**RESPONSES TO THE QUESTIONNAIRE OF THE SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS**

**GREEK REPORT**

**ATHENS, 02.01.2018**

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 order)?**

All judges in Greece belong to a professional group, to which they enter following a public competition and training at the National School of Judges (NSJ). According to article 1 of Law 3689/2008, the National School of Judges is the responsible body (public law entity) for the selection, the initial (pre-entry) theoretical and practical training and evaluation of those who are to be appointed as probationer judges of the Council of State, the Civil and Criminal Courts, the Court of Auditors and the Administrative Courts, as well as the continuing training of the already serving judges. Admission to the NSJ is preceded an open competive examination announced by the Minister of Justice, Transparency and Human Rights for the three judicial branches – administrative justice, civil and criminal justice and public prosecution services. The two- staged entrance examination involve both written and oral tests and is carried out by a five-member committee of different composition for each direction. The training lasts for 16 to 18 months. After the completion of their initial training, the trainees go through a probational period of ten months which is followed by their appointment by a presidential decree, issued after prior decision by the supreme judicial council. Furthermore, according to article 90 of the Greek Constitution: “*1. Promotions, assignments to posts, transfers, detachments, and transfers to another branch of judges shall be effected by presidential decree, issued after prior decision by the supreme judicial council.*”

As regards the suspension of judges, this is effected by a presidential decree issued after a proposal by the Minister of Justice, which is issued after a prior fully reasoned decision of the competent Supreme Judicial Council.

As far as the removal of judges is concerned, the relevant decision is to be issued by the competent court (a. the plenary of the Council of State is competent for the judges for the Supreme Court for civil and criminal justice, the Prosecutors of the Supreme Court, the high ranked judges of the Court of Audit b. the plenary of the Supreme Court is competent for the judges of the Council of State and of the rest of the judges of criminal and civil justice, and c. the plenary of the Court of Audit for the rest of the judges of the Court of Audit) for the imposition of the disciplinary penalty of the permanent removal of the judge. Following this a presidential decree is issued, the summary of which is published in the Government Gazette.

1. **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)**

Regarding the Supreme Judicial Council, according to the abovementioned article of the Greek Constitution: “*1. ...This council shall be composed of the president of the respective supreme court and of members of the same court chosen by lot from among those having served in it for at least two years, as specified by law. The Prosecutor of the Supreme Civil and Criminal Court shall participate in the supreme judicial council on civil and criminal justice, as well as two Deputy Prosecutors of the Supreme Civil and Criminal Court who are chosen by lot from among those having served for at least two years in the Public Prosecutor’s Office of the Supreme Civil and Criminal Court, as specified by law. In the supreme judicial council on the Supreme Administrative Court and on administrative justice shall also participate the General Commissioner of State who serves in them on issues relating to judges of ordinary administrative courts and of the General Commission. In the supreme judicial council on the Court of Audit shall also participate the General Commissioner of State who serves in it. In the supreme judicial council shall also participate, without right to vote, two judges of the branch concerned by the changes in the service status, who must be at least of the rank of Judge of Appeals or of an equivalent one, and are chosen by lot, as specified by law.*

Furthermore according to Law 1756/1988 as amended*,* the tenure of the members of the Supreme Judicial Council, who are chosen by lot, is one year, whereas their number is for the administrative, criminal and civil justice 11 or 15 for certain issues and for the Court of Audit 9 or 11 for certain issues. The annual budget of the Supreme Judicial Council is included in the annual budget of the Ministry of Justice, Transparency and Human Rights for courts.

1. **Please provide detailed information on the legislation and practice existing in your country in relation to:**
2. **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);**
3. **Condition of service and security of tenure of judges;**
4. **Promotion of judges;**
5. **Transfer of judges;**
6. **Disciplinary proceedings against judges.**

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

1. According to article 9 of Law n. 3689/2008, “*1. By decision of the Minister of Justice, Transparency and Human Rights, published in the Government Gazette until the end of January of each year, an invitation to tender is opened at the National School of judges for the following directions: a) Administrative Justice, b) Political and Criminal Justice (c) Prosecutors*”.

According to article 10 of Law n. 3689/2008, as replaced by Article 8 of Law n. 3910/2011, “*1. a. In the competition are accepted those who:  aa. Have the status of a jury (justice of the peace), or have or have had a two-year practice in law, or have a PhD in a legal department, one year's law practice, or are judicial employees with a law degree from a law school and five years in that post. "bb. They have completed the twenty-eighth and have not reached the age of 45 years on the 31st December of the year in which the competition is launched. The age of the candidate is proved in accordance with the provisions of the Code of Organization of Courts and the Status of judges (Law 1756/1988, Government Gazette 35 A '). cc. They have the qualifications set forth in Article 36 (1), (2) and (3) and do not have the impediments provided for in Articles 37 and 38 of the Code of Organization of Courts and Situation of judges, as they apply, for their appointment as judges.  b. The required qualifications, in addition to the age limit, must be met at the start of the competition. Impediments must not exist at the start of the competition and at the time of registration at the School*”.

(b) According to article 87 of the Greek Constitution, “*1. Justice shall be administered by courts composed of regular judges who shall enjoy functional and personal independence. 2. In the discharge of their duties, judges shall be subject only to the Constitution and the laws; in no case whatsoever shall they be obliged to comply with provisions enacted in violation of the Constitution…”*. In addition, the Article 93§4 of the Greek Constitution provides that: *“4. The courts shall be bound not to apply a statute whose content is contrary to the Constitution”.* In particular, regarding the personal independence of judges, all their career issues are regulated by Councils consisted of Judges.

The judges enjoy their independence throughout the execution of their duties. The only condition where they may lose their position is to be suspended by the competent court (see above q.2), if a judge has committed disciplinary violation. According to articles 88 par 1 of the Constitution and article 53 of the Code of Organization of Courts and Situation of judges : “ *judges shall be appointed by presidential decree in compliance with a law specifying the qualifications and the procedure for their selection and are appointed for life*.”

(c) According to article 90 of the Greek Constitution: “*1. Promotions, assignments to posts, transfers, detachments, and transfers to another branch of judges shall be effected by presidential decree, issued after prior decision by the supreme judicial council. This council shall be composed of the president of the respective supreme court and of members of the same court chosen by lot from among those having served in it for at least two years, as specified by law. The Prosecutor of the Supreme Civil and Criminal Court shall participate in the supreme judicial council on civil and criminal justice, as well as two Deputy Prosecutors of the Supreme Civil and Criminal Court who are chosen by lot from among those having served for at least two years in the Public Prosecutor’s Office of the Supreme Civil and Criminal Court, as specified by law. In the supreme judicial council on the Supreme Administrative Court and on administrative justice shall also participate the General Commissioner of State who serves in them on issues relating to judges of ordinary administrative courts and of the General Commission. In the supreme judicial council on the Court of Audit shall also participate the General Commissioner of State who serves in it. In the supreme judicial council shall also participate, without right to vote, two judges of the branch concerned by the changes in the service status, who must be at least of the rank of Judge of Appeals or of an equivalent one, and are chosen by lot, as specified by law. 2. In the case of judgments concerning promotions to the posts of Councillors of State, Supreme Civil and Criminal Court Judges, Deputy Prosecutors of the Supreme Civil and Criminal Court, Councillors of the Court of Audit, President Judges of Appeals and Prosecutors of Appeals, as well as concerning the selection of the members of the General Commissions of administrative courts and of the Court of Audit, the council prescribed in paragraph 1 shall be supplemented by additional members, as specified by law. As for the rest, the provisions of paragraph 1 shall also apply in this case. 3. Should the Minister of Justice disagree with the judgement of a supreme judicial council, he may refer the matter to the plenum of the respective supreme court, as specified by law. The magistrate concerned by the judgement has as well the right of recourse, under the conditions specified by the law. As regards the session of the plenum of the respective highest court, as a second instance supreme judicial council, the provisions of sections three to six of paragraph 1 shall apply. In the plenum of the Supreme Civil and Criminal Court, in the cases of the preceding section, shall also participate with right to vote the members of the Public Prosecutor’s office of the Supreme Civil and Criminal Court. 4. The decisions of the plenum, as a second instance supreme judicial council, on a matter referred to it as well as the decisions of the supreme judicial council with which the Minister has not disagreed, shall be binding upon him. 5. Promotion to the post of President or Vice-President of the Supreme Administrative Court, of the Supreme Civil and Criminal Court and of the Court of Audit shall be effected by presidential decree issued on the proposal of the Cabinet, by selection from among the members of the respective supreme court, as specified by law. Promotion to the post of Supreme Civil and Criminal Court Prosecutor shall be effected by similar decree, by selection from among the members of the Supreme Civil and Criminal Court and Deputy Public Prosecutors of this Court, as specified by law. Promotion to the post of General Commissioner of the Court of Audit shall be effected by similar decree, by selection from among the members of the Court of Audit and of the respective General Commission, as specified by law. Promotion to the post of General Commissioner of administrative courts shall also be effected by similar decree, by selection from among the members of the respective General Commission and the President Judges of Appeals of the administrative courts, as specified by law..”*

Also, according to article 49 of the Code of Organization of Courts and Situation of judges*, which specifies the promotion procedure of the highest posts (President and Vice-President of the Council of the State, the Supreme Court President and Vice-President and Prosecutor, the Court of Audit President and Vice-President and General Commissioner,) a prior non-binding opinion by the Conference of Presidents of the Parliament is asked by the Minister of Justice at certain stage of the procedure.*

(d) According to article 90 of the Greek Constitution: “1. Promotions, assignments to posts, transfers, detachments, and transfers to another branch of magistrates shall be effected by presidential decree, issued after prior decision by the supreme judicial council”. (as above, question 3c).

In addition, according to the provisions of article 50 of the Code of Organization of Courts and Situation of judges, “«*1. The Supreme Judicial Council decides at a meeting on the promotion and transfer of judges. The promoted and transferred judges referred to in the preceding paragraph are obliged to appear in their positions within one (1) month from the publication of the Presidential Decree on promotion or transfer. 2. The transfer of the judge is not allowed before the completion of one (1) year of service at the place where he was appointed.. Exceptionally, transfer may be permitted before the expiry of the above period for official or serious personal reasons, which must be specifically confirmed in the decision or if requests for mutual transfer are made or if there is a lack of locality. Mutual transfers during the court year shall take place after the end of the year. 3. A judge may be transferred either at his request or ex officio in order to cover a service need, which must be set out in detail in the decision. It is forbidden to decide on a transfer relating to the exercise of the judicial and general judicial duties of the judge. 4. The transfer is mandatory if the judge: (a) has been found guilty of grave misconduct; (b) has been found to be unjustifiable and inserious, at the discretion of the Supreme Judicial Council, delay in the execution of his duties. 5. Judge-at-law spouse of a judicial officer shall be transferred, upon his / her request, to the district to which the other spouse belongs, provided that there is no impediment to his / her assistance*.

(e) According to article 91 of the Greek Constitution: “*1. Disciplinary authority over judges from and above the rank of member of the Supreme Civil and Criminal Court or Deputy Prosecutor of the Supreme Civil and Criminal Court, or a rank corresponding thereto, shall be exercised by a Supreme Disciplinary Council, as specified by law. Disciplinary action shall be initiated by the Minister of Justice. 2. The Supreme Disciplinary Council shall be composed of the President of the Supreme Administrative Court as Chairman, and of two Vice-Presidents or Councillors of the Supreme Administrative Court, two Vice-Presidents or members of the Supreme Civil and Criminal Court, two Vice-Presidents or Councillors of the Court of Audit and two law professors from the Law Schools of the country’s universities, as members. The members of the Council shall be chosen by lot from among those having at least three years of service in the respective Supreme Court or law school. Members belonging to the Supreme Court of which the conduct of one of the judges, prosecutors or commissioners the Council has been called on to decide, shall be excluded. In cases involving disciplinary action against members of the Supreme Administrative Court, the Supreme Disciplinary Council shall be presided over by the President of the Supreme Civil and Criminal Court. 3. The disciplinary authority over all other judges shall be exercised, in the first and second instance by councils composed of regular judges chosen by lot, as specified by law. Disciplinary action may also be initiated by the Minister of Justice. 4. Disciplinary rulings in accordance with the provisions of this Article shall not be subject to remedies before the Supreme Administrative Court*”. Detailed and specified provisions related to the disciplinary proceedings against judges can be found in the Code of Organization of Courts and Situation of judges, Part 4, articles 90 – 107.

1. **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:**
2. **judicial selection and appointment;**
3. **transfer and promotion of judges;**
4. **disciplinary proceedings against judges**