Association des Conseils d'Etat et des Juridictions administratives suprêmes de l'Union européenne a.i.s.b.l.

Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.

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

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ESTONIA

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Introductory statement

This questionnaire has been drawn up for member courts and observers of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union which have set up an assessment system for their magistrates. Member countries which do not have such a system are asked to provide any observations and thoughts regarding the principle of assessing magistrates and the methods used to do so.

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

In Estonia there is no assessment system covering all judges. The Courts Act establishes only that the suitability to office of judges of less than three years length of service is assessed once a year. The Chairman of the corresponding court where such a judge is employed submits his or her opinion about the judge to the judge's examination committee once a year.

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

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

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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 submission of opinions on the judges of less than three years lengths of service is regulated by the following:
1) the Courts Act (passed by the parliament of the Republic of Estonia);
2) the rules of procedure of the judge's examination committee (adopted by the committee itself).

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?

Other: the aim of submitting opinions concerning judges of less than three years length of service is to assess the suitability of the judge to the office.

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 of assessment in the opinion submitted about a judge of less than three years length of service are his or her moral character, abilities and skills necessary for working as a judge, and personal characteristics. An opinion must set out the following:
I Concerning the work of judge:
1) number of resolved civil, criminal and/or administrative cases as compared to the corresponding average figure for the court and the average figure for the whole country;
2) number of rulings and judgments which have been annulled or amended;
3) observance of time-limits of proceedings;
4) organisation of work and records management;
5) participation in training;
6) other essential information characterising the work of the judge (including information collected by way of supervision).

The correctness of judicial decisions is not to be assessed in this context.
II Concerning personal characteristics:
7) abilities;
8) character, including moral character;
9) relations with colleagues and citizens.

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

No.

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

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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?

No.

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

The Chairman of a court shall submit an opinion about a judge of less than three years length of service once a year.

b) Describe the various steps in the procedure.

1. Once a year, chairmen of courts shall submit their opinion concerning judges of less than three years length of service employed in the corresponding courts to the judge’s examination committee.
2. a) If the committee receives no information about the unsuitability of the judge to the office the

chairman of the committee shall so inform the Chief Justice of the Supreme Court.

b) If the committee receives information about unsuitability of a judge to the office, the committee shall assess the suitability of the judge to the office. The committee shall hold a session where the judge whose suitability is assessed is heard. Thereafter the committee shall decide whether the judge is suitable for the office and shall submit its opinion to the Supreme Court *en banc.*

3.The declaration of unsuitability of a judge to the office is made by the Supreme Court *en banc*.

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?

Yes. If the judge's examination committee receives information about unsuitability of a judge of less than three years of length of service to the office the committee shall hold a session where the judge whose suitability is assessed is heard.

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

See reply to IV. a.

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)?
No.

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?

Chairmen of courts shall submit their opinion concerning suitability to office of judges of less than three years length of service employed in the corresponding courts to the judge's examination committee.

The judge's examination committee is an independent ten-member body comprised of two judges of the court of first instance elected by the Court *en banc*, two circuit court judges, two justices of the Supreme Court, one jurist designated by the council of the Law Faculty of the University of Tartu, a representative of the Ministry of Justice designated by the Minister of Justice, a sworn advocate designated by the leadership of the Bar Association and a public prosecutor designated by the Chief Public Prosecutor.

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?

A concrete judge of less than three years length of service is assessed - whether or not he or she is suitable for the office. A judge may be released from office due to unsuitability only within the first three years as of his or her appointment to office, whereas the judge shall be declared unsuitable for the office by a Supreme Court *en banc* decision. Thereafter the Chief Justice of the Supreme Court

shall, on the basis of the Supreme Court *en banc* decision, make a proposal to the President of the Republic to release the judge from office due to unsuitability.

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

At the Supreme Court *en banc* session two reasoned opinions concerning the suitability of a judge of less than three years length of service are analysed: the opinion of the chairman of a corresponding court and the opinion of the judge's examination committee. The opinions must set out the required aspects concerning the work of a „young judge", see reply under IV a.

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)?

When the Supreme Court *en banc* declares a judge of less than three years length of service unsuitable for the office by its decision, the judge is released from office (by a resolution of the President of the Republic). This person can no longer be employed as a judge.

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?

A reasoned proposal to release the judge from office shall be presented to the judge whose suitability to office is assessed.

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.

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)?

No.

b) Who may consult this file?

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

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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)?

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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?

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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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