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

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General Comment

In Malta there is a complete separation between members of the judiciary (judges of the superior courts and magistrates of the lower courts) on the one hand and public prosecutors on the other; public prosecutors are not members of the judiciary.

The following comments and answers refer to members of the judiciary (judges and magistrates) only.

I. a) There is no system – formal or informal – for the assessment of the performance of members of the judiciary. The only provisions of law or practice – described under I.c below – which are relevant to this issue do provide a measure of oversight but are not strictly part of an assessment system.

b) No.

c) The provisions which may be relevant to this issue are the following:

i) In terms of art. 101A(11)(f) of the Constitution, one of the functions of the Commission for the Administration of Justice shall be:

to draw the attention of any judge or magistrate on any matter, in any court in which he sits, which may not be conducive to an efficient and proper functioning of such court, and to draw the attention of any judge or magistrate to any conduct which could affect the trust conferred by their appointment or to any failure on his part to abide by any code or codes of ethics relating to him.

In practice, the Commission does not carry out assessments to identify matters on which "to draw the attention" of judges or magistrates but it relies on complaints made in individual cases.

ii)
Every judge and magistrate is required under art. 11 of the Commission for the Administration of Justice Act (Chapter 369 of the Laws of Malta) to submit a report on cases which are still undecided after five years. The relevant provision is as follows:

11. Every judge and magistrate presiding over any court shall, not later than the fifteenth day of January of every year, make a report to the Commission for the Administration of Justice giving a list of all cases pending before the court over which he presides and which have been so pending for a period of five years or more, indicating in the report the reasons why each case is still pending and the time within which the judge or magistrate, as the case may be, expects the case to be disposed of by the said court.

iii) The Ministry of Justice publishes tables1 showing the monthly "output" of each judge and magistrate. In practice, these tables are not very useful because the information contained therein is incomplete: for example, there is no "weighting" of individual judgments, i.e. a judgment on an uncontested claim is given the same numerical weighting as a judgment in a complex case.

II. See answer to I.c, above.

III. The aim of the quoted provisions is the improvement of the justice system. In so far as they may also have the effect of comparing judges and magistrates against each other, this is certainly an undesired and undesirable effect, since it may eventually lead to more emphasis being placed on the "quantity" rather than the "quality" of justice.

IV.

a)
Subject to what has been said above (i.e. that there is no formal or informal assessment system), the more relevant factors seem to be productivity and organisational skills.

b)
No.

c)
The only available tables are those referred to in I.c)iii) above.

V.
In so far as complaints against a judge or magistrate may lead the Commission for the Administration of Justice to "draw the attention" of that judge or magistrate to a particular matter, this is not a threat to his independence or impartiality since the Commission can take no further action on the matter.

VI.
Not applicable.

VII.
Not applicable.

VIII. Not applicable.

IX.
Not applicable.

X.
Not applicable.

XI.
Not applicable.

XII.
No.

XIII. The provisions of law granting powers to the Commission for the Administration of
Justice in regard to judges and magistrates were challenged on the basis of
incompatibility with the Constitution. The challenge was not successful.
http://www2.justice.gov.mt/statistics/default.asp?lng=ENG