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

**High Council of Justice Belgium**

**January 2018**

1. Please indicate whether there is a national body or mechanism in charge of selecting, appointing, promoting, transferring, suspending or removing judges in your country.

*Yes, such bodies and mechanisms have been established.*

What is the exact denomination of this body or mechanism? What are the legal basis for its establishment (e.g. constitutional provisions; ordinary law or other)?

*A specific national body, namely the High Council of Justice (*[*www.hrj.be/en*](http://www.hrj.be/en)*), is competent for selecting, appointing and promoting judges.*

*The High Council of Justice is not competent for the transferral, suspension and/or removal of magistrates. A judge can (either temporarily or permanently) be transferred without his/her consent upon decision of the court president. The same applies for all other disciplinary measures.*

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

*Composition: The High Council of Justice* *is a federal body, enshrined in the Constitution. It has 44 members, of which 22 are magistrates and 22 are non-magistrates (8 lawyers, 6 university or board of higher education professors and 8 members of civil society). Furthermore, there is an equal representation of both communities (22 Dutch-speaking and 22 French-speaking members), which means that there is a so-called “double parity”.* *Each language group (or language board) must, other than 11 magistrates, include, among the 11 non-judges, 4 lawyers and 3 university or board of higher education professors.*

*Procedure: Every four years, 22 magistrates are elected by their peers (each magistrate in the country being entitled to vote). The 22 non-magistrates are appointed by the Senate, with a majority of two-thirds of the votes cast.*

*Duration: each member of the High Council of Justice is appointed for a four-year term of office. At the end of this four-year term of office, each member is entitled to apply for re-election, but for only one further 4-year term of office.*

*Members are not accountable to an outside body, but to the General Assembly of the High Council, in particular as regards strict compliance with ethical standards.*

*Human and financial resources: The High Council of Justice employs an average of 45 members of staff, who provide support services for the elected or appointed members. Amongst these members of staff, there are two directors (called administrators), about 20 FTE’s university graduates (mainly qualifying in law and in audit) and 25 FTE’s of support staff (administration, accountancy, human resources, and so on). The High Council of justice receives its own endowment from the Belgian Federal Parliament. Given its status of independency (the High Council operates independently of the executive and legislative powers and of the judiciary), the High Council is autonomous in the allocation of its financial means and in determining its priorities. It is, of course, required to give accountability to the Belgian Court of Audit. The allocated budget varies from year to year. It is 6.2 million € for the year 2018.*

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

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

*The Constitution itself does not regulate the procedures for selection and promotion of judges. These procedures are thoroughly described in the Belgian judicial code and (as far as the examinations are concerned) in different Royal Decrees.*

*The procedures for selecting candidate judges and for the designation/appointment of judges are to be distinguished. They are complementary.*

*Selection: In Belgium, in order to become a magistrate, one must first pass one of the examinations (there are three types of examinations) organized by the nominations and appointments committees of the High Council of Justice. These exams/assessments take place at least once a year. They are announced in the Belgian Official Journal. The examinations are intended to assess the maturity and aptitude needed for the performance of judicial duties.*

*There is a written part, which is corrected anonymously by a bespoke commission of several members, and a viva voce examination for those candidates having obtained 60 percent of the points for the written exam. In addition to this, psychological (personality) tests are organized. After all, the nominations and appointment committees do not only assess the candidate’s intellectual abilities, but also other aptitudes, such as the candidate’s listening skills, empathy, ability to cope with power, tolerance to stress, etc. .*

*Nominations/appointment: Candidates who have successfully passed an examination and who, if applicable, have completed a judicial internship, do not automatically transfer into magistracy. They must respond to a vacancy within the magistracy.*

*The nomination criteria vary depending on the roles within the judiciary. The specific criteria can be found in the Belgian judicial code, from article 186 onwards. Each candidate must meet the corresponding criteria in order to be able to participate in a selection.*

*Procedure: The procedures (how to apply/deadlines/ways to appeal) are fully determined by law: in this regard, see: article 259ter of the Belgian judicial code. Roughly the following guidelines apply to the appointment of judges and prosecutors, as well as to the designation of chiefs of jurisdiction:*

*- Each candidate enters a personal record/résumé with the supporting documents concerning his/her education and professional experience*

*- For each candidate, there is a mandatory advice by the chief of jurisdiction*

*- For each candidate, there is a mandatory advice by the bar association*

*- For each candidate who is already a magistrate: a mandatory advice is given by his/her chief of jurisdiction*

*- A candidate is able to comment on the abovementioned advices*

*- The nomination and appointment committees organize a hearing with all candidates for each vacancy. These hearings start with an open debate. Afterwards, candidates are compared objectively. They are selected on the basis of criteria concerning their abilities and aptitudes for each specific vacancy. These abilities must be verifiable and must emerge from the files submitted by the candidates or from the advices rendered by the different abovementioned parties.*

*- The nomination and appointment committees present a single candidate, by a majority of two-thirds, to the Head of State. The latter may only refuse the candidate presented on explicit grounds.*

*Many specific rules and procedural guarantees apply to the aforementioned procedures, for example:*

*- Candidates must submit all necessary documents at the same time as their application letter and their résumé. Afterwards, no additional documents can be added to the application file.*

*- All deadlines are binding/compelling*

*- The hearing of each candidate is recorded. This recorded file is transmitted to the council of State in case of an appeal.*

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

*The conditions of service such as salary and benefits are mostly enumerated in the Belgian judicial code. Magistrates have tenure for their entire career, which is guaranteed by the Belgian Constitution (article 152).*

(c) Promotion of judges;

*The High Council of Justice also plays a key role in the promotion of judges and is competent to select the chiefs of jurisdiction within jurisdictions and public prosecutor’s departments and to present them for appointment by the head of State. The procedures for the promotion of judges are identical to those for the appointment of judges. In order to be promoted, a magistrate needs to fulfill all nomination criteria and has to answer to a specific vacancy.*

*The procedures for the appointment of chiefs of jurisdiction are almost identical to those for the appointment of judges. In this regard, see article 259quater of the Belgian judicial code. In addition to the abovementioned files, candidates applying for a vacant position as a chief of jurisdiction must also draft a management plan.*

(d) Transfer of judges;

*The Belgian Constitution guarantees (in its article 152) that a judge may not be transferred without his consent. This used to imply that chiefs of jurisdiction had little to no margin to manage their “staff”. In recent years, things have changed, due to a reorganization of the Belgian jurisdictions. Nowadays, judges can be asked to subvene in another court, as long as this court is situated in the same jurisdiction. Said transfer is possible without consent of the affected magistrate. This decision is taken by the chiefs of jurisdiction (court presidents and crown prosecutors). The magistrate in question can appeal to the college of courts of appeal and courts (see article 330quinquies of the Belgian judicial code). This appeal is not suspensive and a decision must be taken by the Executive Committee within a month after the hearing of the concerned magistrate. The final decision is open to appeal to the Belgian Council of State.*

(e) Disciplinary proceedings against judges.

*Magistrates can be subject to several types of disciplinary sanctions, such as written warning, deduction of salary, the termination of one’s promotion, restitution in degree, dismissal and so on. The disciplinary system is based upon two categories of sanctions, namely minor and major disciplinary offences. In this regard; see the Belgian judicial code, from article 398 onwards.*

*For the most part, disciplinary proceedings lie within the competence of the chiefs of jurisdiction. Disciplinary sanctions against public prosecutors may, however, also be instituted by the ministry of justice (article 400 of the Belgian judicial code).*

*Magistrates can appeal against disciplinary sanctions, albeit only against major disciplinary sanctions. Belgium has two non-permanent first instance disciplinary courts (one Dutch-speaking and one French-speaking) and two non-permanent disciplinary courts of appeal for each language group (see articles 409 and 410 of the Belgian judicial code).*

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

*As mentioned before, the High Council of Justice plays a vital role in the appointment of candidates for judicial offices. It fulfils a key role concerning the access to the magistracy and in relation to the proposal of candidates for nomination or appointment. The High Council does not hold any competence regarding the transferral, suspension and/or removal of magistrates.*

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

(a) Judicial selection and appointment;

*Not applicable.*

(b) Transfer and promotion of judges;

*Not applicable.*

(c) Disciplinary proceedings against judges

*The competence for disciplinary measures lies with chiefs of jurisdiction and, to a certain extent, with the ministry of justice.*

*The procedures are thoroughly described in the Belgian judicial code (from article 398 onwards).*