

Article: A Method for Assessment of the Independence and Accountability of the Judiciary, Frans van Dijk and Geoffrey Vos

APPENDIX. LIST OF INDICATORS AND SCORING RULES

Note: the scores of the sub indicators indicated in closed cells in the table are scaled between 0 and 10; the scores of the indicators is calculated by adding up the scores of the sub indicators; the outcome is scaled between 0 and 10. In the figures 1-5, x 10.

Indicators Independence	Options	Score
1. Legal basis of Independence		
Formal guarantees independence of Judiciary	Constitution Law Constitutional Court No	3 2 1 0
Formal assurances that judges are bound only by law	Constitution Law Jurisprudence No	3 2 1 0
Formal methods for determination of judges' salaries	Constitution Law No	2 1 0
Formal mechanisms for adjustment of judges' salaries	Yes No	1 0
Formal guarantees for involvement of judges in development of legal and judicial reform		
- Formal guarantees	Constitution Law Constitutional Court No	3 2 1 0
- Right to put forward a formal proposal to change a law	Yes No	1 0
- Right to advise on legislative proposals	Yes No	1 0
- Involvement of Judiciary in the formation and the implementation of judicial reform	Yes No	1 0
- Initiative of Judiciary for judicial reform	Yes No	1 0
2. Organisational autonomy of the Judiciary		
Existence of Council for the judiciary	Yes No	1 0
where there is a Council for the Judiciary or equivalent independent body		
Formal position of the Council for the Judiciary	Constitution Law No	2 1 0
Compliance with ENCJ guidelines (five)*	Yes per guideline No	1 0

Responsibilities of the Council (nine categories)*	Yes per category No	1 0
Or: where there is no Council for the Judiciary or an equivalent body		
Decisive Influence of judges on decisions (nine categories)*	Yes per category No	1 0
3. Funding of the Judiciary		
Budgetary arrangements		
- Decision maker about budgets (five categories)*	Per category: Judiciary Legislature Executive	2 1 0
- Resolution of conflicts about budgets: recourse on Parliament by Judiciary	Yes No	1 0
Funding system		
- Funding of Judiciary based on transparent and objective criteria	Workload of courts Fixed percentage of gov. expenditure or GDP Actual costs No	3 2 1 0
- Legal basis of funding system	Law Well-established practice Other	2 1 0
Sufficiency of actual budgets (five categories)*	Yes per category No	1 0
4. Management of the court system		
Management responsibility of the courts (eight categories)*	Per category Judiciary Legislature Executive	2 1 0
5. Human resource decisions about judges		
Selection, appointment and dismissal of judges and court presidents		
- Decision maker (eight categories of decisions)*	Per category Judiciary Legislature Executive	2 1 0
Selection, appointment and dismissal of Supreme Courts judges and the President of the Supreme Court		
- Decision maker (eight categories of decisions)*	Per category Judiciary Legislature Executive	2 1 0
Compliance with ENCJ guidelines about the appointment of judges (five guidelines)*	Yes per guideline No	1 0

Evaluation, promotion, disciplinary measures and training of judges		
- Decision maker (six categories of decisions)*	Per category Judiciary Legislature Executive	2 1 0
Compliance with ENCJ guidelines about the promotion of judges (five guidelines)*	Yes per guideline No	1 0
6. Disciplinary measures		
Compliance with ENCJ guidelines about disciplinary measures against judges (five guidelines)*	Yes per guideline No	1 0
Competent body to make decisions about disciplinary measures against judges (six categories of decisions)*	Per category Judiciary Legislature Executive	2 1 0
7. Non-transferability of judges		
Formal guarantee of non-transferability of judges		
- Possibility of transfer without consent	Yes No	0 15
- Legal basis of non-transferability	Constitution Law Jurisprudence	3 2 1
Arrangements for the transfer of judges without their consent		
- Decision maker	Judiciary Legislature Executive	2 1 0
- Reasons	Closure of court Redeployment of resources due to work load Other	2 2 1
- Legal basis of reasons allowed	Law Other	1 0
- In case of involuntary transfer, guarantee of equivalent post	Yes No	1 0
- Possibility of appeal against transfer	Yes No	1 0
- Decision maker on appeal	Judiciary Legislature Executive	2 1 0
Removal from a case without consent	Yes No	0 1
8. Internal independence, with the following sub-indicators		
Influence by higher ranked judges		

- Authority of higher ranked judges to change verdict of a lower ranked judge	Yes No	0 10
Use and status of guidelines		
- Authority of higher ranked judges to ensure the uniformity or consistency of judicial decisions	No Non-binding guidelines Binding guidelines	5 2 0
- Authority of judges at the same level to develop guidelines to ensure the uniformity or consistency of judicial decisions	No Non-binding guidelines Binding guidelines	5 2 0
Influence of the management of the courts		
- Authority of court management to exert pressure on judges in individual cases with respect to uniformity/consistency	Yes No	0 5
- Authority of court management to exert pressure on judges in individual cases with respect to timeliness/efficiency	Yes No	0 3
9. Independence as perceived by society	Average percentage/10	0-10
10. Independence as perceived by clients of the courts	Percentage/10 No data	0-10 0
11. Independence as perceived by judges	Percentage/10 No data	0-10 0
12. Judicial corruption as perceived by society	< 11% 11-20% 21-30% 31-40% > 40% No data	9 7 5 3 1 0
13. Trust in judiciary, relative to trust in the other state powers by citizens	Higher Equal Lower No data	3 2 1 0

Indicators Accountability	Options	Score
1. Allocation of cases		
Existence of a transparent mechanism for the allocation of cases		
- Existence of a well-defined mechanism	Law Act of court Practice/Other No	3 2 1 0
Content of the mechanism for the allocation of cases		

- Criteria	Random Specialization Experience Workload other	5 4 3 2 1
- Decision maker	Random Special Chamber Court staff Other President of Court	4 3 2 1 0
- Supervision within Judiciary	Yes No	1 0
- Publication of method of allocation	Yes No	1 0
- Information for parties about allocation prior to hearing	Yes No	1 0
- Uniformity of mechanism within country	Yes No	1 0
- Recording of motivation of derogation	Yes No	1 0
2. Complaints procedure		
Availability of a complaints procedure	Yes No	1 0
External participation in the complaints procedure	Yes No	1 0
Scope of the complaints procedure (four categories)*	Yes per category No	1 0
Appeal against a decision on a complaint	Yes No	1 0
3. Periodic reporting by the Judiciary		
- Availability of annual reports	Yes No	1 0
- Organization that publishes the annual report	Judiciary Executive	1 0
- Scope of the annual reports (five categories of data)*	Yes per category No	1 0
- Periodic and public benchmarking of the courts	Yes No	1 0
4. Relations with the press		
- Explanation of judicial decisions to the media	Yes No	1 0
- Availability of press guidelines	Yes No	1 0

- Broadcasting of court cases	Yes No	1 0
5. External review		
- Use of external review	Yes No	1 0
- Responsibility for external review	Judiciary Legislature Executive	2 1 1
6. Code of judicial ethics		
- Availability of a code of judicial ethics	Yes No	1 0
- Availability of a code to the public	Yes No	1 0
- Availability of training on judicial ethics	Yes No	1 0
- Body with responsibility to provide judges with guidance or advice on ethical issues	Yes No	1 0
7. Withdrawal and recusal		
Voluntary withdrawal		
- Obligation to withdraw when impartiality is compromised	Yes No	1 0
- Legal basis of the obligation	Law Act by Council Act by Court Practice Act by Minister of Justice	5 4 3 2 1
Breach of an obligation to withdraw		
- Sanctions (four categories)*	Yes per category No	1 0
Request for recusal		
- Deciding authority	Judiciary Other Executive	2 1 0
- Appeal against a decision on a request for recusal	Judiciary Other Executive No	3 2 1 0
8. Admissibility of external functions and disclosure of external functions and financial interests		
Policy on admissibility of external functions		
- Admissibility of accessory functions	Yes No	0 5
If accessory functions are allowed:		

- Requirement of authorization and decision maker	Judiciary Legislature Executive No	3 2 1 0
- Availability of a register of external functions of judges	Yes No	1 0
- Public register	Yes No	1 0
Financial disclosure		
- Availability of a register of financial interests of judges	Yes No	1 0
- Public register	Yes No	1 0
9. Understandable proceedings		
Duty of judges to make proceedings intelligible to the parties	Yes No	1 0
Duty of judges to make proceedings intelligible to categories of court users (six categories of court users)*	Yes per category No	1 0
Relevant training of judges (four tasks of judges)*	Yes per task No	1 0

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Indicator 2 Independence

ENCJ guidelines about Councils for the Judiciary:

- At least 50% of the members of the Council are judges
- Judges are chosen by peers
- Minister of Justice is not a member of the Council
- The Council controls its own finances independently of both the legislative and executive branches
- The Council controls its own activities independently of both the legislative and executive branches

Responsibilities of the Council and decisions with decisive influence of judges:

- The appointment and promotion of magistrates
- The training of magistrates
- Judicial discipline
- Judicial ethics
- Complaints against the Judiciary
- The performance management of the Judiciary
- The administration of courts
- The financing of the courts
- Proposing legislation concerning the courts and the Judiciary

Indicator 3 Independence

Decisions about budgets:

- Involvement in the preparation of the budget allocated to courts
- Formal proposal on the budget allocated to courts
- Adoption of the budget allocated to courts
- Control of the budget allocated to courts
- Evaluation/audit of the budget allocated to courts

Sufficiency of funding to allow the courts to:

- Handle their caseload
- Engage experts/translators/etc. in cases when necessary if fees paid by court
- Keep the knowledge and skills of judges up to date
- Keep the knowledge and skills of court staff up to date
- Facilitate judges and other personnel in matters of IT-systems, buildings etc.

Indicator 4 Independence

Management responsibility of the courts :

- General management of a court
- Appointment of court staff (other than judges)
- Redeployment of judges to address temporary workload issues
- Other human resource management decisions on court staff
- Decisions regarding the implementation and use of Information and Communication Technology in courts
- Decisions regarding court buildings
- Decisions regarding court security
- Decisions regarding outreach activities

Indicator 5 Independence

Decisions on selection, appointment and dismissal of (1) judges and court presidents and (2) Supreme Court judges and the President of the Supreme Court:

- Proposal of candidates for the appointment as judges
- Decision on the appointment of a judge
- Proposal for the dismissal of a judge
- Decision on the dismissal of a judge
- Proposal of candidates for the appointment as court presidents
- Decision on the appointment of a court president
- Proposal for the dismissal of a court president
- Decision on the dismissal of a court president

ENCJ guidelines about the appointment of judges:

- The appointment process is open to public scrutiny and fully and properly documented
- The appointment process is undertaken according to published criteria
- The appointment of judges is solely based on merit
- There is a written policy in place designed to encourage diversity in the range of persons available for appointment
- The appointment process provides for an independent complaint procedure

Decisions about evaluation, promotion and training of judges:

- Decision on the evaluation of a judge
- Evaluation of the performance management of courts
- Decision on the promotion of a judge
- Adoption of ethical standards
- Application of ethical standards
- Decision on the program/content of training for judges

ENCJ guidelines about the promotion of judges:

Same as the appointment of judges

Indicator 6 Independence

ENCJ guidelines about disciplinary measures against judges:

- There is a list of types of judicial conducts/ethics the breach of which would be unacceptable
- There is a time limit for the conducting of the investigation, the making of a decision and the imposition of any sanction
- The name of the judge is withheld prior to any sanction being imposed
- The judge has the right to be legally represented or assisted by a person of her/his choosing
- There is a right of appeal by way of judicial review or cassation appeal

Decisions in the context of disciplinary procedures against judges:

- Proposal for the appointment of a member of the disciplinary body for judges
- Decision on the appointment of a member of the disciplinary body for judges
- Investigation of a complaint against a judge
- Proposal for a disciplinary decision regarding a judge
- Disciplinary decision regarding a judge
- Decision on the follow-up to a complaint against the Judiciary/a judge

Indicator 2 Accountability

Complaints procedure: admissibility of complaints about:

- Behaviour of the judge
- Timeliness
- Administrative mistakes
- Other

Indicator 3 Accountability

Periodic reporting: subjects:

- Number of completed cases
- Duration of cases
- Disciplinary measures
- (Successful) complaints
- (Successful) request for recusal

Indicator 7 Accountability

Withdrawal and recusal: Sanctions:

- Oral warning
- Written warning
- Suspension
- Disciplinary dismissal

Indicator 9 Accountability

Specific categories of court users:

- Children
- Youth
- Disabled people (physically/mentally)
- Victims
- Those for whom the national language is not their mother tongue
- Self-represented litigants

Specific training of judges:

- Conduct hearings in an understandable manner to court users
- Explain the proceedings in an understandable manner to court users
- Explain the decisions in an understandable manner to court users

Conduct hearings/explain the proceedings/explain the decisions in an understandable manner, in particular in relation to the categories identified above.