

European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Minimum Judicial Standards IV

Allocation of Cases

ENCJ Report 2013-2014



With the support of the European Union

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I. Introduction

The entry into force of the Lisbon treaty and the objectives set down in the Stockholm Programme have paved the way for the establishment and further development of the European judicial culture - one that fully respects the principle of subsidiary and judicial independence. With this top priority, the need to strengthen mutual trust and confidence among judicial authorities in different states, which is in turn the cornerstone for efficient cooperation in the area of justice, has been emphasized. This, however, cannot be achieved without promoting a greater understanding of the diverse legal traditions in the enlarged European Union (EU) and progressive elimination of those differences, which create imbalances and obstacles.

In this regard, the initiative to create a forum for the European judiciaries to share the views and ideas in order to foster the achievement of the mentioned priorities has been taken and supported by the ENCJ. Starting from setting up the conclusions and recommendations on the methods for reinforcing mutual trust and confidence between different Member States, the

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primary initiative has evolved to the multi-annual ENCJ project which develops a set of minimum standards and indicators for the relevant Justice sector each year. As a consequence, the minimum standards (and relevant indicators) have been developed for the recruitment, selection, appointment and (where relevant) evaluation and promotion of members of the judiciary (2011-2012) as well as for the evaluation and irremovability of judges (2012-2013) by the subsequent ENCJ project teams. The success of these projects confirmed that adoption of common / minimum standards improves the

understanding among judicial authorities and different legal systems and, therefore, contributes to the reinforcement of mutual confidence and judicial cooperation as well as facilitates the attainment of a common European judicial culture.

However, the work in this area has not been finished yet. Recent developments in Europe revealed the need to have relevant standards in the area of allocation of cases, which is crucial for guaranteeing the independence and impartiality of the judiciary. As the Charter of Fundamental Rights ensures the right to a fair trial and effective legal remedies, everyone has the right to a pre-established and reviewable determination of which judge will hear his or her case. It is, therefore, essential that case allocation processes are well organized and transparent. In accordance with the recommendation of the Committee of Ministers of the Council of Europe, the allocation of cases within a court should follow objective pre-established criteria in order to safeguard the right to an

independent and impartial judge. It should not be influenced by the wishes of a party to the case or anyone otherwise interested in the outcome of the case.¹ In addition, the guarantees that the judge who is in conflict of interest would not hear the particular case must also be established. Taking into account the fact that a great variety of systems for determining the lawful judge exist across Europe, the Project activity will endeavour to identify the relevant minimum standards in the field of allocation of cases, which should be in compliance with the Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The standards developed will be accompanied by a set of indicators, which will form a tool for self-assessment by judicial authorities.

The Project Team on the “Development of Minimum Judicial Standards IV: allocation of cases” was established by the European Network of Councils for the Judiciary (ENCJ) in September 2013 as a result of the ENJC Workplan 2013-2014 approved by the General Assembly held in Sofia between 5-7 June 2013. The members of the Project Team comprised representatives of 16 member institutions (Belgium, Bulgaria, Denmark, England and Wales, France, Ireland, Italy, Lithuania, the Netherlands, Northern Ireland, Poland, Portugal, Romania, Scotland, Slovakia and Spain), as well as representatives of 5 observer institutions (Austria, Hungary, Norway, Sweden and Turkey). The Project Team was chaired and coordinated by Judge Laima Garmelienė, a member of the Judicial Council of Lithuania, and Judge Nicolas Snelders, a member of the High Council of Justice of Belgium.

For the purpose of drawing up the current report and its annex (questionnaire), the Project Team held a kick-off meeting in Brussels on 30 September – 1 October, 2013 (together with other Project Teams established by the European Network of Councils for the Judiciary following the implementation plan for the period 2013-2014) and three additional meetings: in Brussels on 9 – 10 December, 2013, in Warsaw on 16 – 17 February, 2014, and in Vilnius on 24 – 25 March, 2014; as well was the final meeting of Coordinators in Brussels on 29 April, 2014.

During the kick-off meeting, the members of the Project Team discussed the goal of the project and the methodology to be followed.

II. Project goals

During the kick-off meeting the Project Team agreed and emphasized that the topic of the current Project is very interesting, but challenging and rather wide; however, all the members of the Project team agreed on the essence of the Project and its scope:

¹ Recommendation CM/Rec (2010) 12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies).

- the allocation / re-allocation of cases to different courts is generally regulated by law (competence rules) while no clear regulation exists (or the rules are very different) as regards the allocation and re-allocation of cases to particular judge(-s) within the court;
- the allocation / re-allocation of cases in most countries is managed by using an electronic system or is done by the Chairperson of the court;
- the importance of transparency – all rules should be clear not only for those who apply them, but for the public as well;
- the need for strong motivation (arguments) in case of re-allocation of cases;
- the close interrelation between the allocation / re-allocation of cases and workload of judges;
- the need for considering the mechanism of control and responsibility, etc.

The goal of the Project and expected results. It was agreed that the case allocation processes should be well organized and transparent; it should not be influenced by the wishes of a party to the case or anyone otherwise interested in the outcome of the case. In addition, the guarantee that a judge who has a conflict of interest would not hear the particular case must be established. The Project team concluded that a better knowledge and understanding of the minimum standards applied in other jurisdictions as regards allocation of cases, might be one of the means to be used for, and a strong indication of, enhancing the mutual confidence in the judiciaries of the various European countries.

In this regard, the necessary goals and expected results have been formulated as follows:

- Increasing mutual confidence among judges from different jurisdictions within the EU as a contribution to the achievement of a European common judicial culture.
- Strengthening public confidence in the independence and impartiality of the judicial systems of the members of the EU.
- Assuring the efficiency and accountability of courts and judges, without harming their independence and impartiality.

The scope of the Project. In general, the efforts of the current Project Team were targeted on developing a set of minimum standards and relevant indicators (where possible) in the field of allocation of cases. However, considering the need to determine the boundaries of the Project and the main problematic points which arose during the introductory session, the members of the Project Team also agreed that the Project should focus on the internal allocation of cases to judges, panels, boards or chambers of judges within courts. The Project does not include detailed standards and indicators on the distribution of cases between the different kinds of courts in a country (e.g. labour courts, commercial courts, criminal courts, administrative courts, etc.) or between different territorial areas.

Rules concerning these competence criteria should be provided by law and be objective and transparent.

III. Methodology

Considering the given timeline and the deadline for finalizing the report it was decided to structure the activities of the Project Team in the following way:

- 1) Preparation of the Questionnaire as an instrument for collecting the information needed to start discussing and developing the minimum standards.
- 2) Dissemination of the Questionnaire among the ENCJ Members and Observers and setting up a reasonable period for providing the responses. In order to have the information for the first meeting of the Project Team in December 2013, the 15th November 2013 was set up as the deadline for the collection of information from members of the Project Team and from other ENCJ Members and Observers.
- 3) Collation of the information collected and preparation of a presentation for the first meeting in Brussels in December.
- 4) Analysis of the information collected in connection with each of the topics dealt with by the Project Team and drafting the standards and indicators – during the first, second and third meetings of the Project Team.
- 5) Preparation of the final report for the General Assembly, which was carried out by the Co-ordinators during the fourth meeting in April, 2014.
- 6) Presentation of the report to the General Assembly.

The minimum standards on the allocation of cases were developed during the discussions at the meetings of the Project Team, which were scheduled as follows:

- 1) 1st meeting of the Project Team: 9-10 December, 2013 in Brussels (Belgium);
- 2) 2nd meeting of the Project Team: 17-18 February, 2014 in Warsaw (Poland);
- 3) 3rd meeting of the Project Team: 24-25 March, 2014 in Vilnius (Lithuania);
- 4) Meeting of the Project coordinators: 29 April, 2014 in Brussels (Belgium);
- 5) Presentation to General Assembly: 12 June, 2014 in Rome (Italy).

IV. Minimum Standards on Allocation of Cases

The aim of the Report is to elucidate the proposal on minimum standards regarding the allocation of cases, which have been discussed and agreed upon by the members of the Project Team during the meetings in Brussels, Warsaw and Vilnius.

In order to discuss and prepare a proposal for minimum standards, the Project Team decided to collect information on relevant national standards in the area of the allocation of cases from ENCJ members and observers.

The information was collected by receiving responses to the questionnaire (Annex II).

Responses were received from 17 members, 7 observers of ENCJ, Court of Justice of the European Union and the General Court.

The responses presupposed that there are a number of different procedures across Europe for the allocation of cases. These can be defined and determined by the size of the country, and therefore the number of cases; by the extent of Judge's jurisdiction; by the number and availability of Judges; and by the experience and specialization of the Judge.

In some jurisdictions, a case is allocated to a particular Judge and remains his responsibility throughout the proceedings. In others, a different Judge or Judges may manage the case.

The meaning of the expression “natural judge” was discussed during the sessions, and because it was not possible to find a common clarification and understanding it was decided not to use this expression in the report of the Project.

There was a long debate regarding the power of the president of a Court to list a case in front of a particular judge. According to the Project Team members s/he should be given criteria to apply in making such a decision in order to avoid a decision based on a value judgment being made.

During further discussions the Project Team jointly agreed that there is no need to mention anything about an external audit in the report, therefore no minimum standards relating to the audit of the allocation of cases were created.

Discussions raised the question of whether the individual characteristics of the judge should be taken into account while allocating a case or not. After long discussions the final decision was that every judge is a competent professional and that personal/individual features should not influence the quality of his/her work.

A further discussion was about the interactive composition of the panel. It was suggested that there should be consideration of this when the panel is being appointed as some panels may work more effectively together than others. However, the Project Team did not accept the proposition

that this should be considered. The main opinion was that the interaction between Judges appointed to a panel is not a matter within the scope of the project.

Discussion also surrounded the possibility that when Judges sit as a panel, the lead Judge or rapporteur may direct the decision, or even write it, and it may be agreed by other Judges without serious consideration or discussion about it. The position of the Project Team was that it should be the collective reasoning and decision of the panel.

Discussion ensued about the temporary or permanent replacement of Judges due to their unavailability through other professional commitments, health or holiday or for other reasons. It was considered that every individual country should develop a system of replacement of Judges which should comply with these minimum standards.

Summarizing all discussions, proposals and ideas, **11 minimum standards and indicators (where relevant) were created relating to the allocation of cases:**¹

1. All cases should be allocated on a basis that is compatible with Article 6 ECHR.

2. There should be an established method of allocation of cases. The method of allocation should be made available to the public. This method of allocation may be governed by statute, regulation or judicial or administrative practice.

- a) Is there a defined method of allocation of cases?
- b) Is the method for the allocation of cases publicly accessible?

3. The method for the allocation of cases should ensure the fair and time efficient administration of Justice, and the enhancing of public confidence.

- a) Does the method allocation of cases ensure the fair and/or time efficient administration of Justice?
- b) Does the method of the allocation of cases enhance public confidence?

4. The following principles and criteria to be applied in the allocating of cases should be taken in to account in all established methods of allocation, including administrative or electronic allocation, and allocation by a senior judge, Presiding Judge or President of a Court.

5. The principles and criteria to be considered in the methodology for allocating cases should be objective and include:

- 1) The right to a fair trial;**
- 2) The independence of the Judiciary;**
- 3) The legality of the procedure;**
- 4) The nature and complexity of the case;**
- 5) The competence, experience and specialism of the Judge;**
- 6) The availability and/or workload of the Judge;**
- 7) The impartiality of the Judge;**
- 8) The public perception of the independence and impartiality of the allocation.**

6. When considering complexity, it may be defined as including some or all of the following factors:

- 1) The number of parties or defendants;**
- 2) The number of witnesses;**
- 3) The value of the issue in question;**
- 4) The number of pages of the papers in the case;**
- 5) The extent of the dispute of facts;**
- 6) The legal issues involved;**
- 7) The number of expert witnesses;**
- 8) The estimated length of the trial;**
- 9) The interest of the media or public or profile of the case in so far as it impacts upon the logistics of the case.**

7. The method of allocation should be applied uniformly according to the criteria in paragraph (5); differences in the application of the principles and criteria may be required due to the nature of the jurisdiction, the size of the Court, the level of the Court and the judicial district where the case is heard.

- a) Is the method of allocation being applied uniformly?
- b) What are the differences and are they justified or necessary?

8. Allocation should be the responsibility of the President, Senior Judge of the Court or a Court Board, but the practical arrangements for the allocation of cases can be delegated to either another judge or a civil servant authorised for the purpose of the allocation of cases.

- a) Who bears the responsibility for the allocation of cases?
- b) Can the practical arrangements for allocation be delegated?

9. The motivation/reasoning for any derogation from the established method of allocation should be recorded.

a) Is the motivation/reasoning for any derogation recorded?

10. The method for the allocation of cases should comply with the principles and criteria set out herein whether the Judge is sitting alone or as part of a panel. When Judges sit as a panel it is the combined composition of the panel that should comply with the principles and criteria.

a) Does the method of allocation apply to both a single Judge and a panel of Judges?

11. The parties to a case are entitled to be informed about the allocation of the case at a time prior to the start of the hearing/consideration of the case that is reasonable taking into account the nature and complexity of the case, and the time by which the party has to exercise any right to challenge the allocation of the case to the specific Judge/Judges. This may be done in writing, electronically, or by the publishing of a Court list or any other means.

a) Are the parties entitled to be informed about the allocation of the case prior to the start of the hearing/consideration of the case?



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Project: Standards IV: Allocation of Cases and the Guarantees in Place (2013-2014)

Questionnaire concerning the allocation of cases to judges:

INTRODUCTION

In accordance with the recommendation of the Committee of Ministers of the Council of Europe, the allocation of cases within a court should follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge.

Taking into account the fact that a great variety of systems for determining the lawful judge exist across the Europe, the ENCJ has decided to examine these different systems and identify the relevant minimum standards in the field of allocation of cases and the guarantees in place. The standards will be accompanied by a set of indicators which will form a tool for self-assessment by judicial authorities.

This project focuses on the internal allocation of cases to judges within courts. The project does not concern competence rules (the distribution of cases between the different kinds of courts in a country or on the basis of territorial criteria).

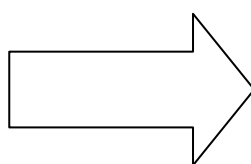
As regards the guarantees in place, the questionnaire is limited to those guarantees specifically designed to assure compliance with allocation rules. Minimum standards concerning more general guarantees, (e.g. recusal) having already been defined in other reports of the ENCJ, this questionnaire doesn't contain questions about these general guarantees.

PRIMARY ALLOCATION

RE-ALLOCATION

SUPERVISION AND CONTROL

LIABILITY/ ACCOUNTABILITY



REGULATION

SUBJECTS

MAIN PRINCIPLES

CONTRIBUTIONS OF MEMBERS AND OBSERVERS BY ANSWERING TO THE FOLLOWING QUESTIONS:

1. How is the allocation of cases regulated in your country (by law, internal rules of court, judicial practice, etc.) and who adopts / approves the rules of allocation of cases? Where these rules can be found and are they available to the public?

AUSTRIA

The right to a lawful judge guaranteed in Austria by the **Constitution** is closely related to the constitutional principle of fixed case allocation. The "lawful judge" guaranteed to anyone is specified by such case allocation. The detailed arrangement of these constitutional provisions is determined by **simple legislation** through various acts of law and regulations.

BELGIUM

- a. The allocation of cases is regulated by law and for each court there's a "special regulation" ("règlement particulier") laid down in a royal decree (articles 88 and following Judicial Code);
- b. The "special regulation" of each court is laid down in a royal decree, but in fact, it is prepared by the president of the concerned court. The advice of several other actors is required (The local public prosecutor, the local bar association, the prosecutor general and the first president of the court of appeal)
- c. The "special regulation" is posted up at the registry of each court and published in the Belgian Official Journal ("Moniteur belge"), which is available on the internet. Some courts have their own internet site on which these rules can be found.

BULGARIA

The basic principles and rules of allocation of cases are regulated by law – primary and secondary legislation. Judiciary System Act, Administrative Procedure Code and the Regulations on Court Administration (the latter is adopted by the Supreme Judicial Council) stipulate that cases are to be allocated within the courts on the basis of a random selection principle through electronic assignment following the sequence of their receipts. The random selection principle for allocation of cases in courts applies at the level of colleges or divisions where such are set up.

The existing legal regulation is scarce. That is why specific detailed rules of allocation of cases are provided by the Internal rules of each court. The Internal Rules have been adopted by the General Assembly of the judges at the respective court and approved by the administrative head of the court. The internal rules of court are published on the internet site of the respective court.

The analysis of these rules proves that they vary to a certain extent even for courts of one and the same type and level. The existing differences in the internal rules could be explained with some specific features: the size of court (small, middle, large; number of divisions); type of court (general or administrative); level of court (district, regional, appeal court, supreme court).

CROATIA

Article 43 of Court Rules Book regulates allocation of cases and it is published in Official Gazzete in the Republic of Croatia. Court Rules Book brings Minister of justice of Republic of Croatia. Based on those rules president of every court brings Annual plan of case distribution with the opinion of all judges of that court where allocation of cases is more specified depending of the type of cases which that court has jurisdiction on.

DENMARK

The allocation of cases is regulated by law. According to the Administration of Justice Act § 3 (The Supreme Court), § 7 (The High Courts), § 12 (The Districts Courts) and § 16 (The Maritime and Commercial Court), the president of the court makes decisions on allocation of cases and the administration of cases after discussions with the other judges in the court.

The rules in the Administration of Justice Act are published and are available to the public on the internet ([www. retsinformation.dk](http://www.retsinformation.dk)) or in public libraries.

ENGLAND AND WALES

There is a combination of methods of allocation depending upon the case and the Court, the guiding principle being to ensure that the case is heard by a suitably qualified Judge. Within each Jurisdiction there are rules which determine the level of the Court that is appropriate for the case, (the High Court and County Court Jurisdictional Order) and in the Crown Court a Practice Direction sets out the level of Judge required for different levels of case. The Order and the Practice Direction are published and available for the public to see.

GERMANY

The German court having jurisdiction for the location and matter is regulated by law.

The allocation of cases towards the judges depends on the individual choice of each German court. Each German court establishes a presidium composed of the president of the court and up to eight judges - depending on the size of the court.

The schedule of responsibilities can be inspected by the public at the court.

HUNGARY

In Hungary the allocation of cases is regulated by laws and other statutory provisions and also by internal rules of court, whereas the role of judicial practice is limited to the development of internal rules of court.

The case distribution regime is defined by the president judge of each court, at the latest – in accordance with the relevant legislation – by 10 December of the previous year. The case

distribution regime is adopted based on the opinions of the relevant chamber of judges and the relevant college of the given court; however, such opinions are not binding.

The substantive rules and criteria for the internal case distribution regime of a court may also be defined – within the framework of the law – by the Organisational and Operational Regulations of the given court.

IRELAND

Supreme Court: Section 8 of the Courts and Court Officer's Act 1995 provides that it is the function of the Chief Justice, or in his or her absence, the senior ordinary Judge of the Supreme Court to arrange the distribution and allocation of the business of the Supreme Court. Appeals are allocated dates in sequence when certified by the appellant as being ready for hearing. Appellants or respondents may apply for priority dates (for urgent matters) in a weekly management list held by the Chief Justice in public in open Court. The practice in this regard is published in Practice Directions available from the Supreme Court Office and the Courts Service website.

High Court: Section 10 of the Courts (Supplemental Provisions) Act 1961 provides that it is the function of the President of the High Court, or in his or her absence, the senior ordinary Judge of the High Court to arrange the distribution and allocation of the business of the Court. Successive Presidents of the High Court have, as a matter of practice, managed the caseload of the Court through a number of lists and delegated the management of each list to a Judge.

Circuit and District: In the Dublin Circuit Court the allocation of business among Judges of the Circuit Court is in general a function of the President of the Circuit Court following consultation with those Judges permanently assigned to Circuits.

In the Dublin Metropolitan District and in District numbers 19 and 13 the President of the District Court decides the allocation of business.

The jurisdiction of the District Court and the Circuit Court in terms of what cases may be dealt with in each Court is determined by legislation and / or Rules of Court, the allocation of cases to actual Court sittings is determined in most instances, as a matter of judicial practice which is exercise in general, in consultation with Court Registrars and staff of the Courts Service.

Central Criminal Court: The Central Criminal Court is the High Court exercising its criminal jurisdiction and deals with the more serious criminal charges such as murder, serious sex offences, treason, etc., the allocation of cases is determined by the senior High Court Judge assigned to the Central Criminal Court.

Special Criminal Court: The Offences against the State Act 1939, provides the establishment of the Special Criminal Court. The Court hears subversive/terrorism type offences, together with offences

where the Director of Public Prosecutions is of the opinion that the ordinary Courts are inadequate to secure the effective administration of justice. The Presidents of each of the Courts assign a Judge from a list of three or four Judges from each of their jurisdictions who are nominated to the Court by the Government from time to time

ITALY

Italy's Constitution enshrines the principles of establishment of judges by law (art. 25) and the requirement that judges be subject to the law (art. 101). With reference to the independence of judges (and prosecutors) in their offices, art. 107 of Constitution provides the principle of non transferability without a resolution by the CSM, or with their consent.

As regards the role of the CSM - responsible for the self-government of the category - Constitutional Court has underlined that management of the jurisdiction must reflect the guarantees of impartiality of the judiciary, unlike the organization of the administrative branch, that art. 110 of Constitution remits to the Ministry of Justice.

As a corollary to the above mentioned constitutional principles, there are the primary rules about the tables of judicial offices, aiming at regulating the allocation of individual magistrates and cases. CSM has introduced the sector-specific regulation by circular letters on the drawing up of the tables of judicial offices each three years, by virtue of a complex proceedings on impulse of Chief Judges that draft a document (tables) to be approved by CSM, on proposals of Presidents of District Courts after hearing Judiciary Councils). For prosecutors offices – owing to their hierarchal structure – the internal organizational projects, issued by the Chief, must be periodically assented by CSM.

All these internal rules can be found on the institutional site of CSM, under the link called “three of tables”.

LATVIA

Article 28¹ of the Law on Judicial Power stipulates that the president of each court is entitled and obliged to adopt Rules on allocation of cases of this specific court.

This Article of the Law reads as follows:

- (1) The president of the court before each calendar year adopts a plan for allocation of cases.
- (2) The president of the court might change the adopted plan during the year if:
 - a. the workload of a judge exceeds a normal (average) one;
 - b. the workload of a judge is too low;
 - c. a judge is leaving or arriving;
 - d. a judge can't perform his or her duties.
- (3) If a judge is involved in the self-governing institutions of judiciary, this shall be taken into account for allocation of cases.

All actual allocation plans can be found on the website of the courts www.tiesas.lv. Allocation plan of the Supreme Court is published on the website of the Supreme Court www.at.gov.lv. These websites are available to the public.

LITHUANIA

The Law on Courts, process laws and the Description of the Rules of Allocation of Cases to Judges and Formation of Judicial Panels (hereinafter referred to as “the Description”) approved by the Judicial Council regulates allocation of cases in Lithuania. All legal acts are published on website www.teismai.lt and accessible for the society. Moreover, having been obliged by the Judicial Council, chairmen of courts have drafted the rules for allocation of cases of a particular court based on the Description and other legal acts necessary to implement the Description.

MONTENEGRO

Allocation of cases to judges is regulated by the Law on Courts and Court Rules. On the proposal of the Ministry of Justice, the Law on Courts is adopted by the Parliament of Montenegro, while the Court Rules are issued by the Minister of Justice.

Both regulations are published in the Official Gazette of Montenegro and are available to all interested parties.

NETHERLANDS

Allocation of cases within the courts is a legal responsibility of the board of the court. This responsibility is mandated to the managers of the different teams within the court (article 20, sections 1 and 2, Organisation of the Judiciary Act). Therefore the topic can be categorised as internal rules of court. Policy on allocation of cases may differ between the courts. This is because allocation of cases is mentioned in the statutes of the courts, but only in the sense that court management is obliged to formulate policy for allocation of cases. The difference can be explained by the difference in size of the courts and the workload.

The assembly of presidents (a meeting of all presidents of the courts) has formed a Case Allocation Working Party within the courts that strives to draw up national Case Allocation Regulations that have to be elaborated further by each court and the different fields of law. The preferred type of allocation may differ between the fields of law. The Case Allocation Working Party within the courts completed a Case Allocation Code containing several general starting points. This is followed by a more specifically-formulated Model Case Allocation Regulation in which it is indicated per field of law how case allocation is to take place and the possible exceptions thereto.

NORTHERN IRELAND

The allocation of cases in Northern Ireland is a judicial function under the direction of the Lord Chief Justice as President of the Courts and Head of the Judiciary in Northern Ireland. He is

assisted in this role by the Presiding (senior) Judge for each judicial tier (including Coroners Courts). The allocation of tribunal sittings is a matter for Tribunal Presidents.

NORWAY

The Courts Act section 11 (courts of appeal) and 19 (district courts) states that the court president assigns cases between the judges. The same sections delegate to the Government to adopt regulations on how cases should be assigned. However, such regulations are not adopted.

POLAND

In general, allocation of cases to individual judges has been regulated in acts (governing judicial procedures – codes of civil, criminal and administrative court procedures) and in ordinances (including Rules and Regulations on Functioning of Courts of Law, issued by the Minister of Justice by the way of Ordinance). Detailed bylaws of particular courts are included in documents of “rules-and-regulations” type (Court President’s orders) and consider court practice.

Acts govern courts’ local and material competence and basic rules of allocation of cases to individual judges’ units (e.g. by way of lottery).

Division of courts into departments and rules allocation of specific category of cases to particular departments of the same courts is determined under ordinances of the Minister of Justice.

It is the court president’s discretion to decide about distribution of activities (duties) among particular judges (decisions on court department the judge shall be employed in, and on the scope of duties allocated to the judge; if, for example, a judge is entrusted with chairmanship of a department, or in case of splitting a department into sections, engaging a judge in a specific section determines the judge’s specialization).

Specific cases are allotted to a judge’s unit by the department chairman.

Rules arising from Acts and Minister of Justice’s ordinances are available in electronic collections of Polish Journal of Laws available in the Government Legislation Centre’s website at the webpage: <http://dziennikustaw.gov.pl/>

Internal bylaws (president’s orders) are not publicly available; however they must be disclosed on a party’s demand (as public information).

PORTUGAL

In Portugal the cases are allocated to judges placed in the same court according to criteria established in the law (203-213 of the Portuguese Civil Procedure Code).

ROMANIA

The random distribution of cases in courts is a legal binding rule in the matter of judicial organisation.

The principle of random distribution is regulated by art. 11 and art. 53 of the Law no 304/2004 on Romanian judicial organisation, and by the Internal Regulation of courts approved by the Decision no. 387/2005 of the Plenum of the Superior Council of Magistracy.

These normative acts are published in the Romanian Official Gazette as well as all the other normative acts and on the Council's web site. Moreover similar information referring to the distribution of cases in courts is available on the courts' portal, <http://portal.just.ro/SitePages/acasa.aspx>.

SCOTLAND

Cases are allocated by administrative practice. There are no published rules.

SLOVAKIA

In Slovakia, the allocation of cases is regulated by law (Act No. 757/2004 Coll.) The law regulates the mechanism of allocation of cases through the work schedule, which is a management act of the court president aiming to ensure the administration of the judiciary at each particular court for a particular calendar year.

When drafting the work schedule, it is requested to respect the principle of an equal workload of judges. The court president has an obligation to discuss the draft of the work schedule with judges and subsequently to present it to the council of judges of the particular court in order to discuss it including all the comments and reservations of judges. The work schedule is then published by the court president together with the comments and reservations of the council of judges. The court forwards the work schedule to the Ministry of Justice, which is to ensure the accessibility of information to the public via its web page.

SLOVENIA

The allocation of cases in Slovenia is regulated by law and by Court Rules. The Courts Act provides the general principle of case assignment and the Court Rules further specify the detailed application of this principle. Court Rules, adopted in 1995 and last amended in 2011 are a special by-law designed to implement the right to judicial protection established in the Constitution and to set out the detailed modalities of implementation of the Courts Act. It deals in particular with the internal organisation of courts, case allocation, contacts with the parties and court management issues.

SPAIN

Allocation of cases in Spain is regulated at several different levels. The basic principles and regulations are contained in the Organic Law on the Judiciary (*Ley Orgánica del Poder Judicial*), a piece of legislation which was passed in July 1985 and which has undergone several amendments since then (the last one was adopted in June 2013). The specific provisions of the Organic Law on the Judiciary which govern allocation of cases are articles 152, 160, 167, 168, and 170. Furthermore the Code of Civil Procedure (*Ley de Enjuiciamiento Civil*) currently in force in Spain (Law number 1/2000, adopted in January 2000) contains some general rules concerning the allocation of cases between the courts of the civil branch of the jurisdiction in its articles 68 to 70. The basic principles and rules governing allocation of cases of the Organic Law on the Judiciary and of the Code of Civil Procedure are developed by a regulation of the General Council of the Judiciary adopted in the exercise of its regulatory powers under articles 107.9 and 110 of the Organic Law on the Judiciary. Regulation number 1/2005 (adopted on September 15, 2005) on accessory aspects of the judicial activity, contains rules concerning allocation of cases in Spanish courts in its articles 17 to 28 and 34 to 37.

Pursuant to article 167.1 of the Organic Law on the Judiciary, the specific rules for the allocation of cases which apply to the individual judges/courts of first instance belonging to the same branch of the jurisdiction located in the same judicial district of the Spanish territory are approved by the Board of Governance of the respective High Court of Justice (which operates at a regional level) following a proposal by the Judges' Assembly for that judicial district. Once approved by the respective Board of Governance, the General Council for the Judiciary (and more specifically its Standing Committee) is formally informed of the rules of allocation applicable to each judicial district. The Standing Committee of the General Council for the Judiciary exercises a legality control concerning the contents of the approved rules or allocation and may annul those rules contrary to the general regulations and principles contained in the Acts of Parliament or Council Regulations dealing with this issue.

The same principle applies for the allocation of cases at the appellate level of the jurisdiction, where cases are adjudicated by panels of three or more judges who sit at the respective Provincial Court, High Court of Justice, National Court or Supreme Court. According to articles 152 and 160.9 of the Organic Law on the Judiciary the respective Boards of Governance are also responsible for the approval of the rules for the allocation of cases between the different sections or panels of a division of one of those collegiate courts. Moreover, the respective Board of Governance must approve annually, on the basis of objective criteria, the rules for the assignment of judges to each section or panel of the collegiate courts and the rules for the allocation of the cases to the judges who act as rapporteur within each panel. In collegiate courts, the President of the respective court is responsible for the specific allocation of cases between divisions of the same jurisdictional order and among their sections or panels pursuant to the rules approved by the Board of Governance.

The rules on allocation of cases contained in the pieces of primary legislation and in the regulations adopted by the General Council for the Judiciary are available to both court users and the general public through the Spanish Official Gazette (*Boletín Oficial del Estado*), since these pieces of legislation must be published in the Official Gazette prior to its entry into force. All these pieces of primary and secondary legislation are also available on the web page of the Spanish Council for the Judiciary.

As regards the specific rules for the allocation of cases approved by the respective Boards of Governance of the High Court of Justice, National Court and Supreme Court, these rules must be “sufficiently publicised”, pursuant to article 159.2 of the Organic Law on the Judiciary. Article 26.1d) of Regulation number 1/2005 on accessory aspects of the judicial activity stipulates that the rules for allocation of cases adjudicated by the Supreme Court, the National Court and the High Courts of Justice must be published in the Spanish Official Gazette, whereas the rules of allocation of cases adjudicated at the first instance (by individual judges/courts) or by Provincial Courts must be communicated to the Bar Association, Law Society and Prosecutor’s Office of the respective judicial district and displayed in the notice board of all the involved courts, so that both legal practitioners and court users (or the general public) can have access to them.

SWEDEN

The foundation of allocation of cases is regulated by law or regulation, but the closer regulation is established in internal rules of each court. The basis of allocation of cases in the first instances can be found in the Ordinance Containing Terms of Reference for the District Courts and the Ordinance Containing Terms of Reference for the Administrative Courts.

The basis of allocation of cases in the second instances can be found in the Ordinance Containing Terms of Reference for the Courts of Appeal and the Ordinance Containing Terms of Reference for the Administrative Courts of Appeal.

The basis of allocation of cases in the supreme courts can be found in the Ordinance Containing Terms of Reference for the Supreme Court and the Ordinance Containing Terms of Reference for the Supreme Administrative Court.

These regulations states that the allocation of cases is regulated in the internal rules of the court. It also states that random allocation of cases is to be used but that exemption from this may be made for cases or matters of particular kind, for cases or matters from a particular part of the district, for cases or matters which are so linked they should be handled in the same department, and to achieve an allocation of cases and matters between the courts judges that meet the requirements of the regulation and otherwise appears plausible. The internal rules of a court are not made available to the public.

Below you can see two examples from internal rules of court.

Example from the internal rules of a district court

The basis of allocation of cases is that these will be distributed equally among the departments. Exceptions may be made for cases that according to Annex is to be allocated to a specific department, cases linked with cases already handled in a certain department, for some special cases that are allocated to certain judges according to the chief judge's decision.

A case that has been remanded shall be handled by a different judge than the first time.

The chief judge may decide on temporary deviations from the internal rules of allocation of cases. The senior judge can decide on the allocation of cases within the department. Objectivity should be exercised in reallocation.

Example from the internal rules of an administrative court

New cases are allocated equally between the departments in the order they are filed.

This does not apply to cases that are so interrelated that they should be handled by the same department. For those cases the lowest case number determines the allocation.

A case that has been remanded shall be handled by a different judge than the first time. The senior judge can reallocate cases due to backlog, workload or staffing.

TURKEY

In the procedural laws based on the articles of the Constitution mentioned below and in the laws referring the composition of courts, the case types and the works that judges and courts shall deal with are explained in detail. Within this scope, the following articles and provisions of Turkish Constitution (numbered 2709) are significant;

In **the article 9** titled “**Judicial Power**”; “Judicial power shall be exercised by independent courts on behalf of the Turkish Nation.”

In **the article 37** titled “**Guarantee of Lawful Judgement**”; “No one may be tried by any judicial authority other than the legally designated court. Extraordinary tribunals with jurisdiction that would in effect remove a person from the jurisdiction of his legally designated court shall not be established.”

In **the article 138** titled “**Independence of the Courts**”; Judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, law, and their personal conviction conforming with the law.

No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions. No questions shall be asked, debates held, or statements made in the Legislative Assembly relating to the exercise of judicial power concerning a case under trial.

Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution.”

In **the article 142** titled “**Organisation of Courts**”; “The organisation, functions and jurisdiction of the courts, their functioning and trial procedures shall be regulated by law.”

Written based on the Constitutional principles, the Law 5235 regulates the establishment, duties and powers of first instance courts of civil and criminal justice & regional court of justice, which clearly lays out the borders of the duties and competence. In addition to this law, Law 5271 on Code of Criminal Procedure (regulating criminal courts), Law 6100 on Code of Civil Procedure (regulating civil courts), Law 2577 on Code of Administrative Procedures (regulating administrative courts). The cases are allocated in accordance with these laws and compatible regulations.

2. What are the main principles and aims of the allocation of cases? Please explain in few words every principle and aim?

AUSTRIA

The right to a lawful judge guaranteed in Austria by the Constitution is closely related to the constitutional principle of fixed case allocation. The "lawful judge" guaranteed to anyone is specified by such case allocation.

According to material and local criteria (e.g. according to the defendant's domicile), the law determines which Austrian court shall be seised to decide a specific matter. Within the competent court, case allocations according to objective and material criteria determine which judge should handle the case. A panel of judges (Personalsenat) allocates all court cases among judges for which each court is competent under the law one year in advance (case allocation year) in such matter as to achieve as **uniform a workload** for all court judges as possible, while taking into account any **substitution** or **administrative tasks**, and **ensuring jurisdiction** in line with the **legal protection requirements** of the citizens.

BELGIUM

The regulation of each court indicates the number of chambers, the number of judges in the chamber (one or three) and their competence. If necessary, it also determines the distribution of cases between judges of inquiry (“juges d’instructions”). The president of the court has to distribute the cases in accordance with the regulation of the court (art. 90 Judicial Code).

The aim is to allocate cases to their “natural judge” in an objective and verifiable way and to assure the correct administration of justice

BULGARIA

The main principle of allocation of cases reads as follows: cases are allocated within a court on the basis of the **random selection principle** through electronic assignment following the sequence of their receipts.

The abovementioned principle for allocation of cases is introduced in order to ensure:

- a) impartial and unbiased justice;
- b) uniformity of the work-load and balancing the caseload amongst judges.
- c) efficiency of courts, including organization of court activities;
- d) transparency of court's performance, thus reducing suspicions of corrupt practices

CROATIA

transparency in the allocation of cases
equal workload

DENMARK

It is a main principle that equal types of cases are allocated in a desultory way, without relation to the parties or any other relations.

The arrangement for allocation varies in practice from court to court.

The main principles are based on topical and numerical allocation. The aims are to secure that judges get an even and fair number of cases, and that cases in special topics are handled by judges with experience and special knowledge within this topic. To prevent accumulation of cases and waiting time, cases can also be allocated after the principles of "first judge/panel available".

Most courts use a case management system where new cases are distributed to judges according to a point system so that the workload is distributed evenly among the judges. As a rule of thumb, all cases are distributed on an equal and random basis solely on the merit of the sheer numbers and order in which they are received. Afterwards, redistribution among judges might occur in order to correct for variations in case complexity.

ENGLAND AND WALES

The aim is to ensure that each case is heard by a Judge with suitable expertise and experience, in as time effective a manner as possible bearing in mind the complexity of the case.

GERMANY

The aim of the allocation of cases is to ensure the legally competent judge due to Article 101 clause 1 phrase 2 Grundgesetz (Basic Law for the Federal Republic of Germany) and to ensure that

the caseload is equally distributed. Inadequate influences on these principles shall be excluded from the allocation of cases.

When establishing the allocation of cases the presidium has a large freedom to act. But in order to fulfil the aims mentioned above some basic principles have to be applied:

- Principle of completeness

All cases and responsibilities of the court have to be allocated upon the chart and each and every judge has to be placed in the allocation.

- Principle of abstraction

The cases and responsibilities have to be allocated due to common, abstract, objective characteristics so that it can be pointed beforehand who is the judges in charge.

- Principle of definiteness

The judges in charge are to be pointed as precise and clear as possible

- Principle of annuality

The schedule of responsibilities has to be clarified beforehand for one year.

- Principle of continuity

Changes to the schedule of responsibilities within the business year have to an exception.

- Principle of forward effect

All the responsibilities have to be scheduled beforehand. Retroactivity of the schedule of responsibilities is not allowed.

- Principle of validity

The schedule of responsibilities comes into effect without further decision and is binding as long as the chart exists.

HUNGARY

As can be seen from the statutory provision quoted above, the main principles of case distribution are not addressed separately. However, in accordance with international standards and recommendations (European Convention on Human Rights, Bangalore Principles, etc.) and with the relevant statutory provisions, these principles and aims can be clearly identified on practical terms:

- enforcement of the right to a legal judge
- enforcement of judicial independence
- enforcement of judiciary integrity
- access to courts
- balancing the workload of judges
- participation of the self-governing bodies of judges.

IRELAND

The principal aim is the efficient and fair administration of justice.

ITALY

The system of the allocation of cases - called "*tables law*" - rules through: **a)** the division of judicial office in sections and the composition of boards of judges or chamber of court within each section; **b)** the allocation of direction and coordination places; **c)** the criteria for the allocation of judges; **d)** the criteria, *objective and pre-determined*, for the allocation of cases; **e)** the criteria for the replacement of judges in the eventuality of temporary absence or refusal.

LATVIA

Main principle is to ensure the objective right to an efficient proceeding and an impartial tribunal as stipulated in the Constitution of Latvia and insured by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Main principles applied are:

- use of the computerised data base (Tiesu informācijas sistēma);
- randomness - the cases are allocated to the judges by a certain pre-established order;
- maximal exclusion of conflict of interests both procedural nature (because a judge has participated in previous examinations of the same case or in previous procedural decisions); and private nature (conflict of interests of a judge)

specialization of judges – for certain courts the presidents have chosen to take into account the specialisation of judges.

LITHUANIA

Under article 36 paragraph 9 of the Law on Courts in all instances the cases shall be allocated to judges and judicial panels so as to ensure the right of the parties to the proceedings and participants of the hearing to independent and impartial court. Under the paragraph 2 of the Description allocation of cases is based on principles of impartiality, transparency, independence, and hearing efficiency.

Cases shall be allocated using the Cases Allocation Module of the courts information system LITEKO (paragraph 3 of the Description).

MONTENEGRO

Case allocation in Montenegro is conducted by a random assignment of cases. This method uses a mathematical algorithm- principle of random selection of the judge, who gets the case in the Judicial Information System (JIS), and is deprived of any possibility of human impact to the allocation of cases.

Of course, the parameters prescribed by the Law and Court rules are entered in the JIS, and respecting the criteria for the assignment of cases, the method of random allocation of cases, the

case and the judge are connected. In this way the allocation of a certain case to a particular judge or judges are disabled, i.e. assignment of cases to judges without order. This method fully achieves the rule that cases which are received daily should be assigned to judges at the same time. This is of course possible due to use of a JIS, as a system that actually performs the random allocation of cases.

NETHERLANDS

Allocation primarily seeks alignment between, on the one hand, the knowledge and experience required for the handling and settling the case and, on the other hand, the knowledge and experience present within the team. Attention is also devoted to the availability of the relevant judges in connection with the current workload.

- If facts and/or circumstances are known as a result of which the allocation of a case to one or more specific judges/justices could harm judicial impartiality (for example a party has a seat on the board of an institution together with the judges), allocation will naturally not take place.

NORTHERN IRELAND

‘Ensure optimum deployment/allocation of work at the appropriate judicial tier’ (Business Plan 2013/14 – Lord Chief Justice’s Office).

NORWAY

Impartiality:

Since the allocation of cases is not regulated by law, the main principle from Norwegian judicial literature is a basic requirement that only objective consideration can be used. Aside questions of judges impartiality the allocations should be made in a way that would not matter for the parties who will be the judge in a case.

Although not stated in the statutory provisions the principle of random assignment prevails in the Norwegian courts due to long and firm practice. Cases are mainly assigned according to a set of firm rules and not by the discretion of the court president.

However, the principle is not carried out to the extent that random assignment is done electronically through the case management system.

POLAND

Basic principles for allocation of cases:

Principle of delivery order: cases delivered to a department (the court internal organizational unit) are assigned to particular judges according to delivery order and alphabetical list of the department’s judges.

Principle of allocation of cases by a department's chairman: allotting a case to a judge is determined by department chairman. In the first instance court only a reporting judge is appointed. In second instance court, in an order on indicating of a date of the hearing, the department chairman appoints a rapporteur judge (potentially also other members of the adjudicating panel, if the case is to be settled by a panel of few people). In the court of second instance a department chairman may be guided by judges' specialization – e.g. in civil department of appeal court there are settled typical civil cases, family cases and business cases, i.e. very wide scope of the cases, so individual judges' preferences in respect to type of allocated cases may be taken into consideration, which means allocation of cases beyond delivery order, but according to the judges' specialization. However, it is justified by difficult and complex character of cases settled on the level of appeal court and by necessity for judges' specialization.

Principle of exceptional character of abandoning delivery order principle: the general principle of delivery order may be deviated from only in exceptional circumstances (e.g. long-lasting judge's disease, mutual connections of various cases that all must be settled by the same judge, workload of a judge's unit – which regards type and weight of cases, necessity of judges' equal workload, functions performed by a judge, rules and principles determined by a court president/court body). Reasons for deviation from the principle of delivery order must be indicated in the order on allotting a case to a particular judge's unit.

Principle of urgent issues' priority: certain type cases (e.g. motions for temporary arresting, issues of arrested and imprisoned persons, criminal cases under the risk of crime punishability limitation, applications for granting claims securing/issuing interim order in family and care cases, cases on possession protection, cases on reinstatement) may (sometimes must) be settled beyond delivery order; application for detention in preparatory proceeding, after court working hours and during non-working days, a directly delivered to judges who are performing so called "arresting" duty.

In particularly justified cases a department chairman may order settlement of particular type case(s) beyond delivery order.

Principle of judges' list transparency: list of judges of a particular court or department is transparent for parties (e.g. it is made available at the chief of department secretary office; some courts are publishing the list of each department's adjudicating judges in web pages).

Principle of adjudicating panel's invariability: changing a rapporteur judge in the course of hearing the case is admissible or possible only in exceptional circumstances (e.g. long illness, retirement of a judge, promotion to a higher court, moving to another court, secondment to the Ministry of Justice).

Principle of proceeding transparency: allocation of cases to particular judges and potential change of the appointed judge must consider citizen's right to hear the case without unjustified default.

PORTUGAL

The main principles and aims of the legal rules for the allocation of cases are, on the one hand, to ensure there are no doubts about the independence and impartiality of the judge and, on the other hand, an equitable distribution of work among the judges serving in the same court.

ROMANIA

The Law no. 304/2004 regulates the principles in this matter namely, the principle of random distribution of cases and the principle of continuity, as follows:

Article 11 – The judgment activity shall take place with the observance of the principles of random distribution of cases and of continuity, unless the judge is unable, for objective reasons, to participate in a trial.

Article 53 – (1) The distribution of cases to panels of judges shall be carried out randomly, in computerized system.

(2) The cases distributed to a panel cannot be transferred to another panel, except under the conditions laid down in the law.

The main objectives of the random distribution of cases are the following:

- granting an equitable case settlement according to the principle of the right to a fair trial, provided both by the national and European legislation;
- granting the observance of the judicial ethics in the limits of the values important for the judiciary, trust and freedom. Therefore the incompatibilities and interdictions provided for judges are regulated within an organic law and by the Deontological magistrates' Code.
- preventing corruption and granting the integrity, rightfulness and accountability of the judicial activity;
- granting the impartiality of the judges' activity in terms of carrying out an objective judicial activity, according to the national legislation;
- granting a balanced distribution of the workload in courts for an enhanced quality of the judicial activity and an increase of the efficiency.

SCOTLAND

The main aim is the efficient and expeditious hearing of cases, by allocation to judges available to hear them, in accordance with the principle of the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal contained in Article 6 of the ECHR.

SLOVAKIA

Allocation of cases aims to ensure the optimal conditions for administration of justice at the particular court in order to secure timely court proceedings, which is stipulated in Article 6 (1) of the Convention and Article 48 of the Constitution of Slovak Republic.

The main principles are such as thorough respect of ensuring the constitutional right of a citizen to a lawful judge and at the same time in the interest of quality and timeliness of the proceeding to ensure the equal workload of judges and court staff, which participate in administration (decision-making) of justice.

SLOVENIA

The Courts Act provides the general principle of case allocation, whereby cases are allocated to individual judges, depending on the legal field to which they have been assigned to work in the court, according to the daily succession of filed initial procedural acts, taking into account the alphabetical order of initial letters of the judges' surname. The Court Rules further specify the detailed application of this principle, for instance when several procedural acts are filed on the same day or when the judges' respective workloads or the urgency of a given case are to be taken into account.

SPAIN

The main principles and aims of allocation of cases, according to the relevant provisions of the Spanish Law on the Judiciary and Regulation number 1/2005 on accessory aspects of the judicial activity are:

- a) Ensuring equal (or similar) workload among every individual judge/court or panel of judges of the same judicial district. Equal or similar workload among all the judges/courts of the same judicial district directly contributes to the efficiency of the judicial system as a whole.
- b) The random assignment of all cases belonging to all categories, in order to avoid any kind of manipulation that may infringe the principle of the legally predetermined (natural) judge, which is enshrined in articles 24.2 and 117.3 of the Spanish Constitution.
- c) The assignment of specific cases to specialised judges/courts (in matters pertaining to family law, commercial law, domestic violence, etc.) when these specialised judges/courts exist within the respective judicial district. The adjudication of cases by specialised judges in specific areas of the law contributes to increase the quality of the judicial response.

SWEDEN

The cases are randomly divided between the courts different departments in the order they are filed. They are then randomly divided between the judges in each department. The goal is to achieve equal allocation between the courts departments and judges without irrelevant considerations.

TURKEY

Allocation of files is carried out according to provisions of the related legislation based on the articles 9 & 138 of Turkish Constitution, which regulate the independence of courts, and the article 37 on tenure of judges.

3. What criteria are applied for the allocation of cases?

AUSTRIA

According to **material** and **local criteria** (e.g. according to the defendant's domicile), the law determines which Austrian court shall be seised to decide a specific matter.

Within the competent court, case allocations according to **objective** and **material criteria** determine which judge should handle the case. A panel of judges (Personalsenat) allocates all court cases among judges for which each court is competent under the law one year in advance (case allocation year) in such matter as to achieve as uniform a workload for all court judges as possible, while taking into account any substitution or administrative tasks, and ensuring jurisdiction in line with the legal protection requirements of the population.

Court matters, in which evidence has already been taken, shall **remain in** the **court departments** which so far have conducted them. Court matters, in which a legal remedy has already been decided upon, shall be allocated to the **same panel** if a new legal remedy has been raised.

Such procedures exclude any extraneous influences upon the selection of the competent judge for any specific court matter.

During any case allocation year, case allocations may **only be changed for important official reasons and only by a competent panel of judges** (Personalsenat). A case in point would be a change of personnel (replacement of judges, lengthier leave of absence or illness), due to workload or low utilisation of individual judges or panels, or for other important reasons. Changing the management or substituting a court department shall be restricted to inevitable cases, e.g. if by such substitution – not just in the short term – workloads are no longer allocated in an equitable manner. If within a court a judge relocates from one department to another, the case allocation has to be changed so that such judge retains those court matters in which he has already taken evidence.

BELGIUM

Specialization: the allocation of cases to a chamber specialized in specific matters contributes to legal security, unity of jurisprudence and swift administration of justice.

- nature and importance of the case: the law prescribes that certain cases have to be judged by a chamber of three judges (art. 92 and 109bis Judicial Code). Other cases are normally allocated to a chamber of one judge, but parties can ask a referral to a chamber of three judges. Three judges are considered to give more authority and legitimacy to the judgement.

- workload of a particular chamber and complexity of a case: In case of necessity (“Lorsque les nécessités du service le justifie”) the president of the court can establish one or more temporary chambers (art. 90 Judicial Code) or allocate a part of the cases of one chamber to another chamber.

BULGARIA

The electronic program applied by the courts provides fully random allocation of cases. The principle used in the computer program renders an account of all the cases allocated so far by their specification and provides for evenness and fairness of workload.

Allocation is done by the sequence of the receipts of the cases.

Allocation is carried out with regard to specialisation of the judges in those courts where units as colleges, divisions are set up.

Each case is allocated to a reporting judge.

The administrative head of the court defines the initial information introductory to the computer program after a decision of the General Assembly of the judges: types of cases (groups according to complexity and specificity of cases), names of reporting judges, percentage of workload of each judge.

The computer program provides 4 options for selecting the reporting judge: a) “random choice”; b) “personal choice” – specific judge is appointed; c) “does not participate”; d) “on duty” option.

- **“Random choice”** – this is the general rule applied. When this option is chosen the computer program takes into account the number of cases allocated to each judge up to that moment depending on the percentage of workload and distributes the cases among the judges evenly.

The next 3 options are exceptions to the principle of random allocation of cases. The Internal Rules specify the occasions when one of the following options applies:

- **“personal choice”** – the case is allocated to a specific judge. The occasions are various depending on the subject matter and the type of proceedings and they stem from legislation. Examples: a) Upon termination of proceedings and returning the criminal case to the prosecutor

for further investigation, in subsequent resubmission of the same criminal case by the prosecution office to the court, it shall be assigned to the initially appointed judge; b) In civil or administrative procedures the judge can dismiss a case by issuing an order whereby the claim or the appeal or the protest is left without examination, the order could be appealed before the higher court and if the order is reversed, then the case is allocated to the initially appointed judge.

- **“does not participate”**- the case is allocated on the random choice principle with the exclusion of a particular judge or judges. Examples: a) In case a judgment is reversed by the upper instance the case is sent back to another judge/panel of judges of the same court. The case is randomly assigned without the participation of the reporting judge/panel of judges, who have delivered the overruled judgment. b) This option is applicable also in case of absence of judges - paid annual leave, unpaid leave, sick leave, business trip for a long time.

- **“On duty”** – the case is assigned to the judge/s who are on duty for a specific day or week; detailed rules about drawing the schedules of judges on duty are specified in the Internal Rules of a court.

CROATIA

In cases of manual allocation cases are allocated to judges by presidents of courts, and in courts where departments are established they are assigned by department presidents. The method of case allocation is strictly determined by the Court Rules Book, in the way that cases are grouped alphabetically according to parties against whom the proceedings are initiated (defendant, debtor, etc.) and then so grouped cases are allocated to judges alphabetically. Court presidents shall determine equality of judges' workload every three months.

DENMARK

The main criteria are:

- Number/points – the normal procedure is that cases are distributed randomly to judges as they as they are received at the court. As a second step, redistribution may occur for instance to take complexity into account
- Topic/specialization
- Availability/workload

ENGLAND AND WALES

The general criteria applied for every case is the nature and complexity of the case, and the experience and expertise of the Judge. Those criteria dictate to which level of Court and which level of Judiciary within that Court the case is then allocated. Please see below for more detail.

GERMANY

Different distribution systems (and often a mix of the systems) are in service – the distribution due to initial letters, the address of the participants, due to fields of law, the time of entry or due to the judge/panel of the court of lower instance.

HUNGARY

It must be pointed out, first of all, that court secretaries are entitled to handle certain types of cases (e.g. misdemeanour and enforcement cases), and consequently, court secretaries are also to be included in the case distribution regime in addition to the judges. In drawing up the annual case distribution regime, the following criteria shall be taken into account and applied, in due consideration of the statutory provisions referred to in point 1 as well:

- a. the procedure for adopting the case distribution regime, the mode of publication, and its scope;
- b. the appointment of a person placed in charge of making decisions relating to case distribution, and the scope of authority of such person;
- c. as regards the judges (court secretaries) involved in the process of case distribution:
 - a. the names and register numbers of persons acting as a single judge (court secretary), or sitting in a chamber as a member or as the presiding judge,
 - b. the types of cases which can be allocated to the single judge (court secretary) or the chamber of judges, where the designation of the case type used for statistical records should be indicated. Moreover, other objective factors could also be specified in that context. The latter is particularly important in connection with cases which can be heard only – according to the relevant legislation – by judges designated therefore (e.g. the criminal cases of juvenile offenders).
 - c. the court days of a judge;
 - d. the available capacity of acting judges (court secretaries) and chambers of judges – in determining the number of cases to be allocated, the capacity of the judge should be determined beforehand (e.g. inexperienced judge, part-time judge, judge assigned to another court as well). For this purpose, the number of cases in progress of the judge shall or should be taken into account, including also the complexity of cases in terms of time, and the number of cases that were given priority. Furthermore, the number of assistants assigned to a judge may also be considered, i.e. if a judge is assisted by a court secretary and/or a court administrator, the number of cases assigned to the judge may be increased, also in terms of complexity.
- d. provisions and limitations prescribed by procedural regulations in connection with case distribution (for example, a case that was previously dismissed should not be heard by the judge acting in the first instance);

e. the process of case distribution – the administrative process is beginning when the case is received, it ends when the case is assigned to a judge. This covers the duration of presentment for allocation, the persons involved in dealing with the case and their scope of responsibility, and the nature of the records and documents maintained;

f. the cases of derogation from the pre-determined case distribution regime and the related process – means of handling extraordinary situations (e.g. long-term absence or unexpected detainment of a judge);

g. the method of case distribution – the method designed to ensure the objective distribution of cases by an automatic process. Automatic case distribution does not necessarily mean a computer-aided process, it does, however, ensure that it is independent from the executive's ad hoc and subjective decision. On the other hand, it should be possible to make decisions on a case-by-case basis, in a way so that it can be verified to the judge and to the clients.

IRELAND

Supreme Court: Readiness and degree of urgency on the basis that a case has been made that the matter is urgent e.g. where a criminal trial is being held up by intervening proceedings, a family law matter or where a point of law is in issue. The determination of which has systemic consequences.

High Court: Cases are assigned to Judges in turn within the aforementioned list system. In particular instances cases may be allocated to Judges with specialised expertise in particular areas of litigation.

Circuit and District Court: See reply to question two above. An additional criteria which applies to the allocation of cases is the availability of Judges to hear the cases.

ITALY

The criteria are above mentioned sub. d).

The general provisions are ruled by CSM in compliance with the pre-established criteria of primary law. The practical execution is demanded to Chief Judge and falls within the management of office: discretionary criteria are forbidden and each derogation/variation has to be motivated.

LATVIA

Cases are allocated in numerical order to all available judges in the system (computerised system). A judge might be excluded from the list if there is objective obstacle for him being appointed as a judge (he or she has previously been involved in the case) or if he or she has stated that there will

be subjective conflict of interests, or if a judge is absent for longer period (training, illness, vocation).

There might be sets of cases which are excluded from the general list, because they have certain (very short) deadline.

Specialization can be taken into account in allocation of cases.

In case there are connected cases, these will be allocated to the same judge.

LITHUANIA

When allocating cases or forming judicial panels, due account shall be taken of:

- The specialisation of judges (if it is established in a court),
- The deadlines for hearing certain categories of cases established by the law,
- Even distribution of the workload,
- The complexity of cases,
- The rotation in the composition of judicial panels determined on the basis of the maximum duration of activities of the judicial panel of the same composition,
- The closest possible date of a court hearing,
- The prohibitions provided for in the laws for a judge to hear a particular case,
- The circumstances constituting the grounds for the removal or opting out of judges,
- The cases of temporary incapacity for work, sick-leave, refresher courses, secondment, or other cases where the judge is not able to hear cases.

MONTENEGRO

The criteria for the allocation of cases to judges are:

- The type of the dispute
- The number of cases per judge
- Whether it is a new case or a case that was on the appeal.
- Whether one of the judges were disqualified from hearing a case.

NETHERLANDS

There are no criteria formulated in the law. as mentioned above, policy with regard to allocation differs between the courts. However, the policies of the courts do have a number of points in common: - General deployability: All cases can, in principle, be allocated to all judges. - Allocation based on categories: Categories of cases can be allocated within a team to a specific judge or groups of judges in connection with the (build up of) experience and specialism. This is done by judges with a management task.

- Random allocation: Individual judges cannot influence the allocation of individual cases. For the purpose of a proportionate distribution of the workload within the teams, cases are allocated taking into account the time for handling the case and the working hours required. Cases are planned for the next possible hearing in the order they are received with due consideration of the above. Managers do not influence the allocation of cases in a substantive manner.

- (Non) allocation in connection with previous involvement. Certain groups of (follow-up) cases are not allocated to a judge who previously handled the case. For example, the judge in interlocutory proceedings generally does not handle the proceedings on the merits between the same parties. Certain groups of other (follow-up) cases are precisely allocated to the judge who previously handled the case. In this connection, think for example of juvenile and family law cases (whereby the same judge often monitors the parties involved).

NORTHERN IRELAND

-To achieve performance standards set by the Lord Chief Justice (criminal business) and by the Northern Ireland Courts and Tribunals Service (civil, family, Coroners Service and, where appropriate, Tribunal business). A Case Management Team has recently been established within the Lord Chief Justice's office to support this process. Similarly Case Progression officers have recently been appointed within the Courts and Tribunals Service to perform the same function.

-To comply with Practice Directions and Sitting Directions issued by the Lord Chief Justice and any other internal guidelines issued by other judicial office-holders.

-To maximise the deployment of judicial specialist knowledge and experience to meet the demands presented by each case taking into account judicial workloads.

-To facilitate the level of readiness of the parties in each case and their legal teams.

-To meet the needs witnesses and victims involved in each case.

-To meet the needs of all other court users involved in each case.

-To comply with any case specific courtroom accommodation/IT requirements.

NORWAY

Mainly the allocation should be made occasionally. When depart from the criteria only objective considerations can be used.

POLAND

Besides allotting cases to judges by delivery order, on the basis of alphabetical list of the department judges, the department chairman considers rules of cases allocation referred to in point 2 as well as, *inter alia*:

a) rules determined by the court's president/body (determining detailed criteria of allocation of cases to judges, if those criteria have not been determined under higher law provisions);

b) other circumstances, such as: the judge's sickness, granting a vacation leave or health-improvement leave, mutual connection of cases which therefore must be settled by one judge, workload of the judge's unit including type and weight of cases, necessity for equal workload for judges, functions performed by the judge, secondment to another court.

Moreover:

a) In criminal proceedings, when the indictment contains charge of committing a crime subject to 25-years imprisonment or life-imprisonment, upon public prosecutor's or defendant's request adjudicating panel is selected by the way of drawing, during which they may be present. The prosecutor may file the application within 7 days upon filing the indictment to the court, and the defendant – within 7 days from providing him with the indictment (Art. 351 §2 of the Criminal Proceeding Code);

b) As regards proceedings before administration courts, drawing of adjudicating panel members takes place in respect to cases delivered to the court for judicial reconsideration, in case of excluding the judge in case of application for resumption of proceedings. The rapporteur judge may apply to the court president for appointing adjudicating panel by the way of drawing, if it is particularly justified (similar rules apply in respect to proceeding before Supreme Administrative Court);

c) The court president may appoint an additional judge for hearing in the case of probability of long hearing duration. If necessary, two additional judges may be appointed; then order of their participation in council and voting must be indicated. An additional judge participates in the council and voting if one of judges cannot participate in the adjudicating panel. Similar rules apply to jurors (Art. 47 and 171 of the Act – Law on System of Courts of Law).

PORTUGAL

According to the law, cases are previously separated by species concerning, inter alia, the subject and the economic value of the same, proceeding then, within each species, to the distribution by lot to several judges, thus ensuring randomness into the result.

ROMANIA

The random electronic distribution of cases in courts carried out exclusively through the ECRIS system represents a unitary manner, countrywide, of distributing cases in courts.

The main criteria taken into account when applying this computerized system, in order to observe the main objectives for granting the effectiveness and efficiency of the judicial activity, are the following:

Cases/files are registered in courts observing the date of their arrival and are being distributed following their chronological order. Moreover, other criteria taken into account are the field of law

the case is referring to, the specialization of the judges, the urgent character of the solicitations/requests, judges' workload and the complexity of the cases.

Referring to the complexity of cases, there are several sub-criteria that are taken into account, according to ECRIS system. as follows: the number of parties, the secondary objects of the case², number of the volumes³/the quantity of documents available within a file.

SCOTLAND

In the Court of Session/High Court of Justiciary, subject to what is said in answer 4 below in relation to specialisation, when a civil case is to be heard or a criminal trial is due to start it will be allocated to a judge who has time available to hear it, and within the group of judges available no particular criteria are applied for allocation of cases to be heard. In the Sheriff Courts, subject to what is said in answer 4 below in relation to specialisation, no particular criteria are applied for allocation of cases to judges. As in the Court of Session/High Court, availability is a factor, particularly in relation to the allocation of potentially lengthy cases. The allocation of cases in the Sheriff Courts is carried out within a system of court programming in which in general cases are allocated to programmed courts and court sittings and judges are allocated to the courts and sittings. In general individual cases are not specifically pre-allocated to particular judges. (However, in some small Sheriff Courts only one judge may normally be available to deal with cases.).

SLOVAKIA

The law regulates the obligatory requirements of the work schedule. The work schedule shall contain:

- a) determination of panels and single judges to deal with the particular cases, that appear before the court
- b) composition of panels
- c) determination of the way of substituting (representing) panels and single judges
- d) means and conditions of making changes in the work schedule
- e) way of case allocation when use of technical means is impossible
- f) schedule of service of single judges and panels as well as the way of their substitution
- g) setting the maximum difference in the amount of the allocated cases between the panels and single judges
- h) classification of judges to the particular boards and colleges, classification of court assistants and other court staff, that fulfils duties within the justice administration
- i) way of instructing the notary with the acts in the succession proceeding.

² For example, in a divorce case, there may be several secondary objects such as dividing common goods of the parties, pension for children, assigning child's custody etc.

³ For example, the number of indictment's volumes, in a criminal case

SLOVENIA

See answer above 2.

SPAIN

The criteria applied for the allocation of cases may differ from one judicial district to other, since the rules applicable to each judicial district are drafted by each Judges' Assembly (composed by all individual judges of first instance in the different branches of the jurisdiction) for that judicial district or by the President of the relevant collegiate court of appellate jurisdiction (Provincial Court or High Court of Justice) for its subsequent submission for approval to the relevant Board of Governance.

It is, therefore, the task of each Judges' Assembly or President of collegiate court of appellate jurisdiction to define the applicable rules for the allocation of cases in each judicial district and branch of the jurisdiction (civil, criminal, labour and administrative) on the basis of predetermined criteria which take into account, among other factors, the area of the law and the existence of specialised judges/courts dealing with that legal area in the individual judicial district, the kind of proceedings applicable, the complexity of the cases, the possibility of joinder of proceedings, the specificities of applications for precautionary measures or injunctions, the calendar of duty shift of the examining judges of the district, etc. Each claim, application or formal complaint is filed under one of the predetermined categories and allocated randomly to one of the individual judges/courts of the judicial district following a rota system which is also defined in the rules of allocation.

SWEDEN

The main rule is random allocation as described earlier. Exceptions can be made due to for instance complexity, cases that should be handled together because of their close connection, staffing, certain cases that should be handled in a special way, for instance concerning the nation's security etc.

TURKEY

Allocation of cases is carried out based on the criteria laid down in the provisions of Law 5235, Law 5271 and Law 6100 taking into account the type of the cases. The provisions of the related regulations are also important. With Law 5237 on Turkish Criminal Code in effect since 2005, the individual cases were removed and all cases are submitted as public case to Chief Public Prosecutor's Office. Following the approval by Chief Public Prosecutor, the lawsuit/case is issued by the Chief Public Prosecutor in the latest location, cases are allocated among courts according to the criminal parameters in UYAP IT system.

A file newly issued to civil courts is randomly allocated by IT system according to the allocation algorithm and the criminal parameters among courts. These parameters focus on the number of suspects, whether the suspect is arrested or not, the number of plaintiffs, the number of

witnesses, the number of crimes, and each of these criteria has a numeric value. For example, a case with one, suspect, one crime and one plaintiff has 115 allocation points. The more the number of suspects, crimes and witnesses, the more the point increases.

The allocation process is carried out randomly according to the courts' number. If there is more than one judge in charge in a court, then the allocation is carried out according to the judges, which means the file is allocated among the courts and then – if more than one judge works there – among the judges depending on the points.

4. What, if any, role does the complexity of the case, specialisation and workload of judges play in allocation of cases? How are these criteria measured? Who or what assesses these criteria? What, if any, indicators are used in the process of assessment?

AUSTRIA

As a matter of principle, court cases within branches of law (civil litigation, property matters, enforcement matters, non-litigious matters, criminal matters, etc.) shall be allocated according to **various criteria** such as initial letter of the name of the defendant or the accused, or on the basis of geographical areas.

As a rule, the cases of which the court was seised must be entered in a computer-based file allocation system (CDS) and equitably allocated to the competent court departments by means of a random generator. Thus, court cases are allocated to judges by computer on the principle of randomness and rotation to achieve an **uniform a workload** for all court judges.

If a judge has to deal with one or more complex cases, the competent panel of judges (Personalsenat) can decide that this judge will receive for a specific period no or fewer new cases than the other judges in the same court.

BELGIUM

a. Role: see above

b. How are these criteria measured? There is no formal method for measuring these criteria. A method for work load assessment is being prepared at the moment and should in the near future be available in order to determine the need of judges for each court. For the moment, workload is (probably) measured by the number of cases allocated to the chamber, the complexity of cases, the number of parties in a case, the nature of the case,...

c. These criteria are assessed by the president of the court. In some cases the parties (public prosecutor, the accused, victim) have the opportunity to ask that the case is dealt with by a chamber of three judges.

BULGARIA

Specialisation (subject related) is a leading principle within the courts where specialised divisions, colleges or chambers exist. Assignment of cases generally follows the specialisation of judges. Specilized units have been set up only in the big regional, district, appellate or administrative courts and in the two Supreme Courts. The random selection principle for the distribution of cases applies at the level of the colleges or the divisions. The number of specialised units depends on different factors: the applicable law, the type of cases typical for the particular judicial area, size of the court, or the decision taken by the General assembly of the judges at the relevant court.

A simpler situation is found in smaller courts where judges deal with all kinds of cases. In courts where no divisions and units are set up the judges hear all type of cases. The cases are categorized and the categories/types are listed in the internal rules of the court and in the computer program. Each category or type encompasses cases dealing with similar matter and complexity. In that way equal number of cases of a specific subject matter (types of cases) is being allocated to each judge.

Workload - initial information referring to the amount (percentage) of workload of each judge is brought into the computer program. The program evenly equalizes the number of cases allocated to each judge depending on the defined percentage of workload.

Recently the Supreme Judicial Council has drafted a Methodology providing uniform rules on the allocation of cases throughout all courts excluding the two Supreme Courts. It has been put forward for consideration by all courts. After receiving comments, remarks and suggestions the Judicial Council will adopt the final act, probably by the end of 2013.

Besides, the Judicial Council has started working on a project which is aimed at creating a methodology regulating the methods and criteria for measuring the workload per court and per judge. From the beginning of 2014 Supreme Judicial Council will start an empirical study on measuring the “weight” of each type of case. A weighted caseload system is to be adopted in order to have a more balanced distribution of cases among judges and to give a tool to estimate the necessary number of judges for each court

CROATIA

The algorithm for the random distribution of cases allocates the cases whereby their level of their complexity is taken into consideration. A special working group within the Ministry of Justice composed of judges worked on determining the level of complexity of each case.

DENMARK

The complexity of a case plays a minor role in allocation. The aim is that at same instance all judges are respected to be equally qualified to handle all types of cases.

Specialization plays some role. At most courts, the president has (after discussion with the judges) selected types of cases where the number of cases and the topic make specialization an advantage. In this light, specialization is seen as an advantage in situations when a court receives a lot of cases of a certain type, and when the court at the same time has a certain number of judges especially suited to handle this type of case. Distribution according to specialization would then be a relevant criterion that the president of the court (in consultation with the other judges) can choose.

Sharing workload plays a basic role. The aim is to prevent unnecessary accumulation of cases and waiting time

ENGLAND AND WALES

In general terms, the lower the value of a case or the less the complexity of the case, the more likely it is that the case will be allocated to a particular judge or magistrates on a totally random basis based entirely on which judge or magistrates are available to hear the case as quickly as possible.

The more complex the case, or the more the case might call for specialised skills on the part of the judge (e.g. a complicated commercial case or a criminal trial involving allegations of sexual misconduct) the more likely it will be for the case to be allocated to a particular judge. In this case Judicial continuity is viewed as important, and so a Judge will be allocated who can both case manage the case, and eventually hear it. In these circumstances the workload of the Judge will be a factor considered as it will be relevant to the time available to manage and hear the case.

All criminal cases start in the Magistrates' Court. The serious cases are soon transferred or "sent" to the Crown Court. The Magistrates' Court only has power to sentence a guilty defendant to a maximum of 6 months imprisonment; the Crown Court has unlimited powers and effectively acts as the High Court sitting in crime.

Judges from the High Court will sit in the Crown Court on certain high profile cases such as multiple murders or terrorism. Thus whilst small cases such as road traffic cases, minor disorder or limited criminal damages have to be tried in the Magistrates' Courts and serious cases such as murder, rape and extreme violence have to be heard in the Crown Court, often there are cases which are borderline and can be tried in either court. The decision then is a judicial one for the Magistrates' Court having heard from the prosecution and the defence. Once the Court is transferred to the Crown Court the level of Judge who will hear it is determined by the Practice Direction referred to above.

The majority of civil cases (including family cases) are dealt with at first instance in the County Courts, i.e. district courts. Some, however, are heard in the High Court or specialist tribunals. Examples of the latter would include high value commercial claims, shipping cases, complex claims involving allegations of medical negligence, judicial review cases (where the judge considers the

appropriateness of the decision-making processes employed by government and other officials) and cases with an international element.

There are jurisdictional rules (known as the High Court and County Court Jurisdictional Order) which determine whether a civil claim should be determined in the High Court or the County Court. However, specific pieces of legislation require certain types of cases to be heard in the High Court regardless of the size of the claim and it is also possible for a court to transfer a case to a different jurisdiction if this is considered to be appropriate. There are three divisions of the High Court which act as separate courts, with judges usually working in one division only. Cases concerning marriage, children and the family, such as adoption and divorce, are dealt with in the Family Division. Those concerning matters of finance and property, such as tax and bankruptcy, are dealt with in the Chancery Division. The Queen's Bench Division has the most varied jurisdiction. It handles contract and tort cases which are unsuitable for the county courts and it also includes within it a number of specialist courts which deal with shipping, commercial, technology/construction and administrative law cases. Judges may need to be specifically authorised to sit in these specialist courts. Some administrative law cases are heard by two or three judges sitting together as a Divisional Court of the Queen's Bench Division if the particular case is considered sufficiently important to warrant this. Defamation claims are also dealt with in the Queen's Bench Division.

GERMANY

In the distribution of subjects, a partly or full specification of some panels may be accounted for in the schedule of responsibilities.

If a capacity overload or low use of capacity of a panel comes up within a year, the chart of responsibilities may be changed. This ruling lies in the area of responsibility of each presidium as institution of the autonomy of the judges.

HUNGARY

The **degree of difficulty of cases** is determined based on the time required (number of hearings, quantity of documents to be processed, complexity of laws in terms of interpretation). Some of these aspects can be estimated and can be assessed objectively; on the other hand, they are reliant on the professional experience and preparedness of the judge designated, and also on his work organisation methods.

At this time, there is no objective and nation-wide system that would be able to determine the length of working time normally required for specific types of cases recorded for statistical purposes. In developing the distribution regime of cases, at the allocation of cases, however, the competent executive officers take these observations into consideration relying – in some cases – on individually developed and documented methodology. In the latter, all executives have a vested interest, as their managements skills are evaluated based largely on the timeliness of the administration of justice in their respective department.

The case distribution regime stipulates which chambers and judges adjudicate in major civil and criminal cases governed in procedural regulations. When establishing the case distribution regime, the significance and labour intensity of cases shall be considered – with regard to high profile actions and major cases – along with statistical data on the receipt of the case, and efforts shall be made to establish commensurate workloads.

The reason for specifying these special cases at the legislative level is that the deadlines prescribed by procedural regulations for the adjudication of such cases are very strict in the interest of their expeditious conclusion. According to the Act on the Legal Status and Remuneration of Judges, if a judge hears such a case, he shall be exempted and/or relieved from other responsibilities if necessary to observe procedural rules and deadlines. The implementation of this provision could be better facilitated if the case distribution regime indicated the judges adjudicating such cases, as the case distribution regime is to be arranged to ensure the balanced distribution of workloads.

The complexity of the cases received and the actual workload of judges are typical examples of issues which cannot be estimated for the year ahead, and the responsibility of assigning each and every case lies with the executive manager designated in the case distribution regime, in accordance with the rules laid down therein.

On general principle, **judges are specialising** in handling either criminal or civil cases. In Hungary it occurs only by way of exception, in courts with a minor staff, that a judge hears civil and criminal cases alike. Further specialisation in civil and criminal matters depends on the size of the court. In the larger courts judges are more likely to specialise, for example dealing with cases of an economic nature within the scope of criminal cases. The executive officer who decides on the distribution of cases is aware of and monitors such specialties. This type of specialisation is taken into consideration when drawing up the case distribution regime.

Currently there are no uniform criteria available for the assessment of the **workload of judges** at the national level. The evaluation of difference in the workload of judges is not clear, as the reason behind any difference in the workload should be taken into account by all means, for it may result from the judge being overburdened, or from the judge's incompetence. Any assessment of workload is generally based on the monthly statistical figures of the given court department. The workload of judges is usually monitored by the officers put in charge of case distribution, and they remedy any problem that may arise on an ad hoc basis.

IRELAND

Supreme Court: Complexity and workload are taken into account particularly where the hearing of an appeal requires more than 1 day of the Court's time. The number of multi day appeals that can be accommodated in any one term is limited. Ultimately, the Chief Justice assesses allocation on the basis of relevant appeal information and the availability of Judges.

High Court: Complexity and workload are taken into account particularly where the hearing is likely to be of a prolonged nature. The number of lengthy trials which can be heard at any time is

limited so as to avoid creating avoidable delays for other cases. Cases may be allocated to Judges with specialised expertise.

Circuit and District Court: The workload and the complexity of cases has a role in the allocation of cases. The primary indicator used is the data associated with waiting times across all Court jurisdictions for hearing dates which is made available to the Presidents of each Court jurisdictions. Based on these indicators the Presidents of each jurisdiction will assign additional Judges within their jurisdictions to address workload issues. Additionally particularly complex cases can have an impact on the administration of justice within any jurisdiction and in this regard Judges may be specifically assigned to deal with such cases and/or additional Court sittings may be arranged to address workload issues. In general specialisation is not a feature of the Irish judicial system and a Judge may be assigned to any type of case.

Specialist Circuit Court Judges have recently been appointed to deal with insolvency matters.

ITALY

The complexity of the case is an autonomous indicator in the field of professional assessment of judges and prosecutors, besides one of the general criteria to establish the competence of a judicial office (j.p., Tribunal, Assise Court with panel of judges, Appeal Court).

The tables of the Supreme Court provides the criterion of “*ponderable weight*” to allocate a case: it depends on the number of disputants in relation with the difficulty and the novelty of juridical dispute; it’s measured through a growing numerical plane from 1 to 8; it may be increased (1 o 2 points) in relation with the size of documents or the number of barristers.

The tables of the judicial offices - in accordance with general criteria ruled by CSM - encourage the specialization of judges in single affairs (by virtue of specialized sections, working groups or specialized roles for family affairs and commercial matters) and provide for specialized sections for labour cases and for preliminary judgments. The same tables provide the criteria to the allocate judges owing to their specialization.

LATVIA

All these criteria might be taken into consideration when allocating a case. For the moment there are no objective criteria to measure the criteria used, except the one stated in the Law on Judicial Power, which is involvement of the judge in self-governing organisations of judges.

Usually for the presidents of the courts it is presumed that a certain percentage of his or her work shall be dedicated exclusively to the duties of the president.

For informative purposes it shall be added that the Law on Judicial Power has been amended to give a right to the Judicial Council to adopt common principles applied to the specialization and to the assessment of the measurement of the complexity of a certain types of cases. These rules are under adoption and will be available soon.

LITHUANIA

Having regard to the specifics of activities, work procedure of a particular court, complexity of the case and workload the person responsible for case allocation shall enter into the courts information system LITEKO data on the specialisations of judges determined in the court, formed judicial panels and/or appointed chairmen of judicial panels, judges acting as the chairman of the court, the deputy of the chairman or the chairman of a division of the court, as well as other data, based on which the Case Allocation Module selects a judge by a computer-assisted method.

MONTENEGRO

Rules on orientation criteria for the work of a judge prescribes which is the number of cases in a paper work of a judge, which is required to be completed annually. This regulation also specifies the exceptional cases to reduce the number of pending cases, pertaining to the President of the Court or the President of a Court division.

Cases are not stand out particularly by its complexity, because we can not always, when receive cases assess which ones are complex cases and which ones are not.

As an exception to the rules, we have recognized the complexity of so-called special cases of Criminal divisions (War crimes, Corruption, Trafficking in Human Beings) and they are recorded in a separate register and a small number of these cases is determined to be completed annually.

Rules are adopted by the Judicial Council, after obtaining the opinion of the Ministry of Justice.

NETHERLANDS

Complexity, specialisation and workload all play a role in the allocation process. Complexity and specialisation are mostly a matter for the teams and team managers within the courts to decide. They are dependent on the experience of the team in handling certain types of complex cases within their field of law and on the previous relevant experience of the judges within that team and field of law.

In order to measure the workload of individual judges, internal norms apply in every field of law. These norms are usually based on national agreement about de local norms per field of law. Therefore, the norms for measuring the workload may differ locally.

The responsible teammanager makes use of an overview of calculations of the number of allocated cases per judge and he or she will relate this to the hours the judge works every week. The teammanger has a large measure of freedom to give one judge a bigger workload than the other. He or she will take into account the knowledge and experience of the judge in question, but also their personal circumstances (private, health) and their usual workplace.

NORTHERN IRELAND

as set out in Response 3 above, the complexity of the case, specialisation and workload of judges are factors that are taken into consideration by senior judiciary in deciding upon the allocation of cases. This process is made possible by the fact that Northern Ireland is such a small jurisdiction – there is no need for measurement of criteria or use of indicators.

NORWAY

Workload will impact, so will specialisation. (However we have a very moderate specialisation in Norway). The complexity can impact. In Norway it is common sense that it is good practice that more complex and extremely high media focused case are handled by judges with routine and special skills.

POLAND

The Chairman of the department makes assessment of judges' workload up-to-date, striving for relatively equal distribution of work. Information on number of cases in particular judges' units is available in electronic database, supplemented by secretary office up-to-date (so called electronic register of cases). Usually, besides statistical data (i.e. number of cases in the judge's unit), also type and weight of a case, extensiveness of collected evidence materials and volume of a specific case (e.g. number of volumes of preparatory proceeding files, number of accused persons and other participants of criminal proceedings) are taken into consideration. Those criteria are assessed by a chairman of the department. It is very discretionary (based on chairman's discretion). A judge may ask the chairman for temporary non-allotting new cases to his unit, however such applications are considered positively in exceptional situations.

There are no formal criteria for assessment of difficulty of cases (e.g. point system – the more difficult a case is the more points are allocated in respect thereto, and number of points, constituting product of number of cases and attributable points should be similar for each judge). The assessment is the matter of department chairman's free discretion.

Judges' specialization has meaning at taking decisions on allotting a case by department chairman in higher-instance court (e.g. in appeal courts); however, as regards criminal case high degree of domination of the principle of delivery order hinders taking that factor into consideration. First-instance courts are divided into departments (civil, criminal, family, juvenile, labour, social security, business, penitentiary and other departments), and specialization of judges has meaning when judges are employed in particular departments where cases of a certain law branch are considered. Within the department cases are allotted by alphabetical order, notwithstanding judges' specialization.

PORTUGAL

It is not considered the concrete complexity of the cases. There are no criteria of specialization of the judges serving in the same court. The High Council of the Judiciary (Conselho Superior da

agistratura: CSM) can, in courts over a section, change the distribution rules in order to ensure the equalization and the operability (149 h) of the Statute of Judicial Magistrates).

ROMANIA

The complexity of the cases, together with the other above mentioned criteria, has a fundamental role in carrying out the distribution of cases as one of the standards in the matter.

All the mentioned criteria are being taken into account when distributing the cases and applying of the computerized system. There is a qualitative and a quantitative assessment according to these criteria. Therefore, for example, according to our system for establishing an optimum workload for judges, the complexity of the cases distributed in courts can be mathematically calculated and the reasonable number of complexity points of the cases that a judge shall settle within a year is 5100. There is a predetermined complexity established for each category of cases, from 1 to 10 points, that can be adjusted according to different sub-criteria of complexity as presented at Q3.

SCOTLAND

Complexity of the case – Complexity plays no role in allocation, except insofar as concerns the factor of availability to deal with a lengthy trial or proof.

Specialisation – Specialisation plays a limited role in the allocation of cases. In the Court of Session a small number of designated judges are allocated to hear particular categories of cases (for example, commercial cases), and otherwise specialisation has no role in allocation. In the Sheriff Courts specialisation generally does not play a role, but in the largest courts some judges are designated to deal with particular types of case (examples are commercial cases, domestic abuse cases). Specialist judges in the Court of Session are appointed by the Lord President; in Sheriff Courts by the Sheriff Principal.

Workload of judges – Workload plays a role only in relation to the availability of judges. For example, a judge who requires time to work on production of a judgment in a case already heard may be temporarily excluded from allocation of a case (or court). Allowance of time to work on writing a judgment is at the discretion of the Lord President in the Court of Session and the Sheriff Principal in Sheriff Courts.

SLOVAKIA

The complexity of the case does not play any role in allocation of cases. Specialisation is taken into account in allocation of cases, where this is always made by random choice through the technical means amongst number of panels determined in the work schedule. Workload of judges (unequal work load) is taken into account in case of re-allocation of already allocated cases or possibility to stop the case-load of an overloaded panel.

Within the specialisation the criteria are stipulated by law, as they depend on the type of the judicial agenda (e.g. family matters).

Workload of judges is measured by the court management (president, vice president) by comparing the case-load and balance of the cases for each type of judicial agenda individually (comparing the state of handling the cases at the particular department of the court administration – civil, penal, commercial and administration justice). Re-allocation is admissible only by amending the work schedule obligatorily supported by the opinion of the council of judges, which shall be made public at the same time as the amendment of the work schedule.

SLOVENIA

Based on the Courts Acts at some courts departments for trials in complex cases of organized and economic crime, terrorism, corruption and related offenses are established. Cases are allocated to the judges assigned to these departments. The Judicial Council decides upon appointment of judges to these departments. With the annual work schedule of courts judges are assigned to resolve cases of their legal areas of specialization. The schedule also provides how the new cases are allocated. If a judge is burdened with heavy case(s), the flow of new cases to a judge can be limited for certain period of time with the schedule.

SPAIN

The complexity of the case and the specialisation of judges do play a role in the allocation of cases, since these are some of the criteria normally used in the rules of allocation of each judicial district in order to define the categories of cases under which the assignment to specific individual judges/courts will be made. The criteria are measured, assessed and defined by the Judges' Assembly of each judicial district or by the President of the relevant collegiate court of appellate jurisdiction when writing up the draft of rules of allocation which will be submitted to the relevant Board of Governance for approval. This system safeguards the necessary autonomy of each Judges' Assembly or President and allows to meet the specificities of each judicial district in terms of numbers of judges/courts, existence of specialised courts/judges, types of cases brought before the courts, etc.

In principle, the workload of individual judges/courts is not one of the criteria used in order to define the predetermined categories of cases under which the assignment to specific individual judges/courts will be made. However, articles 152.2.1^o and 167 of the Organic Law on the Judiciary envisage the possibility of a full or partial release of cases to be allocated to an individual judge/court of first instance or to a panel of a collegiate court with appellate jurisdiction, when workload requirements make it advisable for the better administration of justice or for the better functioning of the judicial system as a whole. The decision on the partial or full release is made by the relevant Board of Governance of the High Court of Justice (or of the National Court) following the proposal of the relevant Judges' Assembly or Court President, must be reasoned and is publicised in the same manner as the general rules for the allocation of cases in the relevant judicial district (see 1). The aim of the full or partial release of cases (which is a derogation of the general rules for the allocation of cases) is to overcome the work overload or backlog affecting the individual judge/court of first instance or the panel of judges with appellate jurisdiction who

benefits from the release and to ensure a better quality of the performance of the courts of justice in the benefit of practitioners and court users in terms of timeliness (reducing undue delays). In order to assess whether a partial or full release of cases to be allocated can be applied the relevant decision-making bodies (i.e. Judges' Assemblies, Presidents of collegiate courts of appellate jurisdiction and Boards of Governance) take into account the predefined standards regarding the number of judgments and decisions to be issued by each court or individual judge, depending on the branch of the jurisdiction, kind of court, etc., determined by the General Council for the Judiciary in the exercise of its constitutional competences. The Council for the Judiciary has established the workload that can be assumed by individual judges or panels of judges, setting the target for each type of judicial body and fixing a scoring for each type of case in each branch of the jurisdiction, and these standards of judicial performance are normally taken into account when making proposals for partial or full release of cases

SWEDEN

All judges in Sweden are to be able to judge in all cases. There are, however, courts that have internal specialization.

District courts may for instance have departments specialized in criminal cases and departments specialized in civil cases. Administrative courts may for instance have departments specialized in tax cases and departments specialized in social security cases. In these situations the cases are randomly allocated in respectively category in the order they are filed in each department. Within the departments the cases are hereafter randomly allocated to the departments judges.

According to the internal rules of the courts there is also a possibility to reallocate cases if one department have a particularly high backlog, temporary lack of staff or for any other similar reason. There is also a possibility to allocate especially complex cases to senior judges with special experience. It is ultimately the chief judge's responsibility to make these decisions. Objectivity and impartiality is to be exercised. The chief judge may sometimes delegate these tasks to a senior judge.

TURKEY

In accordance with provisions of law, the types of the works that courts will deal with is specified. In the locations where more than one court deals with the same type of cases, fair case/file allocation is provided in consideration of the complexity and quality of the work received, all of which is carried out via UYAP.

Criminal Courts;

Criminal courts deal with not only general cases but also the cases of specialized field (e.g. smuggling), and all the cases of specialized field are submitted to the court(s), if any appointed as specialized court by HCJP. To do that, it is enough to define courts as specialized court on UYAP. If the specialized court is requested to deal with cases other than it specialization, this can be done via a simple arrangement for allocation on UYAP again. The allocation process is run randomly among the courts, and the current system is nationwide, and was designed in accordance with the opinions of HCJP.

Civil Courts:

The same allocation algorithm is in use in all courts within the code of procedures of civil courts.

5. What method is used for the allocation of cases? Are cases automatically allocated to a judge (computerised method) or manually? If both methods are used, please explain when the computerised method is used and when the manual.

AUSTRIA

In Austria a **Case Distribution System (CDS)** has been established that enables an automatic and fair distribution of files within public prosecution offices and courts based on a random order. Aside from this mainly in smaller courts the allocation of cases based on a schedule of responsibilities (e. g. letters or locations).

BELGIUM

There is no automatic or computerised official method of allocation of cases. In general, cases are registered on the “general role” of a court in order of entrance and are given a number. Subsequently, they are allocated by the president (or by the clerk of the court on behalf of the president and under his authority) to a specific chamber where it is registered on the “particular role”. In some courts (of appeal) a system of codes is used. These codes are linked to the nature of the case. A code is attributed to a case by the lawyer or by the court clerk. According to the code, the case is then attributed to a certain chamber. This system is more or less “computerised”.

BULGARIA

Cases are allocated by a computerised method, on the basis of the random selection principle through electronic assignment.

Analysis of the Internal Rules of courts finds that there are very rare instances where the administrative head could **re-allocate** a case by issuing an order, i.e. manually. Example: sudden sickness of the reporter judge who hears a case in which summary proceedings are carried out. If such or similar sudden and unexpected circumstances arise the case including summary proceedings could be re-allocated manually to another judge who is in office or who is not overloaded.

CROATIA

Cases are allocated automatically to the judges of municipal, county and commercial courts while to the judges of misdemeanor court and administrative courts cases are allocated manually because in those courts is in use computerised system which does not have possibility of

automaticall allocation of cases. If there is a possibility of automaticall allocation of cases the manual allocation is excluded. In courts which do not have the automaticall allocation cases are allocated manually in a way determined by the Court Rules Book.

DENMARK

Both computerized and manual methods are used. The computerized allocation is used for criteria that do not relate to individual criteria. This may be allocation according to number or to the principle of first available judge/panel.

The manual allocation is used for criteria such as topic or specialization. Here it is used in combination with a computerized allocation. As a first step, cases are divided according to topic, and afterwards they are distributed by computerization - for instance among the specialized judges or among the panels/boards at the high courts which are specialized in the relevant field.

ENGLAND AND WALES

Cases are not allocated by any automated or computerised method.

In the lower courts, whether criminal, civil or administrative, cases are allocated entirely randomly to whichever judge or magistrates (lay judges) are sitting on the particular day each individual case can most quickly be listed for hearing. No reasons would be given for listing a particular case before a particular judge. Save for cases where particular expertise might be required (e.g. a claim in relation to intellectual property or an application in relation to a European Arrest Warrant) the system of allocation is entirely random and governed by the availability of time in the diary of the particular court.

In the higher courts (the High Court or the Crown Court, which deals with the more serious criminal cases) it is for the Listing Officer (who is a member of the court staff), acting under the direction of the senior judge of that court or his authorised nominee, to decide which cases individual judges should be asked to hear. The vast majority of cases are allocated purely on the basis of which of the Judges is available at the time the case is due to be heard, however cases requiring special case management (for example those with vulnerable witnesses) or that are particularly long or complex may be allocated to a named Judge to ensure Judicial continuity.

All listing of cases (and thus allocation) is ultimately a judicial function; final decisions about the listing of cases rest with the judiciary at the court centre. Listing Officers are not required, as a matter of course, to explain the reasons for the allocation of cases to individual judges. Parties occasionally ask for their cases to be heard by certain judges, or recommend that their cases should be heard by judges with expertise in a particular field of law. Listing Officers will always try to match the more serious cases to the particular expertise of each individual judge; whilst representations from the parties are given consideration, there is no obligation to accede to such requests.

GERMANY

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Depending on the use of IT the cases can be distributed electronically or by hand. In any case the criteria of the schedule of responsibilities are in effect.

HUNGARY

The way in which the question is phrased is misleading, for it builds on the presumption that all computerised methods used for allocating cases are automated, and that manual methods cannot be automated. The only correct way to approach this question is that the allocation of cases either takes place based on the subjective and ad hoc decision of the executive in charge of allocation, or it is handled based on a pre-arranged and objective process, in which subjective and ad hoc decision is not involved, or one that is limited and can be checked (verifiable) at least in this respect.

In light of the above, our response is as follows:

Allocation of cases by means of a computerised method is used in corporate cases which are computerised in their entirety. In other categories of cases, allocation takes place manually in a sense that a given case is not assigned to a judge by computerised methods. Where cases are allocated 'automatically' it is or may be carried out by the court administration office in charge of keeping records of cases by assigning cases to judges according to the case distribution regime (e.g. on the basis of odd and even case numbers, or on the basis of a specific row and number of the cases received).

For the 'automatic' allocation of cases Decree 14/2002 of 1 August 2002 of the Minister for Justice recommends several different methods:

- a) based on specific groups of numbers;
- b) according to the first letter of the name of the defendant (respondent etc.) or of the accused (person under arraignment etc.);
- c) by division of the court's area of jurisdiction among the judges (according to towns, districts, other municipalities, etc.);
- d) by assigning all cases received within a timeframe of one week, two weeks or one month to a single chamber or judge;
- e) according to stages or groups of cases, categorised according to the subject-matter of cases;
- f) by the duration of judicial practice;
- g) by means of automated case distribution by a computer-aided process; or
- h) by the combined use of several different case distribution methods.

One satisfactory solution would be to develop a computerised method specifically for the case distribution regime. However, since for such system several different aspects shall have to be taken into consideration, developing a computerised method for the courts of various instances, sizes, etc. would take quite some time.

IRELAND

Manual application applies. All jurisdictions are supported by appropriate computerised systems, but automated allocation of cases based on business rules is not a feature of these systems.

ITALY

General computerized methods – based on programs adopted by the Ministry of Justice and acted by specialized informatics districts offices – allow the application of the above mentioned criteria in all judicial offices.

A manual method might be required when Chief Judge has to reallocate a case - in the eventuality of temporary absence or refusal of a judge and in the other cases sub. 9) - always in respect of tables criteria.

LATVIA

Both methods are used. The computerised system is normally applied, except for cases where manual allocation is necessary in order to allocate a specific case.

LITHUANIA

Allocation of cases is carried out by computer-assisted selection method. Manual method is not used.

MONTENEGRO

In Montenegro, we are using an automated method of random allocation of cases through the Judicial Information System (JIS), and it is used for all types of cases in all court instances.

NETHERLANDS

In the Netherlands, cases are usually allocated manually, not automatically by computer. Policy differs between the courts. In some teams, the administration of the court will divide the cases between the available hearing dates. Cases are categorised when they come into the court, either by judges or by legal advisors, according to size and complexity. In other teams, the team managers will divide the cases after assessing their complexity and required specialisation. Allocation of smaller cases, mostly the ones handled by the small claims court, is mostly done fully automatically.

NORTHERN IRELAND

Certain cases are manually allocated to designated judges depending on the nature of the case – for example a commercial action in the High Court would be automatically allocated to the Commercial Judge.

NORWAY

Mainly, cases are allocated to the next judge who has time in their calendar. Its most often done by someone (not a judge) that the president of the court has given the mandate to do so.

POLAND

Cases are allotted automatically, by delivery order and alphabetical order of the department judges. Upon delivery each case is marked with its unique number (case No.), then the chairman personally (not computer automatically) appoints a reporting judge according to alphabetical list. That allows to chairman to inspect judges' workload up-to-date and interfere (if necessary) in case allocation (e.g. case receipted after cancellation of judgment by a higher instance court cannot be reconsidered by the same judge). Within the frame of activities performed by the department chairman, upon his having considered the circumstances referred to in points 3 and 4 above, may exceptionally issue an order on deviation from general rules, and allot a case to a different judge than under the "automatic allocation" rule. So far there is no literal computer allocation of cases.

PORTUGAL

The cases are automatically distributed. For this purpose a computer program is used. If there is need for rebalancing workloads, the CSM can decide on a manual distribution.

ROMANIA

According to the above mentioned principle, cases are randomly distributed in courts, within a computerized system called ECRIS and only in exceptional situations, for objective reasons, such as the incompatibility of judges, the electronic system may not be applied and the distribution shall be carried out by the method of cyclical distribution system⁴.

SCOTLAND

Cases are allocated manually by a court official. In the Sheriff Courts computer systems are used to assist in the allocation of some cases to courts or sittings (but not specific judges).

⁴ In the situation when all the judges within a court are incompatible to settle a case the cases shall be cyclical distributed among the sections in the same matter. If there is no other section in the same field of law, the case shall be cyclical distributed among the specialized panels for these situations of incompatibilities; these panels are assigned by the leading board of the court at the beginning of every year. Transposing the case from one section to another within the same court shall be decided by the judicial panel as scheduled within the timetable of the court or if there is no judicial session scheduled in the referred day by the next judicial panel of the competent section. If two or more judicial panels are scheduled for the same day, the cases shall be cyclically distributed between them. If the panel ceases to exist the cases shall be cyclically distributed to other panels competent in that particular field of law by the president of the court or by the judge assigned for randomly distributing the cases.

SLOVAKIA

Cases determined according to the subject matter of the proceeding are always allocated by a random selection through the technical means and programs approved by the ministry so that any possibility of having an influence on the allocation of case could be excluded. In cases when it is impossible to allocate the matters by random selection due to the technical failure, in specific fields, where the law stipulates the necessity of allocation of the case without any delay, the work schedule obligatorily implies the way of such allocation of case, where the possibility of having an influence on the case allocation is also excluded (e.g. assigning a lawyer in criminal matter, deciding on detention, order to examine the mental state etc.).

SLOVENIA

The Supreme Court of Slovenia is in charge of the computerisation of the judicial system and has been introducing new technologies in courts, among others to implement the rules on case allocation and on publicity. Court registers in Slovenia are entirely computerised and publicly available. About 95 % of cases are registered and allocated electronically. Annual work schedules of all courts are published on the Slovenian judiciary website. This is, in the GET's view, a positive feature of the system, as it guarantees that no one can tamper with the rules on random case assignments to judges. The GET was informed that computerisation had visibly increased public trust in the case allocation system, as complaints from parties on violation of the rules in that regard have almost completely ceased.

The annual work schedule of the court, adopted by president of the court, and Court Rules are the basis for allocation of cases to judges through automated registers that are managed by court registrars. Control over the accuracy of assigning cases is in the jurisdiction of the president of the court. Procedure of control is not adopted.

SPAIN

Under article 167.2 of the Organic Law on the Judiciary the allocation of cases to individual judges/courts of first instance is done by the registrar of the Doyen's judicial office under the supervision of the Doyen (most senior) Judge (*Juez Decano*). The Doyen has internal decision-making powers to decide on any issues which may arise in the process of allocation and to correct any mistakes detected, adopting whatever measures may be required and promoting the responsibility of those involved in the allocation process.

Originally, the process of allocation was done manually by the officials who work at the relevant department of the Doyen's office or at the department in charge of allocation within the respective collegiate courts (Provincial Courts, High Courts of Justice, National Court and Supreme Court). However, most offices responsible for the allocation of cases within the courts have developed IT programmes for the allocation of cases and the process is nowadays conducted automatically (using computerised methods) in most of the offices of the country. Only Doyen's offices of small/medium court centres (in small or medium size towns) still conduct the process of

allocation manually. Computerised methods of allocation ensure the random assignment of cases among all relevant individual judges/courts of the same judicial district, but it is still the responsibility of the registrar in charge of the process (under the supervision of the Doyen Judge) to decide under which specific category of cases envisaged in the rules of allocation a particular case is to be included. Once the case is introduced in the computerised system of allocation under the relevant category the case is automatically assigned to one of the individual judges/courts.

SWEDEN

The cases are allocated automatically through random allocation in the case management system, VERA. The allocation that has been decided by each court is added to the operational support and then the allocation is automatically generated according to what has been decided in the internal rules of the court.

TURKEY

In the locations where more than one court deals with the same type of cases, fair case/file allocation is provided in consideration of the complexity and quality of the work received, all of which is carried out via UYAP.

6. Is the allocation of cases differentiated according to the instance / competence / region of a court or is there a uniform system applied equally in all the courts of your country? If yes, please indicate the main differences.

AUSTRIA

In principle, cases in courts of all instances are allocated under the **same rules**, with the chairman of a panel allocating cases to its members. Minor deviations from such rules apply to the Supreme Court.

Currently all 17 public prosecution offices including the prosecution office for economic law and corruption, 2 of 4 senior public prosecution offices, 10 of 20 regional courts and 15 of 128 district courts are using the **Case Distribution System (CDS)** – with tendency to rise. Within one month almost 60,000 distributions are registered.

BELGIUM

To the extent that these rules are provided by law there are no regional differences. However, depending on the size of the court, the “special regulations” are not always as extensive or elaborate. Having no uniform or automatic allocation method, local practices may also differ in some degree.

BULGARIA

The basic rule is that cases are distributed on the basis of the random choice principle through electronic assignment following the sequence of their receipts. It applies in all courts of the country. The courts (no matter of level and type) use one computer program approved by the Supreme Judicial Council. The Supreme Administrative Court and the Supreme Court of Cassation use other computer programs.

As the courts differ in size, type, level, prevailing subject matter dealt with, etc., each court has formulated specific *rules* for allocation of cases. Although the courts of all types and levels use one and the same program the Internal Rules allow various regulations. Currently, the existing legal regulation of allocation of cases allows flexibility. The draft Methodology on allocation of cases is aimed at drawing up uniform rules for allocation of cases thus restricting the present flexibility.

CROATIA

The method of allocation of cases is uniformed for all courts because the way of allocation is determined by the Court Rules Book which is applicable in all courts regardless the type or instance of the court.

DENMARK

The principles for allocation are basically the same in all instances and in all regions. There is not a uniform system, but the computerized system that supports the distribution is the same at all district courts.

The Supreme Court has two even chambers, and allocation is based mainly on criteria such as number and workload.

In the two high courts, the system of allocation is more elaborated. A number of panels are specialized on different topics. The topics are set after discussion between the president and the other judges.

In the district courts, allocation is mainly based on number and workload.

ENGLAND AND WALES

It is uniform across the country

GERMANY

No, the allocation of cases and responsibilities is processed upon those criteria as described above (No.2)

HUNGARY

There is no uniform system used in Hungary for the allocation of cases. The method used for the allocation of cases is decided by the given court executive, following consultation with the bodies of judges. The selected and applied methods differ depending on the judicial level, on the technical means available, on the size of staff and on the specialisation of judges (for example, specialisation in smaller courts is not possible, meaning that practically all types of cases can be assigned to any judge, or may be adjudicated by one or two judges). Within the case distribution regime, several different methods may be used for the distribution of cases (see the reply to question No. 5).

The following courts have their own case distribution regime:

- the Curia
- regional courts of appeal (separately for criminal and civil cases)
- regional courts (separately for criminal and civil cases)
- district courts (separately for criminal and civil cases)
- administrative and labour courts

As for the specific methods, there is no uniform protocol or detailed methodology recommendation available neither for the judicial levels nor for the courts or categories of cases, and there is no presidential action sample relating to the case distribution regime, nevertheless, all currently effective case distribution regime complies with the requirements set out in the relevant legislation, and they were drafted to accommodate the personnel and material conditions of the department to which they pertain.

IRELAND

No.

ITALY

The system of allocation of cases is uniform for all the courts in the country, as a result of the general ruling provided for by primary law and CSM circular letters destined to the whole of judicial offices.

Single differentiations (like “*Enterprises Tribunal*”, for example) are related to the profile of district competences of judicial offices rather than to the allocation of cases within the offices.

LATVIA

Region of the court would not play any role. The instance and the competence will influence the possibility for specialization. In Latvia there are general courts dealing with civil and criminal cases and administrative courts dealing exclusively with administrative cases. This division will characterise the specialization.

Different instances will have to deal with procedurally different question (types of cases). Concerning the differences streaming from the different instances of the jurisdiction, it shall be
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noted that, for the moment, judicial instances in Latvia perform mixed tasks when it concerns their duties. The first instance can be both the first level of the courts and the second (regional) level. The appellate instance can be both the second (regional) level or third (the Supreme Court). Only cassation instance is a separated body within the Supreme Court. For each different task there might be different criteria applied. For example, in the cassation instance of the administrative court there are cases divided by the procedural nature and then allocation criteria are applied for each procedural set.

LITHUANIA

Allocation of cases is carried out by a uniform method in all courts with some additional functionalities added in the higher instance courts, e.g. formation of judicial panels in appeal and cassation cases, functionality of acceptance and allocation of cases by the selection panel in the Supreme Court of Lithuania and etc.

MONTENEGRO

JIS as a unique system performs allocation of cases in the same manner in all court instances.

NETHERLANDS

At the moment the allocation is not unified on a national level. The methods used differ between the courts and also between the fields of law. See answer to question 1, paragraph 2.

NORTHERN IRELAND

There are some differences in the system of allocation of cases depending on the court tier. For instance a Crown Court case would be allocated to a specific judge whereas Magistrates' Courts cases would be allocated to a certain courtroom in the major court venues and to a certain day in other court venues.

NORWAY

Yes, there is a difference, especially according to the size of the court. In Norway we have first instance court from 4-5 persons up to 220 persons.

POLAND

System of case allocation in courts operating in Poland is governed in different acts of law, however general scope of applicable rules is not apparently differentiated. In courts of higher instance more meaning is attached to specialization of judges in a department. In first instance courts cases are allocated automatically (or on the basis of lottery). There are no regional differences. There are some differences depending on instance. Some differences regard also criminal courts and administration courts where random selection of judges for a case is applied

(see: point 3). In Supreme Court specialization of judges is taken into consideration mostly, however rule of equal charging judges with work.

PORTUGAL

The cases distribution system described before is applied in all courts in the country.

ROMANIA

There is a unitary system for distributing cases in the Romanian judicial system that is unitary implemented within courts countrywide. Recently, the SCM Plenum has issued a new decision for granting the unitary interpretation and implementation of the legal provisions in the matter of random distribution of cases. Moreover, the electronic system used in this field is monitored in order to be updated for assuring a secure and efficient distribution of cases.

SCOTLAND

The Court of Session and High Court of Justiciary have jurisdiction throughout Scotland and the system of allocation of cases is therefore uniform in those courts. There is also uniform practice in Sheriff Courts across Scotland, in accordance with Scottish Court Service court programming guidance. There are only limited differences between the systems in the Court of Session/ High Court and the Sheriff Courts and these are explained where appropriate in answers to particular questions.

SLOVAKIA

There is a uniform system of case allocation applied at all the courts of the Slovak Republic.

SLOVENIA

The Courts Act provides the general principle of case assignment and The Court Rules further specify the detailed application of this principle, which applies to all courts, including the Supreme Court. In Slovenia there is a uniformed system of case allocation applied equally at all courts.

SPAIN

Since the rules for allocation of cases are approved by the Board of Governance of the respective High Court of Justice (which operates at a regional level) following a proposal by the Judges' Assembly (composed by all individual judges of first instance in the different branches of the jurisdiction) for that judicial district or by the President of the respective collegiate court of appellate jurisdiction (Provincial Court or High Court of Justice), the rules and criteria for allocation (and the different categories used for the allocation) can be different in the respective judicial districts.

Therefore, the contents of the specific rules of allocation which apply both at first instance and at the appellate level in each of the judicial districts are not uniform. The diversity in the rules of

allocation which apply to each judicial district is justified, on the one hand, by the autonomy of each Judges' assembly (or of each President of a collegiate court) in the drafting of the proposal of rules of allocation which is to be submitted for approval to the respective Board of Governance. On the other hand, this non-uniform system of rules of allocation is designed to meet the specificities of each judicial district in terms of numbers of judges/courts, existence of specialised courts/judges, types of cases brought before the courts, etc.

SWEDEN

The basis for allocation of cases is the same in all courts, that is random allocation in the order the cases are filed. However, how the court has decided to divide their departments internally (specialization etc.) may vary.

TURKEY

There is no regional separation in allocation of files/cases among courts. Allocation system devised via UYAP is nationwide.

7. A. Who appoints the person to decide on the allocation of cases and who is responsible for the allocation of cases within the court?

B. Is the system of allocation of cases subject to an audit? If so, by which person or institution is this audit performed and according to what procedure?

AUSTRIA

a) The decision how to allocate cases is taken by the **staff panels** (Sections 36 seqq. Service Act for Judges and Public Prosecutors = RStDG), which mostly consist of elected judges. The president and one vice-president of the court are members ex officio. A staff panel shall be formed at each regional court, higher regional court and the Supreme Court of Justice [Section 36 (1) RStDG]. Staff panels appointed on the basis of the provisions of Art. 86 seqq. Federal Constitution Act (B-VG) shall serve to handle the judicial administrative matters mentioned there. Nevertheless their activities fall into the scope of jurisdiction. Inasmuch as judicial administrative task have to be performed by panels, judges shall exercise their "judicial function" pursuant to Art. 87 (2) B-VG and shall become active, free from any instructions – the staff panel shall therefore be qualified as judicial body. For this very reason there cannot be any interference in the independence of judges.

The **CDS-administrator** configures the distribution of the files, controls manuel (set a stop, adjust files) and interprets the data (lists, details of a distribution).

b) The **internal control system (ICS)** of the Austrian Justice involves inter alia the instrument of „internal auditing“. The objective of the internal auditing is to investigate the ensuring of legality, advisability, economic efficiency and thriftiness in the execution of the duties assigned to the inspected entities. The legal basis for the „internal audit“ of courts and public prosecution offices is § 78a Court Organisation Act (Gerichtsorganisationsgesetz). Part of the procedure of the internal auditing is also verifying an equal and suitable allocation of cases in the examined courts.

The **heads of the departments „internal auditing“**, situated at the higher regional courts (Vienna, Graz, Linz and Innsbruck), are allowed to apply for a modification of the courts' „Geschäftsverteilung“, if the results of the examinations assume a breach of compellent rules or a lack of consistent workload within the entity (§ 28 Abs. 1 Court Organisation Act = Gerichtsorganisationsgesetz).

Beside that the **department for Internal Audit in the Federal Ministry of Justice** activates and attends projects to develop and evaluate measures of quality management, in that context for instance lastly the project of establishing criteria for validation of major criminal cases.

BELGIUM

A. Cases are allocated by the president of the court (or by the clerk of the court on behalf of the president and under his authority). In some courts the president delegates this task to another judge, often a vice-president of the court.

B. The public prosecution has a general role of control and supervision on the regularity of the service in the courts and courts of appeal and on the implementation of the laws and regulations in the courts (articles 140 and 399 Judicial Code). This allows him, with respect to the independence of the judges, to control the application of the rules of allocation. Moreover, the courts of appeal have a general power of supervision on the courts “of first instance” in their jurisdiction. Finally, the High Council of Justice can conduct an audit into the general function of the judiciary and can also conduct an “special inquiry” into specific dysfunctions.

BULGARIA

A. Under the law the head of the court is responsible for organizing and proper functioning of the allocation of cases system. Under art.46 of Regulations on Court Administration administrative heads of courts are entitled to perform technical work related to computer allocation of cases. The administrative head of the court could assign the day-to-day operation of the computer program to a judge or a clerk of court by issuing an order but this is done only as an exception.

In big courts, including the Supreme Courts, where several divisions are set up, the administrative heads or deputy heads carry out only the first distribution of cases to the divisions on a subject-matter basis and then the head of the unit allocates the cases to the judges within the division on the random choice principle.

B. The Inspectorate at the Supreme Judicial Council is competent in this area. The inspections are carried out in compliance with the provisions of Judiciary System Act and the Regulations governing the activities of the Inspectorate.

CROATIA

The cases are allocated by the application e-File, i.e. by the algorithm for automatic random case allocation. The observance of the rules of case allocation is controlled by court presidents, while the work of court presidents is controlled by the Ministry of Justice through its Judicial Inspection.

DENMARK

A. The president of a court is appointed by law to decide the allocation of cases after discussions with the other judges of the court.

B. The system of allocation may be revised at local level in the courts when changes in case flow or other circumstances (for instance new legislation) make this appropriate. The principles for allocation can be changed in the same way that they are set, meaning when the president makes decisions on a new or changed allocation procedure after discussions with the other judges in the court. No external body performs audits or oversees the procedure.

ENGLAND AND WALES

A. Within a Crown Court centre, the prime control rests with the most senior judge at that centre known as the Resident Judge. However, the decision as to how to allocate a case in the Crown Court may occasionally be reviewed by the Presiding Judge who is a High Court judge and the most senior judge with administrative responsibility for the geographical area where the particular Crown Court centre might be located.

In the High Court the Listing Officers of the Chancery and Family Divisions allocate cases under the supervision of their respective Heads of Division, i.e. the Chancellor of the High Court and the President of the Family Division. In the Queen's Bench Division this function is delegated to judges who are assigned specifically for the purpose of supervising the different lists in which the judges sit.

In the county courts, the most senior judge at each court ultimately has control over the allocation of cases although in reality the allocation is handled on a day-to-day basis by each court's Listing Officer acting under the general supervision of the judges of that court.

In the magistrates' courts the allocation of cases is ultimately the responsibility of the Justices' Clerk although, as stated above, the allocation of the overwhelming majority of cases in the magistrates' courts is based entirely on the availability of court time.

The listing of cases is kept under review by those Judges with responsibility for listing, the Senior Judiciary, and the legal profession.

Listing officers and Justice's Clerks are civil servants appointed through the normal civil service process.

B. No

GERMANY

A. The person in charge of processing the entry of cases is appointed by the directorate of the court. Usually it is an (entry-) office.

B. Audits occur regularly. The correct and consistent process of the business is subject of these audits. The allocation of cases according to the schedule of responsibilities is part of this.

Apart from that each and every panel verifies its jurisdiction.

Also the parties can challenge the jurisdiction of the judge or the chamber. Reproof of the presiding judges (Besetzungsrüge), plea for annulment (Nichtigkeitsklage) or constitutional complaint (Verfassungsbeschwerde)

HUNGARY

The **case distribution regime** is determined by the President of the Curia, or the president judges of regional courts of appeal and the regional courts. On practical terms, the colleges of the Curia, and those of the regional courts of appeal and of the regional courts prepare a recommendation for their own case distribution regime, which are later adopted by the president judge. The president judges of district courts and administrative and labour courts are relatively independent as well within the framework of the organisational and operational regulations of the courts. In these courts, the president judges draw up proposals for the case distribution regime, usually following consultation with the judges. Considering that the case distribution regime is assessed by the chambers of judges and colleges, these bodies are entitled to address the case distribution regime any time.

The president of the Országos Bírósági Hivatal (National Office for the Judiciary) appoints the president judges of regional courts of appeal and of regional courts, including their deputies, as well as the chiefs of colleges of regional courts of appeal and of regional courts, and the chiefs of regional administrative and labour colleges, and their deputies.

The President of the Curia appoints, among others, the chiefs of Curia colleges and their deputies.

The president judges of regional courts of appeal appoint, among others, the chiefs of colleges of the regional courts of appeal, and their deputies.

The president of the Országos Bírósági Hivatal approves the organisational and operational regulations of regional courts of appeal and of regional courts, and shall direct and supervise the administrative activities of the president judges of such courts, including the monitoring of compliance with the provisions concerning the governance of the judiciary, with administrative time limits and regulations, and conduct investigations and inspections in that respect.

The President of the Curia shall supervise and control the administrative activities of its court executives, and shall carry out the examination of such executives.

The president judges of regional courts appoint, among others, the president judges of administrative and labour courts and district courts, and shall supervise and control their administrative activities.

As the publication of the case distribution regime falls within the scope of administrative jurisdiction of the president judges, such regimes may and should be examined in terms of design and formalities, together with the methods they contain, by the superior administrative manager, and ultimately by the president of the Országos Bírósági Hivatal. Accordingly, these provisions may indirectly be examined by the Országos Bírói Tanács (*National Committee of Justices*) as well.

The essence of these control procedures lies in that the entity of the appointment also supervises the activities of the administrative manager and, in that context, the regime of the allocation of cases.

As regards the case distribution regime – for they are accessible to the public – the clients may also present their observations, which the court executives are required to investigate.

For the purpose of renewal of the case distribution regime, the following actions had been implemented in the past two years:

- the president judges are to incorporate a special chapter on the subject in their annual reports
- the action plan of the Bírósági Integritás Munkacsoport (*Working Group for Judiciary Integrity*) attached to the OBH for 2014 provides for the examination thereof
- the Munkateher Munkacsoport (*Court Workload Working Group*) attached to the OBH is in the process of developing a method for determining the extent of reasonable workload
- the Igazgatási Munkacsoport (*Administrative Working Group*) attached to the OBH is in the process of reviewing OIT Directive No 9 of 1999, which provides, inter alia, for the ‘methods of the substitution of judges’.

IRELAND

A. Supreme and High Court: The President of Ireland appoints the Chief Justice and the President of the High Court on the nomination of the Taoiseach (Prime Minister). See reply to one above.

Circuit and District Court: The Government appoints the Presidents of the Circuit and District Courts. See reply to one above.

B. No.

ITALY

As above mentioned, primary law and circular letters of CSM rule a complex proceedings on drawing up of the tables of judicial offices, by virtue of which each three years Chief Judge drafts a document (*tables*) with the aims above mentioned sub. 2), to be approved by CSM on proposal of President of District Court, after hearing judges and prosecutors.

Chief Judge is also responsible for the variations of tables - allocation of judges or allocation of affairs to sections or to single judges - when concrete situations within the office change.

Chief Judge oversees compliance with the tables within the office and must himself respect the tables criteria: each violation may be source of disciplinary and management responsibility.

LATVIA

A. The president is responsible for the allocation of cases. He or she can do it himself or herself or to appoint a responsible person. The appointed person might be a legal assistant of the president or a president of a division of a court.

B. An audit of the allocation system is not performed on regular basis. Nevertheless, an individual case can be subject to an examination concerning its adjudication by the court. Such examination usually is performed on the request (after complain) of a party to the proceedings and might include the review of the allocation procedure.

LITHUANIA

A. Cases are allocated by the chairpersons of the courts, their deputies or chairpersons of the divisions of courts or their authorised personnel.

B. Yes, allocation of cases is audited during the supervision of administrative activities of the court. Supervision of administrative activities in accordance with the Regulations of Administration in Courts shall be exercised:

- 1) of district courts - by the Chairperson of the relevant regional court;
- 2) of regional administrative courts - by the Chairperson of the Supreme Administrative Court;
- 3) of regional courts - by the Chairperson of the Court of Appeal;
- 4) of the Court of Appeal – by the Chairperson of the Supreme Court of Lithuania;
- 5) of all courts - the Judicial Council.

The above mentioned subjects in performing the functions of supervision of administrative activities, can also perform investigations of courts' administrative action or judges' performance not associated with the administration of justice. For this purpose the commission of inquiry may be composed, which may include judges of several courts or other officials, as well as the specialists, academics of other institutions, agency's, society representatives. The powers and composition of the commission provided in this paragraph shall be approved by the Judicial Council.

MONTENEGRO

A. Each case is assigned automatically by JIS. JIS administrators in the courts are determining a plan of allocation, upon the order of the President of the Court, in accordance with the annual schedule of the work in the court.

B. The Judicial Council and Working group to monitor the implementation of JIS, who was appointed by the Judicial Council, are responsible for monitoring the operation of the system entirely.

NETHERLANDS

A. The team manager is responsible for the allocation of cases. He or she is a judge who is appointed as team manager by the court board.

B. Allocation is not subjected to an audit in the Netherlands.

NORTHERN IRELAND

A. The allocation of cases is one of the functions of the Lord Chief Justice who is appointed by HM The Queen. It is also one of the functions of presiding judges (within a court tier) and designated and assigned judges (within a court division) who are appointed by the Lord Chief Justice. Also the allocation of cases within tribunals is a function of Tribunal Presidents who are appointed on recommendation by the Northern Ireland Judicial Appointments Commission.

B. No

NORWAY

A. The president of the court

B. No

POLAND

A. Court president or department chairman appointed by him is a person competent to make a decision on allocation of cases; the competence concerned appears from law provisions.

B. Failing to meet rules of allocation of cases to judges may constitute premise for calling back (e.g. in criminal proceeding, in a specific case, such failure may determine improper adjudicating panel – which is an absolute premise for calling back). Such issue is usually taken into consideration upon a party's request (a higher instance court shall not *ex officio* check, whether or not a case has been allotted to a particular judge's unit, according to previously described rules and principles).

Moreover, method of allocation of cases is subject to control within the frame of visitation or vetting of a court/court department. Visitations and vettings are conducted by inspecting judges. In the course of visitation attention is paid to equal charging the judges with job. Rules and principles and course of conducting a visitation are governed by acts and executive ordinances of the Minister of Justice. Unfortunately – there is no general mechanism leading to equal workload for judges out of the same department or court – e.g. within the frame of district, appeal or the whole country. For long time Krajowa Rada Sądownictwa (*National Council of the Judiciary of Poland*) has been applying to the Ministry of Justice for creating a mechanism that would allow

quick equalizing of the workload. Presently differences of judges' workload between small provincial courts and courts in big cities sometimes equal to (temporarily) 1:4.

President of appeal court may order a visitation covering full administrative activity of a court or court's department or vetting covering selected matters of the court's or department's administrative activity; it may also concern distribution of cases among different judges.

Vetting may also be ordered by Minister of Justice.

PORTUGAL

As it was mentioned, the cases are distributed by lottery done electronically. This draw is made by the court clerks.

ROMANIA

A. The president of the court is responsible for the random distribution of cases within the court. Annually, the president of the court, with the advice of the leading board of the court, assigns the person/persons entitled to carry out the distribution of the cases, by managing the ECRIS system, as mentioned above. This person may be a judge or, more often, a clerk functioning at the registry office, achieves or at the IT department.

B. As the president of the court is responsible for the random distribution of cases within that court, he/she is entitled to monitor and to make verifications regarding the activity of the persons assigned to manage the electronic system in terms of distributing cases.

Under the provisions of the Law no. 317/2004 of the SCM the Judicial Inspection carries out verifications in courts concerning the observance of the procedural regulations in the matter of random distribution of cases. Subsequently, the judicial inspectors draft reports that are presented to the Section for judges of the Council.

SCOTLAND

A. The persons responsible for allocation of cases are employees of the Scottish Court Service, an independent body corporate whose function is to provide administrative support to the Scottish Courts and to the judiciary of those courts. These persons are appointed by the Scottish Court Service.

B. There is no formal audit procedure.

SLOVAKIA

A. The work schedule is a management act of the particular court president, who decides on the work schedule upon the obligation to discuss the draft of the work schedule with judges and subsequently with the council of judges of the particular court. The court president is appointed by the minister of justice based on the results of the selection procedure. In the event that the

court president would not comply with this procedure, the law stipulates that such an action is a serious disciplinary misconduct. Breach of the legal conditions of the random allocation of cases and random re-allocation of already allocated cases is also considered as a serious disciplinary misconduct incompatible with the office of judge, where the disciplinary measure is always a removal from the judicial office.

B. The system of allocation of cases is subject to a broad control, as it is accessible to public. It is also subject to the internal audit by the superior authority of the court administration (ministry of justice, president of the higher instance court). At the same time the internal inspection of the court (the department of inspection) has the competence to review the allocation of cases according to the work schedule within discharging the ordinary or the extraordinary inspection.

SLOVENIA

No answer.

SPAIN

A. As it has already been explained (see 1) the rules of allocation of cases are approved by the Board of Governance of the respective High Court of Justice (which operates at a regional level) or by the Board of Governance of the National Court and that of the Supreme Court following a proposal either by the Judges' Assembly for that judicial district (rules of allocation for first instance courts of the different branches of the jurisdiction) or by the President of the respective collegiate court with appellate jurisdiction (Provincial Court, High Court of Justice, National Court and Supreme Court). Boards of Governance are bodies of self-governance of the Spanish Judiciary composed of some *ex-officio* members (President of the respective Court, Presidents of the several Divisions of the Court, Presidents of the Provincial Courts of the respective region, some of the Doyen judges of the region) and other members elected by their peers among the judges of the region for a five years mandate.

Furthermore, under articles 160.9 and 167.2 of the Organic Law on the Judiciary, the allocation of cases among individual courts/judges of the first instance in each judicial district is conducted under the supervision of the Doyen (most senior) Judge, whereas the allocation of cases at the appellate level is conducted under the supervision of the respective President of the appellate court. Both Doyen Judges and Presidents are assisted by court registrars (of the respective Doyen Judge's office or court with appellate jurisdiction) in the process of allocation of cases. The Doyen Judges and the Presidents of collegiate courts with appellate jurisdiction have internal decision-making powers to decide on any issues which may arise in the process of allocation and to correct any mistakes detected, adopting whatever measures may be required and promoting the responsibility of those involved in the allocation process.

Presidents of courts with appellate jurisdiction (Provincial Courts, High Courts of Justice and National Court) are appointed by the plenary of the General Council for the Judiciary on a discretionary basis for a four years mandate. The system for appointment of Doyen Judges is regulated in article 166 of the Organic Law on the Judiciary. In judicial districts where there are

more than ten individual judges/courts of first instance, the judges elect the Doyen Judge amongst them by majority of three fifths (or by simple majority in the second voting session if none of the candidates obtained a qualified majority in the first voting session). The election process must be renewed every four years or when the appointee resigns for any reason. On the other hand, in those judicial districts with less than ten individual judges/courts of first instance, the functions of the Doyen judge are performed by the most senior judge in the judicial hierarchy of the district.

B. Yes. The rules of allocation of cases approved by each Board of Governance are subject to a legality control (audit) by the Standing Committee of the General Council for the Judiciary. The Standing Committee of the General Council for the Judiciary (which is composed by five members of the Council, including its President) exercises a legality control concerning the contents of the approved rules of allocation and may annul those rules contrary to the general regulations and principles contained in the pieces of primary and secondary legislation dealing with this issue. To this effect the Standing Committee of the General Council for the Judiciary is formally informed of the rules of allocation applicable to each judicial district, once these rules have been approved by the relevant Board of Governance.

SWEDEN

A. The chief judge has the ultimate responsibility. In practice the allocation is made by the registrar when a case is filed by automatically allocation in the management system, VERA.

B. The Parliamentary Ombudsmen regularly inspect courts in Sweden. During an inspection one of the Ombudsmen and his or her staff review files and other documents. They meet the senior administrators and public officials of the court and continuously discuss matters during the inspection. An inspection concludes with a report from the ombudsman to the court's management listing errors or shortcomings that may have been noted during the inspection, and the measures needed to remedy them. During an inspection the Ombudsmen may also look at how the court allocates cases.

TURKEY

A. Within the limits of law, the cases to be heard by courts are allocated through UYAP. If there are more than one judges in a court hearing similar cases, the cases are allocated automatically based on the allocation scoring. Each case has a code and a value for scoring in the allocation system. They are automatically reflected to the allocation system after the data is entered into UYAP- National Judiciary Informatics System.

B. The allocation rules are executed automatically (randomly) by consulting HCJP in accordance with the allocation criteria determined in the system. In which court the cases would be heard is prescribed by procedural law, thus, in the appellate procedure the unlawful allocation is ex officio taken into consideration and accepted as a reversal reason by the high court. If there are more than one judge in a court hearing similar cases, there is no audit except the scoring among judges on who will hear the case. The allocation is performed automatically. If the judges object that the

allocation is not fair and there are differences between their workload, this issue is determined by the First Chamber of High Council of Judges and Prosecutors.

8. Is it, according to the rules of your country, necessary to indicate the reasons / basis for the allocation?

AUSTRIA

For each court, the dispositions concerning case allocation are summarised and shown on an overview. Such overview shall designate the individual branches of law, the numbers of the court department, the names of judges (chairman and panel members) and the names of law officers (Rechtspfleger), the head of the business group, the department heads and accounting officers, finally the offices assigned to these persons and to the individual court departments. This overview of allocated cases shall be posted on the message board of each court in such a manner as to provide information for anybody on the staffing of the court and on case allocation.

BELGIUM

The primary allocation of a case in accordance with the regulation of the court is a material act, which is not motivated. If the primary allocation is challenged by one of the parties or by the chamber to which the case was allocated, the file is submitted to the president of the court in order to decide whether the case should be allocated to another chamber. The president decides by ordinance, which has to be motivated (art. 88, §2 Judicial Code).

BULGARIA

The Internal rules and the technical characteristics of the computer program require a clear indication of the reasons/basis for the allocation. The computer program provides several options when selecting the reporting judge: a) “random choice”; b) “personal choice” – specific judge is appointed; c) “does not participate” option; d) “on duty” option.

Choosing the option “random” excludes the need for explanations or giving reasons. If one of the other options is chosen, the program requires an explanation of the reasons for choosing the option.

CROATIA

No.

DENMARK

No. The rules do not go further than described. The rules on incompetence set limits to who can handle a case.

ENGLAND AND WALES

No

GERMANY

The allocation of cases follows the abstract rules of the schedule of responsibilities. Further reasons are not necessary.

HUNGARY

There is no statutory provision ordering the requirement to indicate the reasons / basis for the allocation of specific cases. Publication of the case distribution regime is intended to ensure the verification of the method and base of the allocation of cases.

However, there have been some instances where it was done in specific cases, such as:

- a case is re-assigned from the judge originally designated (e.g. judge's service relationship is terminated, long-term absence, disqualification);
- the case is allocated in derogation from the pre-determined automatic case distribution regime.

In the cases specified above the judge may be informed by the newly designated judge or by the president judge, and the reason for deviation shall be indicated on the case file as well, in some form of override. In these cases re-assignment is properly documented and archived in the president judge's files as well.

IRELAND

No. Applications for priority dates are ruled on and reasons are indicated. It is a transparent system in circumstances where the allocation of cases take place in open Court rather than privately.

ITALY

- not relevant -

LATVIA

No.

LITHUANIA

Courts information system LITEKO provides a protocol that indicates the circumstances and criteria according to which the cases are allocated to a particular judge. Circumstances and criteria for allocating a case to a particular judge are presented in the case file in order to secure the transparency and the impartiality of allocation of cases. The protocols are public and the parties of

the cases or public can access the protocols of the allocation of cases in courts' offices upon a request. It is planned to make the protocols available freely via internet as well.

MONTENEGRO

No.

NETHERLANDS

No. But most courts do publish their policy.

NORTHERN IRELAND

No

NORWAY

No

POLAND

Necessity for particular specifying reason for allocation of a case exists only in case of deviation from the general rule of allotting subsequent cases to judges by delivery order, according to alphabetical list of the department judges.

PORTUGAL

Because of the way the assignment is made it is not necessary to indicate the reasons for it.

ROMANIA

As the electronic ECRIS system is designed to register every step, operation that is carried out when using this application for distributing a case, there is no need for indicating reasons of these procedural steps. However, any change referring to the members of the judicial panel or to the distributed cases shall be mentioned within the electronic system or separately⁵, by drafting minutes containing a detailed description of the reasons of any intervention within the system⁶.

SCOTLAND

No.

⁵ According to the provisions of art. 95 para. 9 of the Internal Regulation of Courts

⁶ Decision no. 805/2013, recently approved by the SCM Plenum

SLOVAKIA

As the allocation of cases is made by the random selection by means of the electronic system, there is no need to indicate the reasons for the allocation.

SLOVENIA

No

SPAIN

Yes. In principle, all decisions made by the officials responsible for the allocation of cases must include a specific reference to the applicable rule, taking into account the specific category to which the case subject to allocation belongs. Moreover, the decisions on procedural review of the allocation of a case to an individual judge/court or panel of judges must be grounded and indicate the reasons for the allocation of the case on the basis of the specific rule of allocation applicable to that particular case.

SWEDEN

Since the cases are randomly allocated there is no need to explain the reasons. If a case is reallocated a decision on this is made with an explanation.

TURKEY

The basis for the allocation criteria which are determined within the scope of the principle of natural justice and the principles of the independency of courts are essential. No allocation rule that is against the legal regulations could be established.

9. Do the rules of your country allow derogating from the general rules of allocation for a specific case? What is the basis and aim of such derogation and what are the criteria? If such derogation is not possible in your country, is there a need to provide for it?

AUSTRIA

No.

BELGIUM

Yes. In case of necessity (“Lorsque les necessities du service le justifie”) the president of the court can establish one or more temporary chambers (art. 89 Judicial code) or allocate a part of the cases of one chamber to another chamber (art. 90 Judicial code). These derogations have to be motivated by the necessity of the service. The workload of a specific chamber or the complexity of a case could justify such derogation.

BULGARIA

Bulgarian Legislation does not allow explicitly derogating the general rules of allocation of cases for a specific case. Very few cases of derogation could be found in courts' practice. Usually it is done because of public interest or complexity of case by an order of the head of the court. Such cases were highly criticised and were subject to public scrutiny.

There is no need to provide for such rules.

CROATIA

Yes, but only if the judge has been exempt or legitimately prevented from resolving the case that has been allocated to him. Reasons for exemption are set out in procedural laws, while reasons for objective impediment of judges are stipulated by the Court Rule Book and listed under question 11.

DENMARK

As the president has the final decision on allocation of a case, there is no need for rules concerning derogation.

ENGLAND AND WALES

The system is such that derogation is not necessary

GERMANY

An exception for certain cases is not allowed and not necessary. In cases of adjustments of the schedule of responsibilities, a lasting competence of a panel can be decided by the presidium so that continuity is in place and double-work avoided.

HUNGARY

In many cases, certain special cases are to be registered in the case distribution regime (for example, criminal cases of juvenile offenders can only be handled by judges expressly designated for such cases). The case distribution regime shall be developed with that aspect in mind.

Derogation from the general rules on the allocation of cases is allowed only for the reasons and by way of the means defined in the case distribution regime. For instance, according to the automated case distribution function, each case ending with an even number should be assigned to the same judge, however, the judge in question participated in the case as a judge or expert. If that happens, the case in question is assigned – also according to a pre-determined procedure and with the derogation documented – to another judge.

Another possibility is that the judge himself declares his inability to hear a case or cases on account of his workload, or there is a conflict of interest in respect of the parties to the case in

question. Such occurrence may also be grounds for a case to be returned to the case distribution regime.

IRELAND

Yes. At the discretion of the President/Judge. This could arise in determining for example, that the case be heard as a matter of urgency.

ITALY

The tables are general instruments valid for three years, so they must be necessarily flexible with reference to the concrete situations in the office (like the allocation of new judges or the re-allocation of affairs to sections or to single judges): so a similar proceeding is provided for tables' revision/variation.

A reallocation of a case is also possible in the eventuality of temporary absence or refusal of a judge, always in respect of predetermined tables criteria.

Chief Judge - for needs of the office - can derogate general criteria of allocation of cases explaining the reasons to judges concerned. On the same ground, Chief Judge must reallocate the cases if it's necessary to balance the burden of affairs in charge to a section/board/single judge.

LATVIA

All rules are general. Those rules are applied in a manner to provide a transparent system of allocation of cases. Even if there is a need to exclude a certain judge from the list of available judges or to allocate to one judge connected or related cases, it is done within the system of allocation of cases.

LITHUANIA

The computerised cases allocation system gives a possibility not to use the automated procedure in exceptional cases, allocating a case to a specific judge.

Under the paragraph 9 of the Description a person allocating cases should not create possibilities to allocate a case to a specific judge, except when a case must be examined by a specific judge on the grounds provided for in the procedural law, as well as in cases specified in paragraph 12 of this Description. In such an event, a case shall be allocated without use of the automated selection method. When a case is allocated without use of the automated selection method, specific legal grounds for this must be indicated in the Module.

Paragraph 12 of the Description sets that the Module, forming the allocation of a case to a judge or judicial panel, shall take into account judges that can hear cases in court, shall form their random sequence and, if the person allocating cases determines, according to the procedural law, when a court hearing will be held, it shall determine that the date and time of court hearing is a

sequence criterion. The sequence criterion can be deviated from when case is to be heard sooner or when it cannot be appointed at the planned time due to business of the participants in the proceedings in other cases at the same time. LITEKO module of business of participants in the proceedings gives information about business of the participants in the proceedings in other cases (together with notifications about such cases to be heard sooner) at the time planned for hearing of the case. The sequence criterion and the probabilistic criterion of allocation of cases can be deviated from if it is expedient to allocate hearing of cases of the same type (in case of an analogous factual and legal situation) at the same time and/or to certain court judges, as well as in other necessary cases, referring to them in the rules of allocation of cases approved by an order of the president of the court.

Nevertheless, even in the exceptional cases when the automated procedure is not used, allocation of cases is always performed only by use of the computer-assisted (electronic) system.

MONTENEGRO

All cases must be allocated transparently and automatically without the possibility of human influence through the JIS.

NETHERLANDS

There is no uniform rule on derogation from the general rules. Derogation from the rules will usually take place when a case is very complex, or when it generates a lot of attention from the media for example. The team manager decides, sometimes after negotiating with the court board. Criteria are the same as for regular allocation. The judges experience being the most important one in this respect.

NORTHERN IRELAND

Any such derogation would be to meet the requirements set out in Response 3 above. The process is not governed by any rules.

NORWAY

Yes, the Court President can decide this.

On certain areas the principle of randomness is modified. For instance, deputy judges in the first instance court will be scrutinized by the court president or mentor judge and caution is made when cases are assigned the first months of the appointment. The principle of randomness is furthermore modified to some extent, for instance in case of specialization. In those cases randomness is tried to be maintained as far as possible between the specialized judges.

The principle is that in these cases the allocation should be made in a way that it would not matter for the parties who will be the judge in a case.

POLAND

Chairman of the department, when allocating cases, may abandon the general rule to allot the cases to judges by delivery order on the basis of judges' alphabetical list in circumstances justifying such decision.

In particular it may take place in the case of judge's long illness, health leave, strict connection of considered cases, and with regard to: judge's unit's workload – including type and weight of cases, necessity to ensure equal charging of judges, functions performed by the judge, secondment to another court (see: points 3 and 4 above).

Also, law determines reasons for excluding a judge (*ex lege* or upon a party's request). After excluding a judge, the case concerned is allotted to another judge.

Law provisions provide that after cancellation of a ruling by a court of higher instance or in the case or in case of complaint for resumption of proceedings, the case should be considered by another judge; that also affects allocation of case to a judge.

All situations of abandoning the rule of allocation of cases by delivery order are determined in law provisions (mainly the Act) and further regulations in that scope are not necessary – except mechanism equalling workload of judges in the scale of the whole country.

PORTUGAL

The current legal rules provide only for the exception mentioned in the second part of Section 4. The new Law on Organization of the Judiciary (Law 62/2013 of 26 August), which has not entered into force yet, allows the CSM, as proposed by the presiding judge of the court, to determine the allocation of cases to another judge who is not the holder, in order to balance the caseload and efficiency of services (Article 94-4 , f)).

ROMANIA

The principle of random distribution of cases is determined by the **situation of incompatibility of the judges** within the judicial panel. One of the cases of incompatibility may be the situation where the judge decided on the proposals of arrest during the criminal investigation. In this case, the president of the section/court decides to allocate the case to other judges. Similar provisions are in force for the situations in which a judge cannot sit for objective reasons (e.g. illness).

SCOTLAND

Not applicable.

SLOVAKIA

No derogation from the general rules set by law for the allocation of cases is possible.

Derogation would be suitable in regulating the specialisation of the decision-making, if the range of case load is sufficient for decision-making of a single judge or a single panel so that the cases would be allocated outside the random selection by technical measures. The very specialisation of decision-making activity particularly ensures an improved quality of decision-making and thus also its timeliness and this one is one of the objective criteria of the allocation of cases set also by the Venice Commission (see the report of March 2010).

SLOVENIA

There is no need.

SPAIN

Yes. Articles 152.2.1^º and 167 of the Organic Law on the Judiciary envisage the possibility of a full or partial release of cases to be allocated to a particular judge/court of first instance or to a panel of a collegiate court with appellate jurisdiction, when workload requirements make it advisable for the better administration of justice or for the better functioning of the judicial system as a whole. The decision on the partial or full release is made by the relevant Board of Governance of the High Court of Justice (or of the National Court), must be reasoned and is publicised in the same manner as the general rules for the allocation of cases in the relevant judicial district (see 1).

If the full or partial release of cases to be allocated refers to a judge/court of first instance, the decision of the relevant Board of Governance is made after the proposal by Judges' Assembly of the judicial district at the request of the interested judge.

Full or partial release of cases is decided only in exceptional instances, after hearing the affected judge or judges of the panel and for a limited period of time (no longer than six months). The measure can be extended for identical periods by the relevant Board of Governance on the basis of the same requirements and following the procedure envisaged for its adoption. The aim of the derogation of the general rules for the allocation of cases is to overcome the work overload or backlog affecting the judge/court of first instance or the panel of judges with appellate jurisdiction who benefits from the release and to ensure a better quality of the performance of the courts of justice in the benefit of practitioners and court users in terms of timeliness (reducing undue delays). The measure is normally adopted when an individual judge/court or panel of judges of a collegiate court with appellate jurisdiction are affected by a serious backlog of pending cases or when a very complex or cumbersome case or proceedings have already been allocated to the individual judge/court or panel of judges benefiting from the full or partial release of new cases, as a compensation for the exceptional workload arising from the complex or cumbersome case or proceedings.

SWEDEN

See earlier answers. Yes, there are exceptions, for instance heavy workload in a department, a judge's special experience etc.

TURKEY

The automatic (random) allocation is essential in the allocation of cases, however, it is also possible to allocate the concerned cases directly to the courts. In the meantime, the reason for this allocation should certainly be stated.

10. What principles are applied when a case is allocated not to an individual judge, but to a panel/board of judges or a chamber of the court? Who decides on the composition of the panel/board/chamber?

AUSTRIA

In principle, cases in courts of all instances are allocated under the same rules, with the chairman of a panel allocating cases to its members. Minor deviations from such rules apply to the Supreme Court.

BELGIUM

In general, cases are not allocated to an individual judge but to a chamber of the court which can be composed of one or three judges. In the courts of “the first instance” the law prescribes that both civil and criminal cases are allocated to a chamber with one judge. At the beginning of the proceedings, parties (prosecutor, accused, defendant,...) can ask a referral to a chamber of three judges (art. 91 Judicial Code). Certain specific cases have to be allocated to chambers with three judges, for instance appeals of decisions of the justices of the peace (art. 92 Judicial Code), sexual crimes. Similar rules exist for the allocation of cases to chambers of the courts of appeal (art. 109bis Judicial Code).

BULGARIA

Under BG legislation the case is allocated to an individual judge called “reporting judge” and not to a panel of judges.

There is no obligation for the administrative head of the court to nominate the other members of the panel by the random choice principle and the computer program does not provide such possibility. Usually the courts form the so called “constant” panels of three judges. After the “reporting judge” has been selected by the computer program he/she hears the case together with the other members of the “constant” panel.

The decision about the composition of the constant panels is made by the General Assembly of judges at the court or by the administrative head. The Internal rules of a court could lay down provisions related to the way the panels are composed but the analysis of the existing Internal Rules reveals that the courts do not lay down such rules.

CROATIA

Cases are assigned to panels of second and third instance courts in alphabetical order of Presidents of panels. The President of a second and third – instance panel assigns cases to the members of the panel in alphabetical order of a panel members. Court presidents adopt act (Annual plan of case distribution) for the next year not later than 10 December in the current year, in which methods of case allocation are determined in a way that for every judge it is exactly determine which type of cases and in what ratio he or she will be in charge of and with that Act also the members of panels are also determined.

DENMARK

The principles for allocation are the same as described concerning allocation to an individual judge. The composition of a panel/board/chamber is decided by the president of the court. By setting the composition of a panel or board, the president will consider the combination of competence and experience.

ENGLAND AND WALES

This does not happen in most Courts as Judges sit individually.

Where it does occur, primarily involving High Court cases heard in the Divisional Court, consideration is given to the complexity and / or profile of the particular case with a view to selecting the most appropriate judges according to their experience and expertise in the relevant area of law. As mentioned above, constitutions of the Divisional Court consist of two or three judges depending on the importance of the case being heard, and usually include at least one judge of the Court of Appeal.

It also occurs on the Magistrates Court where usually lay Magistrates sit in a panel of three, or occasionally two. These are cases which are the more minor cases of a criminal nature of less complex cases in family proceedings. The usual criterion for allocation is availability of the Magistrates on the panel.

GERMANY

The appointment of a panel is decided by the presidium of the court.

Within the panel the schedule of responsibilities is decided upon decision of professional judges (in accordance with principles mentioned above (No2.).

HUNGARY

In point 1 under the section ‘Acts relating to criminal and civil lawsuits, other procedural regulations’ a detailed account was given as to the composition of courts in civil and criminal cases, with reference to special procedural rules as well (administrative procedure).

The chambers comprised of several judges typically handle appellate cases. In such cases the chamber is comprised of two sitting judges and one presiding judge. The office of presiding judge may be awarded by way of a public procedure. The appointment of a presiding judge shall be for an unspecified period of time.

As far as the case distribution regime is concerned, there is no difference whether the case is assigned to a single judge or a chamber. The decision to select the judge-rapporteur from among the judges lies with the presiding judge. Usually, these matters are not specifically addressed in the case distribution regime. Regulations in this respect are introduced in those regional courts and smaller regional courts of appeal where a judge serves as a single judge and also as a member of a chamber, or if a judge concurrently sits on several chambers. The latter is usually indicated in the case distribution regime beforehand. On general principle, whether a judge who is assigned or appointed to a regional court hears cases in the first instance as a single judge, or serves in chamber in appellate cases, is decided at the level of case distribution or allocation.

IRELAND

See reply to 1 and 5 above.

The President of the High Court decides on whether to set up a Divisional Court (a Court, usually consisting of three Judges rather than the standard Judge sitting alone) to hear matters of exceptional importance.

ITALY

In general, the jurisdiction of judicial offices is provided for by primary law (*trial code*), by virtue of the double rule of type of affairs in relation with the territory. On a different ground the tables - meant as internal rules - allocate judges by establishing the composition of individual judges so as of panel/board/chamber of judges.

LATVIA

The case is allocated to a reporting judge. The other members of the panel are chosen according to a certain system described in the rules of the allocation of cases or by a lot. There are several options how the panels are composed. One option is to have designated judges who work together. Another option is to proceed with computerised distribution or by drawing a lot.

LITHUANIA

Formation of judicial panels is automatic and based on the same principles as the allocation of case to a particular judge. System proposes possible variations of judicial panels, which are checked, adjusted if needed and approved by the chairperson of the court, their deputies or chairpersons of the divisions or by their authorized personnel. However, separate courts (e.g. the Supreme Court of Lithuania, The Supreme Administrative Court of Lithuania and the Court of

Appeal of Lithuania and others) may set special rules for composition of judicial panels according to their approved rules which do not contradict to the general principles of the allocation of cases.

MONTENEGRO

These principles of allocation of cases are the same as for the individual. At the beginning of each calendar year, the President of the Court is required to adopt an annual working schedule, in which determines the composition of the court departments, number of the Court panels, as well as the judges who makes the panel.

NETHERLANDS

The criteria are the same for allocation to a single judge or to a panel of judges. The team manager decides, based on the size and complexity of the case. In daily practice, cases are distributed among the judges/justices in the relevant sector(s) (on behalf of the court management). In this connection, the dispute in every case is characterised (for example in the civil-law sector: personal injury, tenancy law or intellectual property) in order to estimate the complexity of the case and for the knowledge and experience required for the handling and decision. The case is then allocated to a (single or three-judge) panel. It does happen regularly that in the following hearing the panel has a new composition. This is a very common practice in the Netherlands and therefore it rarely leads to questions from the parties to the case.

NORTHERN IRELAND

When a case is allocated to the Court of Appeal or a Divisional Court by the Lord Chief Justice he would take into consideration the criteria set out in Response 3 above.

NORWAY

In Norway this can only be done in the Supreme Court, where the president decides upon this.

POLAND

Composition of an adjudicating panel is determined by the Act (one person, three persons, five persons) without deviations from statutory regulations, except for situations where – upon the court president’s order – a case to be considered by one judge according to law provisions, is considered by three judges due to its complex character (factual and legal complexity, precedential character). In courts of law personal composition of adjudicating panel (three persons, and five persons in criminal cases regarding crimes subject to life-imprisonment) is decided by chairman of department, court president in exceptional cases, having regard workload of judges from the multi-personal panel. In the Supreme Court composition of the panel is determined by the Chairman of the Chamber.

PORTUGAL

Currently the adjective law only provide collective intervention in the trial of criminal cases in which imprisonment exceeding five years can be applied. The cases are distributed according to the method described. The board of judges are determined in advance.

ROMANIA

The cases are randomly distributed to the judicial panels and the panels are composed of one, two or three judges according to the stage of the procedure (first instance, appeal, second appeal)⁷.

According to art. 52 para. (1) of the law no. 304/2004 on judicial organization, the leading boards of the courts shall establish the composition of panels at the beginning of every year, with a view of ensuring the continuity of the panels. Panel members may be changed only in exceptional cases, based on the objective criteria set forth in the Internal Regulation of courts.

SCOTLAND

In Scotland all first-instance civil and criminal cases are dealt with by judges sitting alone and not in panels or chambers. In the Court of Session and High Court of Justiciary civil and criminal appeals are heard by appeal divisions of the courts, with courts comprised of more than one judge. The most senior Scottish judges (the Lord President and the Lord Justice Clerk) are *ex officio* members of the appeal divisions of the courts. The other members are appointed by the Lord President. With regard to civil and criminal appeals, the criteria for allocation of cases are the same as for first instance business *mutatis mutandis*. There are usually a maximum of about 10 judges of the Court of Session/High Court available to hear appellate business. If required this number is supplemented by one or more judges who do not normally sit as appellate judges.

SLOVAKIA

A case is always allocated to the judicial department of the respective judge, even if not directly to the judge. In such a case according to the work schedule and based on the delegation of judge, it is judicial clerks who decide. This comes from our constitutional regulation stipulating that based on the judge authorisation the court's employee is entitled to decide (particularly in procedural decisions). Composition of a panel shall be decided by the court president according to the statutory criteria concerning the elaboration of the work schedule, as mentioned above.

SLOVENIA

Allocation to a board of judges is done in the same way and by same principles, as mentioned above. The case is allocated to the reporting judge of the board. The judges within the board alternate the role of reporting judge (the one who writes the judgement).

⁷ There is a particular situation at the High Court of Cassation and Justice where the composition of the panels is different (3 judges when judging in first instance, 5 judges when judging in recourse).

SPAIN

The principles applying to the allocation of cases to panel/boards of judges or chambers of collegiate courts are basically the same that apply to the allocation of cases to individual judges/courts of the first instance. Under articles 152 and 160.9 of the Organic Law on the Judiciary the respective Boards of Governance are also responsible for the approval of the rules for the allocation of cases between the different sections or panels of a division of collegiate courts. Moreover, the respective Board of Governance must approve annually, on the basis of objective criteria, the rules for the assignment of judges to each section or panel of the collegiate courts and the rules for the allocation of the cases to the judges who act as rapporteur judge within each panel. In all collegiate courts, the President of the respective court is responsible for the specific allocation of cases between divisions of the same jurisdictional order and among their panels or sections in accordance to the rules approved by the Board of Governance.

Under articles 203 to 206 of the Organic Law on the Judiciary the rapporteur judge for each case allocated to a panel of judges must be designated among all the judges of the relevant panel/section (including the President) according to a rota system based on objective criteria which is defined in the applicable rules of allocation and made accessible at the beginning of each judicial year. The rapporteur judge within the panel plays a very important role, since he/she is responsible for the in-depth analysis of the first-instance proceedings, for the submission of a draft of the judgment or decision to be adopted by the panel, and for the drafting of the final version of the judgment or decision which mirrors the opinion of the majority of the judges of the relevant panel. The rapporteur judge (like the rest of the judges of the panel) is entitled to write a dissenting opinion if he/she disagrees with the opinion of the majority of the judges of the panel.

SWEDEN

The principles for allocation are the same as described earlier. The composition of the panel/board of judges or a chamber of the court is decided by the chief of each court.

TURKEY

The principles concerning the cases to be heard by an individual judge or a panel/board of judges are prescribed explicitly by our procedural laws. No allocation is allowed if it contradicts to these regulations. This is the reason for reversal in terms of right to appeal.

The judges to be appointed to the courts and also their authorities are decided by High Council of Judges and Prosecutors. In this regard, the chief judges and members are directly assigned to the courts that composed of a panel /board of judges by High Council of Judges and Prosecutors.

11. Is there a possibility to re-allocate a case to another judge? If yes, please specify the procedure, in particular:

- **Indicate in what circumstances such re-allocation is possible?**
- **Who is entitled to reallocate the case?**

- *What criteria should be considered for the re-allocation of cases?*
- *Up until what stage in the proceedings is a re-allocation possible?*
- *Is the consent of the originally designated judge necessary?*

AUSTRIA

During any case allocation year, case allocations may only be **changed for important official reasons** and only by a competent panel of judges (Personalsenat). A case in point would be a change of personnel (replacement of judges, lengthier leave of absence or illness), due to workload or low utilisation of individual judges or panels, or for other important reasons. Changing the management or substituting a court department shall be restricted to inevitable cases, e.g. if by such substitution – not just in the short term – workloads are no longer allocated in an equitable manner. If within a court a judge relocates from one department to another, the case allocation has to be changed so that such judge retains those court matters in which he has already taken evidence.

If the competent judge is **prejudiced** or **excluded**, the judge has to inform the head of the court about the reasons. The head of the court has to decide, whether the case has to be reallocated within the court or not. If all judges of a court, some courts or a whole region are prejudiced or excluded, the president of the regional court or the higher regional court of this region or the Supreme Court of Justice has to decide about the reallocation and to determine the new competent court. At the new court the case has to be allocated according to general rules of allocation of this court.

If the parties think that the competent judge is **prejudiced** or **excluded**, they can bring in a reasoned submission that can lead to a reallocation of the case by the head of this court or a higher court.

The higher regional courts or the Supreme Court of Justice can **delegate criminal cases** ex officio or on application due to specific reasons (e.g. public safety) to another court. At the new court the case has to be allocated according to general rules of allocation of this court.

In civil cases the competent judge has to negotiate (transfer) the case to another court, if **all parties apply for a transfer** to a determined court at least at the beginning of the first hearing. The competent judge can also transfer the case to another court of similar type ex officio due to special reason (e.g. pendency of a trial at another court about the same damaging incident and transfer of the case would lead to a reduction of the effort of the trial).

BELGIUM

- If the primary allocation is challenged by one of the parties or by the chamber to which the case was allocated, the file is submitted to the president of the court in order to decide whether the

case should be allocated to another chamber. The president decides by ordinance, which has to be motivated (art. 88, §2 Judicial Code).

- The legal rules on exemption (kinship with lawyer of one of the parties art. 301 Judicial Code) and on recusal and withdrawal can lead to the reallocation of cases or the change of composition of the chamber during the procedure.

- As long as the case has not been taken “in deliberation”, the president of the court can change the composition of the chamber (for instance in case of ill health of one of the judges).

- Consent of the originally designated judge is not necessary to reallocate a case.

BULGARIA

— *Indicate in what circumstances such re-allocation is possible?*

The Regulations on Court Administration adopted by the Supreme Judicial Council state that re-allocation could be carried out in case of “recusal” or „absence” of the reporting judge. The Internal Rules of the court provide specification of such instances and the proper procedure if such circumstances occur.

a) “Recusal” of the reporting judge. The Civil Procedure Code, Criminal Procedure Code, Administrative Procedure Code provide a list of detailed circumstances under which judges are supposed to resign or to may be disqualified by the parties. These cases mainly deal with the issue of putting their impartiality at risk and therefore may involve personal interests or being related to the parties.

b) “Absence” of the reporting judge. The cases of “absence” are specified in the Internal rules of the courts. Examples: sick leave due to temporary incapacity; leaving the court (e.g. retirement, commission to another judicial body), business trip, use of paid or unpaid annual leave, pregnancy, childbirth, childcare leave.

— *Who is entitled to reallocate the case?*

The person who is responsible for the allocation of the cases (see answer to 7A).

— *What criteria should be considered for the re-allocation of cases?*

The same criteria as those applied in the process of initial allocation. When performing the re-allocation process the initially designated judge is excluded by choosing „does not participate” option of the computer program.

— *Up until what stage in the proceedings is a re-allocation possible?*

It is always possible to re-allocate a case having in mind the sudden and unexpected character of the circumstances which require re-allocation of the case. In some cases re-allocation could lead to a new start of the proceedings (example: in criminal cases because of the Judicial continuity principle regulated in criminal procedural law).

— *Is the consent of the originally designated judge necessary?*

The consent is not necessary and not required.

CROATIA

Cases are allocated to judges/judicial panels according to the Annual Plan of case distribution. The case being allocated in this manner to a particular judge may be allocated to another judge/judicial panel only in the event of his/her objective impediment (exemption, absence from work, exceptional overload of cases or other justifiable reasons). In any stage re-allocation is possible if those circumstances appear. The consent of originally designated judge is not necessary.

DENMARK

It is possible to reallocate a case until the final hearing starts.

The president of the court – or a person that he or she has authorised – can reallocate a case. This will mainly happen when a judge/panel is taken up by other duties or at illness, holidays etc.

The criteria for allocation will be the same. In case of replacement with short notice, the main criteria will be first judge available.

The reallocation will in most cases be on request of – or in the interest of – the originally designated judge. In other cases, consent will normally be given, but it is not necessary.

ENGLAND AND WALES

— *Indicate in what circumstances such re-allocation is possible?*

Cases are occasionally reallocated when a Judge becomes unable to sit on the case, either because an earlier case has overrun, and not reallocating would lead to delay, or because of illness, and another suitably qualified Judge is available.

— *Who is entitled to reallocate the case?*

Usually the Judge him/herself, or the Resident Judge or Senior Judge of the Court in conjunction with the Listing Officer.

— *What criteria should be considered for the re-allocation of cases?*

The same criteria as applied for the original allocation

— *Up until what stage in the proceedings is a re-allocation possible?*

This could happen at any stage

— *Is the consent of the originally designated judge necessary?*

If a case has been specifically reserved to a Judge, then yes. If however s/he has not yet reserved the case then no.

GERMANY

In order to re-allocate cases the chart of responsibilities has to be changed.

It can be done so if judges are permanently absent or in case of capacity overload or low use of capacity or alternating judges. The adjustment of the schedule of responsibilities is decided by the presidium; the judge who has been in charge does not need to agree.

If a judge declares to be not competent the case can be forwarded to a competent judge or panel.

If the alternation of the judge takes place after the hearing, the process may be re-established.

HUNGARY

Re-allocation (re-assignment) of a case to another judge is permitted in exceptional cases only, such as:

- exclusion;
- termination of the judge's service relationship;
- long-term absence of the judge (for example, for reasons of secondment, transfer, maternity, illness);
- type of the case (e.g. reopened case);
- workload balancing;
- processing any case backlog.

Where cases to be joined are heard by different chambers (judges), the designation of such judges shall be amended for hearing the cases thus joined.

Re-allocation is permitted only under such circumstances as provided for by the relevant legislation.

Re-allocation shall take place according to the case distribution regime. The officer in charge of the allocation of cases shall provide for the re-allocation in accordance with that case distribution regime. The consent of the originally designated judge is not necessary.

There is no time limitation for the re-assignment of a case. The reasons enumerated above are typically attributed to circumstances beyond the judge's control (e.g. sickness) which cannot be limited by law.

For the re-allocation of cases the same criteria apply, as the ones used for drawing up the case distribution regime, based on which the case was originally allocated.

The judge has the opportunity to make a statement exclusively if a motion for his recusation has been submitted by a client, weighing also the possibility of re-assignment of the case. If the judge declares bias, the case will be re-assigned to another judge. If the judge maintains that he is unbiased, the matter will be decided by another judge (chamber of judges). In other cases, express consent is not required. Yet, re-assignment frequently takes place following consultation with the judge, or re-assignment is abolished following consultation with the judge. The latter commonly occurs when the judge is transferred to a higher court by applying therefore, however, he

continues to preside over his cases in progress at the previous service post, or a part of such cases by way of secondment.

If the judge requests the re-allocation of cases from his docket citing his workload as the reason, that usually takes place upon weighing the workload of all cases assigned to him, following consultation with his immediate supervisor.

IRELAND

The primary consideration which arises is the maintenance of a fair trial. In this regard therefore it is possible to reallocate a case to another Judge and this decision is normally made by the Judge having session of a case. It is not possible to outline all the circumstances which would arise requiring the reallocation of the case but generally the Judge originally designated may decide on a reallocation of a case on his/her own volition, or on application by either the Plaintiff/Prosecutor or the Respondent/Defendant. These applications can be made at any stage in a case but where the hearing of a case has already commenced, a reallocation would mean that the hearing would have to commence again before another Judge.

A case may be reallocated for a number of reasons, including

- (a) A Judge being conflicted (e.g. it may become apparent that he or she knows one of the parties in the case).
- (b) A Judge may be asked by a party to recuse themselves for a stated reason and accedes to the request.
- (c) The case may be too lengthy having regard to the other commitments of the assigned Judge.
- (d) The death or incapacity of a Judge dealing with a case.

The President or the list Judge or an individual Judge will reallocate a case.

No particular criteria apply to the reallocation.

There is no set stage as to when proceedings must be reallocated though it usually is apparent before or at the commencement of the hearing that it is necessary.

The consent of the Judge is usually forthcoming as she or he will have requested the reallocation.

ITALY

- In what circumstances such re-allocation is possible?

See n. 9).

- Who is entitled to re-allocate a case?

See n. 9).

- What criteria should be considered for the re-allocation of cases?

Also re-allocation of cases follow the general and pre-determined criteria specifically ruled by the

tables of the single judicial office.

- Up until what stage in the proceedings is a re-allocation possible?

There is no preclusion to reallocate a case in relation with personal situations of judges. In other cases, Chief Judge has to evaluate the stage of the proceedings in order to avoid delays. Any way, primary law and CSM rule the proceeding effects of re-allocation.

- Is the consent of the originally designated judge necessary?

Within the proceeding for the approval of tables (each three years), so as against variations and single decisions of Chief Judge, each magistrate is allowed to present remarks to Judiciary Council: final decision is demanded to the President of District Court

LATVIA

Yes, it is possible

If yes, please specify the procedure, in particular:

- Indicate in what circumstances such re-allocation is possible?

Possible reasons can be too long absence of the designated judge, if two cases or more shall be examined together.

- Who is entitled to re-allocate the case?

The president of the court or a person appointed by the president of the court is entitled to re-allocate a case.

- What criteria should be considered for the re-allocation of cases?

The same general criteria are applied.

- Up until what stage in the proceedings is a re-allocation possible?

Normally a case should not be re-allocated. Nevertheless, exceptional circumstances might require a re-allocation. Such exceptional circumstances might be, according to procedural laws, later discovered conflict of interest of the appointed reporting judge or of a judge sitting in the panel. Another situation might be when the appointed reporting judge is unexpectedly absent from work for longer periods (usually – because of an illness), but the case has certain deadlines to follow.

- Is the consent of the originally designated judge necessary?

No

LITHUANIA

Yes, such possibility exists.

• Indicate in what circumstances such re-allocation is possible?

- In the event that a judge or a member of a judicial panel selected by the Module but not yet appointed or selected by the Module and appointed is not able to hear a case due to certain reason (for example, the judge's removal or opting out, illness, secondment, etc.). Who is entitled to reallocate the case?

The person responsible for case allocation shall change the judge or members of the panel (one, several or all of them).

- What criteria should be considered for the re-allocation of cases?

After the person responsible for case allocation has entered the grounds for the change of the judge for the selection of a new judge, just like in case of the appointment of a judge for the first time, the computer-assisted case allocation procedure shall be carried out according to the same criteria, which were set and applied at the time of the appointment of the first judge.

- Up until what stage in the proceedings is a re-allocation possible?

There are no restrictions.

- Is the consent of the originally designated judge necessary?

No

MONTENEGRO

Yes, there is the possibility of reallocation of cases to another judge.

Circumstances which can lead to the reallocation of cases are:

- When the judge is asking for an exemption,
- If the JIS does not have enough information about the case, and assign it by a random allocation to another judge or does not assign at all, ie. in case of an operator error
- If the party is seeking for an exemption of a judge
- If the President of the Court decides that cases which are assigned to a judge because of his absence should be assigned to another judge to work. (Absence of more than 3 months).
- Reallocation of cases is based on a decision issued by the President of the Court for a concrete deployment case.
- The only criterion to be taken into consideration is the reason why the reallocation is performed.
- At any stage of the procedure it is possible to reallocate the cases.

Depending on the reason for the reallocation, the President of the Court may request a statement of the judge whose case is reallocated.

NETHERLANDS

- *Indicate in what circumstances such re-allocation is possible?*

ENCJ Project 2013-2014 Development of Minimum Judicial Standards IV: Allocation of Cases
adopted Rome 13 June 2014

The case can be re-allocated upon request of the judge or by the team manager. Judges can withdraw at all times, or disqualify themselves, if they are of the opinion that they cannot handle a case. If a judge withdraws, the case is allocated to another judge. If a party to the proceedings is of the opinion that the judge in the relevant case is no longer honest, impartial and independent, said party to the proceedings may request that said judge no longer handle the case (challenge).

This legal system of recusal and challenge plays only a marginal role in practice, even though the abovementioned system of changing the panel of judges for the following hearing might suggest otherwise (see answer to question 10). The panel is mostly change in order to facilitate the court schedule for hearings, without there being a formal decision on allocating the case to another judge or panel of judges.

- *Who is entitled to reallocate the case?*

The case can be re-allocated upon request of the judge or by the team manager. Re-allocation on an informal basis, meaning that judges exchange cases amongst each other, happens often. Dutch judges have internalized their judicial integrity strongly during their training and work, so this poses no problems in that respect.

- *What criteria should be considered for the re-allocation of cases?*

The criteria are the same as for regular allocation of cases. The reason for re-allocation lies mostly in the relationship between the current workload of the judge and the size and complexity of the case that is yet to be allocated.

- *Up until what stage in the proceedings is a re-allocation possible?*

This depends on the reason for re-allocation. When the lead time in a case has actually started to run at the court, the case can only be re-allocated due to statutory reasons such as the right of the judge to recuse himself from the case or when the position of the judge is challenged. In exceptional circumstances, for example when a judge retires or transfers to a different court, this can be different.

- *Is the consent of the originally designated judge necessary?*

Not in all cases. When the integrity of the judge is challenged, it might not always happen with their consent. When the composition of the panel of judges is changed because of scheduling purposes, the judge to whom the case was originally allocated to will not be asked for permission.

NORTHERN IRELAND

- A conflict of interest might require a judge to recuse him/herself. For some other unexpected reason a case might have to be re-scheduled and the allocated judge might not be available to hear the case because of other commitments.
- The Lord Chief Justice and Presiding Judges

- As per Response 3 above.
- Yes, save in exceptional circumstances.

NORWAY

Yes, but they are not specified in law. It can for example be when a judge is disqualified and this was not known when the case was allocated or can't appear and postponing will have strong negative impact for the case or the parties.

The reallocate can be done by the president of the court or another person that the president have appointed to handle this.

A formal consent is not necessary.

POLAND

- Re-allocation of case to another judge's unit (change of the reporting judge) is possible in particularly justified cases, e.g. in circumstances justifying abandoning general allocation rules (see: criteria pointed in point 9). Such decision should not lead to extension of considering the case.

- Chairman of the Department is entitled to re-allocate the case.

- There are no restrictions as to proceeding stage where re-allocation is admissible. However, the later the proceeding stage, at which the reporting judge is changed, the more justified re-allocation must be justified in order to ensure efficiency of the proceeding.

- Under applicable provisions the originally appointed judge's consent to re-allocate the case is not required. However, having regard to procedural justice and considering rules of courts' and judges' independence consent of the judge from whom the case is taken and consent of the judge to whom it is transferred might constitute important element for keeping transparency of such re-allocation. However, under applicable law provisions such consent is not required.

As regards criminal proceeding, change in the adjudicating panel is followed by necessity to conduct the case from the beginning. In civil proceeding and before administrative courts judgment may be issued only by judges before whom hearing directly preceding ruling of the judgment, so changing the adjudicating panel in such proceeding is more admissible (even before the last hearing) than in criminal proceeding.

PORTUGAL

Only if the judge is unable or a suspicion of partiality has been raised against him, upheld by the appeal court, does another judge intervene, in replacement, according to criteria established in the law.

ROMANIA

The possibility of a redistribution/new distribution of a case to another judicial panel does exist in the situation of a procedural incident regarding the composition of the panel/court, such as judges' incompatibilities, but also due to annual leave or other absence from court as for professional training or specialization or when cancelling the panels during the suspension of the proceedings of a case etc.

Referring to judges' incompatibilities⁸ as regulated by law, when after solving these incidents regarding the incompatibilities of all the members of a panel, the panel that the case was distributed to is considered no to be able to settle the case, for reasons regulated by law, the case shall be randomly redistributed. When all the judges of a section became incompatible to settle a case the law provides the possibility to cyclically redistribute the cases between the sections in the same field of law, or is there is only one section in that particular field of law, the case shall be cyclically redistributed between the special panels assigned by the leading board for situation of incompatibilities.

In the situation when the procedural incidents refer to some of the members of the panel, these incidents shall be solved by another panel. This new judicial panel shall remain entitled to settle the case if after solving the procedural incidents the decision indicates that the judge/judges subject of the procedural incidents may not participate in settling the case.

Moreover, in the situation when the panel has been cancelled the cases shall be cyclically redistributed among the other panels with competences in that particular field of law by the president of the court or by the judge assigned for random cases' distribution.

The consent of the panel that the case has initially been distributed to is not necessary, in any of the above mentioned situations.

SCOTLAND

— *Indicate in what circumstances such re-allocation is possible?*

A case may be re-allocated administratively if (a) the judge to whom the case was initially allocated becomes unavailable; or (b) if the judge to whom a case is allocated considers that he/she would be unable to hear the case impartially, or that a fair-minded and informed observer, having considered the relevant facts, would conclude that there existed a real possibility that he/she would be unable to hear it impartially.

— *Who is entitled to reallocate the case?*

The case would be reallocated by a court official.

— *What criteria should be considered for the re-allocation of cases?*

⁸ The procedural incidents referring to the members of the judicial panel, such as incompatibilities, shall be solved by the next panel judging in the same matter of law. If there is only one panel judging in the referred matter the procedural incidents regarding all the members of the panel shall be solved by the next following panel, regardless of the matter of law..

Generally the same criteria would apply as for original allocation. Urgency and the need to comply with statutory time limits may be factors.

— *Up until what stage in the proceedings is a re-allocation possible?*

At any time until commencement of a hearing.

— *Is the consent of the originally designated judge necessary?*

No.

SLOVAKIA

Law exclusively sets the criteria, based on which it is possible to re-allocate a case to another judge. Re-allocation of cases is always made by random selection by the technical means and programs approved by the ministry.

Re-allocation of already allocated matters is admissible in the following cases:

- a) long-term absence (exceeding 6 weeks) of judge, to whom the case was originally allocated
- b) change in court composition of judges including a change due to the temporary assignment of a judge; change in court composition of judges in case dealt by panel is a reason to re-allocate the case only if absolute majority of panel members was changed
- c) significant unevenness of work load of judges and
- d) if a lawful judge, to whom the case was allocated, was excluded from the proceeding and the respective decision-making
- e) if there is a sudden obstacle, which prevents the judge to decide, the case shall be re-allocated to a judge designated by the work schedule to represent the lawful judge.

Once the statutory criteria for the re-allocation are met, there is no agreement of lawful judge needed. The case law of the Constitutional Court sets that the right to a lawful judge belongs to the party and not to the judge himself, as the re-allocation of cases is related only to the organization of court work under the rules of the work schedule.

SLOVENIA

Exclusion of a judge or a lay judge from a case is decided upon by the president of the court, at the request of the judge him/herself or of the parties in the case. The grounds for exclusion, which aim at avoiding conflicts of interest or other circumstances in which the judge's impartiality may be doubtful, are specified in the Civil Procedure Act and the Criminal Procedure Act.

The Civil Procedure Act (articles 70-75) and the Criminal Procedure Act (articles 39-44) both contain a set of grounds according to which judges, lay judges and jurors must be excluded from trying a particular case. These grounds all aim to avoid that a judge works on a case s/he has particular links to, either by being a victim or a party to the case, having worked on it before at

lower court or during the investigation phase, being related by family or business relations to the parties or their representatives or if any other circumstances render his/her impartiality doubtful. The motion of withdrawal is initiated by the judge him/herself or the parties and is decided upon by the president of the court. Appeal against the decision of the president of the court is possible.

Withdrawal is also referred to in the commentary of the principle of impartiality of the Code of Judicial Ethics, which explains that the Code does not enumerate circumstances for withdrawal exhaustively, since a judge's impartiality is primarily subject to his/her own self-restraint and avoidance of any conflicts of interest, both as regards his/her own interests and that of the persons with whom s/he lives.

Based on procedural laws, president of the court decides upon re-allocation of the case due to exclusion of a judge. Accordance of the judge is not needed, however a judge makes a statement about requested exclusion. Parties must request for exclusion as soon as they become aware of the reason for exclusion, however at the latest until the end of the main trial or if there is no trial, before issue of the judgement.

SPAIN

In principle, it is not possible to reallocate a case to another judge, since the reallocation could eventually infringe the applicable rules of allocation and the principle of the legally predetermined (natural) judge, which is enshrined in articles 24.2 and 117.3 of the Spanish Constitution. However, by way of exception reallocation of a case from one judge to another judge is possible if the former is successfully challenged or objected to or must be replaced on the basis of sickness, leave, temporary disability or other similar grounds legally stipulated. Reallocation of a case initially assigned to an individual judge/court or panel of judges is also possible in the event of joinder of proceedings, in accordance with the applicable rules of allocation, which normally envisage the possibility of joinder of proceedings as one of the criteria to decide on the allocation of cases. Finally, reallocation of cases is also possible as regards individual judges/courts or panels of judges affected by backlogs or work overload in the context of temporary programmes for the reinforcement of such judges/courts or panels, once the programmes have been approved by the Standing Committee of the General Council for the Judiciary and agreed with the Ministry of Justice

- *Indicate in what circumstances such re-allocation is possible?*

As already explained, reallocation is only possible in the cases of: a) successful challenge or objection to a judge; b) replacement of a judge on the basis of sickness, leave, temporary disability or other similar grounds legally stipulated; c) joinder of proceedings initially assigned to different individual judges/courts or panels of judges, in accordance with the applicable rules of allocation which regulate the event of a joinder of proceedings; d) implementation of temporary programmes of reinforcement for individual judges/courts or panels of judges affected by serious backlogs or work overload, once the relevant programme has been approved by the Standing Committee of the General Council for the Judiciary. Under article 216 bis 1 of the Organic Law on

the Judiciary programmes of reinforcement should be approved “when exceptional delays or work accumulation in a certain court or tribunal may not be handled by increasing the staff of the judicial office or by releasing the said court from the allocation of new cases under article 167” and “may consist in attaching as deputy or secondment judges, judges in training in the terms envisaged in article 307 hereunder or granting secondment appointments to judges, or in attaching surrogate or alternate judges so that they may share the workload with the incumbent holder in handling and issuing judgments on pending cases”.

— *Who is entitled to reallocate the case?*

When the reallocation of a case to a different judge is due to the successful challenge or objection to the judge to whom the case was initially assigned, the reallocation is a consequence of the order of the court with jurisdiction to rule on the challenge or objection. In this case, the Organic Law on the Judiciary contains the basic provisions stipulating the criteria for the replacement of the challenged/objected judge (articles 207 to 216, 221 and 228). These basic provisions are further developed by the relevant internal rules of allocation approved by the respective Board of Governance, which contain a schedule for the replacement of the individual judges or members of the relevant panel or board of judges within each judicial district. The supervision of the reallocation of the case as a result of the replacement of the individual judge to whom the case was initially assigned falls in the hands of the Doyen Judge of the judicial district (reallocation at the level of first instance courts) or in those of the respective President of the appellate court (reallocation at the level of appellate courts).

If the reallocation of a case is based on the sickness, leave, temporary disability or other similar grounds legally stipulated, it is within the scope of competence of the General Council for the Judiciary (and more specifically of its Standing Committee) to grant temporary leave to the judge who is affected by the grounds which justify the replacement by a different judge. Again, the basic provisions of the Law on the Judiciary stipulating the criteria for the replacement of the judge and the relevant internal rules of allocation approved by the respective Board of Governance, which contain a schedule for the replacement of the individual judges or members of the relevant panel or board of judges within each judicial district, are applicable. As in the previous case, the supervision of the reallocation of the case as a result of the replacement of the individual judge to whom the case was initially assigned falls in the hands of the Doyen Judge of the judicial district (reallocation at the level of first instance courts) or in those of the respective President of the appellate court (reallocation at the level of appellate courts).

Reallocation of a case on the basis of the rules of allocation concerning joinder of proceedings is decided by the involved individual judges or panels of judges. Should a dispute arise between them as to whether the reallocation must be granted on the basis of the applicable rules of allocation, the Doyen Judge of the judicial district (at the level of the first instance courts) or the respective President of the collegiate court (at the level of appellate courts) are the competent bodies to settle the dispute and decide whether reallocation of the case must be granted or not.

When the reallocation is a consequence of the implementation of temporary programmes for the reinforcement of judges/courts or panels of judges affected by serious backlogs or work overload, the Standing Committee of the General Council for the Judiciary is the body with jurisdiction to approve such programmes of reinforcement, following the proposal of the relevant Board of Governance. Under article 216 bis 2.4 of the Organic Law on the Judiciary the programme of reinforcement of the court must contain an explanation of “its temporary scope and restructuring project for the judge’s duties or the support team’s duties, that will include the management and adjudication of all new cases or of the cases pending of public hearing; the incumbent judge or judges will continue managing on an exclusive basis all those cases which have not yet reached the aforementioned procedural stage”. The decisions of the Standing Committee of the General Council for the Judiciary normally entrust the relevant Board of Governance with the task of monitoring of the implementation of the temporary programme of reinforcement.

- *What criteria should be considered for the re-allocation of cases?*

As it has been already explained the criteria to be considered for the re-allocation of cases are: successful challenge or objection to a judge; replacement of a judge on the basis of sickness, leave, temporary disability or other similar grounds legally stipulated; joinder of proceedings initially assigned to different individual judges/courts or panels of judges, under the applicable rules of allocation which regulate the event of a joinder of proceedings; and implementation of temporary programmes of reinforcement for individual judges/courts or panels of judges affected by serious backlogs or work overload.

— *Up until what stage in the proceedings is a re-allocation possible?*

Under the relevant provisions of the Organic Law on the Judiciary (articles 256 to 258) reallocation of a case is only possible until the public hearing or trial of the case (procedural stage at which evidence is normally presented before the individual judge or panel of judges and examined by them, and the final submissions of the parties to the proceedings are made) or until the date scheduled by the individual judge or panel of judges for deliberating and voting the judicial decision, in those cases decided in chambers (normally at the appellate level), where there is no public hearing or trial of the case.

- *Is the consent of the originally designated judge necessary?*

The consent of the originally designated judge is not necessary in the event of reallocation due to successful challenge or objection to that judge, replacement on the basis of sickness, leave, temporary disability or other similar grounds legally stipulated, and joinder of proceedings under the applicable rules of allocation of cases. On the contrary, reallocation of cases in the context of the implementation of programmes of reinforcement for individual judges/courts or panels of judges affected by serious backlogs or work overload is normally based on the consent of the initially designated individual judge or panel of judges, since the programme of reinforcement is drafted and approved as a result of the application of the judge or panel of judges affected by the serious backlog or work overload.

SWEDEN

Yes. As stated earlier reasons for allocation of cases may be, the complexity of the case, a judge's special experience or cases that should be handled together because of their close connection. A case may also be reallocated if a judge is challengeable, if the first judge for instance has a relation to one of the parties.

The chief judge has the ultimate responsibility for the reallocation of cases. This responsibility can be delegated to a senior judge. The criteria are the same as described earlier.

A reallocation should be made as soon as possible but in theory it can be made at any time as long as no judging has been made. A formal consent of the originally designated judge is not necessary.

TURKEY

As a rule, it is impossible to re-allocate a case to another judge. However, when there is a recusation or withdrawal of a judge, the case could be allocated to another judge pursuant to the provisions of law. Also, the relevant institutions can decide the case to be transferred to another court if deemed necessary for general security and public safety.

12. Is it possible to change the composition of a panel/board of judges or chamber of court to which the case has been allocated?

— *If yes, in what circumstances and according to what procedure?*

— *Up until what stage in the proceedings is change of the composition of a panel/board/chamber permitted?*

AUSTRIA

During any case allocation year, case allocations may only be changed for important official reasons and only by a competent panel of judges (Personalsenat). A case in point would be a change of personnel (replacement of judges, lengthier leave of absence or illness), due to workload or low utilisation of individual judges or panels, or for other important reasons. Changing the management or substituting a court department shall be restricted to inevitable cases, e.g. if by such substitution – not just in the short term – workloads are no longer allocated in an equitable manner. If within a court a judge relocates from one department to another, the case allocation has to be changed so that such judge retains those court matters in which he has already taken evidence.

BELGIUM

See above.

BULGARIA

— *If yes, in what circumstances and according to what procedure?*

Change of division – in courts where divisions are set up each division handles specific subject matter, so change of division is not possible unless there is a change of the scope of subject matter dealt with (the latter could occur on very rare occasions).

Change of the composition of the panel is possible and permitted.

If the reporting judge should be replaced (e.g. because of recusal, long sick leave, long commission, resignation, etc.) the case is allocated to another judge by the computer program. It is necessary to indicate the reason for replacement of the initially selected judge.

If it happens that one or two members of the panel hearing a case (other than the reporting judge) should be replaced (e.g. sick leave, leaving the court, resignation, recusal, long commission and other similar) the administrative head issues an order for replacement of the judge and indicates the reasons.

— *Up until what stage in the proceedings is change of the composition of a panel/board/chamber permitted?*

Until the final session of the examined case.

As far as criminal cases are concerned the Criminal Procedure Code requires permanence of the court panel (judicial continuity principle). The case shall be examined by one and the same judge or panel of judges from the beginning to the end of the court hearings. Where a member of the court panel cannot continue taking part in the examination of the case and should it be necessary for such member to be replaced, the court hearing shall start from the beginning.

CROATIA

Composition of panels can be changed by changing the Annual plan of case distribution by the President of the court. The composition of a panel may be changed in a way described above in any stage of proceedings.

DENMARK

It is possible to change the composition of a panel/ board of judges or a chamber of court after a case has been allocated. This can happen until the final hearing is started and occurs when changes are necessary because of absence, illness, workload etc.

ENGLAND AND WALES

Yes

— *If yes, in what circumstances and according to what procedure?*

The compositions of constitutions of the Divisional Court, or of a Magistrates Bench, can be changed if one of its member is unable to sit. In such instances, another suitably qualified Judge or Magistrate would be allocated

— *Up until what stage in the proceedings is change of the composition of a panel/board/chamber permitted?*

Up until the commencement of the final hearing of the case.

GERMANY

The composition of a panel is ruled out with the chart of responsibilities and depends on the regulation of the chart.

To alternate the composition of a panel the chart must be adjusted by the presidency.

It can be done so if judges are permanently absent or capacity overload or low use of capacity or alternating judges make this advisable. If the alternation of the judge takes place after the verbal procedure the process may be re-established.

HUNGARY

If any member of the chamber of judges designated for a case withdraws from hearing the case for any reason (e.g. illness, official absence, etc.), or if unable to fulfil his duties, the composition of the chamber of judges can be rearranged.

The related provisions are contained in the case distribution regime of the given court, or potential chamber members shall remain on 'stand by' according to a predetermined schedule. Normally, this kind of substitution of the judge-rapporteur is almost non-existent.

There is no time limit as to changes in the composition. The provisions currently in force provide for a time limit within which a judge – if unavailable for any duration – has to be replaced.

At the same time, Section 144 of Act III of 1952 on the Code of Civil Procedure and Section 287 Act XIX of 1998 on Criminal Procedure, as already referred to in connection with point 1, provide sufficient guarantees for changes in the composition of chambers, on the basis of which there is no need to repeat the relevant procedural steps.

As regards the labour stages of cases, the court is comprised of one professional judge and two associate judges.

Associate judges are called in for specific periods, therefore, associate judges are often replaced for the reason that the chamber is not composed of the same judges.

Members sitting in a chamber hearing administrative actions may also be replaced due to sickness, among other reasons.

IRELAND

See reply to 11 above.

ITALY

See n. 9) e n. 11)

LATVIA

Yes.

- If yes, in what circumstances and according to what procedure?

Composition of the panel can be changed if at a later stage of the procedure a conflict of interests is discovered or if a presence of a judge becomes impossible for longer periods because of his absence.

- Up until what stage in the proceedings is change of the composition of the panel / board / chamber permitted?

A case has to be decided by one panel – that means that from the beginning of the oral procedure if there is one or the written procedure for the decision taking – the judges will be the same. If it is necessary, the procedure will be reopened and repeated.

LITHUANIA

— *If yes, in what circumstances and according to what procedure?*

Yes, this can be done. Grounds are laid down in the Law of proceedings. The procedure is the same as when re-allocating the cases of a single judge.

— *Up until what stage in the proceedings is change of the composition of a panel/board/chamber permitted?*

There are no restrictions. Nevertheless, the general rule sets that the criminal case in the first instance shall be heard by the same panel up to the end (exceptions are allowed).

MONTENEGRO

It is possible to change the composition of the Panel and even the Department. The procedure is the same as in the basic determination of the composition of the Court panels. President of the Court passes the decision on amendments of the panel members, through the annual working schedule of the court. Such amended composition can be ad hoc for one case, or for multiple cases.

It is possible to amend the Court panel in any stage of the proceedings.

NETHERLANDS

*ENCJ Project 2013-2014 Development of Minimum Judicial Standards IV: Allocation of Cases
adopted Rome 13 June 2014*

In principle, the procedure is the same as for allocation to a single judge. See answer to question 11.

NORTHERN IRELAND

Yes. An application can be made by one of the parties that the judge (or judges) recuses himself for good reason. The judge can also take the decision of his own initiative if he considers that he is unable to give a fair hearing to the parties. If there is an objection it is expected that it will be taken at the earliest opportunity, namely once those circumstances giving rise to the objection are known to the parties or the judge.

POLAND

Analogously to the point 11 above.

PORTUGAL

You can only change the composition of a board of judges in the circumstances mentioned in the previous point. But this can only happen until the hearing of evidence takes place. The hearing of evidence has to be completed by the same judges.

ROMANIA

The participation of another judge within the panel that the case was distributed to is possible according to law, not only when a procedural incident, such as an incompatibility, occurs but also when a judge is absent from court, for objective reasons, when the judicial session was scheduled. According to law, a judicial panel may be replaced until the beginning of the hearings in court describing the beginning of the judicial investigation in court. Any modification in the composition of the judicial panel after that procedural moment requires a new hearing procedure.

SCOTLAND

See the answers to Questions 10 and 11.

SLOVAKIA

Law regulates the possibility of changing the composition of a panel, if due to the change in court composition of judges the absolute majority of the panel members is changed. This procedure applies for all the court levels (district, regional, special and supreme court). Personnel change is also admissible in the case dealt by a panel, if a panel member was appointed to the office of the court president, transferred to another court, temporarily assigned to another court or to the office of the court president, if a judge is temporarily suspended, or his judicial office is discontinued or expired or in case of discharging a judicial internship.

SLOVENIA

See the answer to Question 11.

SPAIN

- *If yes, in what circumstances and according to what procedure?*

Yes. The composition of a panel/board of judges or chamber of the court to which a case has been allocated may be changed in the event of: a) successful challenge or objection to a judge within the panel/board or to the whole panel or board of judges; and b) replacement of a judge within the panel/board on the basis of sickness, leave, temporary disability or other similar grounds legally stipulated. In these cases, the Organic Law on the Judiciary contains the basic provisions stipulating the criteria for the replacement of the member of the panel/board who must be replaced (articles 207 to 216, 221 and 228). These basic provisions are further developed by the relevant internal rules of allocation approved by the respective Board of Governance, which contain a schedule for the replacement of the members of the relevant panel or board of judges within each court. The supervision of the reallocation of the case as a result of the replacement of the members of the panel or board of judges falls in the hands of the respective President of the court.

- *Up until what stage in the proceedings is change of the composition of a panel/board/chamber permitted?*

Under the relevant provisions of the Organic Law on the Judiciary (articles 256 to 258) a change in the composition of a panel/board or chamber of a court to which a case has been allocated is only possible until the public hearing or trial of the case (procedural stage at which evidence is normally presented before the panel/board of judges and examined by them, and the final submissions of the parties to the proceedings are made) or until the date scheduled by the relevant panel or board of judges for deliberating and voting the judicial decision, in those cases decided in chambers (normally at the appellate level), where there is no public hearing or trial of the case. Consequently, if the ground for the replacement of a judge within the panel or board of judges occurs after the said stages of the proceedings and the judge who is to be replaced cannot deliberate and/or vote the relevant decision, the public hearing or trial of the case or the deliberation and voting of the judicial decision must be repeated by the panel or board of judges with its new composition.

Every change in the composition of a panel or board of judges must be immediately notified to all the parties involved (even orally at the beginning of the hearing or trial, if it was not possible to notify the change in advance), in order to allow the challenge or objection by the said parties to the new member or members of the panel or board of judges.

SWEDEN

It is possible to change the composition of a panel/board of judges or a chamber of a court after a case has been allocated. This can happen until the judging and occurs when changes are necessary because of absence, illness, workload etc.

TURKEY

As a rule, the chief judge and the panel of judges of the court where the case is heard are responsible for hearing the case. However, when there is a recusation or withdrawal of a judge or when a chief judge or member is transferred to another court, it is possible to appoint a new chief judge and member to the vacant positions of the chief judge and membership. How that appointment could be done is regulated by the regulation on appointments and transfers.

13. A. Who is informed about the allocation of a case and when are they informed about the allocation of a case?

B. Is there a possibility to procedural review of the allocation of a case? If so, is information about this possibility available to the public?

C. Who can request such a review and who decides on it?

AUSTRIA

A. The parties are informed with the delivery of the first court document in a trial (e.g. service of a writ, charge to bring a statement of defense, summon etc.). The parties have also the possibility to ask at the court office about the allocation of their case.

B. Infringements against case allocations or faulty case allocations may be challenged by legal remedies against the decision on the merits of a case.

C. According to the procedural law the parties of the trial have the possibility to challenge infringements against case allocations or faulty case allocations by legal remedies against the decision on the merits of a case. The next higher authority (e.g. regional court, higher regional court or the Supreme Court of Justice) has to decide on the legal remedy.

BELGIUM

A. Some courts immediately allocate a new case to a specific chamber. Parties are informed of the allocation of the case in the introductory act (writ of summons or request). Other courts have a ‘introductory’ chamber to which all new cases are initially allocated. After having made all urgent decisions and having cleared all procedural issues, the case is then referred to a specific chamber for treatment. In that case, parties will be informed of the allocation to a specific chamber at a later date, normally when one of them asks a date to plead the case.

B. The primary allocation can be challenged by one of the parties or by the chamber to which the case was allocated. The file is submitted to the president of the court in order to decide whether the case should be allocated to another chamber. The president decides by ordinance, which has to be motivated (art. 88, §2 Judicial Code).

C. Only the parties or the chamber to which the case was allocated can use this procedure.

BULGARIA

A. There is no obligation for the court or the reporting judge to inform the parties or other persons and institutions about the allocation immediately after the allocation is done. For the assignment of each case the computer program generates a report on the choice made that must be printed on paper, to be signed by the person who did the allocation and to be attached to each individual case or file. The parties to a case have access to it.

A report of assignment of cases performed through the computer program is drawn up on a daily basis. The information related to allocation of cases is stored and saved for a period of not less than the longest period for filing the cases.

The name of the reporting judge to whom a case is assigned is available on the web site of the court together with information about the schedule of the case.

B. No such procedure is regulated by Bulgarian Legislation or the Internal Rules of courts. If there are complaints about allocation done not in conformity with the rules, there are several possible ways to deal with the problem:

- address a complaint to the Inspectorate at the Supreme Judicial Council;
- address a complaint to the administrative head of the court

The allocation decision/report is not considered to be an administrative act; therefore it can not be challenged before a court, in particular, administrative court.

C. Although not explicitly regulated by law or the Internal Rules if a party considers the allocation of the case wrongful they can address the Inspectorate at the Supreme Judicial Council by submitting a complaint. The Inspectorate is competent to inspect the case and the computer program and decide whether there is a breach of the general rules and/or the internal rules of allocation of cases. In case the Inspectorate decides that there is a breach, the inspectors make proposals for the imposition of disciplinary sanctions on judges or administrative heads of judicial system bodies, who have broken the rules.

CROATIA

A. Judge to whom case has been assigned and party when receives an summon, but the party can also before that address to the court regarding the judge to whom her or his case has been assigned.

B. Yes, if there is a reasonable doubt in abuse of allocation of cases a party in proceedings can inform the president of higher court and the Ministry of Justice and which can conduct an audit.

DENMARK

- A. The public is informed about the name of the judges participating in the hearing by court lists published on the court's website two weeks before court hearing - and in the court building on the day of the hearing. The names of lay judges are not available. The allocation to a panel or chamber is normally given by a number or a letter, and parties will be informed about this from the start. The information is also available to the public.
- B. There are no provisions for any reviewing procedure. Objection concerning the possible incompetence of a judge or of a panel/ chamber will be tried by the court and is subject to appeal.
- C. See answer B.

ENGLAND AND WALES

- A. The parties to the case are informed directly, or if legally represented, through their lawyers. The timing of this depends very much upon the nature and complexity of the case. In simple cases the parties will be told the day and time of the Court hearing and will become aware of the identity of the Judge on the day of the hearing. In more complex cases where judicial case management has been required they will usually be aware of any allocated Judge's identity after the first case management hearing.
- B. No unless the party alleges there are grounds upon which the Judge should recuse him/her self and the Judge has refused to do so. This could form the basis of an appeal, but not a review.
- C. The appropriate Appeal Court.

GERMANY

- A. The panel takes notice and starts acting throughout the allocation of the case. The parties are acknowledging the allocation in the same time.
- B. An allocation with failure can be subject of an objection of the competence by the parties and be challenged in remedial procedure.
- C. The (1st) decision is taken by the court where the case is located. Decision over further remedial is taken by the appellate court or the Federal Constitutional Court (Bundesverfassungsgericht).

HUNGARY

- A. Judges and clients are informed concerning the case distribution regime on the courts' website, on a day-to-day basis.

The designated judge is informed upon receipt of the case (document).

The client is informed which judge or chamber of judges hears his case upon receipt of the judge's first action addressed, or delivered to, the client. If a chamber of judges hears the case, the judicial document normally contains only the number of the chamber and the name of the presiding judge

or the judge-rapporteur. Written information may be sent to the client relating to a motion for recusation from the president judge, or from the judge (chamber of judges) who decides on the motion. On occasion, the client may be informed specifically about the re-allocation of the case and the reason therefore. It would be best if such notice was sent to the client by the newly designated judge (in writing or during the hearing).

B–C. Review of the allocation of cases

The allocation of a case may be reviewed at the judge’s request (conflict of interest, wrong allocation, workload, etc.), or upon notification by the client. In such cases the officer in charge of the allocation shall decide.

IRELAND

A. Supreme Court: All parties to the appeal are informed notice period varies according to the urgency with which the matter has been allocated.

High Court: All parties to the case are informed. The notice period is usually immediately before the case commences, though the practice of a small number of lists may afford a number of days notice.

Circuit and District Court: The parties are informed of the Court to which a case is being allocated. This occurs either in person when the case is being initiated or by the service of the appropriate Court documentation underpinning the case.

B. Not unless there is a conflict issue as per answer 11 above or there is a particular issue of the parties in respect of the allocation date.

C. Any of the parties to a case may challenge the procedures adopted before the Court and the Judge(s) to which the case is allocated decides.

ITALY

A. Tables of judicial offices are internal rules and the information involves the subjects of proceedings, the judges concerned by allocation of cases and the local bar.

As above mentioned, the official site of CSM shows the tables under the link called “*three of tables*”.

B. Single magistrates are allowed to present remarks to Judiciary Councils (*see n. 11*) and final decision is demanded to the President of District Court, after hearing the Chief Judge; differently, for private parties, Constitutional Court has underlined that the violation of internal tables doesn’t invalidate the final decision.

LATVIA

A. Parties of the case are informed about the allocation of the case. This information is accessible also via the website of the courts www.tiesas.lv.

B. Procedural laws stipulate certain procedures how a re-allocation of a case can be requested. This concerns possible situation of conflict of interests of one or more judges. The latest moment for a party to dismiss a judge is the opening of the oral procedure. They are always asked whether they have any objections as to the composition of the court. Even during the proceedings a conflict of interests might become known, and then the composition of the panel shall be changed.

C. Parties can request the dismissal of a judge and the court will assess the situation and decide. This decision can be a ground for appeal, because an unlawful composition of a court is one of absolute grounds for setting aside the judgment.

LITHUANIA

A. The judge, judicial panel and parties of the case are informed directly after allocation of the case. If party of the case is not connected to the e.court website, then information is sent by post.

B. Yes, parties of the case can review the protocol of the allocation of case. At the moment, this information is not available freely via internet. The party of the case has a right to challenge the allocation of the case to a particular judge referring to the rules of dismissal of the judges from hearing cases according to the procedural rules. The refusal to dismiss also can be a reason for appeal or (later) cassation – one the absolute grounds to withdraw the judgement is the unlawful composition of the court.

MONTENEGRO

A. The party is informed which judge is in charge of the case, and this information is available to the party on the next working day after the submission of the initial act to the court.

B. Yes, and such information is not available to the public in relation to the particular case.

C. Yes, the Court President, President of the Higher Court and the Judicial Council may request and pass the decision on the verification of the methods of allocation of cases.

NETHERLANDS

A. All members of a team are informed. Usually a roster of hearings is made and cases that come in are allocated to a hearing, depending on the relevant legal terms, which judge and which legal advisor are on duty for that hearing. The moment they are being informed differs between the fields of law.

B. No. But if the judge wants to recuse himself or his position in a case is formally challenged, a special panel of judges will decide on these matters and their decision is public.

C. In case of recusal: the judge. In case of a challenge: the parties to the case. In other situations there is no formal procedure. It is of course possible that this will be discussed internally as well.

NORTHERN IRELAND

A. The court staff. At the beginning of every term and on a day to day basis.

B. No

C. N/A

NORWAY

A. The parties, and the public on a website, will be informed as soon it is decided when the main court hearing will take place.

B. No, but the competence and impartiality of a judge is a question for the court and is subject to appeal.

C. N/A

POLAND

A. Information on a judge to whom a case has been allotted is not a secret. Information which judge shall consider the case may be provided to each interested party from the moment of appointing a reporting judge. However, there is no custom of separate informing the parties about appointing a judge.

B. Allocation of cases is controlled either within the frame of appeal proceedings or within the frame of administrative supervision over the courts (see: point 7 B); hence, the control is governed either by appeal procedures or by provisions on supervision (visitation, vetting). Moreover parties, having access right to files are in control of procedure of allocation of cases (and may apply for excluding a judge, which leads to allotting a case to another judge). Possibility to control allotting the case to a particular judge appears from law provisions; parties not represented by a solicitor are not informed about it; solicitors are aware of those procedures because they know applicable law provisions.

Filing an appeal is decided by the party, Ordering visitation or vetting – by court's president.

C. Allocation of cases is under direct control of parties only in one case. Drawing of adjudicating panel in criminal proceeding, in statutory circumstances, takes place in presence of the department chairman, reporter and secretary office employee conducting the drawing, and public prosecutor and defendant, if they appear.

PORTUGAL

The assignment of civil cases is made known to representatives of the parties through the website of the Ministry of Justice. Both in civil and in criminal cases, the distribution is made known through charts posted in the lobby of the courts. You can only call into question the allocation if an irregularity has been committed. The question must be raised and decided before the judge to whom the case was assigned.

ROMANIA

A. The files randomly distributed to judicial panels shall be taken over by the president of the panel or by one of the members of the panel who shall take the necessary measures for preparing

the judicial session. By the summoning procedure, the parties shall also be informed on details regarding the judicial panel that the case has been distributed to. Moreover, the judicial panel that the case was distributed to is also mentioned on the court's website among other information related to the case.

B. There are no provisions in terms of any reviewing procedure for the allocation of a case. However, the infringement of the rules of random distribution of cases may be a disciplinary misconduct⁹ (dealt with by the Judicial Inspection) or can be a crime, in certain conditions.

SCOTLAND

A. There is no formal system of information regarding allocation of a case in the Court of Session. In some cases the Rolls of Court containing details of the following day's business will state the name of the judge hearing a case; usually, however, cases will be allocated shortly before they are due to be heard. In the Sheriff Court the court programme is published and prior information is usually available to parties about the allocation of a case to a scheduled court or sitting in the programme. In general there is no formal system of advance information regarding allocation of a case to a particular judge. As in the Court of Session in some cases the Rolls of Court containing details of the following day's business will state the name of the judge hearing a case, but often the identity of the judge who will hear a particular case will not be known until shortly before a case is due to be heard.

B. There is no formal procedure for review of allocation of a case. A party who considers that the judge to whom a case is allocated could not hear it impartially, or might appear to be biased, may make representations to the judge that he/she should recuse himself/herself. This is a matter of law of which parties will or ought to be aware.

C. A party to the case may make representations to the judge. The judge decides on it.

SLOVAKIA

The first one to be informed on the allocation of case is the party of the judicial proceeding, who is given an acknowledgement on receipt and allocation of case (made by technical means) when lodging the motion at the court. At the same time the registration of case allocation must provide such a possibility of control so that every person having a legal interest in the case could examine the allocation of case to a lawful judge by inspecting the file and the recording tools. The above mentioned acknowledgement on receipt and allocation of case contains unmistakable identification data on time when the submission was lodged and on the random selection of judge made by technical means. If a party to the proceeding objects the case for not being dealt by the lawful judge, the objection is considered also in appeal (as well as cassation) proceeding. This fact is deemed to be a statutory reason to annul the decision. Bodies of the court administration (court presidents and minister of justice) are authorised to examine, whether there was a breach of

⁹ According to the provisions of at. 99 letter o) of the Law no. 303/2004, o), serious or repeated breaches of the provisions on random case distribution by breaching the internal courts' regulation but without any consequences towards the court decisions represent disciplinary offence, involving judges' disciplinary liability.

statutory requirements of the random allocation in a way which shall establish the disciplinary liability of a judge.

SLOVENIA

The judge is notified with the allocation of the case. The parties in the case are notified, only if they request. The parties in the case get familiar which judge is assigned to their case at the latest with the summons.

B / C.

Control over the accuracy of assigning cases is in the jurisdiction of the president of the court. Procedure of control is not adopted. Any requests of parties in the case regarding allocation of the case are in the jurisdiction of the president of the court.

SPAIN

A. The designated individual judge/court or panel of judges to whom a case is allocated is informed about the allocation of the case. The information about the allocation of a case to the designated individual judge/court or panel of judges is normally done by means of the delivery of the case file, together with the brief decision on the allocation adopted by the registrar of the Doyen's judicial office or of the relevant office within the respective collegiate court. Moreover, the parties to the case are also informed about the allocation of the case. The information to the parties is made by the designated individual judge/court or panel of judges to whom the case has been allocated through the service of process.

B. Yes. Pursuant to articles 167.2 and 168.2a) of the Organic Law on the Judiciary, article 68.3 of the Code of Civil Procedure and article 27 of Regulation number 1/2005 on accessory aspects of the judicial activity there is a possibility of procedural review of the allocation of a particular case. These provisions are further developed by the specific rules of allocation which apply in each judicial district and which are published and accessible to legal practitioners, court users and the general public as specified in the answer to question 1.

C. The review of the allocation of a case can be requested by the involved individual judges/courts or panel of judges and also by the parties to the proceedings. The request for the review of the allocation of the case must be based in the infringement of the relevant applicable rules of allocation and is initially decided by the registrar of the Doyen's judicial office or by the registrar of the office responsible for the allocation of cases within the respective collegiate court at the appellate level. The decision by the registrar on the review of the allocation of a case can be appealed to the respective Doyen Judge (allocation of cases to individual judges/courts of first instance) or President of the collegiate court of appellate jurisdiction (allocation of cases at the appellate level). All decisions on procedural review of the allocation of a case to an individual judge/court or panel of judges (including decisions on appeal to the respective Doyen Judge or

President of the Court) must be grounded and indicate the reasons for the allocation of the case on the basis of the specific rule of allocation applicable to that particular case.

SWEDEN

A) The parties and the public are informed about the name of the judge or judges by a court list outside the courtroom. They can get the information earlier if they contact the court and ask for who will be the judge. If there is no hearing in the case they have to contact the court to get the information.

B) and C) No, there are no possibility to procedural review of allocation of a case. Objection concerning the competence and impartiality of a judge will be tried by the court and is subject to appeal.

TURKEY

In terms of Criminal Courts;

In the automatic allocation of the cases, it is impossible for anyone or any institution to identify which court or which judge the case is to be allocated. However, in some instances, when a case is to be allocated to a certain court, the case could be allocated to a related court by the Prosecutor's Office. Yet, it is required that the Prosecutor's Office remark on the information note why they directly choose the court during that procedure. That procedure could be controlled both by the Prosecutor's Office and the court which the case is allocated. The general allocation scores could be seen on the admin monitors of the criminal unit under the authority of the Prosecutor in charge of UYAP - National Judiciary Informatics System in the courthouses. There is no data viewing apart from this. Accusation judgement cases reports, case and their scores allocated in certain dates, cases directly allocated to court with their reasons are registered to the system and the relevant persons can access these reports according to their security clearances. That information is given to the judges who request. Also the judges can see the score of each case.

In terms of Civil Courts;

After a case is opened in the allocation department of the Civil Courts, the allocation department gives an allocation form to the party opening the case regarding which court the case is allocated. The parties could follow by which court their case will be heard. No one can get access to that information except the parties, the relevant court and the allocation staff. Also, the similar courts in a courthouse could receive reports on how many cases are allocated to which court.

14. Does the allocation of a case which is not compliant with the allocation rules have any specific procedural consequences for that case? If so, please specify.

AUSTRIA

According to the procedural law the parties of the trial have the possibility to challenge infringements against case allocations or faulty case allocations by legal remedies against the decision on the merits of a case. The next higher authority (e.g. regional court, higher regional court or the Supreme Court of Justice) has to decide on the legal remedy. Infringements against case allocations or faulty case allocations may be challenged by legal remedies against the decision on the merits of a case.

BELGIUM

There is no specific procedural sanction. Although, there's no specific sanction, an allocation which is not in accordance with the regulation of the court could, in some circumstances, give rise to suspicion concerning the impartiality and independence of the chamber to which the case was allocated.

BULGARIA

There is not explicit regulation of the procedural consequences for the case if the allocation is not compliant with the rules. The breach of the allocation rules does not necessary lead to any specific consequence for a particular case, especially, reversing the decision or proclaiming it void.

Close examination of the judicial practice of the Supreme Court of Cassation and Supreme Administrative Court in this respect finds the following.

Criminal Cases - Art. 258 of Criminal Procedure Code stipulates that the lower court decision shall be revoked in case the sentence or judgment have been issued by an illegitimate panel, which is considered to be a substantial breach of procedural rules. Several recent decisions of the Supreme Court of Cassation (highest instance adjudicating on criminal cases) discuss the invoked complaints for breach of allocation rules. The Criminal Division judges adjudicated that the breach of allocation rules constitutes substantial breach of procedural rules as the sentence/judgment have been issued by an illegitimate panel. The decisions are reasoned with art.6 of ECHR.

Civil Cases - The judges from the Civil Division of the Supreme Court of Cassation have adjudicated in two cases that if a breach of the allocation rules has been caused, the legitimacy of the panel of judges and the validity of the judgement issued, are not questioned. The breach can be related only to officials' responsibility. Breach of the rules has an impact on disciplinary responsibility of the administrative head, the judge or clerk of court entitled to perform the process of allocation. It will not affect the validity of the judicial decision.

Administrative cases – Supreme Administrative court have adjudicated in several decisions that

with regard to the existing legal regulation the reporting judge is appointed by the head of the court or deputy head or head of the division and this act is complementary to the proceedings of a specific case. From the point of view of the whole legal procedure no fault with the appointment or allocation can affect the closing act/decision.

If the persons responsible for the allocation of cases do not follow the established rules they may, in principle, be subjected to disciplinary measures, since the major principle and criteria for allocation of cases are established by the law and by the Judicial Council and are considered binding.

CROATIA

There are consequences for the president of the court who is responsible and if he violates the rules of allocation of cases he/she can be dismissed from his/her office of court president.

DENMARK

If a case is allocated in conflict with the decisions made by the president after discussion with the other judges, the case will normally be handed over to the proper judge or panel/chamber within the court without procedural consequences for the case.

ENGLAND AND WALES

This could form the basis for an appeal.

GERMANY

A breach of the allocation rules does not mean that the ruling is void by law or illegitimate but it can be objected in remedial procedure.

HUNGARY

If a case is allocated by ways other than what is prescribed in the case distribution regime, and the client arrives to the conclusion during the course of the hearing that the impartiality of the designated judge or of the entire court is doubtful, the client may submit a motion for recusation, and such motion shall be decided in accordance with the relevant procedural regulations.

IRELAND

This would be a matter for the Judges to decide upon having regard to the particular circumstances in any case listed for hearing. If the procedure adopted in a particular case involved a situation that the Judges did not have jurisdiction to deal with the case it is likely that the case would be struck out or remitted to the appropriate Court.

ITALY

See n. 13B)-C)

LATVIA

An unlawful composition of a court (single judge or panel) is one of absolute grounds for setting aside the judgment. Such a case has to be re-examined again by the same instance court.

LITHUANIA

Firstly, a party may claim to the court of appellate instance (later- to the court of cassation) that the case was heard by the unlawful composition of the court (single judge or a panel) – this is an absolute ground to withdraw a decision of the court.

Secondly, the infringement of rules of the allocation of cases may be the ground for a disciplinary procedure for the judge, who is responsible for allocation of the cases.

MONTENEGRO

The manner of allocation of cases has no specific procedural consequences for a particular case.

NETHERLANDS

No, it can happen that a judge recuses himself during the handling of the case. When that happens, the court board and team manager may decide that the whole case should be repeated by a different judge or panel of judges. The role of formal regulations on case allocation is very minimal: the allocation of cases is not discussed or criticised often, not by parties to a case, nor by the judges.

NORTHERN IRELAND

If a case has been allocated to the wrong court division, the judge will normally order it to be transferred to the correct division save where both the parties wish the judge to whom the case has been allocated to hear it and he agrees to hear it on the basis that it is in the interests of best administrative practice that he does so.

NORWAY

No.

POLAND

Obvious and gross violation of law provisions – as regards rules of allotting cases to judges – constitutes basis for disciplinary responsibility of judges (e.g. chairman of department).

Invalidity of the proceeding may be consequence of violation of provisions on adjudication panel. Invalidity of proceeding is taken into consideration by second instance court *ex officio*.

PORTUGAL

The law provide for all cases. If doubts arise, they must be resolved by the presiding judge of the court.

ROMANIA

The case may be reviewed only if a judge has been disciplinary sanctioned for carrying out his activity with bad faith or gross negligence or if he/she has been convicted, but only when his/her actions have influenced the decision in a certain case.

SCOTLAND

Not applicable.

SLOVAKIA

Consequence of allocation of cases, which is not in line with the allocation rules, is a statutory obligation to annul the decision due to the fact that the decision was taken by an unlawful judge, as well as the possibility of disciplinary sanction of persons, who breached the allocation rules. Thus, the decision-making of an unlawful judge (panel) excludes validity and effectuality of such a decision and always results in a redress by allocating the case to a lawful judge, who subsequently deals with the case and takes a decision.

SLOVENIA

Process effects on a specific case, where the case was not allocated in accordance with an annual work schedule, are not specified (prescribed).

SPAIN

Yes. Under article 68.4 of the Code of Civil Procedure the decisions and rulings issued by a an individual judge/court to whom the case has been wrongly allocated may be annulled at the request of the parties to the proceedings if the infringement of the relevant rules of allocation has not been corrected by means of the procedural review of the decision on allocation in accordance with articles 167.2 and 168.2a) of the Organic Law on the Judiciary, article 68.3 of the Code of Civil Procedure and article 27 of Regulation number 1/2005 on accessory aspects of the judicial activity.

SWEDEN

No

TURKEY

If the processes are taken against the allocation rules regarding duty and authority during the allocation of the cases, the court can give decision of rejection of venue at first. If that decision is not given this is the reason of reversal in terms of right to appeal.

15. Has the allocation of cases given rise to important problems in the administration of justice in your country? If so, can you give examples of specific problems or cases?

AUSTRIA

No.

BELGIUM

- In an important criminal case the chamber of the court of Bruges who had to deal with that case was lacking one judge. A judge from the court of Dendermonde was temporarily designated by the first president of the court of appeal to complete and preside the concerned chamber. The accused were convicted by the court of Bruges and the court of appeal of Ghent confirmed that the chamber was regularly composed. The Belgian Supreme Court (Cour de Cassation) nullified the conviction of the court of appeal. A letter from the first president of the court of appeal, who designated the judge, mentioned that the federal prosecutor had given to understand that it was a very “charged” case and that he had given specific indications on the profile of the judge who was to be designated. The Supreme Court concluded that this motivation of the designation could give the impression that the composition of the chamber had been influenced. Therefore the subsequent designation could give rise to an appearance of partiality and dependence (Cour de Cassation, 19/04/2007, P.06.1605.N, <http://jure.juridat.just.fgov.be/>).

- In the framework of a “special inquiry” into the functioning of the judiciary in an important commercial case (Fortis-case), the High Council of Justice has had the occasion to examine the allocation of that case within the court of appeal of Brussels and to give recommendations on the matter. The High Council concluded that the questions that had arisen concerning the allocation of the case to one chamber instead of another chamber of the court were principally due to the lack of clarity of the special regulation of the court of appeal of Brussels. The High Council recommends therefore that all regulations of courts should be as precise as possible to avoid discussions and suspicions of arbitrary allocation of cases (Report available on our website www.csj.be).

BULGARIA

Several cases of misuse of the computer electronic program have been identified in several courts. They were followed by inspections related to the usage of the electronic system and the way the allocation process is done which were carried out by the Inspectorate at the Judicial Council. Wide public discussions with the participation of members of judiciary, NGO, Ministry of Justice, Supreme Judicial Council, Inspectorate to the SJC were carried out. The Judicial Council initiated profound work on this matter. The work started with exploring, analyzing and summarising the existing internal rules of all courts throughout the country. A draft Methodology on allocation of cases has been put forward for consideration. After collecting suggestions and remarks from the courts, the Council will adopt the Methodology.

Technical imperfections of the computer program were found out. According to the information shared by practitioners, the electronic system deployed in the courts demonstrates a range of shortcomings. Now the experts at Judicial Council are working on perfecting the system. Problems identified include insufficient security guarantees, opening the door to manipulation, and an inability to take into account the complexity of each case.

CROATIA

No.

DENMARK

No. Denmark has specific rules concerning incompetence.

ENGLAND AND WALES

No.

GERMANY

No, some cases over the last year have been decided upon the rules.

HUNGARY

Under the current rules and practice we can identify the following important problems:

inadequacies in the uniform and presentable methods of case distribution;

differences in the layout, structure and depth of presidential orders relating to case distribution;

difficulties in the objectivity of distribution of specific types of cases and in balancing the workload of judges.

Another important problem lies in the difficulty in contriving a mathematical model, and on that basis, in developing a computer programme (software) that would permit the case distribution

regime to function sufficiently in the light of all criteria specified above, without external intervention. Furthermore, this software should feature a constant self-governance function so as to monitor the effective distribution of workload, that is to say, to be able to process feedback and hence to automatically carry out any changes that may be necessary, if, for example, a judge's docket is increased out of proportion for any reason (e.g. due to case re-allocation or joining).

Early last year, the president of the Országos Bírósági Hivatal (National Office for the Judiciary) has established the Munkateher Munkacsoport (Court Workload Working Group) with the task to examine this very problem and to find solutions in all disciplines of the judiciary. To that end, a conference entitled 'Measure the immeasurable' was held, endeavouring to shed light on the problem using the achievements of mathematical network research in a language understandable to lawyers as well.

IRELAND

No.

ITALY

- not relevant

LATVIA

No specific problems can be mentioned. All problematic situations related to re-allocation of cases can be dealt with within existing model. In larger scale, it is possible to re-allocate cases between different courts.

LITHUANIA

Probably, this question has more than one answer. But the procedure of allocation of cases has been a subject of debate in the society. In addition, publication, transparency and impartiality of this procedure are very important for all judicial system. One of the aims is to examine the possibility and to seek to make the protocols available to society freely via internet.

MONTENEGRO

In Montenegro, the automated method of random allocation of cases did not lead to problems in the enforcement of the process of justice, but on the contrary it is the reason why the latter was introduced into the courts.

NETHERLANDS

Case allocation has been a topic of discussion in the Netherlands for some time now. Procedures have been highly informal and not regulated for too long. In a recent criminal case, that was brought against two judges who were accused of having committed perjury, the issue of allocation, and many questions as to the rather intransparent practice, were raised. The Judiciary

is of the opinion that there should be a formal, national uniform regulation for the allocation of cases.

NORTHERN IRELAND

No.

NORWAY

No important problems.

POLAND

Method of allocation of cases is subject to charges filed by the parties on different stages of proceedings, however now it is not an important problem for Polish judiciary. Actually, it does not cause undermining of trust in judges' impartiality.

Judges commonly complain about excessive workload and unequal distribution of duties among judges adjudicating in different courts.

PORTUGAL

The assignment of cases has not given rise to any problems in the administration of justice in Portugal. The new Law on Organization of the Judiciary (Law 62/2013 of 26 August), which has not entered into force yet, has provoked discussion concerning the prediction of Article 94-4, f), referred to in 9.

ROMANIA

There was such a problematic situation referring to the cases' distribution in courts in a case on alleged corruption offences involving two judges and a clerk from Bucharest Tribunal. Some of the accusations referred to alleged misuse of the ECRIS system for violating the random distribution of cases in order to assign cases to certain panels. Therefore, the Superior Council of Magistracy has ordered to the Judicial Inspection to carry out an extended investigation at the courts in Bucharest in order to identify any misuse or abusive management of the ECRIS system or any technical modality of altering the informatics system that grants the random distribution of cases in courts. The conclusions of the Inspection's report have indicated several technical vulnerabilities of the system that were proposed to be remedied. Moreover, proposals for improving and constantly monitoring and updating the system have been made and approved by the Council by the decision no. 805/September 2013, as mentioned before.

SCOTLAND

No

SLOVAKIA

When ensuring the timeliness of the proceeding and the decision-making as regards the allocation of cases, in practice there are problems in the event, when cases from a different agenda are allocated to a judge as opposed to the agenda to which he was originally assigned. This, in fact, requires the approval of judge while disapproval is not deemed as an obstacle to such allocation, provided that it was discussed with the council of judges and reason of the change is an uneven work load of judges or ensuring the proper functioning of the court. In this situation the judge is provided with a period of at least 2 months for preparation to take a decision of the different agenda, which in practise has sometimes resulted in such situation, when the respective judge did not try cases during the given period at all.

In cases dealt by the panels problems lie in more significant slowdown of a proceeding, unless the absolute majority of members was changed in the 3-member panel, because the decision must be taken within the original composition of the panel. It is remarkably harder to organisationally harmonise the activity of judges, who are this way assigned to the proceeding and the decision-making to several panels. This does not correspond properly with the findings of the Constitutional Court, which - regarding the cases dealt by panels - claimed, that the lawful judge is a panel (not a member of the panel), within which the work is managed and organised by the chairman of the panel, which allows also the personnel changes in the panel composition.

SLOVENIA

We are not aware of any other problem in this connection.

SPAIN

Yes. The diversity in the rules of allocation which apply to each judicial district and the inconsistency between those rules would make it advisable to reach a higher degree of uniformity in the rules for allocation in the various judicial districts. Moreover, the rules of allocation applicable in some of the judicial districts are too complex and define too many categories of cases in terms of allocation, which causes an excessive amount of requests for review and excessive workload for the Doyen's judicial office and the office responsible for the allocation of cases within the respective collegiate court.

SWEDEN

No

TURKEY

Generally, the allocation system which is developed with UYAP - National Judiciary Informatics System do not give rise to important problems. However, in order to be provided a continuous fair workload, required changes are being made when necessary within the changing conditions.

Scoring criteria could be changed especially when certain cases are intensive and when these cases are heavy in quality.

16. Do you have any other observations or suggestions concerning this questionnaire or this ENCJ project in general?

AUSTRIA

No.

BELGIUM

No

BULGARIA

No

CROATIA

No

DENMARK

No

ENGLAND AND WALES

No

GERMANY

No

HUNGARY

My recommendation is that the countries where computerised systems are used for the allocation of cases should share their practical experiences, or the operating model of the computer-aided process (software) or, if possible, the technical details thereof.

IRELAND

No.

ITALY

No

LATVIA

No

LITHUANIA

No

MONTENEGRO

No

NETHERLANDS

No

NORTHERN IRELAND

No

NORWAY

No

POLAND

Yes. The research might also cover instruments (mechanisms) of equalizing of burdening judges with duties – e.g. how in particular countries issue of equal workload for judges is solved, how workload equality is measured and if complexity (weight) of a case has meaning, whether or not there is opportunity for transfer *ad hoc* of certain categories of cases to another court or for seconding judges from less-burdened courts to those more burdened, if there are indicators of assessment of case difficulty (e.g. point indicators), how to compare workload of a judge adjudicating in cases on misfeasance with judge adjudicating heavy crimes (e.g. how many traffic-misfeasance cases are equal to proceeding regarding collective rape with particular cruelty).

There should exist opportunities to equalize workload, because it counteracts lengthiness of proceedings in most burdened courts.

PORTUGAL

No

ROMANIA

There are no observations in the matter.

SCOTLAND

No

SLOVAKIA

It is necessary to point out the issue of conflict of the constitutional right of the citizen to a lawful judge and at the same time another equivalent constitutional right to a hearing within a reasonable time, which is in line with the Article 6 (1) of the Convention.

The constitutional right of the citizen to a lawful judge (Article 48 of the Constitution) must be ensured by statutory regulation which - in its consequences - will not limit the equivalent constitutional right of citizen to hearing of the case without any delay /Article 48 (2) of the Convention/, which aims to remove the state of legal uncertainty of the party, which is also a guarantee of the application of Article 6 (1) of the Convention – supported by the constant case-law of our Constitutional Court.

The constitutional right of citizen for a timely proceeding clearly stipulates, that even in the event of excessive number of cases and lack of staff, court cannot dispense with the organisation of work so that it would result in failure to implement the given right objectively, since this right cannot be thwarted only for the reason that the state does not know or cannot ensure the appropriate number of judges or other court staff. It is up to the state and court work organisation to avoid unnecessary delays in proceedings.

In certain cases the regulation on the lawful judge is a very strict rule, which can be in its consequences to the detriment of the proper administration of justice, while the constitutional right to a lawful judge cannot be identified (connected) with a person of single judge and the court has a duty to organize the work so that the constitutional right to a timely proceeding could be implemented.

In cases dealt by panels, it is particularly necessary to introduce such a regulation, which would create the possibility to re-allocate backlog cases (older cases), which will ensure proper preservation of constitutional right to a proceeding without any delay. It is essential to ensure requested balance of implementation of two equivalent fundamental citizen rights in the field of right to a judicial protection.

SLOVENIA

No

SPAIN

In the view of the General Council for the Judiciary of Spain it could be interesting for a broader scope of the Project to have access to the rules or system of allocation of cases which apply at the international courts operating at a European level, such as the European Court of Human Rights and the Court of Justice of the European Union. This complementary information to the responses to the questionnaire provided by ENCJ members and observers could be helpful in order to define best practices and minimum standards in the field of allocation of cases at a European level.

SWEDEN

No

TURKEY

No



General Court

25 March 2014

Ms. Laima Gamelienė
Mr. Nico Snelders
Coordinators of the ENCJ Project team European
Network of Councils for the Judiciary
nca@teismai.lt

Dear Ms. Garnelienė and Mr. Snelders,

On behalf of the European Network of Council for the Judiciary Project team “Standards IV: allocation of cases and guarantees in places”, you have sent me a letter, received 31 January 2014, concerning allocation of cases in the General Court.

As a comprehensive answer to your questions, I wish to draw your attention to the fact that the rules governing the allocation of cases in the General Court are provided for in the rules of procedure. They are available on the website of the Court of Justice of the European Union.

According to articles 12 and 13 of the Rules of procedure of the General Court:

“Article 12

The General Court shall lay down criteria by which cases are to be allocated among the Chambers.

The decision shall be published in the *Official Journal of the European Union*.

Article 13

1. As soon as the application initiating proceedings has been lodged, the President of the General Court shall assign the case to one of the Chambers.
2. The President of the Chamber shall propose to the President of the General Court, in respect of each case assigned to the Chamber, the designation of a Judge to act as Rapporteur; the President of the General Court shall decide on the proposal.”

On the basis of article 12, the General Court adopts — in principle for a three-year period corresponding to that of the presidencies of Chambers — a decision which specifies the criteria for assigning cases to Chambers.

Under the most recent decision adopted by the General Court on 23 September 2013 (OJ 2013 C 313, p. 4), appeals against decisions of the Civil Service Tribunal are assigned to the Appeal Chamber, composed of the President of the General Court and the Presidents of Chambers. Other cases are allocated to the (currently) nine Chambers in turn, following three separate rotas relating respectively to: (i) cases concerning application of the competition rules to undertakings, the rules on State aid and the rules on trade protection measures; (ii) cases concerning intellectual property rights; (iii) cases other than those referred to above.

According to the aforementioned decision, the President of the General Court, who is empowered to assign cases according to article 13, may derogate from those rotas on the ground that cases are related or with a view to ensuring an even spread of the workload.

This system of assigning cases therefore follows pre-defined objective criteria which enable cases to be distributed evenly among the Chambers. At the same time, permitted derogations allow the President of the General Court a certain flexibility in the practical application of the rules. The application of these rules is by no means mechanical. The derogations in respect of the connections between cases — understood in a broad sense as covering not only cases which have the same subject-matter but also cases which are closely linked or in which the legal issues are similar — and in respect of the workload leave the President of the General Court some discretion when assigning cases. This ensures that they are allocated among the Chambers in a way that is both consistent and efficient.

Yours sincerely,



Emmanuel Coulon



Luxembourg

Ms. Laima Garnelienė
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25 March 2014

Dear Ms. Garnelienė and Mr. Snelders,

Thank you for your letter of 31 January 2014 requesting information in the context of your project "Standards IV: Allocation of Cases and the Guarantees in Place (2013-2014)". In reply to your request I would like to inform you of the following.

As you know, the Court of Justice of the European Union consists of three courts: the Court of Justice, the General Court and the Civil Service Tribunal. The present answer will address the situation of the Court of Justice. In the enclosed document you will find a collection of the essential provisions applied for the allocation of cases to a Judge-Rapporteur, to an Advocate General and to a formation of judgment. These rules are laid down in the Statute of the Court of Justice of the European Union and in the Rules of Procedure of the Court of Justice. The specific rules applied for the allocation of cases to a formation of judgment are enumerated in Articles 27 and following of the Rules of Procedure. The lists mentioned in these provisions are established every year and published in the Official Journal of the European Union.

In addition, I would like to mention that it is the practice of the Court of Justice, particularly in the context of a procedure for a declaration that a Member State has failed to fulfil its obligations under the Treaty, not to appoint as Judge-Rapporteur or Advocate General a Member of the Court who has the nationality of the Member State concerned.

I trust that these elements reply to your enquiry.

Yours sincerely,

Timothy Millett
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Annex

Provisions applied for the allocation of cases

I. Provisions of the Statute of the Court of Justice of the European Union¹

1) Article 16, third to fifth subparagraphs

“The Court shall sit in a Grand Chamber when a Member State or an institution of the Union that is party to the proceedings so requests.

The Court shall sit as a full Court where cases are brought before it pursuant to Article 228(2), Article 245(2), Article 247 or Article 286(6) of the Treaty on the Functioning of the European Union.

Moreover, where it considers that a case before it is of exceptional importance, the Court may decide, after hearing the Advocate-General, to refer the case to the full Court.”

2) Article 18

“No Judge or Advocate-General may take part in the disposal of any case in which he has previously taken part as agent or adviser or has acted for one of the parties, or in which he has been called upon to pronounce as a member of a court or tribunal, of a commission of inquiry or in any other capacity.

If, for some special reason, any Judge or Advocate-General considers that he should not take part in the judgment or examination of a particular case, he shall so inform the President. If, for some special reason, the President considers that any Judge or Advocate-General should not sit or make submissions in a particular case, he shall notify him accordingly.

Any difficulty arising as to the application of this Article shall be settled by decision of the Court of Justice.

A party may not apply for a change in the composition of the Court or of one of its chambers on the grounds of either the nationality of a Judge or the absence from the Court or from the chamber of a Judge of the nationality of that party.”

II. Provisions of the Rules of Procedure of the Court of Justice²

A) Provisions concerning the Judge-Rapporteur

¹ Protocol (No 3) on the Statute of the Court of Justice of the European Union, annexed to the Treaties, as amended by Regulation (EU, Euratom) No 741/2012 of the European Parliament and of the Council of 11 August 2012 (OJ L 228, 23.8.2012, p. 1) and by Article 9 of the Act concerning the conditions of accession to the European Union of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community (OJ L 112, 24.4.2012, p.21).

² Rules of Procedure of the Court of Justice of 25 September 2012 (OJ L 265, 29.9.2012), as amended on 18 June 2013 (OJ L 173, 26.6.2013).

Article 15

“1. As soon as possible after the document initiating proceedings has been lodged, the President of the Court shall designate a Judge to act as Rapporteur in the case.

2. For cases of the kind referred to in Article 107 [urgent preliminary ruling procedure] and Articles 193 [review of decisions given on appeal] and 194 [review of preliminary rulings], the judge rapporteur shall be selected from among the Judges of the Chamber designated in accordance with Article 11(2), on a proposal from the President of that Chamber. If, pursuant to Article 109, the Chamber decides that the reference is not to be dealt with under the urgent procedure, the President of the Court may reassign the case to a Judge-Rapporteur attached to another Chamber.

3. The President of the Court shall take the necessary steps if a Judge-Rapporteur is prevented from acting.”

B) Provisions concerning the Advocate General

Article 16

“1. The First Advocate General shall assign each case to an Advocate General.

2. The First Advocate General shall take the necessary steps if an Advocate General is prevented from acting.”

C) Provisions concerning the formations of judgment

1) Article 11, paragraphs 2 and 5

“2. The Court shall designate the Chambers of five Judges which, for a period of one year, shall be responsible for cases of the kind referred to in Article 107 [urgent preliminary ruling procedure] and Articles 193 [review of decisions given on appeal] and 194 [review of preliminary rulings].
[...]

5. The composition of the Chambers and the designation of the Chambers responsible for cases of the kind referred to in Article 107 and Articles 193 and 194 shall be published in the Official Journal of the European Union.”

2) Article 27

“1. The Grand Chamber shall, for each case, be composed of the President and the Vice-President of the Court, three Presidents of Chambers of five Judges, the Judge-Rapporteur and the number of Judges necessary to reach 15. The last-mentioned Judges and the three Presidents of Chambers of five Judges shall be designated from the lists referred to in paragraphs 3 and 4 of this Article, following the order laid down therein. The starting-point on each of those lists, in every case assigned to the Grand Chamber, shall be the name of the

Judge immediately following the last Judge designated from the list concerned for the preceding case assigned to that formation of the Court.

2. After the election of the President and the Vice-President of the Court, and then of the Presidents of the Chambers of five Judges, a list of the Presidents of Chambers of five Judges and a list of the other Judges shall be drawn up for the purposes of determining the composition of the Grand Chamber.

3. The list of the Presidents of Chambers of five Judges shall be drawn up according to the order laid down in Article 7 of these Rules.

4. The list of the other Judges shall be drawn up according to the order laid down in Article 7 of these Rules, alternating with the reverse order: the first Judge on that list shall be the first according to the order laid down in that Article, the second Judge shall be the last according to that order, the third Judge shall be the second according to that order, the fourth Judge the penultimate according to that order, and so on.

5. The lists referred to in paragraphs 3 and 4 shall be published in the Official Journal of the European Union.

6. In cases which are assigned to the Grand Chamber between the beginning of a calendar year in which there is a partial replacement of Judges and the moment when that replacement has taken place, two substitute Judges may be designated to complete the formation of the Court for so long as the attainment of the quorum referred to in the third paragraph of Article 17 of the Statute is in doubt. Those substitute Judges shall be the two Judges appearing on the list referred to in paragraph 4 immediately after the last Judge designated for the composition of the Grand Chamber in the case.

7. The substitute Judges shall replace, in the order of the list referred to in paragraph 4, such Judges as are unable to take part in the determination of the case.”

3) Article 28

“1. The Chambers of five Judges and of three Judges shall, for each case, be composed of the President of the Chamber, the Judge-Rapporteur and the number of Judges required to attain the number of five and three Judges respectively. Those last-mentioned Judges shall be designated from the lists referred to in paragraphs 2 and 3, following the order laid down therein. The starting-point on those lists, in every case assigned to a Chamber, shall be the name of the Judge immediately following the last Judge designated from the list for the preceding case assigned to the Chamber concerned.

2. For the composition of the Chambers of five Judges, after the election of the Presidents of those Chambers lists shall be drawn up including all the Judges attached to the Chamber concerned, with the exception of its President. The lists shall be drawn up in the same way as the list referred to in Article 27(4).

3. For the composition of the Chambers of three Judges, after the election of the Presidents of those Chambers lists shall be drawn up including all the Judges attached to the Chamber

concerned, with the exception of its President. The lists shall be drawn up according to the order laid down in Article 7.³

4. The lists referred to in paragraphs 2 and 3 shall be published in the Official Journal of the European Union.”

4) Article 29

“1. Where the Court considers that a number of cases must be heard and determined together by one and the same formation of the Court, the composition of that formation shall be that fixed for the case in respect of which the preliminary report was examined first.

2. Where a Chamber to which a case has been assigned requests the Court, pursuant to Article 60(3) of these Rules, to assign the case to a formation composed of a greater number of Judges, that formation shall include the members of the Chamber which has referred the case back.”

5) Article 59

“1. When the written part of the procedure is closed, the President shall fix a date on which the Judge-Rapporteur is to present a preliminary report to the general meeting of the Court.

2. The preliminary report shall contain proposals as to whether particular measures of organisation of procedure, measures of inquiry or, if appropriate, requests to the referring court or tribunal for clarification should be undertaken, and as to the formation to which the case should be assigned. It shall also contain the Judge-Rapporteur’s proposals, if any, as to whether to dispense with a hearing and as to whether to dispense with an Opinion of the Advocate General pursuant to the fifth paragraph of Article 20 of the Statute.

3. The Court shall decide, after hearing the Advocate General, what action to take on the proposals of the Judge-Rapporteur.”

6) Article 60, paragraphs 1 to 3

“1. The Court shall assign to the Chambers of five and of three Judges any case brought before it in so far as the difficulty or importance of the case or particular circumstances are not such as to require that it should be assigned to the Grand Chamber, unless a Member State or an institution of the European Union participating in the proceedings has requested that the case be assigned to the Grand Chamber, pursuant to the third paragraph of Article 16 of the Statute.

³ Article 7 of the Rules of Procedure:

“1. The seniority of Judges and Advocates General shall be calculated without distinction according to the date on which they took up their duties.

2. Where there is equal seniority on that basis, the order of seniority shall be determined by age.

3. Judges and Advocates General whose terms of office are renewed shall retain their former seniority.”

2. The Court shall sit as a full Court where cases are brought before it pursuant to the provisions referred to in the fourth paragraph of Article 16 of the Statute. It may assign a case to the full Court where, in accordance with the fifth paragraph of Article 16 of the Statute, it considers that the case is of exceptional importance.

3. The formation to which a case has been assigned may, at any stage of the proceedings, request the Court to assign the case to a formation composed of a greater number of Judges.”

7) Article 108, paragraph 1

“1. The decision to deal with a reference for a preliminary ruling under the urgent procedure shall be taken by the designated Chamber, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General. The composition of that Chamber shall be determined in accordance with Article 28(2) on the day on which the case is assigned to the Judge-Rapporteur if the application of the urgent procedure is requested by the referring court or tribunal, or, if the application of that procedure is considered at the request of the President of the Court, on the day on which that request is made.”

8) Article 113

“1. The designated Chamber may decide to sit in a formation of three Judges. In that event, it shall be composed of the President of the designated Chamber, the Judge-Rapporteur and the first Judge or, as the case may be, the first two Judges designated from the list referred to in Article 28(2) on the date on which the composition of the designated Chamber is determined in accordance with Article 108(1).

2. The designated Chamber may also request the Court to assign the case to a formation composed of a greater number of Judges. The urgent procedure shall continue before the new formation of the Court, where necessary after the reopening of the oral part of the procedure.”

D) Provisions concerning a Judge-Rapporteur already designated and the corresponding formation of judgment

1) Article 108, paragraph 2

“2. If the case [of a preliminary ruling under the urgent procedure] is connected with a pending case assigned to a Judge-Rapporteur who is not a member of the designated Chamber, that Chamber may propose to the President of the Court that the case be assigned to that Judge-Rapporteur. Where the case is reassigned to that Judge-Rapporteur, the Chamber of five Judges which includes him shall carry out the duties of the designated Chamber in respect of that case. [...]”

2) Article 153

“1. With the exception of applications referred to in Article 159 [revision], the requests and applications referred to in this Chapter [rectification, failure to adjudicate, application to set aside, third-party proceedings, interpretation, revision] shall be assigned to the Judge-Rapporteur who was responsible for the case to which the request or application relates, and shall be assigned to the formation of the Court which gave a decision in that case.

2. If the Judge-Rapporteur is prevented from acting, the President of the Court shall assign the request or application referred to in this Chapter to a Judge who was a member of the formation of the Court which gave a decision in the case to which that request or application relates.

3. If the quorum referred to in Article 17 of the Statute can no longer be attained, the Court shall, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, assign the request or application to a new formation of the Court.”

March 2014

List of Participants

Country – Member/Observer	Name of participants
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