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Magistrate Assessment

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Introductory remarks

Until recently, there has been no regular and formal system for rating or assessing judges in Sweden.[1] A formal rating and assessing of a non-permanent or permanent judge has taken place only when he or she has applied for a new position[2]. The rating and assessment procedure for promotions and appointments is briefly described below.

We might also be in the process of creating a regular assessment system as a basis for individualized salaries for judges. Traditionally, judges in equal positions have had equally high salaries. A recent agreement on the remuneration of judges in Sweden stipulates that salaries shall be individually determined – as for other public employees – and based upon the competence of the individual judge. An important exception is that the competence when it comes to judicial activities is excluded from this assessment.

Assessment in the procedure for promotions and appointments

There is no promotion by seniority and thus no promotion list. A permanent or non-permanent judge who wants to obtain a higher position has to apply for it.

Formal conditions for a permanent judge is that he or she must have a Swedish citizenship and a law exam. It is prescribed in the Swedish constitution that only objective grounds, such as merits and competence, may be considered in the appointment of a public employee. The Law on Public Employment stipulates that competence normally shall have priority before merit.

Permanent judges are appointed by the Government on the proposal of a special committee[3], The Judges Board, with eight members – mostly senior judges – and a couple of secretaries. The Board will consider the reports and references from present and earlier positions that the applicants have attached to their applications. It is also usual that the Board requires references concerning employments of the last five years and asks the referees to evaluate the skills of the candidates in terms of a number of set criteria.

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[1] The same rules and procedures in this area are applicable to all judges, whether they work in courts of general jurisdiction or in administrative courts.

[2] There is a procedure of continuous rating and assessing of law clerks and reporting clerks, who will be assessed at the end of these services.

[3] Judges in the two Supreme Courts and in a few other senior positions are appointed by the Government without prior application.

The criteria to be considered when an applicants competence is assessed are listed in guidelines for the appointment of permanent judges and supplementary guidelines for senior positions in the court system. According to these guidelines, competence is to be understood as the ability to meet with the qualitative demands of the judicial work. That means that legal knowledge and skills, analytical ability, discretion and personal maturity, independence and integrity, communication skills – orally and in writing –, personal behaviour, work capacity and ability to cooperate will be assessed and taken into account in the rating process. Merits, understood as experience that has been acquired through earlier periods of employment, can be considered in some cases.

Assessment as a tool for determining judicial salaries

In October 2008 an agreement on the remuneration of judges in Sweden was signed by the employer (the state, represented by NCA[4]) and the trade union to which most judges belong, Jusek. The basis for this agreement was the general agreement on remuneration of public employees, which stipulates that salaries shall be determined individually.

The special agreement for the permanent judges prescribes that the remuneration of judges must not be used to affect the independence of their judicial work. To this end it is agreed between the parties that the assessment must not include the judicial activities of the judge, as his application of legal rules in different cases, his management of the cases, his mediation and arbitration activities or sentencing. Neither must speed and efficiency in the judicial work be taken into account in the assessment.

So what is left to consider? According to supporting guidelines that the parties have agreed upon there are different administrative and educative activities, such as guiding or supporting new or younger colleagues, developing common routines at the workplace or in the court system etc. A judge who accepts to be responsible for the leading and coordination of a working group could be rewarded, and also a judge who steps in for a sick colleague and carries out proceedings that would otherwise have been cancelled. Generally, the guidelines describe – rather vaguely – different ways to contribute to the work of the court or the court system that lies beside the judicial activities.

A minimum rise in salaries is guaranteed to every judge.

This new system has not yet been put to test, but questions are already being raised about the impact of such a system on the independence of judges. Another problem is obviously that a good and efficient judge who does not take part in other activities might be left with the guaranteed minimum rise and no more, since other projects and undertakings are rewarded more than judicial activities.

[4] The National Courts Administration, an agency under the Government which is empowered to support the court system in administrative matters as for example payroll administration

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