb reserva de plaça en les mateixes circumstàncies que la Llei de la funció pública estableix per als de l'Administració general, i amb els mateixos efectes.

2. Els funcionaris en situació d'excedència amb reserva de plaça han de sol·licitar el reingrés al servei actiu en el termini improrrogable de tres mesos a comptar de la data de cessament en el càrrec que va motivar aquella situació, i poden reincorporar-se al servei actiu dins dels trenta dies naturals següents a la sol·licitud de reingrés. La manca de sol·licitud de reincorporació dins dels tres mesos posteriors al cessament, o la manca de reincorporació dins dels trenta dies posteriors a la sol·licitud, es consideren, a tots els efectes, com a renúncia a la condició de funcionari de l'Administració de Justícia.

3. Les peticions d'excedència amb reserva de plaça i de reingrés al servei s'adrecen a la Secretaria General del Consell Superior de la Justícia. La declaració de la situació d'excedència i el reingrés al servei actiu són aprovats per acord del Consell Superior de la Justícia.

[...]

Article 38

Comissió de serveis

1. Per necessitats del servei i per un termini no superior a dos anys, l'Administració de Justícia pot adscriure un funcionari, sempre que hi estigui d'acord, a una plaça diferent d'aquella de la qual és titular. Quan es produeix aquesta adscripció el funcionari interessat percep les retribucions del lloc de treball a què correspon la plaça que passa a ocupar, excepte si aquest lloc de treball té assignada una retribució inferior.

2. Si la comissió de serveis s'ha de prorrogar, aquesta pròrroga pot fer-se efectiva una única vegada, per un termini no superior a un any i amb l'acceptació del funcionari afectat.

3. Es pot autoritzar com a comissió de serveis, amb el consentiment previ de les persones interessades, l'adscripció de funcionaris, per un temps determinat, en altres administracions públiques, tant nacionals com estrangeres, per al desenvolupament o l'aprenentatge de funcions d'interès públic.

4. L'adscripció temporal pot sol·licitar-la o bé el funcionari interessat o bé l'administració corresponent, i les condicions de l'adscripció s'han d'establir en la mateixa resolució que l'autoritzi.

5. Les comissions de serveis són resoltes i autoritzades pel Consell Superior de la Justícia, amb informe previ del president de la Batllia o del Tribunal afectat, o del fiscal general, del secretari general del Consell Superior, quan sigui el cas.

**2013 situation**

La Loi sur le Tribunal constitutionnel de 1993 prévoit que les quatre membres du Tribunal sont nommés parmi les personnes ayant plus de 25 ans avec une expérience et des connaissances reconnues dans le monde juridique ou institutionnel (article 10). En théorie un ancien juge de la CEDH pourrait être nommé membre du TC.

Quant à la loi sur la justice, aussi de 1993, son article 31 établit que les "*batlles*" (juges de première instance) et les magistrats sont nommés parmi les personnes de nationalité andorrane (pour les "*batlles*") ou de préférence de nationalité andorrane (pour les magistrats), titulaires d'un diplôme de droit et ayant des aptitudes techniques et des mérites suffisants pour l'exercice de la fonction juridictionnelle. Ils accèdent à la fonction juridictionnelle à travers une procédure de concours public.
Le Conseil supérieur de la justice est l'organe qui organise les concours de recrutement. Pour les différentes postes à pourvoir (les postes supérieurs par exemple), il peut ouvrir les concours à des personnes remplissant les conditions prévues à l'article 31 mais qui ne sont pas déjà des "*batlles*" ou magistrats (article 33).

La loi sur la justice ne contient pas de dispositions spécifiques sur la possibilité de mise en disponibilité des "*batlles*" et magistrats.

La loi sur la fonction publique de 2000 (article 42) prévoit quant à elle un système de mise en disponibilité pour des fonctionnaires ayant été nommés membres du gouvernement, ambassadeurs, magistrats du Tribunal constitutionnel, ou lorsque le Gouvernement les nomme auprès des organismes internationaux ou des gouvernements étrangers pour la réalisation des programmes ou projets d'une durée supérieure à 6 mois. Dans ce cas, les fonctionnaires mis en disponibilité ont le droit de réintégrer leur poste une fois qu'ils ont fini le mandat ou la mission pour laquelle ils ont quitté temporairement leur poste de fonctionnaire (dans un délai de trois mois après la fin du mandat, article 43 de la loi). Le temps de la période de mise en disponibilité est pris en compte en tant que service actif à tous les effets.
Se pose la question de savoir si le mandat de juge à la CEDH tombe sous le coup des situations prévues à l'article 42 de la loi sur la fonction publique. (Le Gouvernement ne nomme pas un juge, il propose une liste de trois candidats et l'Assemblée parlementaire du Conseil en élit un).

# *Armenia*

**Does your country's legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

There is no mainstream legal framework in this respect. The existing regulations pertaining to different public officials is summarised below.

- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

As regards career advancement in the light of international service, the national law is explicit only with respect to judges, where international service is deemed as work experience for advancement purposes; whereas in determination of pension rights, the legal approach is not always the same for all public officials.

**I. Domestic law**

*A. Judges*

Though the national legislation does not provide any special legal framework as to the suspension of a career for the purposes of pursuing judicial mandate at the European Court of Human Rights ("the ECtHR") or any other international jurisdiction (please note that since Armenia is not part of the EU, there is no judge for Armenia at the European Court of Justice), it is clear from the Constitutional Law on the Judicial Code ("the Code") that *another paid work is incompatible* with the mandate of a national judge. Therefore, most probably if a judge gets a position at an international court, he or she will have to resign. No regulation is either provided for regaining the previously held position at the national courts, once the international mandate is completed.

However, the Code maintains that a judge, who has worked at an international court with the participation of Armenia, will have the right to be included in the list of judges for the later appointments/advancements and stipulates that the period of service at international jurisdiction will be included in the seniority of the judge in Armenia. Finally, both the Code and the law concerning social guarantees of State officials reiterate, that at least one term of a judicial service at an international court with the participation of Armenia, entitles the international judge to a State pension after reaching the age of 65, which assumes that the work experience at an international court is taken into consideration for the determination of pension benefits. However, the issue of inclusion of the international judicial service in the work experience of the judge for the provision of premiums to the main salary of a judge is still pending before the administrative court involving a former ECtHR judge.

*B. Diplomats*

According to the RA Law on Diplomatic Service, a diplomat may terminate his/her diplomatic service for a position at international level, by the consent of the Minister of Foreign Affairs. Moreover, when a diplomatic service is terminated for serving a position at an international organisation, a diplomat will be placed in the reserve list for a year, after the completion of his/her international service. It must be noted, that the said year in the reserve list will be included in the work experience of the diplomat, during which he or she will be allowed to participate in internal competitions.

he national law concerning social guarantees of State officials maintains that the heads of diplomatic missions, if serving at the said position at least 10 years, are entitled to a State pension after reaching the age of 65. As regards the pension rights of other diplomats, no separate regulation is provided. Presumably the applicable regulation will be the same as specified under the Law on State Pensions provided below.

*C. Other public officials, professors*

The domestic law does not provide any specific regulation with respect to international service of other public officials. Neither does it contain any provision as to their career advancement in the light of the completed international service.

Nevertheless, if a public official is seconded for a state duty, including to the ECtHR, than he/she will still be considered in a State service preserving all the benefits related to the civil servants, including the retention of the previous position, pension benefits and career advancements. The secondment of civil servants is regulated by governmental decrees for each particular case.

It must also be noted, that as a general rule the RA Law on State Pensions stipulates that "[*t*]*he period of service (carrying out official duties) at international organizations is included in the work experience for pension allocation purposes as long as mandatory pension contributions are paid to the State budget by an international organisation for the person concerned, as specified under an international treaty."*

Please note that, professors and academic scholars do not fall under the notion of public officials and as such the employment relationship is regulated in private domain. Nevertheless, the referred regulations provided by the Law on State Pensions will also be applicable to them. Furthermore, they can be seconded to an international organization by their employer, retaining all the benefits related to the employment relations as provided by the Labour Code.

**II. International Law**

*Officials and employees of the Eurasian Economic Union*

The Bodies of the Union function under the Treaty on the Eurasian Economic Union ("the Union"). The Rules on Social Guarantees, Privileges and Immunities ("the Rules") of officials and employees of the Union are enclosed to the aforesaid Treaty.

Mandatory pension contributions of members of the Board of the Commission, judges of the Court of the Union ("the Court"), officials and employees shall be made by the Bodies of the Union, without any deductions from their salaries, from the Budget of the Union to the pension funds of the Member States of their nationality, in accordance with the procedure and in the amounts determined by the legislation of the respective Member State. Pensions to members of the Board of the Commission, judges of the Court, officials and employees shall be paid by the Member State of their nationality. Furthermore, earnings received by the aforementioned officials in the course of their service, will be taken into account when determining the amounts of their pensions in accordance with domestic legislation of their nationality. As regards the social security benefits, they are paid by the Bodies of the Union, and the procedure is governed by the law of the hosting State.

The Rules maintain that the period of service at the Court will be included in the seniority of the judge in Armenia and as such will be taken into consideration for the determination of the pension at the national level. A similar regulation is provided for a member of the Board of the Commission.

Upon termination of his/her powers, a judge of the Court is entitled to guarantees and allowances provided by national law for a Chairman of the Cassation Court. These guarantees and allowances are determined in accordance with the procedure prescribed by the domestic law.
The period of employment of officials and employees of the Court and Commission of the Union is included in the duration of their public (civil) service in Armenia for the purposes of determining social guarantees for the period of public (civil) service.

## *Austria*

**Current situation (2018)**

**Does your country's legislation expressly recognise service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of**

***a. allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

YES/NO

The Federal Law on the Service of Public Officials ('*Bundesgesetz über das Dienstrecht der Beamten'* - BDG) applies to public officials (like diplomats), but does not include University-Professors appointed after 30 September 2001 (Section 162 BDG). These University-Professors are no public officials, but employed by the University on the basis of a civil law labour contract. For these professors, no interruption of service is allowed. By contrast, judges and prosecutors are considered as state officials, and similar regulations as in the BDG can be found in the Federal Law on the Service of Judges and Prosecutors ('*Richter- und Staatsanwaltschaftsdienstgesetz'* - RStDG)
Pursuant to Section 75 § 2 No. 1 BDG / Section 75 § 2 No. 1 RStDG a public official who has been appointed to an international organisation on proposition or consent of the Republic of Austria is granted special leave under shortfall of benefits ('*Karenzurlaub*'). According to Section 75 § 3 BDG/RStDG the leave is limited to ten years or the age of 64. Previous special leave of this kind, except for the purposes of parenting, is counted into the 10 years.
According to Section 75b § 2 BDG e contrario, a person returning from special leave granted for other purposes than parenting has no right to obtain the same position which he had before he went on leave. Section 75b § 5 BDG provides that a public official who cannot be placed in the same position as the one he had before, has to be treated like someone not responsible for his employment changes in terms of salary and other benefits under service law. No similar regulations exist for judges and prosecutors under the RStDG the general principle being that a judge can be only be employed at a court he was appointed (Section 77 § 1 RStDG). Exceptions appear to be possible only for the purposes of temporary replacement.
For University professors, who are employed by civil law labour contract (see above), no similar regulations apply.
For judges of the Constitutional Court no similar regulations apply.

***b. counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights ?***

YES/**NO**

According to Section 75a § 2 No. 2 c) BDG/RStDG the time on special leave for the purposes of employment with an international organisation is taken into consideration for up to 10 years in terms of career advancement.
According to Section 4 § 1 of the Law on Pensions ('*Allgemeines Pensionsgesetz*') in conjunction with Section 75a § 3 BDG/RStDG the period of special leave is, upon application, considered as period of service entailing pension rights.
For University professors, who are employed by civil law labour contract, no similar regulations apply.
For judges of the Constitutional Court no similar regulations apply.

**2013 situation**

**Does your country's legislation expressly recognise service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of**

***a. allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

YES/NO
The Federal Law on the Service of Public Officials ('*Bundesgesetz über das Dienstrecht der Beamten'* - BDG) applies to public officials including University-Professors (Section 169 BDG e contrario). For judges and prosecutors nearly identical regulations can be found in the Federal Law on the Service of Judges and Prosecutors ('*Richter- und Staatsanwaltschaftsdienstgesetz'* - RStDG)
Pursuant to Section 75 § 2 No. 2 BDG / Section 75 § 2 No. 1 RStDG a public official who has been appointed to an international organisation on proposition or consent of the Republic of Austria is granted special leave under shortfall of benefits ('*Karenzurlaub*'). According to Section 75 § 3 BDG/RStDG the leave is limited to ten years or the age of 64. Previous special leave of this kind, except for the purposes of parenting, is counted into the 10 years.
According to Section 75b § 2 BDG e contrario, a person returning from special leave granted for other purposes than parenting has no right to obtain the same position which he had before he went on leave. Section 75b § 5 BDG provides that a public official who cannot be placed in the same position as the one he had before, has to be treated like someone not responsible for his employment changes in terms of salary and other benefits under service law. No similar regulations exist for judges and prosecutors under the RStDG the general principle being that a judge can be only be employed at a court he was appointed (Section 77 § 1 RStDG). Exceptions appear to be possible only for the purposes of temporary replacement.

***b. counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights ?***

YES/**NO**
According to Section 75a § 2 No. 2 c) BDG/RStDG the time on special leave for the purposes of employment with an international organisation is taken into consideration for up to 10 years in terms of career advancement.
According to Section 6 § 2b Section 4 § 1 of the Law on Pensions ('*Allgemeines Pensionsgesetz*') in conjunction with Section 75a § 3 BDG/RStDG the period of special leave is, upon application, considered as period of service entailing pension rights.

# *Azerbaijan*

**Current situation (2018)**

The information provided in 2013 is still valid. However, there was one amendment to the Law on Constitutional Court on 13 February 2018. According to this amendment, the status of the judge elected to the European Court of Human Rights from the Republic of Azerbaijan shall be considered equal to the status of the judge of the Constitutional Court of the Republic of Azerbaijan and the guarantees stipulated in the law in respect of the judges of the Constitutional Court (excluding some guarantees) shall be applicable also to the judge elected to the European Court of Human Rights (Article 73.9 of the Law on Constitutional Court). One of the applicable guarantees, which is relevant for the present research is that the pension of those judges shall be realized in accordance with the Law on labour pensions (Article 73.7 of the Law on Constitutional Court). Thus, the time spent by the judge at the European Court of Human Rights would be counted for pension rights.

**2013 situation**

**Does Azerbaijan legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of: -**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

***Intro***

Generally, issues related to short or long-term temporary interruption of employment (for various reasons), including regaining the previous position and calculating the length of service, which is taken into account for career advancement and pensions, are regulated by the Labour Code.

However, provisions of the Labour Code apply to public employees only if the *Law on State Service* does not specifically regulate a certain issue (Article 5 of the Code). Besides, many areas of public service are regulated by special legislation, such as: *Law on the Service in Agencies of Justice, Law on Diplomatic Service, Law on Service in Prosecution Agencies, and Law on Notaries.*

The Labour Code is not applicable to judges (Article 6 of the Code). Status of judges and matters related to their service are regulated by the *Law on Courts and Judges*; status and service of judges of the Constitutional Court are regulated by the *Law on Constitutional Court.*

Therefore this research discusses judges and public servants separately.

Service in the European Court of Human Rights or any other international jurisdiction or body by public officials (diplomats, other public servants, judges) is imaginable in two ways:

- A person individually applies and is admitted to a position in the international jurisdiction or body;
- Candidature of a person is supported by a State agency and he/she is admitted to a seconded position.

The research distinguishes these two situations

### *Judges*

The *Law on Constitutional Court* and the *Law on Courts and Judges* are not explicit with regard to a situation where a judge individually applies to a position at an international jurisdiction or body. There are no provisions in these laws allowing judges to (independently) interrupt their service for some period and then regain the status of a judge.

There are no explicit norms in the *Law on Courts and Judges* concerning a secondment of a judge to international institutions either.

This law regulates only secondment to other national bodies. By a decision of the Judicial Legal Council, a judge who consents to this may be seconded to one of the listed State bodies for up to 2 years (this period can be prolonged for another 2 years upon consent of a judge). In this case the period spent in other state body shall be considered as part of a period of service of a judge; he/she keeps all material and social guaranties and privileges stemming from the judge's status (Article 97-1 of the Law on Courts and Judges).

The *Law on Constitutional Court* is silent about the secondment of a judge of this court.

According to Article 126 of the Constitution, a judge may not hold any other selected or appointed position; may not engage in any paid activity except for scientific, pedagogical and creative activity.[132] But this, undoubtedly, does not mean that the judges are precluded from cooperation with international jurisdictions or bodies for the purposes of, for example, sharing professional experience, learning good practices and professional development generally.[133]

Azerbaijani legislation provides for responsibility of concrete State bodies to deal with the issue of professional development of judges.[134] It can be assumed that even if judges are not entitled to formally accept positions in international jurisdiction or body and then regain their status of a judge, they may, nevertheless, in strict coordination with the State bodies responsible for issues related to professional development of judges, engage in short or long-term "study visits" or "traineeships".

### *Public servants*

The Labour Code does not provide for the *right* of public servants (or employees in general) to interrupt their service in order to temporarily work at an international jurisdiction or body. Public servants may engage in such work only if this is authorized by the relevant national State body.

Analysis of the Law on State Service (Article 22-1 of the Law) shows that public servants may be admitted to work at an international jurisdiction or body only within

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[132]. See also Article 104 of the Law on Courts and Judges; Article 11 of the Law on Constitutional Court; and Article 21 of the Ethical Behaviour Code of Judges.

[133]. Article 91 of the Law on Courts and Judges stipulates courts' authority to build relationship with foreign courts and international bodies.

[134]. The Ministry of Justice shall deal with issue of professional development of judges (except for judges of the Supreme Court), strictly complying with independence of judges as provided by legislation. The same Ministry also shall take measures to ensure labour and social rights of judges; and measures for compliance with implementation and labour discipline in courts (Article 86 of the Law on Courts and Judges; and the presidential Decree on implementation of this Law).

Judicial Legal Council is also vested with responsibility to take measures for professional development of judges and for training of candidates for judge's position (Article 11 of the Law on Judicial Legal Council).

the so-called "*additional professional training (or education)*" scheme.[135] Head of the State body, where the public servant works, determines his/her additional professional training (Article 22-1.4 of the Law).
Time period spent for additional professional training shall be included in the service term of the public servant (Article 22-1.2 of the Law on State Service). This also means that this time period is counted for the purposes of career development and pension.[136]

A public servant may be sent to foreign countries for additional professional training (Article 22-1.6 of the Law on State Service). According to the *Rules on Types, Forms, Duration and Financial Coverage of Additional Professional Training of a State Servant* this shall be done in accordance with rules (requirements) of a foreign or international body, where a public servant is sent for training, taking into account requirements of Azerbaijani legislation.[137]
As a rule, the State shall not pay costs of a part of training exceeding the time-limits set for different types of trainings (15 days for "*internship*"; 4 months for "*qualification-raising*"; and end of education for "*re-education*"). If qualification-raising training or re-education is funded by the State budget, a competition shall be organized. A public servant, who wishes to have qualification-raising training or re-education abroad using other financial resources not prohibited by law, shall be given unpaid leave upon consent of the head of a State body.[138]
Generally, during authorised leaves employees retain their place of work, position and in certain cases their average salary; and periods of authorized leaves are counted in record of employment (length of service).[139]

## *Belgium*

**Current situation (2018)**

**I. Les magistrats**

A. Les magistrats de l'ordre judiciaire

***Possibility to interrupt the career in order to work at international level***

Les magistrats de l'ordre judiciaire peuvent être autorisés (par le Roi, sur l'avis du chef de corps ou du magistrat dont ils dépendent hiérarchiquement), à accomplir des missions d'intérêt général auprès d'institutions supranationales ou internationales.

[135]. The Labour Code refers to "*secondment*". According to the Labour Code (Article 79), the employer may not terminate employment contract with an employee during secondment (mission trip). Position and average wage of an employee, who is seconded to foreign country, shall be maintained (Article 179 of the Labour Code). However, here the term "*secondment*" means a situation where an employer sends an employee with special assignment related to his/her employment to a place other than a usual workplace (including assignment abroad).
See also Article 30.4 of the Law on State Service.
[136]. Pension of public servants is regulated by Article 23 of the Law on State Service and by the Law on Labour Pensions.
[137]. See § 14 of the Rules on Types, Forms, Duration and Financial Coverage of Additional Professional Training of a State Servant.
[138]. See the Rules, cited above, §§ 15-17.
[139]. See Article 111 of the Labour Code.

L'autorisation vaut pour un an. À la demande de l'organisation et du magistrat, ce terme peut être prorogé chaque fois pour des périodes d'un an au plus.
Cf. art. 308 du Code Judiciaire (CJ)[140].

***Possibility to regain the previous status once the mandate is completed***

Le magistrat n'est qu'en congé. À la fin de sa mission, il reprend l'exercice effectif de ses fonctions judiciaires.

***Taking into account the time spent in the international jurisdictions or bodies for career advancement purposes***

Les magistrats autorisés à exercer une mission conservent leur place sur la liste de rang et sont censés avoir exercé la fonction à laquelle ils étaient nommés. Ils conservent le traitement lié à cette fonction ainsi que les augmentations et avantages y afférents pour autant qu'aucun traitement ne soit attaché à la mission. Si la mission est une mission à temps partiel à laquelle un traitement est attaché, ils conservent au prorata le traitement lié à leur fonction ainsi que les augmentations et les avantages y afférents.
Cf. art. 308 CJ.

***Pension rights***

Lorsque le magistrat a cessé d'exercer ses fonctions pour remplir celles prévues à l'article 308 CJ et qu'il a été, après l'accomplissement de sa mission, soit réintégré, soit nommé à nouveau à la fonction qu'il avait cessé d'exercer ou à une autre fonction judiciaire égale ou supérieure, le montant de sa pension est calculé comme s'il n'avait jamais cessé d'exercer les dites fonctions. Cf. art 395 CJ.

B. Les magistrats du Conseil d'État

***Possibility to interrupt the career in order to work at international level***

À l'exception des titulaires de mandat de chef de corps (titulaires du mandat de premier président, de président, d'auditeur général et d'auditeur général adjoint[141]), les titulaires d'une fonction du Conseil d'État peuvent être autorisés (par le Roi, moyennant l'avis du premier président lorsqu'il s'agit de membres du Conseil d'État, du bureau de coordination ou du greffe, ou l'avis de l'auditeur général lorsqu'il s'agit de membres de l'auditorat), à accomplir des missions ou à exercer des fonctions auprès d'institutions supranationales ou internationales. Au cas où les tâches qui leur sont ainsi dévolues ne leur permettent plus de s'acquitter de leurs fonctions au Conseil d'État, ils sont placés en position « hors cadre ». La durée totale de la mise hors cadre ne peut excéder les périodes d'exercice effectif de fonctions au Conseil d'État.
Cf. art. 112 des lois sur le Conseil d'État, coordonnées le 12 janvier 1973[142].

[140]. http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?DETAIL=1967101002%2FF&caller=list&row_id=1&numero=4&rech=13&cn=1967101002&table_name=LOI&nm=1967101053&la=F&dt=CODE+JUDICIAIRE&language=fr&fr=f&choix1=ET&choix2=ET&fromtab=loi_all&trier=promulgation&chercher=t&sql=dt+contains++%27CODE%27%26+%27JUDICIAIRE%27and+actif+%3D+%27Y%27&tri=dd+AS+RANK+&imgcn.x=35&imgcn.y=9#LNK0118

[141]. Voy. l'article 74/1 des lois sur le Conseil d'Etat, coordonnées le 12 janvier 1973.

[142]. http://www.ejustice.just.fgov.be/wet/wet.htm

***Possibility to regain the previous status once the mandate is completed***

Les intéressés mis hors cadre conservent le droit de réintégrer leurs fonctions antérieures au Conseil d'État. Si, à l'expiration de la durée de la mise hors cadre, les intéressés n'ont pas réintégré leurs fonctions au Conseil d'État, ils sont réputés démissionnaires.
Cf. art. 112 lois coordonnées sur le Conseil d'État

***Taking into account the time spent in the international jurisdictions or bodies for career advancement purposes***

Dans la position hors cadre, les intéressés cessent de percevoir le traitement attaché à leurs fonctions au Conseil d'État et de participer à l'avancement (art. 112 al. 4 lois coordonnées sur le Conseil d'État). Par dérogation, les titulaires d'une fonction au Conseil d'État, détachés auprès d'institutions supranationales ou internationales pour exercer des fonctions non rémunérées ne leur permettant plus de s'acquitter de leurs fonctions au Conseil d'État, continuent à percevoir le traitement attaché à ces fonctions (art. 112 al. 7 lois coordonnées sur le Conseil d'État). En ce qui concerne ces derniers, quatre membres au plus peuvent être détachés, dont maximum trois du même rôle linguistique (art. 111*bis* lois coordonnées sur le Conseil d'État).
Toutefois, pour les nominations et les désignations dans une fonction de « mandat » (chef de corps, président de chambre, etc), c'est la durée de la période depuis la première nomination au Conseil d'État qui est prise en compte (cf. art. 74/2 lois coordonnées sur le Conseil d'État), pas la durée de la période pendant laquelle les fonctions (de conseiller, d'auditeur etc) ont été effectivement exercées au sein du Conseil d'État. Il semble donc que la période de la mission auprès d'une institution supranationale ou internationale est prise en compte.

***Pension rights***

Les personnes qui ont été autorisées à accomplir une mission auprès d'une institution supranationale ou internationale sont autorisées à compter la durée de leur mission dans le calcul de leur pension, pour autant qu'elle n'ait pas déjà été prise en considération pour ce calcul. La pension ainsi calculée est diminuée du montant net de la pension octroyée à l'intéressé, du chef de la mission, par l'organisme supranational ou international auprès duquel il l'a accomplie. Cette réduction ne s'applique qu'à l'accroissement de pension résultant de la prise en charge, par le Trésor, de la durée de cette mission.
Cf. art. 112 lois coordonnées sur le Conseil d'État

## II. Les fonctionnaires fédéraux[143]

***Possibility to interrupt the career in order to work at international level***

L'*arrêté royal du 19 novembre 1998 relatif aux congés et aux absences accordés aux membres du personnel des administrations de l'État* dispose que l'agent peut obtenir un congé pour l'exercice de fonctions en exécution d'une mission internationale confiée par un organisme international (art. 99, al. 2, 1°, c)), avec l'accord du ministre dont il relève (art. 102 § 1).

[143]. La description des règles applicables est limitée à celles qui concernent les membres du personnel de l'autorité fédérale. Des règles semblables existent pour les membres du personnel des différentes régions et communautés (fonctionnaires flamands et fonctionnaires de la Région wallonne, de la Communauté française, de la Région de Bruxelles-Capitale et de la Communauté germanophone).

L'agent obtient les dispenses de service nécessaires à l'exécution d'une telle mission. Ces dispenses sont accordées au maximum pour deux ans et sont renouvelables pour des périodes de deux ans maximum chacune (art. 100). Il n'y a pas de limite à la durée totale de la mission (comparer, a contrario, art. 101). Toutefois, toute mission perd de plein droit son caractère d'intérêt général (voir ci-après) à partir du moment où l'agent a atteint une ancienneté de service suffisante pour pouvoir prétendre à l'obtention d'une pension à charge de l'organisme international au profit duquel la mission est accomplie (art. 105 § 3 de l'*arrêté royal du 19 novembre 1998*).

***Possibility to regain the previous status once the mandate is completed***

L'*arrêté royal du 19 novembre 1998 relatif aux congés et aux absences accordés aux membres du personnel des administrations de l'État* dispose que l'agent dont la mission vient à expiration ou est interrompue par décision ministérielle, par décision de la Commission des Communautés européennes ou par décision de l'agent lui-même, se remet à la disposition du ministre dont il relève (art. 111). S'il n'a pas été remplacé dans son emploi, il occupe cet emploi lorsqu'il reprend son activité (art. 112).

***Taking into account the time spent in the international jurisdictions or bodies for career advancement purposes***

L'agent chargé de l'exécution d'une mission reconnue d'intérêt général obtient les augmentations dans son échelle de traitement ainsi que les promotions ou les changements de classe ou de grade auxquels il peut prétendre, au moment où il les obtiendrait ou les aurait obtenus s'il était resté effectivement en service (art. 106 de l'*arrêté royal du 19 novembre 1998 relatif aux congés et aux absences accordés aux membres du personnel des administrations de l'État*). Pendant la durée d'une mission qui n'est pas reconnue d'intérêt général, l'agent ne peut faire valoir ses titres à la promotion ou à l'avancement dans son échelle de traitement (art. 107).

Pour pouvoir faire valoir ses titres à la promotion ou à l'avancement dans son échelle de traitement, l'agent doit donc remplir une mission qui est reconnue d'intérêt général. Certaines missions sont de plein droit reconnues comme étant d'intérêt général, mais cette reconnaissance de plein droit ne vaut en général pas pour les missions au service d'un organisme international. Toutefois, le ministre dont relève l'agent peut reconnaître le caractère d'intérêt général si la mission est censée présenter un intérêt prépondérant soit pour le pays, soit pour le Gouvernement fédéral ou l'administration fédérale (art. 105 §§ 1 et 2 de l'*arrêté royal du 19 novembre 1998*).

***Pension rights***

Le congé d'un agent en mission reconnue d'intérêt général est assimilé - y compris en matière de retraite - à une période d'activité de service (art. 104 de l'*arrêté royal du 19 novembre 1998*).

## III. Les professeurs d'université

***Possibility to interrupt the career in order to work at international level***

Au sein de la Communauté française, la charge d'un membre du personnel académique ressortissant d'une université de la Communauté française qui exerce une autre activité rémunérée qui absorbe une grande partie de son temps, devient d'office une charge à temps partiel (art. 21 § 4 loi du 28 avril 1953 sur

l'organisation de l'enseignement universitaire par l'État). Sont considérées comme autres activités rétribuées absorbant une grande partie du temps, toutes les activités rétribuées dont l'importance dépasse deux demi-journées par semaine (article 21 § 6 loi du 28 avril 1953). Cet arrangement permet de maintenir un professeur qui exerce une mission dans une organisation internationale dans le corps enseignant, ne fût-ce que pour une charge plutôt symbolique.
Au sein de la Communauté flamande, les autorités universitaires décident, à la demande d'un membre du personnel académique ou d'office, du caractère partiel de la charge d'un membre qui disposait d'une charge à temps plein (art.V.11 Code flamand de l'enseignement supérieur). Le personnel académique qui n'effectue que des activités d'enseignement doit effectuer une charge minimum correspondant à 5 % d'un temps plein (art.V.12 alinéa 2 Code flamand de l'enseignement supérieur).

***Possibility to regain the previous status once the mandate is completed***

Dans la Communauté flamande, l'article V.45 Code flamand de l'enseignement supérieur dispose que le membre à temps plein du personnel académique qui obtient un statut à temps partiel, obtient de nouveau une charge à temps plein et le traitement y afférent dès qu'il satisfait à nouveau aux conditions imposées et s'il n'a pas atteint l'âge de soixante ans. Il perd ce droit de « retour » s'il exerce pareille activité rémunérée pendant plus de huit années académiques, consécutives ou non. Les autorités universitaires peuvent néanmoins, sans y être obligées, étendre la charge à temps partiel à une charge à temps plein du moment que l'intéressé satisfait aux conditions imposées.
Il ne semble pas qu'un *droit* de retour soit reconnu dans la Communauté française. L'article 32 § 1er loi du 28 avril 1953 prévoit que toute modification de la charge d'un membre du personnel enseignant par le conseil d'administration se fait sur avis de l'organe dont relève la charge, et après que l'avis de l'intéressé ait été demandé.

***Taking into account the time spent in the international jurisdictions or bodies for career advancement purposes***

Ce point n'est pas pertinent dans la mesure où un professeur a obtenu le statut d'enseignant à temps partiel: il demeure alors membre du corps enseignant.

***Pension rights***

Ce point n'est pas pertinent dans la mesure où un professeur a obtenu le statut d'enseignant à temps partiel: il demeure alors membre du corps enseignant, et continue à prester des services (limités) qui sont pris en compte pour le calcul de sa pension.

**2013 situation**

I. **Les magistrats**

A. Les magistrats de l'ordre judiciaire

***Possibility to interrupt the career in order to work at international level***

Les magistrats de l'ordre judiciaire peuvent être autorisés (par le Roi, sur l'avis du chef de corps ou du magistrat dont ils dépendent hiérarchiquement), à accomplir des missions auprès d'institutions supranationales ou internationales.

L'autorisation vaut pour un an. À la demande de l'organisation et du magistrat, ce terme peut être prorogé plusieurs fois, pour des périodes d'un an au plus chaque fois, sans que la durée totale puisse excéder six ans.
Cf. art. 308 du Code Judiciaire (CJ)[144].

***Possibility to regain the previous status once the mandate is completed***

Aussi longtemps que la durée de la mission demeure dans les limites de l'autorisation (donc au maximum six ans), le magistrat n'est qu'en congé. Dans ce cas, à la fin de sa mission, il reprend l'exercice effectif de ses fonctions judiciaires. Il semble que le magistrat qui continuerait à exercer sa mission au-delà de la période couverte par l'autorisation, doive être considéré comme étant en absence injustifiée (voir art. 331 CJ) et de ce chef passible de poursuites disciplinaires.

***Taking into account the time spent in the international jurisdictions or bodies for career advancement purposes***

Les magistrats autorisés à exercer une mission conservent leur place sur la liste de rang et sont censés avoir exercé la fonction à laquelle ils étaient nommés.
Cf. art. 308 CJ.

***Pension rights***

Lorsque le magistrat a cessé d'exercer ses fonctions pour remplir celles prévues à l'article 308 CJ et qu'il a été, après l'accomplissement de sa mission, soit réintégré, soit nommé à nouveau à la fonction qu'il avait cessé d'exercer ou à une autre fonction judiciaire égale ou supérieure, le montant de sa pension est calculé comme s'il n'avait jamais cessé d'exercer les dites fonctions. Cf. art 395 CJ.

B. Les magistrats du Conseil d'Etat

***Possibility to interrupt the career in order to work at international level***

Les titulaires d'une fonction du Conseil d'Etat peuvent être autorisés (par le Roi, moyennant l'avis du premier président lorsqu'il s'agit de membres du Conseil d'Etat, du bureau de coordination ou du greffe, ou l'avis de l'auditeur général lorsqu'il s'agit de membres de l'auditorat), à accomplir des missions ou à exercer des fonctions auprès d'institutions supranationales. Au cas où les tâches qui leur sont ainsi dévolues ne leur permettent plus de s'acquitter de leurs fonctions au Conseil d'Etat, ils sont placés en position « hors cadre ». La durée totale de la mise hors cadre ne peut excéder les périodes d'exercice effectif de fonctions au Conseil d'Etat.
Cf. art. 112 des lois sur le Conseil d'Etat, coordonnées le 12 janvier 1973[145]

***Possibility to regain the previous status once the mandate is completed***

Les intéressés mis hors cadre conservent le droit de réintégrer leurs fonctions antérieures au Conseil d'Etat. Si, à l'expiration de la durée de la mise hors cadre,

[144]. http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?DETAIL=1967101002%2FF&caller=list&row_id=1&numero=4&rech=13&cn=1967101002&table_name=LOI&nm=1967101053&la=F&dt=CODE+JUDICIAIRE&language=fr&fr=f&choix1=ET&choix2=ET&fromtab=loi_all&trier=promulgation&chercher=t&sql=dt+contains++%27CODE%27%26+%27JUDICIAIRE%27and+actif+%3D+%27Y%27&tri=dd+AS+RANK+&imgcn.x=35&imgcn.y=9#LNK0118

[145]. http://www.ejustice.just.fgov.be/wet/wet.htm

les intéressés n'ont pas réintégré leurs fonctions au Conseil d'Etat, ils sont réputés démissionnaires.
Cf. art. 112 lois coordonnées sur le Conseil d'Etat

***Taking into account the time spent in the international jurisdictions or bodies for career advancement purposes***

Dans la position hors cadre, les intéressés cessent de percevoir le traitement attaché à leurs fonctions au Conseil d'Etat et de participer à l'avancement (art. 112 lois coordonnées sur le Conseil d'Etat). Toutefois, pour les nominations et les désignations dans une fonction de « mandat » (chef de corps, président de chambre, etc), c'est la durée de la période depuis la première nomination au Conseil d'Etat qui est prise en compte (cf. art. 74/2 lois coordonnées sur le Conseil d'Etat), pas la durée de la période pendant laquelle les fonctions (de conseiller, d'auditeur etc) ont été effectivement exercées au sein du Conseil d'Etat. Il semble donc que la période de la mission auprès d'une institution supranationale est prise en compte.

***Pension rights***

Les personnes qui ont été autorisées à accomplir une mission auprès d'une institution supranationale sont autorisées à compter la durée de leur mission dans le calcul de leur pension, pour autant qu'elle n'ait pas déjà été prise en considération pour ce calcul. La pension ainsi calculée est diminuée du montant net de la pension octroyée à l'intéressé, du chef de la mission, par l'organisme supranational auprès duquel il l'a accomplie. Cette réduction ne s'applique qu'à l'accroissement de pension résultant de la prise en charge, par le Trésor, de la durée de cette mission.
Cf. art. 112 lois coordonnées sur le Conseil d'Etat

**II. Les fonctionnaires fédéraux[146]**

***Possibility to interrupt the career in order to work at international level***

L'*arrêté royal du 19 novembre 1998 relatif aux congés et aux absences accordés aux membres du personnel des administrations de l'Etat* dispose que l'agent peut obtenir un congé pour l'exercice de fonctions en exécution d'une mission internationale confiée par un organisme international (art. 99, al. 2, 1°, c)), avec l'accord du ministre dont il relève (art. 102 § 1).
L'agent obtient les dispenses de service nécessaires à l'exécution d'une telle mission. Ces dispenses sont accordées au maximum pour deux ans et sont renouvelables pour des périodes de deux ans maximum chacune (art. 100). Il n'y a pas de limite à la durée totale de la mission (comparer, a contrario, art. 101). Toutefois, toute mission perd de plein droit son caractère d'intérêt général (voir ci-après) à partir du moment où l'agent a atteint une ancienneté de service suffisante pour pouvoir prétendre à l'obtention d'une pension à charge de l'organisme européen ou international au profit duquel la mission est accomplie (art. 105 § 3 de l'*arrêté royal du 19 novembre 1998*).

[146]. La description des règles applicables est limitée à celles qui concernent les membres du personnel de l'autorité fédérale. Des règles semblables existent pour les membres du personnel des différentes régions et communautés (fonctionnaires flamands et fonctionnaires de la Région wallonne, de la Communauté française, de la Région de Bruxelles-Capitale et de la Communauté germanophone).

***Possibility to regain the previous status once the mandate is completed***

L'*arrêté royal du 19 novembre 1998 relatif aux congés et aux absences accordés aux membres du personnel des administrations de l'Etat* dispose que l'agent dont la mission vient à expiration se remet à la disposition du ministre dont il relève (art. 111). S'il n'a pas été remplacé dans son emploi, il occupe cet emploi lorsqu'il reprend son activité (art. 112).

***Taking into account the time spent in the international jurisdictions or bodies for career advancement purposes***

L'agent chargé de l'exécution d'une mission reconnue d'intérêt général obtient les augmentations dans son échelle de traitement ainsi que les promotions ou les changements de classe ou de grade auxquels il peut prétendre, au moment où il les obtiendrait ou les aurait obtenus s'il était resté effectivement en service (art. 106 de l'*arrêté royal du 19 novembre 1998 relatif aux congés et aux absences accordés aux membres du personnel des administrations de l'Etat*). Pendant la durée d'une mission qui n'est pas reconnue d'intérêt général, l'agent ne peut faire valoir ses titres à la promotion ou à l'avancement dans son échelle de traitement (art. 107).

Pour pouvoir faire valoir ses titres à la promotion ou à l'avancement dans son échelle de traitement, l'agent doit donc remplir une mission qui est reconnue d'intérêt général. Certaines missions sont de plein droit reconnues comme étant d'intérêt général, mais cette reconnaissance de plein droit ne vaut en général pas pour les missions au service d'un organisme international. Toutefois, le ministre dont relève l'agent peut reconnaître le caractère d'intérêt général si la mission est censée présenter un intérêt prépondérant soit pour le pays, soit pour le Gouvernement fédéral ou l'administration fédérale (art. 105 §§ 1 et 2 de l'*arrêté royal du 19 novembre 1998*).

***Pension rights***

Le congé d'un agent en mission reconnue d'intérêt général est assimilé –y compris en matière de retraite - à une période d'activité de service (art. 104 de l'*arrêté royal du 19 novembre 1998*.

**III. Les professeurs d'université**

***Possibility to interrupt the career in order to work at international level***

La charge d'un membre du personnel académique ressortissant soit de la Communauté flamande, soit de la Communauté française, qui exerce une autre activité professionnelle ou une autre activité rémunérée qui absorbe une grande partie de son temps, devient d'office une charge à temps partiel (art. 75 décret flamand du 12 juin 1991 relatif aux universités dans la Communauté flamande ; art. 21 § 4 loi du 28 avril 1953 sur l'organisation de l'enseignement universitaire par l'Etat (loi applicable aux universités ressortissant de la Communauté française)). Cet arrangement permet de maintenir un professeur qui exerce une mission dans une organisation internationale dans le corps enseignant, ne fût-ce que pour une charge plutôt symbolique.

***Possibility to regain the previous status once the mandate is completed***

Dans la Communauté flamande, l'article 105 du décret flamand du 12 juin 1991 relatif aux universités dans la Communauté flamande dispose que le membre à temps plein du personnel académique qui obtient un statut à temps partiel, obtient

de nouveau une charge à temps plein et le traitement y afférent dès qu'il satisfait à nouveau aux conditions imposées et s'il n'a pas atteint l'âge de soixante ans. Il perd ce droit de « retour » s'il exerce pareille activité rémunérée pendant plus de huit années académiques, consécutives ou non. Les autorités universitaires peuvent néanmoins, sans y être obligées, étendre la charge à temps partiel à une charge à temps plein du moment que l'intéressé satisfait aux conditions imposées.
Il ne semble pas qu'un droit de retour soit reconnu dans la Communauté française.

***Taking into account the time spent in the international jurisdictions or bodies for career advancement purposes***

Ce point n'est pas pertinent dans la mesure où un professeur a obtenu le statut d'enseignant à temps partiel: il demeure alors membre du corps enseignant.

***Pension rights***

Ce point n'est pas pertinent dans la mesure où un professeur a obtenu le statut d'enseignant à temps partiel: il demeure alors membre du corps enseignant, et continue à prester des services (limités) qui sont prises en compte pour le calcul de sa pension.

## *Bosnia and Herzegovina*

**Current situation (2018)**

I confirm for Bosnia and Herzegovina that nothing has changed.

**2013 situation**

**Does the legislation of Bosnia and Herzegovina expressly recognize the service on the European Court for Human Rights or any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

No

There is no legislation in Bosnia and Herzegovina regulating the status of judges of international jurisdictions.

## *Bulgaria*

**Current situation (2018 – in Bleu)**

**Does Bulgarian legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

The answer to the first question is a qualified YES.

Under section 195(1) and (2) of the Judiciary Act 2007, judges, prosecutors and investigators are barred from exercising a number of activities and professions. For

instance, under section 195(1)(2) they cannot serve in "institutions of the European Union", and under section 195(1)(5) they cannot exercise "*another remunerated professional activity*" **– EB (03/10/2018) this latter subsection, which laid down the most general prohibition, was repealed in August 2017. At the same time, a new subsection 2(2) was created, specifically saying that judges, prosecutors and investigators can, while still carrying out their duties, receive remuneration for "participation in European and international programmes and projects". This could be construed to include temporary work or work on secondment at international level, as borne out by the reference to "programmes and projects". The reasons for this latter amendment were not spelled out anywhere, as it was proposed by an MP who was a member of the Parliament's Legal Affairs Committee between the first and second readings of the bill to amend the Judiciary Act 2007, and was taken up by the Committee without any recorded discussion on it. Nor was there any discussion of the point when the bill underwent its second reading in plenary session.**

Under section 195(3) a judge, a prosecutor or an investigator is entitled to regain his or her position if he or she has interrupted his or her service for the purpose of becoming a Member of Parliament, mayor, municipal councillor, judge in the Constitutional Court, or a government minister or deputy minister, and the time served in such a position counts as experience for the purpose of judicial and prosecutorial appointments.

No similar provision exists for service at the international level.

However, Section 229 of the Judiciary Act 2007 says that the Labour Code 1986 governs all matters not specifically dealt with in the Act.

Article 160 § 2 of that Code, added in 2008, provides that the employer is under a duty to allow the employee a one-off unpaid leave if the employee enters into a "*legal relation*" with an institution of the European Union ("the EU"), with the Organisation of the United Nations ("the UN"), with the Organisation for Security and Cooperation in Europe ("the OSCE"), the North Atlantic Treaty Organisation ("NATO") or with another international governmental organisation.

In addition, Article 120a §§ 1 and 2 of the Code, also added in 2008, provides that an employee may be seconded to an institution of the European Union for a period of up to four years, during which time he or she remains in employment and receives his or her base remuneration. Under Article 120a § 4, when the employee returns, he or she is entitled to resume his or her previous position within fifteen days, or if that position no longer exists, an equivalent position.

Equivalent provisions are contained in Sections 64(2) and 81c of the Civil Servants Act 1999, also added in 2008.

– ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

The answer to the second question is simply yes, for career advancement purposes (it appears that not for pension purposes though: only time during which the person serving as a judge, prosecutor or investigator has actually worked and paid social security contributions in Bulgaria counts – Articles 4 § 1(3) and 9 § 1(5) of the Social Security Code 1999). **EB (03/10/2018): With the qualification that if a judge is seconded or does temporary work under section 195(2)(2) of the Judiciary Act 2007 (see my comment above), he or she will retain his or her duties as a judge in Bulgaria, and the period of secondment will hence be counted for pension purposes as time spent serving as a judge.**

Section 164(7) of the Judiciary Act 2007, as originally enacted, provided that the time spent serving as a judge in an international court set up under a treaty to

which Bulgaria is party or within the framework of an international organisation of which Bulgaria is a member counts as experience for the purpose of judicial and prosecutorial appointments (two years and nine months for district-level appointments, eight years for regional-level appointments, ten years for appellate-level appointments and twelve years for supreme-court-level appointments). In 2009 the wording of the provision was amended and expanded; it now provides that time spent in a position requiring a law degree in the European Union or in an international jurisdiction or organisation set up under a treaty to which Bulgaria is party counts as experience for the purpose of judicial and prosecutorial appointments. Following a renumbering of the subsections in 2011, subsection 7 is now subsection 9.

**EB (03/10/2018) In August 2016 subsection 9 was expanded to refer to time spent "serving in a position that requires a law degree in the institutions, bodies and missions of the European Union, the United Nations, the Organization for Security and Cooperation in Europe, the North Atlantic Treaty Organization, as well as other international jurisdictions or international organisations set up pursuant to an international treaty to which the Republic of Bulgaria is party".**

**2013 situation**

**Does Bulgarian legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

The answer to the first question is a qualified YES.

Under section 195(1) and (2) of the Judiciary Act 2007, judges, prosecutors and investigators are barred from exercising a number of activities and professions. For instance, under section 195(1)(2) they cannot serve in "institutions of the European Union", and under section 195(1)(5) they cannot exercise "*another remunerated professional activity*".

Under section 195(3) a judge, a prosecutor or an investigator is entitled to regain his or her position if he or she has interrupted his or her service for the purpose of becoming a Member of Parliament, mayor, municipal councillor, judge in the Constitutional Court, or a government minister or deputy minister, and the time served in such a position counts as experience for the purpose of judicial and prosecutorial appointments.

No similar provision exists for service at the international level.

However, Section 229 of the Judiciary Act 2007 says that the Labour Code 1986 governs all matters not specifically dealt with in the Act.

Article 160 § 2 of that Code, added in 2008, provides that the employer is under a duty to allow the employee a one-off unpaid leave if the employee enters into a "*legal relation*" with an institution of the European Union ("the EU"), with the Organisation of the United Nations ("the UN"), with the Organisation for Security and Cooperation in Europe ("the OSCE"), the North Atlantic Treaty Organisation ("NATO") or with another international governmental organisation.

In addition, Article 120a §§ 1 and 2 of the Code, also added in 2008, provides that an employee may be seconded to an institution of the European Union for a period of up to four years, during which time he or she remains in employment and receives his or her base remuneration. Under Article 120a § 4, when the employee returns, he or she is entitled to resume his or her previous position within fifteen days, or if that position no longer exists, an equivalent position.

Equivalent provisions are contained in Sections 64(2) and 81c of the Civil Servants Act 1999, also added in 2008.

***– counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

The answer to the second question is simply yes, for career advancement purposes (it appears that not for pension purposes though: only time during which the person serving as a judge, prosecutor or investigator has actually worked and paid social security contributions in Bulgaria counts – Articles 4 § 1(3) and 9 § 1(5) of the Social Security Code 1999).

Section 164(7) of the Judiciary Act 2007, as originally enacted, provided that the time spent serving as a judge in an international court set up under a treaty to which Bulgaria is party or within the framework of an international organisation of which Bulgaria is a member counts as experience for the purpose of judicial and prosecutorial appointments (two years and nine months for district-level appointments, eight years for regional-level appointments, ten years for appellate-level appointments and twelve years for supreme-court-level appointments). In 2009 the wording of the provision was amended and expanded; it now provides that time spent in a position requiring a law degree in the European Union or in an international jurisdiction or organisation set up under a treaty to which Bulgaria is party counts as experience for the purpose of judicial and prosecutorial appointments. Following a renumbering of the subsections in 2011, subsection 7 is now subsection 9.

## *Croatia*

**Current situation (2018)**

**Does Croatian legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

1. Introduction

This paper's aim is to shed some light on the above research question, by providing the grounds and conditions under which a Croatian public official may be granted a temporary leave of absence in order to spend a certain period abroad and work for international institutions or courts. The issue of pension rights will be dealt with separately, since, as of recently, this became a highly controversial issue, in particular when it comes to pensions earned under the Council of Europe's pension scheme.

2. Temporary leave of absence

*a) Judges appointed to an international duty by the Government*

The Croatian legislation enables national judges to obtain a special type of temporary leave of absence (*mirovanje sudačke dužnosti*). Section 88 of the Law on Courts created a right to temporary leave of absence for judges that had been appointed, upon a recommendation by the Croatian Government, as judges of an international court or seconded or otherwise appointed to any other duty in the

international courts or organisations. Such international mandate is calculated towards the overall duration of their judgeship, and they are able to return to their post upon its expiry.

*b) Seconded judicial officials (including judges) and civil servants*

Judicial officials and civil servants seconded to international organisations and missions abroad by the Republic of Croatia have similar rights as appointed judges under a). They are entitled to a temporary leave of absence, to return to their post after the expiry of the mandate and to counting of the international mandate for career advancement purposes.

*c) Others*

Other categories of staff (such as university professors) do not have a specific right to a temporary leave of absence, but they may rely on Section 87 of the Labour Act and request such leave from their employer. However, according to the same Section of the Labour Act, during that time all employment rights and obligations are suspended. It so appears that a decision on whether or not to count the international mandate for career advancement purposes is within the employer's discretion. In the context of university professors, in particular, this is a matter to be regulated by the relevant university regulations under the principle of university autonomy guaranteed by the Scientific Activity and Higher Education Act.

3. Pension rights

Public officials who interrupted their career in order to work at international level have faced serious difficulties in the field of pension rights upon their return to Croatia.

It is first to be noted that, unless they independently contribute to the domestic pension scheme via the so called extended pension insurance (*produženo mirovinsko osiguranje*), the time spent on the temporary leave of absence would not count towards years of service for the domestic pension purposes.

If their mandate abroad was long enough to make them eligible for a foreign pension scheme, their foreign pensions could be subject to high tax rates. This rather new tax regime was first introduced with the Amendments to the Income Tax Act that entered into force on 1 March 2012.

Turning to the specific situation of the Council of Europe's pensioners, it is important to emphasise that such pensions are, unlike some other pensions earned abroad, not exempted from tax.

Following the 2012 legislative amendments, the applicable tax rates were the following:

12% for pensions up to 2,200 Croatian kunas (HRK) (EUR 300) a month;

25% for pensions from HRK 2,200 to HRK 8,800 (EUR 1,200); 40% for pensions above HRK 8,800 a month.

Following the 2016 amendments to the Income Tax Act, all pensions of Croatian residents earned abroad are subject to taxation, provided that an international treaty on the avoidance of double taxation does not regulate otherwise. Currently applicable tax rates are: 24% for pensions up to HRK 17.500,00 (EUR 2,300) and 36% for pensions of more than HRK 17.500,00. For the advanced payments of taxes on pensions, a reduction of 50% of the overall amount is applicable.

4. Conclusion

Croatian legislation is not very restrictive towards judges and civil servants who were either seconded or appointed abroad by the State, and wish to interrupt their career in order to work at international level and then regain their previous status

once their mandate is completed. To their benefit, the time spent abroad counts towards career advancement purposes. On the other hand, there are no specific rights for the ones who wish to interrupt their career on their own initiative, or are employed elsewhere.
Since 2012, severe disadvantages have been noted in the field of pension rights. Even before that, the years spent in the international institution generally did not count towards the accrued years of service for the purposes of domestic pension schemes, and the pensions are subject to high tax rates.

5. References


- Law on Courts (*Zakon o sudovima*), Official Gazette "*Narodne Novine*", hereinafter "**NN**", 28/2013, 33/2015, 82/2015, 82/2016, 67/2018
- By-law on seconded judicial officials and civil servants in the international organisations and missions abroad (*Pravilnik o upućivanju pravosudnih dužnosnika i državnih službenika u međunarodne organizacije i misije u inozemstvu*), NN 89/2009, 8/2014
- By-law on secondment of civil servants (*Uredba o upućivanju državnog službenika na rad izvan državne službe*), NN 33/2006
- Labour Act (*Zakon o radu*), NN 93/2014, 127/2017
- Scientific Activity and Higher Education Act (*Zakon o znanstvenoj djelatnosti i visokom obrazovanju*) NN 123/2003, with last amendments 131/2017
- Income Tax Act (*Zakon o porezu na dohodak*), (old version: NN 177/2004, 73/2008, 80/2010, 114/2011, 22/2012, 144/2012; amended NN 115/2016)
- Decision of the Ministry of Labour and Pension System (*Ministarstvo rada i mirovinskog sustava*) 526-08-01-01/2-10-2, 28 September 2010
- Decision of the Ministry of Labour and Pension System 524-08-01-01/5-12-2, 10 April 2012
- Supreme Court (*Vrhovni sud Republike Hrvatske*) judgment Rev-1671/1999-2, 10 May 2001
- Central State Office for Croats living Abroad:

  http://www.hrvatiizvanrh.hr/hr/hmiu/mirovinsko-osiguranje/58
- Ministry of Finance, Revenue Service:

  https://www.porezna-uprava.hr/Dokumenti%20vijesti/Obavijest%20umirovljenicima%20koji%20primaju%20mirovinu%20iz%20inozemstva.pdf


**2013 situation**

**Does Croatian legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

1. Introduction

This paper's aim is to shed some light on the above research question, by providing the grounds and conditions under which a Croatian public official may be

granted a temporary leave of absence in order to spend a certain period abroad and work for international institutions or courts. The issue of pension rights will be dealt with separately, since, as of recently, this became a highly controversial issue, in particular when it comes to pensions earned under the Council of Europe's pension scheme.

2. Temporary leave of absence

*a) Judges appointed to an international duty by the Government*

The Croatian legislation enables national judges to obtain a special type of temporary leave of absence (*mirovanje sudačke dužnosti*). Article 88 of the Law on Courts created a right to temporary leave of absence for judges that had been appointed by the Croatian Government as judges of an international court or to any other duty in the international courts or organisations. Such international mandate is calculated towards the overall duration of their judgeship, and they are able to return to their post upon its expiry.

*b) Seconded judicial officials (including judges) and civil servants*

Judicial officials and civil servants seconded to international organisations and missions abroad by the Republic of Croatia have similar rights as appointed judges under a). Namely, they are entitled to a temporary leave of absence, to return to their post after the expiry of the mandate and to counting of the international mandate for career advancement purposes.

*c) Others*

Other categories of staff (such as university professors) do not have a specific right to a temporary leave of absence, but they may rely on Article 66 of the Labour Act and request such leave from their employer. However, according to the same Article of the Labour Act, during that time all rights and obligations from the employment are set aside. It so appears that a decision on whether or not to count the international mandate for career advancement purposes is within the employer's discretion.

3. Pension rights

Public officials who interrupted their career in order to work at international level have started facing serious difficulties in the field of pension rights upon their return to Croatia.

It is first to be noted that, unless they independently contribute to the domestic pension scheme via the so called extended pension insurance (*produženo mirovinsko osiguranje*), the time spent on the temporary leave of absence would not count towards years of service for the domestic pension purposes.

If their mandate abroad was long enough to make them eligible for a foreign pension scheme, their foreign pensions could be subject to high tax rates. This rather new tax regime was introduced with the Amendments to the Income Tax Act that entered into force on 1 March 2012.

Turning to the specific situation of the Council of Europe's pensioners, it is important to emphasize that such pensions are, unlike some other pensions earned abroad, not exempted from tax.

The current tax rates are the following:

12% for pensions up to 2,200 Croatian kunas (HRK) (EUR 300) a month;

25% for pensions from HRK 2,200 to HRK 8,800 (EUR 1,200); 40% for pensions above HRK 8,800 a month.

4. Conclusion

Croatian legislation is not very restrictive towards judges and civil servants who were either seconded or appointed abroad by the State, and wish to interrupt their career in order to work at international level and then regain their previous status once their mandate is completed. To their benefit, the time spent abroad counts towards career advancement purposes. On the other hand, there are no specific rights for the ones who wish to interrupt their career on their own initiative, or are employed elsewhere. It seems that their status depends largely on their employer's attitude.

Since 2012, severe disadvantages have been noted in the field of pension rights. Even before that, the years spent in the international institution generally did not count towards the accrued years of service for the purposes of domestic pension schemes. Recently, an additional burden has been placed on persons entitled to a pension from the Council of Europe's pension scheme, since such pensions are, unlike salaries, subject to taxation.

5. References

- Law on Courts (*Zakon o sudovima*), Official Gazette "*Narodne Novine*", hereinafter "**NN**", 28/13
- By-law on seconded judicial officials and civil servants in the international organisations and missions abroad (*Pravilnik o upućivanju pravosudnih dužnosnika i državnih službenika u međunarodne organizacije i misije u inozemstvu*), NN 89/09
- By-law on secondment of civil servants (*Uredba o upućivanju državnog službenika na rad izvan državne službe*), NN 33/06
- Labour Act (*Zakon o radu*), NN 149/09, 61/11
- Income Tax Act (*Zakon o porezu na dohodak*), NN 177/04, 73/08, 80/10, 114/11, 22/12, 144/12
- Decision of the Ministry of Labour and Pension System (*Ministarstvo rada i mirovinskog sustava*) 526-08-01-01/2-10-2, 28 September 2010
- Decision of the Ministry of Labour and Pension System 524-08-01-01/5-12-2, 10 April 2012
- The Supreme Court (*Vrhovni sud Republike Hrvatske*) judgment Rev-1671/1999-2, 10 May 2001.

# *Cyprus*

**Current situation (2018)**

**Does your country's legislation expressly recognise service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

Judges:

The Courts of Justice Law (L. 14/60) stipulates for the salary and terms of service of judges in the Cypriot Courts but does not regulate the possibility for working at international level. There is no provision allowing judges to interrupt their career for assuming a paid position at international level. Certain possibilities exist for taking unpaid study leave but such leave must first be approved by the Supreme Council of Judicature.

Civil Servants in General: The information previously provided for Civil Servants is correct.

Diplomats: The information previously provided for Diplomats is correct.

Professors: The information previously provided relates to school teachers, not university professors.
Professors working at the University of Cyprus, which is the only public university in Cyprus, have the possibility of taking leave for the purposes of working anywhere outside the University. No specific reference is made to work in international jurisdictions or bodies. According to the University of Cyprus (Academic Staff) Regulations of 1990 (153/1990 as amended by Reg. 206/2018 on 13.7.2018) professors may either be granted sabbatical leave (for six months every three working years, or of one year for every six working years[147]) or general leave for working for institutions other than the University, subject to approval by the University Council[148]. After having completed their mandate, professors may return to their previous post.
Other than the above, private universities or universities partially funded by the state, have their own regulations.

***- counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

Career advancement: Nothing has been found on this point in the relevant legislation. It could, however, be a factor that may be taken into account in internal competitions for promotions and the impact may be favourable or not according to circumstances.

Pension rights: Pension rights for university professors and civil servants are defined according to the date of their employment and status (i.e. permanent or on permanent staff). There are two distinct legislations: (a) the Pension Law 1997, as amended and the (b) the Retirement Benefits of State Employees and Employees of the Public Sector, including the Local Authorities (General Implementation Provisions) Law 2012 (216 (I)/2012). No specific provision exists in either law, as regards persons who have taken leave for working for international bodies.

**2013 situation**

**Does Cypriot legislation expressly recognise service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

***A. allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

*Judges*: No such possibility is open to judges during their career but only after retirement.

[147]. University of Cyprus (Academic Staff) Regulations of 1990 – Reg. 153/1990, 29.06.1990, as amended by Reg. 206/2018 on 13.7.2018, regulation 7(5).
[148]. University of Cyprus (Academic Staff) Regulations of 1990 – Reg. 153/1990, 29.06.1990, as amended by Reg. 206/2018 on 13.7.2018, regulation 7(8).

*Civil Servants*[149]: Civil Servants are able to apply for unpaid leave. This leave can also be for the purpose of working at an international level. The Council of Ministers can grant permission by a special decision.
A civil servant can be granted unpaid leave, not on grounds of public interest, up to a maximum of two years, for service on international bodies or foreign Governments. However, General Directors and Heads of Departments/Services whose absence may cause operational problems are not entitled to such leave as a rule. They may be granted such leave only in exceptional circumstances and for a very short period (6 weeks for General Directors and 3 months for Head).
Furthermore, a Civil Servant can be granted unpaid leave on grounds of public interest when an international organisation or a foreign Government require technical assistance or experts in a particular field, if the Ministry of Foreign Affairs considers that this will not cause any problems to the particular public body.
Once the mandate is completed, civil servants may regain their post in the Public Service.

As to *diplomats*, in so far as they are civil servants they may be able to benefit from the same provisions.

*Professors*: According to Regulation 15 of the Public Education Service Regulations 1993 issued by the Council of Ministers, a professor can be granted unpaid leave, whether on grounds of public interest or not, in accordance with terms/ regulations/ provisions determined by the Council of Ministers.

***B. Counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

(i) Career advancement: Nothing has been found on this point in the relevant legislation. It could, however, be a factor that may be taken into account in internal competitions for promotions and the impact may be favourable or not according to circumstances.

(ii) Pension rights: There is no provision in the domestic law concerning a calculation of pension rights for civil servants who have interrupted their careers to work in an international organisation. The Pension Law (1997 as amended by Amending Law 31(I) 2012) provides for transfer of pension rights only in the event of resignation/retirement from the public service for taking up a post in the EU (s. 26A) and vice versa (s. 26B).

## *the Czech Republic*

**Current situation (2018)**

**I. Possibilities for public officials to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed**

**Legal framework:**

In the Czech Republic, there is no specific act regulating the service of public officials at the international level. Such regulation is enshrined in different acts concerning an overall legal position of such officials. The regulation is brief and does not fully cover all the issues that may arise in this connection.

[149]. Circular No. 1205 referring to Regulation 20 of the Public Service (Granting of Leave) Regulations of 1995-1999 and the Council of Ministers decision of 7 February 2001 (dec. no. 53.115).

The relevant acts are as follows:

i. Constitutional Act no. 1/1993 Coll., the Constitution of the Czech Republic (hereinafter "the Constitution")
ii. Act no. 182/1993 Coll., on the Constitutional Court, as amended (hereinafter "the Constitutional Court Act" or "the CCA")
iii. Act no. 6/2002 Coll., on Courts, Judges, Lay Judges and the State Administration of the Courts and on the Amendment of Other Acts (the Act on the Courts and Judges) (hereinafter "the Act on the Courts and Judges" or "ACJ")
iv. Act no. 283/1993 Coll., on the Public Prosecutor's Office (hereinafter "the Public Prosecutor's Office Act" or "the PPOA")
v. Act no. 121/2008 Coll., on Administrative Officials of Courts and Administrative Officials of the Public Prosecutor's Office and on the Amendment of Related Acts (hereinafter "the Act on Administrative Officials of Courts and Public Prosecutor's Office")
vi. Act. no. 234/2014 Coll., on Public Service (hereinafter "the Public Service Act" or "the PSA")
vii. Act no. 262/2006 Coll., Labour Code (hereinafter "the Labour Code")

**Legal regulation regarding different public officials:**

In general, a possibility to allocate an employee to work temporarily for another employer is regulated by the Labour Code. According to the Article 43a of the Labour Code, in such case, the person continues to be employed and paid by his/her original employer. After the temporary allocation is over, the employee shall be reinstated to his/her previous or similar position (Art. 44 of the Labour Code). The public officials, however, are generally not employed but hold public offices and the performance of such public functions is regulated by specific acts (as listed above). Therefore, the provisions of the Labour Code are not applicable by default to most of the public officials. Nevertheless, the acts regulating the performance of such public functions often refer to the Labour Code, as described in detail below.

## A. Judges of the Constitutional Court

According to the Constitutional Court Act, a judge of the Constitutional Court holds a public office (section 4). An office of a judge of the Constitutional Court is incompatible with any other remunerated office or any other remunerated activity. None of the exceptions further stated is applicable to the work at the international level. It hence follows that no one may hold the office of a judge of the Constitutional Court and at the same time perform any remunerated activity at the international level.

Unlike the ACJ, the CCA does not contain any specific provisions concerning a temporary allocation or temporary release of a judge in order to work at the international level. The ACJ applies to ordinary judges only; therefore the provisions therein concerning temporary allocation or temporary release of a judge are not directly applicable to the judges of the Constitutional Court. Given the highly specific nature of the position of a judge of the Constitutional Court the application of the Labour Code (even though anticipated by section 10 of the CCA) is very limited. The applicability of the ACJ is not anticipated by the CCA at all; the provisions therein hence only apply *per analogiam.*

The number of judges of the Constitutional Court (15) is (unlike the number of judges serving at ordinary courts) fixe (Art. 84 of the Constitution). For proper functioning of the Constitutional Court, a full occupation of all the judges' mandates is necessary. It is hence not feasible that a judge of the Constitutional Court would be temporarily allocated to work at the international level (e. g. as a seconded

official). As for a temporary release of a judge in order to facilitate his/her appointment to a highly honourable office (e. g. a judge of an international tribunal) the rules remain unclear. No case-law dealing with such matter exists. The authors of a commentary literature acknowledge a possible *per analogiam* application of the ACJ (DOSTÁL, M.; LANGÁŠEK, T.; POSPÍŠIL, I. And WAGNEROVÁ, E. *Zákon o Ústavním soudu: Komentář.* Prague" Wolters Kluwer, 2007. ISBN 978-80-7357-305-8).
A judge of the Constitutional Court may, of course, decide to resign in order to accept a position at the international level. In such case, though, he/she may not be automatically reinstated in his/her office after he/she returns.

**B. Judges**
Legal issues regarding other judges then those serving at the Constitutional Courts are regulated by the Act on Courts and Judges.
Section 84 of the ACJ provides that the labour matters resulting from the office of a judge are regulated by the provisions of the Labour Code unless the ACJ provides otherwise. The ACJ expressly regulates two different possible situations of judges temporarily working or serving at the international level that may occur:

**1) Temporary allocation of a judge to work at the international level:** According to section 68 in conjunction with section 70a of the ACJ, a Minister of Justice **may** temporarily send a judge to work for an international organisation outside of the Czech Republic. Such temporary allocation may not exceed 5 years. The decision to send a judge to an international organisation is to be taken by a Minister of Justice. A typical example of a situation of the application of the cited provision is a secondment at the ECtHR. Seconded judges remain in their offices in the Czech Republic but are temporarily sent to work at the ECtHR as lawyers.
As the ACJ does not encompass any further details regarding a temporary allocation of a judge, Articles 43a and 44 of the Labour Code (see above) are applicable. Hence in such case, the judge, remains in his/her office, keeps receiving his/her salary and after the allocation is over, he/she resume his/her work as a national judge.

**2) Temporary release of a judge in order to hold a function at international level:** The difference must be drawn between a temporary allocation of a judge (as described above) and a temporary release of a judge from his/her office. According to section 99(1)(b) and (d) of the ACJ, the Minister of Justice **shall** temporarily release a judge from his/her office if he/she has been appointed to serve as a judge or an assistant to a judge at an international tribunal (or to hold a similar office – such as the office of the advocate general at the CJEU) or he/she has been temporarily assigned to an international body or an organisation with the seat outside of the Czech Republic, to a peacekeeping operation, to a rescue operation or to a humanitarian aid operation outside of the Czech Republic. A typical example of a situation of the application of the cited provision is an office of the judge at the ECtHR. A person holding an office of a national judge who had been appointed to an office of a judge of the ECtHR would be temporarily released in order to serve in such office. According to section 99(3) and (4), a temporarily released judge keeps receiving his/her salary, unless the office he/she holds at the international level is remunerated. The main differences of a temporary allocation and a temporary release of a judge are summarized in the following table:

| | **Temporary allocation** | **Temporary release** |
|---|---|---|
| The judge remains in his/her office | YES | YES |
| The judge continues to perform the function of a judge | YES | NO |
| The judge keeps receiving his/her salary at the national level | YES | If the position is not remunerated |
| The Minister's power | Discretion to decide on the allocation | Obligation to release the judge |
| Reinstatement of the judge following his/her return to the country of origin | Resumes the ordinary work of the judge | Reinstated as a judge (temporary release is terminated *ex-lege*) |

A judge may, of course, as well decide to resign in order to accept a position at the international level. In such case, though, he/she may not be automatically reinstated in his/her office after he/she returns.

**C. Public prosecutors**

Legal issues regarding public prosecutors are, in general, regulated by the Public Prosecutor's Office Act.

Section18(6) of the ACJ provides that the labour matters resulting from the office of a public prosecutor are regulated by the provisions of the Labour Code unless the PPOA provides otherwise.

According to section 19a(1) and (2) of the PPOA, the Minister of Justice **may**, upon a consultation with or upon a proposal of the Supreme Public Prosecutor, decide to temporarily send a public prosecutor to work at the international level. The period of temporary allocation may not exceed 5 years. As follows from section 19a(5) of the PPOA, a public prosecutor temporarily sent to an international organisation is entitled to a reimbursement of any costs and expenses associated with the temporary allocation.

As the ACJ does not encompass any further details regarding a temporary allocation of a judge, Articles 43a and 44 of the Labour Code (see above) are applicable. Hence in such case, the judge, remains in his/her office, keeps receiving his/her salary and after the allocation is over, he/she resume his/her work as a national judge.

A public prosecutor may, of course, decide to resign in order to accept a position at the international level. In such case, though, he/she may not be automatically reinstated in his/her office after he/she returns.

**D. Judicial clerks, legal clerks**

As to judicial clerks in a preparatory service for the office of a judge and legal clerks in a preparatory service for the office of a public prosecutor, conditions of their work at the international level are not specifically regulated. Articles 43a and 44 of the Labour Code (see above) are applicable.

**E. Administrative officials at the courts and at the public prosecutor's offices**

There is no specific legal regulation of the legal issues regarding the work of administrative officials on the international level; therefore, general provisions encompassed in the Labour Code (as described above) are applicable.

**F. Public servants**

According to the Public Service Act, a public servant is a person who has been recruited and assigned to a position within state administration or appointed to such position in order to perform activities listed in section 5 of the PSA. It follows that the PSA does not apply to anyone employed by the State but only to those who fulfil the definition of a public servant provided. The legal position of other State employees is governed by the Labour Code exclusively.
The PSA anticipates several different situations when a public servant may be for a period of time working outside the territory of the Czech Republic:

**1) Relocation to a foreign country:** According to section 67 of the PSA, a public servant may be sent to serve in a foreign country. Consent of the public servant is needed, unless he/she is employed by the Ministry of Foreign Affairs or the Ministry of Defence, the period of his/her service abroad does not exceed 6 months and relocation did not occur in last 5 years of his/her service. In this case, a public servant works outside of the territory of the Czech Republic but remains a part of Czech state administration; he/she does not work for an international organisation. The most common examples would be a service at an embassy or a permanent representation.

**2) Sending of a national expert:** According to section 67a of the PSA, a public servant may be sent to serve at the European Union institution, international organisation, peacekeeping, rescue or humanitarian operation as a national expert. The public servant is entitled to keep receiving his/her salary unless the position at the international level is remunerated. According to section 70 of the PSA, a national expert shall be upon his/her return reinstated in his/her original position.

**3) Sending of a servant to an international organisation:** According to section 67b of the PSA, a public servant may be sent to serve in an international organisation. The public servant is entitled to keep receiving his/her salary unless the position at the international level is remunerated. A reinstatement in his/her original position upon his/her return is not guaranteed.

**G. Professors and state officials employed under Labour Code provisions**

General provisions of the Labour Code regarding temporary allocation and return to the previous position (as described above) apply to professors and public officials employed under the Labour Code.

## II. Counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights purposes in the Czech legal system

**Legal framework**

i. Act no. 155/1995 Coll., on the Pension Insurance (hereinafter " the Pension Insurance Act" or "the PIA")
ii. Regulation (EC) no. 883/2004 of the European Parliament and the Council of 29th of April 2004 on the Coordination of Social Security Systems (hereinafter "the Regulation on Social Security Systems" or "the EU RSSS").
iii. Act no. 6/2002 Coll., on Courts, Judges, Lay Judges and the State Administration of the Courts and on the Amendment of Other Acts (the Act on the Courts and Judges) (hereinafter "the Act on the Courts and Judges" or "ACJ")

iv. Act no. 283/1993 Coll., on the Public Prosecutor's Office (hereinafter "the Public Prosecutor's Office Act" or "the PPOA")
v. Act no. 15/2002 Coll., Code of Administrative Justice (hereinafter "the Code of Administrative Justice" or "the CAJ")
vi. Act no. 236/1995 Coll., on the Salary and other Issues regarding the Service as Public Official and regarding State Authorities and Judges and Members of the European Parliament (hereinafter "the Judges' Salary Act" or "the JSA")
vii. Act no. 201/1997 Coll., on the Salary and other Issues regarding Public Prosecutors and on the Amendment and Supplementation of the Act no. 143/1992 Coll., on the Salary and Remuneration for the Emergency Service in Budgetary Bodies and Other Organisations and Authorities (hereinafter "the Public Prosecutors' Salary Act" or "the PPSA")

**Legal regulation of career advancement and pension entitlement of public officials**

**A. Career advancement**

**a. Judges of the Constitutional Court**

According to Article 84 § 3of the Constitution, a person appointed to the office of a judge of the Constitutional Court shall have been practising a legal profession for at least 10 years. Hence, anyone previously working at the international level as a legal professional (provided that he/she fulfils other conditions set by law) is eligible for the office.

**b. Judges**

As to the career advancement of judges, different requirements on the number of years served are set in the relevant acts for judges wishing to be appointed to serve at different levels of the judiciary. According to section 71(2) of the ACJ, a judge of the Supreme Court shall have at least 10 years of "legal experience" and a judge of a regional court dealing with civil or criminal cases shall have at least 8 years of "legal experience".

However, it has to be stressed out that the situation of administrative judges is different; the legal regulation of civil and criminal branch of the judiciary is incoherent with that of an administrative branch. According to Article 121 § 1 of the CAJ, a judge of the Supreme Administrative Court may be appointed to if he/she conducted legal, scientific or pedagogic activity for at least 10 years or if his/her appointment is justified by his/her accomplishments during his/her preparatory service and by results he/she achieved at the judicial exam. Similarly according to Article 121 § 2 of the CAJ, a judge may be appointed to an administrative branch of a regional court if he/she conducted legal, scientific or pedagogic activity for at least 10 years or if his/her appointment is justified by his/her accomplishments during his/her preparatory service and by results he/she achieved at the judicial exam.

In practice, judges of higher courts of criminal and civil branch of the judiciary are selected among career judges and only the years spent serving as a judge are recognized as a "legal experience" whereas judges of administrative branch of the judiciary are selected among different legal professionals with the required number of years served as different legal professionals. Therefore, it would be probably easier for a candidate coming (or returning) from an international environment to achieve career advancement in the administrative branch of the judiciary rather than in the civil or criminal branch. However, the situation begins to change at the

moment and the civil and criminal branch of the judiciary anticipates selecting new judges of the higher courts among different legal professionals as well.

**c. Judicial and legal clerks**

As to the career advancement, the only specific provision concerns judicial and legal clerks in preparatory service for the office of a judge or a public prosecutor. According to section 110(4) of the ACJ and according to section 33(2) of the PPOA, the Ministry of Justice may, upon a request, recognise the time spent working at the international level as part of a preparatory service of a judicial clerk or a legal clerk.

**d. Public servants**

According to the PSA, for an appointment to a vacancy in the State administration a condition of a set number of years of practice may be required. The necessary practice may be defined differently according to the desired characteristics of a suitable candidate. Therefore, according to conditions set for a specific recruitment for a specific vacancy the fact that a candidate is coming or returning from an international environment may be either an advantage either a disadvantage or may not matter at all.

**e. Other public officials**

As to other public officials, the time spent working at the international level does not influence (negatively nor positively) their eventual career advancement as there are either no specific conditions set by law or the career advancement depends on different conditions than the number of years served (e. g. publishing activity of academic staff etc.).

## B. Pension

Unlike the other issues covered in the present research, the pension of public officials is governed by general legal provisions concerning Czech social security system. There is, therefore, no specific system of pensions of any public officials and the pensions of public officials are regulated by the PIA and the relevant provisions therein.

The PIA sets a general rule that a person is entitled to a pension when reaching a defined age (the pension age is set to 60 for men and is differentiated for women according to the number of children they raised) if he/she had been contributing to the pension system for a specified number of years (currently 35 years) and meets all other conditions (sections 28 and 29 of the PIA).

Section 5 of the PIA enumerates all those who are participating *ex-lege* on the pension insurance system; the detailed list covers in different categories all the public officials. Hence, those who remain in the course of their work at the international level in their offices (temporarily released judges, temporarily allocated public prosecutors etc.) or employed (employees of the universities allocated to work in a foreign countries etc.) would be insured during their work abroad and therefore the years served abroad would count into the total of contribution years required.

On the other hand, any public official who resigns or quits in order to accept a position on the international level would no longer be participating in the pension insurance in the Czech Republic. The only exception enshrined in the PIA is the office of the member of the European Parliament. The person who holds the office may register for pension insurance in the Czech Republic (section 6(1)(f) of the PIA). Any other public officials leaving to work at the international level might,

though, decide to voluntarily contribute to the pension insurance system (section 6(2) of the PIA).

**2013 situation**

***1. Legal framework***

Generally, Czech legislation does not contain any complex and explicit regulation recognizing service at the European Court of Human Rights or at any other international jurisdiction or body. Provisions dealing with a status of a judge or public officials at international level are fragmented in various legal acts and these provisions have general applicability. Therefore, it is always necessary to use a proper legal provision which regulates particular legal occupation, as these provisions are not unified.

***2. Does Czech legislation allow public officials to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

*Judge*

The most relevant provision is incorporated into Section 99 of the Act n. 6/2002 Coll., on Courts and Judges. The Section stipulates that Minister of Justice shall temporarily release a judge from his office, in case he becomes a judge or an assistant of a judge by an international court or when he is charged to exercise a similar function by the international court, during the time of performance his mandate (Section 99, paragraph 1, letter b). Additionally, the Minister of Justice shall temporarily release a judge from his office when the judge was temporarily assigned to an international body or an organisation with the seat outside of the Czech Republic, in a peacekeeping operation, a rescue operation or by a humanitarian aid outside of the Czech Republic; the judge is released for the time of assignment only (Section 99, paragraph 1, letter d). The judge is entitled to receive a salary and additional monetary compensation during the time of his temporal release, unless he is entitled to receive a reward from the international body on the grounds of his office.

Details about salary and additional monetary compensation are set in the Act n. 236/1995 Coll. It does not stipulate explicitly that the judge has the right to regain his previous office, although it can be implied from wording of the Act and from academicals opinions.

The Minister of Justice has the duty to release the judge without using discretionary powers. During the time of release, the judicial function and labour relationship between a judge and the court still exist. The temporary release of the judge lasts as long as he is exercising his mandate at international level; afterwards the temporary release terminates ex lege and the exercise of a judicial function is renewed in a previous extent.

*Attorney*

The basic provisions are set in the Act n. 85/1996 Coll., on Attorneys, particularly in Sections 10 and 11. The Bar shall suspend the practice of an attorney if any obstacle hinders him practicing the legal profession for the period longer than four months. The suspension shall terminate on the date when the fact which was the reason for suspension to practice the legal profession ceases to exist. Therefore, the practice of lawyer will reactive automatically. However, these Sections have general meaning and they do not contain any special provision regulating work at international level.

*Notary*

The basic provisions (Sections 10 and 11) are set in the Act n. 358/1992 Coll., on Notaries and their Work Activities (Notarial Procedures). The Minister of Justice discontinues the exercise of notary's work for the period of time during which the notary is performing work incompatible with the notary' s work, for up to 4 years continually. The Minister of Justice removes a notary from the office if he performs work incompatible with the notary's work for more than 4 years continually.

*Others*

The other occupations as academic professors and diplomates are regulated by the Act n. 262/2006 Coll., Labour Code. Therefore various conditions can be agreed between employer and employees.

To sum up, the Czech legislation allows some public officials to interrupt their legal career, in order to work at international level. However, some of public officials can return automatically to their position when the mandate is completed (lawyer, judge), but this is not applicable to all public officials (notary).

***3. Does the time spent in the international jurisdictions or bodies count for career advancement purposes or pension rights?***

In the case that a judge is not paid by international body and receives salary at the national level in accordance with the Act n. 236/1995 Coll., then he is also subject to career advancement as he is collecting number of months (years) of working practice necessary for a salary increase and for pension rights in compliance with national law. In case he receives salary at international level, he is not entitled to these rights.

In other occupations, these information are not established by law, therefore it can be implied that they are not entitled for career advancement purposes or pension rights when they carry out the service for international jurisdiction.

## *Denmark*[150]

**Current situation (2018)**

As concern Denmark the info is still valid, but the Act on Civil Servants is now no. 678 of 17 September 1998

**Complementary information**

The executive order § 2(1) speaks of the period of unpaid leave being taken into account for the purpose of "salary calculations" ("…medregnes den tid, i hvilken en tjenestemand har tjenestefrihed uden løn til de i § 1, stk. 1, nævnte formål, i lønanciennitetenen"), but it does not speak about being taken into account for the purpose of "career advancement" as indicated below.

According to the executive order § 4(1), at the end of the period of unpaid leave, the public official is entitled to return to his or her previous post or to another suitable post within his or her field of employment ("Ved tilbagevenden fra en tjenestefrihedsperiode har tjenestemanden krav på at genindtræde i sin hidtidige stilling eller anden passende stilling inden for sit ansættelsesområde").

According to § 3 of the executive order, as a main rule, the period of unpaid leave is not taken into account in calculating the pension age (or pension entitlement), however, the Minister of Finance may decide that the period is taken into account, but it is a precondition that no pension scheme or pension entitlement is affiliated

[150]. This contribution was prepared by Helle Pøhl, on 27/09/2018.

to the international post ("For de i § 1, stk. 1, nævnte tjenestemænd kan tjenestefriheden eventuelt medregnes i pensionsalderen efter forelæggelse for Finansministeriet i det konkrete tilfælde. En forudsætning herfor er, at der ikke til det hverv, som tjenestemanden varetager under tjenestefriheden, er knyttet en pensionsordning").

**2013 situation**

Pursuant to Section 58(a) of the Act on Civil Servants (no. 671 of 2-10 1986), and executive order 518 of 3-7 1991, public officials have a right to unpaid leave in order to work for ECRH and other international institutions and to regain their previous status once the mandate is completed.
Upon return, the time spent thereon will be included for the purposes of salary calculation and career advancement - and possibly for pension rights, unless the public servant also gained pension rights in their work at international level.
Thus YES to **question 1** and Partly YES to **question 2**.

## *Estonia*

**Does your country's legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

**Current situation (2018)**

There have been no substantial changes since 2013. However, in 2014 the relevant provisions of the *Courts Act* were modified with more detailed rules governing in particular the notice of return and the availability of vacant positions: The modified provisions of paragraph $58^1$ of the Courts Act, which entered into force on 1 July 2014, read as follows:

> "(2) A judge may return to the same court to a vacant position of judge. A judge shall give notice of the wish to return to the chairman of the corresponding court in writing:
>
> 1) no later than one month before the regular termination of the judge's service at an international court institution or returning from an international civil mission;
>
> 2) no later than one month after the early termination of the judge's service in an international court institution or returning from an international civil mission;
>
> ($2^1$) Upon failure to notify in due time of the wish to return specified in subsection (2) of this section it shall be considered that the judge does not wish to return to the same court.
>
> (3) If after leaving the service in an international court institution or returning from an international civil mission, a judge does not have the opportunity to return to the same court to a vacant position of judge, the Supreme Court *en banc* may appoint a judge to a vacant position of judge at another court of the same instance or a lower instance as a judge with his or her consent. If the salary paid to the judge would be lower in comparison with the salary which the judge would have received on returning to the same court to a vacant position of judge, he or she shall continue to receive higher salary for six months."

The relevant provisions of the *Bar Association Act* have also been changed as recently as 10 June 2018. Article 26 still provides that persons who have served as judges in the European Court of Human Rights, the General Court of the European Union or the European Court of Justice for at least 3 years can be admitted to the Bar Association as a sworn advocate without having to pass an exam or fulfil some other requirements, but adds that an application for admission must be made within 5 years from the termination of the judicial mandate. In addition, a candidate must undergo an interview with the professional suitability assessment committee (sections $3^1$ and $3^2$ of Article 26 of the Bar Association Act).

**2013 situation**

**Does your country's legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

The answer is yes for both questions but only in respect of persons who worked as judges before their election to the Strasbourg Court or another international court. The recognition of service in those courts came about as a result of amendments to the *Courts Act* of 2002 which entered into force on 1 April 2011. In particular, a new paragraph $58^1$ was added to the Act entitled "*Employment of judges in international court institutions and participation as experts in international civil missions*". The term "*international court institution*" expressly includes the European Court of Human Rights and European Court of Justice (§ 12(4), subsection 3 of the Courts Act).

According to paragraph $58^1$, a judge in a domestic court who has served as a judge in an international court may return to a vacant position in the same court. He/she may be appointed with his/her consent to work as a judge also at another court of the same instance or a lower instance, while maintaining his former salary for a period of six months.

If there is no vacancy in the judge's former court and he/she does not agree to be transferred to another court, the judge will be released from office and will receive compensation in the amount equal to his or her six months' salary.

As regards pension rights, the period of service in an international court institution will be included in the period of employment as a judge.

The relevant provisions of paragraph $58^1$ of the Courts Act read as follows:

(1) Upon election or appointment of a judge as a judge of an international court institution or participation as expert in international civil mission the authority and service relationship of the judge shall be suspended.

(2) A judge may return to the same court to a vacant position of judge by giving at least one month's advance notice thereof to the chairman of the corresponding court.

(3) The Supreme Court en banc may appoint a judge who leaves the service in an international court institution or returns from an international civil mission to another court of the same instance or a lower instance as a judge with his or her consent. If the salary paid to the judge would be lower in comparison with the salary which the judge would have received on returning to the same court to a vacant position of judge, he or she shall continue to receive higher salary for six months.

(4) If after leaving the service in an international court institution or returning from an international civil mission, a judge does not have the opportunity to return to his or her former position of judge, and he or she does not wish to be transferred to another court, the judge shall be released from office pursuant to clause 99 (1) 6) and shall receive compensation in an amount equal to his or her six months' salary. Compensation shall be calculated on the basis of the salary valid at the time of grant thereof in the position of judge in which the judge was last employed prior to assuming office in the international court institution or taking part in the international civil mission.
(5) The period of employment in the service in an international court institution or as an expert in an international civil mission shall be included in the period of employment as a judge.

As regards career choices for former international judges, it is of interest to note that by a recent amendment to the Bar Association Act which entered into force on 1 April 2013, persons who have served as judges in the European Court of Human Rights, the General Court of the European Union or the European Court of Justice for at least 3 years can be admitted to the Bar Association as a sworn advocate without having to pass an exam or fulfil some other requirements (§ 26, section $3^1$ of the Bar Association Act).

## *Finland*

**Current situation (2018)**

**Does your country's legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

***- allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

It is possible to apply for unpaid leave under section 23 of the State Public Service Act (*valtion virkamieslaki,* Act no. 750/1994) but the employing authority has discretion to decide as to whether to grant the leave or not. The Act applies also to judges (see section 3a of the State Public Service Act, as amended by Act no. 685/2016).

***- counting the time spent in the international jurisdictions or bodies for career advancement purposes?***

There is no system of automatic career advancement based on the length of service in the judiciary, nor in the civil service. Appointments and promotions are based on merit and not merely on the length of service. Acquired professional experience is taken into account, including service in international institutions such as the Court. In terms of salaries, length of service has an impact in the lower levels of the judiciary, but in the Supreme Court all judges receive a uniform remuneration the level of which is determined by statute.

***- or pension rights?***

Pursuant to section 87 § 5 of the Pension Act for Public Sector (*julkisten alojen eläkelaki,* Act no. 81/2016), no pension rights are accumulated during the service in an international or regional organisation which provides for its own pension scheme, like in the Council of Europe.

**2013 situation**

**Does your country's legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

YES

It is possible to apply for special leave under Section 23 of the State Public Service Law (*valtion virkamieslaki*). The decision lies in the discretion of the employing authority. The law also applies to judges (Section 45 State Public Service Law).

- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes?***

YES

According to the current Finnish Judge at the Court, Mrs. Päivi Hirvelä, the service at an international court is counted as experience corresponding to one acquired at a national court. However, this does not seem to be explicitly stated in any law.

***or pension rights?***

NO

Pursuant to Section 62 § 5 of the State Pension Law (*valtion eläkelaki*) no pension accumulates for the time worked for an international or regional organisation which provides for its own pension scheme like the Council of Europe does.

## *France*

**Current situation (2018)**

D'après le décret de juillet 2004 (décret n°2004-708) abrogeant les dispositions du précédent décret de 1997, les fonctionnaires des corps recrutés par la voie de l'École nationale d'administration (l'ENA), devant effectué une période mobilité obligatoire, peuvent effectuer cette mobilité dans une organisation internationale pour une période allant jusqu'à deux ans, après quoi ils sont réintégrés de droit, au besoin en surnombre. D'après l'article 27 de la loi organique n°2007-287 du 5 mars 2007, cette disposition peut également s'appliquer aux magistrats. La mobilité, qui est obligatoire pour les magistrats souhaitant accéder aux emplois placés hors hiérarchie, peut prendre la forme d'un détachement ou d'une disponibilité pour convenances personnelles.

**2013 situation**

**"Does French legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of :**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?"***

1. En application des articles 67 et 68 de l'ordonnance n°58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature (pour les magistrats) et 45 de la loi n° 84-16 du 11 janvier 1984 portant dispositions

statutaires relatives à la fonction publique de l'Etat (pour les fonctionnaires), les magistrats et fonctionnaires peuvent être placés en position de « *détachement* » pour exercer des fonctions au sein d'une organisation internationale. Le détachement est la situation de l'agent placé hors de son corps d'origine, pour une durée limitée[151], mais continuant à bénéficier, dans ce corps, de ses droits à l'avancement et à la retraite. Ainsi, cette position garantit au magistrat ou fonctionnaire une situation identique, lors de son retour dans l'administration française, à celles de ses collègues qui ont continué leur carrière en France. Les agents détachés sont toutefois rémunérés par l'institution d'accueil. Il s'agit de la position appliquée à la quasi-totalité des magistrats et fonctionnaires français exerçant en organisation internationale.

2. En application des articles 67 et 68 de l'ordonnance n°58-1270 du 22 décembre 1958 (magistrats) et 45 de la loi n° 84-16 du 11 janvier 1984 précitées (fonctionnaires), les magistrats et fonctionnaires peuvent également exercer dans une organisation internationale intergouvernementale sous le régime de la « mise à disposition ». Ils demeurent alors dans leur corps d'origine, sont réputés occuper leur emploi, continuent à percevoir la rémunération correspondante, mais exercent leurs fonctions hors du service où ils se trouvent en poste. Ils bénéficient également des avancements et droits normaux de carrière. Cette position est plus rare compte tenu de son coût pour l'Etat qui met à disposition un agent en continuant à le rémunérer.

3. Enfin, il est possible pour un magistrat ou un fonctionnaire qui le souhaite de travailler au sein d'une organisation internationale sous le régime de la « *mise en disponibilité pour convenances personnelles* » (articles 67 et 68 de l'ordonnance n°58-1270 et 51 de la loi n°84-16). Dans ce cas, l'agent, placé hors de son administration d'origine, cesse de bénéficier dans cette position de ses droits à l'avancement et à la retraite. Cette position défavorable résulte le plus souvent d'un choix personnel motivé par la volonté de s'affranchir des contraintes statutaires liées au corps d'appartenance. Rarement utilisée pour la mobilité en organisation internationale, elle est la règle pour l'exercice d'une activité dans le secteur privé.

## *Georgia*

**Current situation (2018)**

It can be straightforwardly confirmed (we had a recent discussion on the same question with our national judge) that the question – the social rights (pension, recognition of years of service) of an international judge - is still in complete legal vacuum in Georgia. There exists not a single legal provision in Georgian law that would address the social status of Georgian nationals temporarily serving as judicial officers at international tribunals (in fact, apart from judicial post at the ECHR, the country is not represented at any other international tribunals or private arbitration courts).

**2013 situation**

Having gone through the relevant domestic provisions concerning the status of judges in Georgia, I confirm that domestic law is silent about the consequences of service of a judge at an international judicial body on his her career growth,

[151]. Pour les magistrats, la durée est en principe de 3 ans renouvelable une fois.

pension rights and so on. The same is true with respect to any other civil servants or law professors. Such a situation is not explicitly addressed by the Georgian legislation.

## *Germany*

**Current situation (2018)**

**Does your country's legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

YES

Public officials seconded to international organisations are entitled to special leave without pay under Section 6 § 1(1) of the Decree on Special Leave (*Sonderurlaubsverordnung* – SurlV). According to Section 2 § 4 of the Guidelines on Secondment of Public Officials of the Federal State to Public Interstate or International Organisations (*Entsendungsrichtlinien* - EntsR) the duration of the special leave is to be restricted up to 5 years. Only under exceptional circumstances can it be prolonged over a maximum of 10 years.

Public officials in the service of international organisations outside a secondment can be awarded special leave up to one year on the discretion of the highest supervisory authority and when permitted under functional considerations of the service (Section 6 § 2 of the SurlV). In principle, the taking up of office as a public servant of a regional or international organisation ends the public service for the German state by virtue of Section 31 § 1 No. 2 *Bundesbeamtengesetz* - BBG. It lies, however, in the discretion of the competent supervisory authority to order the continuation of the German appointment along the one at the regional/international organisation provided that the organisation in question consents to this parallelism (Section 31 § 2 2nd sentence BBG). This means in substance that special leave is granted for the duration of the service abroad.[152]

- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights ?***

YES

A secondment is deemed to be in the interest of the service or the general public and shall thus not interfere with career advancement chances (Section 27 § 3 3rd sentence and Section 28 § 5 (2) of the Law on the Remuneration of Public Officials [*Bundesbesoldungsgesetz* – BBesG], Section 3 § 3 of the EntsR).

The time spent in the service of an international organisation is counted as time served as regards pension rights (Section 6 § 3 No. 4 of the Law on the Maintenance of Public Officials, *Beamtenversorgungsgesetz* - BeamtVG). The pension paid by the German state is, however, possibly subject to deduction in case of an entitlement to a parallel pension by the international organization in question (Section 56 BeamtVG).

[152]. See e.g. Verwaltungsgericht Berlin (Administrative Court Berlin), judgment of 27 November 2012 – 5 L 423.12.

**2013 situation**

**Introductory remarks**

The following contribution only makes reference to the federal laws on civil servants although the majority of public officials are employed on the level of the 16 *Länder*. Yet many of the state laws make reference to the equivalent on the federal level thus accepting their applicability mutatis mutandis for the state level.[153] Moreover, even where the state laws provide for their own regulations they do not seem to differ in a significant way from the federal ones.[154]

Most of the federal laws quoted below (SurlV, EntsR, BeamtVG, BBesG) are equally applicable to judges

**Does your country's legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

YES

Public officials seconded to international organisations are entitled to special leave without pay under Section 9 § 1 of the Decree on Special Leave (*Sonderurlaubsverordnung* – SurlV). According of the Guidelines on Secondment of Public Officials of the Federal State to Public Interstate or International Organisations (*Entsendungsrichtlinien* - EntsR) the duration of the special leave is to be restricted up to 5 years. Only under exceptional circumstances can it be prolonged over a maximum of 10 years.

Public officials in the service of international organisations outside a secondment can be awarded special leave up to one year on the discretion of the highest supervisory authority and when permitted under functional considerations of the service. In principle, the taking up of office as a public servant of a regional or international organisation ends the public service for the German state by virtue of Section 31 § 1 No. 2 *Bundesbeamtengesetz* - BBG. It lies, however, in the discretion of the competent supervisory authority to order the continuation of the German appointment along the one at the regional/international organisation provided that the organisation in question consents to this parallelism (Section 31 § 2 2nd sentence BBG). This means in substance that special leave is granted for the duration of the service abroad.[155]

- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights ?***

YES

A secondment is deemed to be in the interest of the service or the general public and shall thus not interfere with career advancement chances (Law on the Remuneration of Public Officials [*Bundesbesoldungsgesetz* – BBesG]).

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153. Cf. e.g. the Guidelines on the Authorisation of Special Leave for Public Officials and Judges of Hamburg [Richtlinien über die Bewilligung von Sonderurlaub für Beamtinnen und Beamte sowie Richterinnen und Richter - HmbSUrlR].

154. Cf. e.g. the Guidelines for the Secondment of State Officials to Public Interstate or International Organisations of North Rhine-Westphalia [Richtlinien für die Entsendung von Landesbediensteten in offentliche zwischenstaatliche oder uberstaatliche Organisationen in Nordrhein-Westfalen].

155. See e.g. Verwaltungsgericht Berlin (Administrative Court Berlin), judgment of 27 November 2012 – 5 L 423.12.

The time spent in the service of an international organisation is counted as time served as regards pension rights (Section 6 § 3 No. 4 of the Law on the Maintenance of Public Officials, *Beamtenversorgungsgesetz* - BeamtVG). The pension paid by the German state is, however, possibly subject to deduction in case of an entitlement to a parallel pension by the international organization in question (Section 56 BeamtVG).

## *Greece*

**Current situation (2018)**
OK for Greece

**2013 situation**
**Does Cypriot and Greek legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

There is no such specific provision in Greek legislation concerning the service in an "international jurisdiction". Rather, the law regulates the status and pension rights of public servants, university professors and judges in the event of taking up posts at the EU or "*international organizations*".

(a) Public servants in general

According to law 3528/2007 ("*code for public civil servants*"), a public servant who accepts a post "*in the European Union or an international organization, in which Greece is a member state*", may be granted with an unpaid leave for up to five years, after the relevant approval of the "*service board*". The abovementioned leave may be extended for five more years (Article 51 § 4). The time the public servant has served in the relevant post at the international organization is counted as "*years of actual service*" (Article 51 § 5). During the time of the unpaid leave, the public servant is obliged to pay "*the legal deductions for the main and supplementary insurance and welfare funds*" (Article 51 § 6).

(b) University professors

Law 4009/2011 stipulates that university professors who hold positions in international organizations are suspended from the exercise of their duties [Article 24 § 4(c)]. The Minister of Education, Lifelong Learning and Religious Affairs issues a relevant decision so that the suspension is enacted (article 5). It follows that after having completed their mandate at the international organization, university professors may return to their previous post.
The time worked in international organizations is counted towards retirement, provided that the university professor concerned continues to pay the contributions to the relevant pension fund. According to law 2703/1999, professors may choose to remain insured in the same pension fund as before their suspension. In that case, the service at their new posts will be considered as "*actual and pensionable service*" in the post held before their departure [Article 5 § 11(a)].

(c) Judges

According to law 1756/1988, judges may apply and be granted with a special unpaid leave in order to take up duties "*in the EU or other international organizations*". This leave is initially granted for three years, with the possibility to be extended for another three years (Article 44 § 6). Ministerial decision no. 41/1989 defines how contributions are paid to the usual pension fund during this special unpaid leave. It follows that since judges are granted with "*leave*" and continue to pay contributions, they are on the one hand able to return to their posts once their mandate is completed and on the other hand the time spent in the international jurisdiction counts in respect of their pension rights.

## *Hungary*

**Current situation (2018)**

The information in the contributions from 2013 is still up to date. No changes have been made in the domestic laws.

**2013 situation**

**Does Hungarian legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

The legal status of judges, public prosecutors, civil servants (e.g. diplomats) and public employees (e.g. university professors) is regulated in different ways in the Hungarian legal system; therefore the answer to the questions needs differentiation between the respective categories.

1. The status of **judges** is regulated by *Act no. CLXII of 2011 on the Legal Status and Remuneration of Judges*.

Section 90(g) of the Act provides that judges shall be **dismissed** from service, if they, with the consent of the President of the National Office of Justice, enter into employment at an international body or EU agency in order to perform there judicial or judiciary related activities.

However, Section 23(3) of the Act provides that upon a request lodged within 30 days of the expiry of their mandate at the international body or EU agency, the dismissed judges shall be appointed again as judges and reemployed in their former positions. In this case the time spent in work at the international body or EU agency shall be taken into consideration as service time.

*It follows that judges can interrupt their carrier in order to work at international level and then regain their previous status; and the time spent with international judicial activities counts for their career advancement and public pension rights.*

2. The situation of **public prosecutors**, as regulated by *Act no. CLXIV of 2011 on the Status of the Chief Procecutor, Prosecutors and Prosecution Employees and the Prosecution Career*, is slightly different and a bit less favourable.

Section 30(1) and (4) of the Act provides that public prosecutors may be **assigned to a long term mission** at an international body or EU agency in order to fulfill

duties of judicial cooperation. After the expiry of their mandate they shall be reemployed in their original position automatically. In addition, under Section 31 of the Act, the Chief Prosecutor may authorise fix-term **unpaid leave** for public prosecutors in order to work at an international body or EU agency in a position which requires prosecution expertise and is compatible with the prosecutor's office. An authorised public prosecutor shall not be entitled to the rights arising from their prosecution service relationship during the unpaid leave. If the duration of the leave exceeds six months and the public prosecutor holds a managerial position at the Hungarian prosecution service, this position shall cease as of the day preceding the beginning of the unpaid leave. If the duration of the leave exceeds six months, the public prosecutor shall only be reemployed in his former position if he submits a requests to this effect at least three months before the expiry of his mandate at the international body or EU agency. If he does not submit such a request within the deadline, his public prosecution service relationship terminates as of the last day of the unpaid leave. If the Chief Prosecutor does not authorise an unpaid leave, the prosecution service relationship terminates on the day preceding the beginning of the working relationship at the international body or EU agency. In this case there is no obligation to reemploy the public prosecutor in his former position.

*To sum up, public prosecutors can only interrupt their carrier in order to work at international level and then regain their previous status if they are assigned to that work or they are authorized to take unpaid leave for it. Under assignment they keep their career advancement and pension rights for the duration of the foreign mission, while under unpaid leave they do not.*

3. The third category comprises of **civil servants** (those who work for the executive power, i.e. governmental and administrative bodies), whose situation is regulated even less favourably by *Act no. CXCIX of 2011 on the Public Service Officials*.
Section 62 of the Act stipulates that if a civil servant enters into any kind of employment at an international body or EU agency, his public service relationships **terminates** on the day preceding the beginning his employment at the international body or EU agency, without any obligation to reemploy him later in the public service.

*It follows that civil servants cannot interrupt their carrier in order to work at international level and then regain their previous employment; nor the time spent with international judicial activities counts for their career advancement or public pension rights in Hungary.*

4. The situation of the last category, **public employees** (persons working at publicly organized and financed institutions, e.g. at hospitals or universities), is not regulated at all by *Act no. XXXIII of 1992 on the Legal Status of Public Employees*, the law applicable to their employment.

*In lack of any express legal regulation or judicial case law regarding the employment of public employees at international bodies, the questions cannot be answered with certainty in relation with them.*

# *Iceland*

**Current situation (2018)**

**Does Icelandic legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

YES

According to Section 18, 26 and 35 of the Act on the Judiciary No 50/2016, a District Court, High Court or a Supreme Court judge can be granted a leave for up to six years, upon his request, in order to enable him to become a member of an international tribunal or to work for an international institution.

As to other public officials, it appears that the law is not explicit about this. In practice, however, work at an international level is considered to be a valid ground for granting unpaid leave for a fixed period of time.

- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

The time spent in the international jurisdictions or bodies does not in general count into pension rights in Iceland. In simple terms there are two types of pension rights in Iceland. Each employee is obliged to be a member of a pension fund and pay certain % of his/her income to the fund, the employer pays a contribution for the employee as well, the details are set out in collective agreements. The pension right depends on the payments you have made into the fund. If you don´t pay when you work for an international body no rights are being accumulated during that time. However, in the Act on the Pension Fund for Employees in the Public Sector, there is a provision according to which the board of the fund can, with the approval of the minister, give a member of the fund, who is granted leave from his office to work for an international body, the right to continue to pay to the fund while he is working for the international body. It is also possible to pay contributions to Icelandic pensions funds while living abroad, but for tax purposes it is not necessarily a good option. The second type is pension received from social security, if the payment received from the first system is low or none. This pension is paid as a proportion of a period of residence between 16-67 years of age. You have a right to full pension after 40 years of residence in Iceland, however special rules can apply as regards residence in an EEA Country. It does not appear that working for international bodies has any effect on these rights, unless you may be residing in an EEA country as well. However, according to the Act on legal residence a person working for an international institution which Iceland is a part of is permitted to keep his registered legal residence in Iceland, which would then count to the years resided in Iceland in this respect.

It does not appear to count for career advancement purposes in a general, although the law is not explicit about that. For instance, experience of working as a judge at an international court would count as judge's experience for domestic purposes, such as when applying for the post of a Supreme Court, High Court or District Court judge. Work at an international institution would also be taken into account, if relevant, when applying for work.

**2013 situation**

**Does Icelandic legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

YES

In relation to judges. According to the Act on the Judiciary, the Minister may grant a District Court or a Supreme Court judge a leave for up to six years, upon his request, in order to enable him to become a member of an international tribunal or to serve an international institution.

As to other public officials, it appears that the law is not explicit about this. In practice, however, work at an international level is considered to be a valid ground for granting unpaid leave for a fixed period of time.

- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

The time spent in the international jurisdictions or bodies does not count for pension rights in Iceland. It does count for career advancement purposes in a general manner, although the law is not explicit about that. For instance, experience of working as a judge at an international court would count as judge's experience for domestic purposes, such as when applying for the post of a Supreme Court judge.

In the Act on the Pension Fund for employees in the public sector, there is a provision according to which the board of the fund can, with the approval of the minister, give a member of the fund, who is granted leave from his office to work for an international body, the right to continue to pay to the fund while he is working for the international body.

## *Ireland*

**Current situation (2018)**

***Does your country's legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:***

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

I. The Irish Context

In terms of service on the European courts, it should be noted that no Irish *civil servant or university professor* has ever been appointed to either this Court or the CJEU. Information on civil service rules regarding secondment to an EU institution or other international organisation is provided below, however, for the sake of completeness. As regards *judges*, all bar two of those appointed to the two European courts have been either practicing members of the Bar of Ireland (at Senior Counsel level) or judges in the Irish Superior Courts.

For those appointees who are practising barristers, they are self-employed individuals and therefore the questions raised concerning the interruption of career or pension rights do not apply. After service on a European court the individual

may return to the Bar as a self-employed lawyer if they so wish. For those appointees who are serving as Irish judges when appointed to the European courts, it is important to stress that they are *not* considered to be civil servants. They must leave their posts in the Irish courts when they take up a position in either European court. They do not remain "seconded" members of the Irish bench. If, after their service in the two European courts, they are appointed to the Irish bench, it is on the basis of a Government decision and in accordance with the procedure which applied when they were first appointed to the bench in Ireland. The legislative provisions concerning eligibility for appointment to the Superior Courts (both current and proposed) are set out at section III below. As regards practice, until recently, all former Irish members of the CJEU returned to a position in the Superior Courts. The first Irish judge to serve after the ECtHR became permanent came to the ECtHR as a barrister (Senior Counsel) but was appointed to the High Court bench upon return. In other words, European court service was generally followed, if the office holder so wished, by appointment to the Irish bench. However, from approximately 2014 onwards, this tradition has no longer been followed and several former members of both European courts have not been appointed to the Irish bench in recent years.

II. Civil Servants, professors and diplomats

This information is provided for the sake of completeness, as referenced in the introductory paragraph. As regards public officials in general, the *Diplomatic Relations and Immunities Act, 1967* recognises the privileges and immunities of those serving in the United Nations and the Council of Europe.

According to the *Civil Service Circular 33/91* on "Special leave without pay to take up an appointment with an institution of the European Communities or other international organisation of which Ireland is a member", civil servants may request special leave to serve with the EU for a maximum of ten years or up to the minimum retiring age, whichever is the shorter. Further, special leave may also be granted to serve with an international organisation of which Ireland is a member (other than the EU) for a maximum of five years or up to the minimum retiring age, whichever is the shorter. A civil servant on special leave will be allowed to return to the Irish Civil Service on giving adequate notice (normally six months), provided: he has not in the meantime become disqualified for service, he satisfies health requirements, his appointment with the EU or other international organisation had not been terminated on grounds which would warrant dismissal from the Civil Service; and a suitable vacancy exists. A civil servant returning from special leave, other than on promotion, will be placed on the point he had reached on the salary scale of the grade in which s/he was serving immediately before the commencement of the special leave. However, the Head of Department may, within one year of return, award the civil servant grade progression retrospectively from the date which applied before the civil servant left on special leave, subject to certain conditions. In general, it appears that civil servants on special leave are still eligible for promotion, although they may need to defer that promotion until they return from special leave. Service with an EU institution (but not with another international organisation) can count towards a qualifying service period for promotion. This means that for a civil servant who has already completed the relevant qualifying service period, he may be promoted during the time he spends on special leave no matter if the leave is spent with the EU or a non EU organisation. If he has not yet completed the required qualifying service period however, only special leave with an EU organisation with continue to 'accrue' qualifying service period time for him.

Regarding pension rights, these are also regulated by the Circular for civil servants on special leave. Where a civil servant remains with the EU and does not return to the Civil Service, they may receive an award based on actual paid service in the Civil Service at the time the award becomes payable, to the point he had reached on the salary scale of the grade in which he was serving immediately before the commencement of special leave. He may also, subject to formal resignation from the Civil Service, opt to have a direct payment made to the EU in respect of his civil service superannuation entitlements. Contributions to spouse and children schemes will not be refunded when a civil servant goes on special leave to serve with the EU. There is no indication that this Circular has been withdrawn, and it has been referred to in other Civil Service official documents as recently as June 2013. It is not clear if diplomats fall outside the category of persons covered by this Circular, but the information is provided in the event it is relevant.
The position of professors and diplomats (if distinct from 'normal' civil servants) is not specifically addressed.

III. Judges

A judge is not considered to be a civil servant in Ireland. The Constitution of Ireland ('Bunreacht na hEireann') provides that judges are appointed by the President of Ireland and are independent in the exercise of their judicial functions and subject only to the Constitution and the law. Unlike the English Human Rights Act 1998, Ireland's equivalent legislation – the *European Convention on Human Rights Act 2003* – contains no provision for the appointment of judges to the European Court of Human Rights. There is no mention of any relevant provisions in the context of the judiciary in the principal legislation in that area, the *Courts of Justice Act, 1953*, nor its amended forms.

(i) Eligibility for appointment to the Superior Courts

Article 35.1 of the Constitution provides that *"The judges of the Supreme Court, the Court of Appeal, the High Court and all other Courts established in pursuance of Article 34 hereof shall be appointed by the President.* While the formal appointment of judges is made by the President through the presentation of warrants of appointment to those appointed, this power is, pursuant to Article 13.9, *exercised "only on the advice of the Government.*"
Section 5(2) of the Courts (Supplemental Provisions) Act, 1961 as amended by section 4 of the Courts and Court Officers Act, 2002 and section 11 of the Court of Appeal Act 2014 sets out the requirements for the qualification of judges of the Supreme Court, the Court of Appeal and the High Court as follows:

> "5. (2) (a) Subject to paragraphs (b) and (c) of this subsection, a person shall be qualified for appointment as a judge of the Supreme Court, the Court of Appeal or the High Court if the person is for the time being a practising barrister or a practising solicitor of not less than 12 years' standing who has practised as a barrister or a solicitor for a continuous period of not less than 2 years immediately before such appointment.
>
> (b) A person who—
>
> (i) is or was at any time during the period of 2 years immediately before the appointment concerned—
>
> (I) a judge of the Court of Justice of the European Communities,
>
> (II) a judge of the Court of First Instance attached to that Court,
>
> (III) an Advocate-General of the Court of Justice of the European Communities,
>
> (IV) a judge of the European Court of Human Rights established under the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November, 1950,

(V) a judge of the International Court of Justice established under the Charter of the United Nations,

(VI) a judge of the International Criminal Court established under the Rome Statute of the International Criminal Court done at Rome on the 17th day of July, 1998, upon the entry into force of that Statute,

(VII) a judge of an international tribunal within the meaning of section 2 of the International War Crimes Tribunals Act, 1998 ,

and

(ii) was a practising barrister or a practising solicitor before appointment to any of the offices referred to in subparagraph (i) of this paragraph,

shall be qualified for appointment as a judge of the Supreme Court, the Court of Appeal or the High Court.

(c) A judge of the Circuit Court who has served as such a judge for a period of not less than 2 years shall be qualified for appointment as a judge of the Supreme Court, the Court of Appeal or the High Court."

(ii) The Judicial Appointments Advisory Board

Section 13, Part IV of the Courts and Court Officers Act 1995 ('the 1995 Act') provides for the appointment of a Judicial Appointments Advisory Board for the purposes of *"identifying persons and informing the Government of the suitability of those persons for appointment to judicial office."*

The Board advertises for applications for judicial appointments. Anyone recommended by the Board to the Government for judicial appointment must not only hold the formal qualifications set out in the Courts (Supplemental Provisions) Act 1961 but must also display an appropriate "*degree of competence and probity*" and be "*suitable on the grounds of character and temperament*". The Board forwards a list of at least seven suitable candidates to the Government, without any ranking as to suitability, and the Government is not obliged to appoint from this list.

Specifically in respect of judges who have served in international courts and tribunals and who will be appointed to judicial office on their return, section 17A of the 1995 Act (as inserted by the Courts and Court Officers Act, 2002) sets out as follows:

*"17A.—A person who for the time being holds the office of—*

*(a) judge of the Court of Justice,*

*(b) judge of the Court of First Instance attached to that Court,*

*(c) Advocate-General of the Court of Justice,*

*(d) judge of the European Court of Human Rights established under the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November, 1950,*

*(e) judge of the International Court of Justice established under the Charter of the United Nations,*

*(f) judge of the International Criminal Court established under the Rome Statute of the International Criminal Court done at Rome on the 17th day of July, 1998, upon the entry into force of that Statute,*

*(g) judge of an international tribunal within the meaning of section 2 of the International War Crimes Tribunals Act, 1998 ,*

*shall vacate the office concerned before the President appoints the person to a judicial office."*

The above procedures continue to apply pending the enactment of the Judicial Appointments Commission Bill 2017.

(iii)Judicial Appointments Commission Bill 2017

A legislative bill which would reform the judicial appointments process in Ireland is making its way through the Irish parliament (Oireachtas). The Judicial Appointments Commission Bill 2017 is currently before the Seanad Éireann (Upper House), Third Stage (also known as Committee Stage) as of 20 June 2018, where it is being examined and amendments may be made. If the Bill is enacted as currently drafted, it will repeal Part IV of the Courts and Court Officers Act 1995 concerning judicial appointments, save for certain sections. Section 17A, providing that a judge appointed to the Court of Justice of the European Union, the European Court of Human Rights, and the international courts must vacate the office concerned before appointment by the President to a judicial office, will continue in operation. The Bill would also dissolve the Judicial Appointments Advisory Board and establish the Judicial Appointments Commission ('JAC'). The function of the JAC would be to select and recommend to the Minister for Justice and Equality persons for appointment to judicial office, to be performed through committees.

The JAC would consist of 16 members, comprising the Chief Justice, the President of the Court of Appeal, the President of the High Court, the President of the Circuit Court, the President of the District Court, the Attorney General, a member who is a lay person and a member of the Irish Human Rights and Equality Commission, a practising barrister, a practising solicitor, a chairperson and 6 lay persons. Section 12 of the Bill provides for the appointment of a lay person as chairperson of the JAC. The Bill would amend Section 5 of the Courts (Supplemental Provisions) Act, 1961 (as amended) regarding the requirements for the qualification of judges of the Supreme Court, the Court of Appeal and the High Court by the insertion of certain provisions. However, none of the existing grounds of eligibility for judicial appointments are proposed to be removed. The additional provisions include:

(i) Provision for a judge of the District Court of not less than two years of service to be eligible for appointment to the High Court bench; and
(ii) An additional basis of qualification for appointment as a judge of the Supreme Court, the Court of Appeal or the High Court to be inserted by way of a Section 45A regarding certain legal academics of not less than 12 years standing.

The JAC shall invite applications for judicial appointments through advertisement. Section 7 of the Bill provides that recommendations to the Minister for Justice and Equality for appointments to judicial office shall be based on merit, and regard shall be had to the objective of gender equal membership of the judiciary, diversity and proficiency in the Irish language. Section 35 provides for the principal conditions to be satisfied in respect of the recommendation of names by the JAC to the Minister for Justice and Equality. It provides that the JAC shall not recommend a person's name to the Minister for Justice and Equality for appointment to the office of the Supreme Court, Court of Appeal or High Court unless in the opinion of the JAC the person has an appropriate knowledge of the decisions and an appropriate knowledge and experience of the practice and procedure of those courts. Section 36 further requires that the person to be recommended has displayed *"a degree of competence and a degree of probity appropriate to and consistent with the appointment concerned*" in his or her role as a barrister, solicitor or legal academic, as well as being suitable on grounds of character and temperament, and on grounds of health. The person must also give an undertaking that they will undertake such training or education as may be required by the Chief Justice or President of the relevant Court.

Where one judicial office stands/will stand vacant the JAC shall recommend three persons to the Minister for Justice and Equality, ranked in order of the JAC's preference. Where more than one judicial vacancy in the same court stands/will stand vacant the JAC shall recommend a number of persons which is arrived at by calculating twice the number of vacancies, and adding one to that figure.

IV. Conclusion

Generally speaking, Irish legislation does not expressly recognise service on the European Court of Human Rights or another international jurisdiction such as the CJEU in terms of allowing public officials to work at the international level and then regain their status once their mandate is completed, or in terms of counting the time spent in service for career advancement or pension rights. The exception to this statement is that there is provision for civil servants to obtain special leave without pay to take up an appointment with an institution of the EU or other international organisation of which Ireland is a member. In practical terms, however, it is important to note in the specific Irish context that no Irish civil servant/diplomat (or Irish professor) has thus far been appointed to either European court. Further, where an Irish judge is appointed to either European court, s/he does not remain a seconded member of the Irish bench and as such the time spent on either European court would not count towards pension rights. While such an individual *may* be appointed to the Irish bench after service on a European court, this has not always been the case in recent years.

**2013 situation**

**Does your country's legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

As regards public officials in general, the Diplomatic Relations and Immunities Act, 1967 recognises the privileges and immunities of those serving in the United Nations and the Council of Europe. However, no legislation expressly recognises the right of public officials to interrupt their career in order to work at an international level and then regain their previous status once the mandate is completed. According to the Civil service Circular 18/98, however, a civil servant who has satisfactorily completed two years of continuous services may apply for special, *unpaid* leave in the form of a career break. The respective period of the career break will not serve towards promotion, increment or superannuation. On completion of a career break, a civil servant will be assigned to the next appropriate vacancy, with a guarantee of re-employment to his/her original grade (although not necessarily in his/her original Department/Office), within twelve months of the end of the career break.[156] In particular, no mention of any such right in the context of the judiciary is made in the principal legislation in that area, the Courts of Justice Act, 1953, nor its amended forms. Any such rights or privileges presumably must be negotiated with the particular governmental department for which an individual was working previous to their employment in an international

[156]. "An Introduction into the Irish Civil Service": http://hr.per.gov.ie/files/2011/05/14_Civil_Service_Induction_Manual_2008_En.pdf

institution. Unlike the English Human Rights Act 1998, Ireland's equivalent legislation – the European Convention on Human Rights Act 2003 – contains no provision for the appointment of judges to the European Court of Human Rights.
Therefore, Ireland does not recognize service on the European Court of Human Rights or any other international jurisdiction or body in terms of allowing public officials to interrupt their career in order to work at international level and then regain their previous status once their mandate is completed. Furthermore, time spent in international jurisdictions or bodies does not count towards career advancement or pension rights.

## *Italy*

**Current situation (2018)**
**The questions to be answered are the following:**
**Does your country's legislation expressly recognise service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- **allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed ?**
- **counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights ?**

For public officials and civil servants in general, temporary international and European mobility can be achieved in three ways:

- secondment of Italian officials as END, or Seconded national Experts to Institutions or Bodies of the European Union or international organizations, pursuant to art. 32 of the Legislative Decree no.165/2001 (("General rules on the employment by public administrations"), as amended by art. 21 of the Law 24.12.2012, n. 234 ("General rules on the participation of Italy to the formation and implementation of the legislation and policies of the European Union"), and regulation 30.10.2014, n. 184 ("Implementing Regulation concerning secondments of public administration's personnel to the European Union, international organizations or foreign States).
  These rules provide that personnel who provide temporary service abroad remain formally in the administration to which they belong; however, the economic treatment of the seconded national experts may be charged to the administrations of origin, to those of destination or be divided between them, or be repaid in whole or in part to the Italian State by the European Union or by an international organization or body.
  It is also prescribed the valorization of the experience gained by the civil servant, being stated that the experience gained abroad is a preferential title for access to higher economic positions or to horizontal and vertical career progressions within the public administration, and that the administration must also take into account the experience gained abroad in the assignment of the employee at the end of the period of secondment.
- exchange of officials, pursuant to the same art. 32 or the Legislative Decree no.165/2001.
- leave of absence (the so called "placement out of the position", or "collocamento fuori del ruolo"), pursuant to Law 27.7.1962, n. 1114 ("Discipline of the legal and economic position of State employees authorized to take up employment with international bodies or to perform

functions in foreign countries"). This law provides that, from the commencement date of the placement "out of the position", the economic treatment paid by the Italian State ceases, and the employee is required, from that same date, to pay to the Administration to which he belongs the amount of contributions due to the social security service.

For personnel of the Foreign Ministry working abroad, the legislative decree n. 62/1998, Law n. 662/1996, and the decree of the President of the Republic n. 18/1967 grant specific allowances for the work generally performed abroad.

Finally, it has to added that, for international missions, royal decree 3.6.1926, n. 941, the decree 21.8.1945, n. 540, and the Decree of the President of the Republic 31 marzo 1971, n. 286, rule on the allowances which are granted to the personnel, while specific dispositions related to single missions give more detailed rules.

To the magistrates who became Judge of the ECHR or of the ECJ, Art. 23bis of the Legislative Decree n. 165/2001 is applicable, and the Judge is paid directly by the international organization concerned.
Art. 23bis of the Legislative Decree n. 165/2001 provides in general that diplomats, judges, public prosecutors and public lawyers, public managers can interrupt their career in order to work at international organizations, except in case of explained denial delivered by their administration body.
They are put on leave without allowances and they have to pay their contributions to the national pension scheme if they want the period on leave to be counted for the retirement benefits.
Once the mandate is completed, they regain their previous working positions, but the time off work is considered for the purposes of career progressions.

For professors and researchers of the Universities Art. 7 of Law n. 240/2010 ("Rules on the organization of universities, academic staff and recruitment") provides rules and principles similar to those provided by the said Art. 23bis.

Article 23bis states that the current legislation on the placement "out of the position" in the permitted cases remains valid. For magistrates on secondment to international organizations it is therefore applicable Art. 210 of the Royal decree 30.01.1941, n. 12, "Judicial system", which states that magistrates having a leave of absence owing to special tasks (and placed "out of their position", fuori del ruolo organico) keep the economic treatment and their degree; therefore, magistrates on secondment–notwithstanding they are "out of the position"- keep on benefiting of the economic and social security treatment they had before the secondment.
Moreover, also a special indemnity (provided by inter-ministerial decree 03/03/2011) is granted to them.

Finally, EJTN magistrates, who are national magistrates seconded in the framework of the activities of the European Judicial training network, continue benefiting of the economic and social security treatment they had before the secondment; in this case, however, the magistrate keeps the original position in his/her country and he/she is not placed "out of the position", as the activities performed abroad are considered a kind of long-term specific training which do not interfere with the job position of the magistrate.

**2013 situation**

1) Diplomats, judges, public prosecutors and public lawyers can interrupt their career in order to work at international bodies, except in case of explained denial delivered by their administration body.
Once the mandate is completed, they regain their previous working positions.
The international bodies provide for the retirements benefits respect of that period (art. 23*bis* Decreto Legislativo n. 165/2001 "*Norme generali sull'ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche"*).

2) Professors can interrupt their career in order to work at international bodies and, once the mandate is completed, they have right to return to their previous working positions.
The international bodies provide for the retirements benefits concerning that period (art. 7 Legge 240/2010 *"Norme in materia di organizzazione delle universita', di personale accademico e reclutamento"*).
The time off work is considered for the purposes of career progressions (art. 13.5 Decreto del Presidente della Repubblica n. 382/1980 *"Riordinamento della docenza universitaria"*).

## *Latvia*

**Current situation (2018)**

**Does your country's legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

**Allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed**

There are no such provisions.
However, according to Sections 53(3) and 54(3) of the Judiciary Act 1992 (*Likums "Par tiesu varu"*), a former judge of "*an international or supranational court*" (which includes the ECHR) *may apply* for the post of the judge of a regional court (*apgabaltiesa*) or of the Supreme Court. If he/she wishes to apply for the post of a Supreme Court judge, he/she has to obtain a positive opinion of the general assembly of the respective department of the Supreme Court. If he/she applies to the Supreme Court, he/she has to pass an examination according to criteria set by the Council of the Judiciary (Section 54-1(1)). This will be seen as the *beginning*, not the *continuation*, of his/her judicial career in Latvia.
Sections 75, 77 and 79 deal with the "*replacement of a judge in case of his/her absence*", but this absence and replacement cannot exceed two years.
Finally, according to Section 86-1, a judge may be seconded to, *inter alia*, an international court or an international organization, with the authorization of the president of the respective court and for a period of time not exceeding three years. This obviously does not concern judges of the ECHR.

Section 36 of the Prosecutors' Office Act 1994 (*Prokuratūras likums*) allows a former judge of "an international or supranational court" to apply for the post of Prosecutor General, provided that he/she meets other conditions listed therein.

**Counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights**

The answer is negative. Section 3 of the Judges' Service Pensions Act 2006 (*Tiesnešu izdienas pensiju likums*) contains a list of professions and posts which are included in the overall working period taken as a basis for the calculation of pension rights of a judge; i.e., they are legally assimilated to a judge's work for this purpose. These professions are the following: judge (including judges of the Constitutional Court), Ombudsman, prosecutor, investigating officer, judge of the former State Arbitration Court (before 1994 or 1995). The post of a judge of an international or supranational court is not included. However, this provision concerns only a person having worked as a judge during the last ten years and having either resigned or left the office after having reached the retirement age (Section 2(1) - *1°*). If (theoretically) the legislator adds the post of an ECHR judge to the aforementioned list, then it will mean that the former ECHR judge will have to apply for the post of a judge in Latvia, then be a judge for at least ten years, and then he/she will be entitled to the service pension, the amount of which will be calculated taking into account the years worked at the ECHR. But, as I said, this is a only hypothetical version imagining that the legislator would adopt such an amendment.

**2013 situation**

**Allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed**

There are no such provisions.

However, according to Sections 53(3) and 54(3) of the Judiciary Act 1992 (*Likums "Par tiesu varu"*), a former judge of "*an international or supranational court*" (which includes the ECHR) *may apply* for the post of the judge of a regional court (*apgabaltiesa*) or of the Supreme Court. If he/she applies to the Supreme Court, he/she has to pass an examination according to criteria set by the President of the Supreme Court (Section 54-1(2)). This will be seen as the *beginning*, not the *continuation*, of his/her judicial career in Latvia.

Sections 75, 77 and 79 deal with the "*replacement of a judge in case of his/her absence*", but this absence and replacement cannot exceed two years.

Finally, according to Section 86-1, a judge may be seconded to, *inter alia*, an international organization, with the authorization of the president of the respective court and for a period of time not exceeding three years. This obviously does not concern judges of the ECHR.

Section 36 of the Prosecutors' Office Act 1994 (*Prokuratūras likums*) allows a former judge of "an international or supranational court" to apply for the post of Prosecutor General, provided that he/she meets other conditions listed therein.

**Counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights**

The answer is negative. Section 3 of the Judges' Service Pensions Act 2006 (*Tiesnešu izdienas pensiju likums*) contains a list of professions and posts which are included in the overall working period taken as a basis for the calculation of pension rights of a judge; i.e., they are legally assimilated to a judge's work for this purpose. These professions are the following: judge (including judges of the

Constitutional Court), Ombudsman, prosecutor, investigating officer, judge of the former State Arbitration Court (before 1994 or 1995). The post of a judge of an international or supranational court is not included. However, this provision concerns only a person having worked as a judge during the last ten years and having either resigned or left the office after having reached the retirement age (Section 2(1) - *1°*). If (theoretically) the legislator adds the post of an ECHR judge to the aforementioned list, then it will mean that the former ECHR judge will have to apply for the post of a judge in Latvia, then be a judge for at least ten years, and then he/she will be entitled to the service pension, the amount of which will be calculated taking into account the years worked at the ECHR. But, as I said, this is a only hypothetical version imagining that the legislator would adopt such an amendment.

## *Liechtenstein*

**Current situation (2018)**

The information in the contributions from 2013 is still up to date. No changes have been made in the domestic laws.

**2013 situation**

1. **Does your country's legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU)**

The Public Officials Act (*Staatspersonalgesetz*, StPG) applies to public officials of the state. The regulations regarding leave in the StPG are equally applicable to judges and public prosecutors due to references in the Service of Judges Act (Article 29 § 1 *Richterdienstgesetz* - RDG) and the Public Prosecutor Act (Article 46 § 1 *Staatsanwaltschaftsgesetz* - StAG) respectively.

**c. in terms of allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed ?**

Provided that the deployment is in the interest of the state pursuant to Article 33 § 1 StPG state officials can be granted leave of 3 years in order to serve in an international organisation. The leave can be prolonged, but must not exceed 6 years (Article 33 § 2 StPG). The Public Officials Regulation (*Staatspersonalverordnung* - StPV) explicitly states that the Council of Europe is an international organisation in the sense of Article 33 StPG (Article 24 § 1 StPV). The government is to decide insurance and compensation issues on a case by case basis (Article 24 § 3 StPV). Positions which became vacant because of the state official is temporarily serving in an international organisation are to be filled with employees on the basis of a temporary contract (Article 24 § 4 StPV). Upon ending the service in an international organisation, the public official concerned is either offered the position he/she held before his/her leave, or he/she is to be placed in another, appropriatee position where, if possible, the obtained experience and the previous functions are taken into account (Article 24 § 6 StPV).

**d. in terms of counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights ?**

The duration of the leave granted for service in an international organisation is recognised as period of service (Article 24 § 5 StPV). Article 5bis § 2 of the Regulation on the Insurance of the Old Age and Surviving Dependents (*Verordnung über die Alters- und Hinterlassenenversicherung* - AHVV) provides that persons working abroad in international organisations to which Liechtenstein is a member state, continue to be subject to the legal provisions regarding insurance and pension contribution obligations. This is under the condition that they were insured before leaving to serve in the international organisation and that they are not voluntarily or obligatory subject to a pension scheme in the foreign country. The contributions are calculated in the same manner as for the other obligatorily insured persons.

## *Lithuania*

**Current situation (2018)**

**Does Lithuanian legislation expressly recognise service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- **allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?**
- **counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?**

**Prosecutors and or Civil Servant'**

The service of prosecutors in Lithuania is regulated by the Law on Prosecutors and the pension right is regulated by the Law on Officials and soldiers pension rights and other State Social Insurance Pensions legal acts. The service of Public officials is regulated by the Law on Civil service, the pension right is established by the Law on State Social Insurance Pensions.

European Courts:

Lithuanian's Republic legislation does not recognise service for the European Court of Human Rights, European Court of Justice or any other European Court in terms of allowing **civil servants or prosecutors** to interrupt their careers in order to work at international level and regain their previous status once the mandate is completed. When **civil servants or prosecutors** take up employment at one of the European courts, their work relationship at national level is terminated without any obligation to reemploy them later in the public sector. However, Article $34^1$, par. 1 of the Law on Prosecutors provides, that a former prosecutor who has been dismissed from his duties voluntarily, elected to another office or with his consent has been transferred to another job, without any separate selection, in accordance with the procedure for appointment and dismissal of a prosecutor established in this Law *may be appointed* to the same or lower office of a prosecutor position, if the prosecutor of the service has not completed five years and there is a free position. Article 28, par. 2.3. of the Law on Prosecutors also provides that length of service in the foreign country or international institution (mostly in EU state members) as a judge is taken into account for career advancement and pension rights.

Eurojust:
According to the Law on Prosecutors, a **prosecutor** in Lithuania can be *represented* for a four-year term as the Lithuanian National Member in Eurojust, who is assisted by a deputy and an assistant (Article $37^2$, par. 1, 4). A Eurojust prosecutor, his/her deputy and assistant, have the same powers as the prosecutor, as well as the functions established by the acts of the European Union regulating the activities of Eurojust. Exceptionally, the prosecutor of the General Prosecutor's Office of the Republic of Lithuania may be appointed to this service (Article $37^3$, par. 1). The salary for the prosecutor of Eurojust, his deputy and assistant is paid by Lithuania. When the term of office expires, the prosecutor if he/she so wishes, shall be transferred to any level of the prosecutor's office without election (Article $37^5$, par. 2). The Law on Prosecutors also provides that a period spent in Eurojust is included in the prosecutor's service record (Article 28, par. 2.3.) and according to the Law on Officials and soldiers pension rights, is also taken into account for the pension rights (Article 6, par. 1.6.).

Other international level bodies:
I. Article $37^7$ of the Law on Prosecutors provides **prosecutor's** participation in projects of the European Union, international organisations and foreign countries or Lithuanian development cooperation and democracy support projects. The prosecutor may be voluntarily *appointed* to participate in the projects funded only by international bodies where the prosecutor's activities will be related to the mission and eligible to his/her duties. Usually the appointment is for three years, if the international agreement or European Union law does not provide otherwise. During the period that the prosecutor remains in position, he/she does not receive a salary. Nevertheless, the time spent in an international body is taken into account for career advancement. (Article 28, par. 2.4., $37^7$, par. 2, 3)

II. According to the Law on Prosecutors, a **prosecutor** in Lithuania can be *temporarily transferred* to an international, European Union or foreign institution, organization set up by the European Commission or the Council, civilian international operations or missions, or other duties provided for in international agreements with the Republic of Lithuania, for a maximum of three years, unless otherwise provided for by an international treaty or European Union legal acts (Article $37^1$, par. 1). In the case of such a transfer, the prosecutor remains in his/her position and shall be paid a fixed wage, compensated for other related expenses and a transfer period is included into the prosecutor's service record (Article 28, par. 2.4., $37^1$, par. 2).
Article 6, par. 1.6. of the Law on Officials and soldiers pension rights provides that the length of service during a prosecutor's *appointment* and *temporary transfer* to the aforementioned I, II institutions is also taken into account for the pension rights.
The **civil servant' and prosecutor'** temporarily transferring to an international or European Union institution is additionally protected by the Law on the delegation of persons to international and European Union authorities or foreign state authorities (further – Law on Delegation).
Article 19, par. 1, 3 of the Law on the Civil service provides that a **civil servant**, if he/she so wishes, may be *temporarily transferred* to a vacancy in international organizations and institutions, institutions and bodies of the European Union, bodies set up by the European Commission or the Council, organizations, civilian international operations or missions, foreign institutions jointly established by the European Commission and the Member States of the European Union Institutions. A civil servant abroad can carry out other duties for a maximum period of three years, unless otherwise provided by international treaties or European Union

legislation. The service length due to such transfer is included (Article 42, par. 1) and the pension right is secured (Article 2, par. 6 of the Law on State Social Insurance Pensions). The civil servant remains in his/her former position, and if the international body does not pay a salary, he/she is guaranteed a salary from his/her employer or the institution or Ministry of Foreign Affairs of the Republic of Lithuania, unless otherwise provided for by an international treaty or European Union legal acts (Article 43, par. 5.9., 8).
Article 21, par. 1 of the Law on Delegation provides that **civil servants** and **prosecutors** shall be paid the same wage as they received before their temporarily transfer if European Union law or international agreement does not provide otherwise. Essentially the delegation is co-ordinated by the Ministry of Foreign Affairs and by the Department of Civil Service.

**Complementary information**
**Judges**
The status of judges and the social guarantees of judges are regulated by the Law on Courts. Article 60 of the Law on Courts grants a possibility to a former judge of the Constitutional Court of the Republic of Lithuania, of the Supreme Court of Lithuania, of the European Court of Justice, of the General Court of the European Union or the European Court of Human Rights to be appointed without an exam and selection procedure to the position of judge in the Supreme Court of Lithuania, the Supreme Administrative Court, Lithuanian Appeal Court, regional courts, regional administrative courts and district courts. According to Article 61, paragraph 2 and 3 a judge can be elected, transferred or appointed to perform legal work at international level (in an international organisation or authority, in an authority or body of the European Union, in a body established by the European Commission or Council of Europe, in an organisation created by the European Commission in conjunction with the EU member states, in a civil international operation or mission either foreign or domestic state authority) as well as at the diplomatic or consular representations of the Republic of Lithuania and at the representations of the international organisations. He or she has the opportunity to be appointed without an exam and selection procedure to their former position or at another court of the same instance either to the lower instance court upon his or her request in the period of two years after he or she has finished performing their duties at international level. According to the Law on the Judicial State Pension, judges of the Constitutional Court of the Republic of Lithuania, the Supreme Court of Lithuania, the Lithuanian Court of Appeal, the Supreme Administrative Court of Lithuania, Lithuanian general jurisdiction and specialised courts and judges from Lithuania appointed or elected to any international courts meeting the terms of Article 3 of the Act shall be entitled to the judicial state pension (Article 1).
Article 3 provides the following requirements for an applicant:

1) at the time of the application for the appointment of the judicial state pension, the applicant should be a Lithuanian citizen and permanently residing in the Republic of Lithuania;
2) has reached the retirement age according to the Law on the State Social Insurance Pensions of the Republic of Lithuania;
3) has ceased to work as a judge;
4) has at least 5 years of service as a judge.

Article 5 of the Law on the Judicial State Pension provides that in calculating the length of service, the period from 11 March 1990, when the person was serving as a judge in courts (the Constitutional Court, courts of general or specialised

jurisdiction) in the territory of Lithuania or was appointed or elected to any international court, is to be included.

**Professors**

Employment in the sphere of science and studies is regulated by the Law on Science and Studies of the Republic of Lithuania. There are no special rules for professors regarding the interruption of their career in order to work at international level but there are general provisions which provide basic rules to scientists and lecturers concerning the possibility to interrupt a career in substance.

According to Article 72 of the Law, appointments for teaching and research positions of higher education institutions for 5 years are made through open competition. According to Article 69 paragraph 1, under the decision of senate (academic council) or research council, it is possible to give associated scientist's or lecturer's status to scientists or lecturers who temporarily (not longer than their term of office) work elsewhere but have been working in a particular higher education institution and have a scientific or artistic contract with this institution (in conjunction with staff members who prepare joint publications of science and art, carry out research work, experimental development or artistic projects, give advice on scientific or artistic pedagogical or other issues). Professors have the possibility to regain without competition their previous status and to perform their duties by the end of the term only with the approval of the senate (academic council). The time when the professor has been working elsewhere is calculated in accordance with their term of office. According to Article 3 of the Law on Scientists' State Pensions, pension should be paid to individuals who have reached retirement age and have at least 10 years of doctoral or academic service. There are no provisions in this Law for including the calculation of the length of doctoral or academic service for the purpose of receiving state pension, the time of service at the European Court of Human Rights or any other international jurisdiction or (Article 4).

**Diplomats**

The Law on the Diplomatic Service expressly provides that a diplomat of the Republic of Lithuania can be temporarily transferred to an international and European Union institution or foreign institution in accordance with the Law on the Delegation to International and European Institutions or Foreign Institutions. The diplomatic service contract shall not be terminated following such a transfer, the diplomat retains his/her diplomatic rank, the transfer period is included in the diplomatic service record. At the end of the transfer period, the diplomat returns to work at least at the same grade within the Ministry of Foreign Affairs (Article 24, par. 3).

**Prosecutors**

The status of prosecutors and their social guarantees are regulated by the Law on the Prosecution Service. Article $37^1$ paragraph 1 of this Law grants an opportunity to a prosecutor, subject to his consent, to be seconded to international and EU institutions or foreign institutions or any other post provided for in international treaties to which the Republic of Lithuania is a party, usually for a period not exceeding three years, unless a relevant international treaty or EU legal acts provide otherwise. The period of secondment of a prosecutor to international and EU institutions or foreign institutions is included in the length of the prosecutor's service and fixed remunerations and compensation for other statutory expenses related to his/her secondment are paid. During the period of secondment the post held by the prosecutor is guaranteed.

**2013 situation**

**Does Lithuanian legislation expressly recognize service on the European Court of Human Rights or any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***Allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and regain their previous status once the mandate is completed'***
- ***Counting the time spent in international jurisdictions or bodies for career advancement purposes or pension rights?***

**Judges**

The service of judges in Lithuania is regulated by the Law on Courts. This legal act does not set any explicit rules about recognizing service on the European Court of Human Rights or any other international jurisdiction or body in the terms of allowing a judge to interrupt his/her career in order to work at international level and regain previous status once the mandate is completed.

Article 60 of the Law on Courts provides the eligibility of a former judge of the Constitutional Court of the Republic of Lithuania and of the Supreme Court of Lithuania to be appointed a judge of the Supreme Court, the Court of Appeals, the Supreme Administrative Court, a regional court, the regional administrative court, or of a district court without an examination and pre-selection. Other persons seeking judicial office at the different level of courts are to comply with the requirements established in Articles 66 to 68 of the Law on Courts.

The Law on the Constitutional Court provides that a person with impeccable reputation, a Lithuanian national, who has a law degree and at least ten years services of legal or scientific educational work can be appointed as a judge of the Constitutional Court (Article 5).

According to the Law on the Judicial State Pension, judges of the Constitutional Court of the Republic of Lithuania, the Supreme Court of Lithuania, the Lithuanian Court of Appeal, the Supreme Administrative Court of Lithuania, Lithuanian general jurisdiction and specialized courts and judges from Lithuania appointed or elected to any international courts meeting the terms of Article 3 of the Act shall be entitled to the judicial state pension (Article 1).

Article 3 provides the following requirements for an applicant:

1) at the time of the application for the appointment of the judicial state pension, the applicant should be a Lithuanian citizen and permanently residing in the Republic of Lithuania;
2) has reached the retirement age according to the Law on the State Social Insurance Pensions of the Republic of Lithuania;
3) has ceased to work as a judge;
4) has at least 5 years of service as a judge.

Article 5 of the Law on the Judicial State Pension provides that in calculating the length of service, the period from since March 11, 1990 when the person was serving as a judge in courts (the Constitutional Court, courts of general or specialized jurisdiction) in the territory of Lithuania or was appointed or elected to any international court, is to be included.

**Professors**

Employment in the sphere of science and studies is regulated by the Law on Science and Studies of the Republic of Lithuania. According to Article 65 of the Law, appointment to teaching and research positions of higher education institutions for 5 years is held by the way of open competition. There are no special provisions about the possibility of persons who have served in the European Court

of Human Rights or in any other international jurisdiction or body to regain without competition their previous status in his/her teaching or research position once the mandate is completed. The procedures of competition are determined by the relevant university. Qualification requirements for teaching positions are to be specified by the university (Article 58, par. 6), thus it cannot be ruled out that service on the European Court of Human Rights or any other international jurisdiction or body could be regarded as one of the qualification requirements approved by the university.
According to Article 3 of the Law on Scientists' State Pensions, pension should be paid to individuals who have reached the retirement age and have at least 10 years of doctoral or academic service. There are no provisions in this Law that calculating the length of doctoral or academic service for the purpose of receiving state pension, the time of service on the European Court of Human Rights or any other international jurisdiction or body may be included (Article 4).

**Diplomats**
The Law on the Diplomatic Service expressly provides that a diplomat of the Republic of Lithuania can be temporarily transferred to an international and the European Union institution or foreign institution in accordance with the Law on the Delegation to the International and European Institutions or Foreign Institutions. Due to such a transfer, the diplomatic service contract shall not be terminated, the diplomat retains his diplomatic rank, the transfer period is included into the diplomatic service record. At the end of the transfer period, the diplomat returns to work on the same or not lower grade at the Ministry of Foreign Affairs (Article 24, par. 3).

## *Luxembourg*

**Current situation (2018)**
J'ai vérifié dans le code administratif : la loi décrite dans le document de travail de 2013 n'a pas été modifiée entre temps (les informations me paraissent donc complètes et toujours d'actualité).
L'article 149-2 de la loi sur l'organisation judiciaire (citée dans les « Comments du juge Spielmann ») n'a pas été modifiée non plus

**2013 situation**
- In this country, the legislation recognizes service by certain public officials on an international institution – without specifying jurisdiction or referring to any european or international body.

**See[157] :**

[157]. *http://www.legilux.public.lu/leg/textescoordonnes/compilation/code_administratif/VOL_6/FONCTIONNAIRES/H_FONCTIONNAIRES_INST_INT.pdf*
-- base juridique de:
**RGD du 28 mars 1984** (Mém. A - 32 du 18 avril 1984, p. 408)
**RGD du 27 juin 1978** (Mém. A - 35 du 28 juin 1978, p. 668)
-- doc. parl.:
**n°1632** *(fonctionnaires au service d'institutions internationales)*
-- citant:
**L du 26 mai 1954** (Mém. A - 29 du 28 mai 1954, p. 891)
-- cité par:
**RGD du 17 décembre 2003** (Mém. A - 192 du 31 décembre 2003, p. 4014)

**Loi du 27 août 1977 concernant le statut des fonctionnaires entrés au service d'Institutions internationales** en vigueur depuis septembre 1977 *(Mém. A - 52 du 29 août 1977,p._1528) Code administratif*

**Art. 1er.**

Les fonctionnaires de l'Etat qui acceptent une **fonction internationale peuvent obtenir un congé spécial**, conformément aux dispositions de la présente loi.

Par fonctionnaire de l'Etat au sens de la présente loi il y a lieu d'entendre **les fonctionnaires administratifs, «les magistrats de l'ordre judiciaire et de l'ordre administratif»** (ainsi modifié par la loi du 21 juin 1999) **les membres du corps enseignant ainsi que les membres de la Force publique.**

Par fonction internationale au sens de la présente loi il y a lieu d'entendre **toute fonction ou mandat exercé, à titre principal et contre rémunération,** au service ou au sein d'une Institution internationale à laquelle le Grand-Duché de Luxembourg est partie.

Aucune des dispositions de la présente loi ne pourra être appliquée de manière à porter atteinte à l'indépendance statutaire des titulaires d'une fonction internationale.

**Art. 2.**

Le congé spécial est accordé, après délibération du Gouvernement en Conseil, par l'autorité compétente pour la nomination du bénéficiaire et dans la forme prescrite pour celle-ci.

- Magistrates, professors and members of the public forces and other civil servants are allowed to interrupt their career at domestic level in order to work for a certain period of time at international level (4 years up to 10 years).

**Art. 3.**

1. **Le congé spécial est accordé pour une période initiale de quatre années**. Sur demande de l'intéressé le congé **peut être renouvelé pour des périodes de deux années sans que sa durée totale puisse cependant dépasser dix années.** Lorsque l'autorité compétente n'a pas l'intention de renouveler le congé spécial, elle en informera le fonctionnaire au moins quatre mois avant l'expiration du congé.

2. **Lorsqu'un mandat exercé au sein d'une Institution internationale est conféré pour une durée déterminée, le congé est accordé pour toute la durée de ce mandat; en cas de prorogation ou de renouvellement du mandat l'intéressé doit présenter une nouvelle demande.**

Les fonctionnaires directement attachés à la personne d'un titulaire d'un mandat peuvent bénéficier du congé spécial dans les conditions spécifiées soit à l'alinéa qui précède, soit au paragraphe 1er.

3. Le bénéficiaire peut mettre fin au congé spécial, avant le terme découlant des paragraphes 1 et 2, en adressant une demande écrite au Gouvernement et en observant un préavis d'au moins quatre mois.

4. A défaut de demander la réintégration dans le service après l'expiration du congé spécial qui lui a été accordé, le fonctionnaire ayant bénéficié de ce congé est considéré de plein droit comme démissionnaire de sa fonction au service de l'Etat.

- As a matter of principle, once their mandate has been completed, they are allowed to regain their previous status.

Only under certain conditions, the time spent at international level may be taken into account for career advancement:

**Art. 6.**

1. **Le bénéficiaire est réintégré dans son service d'origine à l'expiration du congé spécial**. **Il y obtient un emploi équivalent à la fonction qu'il exerçait effectivement avant l'octroi du congé spécial**.

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**L du 01 août 2001** (Mém. A - 112 du 07 septembre 2001, p. 2248)
**RGD du 15 octobre 1992** (Mém. A - 77 du 17 octobre 1992, p. 2278)
**L du 29 juillet 1988** (Mém. A - 42 du 12 août 1988, p. 816)
**L du 24 décembre 1985** (Mém. A - 84 du 27 décembre 1985, p. 1848)
**L du 16 avril 1979** (Mém. A - 31 du 17 avril 1979, p. 622)
-- modifié par:
**L du 19 décembre 2008** (Mém. A - 212 du 24 décembre 2008, p. 3178)
**L du 21 juin 1999** (Mém. A - 98 du 26 juillet 1999, p. 1892)
**L du 03 août 1998** (Mém. A - 70 du 01 septembre 1998, p. 1378)
*Règlements grand-ducaux*

**Toutefois, si l'autorité investie du pouvoir de nomination estime que la nature du travail accompli et l'expérience acquise par l'intéressé au sein ou au service d'une Institution internationale justifient sa nomination à une fonction supérieure à celle visée ci-dessus, elle peut procéder à une telle nomination sans que le bénéficiaire ne puisse, de ce fait, accéder à une fonction ou obtenir un rang plus élevé que les fonctionnaires de la même carrière entrés au service de l'Etat en même temps que lui ou avant lui**.

2. **A défaut de vacance d'emploi, l'intéressé peut être nommé à un emploi «hors cadre».** Le bénéficiaire est réintégré dans le cadre ordinaire lors de la première vacance d'emploi qui se produit à un niveau approprié. L'emploi «hors cadre» qu'il occupait est supprimé de plein droit par l'effet de la réintégration.

Dans le cas où la nomination à un emploi «hors cadre» s'avère impossible, le fonctionnaire aura droit à un emploi comportant le même rang et le même traitement que ceux dont il bénéficiait effectivement avant son départ.

**Art. 5.**

(…) 2. **Le congé spécial suspend le droit au traitement et aux prestations accessoires**. **En cas de réintégration du fonctionnaire les périodes de congé sont cependant mises en compte pour l'application des dispositions relatives aux traitements comme temps de «bons et loyaux services».**

**Art. 4**

§ 4. A défaut de demander la réintégration dans le service après l'expiration du congé spécial qui lui a été accordé, le fonctionnaire ayant bénéficié de ce congé est considéré de plein droit comme démissionnaire de sa fonction au service de l'Etat.

**Article 5**

(..) 3. **Un fonctionnaire bénéficiant d'un congé spécial ne peut recevoir une promotion, toutes autres conditions étant remplies, que s'il renonce à son congé**. **Le Gouvernement peut cependant, à sa demande, l'autoriser à porter un titre correspondant à** une fonction supérieure à celle qu'il occupait au moment où le congé spécial lui a été accordé. Ce titre est conféré dans les conditions et formes prévues par l'article 2.

Art. 6.

§ 3. **L'autorité investie du pouvoir de nomination peut refuser la réintégration d'un fonctionnaire** qui, à la fin de son congé spécial, sera reconnu en droit de jouir d'une pension de l'Etat ou d'une pension à charge d'une Institution internationale ou d'une caisse de prévoyance du fait de son activité au service ou au sein d'une telle institution, et dont le montant est égal ou supérieur au traitement qu'il toucherait en cas de réintégration.

4. L'exécution des dispositions du présent article est assurée, après délibération du Gouvernement en conseil, par l'autorité compétente.

*(Loi du 19 décembre 2008)*

- The time spent at international level *can* be taken into account for pension rights at domestic level but only under certain conditions:

**Art. 7.**

**La période de congé spécial du fonctionnaire qui réintègre le service de l'Etat sans avoir droit à une pension immédiate ou différée du chef de ses services auprès d'une institution, est mise en compte, comme temps de service pour la détermination du droit de la pension nationale et pour le calcul du montant** de celle-ci conformément à la loi modifiée du 26 mai 1954 réglant les pensions des fonctionnaires de l'Etat **à condition que l'institution internationale ou le fonctionnaire verse au Trésor une somme de rachat.** Cette période est complétée, le cas échéant, par des périodes mises en compte par l'institution internationale et réalisées par l'intéressé en dehors d'un congé spécial tel que prévu à l'article 3.

**Le montant du rachat est fixé par annuité rachetée à seize pour cent du traitement que le fonctionnaire obtient lors de sa réintégration, majoré des intérêts composés de quatre pour cent l'an. Le taux de seize pour cent, étant égal à la somme des parts de l'intéressé et de l'employeur qui aurait été versée sous le régime général de pension, suivra l'évolution des taux fixés pour ces parts.**

**Art. 8.**

*(Loi du 3 août 1998)* «Lorsqu'un fonctionnaire luxembourgeois bénéficiant ou ayant bénéficié d'un congé spécial, donne sa démission ou est considéré de plein droit comme démissionnaire par application de l'article 3 paragraphe 4, sans avoir droit à une pension différée suivant les dispositions de la loi modifiée du 26 mai 1954 réglant les pensions des fonctionnaires de l'Etat,il

bénéficie, sur sa demande, d'une mise en compte du temps de service qui lui manque pour parfaire la durée de service requise par cette législation dans les conditions suivantes:

a) que le temps manquant ait été accompli en activité de service auprès d'une Institution internationale;

b) que le fonctionnaire verse au Trésor une somme de rachat.»

Le montant du rachat est fixé suivant les modalités prévues au deuxième alinéa du premier paragraphe de l'article 7 pour la

période déjà accomplie en activité de service auprès d'une Institution internationale. Si cette dernière période est insuffisante pour atteindra la durée de service requise pour avoir droit à une pension différée suivant les dispositions de la législation sur les pensions des fonctionnaires de l'Etat, les versements concernant la période complémentaire pour laquelle le rachat est nécessaire sont à faire par mensualité.

La base du calcul est formée par le dernier traitement luxembourgeois dont l'intéressé a joui au moment de la cessation de ses fonctions.

**Art. 9.**

Lorsqu'un fonctionnaire international qui n'a pas droit à une pension immédiate ou différée du chef de ses services auprès d'une institution, entre au service de l'Etat, la période computable auprès de l'institution internationale est mise en compte comme temps de service pour la détermination du droit à la pension nationale et pour le calcul du montant de celle-ci, conformément à la loi modifiée du 26 mai 1954 précitée, à la condition que le fonctionnaire ou l'institution internationale verse au

Trésor une somme de rachat.

Le montant du rachat prévu à l'alinéa qui précède est fixé conformément aux dispositions de l'article 7, deuxième alinéa.»

*(Loi du 19 décembre 2008)*

**Art. 10.**

**Les dispositions des articles 7** à 9 **n'excluent pas l'application d'accords conclus avec les institutions ou de dispositions figurant au régime de pension de ces institutions qui sont directement applicables au Grand-Duché de Luxembourg ou qui ont été rendu applicables sur la base de tels accords et qui prévoient**

a. d'une part le transfert à l'Etat de l'équivalent actuariel des droits à pension du fonctionnaire international qui quitte ses fonctions auprès de ces institutions pour entrer ou rentrer au service de l'Etat et l'octroi correspondant de droits à pension nationaux et

b. d'autre **part l'option pour le fonctionnaire qui entre au service de ces institutions de faire transférer à ceux-ci l'équivalant actuariel des droits à pension nationaux**.[i158]

Suivant son cas, le fonctionnaire pourra opter entre soit l'application des dispositions sous a), soit l'application de celles sous b).

Au sens des dispositions du présent article, il y a lieu d'entendre par **transfert de l'équivalent actuariel le transfert de cotisations** telles que celles-ci sont définies respectivement à l'article 7 et à l'alinéa 4 qui suit.

Si dans l'hypothèse sous a), le montant versé à l'Etat est insuffisant par rapport au montant du rachat déterminé conformément à l'article 7 et, le cas échéant, à l'alinéa 5 qui suit pour la période y visée, le fonctionnaire devra le compléter à ses frais. A défaut de versement complémentaire dans les trois mois qui suivent la notification à l'intéressé du montant à verser, la mise en compte devient caduque et l'institution se voit rembourser par le Trésor le montant transféré. Si le montant transféré dépasse la valeur du rachat, l'excédent reste acquis au Trésor.

**Dans l'hypothèse sous b), et à condition que l'intéressé remplit les conditions de droit prévues pour une pension différée conformément à la loi précitée du 26 mai 1954, le montant à transférer par l'Etat pour les périodes qui auraient été computables pour cette pension correspond à celui déterminé par analogie à l'article 8, alinéas 2 et 3, sous réserve du taux de l'annuité défini à l'article 7 qui est complété par celui correspondant à la part des cotisations incombant à l'Etat conformément à l'article 239 du Code de la Sécurité sociale.**

**En cas de rentrée ultérieure dans les services de l'Etat, le montant du rachat visé à l'article 7 est augmenté de la valeur du complément dont question ci-avant ayant fait l'objet, antérieurement, d'un transfert conformément au présent point b),augmenté d'intérêts composés de 4 pour cent l'an à courir à partir de l'année qui suit celle du transfert initial jusqu'à la fin de l'année précédant celle de la réception de la demande de mise en compte**.

Si lesdites conditions prévues pour l'ouverture d'un droit à pension différée ne sont pas remplies, les dispositions des articles 4 à 6 de la loi modifiée du 28 juillet 2000 ayant pour objet la coordination des régimes de pension sont applicables.

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[158]. Nous n'avons pas trouvé trace de tels accords.

Précisions :
L'autorité compétente peut, dans l'intérêt du bon fonctionnement des services et sans préjudice de l'affectation du fonctionnaire, procéder à des détachements.
Par détachement, on entend l'assignation du fonctionnaire auprès d'un organisme international.
En cas de détachement dans un organisme international, le fonctionnaire relève de l'autorité hiérarchique de l'administration, respectivement de l'établissement ou de l'organisme auquel il est détaché.
Le fonctionnaire détaché est placé hors cadre dans son administration d'origine. Au terme du détachement, il est de nouveau intégré dans le cadre de son administration d'origine.
**********

**Loi du 27 août 1977 concernant le statut des fonctionnaires entrés au service d'Institutions internationales** *(Mém. A - 52 du 29 août 1977,p._1528)*
*Code administratif*
*http://www.legilux.public.lu/leg/textescoordonnes/compilation/code_administratif/VOL_6/FONCTIONNAIRES/H_FONCTIONNAIRES_INST_INT.pdf*

-- base juridique de:
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**RGD du 27 juin 1978** (Mém. A - 35 du 28 juin 1978, p. 668)
-- doc. parl.:
**n°1632** *(fonctionnaires au service d'institutions internationales)*
-- citant:
**L du 26 mai 1954** (Mém. A - 29 du 28 mai 1954, p. 891)
-- cité par:
**RGD du 17 décembre 2003** (Mém. A - 192 du 31 décembre 2003, p. 4014)
**L du 01 août 2001** (Mém. A - 112 du 07 septembre 2001, p. 2248)
**RGD du 15 octobre 1992** (Mém. A - 77 du 17 octobre 1992, p. 2278)
**L du 29 juillet 1988** (Mém. A - 42 du 12 août 1988, p. 816)
**L du 24 décembre 1985** (Mém. A - 84 du 27 décembre 1985, p. 1848)
**L du 16 avril 1979** (Mém. A - 31 du 17 avril 1979, p. 622)
-- modifié par:
**L du 19 décembre 2008** (Mém. A - 212 du 24 décembre 2008, p. 3178)
**L du 21 juin 1999** (Mém. A - 98 du 26 juillet 1999, p. 1892)
**L du 03 août 1998** (Mém. A - 70 du 01 septembre 1998, p. 1378)
*Règlements grand-ducaux*

**Règlement grand-ducal du 27 juin 1978** ayant pour objet d'assimiler les employés publics statutaires des organismes de sécurité sociale aux fonctionnaires de l'Etat pour l'application de la loi du 27 août 1977 concernant le statut des fonctionnaires entrés au service d'institutions internationales.
*(Mém. A - 35 du 28 juin 1978, p._668)*
-- base juridique:
**L du 27 août 1977** (Mém. A - 52 du 29 août 1977, p. 1528)
-- citant:
**L du 23 décembre 1976** (Mém. A - 83 du 30 décembre 1976, p. 1508)
-- rectifié par:
**RECT du 13 septembre 1978** (Mém. A - 57 du 13 septembre 1978, p. 1268)

Observations complémentaires
Il peut être rajouté qu'outre la précision finale pour les fonctionnaires, il existe une disposition spécifique pour les magistrats dans la loi du 7 mars 1980 sur l'organisation judiciaire :

> **«Art. 149-2.**
>
> Les magistrats appelés à collaborer pendant une période déterminée aux travaux d'organisations internationales ou d'une administration peuvent obtenir, de leur accord, un détachement temporaire. Ce détachement est accordé par l'autorité compétente pour la nomination du bénéficiaire et dans la forme prescrite par celle-ci. Les postes laissés vacants par les magistrats détachés sont occupés par un nouveau titulaire.» *(Loi du 11 avril 2005)*
>
> «Au terme du détachement, le magistrat ainsi remplacé est réintégré à un poste équivalent à la fonction qu'il exerçait avant le détachement. A défaut de vacance de poste adéquat, il est nommé hors cadre à un poste comportant le même rang et le même traitement que ceux dont il bénéficiait avant le détachement.»

Dans la mesure où il s'agit d'un détachement, le magistrat reste dans ce cas de figure magistrat, partant le temps devrait normalement être computé pour sa retraite (à défaut de disposition spécifique, l'article 8 de la loi du 3 août 1998 instituant des régimes de pension spéciaux pour les fonctionnaires de l'Etat et des communes ainsi que pour les agents de la Société nationale des Chemins de Fer luxembourgeois : « Les fonctionnaires normalement occupés au Grand-Duché de Luxembourg qui sont détachés temporairement à l'étranger par leur employeur restent affiliés au présent régime. ». Par contre, dans la mesure ou le fonctionnaire réintègre un poste équivalent à ce qu'il avait avant son départ, la computation de l'ancienneté ne semble pas prévue.

## *The former Yugoslav Republic of Macedonia*

**Current situation (2018)**
I confirm that the data contained in the 2013 research report with regard to MKD are up to date.

**Complementary information**
According to the Law on Foreign Affairs (Official Gazette No 103/15) Article 63 reads as follows:

> "The employees in the Ministry have the status of administrative officers or auxiliary - technical persons.
>
> The administrative officials referred to in paragraph (1) of this article may be:
>
> - Diplomats carrying out expert tasks within the competence of the Ministry or
>
> - Auxiliary - professional officials performing auxiliary - expert work in function of performing the competencies of the Ministry determined by this Law.
>
> Auxiliary - technical persons are employed in the Ministry that are working on maintenance, transport and other auxiliary and technical works that enable smooth operation functioning of the Ministry.
>
> Diplomats exercise the rights and obligations of employment in accordance with this Law. For questions of employment that are not regulated by this law, for diplomats are apply the Law on Administrative Officers, the Law on Employees in the public sector and general labor regulations.
>
> The auxiliary-professional servants realize the rights and obligations from the working relation in accordance with the Law on Administrative Officers.
>
> Auxiliary - technical persons realize the rights and obligations of employment in accordance with the Law on Public Sector Employees and General Labor Regulations."

The report could add a provision that regulates the right of the public prosecutors to freeze the function (Article 50 paragraph 1 of the Law on Public Prosecutor's Office - Official Gazette of the Republic of Macedonia No. 150 dated 12.12.2007), which reads as follows:

> "A public prosecutor appointed or elected as a member of the Council of Public Prosecutors or a judge or prosecutor of an international judicial institution, a judge of the Constitutional Court of the Republic of Macedonia or a director of the Academy for Training of Judges and Public Prosecutors of the Republic of Macedonia, her/his function remains frozen while performing the duty for which she/he has been appointed or elected."

**2013 situation**

**Does your country's legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

***I. Allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

With regard to judges:
According to Article 53 § 1 of the Law on the Courts[159], if a judge is appointed or elected as member of the Judicial Council of the Republic of Macedonia or as judge of an international court, judge of the Constitutional Court or Director of the Academy for Training of Judges and Public Prosecutors, her/his judicial function remains frozen for the duration of the office to which she/he has been appointed or elected. After the expiration of the term of her/his appointment, the judge has the right to return to the court where he worked before she/he took over the other duties (§ 2).

With regard professors and other public officials:
There is no specific provision on the possibility for professors to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed.[160] This is also the case of other public officials. In respect to the latter, the Law on Foreign Affairs[161] provides in Article 63 that the diplomats and technical-administrative employees exercise their employment rights and obligations by virtue of the Law on Foreign Affairs and the Labour Law.
Accordingly, Article 45 § 1 of the Labour Law[162] on the freezing of rights and obligations relating to the employment contract, provides that when the employee stops temporarily to work, *inter alia*, in other cases provided by law, her/his employment contract does not cease to apply and the employer shall not terminate it unless she/he has initiated a procedure for its termination, during which period the contract remains frozen.
This provision also applies to professors.[163]
According to Article 70 § 1 of the Law on Foreign Affairs, when it is of interest to the Republic of Macedonia, a diplomat can be supported, sent and nominated, on

[159]. Published in the Official Gazette Nos 58/2006, 35/2008 and 150/10. It appears that the present law does not concern the Constitutional Court.
[160]. The Law on Higher Education (Official Gazette No 35/2008), as amended and modified on several occasions.
[161]. Published in the Official Gazette Nos 46/2006, 107/2008 and 26/2013.
[162]. Published in the Official Gazette Nos 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 50/10, 52/10, 124/10, 47/11, 11/12, 39/12, 52/2012, 13/2013 and 25/2013.
[163]. The Labour Law governs the employment relations between the employee and the employer established by the employment contract (Article 1 § 1).

the basis of a competition, for certain positions and functions within international governmental organisations. During the engagement within the international organisation as referred to in § 1, as far as the international governmental organisation pays the salary and the fees to the diplomat, her/his employment within the Ministry will remain frozen (§ 2). According to Article 152 § 1 of the Labour Law, the employee sent to work abroad, either in the framework of an international-technical cooperation, an educational-cultural and scientific cooperation, in a diplomatic or a consular representation, or for the purposes of a vocational training or education in accordance with the needs of the employer, shall have her/his employment frozen. She/he is entitled, within 15 days after the termination of her/his engagement abroad, to return to work for her/his employer and perform tasks corresponding to her/his level of education.

***II. Counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

There are no specific provisions in respect of the pension rights of judges, professors or other public officials whose functions are frozen during the period of time they work abroad. Some general provisions (see below) seem to apply as regards the pension rights of persons in such situation. It is difficult to predict how they would apply in practice. According to Article 45 § 2 of the Labour Law, during the period of time when the employment contract is frozen, the contractual and other rights, as well as the obligations concerning the employment that are directly related to the performance of the tasks, will also remain frozen. Accordingly, it appears that the time the person concerned worked abroad shall not count for her/his pension rights. However, Article 11 § 1, 5th point of the Law on Pension and Disability Insurance[164], provides that the insured persons with mandatory pension and disability insurance include, *inter alia*: citizens of Republic of Macedonia employed abroad, as far as they do not benefit from a mandatory foreign insurance. Are also included in Article 11 § 1 the employees with an established employment and persons equal to them, in accordance with a specific legislation (1st point), and elected or appointed holders of a public or other function, if for the performance of the function they receive salary or other compensation (3rd point). The persons referred to in point 1 and 3 benefit from the mandatory insurance granted by virtue of this law when they are sent to work abroad and if during this period of time they do not benefit from a mandatory insurance under the provisions of the State to which they have been sent or in accordance with a ratified international agreement that provides otherwise. The Law on Contributions for Mandatory Social Insurance[165] provides in Article 7 § 1, 4th point, that the persons obliged to pay contributions for mandatory social insurance include the Macedonian citizen who is employed abroad, carries out her/his duties abroad or is sent to work abroad, if during that period of time she/he does not benefit from a mandatory foreign insurance unless an international agreement ratified by the Republic of Macedonia provides otherwise.

- The present Law defines the persons obliged to pay contributions as the persons insured in whose name and for whose account are paid the said contributions.
- The persons obliged to calculate and pay the contributions include *inter alia* the employer, the public institution, authority or organiser who bears the

[164]. A consolidated text of this Law has been published in the Official Gazette No 53/2013.

[165]. Published in the Official Gazette No 142/2008, as amended and modified on several occasions. According to Article 5 of the present Law, the mandatory social insurance includes the pension and disability insurance on the basis of current transactions.

responsibility to calculate, withhold and pay contributions on the account of the persons obliged to pay contributions.

Article 13 provides that the Fund for Pension and Disability Insurance of Macedonia is obliged to calculate the contributions for the persons referred to in Article 7 § 1 4th point of this law, and the persons obliged to pay the contributions shall pay themselves directly the said contributions.

## *Malta*

**Current situation (2018)**

**Does Maltese legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

A distinction has to be made between judges (and magistrates), diplomats and other civil servants (including the Attorney General and all lawyers working in his office) on the one hand, and University of Malta professors on the other, since the latter are not civil servants and are covered by the university statutes and regulations as well as by a specific collective agreement. The university statutes and regulations are subsidiary legislation made pursuant to the Education Act (Cap. 327). As regards both civil servants (other than judges and magistrates) and professors there is no legislation which specifically refers to, or specifically recognizes, service on the ECtHR or other international judicial body, whether for the purpose of interruption of career or for pension purposes. As regards members of the judiciary, however, Article 16 of the Code of Organisation and Civil Procedure (Cap. 12) provides as follows:

> "It shall not be lawful for any judge or magistrate to carry out any other profession, business or trade, or to hold any other office of profit whatsoever, even though of a temporary nature, with the exception of any judicial office on any international Court or tribunal or any international adjudicating body, or the office of examiner at the University of Malta."

Regarding interruption of one's career, in the case of civil servants (other than judges or magistrates, but including the Attorney General) who want to take up some temporary full-time post, whether in Malta or abroad, the normal practice is to request and be granted unpaid leave of absence. This is granted through the Office of the Prime Minister (under which the Civil Service Establishment falls). Upon termination of the contract or other such post, the individual will revert to his former substantive post within the civil service (unless by that time he has attained retirement age). It is not clear whether such leave of absence may be refused (in which case the civil servant would have to resign before or upon taking up the temporary full-time post). In the case of judges (or magistrates) the practice which was followed in the only three cases where members of the judiciary took up temporary full-time posts abroad – i.e. in the case of Chief Justice Vincent De Gaetano current judge at the ECtHR, in the case of Judge Carmel A. Agius who took up the post of judge on the International Criminal Court for the former Yugoslavia, and in the case of Magistrate Dr Carol Peralta who served for a

number of years with the U.N. in a judicial capacity in Kosovo and in Bosnia-Herzegovina – was to request leave of absence from the Ministry of Justice, with the possibility of returning to the substantive post in Malta after the termination of the mandate overseas. In fact Magistrate Peralta, after serving for eight years with the U.N., later resumed his post in Malta in the Court of Magistrates. In the case of Mr De Gaetano, he resigned from the post of Chief Justice but retained his substantive office of judge. In view of Article 16 of Cap. 12, mentioned above, it is opined that such leave of absence may not be refused. As concerns pension rights, members of the judiciary (and the Attorney General, but not the officers serving in the Attorney General's Office) now have a service pension as a result of Act XLIV of 2016, which came into force on 3 October 2016. For the purpose of calculating the period of "pensionable service", Article 2 of this act provides that:

> "service performed by a member of the judiciary [and the Attorney General] prior to his retirement in any court or tribunal of international jurisdiction constituted by virtue of any international or multilateral convention or treaty shall, for the purposes of calculating length of service, also be included as pensionable service except when that service gives a right to the member of the judiciary to a pension or other retirement benefit from an institution outside Malta."

Diplomats, do not have a service pension, but only the retirement pension under the Social Security Act (Cap. 318). This is an obligatory and contributory "two-thirds" pension (capped in respect of the higher salaries in the civil service) for all employed or self-employed persons (whether civil servants or otherwise). In order not to prejudice pension rights under the Social Security Act, the practice followed when a diplomat is granted leave of absence to take up any appointment abroad, is to apply (and, previous to the introduction of a service pension for members of the judiciary, when a member of the judiciary was granted such leave of absence), with the consent of the Director General (Social Security), Article 13 of that Act (this practice was also applicable, prior to the introduction of the service pension, also to members of the judiciary – it is not clear how or to what extent it is now still applicable to members of the judiciary, although it is opined that is should still apply, as a member of the judiciary will have paid, prior to his leave of absence and appointment abroad, a significant number of contributions). The practical result of the application of this Article 13 is that, for the duration of the mandate overseas, a reduced contribution is paid on behalf of the insured person (i.e. on behalf of the member of the judiciary or on behalf of the diplomat, as the case may be) by the employer (the Government department concerned). The application of this provision of law, however, requires the consent of the said Director which may, conceivably, not be forthcoming. [Members of the judiciary who have since benefitted from the new service pension also receive a much reduced "two-thirds" national insurance pension, in recognition of their contributions to the National Insurance Fund]. With regard to university professors (and other employees of the University of Malta), the advice received from the Personnel Officer at the UOM is the following:

> "Special Leave without pay is not catered for in the Employment and Industrial Relations Act, Chapter 452 of the Laws of Malta and Subsidiary Legislation 451.101 entitled 'Minimum Special Leave Entitlement Regulations', however, it is specified in the Collective Agreement. The Law lays down minimum standards (in this case the law is silent), however, the employer may offer better conditions to the employee as is the case under examination.
>
> There is no provision for special unpaid leave for academic members of staff in the Education Act.
>
> In the event of an academic member of staff requesting 'Special Unpaid Leave' to take up an assignment for example of national or international standing, the Collective Agreement for Academic Staff of the University of Malta and Academic Staff of the Junior College, 2009 - 2013,

> signed on the 21st January 2009, makes provision in section 35.3 Special Leave without Pay. A copy of the relevant section is annexed for your information."

Presumably Article 13 of Cap. 318 , mentioned above applies also to university employees – but this would really depend on how Cap. 318 interacts with the "in house" contributory pension of the University of Malta. No specific information on this was available.

**2013 situation**

**Does Maltese legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

A distinction has to be made between judges (and magistrates), diplomats and other civil servants (including the Attorney General and all lawyers working in his office) on the one hand, and University of Malta professors on the other, since the latter are not civil servants and are covered by the university statutes and regulations as well as by a specific collective agreement. The university statutes and regulations are subsidiary legislation made pursuant to the Education Act (Cap. 327). As regards both civil servants (other than judges and magistrates) and professors there is no legislation which specifically refers to, or specifically recognizes, service on the ECHR or other international judicial body, whether for the purpose of interruption of career or for pension purposes.

As regards members of the judiciary, however, Article 16 of the Code of Organisation and Civil Procedure (Cap. 12) provides as follows:

> "It shall not be lawful for any judge or magistrate to carry out any other profession, business or trade, or to hold any other office of profit whatsoever, even though of a temporary nature, with the exception of any judicial office on any international Court or tribunal or any international adjudicating body, or the office of examiner at the University of Malta."

Regarding interruption of one's career, in the case of civil servants (other than judges or magistrates, but including the Attorney General) who want to take up some temporary full-time post, whether in Malta or abroad, the normal practice is to request and be granted unpaid leave of absence. This is granted through the Office of the Prime Minister (under which the Civil Service Establishment falls). Upon termination of the contract or other such post, the individual will revert to his former substantive post within the civil service (unless by that time he has attained retirement age). It is not clear whether such leave of absence may be refused (in which case the civil servant would have to resign before or upon taking up the temporary full-time post). In the case of judges (or magistrates) the practice which was followed in the only three cases where members of the judiciary took up temporary full-times posts abroad – i.e. in the case of Chief Justice Vincent De Gaetano current judge at the ECtHR, in the case of Judge Carmel A. Agius who took up the post of judge on the International Criminal Court for the former Yugoslavia, and in the case of Magistrate Dr Carol Peralta who served for a number of years with the U.N. in a judicial capacity in Kosovo and in Bosnia-Herzegovina – was to request leave of absence from the Ministry of Justice, with the possibility of returning to the substantive post in Malta after the termination of

the mandate overseas. In fact Magistrate Peralta, after serving for eight years with the U.N., has now resumed his post in Malta in the Court of Magistrates. In the case of Mr De Gaetano, he resigned from the post of Chief Justice but retained his office of judge. In view of Article 16 of Cap. 12, mentioned above, it is opined that such leave of absence may not be refused. As concerns pension rights, members of the judiciary and diplomats do not have a service pension, but only the retirement pension under the Social Security Act (Cap. 318). This is an obligatory and contributory "two-thirds" pension (capped in respect of the higher salaries in the civil service) for all employed or self-employed persons (whether civil servants or otherwise). An attempt was made last year to introduce a service pension (uncapped) for members of the judiciary, and the draft bill did specifically refer, in one of its clauses, to service with or on an international court or other international adjudicating body; however, with the dissolution of Parliament earlier this year and the subsequent change of government, the process will have to start afresh (if at all). In order not to prejudice pension rights under the Social Security Act, the practice followed when a member of the judiciary or a diplomat is granted leave of absence to take up any appointment abroad is to apply, with the consent of the Director General (Social Security), Article 13 of that Act. The practical result of the application of this provision is that, for the duration of the mandate overseas, a reduced contribution is paid on behalf of the insured person (i.e. on behalf of the member of the judiciary or on behalf of the diplomat, as the case may be) by the employer (the Government department concerned). The application of this provision of law, however, requires the consent of the said Director which may, conceivably, not be forthcoming. With regard to university professors (and other employees of the University of Malta), the advice received from the Personnel Officer at the UOM is the following:

> Special Leave without pay is not catered for in the Employment and Industrial Relations Act, Chapter 452 of the Laws of Malta and Subsidiary Legislation 451.101 entitled 'Minimum Special Leave Entitlement Regulations', however, it is specified in the Collective Agreement. The Law lays down minimum standards (in this case the law is silent), however, the employer may offer better conditions to the employee as is the case under examination.
>
> There is no provision for special unpaid leave for academic members of staff in the Education Act.
>
> In the event of an academic member of staff requesting 'Special Unpaid Leave' to take up an assignment for example of national or international standing, the Collective Agreement for Academic Staff of the University of Malta and Academic Staff of the Junior College, 2009 - 2013, signed on the 21st January 2009, makes provision in section 35.3 Special Leave without Pay. A copy of the relevant section is annexed for your information.

Presumably Article 13 of Cap. 318 , mentioned above applies also to university employees – but this would really depend on how Cap. 318 interacts with the "in house" contributory pension of the University of Malta. No specific information on this was available.

# *The Republic of Moldova*

**Current situation (2018)** (indicated in red in the text)

**Does** Moldovan ~~Moldavian~~ **legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

***A. Possibility to interrupt career in order to work at international level and then regain their previous status***

The Moldovan ~~Moldavian~~ law does not provide for any express provisions concerning service on the European Court of Human Rights or on any other international jurisdiction or body. It does refer to such service generically as service in international courts or jurisdictions or in international organizations. Under Moldovan ~~Moldavian~~ law ~~only~~ diplomats are expressly allowed to work in international organizations with their previous status guaranteed upon their expiry of their mission. However, this guarantee is effective only if the Ministry of Foreign Affairs has vacancies; otherwise, the former diplomat is transferred in the reserve of the Ministry of Foreign Affairs, which *de facto* means no employment with the MFA (Articles 15(2) and 17 of the Law on diplomatic service no. 761/27.12.2001).
Prosecutors and other public officials may be seconded to "*international organisations*" ~~strictly for the exercise of their professional duties~~ as prosecutors and as public officials. Such secondment guarantees the preservation of their previous status (Article 54 (4) of the Law on prosecutor's office no. 3/25.02.2016 and Article 47 of the Law on public service no. 158/04.07.2008). Judges are not allowed to interrupt their judicial career other than for secondment to the National Institute of Justice and to the Higher Council of Magistrates. The law on the status of judges no. 544/20.07.1995 provides expressly that a judge elected President of the country, member of Parliament or of Government or local public administration should resign his judicial position at the latest 30 days after the election for that public office was validated (Article 8). Judge Stanislav Pavlovschi resigned his position with the General Prosecutor's office in 2001 and Judge Mihai Poalelungi resigned his judicial position with the Supreme Court of Justice in April 2008 (Parliament Decision no. 81 of 11.04.2008), in order to take up duties as Judge at the European Court of Human Rights. Judge Mihai Poalelungi ran as candidate for a vacant position of judge with the Supreme Court of Justice in 2012 before being appointed as President for the same court (Parliament Decisions nos. 8 and 9 of 16.02.2012). The Labor Code provides for the possibility to suspend a labor agreement for a certain list of reasons, including "*other reasons*", which may allow any employee, other than those listed above, to interrupt their career for international work, with the guarantee of regaining their previous status (Article 71 and 72).

***B. Counting of time spent in international jurisdictions or bodies for career advancement or pension purposes***

Although Moldovan ~~Moldavian~~ legislation does not appear to encourage international careers of public officials, prosecutors and judges, it acknowledges for certain categories the time spent in those institutions for the purpose of career advancement and of pension rights.

The time spent with international organizations is included in the officially recognized work experience of diplomats (Article 28 of the Law on diplomatic service) and of judges (Article $24^1$ (6) ~~Article 3 and 6~~ of the Law on the status of judges), both for the advancement of their career and for pension rights. For instance, judges at international courts running for the position of judge in domestic courts are dispensed from taking a qualification exam before the National Institute of Justice and are dispensed from the appraisal of their performance (6 and 13 of the Law on the status of judges). For the purpose of pension rights, since 2011 the time spent as international judge is assimilated to work as a domestic judge, and the pension is calculated from the salary of judges at the Supreme Court of Justice ~~(Article 46/1 of the Law on state social insurance pensions no. 156/14.10.1998). However the text of the law requires that any period, after 31 December 2005, spent on international work or other activity be contributive in order to be included in the calculation of pensions~~. according to the case-law of the Surpreme Court of Justice. ~~The Law on public service (Article 47(f)) contains a similar provision concerning the inclusion of periods spent on work in international organizations in the calculation of pension rights only if they are contributive.~~ International careers, including careers as international judge or arbitrator are not expressly acknowledged as relevant professional experience to be considered for the advancement of prosecutors in their career. Before 2011, judge Stanislav Pavlovschi obtained an acknowledgment of his work at the European Court of Human Rights for pension purposes only by a judgment of the Chisinau Court of Appeals (30 October 2008).

**2013 situation**

**Does Moldavian legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

***A. Possibility to interrupt career in order to work at international level and then regain their previous status***

The Moldavian law does not provide for any express provisions concerning service on the European Court of Human Rights or on any other international jurisdiction or body. It does refer to such service generically as service in international courts or jurisdictions or in international organizations. Under Moldavian law only diplomats are expressly allowed to work in international organizations with their previous status guaranteed upon their expiry of their mission. However, this guarantee is effective only if the Ministry of Foreign Affairs has vacancies; otherwise, the former diplomat is transferred in the reserve of the Ministry of Foreign Affairs, which *de facto* means no employment with the MFA (Articles 15(2) and 17 of the Law on diplomatic service no. 761/27.12.2001). Prosecutors and other public officials may be seconded to "*other institutions*" and to "*public institutions*" strictly for the exercise of their professional duties as prosecutors and as public officials. Such secondment guarantees the preservation of their previous status (Article 71 of the Law on prosecutor's office no. 294/25.12.2008 and Article 47 of the Law on public service no. 158/04.07.2008). Judges are not allowed to interrupt their judicial career other than for secondment to the National Institute of Justice and to the Higher Council of Magistrates. The law on the status of judges no. 544/20.07.1995 provides expressly that a judge elected President of the country, member of

Parliament or of Government or local public administration should resign his judicial position at the latest 30 days after the election for that public office was validated (Article 8). Judge Stanislav Pavlovschi resigned his position with the General Prosecutor's office in 2001 and Judge Mihai Poalelungi resigned his judicial position with the Supreme Court of Justice in April 2008 (Parliament Decision no. 81 of 11.04.2008), in order to take up duties as Judge at the European Court of Human Rights. Judge Mihai Poalelungi ran as candidate for a vacant position of judge with the Supreme Court of Justice in 2012 before being appointed as President for the same court (Parliament Decisions nos. 8 and 9 of 16.02.2012). The Labor Code provides for the possibility to suspend a labor agreement for a certain list of reasons, including "*other reasons*", which may allow any employee, other than those listed above, to interrupt their career for international work, with the guarantee of regaining their previous status (Article 77 and 78).

***B. Counting of time spent in international jurisdictions or bodies for career advancement or pension purposes***

Although Moldavian legislation does not appear to encourage international careers of public officials, prosecutors and judges, it acknowledges for certain categories the time spent in those institutions for the purpose of career advancement and of pension rights. The time spend with international organizations is included in the officially recognized work experience of diplomats (Article 28 of the Law on diplomatic) and of judges (Article 3 and 6 of the Law on the status of judges), both for the advancement of their career and for pension rights. For instance, judges at international courts running for the position of judge in domestic courts are dispensed from taking a qualification exam before the National Institute of Justice and are dispensed from the appraisal of their performance (Article 6 and 13 of the Law on the status of judges). For the purpose of pension rights, since 2011 the time spent as international judge is assimilated to work as domestic judge, and the pension is calculated from the salary of judges at the Supreme Court of Justice (Article 46/1 of the Law on state social insurance pensions no. 156/14.10.1998). However the text of the law requires that any period, after 31 December 2005, spent on international work or other activity be contributive in order to be included in the calculation of pensions. The Law on public service (Article 47(f)) contains a similar provision concerning the inclusion of periods spent on work in international organizations in the calculation of pension rights only if they are contributive. International careers, including careers as international judge or arbitrator are not expressly acknowledged as relevant professional experience to be considered for the advancement of prosecutors in their career. Before 2011, judge Stanislav Pavlovschi obtained an acknowledgment of his work at the European Court of Human Rights for pension purposes only by a judgment of the Chisinau Court of Appeals (30 October 2008).

## *Monaco*

**Current situation (2018)**

Aucune abrogation ou réforme n'est à signaler.

**2013 situation**

**I. Pour les magistrats**, une loi de 2009 ci-dessous prévoit expressément une possibilité de détachement "*auprès d'une organisation internationale*" (ou d'une disponibilité ou affectation) (article 60) selon la procédure décrite ci-dessous.

La réintégration est prévue à l'expiration du détachement selon les modalités suivantes : « *en surnombre dans un emploi correspondant audit grade* » (article 60).

- Quant à l'avancement, aucune mention n'y est faite expressément, mais la loi précise que « lorsque le magistrat a exercé une fonction juridique *auprès d'une organisation internationale*, en situation de détachement, de disponibilité ou d'affectation, *il est tenu compte* du temps passé dans cette fonction et de l'expérience acquise *en vue du reclassement* de ce magistrat *lors de sa réintégration au sein du corps judiciaire monégasque* » (article 60).
- Quant aux droits à pension, pour en bénéficier dans son administration nationale, l'agent détaché est tenu de verser la cotisation prévue par les dispositions en vigueur dans son Etat pour la constitution du droit à pension, qui sont calculées sur le traitement et la part d'indemnité afférente à son grade et à sa classe ou à son échelon dans le service dont il est détaché.

**II. <u>Les textes sur les fonctionnaires</u>** prévoient une possibilité très générale de « détachement » – sans précision d'affectation internationale - pour les fonctionnaires d'Etat par une loi de 1975 et une ordonnance de 1978 ci-dessous, qui ne concernent pas les magistrats, les chefs de mission du service diplomatiques et les membres de la force publique (article 1 et article 59). Toutefois, la loi précise que le détachement est possible « *exceptionnellement, pour un but d'intérêt général* ».
La réintégration est prévue à l'expiration du détachement selon les modalités suivantes (loi de 1975, article 61) :
« *À l'expiration du détachement, le fonctionnaire est réintégré dans l'administration à la première vacance se produisant dans son grade. Il est affecté dans un emploi correspondant audit grade ; toutefois, il a priorité pour être affecté à l'emploi qu'il occupait antérieurement à son détachement* ». ou article 45 de l'ordonnance précitée :
« *Si le détachement a été prononcé d'office, le fonctionnaire peut être réintégré dans l'Administration en surnombre temporaire jusqu'à ce qu'un emploi soit vacant dans son grade.* »

<u>S'il refuse l'emploi qui lui est assigné, il est placé en disponibilité jusqu'à ce qu'une nouvelle vacance soit ouverte dans son grade.</u>

- Quant aux droits à pension, pour en bénéficier dans son administration nationale, l'agent détaché est tenu de verser la cotisation prévue par les dispositions en vigueur dans son Etat pour la constitution du droit à pension, qui sont calculées sur le traitement et la part d'indemnité afférente à son grade et à sa classe ou à son échelon dans le service dont il est détaché (loi de 1975, article 60).

**III. <u>Annexe : Textes en vigueur</u> :**
**=> <u>Fonctionnaires d'Etat (hors magistrats et chefs de missions diplomatiques et forces de l'ordre)</u>**
***<u>Loi n. 975 du 12/07/1975 portant statut des fonctionnaires de l'État</u>**
Article 1er.- Le présent statut s'applique aux personnes qui ont la qualité de fonctionnaire de l'État.
<u>Il ne s'applique toutefois pas aux magistrats et aux greffiers, dont le statut est fixé par une loi, ni aux membres du clergé dont le statut est déterminé par ordonnance souveraine en vertu de la Bulle pontificale du 15 mars 1886 créant le diocèse de</u>

Monaco. Il n'est de même pas applicable aux personnes relevant des services du Palais princier, aux chefs de mission du service diplomatique et aux membres de la force publique

**Détachement**
**Article 59.-** Le détachement peut avoir lieu dans tous emplois dont les titulaires relèvent du champ d'application de la législation sur les pensions de retraite des fonctionnaires et, exceptionnellement, pour un but d'intérêt général, dans tous autres emplois ou fonctions. Le détachement est toujours révocable.
Il est prononcé soit à la demande du fonctionnaire, soit d'office ; dans ce dernier cas, la commission paritaire compétente est consultée et l'intéressé a droit au maintien d'un traitement égal à celui afférent à son grade et à sa classe ou à son échelon.
Article 60.- En cas de détachement dans un emploi ou une fonction dont les titulaires ne relèvent pas du champ d'application de la législation sur les pensions de retraite des fonctionnaires, l'intéressé doit verser la cotisation prévue par les dispositions en vigueur pour la constitution du droit à pension ; cette cotisation est calculée sur le traitement d'activité afférent à son grade et à sa classe ou à son échelon dans le service dont il est détaché.
La personne privée auprès de laquelle le fonctionnaire est détaché est redevable à l'administration des cotisations dont elle serait tenue s'il s'agissait d'un salarié du régime général.
Article 61.- À l'expiration du détachement, le fonctionnaire est réintégré dans l'administration à la première vacance se produisant dans son grade. Il est affecté dans un emploi correspondant audit grade ; toutefois, il a priorité pour être affecté à l'emploi qu'il occupait antérieurement à son détachement.
S'il refuse l'emploi qui lui est assigné, il est placé en disponibilité jusqu'à ce qu'une nouvelle vacance soit ouverte dans son grade.
Article 62.- Les conditions et la durée du détachement seront déterminées par une ordonnance souveraine prise après avis de la commission de la fonction publique.

***Ordonnance n. 6.365 du 17/08/1978 fixant les conditions d'application de la loi n° 975 du 12 juillet 1975 portant statut des fonctionnaires de l'État**
Vu la loi n° 975 du 12 juillet 1975 portant statut des fonctionnaires de l'État ;
**Du détachement**
**Article 43.-** Le détachement est prononcé par arrêté ministériel pour une période d'une durée maximale de cinq années susceptible d'être renouvelée.
Il peut être mis fin au détachement à tout moment par l'Administration d'origine soit à son initiative soit à la demande de l'administration publique ou privée auprès de laquelle le fonctionnaire est détaché.
Le fonctionnaire qui fait l'objet d'un détachement peut être remplacé dans son emploi.
Article 44.- Le fonctionnaire en service détaché est soumis à l'ensemble des règles régissant l'emploi ou la fonction qu'il occupe par l'effet de son détachement.
L'appréciation motivée visée à l'article 16 est portée par le chef de service dont il dépend dans l'emploi ou la fonction où il est détaché.
Article 45.- Si le détachement a été prononcé d'office, le fonctionnaire peut être réintégré dans l'Administration en surnombre temporaire jusqu'à ce qu'un emploi soit vacant dans son grade.

**=> MAGISTRATS :**
*** Loi n. 1.364 du 16/11/2009 portant statut de la magistrature**
Titre - VIII Des positions

**Article 59.-** Les magistrats sont placés dans une des positions suivantes :
1° - l'activité en juridiction ou par affectation auprès du directeur des services judiciaires ;
2° - le service détaché ;
3° - la disponibilité.

Article 60.- Les dispositions du statut général des fonctionnaires de l'État concernant les positions ci-dessus énumérées s'appliquent aux magistrats dans la mesure où elles ne sont pas contraires aux règles statutaires du corps judiciaire et sous réserve des dérogations suivantes :
- le détachement notamment auprès d'une organisation internationale, la disponibilité, l'affectation auprès du directeur des services judiciaires ainsi que la réintégration à l'expiration de ceux-ci, sont prononcés à la demande de l'intéressé par ordonnance souveraine sur le rapport du directeur des services judiciaires et après avis du haut conseil de la magistrature ;
- à l'expiration du détachement, de la disponibilité ou de l'affectation, en l'absence de vacance d'emploi dans son grade, le magistrat est réintégré en surnombre dans un emploi correspondant audit grade.
Lorsqu'un magistrat a exercé une fonction juridique auprès d'une **organisation internationale**, en situation de détachement, de disponibilité ou d'affectation, il est tenu compte du temps passé dans cette fonction et de l'expérience acquise en vue du reclassement de ce magistrat lors de sa réintégration au sein du corps judiciaire monégasque.
Le haut conseil de la magistrature est informé, dans un délai raisonnable, des choix opérés pour le détachement, ainsi que sur la demande de renouvellement ou de non-renouvellement de ce détachement, des magistrats mentionnés à l'article 65 préalablement à leur nomination.

***Loi n. 1.049 du 28/07/1982 sur les pensions de retraite des fonctionnaires, des magistrats et de certains agents publics**
Paragraphe - I Durée des services
**Article 4.-** Les droits à pensions sont ouverts lorsque l'agent a accompli quinze années de services effectifs.
Ils sont toutefois ouverts sans condition de durée de service si l'agent cesse d'exercer ses fonctions :
* 1° par suite d'invalidité imputable, ou non, au service ;
* 2° par l'effet de la limite d'âge ;
* 3° par suite de licenciement pour cause de suppression d'emploi.
Article 5.- (Modifié par la loi n° 1.275 du 22 décembre 2003)
Les services effectifs à prendre en compte pour l'ouverture des droits sont ceux qui sont accomplis :
* 1° en position d'activité, à temps plein ou à temps partiel, ou de détachement ;
* 2° en qualité d'agent stagiaire.
Paragraphe - III Cotisations pour pensions
Article 7.- (Loi n° 1.190 du 2 décembre 1996)
La rémunération de tout agent est assujettie à cotisation à compter de la date d'effet de la décision de nomination ou de titularisation. La cotisation est précomptée dans les conditions ci-après :
* 1° six pour cent sur le montant du traitement indiciaire, au titre de la retraite principale ;
* 2° six pour cent sur l'indemnité compensatrice représentative d'un complément de traitement et sur l'indemnité de cinq pour cent, au titre de la retraite

supplémentaire. La base de cette cotisation est égale à trente pour cent du montant du traitement indiciaire.
L'agent détaché dans un emploi ou une fonction ne relevant pas de l'application de la présente loi est tenu de verser les cotisations mentionnées ci-dessus. Celles-ci sont calculées sur le traitement et la part d'indemnité afférente à son grade et à sa classe ou à son échelon dans le service dont il est détaché.
Lorsque les montants soumis à cotisation sont réduits pour quelque cause que ce soit, les sommes précomptées ou à verser sont calculées sur l'intégralité de ces montants.

Comment by judge Berro-Lefevre
La loi n° 1364 du 13 novembre 2009 portant statut de la magistrature inclut effectivement en son article 60 des dispositions spécifiques pour les magistrats détachés auprès des organisations internationales. Toutes les dispositions visées sont exactes.

## *Montenegro*

**Current situation (2018)**
I have checked this, and consulted with Judge, she has also nothing to add.
It's Ok

**2013 situation**
***Does your country's legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:***

***I. allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

The Law on the Courts[166] does not provide specifically the possibility for a national judge appointed or elected to work at international level to have her/his national judicial function frozen for the duration of her/his office at international level.
Similarly, there is no specific provision in the Law on Higher Education on the possibility for professors to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed.
In both situations, it seems that the Labour Law[167] relevant provisions would apply. Indeed, Article 2 § 2 provides that the present Law applies to employees of state organs, organs of the state administration, organs of local government and public services, unless otherwise provided by law. This law also applies to employees sent to work abroad by an employer based in Montenegro, unless the law provides otherwise (Article 2 § 1).
- According to Article 76 § 1, 1st point of the Labour Law, the rights and obligations of the employee related to the employment shall remain frozen for the period of time the employee is absent from work because she/he has been sent to work abroad, either in the framework of an international-technical cooperation or an educational-cultural cooperation, in a diplomatic, a consular or other representation, or for the purposes of a vocational training or education in

[166]. Published in the Official Gazette of RCG, Nos 05/2002, 49/2004 and the Official Gazette of CG, Nos 22/2008 and 39/2011.
[167]. Published in the Official Gazette of Montenegro Nos 49/08, 26/09, 88/09, 26/10 and 59/11.

accordance with the needs of the employer. The employee has the right, within 30 days after the termination of the reasons for which her/his employment rights and obligations were frozen, to return to work for her/his employer on the same or other position corresponding to her/his level of professional competences or her/his level of education and occupation.

As for the public officials, Article 62 § 1 of the Law on Government Officials and Employees[168] provides for the possibility to freeze the rights and obligations related to the employment of government officials and employees absent of work because they have been sent to work abroad, either in the framework of an international-technical cooperation or an educational-cultural cooperation, in a diplomatic, a consular or other representation, or for the purposes of a vocational training or education. The employee has the right, within 30 days after the termination of the reasons for which her/his employment rights and obligations were frozen, to return to work for her/his employer on the same or other position corresponding to her/his level of professional competences or her/his level of education and occupation.
The Law on Foreign Affairs[169] provides in its Article 38 that the rights, obligations and responsibilities of employees of the Ministry of Foreign Affairs and of the diplomatic and consular missions are governed by the regulations on government officials and employees and the general rules on labour, unless the law provides otherwise. In the same sense as the Law on Government Officials and Employees, as well as the Labour Law, Article 56 of the Law on Foreign Affairs provides that the rights and obligations of a diplomat assigned to work in international and other organisations for a determined period of time in order to conduct tasks in the field of foreign affairs which correspond to her/his diplomatic vocation, remain frozen during this period of time.

***II. counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

Bearing in mind the abovementioned provisions in respect of judges, professors or other public officials whose functions are frozen during the period of time they work abroad, it appears that as far as their pension rights are concerned, the freeze of their rights and obligations related to the employment entails the freeze of their rights related to health, pension and disability insurance. Accordingly, the time the person concerned worked abroad would not count for her/his pension rights.
By virtue of the enumerated provisions, the same principle would apply to the three categories of persons concerned, because of the same wording employed in the relevant provisions of the Labour Law and the Law on Government Officials and Employees. However, some general provisions exist in relation to pensions rights. It is difficult to foresee how they would apply in practice.

***First***, the Law on Pension and Disability Insurance[170] provides in its Article 6 § 1 that funds for pension and disability insurance are provided through contributions paid by the insured persons and employers.
- Article 9 defines the insured persons as the persons who are employed.

[168]. Published in the Official Gazette No 39/2011, as amended and modified subsequently.
[169]. Published in the Official Gazette of Montenegro No 46/2010.
[170]. Published in the Official Gazette of RCG Nos 54/03, 39/04, 61/04, 79/04, 81/04, 29/05, 14/07 and 47/07 and the Official Gazette of Montenegro Nos 12/07, 13/07, 79/08, 14/10, 73/10, 78/10, 34/11, 40/11 and 66/12.

- The insured employed persons include the employed persons sent to work abroad, if they are not insured according to the regulations of that State or unless an international agreement specifies otherwise (Article 10, 5th point). The insured employed persons also include citizens of Montenegro employed abroad, if during that time they are not insured on a mandatory basis in a foreign pension fund or if the rights arising from pension and disability insurance, pursuant to regulations of that State, cannot be realised or used outside its territory, and if shortly before they went abroad, they were insured in Montenegro, i.e. they were residents of Montenegro before going abroad (Article 10, 7th point).

***Then***, Article 19 of the Law on Contributions for Mandatory Social Insurance[171] provides that the obligation to pay contributions of an employee, who is granted a freeze of her/his functions in accordance with the Labour Law, shall also remain frozen during this period of time, unless the present law provides otherwise.

The said Law provides in Article 5 § 1 that the persons obliged to pay contributions for pension and disability insurance include the "*persons sent*", if they are not insured on a mandatory basis according to the laws of that State or unless an international agreement specifies otherwise (5th point), as well as citizens of Montenegro, employed abroad (7th point).
According to Article 4, 5th point of the present Law, a "*person sent*" is a person employed by an employer based in Montenegro and who performs her/his tasks in another State or a person employed in a diplomatic or consular mission or in an international organisation abroad. Article 4, 6th point lays down that a citizen of Montenegro employed abroad is a person employed abroad by a foreign employer, if during that time she/he is not insured on a mandatory basis in a foreign pension fund or if the rights arising from pension and disability insurance, pursuant to regulations of that country, cannot be realised or used outside its territory, and if shortly before she/he went abroad, she/he was insured in Montenegro, i.e. she/he was a resident of Montenegro before going abroad.
Article 5 § 2 provides that for the persons as referred to in Article 5 § 1, 5th point, the person obliged to pay contributions for pension and disability insurance is the employer or other payer of incomes.
According to Article 21 § 1, the contribution for the persons obliged to pay it, as referred to in Article 5 § 1, 5th point of this Law, shall be calculated and paid by the employer or payer of the income at the occasion of the payment of salaries or wages. The said contribution is at the charge of both the insured person and the employer. The contribution for the persons obliged to pay it, as referred to in Article 5 § 1, 7th point of this Law, shall be paid by the insured person itself (Article 21 § 2).

[171]. Official Gazette of Montenegro Nos 13/07, 79/08, 86/09, 78/10, 40/11 and 14/12.

# *The Netherlands*

**Current situation (2018)**

**Does your country's legislation expressly recognise service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or* pension rights?**

The Netherlands does not have any legislation expressly recognising service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed. Nor is there any legislation safeguarding that the time spent in the international jurisdictions or bodies are counted for career advancement purposes or pension rights. Judges and other public officials who apply for a long-term international post may, when elected, have to resign from office without the guarantee to return. Pension rights are at best frozen and there is a direct negative impact on the rights of dependants (spouse); however such negative impact can be covered by (relatively costly) private arrangements if thought necessary. It may be that individual return arrangements will be conditionally accepted when asked for. Civil servants may make use of the extraordinary leave regulation, called the "Extraordinary leave for fulfilling a function at an international legal organisation".[172] This regulation allows civil servants to take unpaid leave in order to fulfil temporary jobs within an international organisation. During this time the civil servant is responsible for the continuation of his pension build up. There is an option to continue using the government pension fund, but the civil servant would have to pay both the employer's and the employee's contribution. According to this regulation, another option is for civil servants to be seconded at an international organisation. In this situation the salary and the pension contributions will continue to be paid. If the partner is a civil servant, it is possible to request unpaid partner leave. These arrangements however do not apply to judges. Judges are not a civil servant within the meaning of Article 34 of the Dutch Civil Servants Regulation and therefore neither within the meaning of the regulation on extraordinary leave.

**2013 situation**

To begin with: there is no general legislative framework covering these matters.
Most Universities have specific arrangements. Within these arrangements additional individual agreements need to be made to continue building pension rights (instead of freezing those rights) etc.

Another context is the agreement between the central government and international organizations:
Detached national experts, for example the agreement between the Dutch government and the secretariat of the CoE to detach a Dutch national expert on LGTB rights in 2013 to the CoE, financed from the Dutch contribution 2011-2013.

[172]. Buitengewoon verlof in verband met het vervullen van een functie bij een internationale volkenrechtelijke organisatie, http://wetten.overheid.nl/BWBR0028098/2010-08-24

Such a detached national expert continues to hold his legal position (continues to build his pension etc.) as a civil servant in the Netherlands while performing in Strasbourg.

As for judges being detached to another organization for a relative short fixed period of time, like a government branch or some international organization, they will normally continue to build pension rights and to have counted the time thus spent for advancement in their judicial career (albeit only within the function held); the 'sending' court will normally be refunded by the branch where the detachment takes place, or by the Juridical council.

Judges, advocates-general and the like who apply for a long-term international post, *like* becoming judge in the European court of human rights may, when elected, have to resign from office without guarantee to return, pension rights are at best frozen and there is a direct negative impact on the rights of dependants (spouse); however such negative impact can be covered by (relatively costly though) private arrangements if thought necessary. It may be, that individual return arrangements will be conditionally accepted when asked for. In a number of some cases a form of detachment with a return-possibility for an international judicial position was indeed accepted or already part of the detachment-arrangement, and along with it normal protection of pension rights etc. (judges detached to the UN International tribunals, holding their former position as a judge was also important as a guarantee for independence).

## *Norway*

**Current situation (2018)**
As far as I can see the information concerning Norway is still relevant.

It could be added:
Regarding pension rights there is a special agreement, founded in the Norwegian Public Service Pension Fund Act para 20 d, granting membership in the of the Norwegian Public Service Pension Fund and by that securing a pensionable period of service for five years while being on leave for working in an international organisation abroad.

**2013 situation**
The position in Norway is the following: International assignments are not covered by the statutory rules on leave of absence contained in the Work Environment Protection Act (*Arbeidsmiljøloven*). When the Norwegian Administration of Courts (*Domstolsadministrasjonen*) or the President of the Court in question (depending on the duration of the leave of absence) decides on an application for leave made by a judge, the application will in practice be granted. This is also in keeping with the State Civil Service Handbook, even though the latter does not directly apply to judges. In Chapter 10.8.7.1 (Introduction) of the said Handbook one can read:

> "An application for leave of absence without remuneration shall be decided in each case by the employer or appointment authority, which is to assess whether it is feasible in view of the interests of the service to grant leave. In the assessment weight should be attached inter alia to whether it is possible to hire a replacement or to otherwise organize the services in a responsible manner. This applies also to applications for leave concerning Norwegian and international assistance.
>
> In view of the expansion and strengthening of international cooperation and relations, civil servants should be given an opportunity to work in the administration in other countries or in international institutions and organizations. Through this kind of work national civil servants are able to acquire valuable knowledge and experience, which it will be beneficial to the national civil service to use."

# *Poland*

**Current situation (2018)**

**Does Polish legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

The Polish law regulates partly the issue in question, namely in respect of judges.
The Law on the Supreme Court provides that a Supreme Court judge may be appointed or elected to exercise functions in the organs of international or supranational organisations (Section 46 § 1). In such a case the judge is required to resign from his judicial office. This provision would apply to election to the ECHR and the Court of Justice of the EU. A Supreme Court judge has a right to return to his previous judicial office if the period of his appointment was no longer than 9 years. This time-limit does not apply to judges who exercised judicial functions in international courts (Section 46 § 2). Similar regulation is applicable to the judges of ordinary courts (cf. Section 98 §§ 2-3 of the Law on the Organisation of Courts).
**The new Law on the Supreme Court of December 2017 contains the same regulation as before. The only change is that the relevant provisions are now in section 52 par. 1-2.**

Judges of the Constitutional Court can be elected to international courts but they have to resign their judicial office and they have no right to come back.
**The new law on the status of judges of the Constitutional Court of November 2016 does not regulate the issue (by comparison to the previous regulation).**

As regards counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights:

- term of serving as judge on an international court would normally count as a period of employment in judiciary.
- there is no specific rule governing the situation of judges sitting on international courts. However, under the general rules applicable to all persons, for the purposes of determining pension rights and calculating the amount of the pension due, the periods when a person has been insured abroad are taken into account if so provided by international agreements.

**2013 situation**

**Does Polish legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

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and the Court of Justice of the EU. A Supreme Court judge has a right to return to his previous judicial office if the period of his appointment was no longer than 9 years. This time-limit does not apply to judges who exercised judicial functions in international courts (Section 46 § 2). Similar regulation is applicable to the judges of ordinary courts (cf. Section 98 §§ 2-3 of the Law on the Organisation of Courts).

Judges of the Constitutional Court can be elected to international courts but they have to resign their judicial office and they have no right to come back.

As regards counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights:

- term of serving as judge on an international court would normally count as a period of employment in judiciary.
- there is no specific rule governing the situation of judges sitting on international courts. However, under the general rules applicable to all persons, for the purposes of determining pension rights and calculating the amount of the pension due, the periods when a person has been insured abroad are taken into account if so provided by international agreements.

## *Portugal*

**Current situation (2018)**

**Does the Portuguese legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice in the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their careers in order to work at international level and then regain their previous status once the mandate is completed?***

Yes

- ***Counting the time spent in the international jurisdictions or bodies for careers advancement purposes or pension rights?***

Yes

| **Diplomats** | **Other Public Officials (judges, professors, etc.)** |
|---|---|
| Applicable Law: *Estatuto da Carreira Diplomática, Decreto-Lei n°40-A/98* (Diplomatic Career Statute, Law Decree n°40-A/98) | Applicable Law: *Lei Geral do Trabalho em Funções Públicas, Law no 35/2014 of 25 June 2014.* |
| Diplomats may be called to exercise functions in international organisations and entities for a maximum of 4 years. This time may be extended for one year maximum. A dispatch from the Minister of Foreign Affairs is requested (Article 73/1);<br><br>These diplomats will keep their rights and benefits, mainly with regard to seniority and scores of time for the purpose of career progression through the ranks and promotions. The same will apply for retirement purposes if they make the payment of the legal quota (Article 72/2). | At the employee's request, the public employer may grant him an unpaid leave (Article 283 § 1) due to the exercise of functions at an international organisation in which Portugal is a part. The rule is that the leave suspends the contract and that the worker has a right to return to the entity or service where he was before the leave. (Article 281). In these situations the employee can request that the time of the leave counts for pension rights, retirement and social benefits as long as he continues his contributions;<br>According to Article 281 § 3 of Law no 35/2014 the time spent in an international organisation counts for career purposes. |

**2013 situation**

**Does the Portuguese legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice in the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their careers in order to work at international level and then regain their previous status once the mandate is completed?***

Yes

- ***Counting the time spent in the international jurisdictions or bodies for careers advancement purposes or pension rights?***

Yes

| **Diplomats** | **Other Public Officials (judges, professors, etc.)** |
|---|---|
| Applicable Law: *Estatuto da Carreira Diplomática, Decreto-Lei n°40-A/98* (Diplomatic Career Statute, Law Decree n°40-A/98) | Applicable Law: *Regime do Contrato de Trabalho em Funções Públicas, Lei n° 59/2008* (Regime of Employment Contract in Public Functions, Law n 59/2008) + *Lei dos regimes de vinculação, de carreiras e de remunerações dos trabalhadores que exercem funções públicas, Lei n° 12-A/2008* (Law of linking schemes, careers and salaries of workers performing public functions, Law n 12-A/2008) |
| Diplomats may be called to exercise functions in international organisations and entities for a maximum of 4 years. This time may be extended for one year maximum. A dispatch from the Minister of Foreign Affairs is requested (Article 73/1);<br><br>These diplomats will keep their rights and benefits, mainly with regard to seniority and scores of time for the purpose of career progression through the ranks and promotions. The same will apply for retirement purposes if they make the payment of the legal quota (Article 72/2). | At the employee's request, the public employer may grant him an unpaid leave (Article 234/1) due to the exercise of functions at an international organisation in which Portugal is a part. The rule is that the leave suspends the contract and that the worker has a right to return to the entity or service where he was before the leave. (Article 235). In these situations the employee can request that the time of the leave counts for pension rights, retirement and social benefits as long as he continues his contributions;<br><br>According to Law 12-A/2008 the time spent in an international organisation counts for career purposes. |

# *Romania*

**Current situation (2018)**

**Does Romanian legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

***a) allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

**1. Seconded judges and prosecutors:**

***a). Article 58 of Law no. 303/2004 on the Statute of Judges and Prosecutors provides***

(1) The Superior Council of Magistracy has jurisdiction to decide upon the secondment of judges and prosecutors […] to other courts and prosecutor's offices […], as well as to other institutions of the European Union or international organizations.
(2) The initial secondment period can vary between 6 months and 3 years and can be extended only once, up to no more than 3 years [...]
(3) During the secondment period, the magistrates maintain their position as judge or prosecutor and enjoy all pecuniary rights provided by the domestic law for temporary professional missions abroad [ …]
(4) The secondment period represent seniority in service as judge or prosecutor.
(5) When the secondment period is completed, the judge or prosecutor resumes his previous position.

***b). The above provision is to be modified starting with 30 June 2019, when the Article 58 will stipulate***

(1) The Superior Council of Magistracy has jurisdiction to decide the secondment of judges and prosecutors […] to other courts and prosecutor's offices […].
(1)[1] Judges and prosecutors can hold positions within the European Union institutions or international organizations if the international document establishing the employment requirements asks expressly for the candidate's quality of judge or prosecutor in order to access to the respective position.
(2)[2] If the judge or prosecutor decides to hold a position within the European Union institutions or international organizations, he/she is released from his function of judge or prosecutor, but his/her post at national level is reserved.
It is to be noted that starting with 30 June 2019, the relevant national legislation will not contain any provision permitting the secondment of judges or prosecutors to European Union institutions or international organizations.

**2. Professors and public civil servants can suspend their activity in order to work in an international organization and their posts are maintained until their mandate is completed, possibility stipulated within the following laws:**

- Professors - Article 304(8) of Law no. 1/2011 on National Education;
- Public civil servants - Articles 94(c) and 95(c) of Law no. 188/1999 on the Statute of the Public Civil Servant;

As regards the diplomats, there is no provision on Law no. 269/2003 on the Statute of Romanian Diplomatic and Consular body affording the possibility to interrupt their carrier in order to work in an international organization.

***b) counting the time spent in the international jurisdictions or bodies for***

i) career advancement purposes

1. Seconded judges and prosecutors: Article 58(4) of Law 303/2004 on the Statute of Judges and Prosecutors reproduced above; moreover, the secondment period is recognised as seniority time for entering examinations in order to obtain higher professional degrees;
2. Professors, Public civil servants:
   - Professors: Article 304(12) of Law no. 1/2011 on National Education provides that the period in which the professor is suspended from his position to serve in an international organization is counted as seniority in service;
   - Public civil servants: Article 96(4) of Law no. 188/1999 on the Statute of the Public Civil Servant provides that the period worked in an international organization is counted as seniority time as a civil servant;

or

ii) pension rights?

1. Seconded judges and prosecutors: Article 58(4) of Law 303/2004 on the Statute of Judges and Prosecutors acknowledges the secondment period as seniority in service as judge or prosecutor, therefore this period is to be considered when calculating the pension rights;
2. Professors, Public civil servants;
   - Professors: Article 304(12) of Law 1/2011 on National Education acknowledges the period worked in an international organization as seniority time, therefore this period is to be considered when calculating the pension rights;
   - Public civil servants: Article 96(4) of Law no. 188/1999 on the Statute of the Public Civil Servant acknowledges the time spent working for an international organization as seniority time, therefore this period is to be considered when calculating the pension rights;

**2013 situation**

**Does Romanian legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

***a) allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

1. Seconded judges and prosecutors: Article 59 of Law no. 303/2004 on the statute of judges and prosecutors provides:
(1) The Superior Council of Magistrates can authorize the secondment of judges and prosecutors […] to other courts […], as well as to other institutions of the European Union or international organizations.
(2) The secondment can last between 6 months and 3 years, and can be prolonged only once, up to no more than 3 years [...]
(3) During the secondment, judges and prosecutors maintain their position as judge or prosecutor and enjoy all rights provided for by law for seconded staff [ …]
(4) The time spent on secondment represents seniority time (ancienneté) as judge or prosecutor.

2. Professors and diplomats can suspend their activity as professors or public civil servants, and their posts are maintained as such, in order to work in an international organization, as follows:
University professors - Article 304(8) of Law no. 1/2011 on the Education
Diplomats – Articles 94(c) and 95(c) of Law no. 188/1999 on the Statute of the Public Civil Servant.

***b) counting the time spent in the international jurisdictions or bodies for***
i) career advancement purposes
1. Seconded judges and prosecutors: see above Article 59(4)

2. Professors, diplomats:
Suspended Professors: Article 204(12) of Law no. 1/2011 provides that the period while the post is maintained represents seniority time
Diplomats: Article 96(4) of Law no. 188/1999 provides that when suspended, time spent while working for an international organization is to be considered as seniority time as a civil servant

or
ii) pension rights?
1. Seconded judges, prosecutors: no express recognition, see Article59 (4) above mentioned;

2. Suspended civil servants professors, diplomats:
- Professors: No express recognition, see Article 304(12) of Law 1/2011 1999 (when suspended, with post maintained, time spent while working for an international organization is to be considered as seniority time as a civil servant).
- Diplomats: No express recognition, Article 96(4) of Law no. 188/1999 (when suspended, time spent while working for an international organization is to be considered as seniority time as a civil servant).

## *Russia*

**Current situation (2018)**
**Does Russian legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***

As a general rule, no, exceptions being provided by a treaty.

- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

As a general rule, no, exceptions being provided by a treaty.

**I. Judges**
***1. Domestic law***
Russian law contains no provisions regarding the status of the judges of the European Court of Human Rights or other international courts (since Russia is not part of the EU there is no judge for Russia in the European Court of Justice). Article 13 of the main act governing the status of judges (the Federal Law "*On the*

*Status of Judges in the Russian Federation*", in force as from 26 June 1992 N 3132-1, with amendments)("Act on the Status of Judges")) establishes the grounds for suspending the judge's status; the list does not include election of a person as a judge in a supranational court. The Act on the Status of Judges provides that the status of the judge will be terminated at the request of a judge if the judge gets a new job. His or her status will also be terminated if he or she obtains a residence permit of a foreign State or opens a bank account in a foreign State. So if the judge gets a position in an international court, he or she will have to resign. The Act on the Status of Judges does not provide for any privileges for "*external*" judges after their careers: the period of their office is not taken into account for any special pension or other purposes. The Decree of the Present of 22 November 2016 no. 617 "On Financial and Social Assistance of Judges Elected by Russian Federation for the Court of the Eurasian Economic Union ("Court of the Union") and the Economic Court of the Commonwealth of Independent States ("CIS Economic Court") and Removed from their Office" prescribes the conditions of payments for loss of employment and life annuity payments for judges who left these international courts for reasons listed in the Decree. The length of service includes the period of work in the above courts and in national courts.

### *2. International law*

*a. CIS Economic Court*

The status of international courts judges may be determined by inter-governmental agreements, which is the case for the CIS Economic Court established under the Agreement on the Status of the CIS Economic Court, of July 6 1992). The Agreement contains the Rules of the CIS Economic Court. According to Rule 7, upon expiration of the judges' mandate, their dismissal, including dismissal due to an illness, the judges may enjoy the same guarantees as those provided for national judges.

*b. Court of the Union*

The Court of the Union functions under the Treaty on the Eurasian Economic Union singed on 29 May 2014. The Rules of the Court and the Rules on Social Guarantees, Privileges and Immunities in the Eurasian Economic Union are enclosed to this Treaty (see the text with all annexes in English: http://www.wipo.int/wipolex/ru/treaties/text.jsp?file_id=376938).

According to Rule 44 of the Rules on Social Guarantees, Privileges and Immunities, pension benefits of the judges of the Court of the Union are governed by the law of the Member State of their nationality, in our case, Russia. Mandatory pension contributions of judges of the Court of the Union are made by the Bodies of the Union, without any deductions from their salaries, from the Budget of the Union to the pension funds of the Member States of their nationality (Russia), in accordance with the procedure and in the amounts determined by the national law. Russian authorities pay pensions directly to judges of the Court of the Union. For the purposes of determining pensions or social security benefits (social insurance), the length of pensionable service or seniority shall include the period of service as a judge of the Court of the Union in accordance with national law. The period of service as a judge of the Court of the Union is included in the length of pensionable service or seniority when determining their pensions in accordance with the national law and the law of the host State when determining social security benefits (social insurance) (Rule 46). Earnings received by judges of the Court of the Union during the period of their office are taken into account when determining the amounts of their pensions in accordance with the national law and law of the host State when determining the amounts of social security benefits (social insurance)

(Rule 47). According to Rule 48 § 5, the period of service of the judges of the Court of Union is taken into account when calculating the service period in Russia. Upon termination of his/her powers, a judge of the Court of the Union is entitled to guarantees and allowances provided for by national law for the Chairman of the Supreme Court. These guarantees and allowances are determined for a judge of the Court of the Union in accordance with the procedure prescribed by the national law (Rule 50). Officials and employees of the Court of the Union who are Russian nationals, if they held federal public (civil) service positions prior to the employment at the Court of the Union, were dismissed from offices held at the Court of the Union (except for dismissal due to any wrongful actions), and served in civil service for at least 15 years, are entitled to a long service pension to be determined in accordance with the procedure provided for by the Russian law for federal civil servants, if immediately prior to their dismissal from the Court of the Union they have occupied their positions for at least 12 months (Rule 53). The period of employment of officials and employees of the Court of the Union is included in the duration of their public (civil) service in Russia for the purposes of determining social guarantees for the period of public (civil) service and for granting long service pension of public servants (federal civil servants) (Rule 54).

## II. Diplomats

### *1. Domestic law*

The status of diplomats is determined by the Federal Law "*On State Civil Service*" and (special provisions) by the Federal Law "*On Particularities of Federal State Civil Service in the Foreign Ministry of the Russian Federation*". Article 7 provides for a possibility to suspend a service contract if a diplomat is sent for work to an international organization. Although being elected a judge is not the same thing, most likely these provisions may be applicable to this case. Once the contract suspended, the period of "*external*" office counts for career pattern and pension purposes.

### *2. International law*

For information regarding the members of the Board of Eurasian Economic Commission, other employees and officials of the Eurasian Economic Union, please refer to the Section I of this paper: these categories of personnel are subject to the Rules on Social Guarantees, Privileges and Immunities in the Eurasian Economic Union described above.

## III. Other State officials

The Federal Law "*On State Civil Service*" provides for a possibility for civil servants to take a sort of sabbatical leave (unpaid) for a period up to 1 year which may be extended. Its extension depends on the employer's discretion. This period counts for career pattern and pension rights. However, it is hardly likely that their contracts may be suspended for several years which is required when a person becomes an international judge.

## IV. Professors/Academic Scholars

As a general rule, professors and academic scholars are not State officials; their contracts may by suspended subject to the employer's consent; the period of suspension counts as well for the purposes above.

**2013 situation**

**Does Russian legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

The answer to these questions is different depending to the group of officials in question:

I. Judges

Russian legislation contains no provisions regarding the status of the judges of the European Court of Human Rights or other international courts (since Russia is not part of the EU there is no judge for Russia in the European Court of Justice). Art. 13 of the main act governing the status of judges (the Federal Law "*On the Status of Judges in the Russian Federation*", in force as from 26 June 1992 N 3132-1, with amendments) establishes the grounds for suspending the judge's status; the list does not include election of a person as a judge in a supranational court; in similar case the judge should resign. Neither does the Law provides for any privileges for "*external*" judges after their careers: the period of their office is not calculated for any special pension or other rights.

Sometimes the status of international courts judges may be determined by inter-governmental agreements, which is the case for the Economic Court of CIS. This status includes, among other, the same guarantees after resignation as for national judges (which means, normally, the right to a special judges maintenance, on conditions set by Russian law). On the other hand, the status of judges of another international court on the post-Soviet territory – the Court of the Eurasian Economic Community – is not determined in the organizational documents and remains unclear. In practice the judges of these courts enjoy the same privileges and immunities as diplomatic officers. Summing up, persons acting as judges in international courts and tribunals, as a general rule (in the absence of an express intergovernmental agreement) do not enjoy the same privileges as the national judge and their time of office is not considered as judicial experience.

II. Diplomates

The status of diplomats is determined by the Federal Law "*On State Civil Service*" and (special provisions) by the Federal Law "*On Particularities of Federal State Civil Service in the Foreign Ministry of the Russian Federation*". Art. 7 provides for a possibility to suspend a service contract if a diplomat is sent for work to an international organization. Although being elected a judge is not the same thing, most likely these provisions may be applicable to this case. Once the contract suspended, the period of "*external*" office counts for career pattern and pension purposes.

III. Other State officials

The Federal Law "*On State Civil Service*" provides for a possibility for civil servants to take a sort of sabbatical leave (unpaid) for a period up to 1 year which may be extended. Its extension depends on the employer's discretion. This period counts for career pattern and pension rights. However, it is hardly likely that a contract may by suspended for such long period as the term of office of an international judge usually is.

IV. Proffesors/Academic Scholars
As a general rule, are not State officials; their contract may by suspended subject to the employer's consent; the period of suspension counts as well for the purposes above.

## *San Marino*

**No, San Marino law doesn't allow public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level, and then regain their previous status once the mandate is completed.**

If you wish further information, you might In particular note the following:
Regarding the employees of the public administration – civil servant (and among these we can count the professors and the diplomats, but not the judges), the law of 22 December 1972, n. 41 contemplates some forms of suspension from the service, on the request of the interested party. None of these refers, however, to the taking of service in international organizations. For general information, Article 46 - entitled "*Expectation for political, administrative or trade union reasons*" - states that "*Employees elected for managerial positions of a political, administrative or trade union nature are placed, on request, on leave until the end of the assignment. In this period the salary is not paid and in the case that the employee returns to post, he or she can obtain the reconstruction of the career after having paid the withholding taxes according to the emoluments that will be paid to him at the time of the return*". The law could possibly also be applied by analogy to management positions such as professors and diplomats, but not judges. However, there are no concrete examples. It is noted that Article 201 of the same law limits the application of the same to "*wages, allowances, wage periodic increases, family allowances, exit allowances, service travel and leaves*".
There are actually three laws that establish and regulate the judicial power: the constitutional law n. 144 of the year 2003, the qualified law n. 145 of the year 2003 and the law n. 4 of the year 2004 (which deals only with remuneration). Article 2, paragraph 7 of the law n. 145 - as amended by article 2 of the qualified law 16 September 2011, n. 2 - states that "*the legal status of the Magistrate [i.e. judge] is regulated by ordinary law*". However, to date, the parliament has not yet adopted that law and there are no other rules that provide for those belonging to the judiciary to suspend themselves from the service for having assumed offices, including international office.

## *Serbia*

**Current situation (2018)**
**Question:**
***Do Albanian and Serbian legislations expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:***

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

**Answer:**
In Serbia, the Judges Act (*the Official Gazette of RS, no. 116/2008, 58/2009, 104/2009, 101/2010, 8/2012, 121/2012, 124/2012, 101/2013, 111/2014, 117/2014, 40/2015, 63/2015, 106/2015, 63/2016 and 47/2017*), the Public Prosecution Act (*the Official Gazette of RS, no. 116/2008, 104/2009, 101/2010, 78/2011, 101/2011, 38/ 2012, 121/2012, 101/2013, 111/2014, 117/2014, 106/2015 and 63/2016*), the State Officials Act (*the Official Gazette of RS, no. 79/2005, 81/2005, 83/2005, 64/2007, 67/2007, 116/2008, 104/2009, 99/2014 and 94/2017*) and the Higher Education Act (*the Official Gazette of RS, no. 88/2017 and 27/2018*) do not expressly provide for the possibility for public officials to interrupt their career in order to become a judge of the European Court of Human Rights or of any other international jurisdiction or body, and then regain their previous status once the mandate is completed.
However, the Judges Act[173] and the Public Prosecution Act[174] provide a possibility for judges and prosecutors to be seconded to an international judicial organization for a period of up to three years. In accordance with Article 79 of the Labour Act (*the Official Gazette of RS, no. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 and 113/2017*), which is applicable, they have right to return to their previous position once the secondment is completed.
Concerning the second part of the question, it is observed that the Judges Act, the Public Prosecution Act, the State Officials Act, the Higher Education Act and the Invalidity and Pension Insurance Act (*the Official Gazette of RS, no. 34/03, 64/04, 84/04, 85/05, 101/05 , 63/06, 5/09, 107/09, 30/10, 101/10, 93/12, 62/2013, 108/2013, 75/2014 and 142/2014*) do not contain specific provisions about counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights.

**2013 situation**
**Question:**
***Do Albanian and Serbian legislations expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:***

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

**Answer:**
In Serbia, the Judges Act (*the Official Gazette of RS, no. 116/2008, 58/2009, 104/2009, 101/2010, 8/2012, 121/2012, 124/2012*), the State Officials Act (*the Official Gazette of RS, no. 79/2005, 81/2005, 83/2005, 64/2007, 67/2007, 116/2008 and 104/2009*) and the Higher Education Act (*the Official Gazette of RS, no 76/2005, 100/2007, 97/2008, 44/2010 i 93/2012)* do not expressly allow public officials to interrupt their career in order to work on international level and then regain their previous status once the mandate is completed.
However, the Judges Act provides a possibility for judges to be seconded to an international judicial organization. The High Judicial Council issues the decision on the secondment upon the recommendation of the head of the international

[173]. Article 21 of the Judges Act.
[174]. Article 64 of the Public Prosecution Act.

organization and following the opinion of the president of the court wherein the judge holds office. The secondment cannot exceed three years[175].
It is further observed that all of the abovementioned Acts contain provisions which essentially prescribe that judges, the university staff and the State bodies' employees enjoy their respective employment rights in accordance with general labour legislation unless it is otherwise regulated by a specific piece of legislation in question[176]. Taking into account that Article 79 of the Labour Act (*the Official Gazette of RS, no. 24/2005, 61/2005, 54/2009, 32/2013*) provides that a person who was elected or appointed to public office has a right to return to previous employer, it can be argued that a public official who was elected to serve as a judge of the European Court of Human Rights, has a right to return to his previous position once the mandate is completed. Concerning the second part of the question it is observed that the Judges Act, the State Officials Act, the Higher Education Act and the Invalidity and Pension Insurance Act (*the Official Gazette of RS, no. 34/03, 64/04, 84/04, 85/05, 101/05 , 63/06, 5/09, 107/09, 30/10, 101/10, 93/12*) do not contain specific provisions about counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights.

## *Slovakia*

**Current situation (2018)**

**Does your country's legislation expressly recognise service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

**Introductory remark**

Duties and rights of judges, prosecutors, professors, diplomats and other public officials are governed in Slovakia by various pieces of legislation. These mainly are: the Judges and Assessor Judges Act (Law no. 385/2000 Coll., as amended) for judges; the Prosecutors and Trainee Prosecutors Act (Law no. 154/2001 Coll., as amended) for prosecutors; the State Service Act (Law no. 55/2017 Coll., as amended), in conjunction with the Foreign Service Act (Law no. 151/2010 Coll., as amended) for diplomats and other officials; and the Labour Code, in conjunction with the Exercise of Functions in the Public Interest Act (Law no. 552/2003 Coll., as amended) for professors.

**1. Career interruption**

For judges and prosecutors - YES

According to Section 24 (3) of the Judges and Assessor Judges Act, the mandate of a judge is to be suspended by a decision of the Minister of Justice if the judge sits in an international organisation or an international tribunal established under

[175]. Article 21 of the Judges Act.
[176]. Article 11 of the Judges Act, Article 4 of the State Officials Act, and Article 74 of the Higher Education Act.

an international treaty binding upon the Slovak Republic, provided that that function prevents the judge in question from exercising his or her mandate.
Although this provision does not explicitly mention the service on the European Court of Human Rights, such service implicitly falls under the "international organisation or international tribunal established under an international treaty". It can therefore be concluded that the Slovak legislation allows for an interruption of judge's career while sitting on the European Court of Human Rights or on other international jurisdiction or body. A similar regime applies to prosecutors, by virtue of Sections 12(3) and (6), 96 and 97(4)(d) of the Prosecutors and Trainee Prosecutors Act.

For diplomats and other officials - YES
Diplomats and other officials may be presumed to have similar rules applicable to their service "*in international organisations*" (see in particular Section 102(6), (8) and (9) of the State Service Act and Section 25 of the Foreign Service Act).

For Professors - NO
There do not appear to be any particular rules for professors. The regime applicable to them would depend on contractual arrangements they may be able to secure with their employers. Regulation by internal rules of universities is unknown but cannot be excluded.

**2. Career advancement and pension rights**
For judges – YES for career advancement and PARTLY YES for pension rights
In terms of Section 62(m) of the Judges and Assessor Judges Act, the exercise of a judicial mandate comprises the time while the mandate was suspended under Section 24(3) mentioned above. Furthermore, the time while the mandate is suspended under Section 24(3) is under Section 82(2)(d) considered as "*recognisable practice*" which in turn is under Section 67 determinative for the amount of the salary of the judge concerned. Under Section 24(7) the judge whose mandate was suspended under Section 24(3) may restart exercising it at the court where he or she had been exercising it prior to the suspension unless the Judicial Council (the judiciary's supreme self-government body) decides to assign him or her to another court. Further implications such as, for example, in the area of pension rights, are embodied in other legislation, e.g. the act no. 461/2003 Coll., as amended (The Social Insurance Act), which also regulates the pension of the judges. The Social Insurance Act and neither the Judges and Assessor Judges Act expressly recognise the service on international institutions or body as ECtHR or Court of Justice of the European Union. The general principle under the Social Insurance Act is that if a person contributes to the pension insurance system and meets specified conditions, he or she has the right to the payment of a pension.
If a national judge sits in an international tribunal, the time served on that tribunal counts against the number of years required for him to be eligible for an old-age pension in Slovakia. However, if during this time no contributions are made to the Slovakian pension scheme, there is nothing to be taken into account when calculating the amount of the judge's pension. Nevertheless, while a national judge sits on an international tribunal, he or she may opt to make voluntary contributions to the Slovakian pension scheme. In such a case, these contributions would be taken into account when calculating the amount of the judge's pension. This position has been consulted on anonymous basis with the social security authorities. Moreover, according to Section 95 (1) of the Judges and Assessor Judges Act, a judge who is entitled to a payment of the old-age pension, early retirement or disability pension under the Social Insurance Act, has right to a

"supplementary pension for the exercise of the mandate of a judge" (*príplatok za výkon funkcie sudcu*) for each year of his office. The years spent on service on an international organisation should count in for the calculation of this supplement (see Section 62 (m) and Section 24 (3) of the Law no. 385/200 Coll.).

For prosecutors – PARTLY YES for career advancement and PARTLY YES for pension rights

Prosecutors are subject to similar rules as judges. In particular, by virtue of Section 97(4)(d), in conjunction with Section 12(3) of the Prosecutors and Trainee Prosecutors Act, service on an international tribunal would be counted against the length of a prosecutor's experience (*započítateľná prax prokurátora*) that is taken into account for the determination of the amount of his or her salary. However, under Section 12(6) of the Prosecutors and Trainee Prosecutors Act, the service in an international body would be counted for the purposes of the determination of the prosecutor's "length of the exercise of the function of a prosecutor" (*čas výkonu funkcie prokurátora*) only if he or she serves internationally in the capacity of a prosecutor. As much as can be understood, the "length of the exercise of the function of a prosecutor" is a criterion for the determination of the amount of the prosecutor's "supplementary pension for the exercise of the mandate of a prosecutor" (*príplatok za výkon funkcie prokurátora*) and possibly further benefits.

For diplomats, other public officials and professors

As to the career advancement and pension rights of diplomats, other public officials and professors, these matters do not appear to be expressly established by law.

**2013 situation**

In the Slovak judiciary, the problem is indirectly governed by Law no. 385/2000 Coll.., as amended (the Judges and Assessor Judges Act). Pursuant to its Section 24(3) the mandate of a judge is to be suspended by a decision of the Minister of Justice if the judge sits in an international organisation or an international tribunal established under an international treaty binding upon the Slovak Republic, provided that that function prevents the judge in question from exercising his or her mandate. In terms of Section 62(m) the exercise of a judicial mandate in general comprises the time while the mandate was suspended under Section 24(3). Furthermore, on a more specific level, the time while the mandate is suspended under Section 24(3) is under Section 82(2)(d) considered as "*recognisable practice*" which in turn is under Section 67 determinative for the amount of the salary of the judge concerned. Further implications such as, for example, in the area of pension rights are not governed by the statue directly or indirectly but may be presumed in conjunction with the rules on pensions embodied in other legislation. Under Section 24(7) the judge whose mandate was suspended under Section 24(3) may restart exercising it at the court where he or she had been exercising it prior to the suspension unless the Judicial Council (the judiciary's supreme self-government body) decides to assign him or her to another court. Similar rules apply *mutatis mutandis* in respect of prosecutors by virtue of Sections 12(3) and (6), 96 and 97(4)(d) of the Law no. 154/2001 Coll., as amended (the Prosecutors and Trainee Prosecutors Act). Diplomats again may be presumed to have similar rules by operation of Law no. 400/2009 Coll., as amended (the State Service Act), applicable to their service "*in international organisations*" (see in particular Section 69(6) and (9) and 85(1)(b) of the Law no. 400/2009 Coll.).

There however do not appear to be any specific rules concerning professors, who fall under the regime of Law no. 553/2003 Coll., as amended (Remuneration of

Certain Employees for the Exercise of Functions in the Public Interest Act), as *lex specialis*, and Law no. 311/2001 Coll., as amended (the Labour Code), as *lex generalis*.

## *Slovenia*

**Current situation (2018)**

**Does Slovenian legislation expressly recognize the service on the European Court for Human Rights or any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

The general framework for the judiciary is set by the Constitution (*Ustava RS*, Official gazette no. 33/91), the Judicial Service Act (*Zakon o sodniški službi*, Official gazette, no. 19/94, with amendments) and the Courts Act (*Zakon o sodiščih*, Official gazette no. 94/07). The Labour Code (*Zakon o delovnih razmerjih*, Official gazette no. 21/13) governs all matters not specifically dealt with in the Judicial Service Act (Section 4.a). As to the procedure for nomination of judges working in the international jurisdictions, it is set out in the Act on nomination of candidates from the Republic of Slovenia for judges at international court (*Zakon o predlaganju kandidatov iz RS za sodnike mednarodnih sodišč,* Official gazette, no. 64/01, with amendments). It however does not regulate their status.

**(1)** As to national judges, Section 40 of the Judicial Service Act provides that if a judge was elected, *inter alia*, as judge of the international court, or for any other international judiciary function, his function as well as all rights and obligations deriving from the judicial service are suspended (*mirovanje pravic in dolžnosti iz sodniške službe*). The same is valid if a judge has been elected or nominated as President of the Republic, Member of Parliament, judge of the Constitutional Court, Prime Minister, Ombudsman or his/her Deputy, Minister or President, Deputy or Member of the Commission for the Prevention of Corruption. The same disposition is applicable also if a judge has been elected as Member of the European Parliament, European Ombudsman, member of the European Commission or member of an international civil mission. The provisions on the suspension of rights are incorporated also into the other relevant legislation (Section 53 of the Labour Code). In particular, as to the civil servants, Section 152.b of the Civil Servants Act (*Zakon o javnih uslužbencih*, Official gazette no. 56/02) provides for the possibility of consensual agreement on the suspension of rights (*sporazumen dogovor o mirovanju pravic*) in case of conclusion of a work contract with another employer. This is reflected in the specific legislation regulating the status of diplomats and professors.

**(2)** The State Attorneys Office Act (*Zakon o državnem odvetništvu*, Official Gazzette no. 23/17) sets the conditions for becoming a state attorney. In order to become a state attorney working in the international department, the candidate needs to have knowledge or three years of experience in the area of international law, European human rights law or European Union law.

No special provisions concerning suspension of rights and obligations in cases where a state attorney was elected to another function exist. The act refers to the Civil Servants Act for the situations not regulated by the Labour Code and the State Attorneys Office Act.

**(3)** The Constitutional Court Act (*Zakon o ustavnem sodišču*, Official Gazzette no. 64/07) contains a special chapter dedicated to "The Rights of Constitutional Court Judges after the Termination of Their Term of Office". Under the act, the Constitutional Court judges have the right to their previous positions. Carrier judges and those who had held other permanent office in a State authority have under certain conditions right to be reinstated to the position. Similarly, this right is provided for those who were regularly employed in a State authority, public corporation, or public institution. Moreover, the act provides for a right to an annuity for those previous Constitutional Court judges who for objective reasons cannot return to their previous office or find other suitable employment, and do not fulfill the minimal conditions for the right to the full amount of an old age pension.

**(4)** There is no automatic counting of time spent in the international bodies which can be taken into account as experience for career advancement purposes under the general rules for judges (Sections 4 and 24 to 29 of the Judicial Service Act) or subsequently in their career. Other employees have a right to integrate their previous working position and to put forward candidatures mentioning this experience in their further career. Finally, the time spent outside the Slovenian judiciary (or other) system is not taken into account for pension purposes since no social security contributions are paid by the foreign employer.

**2013 situation**

**Does Slovenian legislation expressly recognize the service on the European Court for Human Rights or any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

The general framework for the judiciary is set by the Constitution (*Ustava RS*, Official gazette no. 33/91), the Judicial Service Act (*Zakon o sodniški službi*, Official gazette, no. 19/1994, with amendments) and the Courts Act (*Zakon o sodiščih*, Official gazette no. 19/94). The Labour Code (*Zakon o delovnih razmerjih*, Official gazette no.42/2002) governs all matters not specifically dealt with in the Judicial Service Act (Section 4.a). As to the procedure for nomination of judges working in the international jurisdictions, it is set out in the Act on nomination of candidates from the Republic of Slovenia for judges at international court (*Zakon o predlaganju kandidatov iz RS za sodnike mednarodnih sodišč* (Official gazette, no. 64/2001, with amendments). It however does not regulate their status.

**(1)** As to the judges, Section 40 of the Judicial Service Act provides that if a judge was elected, *inter alia*, as judge of the international court, or for any other international judiciary function, his function as well as all rights and obligations deriving from the judicial service are suspended (*mirovanje pravic in dolžnosti iz sodniške službe*).

The same is valid if a judge has been elected or nominated as President of the Republic, Member of Parliament, judge of the Constitutional Court, Prime Minister, Ombudsman or his/her Deputy, Minister or President, Deputy or Member of the Commission for the Prevention of Corruption. The same disposition is applicable also if a judge has been elected as Member of the European Parliament, European Ombudsman, member of the European Commission or member of an international civil mission.

The provisions on the suspension of rights are incorporated also into the other relevant legislation (Section 235 of the Labour Code). In particular, as to the civil servants, Section 152.b of the Civil Servants Act (*Zakon o javnih uslužbencih*, Official gazette no. 56/2002) provides for the possibility of consensual agreement on the suspension of rights (*sporazumen dogovor o mirovanju pravic*) in case of conclusion of a work contract with another employer. This is reflected in the specific legislation regulating the status of diplomats and professors.

**(2)** There is no automatic counting of time spent in the international bodies which can be taken into account as experience for career advancement purposes under the general rules for judges (Sections 4 and 24 to 29 of the Judicial Service Act) or subsequently in their career. Other employees have a right to integrate their previous working position and to put forward candidatures mentioning this experience in their further career. Finally, the time spent outside the Slovenian judiciary (or other) system is not taken into account for pension purposes since no social security contributions are paid.

## *Spain*

**Current situation (2018)**

After having been properly reviewed, the content of the original report regarding recognition of services under Spanish Law is accurate and reflects clearly the legal situation of the Spanish civil servants who join an international organisation. Nevertheless, there are some nuances to underline.

1. The main legal regulation for civil servants on the matter is contained in art, 87 of the Basic Statute of the Public Employees, now regulated into a new Act, called "Real Decreto Legislativo 5/2015 de 30 de octubre", which is a new updated version (Texto Refundido) of the former Act 7/2007, of Aril, 12th). The present article 87 has exactly the same content as the one regulated in the Act of 2007.

2. The legal situation of University Professors who are civil servants and join an International Organization is covered -in the same terms as other civil servants- by the Act 5/2015, as article 2.1.e) of the Act so establishes (in the same sense of former art. 2.1 of Act 7/2007), as well as by art. 5 of the Royal Decree 898/1985, which establishes the same legal procedures to be reinstated in the former position as established by the Royal Decree 365/1995 of march, 10th, which regulates the procedural aspects of the Act 5/2015 for public employees of the Government of the Sate. I do not see the reason of mentioning in the original report the Royal Decree 898/1985 and not the Royal Decree 365/1995. To my understanding, it should be emphasized in the report that there are no substantial differences between civil servants and university professors regarding recognition of services.

3. Judges and also prosecutors (as it is said under art. 47 of Act 50/1981, of December, 30th, regulating the Statute of Prosecutors, which refers to the Act for Judges) are under a special regime not covered by Act 5/2015, so they are the exception. They are both regulated by arts. 351 to 355 of Act 6/1985 on Judicial Power, but the Act set forth the same substantial rights recognized under Act 5/2015, excluding some differences of procedure. Although in 2014 the Act 4/2014 added a new art. 355 bis, since the original date of the report, there were no relevant amendments of the Act 6/1985 regarding the recognition of services. It should be stressed in the report that prosecutors are also covered by Act 6/1985 on this issue.

4. All the above mentioned regulations recognize to civil servants who join an International Organization their rights to be promoted, to seniority, and to pension rights to the same extent as whether they were not interrupting their professional activity as national civil servants.

5. For all civil servants who started the services before January 1st, 2011, the main regulation on pension schemes is set forth on Act 670/1987, for pensionable civil servants (Real Decreto Legislativo 670/1987, de clases pasivas), which states on art. 23 that civil servants, under *special services* (servicios especiales), must contribute to the payment of their pension rights. Usually, the contribution is made by detracting the amount out of the monthly salary payments, but when this mechanism might not be used, for any reason, it is obligation of the civil servant to pay his/her contributions directly to the Spanish Treasure. Under the Law, it is not clear which institution –if any- must pay employer contributions during the time of rendering *special services*. It seems that to the Spanish Social Security Bodies, the former Public Employer of the civil servant under special services is the contributing institution. Anyway, art. 32.1.b) of the Act of 1987 declares that the professional period under *special services* is taken into account in order to calculate pension rights as they are considered effective services rendered by the civil servant for these purposes.

It must be noted that this pension scheme for civil servants (clases pasivas) is planned to be terminated in the next future as all the new civil servants who started their careers after January, 1st, 2011 must join the General Regime of Social Security to accrue pension rights. Also, for this new personnel, there are no regulations on who is paying –if any- contributions under this Regime after having been declared on *special services*. Nevertheless, it must be stressed that Acts 5/2015 and 6/1985 guarantee in any case the maintenance of the pension rights of the civil servants under *special services*. It should be advised on those cases (i) to pay directly contributions to the national Treasure, applying then what is set forth under Act of 1987, or (ii) sign a special agreement with the Social Security System (see below, no. 7).

6. As it was mentioned on the original report, there is a special pension scheme guaranteed by the European Union to their employees. Under these regulations, employees might transfer their national pensionable rights to the European Union pension scheme, and also transfer their pension rights under the European Union Statute to their national schemes. The Royal Decree 2072/1999 establishes the Spanish internal regulations for the transfer of pension rights according to the European Union regulations.

7. The report covers the legal situation of Spanish civil servants who join an International Organization. This regime is not applicable to public employees under common Employment Law Statute, who are gaining more relevance every day inside the Spanish Public Administration. All judges and prosecutors must be civil servants, but according to Spanish Law it is possible to work under common Employment Law Statute in almost any other position at the Public Sector. Actually, although it is not very spread yet, even University Professors might perform their duties under employment contracts. Employees under common Employment Law Statute might sign a special agreement (convenio especial) with the Spanish Social Security System, according to Royal Decree 2805/1979, in order to maintain their pension rights during the period of work in an International Organization.

**2013 situation**

**Does your country's legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

According to Law 30/1984 on the measures to reform the civil service and Law 7/2007 on the basic statute of the public employee, **civil servants of the State** can interrupt their career in order to perform a service for a period of more than 6 months at an international organisation (Article 29 § 2a) of Law 30/1984 and 87 § 1b) of Law 7/2007), when they are elected members of the institutions of the EU or other international organizations (Article 87 § 1a) of Law 7/2007), or when they become international civil servants (Article 29 § 2b) of Law 30/1984 and Article 87 § 1j) of Law 7/2007). In these cases, they are granted a particular type of leave of absence called "*special services*" (*servicios especiales).* They have the right to return to the exact same post under the same conditions, and the time spent away from the national civil service will count for the purposes of civil service seniority, career promotions and social security rights, except for those civil servants who joined the EU civil service and asked to be transferred under the statute of civil servants of the EU (see Article 87 § 2 of law 7/2007).

**University professors** are also covered by the general legislation on civil servants (see Article 5 of Royal Decree 898/1985 on the regime of university professors).They have to return to their post within 1 month since they ceased to be on "*special services*" leave. If they do not return within that deadline, they will be deemed to have taken a voluntary unpaid leave.

The situation of **judges** is regulated by the Organic Law on the Judicial Power (LOPJ 6/1985), which recognizes the right of judges to be granted a "*special services*" leave when they are elected members of high international courts (Article 351a) of LOPJ). Article 352c) expressly mentions the situation of judges of the Supreme Court who are elected members of high international tribunals. The situation of "*special services*" leave shall be declared ex officio or at the request of the judge concerned by the General Council of the Judiciary (*Consejo General del Poder Judicial*). Like civil servants, the judges on a "*special services*" leave have the right to return to the same post and the time spent away will count for the purposes of seniority, career promotions and passive rights

(social security rights; see Article 354 § 2 of LOPJ). When their term of office as an international judge comes to an end, they have to ask for reintegration within 10 days and return to the post within the following 20 days. If they do not, they will be deemed to have taken a voluntary unpaid leave (*excedencia voluntaria*).

## *Sweden*

**Current situation (2018)**

**Does Swedish legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

***(a) allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at an international level and then regain their previous status once the mandate is completed?***

According to the ~~**subsidiary**~~ Decree of Leave of Absence (*Tjänstledighetsförordningen*, 1984:111), Section 5(a), all government employees should be granted leave of absence in order to work temporarily at the EU institutions or organs. **However, pursuant to Section 3 of the Decree of Leave for Judges (*Förordning om ledighet för domare*, DVFS 1996:19), Swedish judges cannot be granted leave of absence for longer than three years, within a five year period, in order to work at an international level in the UN, the EU or in an international court or tribunal. If a judge returns within a three year leave of absence, he or she will be able to regain previous status in Sweden. If the duration of the leave of absence required exceeds three years, the judge would have to resign and thus would not be able to regain previous status once the mandate at the international level was completed. However, under Section 10(b) of the Decree of Leave of Absence it is also possible for a government employee to be granted leave of absence for a longer period of time than is expressly allowed for in other provisions, if there are special reasons for it and provided it will not cause an inconvenience for public authority where he or she is employed. That this rule applies also to judges is expressly recognised in Section 8 the Decree of Leave for Judges.**

According to Section 1 in the Decree of Leave for Judges, as well as Chapter 3, Section 4 in the Code of Judicial Procedure (*Rättegångsbalk*, 1942:740) and Section 3 in the Administrative Court Act (*lag om allmänna förvaltningsdomstolar*, 1971:289) judges at the Supreme Court and the Supreme Administrative Court, respectively, have no possibilities of obtaining leave of absence for the purpose of working at an international level. Thus, a judge at the Supreme Court or the Supreme Administrative Court has to resign in order to work at an international court or tribunal and will not be able to regain his or her previous status once the mandate is completed.

***(b) counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

No

The possibility of counting time spent in international jurisdictions for advancement purposes is not expressly recognised in Swedish legislation. However, international work experience, as all other experience indicated in a CV, will naturally be considered for advancement purposes.

No

The possibility of counting time spent in international jurisdictions for pension rights is not expressly recognised in Swedish legislation either.

It may be noted that if the employee, within the framework of his or her employment, is stationed to work abroad, e.g. as a seconded lawyer at an international level, the terms of employment including pension rights are generally covered by a special agreement, the so called URA-agreement (Agreement on overseas contracts and guidelines on employment conditions in service abroad).

**2013 situation**

**Does Swedish legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

***(a) allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at an international level and then regain their previous status once the mandate is completed?***

According to the subsidiary Decree of Leave of Absence (*Tjänstledighetsförordningen*, 1984:111), Section 5(a), all government employees should be granted leave of absence in order to work temporarily at the EU institutions or organs. However, pursuant to Section 3 in the Decree of Leave for Judges (*Förordning om ledighet för domare*, DVFS 1996:19), Swedish judges cannot be granted leave of absence for longer than three years, within a five year period, in order to work at an international level in the UN, the EU or in an international court or tribunal. If a judge returns within a three year leave of absence, he or she will be able to regain previous status in Sweden. If the duration of the leave of absence required exceeds three years, the judge would have to resign and thus would not be able to regain previous status once the mandate at the international level was completed. According to Section 1 in the Decree of Leave for Judges, as well as Chapter 3, Section 4 in the Code of Judicial Procedure (*Rättegångsbalk*, 1942:740) and Section 3 in the Administrative Court Act (*lag om allmänna förvaltningsdomstolar*, 1971:289) judges at the Supreme Court and the Supreme Administrative Court, respectively, have no possibilities of obtaining leave of absence for the purpose of working at an international level. Thus, a judge at the Supreme Court or the Supreme Administrative Court has to resign in order to work at an international court or tribunal and will not be able to regain his or her previous status once the mandate is completed.

***(b) counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

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The possibility of counting time spent in international jurisdictions for advancement purposes is not expressly recognised in Swedish legislation. However, international work experience, as all other experience indicated in a CV, will naturally be considered for advancement purposes.

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It may be noted that if the employee, within the framework of his or her employment, is stationed to work abroad, e.g. as a seconded lawyer at an international level, the terms of employment including pension rights are generally covered by a special agreement, the so called URA-agreement (Agreement on overseas contracts and guidelines on employment conditions in service abroad).

# *Switzerland*

**Current situation (2018)**

The report regarding Switzerland is still up-to-date and accurate with regard to members of the federal administration, to judges and lawyers of the lower federal courts (Federal Administrative Court, Federal Criminal Court, Federal Patent Court) as well as to lawyers (greffiers) of the Federal Supreme Court.

However, I wish to point out the following:
(1) With regard to Federal Supreme Court judges not a single case is known in the history of the Federal Supreme Court that a judge ever served in international courts while in office. Hence, so far, Federal Parliament did not enact any legislation. Should ever such a case occur the Ordinance (cited in footnote 4 of the report) will probably apply per analogiam.
(2) More importantly : The report just covers federal public officials. However, Switzerland is a federal state with 26 cantons, each fully competent ("sovereign", see Article 3 of the Federal Constitution) in public employment matters. Therefore, the solutions will inevitably differ. What can be said for sure is that there is no uniform legislation on the cantonal level. This is a very complex matter and it is also questionable whether an in-depth inquiry will lead to insights dramatically changing the overall picture, as depicted in the report.

**2013 situation**

La question est essentiellement régie par l'*Ordonnance du DFAE sur les prestations accordées aux employés de l'administration fédérale en vue de leur engagement par les organisations internationales*, du 8 mars 2002[177]. Cette ordonnance concerne la majorité du personnel de la Confédération (cf. art. 1 de l'*Ordonnance sur le personnel de la Confédération* du 3 juillet 2001 – « OPers »).

***…allowing to interrupt their career in order to work at international level…***

Art. 3 § 1 de l'Ordonnance du 8 mars 2002 : un congé non payé est accordé à l'employé si son engagement dans une organisation internationale sert les intérêts de la Suisse[178].

***… then regain their previous status once the mandate is completed… counting the time spent in the international jurisdictions or bodies for career advancement purposes***

L'autorité compétente[179] statue sur la demande de congé et fixe les modalités de la réintégration de l'employé dans l'administration fédérale (art. 4 § 3). Avant que l'employé prenne son congé, l'employé et l'autorité compétente signent un avenant au contrat de travail. L'avenant fixe les modalités de la mise en congé de l'employé et de sa réintégration dans l'administration fédérale (art. 12).
S'agissant des magistrats, l'autorité compétente est la Commission administrative du tribunal ou la direction du tribunal ; dans son appréciation de la demande, elle tient compte des dispositions relatives au congé qui s'appliquent au personnel de l'administration fédérale (art. 12 de l'*Ordonnance de l'Assemblée fédérale*

[177]. http://www.admin.ch/opc/fr/classified-compilation/20020902/index.html
[178]. Art. 3 § 3: Le congé est accordé une première fois pour la durée de l'engagement proposé par l'organisation internationale, mais au maximum pour trois ans. La durée totale de mise en congé ne peut dépasser cinq ans (art. 5 § 2).
[179]. En règle générale, les départements ; pour les plus hauts niveaux du personnel fédéral, le Conseil fédéral - art. 2 OPers.

*concernant les rapports de travail et le traitement des juges du Tribunal pénal fédéral, des juges du Tribunal administratif fédéral et des juges ordinaires du Tribunal fédéral des brevets*[180]).
À la fin de son engagement dans l'organisation internationale, l'employé est réintégré dans la fonction qu'il occupait avant sa mise en congé[181] ou dans une fonction pouvant être raisonnablement exigée de lui et tenant compte, *dans la mesure du possible*, des expériences qu'il a acquises et des charges qu'il a assumées (art. 13 § 1).

***Pension rights***
Selon l'Ordonnance du 8 mars 2002, article 7 : pendant la durée du congé, l'employé peut rester assuré à la Caisse fédérale de pensions, s'il acquitte non seulement la cotisation de l'employé, mais aussi celle de l'employeur (les cotisations sont calculées sur la base du salaire assuré perçu lors de la mise en congé).
Une prestation équivalente au maximum à la moitié du montant nécessaire au rachat, auprès de la Caisse fédérale de pensions, des années d'assurance manquantes du fait du congé peut être allouée par la Confédération à l'employé qui rachète ces années d'assurance (art. 8 § 2) – sans cumul possible avec des prestations similaires accordées par l'organisation internationale (art. 8 § 3).
Si l'employé est réintégré dans une unité de l'administration fédérale après son congé, les cotisations qu'il a versées à la caisse de pension de l'organisation internationale et qui lui sont restituées à la fin de son congé doivent être versées à la Caisse fédérale de pensions[182] (art. 7 § 2).

## *Turkey*

**Current situation (2018)**
***Does your country's legislation expressly recognise service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:***
***- allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed ?***
***- counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights ?***
The legislation in Turkey does not provide an express recognition of service at the European Court of Human Rights. Instead, the legislation incorporates general provisions on service at international level. Public officials are allowed to interrupt their career in order to work at international level and some provisions ensure their return to a position once their mandate is completed. The time spent at an international court or organisation is counted towards career advancement and pension rights.

**Judges and Prosecutors:**
Article 50 of the Law no. 2802 on Judges and Prosecutors stipulates that judges and prosecutors, upon their approval, can be appointed by the Ministry of Justice to representations of Turkey, international courts or organisations. Judges and

[180]. http://www.admin.ch/opc/fr/classified-compilation/20021335/index.html#fn-#a12-1.
[181]. Sauf cas de restructurations rendant cela impossible (cf. art. 104 et s. OPers).
[182]. Sous forme de « *capital de libre-passage* ».

prosecutors appointed to international courts or institutions are considered to be on unpaid leave. The term of appointments is three years and can be subject to renewal every three years for up to twenty-one years. Judges and prosecutors who wish to return to their professions at the end of their term can submit applications to the Higher Council of Judges and Prosecutors within fifteen days after they leave their positions at the international court or organisation. In this case, they are appointed to an appropriate post within thirty days. If their application is submitted after the fifteen day period, they are considered to have left the profession but can be re-appointed if they still fulfill the requirements for appointment. The Higher Council of Judges and Prosecutors can appoint them to a position at a similar level. The time spent at an international court or organisation is taken into consideration for career advancement purposes.

**Public Servants**
Article 77 of Law no. 657 on Public Servants stipulates that, upon the approval of the relevant Minister, public servants can serve at official institutions of other states and at international organisations. The Minister's approval is subject to renewal every three years for up to twenty-one years. Public servants are considered to be on unpaid leave for this duration and their relation to their post is preserved. The time spent at the international court or organisation is taken into consideration for career advancement purposes and pension rights. If the public servant wishes to return to their position, their request is reviewed, taking into account the time they have spent at the international organisation and the availability of positions.

**Academics**
Article 20 of Law no. 2914 on Higher Education Staff stipulates that Law no. 657 on Public Servants is applicable to staff at higher education institutions if Law no. 2914 does not include a specific provision. Given the absence of an explicit provision on academic staff working at international organisations, the abovementioned rules for public servants apply to academics working at international level.

**2013 situation**
***Does your country`s legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body in terms of allowing public officials to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed, counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***
There appears not to be any explicit provisions under Turkish law regarding the recognition of service at the European Court of Human Rights of the judge elected in respect of Turkey. There is however some provisions allowing public officials to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed (i.e. seconded lawyers at the Registry for example). Please find the relevant provisions below.

**Judges and public prosecutors**:
Article 50 of the Law no. 17971 on judges and public prosecutors provides for the possibility of the deployment of judges and prosecutors, upon the approval of Minister of Justice, to Turkish representations abroad and to international courts or institutions.
In this connection, the judges and prosecutors deployed at an international court or institution are on unpaid leave which can be renewed every three years for up to

twenty-one years. These judges and prosecutors can return back to the judiciary provided they submit such a request with the Higher Council of Judges and Prosecutors within fifteen days of the end of their employment with the international court or institution. The latter will appoint them to a relevant post within thirty days. Those judges and prosecutors who submit a request their request after the deadline mentioned above can be re-appointed to another post if the Higher Council of Judges and Prosecutors consider that they have not lost the required criteria for becoming a judge or prosecutor (Article 40 of Law no. 17971).
The time spent working at the international court or institution is taken into account for career advancement.

**Civil servants:**
Article 77 of Law no. 657 on Civil Servants provides for the possibility of a civil servant, upon the approval of the relevant Minister, to be deployed at an international institution. The civil servant in question is considered to be on unpaid leave. The deployment must be renewed every three years and can last up to twenty-one years. The time spent working at the international institution is counted for career advancement and pension.

**Academics employed in the public sector:**
The situation is not clear with respect to the academics employed in the public sector. On the one hand there appear to be no explicit provision like those mentioned above. On the other hand, Article 20 of Law no. 2914 on Higher Education Staff Law provides that, in the absence of specific provisions, Law no. 657 remains applicable.

## *Ukraine*

**Current situation (2018)**
**Does your country's legislation expressly recognise service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:**

- **allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed ?**

*Judges*
The issue of a judge's out-of-court activities is regulated by the 2016 Law of Ukraine on the Judiciary and Status of Judges (the Law). In general terms the Law builds a system in a way that excludes any possibility for a judge to interrupt his/her judicial career with a little exception. Article 54 of the Law provides for a possibility for a judge to be seconded to serve, retaining his/her primary employment salary, on the High Council of Justice, High Qualifications Commission of Judges, National School of Judges, and the Council of Judges. No possibility for a judge to work at international level is foreseen.

*Professors*
Professorial duties are regulated by the Labour Code and the Law on the Higher Education. The above-mentioned legislation does not clearly foresee the possibility to interrupt the main activity of the professor with a view of performing duties on an international jurisdiction or body. However, Article 60 of the law on the Higher Education stipulates that professor may enhance his or her qualification or do an

internship (stage) abroad. So, in general terms the possibility for the professor to perform duties on an international jurisdiction or body cannot be totally excluded. However, its practical implementation may be seriously complicated owing to lack of clarity in the legislation.

*Diplomats*
The 2015 Law On Public Service provides that diplomats are to be considered as public servants. Article 42 of the said Law stipulates that a public servant (diplomat) can be seconded (in the form of a mission) to the secretariats of international organisations in order to perform his or her function as public servant, retaining his or her primary employment salary. The Law does not expressly mention the service on the European Court of Human Rights or on any other international jurisdiction or body. Likewise it does not seem to be allowing diplomats to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed.

- **counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights ?**

*Judges and Diplomats*
Since the relevant legislation does not foresee the possibility for Judges and Diplomats to work at international level there is no corresponding provision related to counting the time of the relevant work for career advancement purposes or pension rights.

*Career advancement for professors*
Article 60 of the Law on the Higher Education provides that the results of internship or enhancement of qualification shall be taken into account in the course of professor's appraisal or further promotion/conclusion of a contract.

*Pension rights*
As regards pension issues, the current legislation does not take into account the time a person worked abroad for pension purposes.

**2013 situation**

***Does Ukrainian legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of:***

- *allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?*

The issue of a judge's out-of-court activities is regulated by the Law of Ukraine on the Judiciary and Status of Judges (the Law). In general terms the Law builds a system in a way that excludes any possibility for a judge to interrupt his/her judicial career with a little exception. Article 53 of the Law provides for a possibility for a judge to be seconded to serve, retaining his/her primary employment salary, on the High Council of Justice, High Qualifications Commission of Judges, National School of Judges of Ukraine. No possibility for a judge to work at international level is foreseen.

- *counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?*

Since the Law of Ukraine on the Judiciary and Status of Judges does not foresee the possibility for a judge to work at international level there is no corresponding

provision related to counting the time of the relevant work for career advancement purposes or pension rights.

## *The United Kingdom*

**Current situation (2018)**

I have reviewed the research report submitted in 2013 in respect of the UK. I can confirm that the position as stated in that report is still up to date. Section 18 and Schedule 4 of the Human Rights Act 1998 remain in force.

**2013 situation**

**Does your country's legislation expressly recognize service on the European Court of Human Rights or on any other international jurisdiction or body (for instance, the Court of Justice of the EU) in terms of**

- ***allowing public officials (judges, professors, diplomats, etc.) to interrupt their career in order to work at international level and then regain their previous status once the mandate is completed?***
- ***counting the time spent in the international jurisdictions or bodies for career advancement purposes or pension rights?***

Summary answers

1. The relevant legislation for the United Kingdom is to be found in Section 18 of the Human Rights Act 1998, which deals with appointment to the European Court of Human Rights. According to Section 18(2) a holder of judicial office in the UK (which is defined in sub-section 1), may become a judge of the European Court of Human Rights without being required to relinquish his office. He is not required to perform the duties of his judicial office while he is a judge of the Court. Therefore, in answer to question 1, the Human Rights Act 1998 does expressly recognize service on the European Court of Human Right in terms of allowing a *judge* of a certain level to regain this/her previous judicial office once this/her mandate is completed. However, there is no mention of other professions such as professors or diplomats.
2. Concerning pension rights, Schedule 4 to the Human Rights 1998 provides that an ECHR judge who was, immediately before his appointment as an ECHR judge, a member of a judicial pension scheme is entitled to remain as a member of that scheme and the terms on which he remains a member of the scheme are those which would have been applicable had he not been appointed as an ECHR judge; and entitlement to benefits payable in accordance with the scheme continues to be determined as if, while serving as an ECHR judge, his salary was that which would (but for Section 18(4)) have been payable to him in respect of his continuing service as the holder of his judicial office.

Relevant legislation
Human Rights Act 1998

> 18 Appointment to European Court of Human Rights.
> (1)In this section "judicial office" means the office of— .
> (a)Lord Justice of Appeal, Justice of the High Court or Circuit judge, in England and Wales; .
> (b)judge of the Court of Session or sheriff, in Scotland; .
> (c)Lord Justice of Appeal, judge of the High Court or county court judge, in Northern Ireland. .
>
> (2)The holder of a judicial office may become a judge of the European Court of Human Rights ("the Court") without being required to relinquish his office. .

(3)But he is not required to perform the duties of his judicial office while he is a judge of the Court. .

(4)In respect of any period during which he is a judge of the Court— .

(a)a Lord Justice of Appeal or Justice of the High Court is not to count as a judge of the relevant court for the purposes of section 2(1) or 4(1) of the [F1Senior Courts Act 1981](maximum number of judges) nor as a judge of the [F2Senior Courts] for the purposes of section 12(1) to (6) of that Act (salaries etc.);

(b)a judge of the Court of Session is not to count as a judge of that court for the purposes of section 1(1) of the M1Court of Session Act 1988 (maximum number of judges) or of section 9(1)(c) of the M2Administration of Justice Act 1973 ("the 1973 Act") (salaries etc.);

(c)a Lord Justice of Appeal or judge of the High Court in Northern Ireland is not to count as a judge of the relevant court for the purposes of section 2(1) or 3(1) of the M3Judicature (Northern Ireland) Act 1978 (maximum number of judges) nor as a judge of the [F3Court of Judicature] of Northern Ireland for the purposes of section 9(1)(d) of the 1973 Act (salaries etc.);

(d)a Circuit judge is not to count as such for the purposes of section 18 of the M4Courts Act 1971 (salaries etc.);

(e)a sheriff is not to count as such for the purposes of section 14 of the M5Sheriff Courts (Scotland) Act 1907 (salaries etc.); .

(f)a county court judge of Northern Ireland is not to count as such for the purposes of section 106 of the M6County Courts Act Northern Ireland) 1959 (salaries etc.). .

(5)If a sheriff principal is appointed a judge of the Court, section 11(1) of the M7Sheriff Courts (Scotland) Act 1971 (temporary appointment of sheriff principal) applies, while he holds that appointment, as if his office is vacant. .

(6)Schedule 4 makes provision about judicial pensions in relation to the holder of a judicial office who serves as a judge of the Court. .

(7)The Lord Chancellor or the Secretary of State may by order make such transitional provision (including, in particular, provision for a temporary increase in the maximum number of judges) as he considers appropriate in relation to any holder of a judicial office who has completed his service as a judge of the Court. .

[F4(7A)The following paragraphs apply to the making of an order under subsection (7) in relation to any holder of a judicial office listed in subsection (1)(a)— .

(a)before deciding what transitional provision it is appropriate to make, the person making the order must consult the Lord Chief Justice of England and Wales; .

(b)before making the order, that person must consult the Lord Chief Justice of England and Wales. .

(7B)The following paragraphs apply to the making of an order under subsection (7) in relation to any holder of a judicial office listed in subsection (1)(c)— .

(a)before deciding what transitional provision it is appropriate to make, the person making the order must consult the Lord Chief Justice of Northern Ireland; .

(b)before making the order, that person must consult the Lord Chief Justice of Northern Ireland. .

(7C)The Lord Chief Justice of England and Wales may nominate a judicial office holder (within the meaning of section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section. .

(7D)The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under this section— .

(a)the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002; .

(b)a Lord Justice of Appeal (as defined in section 88 of that Act).]

## SCHEDULE 4 Judicial Pensions

### Duty to make orders about pensions

1(1)The appropriate Minister must by order make provision with respect to pensions payable to or in respect of any holder of a judicial office who serves as an ECHR judge..

(2)A pensions order must include such provision as the Minister making it considers is necessary to secure that—.

(a)an ECHR judge who was, immediately before his appointment as an ECHR judge, a member of a judicial pension scheme is entitled to remain as a member of that scheme;.

(b)the terms on which he remains a member of the scheme are those which would have been applicable had he not been appointed as an ECHR judge; and.

(c)entitlement to benefits payable in accordance with the scheme continues to be determined as if, while serving as an ECHR judge, his salary was that which would (but for section 18(4)) have been payable to him in respect of his continuing service as the holder of his judicial office..

## Contributions

2A pensions order may, in particular, make provision—.

(a)for any contributions which are payable by a person who remains a member of a scheme as a result of the order, and which would otherwise be payable by deduction from his salary, to be made otherwise than by deduction from his salary as an ECHR judge; and.

(b)for such contributions to be collected in such manner as may be determined by the administrators of the scheme..

## Amendments of other enactments

3A pensions order may amend any provision of, or made under, a pensions Act in such manner and to such extent as the Minister making the order considers necessary or expedient to ensure the proper administration of any scheme to which it relates.

## Definitions

4In this Schedule—.

"appropriate Minister" means—

(a) in relation to any judicial office whose jurisdiction is exercisable exclusively in relation to Scotland, the Secretary of State; and

(b) otherwise, the Lord Chancellor;

"ECHR judge" means the holder of a judicial office who is serving as a judge of the Court;

"judicial pension scheme" means a scheme established by and in accordance with a pensions Act;

"pensions Act" means—

(a) the M1County Courts Act Northern Ireland) 1959;

(b) the M2Sheriffs' Pensions (Scotland) Act 1961;

(c) the M3Judicial Pensions Act 1981; or

(d) the M4Judicial Pensions and Retirement Act 1993; and "pensions order" means an order made under paragraph 1.