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JUDICIAL COUNCILS IN DENMARK AND GREENLAND

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The Danish Institute for Human Rights (DIHR) has received a questionnaire from the UN Special Rapporteur on the independence of judges and lawyers by email on 18 December 2017. The Special Rapporteur has requested information on national judicial council and/or other national organs or mechanisms in charge of selection, appointing, promoting, transferring, suspending or removing of judges. Based on the contributions, the Special Rapporteur will compile a report on the topic to be presented to the Human Rights Council in June 2018.

As DIHR is appointed as national human rights institution (NHRI) in Greenland, which is part of the Kingdom of Denmark, the information below includes information on appointment of judges in Greenland in addition to the information concerning judicial appointments in Denmark. The Faroe Islands are also a part of the Kingdom of Denmark. However, DIHR is not appointed as national human rights institution for the Faroe Islands. For this reason, DIHR has not provided information on judicial appointment in the Faroe Islands.

Overview of the judicial system

In order to provide an overview of the interrelation between the Danish and Greenlandic judicial systems, a brief overview of the organisational and administrative structure is provided below.¹

The judicial systems in Denmark and Greenland are governed by separate legal frameworks, i.e. the Danish Administration of Justice Act (*retsplejeloven*) and the Greenlandic Administration of Justice Act

¹ For further information regarding the subject see the publication: Danish Court Administration (2015), *A closer look at the Courts of Denmark*, Copenhagen, available at:

http://www.domstol.dk/om/otherlanguages/english/publications/Publications/profilbrochure_uk.pdf.

(*retsplejeloven for Grønland*).² All courts in the kingdom of Denmark are administered by the Danish Court Administration (*Domstolsstyrelsen*).

Information on Denmark

In a traditional hierarchical legal system, the Danish Courts are composed of the Danish Supreme Court (*Højesteret*), the Eastern and Western High Court (*Østre Landsret* and *Vestre Landsret*), and 24 district courts (*byretterne*). Furthermore, the Maritime and Commercial Court (*Sø- og Handelsretten*) and the Land Registration Court (*Tinglysningsretten*) serve as special courts for a number of specific issues, particularly commercial disputes, with appeal possibilities incorporated into the regularly hierarchical system.

Information on Greenland

The Greenlandic court system is hierarchically composed of the Danish Supreme Court (*Eqqartuussiviit Qullersaat*), the High Court of Greenland (*Nunatta Eqqartuussisuuneqarfia*), the Court of Greenland (*Kalaallit Nunaanni Eqqartussivik*) and four district courts (*Eqqartuussisoqarfiit*). Depending on the type of case, either one of the four district courts or the Court of Greenland hears cases as the first instance with the High Court of Greenland as appeal instance. Notably, the Court of Greenland handles all civil disputes.

Decisions made by the High Court of Greenland may be brought before the Supreme Court in Denmark subject to the permission of the Danish Appeals Permission Board (*Ingerlatitseqqinnissamik Aalajangiisartut*). This procedure is similar to the appeals procedure from the Danish High Courts to the Danish Supreme Court.

QUESTION NO. 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)?

INFORMATION ON DENMARK

According to Section 43a of the Danish Administration of Justice Act, the Judicial Appointments Council (*Dommerudnævnelsesrådet*) (hereinafter 'the Council') submits recommendations to the Minister of

² Denmark, Danish Administration of Justice Act (*retsplejeloven*), 22 September 2017, available in Danish at:

<https://www.retsinformation.dk/Forms/R0710.aspx?id=192286>; Denmark, Greenlandic Administration of Justice Act (*retsplejelov for Grønland*), 13 December 2016, available in Danish at: <https://www.lovtidende.dk/pdf.aspx?id=182027>.

Justice for all judicial appointments, including positions as interim judges (*konstituerede dommere*). The position as president of the Danish Supreme Court is chosen through an internal procedure in the Supreme Court and excluded from the competence of the Council.³ The power of the Minister of Justice is strictly limited, as it is settled legal practice that the minister is obliged to accept the recommendations from the Council. Thus, the minister may not appoint another candidate for the open position, and only in exceptional cases reject the Council's recommendation.⁴

The Council does not follow a procedure for automatic promotion of judges. A judge applies for an open position at another court, for example a hierarchical higher placed court. Based on the applications received, the Judicial Appointments Council assesses the candidates and decides whether an applicant should be recommended to the Minister of Justice following the procedure described above.

An appointed judge is protected from administrative transfer of his or her position in cases outside a general reorganisation of the administration of the courts.⁵

Regarding suspension and removal of judges, the Special Court of Indictment and Revisions (*Den Særlige Klageret*) decides on such matters, cf. Section 1a of the Danish Administration of Justice Act (see further information below).

INFORMATION ON GREENLAND

According to Section 10 (1) of the Greenlandic Administration of Justice Act, the Judicial Council (*Dommerrådet*) makes decisions on recruitments to judge positions at the district courts and submits recommendations to the Danish Court Administration. Furthermore, the Judicial Council makes decisions concerning transfer of judges, disciplinary proceedings, suspension and resignation.⁶

The Judicial Appointments Council for Greenland (*Dommerudnævnelsesrådet for Grønland*) submits recommendations to the (Danish) Minister of Justice regarding the positions as judge at the Court of Greenland and the High Court of Greenland, cf. Section 13 of the Greenlandic Administration of Justice Act. The Danish Special Court of Indictment and Revisions handles cases of suspension and removal of

³ Christensen, J. P., Jensen, J. A., and Jensen, M. H. (2016), *Dansk Statsret*, Copenhagen, Jurist- og Økonomforbundets Forlag, p. 109.

⁴ Christensen, J. P., Jensen, J. A., and Jensen, M. H. (2016), *Dansk Statsret*, Copenhagen, Jurist- og Økonomforbundets Forlag, p. 107.

⁵ Danish Constitution art. 64, cf. Christensen, J. P., Jensen, J. A., and Jensen, M. H. (2016), *Dansk Statsret*, Copenhagen, Jurist- og Økonomforbundets Forlag, pp. 115-116.

⁶ The Greenlandic Administration of Justice Act (Section 10 (1) (4)), cf. sections 26-32.

judges from the Court of Greenland and the High Court of Greenland, cf. Section 33 of the Greenlandic Administration of Justice Act.

Judges at the Court of Greenland and High Court of Greenland can apply for other judge positions following the same procedure as Danish judges, see above, and they are equally protected from transfer by the Danish Constitution. The district court judges are also protected from transfer despite the fact that they are not judges in the sense of the Danish Constitution.

QUESTION NO. 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).

INFORMATION ON DENMARK

The Judicial Appointments Council consists of six members, i.e. one judge from the Supreme Court (president), one judge from one of the high courts, one judge from one of the district courts, one lawyer, and two representatives of the public, cf. Section 43 b, paragraph 1 of the Danish Administration of Justice Act. The Ministry of Justice states in the preparatory comments to the bill that the Council is composed this way in order to ensure that the members possess knowledge about the organisation of the judicial system. Furthermore, the composition represents a broad spectrum of society with the purpose of reaching the aim of greater transparency of judicial appointments.⁷

The judges of the Council are appointed upon recommendation from the Supreme Court, the High Courts, and the Association of Danish Judges (*Den Danske Dommerforening*), cf. Section 43 b, paragraph 2.⁸

The lawyer of the Council is appointed by the Minister of Justice upon recommendation from the Council of the Danish Bar and Law Society (*Advokatrådet*), cf. Section 43 b, paragraph 3. There does not appear to

⁷ Denmark, Bill No. 32 on recruitment of judges, deputy judges' conditions of employment, judges' subsidiary occupation and amendments as a result of establishment of a court administration (*Forslag til Lov om ændring af retsplejeloven, tjenestemandsløven og forskellige andre love (Rekruttering af dommere, dommerfuldmægtiges ansættelsesvilkår, dommeres bierhverv og ændringer som følge af oprettelse af en domstolsstyrelse m.v.)*), 26 March 1998, Section 3.3.3., available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=111132>.

⁸ Note that the judges must not be members of the board of the Association of Danish Judges.

be any public available information on the qualification requirements of the lawyer.

The representatives of the public of the Council is appointed by the Minister of Justice upon recommendation from Local Government Denmark (*KL – Kommunernes Landsforening*) and the Danish Adult Education Association (*Dansk Folkeoplysnings Samråd*), cf. Section 43 b, paragraph 4. In the preparatory work, it is stated that the reason to include these members is that they may contribute to a wider consideration of societal aspects. According to the preparatory works, the selection of these representatives is not based on established guidelines, although they should be engaged in society issues and broadly oriented as well as possess personal integrity and impact ability.⁹

All members of the Council are appointed for four years and reappointment cannot take place, cf. Section 43 b, paragraph 6.

For each member of the Council, a substitute member is appointed in line with the procedures described above, cf. Section 43 b, paragraph 7. The substitute members may be reappointed.

The DIHR is not able to provide updated information on the Council's financial resources.

INFORMATION ON GREENLAND

Members of the Judicial Council (*Dommerrådet*)

The Judicial Council consists of five members, i.e. the judge from the High Court of Greenland (president), the judge from the Court of Greenland, one judge from the district courts, and two representatives from the public, cf. Section 11, paragraph 1 of the Greenland Administration of Justice Act.

The judge from the district courts is appointed by the Danish Minister of Justice upon recommendation from the Association of Greenlandic District Court Judges (*Kredsdommerforeningen*) for four years, cf. Section 11, paragraph 3 of the Greenlandic Administration of Justice Act. Reappointment cannot take place. A substitute member is appointed following the same procedure, who can be reappointed, cf. paragraph 4.

⁹ Denmark, Bill No. 32 on recruitment of judges, deputy judges' conditions of employment, judges' subsidiary occupation and amendments as a result of establishment of a court administration (*Forslag til Lov om ændring af retsplejeloven, tjenestemandsløven og forskellige andre love (Rekruttering af dommere, dommerfuldmægtiges ansættelsesvilkår, dommeres bierhverv og ændringer som følge af oprettelse af en domstolsstyrelse m.v.)*), 26 March 1998, Section 3.3.3., available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=111132>.

The two representatives of the public and the substitute members are appointed by the Danish Minister of Justice for a period of four years upon recommendation from the Government of Greenland (*Naalakkersuisut*) and the Association of Municipalities in Greenland (*Kanukoka*),¹⁰ cf. Section 11, paragraph 5, cf. Section 13, paragraphs 3-7 of the Greenlandic Administration of Justice Act. Unlike the substitute members, the permanent members cannot be reappointed, cf. Section 13, paragraph 6.

It has not been possible to collect information on the allocation of financial resources to the Judicial Council.

Members of the Judicial Appointments Council for Greenland (*Dommerudnævnelsesrådet for Grønland*)

With two exceptions, the Judicial Appointments Council for Greenland consists of the same members as the Judicial Appointments Council in Denmark (see above). The exceptions are: 1) the lawyer must reside in Greenland, and 2) the two representatives of the public should represent the Greenland public rather than the Danish public, cf. Section 13, paragraph 3 of the Greenlandic Administration of Justice Act.

The Minister of Justice appoints the two representatives of the public and the substitute members for a period of four years upon recommendation from the Government of Greenland (*Naalakkersuisut*) and the Association of Municipalities in Greenland (*Kanukoka*), cf. Section 13, paragraph 4. Unlike the substitute members, the permanent members cannot be reappointed, cf. Section 13, paragraph 6.

It has not been possible to collect information on the allocation of financial resources to the Judicial Appointments Council for Greenland.

QUESTION NO. 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); (b) Condition of service and security of tenure of judges; (c) Promotion of judges; (d) Transfer of judges; (e) Disciplinary proceedings against judges. What is the role played by the national organ or mechanism with regard to the issues referred to above?

¹⁰ The Association of Municipalities in Greenland (*Kanukoka*) will be closed as of 31 July 2018. It has not been decided who will replace this body in procedures prescribed by the Greenlandic Administration of Justice Act.

INFORMATION ON DENMARK

(a) The selection and appointment of candidates for judicial offices and the criteria used for their selection and appointment

The monarch formally appoints permanent judges in Denmark, cf. Section 42, paragraph 1 of the Danish Administration of Justice Act. It is a requirement that candidates for a judge position hold a Master's Degree in Law, cf. paragraph 3.

As a general rule, in order to be appointed as a High Court judge, a district court judge, or a judge in the Maritime and Commercial Court and the Land Registration Court, it is required that a candidate's eligibility has been examined by the High Court, cf. Section 42, paragraph 4. Usually, this examination is conducted in connection with a period as a temporary High Court or district court judge in accordance with Section 44 b. The wording of Section 42, paragraph 4 allows that a candidate may be appointed as a judge despite the fact that the candidate has not been examined by the High Court. In that case, it is a prerequisite that it is undisputed that the candidate is eligible to maintain the position as a judge. For example, this could be the case if the candidate has worked as a judge before.¹¹

In order to be appointed as a Supreme Court judge, the potential candidate must have illustrated his or her eligibility by having participated in at least four cases of which at least one case must be a civil case. According to Section 43, a candidate must meet both the professional and personal requirements entailed in the position as a judge. Additionally, the candidate's legal experience must be satisfactory, and the Council should aim at appointing candidates with various legal backgrounds.

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

Judges are employed as civil servants, cf. Section 27, paragraph 2 of the Danish Constitution. Following Section 64 of the Constitution, the legislator cannot independently choose the form of employment. Thus, because of the principle of irremovability of judges, judges are employed without further limitations in their period in office except what follows from the general retirement age,¹² which is 70 years, cf. Section 34, paragraph 2 of the Danish Civil Servants Act (*tjenestemandsløven*).

¹¹ Comment no. 268 in KarnovGroup's version of the Danish Administration of Justice Act provided by professor Lasse Højlund Christensen.

¹² Christensen, J. P., Jensen, J. A., and Jensen, M. H. (2016), *Dansk Statsret*, Copenhagen, Jurist- og Økonomforbundets Forlag, p. 109.

Section 64 of the Danish Constitution protects judges from unsolicited removal by demanding that judges may only be removed by a court ruling. A decision to remove a judge may not be based on discretionary powers, but may only take place on the basis of law, which is regulated in Sections 49 and 49 a of the Danish Administration of Justice Act. For example, a removal could take place in case a judge has committed a criminal offence such as tax fraud.

As an exception to this principle rule, a judge may be removed administratively in connection with a general reorganisation of the courts, cf. Section 64 of the Danish Constitution.

Furthermore, a judge who has reached the age of 65 years may be removed without loss of income, cf. Section 64 of the Danish Constitution, cf. Section 34, paragraph 2 of the Danish Civil Servants Act. However, a judge who is removed on the grounds of age is eligible to complete pending cases that were initiated before the removal, cf. Section 51 of the Danish Administration of Justice Act. Furthermore, a judge who has reached the age of 65 may take the position as a part-time judge upon agreement with the president of the court, cf. Section 51 a of the Danish Administration of Justice Act.

Finally, the widely used interim judges are protected by the rules in Sections 54 and 54a of the Danish Administration of Justice Act, cf. Section 44, paragraph 4 of the Danish Administration of Justice Act. These provisions correspond with Section 64 of the Danish Constitution.

(c) Promotion of judges

As regards promotion of judges, please, see DIHR's comments to question no. 1 concerning the body in charge of this procedure and question no. 3 (a) ('Information on Denmark') as regards the qualification requirements to judges.

(d) Transfer of judges

Judges are protected from being transferred, unless if this is suggested as a part of a reorganisation of the Danish Courts, cf. Section 64 of the Danish Constitution. It is presumed that a judge who does not wish to be transferred in case of a reorganisation of the Danish Court may require to be removed with retirement benefits, cf. Section 27, paragraph 3.¹³

As regards transfer of interim judges, please, see comments to question no. 3 (b).

¹³ Christensen, J. P., Jensen, J. A., and Jensen, M. H. (2016), *Dansk Statsret*, Copenhagen, Jurist- og Økonomforbundets Forlag, p. 116.

(e) Disciplinary proceedings against judges

Because of the independence and impartiality of judges, it is presumed that disciplinary proceedings against judges may only be conducted by other judges, even though this does not follow explicitly from Section 64 of the Danish Constitution.¹⁴

According to Section 48 of the Danish Administration of Justice Act, the presidents of the courts may reprimand less serious matters and issue a warning. Following Section 49, the Special Court of Indictment and Revisions deals with more serious cases. The Special Court may announce its disapproval of the behaviour of a judge under scrutiny or issue the judge a fine. If the matters concerned are of an aggravating nature or if the court previous has passed judgment concerning such matters, the court may decide to remove the judge from office.

As regards disciplinary proceedings against interim judges, please, see comments to question no. 3 (b).

INFORMATION ON GREENLAND

(a) The selection and appointment of candidates for judicial offices and the criteria used for their selection and appointment

In order to be appointed a district court judge, a candidate must have an impeccable reputation and fulfill the requirements concerning the right to be elected for the municipal councils, cf. Section 12, paragraph 1 of the Greenlandic Administration of Justice Act.

It is a prerequisite for appointment as a district court judge that the candidate completes a separate education for district court judges directed by the Court of Greenland, cf. Section 12, paragraph 2. This requirement may only be bypassed in exceptional cases, cf. Section 12, paragraph 3. The training of district court judges is a full-time two-year programme consisting of both theoretical as well as practical aspects.¹⁵ Contrary to being appointed as a judge to the Court of Greenland and the High Court of Greenland, being appointed as a district court judge does not require a master's degree in law.

Besides personal and academic qualifications, a candidate for district court judge should have knowledge about the local conditions in the district of the court, cf. Section 12, paragraph 4.

¹⁴ Christensen, J. P., Jensen, J. A., and Jensen, M. H. (2016), *Dansk Statsret*, Copenhagen, Jurist- og Økonomforbundets Forlag, p. 111.

¹⁵ Denmark, Administrative Order for Greenland on the education of district court judges (*bekendtgørelse for Grønland om uddannelse af kredsdommere*), 18 September 2014, available in Danish at: <https://www.lovtidende.dk/pdf.aspx?id=164749>.

In order to be appointed as a judge at the Court of Greenland or the High Court of Greenland, a candidate must hold a Master's Degree in Law, cf. Section 13, paragraph 1. Hereinafter, the requirements stipulated in Sections 42-43 of the Danish Administration of Justice Act are applicable (see question no. 3 (a) ('Information on Denmark) above).

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

As regards district court judges, these may be removed because of ineligibility or illness, cf. Section 26, paragraph 1 of the Greenlandic Administration of Justice Act. They may also be removed if they are found guilty of matters rendering them unworthy of the esteem and trust that the position as district court judge requires, cf. Section 26, paragraph 1 of the Greenlandic Administration of Justice Act.

Furthermore, removal may take place in cases of reorganisation of the Courts of Greenland, cf. Section 26, paragraph 2 of the Greenlandic Administration of Justice Act.

The Court of Greenland raises, ex officio, the question concerning removal in cases covered by Section 26, paragraphs 1-2 (see above) before the Danish Court Administration, cf. Section 26, paragraph 3. Hereinafter, the Danish Court Administration bring the cases before the Greenlandic Judicial Council, cf. Section 26, paragraph 4.

As regards judges from the Court of Greenland and the High Court of Greenland, the conditions of service and security of tenure is governed by Sections 47-50 of the Danish Administration of Justice Act (see question no. 3 (b) ('Information on Denmark) above).

For interim judges in Greenland, Sections 54-55 of the Danish Administration of Justice Act are applicable (see question no. 3 (b) ('Information on Denmark) above).

(c) Promotion of judges

As regards promotion of judges, please, see DIHR's comments to question no. 1 concerning the body in charge of this procedure and question no. 3 (a) ('Information on Greenland') as regards the qualification requirements to judges.

(d) Transfer of judges

Unsolicited transfer of district court judges may only take place in case of reorganisation of the Courts of Greenland, cf. Section 27, paragraph 1 of the Greenlandic Administration of Justice Act.

(e) Disciplinary proceedings against judges

Ex officio or based on a complaint, the Court of Greenland may issue a warning to a district court judge who is found guilty responsible for neglect or recklessness under conduct of duty or has behaved unjustifiably or indecently, cf. Section 29, paragraph 1 of the Greenlandic Administration of Justice Act. If the case is considered to be of a character that is not suitable to be decided upon by the judge from the Court of Greenland, the judge shall request the Danish Court Administration to bring the case before the Greenlandic Judicial Council, cf. Section 29, paragraph 2.

In case the Judicial Council does not find the basis for removal, but for unjustifiable or indecent behaviour, the Judicial Council may announce its disapproval of the behaviour or issue a fine to the district court judge, cf. Section 31, paragraph 2.

As regards disciplinary proceedings against judges from the Court of Greenland and the High Court of Greenland, Sections 47-50 of the Danish Administration of Justice Act are applicable (see question no. 3 (e) ('Information on Denmark) above).

QUESTION NO. 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; (b) Transfer and promotion of judges; (c) Disciplinary proceedings against judges

Please, see comments to question no. 3 above.

Yours sincerely,

Lise Garkier Hendriksen

CHIEF LEGAL ADVISER