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

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Council of State of Belgium

Magistrate Assessment

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

In Lithuania all judges are covered by an assessment system established in the Law on Courts (Articles 91^1-91^5). The Law on Courts provides main principles of the assessment while more detailed process is determined by the Procedure of the Assessment of Judges Activities approved by the Judicial Council Resolution No 13P-162-(7.1.2). It regulates various aspects concerning the assessment of the professional activities of Presidents, Vice Presidents, Chairmen of divisions and other judges of courts, establishes the content and the periodicity of assessment of judges' activities, defines the organization of the assessment and the procedure as well as other related issues.

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)?

There are certain differences concerning the assessment of the President and the Vice President of the Supreme Administrative Court of Lithuania. While assessing the activities of the President and the Vice President of the Court the information concerning the quality and the efficiency of their work shall also be gained by analysing the data about the internal court administration assigned to the judges and the fulfilment of supervision functions related to the court administration (e.g. planning of court finances, drafting of court budgetary projects, organization of work in structural units of the court, psychological atmosphere among the employees of the court, security of the court building and court premises, provision of the inventory and other technical means, fulfilment of the assignments performed by the subjects responsible for the supervision of administrative activities, representation of the court interests among other institutions).
In addition, a reasoned conclusion for the assessment of the President of the Supreme Administrative Court of Lithuania shall be prepared by a specially formed commission. Under a general rule, a reasoned conclusion on the jurisdictional and non-jurisdictional activities of the judge whose activities are subject to the assessment to the Permanent Commission for the Assessment of Judges' Activities (hereinafter the Assessment Commission) shall be presented by the President of the Supreme Administrative Court of Lithuania. However, if the President of the Court is subject to the assessment, the reasoned conclusion to the Assessment Commission shall be presented by the commission formed by the Vice President of the Court which consists of five judges including the Vice President of the Court.

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

The assessment of judges' activities is a procedure which obtains information concerning the quality and efficiency of judges' activities, it also helps to identify deficiencies of judges' in professional, organisational and administrative activities that determine the necessity to improve the qualification and the level of professional activities to relevant persons.

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 relevant aspects of the assessment of judges' activities are determined by the Law on Courts (Articles 91^1-91^5) and the regulations adopted by the Judicial Council (the Procedure of the Assessment of Judges' Activities). The Judicial Council is an executive body of the self-governance

of courts ensuring the independence of courts and judges which is comprised of 21 judges from various courts of Lithuania. Certain issues on the Permanent Commission for the Assessment of Judges Activities are established by the Regulation on the Permanent Commission for the Assessment of Judges Activities approved by the Judicial Council Resolution No 13P-147-(7.1.2). Criterions on the selection of judges pursuing the career are established by the Judicial Council Resolution No 13P-122-(7.1.2.).

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?

Pursuant to Article 91[1] of the Law on Courts and Paragraph 2 of the Procedure of Procedure of the Assessment of Judges Activities, the objective of the assessment of judges' activities is to analyse the capacity of judges to use theoretical knowledge and skills in the practice, establish the strengths and weaknesses of the professional activities of judges and to apply the negative results of the assessment of judges' activities in organising the training of judges, the improvement of judges' qualification and promoting the improvement of the professional activities. A supplementary aim while assessing the activities of President and Vice President is to analyse the leading, organizational and administrative skills of judges.

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)?

While assessing the activities of judges quantitative and qualitative professional performance indicators, personal and performance characteristics of a judge, jurisdictional and non-jurisdictional activities of judges are taken into account.

*In assessing the **jurisdictional** activities of judges the following factors directly related to the professional performance shall be analysed:*
- Statistical data on the procedural decisions adopted by judge;
- Instances related to the unjustifiable delays of case hearings;
- Quality of managing the proceedings (e.g. perceptiveness, consideration, behaviour with parties of the proceedings and other participating persons, ability to hear speeches of every person participating in the proceedings, attentiveness);
- Clarity, consistency and expression of the procedural decisions adopted by judge.

*While assessing the **non-jurisdictional** activities of judges the following factors related to the professional performance shall be analysed:*
- Communication abilities of judge (e.g. professional communication with other judges, lawyers, prosecutors, employees and other persons of the court were judge works, other courts and institutions);
- Abilities to organise the work (e.g. proper planning and organisation of work, ability to devote enough time for each issue under consideration, diligence, punctuality, compliance with the terms established by the law while performing duties related to professional activities of judge);
- Other performance characteristics of judge (e.g. in service training, scientific–pedagogical activities, participation in self-governance of courts, social activities of the community, drafting of

legal acts, usage of common and procedural language, knowledge of foreign languages, working skills related to the use of information technologies and other);
- Personal characteristics of judge (responsibility, communication skills, tact and others);
- Compliance with the requirements of the Judicial Code of Ethics.

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

These criteria may be weighted by granting up to 25 points when deciding on the promotion of judge or the appointment for a new term of office of President of the court or Vice President of the court, on the request of the judge himself or when the judge's weaknesses have been determined more than twice under the control procedure of administrative activities. In these cases the Assessment Commission in the resolution part of the conclusion shall identify whether the judge seeking judicial promotion or the President of the court, the Vice President of the court seeking for the appointment for a new term of office comply with the requirements applied to such candidates and give up to 25 points. The aforementioned conclusion is evaluated by the Selection Commission for the Selection of Candidates to Judicial Office. This Commission helps the President of the Republic to select candidates for judicial office.

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

The assessment charts are provided in the Annex to the Procedure of the Assessment of Judges' Activities. The form of the charts corresponds with every single factor of jurisdictional and non jurisdictional judges' activities. Please see the Answer to Question IV a).

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?

Paragraph 4 of the Procedure of the Assessment of Judges' Activities establishes that the procedure for the assessment of judges' activities shall comply with principles of legal certainty and efficiency, legitimate expectations and judicial independence in order to provide conditions for thorough and objective assessment of the professional activities of judges. Pursuant to Paragraph 6 of the Procedure of the Assessment of Judges' Activities, jurisdictional and non-jurisdictional activities of judges shall be evaluated strictly in accordance with the principle of judicial independence using the statistical data related to the administration of justice without checking the legitimacy and validity of separate procedural judgments.

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

There are two types of the assessment of judges' activities–periodical assessment and extraordinary assessment.
*The **periodical** assessment of the activities shall be performed in the following cases:*
- The first assessment of the judge's activities shall be after a lapse of three years following his appointment to judicial office. The aim of this assessment is to determine the level of work organisation, legal knowledge and professional ethics of the person who holds the office of a judge. In case the deficiencies of the professional activities are identified, it shall be brought to the attention of the assessed judge and proposals concerning the elimination of these deficiencies by organising the training of a judge and the in-service training shall be put forward;
- Every five years after the first assessment. This assessment shall be aimed at identifying whether a person during the established period adequately performed the duties of a judge.

*The **extraordinary** assessment of the judge's activities shall be carried out when deciding on the promotion of the judge or on the appointment for a new term of office of the President of the court, the Vice President of the court, on the request of the judge himself or when the judge's weaknesses have been determined more than twice under the control procedure of the administrative activities.*

b) Describe the various steps in the procedure.

The procedure of the assessment of judges' activities may be divided into the following steps:

1) Initiation of the assessment. The periodical assessment is conducted every five years. The right to initiate the extraordinary assessment of judges' activities rests on:
- The President of the court–the Judicial Council or the President of the court himself;
- The Vice President of the court–the Judicial Council, the President of the court in which the judge to be assessed is employed, or the Vice President of the court himself;
- Other judge–the Judicial Council, the President of the court in which the judge to be assessed is employed, his Vice President or the judge himself.

2) Presentation of reasoned conclusion to the Assessment Commission. The President of the Supreme Administrative Court of Lithuania shall present a reasoned conclusion on the jurisdictional and non-jurisdictional activities of the judge whose activities are subject to the assessment to the Permanent Commission for the Assessment of Judges' Activities. If the President of the Court is subject to the assessment, the reasoned conclusion to the Commission shall be presented by the commission formed by the Vice President of the Court which consists of five judges including the Vice President of the Court. The conclusion includes information on jurisdictional and non-jurisdictional activities of the judge as described in Answer to Question IV a). The judge whose activities are subject to the assessment shall be acquainted with the reasoned conclusion by signing the document. The judge who disagrees with the statements presented in the conclusion no later than in 5 (five) calendar days from the day on which he was acquainted with the conclusion shall have a right to present his written explanations to the Assessment Commission.

3) The Assessment Commission meeting. Judges' activities shall be assessed during the Assessment Commission meeting. During the ordinary assessment of judges' activities the participation of the assessed judge shall not be necessary unless the Assessment Commission decides otherwise. During the extraordinary assessment of judges' activities the assessed judge shall participate in the Assessment Commission meeting.
The judge whose activities shall be assessed until the day of the Assessment Commission meeting may present the reasoned motion for removal of the Commission members. The motion for the removal shall be in a written form and indicating the motives.
Member of the Assessment Commission having regard to the provided reasoned conclusion by the President of the Court (or the commission in case the President of the Court is under assessment) shall present the working results of the assessed judge; describe his subject, organisational and personal characteristics. If the reasoned conclusion is not comprehensive the member of the Commission may offer the Commission to adjourn the assessment procedure and ask for a repeated conclusion.
After the presentation of the conclusion concerning the professional activities of the judge, the members of the Assessment Commission shall listen to the judge whose activities are subject to assessment and ask questions. Questions concerning the professional activities, subject, organisational and personal characteristics and other important circumstances shall be addressed to the judge.

4) Adoption of the conclusion by the Assessment Commission. The Commission after the assessment of the judge's activities shall write a reasoned conclusion. The conclusion shall be adopted by the

majority of votes. The Chairman and the Secretary of the Commission no later than in 5 (five) working days after the meeting shall sign the conclusion. Having discussed the relevant issues and listened to the opinion of every member of the Commission, the member of the Commission who was responsible for the presentation of information on the judge's assessment delivers general conclusions and having offered one or alternative versions of the draft conclusion offers to vote for the final conclusion of the Assessment Commission. The Commission member who disagrees with the opinion of the majority shall have a right to present a dissenting opinion.

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?

The judge may present his opinion concerning the various steps of the procedure in the following cases:
- The judge may provide written explanations concerning the reasoned conclusion provided by the President of the court (the commission in case the President of the court is subject for the assessment) he/she is employed to the Assessment Commission.
- During the meeting of the Assessment Commission the judge is entitled to give explanations and answer various questions concerning the professional activities, subject, organisational and personal characteristics and other important circumstances.

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

Pursuant to Paragraph 9 of the Procedure of the Assessment of Judges' Activities while assessing the activities of judges, the information about the quality and efficiency of the judicial activities may be gained by:
- Directly or using means allowed by the procedural laws observing the course of the proceedings of the assessed judge;
- Evaluating the statistical indicators of the judge's activities (e.g. the number of cases heard within a specific period);
- Examining the data concerning training, in-service training and results of the knowledge tests, internship abroad, as well as scientific and pedagogical activities of the judge;
- Analysing the applications, complaints of persons not related to the administration of justice, materials of the investigation collected by the control procedure of the administrative activities.
- Evaluating the written and oral explanations of the judge.
If activities of the President of the court and the Vice President of the court are assessed the information concerning the quality and the efficiency of their work shall also be gained by analysing the data about the internal court administration assigned to the judges and the fulfilment of supervision functions related to the court administration.

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)?

There are no concrete objectives set for the judge to achieve, for example decide certain number of cases. However, the goals judge should pursue may be drawn from the criteria against which he is assessed, i.e. the quantitative and qualitative professional performance indicators, personal and performance characteristics of a judge, jurisdictional and non-jurisdictional activities of judges as described in Answer to Question IV a) (Paragraph 6 of the Procedure of the Assessment of the Judges' Activities.

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?

The assessment is carried out by the Permanent Commission for the Assessment of Activities of Judges. This commission is formed under the regulations of the Law on Courts set in Paragraph 4 of Article 91[3]. The Assessment Commission shall be formed for the term of office of the Judicial Council from seven members: three of them must be not judges. Four members of the Assessment Commission shall be elected from the judges by the Judicial Council, three members shall be appointed by the President of the Republic. The Chairman of the Commission from the appointed members shall be elected by the Judicial Council.

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 Permanent Commission for the Assessment of Activities of Judges after the assessment of the judge's activities shall write a reasoned conclusion. In the conclusion the Commission shall state the deficiencies of the professional, organisational or administrative activities of the assessed judge if they are found and present proposals concerning the elimination of these deficiencies.
After the assessment of judge's activities who is seeking judicial promotion as a President of the court or Vice President of the court or the appointment for a new term of office the Commission shall identify in the conclusion whether the judge complies with the requirements applied to such candidates and shall grant up to 25 points to him.
If the assessment of the results of judges' activities shows the circumstances concerning failure to carry out administrative functions assigned to him, breaches of the Judicial Code of Ethics, circumstances calling for disciplinary action the Chairman on behalf of the Assessment Commission shall provide a reasoned motion to the Judicial Ethics and Discipline Commission regarding the possibility to start a disciplinary proceeding against the judge and inform the Judicial Council and the President of the Republic regarding the possibility to dismiss the judge or remove him from office.

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

The final decision is based on a number of factors: the reasoned conclusion provided by the President of the court or special commission of the court submitted to the Assessment Commission, written and oral explanations of judges undergoing the assessment and discussions of the Commission members during the Assessment Commission meeting.

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)?

Basically, the conclusion adopted by the Assessment Commission is one of the factors evaluated by the Selection Commission for the selection of candidates to judicial office. It may also be a background to start disciplinary actions, to dismiss the judge or remove him from office. The conclusion is also relevant in order to identify how the judge could improve his jurisdictional and non jurisdictional activities.

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?

The judge is not given the access to a draft of the final decision. However, he/she may submit written explanations concerning the reasoned conclusion provided by the President of the court (or the commission composed in the court when the President of the court is subject of the assessment) which is one of the factors that the Assessment Commission bears in mind while adopting the final conclusion. In addition the judge may give oral explanations during the meeting of the Assessment Commission.

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.

Pursuant to Article 91[4] of the Law on Courts and Paragraph 29 of the Procedure of the Assessment of Judges' Activities, the judge whose activities were subject to the assessment is entitled to appeal within one month of the day on which he was acquainted with the assessment results against the results to the Judicial Council. After the review of the complaint the Judicial Council may decide:
- to meet the complaint and revoke the conclusion of the Assessment Commission on the judge's assessment fully or partially;
- to reject the complaint.
The Judicial Council shall quash the conclusion of the Assessment Commission and inform the person who brought the complaint against the conclusion and the Chairman of the Commission in case it establishes that the conclusion of the Assessment Commission concerning the assessment of judge's activities is invalid or that the assessment of judge's activities have been performed by violating the requirements identified in the Rules of the Permanent Commission for the Assessment of Judges' Activities and the Procedure of the Assessment of Judges' Activities.
The judge whose complaint was satisfied and the conclusion concerning the results of the assessment of his activities adopted by the Assessment Commission was quashed shall be assessed once again during the nearest meeting of the Assessment Commission.

The judge may also lodge a judicial appeal against the findings of the assessment. The conclusion adopted by the Assessment Commission may be evaluated by the Judicial Council which is entitled to give an advice to the President of the Republic in respect of the appointment of judges, their promotion, transfer and removal from office. Therefore, it might be concluded that it raises legal consequences to the judges under assessment. As a general rule every interested person shall be entitled to apply to the court in the manner prescribed by law for the protection of his infringed or contested right or interest protected under law.

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 conclusion of the Assessment Commission and the dissenting opinion of the Assessment Commission member shall be enclosed in the personal file of the judge. Personal files of judges are administered by the National Courts Administration.

b) Who may consult this file?

When the judge whose activities were subject to the assessment seeks judicial promotion the National Courts Administration due to the established procedure shall provide copies of the conclusion of the Assessment Commission to the Selection Commission for the Selection of Candidates to Judicial Office. When necessary, copies of the conclusion of the Commission concerning the assessment of judges' activities may be provided to the Judicial Council.

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

Pursuant to Paragraph 36 of the Procedure of the Assessment of Judges' Activities, materials of judges' assessment may be used without infringing the security requirements of legal acts regulating the rights of personal data protection, the protection of the state, official, commercial, professional and other law protected secrets.

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)?

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?

There is no case law regarding compliance of the assessment system with the Constitution and international treaty law so far.

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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