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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.

INTRODUCTION

The answers that are provided address only the assessment system of judges. The system of public prosecutors is not regulated by the same provisions and is not addressed here.

The Constitution of the Republic of Slovenia[1] defines that judges shall be independent in the performance of the judicial function and that they shall be bound by the Constitution and laws.[2] Furthermore, it states that the office of a judge is permanent and that the age requirement and other conditions for election are determined by law.[3] Judges are elected by the National Assembly on the proposal of the Judicial Council.[4]

The Judicial Council is composed of eleven members. The National Assembly elects five members on the proposal of the President of the Republic from among university professors of law, attorneys and other lawyers, whereas judges holding permanent judicial office elect six members from among their own number. The members of the council select a president from among their own number.[5]

The main law, regulating the rights and duties of judges, is the Judicial Service Act.[6]

Anyone who fulfils the following general conditions may be elected a judge:[7]

1. he/she is a citizen of the Republic of Slovenia and has an active command of Slovene language;
2. he/she has the capacity to contract and is in generally good health;
3. he/she is at least thirty years of age;
4. he/she has obtained the professional title of a graduate lawyer in the Republic of Slovenia or has nostrified a law degree obtained abroad in the Republic of Slovenia;
5. he/she has passed the lawyer's state examination;
6. he/she is personally suited to holding judicial office.

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1 Constitution of the Republic of Slovenia, Official Gazette of the Republic of Slovenia, n. 33/91-I, 42/97, 66/2000, 24/03, 69/04 in 68/06.
2 Constitution of the Republic of Slovenia, Article 125.
3 Constitution of the Republic of Slovenia, Article 129.
4 Constitution of the Republic of Slovenia, Article 130.
5 Constitution of the Republic of Slovenia, Article 131.
6 Judicial Service Act, Official Gazette of the Republic of Slovenia, n. 19/1994, 8/1996, 24/1998, 45/1999 Skl.US: U-I-144/95, 101/1999, Constitutional Court Decision U-I-175/97, 48/2001, 67/2002, 105/2002, Constitutional Court Decision U-I-202/99-20, 2/2004-ZPKor, 71/2004, 23/2005-UPB1, 47/2005, Constitutional Court Decision U-I-198/03-25, 17/2006, 27/2006, Constitutional Court Decision U-I-60/06-12, 41/2006-UPB2, 127/2006, 1/2007, Constitutional Court Decision U-I-60/06-200, U-I-214/06-22, U-I-228/06-16, 27/2007-UPB3, 57/2007, 94/2007-UPB4, 120/2008, Constitutional Court Decision U-I-159/08-18.
7 Judicial Service Act, Article 8.

Persons who fulfil the listed conditions may be elected to a judicial position at a local court (local judge), if they have at least three years of working experience in legal work after passing the lawyer's state examination.[8]

The Administrative court has the position of a high court, so judges at the Administrative court have to fulfil the conditions for a high court judge. Beside the general conditions, a person can be elected to the position of a high court judge, if he/she has successfully held judicial office for at least six years or has at least nine years of working experience in legal work after passing the lawyer's state examination. Besides that, university lecturers in law who fulfil the general conditions may be elected a high court judge provided they have been elected to a title of assistant professor.[9]

As far as the Supreme Court is concerned, the working experience conditions are judicial office for at least fifteen years or at least twenty years of working experience in legal work after passing the lawyer's state examination. As for the university lecturers, they may be elected a judge of the Supreme Court, if they have been elected to a title of associate professor.[10]

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

Yes, there is an assessment system for judges as well as for prosecutors, which is different. As stated, the system for judges is addressed in this questionnaire.

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)?

The Judicial Council has adopted the *Criteria for the minimum expected quantity of work for judges* and the *Criteria for the quality of performance of judges* with a two-thirds majority vote. According to the *Criteria for the minimum expected quantity of work*, they do not apply to the President of the Supreme Court, the head of the Registry Department and other judges appointed to the Registry Department, the Ministry of Justice, the Judicial Training Centre and the Constitutional court. The minimum expected quantity of work for these categories (except for the President of the Supreme Court) is decided by their superiors on the basis of the yearly report.

Furthermore, there are certain reductions in the number of expected cases for some other positions, due to the performance of tasks, related to court management or other specific tasks. The heads of the departments at the Supreme Court are expected to fulfil 20% of the expected, while the members of the Personnel Council at the Supreme Court are expected to fulfil 90% of the expected quantity of work.

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8 Judicial Service Act, Article 9.

9 Judicial Service Act, Article 11.

10 Judicial Service Act, Article 12.

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

The Personnel Council[11] of the court formulates an assessment of judicial service for judges every three years or before such period has elapsed at the request of the Judicial Council, the president of the court, the president of a superior court or the judge himself/herself.[12] An assessment of judicial service is formulated every year for judges in their first three years of judicial service.

The assessment of judicial service is formulated on the basis of information from the judge's personal file and other information on the fulfilment of the criteria specified in Article 29 of the Judicial Service Act. These criteria are the following:

- specialist knowledge;
- working abilities;
- ability of solving legal questions;
- work accomplished on the field of judicial backlogs;
- maintaining the reputation of the judge and the court;
- ability of spoken and written communication;
- additional accomplished work;
- relationship with co-workers;
- leadership abilities.

By order of the president of the court, the president of a superior court, the Personnel Council or the Judicial Council or at the request of the judge, all information significant to the formulation of the assessment of judicial service is recorded in the personal file. The judge to whom the file relates is immediately informed of the details of any entry.[13]

The Personnel Council uses the assessment of judicial service to determine whether a judge:

1. is unsuitable for judicial service
2. fails to fulfil the conditions for promotion
3. fulfils the conditions for promotion
4. fulfils the conditions for accelerated promotion
5. fulfils the conditions for extraordinary promotion to a superior judicial position.[14]

Promotion includes promotion in wage classes within the limits of wage classes for a judicial

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[11] According to the Courts Act (Official Gazette of the Republic of Slovenia, n. 19/1994, 45/1995, 26/1999-ZPP, 38/1999, 45/1999, Constitutional Court Decision U-I-144/95, 28/2000, 26/2001-PZ, 56/2002-ZJU, 16/2004-ZZZDR-C, 73/2004, 23/2005-UPB1, 72/2005, 100/2005-UPB2, 49/2006-ZVPSBNO, 127/2006, 27/2007-UPB3, 67/2007, 94/2007-UPB4, 101/2007 Constitutional Court Decision Up-679/06-66, U-I-20/07, 31/2008, Constitutional Court Decision U-I-304/07-11, 45/2008, 47/2009 Constitutional Court Decision U-I-54/06-32 (48/2009)) the Personnel Council of the Supreme Court is responsible for forming opinions on the suitability of candidates for judges of the Supreme Court, for assessing the judicial service of judges of the Supreme Court and high courts, for resolving appeals to the assessment of judicial service, and for other tasks, if so determined by statute (Article 30). The Personnel Council is composed automatically of the president of the court by reason of his position and a specified number of members elected by the judges among themselves (Article 31). The Council, which is composed of four members and is elected for four years, adopts decisions by a majority vote of all members.

[12] Judicial Service Act, Article 31.

[13] Judicial Service Act, Article 31.

[14] Judicial Service Act, Article 32.

position, promotion to a superior judicial position and promotion to the position of councillor. It is the president of the court who rules on promotion in wage classes and promotion to the position of councillor at the proposal of the judge after having carried out the procedure for determining the judge's expertise and performance. However, the promotion to a superior judicial position, a more rapid promotion in wage classes within the limits of a judicial position, a more rapid promotion to the position of councillor and an extraordinary promotion to a superior judicial position are decided by the Judicial Council upon proposal of the judge or the president of the court.[15]

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 criteria that are relevant for the compilation of the assessment of judicial service are included in the Judicial Service Act. On the other hand, the *Criteria for the minimum expected quantity of work for judges* and the *Criteria for the quality of performance of judges* are adopted by the Judicial Council with a two-thirds majority vote. The regulations that regard the work of the Personnel Council are also included in the Judicial Service Act, no additional regulations were determined by the court or the court president.

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?

It could be said that the goals are all three. Primarily, they are the improvement of the organisation and functioning of the court and the identification of strengths and weaknesses of individual judges. However, the assessment procedure is used also for the promotion of judges, so in a sense it also enables the comparison of judges (especially when they are promoted to a higher judicial position and the Judicial Council decides on their promotion).

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 that the president and the Judical Council considers when deciding on the appropriate candidates for election or for promotion that constitute the assessment of judicial service are the following (the criteria listed for promotion are used mutatis mutandis also for election):[16]

- specialist knowledge (general description, post-graduate studies etc.);
- working abilities (number of solved cases, structure of solved cases, number of solved old cases, respecting time schedules, solving cases by turns, judge's

[15] Judicial Service Act, Article 24.
[16] Judicial Service Act, Article 29.

ability to bring parties to the settlement; comments about statistical results – i.e., longer absences, some very difficult cases that required additional time etc.);
- ability of solving legal questions (the success rate at the court of appeal – percentage of appeals dismissed, granted etc.);
- work accomplished on the field of judicial backlogs (this point was added recently due to the backlog problem; the description of judge's activities about solving backlogs, i.e. amount of backlogs in the number of solved cases, solving cases by turns, etc.);
- maintaining the reputation of the judge and the court (judge's behaviour in the courtroom, communication with parties and other participants in the trial, maintaining the independence, impartiality, dignity of the court etc.);
- ability of spoken and written communication (legal, logical and grammatical integrity and correctness of his/her written decisions);
- additional accomplished work (i.e. tutorship to trainees and younger judges, participation in educational process inside and outside of judiciary, published papers in professional journals etc.);
- relationship with co-workers;
- leadership abilities (only for judges who also hold certain leading positions – heads of departments and their deputies, presidents etc.).

Similarly, the criteria that are included in the *Criteria for the quality of performance of judges*, adopted by the Judicial Council, are the following:

- the ability to solve legal question and to use the law appropriately;
- the ability to establish the facts of the case;
- the ability of written and oral communication;
- the quality of the argumentations of the decisions (systematic, accurate, concise, clear, integral)
- the ability to organise and rationally conduct the proceedings;
- the ability to solve complex cases;
- the ability to report at senate sessions.

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

Some of the criteria are weighted and form part of the statistics - number of solved cases, structure of solved cases, number of solved old cases, the success rate at the court of appeal, the amount of backlogs in the number of solved cases, additional accomplished work, etc.

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

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 various provisions for the protection of the independence and impartiality in the Constitution and in the Judicial Service Act. However, they are not aimed particularly at the assessment system.

The most relevant are the following:

- Judges shall be independent in the performance of the judicial function. They shall be bound by the Constitution and laws.[17]
- The conditions for election to judicial office, the conditions for the promotion of a judge, the reasons for the termination of judicial office, the reasons for the dismissal of a judge, the rights and duties deriving from judicial service, and the procedures for their exercising shall be determined by statute.[18]
- In exercising their rights judges must always act such that they safeguard the impartiality and independence of judging and the reputation of judicial service.[19]
- Judges shall be guaranteed the right to promotion, to education, to pay and to other rights deriving from judicial service, and it shall not be permissible for anyone to encroach upon such rights except in cases and procedures set out by law.[20]

– 2. A judge who feels that his/her independence was prejudiced in any way may propose to the Judicial Council that it annul the violation. If the Judicial Council finds the proposal to be well-founded, it may with regard to the nature of the violation annul it, or request or propose the revocation thereof, and publish its findings.[21]

– Judges must at all times act to safeguard the impartiality and independence of judging, the reputation of the judiciary and the independence of judicial power.[22]

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

The Personnel Council of the court formulates an assessment of judicial service for judges every three years, or before such period has elapsed at the request of the Judicial Council, the president of the court or the judge himself/herself.[23]

b) Describe the various steps in the procedure.

Look at the answer under point I. c).

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?

No.

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 is gathered that regards the assessment of judicial service. The information includes the statistics of the judge, the opinion by the superior of the judge (head of department or president of the court) and all the relevant data provided by the judge

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17 Constitution of the Republic of Slovenia, Article 125.
18 Courts Act, Article 39.
19 Judicial Service Act, Article 2.
20 Judicial Service Act, Article 4.
21 Judicial Service Act, Article 4.
22 Judicial Service Act, Article 37.
23 Judicial Service Act, Article 31.

himself/herself (like data about tutorship to trainees and younger judges, participation in educational process inside and outside of judiciary, published papers in professional journals, etc.).

The assessment of judicial service is formulated on the basis of information from the judge's personal file and other information on the fulfilment of the criteria specified in Article 29.

The judge's personal file is administered at the office of the president of the court where the judge is performing judicial service. By order of the president of the court, the president of a superior court, the Personnel Council or the Judicial Council or at the request of the judge, all information significant to the formulation of the assessment of judicial service is recorded in the personal file. The judge to whom the file relates is immediately informed of the details of any entry.[24]

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)?

The objectives are set in the *Criteria for the minimum expected quantity of work for judges* and the *Criteria for the quality of performance of judges*, adopted by the Judicial Council.

The *Criteria for the minimum expected quantity of work for judges* set the number of cases that a judge is expected to solve in a year. The document specifically analyses the types of cases and their value.

On the other hand the *Criteria for the quality of performance of judges* sets the following criteria:

- the ability to solve legal question and to use the law appropriately;
- the ability to establish the facts of the case;
- the ability of written and oral communication;
- the quality of the argumentations of the decisions (systematic, accurate, concise, clear, integral)
- the ability to organise and rationally conduct the proceedings;
- the ability to solve complex cases;
- the ability to report at senate sessions.

In evaluating the ability to solve legal questions the level of accuracy and legality of the decisions in the procedure with legal remedies is taken into account, particularly:

- the number and ratio of confirmed, changed or annulled decisions in the procedures with legal remedies in relation to the overall number of decided cases;
- the number of decisions changed in the procedures with legal remedies on the ground of violation of substantive law;
- the number of decisions annulled on the ground of severe violation of procedural provisions;

[24] Judicial Service Act, Article 31.

- the number of decisions annulled in the procedures with legal remedies on the grounds of new facts or decisions of the Constitutional Court.

According to the *Criteria for the quality of performance of judges* the quality of work is evaluated mainly on the basis of the opinion of the head of the department, but relevant data and evaluations can be obtained also from the president of the court and other courts and institutions that have the data.

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?

It is the president of the court who rules on promotion in wage classes and promotion to the position of councillor at the proposal of the judge after having carried out the procedure for determining the judge's expertise and performance. However, the promotion to a superior judicial position, a more rapid promotion in wage classes within the limits of a judicial position, a more rapid promotion to the position of councillor and an extraordinary promotion to a superior judicial position are decided by the Judicial Council upon proposal of the judge or the president of the court.[25]

The relevant materials are prepared by the Personnel Council (the one of the Supreme Court is composed of 4 Supreme Court Judges). Assessors do not receive specific training.

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 Personnel Council at the Supreme Court formulates the assessment of judicial service for Supreme Court judges. It can determine that the judge:

1. is unsuitable for judicial service
2. fails to fulfil the conditions for promotion
3. fulfils the conditions for promotion
4. fulfils the conditions for accelerated promotion
5. fulfils the conditions for extraordinary promotion to a superior judicial position.[26]

The assessment is a detailed evaluation provided on a case-by-case basis.

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 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)?

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[25] Judicial Service Act, Article 24.

[26] Judicial Service Act, Article 32.

The decision has a very strong influence over the individual situation of the judge, as it determines whether he/she is unsuitable for the judicial function and regulates his/her promotion in wage or position.

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 Personnel Council sends the assessment of judicial service in written and confidential form to the assessed judge and the president of the court where the judge performs judicial service. This is not a draft assessment, but an appeal can be lodged against it.[27]

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.

Any assessed judge, president of a court or head of a body who does not accept the assessment may appeal to the Personnel Council at the Supreme Court within eight days.

When ruling on an appeal against the assessment of the Personnel Council at the Supreme Court, the Personnel Council decides with a majority of all members. After reprocessing the assessment the Personnel Council either amends the assessment or rejects the appeal.

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)?

Yes, an assessment file is held for each judge.

For the needs of implementing Judicial Service Act, the Ministry of Justice administers the personal records of judges covering the following information:

1. personal data
2. rulings on the election and appointment of the judge
3. information on performance during study
4. information on the judge's probationary period
5. assessment of judicial service and information on the effectiveness of the judge's work
6. records of promotion
7. disciplinary resolutions
8. information on supervisory appeals lodged and requests for judicial control
9. the number of cases decided by the judge in which the European Court of Human Rights has found a violation of human rights of the parties

The information in the personal record is confidential, with the exception of the information specified in points 2 and 6.[28]

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27 Judicial Service Act, Article 36.

28 Judicial Service Act, Article 72.

The judge's personal file is administered at the office of the president of the court where the judge is performing judicial service, while that for the president of the court is administered at the office of the president of the immediately superior court.

b) Who may consult this file?

Information from the personal file may only be viewed by the president of the court, the Personnel Council or the Judicial Council, the Disciplinary Prosecutor and the Disciplinary Courts of First and Second Instances for reason of the execution of authorisations pursuant to the Judicial Service Act and the Courts Act.[29] Judges as well have the right to view their own personal file.

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

Yes, the file is confidential, as only authorised persons and institutions are allowed to view it.

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)?

The question whether the negative assessment of judicial service can be rendered public was under judicial review in 2007. One of the exceptions that prevent disclosure under the Act on the Access to Information of Public Character[30] is the fact, that some data are secret. The applicant wanted to get access to the decision of the Judicial Council that confirmed the negative assessment of judicial service for a judge. The Judicial Council denied access arguing that secret data are not only those that are defined by the Act on the Access to Information of Public Character, but also data that are defined as confidential under other acts, such as the Judicial Service Act. The applicant appealed to the Information Commissioner, who agreed with him, stating that only data that are listed as exceptions in the Act on the Access to Information of Public Character are relevant and that the confidentiality of the provisions of the Judicial Service Act is not a valid reason to prevent disclosure, since

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[29] Judicial Service Act, Article 31.

[30] Official Gazette of the Republic of Slovenia, n., 24/2003, 61/2005, 96/2005-UPB1, 109/2005-ZDavP-1B, 113/2005-ZInfP, 28/2006, 51/2006.

these are not secret data in line with the Classified Information Act.[31] The Prosecutor then started an administrative dispute on behalf of the Judicial Council, arguing that confidentiality of the Judicial Service Act is a valid reason to refuse access. The Administrative court decided[32] that other laws beside the Act on the Access to Information of Public Character can offer reasons for denial of access, as is the case of the Judicial Service Act. However, since the Judicial Service Act does not include as confidential the decision of the Judicial Council to confirm the negative assessment of judicial service, but only the assessment as such and since the interest of the public of getting access to the decision of negative assessment of judicial service is founded, access should be given to the decision of negative assessment of judicial service, with the proper exclusion of personal data.

The question whether the provision of the Judicial Service Act on the confidentiality of the assessment of judicial service will be part of the Act on the Access to Information of Public Character is still unsolved. The proposed new provisions of the Act on the Access to Information of Public Character include the confidentiality, but changes were not passed in the Parliament yet.

[31] Official Gazette of the Republic of Slovenia, n. 87/2001, 48/2003 Skl.US: U-I-79/03-7, 101/2003, 135/2003-UPB1, 28/2006, 50/2006-UPB2.

[32] Decision n. U 831/2007-7 of the 24.10.2007.