

Questionnaire of the Special Rapporteur on the independence of judges and lawyers

1. Please indicate whether there is a national body or mechanism in charge of selecting, appointing, promoting, transferring, suspending or removing judges in your country. What is the exact denomination of this body or mechanism? What are the legal basis for its establishment (e.g. constitutional provisions; ordinary law or other)?

• Regarding the selection and the appointment

In Japan, justices and judges are appointed through the following procedures.

The Chief Justice of the Supreme Court shall be appointed by the Emperor as designated by the Cabinet (Article 6, Paragraph (2) of the “Constitution”, Article 39, Paragraph (1) of the “Court Act”). Other justices of the Supreme Court shall be appointed by the Cabinet (Article 79, Paragraph (1) of the “Constitution”, Article 39, Paragraph (2) of the “Court Act”).

Judges of lower courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court (Article 80, Paragraph (1) of the “Constitution”, Article 40, Paragraph (1) “Court Act”).

The nomination of lower court judges, except for Summary Court judges, is done in consultation with the Advisory Committee for the Nomination of Lower Court Judges and is determined in consideration of the committee’s opinions (Article 3 of the “Rules of the Advisory Committee for the Nomination of Lower Court Judges”). The Advisory Committee for the Nomination of Lower Court Judges has been established as a body to state opinions from a national perspective and multilateral viewpoint, so as to enhance the transparency of the judge nomination process and have public views reflected in such a process. The committee is composed of the three categories of legal professionals (judges, public prosecutors, and attorneys) and persons with relevant knowledge and experience. Its duty is to examine the appropriateness of the nomination of prospective lower court judges when consulted by the Supreme Court and to report the results of such examination (Article 2)

• Regarding the promoting, transferring

Applicable laws provide as follows: the Supreme Court is vested with the power to manage judicial administration affairs. Personnel affairs of each court are managed independently by the court itself (See Article 22 paragraph (2), and Articles 29, 40 and 47 of the Court Act), while compensation received by each judge (including salary increase) is

fixed by the Supreme Court (Article 3 of the Act on Remuneration, and so forth. of Judges).

∴ Regarding the suspending or removing

Article 78 of the Constitution provides, “Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.” and Article 48 of the Court Act provides, “A judge shall not be removed or be transferred, or be suspended from performing his job, or have his salary reduced, against his will, except in accordance with the provisions of law concerning public impeachment or national referendum, or unless, the judge is declared mentally or physically incompetent to perform his/her duties in accordance with provisions of applicable law.” Removal proceedings of judges are administered by an impeachment court set up by members of both Houses of the Diet, namely the House of Representatives and the House of Councilors (Article 78 and Article 64 paragraph (1) of the Constitution).

There is no system for suspending judges from duty. (Disciplinary measures stipulated in the Judges Status Act are limited to an admonition or an administrative penalty not exceeding 10,000 yen (Article 2 of the same Act).

The appointment of Supreme Court judges shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after lapse of ten (10) years, and in the same manner thereafter. (Article 79 paragraphs (2) to (4) of the Constitution.)

2. Please provide information on the composition of the body or mechanism (number and qualifications of members), the procedure for the appointment of its members and the duration of their term of office. Please also provide information on the human and financial resources of this body or mechanism (e.g. number of employees and their qualifications; annual budget).

An Impeachment court that administers proceedings for removing judges is organized by Diet members of both Houses.

Seven lay judges and four reserves are elected from among the members of each House of the Diet (Article 16 paragraphs (1) to (3) and paragraph (5), and Article 5 of Judge Impeachment Act)...

The term of office for the lay judges and reserves who constitute the impeachment court correspond to their term of office as Diet members (Article 16, paragraph 5 of Judge Impeachment Act)...

As an impeachment court is organized by Diet members of both Houses, the Supreme Court has no detailed information about the number of employees and budget, etc. of the court.

3. Please provide detailed information on the legislation and practice existing in your country in relation to:

(a) The selection and appointment of candidates for judicial offices and the criteria used for their selection and appointment (e.g. qualifications, integrity, ability and efficiency);

• Regarding the selection and the appointment

As stated in the answer to Question 1)

• Regarding these criteria

As a principle, in Japan, only those who have passed a certain qualification examination and undergone an advanced specialized training for a certain period of time shall be qualified as judges, public prosecutors or lawyers who play roles in the judicial process so that a virtuous person who has advanced general learning and basic grounding in judicial affairs engages in judicial affairs (Articles 66 and 67 of the Court Act).

In addition, Justices of the Supreme Court shall be appointed from among learned persons with extensive knowledge of law, who are not less than 40 years old. At least ten of the 15 Justices of the Supreme Court must be persons who have held the position of President of High Court or the position of judge for not less than ten years, or who have held the position of judge, public prosecutor, attorney, university professor or associate professor of law for at least 20 years in total (Article 41 of the Court Act).

Presidents of high courts and judges shall be appointed from among persons who have held the position of assistant judge, public prosecutor, attorney, etc. for at least ten years (Article 42 of the Court Act).

Assistant judges shall be appointed from among persons who have completed the training as legal apprentices (Article 43 of the Court Act).

Judges of summary courts shall be appointed from among persons who have held the position of President of High Court or judge or who have held the position of assistant judge, public prosecutor, attorney, etc. for at least three years (Article 44 of the Court Act). In addition, persons who have been engaged in judicial affairs for many years and therefore possess the knowledge and experience necessary for performing the duties of a summary court judge may be appointed as summary court judges through the selection

process by the Selection Committee of Summary Court Judges even if they do not meet the requirements prescribed in Article 44 of the Court Act (Article 45 of the Court Act).

There is no statute that clearly defines the criteria for appointment of judges. Article 46 of the Court Act (Grounds for Incompetence for Appointment) provides that the following types of persons may not be appointed as judges:

- (i) a person who is incompetent to be appointed as an ordinary government official;
- (ii) a person who has been punished with imprisonment without work or a heavier penalty; and
- (iii) a person whose removal from office has been decreed by an impeachment court.

(b) Condition of service and security of tenure of judges;

Article 48 of the Court Act provides “A judge shall not be removed or be transferred, or be suspended from performing his/her job, or have his/her salary reduced, against his/her will, except in accordance with the provisions of law concerning public impeachment or national referendum or where the judge is declared mentally or physically incompetent to perform his/her duties in accordance with provisions of applicable law.” The monthly salaries of judges are prescribed by the Act on Remuneration, etc. of Judges. The monthly salary to be applied to each judge shall be determined by the Supreme Court (Article 3 of the Act on Remuneration, and so forth. of Judges).

There is no legislation in Japan that specifies the tenure of Justices of the Supreme Court, except that the appointment of these Justices shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment and at the subsequent general elections to be held every ten years (Article 79, paragraphs (2) through (4) of the Constitution).

Judges of lower courts shall hold office for a term of ten years and may be reappointed (Article 80, paragraph (1) of the Constitution).

All Justices and judges shall retire upon their attainment of the mandatory retirement age, namely, 70 years of age in the case of Justices of the Supreme Court and judges of summary courts, and 65 years of age in the case of judges of other courts (Article 79, paragraph (5) and Article 80, paragraph (1) of the Constitution; Article 50 of the Court Act).

(c) Promotion of judges;

As stated in the answer to Question 1)

(d) Transfer of judges;

As stated in the answer to Question 3b)

(e) Disciplinary proceedings against judges.

As stated in the answer to Question 1)

What is the role played by the national organ or mechanism with regard to the issues referred to above?

As stated in the answer to Question 1)

4. If the national organ or mechanism does not have a role to play in relation to any of these issues, please provide detailed information on legislation and procedure for:

(a) Judicial selection and appointment;

As stated in the answer to Question 1)

(b) Transfer and promotion of judges;

As stated in the answer to Question 1)

(c) Disciplinary proceedings against judges

As stated in the answer to Question 1)