

Questionnaire: Rule of Law Report regarding the Stakeholder-Consultation of the EU Commission

I JUSTICE SYSTEM

A. Independence

1. Appointment and selection of judges and prosecutors and court presidents (including judicial review)

The Covid-19 pandemic has not influenced the method of appointment and selection of judges. The President of Finland confirms the appointments and has the veto right to differ from the proposal. There is a special organ that appoints the judges. The organ consist of judges from all court instances and also contains delegates from attorneys, prosecutors and universities.

The amount of non-permanent judges in Finland is significant which is a threat to the judges independence. The amount of non-permanent judges in Helsinki District Court is 30 percentage. The Chief Justice has the right to appoint and select the non-permanent judges with the duration of the position under six months.

In criminal cases there is the lay judge system in use. The lay judges are elected and selected by trough political nominations.

2. Irremovability of judges, including transfers (including as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)

Judges appointed to the permanet positions/office are irremovable. The amount of non-permanent judges in Finland is significant which is a threat to the judges independence.

The retirement age of the judges has been raised the same way as the retirement age of other public servants.

4. Allocation of cases in courts

The allocation of court cases is designated according the Forum rules and legislation. Because of the legislation of the Forum quantitatively cases are centered to the courts with most residents in the district. Due to the Covid-19 pandemic the number of criminal cases and civil cases (especially cases related to family matters) has increased. Cases related to family matters (statistics of the Helsinki district court) has increased 25 percentage since the beginning of the pandemic.

5. Independence (including composition and nomination and dismissal of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

Budgetary guidance by the government has de facto influence on which cases the courts are handling and on what time frame.

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The appointment of the judges to the cases (composition of Judges in cases consisting of more than one judge) can be determined by the Chief Justice or the Head of Department. Chief Justice also can decide in criminal cases the composition and number of Judges needed to handle the case. The parties determine in civil cases the composition (number) of judges (one or three in general). To determine the composition and number of judges handling the case is a decision to do with jurisdiction and should be solely made by the judge handling the case. This is a threat to the independence of the Judge and endangers the due process of the party. The Chief Justice also determines the order of the handling of the cases and the schedule to handle the cases. The cases with public interest are handled promptly. The cases with public interest or other case which are handled promptly without a proper reason are causing the delays of other cases.

6. Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review).

Judges and prosecutors are considered accountable and the judicial immunity is on high level. There is no disciplinary organ or disciplinary functions directed on Judges. The Association of judges in Finland has established in 2021 ethical advisory board to assist judges with ethical rules.

7. Remuneration/bonuses/rewards for judges and prosecutors including changes (significant increase or decrease over the past year), transparency on the system and access to the information:

The salary of the Judges is based on public salaries pay grade. The salaries and pay grades are open to public and impartial. The salary levels of judges are not contemptible and the salaries have been significantly fallen behind the general development of the level of wages. The Association of judges in Finland is forwarding large scale salary reform.

10. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

The general public opinion is very confident of the independence of the judiciary. The independence of the court of law is on high level. Supreme courts are also evaluated independent. This is in spite of Supreme courts method of appointing the judges is partly made behind the doors and is not open to public evaluation.

B. Quality of Justice

12. Accessibility of courts (e.g. court fees, legal aid, language)

The duration of the legal proceedings has increased. This is weakening the protection under the law of private persons and entrepreneurs. Linguistically the rights of the parties are secured. The interpreters are

guaranteed by the state for legal aid customers. The costs of the legal proceedings has increased even more. This aggravates non legal aid customers actual access to the courts.

The government of Finland announced the limitations for gatherings of people, travelling, closing of public buildings etc. shortly after the pandemic was declared by WHO 11th March 2020. The courts started to cancel their sessions during Spring 2020 and only urgent cases such as criminal cases with defendant, who is taken into custody, were handled. Some district courts canceled all other cases until the beginning of June 2020. Some district courts canceled sessions only few weeks in advance and therefore the pause became shorter compared to the other district courts.

National Courts Administration gave instructions for the court practices already in March 2020, but the instructions were only recommendations, not binding rules for the courts. At the courts the decisions of timetables and postponing the sessions were made by the judges responsible of individual cases.

Urgent cases, which were handled despite of emergency situation in Spring 2020, were mostly criminal cases in which the defendant was taken into custody. Additionally, pre-trial detention and other coercive measures were processed despite the emergency situation, since there are binding time-limits concerning those cases in procedural legislation.

The number of oral hearings executed via videoconference in court sessions has risen. The problem with these measures has been, that in some district courts the hardware for videoconferences and internet-connections are not up-to-date. Increased need for connections also loaded the system and there were regularly interruptions during the court sessions.

13. Resources of the judiciary (human/financial/material)

The National Courts Administration has distributed extra resources to the courts for year 2021 and 2022. The distribution come as a part of normal budgetary process and therefore it has the same safeguards against corruption as process as a whole. The problem is that the case load of the courts was remarkable even before pandemic and the extra resources for the year 2021 and 2022 are not sufficient to change the overall situation. The other problem is to find suitable employees for the courts, since the timetable for recruiting is challenging. The processes for recruiting new judges are not adequate. The amount of non-permanent judges in Finland is significant which is not satisfying, since the judges should act independently. The judges should not be dependent on chief judges, who decide the appointments of temporary judges. If the chief judge is not able to maintain proper procedures for recruiting new judges, there is a risk that budgetary resources are used in arbitrary appointments.

14. Training of Justice professionals (including judges, prosecutors, lawyers, court staff)

The national law of the court of law is setting judges obligation yearly to participate to the suitable and necessary training. The means to fulfill the obligation are not guaranteed.

The training of Justice professionals is insufficient. Judges have no time to take part of the training. The quantity of training is insufficient and the quality of training is also lacking. This is largely due to the heavy working load of judges and the insufficient resources of the courts and National Courts Administration.

15. Digitalisation (e.g. use of digital technology, particularly electronic communication tools within the justice system and with court users, including resilience of justice systems in Covid-19 pandemic)

Courts have been widely using technical tools and devices through the pandemic since February 2020. National laws concerning process allow courts to use technical devices for a video conference especially to put in order preparative sessions.

Courts are equipped mostly with technical devices for a video conference. Still there are session rooms without any technical equipment for a video conference. Even if there are technological means for a video conference, the use of the equipment has been uncertain and vulnerable. Generally, the connections have been functioning properly when connections have been between two public servers (for example between courts). On the contrary, it has been much more difficult to create and maintain a proper connection between the court and private party, for example a lawyer's office. Mostly, it is the duty of the court secretaries to take care of technological means and connections. Secretaries nor judges have not got any systematic training on new procedures. Even technical support has been insufficient.

16. Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

Since the commissioning of the new data processing tool *Aipa* mainly in civil cases, there are no tool to estimate the number and scope of the cases brought to the court. *Aipa* has significant deficiencies and reliability issues. *Aipa* has not brought any effectiveness to the working methods of the courts, on the contrary it has increased the amount of work for both Judges and secretarial staff. There has not been given any safeguards that the insecurities of the *Aipa* will be abolished. The new data processing tool for administrative courts *Haipa* is so deficient that the legal assistants have stopped using it. Its main failure is the lack of proper clientportal. *Aipa* does not have any clientportal.

17. Geographical distribution and number of courts jurisdictions ("judicial map") and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

The amount of Courts of First Instance and Administrative Courts has been diminished previously significantly in 2019. The geographical distances have increased and this has caused problems for parties to access the courts. It has also led to complexity concerning the actual court premises and obliged courts to organize court hearings in remote court premises.

C. Efficiency of the justice system

19. Length of proceedings

The length of the proceedings has increased even more because of the Covid-19 pandemic. This is due to fact that the case load of the courts was remarkable even before pandemic. This is also due to the acute and chronic lack of financial resources and that the number of Justice professionals is insufficient. According the statistics of the National Courts Administration the duration and the extent of the average criminal case has increased and the cases have become more difficult.

II. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

A. The process for preparing and enacting laws

21. Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), and transparency of the legislative process

The legislative process is lacking significantly financial resources. The quality of legislation is weakened due to the lack of financial resources and pressured time schedule. This is also the result of the Covid-19 pandemic. The level of estimation (financial impact and other impacts) in legislation is unsatisfactory and tendentious.

22. Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions).

The measures adopted were based on instructions by National Courts Administration and permanent procedural legislation. In Finland, the emergency legislation did not concern the court activities.

23. Regime for constitutional review of laws.

There is no individual constitutional court. The political organ consisting of Members of Parliament - The Constitutional Law Committee - judges whether a bill harmonizes with the Constitution. This process executes before the law is passed (checks and balances).

24. Covid-19 provide update on significant developments with regard to emergency regimes in the context of the Covid-19 pandemic

- **Judicial review (including constitutional review) of emergency regimes and measures in the context of Covid 19 pandemic**
- **Oversight by Parliament of emergency regimes and measures in the context of Covid 19 pandemic**
- **Measures taken to ensure the continued activity of Parliament (including possible best practice)**

Emergency Powers Act has been imposed. The act restrains persons fundamental rights.

B. Independent authorities

25. independence, resources, capacity and powers of national human rights institutions (NHRIs), ombudsman institutions, if different from NHRIs, of equality bodies, if different from NHRIs and of supreme audit institutions;

Ombudsman institutions (control of legality) are independent. The lack of resources is complicating the effectiveness and independence of the control of legality institutions. The National Audit Office of Finland (NAOF) audits central government finances, monitors fiscal policy, and oversees political party and election campaign funding. The role and duties of the NAOF are laid down in the Constitution of Finland. During the 2021 there has been suspicion of malpractice and corruption of the head of department Tytti Yli-Viikari. Charges were pressed against the head of department and the the ruling of the criminal charges is still pending.

E. Initiatives to foster a rule of law culture

29. Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues etc.

The seminar to observe the Rule of Law culture and situation in Finland was organized by the ministry of Justice 11.11.2021. Chronical lack of financial resources and the insufficient number of Judges is considered a threat to the development of the Rule of Law culture. Also the exhaustion of the Judges under the work load was considered a threat to the due process of the persons.

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On behalf of the Association of judges in Finland,

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International commissioner, in consultation with the board of the Association of judges in Finland