



GOVERNANCE MODEL FOR THE JUDICIARY OF THE REPUBLIC OF SOUTH AFRICA

April 2025

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EXECUTIVE SUMMARY

1. The Council for the Advancement of the South African Constitution (CASAC) sought assistance in developing a report to inform possible constitutional reforms against the backdrop of the 30th anniversary of constitutional democracy in South Africa. The purpose of the project is to undertake comparative research on judiciary-led court administration and judicial governance in comparative jurisdictions. This report seeks to assist CASAC in developing a position paper on reforming the governance of the South African judiciary with a view to proposing a judiciary-led model for court administration.
2. This report explores how courts, particularly apex courts, are administered in several jurisdictions. These jurisdictions were selected in conjunction with CASAC to have a global overview of the different models of court administration. The jurisdictions explored in this report are Brazil, Canada, Colombia, Germany, Hong Kong, India, Ireland, the United Kingdom ('UK'), the United States of America ('US'), and Singapore. The project has focused mostly on the apex courts (Constitutional, Supreme, or High Courts) and in federalist countries we have primarily focused on the highest federal courts. The above jurisdictions sections are analysed based on the following questions:

Question 1: What model of court administration is in place in the jurisdiction surveyed?

Question 2: How are the monies for the administration of the courts and the remuneration of judges defrayed from the relevant legislature?

Question 3: Who bears the political responsibility for the defraying of public monies for the judiciary?

Question 4: What are the reporting and accountability requirements regarding the funds defrayed for the judiciary?

Question 5: What role, if any, does the head of the judiciary play in relation to accountability for the use of public monies?

Question 6: Who appoints administrative and other support staff for judges?

Question 7: What interface is there, if any, between the three arms of state relating to the administration of the courts?

QUESTION 1: WHAT MODELS OF COURT ADMINISTRATION ARE IN PLACE IN THE JURISDICTIONS SURVEYED?

3. Different jurisdictions have adopted very different models for the organisation of the administration of their apex courts. In this report we rely on the categorisation of court-administration proposed by Natalie Fox, Jakub Firlus, and Piotr Mikuli, which finds that there are mainly three models of court administration: (i) autonomous or self-management model (including those with judicial governing bodies), (ii) executive model, and the (iii) partner model.¹
4. **Autonomous/self-management model.** The autonomous or self-management model takes place when the court is responsible for its own management and administration. For example, the **Indian** Supreme Court is managed by its own registry, and the Chief Justice of the Supreme Court regulates the working of the registry. Likewise, **Germany's** Federal Constitutional Court is also characterised by self-administration, adopting its own rules of procedure, including on its organisation and administration. The President of the Court is therefore responsible for its administration. In **Brazil**, the judicial branch's administrative autonomy means that the branch selects its judges, decides on their allocation, hires staff through direct appointments and public exams, manages its buildings, and establishes its own internal rules of organization the rules for superior courts are different. **Hong Kong's** High Court could also be classified under the self-administration model: it is administered by the Chief of Justice and assisted by the Judiciary Administrator.
5. The autonomous model includes cases where apex courts are responsible for their own administration, as well as those where there are **judicial governing bodies** that manage the courts, including apex courts. In **Colombia**, the administration of the judiciary is the Superior Council of the Judiciary (*Consejo Superior de la Judicatura*).
6. **Executive model.** In the executive model, the management and administration of court involves, to different degrees, the involvement of the Executive.² Here, the relevant ministry may manage the court, take responsibility for its functioning and allocate funds,³ and the

¹ Natalie Fox, Jakub Firlus and Piotr Mikuli, 'Models of Courts Administration: An Attempt at a Comparative Review' in Pieter Mikuli (ed), *Current Challenges in Court Administration* (Eleven International Publishing 2017).

² *ibid.*

³ *ibid.*

judiciary has no formal relationship with the administration of the court.⁴ The Executive model of court administration is characterised by a separation between the dispensation of justice, entrusted to the judiciary, and the administration of the court, the responsibility of the Executive.⁵ While not as common, we have found this model primary in two jurisdictions studied. This is the model followed by **German** federal and state courts (that are not the Federal Constitutional Court) where the administration is mostly the responsibility of the Executive, and the oversight of the courts is exercised on the competent federal minister. To avoid any possible conflict with judicial independence, the executive supervision of judges is only allowed insofar as their independence is not compromised.

7. **Partnership model.** In the partnership model, there is a collaborative relationship between the court and the executive. It assumes the existence of a separate agency/office and often subject to bilateral agreements between the judiciary and executive, but sometimes the agency itself may be a part to the agreement. The responsibility depending on the jurisdiction varies significantly. The **UK** is an example of the partner model. His Majesty's Courts & Tribunals Service (HMCTS), which is a partnership between the Lord Chancellor (head of the Ministry of Justice) and the Lord Chief Justice (president of the courts in England and Wales) functions as an agency of the Ministry of Justice. The Lord Chancellor is responsible for providing an efficient and effective support system to ensure smooth running of the courts and tribunals, and the Chief Justice is responsible for the welfare, training and guidance of the judiciary as well as presenting the judiciary's view to the Lord Chancellor and the Crown. **Singapore** would also fit into this model, as there is a strong involvement of the executive branch in the administration of courts. For instance, we see this through the authority to appoint judges, which rests with the President (Executive). **Ireland** is also a partnership model. The Courts Service, which is a statutory body established through the Courts Service Act 1998, manages the administrative affairs of courts, provides support services to the judges, manages the court buildings and provides facilities for users of the courts.⁶ Its management is conducted by a Board which is comprised of judges, a member of the bar, and a civil servant from the Department of Justice among others.

⁴Alternative Models of Court Administration', Canadian Judicial Council, 2006, <https://www.cjcccm.gc.ca/cmslib/general/news_pub_other_Alternative_en.pdf> accessed 8 February 2025

⁵ *ibid.*

⁶ Section 5, Courts Service Act, 1998, <<https://www.irishstatutebook.ie/eli/1998/act/8/enacted/en/print>> accessed 8 February 2025.

However, the minister does have political responsibility for the operation of the agency. The **Canadian Supreme Court** is also an example of the partnership model.⁷

QUESTION 2: HOW ARE THE MONIES FOR THE ADMINISTRATION OF THE COURTS AND THE REMUNERATION OF JUDGES DEFRAIDED FROM THE RELEVANT LEGISLATURE?

8. The preparation and approval of the budget varies among each jurisdiction, including the degree that each branch of the state plays in the preparation and approval of the budget. The involvement of the judiciary in the preparation of the budget varies significantly across jurisdictions.
9. In **Brazil**, the budget proposal for the judiciary is submitted by the chief judge of each court and forwarded to the Executive. The Brazilian Constitution provides that the executive must direct the monies for the administration of courts in 12 monthly instalments.⁸ Interestingly, the judicial branch also has its own sources of income, including fees paid by litigants. The judiciary is also involved in the determination of the salaries of judges, as the relevant law determining these salaries is drafted by the head of the judicial branch – i.e., the chief of the Brazilian Supreme Court – and is submitted to the Brazilian Congress for review and approval following the procedure for approval of ordinary laws.⁷⁹ Moreover, the Constitution sets parameters to define what is the maximum salary a civil servant may receive.
10. In **Germany**, the Federal Constitutional Court draws up its budget independently. This budget is submitted to the *Bundestag* and *Bundesrat* (the two houses of the Federal Parliament) by the Federal Ministry of Finance. If the Constitutional Court's bid is not included unchanged in the Federal Government's draft general budget, it must be submitted to the *Bundestag* in the unchanged form in addition to the draft. This so-called right of 'double submission' enables the Federal Constitutional Court to make its requests clear to the

⁷ Canadian Judicial Council, *Alternative Models of Court Administration* (2006) <https://cjc-ccm.ca/cmslib/general/news_pub_other_Alternative_en.pdf> accessed on 8 February 2025

⁸ Article 168. Funds corresponding to budget allocations, including supplementary and special credits, intended for the bodies of the Legislative and Judicial branches, the Prosecution Office, and the Office of the Public Defender, shall be remitted to them by the twentieth of each month, in twelfths, as provided by the supplementary law referred to in Article 165, paragraph 9. (Constitution of the Federative Republic of Brazil (Constituição da República Federativa do Brasil) 1988, Art 168)

legislative bodies appointed to adopt the budget, and to represent their bid if it deviates from the Federal Government's plans. The budget of the Federal Constitutional Court appears in an individual section (section 19) in the general budget. The Federal Constitutional Court manages the approved financial resources on its own responsibility. More specifically, the Plenary of the Court decides on the Court's budget plan, prepared by the Committee on Budgetary and Personnel Matters.

11. In **Ireland**, the budget for the Courts Service is prepared by the Executive (Department of Justice) and then submitted to the government for approval. The Department of Justice, under the oversight of the Minister for Justice, is responsible for allocating funding for the judiciary, including the Courts Service. This budget then needs to be approved by Parliament (the Oireachtas), and it is introduced to the Oireachtas by the Minister for Public Expenditure and Reform. The budget is then appropriated directly by Dáil Éireann (lower chamber in parliament). The Courts Service is responsible for the administration of this budget.
12. In the case of the **Canadian** Supreme Court, its Registrar, who is appointed by the Governor general-in-council (the federal representative of the Canadian monarch), submits funding requests to the Minister of Justice which are forwarded to the Minister of Finance. The money is then disbursed by the Registrar. The funding for the Supreme Court's administration comes from Consolidated Revenue Fund of the federal government. In relation to judicial salaries, the Judges Act 1985⁹ provides that the current salary of the judges of the Supreme Court of Canada is \$435,600 for the Chief Justice of Canada, and \$403,300 for the eight puisne judges. The body responsible for determining the adequacy of the salaries and amounts payable is the Judicial Compensation and Benefits Commission. This Commission is composed of a member nominated by the Minister of Justice, one member is to be nominated by the Judiciary, and the Chair is to be nominated by the other two members. It reviews the salaries every four years, taking into account the prevailing economic conditions in Canada, the financial security of the judiciary in ensuring judicial independence, the need to attract outstanding candidates, and any other relevant criteria.¹⁰ Section 53(1) of the Judges Act 1985 provides that salaries, allowances and annuities payable under the Act shall be paid out of the Consolidated Revenue Fund.

⁹ Judges Act, R.S.C., 1985, c. J-1

¹⁰ Judges Act, R.S.C., 1985, c. J-1, s. 26.

- 13. In Hong Kong** there is a greater involvement of the Executive in the determination of the judicial salaries. The Standing Committee on Judicial Salaries and Conditions of Service, an independent advisory body appointed by the Chief Executive, advises the Chief Executive on the salaries of the justices. Judicial salaries are fixed through the Judicial Service Pay Scale.¹¹ The salary is provided for through a contractual arrangement with each individual judge rather than through legislative provision.¹² The salaries on the Pay Scale are subjected to annual review, and are roughly kept in line with the equivalent in the Civil Service Directorate Pay Scale.
- 14. In Singapore**, the Constitution provides that it is the responsibility of Parliament to provide for the remuneration of the Judges of the Supreme Court by law.¹³ Yet, the relevant law hands the determination of the remuneration to the Executive. The Judges' Remuneration Act 1994¹⁴ provides that the Minister is responsible for determining the salaries of the judiciary by way of an order which is published in the Gazette. The current Minister responsible for this is the Minister of the Public Service. Supreme Court Judges must "receive, in addition to his or her salary, such pensionable and non-pensionable allowances and privileges as the Minister may determine, which must not be less than such pensionable and non-pensionable allowances and privileges as a public officer receiving the same pensionable salary would receive."¹⁵ The remuneration of the Supreme Court is charged on the Consolidated Fund. In **India**, the judges' salaries are also paid from the respective Consolidated Funds.
- 15. In the UK**, the Treasury Department, which is the economic and finance ministry, is responsible for paying judicial salaries from the Consolidated Fund (the Government's general bank account at the Bank of England) to the judges.
- 16. In the US**, representatives from the US Judicial Conference Committee on the Budget, along with the Director of the Administrative Office of the United States Courts (AOUSC) prepare a budget for funding the federal courts, including judicial salaries. The Supreme

¹¹ The Pay Scale for 2023 can be found in Annex D, Standing Committee on Judicial Salaries and Conditions of Service, 'Judicial Remuneration Review 2024' (2024) <https://www.jssc.gov.hk/reports/en/jscs_24.pdf>.

¹² Standing Committee on Judicial Salaries and Conditions of Service, 'Report on the Study on the Appropriate Institutional Structure, Mechanism and Methodology for the Determination of Judicial Remuneration in Hong Kong' (2005) <https://www.jssc.gov.hk/reports/en/jscs_08/entire_report.pdf>, para.2.18 ('SC Report 2005')

¹³ Constitution, art 98(6), (Sing).

¹⁴ Section 2, Judges' Remuneration Act 1994 <<https://sso.agc.gov.sg/Act/JRA1994>> accessed 8 February 2025

¹⁵ Judges' Remuneration Act 1994 <<https://sso.agc.gov.sg/Act/JRA1994>> accessed 8 February 2025

Court works with AOUSC to provide input on the budget on staffing and court operations. This budget is then presented to the Congress, and monies for administration of courts then comes from appropriations made by Congress as part of the federal budget.

QUESTION 3: WHO BEARS THE POLITICAL RESPONSIBILITY FOR THE DEFRAYING OF PUBLIC MONIES FOR THE JUDICIARY?

17. In most of the cases studied, the political responsibility for defraying the public monies for the judiciary rests on the Executive branch. In **Brazil** the chief of the federal or state government (i.e., the president or the governors) is responsible for transferring twelve monthly instalments corresponding to the annual budget for the judiciary. In **Ireland**, the Minister of Justice, bears the political responsibility for funding of the judiciary. In **Singapore**, the Minister-in-charge of the Public Service is responsible for funding the judiciary. In the **UK**, it is the Lord Chancellor, a senior minister of the Crown, who bears responsibility to Parliament in matters related to the justice system, including the administration of courts. In **Canada**, the Minister of Justice and the Registrar, who is appointed by the Governor general-in-council (the federal representative of the Canadian monarch), bear political responsibility for the defraying of public monies to the judiciary. The Minister of Justice is accountable to Parliament for the defrayment of public monies as the ministerial authority for the Office of the Registrar.
18. In some countries this responsibility lies with legislature in addition to the government/ executive. For instance, in **Germany** the Constitutional Court submits its bid to the Federal Government, which in turn submits it to the legislature for approval. If the Federal Government does not accept the Constitutional Court's bid, then it must submit both the original bid and its own draft to the legislature. Similarly, in **India** the Supreme Court submits its demand for grants to the Law Ministry, which includes it within its own demands which is then presented to the legislature for assent. In the **U.S.** the political responsibility for defraying the public monies for the judiciary lies on both the legislature and the executive: Both Congress and the US President are responsible for reviewing and approving proposed judicial budgets.
19. In other cases, either judiciary or its administrative wing bear the responsibility for drawing up their budgets. In **Hong Kong**, the concerned Controlling Officer for each department is responsible and accountable for all expenditure for that department. In the case of the judiciary, the Controlling Office is the Judicial Administrator (a member of the Civil Service, appointed by the Chief Justice) who has the authority to incur and authorise expenditure. In

Brazil the presidents of the supreme federal court and of the Superior Courts, draw up their own budgets within the limits set jointly with other branches of the government.

QUESTION 4: WHAT ARE THE REPORTING AND ACCOUNTABILITY REQUIREMENTS REGARDING THE FUNDS DEFRAIDED FOR THE JUDICIARY?

20. Both who must report and the reporting mechanisms vary across jurisdictions. In many jurisdictions, the apex courts are required to be accountable for and report on the expenditure of the funds allocated to the judiciary. The frequency of these reports varies, from annually (i.e. **Indian** Supreme Court) to every four months (**Brazil**). In the case of the **Indian** Supreme Court, the annual report contains the details of the functioning of the Court including procedures followed in decision making, salary structure, budget allocation, etc. In the **Brazilian** case, quarterly reporting is in addition to an annual reporting responsibility “on the state of the judicial branch in the country.” The reports are prepared by the National Council of Justice (which is headed by the President of the Supreme Court). In Brazil all courts have their own internal auditing divisions, and in the Supreme Court the auditing division is overseen by the President.
21. In the **U.K.**, the Chief Executive of the HMCTS, as Accounting Officer, bears responsibility for producing and signing audited Annual Reports and Accounts on the performance of HMCTS. In **Ireland**, the Courts Service, the independent State Agency tasked with managing the courts, supporting the judiciary and providing administration, submits a strategic plan every 3 years to the Minister for Justice's for approval. The Courts Service also submits an Annual Report to the Minister for Justice on its activities and performance, which is then sent to the Parliament after approval. In the **U.S.**, the AOUSC submits annual reports to Congress outlining the federal Judiciary funding priorities, and the Director of AOUSC also submits annual reports on the major activities on the the federal Judiciary and the Administrative Office of the U.S. Courts (AO).¹⁶
22. In **Colombia**, the judiciary is subject to stringent reporting and accountability standards to ensure transparency in the use of public funds. The reporting mechanisms involve different actors. The Executive is involved through the Comptroller General's Office (Contraloría

¹⁶ <https://www.uscourts.gov/data-news/reports/annual-reports/directors-annual-report/annual-report-2023>

General de la República), which is responsible for conducting fiscal oversight of the judiciary's financial activities. The Congress also receives an annual report on the status of finance and administration of the judiciary from the Superior Council of the Judiciary (*Consejo Superior de la Judicatura*), and it may oversee procedures against the heads of the High Courts. The Commission for National Discipline also exercises oversight over the individual use of funds by members of the different judicial bodies. In **Germany**, the execution of the budget is primarily carried out by the executive. The budget funds allocated to the federal courts are administered by the respective court presidents, who are (thereby) supervised by the ministry.

23. In **Singapore**, there appear to be no formal accountability requirements placed on a particular body, the expenditure of the judiciary is reported in the annual budget inclusive of the actual expenditure.

QUESTION 5: WHAT ROLE, IF ANY, DOES THE HEAD OF THE JUDICIARY PLAY IN RELATION TO ACCOUNTABILITY FOR THE USE OF PUBLIC MONIES?

24. The role of the head of the judiciary in relation to the accountability for the use of public monies varies across jurisdictions. Whereas in some the head of judiciary has a significant role, in others there is no role for the head of the judiciary in this regard. The role of the head of the judiciary thus ranges from overseeing, providing summary reports and updates on the budget, to not playing role at all.
25. In the **UK**, the Lord/Lady Chief Justice (LCJ), the head of the judiciary, approves the appointment of the members of the HMCTS Board, which in turn governs the financial management of HMCTS. In **Ireland**, the head of the judiciary chairs the Board of the Court Service and the Judicial Council, which is responsible for publishing annual reports containing details of the activities of the judiciary, financial statements, and other relevant information. In **Singapore**, the Office of the Chief Justice oversees the corporate functions of the courts including "Finance and Procurement".
26. In **Colombia**, the judiciary provide detailed reports on budget execution, including expenditures and financial management outcomes. In the **US**, the Chief Justice presides over the Judicial Conference, which is responsible for providing summary reports and budget requests to Congress and the US President. In **India**, the Chief Justice constitutes various committees of judges such as the Finance Committee to oversee the functioning of the

court. Additionally, the Registry of the Supreme Court on the directions of the Chief Justice of India, uploads all the transparency audits on an online portal. Likewise, in **Brazil**, the head of the judicial is responsible for reporting on the budget. The president of the Supreme Court is also the president of the National Council of Justice, which is central to the accountability of the whole system of justice.

27. On the other end of the spectrum, there are jurisdictions where the head of the judiciary does not play a role in relation to the accountability for the use of public monies. This is the case, for example, in **Hong Kong**, where the Chief of the Judiciary does not play a role, and financial reporting is the responsibility of the Judiciary Administrator, who is the Controlling Officer. The **Canadian** Chief Justice does not play a significant role in the accountability for the use of public monies. **Colombia** does not have a singular "head" akin to systems with a Chief Justice overseeing the entire judicial branch. Instead, the Superior Council of the Judiciary collectively assumes administrative responsibilities, including financial oversight.

QUESTION 6: WHO APPOINTS ADMINISTRATIVE AND OTHER SUPPORT STAFF FOR JUDGES?

28. The institution responsible for the appointment of the administrative and support staff for judges varies significantly across the jurisdictions. The main forms of appointment of the staff are: (i) the court or the chief of the court has the ability to appoint court staff; (ii) staff are members of the civil service, and there is a competitive process and exam by which they are appointed; and (iii) judicial bodies appoint court staff.
29. **Court staff appointed by the court/chief of the court.** For many of the countries, the courts, or the chief of the court, can choose their own personnel. For instance, in **India** the Chief Justice or any judge or officer designated by the Chief Justice appoints the administrative and other support staff for judges of the Supreme Court. In the **U.K.**, the President of the Supreme Court hires judicial assistants for the court whereas provision for other administrative and support staff is supported by the HMCTS. In the **U.S.**, each court has the responsibility of appointing its own support staff. Similarly, in the **German** Federal Constitutional Court, the staff management is the responsibility of the President of the Federal Constitutional Court,⁸⁰ and is responsible for appointing and dismissing the Court's civil servants and employees.⁸¹ In practice, much of the day-to-day administration is led by the Director of the Court, who acts as administrative head of the Court on behalf of the President.⁸² In **Canada**, the Registrar of the Supreme Court is responsible for appointing the staff of the court under the Chief Justice's direction. In **Brazil**, although most of the

staff members are civil servants (and therefore have to pass a competitive exam to work in court), the Court retains power to appoint part of their own staff members even if they are not public servants.

30. Executive involvement. In **Germany**, in the state and federal courts outside the Federal Constitutional Court, , the ministries (both on federal and *Länder* level) are responsible for the appointment of administrative and other support staff of the courts.⁸⁶ The respective court's President acts as the supervisor for all support staff at her court,⁸⁷ while she is herself bound by instruction of the relevant minister.⁸⁸

31. Civil service/competitive exam. Another way in which administrative and other support staff are appointed is through a competitive public exam for civil servants. This is for example the case in Brazil, where these staff members need to pass such an exam. However, it is important to note that not all staff in the court are public servants. Some are positions that are there are some "confidence appointments" meaning that they are not required to be civil servants, and are specifically appointed by the judges based on their relationship of trust. Likewise, in **Hong Kong**, administrative and support staff are public servants, and are either appointed by the Civil Service Bureau of the Judiciary itself.

32. Appointment by external judicial bodies. In other countries, the appointment of staff members is the responsibility of external bodies, which might also include members of the Executive. For instance, in **Colombia**, the appointment of personnel is the responsibility of the Superior Council of the Judiciary which is composed of members of the Supreme Court of Justice, one from the Constitutional Court, and one member of the State Council. In **Ireland**, the Courts Service appoints administrative and support staff for judges.

QUESTION 7: WHAT INTERFACE IS THERE, IF ANY, BETWEEN THE THREE ARMS OF STATE RELATING TO THE ADMINISTRATION OF THE COURTS?

33. Every jurisdiction proclaims judicial independence notwithstanding that the involvement of the executive and legislative branches in the administration of courts varies. There are two notable areas of interface: in setting and approving the budget for the administration of the courts, and in the appointment of judicial officers.

34. In most cases of budget setting and approval, both the legislative and executive branches are involved, with the executive leading the budget determination and the legislature approving

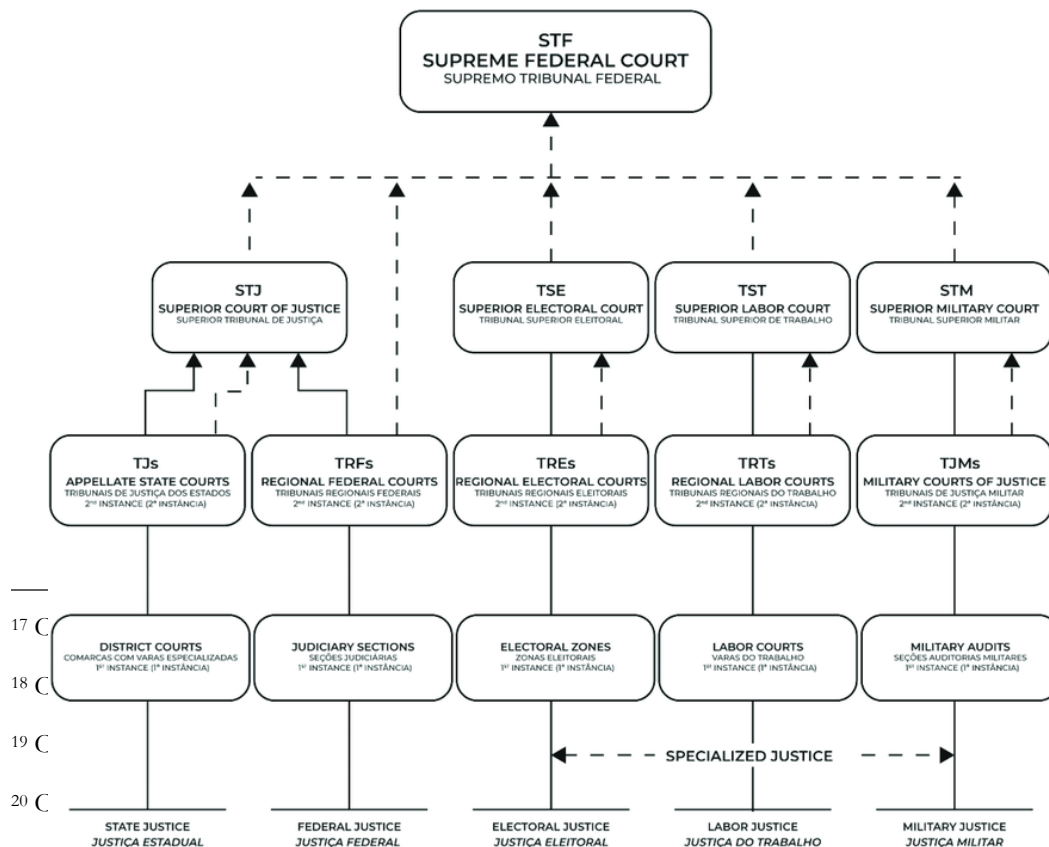
it. In **Ireland**, funding for the administration of courts is negotiated by the executive (Department of Justice, Equality and Law Reform) and given to the legislative branch for approval. In the **UK**, the executive branch bears responsibility for determining the provision of funding and administrative support to the courts, and Parliament approves this funding. The **German** federal and *lander* courts have their budgets determined by the executive with the legislature determining judges' remuneration and overseeing public finance provisioning. In these jurisdictions, while the total budget for the administration of the courts is set by the non-judicial branches, internal budgeting (i.e., the precise determinations of how the total budget will be dispersed) lies with the judiciary.

35. The executive has stronger influence in jurisdictions such as **India**, wherein the budget for court administration is pre-set and dispensed by the executive. Similarly, in the **USA**, it is Congress and the President which allocates funds for the judiciary as well as oversee judiciary budgets.
36. In some cases, the judiciary has varying degrees of influence. In **Colombia**, for example, the budget is initially drafted by the Minister of Finance, given to Congress to amend, and the Legislature to approve, but the judicial branch can make recommendations on the proposed budget before legislative approval. In **Canadian** Supreme Court, the Minister of Justice (executive) and Chief Justice (judiciary) collaborate in the drafting of the court administration budget, which is submitted for legislative approval by the Minister of Justice. A greater role is given to the judiciary in **Brazil** which could be considered a rare case of judiciary-led budgeting. There, the judiciary first proposes the budget whereafter the executive may edit the budget, and the legislature votes to approve it. On paper this empowers the executive to significant edit-down the proposed budget, however, this has not born out in practice as the budget has increased year on year.
37. As to the appointment of judges, the approaches are far from uniform. On the extreme end of judicial non-involvement is the **USA** wherein the President is responsible for the nomination of federal judicial officers. These need to be approved by Senate, according to Article III of the US Constitution. Laxer is **Singapore**, wherein the authority to appoint judges rests with the President though the Chief Justice will be consulted on this matter. On the opposite end is **Hong Kong** where the Judicial Officers Recommendations Commission (made up predominantly of members of the judiciary) who recommend persons for judicial appointment to the Chief Executive, who tends to accept such recommendations as a matter of Convention. On the other hand, there are more collaborative relationships such as in **Germany**, where there the legislature is involved in choosing judges.

BRAZIL

STRUCTURE OF THE COURT SYSTEM IN BRAZIL

38. Brazil is a federal system comprising the Union, 26 states, municipalities, and the Federal District.¹⁷ States and the Union have their own judicial branches; the Federal District does not, and its judiciary is part of the Union.¹⁸
39. There are specialised courts—labour, electoral, and military—which are all part of the federal judicial branch (i.e., the branch related to the Union) and have jurisdiction over specific subject matters.¹⁹ The electoral courts also have various administrative roles: besides judging cases, they are responsible for organizing national and municipal elections, as set forth in the Brazilian Electoral Code (Federal Law 4.737/1965).
40. There are also federal and state non-specialised courts. The law sets their jurisdiction mainly according to who are the parties to the litigation. Federal courts primarily adjudicate cases where the Union or one of its agencies is party to proceedings.²⁰ They also have competence



over other specific matters,²¹ but these are less frequent. From the 6,090,697 cases filed in federal courts in 2024, 4,020,385 were related to social security, indicating that they were filed against the social security federal agency, the National Social Security Institute (“Instituto Nacional do Seguro Social” or INSS).²² Ordinarily, cases are first heard by a single judge and appealed to an appellate court. Further appeals are directed to one of the four Brazilian high courts: the Superior Court of Justice (for common justice),²³ the Superior Electoral Court,²⁴ the Superior Labour Court,²⁵ and the Superior Military Court.²⁶ The apex court for the whole system is the Supreme Federal Court (Supremo Tribunal Federal).²⁷ Depicted visually:²⁸

²¹ II – cases between a foreign State or international organization and a municipality or a person domiciled or residing in the country;

III – cases based on a treaty or a contract between the Union and a foreign State or international organization;

IV – political crimes and criminal offenses committed against the assets, services or interests of the Union or its agencies or companies, excluding misdemeanors with the exception of the jurisdiction of the Military and Electoral Courts;

V – crimes covered by an international treaty or convention, when, the prosecution having started in the country, the result has taken place or should have taken place abroad, or conversely;

V-A – cases regarding human rights referred to in paragraph 5 of this Article;

VI – crimes against the organization of labor and, in the cases determined by law, those against the financial system and the economic and financial order;

VII – habeas corpus, for criminal matters within their jurisdiction or when the coercion is exercised by an authority whose acts are not directly subject to another jurisdiction;

VIII – writs of mandamus and habeas data against an act of a federal authority, except for the cases within the jurisdiction of the Federal Courts;

IX – crimes committed aboard ships or aircrafts, with the exception of the jurisdiction of the Military Courts;

X – crimes or irregular entry or stay of a foreigner, execution of letters rogatory, after exequatur, and of foreign court decisions, after homologation, cases related to nationality, including the respective option, and to naturalization;

XI – disputes over indigenous rights. (Constitution of the Federative Republic of Brazil (Constituição da República Federativa do Brasil) 1988, art. 109)

²² Data available <<https://justica-em-numeros.cnj.jus.br/painel-estatisticas/>> accessed on 8 December 2025. Filters used ‘Justiça Federal’ for ‘Ramo da Justiça’ and ‘Direito Assistencial’ and ‘Direito Previdenciário’ for ‘Assunto.’

²³ Constitution of the Federative Republic of Brazil 1988, Art. 105.

²⁴ Constitution of the Federative Republic of Brazil 1988, Art. 119.

²⁵ Constitution of the Federative Republic of Brazil 1988, Art. 111-A.

²⁶ Constitution of the Federative Republic of Brazil 1988, Art. 123.

²⁷ Constitution of the Federative Republic of Brazil, 1988, Article 102. The Federal Supreme Court has, essentially, responsibility for safeguarding the Constitution with the power: [...]

²⁸ Ana Paula Pimentel Walker and Abigail Friendly, ‘Master Planning “as a Verb”: Enforcing Participatory Planning through the Brazilian Courts’ (2024) 39 Planning Practice & Research 1056, 7.

National Council of Justice

41. Since 2004, the National Council of Justice (“Conselho Nacional de Justiça” or CNJ) has been responsible for overseeing the *administrative* and *financial* operations of the judicial branch. Although the CNJ is considered part of the judicial branch, five of its fifteen counsellors are not judges: one is a member of a state Prosecution office, two are lawyers appointed by the Brazilian Bar Association, one is a citizen nominated by the Chamber of Deputies, and one is a citizen nominated by the Senate. The other ten counsellors are judges, ranging from the President of the Supreme Court to judges from courts of first instance.²⁹

42. The role of the NCJ includes:

- a) Examining – on its own initiative or upon request – the legality of *administrative* acts (i.e., not judicial decisions) carried out by judges or bodies of the Judiciary, and to repeal or review them, or set a deadline for the relevant authority to act.³⁰ By the end of 2024, for instance, an act that granted meal allowances for civil servants (judges included) in the State Court of Mato Grosso was suspended by the CNJ;³¹ and
- b) Carrying out disciplinary proceedings against judges or bodies of the judicial branch (art. 103-B, §4º, II),³² and presenting formal charges to the Prosecutor’s Office in the case of

²⁹ Constitution of the Federative Republic of Brazil, 1988, Article 103-B.

³⁰ *ibid* at §4, II – to ensure that Article 37 is complied with, and examine, on its own initiative or upon request, the legality of administrative acts carried out by members or bodies of the judicial branch; being able to repeal or review them, or stipulate a deadline for the adoption of the necessary measures to achieve due enforcement of the law, without prejudice to the jurisdiction of the Federal Accounting Court; (CA 45, 2004)

³¹ ‘CNJ suspende auxílio de R\$ 10 mil para servidores e magistrados do TJ-MT’ (UOL, 21 December 2024) <<https://noticias.uol.com.br/ultimas-noticias/agencia-estado/2024/12/21/cnj-suspende-auxilio-de-r-10-mil-para-servidores-e-magistrados-do-tj-mt.htm>> accessed 1 March 2025.

³² *ibid* at §4, III – to receive and examine complaints against members or bodies of the judicial branch, including against its ancillary services, clerical offices, and bodies in charge of notary and registration services which operate due to government delegation or have been made official, without prejudice to the courts’ disciplinary competence and their power to correct administrative acts; it may order that pending disciplinary proceedings be forwarded to the National Council of Justice, determine the removal, placement on paid availability, or retirement with compensation or pension in proportion to the length of service, and enforce other administrative sanctions, full defense being ensured;

crimes against public administration or abuse of authority;³³ and producing reports (see below).

43. The creation of the CNJ through an amendment to the Brazilian Constitution was contentious. Its constitutionality was challenged in the Brazilian Supreme Court, which held that the establishment of the Council is constitutional, with the caveat that the Council “has no jurisdiction over the Federal Supreme Court and its justices, as the Federal Supreme Court is the highest body of the national judiciary, to which the council is subject”.³⁴

Scale of administration

44. According to the 2024 annual report issued by the CNJ, which refers to the year 2023, there are 18,265 judges in Brazil and 229,588 other civil servants working for the judicial branch. The Judiciary’s total expenses in 2023 were R\$ 132,753,957,654 (equivalent to ±US\$ 21,815,874,177), 90.2% of these expenses corresponding to personnel expenses.³⁵ 22.6 million lawsuits were filed in 2023. The year ended with 83.8 million lawsuits pending judgment.³⁶
45. State judiciaries are the most prevalent institutions in Brazil, as illustrated by the following graph that accounts for the number of judicial “unities” (i.e., judge’s offices)³⁷ for each system of justice:³⁸

³³ *ibid* at §4, IV – to present a formal charge to the Prosecution Office, in case of crime against public administration or abuse of authority;

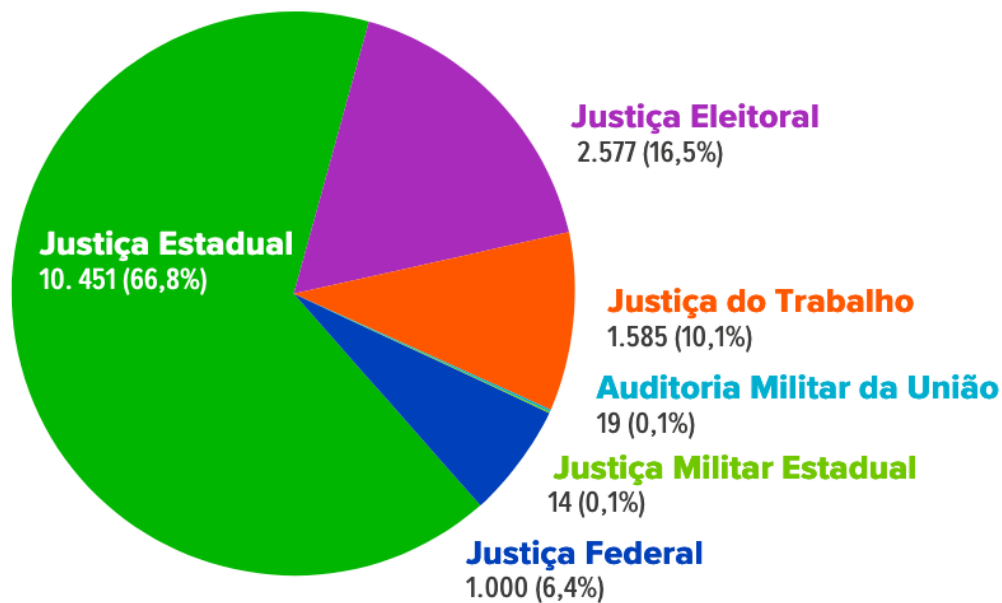
³⁴ Ação Direta de Inconstitucionalidade 3367 [2006] Cezar Peluso (Brazilian Supreme Court).

³⁵ Conselho Nacional de Justiça, *Justiça em números 2024* (Conselho Nacional de Justiça 2024) 64.

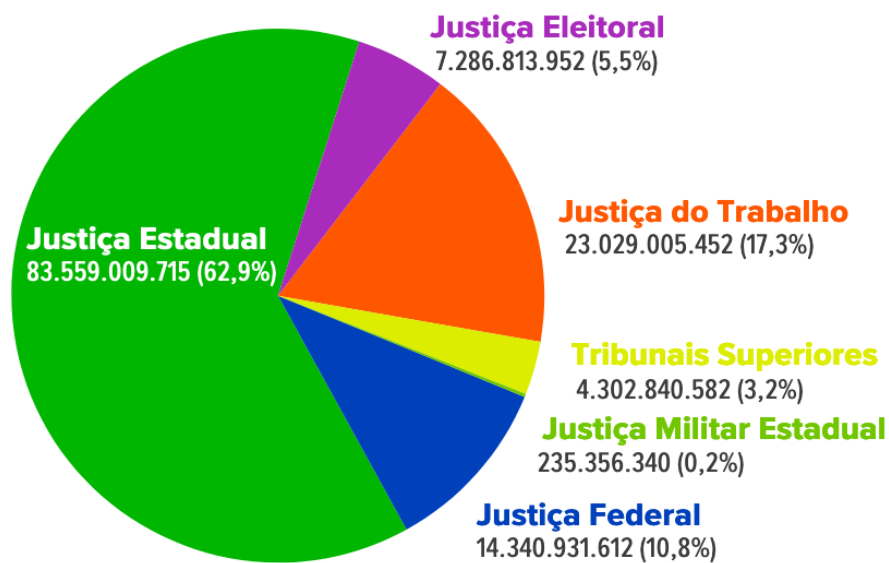
³⁶ *ibid* 47.

³⁷ The number of judges does not exactly match the number of offices because the same office may have more than one judge.

³⁸ Justiça (n 46) 47.

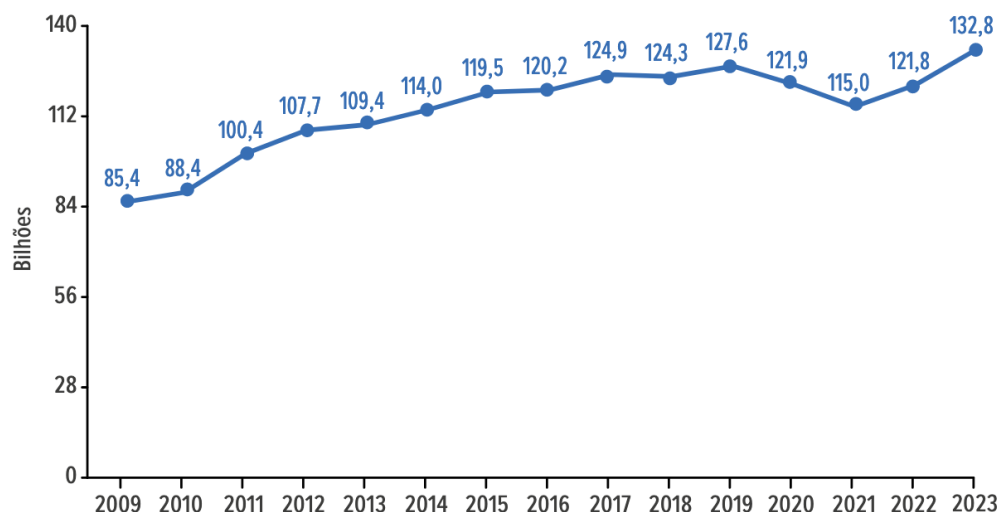


46. This is roughly consistent with the division of expenses for each judicial system as well (figures given in Brazilian reais, R\$):³⁹



³⁹ ibid 82.

47. The total cost of the Brazilian judicial system amounts to 1.2% of the Brazilian GDP, 2.38% of all government expenses, and R\$ 653.7 (US\$ 104.39) per person per year. Expenses in 2023 were the highest so far (numbers in billions Brazilian reais, R\$):⁴⁰



Relevant institutions from other branches of government

48. Brazil has a federal presidential regime. The head of the federal government is the President of the Republic,⁴¹ and the head of each state and federal district is a governor.⁴² At the federal level, the Legislative branch has two chambers—a Chamber of Deputies and a Senate—and at the state level, there is just one chamber for each state—the Deputies’ Assemblies.⁴³

49. The so-called Accounting Courts (“Tribunais de Contas”) are auxiliary bodies to the federal or state legislative branches. They are part of the legislative, not the judicial, branch,⁴⁴ and their decisions are considered *administrative* rather than judicial. This means that they are subject to judicial review.⁴⁵ They are, nevertheless, enforceable.⁴⁶

⁴⁰ *ibid.*

⁴¹ Constitution of the Federative Republic of Brazil, 1988, Article 76 - The executive power is vested in the president of the Republic, who is assisted by the ministers of State.

⁴² Constitution of the Federative Republic of Brazil, 1988, Article 28.

⁴³ Constitution of the Federative Republic of Brazil, 1988, Article 27, 8

⁴⁴ Constitution of the Federative Republic of Brazil, 1988, Article 71.

⁴⁵ Wanderley José Federighi, ‘Notas sobre a fiscalização financeira e orçamentária e o Poder Judiciário’ in José Maurício Conti (ed), *Poder judiciário: orçamento, gestão e políticas públicas* (Almedina 2016) 374.

⁴⁶ Constitution of the Federative Republic of Brazil, 1988 Article 71 (3) [...] Paragraph 3. Decisions of the Court resulting in the imposition of a debt or fine shall have the effectiveness of an enforceable instrument.

50. One-third of the Federal Accounting Court's members are appointed by the Executive (among auditors and members of the Accounting Court Prosecution Office), and two-thirds are appointed by the National Congress.⁴⁷

The budgetary process

51. The budgetary process in Brazil is structured through three kinds of budgetary laws, with the following characteristics:

- a) Pluriannual Plan Law ("PPA") which establishes goals for the next four years;⁴⁸
- b) Budgetary Directives Law ("LDO"), which establishes guidelines for the annual budget law,⁴⁹ for which the Executive must send its proposal to the National Congress by mid-April each year;⁵⁰ and
- c) Annual Budget Law ("LOA") which sets the actual budget (i.e., income, expenses, and investments)⁵¹ which must be compatible with both the PPA and LDO.

52. These laws are proposed by the Executive,⁵² voted on by the Legislature,⁵³ and sanctioned by the Executive.⁵⁴ The same law provides the budget for the three branches of government,⁵⁵ but each level of government—Union, states, and municipalities—has its own budgetary laws.

53. Budgetary laws may be challenged in the Supreme Court on the grounds of constitutional violation.⁵⁶

⁴⁷ Constitution of the Federative Republic of Brazil, 1988, Article 73, para 3.

⁴⁸ Constitution of the Federative Republic of Brazil, 1988, Article 165, para 1.

⁴⁹ Constitution of the Federative Republic of Brazil, 1988, Article 165, para 2..

⁵⁰ Constitution of the Federative Republic of Brazil, 1988, Article 35, para 2, ADCT.

⁵¹ Constitution of the Federative Republic of Brazil, 1988 Article 165, para 5.

⁵² Constitution of the Federative Republic of Brazil, 1988, Art. 84, XXIII.

⁵³ Constitution of the Federative Republic of Brazil, 1988, Article 166.

⁵⁴ Constitution of the Federative Republic of Brazil, 1988, Article 166, para 7.

⁵⁵ Constitution of the Federative Republic of Brazil, 1988, Article 165, para 5, I.

⁵⁶ *Ação Direta de Inconstitucionalidade 2925* [2003] Ellen Gracie (Brazilian Supreme Court).

QUESTION 1: WHAT MODEL OF COURT ADMINISTRATION IS IN PLACE IN THE JURISDICTION SURVEYED?

54. The Brazilian Constitution grants the judicial branch “administrative and financial autonomy”.⁵⁷ In practice, *administrative* autonomy means that the branch selects its judges, decides on their allocation, hires staff through direct appointments and public exams, manages its buildings, and establishes its own internal rules of organization, as detailed below. The rules for appointments of justices at superior courts are different. Most importantly, Supreme Federal Court justices are appointed by the President and are subject only to Senate approval.⁵⁸ We could then describe it as an *autonomous* model of court administration.

55. In 2023, the CNJ issued a ruling stating that, in addition to passing the exams for a specific court, all candidates seeking to become judges must also pass a national exam, to be administered by the National School of Judges Training and Development (“ENFAM”).⁵⁹

Managerial responsibility

56. Courts have the prerogative of arranging their organisation through internal regulations.⁶⁰ Where a law to implement more structural changes is considered necessary, the head of the relevant court must be the one to draft the proposal.⁶¹

57. New positions for judges depend on laws being approved. These laws, like the laws setting their salaries (see below), must be drafted by the judicial branch and approved by the relevant federal or state Parliament and later the President or State Governor.⁶² Courts usually have judicial academies, which are presided and directed by judges.⁶³

⁵⁷ Constitution of the Federative Republic of Brazil, 1988, Article 99.

⁵⁸ Constitution of the Federative Republic of Brazil, 1988, Article 101.

⁵⁹ Resolution No 531/2023, National Justice Council (CNJ), 14 November 2023

⁶⁰ Constitution of the Federative Republic of Brazil, 1988, Article 96, I, a.

⁶¹ Constitution of the Federative Republic of Brazil, 1988, Article 96, II, d.

⁶² Constitution of the Federative Republic of Brazil, 1988, Article 96, II, a.

⁶³ A list of all judicial academies across the country may be found at <<https://www.enfam.jus.br/ensino/escolas-de-magistratura/>> accessed on 8 February 2025

Courts' presidents

58. The head of the Judiciary is the Chief Justice of O Superior Tribunal de Justiça (the “Brazilian Supreme Federal Court” or STF), who is also the president of the CNJ.⁶⁴ According to STF regulations, its president is elected by the court’s justices.⁶⁵ Traditionally the justice who has the longest tenure on the court and has not yet served as president is elected.⁶⁶ Each appellate court is led by a president, who is a judge responsible for the management of the appellate court and its lower courts. Presidents’ mandates are two years long.⁶⁷ Court presidents have broad managerial responsibilities. Consistent with these responsibilities, they do not judge cases during their mandate, a rule that state laws may also extend to courts’ vice presidents.⁶⁸ This provision does not apply to the Supreme Court. There is an important judicial responsibility that is left to courts’ presidents: the suspension of provisional injunctions issued against the government. This decision is taken on grounds of “public interest” to avoid “great harm” and does not involve a comprehensive analysis of the case at hand.⁶⁹

Strategic planning

59. In 2009, the CNJ issued a resolution requiring each court to develop a *strategic plan*, which must align with a national strategic plan for the administration of the judicial branch (art. 2, Res. CNJ 70/2009). A new resolution was issued in 2014, setting plans for the years 2015 to 2020 (Res. 198/2014). The current resolution is Res. 325/2021, which sets plans for the years 2021 to 2026. This last resolution seeks to internalize the goals of the United Nations’ 2030 Agenda for Sustainable Development.

⁶⁴ Constitution of the Federative Republic of Brazil 1988, Article 103-B, para 1

⁶⁵ STF Internal Regulations (Regimento Interno do STF), Article 12.

⁶⁶ Virgílio Afonso da Silva, ‘Poder Judiciário’, *Direito Constitucional Brasileiro* (Edusp 2020) 503.

⁶⁷ Supplementary Federal Law No 35/1979 (Statute of the Judiciary), art 102, § 1º.

⁶⁸ Supplementary Federal Law No 35/1979 (Statute of the Judiciary), art 103.

⁶⁹ Article 4. It is the responsibility of the president of the court, to which the respective appeal is assigned, to suspend, by reasoned decision, the enforcement of the preliminary injunction in actions filed against the Public Authorities or their agents, upon request of the Public Prosecutor’s Office or the interested public legal entity, in cases of manifest public interest or evident lack of legitimacy, and to prevent serious harm to public order, health, security, and the economy. [Art. 4º Compete ao presidente do tribunal, ao qual couber o conhecimento do respectivo recurso, suspender, em despacho fundamentado, a execução da liminar nas ações movidas contra o Poder Público ou seus agentes, a requerimento do Ministério Público ou da pessoa jurídica de direito público interessada, em caso de manifesto interesse público ou de flagrante ilegitimidade, e para evitar grave lesão à ordem, à saúde, à segurança e à economia públicas.] (Federal Law No 8,437/92, art. 4)

60. It has been noted that the setting of these longer-term plans is a way to compensate for the fact that the heads of each court are judges with no formal training in management and who will preside over their courts for only two years.⁷⁰

Judges allocation

61. Judges are allocated according to their time in office and their results in the civil service entrance exam. Usually, a judge begins their time in office in a rural area or a small town and later can reach courts in larger cities. The allocation of judges is a prerogative of the courts.⁷¹ Career progress considers either seniority or “merit” (usually assessed by votes from peers).⁷² This is a statutory provision that follows a constitutional rule.⁷³ The same rule applies to access to courts of second instance.⁷⁴ It is also possible that the assessment of merit includes the frequency of courses offered at judicial academies.⁷⁵

62. To transfer a judge for “public interest”—that is, without the judge’s request—a decision by the CNJ is necessary.⁷⁶ Seniority, merit, and adherence to deadlines must be considered for transferring a judge upon request.⁷⁷

63. There is a guarantee of “lifetime tenure” after two years of service, ending at 75 years old, when retirement is compulsory. The only way for a judge to be removed from his or her office after these two years is through a “final and unappealable judicial decision”⁷⁸ given by the relevant court, according to ordinary procedural rules of judicial hierarchy. The need for a judicial decision to terminate the employment of a judge sets them apart from other civil

⁷⁰ José Maurício Conti, ‘Planejamento Estratégico do Poder Judiciário’ in José Maurício Conti (ed), *Poder judiciário: orçamento, gestão e políticas públicas* (Almedina 2016) 82.

⁷¹ Constitution of the Federative Republic of Brazil, 1988, Article 96, I, c.

⁷² This is the case in the biggest Brazilian Federal Court (TRF-1), see Internal Rules of the Federal Regional Court of the 1st Region (TRF-1), art. 114, paragraph 1.

⁷³ Constitution of the Federative Republic of Brazil, 1988, Article 93, II.

⁷⁴ Constitution of the Federative Republic of Brazil, 1988, Article 93, III.

⁷⁵ Supplementary Federal Law No 35/1979 (Statute of the Judiciary), Article 87.

⁷⁶ Constitution of the Federative Republic of Brazil, 1988, Article 93, VIII.

⁷⁷ Constitution of the Federative Republic of Brazil, 1988, Article 93, VIII-A.

⁷⁸ Constitution of the Federative Republic of Brazil, 1988, Article 95.

servants, whose employment may be terminated through an administrative disciplinary procedure. In any case, the results of these proceedings may also be challenged in court.⁷⁹

64. One-fifth of appellate court judges come directly from either the Prosecutor's Office ("Ministério Público") or the Bar Association (private or public lawyers), without the need to pass the ordinary exams to become judges. In these cases, first, a list of six names is drafted by the representative entity; then the court will choose three names from the list, and finally, the President or Governor will appoint one name to serve.⁸⁰ The rules for superior courts are different. Most importantly, Supreme Court justices are appointed by the President and are subject only to Senate approval.⁸¹

QUESTION 2: HOW ARE THE MONIES FOR THE ADMINISTRATION OF THE COURTS AND THE REMUNERATION OF JUDGES DEFRAIDED FROM THE RELEVANT LEGISLATURE?

The drafting and executing of the budget laws

65. The Brazilian Constitution provides that the judicial branch has both administrative and financial autonomy.⁸² *Financial* autonomy means that the annual budget law always includes a section specific to this branch and that the judicial branch has the right to receive what is specified in this law every month. This budget proposal is submitted by the chief judges of each court and forwarded to the Executive. The proposal must comply with limits set in the *Budgetary Directives Law* ("Lei de Diretrizes Orçamentárias" or LDO). The limits set in the

⁷⁹ Constitution of the Federative Republic of Brazil, 1988, Article 41. Civil servants who, as a result of a competitive civil-service examination, are appointed to effective posts, acquire tenure after three years of actual service.

Paragraph 1. A tenured civil servant shall only lose office:

I – as a result of a final and unappealable judicial decision;

II – by means of an administrative proceeding, in which full defense is ensured;

III – by means of a procedure of periodical appraisal of performance, under the terms of a supplementary law, full defence being ensured.

Paragraph 2. If the dismissal of a tenured civil servant is voided by a judicial decision, the servant shall be reinstated, and the occupant of the vacancy, when tenured, shall be led back to the original office, with no right to indemnity, taken to another office or placed on paid availability with a remuneration proportional to the length of employment.

⁸⁰ Constitution of the Federative Republic of Brazil, 1988, Article 94.

⁸¹ Constitution of the Federative Republic of Brazil, 1988, Article 101.

⁸² Constitution of the Federative Republic of Brazil, 1988, Article 99.

LDO for the judicial branch should be stipulated “jointly with the other branches”,⁸³ but a recent survey conducted by the CNJ with representatives from all Brazilian courts indicated that this occurs in only 10.34% of the courts.⁸⁴ In other words, the limits are stipulated, in most cases, solely by the judiciary.

66. LDOs vary in specificity depending on the state. In some of them, a percentage indexed to the actual income is fixed. In the state of Paraná, for example, the current LDO determines that 9,5% of the state’s total income will be directed to the judicial branch (art. 17, II, State Law 22.065/2024). On one side, this gives a guarantee to the judicial branch; on the other side, there is risk that income is below expected, affecting the amounts transferred to the judicial branch. In São Paulo, the biggest state in Brazil, the LDO does not set many constraints (e.g., State Law 17.990/2024), except for defining a percentage that the governor can redistribute and criteria for cuts.
67. In any case, after the LDO is approved, the court president sends a proposal to the Executive for the judicial branch section in the annual budget law. Apart from cases such as Paraná’s, the Executive can cut some of the expenses planned by the judicial branch. Proposals and cuts are public, so it was reported that a kind of informal exercise of checks and balances works here, as each institution will be attentive to what is given or taken from other institutions.⁸⁵
68. The executive must direct the monies for the administration of courts in 12 monthly instalments.⁸⁶ If the government's income is lower than expected, the amounts allocated to the courts may be reduced. The reduction, however, needs to be strictly proportional, and if income increases in the future, it must be compensated.⁸⁷

⁸³ Constitution of the Federative Republic of Brazil, 1988, Article 99, para 1.

⁸⁴ Conselho Nacional de Justiça, ‘Gestão Orçamentária Dos Tribunais Brasileiros’ (2023) 12–13 <<https://www.cnj.jus.br/wp-content/uploads/2023/10/diagnostico-g-o-t-brasileiros-10-10-23.pdf>> accessed 7 December 2024.

⁸⁵ This is an observation received from a public servant of a state court.

⁸⁶ Constitution of the Federative Republic of Brazil, 1988, Article 168. Funds corresponding to budget allocations, including supplementary and special credits, intended for the bodies of the Legislative and Judicial branches, the Prosecution Office, and the Office of the Public Defender, shall be remitted to them by the twentieth of each month, in twelfths, as provided by the supplementary law referred to in Article 165, para 9.

⁸⁷ *Medida Cautelar em Mandado de Segurança 34483* [2016] Dias Toffoli (Brazilian Supreme Court).

69. The right to receive these monthly instalments distinguishes the judicial branch—together with the Prosecutor’s and Public Defender’s offices—from agencies in the executive branch that receive monies listed in the budget law at the discretion of the chief of the Executive.

70. Scholars say that, in practice, this is the meaning of the judicial branch’s financial autonomy.⁸⁸ It is also possible that throughout the year, the executive decides discretionarily to direct more money to the judicial branch than was provisioned in the annual budget law. The limits for this are set in the LDO. In São Paulo’s LDO for 2025, for example, the limit is set at 15% (art. 13, State Law 17.990/2025). Besides the monies that are transferred each month, courts may also create special funds.⁸⁹ Monies not spent will be directed to these funds, which may be useful for longer-term planning, such as the periodical upgrade of technology equipment.⁹⁰

Judicial costs and fees

71. The judicial branch also has its own sources of income, including fees paid by litigants.⁹¹ In 2023, these fees amounted to R\$23.7 billion (US\$ 3.79 billion),⁹² which accounted for 17% of the branch’s expenses in the same year.

Definition of salaries

72. Salaries are determined by law. This law is drafted by the head of the judicial branch—the chief of the Brazilian Supreme Court—and is submitted to the Brazilian Congress for approval.⁹³ As is the case with all laws in Brazil, it needs to be sanctioned by the President,⁹⁴ and if the President decides to veto it, then the National Congress may reject the veto by an absolute majority of deputies and senators.⁹⁵ At the state level, a similar process occurs, involving the head of the local judiciary and the State Assembly.

⁸⁸ Kiyoshi Harada, ‘Orçamento e autonomia financeira do poder judiciário’ in José Maurício Conti (ed), *Poder judiciário: orçamento, gestão e políticas públicas* (Almedina 2016) 123.

⁸⁹ E.g., the “Special Fund of Expenses for the São Paulo Court of Justice”, created by the State Law 8,876/94.

⁹⁰ This example was provided by a civil servant from a state court.

⁹¹ Constitution of the Federative Republic of Brazil, 1988, Article 98, para 2.

⁹² Justiça (n 46) 87.

⁹³ Constitution of the Federative Republic of Brazil, 1988, Article 96. II, b.

⁹⁴ Constitution of the Federative Republic of Brazil, 1988, Article 66.

⁹⁵ Constitution of the Federative Republic of Brazil, 1988, Article 66, Paragraph 4.

73. The Brazilian Constitution sets parameters to define what is the maximum salary a civil servant may receive. At the federal level, this corresponds to the salary of a justice of the Brazilian Supreme Court.⁹⁶ The text of the Constitution states that the maximum salary for state judges corresponds to 90.25% of that amount (art. 37, XI). However, the Brazilian Supreme Court ruled this provision unconstitutional, declaring that state judges should receive the same maximum salary.⁹⁷ There is also a constitutional provision regulating salary variations across different levels of the judiciary.⁹⁸
74. In addition to these constitutional provisions, the Fiscal Responsibility Law also determines that no more than 6% of the total government income may be spent on salaries at both federal and state levels.⁹⁹ In Brazil, civil servants' salaries may not be reduced in general,¹⁰⁰ which also applies to judges. However, if salaries are not adjusted for inflation, their real value may decrease over time. Finally, it must be observed that there is a consolidated practice of granting compensations that are not considered salaries and, for that reason, do not fall either under the limits for salaries or demand laws to be instituted.¹⁰¹

QUESTION 3: WHO BEARS THE POLITICAL RESPONSIBILITY FOR THE DEFRAIVING OF PUBLIC MONIES FOR THE JUDICIARY?

75. As noted above, the Executive is responsible for transferring 1/12 of the Judiciary's annual budget each month. This obligation ultimately falls on the chief of the federal or state

⁹⁶ Constitution of the Federative Republic of Brazil, 1988, Article 66, Article 37, XI.

⁹⁷ The reasoning was that there was no hierarchy between state and federal courts. A provisional decision was issued in 2007 and confirmed in 2020. See *Ação Direta de Inconstitucionalidade 3854* [2020] Gilmar Mendes (Brazilian Supreme Court).

⁹⁸ Constitution of the Federative Republic of Brazil, 1988, Article 93, V.

⁹⁹ Supplementary Federal Law No 101/2000 (Fiscal Responsibility Law), Article 20.

¹⁰⁰ Constitution of the Federative Republic of Brazil, 1988, Article 37, XV – compensation and salaries of holders of public offices and positions may not be reduced, except for the provisions of items XI and XIV of this Article and of Articles 39, paragraph 4; 150, item II; 153, item III; and 153, paragraph 2, item I.

¹⁰¹ While the researcher could not find consolidated data about the amount of these expenses in comparison to the actual salaries, the medium cost of a judge in 2023 was R\$ 68,100 (US\$ 11,182) a month, while the maximum salary (i.e., the salary of a Supreme Court justice) is of R\$ 41.650 a month (Federal Law 14.520/2023). See Justiça (n 46) 94.

government (i.e., the president or the governors). If it is not met, the relevant court may file a claim against the governor for the transfer to be regularized.¹⁰²

QUESTION 4: WHAT ARE THE REPORTING AND ACCOUNTABILITY REQUIREMENTS REGARDING THE FUNDS DEFAYED FOR THE JUDICIARY?

Annual reports and Accounting Courts

76. The presiding judge of each court must present a financial report every four months.¹⁰³ This report must demonstrate compliance with the law in executing the budget and outline measures to correct expenses that exceed the legal limits.¹⁰⁴ Additionally, there is a yearly report “on the state of the judicial branch in the country” prepared by the CNJ.¹⁰⁵
77. In practice, accountability is more robust than this, as each expense is registered electronically in a system that is open to the accounting courts.¹⁰⁶ In any case, the annual report to be presented at the end of the year should show expenses and their alignment with the goals set in the pluriannual budgetary law. These goals relate to administrative matters (buildings, etc.) and judging. The most important goal is to reduce the number of cases pending judgment.

Internal auditing divisions

¹⁰² *Mandado de Segurança 22384* [1997] Sydney Sanches (Brazilian Supreme Court).

¹⁰³ Supplementary Federal Law No 101/2000 (Fiscal Responsibility Law), Articles 54 and 55, para 2.

¹⁰⁴ Supplementary Federal Law No 101/2000 (Fiscal Responsibility Law), Article 55.

¹⁰⁵ Constitution of the Federative Republic of Brazil 1988, Article 103-B, para 4, VII.

¹⁰⁶ Consider, for example, the following provision in the LDO for the State of São Paulo in 2025: Article 19 - It is mandatory to record, in real time, the budgetary, financial, asset, and accounting execution in the Integrated Financial Administration System for States and Municipalities - SIAFEM/SP by all bodies and entities that are part of the state's fiscal budget and social security budget. [“Artigo 19 - É obrigatório o registro, em tempo real, da execução orçamentária, financeira, patrimonial e contábil no Sistema Integrado de Administração Financeira para Estados e Municípios - SIAFEM/SP por todos os órgãos e entidades que integram os orçamentos fiscal e da seguridade social do Estado.”]

78. All courts have an internal auditing division.¹⁰⁷ The Supreme Court has one under its President.¹⁰⁸ The federal common justice has the “Council of Federal Justice” (regulated by Federal Law No 11.798/2008), and so on.

Popular control

79. Any administrative act—i.e., not a judicial decision—issued by a judge in the management of a court may be challenged judicially by any citizen through the filing of a popular action (“ação popular”) on the grounds that it is harmful to public assets.¹⁰⁹ This action will be judged by a first-instance judge, regardless of who the defendant is.¹¹⁰

QUESTION 5: WHAT ROLE, IF ANY, DOES THE HEAD OF THE JUDICIARY PLAY IN RELATION TO ACCOUNTABILITY FOR THE USE OF PUBLIC MONIES?

80. As the authority responsible for the management of the court, the President of each court prepares the reports referred to above and is accountable for cases of illegality in the use of public monies. More precisely, any act that violates the budgetary law constitutes an act of “administrative misconduct” [“improbidade administrativa”],¹¹¹ which is a kind of illegality that is not a crime, but may lead to fines, the obligation to reimburse the state and loss of office.¹¹² The president of the Supreme Court is also the president of the CNJ,¹¹³ which is central to the accountability of the whole system of justice (see above).

¹⁰⁷ Conselho Nacional de Justiça (n 37) 24.

¹⁰⁸ STF Secretariat Internal Regulations (Regimento Interno do STF), Article 35.

¹⁰⁹ Federal Law No 4,717/1965, art. 1.

¹¹⁰ Federal Law No 4,717/1965, art. 5.

¹¹¹ Federal Law No 8,429/1992, Article 10, XI.

¹¹² Federal Law No 8,429/1992, Article 12, II.

¹¹³ Constitution of the Federative Republic of Brazil, 1988, Article 103-B, para 1.

QUESTION 6: WHO APPOINTS ADMINISTRATIVE AND OTHER SUPPORT STAFF FOR JUDGES?

81. There are public servants specific to the Judiciary's structures appointed after public, competitive exams. Each court is responsible for conducting these exams.¹¹⁴ This staff has *tenure*, meaning they cannot be dismissed except for disciplinary reasons. In 2023, there were 228,330 tenured employees in the judicial branch.¹¹⁵
82. Moreover, there are trust appointments. Trust appointees do not need to pass exams to be admitted, and - unlike other civil servants, who hold tenure - they are dismissed and appointed at the discretion of the relevant authority. They may occupy some specific positions in courts, traditionally serving as clerks. Judges and justices have the prerogative of making these appointments, provided anti-nepotism rules are adhered to.¹¹⁶ In 2023, there were 24,968 trust appointments in the Judiciary.
83. It is also possible that civil servants from other levels or branches of government be appointed to perform clerking functions—e.g., a judge from a lower state court can work as a clerk to a Supreme Federal Court. In 2023, there were 22,232 of such appointments.¹¹⁷ Finally, outsourcing is also an option. A survey from 2023 indicated that this form of appointing support staff was adopted by 6.9% of the courts.¹¹⁸

¹¹⁴ Constitution of the Federative Republic of Brazil, 1988, Article 96, I, b and e.

¹¹⁵ Justiça (n 46) 64.

¹¹⁶ The “anti-nepotism” rule is specified in a ruling of the Brazilian Supreme Court, that understood it to be implied on the constitutional imperative of impersonality (Binding Precedent 13: The appointment of a spouse, partner, or relative in a direct or collateral line, or by affinity, up to the third degree, inclusive, of the appointing authority or of a civil servant of the same legal entity holding a leadership, management, or advisory position, to a commission or trust position, or even to a gratified function in the direct and indirect public administration of any of the branches of government at the federal, state, federal district, or municipal levels, including arrangements through reciprocal designations, violates the Federal Constitution. [“Súmula Vinculante 13: A nomeação de cônjuge, companheiro ou parente em linha reta, colateral ou por afinidade, até o terceiro grau, inclusive, da autoridade nomeante ou de servidor da mesma pessoa jurídica investido em cargo de direção, chefia ou assessoramento, para o exercício de cargo em comissão ou de confiança ou, ainda, de função gratificada na administração pública direta e indireta em qualquer dos poderes da União, dos Estados, do Distrito Federal e dos Municípios, compreendido o ajuste mediante designações recíprocas, viola a Constituição Federal.”])

¹¹⁷ Justiça (n 46) 64.

¹¹⁸ Conselho Nacional de Justiça (n 68) 19.

QUESTION 7: WHAT INTERFACE IS THERE, IF ANY, BETWEEN THE THREE ARMS OF STATE RELATING TO THE ADMINISTRATION OF THE COURTS?

84. Influence by the other arms of state in the administration of courts occurs indirectly in the Brazilian case. The most important site of influence seems to be the budgetary process. This is because, even though the judicial branch has its own budget and the prerogative to execute it, its budgetary proposal will be edited by the executive and finally voted on by the legislature. As set out above, it is also possible that the head of the executive uses their discretion to allocate additional funds to the judiciary throughout the year.
85. It is difficult to assess how much power the Executive actually exercises over the Judiciary throughout this budgetary process. The Executive does have the formal power to significantly reduce the Judiciary's budget proposal.¹¹⁹ At the same time, the actual budget of the judicial branch has increased each year (see above). Other sites of influence are the control exercised by the accounting courts – which are part of the legislative branch – and the appointments to positions in appellate courts and higher courts by the executive branch.

¹¹⁹ Consider for example, this statement of a judge from the São Paulo Appellate Court: What has been observed is that the Executive continues to control the spectacle [of the budgetary process], often acting with unmistakable arrogance in relation to a Judiciary that struggles to assert itself and establish itself as a true branch of government, repeatedly appearing before Governors and public administrators with a begging bowl in hand, in order to obtain resources deemed essential for the proper administration of Justice." ["O que se tem verificado é que o Executivo é que continua a comandar o espetáculo [do processo orçamentário], agindo, muitas vezes, com indisfarçável soberba, em relação a um Judiciário que tem dificuldades de se impor e de se firmar como autêntico Poder, comparecendo repetidas vezes à presença de Governadores e administradores públicos com o pires na mão, para fins de obter recursos considerados indispensáveis para a boa administração da Justiça"] (Federighi (n 29) 391.)

CANADA

STRUCTURE OF THE COURT SYSTEM IN CANADA

86. Canada is a constitutional monarchy and the Constitution of Canada is the supreme law in the country. Canada has a federal system of government.

87. The court structure of Canada has four levels: (i) the Supreme Court is the final court of appeal in the country which hears appeals from federal and provincial courts; (ii) the Federal Court of Appeal alongside the provincial and territorial courts of appeal; (iii) the provincial superior courts alongside the Federal Court and (iv) the provincial and territorial (lower) courts.¹²⁰ The Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court and the Tax Court are established by the federal government, and the provincial and

¹²⁰ Government of Canada, 'The Judicial Structure' <<https://www.justice.gc.ca/eng/csj-sjc/just/07.html>> accessed 15 December 2024.

territorial (lower) courts, superior courts and courts of appeal are established by the provincial governments.

QUESTION 1: WHAT MODEL OF COURT ADMINISTRATION IS IN PLACE IN THE JURISDICTION SURVEYED?

88. The model of court administration differs depending on the court concerned and whether the court in question is federal or provincial. The Supreme Court of Canada is an example of the partner model. It administers its own affairs by means of its own Registrar appointed by the Governor in Council.¹²¹ The Registrar answers directly to the Chief Justice of Canada.¹²² However, the federal government appoints judges to the federal courts, the appellate and superior courts of the provinces/territories, and to the Supreme Court of Canada. The Governor in Council exercises the authority of the Executive and makes appointments in the judicial system, including the appointment of the Registrar and Deputy Registrar of the Supreme Court of Canada.¹²³
89. The Federal Court, the Tax Court, Court Martial Appeal Court and the Federal Court of Appeal make use of the Courts Administration Service. The Courts Administration Service is a branch of the federal government.¹²⁴ The Courts Administration Service provides legal services and administrative support services to assist members of the Courts in the discharge of their judicial functions. The Governor in Council appoints the Chief Administrator.¹²⁵ Section 8(1) of the Courts Administration Service Act S.C. 2002 ('Courts Administration Service Act') provides that the Chief Justices of the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court and the Tax Court of Canada are responsible for the

¹²¹ Supreme Court Act R.S.C., 1985, c. S-26, s 12(1).

¹²² Supreme Court of Canada, 'Administration of Court' <<https://www.scc-csc.ca/about-apropos/administration-eng.aspx>> accessed 15 December 2024.

¹²³ House of Commons, 'Canadian Parliamentary System' <https://www.ourcommons.ca/procedure/our-procedure/parliamentaryFramework/c_g_parliamentaryframework-e.html#:~:text=parties%20to%20govern.,The%20Executive%20Branch,the%20Prime%20Minister%20and%20cabinet.>> accessed 15 December 2024.

¹²⁴ Courts Administration Service Act S.C. 2002, c. 8, s 3.

¹²⁵ Courts Administration Service Act S.C. 2002, c. 8, s 5(1).

judicial functions of their courts, including the direction and supervision over court sittings and the assignment of judicial duties.¹²⁶

90. The provincial and territorial courts are administered by the provincial governmental department responsible for that court and therefore follow an *executive* model.¹²⁷ Accordingly, only the Supreme Court of Canada has independence over its administration, reflecting an *autonomous* model, as the Courts Administration Service and governmental departments are otherwise responsible for administration of the remainder of the courts in Canada.

QUESTION 2: HOW ARE THE MONIES FOR THE ADMINISTRATION OF THE COURTS AND THE REMUNERATION OF JUDGES DEFRAIDED FROM THE RELEVANT LEGISLATURE?

91. The Judges Act 1985¹²⁸ regulates the salaries of the judges. It provides that the current salary of the judges of the Supreme Court of Canada is \$435,600 for the Chief Justice of Canada, and \$403,300 for the eight puisne judges. The body responsible for determining the adequacy of the salaries and amounts payable is the Judicial Compensation and Benefits Commission. This Commission is composed of a member nominated by the Minister of Justice, one member is to be nominated by the Judiciary, and the Chair is to be nominated by the other two members. It reviews the salaries every four years, taking into account the prevailing economic conditions in Canada, the financial security of the judiciary in ensuring judicial independence, the need to attract outstanding candidates, and any other relevant criteria.¹²⁹ The money for the administration of the Supreme Court of Canada is disbursed by the Registrar. The Registrar formally submits funding requests to the Minister of Justice who, without alteration, submits the funding requests to the Minister of Finance who grants the request.¹³⁰

¹²⁶ Courts Administration Service Act S.C. 2002, c. 8, s 8(1).

¹²⁷ Supreme Court of Canada, 'Canadian Judicial System' (15 February 2018) <<https://www.scc-csc.ca/court-cour/sys-eng.aspx>> accessed 15 December 2024.

¹²⁸ Judges Act, R.S.C., 1985, c. J-1

¹²⁹ Judges Act, R.S.C., 1985, c. J-1, s. 26.

¹³⁰ Supreme Court of Canada, 'Accord to strengthen the independence of the Supreme Court of Canada' (22 July 2019) <<https://www.scc-csc.ca/court-cour/accord-justice-eng.aspx>> accessed 15 December 2024.

92. Money for the administration of the Federal Court, Tax Court, Court Martial Appeal Court and Federal Court of Appeal is disbursed by the Courts Administration Service. Money for the administrative services of provincial courts of all levels is disbursed by the provincial governments. The authority of Parliament is needed before monies can be spent by the Executive and therefore the Registrar and Chief Administrator submit quarterly reports regarding expenditure.¹³¹ Approvals are given in the form of annually approved limits through appropriation acts or legislation in the form of statutory spending authority for specific purposes.
93. Judges of the Supreme Court of Canada, Federal Court, Court Martial Appeal Court, Tax Court and Federal Court of Appeal are paid by the federal government. The provinces and territories administer the superior courts,¹³² but superior court judges are appointed and paid by the federal government and therefore authority over the superior courts in each province is shared between the provincial and federal governments.¹³³ Consequently, to ensure proper functioning, the federal and provincial governments are required to cooperate in the exercise of their respective authorities.

QUESTION 3: WHO BEARS THE POLITICAL RESPONSIBILITY FOR THE DEFRAISING OF PUBLIC MONIES FOR THE JUDICIARY?

94. In terms of the Accord to strengthen the judicial independence of the Supreme Court of Canada, the Minister of Justice is the appropriate Minister for the Office of the Registrar. Owing to the Minister's responsibility for the administration of justice, all submissions to Cabinet respecting the Office of the Registrar are sponsored by the Minister.¹³⁴ The Registrar is seen as the accounting officer and must compile a quarterly report on the financial activities of the Supreme Court of Canada. The Registrar must present the report

¹³¹ Courts Administration Service, 'Quarterly Financial Report - For the quarter ended September 30, 2024' (4 December 2024) <<https://www.cas-satj.gc.ca/en/pages/publications/qfr/qfr-09-2024>> accessed 15 December 2024.

¹³² Government of Canada, 'The judicial structure' (1 September 2021) <<https://www.justice.gc.ca/eng/csj-sjc/just/07.html>> accessed 15 December 2024.

¹³³ Supreme Court of Canada, 'Canadian Judicial System (15 February 2018) <<https://www.scc-csc.ca/court-cour/sys-eng.aspx>> accessed 15 December 2024.

¹³⁴ Supreme Court of Canada, 'Accord to strengthen the independence of the Supreme Court of Canada' (22 July 2019) <<https://www.scc-csc.ca/court-cour/accord-justice-eng.aspx>> accessed 15 December 2024.

to the Minister of Justice and may be questioned by Parliament. This means that both the Minister and the Registrar are political responsibility bearers.

95. In respect of the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court and Tax Court, section 12(1) of the Courts Administration Service Act provides that the Chief Administrator must, within six months after the end of each fiscal year, send to the Minister of Justice a report on the activities of the Service for that year.¹³⁵ Similarly to the Registrar, the Chief Administrator may also be called before the parliamentary committee for questioning.

QUESTION 4: WHAT ARE THE REPORTING AND ACCOUNTABILITY REQUIREMENTS REGARDING THE FUNDS DEFRAIDED FOR THE JUDICIARY?

96. The Registrar and Chief Administrator both compile quarterly reports per the requirements of section 65(1) of the Financial Administration Act.¹³⁶ As set out above under Question 3, both the Registrar and Chief Administrator may be called for questioning before Parliament.

QUESTION 5: WHAT ROLE, IF ANY, DOES THE HEAD OF THE JUDICIARY PLAY IN RELATION TO ACCOUNTABILITY FOR THE USE OF PUBLIC MONIES?

97. The Registrar is under the direction of the Chief Justice of Canada (section 15-17 of the Supreme Court Act).¹³⁷ The Registrar is directly answerable to the Chief Justice and is responsible for the management of the Court.¹³⁸ However, the responsibility of the Registrar to account for the use of public monies is related to the function of the Minister of Justice as set out above at (3). Therefore, although the Chief Justice and Minister of Justice have a “collaborative” relationship as evidenced by the Accord to strengthen the independence of

¹³⁵ Courts Administration Service Act S.C. 2002, c. 8, s 12(1).

¹³⁶ Financial Administration Act R.S.C., 1985, c. F-11, s 65(1).

¹³⁷ Supreme Court Act R.S.C., 1985, c. S-26, s 15-17.

¹³⁸ Supreme Court of Canada, ‘Administration of the Court’ (11 October 2022) <<https://www.scc-csc.ca/about-apropos/administration-eng.aspx>> accessed 15 December 2024.

the Supreme Court of Canada, the Accord specifically confirms the principle of ministerial accountability as it relates to the expenditure of public funds on the judiciary.¹³⁹ Seemingly, the Chief Justice of the Supreme Court does not play a role in the accountability of the use of public monies.

QUESTION 6: WHO APPOINTS ADMINISTRATIVE AND OTHER SUPPORT STAFF FOR JUDGES?

98. The Governor in Council appoints the Registrar and Deputy Registrar of the Supreme Court of Canada after the Minister of Justice has made recommendations for these positions.¹⁴⁰ The Minister of Justice will consult with the Chief Justice of Canada. Thereafter the Registrar appoints the staff of the court under the direction of the Chief Justice.¹⁴¹
99. The Chief Administrator is appointed by the Governor in Council in a similar manner to the appointment of the Registrar of the Supreme Court, with consultation by the Minister of Justice with the Chief Justices of the courts concerned.¹⁴² Section 7(2) of the Courts Administration Service Act provides that the Chief Administrator is responsible for staffing and management of the Courts Administration Service.¹⁴³

QUESTION 7: WHAT INTERFACE IS THERE, IF ANY, BETWEEN THE THREE ARMS OF STATE RELATING TO THE ADMINISTRATION OF THE COURTS?

100. The executive and judiciary have a collaborative relationship in respect of the administration of the judiciary signified by the Accord between the Minister of Justice and the Chief

¹³⁹ Supreme Court of Canada, 'Accord to strengthen the independence of the Supreme Court of Canada' (22 July 2019) <<https://www.scc-csc.ca/court-cour/accord-justice-eng.aspx>> accessed 15 December 2024.

¹⁴⁰ Supreme Court of Canada, 'Accord to strengthen the independence of the Supreme Court of Canada' (22 July 2019) <<https://www.scc-csc.ca/court-cour/accord-justice-eng.aspx>> accessed 15 December 2024.

¹⁴¹ Supreme Court Act R.S.C., 1985, c. S-26, s 15.

¹⁴² Courts Administration Service Act S.C. 2002, c. 8, s 5(1).

¹⁴³ Courts Administration Service Act S.C. 2002, c. 8, s 7(2).

Justice.¹⁴⁴ The Minister of Justice is equally accountable to Parliament for the defrayment of public monies as the ministerial authority for the Office of the Registrar. This relationship is replicated with respect to the Courts Administration Service, which is operated under the direction of the Chief Justices of the relevant courts and the Minister of Justice has a role in respect of the budgetary aspects of the Courts Administration Service. The main interface is thus that the legislature provides funding for the administration of courts and the judiciary, through the Minister (executive), may make budget submissions and requests.

COLOMBIA

¹⁴⁴ Supreme Court of Canada, 'Accord to strengthen the independence of the Supreme Court of Canada' (22 July 2019) <<https://www.scc-csc.ca/court-cour/accord-justice-eng.aspx>> accessed 15 December 2024.

INTRODUCTION TO THE COURT SYSTEM IN COLOMBIA

101. The Colombian court structure operates under a single ‘unitary system’. This entails that the judicial system is centralized and applied uniformly across the country. As such, all courts are part of a single national judicial hierarchy, although they operate at different levels and handle distinct types of cases.

102. First, many of the disputes categorized as local-level cases, or cases of first instance, are brought before Municipal Courts (*Juzgados Municipales*) and Circuit Courts (*Juzgados de Circuito*), depending on the subject matter in dispute. Second, these cases may then be brought or appealed before regional level or appellate courts, often known as Higher District Courts (*Tribunales Superiores de Distrito Judicial*). Finally, these cases may then be brought to the final instance courts at the national level. Depending on the subject matter, in the final instance, cases may be brought before one of the following courts, which are jointly referred in practice as the “High Courts”:¹⁴⁵

102.1. The Constitutional Court (*Corte Constitucional*), which oversees claims (*tutelas*) on alleged breaches of the Colombian Constitution;¹⁴⁶

102.2. The Supreme Court (*Suprema Corte*), which functions as the instance organ for cases concerning ordinary jurisdiction (e.g., labor, criminal, civil and family matters);¹⁴⁷ and

102.3. The Council of State (*Consejo del Estado*), which serves as the last authority in administrative contentious disputes.¹⁴⁸

QUESTION 1: WHAT MODEL OF COURT ADMINISTRATION IS IN PLACE IN THE JURISDICTION SURVEYED?

103. Colombia's judiciary without a single head of the judiciary or a single supreme body of the judiciary. Under the model presented in the Executive Summary of this report, Colombia's Constitutional Court is an autonomous model, managed by a judicial governing body. As such, there is a division between the adjudicative or judicial tasks and the administrative tasks.

¹⁴⁵ SCJ 2023 National Report by the Judiciary to the Congress, p. 23.

¹⁴⁶ Colombian Political Constitution, Articles 239-241.

¹⁴⁷ Colombian Political Constitution, Articles 234-235.

¹⁴⁸ Colombian Political Constitution, Chapter 3, Articles 236-237.

The former are responsibility of the he Constitutional Court, the Supreme Court and the Council of State, and the latter are vested in the Superior Council of the Judiciary and National Commission for Judicial Discipline. . The Colombian Constitution assigns most of the administrative functions in the judiciary branch to the following bodies:

103.1.The Superior Council of the Judiciary (“SCJ”) (*Consejo Superior de la Judicatura*), tasked with most of the administrative functions for the delivery of justice,¹⁴⁹

103.2.The National Commission for Judicial Discipline (*Comisión Nacional de Disciplina Judicial*), which administers and prosecutes cases against the public officials, including sitting judges, of the judiciary for lack of discipline.¹⁵⁰

104.While the National Commission for Judicial Discipline also performs judicial functions, it does so only with respect to disciplinary administrative manners within the judicial branch.¹⁵¹ As mentioned, the High Courts have no established hierarchy among and between them. Instead, the judiciary in Colombia operates through a decentralized model. The Colombian Constitution emphasizes the autonomy and independence of the High Courts, including the SCJ.

105.The primary entity responsible for the administration of the judiciary is the SCJ, established by the Statutory Law for Administrative Justice (*Ley Estatutaria de la Administración de Justicia (Ley 270 de 1996)*). The SCJ oversees the organization, administration, and general control of the judiciary, ensuring its proper functioning and independence.¹⁵² For 2023, the budget for the judiciary represented 0,53% of the GDP and increased from the 0,42% assigned for 2022.¹⁵³

106.The SCJ is composed of six magistrates elected for a period of eight years. Two are elected by the Supreme Court, one by the Constitutional Court, and the final three by the Council of

¹⁴⁹ Colombian Political Constitution, Chapter 7, Title VIII.

¹⁵⁰ Colombian Political Constitution, Article 257A, Chapter 7, Title VIII. The National Commission for Judicial Discipline is composed of seven members. Four of them are elected by the Colombian Congress from a list of candidates sent by the SCJ, and the other three from a list drawn by the President of the Colombian Republic. Members of this Commission are elected for eight years

¹⁵¹ Colombian Constitution, Article 257A.

¹⁵² To ensure the independence of the National Commission for Judicial Discipline, the SCJ is not involved in the administrative functions of the National Commission. See, Colombian Political Constitution, Article 257, Chapter 7, Title VIII.

¹⁵³ SCJ 2023 National Report by the Judiciary to the Congress, p. 176.

the State.¹⁵⁴ Law 1712 of 2014 (*Ley 1712 de 2014*), which establishes the Law of Transparency and the Right to Access the National Public Information and other provisions (*Ley de Transparencia y del Derecho de Acceso a la Información Pública Nacional y se dictan otras disposiciones*), tasks the SCJ with providing general and public access to the administration of justice. The SCJ has also implemented a Commission of ‘Open Justice’ to increase public participation and as an additional system of accountability.¹⁵⁵ In this manner, the Colombian Constitution seeks to ensure that public bodies tasked with judicial functions are only concerned with the proper exercise of such functions, while the administrative functions are carried out by the SCJ.

QUESTION 2: HOW ARE THE MONIES FOR THE ADMINISTRATION OF THE COURTS AND THE REMUNERATION OF JUDGES DEFRAIDED FROM THE RELEVANT LEGISLATURE?

107. There are two relevant budgets to consider: (i) a national budget drafted by the Colombian president and (ii) an internal budget prepared by the SCJ. Regarding the former, the financial resources for court administration and judges’ salaries are allocated through the national budget, as outlined in the Colombian Political Constitution. This national budget covers all government expenses across its different branches. Specifically, Article 345 of the Constitution mandates that no public expenditure can be executed without prior legislative approval. Approval for the budget applies the following process:¹⁵⁶

107.1. First, a draft of the national budget is prepared by the Ministry of Finance and Public Credit and its National Department for Planning which includes any estimated expenses from the government for a given year;

107.2. Second, once an initial draft for the budget is completed, the President sends the proposal to the Colombian Congress;¹⁵⁷

¹⁵⁴ Colombian Political Constitution, Article 254.

¹⁵⁵ This was done as a response to (*Acuerdo No. PCSJA17 10672 de 2017 “Por medio del cual se definen las Políticas de Transparencia y Justicia Abierta y se conforma la Comisión de ‘Justicia Abierta’ del Consejo de la Judicatura”*).

¹⁵⁶ Colombian Political Constitution, Article 346.

¹⁵⁷ Colombian Political Constitution, Article 348-349.

107.3.Third, the judicial branch, through the SCJ, reviews the budget proposal and may submit observations to the Congress in case it considers that an adjustment is necessary.¹⁵⁸

108.The budget prepared by the Colombian President is different from the budget plan drafted by the SCJ. The National Budget, prepared by the President, is prepared on the basis of the report and communications received by the SCJ, mainly through the SCJ's budget plan. The SCJ's budget plan provides for the internal distribution of the budget that the judicial branch received from the national budget for any given year.¹⁵⁹ In addition to the SCJ's budget plan, in practice the Ministry of Finance and Public Credit receives input from the SCJ for the drafting of the National Budget.¹⁶⁰ The SCJ's budget also contains a list of short- and medium-term public policies that the Colombian President considers for the next year's budget.¹⁶¹ This internal budget, prepared by the SCJ, is also provided to the Ministry of Finance and Public Credit when they prepare the national budget, which allows for better planning. In practice, the SCJ does not perform a financial forecast of the expected budget that it would require to achieve its goals.¹⁶²

109.These budgets also include expenses arising from the remuneration of judges and the administrative staff of the judicial branch. Under Art. 150, section 19 of the Colombian Political Constitution, it is for Congress to set the legal framework governing the remuneration of public servants, including judges and magistrates. Art. 150 of the Colombian Constitution is deployed jointly with Law 4 of 1992 (*Ley 4 de 1992*), which grants the President the scope annually to regulate salaries through annual decrees. Specifically, Article 1(b) of the latter Law provides that "The National Government, subject to the norms, criteria, and objectives contained in this Law, shall set the salary regime and of benefits for: [...] The employees of [...] the Judicial Branch [...]".

¹⁵⁸ Colombian Political Constitution, Article 257.

¹⁵⁹ Law 270 of 1996 (Statutory of the Justice Administration (*Ley 270 de 1996 Estatutaria de la Administración de Justicia*)).

¹⁶⁰ See,

¹⁶¹ Law 270 of 1996 (Statutory of the Justice Administration (*Ley 270 de 1996 Estatutaria de la Administración de Justicia*)), Article 80(1).

¹⁶² See, SCJ 2023 National Report by the Judiciary to the Congress.

QUESTION 3: WHO BEARS THE POLITICAL RESPONSIBILITY FOR THE DEFRAYING OF PUBLIC MONIES FOR THE JUDICIARY?

110. As mentioned, the judicial budget for a given year is embedded within the larger national budget prepared by the Colombian President with assistance from its Ministry of Finance and Public Credit.¹⁶³ While the President prepares the national budget, it is the responsibility of the Colombian Congress to approve the annual budget. If it fails to do so, the budget for the prior year is applied again for the subsequent year.¹⁶⁴

111. The political responsibility for allocating public funds within the judiciary falls upon those members of the judiciary who are members of the SCJ. Given that the SCJ is tasked with delivering reports on the functioning of the judicial branch to Congress, members of the SCJ bear a higher degree of responsibility. For instance, at the end of the annual financial reports submitted by the SCJ to the Congress, the document is undersigned by the Executive Director for Judicial Administration and the Administrative Director of the Division of Accountability of the Unit for Budget Matters, both public officers of the SCJ, who present the document “under their responsibility”.¹⁶⁵

112. This report serves the purpose of ensuring proper accountability of the judiciary before the Colombian Congress. Art. 80 of Law 4 of 1992 (*Ley 4 de 1992*) states that this report shall include at least:

112.1. The policies, objectives and plans in the medium and long term of the SCJ;

112.2. The public policies and goals to reduce costs and enhance the quality of justice, including the results of prior policies;

112.3. The plan of investment and budget for the ongoing year; and

112.4. The financial statements audited for the prior year and an analysis of the financial situation of the different judicial bodies, among other points.

113. While the annual budget submitted by the SCJ serves as a system for financial and administrative accountability to Congress, the specific responsibility depends on the actor and the actions undertaken regarding the manner in which public monies are managed.

¹⁶³ See, Decree 111 of 1996 (*Decreto 111 of 1996*).

¹⁶⁴ Colombian Political Constitution, Article 348.

¹⁶⁵ SCJ 2023 National Report by the Judiciary to the Congress, p. 209.

114.Colombia's legal framework provides that members of the judiciary, including members of the SJC may be subject to (i) disciplinary action if they do not perform their duties properly; (ii) criminal liability if they commit a criminal offence in relation to the performance of their administrative duties; , and (iii) responsibility for tax or fiscal mismanagement of resources. Each of these actions may be jointly taken against the misappropriation or misuse of public monies and may trigger different consequences (*e.g.*, suspension or removal of the personnel, imprisonment or fines, and the requirement to return the misused public resources). For criminal matters, the General National Prosecutor (*Fiscalía General de la Nación*) may take action where a crime appears to have been committed by a member of the judiciary in situations related to embezzlement, illicit enrichment, or false production of a public document, among other matters.

115.Finally, fiscal or tax investigations ordinarily falls within the remit of the General Controller of the Republic (*Contraloría General de la República*), who oversees cases related to misappropriation of public resources. The mandate of the General Controller of the Republic is grounded in the Colombian Constitution.¹⁶⁶ It empowers it to exercise vigilance over the fiscal and tax management of the Colombian State, including overseeing financial control, management, and results, by applying specific metrics such as efficiency, economy, equity and the environmental costs of a decision.¹⁶⁷ While the National Commission for Judicial Discipline is entrusted with overseeing lack of administrative discipline, the General Controller of the Republic looks to recover any economic damage cause to the public finances. Interestingly, the fiscal vigilance of the activities conducted by the General Controller of the Republic itself, is conducted by an auditor chosen by the State's Council from a list sent by the Colombian Supreme Court.¹⁶⁸

¹⁶⁶ See, Colombian Constitution, Article 267.

¹⁶⁷ See, *Id.*

¹⁶⁸ Colombian Constitution, Article 274.

QUESTION 4: WHAT ARE THE REPORTING AND ACCOUNTABILITY REQUIREMENTS REGARDING THE FUNDS DEFAYED FOR THE JUDICIARY?

116. The judiciary is subject to stringent reporting and accountability standards to ensure transparency in the use of public funds.¹⁶⁹ Different actors are involved in the accountability of the judiciary:

116.1. The Comptroller General's Office (*Contraloría General de la República*) conducts fiscal oversight of the judiciary's financial activities;¹⁷⁰

116.2. The Colombian Congress also receives an annual report on the status of finance and administration of the judiciary and it may oversee procedures against the heads of the High Courts;¹⁷¹ and

116.3. The Commission for National Discipline also exercises oversight over the individual use of funds by members of the different judicial bodies.

117. Additionally, Law 270 of 1996 requires the judiciary to provide detailed reports on budget execution, including expenditures and financial management outcomes. These reports are submitted to the executive and legislative branches and are made publicly accessible to promote transparency.

118. The reports are submitted by the SCJ, which receives input from the other judicial bodies. While there is no specific provision that defines the number of reports that the SCJ must file per year, in practice, this is done once a year through a single comprehensive report submitted to the Colombian Congress. This does not impede Congress from requesting more reports or information throughout the year from the SCJ. The reports are publicly available and there is public access to the reports up to 2023. The reports are divided into four main sections: (i) the current state of justice administration amongst federal judicial bodies, (ii) the opportunities to enhance the administration of justice, (iii) the public policies

¹⁶⁹ The reporting and accountability standards are provided through several sets of provisions. This include rules that govern the accounting books for public instrumentalities (e.g., the Decree 2674 of 21 December 2012; the General Plan on Public Accountability under Resolution No. 620 of 2015), and provisions that require the participation and assumption of responsibility of the accountant and legal representative of the SCJ, among other provisions.

¹⁷⁰ Colombian Constitution, Article 267.

¹⁷¹ See, Colombian Political Constitution, Article 174.

to implement in the medium and long term, and (iv) the performance and execution of the financial budget for the immediate past year, as well as the investment plan for the incoming year.

Status of justice administration

119. The SCJ provides the Colombian Congress with statistical data concerning the number of cases received and heard by the judicial branch each year.¹⁷² This is then assessed against the capacity of the judicial branch to address new cases and discharge the back log. If the Colombian judiciary is able to resolve or settle more cases than it receives each year, this is seen as a favorable metric.¹⁷³ The SCJ also provides data on the number of different types of procedural action initiated and resolved each year.¹⁷⁴ The data provided allows the SJC to identify which types of procedure are more common and whether resources need to be shifted in the light of the cases received each year.

120. Each year, the SJC uses 13 metrics to assess the effectiveness and responsiveness of the administration of justice:¹⁷⁵ (i) national demographic data; (ii) the geographical spread of presence judges throughout the municipalities of the Colombian Republic, (iii) the number of judicial bodies available to address new cases, (iv) human resources and personnel of the judiciary with the exclusion of judges, (v) the proportion of the National Budget allocated to the judicial branch, (vi) increase or reduction on demand of justice per each 100,000 citizens, by calculating the average of new claims per year brought per 100,000 citizens, (vii) amount of judges that the judiciary has to address new cases per each 100,000 citizens only excluding cases concerning constitutional procedures (*tutelas*), (viii) number of new cases received per day across all types of dispute procedures, (ix) number constitutional procedures (*tutelas*) that are filed (x) per day, (xi) throughout the year, (xii) and as a proportion of all judicial procedures initiated by the public; and (xiii) number of new matters that are fully concluded per year – i.e., where to appeal is pending on a given case. These data points are relied upon to undertake administrative decisions from year-to-year.

121. To determine allocation of financial support and resources across the judicial branch, the SCJ conducts a periodic review of incoming cases per subject (i.e., on civil, criminal, labor

¹⁷² For example, during 2023 Colombia identified an increase of demand of 5,6% in comparison to previous year.

¹⁷³ SCJ 2023 National Report by the Judiciary to the Congress, p. 19.

¹⁷⁴ SCJ 2023 National Report by the Judiciary to the Congress, p. 19, 21.

¹⁷⁵ See, SCJ 2023 National Report by the Judiciary to the Congress, p. 19.

and family matters) and across each judicial body (i.e., the Supreme Court of Justice, the Council of the State, the Constitutional Court, and the National Commission for Judicial Discipline).¹⁷⁶ Each of these judicial bodies may decide how to allocate the budget that the SCJ assigns to it per year. The SCJ monitors the performance of each judicial body, to identify unsatisfactory performance).

Areas of opportunity

122. The reports submitted by SCJ serve primarily as a system of financial and administrative audit and accountability, and do not expend significant effort in identifying new areas of opportunity for the administration of justice. The reports run for several hundreds of pages, but the portion allocated for ‘areas of opportunity’ often comprises less than ten pages, even when it is considered as one of the four main sections of the report. The areas of opportunity are often broad and general, and address new issues such as technology, strengthening the educational and technical capacity of its personnel, participation of citizens in the workings of the different judiciary bodies.¹⁷⁷

Public policies

123. Similar to the ‘areas of opportunity’ section, the proposals concerning new public policies are also broad and general, and not in detail. The report mentions some themes of interest where the SCJ might focus in the next year, but it does not contain the details of any of these policies.

Financial accountability

124. The Report’s section on financial accountability is extensive. The judiciary’s budget is divided between operative functions, public debt, and resources for investment. It first provides historical background on the finances of the judicial sector, and its importance in terms of the State’s gross domestic product. While most of the judiciary’s budget is obtained through the National Budget, the report also provides information on certain independent trust and financial accounts that the judiciary holds.¹⁷⁸ To ensure proper accountability, the SCJ also provides a financial breakdown of the allocation of any budgetary excess from the prior year.

¹⁷⁶ SCJ 2023 National Report by the Judiciary to the Congress, pp. 23, 24.

¹⁷⁷ SCJ 2023 National Report by the Judiciary to the Congress, pp. 161-165.

¹⁷⁸ SCJ 2023 National Report by the Judiciary to the Congress, p. 183.

QUESTION 5: WHAT ROLE, IF ANY, DOES THE HEAD OF THE JUDICIARY PLAY IN RELATION TO ACCOUNTABILITY FOR THE USE OF PUBLIC MONIES?

125.Colombia's judiciary does not have a singular “head” akin to systems with a Chief Justice overseeing the entire judicial branch. Instead, the SCJ collectively bears administrative responsibility for the judicial branch, including the obligation to provide financial oversight. Nevertheless, each judicial body that receives a portion of the budget from the SCJ may determine the allocation and spending of the funds they receive. The SCJ monitors the expenditure to ensure that the funds are utilized appropriately and in accordance with legal and constitutional mandates, so providing for a degree of accountability within the judiciary. As previously mentioned, this accountability is enhanced by the possibility of administrative, fiscal, and criminal liability in circumstances where individual judges or court staff misappropriate funds or otherwise act improperly.

QUESTION 6: WHO APPOINTS ADMINISTRATIVE AND OTHER SUPPORT STAFF FOR JUDGES?

126.The appointment of administrative and support personnel for judges is mainly managed by the SCJ.¹⁷⁹ According to Law 270 of 1996, the SCJ is responsible for the selection, appointment, and oversight of judicial employees, ensuring that staffing aligns with the judiciary's operational needs and maintains its independence.

QUESTION 7: WHAT INTERFACE IS THERE, IF ANY, BETWEEN THE THREE ARMS OF STATE RELATING TO THE ADMINISTRATION OF THE COURTS?

127.While there is no established authority that manages the relations and interactions between the three arms of state and the administration of the courts, there are several instances in which the different branches interact. While the judiciary operates independently, there is a structured interface with the executive and legislative branches concerning administrative matters. As discussed, the range of these interactions spans from the (i) continuous interaction between the three branches in the establishment of the annual budget to the

¹⁷⁹ Colombian Political Constitution, Article 256.

participation of the Colombian President and Congress in (ii) the appointment of certain members in the judiciary branch and (iii) the establishment of the judges and staff remuneration.

GERMANY

INTRODUCTION TO THE COURT SYSTEM IN GERMANY

128. Germany's federal order is also reflected in the federal structure of the court system. Jurisdiction is exercised by federal courts and by the courts of the 16 *Bundesländer* (federal states).¹⁸⁰ This also means that a major part of the regulation of court administration lies with the *Länder*, which in turn leaves room for a certain degree of diverging practices.

129. The German court system consists of five independent specialised branches: the ordinary (encompassing civil and criminal jurisdiction), administrative, fiscal, labour, and social jurisdiction.¹⁸¹ In addition, there is the constitutional jurisdiction, consisting of the Federal Constitutional Court (*Bundesverfassungsgericht*), which is the supreme constitutional court and responsible for ensuring adherence to the German Basic Law (*Grundgesetz*), and the constitutional courts of the *Länder*, which oversee compliance with the *Länder* constitutions.¹⁸²

130. Court administration is situated in a field of tension between two constitutional provisions.¹⁸³ Article 97(1) of the German Basic Law declares that '[j]udges shall be independent and subject only to the law'. On the other hand, article s 20(1) and (2) of the Basic Law requires that all measures taken by the organs of the State must be based on the will of the people and be accountable to them.¹⁸⁴

131. Section IX of the Basic Law, 'The Judiciary', and especially articles 92-101 provide a framework for the court structure as well as a general framework for court administration. The regulatory regime of court administration of the different courts is further shaped by provisions in various acts, such as the German Judiciary Act (*Deutsches Richtergesetz*) and the Act on the Federal Constitutional Court (*Bundesverfassungsgerichtsgesetz*), and – to a more

¹⁸⁰ Basic Law (*Grundgesetz*), art 92: 'The judicial power shall be vested in the judges; it shall be exercised by the Federal Constitutional Court, by the federal courts provided for in this Basic Law and by the courts of the *Länder*.'

¹⁸¹ Basic Law, art 95(1).

¹⁸² Basic Law, art 92. On the constitutional courts of the *Länder*, see the respective constitutions of the *Länder*. One example is article 54 of the Constitution of the State of Lower Saxony, which establishes the jurisdiction of the Constitutional Court of Lower Saxony (*Niedersächsischer Staatsgerichtshof*).

¹⁸³ For a detailed discussion of the constitutional framework, see Fabian Wittreck, *Die Verwaltung der Dritten Gewalt* (Mohr Siebeck 2006) 114–207.

¹⁸⁴ BVerfGE 93, 37, 66.

limited extent – the acts on the rules of procedure, for example the Courts Constitution Act (*Gerichtsverfassungsgesetz*).

132. In 2022, Germany spent approximately 0.003 % of its GDP on its judicial system (including public prosecution).¹⁸⁵ According to a 2015 report by the Federal Statistical Office, the federal and *Länder* governments spent € 13.7 billion on legal protection (€ 0.4 billion by the federal government and € 13.3 billion by the *Länder* governments) in 2011.¹⁸⁶ These numbers include not only the expenditure for courts, but also for the public prosecutors' offices and the prison system (which had a share of € 3 billion).

QUESTION 1: WHAT MODEL OF COURT ADMINISTRATION IS IN PLACE IN THE JURISDICTION SURVEYED?

133. It is necessary to distinguish between the model of court administration of the Federal Constitutional Court and the other federal as well as *Länder* courts.

134. The model in place for the court administration of the Federal Constitutional Court is characterised by self-administration. Hence, the Federal Constitutional Court falls under the self-autonomous or self-management model of court administration. This reflects the Courts' role as '*Oberstes Verfassungsorgan*' (supreme constitutional organ). Article 93(1) of the Basic Law states: 'The Federal Constitutional Court shall be a federal court of justice which is autonomous and independent of all other constitutional organs'. This entails that the Court adopts its own Rules of Procedure (*Geschäftsordnung des Bundesverfassungsgerichts*) according to section 1(3) of the Act on the Federal Constitutional Court.

135. Part A of these rules comprises the rules on the organisation and administration of the Federal Constitutional Court. Section 1 thereof introduces the two main actors in the Court's administration: the Plenary, consisting of all 16 judges of the Court, and the President of the Court.

136. The Plenary decides on fundamental issues concerning the Court's administration. Also, it sets up standing committees as 'subgroups' of the Plenary that are in charge of specific administrative areas. According to section 3(1) of the Rules of Procedure of the Federal

¹⁸⁵ Council of Europe, European Judicial Systems – Implemented Budget <<https://public.tableau.com/app/profile/cepej/viz/BudgetEN/GDPBudget>> accessed 14 December 2024.

¹⁸⁶ Statistisches Bundesamt, 'Justiz auf einen Blick' (Wiesbaden, June 2015) 52.

Constitutional Court, these are the Rules Committee, the Protocol Committee, the Budget and Personnel Committee, and the Library Committee. Each committee consist of two judges from each of the two senates as well as—except for the Library Committee—the President and the Vice-President. The President heads the administration and represents the Court externally.¹⁸⁷ The special status of the judges of the Constitutional Court is reflected in section 69 of the German Judiciary Act according to which the provisions of the Act apply to them only insofar as they are compatible with their special legal status under the Basic Law and the Federal Constitutional Court Act.

137. In contrast to the Constitutional Court's autonomous self-administration, the administration of the other federal courts follows an executive model with administration lying primarily in the hands of the Executive.¹⁸⁸ Court oversight is exercised by the competent federal minister.¹⁸⁹ It is seen as contributing to the necessary democratic legitimisation of the judiciary as well as its control under the rule of law.¹⁹⁰ However, due to the tension with judicial independence, executive supervision of judges is only allowed 'insofar as their independence is not compromised'.¹⁹¹ This means that any measure of supervision which could possibly have an impact on the decision or decision-making in a specific pending case or conceivable future cases is in principle inadmissible.¹⁹²

138. Similarly, because of the possible direct influence on a court's jurisprudence, the (court-internal) allocation of responsibilities – i.e. the composition of the adjudicating bodies, appointment of the investigating judges, the regulation of representation, and the allocation of court business – is carried out through a process of judicial self-administration.¹⁹³ This is the main task of the Presidium: a body consisting only of judges that is established at each court.¹⁹⁴ Other ways through which judges (at the federal courts) participate – although to a

¹⁸⁷ Rules of Procedure of the Federal Constitutional Court, s 5(1).

¹⁸⁸ Claus D Classen, 'Artikel 97' in Peter M Huber and Andreas Voßkuhle (eds), *Grundgesetz: Kommentar* (8th edn, C.H. Beck 2024) para 29.

¹⁸⁹ This is not always the Minister of Justice. The Federal Labour Court, for example, is overseen by the Federal Minister for Labour.

¹⁹⁰ Classen (n 189) para 29.

¹⁹¹ German Judiciary Act, s 26(1).

¹⁹² Christian Hillgruber, 'Artikel 97' in Günter Dürig, Roman Herzog and Rupert Scholz (eds), *Grundgesetz: Kommentar* (104th supplementary delivery April 2024, C.H. Beck 2024) para 80.

¹⁹³ Court Constitution Act, s 21e; Classen (n 189) para 29a.

¹⁹⁴ Court Constitution Act, s 21a.

limited extent – in court administration are the Councils of judges (for participation in general and social matters) and the Councils for judicial appointments (for participation in appointing judges).¹⁹⁵ Structurally, they are modelled on staff representation in State agencies, with a judge-specific design.¹⁹⁶ Thus, they are in no way equivalent to strong and centralised judicial councils that are the characteristic of comprehensive self-administration.¹⁹⁷

139. Generally, section 4(1) of the German Judiciary Act prohibits the simultaneous exercise of judicial and legislative or executive functions for judges. However, section 4(2)(i) makes an exception for duties relating to court administration. A judge with a major role in court administration is the President of the respective court. While she is, on the one hand, independent in the exercise of her judicial functions, she is, on the other hand, also performing administrative functions, and thereby bound by the instructions of the respective minister and authorised to issue instructions to subordinate judges and employees.¹⁹⁸ (The president's role will be further assessed with regard to question 5.)

140. Although the court administration in the *Länder* is in many regards similar to that on the federal level, there are slight variations, also between the *Länder*.¹⁹⁹ One example is the procedure regarding the appointment of professional judges: the majority of judges at the level of the *Länder* is appointed solely by the executive, but some *Länder* also use committees for the selection of judges that decide together with the respective minister.²⁰⁰

141. The federal judges are selected by a joint decision of the competent federal minister and a committee for the selection of judges that comprises the competent *Land* ministers as well as

¹⁹⁵ German Judiciary Act, s 49.

¹⁹⁶ Johann-Friedrich Staats, 'Vorbemerkung zu §§ 49 – 60' in Johann-Friedrich Staats (ed), *Deutsches Richtergesetz* (Nomos 2012) para 1.

¹⁹⁷ *ibid.*

¹⁹⁸ Alexander von Bernstorff, *Die Gerichtsverwaltung in Deutschland und England* (Dunker & Humblot 2016) 138.

¹⁹⁹ The court administration on the level of the *Länder* is further characterised by a three-level structure of the ordinary jurisdiction (comprised of district courts, regional courts, higher regional courts) and a two-level structure of the specialised jurisdiction (for example, administrative courts and higher administrative courts).

²⁰⁰ Judge selection committees are permitted by article 98(4) of the Basic Law, which reads: 'The *Länder* may provide that *Land* judges shall be chosen jointly by the *Land* Minister of Justice and a committee for the selection of judges.' For a more detailed description of the differences concerning the regulations on the appointment of professional judges, see Bericht der Bund-Länder-Arbeitsgruppe "Wehrhafter Rechtsstaat", 'Wie lassen sich die freiheitlich-demokratische Grundordnung und ihre Institutionen gegen Verfassungsfeinde verteidigen?' (18 April 2024) 57–58 <<https://www.mj.niedersachsen.de/download/208073>> accessed 6 December 2024.

an equal number of members elected by the *Bundestag*.²⁰¹ A recent example shows how delicate these appointments can sometimes be. In 2020, the Federal Ministry of Justice planned to fill the positions of President and Vice-President of the Federal Fiscal Court with persons who had not previously been federal judges. In this context, the Minister of Justice wanted to soften the internal requirement regulations that demanded at least five years of experience at the respective court in order to take on a management position.²⁰² This was highly criticised by the other federal courts' presidents and leading court members, as well as associations of judges,²⁰³ who feared that the appointment of top positions at federal courts would thus be purely politicised. With regard to the post of the Vice-President of the Federal Fiscal Court, the appointment was stopped by courts because competitors for this position were successful with their complaints based on article 33(2) of the Basic Law.²⁰⁴ In 2022, the requirement of 'at least five years' experience at the court was reintroduced into the requirements regulation.²⁰⁵

142. The judges of the Federal Constitutional Court are elected by the *Bundestag* or *Bundesrat*, and each constitutional organ elects half of the judges of each Senate.²⁰⁶ The judges of the constitutional courts of the *Länder* are elected by the parliament of the respective *Land*. As

²⁰¹ See Basic Law, art 95(2). See further the provisions for the specific courts, such as Courts Constitution Act, s 125 for judges of the Federal Court of Justice, Labour Court Act (*Arbeitsgerichtsgesetz*), s 42, Social Court Act (*Sozialgerichtsgesetz*), s 38, Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*), s 15(3), Fiscal Court Code (*Finanzgerichtsordnung*), s 14(2). See also, for a more detailed description of the practice, Wittreck (n 184) 307–311.

²⁰² Markus Sehl, 'Auf der Suche nach den politisch Besten?' (*Legal Tribune Online*, 3 December 2020) <<https://www.lto.de/recht/justiz/j/bmjv-bundesgerichte-richter-auswahl-erfahrung-politische-einflussnahme-bundesfinanzhof>> accessed 14 December 2024.

²⁰³ Redaktion beck-aktuell, 'Bundesrichter streiten mit Lambrecht um höchstrichterliche Führungspositionen' (*beck-aktuell*, 30 November 2020) <<https://rsw.beck.de/aktuell/daily/meldung/detail/bundesrichter-streiten-mit-lambrecht-um-hoechstrichterliche-fuehrungspositionen>> accessed 14 December 2024.

²⁰⁴ LTO-Redaktion, 'BFH weiter ohne Vizepräsidenten' (*Legal Tribune Online*, 7 February 2022) <<https://www.lto.de/recht/nachrichten/n/bayvgh-bayerischer-verwaltungsgerichtshof-6ce212708-besetzung-stelle-bfh-bundesfinanzhof-vizepraesident-vizepraesidentin-kandidatin-bund-abgelehnt-rechtsfehlerhafte-auswahl>> accessed 14 December 2024.

²⁰⁵ LTO-Redaktion, 'Wieder fünf Jahre Erfahrung für Führung eines Bundesgerichts' (*Legal Tribune Online*, 10 February 2022) <<https://www.lto.de/recht/justiz/j/bundesjustizminister-marco-buschmann-bundesgerichte-bundesrichter-fuehrung-praesident-anforderung-erfahrung-korrigiert>> accessed 14 December 2024.

²⁰⁶ Until recently, detailed regulations regarding the election procedure (as well as, e.g., the number of judges on the Court and the length of their term of office) were only regulated by the Act on the Federal Constitutional Court (*Bundesverfassungsgerichtsgesetz*), an ordinary law, which could be changed by simple parliamentary majority. In order to better protect the Court's independence, the Basic Law was changed in December 2024 and now includes more detailed regulations, such as article 93(2) on the composition of the Court and the election of judges.

the constitutional courts of the *Länder* are called upon relatively rarely, the judges are generally not exclusively active there but fulfil this task in addition. Most of them are professional judges who sit on other courts, and some are also honorary judges, such as law professors.

143. Associations of judges, such as *Neue Richtervereinigung* and *Deutscher Richterbund*, regularly call for reforms of the system of court administration. Their proposals suggest to generally establish a system of self-administration.²⁰⁷ These proposals are, however, criticised in scholarship and regarded inconsistent with the Basic Law.²⁰⁸

QUESTIONS 2 & 3: HOW ARE THE MONIES FOR THE ADMINISTRATION OF THE COURTS AND THE REMUNERATION OF JUDGES DEFRAIDED FROM THE RELEVANT LEGISLATURE? WHO BEARS THE POLITICAL RESPONSIBILITY FOR THE DEFRAIDING OF PUBLIC MONIES FOR THE JUDICIARY?

Federal Constitutional Court

144. The Federal Constitutional Court draws up its budget *independently*. More specifically, the Plenary of the Court decides on the Court's budget plan, prepared by the Committee on Budgetary and Personnel Matters.²⁰⁹ In 2023, the budget amounted to around € 40 million.²¹⁰

145. A draft of the State's general budget has to be adopted by the Federal Government, before it is submitted to both the *Bundestag* and *Bundesrat* (the two houses of the Federal Parliament) by the Federal Ministry of Finance.²¹¹ If the Constitutional Court's bid is not included unchanged in the Federal Government's draft general budget, it must be submitted to the

²⁰⁷ Neue Richtervereinigung, 'Demokratie statt Hierarchie: Das NRV-Modell für eine unabhängige, selbstverwaltete Justiz in Deutschland', *Stolpersteine auf dem Weg zur Unabhängigkeit* (2nd edn 2017); Deutscher Richterbund, 'Entwurf für ein Landesgesetz zur Selbstverwaltung der Justiz' (1 February 2010); for a discussion of their approaches in English, see Anja Seibert-Fohr, 'Judicial Independence in Germany' in Anja Seibert-Fohr and Lydia F Muller (eds), *Judicial independence in transition* (Springer 2012) 461-464.

²⁰⁸ Hillgruber (n 186) para 113; Wittreck (n 184) 687.

²⁰⁹ Rules of Procedure of the Federal Constitutional Court, s 1(2) and 3(1)(c).

²¹⁰ See <<https://www.bundeshaushalt.de/DE/Bundeshaushalt-digital/bundeshaushalt-digital.html>> accessed 14 December 2024.

²¹¹ Federal Budget Code (*Bundeshaushaltsordnung*), s 30 and 31.

Bundestag in the unchanged form in addition to the draft.²¹² This so-called right of ‘double submission’ enables the Federal Constitutional Court to make its requests clear to the legislative bodies appointed to adopt the budget,²¹³ and to represent their bid if it deviates from the Federal Government’s plans. The budget of the Federal Constitutional Court appears in an individual section (section 19) in the general budget.

Other courts at the federal level

146. For the other federal courts, there is no independent budget.²¹⁴ Instead, the budgets of the courts are part of the individual budgets of the respective federal ministries. The preparation of the courts’ plans is the responsibility of the courts’ presidents.²¹⁵ But unlike the Federal Constitutional Court, the other federal courts do not have the opportunity to address their budget proposals directly to the budget legislator.²¹⁶ Instead, they must express their bids to the relevant federal minister, who can then decide whether to adjust it before she introduces them into the budget negotiations in the Cabinet and *Bundestag*.²¹⁷

Courts at the *Länder* level

147. Similarly to the federal courts, the courts on the level of the *Länder* also have no independent budget, as their budget is part the budget of the respective ministry at *Land* level.²¹⁸ Several recent initiatives by the Federal Government and the *Länder* allowed for additional funds for the judiciary (not only, but particularly) on the *Länder* level. In 2019, the Federal Chancellor and the *Länder* heads of government passed a resolution on a ‘Pact for the Rule of Law’, which provided the *Länder* with one-time funds of € 220 million.²¹⁹ The

²¹² Federal Budget Code (*Bundeshaushaltsordnung*), s 29(3): ‘If the draft budget deviates from the bids of the Federal President, the German Bundestag, the Bundesrat, the Federal Constitutional Court, the Federal Court of Auditors or the Federal Commissioner for Data Protection and Freedom of Information, and if consent has not been given to such amendments, then the parts on which no agreement has been reached shall be attached unamended to the draft budget.’

²¹³ Basic Law, art 110.

²¹⁴ Wittreck (n 184) 319.

²¹⁵ *ibid*.

²¹⁶ The so-called ‘double submission’ does not include the federal courts, compare Federal Budget Code, s 29(3).

²¹⁷ Wittreck (n 184) 319.

²¹⁸ Bernstorff (n 199) 186.

²¹⁹ Besprechung der Bundeskanzlerin mit den Regierungschefinnen und Regierungschefs der Länder am 31. Januar 2019. <<https://www.bundesregierung.de/resource/blob/974430/1575742/7ddad7d2ca2a8d397c64b87b9a07d55b/2019-01-31-beschluss-pakt-rechtsstaat-data.pdf?download=1>> accessed 14 December 2024.

funds were especially designated for the increase of personnel. The Pact was positively assessed²²⁰ and especially the *Länder* governments called for a continuation.²²¹ In 2023, the Federal Ministry of Justice undertook to provide € 200 million for digitalisation projects within the judiciary of the *Länder* and federal digitalisation projects that aim at benefiting the entire judiciary in 2023-2026 as part of a ‘Digitalisation Initiative for the Judiciary’.²²²

148. With regard to the constitutional courts at the *Länder* level, the budget procedure varies. Some *Länder* follow the model of the Federal Constitutional Court with an independent budget and the right of ‘double submission’ for their constitutional court. In others, the budget of the constitutional court is at least listed individually. In a few *Länder*, however, the budget of the constitutional court is part of the budget of the ministry of justice.²²³

Remuneration of judges²²⁴

149. The remuneration of judges has to be determined by law.²²⁵ The remuneration of the judges of the Federal Constitutional Court is regulated by the Act on the Salary of the Members of the Federal Constitutional Court (*Gesetz über das Amtsgehalt der Mitglieder des Bundesverfassungsgerichts*). Through this Act, the salaries’ level is linked to that of other federal judges and high-ranking civil servants. The remuneration of federal judges is laid down in the Federal Salaries Act (*Bundesbesoldungsgesetz*); however, the salary scale (*Besoldungsordnung R*) is independent of that of federal civil servants. For the judges of the *Länder*, the remuneration is determined by laws of the *Länder*,²²⁶ and the level of remuneration differs

²²⁰ Gemeinsamer Bericht von Bund und Ländern über die Umsetzung der vereinbarten Maßnahmen des MPK-Beschlusses vom 31. Januar 2019 zum Pakt für den Rechtsstaat <<https://www.bundesregierung.de/resource/blob/974430/1926850/c872a1bd3871dcb9fb8ab419a9f92ba2/2021-06-10-mpk-top-5-bericht-data.pdf?download=1>> accessed 14 December 2024.

²²¹ 94. Konferenz der Justizministerinnen und Justizminister am 10. November 2023 in Berlin, Beschluss zu TOP I.1 <<https://www.berlin.de/sen/justv/jumiko/beschluesse/artikel.1367008.php>> accessed 14 December 2024. So far, there is no agreement on the continuation.

²²² For more details on the initiative, see <https://www.bmj.de/DE/themen/digitales/digitalisierung_justiz/digitalisierungsinitiative/digitalisierungsinitiative_node.html> accessed 14 December 2024.

²²³ Bernstorff (n 199) 160-161.

²²⁴ For a more detailed description of the remuneration of judges in English, see Seibert-Fohr (n 208) 478-481.

²²⁵ Basic Law, art. 98(1). Helmuth Schulze-Fielitz, ‘Artikel 98 GG’ in Horst Dreier and Hartmut Bauer (eds), *Grundgesetz* (3rd edn, Mohr Siebeck 2018) para. 27.

²²⁶ The competence of the *Länder* arises from article 98(3) in connection with article 74(1) no. 27 of the Basic Law.

between the *Länder*.²²⁷ The remuneration, especially at *Länder* level, is also a regular the subject of proceedings before the Federal Constitutional Court.²²⁸ In its decisions, the Court repeatedly found salaries being ‘evidently insufficient’²²⁹ and thus in violation of article 33(5) of the Basic Law. Although the Court recognises the broad discretion of the legislator with regard to the remuneration of judges, it nevertheless established several criteria for the determination of a lower limit of the salary,²³⁰ as well as for the structure of the system of remuneration more generally. At least indirectly relevant for court administration is that the system must be different to that of civil servants, to limit an influence of the executive on the judiciary.²³¹ This means, for example, that the career path should not be hierarchically structured and that there should be as few promotion offices as possible.²³² However, the function of judges in court administration can be taken into account to a certain extent.²³³

QUESTION 4: WHAT ARE THE REPORTING AND ACCOUNTABILITY REQUIREMENTS REGARDING THE FUNDS DEFRAIDED FOR THE JUDICIARY?

150. The reporting and accountability requirements for the funds defrayed for the judiciary do not differ to those for other funds of the State’s budget. The execution of the budget is primarily carried out by the executive. The budget funds allocated to the federal courts are

²²⁷ Compare Deutscher Richterbund, ‘Große Besoldungsunterschiede zwischen den Bundesländern’ (6 January 2021) <<https://www.drb.de/newsroom/presse-mediencenter/nachrichten-auf-einen-blick/nachricht/news/grosse-besoldungsunterschiede-zwischen-den-bundeslaendern>> accessed 14 December 2024.

²²⁸ For an overview of decisions by the Constitutional Court as well as other courts on the remuneration of judges, see <<https://www.richterbesoldung.de/besoldung-versorgung/rechtsprechungsuebersicht/>> accessed 14 December 2024.

²²⁹ BVerfGE 139, 64, 127. An English translation of the judgment is available at <https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2015/05/ls20150505_2bvl001709en.html> accessed 14 December 2024.

²³⁰ BVerfGE 139, 64. An English translation of the judgment is available at <https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2015/05/ls20150505_2bvl001709en.html> accessed 14 December 2024.

²³¹ BVerfGE 32, 199, 213-214.

²³² *ibid*; BVerfGE 55, 372, 389; BVerfGE 148, 69, 92.

²³³ BVerfGE 55, 372, 389.

administered by the respective court presidents, who are (thereby) supervised by the ministry.²³⁴

151. The Federal Constitutional Court manages the approved financial resources on its own responsibility.²³⁵ The *Bundestag* and its Budget Committee have some powers of control that can already be exercised during the implementation period.²³⁶ However, the main audit takes place retrospectively after the end of the financial year.²³⁷ In this regard, according to article 114(1) of the Basic Law, '[f]or the purpose of discharging the Federal Government, the Federal Minister of Finance shall submit annually to the *Bundestag* and to the *Bundesrat* an account for the preceding fiscal year of all revenues and expenditures as well as of assets and debts.'

152. Alongside parliament, the Federal Court of Audit (*Bundesrechnungshof*) plays a major role with regard to the determination if public finances have been properly and efficiently administered (compare article 114(2) of the Basic Law). It audits the entire federal financial management and reports on major findings to the parliament and the public.²³⁸ Also, it provides advice to both parliament and government on the basis of its findings.²³⁹

153. The Court of Audit's right to audit 'the Federation's entire budgetary and financial management'²⁴⁰ generally extends to the Federal Constitutional Court²⁴¹ and the other federal courts.²⁴² For an audit, a federal court is regarded as a single budgetary entity,

²³⁴ Wittreck (n 184) 319; Bernstorff (n 199) 144.

²³⁵ Herbert Bethge, '§ 1 BVerfGG' in Bruno Schmidt-Bleibtreu, Franz Klein and Herbert Bethge (eds), *Bundesverfassungsgerichtsgesetz: Kommentar* (63rd supplementary delivery June 2023, C.H. Beck 2023) para 39; Bernstorff (n 199) 118.

²³⁶ For an overview, see Wissenschaftliche Dienste des Deutschen Bundestages, 'Parlamentarische Kontrollrechte in Bezug auf den Bundeshaushalt' (1 September 2023) WD 4 - 3000 - 055/23 7–13.

²³⁷ *ibid* 13.

²³⁸ Section 88(1) of the Federal Budget Code, s 88(1).

²³⁹ Federal Budget Code, s 88(2).

²⁴⁰ Federal Budget Code, s 88(1).

²⁴¹ Thomas Franz, 'Prüfungen des Bundesrechnungshofs bei den Gerichten des Bundes' in Helmuth Schulze-Fielitz (ed), *Fortschritte der Finanzkontrolle in Theorie und Praxis. Zum Gedenken an Ernst Heuer* (Die Verwaltung Beiheft 3, Duncker & Humblot 2000) 75.

²⁴² Helmut Sickmann, 'Artikel 114 GG' in Christian von Coelln and Thomas Mann (eds), *Sachs, Grundgesetz-Kommentar* (10th edn, C.H. Beck 2024) para 30.

represented by the president of the court.²⁴³ The Court of Audit has the right to request documents and information in accordance with section 95 of the Federal Budget Code.

154. There can be tensions that arise between the right to audit and judicial independence. However, as far as can be seen, this has hardly played a role in practice to date. The engagement with this issue in scholarship is also rather limited.²⁴⁴ Boundaries for actions that cannot be subject to audit are drawn in comparison to section 26(1) of the German Judiciary Act according to which executive supervision of judges is only allowed ‘insofar as their independence is not compromised’. Similarly, it is argued that original judicial acts (even when they are ‘financially relevant’, such as, for example evidentiary rulings) cannot be subject to an audit by the Court of Audit, while the general court administration has to be under full financial control.²⁴⁵ Scholarship acknowledges that there are grey areas in which it must be considered on a case-by-case basis whether an audit entails the risk of influencing individual judges in a specific court proceeding or whether the interest of the general public in effective financial control prevails.²⁴⁶

Courts at *Länder* level

155. The budget management as well as the reporting and accountability requirements on the level of the *Länder* is generally very similar to that of the federal courts. The *Länder* are generally autonomous and independent in the management of their respective budgets (article 109(1) of the Basic Law). There exists practice where *Länder* Courts of Audit have examined and commented in a more general way on certain court practices arising from closed cases.²⁴⁷

²⁴³ Franz (n 242) 84–85

²⁴⁴ *ibid*; Hans Blasius and Burkhard Stadtmann, ‘Justiz und Finanzkontrolle’ (2002) 55(1) Die Öffentliche Verwaltung 12.

²⁴⁵ Franz (n 242) 87–88

²⁴⁶ Blasius and Stadtmann (n 245) 16; Franz (n 242) 93.

²⁴⁷ Blasius and Stadtmann (n 245) 16–18.

156. In some *Länder*, courts enjoy more flexibility with regard to the management of their budget.²⁴⁸ This seems, however, not to be specific to the judiciary in these cases. Instead, it is (often) part of a more decentralised approach to budget responsibility in broader parts of the administration.²⁴⁹

QUESTION 5: WHAT ROLE, IF ANY, DOES THE HEAD OF THE JUDICIARY PLAY IN RELATION TO ACCOUNTABILITY FOR THE USE OF PUBLIC MONIES?

157. The court's presidents, at all levels, generally act as central figures in court administration. In that regard, they are also in charge of the management of the court's budget.²⁵⁰

158. Generally, as has been mentioned before, the court presidents of the federal courts (except for the Federal Constitutional Court) have a dual role. They enjoy judicial independence with regard to the exercise of their judicial function, but they also exercise administrative functions. In that regard, the presidents are part of the executive and bound by the instructions and under the supervision of the respective ministry.²⁵¹

159. The presidents of the federal courts have no powers of intervention over the courts of the *Länder* that are subordinate to them in the hierarchy of instances.²⁵² Presidents of the higher courts on *Länder* level however act as the supervision authority for the lower courts.²⁵³

²⁴⁸ One example is Baden-Württemberg, compare <<https://oberlandesgericht-stuttgart.justiz-bw.de/pb/,Lde/Startseite/Gericht/Verwaltungsabteilung>> accessed 14 December 2024. For a summary of the discussion with regard to more budget independence of courts, see Wittreck (n 174) 474–477. See also on test phases in some *Länder*, Seibert-Fohr (n 208) 496–497.

²⁴⁹ See Landtag von Baden-Württemberg, Drs 15 / 5377, 26 June 2014 <https://www.landtag-bw.de/files/live/sites/LTBW/files/dokumente/WP15/Drucksachen/5000/15_5377_D.pdf> accessed 14 December 2024, 9–10.

²⁵⁰ Wittreck (n 174) 290.

²⁵¹ Bernstorff (n 199) 138. For the Federal Labour Court and the Federal Social Court, Labour Court Act, s 40(2) and Social Court Act, s 38(3) sentence 2 determine the possibility of the transfer of the administrative functions from the ministry to the court president. For the Federal Administrative Court and the Federal Fiscal Court the transfer of administrative functions partly follows directly from the law, see the Code of Administrative Court Procedure, s 38(1) and Fiscal Court Code, s 31. In practice, there is however no difference to the role of the other federal courts' presidents, where these provisions do not exist.

²⁵² Wittreck (n 174) 289.

²⁵³ Code of Administrative Court Procedure, s 38(2) for the administrative courts.

QUESTION 6: WHO APPOINTS ADMINISTRATIVE AND OTHER SUPPORT STAFF FOR JUDGES?

Federal Constitutional Court

160. The staff management is the responsibility of the President of the Federal Constitutional Court.²⁵⁴ As the head of administration, he or she appoints and dismisses the Court's civil servants and employees.²⁵⁵ In practice, much of the day-to-day administration is led by the Director of the Court, who acts as administrative head of the Court on behalf of the President.²⁵⁶ The Director is appointed by the President.²⁵⁷ The Rules of Procedure require that he or she is eligible to hold judicial office.²⁵⁸

161. The Court's research assistants, which support the judges of the Court, have a special role. They are selected by the individual judge and bound to her instructions.²⁵⁹ Today, each judge

²⁵⁴ Rules of Procedure of the Federal Constitutional Court, s 1(3) sentence 2 subpara 1.

²⁵⁵ For the civil servants, see Act on Federal Public Servants (*Bundesbeamtenengesetz*), s 129.

²⁵⁶ On the role of the Director, a position regularly not held by judges but by lawyers with experience in the administration (although the person must be qualified to serve as a judge), compare Rules of Procedure of the Federal Constitutional Court, s 14 and 15.

§ 14

(1) The President shall allocate the administrative tasks. He may generally assign certain tasks to the Director to be conducted by the latter on his own.

(2) Administrative decisions that concern the members of the Court and are not simple tasks of administrative routine shall be taken by the President himself.

§ 15

(1) The Director shall act as head of administration on behalf of the President. Further details are regulated by a presidential decree.

(2) Preparatory discussions or negotiations conducted by members of the administration with representatives of legislative bodies or ministries must adhere to the guidelines laid down by the Plenary or one of its committees or, should no such guidelines exist, must be conducted according to the President's instructions.

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²⁵⁷ Act on Federal Public Servants, s 129.

²⁵⁸ Rules of Procedure of the Federal Constitutional Court, s 12(2).

²⁵⁹ Compare Section 13 of the Rules of Procedure of the Federal Constitutional Court, s 13:

‘(1) Research assistants shall support the member of the court to whom they are assigned in their official duties. They shall be bound by his or her instructions.

(2) The judges shall be authorised to select their research assistants themselves. They shall be responsible for the official assessment; the chairpersons of the senates may add their own assessment.’ (*own translation*).

has around four research assistants assigned to them.²⁶⁰ In most cases, the research assistants are seconded public prosecutors and judges from all branches of the judiciary, occasionally also ministerial officials from the federal and *Länder* governments, or those pursuing academic careers; they are regularly proposed by the justice administrations of the *Länder*, other federal and *Länder* ministries, or university professors.²⁶¹

Other Courts

162. Due to the system of ministerial court administration, the ministries (both at federal and *Länder* level) are responsible for the appointment of administrative and other support staff of the courts.²⁶² The respective court's President acts as the supervisor for all support staff at her court,²⁶³ while she is herself bound by instruction of the relevant minister.²⁶⁴

163. There are also research assistants at the other federal courts. They are regularly seconded from the judiciary of the *Länder*. However, they are neither selected by nor assigned to individual judges. Instead, they are placed to work for a specific senate and its different rapporteurs during their secondment.²⁶⁵

QUESTION 7: WHAT INTERFACE IS THERE, IF ANY, BETWEEN THE THREE ARMS OF STATE RELATING TO THE ADMINISTRATION OF THE COURTS?

164. Characteristic for Germany's system of court administration is that judicial independence is not understood as absolute independence.²⁶⁶ Judges are independent in the exercise of their judicial function, however, the Basic Law's concept of democratic governance requires

²⁶⁰ Eckart Klein, Ernst Benda and Oliver Klein, *Verfassungsprozessrecht* (4th ed, C.F. Müller 2020) § 7 para 199.

²⁶¹ *ibid.*

²⁶² Seibert-Fohr (n 208) 456; John Bell, *Judiciaries within Europe: A comparative review* (Cambridge University Press 2006) 112.

²⁶³ Compare Code of Administrative Court Procedure, s 38(1) for the Federal Administrative Court.

²⁶⁴ Bernstorff (n 199) 152.

²⁶⁵ With regard to the practice of research assistants at the Federal Court of Justice (*Bundesgerichtshof*), see their website <<https://bgh-hiwis.de/faqs/>> accessed 14 December 2024. The practice can vary slightly between the different courts.

²⁶⁶ Seibert-Fohr (n 208) 450.

democratic accountability, which opposes a structural isolation.²⁶⁷ Thus, the system of court administration in place in Germany can be perceived as a rather complex system that enables impacts from all three branches of State.²⁶⁸

165. The Federal Constitutional Court has a special role as an autonomous and independent constitutional organ, which is reflected in its self-administration. The administration of the other federal courts and courts at *Länder* level is characterised by executive oversight. The executive has a major role when it comes to the determination of the courts' budgets and the appointment of judges and support staff. But the legislative also considerably regulates court administration, as the many interacting regulations on court administration show. The judges' remuneration is determined by law, and the legislative has overall budgetary sovereignty, meaning that it oversees the spending of public finances for the judiciary. At the federal level, parliament is also involved in the election of judges. The judiciary takes part in court administration, too, albeit to a lesser extent. In some *Länder*, judges are involved in the selection of judges. Furthermore, judges allocate court internal responsibilities independently. Finally, the respective court president, even though he or she acts as part of the executive when carrying out tasks of court administration, is always also a practising judge at the court, which creates a close (personal) link to the judiciary.

²⁶⁷ *ibid.*

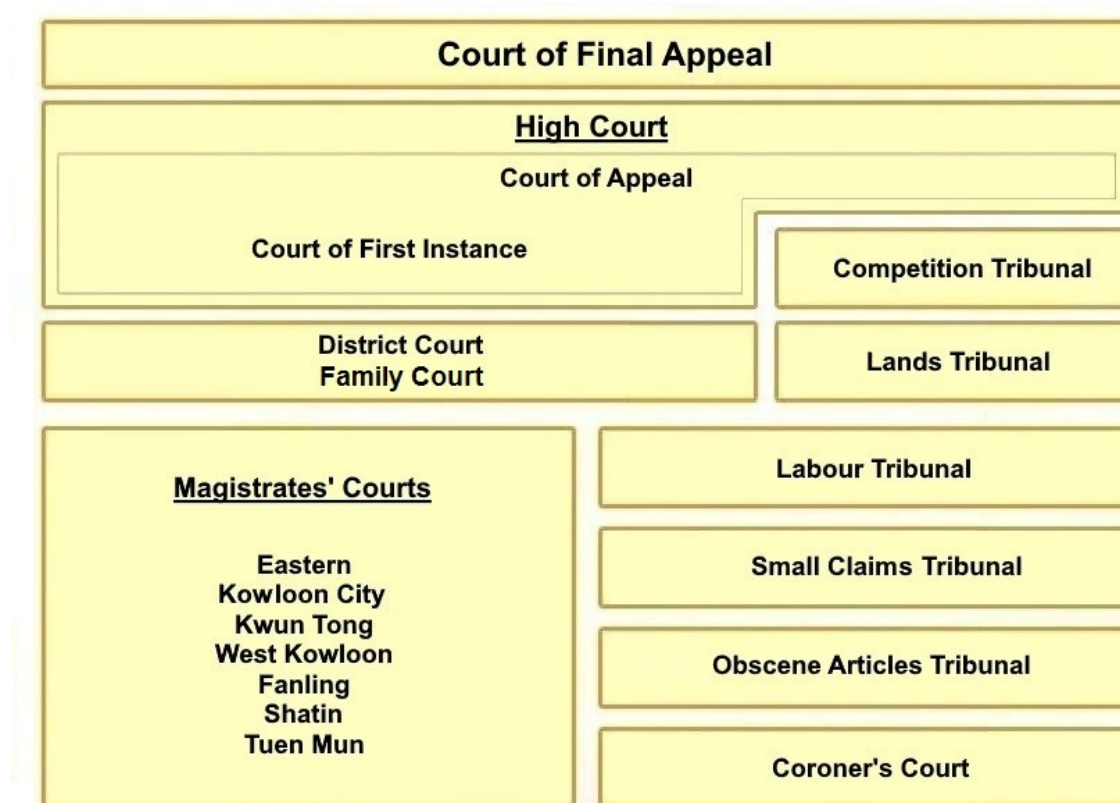
²⁶⁸ Compare Wittreck (n 174) 343.

HONG KONG

STRUCTURE OF THE COURT SYSTEM IN HONG KONG

166. The current structure of the judiciary in Hong Kong consists of the Court of Final Appeal, Court of Appeal, Court of First Instance, Magistrates' Courts, a District Court, Family Court, Coroner's Court and several tribunals. Prior to the handover in 1997 the final appellate court was the Judicial Committee of the Privy Council which heard appeals from the Supreme Court which then consisted of the Court of Appeal and High Court.

167. The structure of the judiciary is exemplified in the image below:²⁶⁹



168. The Court of Final Appeal is the highest appellate body, and the Supreme Court was renamed the High Court. The Court of Final Appeal is composed of 14 judges, and there are three permanent judges. There are two panels of non-permanent judges: one consisting of former Hong Kong judges and the other of judges from other common law jurisdictions.

²⁶⁹ HKSAR Judiciary, 'Structure of the Courts' (*Department of Justice*, 04 Dec 2024) <https://www.judiciary.hk/en/about_us/courtchart.html> accessed 23 January 2025

The maximum number of non-permanent judges is 30 as dictated by Hong Kong Court of Final Appeal Ordinance ('HKCFAO').²⁷⁰

169. Under Art. 19 of the Basic Law Hong Kong courts are vested with independent judicial power, including that of final adjudication. However, there are two caveats to the Hong Kong courts' exercise of judicial power:

- a) The Hong Kong courts have no jurisdiction over acts of state such as defence and foreign affairs.²⁷¹ If questions of fact regarding acts of state arise, the Hong Kong courts must obtain a certificate from the Chief Executive on such questions of fact, which are binding on the Hong Kong courts.²⁷²
- b) Under Art. 158 of the Basic Law, the power to interpret the Basic Law is vested in the Standing Committee of the National People's Congress of the People's Republic of China ("NPCSC"). Art. 158 of the Basic Law provides that the NPCSC authorises the Hong Kong courts to interpret provisions of the Basic Law which are within the limits of Hong Kong's autonomy. However, if Hong Kong courts need to interpret any provisions of the Basic Law which concern affairs that are the responsibility of the Central People's Government or the relationship between Hong Kong and the Central Authorities, Hong Kong courts are required²⁷³ to seek an interpretation of the relevant provisions from the NPCSC through Hong Kong's Court of Final Appeal".²⁷⁴ Any interpretation made by the NPCSC is binding on Hong Kong courts but will not retrospectively affect judgments previously rendered.²⁷⁵

QUESTION 1: WHAT MODEL OF COURT ADMINISTRATION IS IN PLACE IN THE JURISDICTION SURVEYED?

170. Hong Kong implements an Executive-Led model of court administration. The Chief Executive is responsible for appointing members of the judiciary, including the Chief Justice

²⁷⁰ (Cap.484), s.10.

²⁷¹ Basic Law, Art. 19

²⁷² *ibid.*

²⁷³ By virtue of the language "shall [...] seek an interpretation" in Basic Law, Art. 158.

²⁷⁴ Basic Law, Art. 158.

²⁷⁵ *ibid.*

of the Court of Final Appeal.²⁷⁶ The Chief Justice is head of the judiciary, and charged with its administration.²⁷⁷ The Chief Justice is assisted by a Judiciary Administrator who is ranked at the same level as a permanent secretary to a policy bureau.²⁷⁸ Further, as will be explained below, the funding of the judiciary is proposed by the Financial Secretary.

171. The Basic Law of The Hong Kong Special Administrative Region of the People's Republic of China ("Basic Law") provides that judges and members of the judiciary are chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions.²⁷⁹ This is with the exception of the Chief Justice and Chief Judge of the High Court who must be permanent residents of Hong Kong and Chinese Citizens.²⁸⁰

QUESTION 2: HOW ARE THE MONIES FOR THE ADMINISTRATION OF THE COURTS AND THE REMUNERATION OF JUDGES DEFRAIDED FROM THE RELEVANT LEGISLATURE?

172. Monies for the administration of courts and remuneration of judges are defrayed through the appropriation process, governed by Public Finance Ordinance (Cap.2) ("PFO"). In this process the Financial Secretary announces the budget for the coming financial year and introduces it to the Legislative Council, the legislative body of Hong Kong,²⁸¹ in the form of an Appropriation Bill.²⁸² Alongside the Appropriation Bill are Draft Estimates of expenditure, prepared by the Controlling Officer of each Head of expenditure.²⁸³

173. The approval of the budget rests with the Legislative Council²⁸⁴. Once enacted, the Appropriation Bill becomes an Appropriation Ordinance and will have effect from the first

²⁷⁶ Basic Law Art.48(6); HKFCAO s.6(1).

²⁷⁷ *ibid.* s.6(2).

²⁷⁸ Department of Justice, 'Judicial System and our Courts' (*Department of Justice*, 01 Dec 2023) <https://www.doj.gov.hk/en/our_legal_system/judiciary.html> accessed 27 November 2024.

²⁷⁹ Basic Law, Art 92.

²⁸⁰ *ibid.*, Art 90.

²⁸¹ *ibid.*, Art.66.

²⁸² PFO Art.6(1).

²⁸³ PFO s.5(3).

²⁸⁴ Basic Law, Arts.73(2), (3)

day of the financial year. The expenditure of the Government will be subject to the Appropriation Ordinance and be arranged according to each Head and Subhead and limited by the approved estimated expenditures.²⁸⁵

174. Upon the Appropriation Ordinance coming into effect, the Financial Secretary shall authorise the Director of Accounting Services to defray such sums to meet the expenditure in the Ordinance.²⁸⁶ Both the authorisation and the Appropriation Ordinance will lapse at the end of every financial year.²⁸⁷

175. Hence, the determination of monies for the administration of courts and remuneration of judges is only indirectly controlled by the judiciary. The sums for the judiciary are provided as Draft Estimates under Head 80 and prepared by the Judiciary Administrator as the Controlling Officer.²⁸⁸ Once the Appropriation Bill is approved, the Judiciary Administrator is charged with defraying the sums, including negotiating individual contractual pay arrangements with each judge.²⁸⁹ As of 2024, the sum provided to the judiciary was 0.4% of the overall budget.²⁹⁰

176. In a report of the Standing Committee on Judicial Salaries and Conditions of Service (as it was then known), it was suggested that judicial remuneration should receive standing appropriation, meaning it would not be subject to the annual appropriation process.²⁹¹ Although this proposal was accepted,²⁹² no change has been implemented by legislation.²⁹³

²⁸⁵ PFO s.6(3); Annex 1.

²⁸⁶ PFO ss.19, 18.

²⁸⁷ PFO s.31.

²⁸⁸ SC Report 2005, para.2.18(a). For example, see: Appropriation Ordinance 2024, No.9 (2024) OHK §1. <<https://www.legco.gov.hk/yr2024/english/ord/2024ord009-e.pdf>> ('AO 2024'); Judiciary Administrator, 'Head - 80 Judiciary, Controlling Officer's Report' (2024) <<https://www.budget.gov.hk/2024/eng/pdf/head080.pdf>> ('Head - 80 Report') accessed 8 February 2025, p.1; Annex 1.

²⁸⁹ See *infra* para. 20.

²⁹⁰ See AO 2024

²⁹¹ SC Report 2005, Executive Summary para.8; para.2.16.

²⁹² News.gov.hk, 'New judicial pay system to be implemented' (news.gov.hk, 20 May 2008) <<https://www.news.gov.hk/isd/ebulletin/en/category/lawandorder/080520/html/080520en08002.htm>> accessed 27 November 2024; News.gov.hk, 'Press Release - The Judiciary's statement on the Administration's decision on the new system for the determination of judicial remuneration', (news.gov.hk, 20 May 2008)

²⁹³ Annex 1.

QUESTION 3: WHO BEARS THE POLITICAL RESPONSIBILITY FOR THE DEFRAYING OF PUBLIC MONIES FOR THE JUDICIARY?

177. The Controlling officer is responsible and accountable for all expenditure from any Head or Subhead and for all public moneys and Government property in respect of the department or service for which he/she is responsible for.²⁹⁴ The Controlling Officer of the judiciary is the Judiciary Administrator.²⁹⁵ The Judiciary Administrator is a member of the Civil Service, appointed by the Chief Justice as the head of the judiciary. The current Administrator, Ms. Ester Leung, has the authority to incur and authorise expenditure.²⁹⁶

QUESTION 4: WHAT ARE THE REPORTING AND ACCOUNTABILITY REQUIREMENTS REGARDING THE FUNDS DEFRAYED FOR THE JUDICIARY?

178. The Director of Accounting Services is responsible for, inter alia, compiling and supervising the accounts of the Government and for ensuring that all (subsidiary) regulation, directions or instructions made under PFO are complied with.²⁹⁷ This includes duties such as bringing to the notice of the Financial Secretary and the Director of Audit any material defects in the control of revenue and expenditure.²⁹⁸

179. The financial accounts compiled by the Director of Accounting Services are then audited by the Director of Audit.²⁹⁹ Any sums which a public officer has, inter alia, failed to collect or improperly defrayed may be surcharged against said officer.³⁰⁰

²⁹⁴ FO s.12(2).

²⁹⁵ Head-80 Report, p.1; Annex 1.

²⁹⁶ PFO s.14.

²⁹⁷ PFO s.16(1).

²⁹⁸ PFO s.16(2).

²⁹⁹ Audit Ordinance (Cap.122), s.12(1).

³⁰⁰ PFO s.32(1).

180. Outside of that, the Standing Committee on Judicial Salaries and Conditions of Service produces an annual report indicating whether judicial salaries should be revised.³⁰¹ The Standing Committee was established in 1987 in recognition of the need for the pay and conditions of judges and judicial officers to be determined separately from those of the civil service.³⁰² In 2008, the Committee's terms of reference and membership were expanded.³⁰³

181. The Committee will advise and make recommendations to the Chief Executive on the structure,³⁰⁴ i.e. number of levels and salary level; conditions of service and benefits other than salary appropriate to each rank of judges and judicial officers and other matters relating thereto; matters relating to the system, institutional structure, methodology and mechanism for the determination of judicial salary and other matters relating thereto which the Chief Executive may refer to the Committee; and any other matter as the Chief Executive may refer to the Committee.

182. The Committee will also, when it so determines, conduct an overall review of the matters referred to in I(a) above. In the course of this review, the Committee must accept the existing internal structure of the Judiciary and not consider the creation of new judicial offices. If, however, the Committee in an overall review discovers anomalies, it may comment upon and refer such matters to the Chief Justice, Court of Final Appeal.

183. The review is done by undertaking an annual salary review in the middle of every calendar year and analysing a basket of factors.³⁰⁵ This is complemented by 5-year benchmark studies to ascertain the level of earnings of legal practitioners in private practice are earning.³⁰⁶ The Committee then decides how the salaries should be adjusted. The basket includes:³⁰⁷

³⁰¹ Standing Committee on Judicial Salaries and Conditions of Service, 'Report on Judicial Remuneration Review 2024' (2024) <https://www.jsscs.gov.hk/reports/en/jscs_24.pdf> ('JRR Report 2024') accessed 8 February 2025

³⁰² Standing Committee on Judicial Salaries and Conditions of Service, 'Report on Judicial Remuneration Review 2023' (2023) < https://www.jsscs.gov.hk/reports/en/jscs_23.pdf>, para.1.2 ('**JRR Report 2023**') accessed 8 February 2025

³⁰³ JRR Report 2024, para.1.3; JRR Report 2023, para.1.3.

³⁰⁴ The Chief Executive is the head of the government of the Hong Kong Special Administrative Region.

³⁰⁵ *ibid*, para.1.6.

³⁰⁶ *ibid*, para.1.8.

³⁰⁷ *ibid*, para.1.7.

- a) the responsibility, working conditions and workload of judges vis-à-vis those of lawyers in private practice;
- b) recruitment and retention in the Judiciary;
- c) the retirement age and retirement benefits of Judges and Judicial Officers (“JJOs”);
- d) the benefits and allowances enjoyed by JJOs;
- e) prohibition against return to private practice in Hong Kong;
- f) public sector pay as a reference;
- g) private sector pay levels and trends;
- h) cost of living adjustments;
- i) the general economic situation in Hong Kong;
- j) overseas remuneration arrangements;
- k) unique features of judicial service; and
- l) the budgetary situation of the Government.

QUESTION 5: WHAT ROLE, IF ANY, DOES THE HEAD OF THE JUDICIARY PLAY IN RELATION TO ACCOUNTABILITY FOR THE USE OF PUBLIC MONIES?

184. The Chief Justice does not play a role in relation to accountability for the use of public monies. This is the role as the Judiciary Administrator, who, as explained above, is the Controlling Officer.

QUESTION 6: WHO APPOINTS ADMINISTRATIVE AND OTHER SUPPORT STAFF FOR JUDGES?

185. Administrative and support staff are members of the civil service and are appointed either by the Civil Service Bureau or the Judiciary itself.

QUESTION 7: WHAT INTERFACE IS THERE, IF ANY, BETWEEN THE THREE ARMS OF STATE RELATING TO THE ADMINISTRATION OF THE COURTS?

186. It is enshrined in Article 85 of the Basic Law that the courts “shall exercise judicial power independently, free from any interference.” This principle is given effect through the process of appointing and removing judges as well as control of the judicial budget.

187. Judges are appointed by the Chief Executive on recommendation by the Judicial Officers Recommendation Commission (‘JORC’). JORC is composed of the Chief Justice, the Secretary for Justice and seven members appointed by the Chief Executive (two judges, one barrister, one solicitor and three eminent persons with no connection to the practice of law).³⁰⁸ JORC advises and makes non-binding recommendations,³⁰⁹ but recommendations are accepted by the Chief Executive as a matter of convention.³¹⁰

188. Outside of the mechanisms mentioned regarding the determination of the judicial budget, the minimum standards of pay are guaranteed by Art. 93 of the Basic Law. However, this guarantee is weak as it only ensures that the pay, allowances, benefits and conditions of service were “no less favourable than before” the handover in 1997.³¹¹

³⁰⁸ Judicial Officers Recommendation Commission Ordinance (Cap.92) s.3(1).

³⁰⁹ *ibid.* s.6.

³¹⁰ Chan, Johannes, *Law of the Hong Kong Constitution (3rd Edn)*, Sweet & Maxwell 2021, [11.047]

³¹¹ *ibid* [11.059]

INDIA

INTRODUCTION TO THE COURT SYSTEM IN INDIA

189. India is a parliamentary republic which operates as a federal system with some unitary features. At the central level, the Prime Minister is the head of the Council of Ministers that advise the President who is the constitutional head of the country. Similarly, at the level of the states, the Chief Minister heads the Council of Ministers that advises the Governor. India has a unified judicial system which comprises the Supreme Court of India, the High Courts, and the district and subordinate courts. Article 124 of the Constitution of India establishes the Supreme Court of India,³¹² which is the apex court of the land. This is followed by the High Courts which supervise the district and subordinate courts within their jurisdiction.

190. The judiciary in India is an integrated system. The Supreme Court of India is at the apex of the hierarchy. It is vested with extensive powers in the form of original, appellate, and advisory jurisdiction. Thereafter, the High Courts of various states exercise jurisdiction within their states. Under the High Court's supervision are the District and Sessions Courts.

QUESTION 1: WHAT MODEL OF COURT ADMINISTRATION IS IN PLACE ?

191. The Indian Supreme Court is another example of an executive model. The Supreme Court has its own administrative organ, called the Registry.³¹³ The Registry is divided into two wings, i.e. Administrative and Judicial. These wings are then subdivided into various divisions, branches, sections, and cells. The Chief Justice of India through his administrative powers regulates the working of the Registry. The Chief Justice is assisted by the Secretary General, who is the topmost officer of the administrative wing of the Court. The Secretary General is assisted by Registrars/Officers on Special Duty and Additional Registrars, Deputy Registrars, Additional Registrars, and other registry staff.³¹⁴

³¹² Constitution of India, 1950, Article 124

³¹³ Supreme Court Registry < <https://www.sci.gov.in/constitution/> > accessed 8 February 2025

³¹⁴ Flow Chart of the Supreme Court of India registry < <https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/03/2024031128-1.pdf> > accessed 8 February 2025

QUESTION 2: HOW ARE THE MONIES FOR THE ADMINISTRATION OF THE COURTS AND THE REMUNERATION OF JUDGES DEFRAIDED FROM THE RELEVANT LEGISLATURE?

192. As per Article 146 of the Indian Constitution,³¹⁵ all administrative expenses including all salaries, allowances, pensions payable to the officers and servants of the Supreme Court shall be paid from the Consolidated Fund of India. Furthermore, any additional money sought by the Court shall also be considered to be paid from the Consolidated Fund of India. The fund as per Article 266 of the Indian Constitution,³¹⁶ comprises of all the revenues and loans received and raised by the Government of India. The Budget division in the Department of Economic Affairs under the Ministry of Finance prepares the budget, which is then presented by the Union Finance Minister in the Parliament.

193. The Judges of the Supreme Court of India are paid in accordance with the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 passed by the Parliament of India.³¹⁷ Through this Act the Parliament decides the salaries, gratuity, pension, allowances and etc, to be paid to the judges of the Supreme Court. These payments are made from the Consolidated Fund of India.³¹⁸

³¹⁵ Constitution of India, 1950, Article 146- Officers and servants and the expenses of the Supreme Court, Constitution of India, <<https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2024/07/20240716890312078.pdf>> accessed 8 February 2025

³¹⁶ Constitution of India, 1950, Article 266- Consolidated Funds and public accounts of India and of the States. <<https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2024/07/20240716890312078.pdf>> accessed 8 February 2025

³¹⁷ Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 <<https://www.indiacode.nic.in/bitstream/123456789/1545/1/A1958-41.pdf>> accessed 8 February 2025

³¹⁸ Pay, Allowance and Pension, Depart of Justice, <<https://doj.gov.in/pay-allowance/>> accessed 8 February 2025

QUESTION 3: WHO BEARS THE POLITICAL RESPONSIBILITY FOR THE DEFRAYING OF PUBLIC MONIES FOR THE JUDICIARY?

194. The Supreme Court of India makes a demand for grants i.e. a formal request for funds.³¹⁹

The demand for grants is a form which consists of the all the expenditure which is to be made from the Consolidated Fund of India. The Parliament needs to give its assent under Article 113 of the Constitution before funds can be withdrawn from the Consolidated Fund of India.³²⁰

195. The Supreme Court's demand for grants falls under the Ministry of Law and Justice's demand for grants.³²¹ Demands for grants from various ministries are then presented by the Union Finance Minister in the Union Budget, which estimates the expenditure by the central government for that particular financial year.³²² If the various demands for grants are approved, they become part of the Appropriation Bill. Once the Appropriation Bill is passed by the Parliament of India, the government can then withdraw funds from the Consolidated Fund of India.

QUESTION 4: WHAT ARE THE REPORTING AND ACCOUNTABILITY REQUIREMENTS REGARDING THE FUNDS DEFRAYED FOR THE JUDICIARY?

196. The Information and Statistics Secretariat of the Supreme Court of India deals with the applications under the Right to Information Act, 2005 (RTI Act) and any matters arising out of it. The Supreme Court Annual Report states that the Transparency Audit of Proactive

³¹⁹2024-2025 Detailed Demands For Grants, Demand No. 67, Supreme Court of India, <<https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/04/2024083129.pdf>> accessed 8 February 2025

³²⁰ Constitution of India, 1950, Article 113- Procedure in Parliament with respect to estimates <<https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2024/07/20240716890312078.pdf>> accessed 3 March 2025

³²¹ Demands for Grants of Central Government 2024-25, XII <<https://www.indiabudget.gov.in/doc/eb/alldg.pdf>> accessed 8 February 2025

³²² *ibid* 87

disclosures under Section 4 of the RTI Act, 2005³²³ is conducted every year and is uploaded on the Central Information Commission portal.³²⁴ Furthermore, the report also states that third party audit of proactive disclosures is also been conducted under Section 4 of the RTI Act, 2005.³²⁵

197. Section 4(1)(b) of the RTI Act requires a public authority which includes the Supreme Court of India to publish the details of its organisation structure, functions, duties of officers, procedures followed in decision making, salary structure, budget allocation, publication of facts with regard to policies and announcements.

QUESTION 5: WHAT ROLE, IF ANY, DOES THE HEAD OF THE JUDICIARY PLAY IN RELATION TO ACCOUNTABILITY FOR THE USE OF PUBLIC MONIES?

198. The Chief Justice of India constitutes committees of judges that deal with various aspects of expenditure. There are various committees like the Finance Committee, Building and Precinct Supervisory Committee, Committee for Supreme Court Guest House, Technology Supervisory Committee, Committee to oversee scanning, digitisation and preservation of case records, Security Committee amongst others.³²⁶ Apart from this, the Registry on the directions of the Chief Justice of India, uploads all the transparency audits and proactive disclosures to the CIC portal.

³²³ Right to Information Act, 2005, Section 4- Obligations of public authorities, <[https://rti.gov.in/rti%20act,%202005%20\(amended\)-english%20version.pdf](https://rti.gov.in/rti%20act,%202005%20(amended)-english%20version.pdf)> accessed 8 February 2025

³²⁴ Indian Judiciary Annual Report 2023-24, Chapter 6- Administrative Workforce- The Registry, 101 <<https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/12/2024120414.pdf>> accessed 8 February 2025

³²⁵ *ibid* 101

³²⁶ Committees, Supreme Court of India <<https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024111812.pdf>> accessed 8 February 2025

QUESTION 6: WHO APPOINTS ADMINISTRATIVE AND OTHER SUPPORT STAFF FOR JUDGES?

199. As per Article 146 of the Indian Constitution,³²⁷ all appointments of officers and servants of the Supreme Court are made by the Chief Justice of India or any judge or officer of the Court at the directions of the Chief Justice. In the event that the person is not already attached to the Court, the President may require consultation with the Union Public Service Commission before the appointment of the person to the Court.³²⁸

200. Except for law made by the Parliament, all rules regarding service of officers and servants will be prescribed by the Chief Justice of India or any judge or officer of the Court at the directions of the Chief Justice. The rules can be found in the Supreme Court Officers & Servants (Conditions of Service & Conduct) Rules 1961.³²⁹

QUESTION 7: WHAT INTERFACE IS THERE, IF ANY, BETWEEN THE THREE ARMS OF STATE RELATING TO THE ADMINISTRATION OF THE COURTS?

201. There is an interface between the three arms of the state in relation to the administration of the court. Any increase in the number of judges of the Supreme Court requires an act of Parliament. Further, the Court is dependent upon the Executive for monetary resources. As it does not possess any funds of its own, all funds required for innovation or reforms to the administration of the Court have to come through the Executive. The Chief Justice of India

³²⁷ Constitution of India, 1950, Article 146- Officers and servants and the expenses of the Supreme Court, <<https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2024/07/20240716890312078.pdf>> accessed 8 February 2025

³²⁸ Constitution of India, 1950, Article 146(1)- Officers and Servants and the expenses of the Supreme Court- Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the court as he may direct: Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

³²⁹ Supreme Court Officers & Servants (Conditions of Service & Conduct) Rules 1961 (as amended upto 6th November 2024 <<https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024112857.pdf>> accessed 8 February 2025

does have limited power in terms of altering the budgetary allocations under various heads, provided it is within the allocated budget.³³⁰

202. However, the Chief Justice of India decides the strength and composition of the staff of the Court. The number of permanent and temporary posts under various categories in Class I, Class II, Class III, and Class IV are decided by the Chief Justice of India as mentioned in the Supreme Court Officers & Servants (Conditions of Service & Conduct) Rules 1961.³³¹

IRELAND

STRUCTURE OF THE COURT SYSTEM IN IRELAND

203. Ireland follows a unitary system with a single central government in addition to local government.³³² Ireland is a parliamentary democracy, which means the government is led by a prime minister. Since Ireland is a small and centralised state, regions play a very limited role.

204. In Ireland, there are 5 distinct types of court: the District Court, the Circuit Court, the High Court, the Court of Appeal and the Supreme Court.³³³ The responsibilities fall under the scope of the central government as opposed to the local government. Each court deals with specific types of cases.

³³⁰ P.N. Bhagwati, Foreword, CIJL Year, Vol. 1, April 1992, 16 <<https://www.icj.org/wp-content/uploads/2013/09/CIJL-Yearbook-constitutional-guarantees-I-1992-eng.pdf>> accessed 8 February 2025

³³¹ The Supreme Court Officers & Servants (Conditions of Service & Conduct) Rules 1961 (as amended up to 6th November 2024, Rule 3 and 4 <<https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024112857.pdf>> accessed 8 February 2025.

³³² ‘CoR - Ireland-Intro’ (*Europa.eu*2025) <[https://portal.cor.europa.eu/divisionpowers/Pages/Ireland-intro.aspx#:~:text=Ireland%20is%20a%20parliamentary%20democracy%20and%20a%20unitary%20state%20which,the%20Senate%20\(Seanad%20%C3%99ireann\).>](https://portal.cor.europa.eu/divisionpowers/Pages/Ireland-intro.aspx#:~:text=Ireland%20is%20a%20parliamentary%20democracy%20and%20a%20unitary%20state%20which,the%20Senate%20(Seanad%20%C3%99ireann).>)> accessed 25 January 2025

³³³ (The Irish courts system in the 21st Century) <<https://www.ijsj.ie/assets/uploads/documents/pdfs/2001-Edition-01/article/the-irish-courts-system-in-the-21st-century-planning-for-the-future.pdf>> accessed 1 December 2024

205. The District Court is organised on a local basis throughout the country. It deals with civil actions where the compensation claimed does not exceed € 15,000. A judge sitting alone deals with these cases. Consumers can use the small claims procedure in the District Court to recover sums up to € 2,000.³³⁴
206. The Circuit Court is organised on a regional basis. It deals with civil cases which do not exceed € 75,000 (€ 60,000 in personal injury cases). In criminal matters, the Circuit Court sits with a judge and jury and can try all but the most serious offences, such as murder and rape. The Circuit Court also hears appeals from the District Court in civil and criminal matters.³³⁵
207. The High Court is mainly based in Dublin and hears civil cases where the claim exceeds € 75,000 (€ 60,000 in personal injury cases). It also hears appeals from the Circuit Court in civil matters and can give rulings on questions of law raised in the District Court. When the High Court is dealing with criminal cases, it is known as the Central Criminal Court. It tries the most serious offences, such as murder and rape, which the Circuit Court cannot deal with. A judge and jury try these cases.³³⁶
208. The Court of Appeal hears appeals in civil cases from the High Court and appeals in criminal cases from the Circuit Court, the Central Criminal Court or the Special Criminal Court.³³⁷
209. The Supreme Court is the highest court in the land. It hears appeals from the Court of Appeal and the High Court in the limited circumstances set out in the Constitution. The President of Ireland may refer any Bill passed by the Oireachtas to the Supreme Court to determine whether it is unconstitutional.³³⁸
210. The Special Criminal Court consists of three judges sitting without a jury and primarily deals with criminal charges involving terrorist organisations, and, more recently, with charges relating to organised drug activities. The court was established by the government to hear

³³⁴ *ibid.*

³³⁵ *ibid.*

³³⁶ *ibid.*

³³⁷ *ibid.*

³³⁸ *ibid.*

cases that the ordinary courts might be unable to handle because of fears of the possibility of jury intimidation.³³⁹

QUESTION 1: WHAT MODEL OF COURT ADMINISTRATION IS IN PLACE IN THE JURISDICTION SURVEYED?

211. The Irish Constitution establishes the judiciary as an arm of the state that interprets and applies the law to resolve disputes. The Constitution also protects the independence of judges and their right to exercise their powers without bias. Articles 34-37 give the courts the power to interpret and apply the law.³⁴⁰ Under Article 35, judges of the courts are independent of the Government and can only be removed through a resolution of both houses of the Oireachtas for misbehaviour or incapacity.³⁴¹

212. The Supreme Court of Ireland administration is of a partnership model. The Chief Justice of Ireland, currently Donal Gerard O'Donnell, is the President of the Supreme Court and titular head of the judiciary.³⁴² The administration of the courts in Ireland is predominantly influenced by the judiciary, particularly the Chief Justice. The Chief Justice of Ireland holds a central role in the operation of the judiciary and the courts. The Chief Justice chairs the Board of the Courts Service which is responsible for managing the courts' administration. Additionally, the Chief Justice chairs several key judicial bodies, including the Judicial Appointments Advisory Board and the Judicial Council.³⁴³

213. However, the administration is not entirely under the control of the judiciary alone. The Courts Service, which manages the administration, is an independent body established by the

³³⁹ *ibid.*

³⁴⁰ 'Electronic Irish Statute Book (EISB)' (Irishstatutebook.ie2020) <<https://www.irishstatutebook.ie/eli/cons/en/html#part11>> accessed 25 January 2025

³⁴¹ Citizensinformation.ie, 'Main Institutions of the Irish State' (Citizensinformation.ie2022) <<https://www.citizensinformation.ie/en/government-in-ireland/irish-constitution-1/main-institutions-of-the-state/#:~:text=The%20Judiciary,-The%20judicial%20power&text=Under%20Article%2035%2C%20judges%20of,the%20advice%20of%20the%20Government.>> accessed 25 January 2025

³⁴² 'Head of the Judicial System of the Republic of Ireland' (*Wikipedia.org* 9 July 2005) <https://en.wikipedia.org/wiki/Chief_Justice_of_Ireland> accessed 25 November 2024

³⁴³ *ibid.*

Courts Service Act 1998.³⁴⁴ It operates with a board that includes members from the judiciary, legal profession, and other stakeholders. So, while the Chief Justice has a leading role, the administration is a collaborative effort involving multiple members. This hybrid system ensures judicial independence while also centralising administrative functions. This would be classified as a partnership model since the Service is governed by a Board of 17 members, 9 of which are members of the judiciary (including the Chairman, who is the Chief Justice of Ireland), the remaining 8 being representatives of the Department of Justice.³⁴⁵

QUESTION 2: HOW ARE THE MONIES FOR THE ADMINISTRATION OF THE COURTS AND THE REMUNERATION OF JUDGES DEFRAIDED FROM THE RELEVANT LEGISLATURE?

214. In Ireland, the funding for the administration of the courts and the remuneration of judges are handled through different mechanisms. The Courts Service is an independent State Agency established in 1999 by the Courts Service Act, 1998 to manage the courts, support the judiciary and provide administration services to the courts of the Republic of Ireland.³⁴⁶ The Courts Service is responsible for the administration and management of the courts in Ireland.³⁴⁷ The Courts Service has no role in relation to the decision of legal cases which is a matter for the courts and the judiciary. Under the Constitution, judges are entirely independent in the exercise of their judicial functions. The Courts Service is the organisation that has the role of the court manager and service provider.³⁴⁸ Under section 5 of the Courts Service Act 1998, the functions of the Service are to:

³⁴⁴ *ibid.*

³⁴⁵ Government of Canada PS and PC, 'Information Archivée Dans Le Web' (*publications.gc.ca*) <https://publications.gc.ca/collections/collection_2013/ccm-cjc/JU14-24-2013-eng.pdf>

³⁴⁶ 'National Council of the Judiciary of Ireland' (Wikipedia.org 2 June 2006) <https://en.wikipedia.org/wiki/Courts_Service> accessed 26 January 2025

³⁴⁷ 'About Us | the Courts Service of Ireland' <<https://www.courts.ie/about-us#:~:text=The%20Courts%20Service%20is%20an,manage%20the%20courts>> accessed 26 January 2025.

³⁴⁸ Fitzpatrick PJ, 'Management of the Courts: The Irish Experience' (2008) 1 *International Journal for Court Administration* 56

- a) Manage the courts;
- b) Provide support services for the judges;
- c) Provide information on the courts system to the public;
- d) Provide, manage and maintain court buildings; and
- e) Provide facilities for users of the courts.

215. Powers ancillary to Courts Service's functions include:

- a) Acquire, hold and dispose of land;
- b) Enter into contracts;
- c) Make proposals to the minister in relation to – reform and development, the distribution of jurisdiction and business among the courts and matters of procedure; and
- d) Designate court venues.

216. The Courts Service's annual budget comes from “voted expenditure,” which is expenditure proposed by the Government to the Lower House of Parliament (Dáil Éireann) to fund ordinary government services.³⁴⁹ Each year, the Courts Service submits its budgetary requirements to the Department of Justice and Equality. This submission includes detailed estimates of expenditures and receipts based on projections provided by the Courts Service's management. The Dáil Éireann reviews and votes on the proposed budget. The budgetary measures are adopted on a provisional basis before being formalised through legislation.³⁵⁰ The budget is negotiated through the Department of Justice, which oversees the relationship between the Courts Service and the judiciary. The Chief Justice serves as the Chairperson of the Courts Service Board, which oversees the organisation's strategic direction and administration. This governance structure ensures that while judges are not directly involved in the day-to-day preparation of the budget, they provide oversight and input through their roles on the Board. The Minister for Justice is a key intermediary and is politically accountable for this process and must ensure that any budgetary proposals align with broader governmental priorities. Ireland employs a performance-based budgeting approach,

³⁴⁹ (The budget of the courts and judicial system in Ireland) <<https://rm.coe.int/the-budget-of-the-courts-and-judicial-system-in-ireland-by-noel-ruboth/168076d496>> accessed 25 November 2024

³⁵⁰ *ibid.*

which links funding allocations to specific outputs and public service activities.³⁵¹ This method aims to enhance transparency and accountability in how funds are utilised within the Courts Service.

217. The funding for judges' salaries in Ireland is determined by the government, specifically through the Central Fund (Ireland's main treasury fund). This method of funding means that judicial salaries are not part of the annual budgetary process and would not be influenced by political considerations. Article 35.5 of the Irish Constitution ensures that the remuneration of judges "shall not be reduced during their continuance in office."³⁵² This means the government cannot arbitrarily decrease judges' salaries once they are appointed. The amount allocated for judicial salaries is included in the overall budget presented by the government to Dáil Éireann (the Irish Parliament). The budget must be approved by Parliament, which means that while the government proposes the salary levels, they ultimately require legislative consent.

QUESTION 3: WHO BEARS THE POLITICAL RESPONSIBILITY FOR THE DEFRAISING OF PUBLIC MONIES FOR THE JUDICIARY?

218. The political responsibility for the funding of the judiciary lies with the Minister of Justice, currently Helen McEntee.³⁵³ This includes funding for judicial salaries, court administration, and other operational expenses related to the judiciary. As previously stated, the Courts Service manages the day-to-day administration of the courts and operates as an independent body. However, its funding is allocated from the national budget, which is approved by the Oireachtas (Irish legislature) and administered by the Department of Justice.

³⁵¹ *ibid.*

³⁵² 'Electronic Irish Statute Book (EISB)' (Irishstatutebook.ie 2024) <<https://www.irishstatutebook.ie/eli/2011/ca/29/schedule/enacted/en/html#sched-part1>> accessed 26 November 2024

³⁵³ 'Irish Government Department' (Wikipedia.org 21 November 2005) <[https://en.wikipedia.org/wiki/Department_of_Justice_\(Ireland\)](https://en.wikipedia.org/wiki/Department_of_Justice_(Ireland))> accessed 28 November 2024

QUESTION 4: WHAT ARE THE REPORTING AND ACCOUNTABILITY REQUIREMENTS REGARDING THE FUNDS DEFAYED FOR THE JUDICIARY?

219. The reporting and accountability requirements for funds allocated to the judiciary include the Courts Service submitting a strategic plan for the Minister for Justice's approval every 3 years. The Courts Service must also submit an Annual Report to the Minister for Justice on its activities /performance and the Minister remits this plan to Parliament after approval. The annual Agency Framework Agreement between the Courts Service and Ministry defines the Ministry's expectations of Courts Service, the Court Service's expectations of the Ministry and the inputs, outputs and expected outcome of the activities of the Courts Service.³⁵⁴ The Ministry must also prepare "Appropriation Accounts", which detail the financial transactions of government departments and offices, including those managing judiciary funds. These accounts are prepared under the Exchequer and Audit Departments Act, 1866.³⁵⁵ The reports must adhere to accounting rules set by the Minister for Public Expenditure, National Development Plan Delivery, and Reform. The accounts include a cash-based record of receipts and payments compared to budgetary provisions, with supplementary information provided on an accrual basis. They are audited by the Comptroller and Auditor General, who ensures accuracy and compliance with financial guidelines. These audited accounts are subsequently reviewed by the Public Accounts Committee.

³⁵⁴ (The budget of the courts and judicial system in Ireland) <<https://rm.coe.int/the-budget-of-the-courts-and-judicial-system-in-ireland-by-noel-ruboth/168076d496>> accessed 25 November 2024

³⁵⁵ 'Accounting and Financial Reporting Requirements' (Www.gov.ie 29 June 2020) <<https://www.gov.ie/en/publication/ccad9-accounting-and-financial-reporting-requirements/>> accessed 29 November 2024

QUESTION 5: WHAT ROLE, IF ANY, DOES THE HEAD OF THE JUDICIARY PLAY IN RELATION TO ACCOUNTABILITY FOR THE USE OF PUBLIC MONIES?

220. The head of the judiciary is the Chief Justice. The Courts Service is governed by a board consisting of a chairperson and seventeen other members.³⁵⁶ The chairperson of the Courts Service has recently changed to Elizabeth Dunne, the Judge of the Supreme Court. The board also comprises the presidents of the 5 courts of Ireland as well as the chief executive of the Courts Service,³⁵⁷ currently Angela Denning, who is also the deputy master of the High Court. Under the Judiciary Council Act 2019, all members of the judiciary are responsible for promoting and maintaining high standards of conduct among judges, providing judicial education and training, and ensuring consistency in judicial decisions.³⁵⁸ The Council has several committees, including the Judicial Conduct Committee, which oversees the ethical conduct of judges. This committee can investigate complaints against judges, including the use of public monies and recommend disciplinary actions if necessary. The Judicial Council also publishes annual reports detailing its activities, financial statements, and other relevant information. These reports are publicly accessible, promoting transparency and accountability. The Chief Justice engages in discussions on judicial and infrastructural needs, as seen in the Digital First programme and projects like the Hammond Lane family court centre.³⁵⁹ These efforts aim to optimise resources while maintaining judicial independence and public accountability. Additionally, the Chief Justice provides input into medium-term justice planning groups, ensuring that judicial perspectives are incorporated into broader policy discussions.³⁶⁰ This cooperative approach creates transparency and accountability in the use of funds allocated to the judiciary.

³⁵⁶ 'Courts Service Board | the Courts Service of Ireland' (Courts.ie2024) <<https://courts.ie/courts-service-board>> accessed 26 January 2025

³⁵⁷ She is the deputy master of the High Court and a public servant.

³⁵⁸ '2022 Edition 1 | JSIJ' (JSIJ2022) <<https://www.ijsj.ie/editions/2022-edition-1/>> accessed 29 November 2024

³⁵⁹ 'Announcements | the Courts Service of Ireland' (Courts.ie2019) <<https://www.courts.ie/content/remarks-chief-justice-launch-courts-service-annual-report-2019>> accessed 29 November 2024

³⁶⁰ *ibid.*

QUESTION 6: WHO APPOINTS ADMINISTRATIVE AND OTHER SUPPORT STAFF FOR JUDGES?

221. In Ireland, administrative and support staff for judges are typically appointed by the Courts Service as this is one of their functions as per question 2.³⁶¹ Some of the key support staff and duties include: Judicial Assistant, to assist in keeping a diary for the judge of court appointments.

222. The judicial assistant is responsible for maintaining proper order in the courtroom and managing the judge's chambers. Their duties include collecting and delivery of correspondence and papers for the judge, photocopying, collecting and disposing of court files. And, they act as a buffer between lawyers, litigants and judge.³⁶² Judicial research assistants are also employed by the Courts Service. The Judicial Researchers' Office constitute a mix of legal professionals (solicitors and barristers) and legal academics, each with complementing interests and qualifications. Their roles include preparing Research Memoranda (on discreet legal topics), proofreading, bench memoranda (summary of evidence), preparation for conferences, speeches and publications, compiling handbooks including District Court Handbooks.

QUESTION 7: WHAT INTERFACE IS THERE, IF ANY, BETWEEN THE THREE ARMS OF STATE RELATING TO THE ADMINISTRATION OF THE COURTS?

223. Authority in Ireland is divided between the Legislature (the Oireachtas), the Executive (the Government) and the Judiciary (the courts). The Constitution, Bunreacht na hÉireann, provides for a separation of these powers, so none of the three organs of State can interfere with the functions of the other two.³⁶³ Every three years the Court Service must prepare and

³⁶¹ 'The Courts Service - Association Of' (Association of Judges of Ireland) <<https://aji.ie/supports/the-courts-service/>> accessed 1 December 2024

³⁶² *ibid.*

³⁶³ 'How Parliament Works - Houses of the Oireachtas' (Oireachtas.ie2020) <<https://www.oireachtas.ie/en/visit-and-learn/how-parliament-works/#:~:text=Authority%20in%20Ireland%20is%20divided,functions%20of%20the%20other%20two.>> accessed 1 December 2024

submit to the Minister (the Government) for approval a three-year strategic plan. When approved, with or without amendments, the Minister must present the plan to both houses of the Oireachtas. Funding is negotiated through the Department of Justice, Equality and Law Reform.³⁶⁴ The Service has its budget appropriated directly by Dáil Éireann, (part of the legislative branch of the Irish State). The Courts Service Act 1998 ensures that the administration of the courts in Ireland does not interfere with the judiciary's independence.³⁶⁵ The Courts Service, its Board, or the Chief Executive cannot interfere with judges' legal duties or anyone else performing limited judicial functions assigned by law. The CEO of the Courts Service can explain the organisation's general administration to parliamentary committees (Oireachtas). However, the CEO cannot be asked to account for judicial decisions or functions or issues under judicial consideration (e.g., ongoing or past cases). If the CEO believes a parliamentary question crosses into judicial functions, they can request a ruling from the High Court. If the High Court agrees, the question must be withdrawn. If not, the CEO must address it.

³⁶⁴ PJ Fitzpatrick, 'Management of the Courts: The Irish Experience' (2008) 1 *International Journal for Court Administration* 56.

³⁶⁵ *ibid.*

UNITED KINGDOM

INTRODUCTION TO THE COURT SYSTEM IN THE UK

224. The UK constitution is unwritten, unlike most countries with a formal constitutional text.³⁶⁶

Rather, the UK's constitution is to be found in four primary sources; namely, statute, judicial decisions, constitutional conventions, and the Royal Prerogative; however, determining the number of distinct legal orders in the UK is surprisingly challenging.³⁶⁷ The UK Constitution is comprised of primary and secondary sources.

225. The UK observes a separation of powers between the judiciary, legislative, and executive branches of government. However, there is both functional and personnel overlap between the three organs. A system of checks and balances operates to complement the overlap, such as backbench pressure (for example, in EU withdrawal agreement debates).³⁶⁸ Despite this, the UK application of the separation of powers is effective,³⁶⁹ and has been described as an “efficient secret”.³⁷⁰ Significant overlap exists between the legislative and executive branches; however, there is a higher degree of separation in relation to the judiciary (although some overlap remains).³⁷¹

The UK court system is hierarchical, and is divided into criminal, civil, and family courts. Moreover, the UK does not have a single legal system.³⁷² Rather, there are independent

³⁶⁶ Barber, N. W., 'Introduction to Constitutions', *The United Kingdom Constitution: An Introduction* (Oxford, 2021; online edn, Oxford Academic, 24 Mar. 2022), p.9 <https://doi.org/10.1093/oso/9780198852315.003.0002>, accessed 3 Mar. 2025

³⁶⁷ *ibid.*, p.20. Further, examples of UK constitutional law constituents include statutory separation under the *Constitutional Reform Act* 2005; case law such as *CCSU v Minister for Civil Service* [1985] AC 374; conventions including the agreement (by convention) that Parliament meets every year; and the Royal Prerogative powers of Dissolution of Parliament.

³⁶⁸ HC Deb 25 March 2019, vol 657, cols 60-145.

³⁶⁹ *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5 at [40].

³⁷⁰ Walter Bagehot, “*The English Constitution*” (1873) 2nd edn, McMaster University Archive for the History of Economic Thought, p. 48 <<https://historyofeconomicthought.mcmaster.ca/bagehot/constitution.pdf>> accessed 11 January 2025.

³⁷¹ See for example Begum: *R (on the application of Begum) (Appellant) v Special Immigration Appeals Commission (Respondent)* *R (on the application of Begum) (Respondent) v Secretary of State for the Home Department (Appellant)* *Begum (Respondent) v Secretary of State for the Home Department (Appellant)* [2021] UKSC 7.

³⁷² The Supreme Court, UK Judicial System <<https://www.supremecourt.uk/about/uk-judicial-system.html>> accessed 29 November 2024.

jurisdictions governing (i) England & Wales; (ii) Scotland; and (iii) Northern Ireland. Each has a separate court system; however, the UK Supreme Court is the highest court for each jurisdiction.

Judicial Separation

226. The predominant statute preserving judicial independence in the UK is the *Constitutional Reform Act 2005* (CRA). A statutory guarantee of judicial independence is guaranteed under s 3. The CRA also strengthened judicial separation by creating the role of Lord Chief Justice; and establishing the Supreme Court and the Judicial Appointments Commission.³⁷³ Further judicial separation is legislated under the *House of Commons Disqualification Act 1975*, plus recognition by the courts.³⁷⁴ This is important for two reasons. First, judicial appointments, tenure, salaries, and case-load management are governed (in part) by a combination of primary sources and non-binding guidelines or convention. This means that certain governing provisions of the judiciary are not legally enforceable. Second, judicial appointments and salaries are in-part administered by the Executive branch of government.

Judicial Administration

227. His Majesty's Courts and Tribunals Service (HMCTS) is an executive agency of the UK Government, responsible for the administration of criminal, civil, and family courts, as well as tribunals in England and Wales. It operates under the Ministry of Justice (MoJ) and works to ensure that justice is delivered efficiently and effectively.

228. HMCTS publishes the Framework Document, which outlines judicial administration in the UK.³⁷⁵ The Framework Document outlines the 'partnership' approach adopted for financing, governance, and operation of the judiciary. The Framework is an agreement between:³⁷⁶

- a) The Lord Chancellor (Executive Branch);
- b) The Lord/Lady Chief Justice (Judicial Branch); and

³⁷³ The Judicial Appointments Regulations 2013 SI 2013/2192.

³⁷⁴ *Miller* (n3) para [42].

³⁷⁵ HM Courts & Tribunals Service, Framework Document, (2014) <<https://assets.publishing.service.gov.uk/media/5a7efae440f0b6230268cbeb/hmcts-framework-document-2014.pdf>> (visited 28 November 2024).

³⁷⁶ Barber, p.187.

- c) The Senior President of Tribunals (Judicial Branch).

229. The Lord Chancellor has a statutory duty to ensure the independent delivery of justice.³⁷⁷

Moreover, the Lord Chancellor has responsibility to Parliament in matters related to the justice system (including the courts).³⁷⁸ The position of Lord/Lady Chief Justice is appointed as follows:

- a) Nominated by the Judicial Appointments Commission (statutory body);³⁷⁹
- b) Recommended by the Prime Minister and Lord Chancellor (Executive); and
- c) Appointed by the Monarch.

230. Judicial appointments, salaries, tenure, and case-load administration in the UK are governed by a combination of primary and secondary legal instruments. This includes a combination of primary and secondary legal instruments, including both binding legislation and convention.³⁸⁰ Furthermore, the UK does not observe a strict separation of powers. Rather, there is functional overlap across the three branches.³⁸¹ Accountability for dispersing public monies for judicial purposes is governed by a complex structure of checks and balances, including Parliamentary oversight; Corporate Governance; Codes of Conduct; and the HMCTS Framework Document.

QUESTION 1: WHAT MODEL OF COURT ADMINISTRATION IS IN PLACE IN THE JURISDICTION SURVEYED?

231. The UK is an example of the partnership model. The UK Supreme Court is independent from the lower courts and was established under s 23(1) of the CRA on October 1, 2009. Unlike the lower courts, which operate under the administrative framework of HMCTS and the Ministry of Justice, the Supreme Court enjoys a higher degree of administrative

³⁷⁷ Section 1 *Courts Act 2003*; s 39 *Tribunals Courts and Enforcement Act 2007*.

³⁷⁸ Framework Document (n 362) para [1.2].

³⁷⁹ *ibid*

³⁸⁰ Barber, p.145.

³⁸¹ Barber, p.312.

independence.³⁸² ³⁸³ HMCTS, on the other hand, is an agency of the Ministry of Justice and operates under a Board and Governance structure.

232. This means that although the government remains responsible for funding and broader policy decisions, the Supreme Court manages its own administration, appointments, and procedural rules to a greater extent than other courts. This structure ensures the day-to-day operations are not directly controlled by the executive, preserving the Supreme Court's role as the ultimate arbiter of legal disputes across the UK's three separate legal systems.³⁸⁴ Therefore, the broader UK court system follows an executive model due to HMCTS oversight; however, the Supreme Court itself operates under an autonomous model because it maintains administrative independence from the executive branch.³⁸⁵ Hence, it is most appropriately considered an example of the partnership model.

Judicial Salaries

233. Section 34 of the CRA governs Supreme Court judges' salaries. Under s 34(2), their salaries are determined by the Lord Chancellor with Treasury agreement (both of whom are part of the Executive Branch). The function of determining judicial salaries under s 34(2) is performed by the Senior Salaries Review Body (SSRB).

234. The SSRB operates independently and releases annual guidance which is provided to the Lord Chancellor.³⁸⁶

235. In September 2024, the Ministry of Justice confirmed a 6% rise in judicial salaries after the government accepted the SSRB's recommendation of a 6% pay award for all judicial office holders. The increase was backdated to April 2024.

³⁸² Barber, pp.138-9.

³⁸³ *ibid*, para [7.9].

³⁸⁴ Barber, 138.

³⁸⁵ Barber, p.138.

³⁸⁶ Review Body on Senior Salaries, 'Forty-Sixth Annual Report on Senior Salaries' (2024) Report no. 97, CP 1120, Open Government License, Chapter 5 'The Judiciary' p.61 <https://assets.publishing.service.gov.uk/media/66a7a3c849b9c0597fdb066e/SSRB_Annual_Report_2024_Accessible.pdf> accessed 10 January 2025.

236. In addition to the annual SSRB review, judicial salaries undergo periodic assessment. The most recent of these was the Major Review of the Judicial Salary Structure conducted in 2018.³⁸⁷

Reduction of Salaries

237. Section 12(3) of the Senior Courts Act 1981 which states that the salary payable to any judge of the Senior Courts shall not be diminished during their tenure. This provides a safeguard for judicial independence by ensuring that the salaries of High Court and Court of Appeal judges in England and Wales cannot be reduced while they remain in office. A similar safeguard exists for Justices of the UK Supreme Court under Section 34(4) of the CRA. This ensures their salaries also remain protected throughout their tenure.

Increase in salaries

238. The independent SSRB conducts salary reviews upon request from the Lord Chancellor and may recommend an increase. The Lord Chancellor presents the report to Parliament for acceptance. The Ministry of Justice executes the ratified salaries.

Payment salaries

239. Under s 34(5) of the CRA, salaries of Supreme Court judges are paid from the Consolidated Fund of the UK. Treasury makes the request to pay. The Consolidated Fund is governed by the *Consolidated Fund Act 1816* and Erskine May (the authoritative guide to parliamentary procedure in the UK).³⁸⁸

Allocation of judges

240. The allocation of judicial work and the administration of courts are governed by specific statutory provisions. One of the responsibilities of the Lord/Lady Chief Justice under the CRA includes arranging the allocation of work among judges and the deployment of judges. The daily administration of courts is managed by HMCTS. The statutory foundation for HMCTS's role includes the Courts Act 2003 and the Tribunals, Courts and Enforcement Act 2007. This Act further defines the functions and administration of tribunals and courts,

³⁸⁷ Review Body on Senior Salaries, 'Supplement to the Fortieth Annual Report on Senior Salaries 2018' (2018) Report No. 90, Cm 9716 <https://assets.publishing.service.gov.uk/media/5bd30f5aed915d78b48aabe9/Supp_to_the_SSRB_Fortieth_Annual_Report_2018_Major_Review_of_the_Judicial_Salary_Structure.pdf> accessed 10 January 2025.

³⁸⁸ Thomas Erskine May, Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament (David Natzler and others (eds), 25th edn, LexisNexis 2019), para [35.6] <<https://erskinemay.parliament.uk/section/5768/the-consolidated-fund>> accessed 10 January 2025.

contributing to the framework within which HMCTS operates. These legislative provisions collectively establish a framework where the Lord Chief Justice oversees judicial functions such as work allocation and judge deployment, while HMCTS handles the operational aspects of court administration, ensuring the efficient functioning of the courts in England and Wales.

241. The HMCTS is responsible for the operational management of the courts and tribunals, including:

- a) Case management and scheduling;
- b) Facilities management;
- c) Staff training and support; and
- d) Implementation of policy changes.

242. Section 61 of the CRA established the Judicial Appointments Commission (JAC).³⁸⁹ The JAC selects and appoints persons to the judiciary.³⁹⁰ The JAC has a governing Board of Commissioners, comprised of 15 members. The Board of Commissioners is governed by ‘Terms of Reference’.³⁹¹

243. The composition of the Board of Commissioners is as follows:

- a) The Chairperson is a lay member;
- b) 6 commissioners must be members of the judiciary;
- c) 2 commissioners are professional members (qualified as a barrister or solicitor in England and Wales);
- d) 5 commissioners must be lay persons; and
- e) 1 commissioner must be a ‘non-legally qualified judicial member’.³⁹²

³⁸⁹ See also Schedule 12 CRA.

³⁹⁰ Judicial Appointments Commission <<https://judicialappointments.gov.uk/>> accessed 10 January 2025.

³⁹¹ Commission Board, Terms of Reference, <https://judicialappointments.gov.uk/wp-content/uploads/2024/01/Board-Terms-of-Reference_Dec-2023.pdf> accessed 10 January 2025.

³⁹² *ibid*, ‘The Board of Commissioners, the Commission’.

244. Furthermore, appointments are decided by ‘open competition’:

- a) The Commission recommends candidates to the Lord Chancellor;
- b) The Lord Chancellor has limited power of veto; and
- c) The Commission has a statutory duty to “encourage diversity in the range of persons available for selection for appointments.”

245. Under s 26 CRA, judges of the Supreme Court may only be made by recommendation of the Prime Minister.

Who decides when there is a need for more judges?

246. Section 23(2) of the CRA states there shall not be more than 12 judges of the Supreme Court.

247. The Crown (His Majesty) may increase the number of Supreme Court judges; however, only if such recommendation is presented before, and approved by, both houses of Parliament.³⁹³

Who decides changes when works do not work efficiently?

248. The Chief Executive oversees the daily operations of HMCTS, ensuring the effective management of court and tribunal services.³⁹⁴ The Chief Executive may correspond to Members of Parliament upon questions raised by Parliament.³⁹⁵ As the Accounting Officer, the Chief Executive holds fiscal responsibility, ensuring that HMCTS operates within its budget and complies with financial regulations. The Chief Executive is accountable to Parliament and may correspond directly with Members of Parliament regarding operational matters.

249. The HMCTS Board provides oversight on budgets, financial management, and strategic direction. The Board operates under 'Terms of Reference,' which outline its functions and responsibilities to ensure transparency and accountability in its financial practices.

250. The administrative actions of HMCTS fall under the jurisdiction of the Parliamentary Commissioner for Administration (PCA), commonly known as the Ombudsman. The PCA's

³⁹³ Sections 23(3) & (4) CRA.

³⁹⁴ Framework Document (n 362) Section 3.

³⁹⁵ *ibid*, para [6.6].

authority is established under the Parliamentary Commissioner Act 1967, which empowers the Ombudsman to investigate complaints of maladministration in government departments and agencies, including HMCTS.

QUESTION 2: HOW ARE THE MONIES FOR THE ADMINISTRATION OF THE COURTS AND THE REMUNERATION OF JUDGES DEFRAIDED FROM THE RELEVANT LEGISLATURE?

251. The Treasury Department pays judicial salaries from the Consolidated Fund of the UK. The Consolidated Fund is governed by the *Consolidated Fund Act 1816* and Erskine May guidelines.³⁹⁶

252. The head of the judiciary is the Lord/Lady Chief Justice (LCJ). One of the duties of the LCJ is presiding over HMCTS (in partnership with the Lord Chancellor). Per the Framework Document: The Lord Chancellor makes the allocation to HM Courts & Tribunals Service in accordance with his duty under section 1 of the *Courts Act 2003*, section 39 of the *Tribunals, Courts and Enforcement Act 2007* and his oath of office under section 17 of the *Constitutional Reform Act 2005* to ensure the provision of resources for the efficient and effective support of the courts for which he is responsible.³⁹⁷

QUESTION 3: WHO BEARS THE POLITICAL RESPONSIBILITY FOR THE DEFRAIDING OF PUBLIC MONIES FOR THE JUDICIARY?

253. The Lord Chancellor bears responsibility to Parliament in matters related to the justice system (including the courts).³⁹⁸ The Chief Executive may appear before the Committee for Public Accounts regarding Accounting Officer matters.³⁹⁹ Judges in the United Kingdom do not bear political responsibility for public expenditure on the judiciary and, as a general rule, do not appear before Parliament to answer for judicial decisions or financial matters.

³⁹⁶ Erskine May, para [35.6].

³⁹⁷ Framework Document (n 362) para [7.2].

³⁹⁸ Framework Document (n 362) para [1.2].

³⁹⁹ *ibid*, para [6.1].

However, there are limited circumstances where senior judges may engage with parliamentary committees in an informative capacity rather than as a form of direct accountability.

254. Judicial Independence and Political Responsibility requirements mean that political responsibility for judicial funding and court administration rests with the Lord Chancellor, who is a government minister and accountable to Parliament. The Chief Executive of HMCTS, as the Accounting Officer, may also appear before the Committee of Public Accounts to discuss financial matters related to court administration. Judges themselves do not bear political responsibility for public expenditure and do not report to Parliament on financial matters.

When Judges May Appear Before Parliament

255. While judges do not answer to Parliament, senior judges may occasionally provide evidence before parliamentary committees on matters related to judicial administration, legal reform, and court processes. The Lord/Lady Chief Justice, as the head of the judiciary, has on occasion appeared before select committees to discuss the state of the justice system, court funding challenges, and judicial independence. This engagement is meant to provide information rather than to hold the judiciary accountable in a political sense.

256. Supreme Court Justices may give evidence to parliamentary committees, particularly the House of Lords Constitution Committee, to provide insight on constitutional issues, judicial independence, and legal developments. Their appearances do not constitute political accountability but rather an opportunity to share judicial perspectives on the rule of law.

257. The Constitutional Reform Act 2005 formally separated the judiciary from government, reinforcing the principle that judges should not be subject to political oversight. Judges are accountable only through the appellate process and judicial review, rather than to Parliament or the government. Judicial independence ensures that judges can decide cases without political pressure, reinforcing the separation of powers.

258. Section 7 of the Framework Document outlines Finance, resource allocation, performance, and reporting'. Moreover, there is an obligation under the Framework Document to act

‘openly and transparently.’⁴⁰⁰ The administrative work of HMCTS is subject to the jurisdiction of the Parliamentary Commissioner for Administration (PCA).⁴⁰¹

QUESTION 4: WHAT ARE THE REPORTING AND ACCOUNTABILITY REQUIREMENTS REGARDING THE FUNDS DEFAYED FOR THE JUDICIARY?

259.The Chief Executive of HMCTS is accountable for expenditure.⁴⁰² The Chief Executive bears responsibility for the day-to-day operations and administration of the agency under general direction of the Board.⁴⁰³

260.These responsibilities include (among other things): (i) cost-effective management of the HMCTS; (ii) performance of the HMCTS; and (iii) reporting on performance.⁴⁰⁴ Financial management of HMCTS is governed by the Board with accountability to the Ministry of Justice. The Principal Accounting Officer of the Ministry of Justice makes delegations to the Chief Executive and reported to the Board.⁴⁰⁵

261.The Chief Executive has authority to approve expenditure that is (i) within the Departmental Expenditure Limit, which is (ii) consistent with HMCTS business plans.⁴⁰⁶ The Chief Executive, as Agency Accounting Officer, may (i) approve expenditure; (ii) write off losses; and (iii) make special payments. These actions must accord with ‘financial control and proprietary.’⁴⁰⁷

⁴⁰⁰ *ibid*, para [7.4].

⁴⁰¹ *ibid*, para [6.3].

⁴⁰² *ibid*, para [7.9].

⁴⁰³ *ibid*, para [3.1].

⁴⁰⁴ *ibid*, para [3.2].

⁴⁰⁵ *ibid*, para [7.7].

⁴⁰⁶ Framework Document (n 362) para [7.8].

⁴⁰⁷ *ibid*, para [7.10].

262.HMCTS is subjected to rules outlined by HM Treasury, including Managing Public Money policy and the Financial Reporting Manual.⁴⁰⁸ Financial performance matters do not fetter the exercise of judicial discretion or the interests of justice in any individual case.⁴⁰⁹

263.The Chief Executive is not accountable for matters relating to judicial performance.⁴¹⁰ The Chief Executive, as Accounting Officer, bears responsibility for producing and signing audited Annual Reports and Accounts on the performance of HMCTS.⁴¹¹ The Chief Executive receives Board approval for Annual Accounts and Reports.⁴¹²

264.The Annual Report includes a set of annual financial accounts prepared on an accruals basis. The accounts are produced in accordance with a direction issued by HMT under section 7 of the *Government Resources and Accounts Act 2000* and are audited by the Comptroller and Auditor General. The Lord Chancellor lays the Annual Report before Parliament.⁴¹³

265.Section 8 of the Framework Document outlines internal and external audit procedures, including an HMCTS Audit Committee appointed by the Board. The financial activities of HMCTS are subjected to External Audit, as follows:

- a) The Comptroller and Auditor General audits HMCTS expenditure and income, examines their regularity and propriety, and this includes a certified report of the HMCTS Statement of Accounts;
- b) The certified copy of the report is distributed to the HMCTS Finance Director who draws issues to the Board; and
- c) The Comptroller and Auditor General has access to HMCTS books and records under the *National Audit Act 1983*.

⁴⁰⁸ *ibid*, para [7.15].

⁴⁰⁹ *ibid*, para [7.17].

⁴¹⁰ *ibid*, para [7.18].

⁴¹¹ *ibid*, para [7.24].

⁴¹² *ibid*, para [7.25].

⁴¹³ *ibid*, para [7.26].

QUESTION 5: WHAT ROLE, IF ANY, DOES THE HEAD OF THE JUDICIARY PLAY IN RELATION TO ACCOUNTABILITY FOR THE USE OF PUBLIC MONIES?

266. The LCJ and Lord Chancellor approve HMCTS Board members. Financial management of HMCTS is governed by the Board. The Board is comprised of:⁴¹⁴

- a) An independent non-executive Chairperson;
- b) The Senior Presiding Judge for England and Wales (representing the LCJ);
- c) 2 judicial representatives (representing the LCJ), one appointed by the LCJ, one appointed by the Senior President of Tribunals;
- d) The Chief Executive;
- e) Three Executive Directors; and
- f) Three Non-Executive Directors.

267. Therefore, ultimate accountability for the use of public monies is presided over by the head of the judiciary.

QUESTION 6: WHO APPOINTS ADMINISTRATIVE AND OTHER SUPPORT STAFF FOR JUDGES?

268. The Supreme Court hires up to 11 Judicial Assistants each year.⁴¹⁵ These positions are appointed by the President of the Supreme Court.

269. Administrative (and other support) staff for judges is entrenched in the Framework Document of HMCTS, which states services include:⁴¹⁶

⁴¹⁴ Framework Document (n 362) para [4.5].

⁴¹⁵ The Supreme Court of the UK, 'Judicial Assistant Recruitment' (2025) <<https://supremecourt.uk/working-for-us/ja-recruitment>> accessed 11 January 2025.

⁴¹⁶ Framework Document (n 362), para [2.3].

- a) Provide the supporting administration fair, efficient and accessible courts and tribunal system;
- b) Support an independent judiciary in the administration of justice;
- c) Drive continuous improvement of performance and efficiency across all aspects of the administration of the courts and tribunals;
- d) Collaborate effectively with other justice organisations and agencies, including the legal professions, to improve access to justice; and
- e) Work with government departments and agencies, as appropriate, to improve the quality and timeliness of their decision making in order to reduce the number of cases coming before tribunals and courts.

QUESTION 7: WHAT INTERFACE IS THERE, IF ANY, BETWEEN THE THREE ARMS OF STATE RELATING TO THE ADMINISTRATION OF THE COURTS?

270. The Executive, Legislature, and Judiciary in the UK interact in court administration through funding, policy-making, and operational oversight, but each branch retains its independence. The Ministry of Justice and HMCTS manage administration, while the Lord Chief Justice oversees judicial work, and Parliament legislates and scrutinizes the system without interfering in judicial independence. However, there are points of interaction (interfaces) where their functions overlap, particularly in matters of court funding, judicial appointments, and legislative reforms affecting the judiciary.

271. The Key Point of Interaction between the Executive and the Administration of Courts includes Executive provision of funding and administrative support.

272. The interface between the Legislature and the Administration of Courts includes Parliament passing laws affecting courts and approves funding.

273. The Judiciary is responsible for interpreting and applying the law but has some administrative responsibilities concerning court operations. Judges oversee case management but rely on HMCTS for operational support, maintaining a balance between independence and administrative cooperation.

UNITED STATES OF AMERICA

INTRODUCTION TO THE COURT SYSTEM IN US

274. The United States of America ('US') operates under a federal system of government, where power is distributed between the federal government and individual states.⁴¹⁷ Under the Tenth Amendment to the US Constitution, all powers not granted to the US Federal Government are reserved for the States.⁴¹⁸ Both federal and state governments in the US are modelled on a three-branch structure of government: the legislative, executive, and judiciary.⁴¹⁹ This separation of powers principle ensures that no single branch exercises complete control, maintaining a system of checks and balances.

The judiciary in the US operates at two levels: federal and state.⁴²⁰ The US federal judiciary is established by Article III of the Constitution and operates as an independent arm of the state responsible for interpreting and applying the law, though Article III leaves Congress (the legislature) significant discretion to determine the federal judiciary's shape and structure.⁴²¹ The Constitution establishes the Supreme Court of the United States (SCOTUS) as the highest judicial authority and allows Congress to create inferior courts as necessary.⁴²² Below SCOTUS are the US Courts of Appeals (divided into circuits) and the US District Courts, which serve as trial courts.⁴²³ Specialised courts, such as bankruptcy courts and the Court of International Trade, also operate within the federal system.⁴²⁴ Federal judges are appointed for life, ensuring independence and protection from political pressures, with their remuneration safeguarded by the Compensation Clause of Article III, Section 1.⁴²⁵ This structural independence is to allow

⁴¹⁷ The White House, 'Our Government' (The White House) <<https://www.whitehouse.gov/about-the-white-house/our-government/>> accessed 8 February 2025

⁴¹⁸ *ibid*

⁴¹⁹ *ibid*

⁴²⁰ *ibid*

⁴²¹ The White House, 'The Judicial Branch' (The White House) <<https://www.whitehouse.gov/about-the-white-house/our-government/the-judicial-branch/>> accessed 8 February 2025

⁴²² *ibid*

⁴²³ Offices of the United States Attorneys, 'Introduction To The Federal Court System' (Offices of the United States Attorneys) <<https://www.justice.gov/usao/justice-101/federal-courts>> accessed 8 February 2025

⁴²⁴ Federal Judicial Center, 'Specialized Courts' (Federal Judicial Center) <<https://judiciariesworldwide.fjc.gov/specialized-courts>> accessed 8 February 2025

⁴²⁵ *ibid*

the judiciary to function as a neutral arbiter of the law and a check on the powers of the legislative and executive branches.⁴²⁶

275.State judiciaries have their own hierarchies, typically including trial courts, intermediate appellate courts, and a state supreme court.⁴²⁷ While state courts handle the majority of cases, federal courts address issues related to federal law and the Constitution.⁴²⁸

QUESTION 1: WHAT MODEL OF COURT ADMINISTRATION IS IN PLACE IN THE JURISDICTION SURVEYED?

276.Day-to-day judicial administration is managed at the individual court level and overseen by the chief judge of each court.⁴²⁹ Significant policy decisions, however, are typically made collectively by the court's judges.⁴³⁰ The administrative and non-judicial functions of each court are handled by the clerk of the court, a court officer appointed by the judges.⁴³¹

277.Judicial administration in the US is further supported by several key organisations. The Judicial Conference of the United States serves as the national policymaking body for the federal courts.⁴³² Convening twice annually, the Judicial Conference addresses administrative and policy issues affecting the federal judiciary.⁴³³ Its membership includes the Chief Justice of the United States, the chief judges of each circuit, the Chief Judge of the Court of International Trade, and one district judge from each regional judicial circuit.⁴³⁴ The

⁴²⁶ *ibid*

⁴²⁷ United States Courts, 'Comparing Federal and State Courts' (United States Courts) <<https://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts#:~:text=The%20State%20Court%20System&text=A%20court%20of%20last%20resort,as%20Circuit%20or%20District%20Courts.>> accessed 8 February 2025

⁴²⁸ *ibid*

⁴²⁹ United States Courts, 'Judicial Administration' (United States Courts) <<https://www.uscourts.gov/about-federal-courts/judicial-administration>> accessed 8 February 2025

⁴³⁰ *ibid*

⁴³¹ *ibid*

⁴³² United States Courts, 'About the Judicial Conference' (United States Courts) <<https://www.uscourts.gov/about-federal-courts/governance-judicial-conference/about-judicial-conference>> accessed 8 February 2025

⁴³³ *ibid*

⁴³⁴ *ibid*

Conference reviews matters within its jurisdiction, including issues referred by the Chief Justice, Congress, or federal judges, as well as any matters required by statute.⁴³⁵

278. Additionally, the Administrative Office of the United States Courts (AOUSC) provides support to federal courts, offering services related to legislation, legal matters, finance, technology, management, and program administration.⁴³⁶ The Federal Judicial Center focuses on research and education for the federal judiciary.⁴³⁷ It conducts studies on judicial operations and offers recommendations to the Judicial Conference for improving the management and efficiency of federal courts.⁴³⁸

279. Because court administration is governed by these independent organisational units, the US Supreme Court is an example of an autonomous model.

QUESTION 2: HOW ARE THE MONIES FOR THE ADMINISTRATION OF THE COURTS AND THE REMUNERATION OF JUDGES DEFRAIDED FROM THE RELEVANT LEGISLATURE?

280. The funding for federal courts, including judicial salaries, comes from appropriations made by Congress as part of the federal budget.⁴³⁹ Representatives from the United States Judicial Conference Committee on the Budget, along with the Director of the AOUSC prepare and present a budget request to Congress.⁴⁴⁰ The budget is then sent to the legislative appropriations committees responsible for the US judiciary.⁴⁴¹ These committees are

⁴³⁵ *ibid*

⁴³⁶ United States Courts, 'Judicial Administration' (United States Courts) <<https://www.uscourts.gov/about-federal-courts/judicial-administration>> accessed 8 February 2025

⁴³⁷ *ibid*

⁴³⁸ *ibid*

⁴³⁹ Federal Judicial Center, 'Budget Process' (Federal Judicial Center) <<https://judiciariesworldwide.fjc.gov/budget-process#:~:text=In%20the%20case%20of%20the,in%20full%20or%20make%20adjustments>> accessed 8 February 2025

⁴⁴⁰ *ibid*

⁴⁴¹ *ibid*

responsible for considering the requested budget and deciding whether to grant in full or adjust.⁴⁴² The requested budget is then sent to the US President for approval.⁴⁴³

281. The chair of the *Judicial Conference Committee on the Budget*, alongside the Director of the AOUSC may sometimes be required to testify and explain the request during hearings before the *House Appropriations Subcommittee on Financial Services and General Government*.⁴⁴⁴ The US Supreme Court has its own separate budget and one or more of the justices of the Supreme Court may sometimes be required to testify before the *House Appropriations Subcommittee on Financial Services and General Government* during budget hearings.⁴⁴⁵

282. Federal judicial salaries in the US are governed by the Compensation Clause in Article III, § 1 of the US Constitution – which prevents Congress from reducing the salaries of Article III judges.⁴⁴⁶ This measure is designed to protect judicial independence, and to prevent Congress from reducing salaries to influence judicial decisions.

QUESTION 3: WHO BEARS THE POLITICAL RESPONSIBILITY FOR THE DEFRAISING OF PUBLIC MONIES FOR THE JUDICIARY?

283. Both Congress and the US President have the responsibility of reviewing and/or approving proposed judicial federal budgets. Congress has the responsibility of setting the salaries of judicial officers upon appointment.⁴⁴⁷ The salary can be raised but cannot be decreased once the judge has taken office due to the protections provided by Article III, Section 1, of the US Constitution.⁴⁴⁸

⁴⁴² *ibid*

⁴⁴³ *ibid*

⁴⁴⁴ *ibid*

⁴⁴⁵ *ibid*

⁴⁴⁶ United States Congress, 'Art III. S1.10.3.2 Compensation Clause Doctrine' (United States Congress) <https://constitution.congress.gov/browse/essay/artIII-S1-10-3-2/ALDE_00013556/#:~:text=Cases%20or%20Controversies-,ArtIII.,2%20Compensation%20Clause%20Doctrine&text=The%20Judge%20C%20both%20of%20the,during%20their%20Continuance%20in%20Office> accessed 8 February 2025

⁴⁴⁷ *ibid*

⁴⁴⁸ US Constitution, art III § 1.

284. Each federal court is responsible for the management of public resources under its control.⁴⁴⁹ Allegations of fraud, waste, or abuse involving these resources are addressed by the judicial authority overseeing the individual or organisation in question.⁴⁵⁰ For instance:

284.1. Allegations related to federal courts are handled by the relevant chief judge or the circuit judicial council,⁴⁵¹

284.2. Allegations concerning a federal public defender are reviewed by the chief judge of the respective circuit court of appeals,⁴⁵² and

284.3. Allegations involving the federal public defender organization or its staff (excluding the federal public defender themselves) are directed to a federal public defender for resolution.⁴⁵³

285. The Director of the Administrative Office of the United States Courts is the primary official answerable to Congress regarding judicial administration expenditures.⁴⁵⁴ The AOUSC, under the supervision of the Judicial Conference of the United States, submits budget requests and expenditure reports to Congress, ensuring financial accountability for the judiciary.⁴⁵⁵

⁴⁴⁹ United States Courts, 'Administrative Oversight and Accountability' (United States Courts) <<https://www.uscourts.gov/about-federal-courts/judicial-administration/administrative-oversight-and-accountability#:~:text=Every%20federal%20court%20is%20responsible,and%20producing%20timely%20financial%20reports>> accessed 8 February 2025

⁴⁵⁰ *ibid*

⁴⁵¹ *ibid*

⁴⁵² *ibid*

⁴⁵³ *ibid*

⁴⁵⁴ 28 US Code §604(a)

⁴⁵⁵ *ibid*, §604(a)(3)

QUESTION 4: WHAT ARE THE REPORTING AND ACCOUNTABILITY REQUIREMENTS REGARDING THE FUNDS DEFAYED FOR THE JUDICIARY?

286. The federal judiciary is accountable to Congress for the funds allocated to it. The AOUSC submits reports on judiciary spending and operational efficiency to Congress.⁴⁵⁶ Judges, judicial employees, and federal public defender employees across the United States are subject to ethics laws and codes of conduct that regulate the proper performance of their official duties and restrict certain outside activities to prevent conflicts of interest.⁴⁵⁷ For instance, each judge is required to maintain a list of personal and financial interests that might necessitate recusal as outlined in 28 U.S.C. § 455 and the *Code of Conduct for United States Judges*.⁴⁵⁸

287. Additionally, all judges, high-ranking judiciary officials, and senior staff are mandated to file annual public financial disclosure reports, a requirement shared by all three branches of government under the *Ethics in Government Act*.⁴⁵⁹ Judicial personnel are also subject to specific provisions of the *Stop Trading on Congressional Knowledge (STOCK) Act*, ensuring transparency and accountability in their financial dealings.⁴⁶⁰

288. Federal courts are also sometimes reviewed by the Government Accountability Office (GAO).⁴⁶¹ These measures ensure that while the judiciary is financially independent, it remains accountable for the public monies it utilises.

⁴⁵⁶ Federal Judicial Center, 'Budget Process' (Federal Judicial Center) <<https://judiciariesworldwide.fjc.gov/budget-process#:~:text=In%20the%20case%20of%20the,in%20full%20or%20make%20adjustments>> accessed 8 February 2025

⁴⁵⁷ United States Courts, 'Administrative Oversight and Accountability' (United States Courts) <<https://www.uscourts.gov/about-federal-courts/judicial-administration/administrative-oversight-and-accountability#:~:text=Every%20federal%20court%20is%20responsible,and%20producing%20timely%20financial%20reports>> accessed 8 February 2025

⁴⁵⁸ *ibid*

⁴⁵⁹ *ibid*

⁴⁶⁰ *ibid*

⁴⁶¹ U.S. Government Accountability Office, 'Federal Judiciary: Additional Actions Would Strengthen Efforts to Prevent and Address Workplace Misconduct' (U.S. Government Accountability Office, 25 July 2024) <<https://www.gao.gov/products/gao-24-105638#:~:text=GAO%20reviewed%20the%20judiciary's%20workplace,the%20national%20and%20circuit%20levels>> accessed 8 February 2025

QUESTION 5: WHAT ROLE, IF ANY, DOES THE HEAD OF THE JUDICIARY PLAY IN RELATION TO ACCOUNTABILITY FOR THE USE OF PUBLIC MONIES?

289. The Chief Justice of the United States, as the head of the US judiciary, presides over the Judicial Conference.⁴⁶² The Judicial Conference provides summary reports and budget requests to Congress and the US President.⁴⁶³ While the Chief Justice does not always directly manage funds, they influence policy and oversight concerning judiciary administration and budgeting.⁴⁶⁴

QUESTION 6: WHO APPOINTS ADMINISTRATIVE AND OTHER SUPPORT STAFF FOR JUDGES?

290. By statute and US administrative practice, each federal court has the responsibility of appointing its own support staff.⁴⁶⁵ The chief judge of the court oversees day-to-day court administration, while important policy decisions are made by judges of a court working together.⁴⁶⁶

QUESTION 7: WHAT INTERFACE IS THERE, IF ANY, BETWEEN THE THREE ARMS OF STATE RELATING TO THE ADMINISTRATION OF THE COURTS?

291. The US exhibits a very strong constitutional and cultural commitment to the separation of powers. Whilst the US Constitution contains no provision explicitly that the three branches of the federal government shall be separated, the text of Articles I, II and III of the US

⁴⁶² United States Courts, 'About the Judicial Conference' (United States Courts) <<https://www.uscourts.gov/about-federal-courts/governance-judicial-conference/about-judicial-conference>> accessed 8 February 2025

⁴⁶³ *ibid*

⁴⁶⁴ *ibid*

⁴⁶⁵ United States Courts, 'Judicial Administration' (United States Courts) <<https://www.uscourts.gov/about-federal-courts/judicial-administration>> accessed 8 February 2025

⁴⁶⁶ *ibid*

Constitution create an implicit understanding the three branches of government are separate.⁴⁶⁷ As a result, the US judiciary operates with significant independence, but there are interfaces with the other branches:

291.1.Judiciary and Legislative: The US Congress (and the President) allocates funds and oversees judiciary budgets through hearings and appropriations.⁴⁶⁸ Congress also has the power to impeach and try members of the federal judiciary for ‘high crimes and misdemeanours’.⁴⁶⁹

291.2.Judiciary and Executive: As set out by the US Constitution’s Article II Appointments Clause, the US President nominates SCOTUS justices, Court of Appeals judges and District Court judges, though the Senate confirms those appointments.⁴⁷⁰ Traditionally, modern presidents have exercised more discretion in filling vacancies on the SCOTUS but has usually deferred to the Senate in the selection of most US District Court judges.⁴⁷¹ The judicial branch also often depends on the executive branch to enforce court decisions.

⁴⁶⁷ James Madison, The Federalist No. 48.

⁴⁶⁸ Federal Judicial Center, ‘Budget Process’ (Federal Judicial Center) <<https://judiciariesworldwide.fjc.gov/budget-process#:~:text=In%20the%20case%20of%20the,in%20full%20or%20make%20adjustments>> accessed 8 February 2025

⁴⁶⁹ US Constitution, art I, § 3, cl 7; art II § 4.

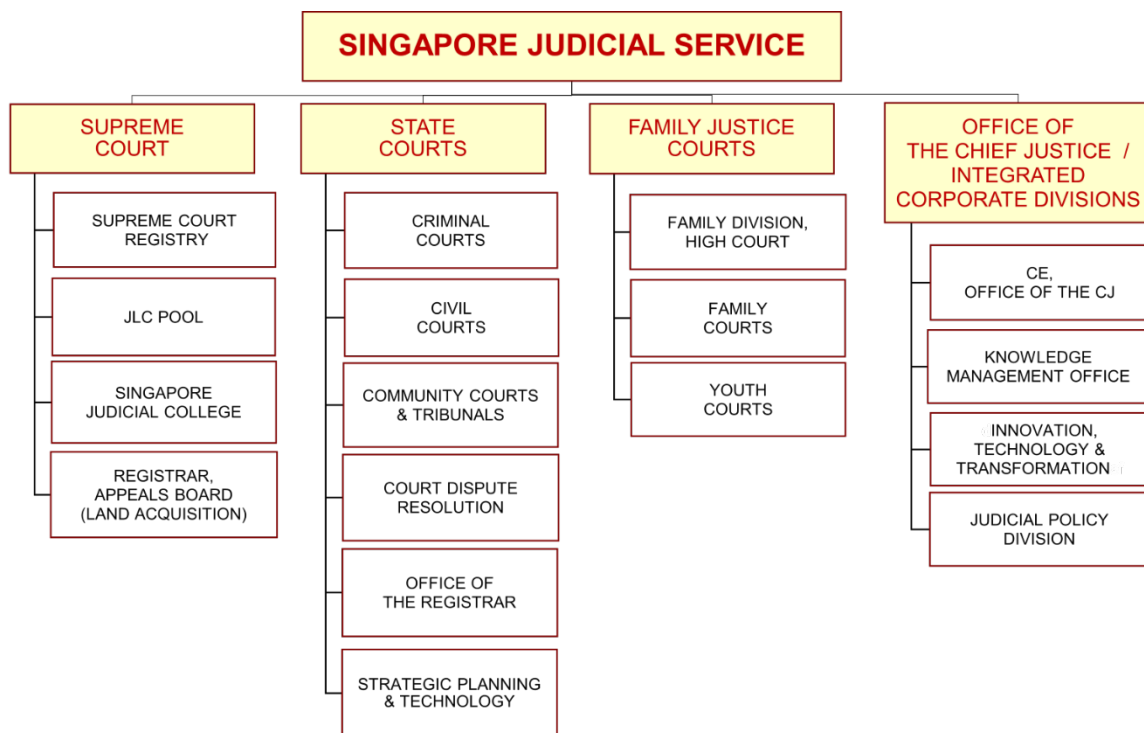
⁴⁷⁰ *ibid*, art II, § 2, cl 2.

⁴⁷¹ Federal Judicial Center, ‘The Executive Role in the Appointment of Federal Judges’ (Federal Judicial Center) <<https://www.fjc.gov/history/administration/executive-role-appointment-federal-judges#:~:text=In%20modern%20times%2C%20presidents%20have,state%20senators%20have%20the%20most>> accessed 8 February 2025

SINGAPORE

INTRODUCTION TO THE COURT SYSTEM IN SINGAPORE

292. Singapore is a unitary parliamentary republic. Its government is modelled on the Westminster system, with three separate branches: the Legislature, the Executive, and the Judiciary.⁴⁷² The powers and constitution of the Judiciary is provided for in Part 8 of the Constitution of the Republic of Singapore.⁴⁷³ Within the Judiciary itself, the Judiciary is divided broadly between the Supreme Court, State Courts, Family Justice Courts, and the Integrated Corporate Divisions. The following chart⁴⁷⁴ illustrates this structure:



⁴⁷² Parliament of Singapore, 'System of Government', (Parliament of Singapore, 12 March 2024), <<https://www.parliament.gov.sg/about-us/structure/system-of-government>>, accessed 10 January 2025

⁴⁷³ Constitution of the Republic of Singapore (1999 Rev Ed), art 93

⁴⁷⁴ Singapore Judicial Service, 'Structure of the Singapore Judicial Service', (Singapore Judicial Service, 9 January 2025), <<https://www.jsc.gov.sg/structure/structure-of-the-singapore-judicial-service/>>, accessed 10 January 2025

QUESTION 1: WHAT MODEL OF COURT ADMINISTRATION IS IN PLACE IN THE JURISDICTION SURVEYED?

293. The Supreme Court consists of the Chief Justice, Justices of the Court of Appeal, Judges of the Appellate Division, Judges of the High Court, Senior Judges, International Judges and Judicial Commissioners.⁴⁷⁵ The Judges and Judicial Commissioners are appointed by the President, on advice of the Prime Minister.⁴⁷⁶ However, the administration of the judiciary, including ensuring the efficient running of the courts and provision of effective services to court users, is responsibility of the Chief Executive of the Supreme court, who oversees the integrated administration of the judiciary. Therefore, the most appropriate model to understand Singapore's Supreme Court is the partner model of court administration. The Constitution expressly declares that the judicial power of the State is vested in the Judiciary, recognising and accepting it as an independent judiciary.⁴⁷⁷

QUESTION 2: HOW ARE THE MONIES FOR THE ADMINISTRATION OF THE COURTS AND THE REMUNERATION OF JUDGES DEFRAIDED FROM THE RELEVANT LEGISLATURE?

294. The "Legislature shall by law provide for the remuneration of the Supreme Court Judges and the remuneration so provided shall be charged on the Consolidated Fund".⁴⁷⁸ The Consolidated Fund is established under the Constitution,⁴⁷⁹ and it serves as the Government's bank account.⁴⁸⁰ Art 98(6) of the Constitution therefore allows monies to be withdrawn from the Fund for the purpose of remunerating judges.

295. Individuals who are first appointed to any judicial office in Singapore on or after 1 January 2015⁴⁸¹ are subject to the Judges' Remuneration Act, which provides that judicial officers

⁴⁷⁵SG Courts, Role and structure of the Supreme Court, <https://www.judiciary.gov.sg/who-we-are/role-structure-supreme-court/structure>

⁴⁷⁶ Ibid.

⁴⁷⁷ Constitution of the Republic of Singapore (1999 Rev Ed), Art 93

⁴⁷⁸ Constitution of the Republic of Singapore (2020 Rev Ed), Art 98(6)

⁴⁷⁹ Constitution of the Republic of Singapore (2020 Rev Ed), Art 145

⁴⁸⁰ Singapore Parliament Glossary

⁴⁸¹ Judges' Remuneration Act 1994, s 4(8)

must be paid annual pensionable salaries “as the Minister may, from time to time ... determine”.⁴⁸² Aside from the annual pensionable salaries, Supreme Court Judges are also entitled to receive pensionable and non-pensionable allowances and privileges as the Minister may determine, the minimum value of which is pegged to a public officer receiving the same pensionable salary.⁴⁸³

296. The overall costs of operating the judiciary includes ‘Expenditure on Manpower’, ‘Other Operating Expenditure’ and ‘Development Expenditure’. Such costs are projected (and subsequently revised) by the Ministry of Finance every financial year, with a particular breakdown of costs according to object class.⁴⁸⁴

QUESTION 3: WHO BEARS THE POLITICAL RESPONSIBILITY FOR THE DEFRAYING OF PUBLIC MONIES FOR THE JUDICIARY?

297. The Minister-in-charge of the Public Service is responsible for the Judges’ Remuneration Act 1994, which sets out the framework for salaries, allowances, and privileges for Supreme Court Judges as a class.⁴⁸⁵ For judicial officers aside from Supreme Court Justices, their salary is determined by reference to a number of salary data sources, including market surveys by compensation specialists.⁴⁸⁶ The remuneration of Singapore’s judges is underpinned by a strong policy focus of preventing judicial corruption, which would then damage judicial independence. Recognising that poorly paid judges are more likely to succumb to bribes from interested parties,⁴⁸⁷ it is enshrined in the Constitution that a Supreme Court judge’s remuneration is constitutionally protected – it may not be reduced during their tenure.⁴⁸⁸

⁴⁸² Judges’ Remuneration Act 1994, s2(1)

⁴⁸³ Judges’ Remuneration Act 1994, s2(2)

⁴⁸⁴ Ministry of Finance, ‘Head E – Judicature’ (Ministry of Finance, 2024), <<https://www.mof.gov.sg/docs/librariesprovider3/budget2024/download/pdf/15-judicature-2024.pdf>>, accessed 20 February 2025

⁴⁸⁵ Written Reply by Mr Chan Chun Sing’s, Minister for Education and Minister-in-charge of the Public Service, *Parliamentary Questions on salaries of Judicial Appointment Holders* (Parliament Sitting: 2 Jul 2024)

⁴⁸⁶ *ibid.*

⁴⁸⁷ Chan Sek Keong, ‘Securing and Maintaining the Independence of the Court in Judicial Proceedings’ (2010) 22 SACLJ, 234

⁴⁸⁸ Constitution of the Republic of Singapore (2020 Rev Ed), Art 98(8).

298. The political responsibility for the costs of the overall functioning of the judiciary lies with the Ministry of Finance. As explained above, the Ministry of Finance, as part of Singapore's annual budget, conducts annual projections and revisions of the judiciary's running costs. The budget allocated to the judiciary is then designed in line with the three key objectives of a) ensuring fiscal sustainability; b) supporting growth; and c) promoting equity.⁴⁸⁹

299. The projected total expenditure of the Judicature in each financial year is published in the annual reports,⁴⁹⁰ and any significant changes in the expenditure under each category is. Moreover, the breakdown of precise development expenditures by project is provided in the annual report. For example, in FY2023, the increment of 34.3% over the actual FY2022 development expenditure was justified by the increase in progress payments in FY2023 for the addition and alteration works for the Octagon Building.

QUESTION 4: WHAT ARE THE REPORTING AND ACCOUNTABILITY REQUIREMENTS REGARDING THE FUNDS DEFRAIDED FOR THE JUDICIARY?

300. There do not appear to be any special reporting and accountability requirements regarding funds defrayed for the judiciary compared to funds defrayed for any other purpose. The Constitution makes clear that the Minister of Finance shall, before the end of the financial year, prepare estimates of revenue and expenditure, which shall be presented to Parliament after being approved by the Cabinet.⁴⁹¹

301. As monies defrayed for the judiciary are authorised under Art 98(6) of the Constitution and is charged on the Consolidated Fund, it is not subject to authorisation by the Minister of Finance.⁴⁹² However, the Judiciary's expenditure is reported in the Annual Budget, with a breakdown of expenditure estimates for the following year, and the actual expenditure. The

⁴⁸⁹ Ministry of Finance, 'Singapore's Fiscal Policy' (Ministry of Finance, 2025), <<https://www.mof.gov.sg/policies/fiscal>>, accessed 20 February 2025

⁴⁹⁰ Ministry of Finance, 'Head E – Judicature' (Ministry of Finance, 2024), <<https://www.mof.gov.sg/docs/librariesprovider3/budget2024/download/pdf/15-judicature-2024.pdf>>, accessed 20 February 2025

⁴⁹¹ Constitution of the Republic of Singapore (2020 Rev Ed), Art 147(1)

⁴⁹² Financial Procedure Act 1966, s 12(2)

total expenditure is also further broken down by programme and project, and assessed according to the key performance indicators of fairness, accessibility, integrity and respect.⁴⁹³

QUESTION 5: WHAT ROLE, IF ANY, DOES THE HEAD OF THE JUDICIARY PLAY IN RELATION TO ACCOUNTABILITY FOR THE USE OF PUBLIC MONIES?

302. The Office of the Chief Justice (which is part of the Supreme Court) oversees the integrated administration of the judiciary, and one of the integrated and corporate functions of the three courts is “Finance and Procurement”, which requires the “implementation of frameworks that promote financial prudence, value-for-money practices and financial accountability”.⁴⁹⁴ However, it is unclear precisely what frameworks have been implemented as part of this function.

QUESTION 6: WHO APPOINTS ADMINISTRATIVE AND OTHER SUPPORT STAFF FOR JUDGES?

303. The Registrars serve a dual role – they perform a judicial role while also ensuring “the smooth and expeditious resolution of Supreme Court cases and matters docketed to specialised lists through active case management”.⁴⁹⁵ Registrars, Deputy Registrars and Assistant Registrars of the Supreme Court are appointed by the President, on the recommendation of the Chief Justice.⁴⁹⁶

⁴⁹³ Ministry of Finance, ‘Head E – Judicature’ (Ministry of Finance, 2024), <<https://www.mof.gov.sg/docs/librariesprovider3/budget2024/download/pdf/15-judicature-2024.pdf>>, accessed 6 December 2024

⁴⁹⁴ Government of Singapore, ‘Role and structure of the Supreme Court’ (SG Courts, 4 November 2024), <<https://www.judiciary.gov.sg/who-we-are/role-structure-supreme-court/structure>>, accessed 6 December 2024

⁴⁹⁵ Government of Singapore, ‘Role and structure of the Supreme Court’ (SG Courts, 4 November 2024), <<https://www.judiciary.gov.sg/who-we-are/role-structure-supreme-court/structure>>, accessed 6 December 2024

⁴⁹⁶ Supreme Court of Judicature Act 1969, s 61(1)

QUESTION 7: WHAT INTERFACE IS THERE, IF ANY, BETWEEN THE THREE ARMS OF STATE RELATING TO THE ADMINISTRATION OF THE COURTS?

304. Although the Constitution explicitly declares that the judiciary is independent,⁴⁹⁷ much of the administration of the courts is dependent upon executive decision. The Chief Justice is required to be consulted for most decisions (see below), but the Constitution provides that, at least formally, it is for the President to appoint judges.

Allocation of judges

305. The Chief Justice may, on an ad hoc basis, allocate a Senior Judge⁴⁹⁸ or International Judge⁴⁹⁹ to hear and determine a specific case or class of cases. Aside from that, however, the cases and judges in Singapore are split amongst the Supreme Court, State Courts and the Family Justice Courts.⁵⁰⁰ It is unclear how judges are allocated, but the judges are first allocated by the Judicial Service Commission to the respective courts based on manpower constraints and areas of expertise or preference. The Judicial Service Commission has the powers of appointment, confirmation, emplacement on the permanent establishment, promotion, transfer, disciplinary control and dismissal over Judicial Service Officers.⁵⁰¹ Within the Supreme Court, the Registry is the body which allocates.⁵⁰²

Judicial education

306. The Singapore Judicial College is established under the Supreme Court of Singapore.⁵⁰³ The College provides induction and continuing training for Judges, and also extends to the

⁴⁹⁷ Constitution of the Republic of Singapore (1999 Rev Ed) Art 93

⁴⁹⁸ Constitution of the Republic of Singapore (2020 Rev Ed), Art 95(9)(a)

⁴⁹⁹ Constitution of the Republic of Singapore (2020 Rev Ed), Art 95(9)(b)

⁵⁰⁰ Government of Singapore, 'About the Singapore courts', (SG Courts, 17 July 2021), <<https://www.judiciary.gov.sg/who-we-are/about-singapore-courts>>, accessed 6 December 2024

⁵⁰¹ Singapore Judicial Service, 'The JSC -- Introduction' (Singapore Judicial Service, 9 January 2025), <<https://www.jsc.gov.sg/about-us/the-jsc/>>, accessed 10 January 2025

⁵⁰² Government of Singapore, 'Role and structure of the Supreme Court' (SG Courts, 4 November 2024), <<https://www.judiciary.gov.sg/who-we-are/role-structure-supreme-court/structure>>, accessed 6 December 2024

⁵⁰³ Government of Singapore, 'Who we are', (Singapore Judicial College, 18 March 2024), <<https://www.judiciary.gov.sg/singapore-judicial-college/vision-mission>>, accessed 6 December 2024

technical assistance and educational programmes that are offered to judicial officers from other jurisdictions.⁵⁰⁴

307. The Singapore Judicial College's Board of Governors includes international judges from the Singapore International Commercial Court, senior judges in the various courts in Singapore, and a university professor from the New York University of Law.⁵⁰⁵ The College's curriculum is also periodically reviewed by the subject-matter advisory panels,⁵⁰⁶ which comprise members of each relevant court.

Appointments

308. Art 95(1) of the Constitution states that "The Chief Justice, the Justices of the Court of Appeal, the Judges of the Appellate Division and the Judges of the High Court shall be appointed by the President if he, acting in his discretion, concurs with the advice of the Prime Minister".⁵⁰⁷

309. The President appears to be the authority which decides when there is a need for more judges. It is within his discretion to appoint Judicial Commissioners,⁵⁰⁸ Senior Judges,⁵⁰⁹ or International Judges,⁵¹⁰ following the advice of the Prime Minister. It is unclear who decides change when work is not being done efficiently, but Art 95(5) enables a Judicial Commissioner, Senior Judge or International Judge to be appointed to hear and determine a specific case only⁵¹¹ or to be appointed for a specific period.⁵¹² A person holding high judicial office (such as a Supreme Court Judge) can only be removed on the ground of

⁵⁰⁴ Government of Singapore, 'Chief Justice's Message' (Singapore Judicial College, 10 August 2021), <<https://www.judiciary.gov.sg/singapore-judicial-college/chief-justice-message>>, accessed 6 December 2024

⁵⁰⁵ Government of Singapore, 'Board of Directors' (Singapore Judicial College, 14 November 2024), <<https://www.judiciary.gov.sg/singapore-judicial-college/board-of-governors>>, accessed 6 December 2024

⁵⁰⁶ Government of Singapore, 'Subject-Matter Advisory Panels' (Singapore Judicial College, 30 June 2024), <<https://www.judiciary.gov.sg/singapore-judicial-college/about-college/subject-matter-advisory-panels>>, accessed 6 December 2024

⁵⁰⁷ Constitution of the Republic of Singapore (2020 Rev Ed), Art 95(1)

⁵⁰⁸ Constitution of the Republic of Singapore (2020 Rev Ed), Art 95(4)(a)

⁵⁰⁹ Constitution of the Republic of Singapore (2020 Rev Ed), Art 95(4)(b)

⁵¹⁰ Constitution of the Republic of Singapore (2020 Rev Ed), Art 95(4)(c)

⁵¹¹ Constitution of the Republic of Singapore (2020 Rev Ed), Art 95(5)(a)

⁵¹² Constitution of the Republic of Singapore (2020 Rev Ed), Art 95(5)(b)

misbehaviour or of inability, infirmity of body or mind or any other cause. The Constitution provides that the President shall appoint a tribunal, and may, on the tribunal's recommendation, remove the person from office.⁵¹³

⁵¹³ Constitution of the Republic of Singapore (2020 Rev Ed), Art 98(3)