



**Council of State of Belgium**

## **Magistrate Assessment**

*Seminar organized by the Association of the Councils of State and the Supreme  
Administrative Jurisdictions of the EU*

*With the collaboration of the Council of State of Belgium*

*With the support of the European Commission*

Austria

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## Questionnaire

### Introductory remark:

Many questions concern the situation at the respective Court. The rules regarding the service of the judges of the Supreme Court are also applicable for members of the Administrative Court according to Art. 7 of the Administrative Court Act. Therefore the articles 50 to 56 of the Act concerning the service of judges and prosecutors could be considered as applicable for the assessment of judges of the Administrative Court. Article 51 of this act does - other than for judges of the first and second instance in normal justice - not foresee an assessment ex officio after the nomination of Supreme Court Judges. The other cases of assessment (paragraph 3: the president thinks the former mark is no longer correct, paragraph 4: the judge thinks the former mark is no longer correct, paragraph 5: the judges' performance is weaker than "very good") might in principle apply. In this context it must be mentioned that it is practically necessary to have the mark "excellent" for a judge or civil servant to become member of the Administrative Court. For the time being there was no occasion for a (new) assessment of a member of the Administrative Court. The following answers therefore apply for judges in general and are of no practical relevance for my court.

**I. a)** Does your country have an assessment system covering all its magistrates (judicial and/or administrative)?

See introductory remark

b) Within your court, does the assessment system vary depending on the function of individual magistrates (e.g. President, chamber presidents, members of the public prosecutor's office)?

An assessment of the President or the Vice President of the Administrative Court is out of question. For the other members there is difference between chamber presidents and reporting judges.

c) Briefly describe the assessment system or systems used for magistrates in your court (if necessary, please include the relevant texts).

See introductory remarks and the following answers.

**II.** What is the nature of the regulations which establish and govern the assessment of magistrates

in your court (e.g. constitutional, legislative or regulatory framework, guidelines, regulations determined by the court itself or the president)?

The assessment of magistrates is ruled by a (non constitutional) act of Parliament, the Law concerning the service of Judges and Prosecutors.

**III.** What is(are) the goal(s) of your court's magistrate assessment system:

- improve the organisation and functioning of the court?
- identify the strengths and weaknesses of individual magistrates?
- compare magistrates against each other?
- other?

The goal of the law mentioned above is to identify strengths and weaknesses of individual magistrates and to compare magistrates against each other when they are candidates for higher positions.

**IV. a)** Against what criteria are magistrates in your court assessed (e.g. productivity, quality of work, organisational skills, willingness to take initiatives, decision-making mindset, interaction with colleagues, relations with litigants, continuing training, ability to train others, level of involvement in the court's operation)?

The criteria magistrates are assessed against are according to Art. 54 of the Act concerning service of judges and prosecutors:

- Juridical knowledge, in particular knowledge of regulations necessary to fulfil the individual judges' duties
- Skills and comprehension
- Diligence, tenacity, exactness, reliability, fondness of making decisions and purposefulness
- Social skills, ability to communicate, in particular with parties
- Expressiveness (written and oral) in German, if needed, foreign language skills
- Behaviour, in particular towards superiors, colleagues and parties, as well as behaviour out of service, if it has impacts on service
- For Presidents of first and second instance courts and for candidates for such positions the ability for this function
- The success of employment

b) Are these criteria weighted? If yes, please explain.

No.

c) If assessment charts or tables are available, please include them.

No.

**V.** Does the assessment system offer any guarantees designed to safeguard the independence and impartiality of magistrates in your court? If yes, what are these guarantees?

There are no rulings concerning substantial law, but the independence is safeguarded because the assessment is done by special bodies (Personalsenate) consisting of judges, who act independently.

**VI. a)** How often are magistrate assessments carried out in your court?

See introductory remarks.

**b)** Describe the various steps in the procedure.

The reporting judge of the Personalsenate drafts the assessment report taking into consideration the criteria of Art. 54. Then the chamber (Personalsenate) decides.

**c)** Is the assessment preceded by discussions between the assessor(s) and the magistrate undergoing assessment? If yes, what is the nature and purpose of these discussions?

Usually not.

**VII.** Before the assessment is carried out, is information gathered on the magistrate undergoing assessment? If yes, what information and how is it gathered?

Yes. Information (including statistics) comes from the respective court's president; moreover, members of the appeal court competent to decide on appeals against the judges' decision are informally asked to give their opinion.

**VIII.** Are there any objectives to be attained by the magistrate undergoing assessment? If yes, what are they and how are they set (e.g. productivity and/or qualitative standards)?

Apart from Art 54 there are no such objectives.

**IX.** What authority carries out the assessment? Is this an internal or external authority of the court? Is it a collective body? If yes, what is its makeup? What training do assessors receive?

In normal justice it is - as mentioned - the Personalsenate. There exist three kinds of such a body:

- At the level of the Landesgerichte (for district courts and for the members of the Landesgericht itself)

- At the level of the Oberlandesgerichte (Courts of Appeal) (for members of the Courts of Appeal and for the Presidents and Vice Presidents of the Landesgerichte)

- At the level of the Supreme Court (for its members and the Presidents and Vice Presidents of the Courts of Appeal)

These bodies consist of the President and one Vice President of the respective court ("Virilisten") and of other judges as members. These members are elected by the judges. The number of elected members differs, but is always higher than two.

At the Administrative Court no Personalsenat is established according to the Administrative Court's Act. Therefore - in case of need - the decision could only be taken by the plenary assembly of the Court, consisting of all its members.

There is no special training of the assessors. But Presidents and Vice Presidents of Courts are usually experienced in question of the administration of judges. There are also special training for this kind of career within the normal justice.

**X.** a) What form does the final decision resulting from the assessment take? Is it a general evaluation (i.e. the magistrate is rated as either good or poor) or is a more detailed evaluation provided on a case-by-case basis?

The final decision results in a general evaluation, a kind of mark: excellent, very good, good, appropriate, insufficient

b) On what is the final decision based (e.g. standard table filled in by the assessor, detailed report)?

Detailed report

c) To what extent does this decision influence the individual situation of the magistrate in question (e.g. positive or negative financial impact, repercussions on career prospects, disciplinary action)?

There is no financial impact but it is relevant for the career. If the judge is to be blamed for a poor performance, disciplinary sanctions might be taken independently from the assessment.

**XI.** a) Is the magistrate in question given access to a draft assessment regarding which he or she may make observations before a final assessment decision is taken?

Usually not.

b) May the magistrate lodge either a judicial or non-judicial appeal against the findings of the assessment? If yes, please briefly describe the various appeal options.

There is (only) judicial appeal to the higher "Personalsenat".

There is no appeal against the decision of the Personalsenat of the Supreme Court and there would be none against a decision of the Administrative Court's plenary assembly.

**XII.** a) Is an assessment file held on each magistrate? If yes, who holds the file and what does it contain (e.g. activity reports, assessment reports, observations by the magistrate in question, final decision)?

The results of the assessment become part of the personal file of the magistrate.

b) Who may consult this file?

The judge himself and each Austrian judicial or administrative authority in case of need for a certain procedure are entitled to consult it.

c) Is the file confidential? If yes, how is this confidentiality guaranteed?

Yes. All civil servants who use the file have to respect official secrecy (Amtsgeheimnis).

**XIII.** a) Has case law been invoked regarding the legal admissibility of the current assessment system (particularly with regard to the Constitution or the principles of the rule of law)?

No.

b) Has case law been invoked regarding compliance of the assessment system with international treaty law, specifically the European Convention on the Protection of Human Rights and Fundamental Freedoms?

No.

**XIV.** Please provide any additional information you consider to be relevant concerning the current assessment system for magistrates in your country (or regarding the absence of such a system)?

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