



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

ENCJ PROJECT TEAM

Development of Minimal Judicial Standards III

Minimum Standards regarding evaluation of
professional performance and irremovability of
members of the judiciary

Collection of replies to Questionnaire

2012-2013



1) Evaluation of professional performance of judges and/or (where relevant)

prosecutors: _____ 4

a. Has your legal system established any mechanism (formal or informal) for the evaluation of the professional performance of judges and/or (where relevant) of prosecutors? _____ 4

b. What are the aims of the system of evaluation of the professional performance of judges and/or (where relevant) of prosecutors if such mechanisms exist? _____ 15

c. Which are the criteria (qualitative and/or quantitative) and eventually the indicators applied in your legal system for the evaluation of the professional performance of judges and/or (where relevant) of prosecutors? _____ 23

d. In the evaluation of the work and professional performance of judges and/or prosecutors, is there any reference to data on the overall number of cases dealt with by the single judge/prosecutor and by the court/prosecutor's office to which they belong? Please describe in what way such data features are used in the evaluation of judges and/or prosecutors. _____ 47

e. Which is the competent body in your legal system in order to conduct the evaluation of the professional performance of judges and/or (where relevant) of prosecutors? What is the composition of this body? What role do the Ministry of Justice, the Council for the Judiciary, Chief Prosecutor or Chairman of the Court, etc. play in the process of evaluation, if any? _____ 54

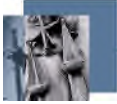
f. Which is the competent body for the inspection of courts and/or prosecutors' offices? Does the competent body in the field of judicial inspection have the role to deal with evaluation of the professional performance of judges and/or prosecutors, too? 65

g. In case the body responsible for the inspection of courts and/or prosecutors plays a role in the evaluation of the professional performance of judges and/or prosecutors is it an independent body or does it function under the supervision of the respective Council for the Judiciary, the Supreme Court or the Executive (government)? What is the level of dependence of the body responsible for the inspection of courts and/or prosecutor's offices? _____ 72

h. Is there a specific or formal procedure envisaged in your legal system in order to conduct the evaluation of the professional performance of judges and/or (where relevant) prosecutors? Please describe the basic stages or phases of the procedure. 76

i. Is the judge (or prosecutor) subject to the process of evaluation of professional performance entitled to be heard in the context of the proceedings (for instance, drawing up reports on themselves or providing a profile of their professional activities)? Please describe the involvement of the individual judges (and/or prosecutors) in the process of evaluation of professional performance. _____ 87

j. Is the judge (or prosecutor) subject to the process of evaluation of professional performance entitled to challenge/appeal the decision or findings issued in the context of the evaluation process? Which is the body with jurisdiction to decide on the challenge/appeal? Please describe the procedure for challenging/appealing this decision and whether he/she can be represented at that stage and if so by whom. 91



k. Are there any safeguards in force in order to guarantee that the process for evaluation of professional performance of judges and/or (where relevant) of prosecutors is consistent with the principle of judicial independence? _____ 97

l. Is any consideration given to the merit of judicial decisions issued by the judges/prosecutors subject to evaluation, both in relation to the specific content of the ruling and to the outcome of subsequent levels of appeal of the decision? ___ 102

m. Is the process for the evaluation of the professional performance of judges and/or (where relevant) of prosecutors in its different levels relevant in terms of defining the professional career (promotion or demotion) of the judges/prosecutors subject to evaluation. _____ 105

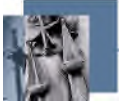
2) Irremovability of Judges and/or Prosecutors: _____ 113

a. Is the principle of irremovability of judges and/or prosecutors enshrined in the Constitution or in any piece of primary legislation in your legal system? What is it that contains this principle? _____ 113

b. Are there any specific safeguards of the principle of irremovability of judges and/or prosecutors in your legal system? How do these safeguards operate in the context of the disciplinary process or transfer process of judges and/or prosecutors?
124

c. Which are the specific grounds for removal of judges and/or prosecutors from their offices in your legal system? Are these grounds related disciplinary measures, to the evaluation of professional performance of judges and/or prosecutors, or to other circumstances (such as connection to the parties, advocates, other judges of the court, etc.)? _____ 133

Table of countries _____ 149



1) Evaluation of professional performance of judges and/or (where relevant) prosecutors:

- a. Has your legal system established any mechanism (formal or informal) for the evaluation of the professional performance of judges and/or (where relevant) of prosecutors?

AUSTRIA

The work and performance evaluations of judges and public prosecutors follow the provisions of the Service Act for Judges and Public Prosecutors (Richter- und Staats-anwaltschaftsdienstgesetz = RStDG), Federal Legal Gazette (FLG) No 305/1961. Judicial Staff Panels are in charge of issuing work evaluations of judges. The Staff Panels consist of the President and one Vice-President of the court of law (higher regional court or regional court) and of judges elected by all judges of the court precinct in a secret ballot. The Public Prosecutors Staff Commissions are in charge of issuing work evaluations of public prosecutors.

BELGIUM

Yes, three formal evaluation systems exist:

- 1) Periodic evaluation of judges and prosecutors
- 2) Evaluation of adjunct mandates (ex. Deputy chief judge) and specific mandates (ex. Investigating judge)
- 3) Evaluation of mandates of chief prosecutors

Art 151 §6 of the constitution: "Selon le mode déterminé par la loi, les juges, les titulaires des fonctions visées au § 5, alinéa 4, et les officiers du ministère public sont soumis à une évaluation."

(§5, al4 = Le président et les présidents de section de la Cour de cassation, les présidents de Chambre des cours et les vice-présidents des tribunaux)

BULGARIA

Bulgarian legislation provides a detailed regulation of the mechanism for evaluation of professional performance of judges/prosecutors/investigating magistrates /all of them are members of the Judiciary/. The mechanism is established in the primary legislation – Judiciary System Act /JSA/. It regulates the basic issues /criteria, indicators, competent bodies, applicability of the procedure, stages of the procedure, etc./. In addition, the High Judicial Council is entitled to work out in details the procedure and the methodology for evaluation of professional performance. The Council has adopted Regulation on evaluation of members of the Judiciary /further down referred to as 'The Regulation'/.

CYPRUS

No, however a report is prepared and is submitted to the Supreme Court as



to delayed cases in the district court. Furthermore according to the Supreme Court rules of 1986, judgments must be delivered within six months from the completion of the hearing. Prosecutors are not part of the judiciary which is completely independent from the office of the Attorney General.

CZECH REPUBLIC

Czech system is not mainly aimed at the evaluation of professional performance but to control number of judges needed. Ministry of Justice – judicial department sets minimal number of cases each judge has to deal with, according to the level of the court and specificities of its agenda. Evaluation of the performance of judge is done by the head of the court.

ENGLAND AND WALES

1. In England and Wales only salaried judges, with some exceptions, appointed until the age of 70, should be regarded as “the judiciary” or indeed “professional judges” for the purpose of this research. Only the salaried judiciary and two Justices of the Peace are represented on the Judges Council of England and Wales.

2. There is no formal system of evaluation of these judges so the correct answer to 1)(a) is “no” and 1)(b) – (m) are therefore not relevant.

3. There is nevertheless within the courts and tribunals a judicial hierarchy under the Lord Chief Justice who, as head of the judiciary, has sole responsibility for governance. This structure involves senior judges discharging management and mentoring responsibilities which inevitably lead to notice being taken of a judge’s strengths and weaknesses. Knowledge of a judge’s performance may lead to informal guidance or may be used to support references which may be provided for the Judicial Appointments Commission when dealing with a judge’s application for other judicial office.

4. I believe that it would be wrong to regard such incidental examples of judicial management as representative of a system of informal evaluation.

5. It would however also be wrong to ignore in this response those systems which been developed for some part-time judicial office holders represented mainly by fee-paid judges on the District Bench, in tribunals and lay Justices of the Peace (magistrates). There are currently around 28,000 magistrates. The District Bench and the larger tribunals have several fee-paid judges for each of well over 1,000 salaried judges, so an overview of their systems may be useful to the Working Group.

6. Fee-paid judges, who primarily continue to practice in the legal professions and may sit between 20 – 50 days per annum (dependent on demand), are subject to appraisal on the District Bench and in most tribunals. These judges are designated as judicial office holders. They have the same powers as the salaried judiciary when they are sitting, but have to maintain the standards of judicial conduct at all times.

7. Details of the scheme adopted in tribunals were circulated before the meeting of the Working Group in Rome in December 2012. It is based on a



model approved by the Judicial Studies Board (now the Judicial College).

8. During the first year of an appointment as a fee-paid judge in tribunals the system is geared to formal training and mentoring with no formal assessment. There is then an appraisal after this first year and again every third year or within shorter periods if there are concerns about the judge's performance.

9. The triennial appraisals are carried out alternately by the salaried judge with responsibility in the fee-paid judge's locality and the next one by a different salaried judge. A report is prepared by references to a set of competencies reflecting the fee-paid judge's self-assessment, matters recorded in the file, decisions made on any appeals from the judge and an observation session. The appraisee may comment on the initial draft with the result that it may be amended or will record the areas of disagreement between appraiser and appraisee.

10. The final report will then be considered by a regional judge who may recommend an action plan, including provision for further training, where there are concerns. The appraisal scheme may contribute to references following applications which such judges may make for salaried posts. It must be stressed however that this is not the primary purpose of such appraisal as not all judges seek salaried positions.

11. The system for the District Bench is similar but with a less rigid timetables.

12. Recorders are part-time, fee-paid judges sitting on the Circuit Bench. A pilot scheme for their appraisal of was run in Liverpool about 6 years ago and by the end of the experiment all agreed that this was a good system and the Lord Chancellor was encouraged to take it further. He accepted that conclusion but declared that there were no financial resources available at that time.

13. My impression is that most judges would not be averse to appraisal by their peers being adopted as a tool for self-improvement, but are unlikely to submit to evaluation by another body.

14. In the past most salaried judges had been senior practitioners appointed to particular posts and remained in those posts until retirement. In recent years, because of the need to reflect equality and diversity within the judiciary, newly appointed judges are becoming considerably younger than before. This factor, together with the emergence of the concept of a judicial career, involving progression and changes in jurisdiction, calls for some kind of evaluation to support it.

15. The Judicial Office has recently been examining appraisal schemes but I am not aware as to what conclusions it may have reached.

16. The resource problem is simply that peer appraisal takes judges off the bench to provide it. As there are large numbers of both salaried and fee-paid judges in post, the current necessity to cut costs (even greater than it was 6 years ago), there is no scope for appointing additional judges to cover the shortfall.



17. Justices of the Peace are lay persons who sit in local Magistrates' Courts. They are unpaid but are allowed some recompense for loss of earnings. They sit, typically, on one day each week or fortnight and are assisted in their task by a legal advisor who is a solicitor or barrister. In the criminal jurisdiction magistrates deal with 95% of all criminal matters that come to court. They also undertake a large amount of civil work including family work.

18. For at least 10 years there has been a formal structure of mentoring and appraisal for magistrates. On appointment each is assigned to a mentor who supports them through at least the first year of sitting and must undergo an appraisal to consider if they are suitable to continue to sit.

19. Thereafter magistrates are appraised every three years at whatever level they sit. (It is noteworthy that magistrates are the only judges of the family court who are appraised). If a magistrate sits in adult and family/youth courts they have to be appraised in both jurisdictions.

20. Each bench has a Bench Training and Development Committee (BTDC) responsible for the training, mentoring and appraisal of magistrates and this committee decides whether individual magistrates are capable of being appointed as presiding magistrates. Appraisals are conducted according to set criteria and the appraiser's report enables the BTDC to decide if the magistrate has demonstrated the necessary skills. If he/she does not then they can be asked to undertake more training and be re-appraised.

FRANCE

We do have in France since a long time a system of individual appraisal which is really career oriented and used as an element for the management of human resources.

This appraisal is made by the chief of court according to a very detailed and formal procedure.

This system has progressively been improved thanks to various working group.

Each judge and each prosecutor must be evaluated each two years according to the procedure describe at the point (h) bellow.

In exception, when a magistrate is supposed to pass from the second to the first level he/she is evaluated each years.

GERMANY

Pursuant to section 21 of the Act on Federal Civil Servants, which is applicable to judges pursuant to section 46 of the German Judiciary Act, aptitude, qualifications and professional achievements of civil servants are to be evaluated at regular intervals. More detailed provisions covering the judges in Land service may be found in the respective acts on judges of the respective Länder and guidelines on their evaluation. One example is the Joint Notice of the Bavarian Land Ministries of Justice and Consumer



Protection, Interior, Finance as well as Labour and Social Order, Families and Women dated 20 December 1999, file no. 2012 – V – 863/98, amended by Notice dated 28 February 2011, on the evaluation of judges and public prosecutors. These contain provisions on competence, time and procedures, as well as on substantive criteria for evaluation , evaluation standards and assessment.

HUNGARY

The Hungarian legal system adopted a formal mechanism for the evaluation of the professional performance of judges. The formal procedure is regulated by the Act No. CLXII of 2011. on „The legal status and remuneration of judges in Hungary”(ALSRJ) and by the decree of the President of the National Office for the Judiciary (NOJ).

IRELAND

There is no system in Ireland for the evaluation of professional performance of judges. Prosecutors in respect of criminal offences are either solicitors from within the Office of the Director of Public Prosecutions or barristers retained on behalf of the Director of Public Prosecutions to conduct prosecutions in more serious criminal cases taking place in the Circuit Court and the High Court. There is no formal process in place to monitor the performance of prosecutors, but quite clearly insofar as they are barristers retained on behalf of the Director of Public Prosecutions they are considered to be experts in their particular field and accordingly, would not be retained otherwise.

ITALY

The law regulating the Italian judiciary provides for a system of periodic professional evaluation of judge and prosecutors.

The reform of the judicial system by Legislative Decree no. 160/2006, as amended by Law no. 111/2007, provides for all magistrates to be appraised every four years, until they pass their seventh professional appraisal, after 28 years of employment.

The C.S.M., by its own circular letter no. 20691 issued on 4 October 2007, has implemented the primary legislation, and has regulated criteria, sources and parameters of assessment that will serve as guidelines for the four-year professional appraisals.

LITHUANIA

According to Chapter IX, Section 3 of the Law on Courts of the Republic of Lithuania (hereinafter referred to as the Law on Courts), the activities of judges shall be assessed seeking to reveal the level of professional activities and skills possessed by judges, also Chairperson of Courts, Deputy-chairperson of Courts, Chairperson of the divisions (hereinafter together referred to as judges), the capacities to use in practice theoretical knowledge and skills, to participate in the administrative work of the court and to organize it, to establish the strengths and weaknesses of the activities of judges and to promote them, to improve professional skills.



During the assessment of the activities of judges the judge's professional activities and personal qualities shall be assessed in a complex manner.

The results of assessing the activities of judges shall be used for the following purposes:

1. when organizing adequate training of judges (establishing the trends of teaching, compiling and improving the programs of teaching of the judges, tailoring teaching etc.);
2. objectively deciding the issues of promotion of judges and appointment for a new term of office of judges and Chairperson of courts, Deputy-chairperson of courts, Chairperson of the divisions, seeking to establish whether the judge who is a candidate to promotion or the Chairperson of Court who is a candidate to a new term of office meets the requirements put to the candidate, as well as objectively comparing several candidates between one another;
3. promoting the improvement of the judge's qualifications;
4. developing the administration of courts.

It should also be mentioned that the Law on Courts provides two types of assessment of the activities of judges:

1. periodical assessment of the activities of judges;
2. extraordinary assessment of the activities of judges.

The first assessment of the judge's activities shall be carried out after the lapse of three years following his appointment to judge's office. Thereafter, the activities of the judge shall be assessed periodically every five years.

The extraordinary assessment of the judge's activities shall be carried out on the request of the judge himself or when the judge's operational weaknesses have been recurring. The extraordinary assessment of the judge's activities shall also be carried out when deciding on the promotion of the judge or Chairperson of the court or Deputy-chairperson of the court, Chairperson of the division of the court or of his appointment for a new term of office, except occasions then the last ordinary assessment of the judge's activities or the extraordinary assessment of the judge's activities have been carried out less than three years ago.

MALTA

We have no automatic mechanism to measure the performance of judges but if a judge is under performing he or she can be reprimanded by the Commission for the administration of justice - normally after being spoken to by the Chief Justice.

NETHERLANDS

The Judicial Officers Act provides for an evaluation of the performance of judges on a regular basis (once a year). Several months from now, the Dutch parliament will discuss a new proposal for a law that will lead to a new kind of annual evaluation called discussion about the functioning as a legal



officer, just as these are custom for other public servants. These discussions can only be held between the president of the court and the individual judge. In these discussions appointments will be made for the next year.

NORTHERN IRELAND

The evaluation of judiciary is an informal process mainly undertaken through mentoring by the Chief Justice as Head of the Judiciary and the senior presiding Judges. This works well in a small jurisdiction where there are only 70 salaried Judges (in a population of 1.8m – approximately 2.57 judges per 100,000 population). All the judges are known personally to each other and to the Chief Justice.

The Chief Justice has set published “ standards “ of performance in relation to the progression of cases across the various court tiers and main types of business which all Judges endeavour to follow. The Chief Justice would review the relevant statistics on a regular basis and may if he thought necessary raise any issues of concern. Progress against the standards is detailed in an annual report laid before the Northern Ireland Assembly.

The Chief Justice also receives regular audit reports on the accuracy of court records and sentencing decisions in the most complex areas of sentencing. If any concerns are identified the Chief Justice would speak to the relevant Presider and the Tutor Judge for the Judicial Studies Board to consider if any particular training would be helpful .

There are a number of Judicial Committees which also monitor the throughput of judicial business and which would take an overview on general performance and report to the Chief Justice as necessary

The Judicial Studies Board is also a forum in which Judges can learn from each other and develop best practice across a range of court issues

The Chief Justice has a policy of meeting a Judge who is reassigned to a new area of work or new geographical location to encourage them in the new post and would wish to be kept informed of their progress or any problems they encounter.

NORWAY

Norway does have a system where parties and the public can file a complaint against judges’ behavior to an independent disciplinary body – the Supervisory Committee for Judges, c.f. Q 1 a. Pursuant to the Courts Act section 236 a complaint cannot be based on circumstances that may be subject to an appeal. I.e. it is not the professional work that is subject to complaints but (unprofessional) behavior of judges.

Otherwise, Norway does not have any formal evaluation of judge's professional performance. The courts are to some extent evaluated on court level, but not on judge level.

It should be mentioned that the Norwegian Courts Administration has worked out a model for voluntary evaluation among judges themselves on how to perform in a court hearing.



POLAND

Yes. Until now, the evaluation of work of a judge was made only in connection with the promotion, the new law (entered into force on 28 March 2012) provides a system of periodic (every 4 years) evaluations of judges, although until now the executive provisions has not been issued. In accordance with the Law on Common Courts Organization a candidate for the post of a judge shall be evaluated on the qualifications, and then evaluated by the College of the competent court. In the promotion are therefore not only formal qualifications assessed and length of service, but also the quality of work. The provisions of the Law on Common Courts Organization are although not very specific on this matter.

Noteworthy is the fact that the Law on Common Courts Organization also provides for other instruments that can be considered as indirect forms of assessment of the work of the courts and judges. The act provides the following activities carried out under the supervision of the administrative operation of the courts:

1. visitation of the Court or certain organizational units,
2. lustration in court,
3. the study of progress and efficiency of individual cases,
4. control of the Secretariat of the Court.

PORTUGAL

Yes. The Statute of Judges (approved by Law n.º 21/85 of 30 July, hereinafter Statute) establishes a formal mechanism for the evaluation of the professional performance of judges (and the Statute of Prosecutors establishes a formal mechanism for the evaluation of the professional performance of prosecutors), developed by the Regulation on Judicial Inspections (hereinafter Regulation).

ROMANIA

Yes, our legal system does establish a formal and complex mechanism for the evaluation of the magistrates' (both, judges and prosecutors) professional performance. Chapter IV of the Law no. 303/2004 on the status of judges and prosecutors refers to the in-service training and periodical evaluation of magistrates. Moreover, there is a Regulation issued by the SCM's decision no. 676 of 2007, with subsequent amendments, on the evaluation of the professional activity of judges and prosecutors.

Therefore, according to the provisions of art. 39 of the Law no. 303/2004, para (1) in view of verifying whether the requirements of professional competence and performance are met, once every three years, the judges and prosecutors shall be subject to an evaluation on their effectiveness, the quality of their activity and integrity, their obligation to attend continuous training activities and to graduate specialisation courses and, for the judges and prosecutors in leading position, the manner of fulfilling the management duties; according to para. (2) the first evaluation of judges and prosecutors shall be performed after 2 years from their appointment into office.



SCOTLAND

The Scottish legal system has not established any mechanism (formal or informal) for the evaluation of the professional performance of professional judges who make up the main judiciary in Scotland. There is no system of career judiciary in Scotland and no requirement for regular appraisal in connection with career-development, transfer, promotion or performance-related pay. There is a system of appraisal for lay (unqualified) Justices of the Peace, who are appointed for a fixed time period, but who may be reappointed if eligible. That system of appraisal is related to the reappointment process. Prosecutors do not form part of the judiciary in Scotland and the Judicial Council for Scotland has no responsibility for prosecutors.

In view of this answer the subsequent questions are not applicable, so far as the Scottish legal system is concerned.

SLOVAKIA

Yes, it has. This mechanism is regulated by Act on Judges and Lay Judges as amended.

SLOVENIA

According to the Judicial Service Act of the Republic of Slovenia judges are assessed twice during their first four years in office; then, the Personnel councils evaluate the professional performance of judges every three years or upon the request of the Judicial Council, the court president or president of the relevant higher court, or the judge himself.

SPAIN

Yes. Judges' professional performance is currently evaluated through a monitoring procedure. The system basically takes into consideration the quantitative aspect of the professional performance of judges (i.e. the number of judgments and decisions issued in their respective courts per year), and does not make an assessment of the qualitative aspect of the contents of the decisions, in as far as this aspect of professional assessment could conflict with judicial independence. However, the qualitative aspect of professional performance of Spanish judges is assessed by the relevant Committees of the General Council for the Judiciary and by its Plenary when appointing Chairpersons of the respective courts, and Justices of the Supreme Court, since the Council should make this appointment on the basis of merit and professional qualification of the candidates.

As regards the evaluation of public prosecutors it has to be underlined that in Spain public prosecutors are not part of the Judiciary. They are selected jointly with judges but, in contrast to them, they are not subject to the General Council for the Judiciary. The General Public Prosecutor is responsible for the professional evaluation of Spanish prosecutors, although he is advised by two different bodies within the structure of the General Public Prosecutor's Office: the Prosecutors' Council and the Inspectorate of the General Public Prosecutor's Office.



SWEDEN

4. Sweden has no formal mechanism in the legal system for the evaluation of the professional performance of permanent judges. So the answer to 1) (a) is “no” and 1) (b) – (m) are therefore not relevant. However there will be some complement response below when significant.

4.1. The Swedish Constitution contains basic national rules on courts and judges. Through the recent reform of the Constitution, most of these measures have been included in a separate chapter of justice (Chapter 11 of The Instrument of Government). The purpose of the change was to highlight the courts' special role in the constitutional system and to highlight the importance of an independent and impartial judiciary.

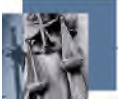
4.2. A sort of informal yearly evaluation takes place within the court where the judge is working. In the courts we have two formalized dialogues between manager and employees, “the Employee dialogue” and “the Wage setting dialogue. The Wage setting dialogue do not include the judges in the highest instances. See examples below (4.4.-4.5.)

”The employee dialogue” is a type of dialogue, an opportunity for manager and employee to discuss different matters related to the work. This dialogue is prior to “the Wage setting dialogue”. The aims inter alia is to set goals (individual) for the year to come, discuss the situation at work in general, and discuss need to development and fill competence gap. “The Employee dialogue” is a source to go back to when it comes to “the Wage setting dialogue”. It’s like an annual wheel that links to the operational goals and planning.

4.3. In Sweden employer organizations and trade unions has a long tradition to negotiate and collaborate in matters regarding employment conditions and remunerations. The negotiations lead to collective agreements (kollektivavtal). One important matter is to negotiate the annual pay review. The collective agreement (RALS) states how this will be executed between the parties.

4.4. “Wage setting dialogue”. One way to do this process is that the chief responsible to decide (has mandate) salary has a dialogue, wage setting dialogue, with his/hers employees. This could be the Chief Judge, President - Court of Appeal, President - Administrative Court of Appeal, Senior Judge - Head of Division or other person with this delegated responsibility. The wage setting dialogue focus at the performance and the results that the employee has achieved. The dialogue aims to lead to an agreement of the annual pay review.

4.4.1 There are some criteria’s (see below) which are stated in the local wage policy and they are also described in the support document “The Evaluation-tool” and it’s an informal way to evaluate judges. However the evaluation of judge performance shall not be a reaction or effect on how she or he judges in an individual case nor in other respects apply rule of law in a particular case. The system with “the wage-setting dialogue” is a relatively new practice for judges.



4.5. Summarize

To summarize there are no formal mechanism in our legal system established for the evaluation of the professional performance of judges. However there is an informal mechanism for the evaluation of the professional performance of judges, but as described above the evaluation are strictly regulated and cannot under any circumstances come in conflict with the principle of the judges' independence.

TURKEY

There is a special law of 2802 for the judges and prosecutors in our country. The personal rights of both judges and prosecutors are enacted by this law. All personal rights are common for the judges and prosecutors. In every two years, their performances are measured with regular inspections by the inspectors of HCJP. The evaluations are carried out on their field of work. Every section in the form is given points as a result of the inspection. With the result of general average, the results are remarked as "insufficient 0-39", "needs improvement 40-69", "as expected 70-79", "higher than expected 80-94" and "perfect 95-100".

In addition, there is a specific promotion system which the form is also evaluated. That is to say; judges and prosecutors starts to carry out their judicial office with the 8th degree and are subjected to the examination of promotion. They are also subjected to the examination of the first degree promotion after fulfilling their 10 years of office term. They are subjected to the first class' evaluation after 3 years they promote to the first class and after becoming first class to the examination of promotion in every 3 years.

In the examination of promotions, the evaluation is carried out considering "C" for the best, "B" for good and "A" for intermediate. As a precondition, it is required that the number of B promotions must be higher than "A"s to promote first class. In this criterion, promotion C is regarded as same with promotion B. It is required to promote at least B to become first class and succeed in the examinations made in every three years. In what conditions to get promotion to A, B and C is legislated within the Resolution of HCJP. These matters are mentioned in the following paragraphs.



b. What are the aims of the system of evaluation of the professional performance of judges and/or (where relevant) of prosecutors if such mechanisms exist?

AUSTRIA

It is the aim of the statutory rules of issuing a work evaluation on the one hand to evaluate the aptitude of a judge for the office he actually holds and on the other hand and in particular to serve as quality assurance of jurisdiction (and of public prosecution). Moreover, work evaluations serve as input (as one of several criteria) for appointment procedures, with a new work evaluation being issued in the case of an appointment pursuant to Section 51 (2) Service Act for Judges and Public Prosecutors (RStDG), for that matter.

Reform Plans to Strengthen Confidence in the Administration of Justice

In the recommendations developed in the framework of working groups appointed by the Federal Minister of Justice with an aim to strengthen confidence in the administration of justice, amended rules on issuing work evaluations were proposed in order to accomplish more realistic routines of issuing more meaningful work evaluations.

Specific Reform Objectives

It is the objective of reform discussions within the judiciary to address questions of structural organisation and problems concerning performance evaluations, and in particular to achieve more detailed differentiation criteria and more meaningful ratings (possibly a points system). Accidental results depending on the timing of appointment procedures, and protracted periods without revised evaluations shall be avoided. This is meant to achieve quality assurance of jurisdiction (and public prosecution) in regular intervals as a measure of strengthening and ensuring public confidence.

A more detailed Description of the Amended Rules Proposed

- The criteria for obtaining the highest rating in aptitude assessments (“excellent”) shall be re-defined and made stricter. Such a top rating may only be awarded for outstanding knowledge, abilities and performance in all criteria to be considered pursuant to Section 54(1).
- There shall be more detailed rules on the extent of explanations for the rating. The ratings “excellent” and “not qualified” have to be justified comprehensively; simplified, headline style and cursory explanations are possible for all other ratings. An explanation must be specifically formulated in such a manner so as to make the respective reasons for the differentiated ratings “very good”, “good” und “satisfactory” plausible.
- The practice that opinions of the court managers and of the chairperson of the appeal panel shall be obtained (or if necessary the chairperson of the appeal panel shall be requested to participate in the deliberations), prior to making a decision on a work evaluation of judges employed at district courts shall be extended to judges of regional and higher regional courts, and to



the Supreme Court as well (under proviso of restrictions due to systematic requirements).

- In line with comparable rules for public prosecutors, it shall be established also in the judicial area that a judge having obtained an overall rating of “not qualified” in two consecutive calendar years, shall be relieved of his/her function once the second rating has become final.

- During the reform, a transition from “calendar year” to “work-years” shall be made.

- Implementations of point-wise indicator systems are under consideration.

Work in Progress

There exists a comprehensively amended draft law comprising elements from various proposals and discussion results of recent change management seminars, from regular discussions with professional representatives of judges and from other feedback received concerning the draft proposal to amend the provisions of the Service Act for Judges and Public Prosecutors (RStDG) on work evaluations for judges and public prosecutors. The following items should be particularly highlighted:

- Strengthening the rights of the persons assessed by creating a legal basis, achieving fairness and objectivity in the procedure and improving the plausibility of the rating),

- Departing from calendar year as period of assessment (in future work-year/s) also for first assessments,

- Waiving time requirements (one-year period), when judges apply for revised work evaluations (i.e. more flexibility in work applications),

- Revising work evaluations in a regular manner (at least every 5 years with right of transition),

- Specifically considering a point-wise indicator system (in different options),

- Defining rules related to cases of doubt (average), as long as no performance evaluation has been issued,

- Defining exceptions related to (only a few) top positions,

- Broadening evaluation fundamentals (generally obtaining opinions from superiors or from the chairperson of the appeal panel),

- Increasing transparency of the procedure (access to files, possible hearing),

- Full integration and special consideration of judicial administrative functions and tasks and

- practically consistent synchronisation of measures with public prosecution.

BELGIUM

The main objectives of the periodic evaluation system consist of:

a) putting judges and prosecutors up to improve performance and develop job skills;



- b) identifying dysfunctions in the activities performed by magistrates;
- c) sanctioning of magistrates (is made possible by the quantification of the evaluation)

There is no direct relationship between the evaluations of professional performance of judges and prosecutors and their destination to the higher levels of jurisdiction.. The evaluations are about the way the magistrate is executing his/her current function.

The evaluation "insufficient" results in a reduction of the magistrate's salary for 6 months (retention of the last salary increase). By the end of the 6th month the magistrate will be evaluated again. If the evaluation remains "insufficient" then the sanction will be further applied.

BULGARIA

The appraisal is aimed at making an objective assessment of the professional qualifications and the professional performance of a judge, a prosecutor or investigating magistrate. The procedure is regulated by Bulgarian legislation as "individual evaluation". An appraisal of professional performance is carried out in two cases /occasions/:

1. for the purpose of acquiring a status of irremovability, after completing a five year length of service as a judge, prosecutor or investigating magistrate;
2. Periodically, every four years until reaching the age of 60 years.

The aims of the evaluation are not defined explicitly in the Bulgarian legislation. The final results /the grades/ of the evaluation are taken into consideration in several cases:

- 1/ career development /for example: "on the job" promotion; participation of the judge/prosecutor in a competition for transfer or promotion to a higher level/;
- 2/ when acquiring "status of irremovability".

CZECH REPUBLIC

Regulate workload of courts

FRANCE

The aim of the appraisal system is to evaluate professional and personal abilities of the magistrate, his/her suitability with certain kind of functions, and to give an opinion on his/her formation needs and his/her capacity to occupy others functions.

Generally speaking, the aims of the system of evaluation of the professional performance are :

- improve the quality of justice by the increase of the competencies,
- provide the necessary information allowing to put the right person at the right place,
- prevent problems and dysfunctions of the justice public service.



GERMANY

The general performance evaluations which take place at certain intervals enable a regular comparison of judges' performance. The rules governing the evaluation (cf. 1.a. above) ensure that the evaluations are uniform and allow for comparison. In addition to an evaluation of performance, there is an aptitude assessment, whose purpose and goal is a determination of whether the judge is suited for a concrete position by way of promotion. The evaluation of aptitude is the factual basis for the subsequent selection decision.

HUNGARY

The aim of the system of evaluation is to assure good professional standard and performance, to reveal the inaccurate practice/mistakes and besides it is a measuring system in the selection of judges for promotion.

Section 66 of ALSRJ reads as follows : „Based on cases completed on a final and absolute basis, the investigation giving rise to the evaluation shall uncover the judge's practice in the application of substantive, procedural and administrative rules of law and the conduct of hearings.”

ITALY

It has the sole aim of assessing their professional performance in order to check their capability to adequately fulfil their functions, in the view of career advancements .

The field of professional evaluation hasn't anything to do, and has no link with the different ground of disciplinary liability, which has completely different rules and procedures, relating to specific cases – analytically numbered by law - of breach of duties.

These recurring appraisals stress that the professionalism of magistrates, under its various profiles, is repeatedly and thoroughly monitored during their whole professional career.

Assuming that a magistrate's independence, impartiality and balance are indispensable conditions for a proper exercise of the judicial functions, these professional appraisals mostly concern: professional capacity, hardworkingness, diligence and commitment.

LITHUANIA

For the aims of the system of evaluation of the professional performance of judges see 1 a).

NETHERLANDS

These conversations are meant to deal with the position of the judge in relation to the organization. Topics can be: how is the judge appreciated by his fellow workers? Does he fit in the organization? Does he need more education in certain fields related to the judicial sector in which he works, etc. The content of his decisions and opinions will never be discussed, but the way in which he handles his workload can be at issue.



NORTHERN IRELAND

The Chief Justice monitors judicial performance in order to ensure public confidence is maintained in the efficient and independent administration of justice.

NORWAY

The aim is to improve the quality of the performance by getting feed-back and advices from colleagues.

POLAND

Until now it was the promotion, under the new law it should also aim at improving of the efficiency.

PORTUGAL

The primary aim of the system of evaluation of the professional performance of judges is to improve the quality of the justice system.

To achieve this goal, when assessing the work of judges, the inspectorates shall gather information about the merit of judges and propose to the Portuguese High Council for the Judiciary (hereinafter CSM) the proper classification. On the first inspection to the service of a judge, shall be given special emphasis to the assessment of the ability of the inspected for exercising the function, as well as to the pedagogical aspect of the inspection. The CSM sets the objective for each extraordinary inspection ordered.

ROMANIA

According to art. 1 para. (1) of the above mentioned Regulation, the evaluation of judges and prosecutors is aimed at establishing the requested standards of professional competence, at improving magistrates' professional skills, increasing the efficiency of the activity in courts and prosecution offices and at enhancing public trust in the judicial system together with maintaining a high level of the quality of the judiciary.

SLOVAKIA

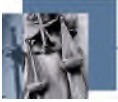
The aim of the regulation on evaluation of the professional performance of judges is to set up predictable criteria of evaluation of judge, to individualize the approach to assess his activity and last but not least to contribute to strengthening the public confidence in the judiciary.

SLOVENIA

The Personnel council's assessments affect the career path of judges, such as promotions to higher courts and higher pay brackets. The judicial office of the judge can also be terminated if it proceeds from assessment of her/his service that he/she is unsuited to judicial service.

SPAIN

Evaluation of professional performance of judges in Spain has several aims:



A) The system of performance evaluation is helpful in order to ensure the good functioning of the judicial system by foreseeing and preventing any possible malfunctioning of the judicial bodies. In this respect it can be of assistance in order to make decisions regarding the number of courts and judicial positions in each court of the country, including programmes of reinforcement in overburdened courts. The performance targets have helped the General Council for the Judiciary define the maximum workload of every judge/court of the country through the system of “input measures/output measures” (módulo de entrada de asuntos/módulo de dedicación), according to the specificities of each court. When the input measures of the judges/courts of a city in the country are exceeded, the Council makes a reasoned proposal to the Ministry of Justice in order to have new courts or positions for additional judges installed in that city or to develop and implement temporary programmes of reinforcement in overburdened courts.

B) On the other hand, performance evaluation could also be helpful in order to adopt decisions by the relevant Committees or the Plenary of the General Council for the Judiciary concerning disciplinary liability of Spanish judges. So, for instance, the disciplinary liability for delays of judges who achieve the predetermined performance targets is normally discarded or mitigated taking into account the fact that standards of performance defined by the Council for the Judiciary have been met.

C) Finally evaluation of professional performance is also related to the payment of a variable component of the judicial salary, which is connected to the achievement of performance targets. The system of evaluation of judicial performance has an impact on judicial salaries, since it is intended as a means for rewarding judges according to their productivity, offering bonuses up to 10% of the judicial salary.

SWEDEN

Sweden has no formal mechanism in the legal system for the evaluation of the professional performance of permanent judges.

In order to be an attractive employer, The Swedish Courts actively focus on matters that affect employee performance and the atmosphere at work. An important factor is the ongoing dialogue between manager and employee. In this context we want to highlight two formalized dialogue mentioned earlier, “The Employee dialogue” and “The Wage setting dialogue”.

“The Employee dialogue”

The purpose with the employee dialogue is to strengthen and to utilize the employee’s potential in order to make her or him to contribute to the operation and goal achievement in best possible ways.

In the employee dialogue shall the manager and the employee:

- Follow up the performance. The operation plan and the individual development/competence plan are used as a basis in the dialogue.
- Goal setting, clarify demands and expectations related to the current job position. The criteria which should be used are also found in the



evolution-tool used in the wage-setting dialogue.

- Connect individual development measures to competence required in current or future job position.
- Create a plan for individual improvement. The plan shall be made from agreement in the employee dialogue and the plan is also adjust to the operation plan and competence of the employee.
- Other topics to discuss are, work environment, cooperation and leadership at the work.

A genuine employee dialogue improves the communication between operation and the employee. In the dialogue is the operation plan linked to the individual's competence and need to development.

In an employee dialogue is the performance evaluated and expectations is stated in order to ensure that every unit and employee contribute to the overall goals of operation.

"The Employee dialogue" is an opportunity for chief and employee to discuss different matters related to the job. Here are the aims inter alia to set goals (individual) for the year to come, discuss the situation at work in general, and discuss need to development and fill competence gap. "The Employee dialogue" and the documentation of it is a source to review in future dialogues e.g. "wage setting dialogue".

Wage setting dialogue

As mentioned earlier, Swedish employer organizations and trade unions have a long tradition of negotiate and collaborate in various matters regarding to employment conditions and remunerations. The negotiations lead to collective agreements (kollektivavtal). One important matter is to negotiate the annual pay review. The collective agreement (RALS) states how this will be executed between the parties. One method is "The Wage setting dialogue".

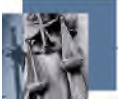
In this dialogue the chief responsible to decide (has mandate) salary has a dialogue with his/hers employees. This could be the Chief Judge, President - Court of Appeal, President - Administrative Court of Appeal, Senior Judge - Head of Division or other person with this delegated responsibility. The wage setting dialogue focus at the performance and the results that the employee has achieved. The dialogue aims to lead to an agreement of the annual pay review.

Purpose with wage setting dialogue

The salary is based on the individuals' performance and skill at work. The salary is set individual with regard to the goals of the operation.

The manager and the employee is discussing with each other the employees work tasks and how these has been carried out in relation to these criteria. There are several advantages with wage setting dialogue, for instance

- It gives an increased clarification of the motives for the wage setting.



- Agreement of wage is established between the two who has the best knowledge of the employees' performance and skills, and it takes place at the individual's workplace.
- A well done dialogue strengthens the connection between results, performance and wage, and this all together contribute in a positive way to the development of operation and goal achievement.

TURKEY

Promotion system primarily aims to distinguish judges & prosecutors who work hard from those who do not. Successful performances by judges & prosecutors are considered in case of promotions to higher positions, and of appointments/transfers to places where they prefer to work. Judges & prosecutors, who get promoted in Books B or C, are rewarded with the increase of their monthly indicators.



c. Which are the criteria (qualitative and/or quantitative) and eventually the indicators applied in your legal system for the evaluation of the professional performance of judges and/or (where relevant) of prosecutors?

AUSTRIA

Pursuant to Section 54 Service Act for Judges and Public Prosecutors (RStDG) any performance evaluation shall include in particular range and current status of professional knowledge, industriousness, perseverance, diligence, dependability, decisiveness, social skills, expressive abilities (both oral and in writing), general conduct in office, in particular towards superiors, co-workers and the public, any conduct outside the office with repercussions to the service, as well as the accomplishments of the position. With judges appointed to a permanent management position or eligible for such a position, their aptitude for such a position has to be evaluated as well. Thus the rating of the judge shall read “excellent”, “very good”, “good”, “satisfactory” or “not qualified”. The work evaluations shall be added to, and kept in the personal file.

BELGIUM

The evaluation criteria are :

A) Periodic evaluation of judges and prosecutors:

Three groups of criteria were established. Group A criteria are more important than group B criteria which are more important than group C criteria:

The evaluation criteria for judges are:

Group A:

1. Judicial knowledge required for the matters to be handled
2. Effectiveness and efficiency
3. Communication and ability to express oneself
4. Decisiveness
5. Integrity

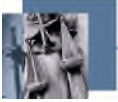
Group B:

1. Collegiality
2. Self control

Group C:

1. Willingness to learn
2. Ability to adapt
3. Open mind and commitment

The evaluation criteria for prosecutors are:



Group A:

1. Judicial knowledge required for the matters to be handled
2. Effectiveness and efficiency
3. Communication and ability to express oneself
4. Decisiveness
5. Integrity
6. Criminal policy

Group B:

1. Collegiality
2. Self control
3. Capacity to work together in a hierarchy

Group C:

1. Willingness to learn
2. Ability to adapt
3. Open mind and commitment

Each criterion can be defined by a number of indicators. The relevant indicators are enumerated in the royal decree.

Example of criteria and their related relevant indicators for judge of a court of first instance:

GROUP A

1. Juridical knowledge required for the matters to be handled:

Indicators:

- Has command of the legal matters to be handled, taking into account the facts, offences and situations with which the magistrate is presented in the exercise of his judiciary function;
- Shows interest in these matters;
- Justifies his rulings in law as well as in fact;
- ...

2. Effectiveness and efficiency:

Indicators:

- Evidences analytic ability;
- Evidences organisational skill in organising the work and leading a group;
- Motivates colleagues and staff;
- Works effectively: is capable of organising his own work and finding an effective solution to the problems that arise;
- Has a sense of initiative, evidences common sense and practical insight;



- Maintains a balance between:
 - . the quality of the work
- professional accuracy
- creativity
- . the quantity of work
- working method
- follow-up of cases;
- Is punctual: respects agreed upon times and deadlines;
- Is capable of leading a hearing or meeting;
- ...

3. Communication and ability to express oneself:

Indicators:

- . Willingness to listen:
 - Discerns explicit and implicit motives of discussion partners;
 - Is capable of obtaining important information in discussions by asking questions and responding appropriately to the interventions;
 - Is able to choose the most appropriate form of communication;
 - Is courteous and polite;
 - ...
- . Ability to express oneself verbally and in writing:
 - Expresses himself in a balanced, cautious and correct manner;
 - Writing skills: written documents are structured, clearly argued, grammatically correct, logical and precisely formulated, in an understandable language;
 - Speaking skills: fluent, clear, concise and precise;
 - Ability to synthesise;
 - ...
- . Professional relational skills:
 - Pays attention to the quality of the relationships with lawyers, judicial staff (court clerks, jurists, investigators, interns), those being judged and colleagues;
 - Pays attention to consultation and reconciliation;
 - ...

4. Decisiveness:

Indicators:

- Assumes responsibility despite the degree of difficulty of the matters and



situations about which rulings must be made;

- Takes decisions within a reasonable time frame;
- Avoids pointless judgements or interlocutory rulings;
- ...

5. Integrity:

Indicators:

- Is impartial in all rulings, during the entire judgement process;
- Acts with respect for generally accepted professional ethics and deontology;
- Is concerned about public service and promotes in particular the trust of those being judged in the administration of justice;
- Exercises his authority in full independence and allows no external influence in this;
- Is able to resist pressure, provocation and coercion;
- Pays attention to the rights of the person and fair debate;
- Employs a certain level of reservedness;
- ...

GROUP B

1. Collegiality:

Indicators:

- Has a collegial attitude: is committed to realising the shared objectives of the group;
- Exchanges professional expertise and information;
- Is able to work in a team: seeks and assumes responsibility;
- Is loyal to others and the judgements made;
- ...

2. Self-control:

Indicators:

- . Fair behaviour:
 - Acts in accordance with the judgements taken;
 - Overcomes the difficulties with which he is faced in his cabinet, at the hearing, in the framework of deliberations and in all other situations;
- . Ability to handle stress:
 - Able to handle the workload;
 - Maintains self-control even when challenged;
- ...



GROUP C

1. Willingness to learn:

Indicators:

- Is concerned about supplementing or improving his skills;
- Takes initiative to further his education;
- Maintains balance between work and education;
- ...

2. Ability to adapt:

Indicators:

- Is willing to perform new activities and shows himself to be effective in these;
- Views each change or required replacement with a positive attitude;
- ...

3. Open mind and commitment:

Indicators:

- Is available, both within and outside his jurisdiction, to take or contribute to constructive initiatives, but remains able to maintain a good balance between primary and secondary activities;
- Takes part in activities that contribute to better insight into societal reality;
- ...

B) Evaluation of adjunct mandates and specific mandates:

The groups of evaluation criteria mentioned under A) are adapted to each mandate.

C) Evaluation of mandates of chief prosecutor (i.e. general prosecutor, federal prosecutor, chief prosecutor (also the chief prosecutor mandate in relation with labour cases, i.e. “auditeur du travail”):

Criteria for a follow up (during the first year of the mandate) and the evaluation (during the last year of the mandate) of the fore-mentioned chief prosecutors are:

Group A: General criteria

- 1. Legal knowledge
- 2. Integrity - Professional Ethics
- 3. Vision
- 4. Control of external environment
- 5. Ability to lead a group
- 6. Planning and organization
- 7. Monitoring progress



- 8. Capacity in taking decisions
- 9. Sense of public service

These nine general criteria apply to all the functions of chief prosecutor.

Group B: Specific criteria

- 1. Capacity of collaboration with colleagues and judicial staff
- 2. Capacity of efficient delegation of tasks
- 3. Capacity of active listening
- 4. Capacity of developing the professionalism of the staff
- 5. Adaptability
- 6. Persuasiveness
- 7. Capacity of analysis
- 8. Stress resistance
- 9. Emotional intelligence

Only two or three specific criteria apply to the different functions of chief prosecutor.

Group C: Assessment of implementation of management plan

A. Evaluation of original management plans;

B. Evaluation of modifications to original management plans.

The group C criteria apply to all functions of chief prosecutor.

Group A indicators

1. Legal knowledge

- deep knowledge of laws and regulations applied in exercising jurisdiction:
- sound knowledge of legal conditions, behaviours and discipline the magistrates have to comply with and those of the judicial staff;
- knowledge of the procedural and organizational rules which are relevant for an adequate functioning of courts and offices;

2. Integrity - Professional Ethics

In order to comply with this criterion the magistrate has to demonstrate honesty, uprightness and an adequate commitment in order to observe obligations related to the judicial function.

More specifically the evaluated magistrate has to:

- observe the same standard-rules that his staff has to observe;
- be honest and fair in his/her intentions and behave consistently;
- work for assuring equal treatment of members of his court or office;
- take responsibility in applying jurisdiction, as well as towards his/her body and the employees of his/her office in any circumstance even in case of



critical conditions;

- avoid undertaking any activity which can undermine his/her integrity;
- exercise professional functions with independence avoiding any influence or pressure

3. Vision

In order to comply with this parameter the evaluated magistrate has to show ability to develop a vision in terms of elaborating important and long-term strategies and their consequent management.

More specifically the evaluated magistrate has to:

- set specific objectives within a long-term plan and the system to achieve them;
- set consistent short-term strategies within the long-term plans;
- demonstrate capacity in foreseeing circumstances which can affect his/her office;
- quickly discern the causes of problems;
- respond immediately to new and unforeseen circumstances;
- demonstrate ability to synthesize;

4. Control of external environment

In order to comply with this parameter the magistrate has to demonstrate a good knowledge of social trends and policies, or other social phenomena and effectively use this knowledge as part of its function or for the benefit of the organization.

More specifically the evaluated magistrate has to:

- be aware of the important developments in his/her own profession and function;
- be well informed of the condition of jurisdiction in his district, the evolution of the society and about elements which can have an impact on the organization or on his task/function;

Be aware of the impact that the exercise of his /her function can or should have on society:

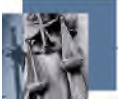
- is aware of the impact of the missions entrusted with his jurisdiction or his/her body.

5. Ability to lead a group

In order to comply with this parameter the magistrate has to show the capacity of leading a group and creating and maintaining working relationships to achieve a specific objective.

More specifically the evaluated magistrate has to:

- have a concrete knowledge of the body he leads;
- delegate efficiently responsibilities to his employees and thus create



synergies;

- organize an effective cooperation within the group of employees;
- adopt decisions in order to encourage his/her employees to support his work and give his/her contribution;
- define and distribute responsibilities among staff;
- solve in an effective way disputes within the group;
- have full domain of the oral and written evidence, be persuasive, organize and ensure the flow of information;
- have capacity in creating a good spirit in the working-team and motivate employees;

6. Planning and organization

In order to comply with this parameter the magistrate has to show his/her skill of setting effective goals and priorities, identifying actions, time and resources to achieve specific targets.

According to the following indicators the evaluated magistrate has to:

- establish clear objectives and indicated unambiguously the result to be achieved;
- regularly evaluate his action and that of his employees and adapts his activity according to the fixed objectives;
- evaluate in a proper way the correct meaning and the importance of the acquired information not only in a perspective of his/her office, but even in favour of the general function of the judicial body; on the basis of these information take all necessary measures.

7. Monitoring progress: being able to create adequate instruments for monitoring progress.

In order to comply with this parameter the magistrate has to give proof of his/her ability to:

- find solutions to problems in due time;
- follow carefully the evolution of his jurisdiction or his body according to the defined objectives;
- keep itself informed of progresses, both formally and informally;
- be open to the implementation and use of new technologies such as management support;
- react in a due time in taking appropriate actions in case of unexpected modifications of the established plans, adopting legal solutions on the basis of best practices.

8. Capacity in taking decisions

In order to comply with this parameter the magistrate has to give proof of his/her ability to render the necessary decisions timely, expressing his



position.

More specifically the evaluated magistrate has to:

- adopt decisions within a reasonable time;
- grounding his/her decisions;
- demonstrate ability in deciding in all circumstances;
- be able to take appropriate and adequate decisions, taking into account the collected information.

9. Sense of public service

In order to comply with this parameter the magistrate has to demonstrate the capacity of taking into consideration during his professional activity the perspective of legal professionals, users and actors of civil society.

More specifically the evaluated magistrate has to:

- Acquire regular information from the perspective of legal professionals, users and actors of civil society;
- develop an appropriate communication with justice professionals, users and actors of civil society;
- develop a policy for handling complaints submitted to it;
- organize the reception and information of litigants;
- create proper relationships with public institutions involved in Judicial activities.

Group B indicators:

- 1. Collaboration

In order to comply with this parameter the magistrate has to demonstrate his/her skills in stimulating and establishing collaboration and coordination both internally and externally.

More specifically the evaluated magistrate has to:

- develop a transparent model of collaboration and consultation;
- demonstrates diplomacy;
- use in a appropriate manner, persons who can play an important role in finding adequate solutions;
- overcome objections, different approaches within the organization and meet the staff in a constructive manner;
- establish a common working method and ensure that each employee provides his contribution in a appropriate manner;
- ensure an effective collaboration with external actors;
- create easily contacts with others, put his listeners at ease and be capable of piquing their interest;

2. Delegation



In order to comply with this parameter the magistrate has to demonstrate his/her ability of assigning responsibilities and clear tasks to a selected staff.

More specifically the evaluated magistrate has to:

- delegate conveniently responsibilities to all levels within the organization of his/her office;
- indicate the process to follow and specify to employees the margin they have in order to adopt their own decisions;
- delegate tasks to his staff, taking into account their capabilities, experiences and specializations;
- keep records of delegated activities;
- adopt decisions in the frame of the delegated activities respecting the delegated personnel;

3. Active listening

In order to comply with this parameter the magistrate has to demonstrate his/her ability to identify important information in communications, ask appropriate questions, respond to interventions.

More specifically the evaluated magistrate has to:

- understand correctly his/her interlocutors;
- search the explicit and implicit motivations of his interlocutors;
- be able to identify important information in oral communications, ask questions and respond appropriately to interventions;
- be able to choose the most appropriate mode for communication;
- be clear, polite and courteous.

4. Professional development of staff. To take or propose measures to enable his employees to provide the best performances.

According to the following indicators the evaluated magistrate has to:

- be available to his staff;
- provide his staff with clear and constructive "feedback" according to their performances;
- explain to employees the reasons of changes in the organization and the different phases to implement;
- promote and provide training to employees;
- search a balance between the specialization of staff and their adaptability;
- guarantee a balance between work and training;
- optimize working conditions in compliance with the legislation on welfare;
- allocate the workload equitably;
- keep informed employees of circumstances of their work.

5. Adaptability



In order to comply with this parameter the magistrate has to effectively adapt his/her activity to the changes of working environment, tasks, responsibilities and human and material resources.

More specifically the evaluated magistrate has to:

- adapt the original objectives in order to operate effectively and suitably;
- be able to challenges;
- be open to others' opinions;
- recognize good ideas from others and evaluate them;
- respond appropriately to unexpected and urgent situations;
- find innovative solutions that can improve the situation;
- take advantage of opportunities that arise to achieve objectives.

6. Persuasiveness

In order to comply with this parameter the magistrate has to be able to convince his/her interlocutors and to ensure they include projects and ideas.

More specifically the evaluated magistrate has to:

- be capable of attracting adherence;
- create the suitable conditions for involving stakeholders and promoting their participation and give feedback;
- present his decisions with conviction and clearness.

7. Capacity of analysis

In order to comply with this parameter the magistrate has to be able to analyze data and draw adequate and practical conclusions.

More specifically the evaluated magistrate has to:

- be able to elaborate personal opinions based on objective data;
- adopt realistic and balanced decisions, even in cases of incomplete and unclear data.
- manage to distinguish the essential from the accessory;
- evaluate properly the feasibility of proposed projects.

8. Stress resistance

In order to comply with this parameter the magistrate has to perform properly professional activity even in case of constraining circumstances.

More specifically the evaluated magistrate has to:

- search the best solutions, even if there are serious problems, lack of time or emotional situations;
- be capable of self-control, even if provoked;
- avoid excessive talking in all circumstances and expresses opinions with serenity and caution;



- be able to establish priorities and functions of his partners.

- 9. Emotional Intelligence

In order to comply with this parameter the magistrate has to consider the weaknesses and uncertainties that may influence situation.

More specifically the evaluated magistrate has to:

- take into account conditions of other persons;
- understand beliefs of others;
- demonstrate respect for others;
- show interest in his/her staff;
- encourages his/her employees and recognize their merits;
- create proposals and ideas with colleagues.

The different relevance of the criteria and indicators as to the final evaluation grade.

1) Periodic evaluation: As mentioned before criteria have not the same relevance: their value depends on the group they belong to.

The four grades correspond to the following values:

Group A criteria

- a. very good = + 6;
- b. good = + 3;
- c. sufficient = 0;
- d. insufficient = - 3;

Group B criteria

- a. very good = + 4;
- b. good = + 2;
- c. sufficient = 0;
- d. insufficient = - 2

Group C criteria

- a. very good = + 2;
- b. good = + 1;
- c. sufficient = 0;
- d. insufficient = - 1

After the evaluation of each criterion, all the marks are added.

A judge obtains the final evaluation:

- “very good”, if the total obtained exceeds +22;



- “good”, if the total exceeds +11 but is less than or equal to +22;
- “sufficient”, if the total exceeds -11 but is less than or equal to +11;
- “insufficient”, if the total exceeds -22 but is less than or equal to -11.

A prosecutor obtains the final evaluation:

- “very good”, if the total exceeds +27;
- “good”, if the total exceeds +13 but is less than or equal to +27;
- “sufficient”, if the total exceeds -13 but is less than or equal to +13;
- “insufficient”, if the total exceeds -27 but is less than or equal to -13.

2) Evaluation of adjunct mandates and specific mandates:

Per group of criteria the evaluation “good” or “insufficient” receives another value (e.g. group A: good = +3; insufficient = -3).

3) Evaluation of the mandates of chief prosecutor:

If one general criterion of Group A is evaluated “insufficient” then the final grade will be “insufficient”.

When group B consists of 1 or 2 specific criteria and if one of these is evaluated “insufficient”, then the final grade will be “insufficient”.

When group B consists of 3 or 4 specific criteria and if at least two of these are evaluated “insufficient” then the final grade will be “insufficient”.

When the evaluation of the management plan is “insufficient” then the final grade will be “insufficient”.

BULGARIA

The primary legislation provides for the criteria and indicators applied in the appraisal procedure. The Regulation on appraisal procedure adopted by the High Judicial Council explains in details the contents and the application of the abovementioned criteria and indicators. The criteria are divided into two groups: general and specific.

General criteria for the appraisal of a judge, prosecutor or an investigating magistrate are:

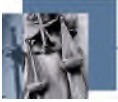
1. legal knowledge and skills for its implementation;
2. skills for analysis of legally relevant facts;
3. skills for optimal organisation of work;
4. expediency and discipline.

Specific criteria for the appraisal of judges are:

1. The compliance with the schedule of court hearings,
2. The skills for conducting court hearings and drawing up records of proceedings.

Specific criteria for the appraisal of prosecutors are:

1. The skills for planning and adopting a structured approach at taking



action in pre-trial and trial proceedings,

2. The level of implementation of written instructions and personal orders of a higher-standing prosecutor,

3. The ability to organise the work and to direct investigation bodies and teams involved in pre-trial proceedings.

Specific criteria for the appraisal of investigating magistrates are:

1. The skills for planning and adopting a structured approach at taking action in pre-trial proceedings,

2. The level of implementation of written instructions and personal orders of the prosecutor.

In the course of the appraisal the following major indicators are taken into account:

1. compliance with terms,

2. the number of acts confirmed, repealed, modified and the grounds therefor,

3. the outcomes of inspections carried out by the Inspectorate at the High Judicial Council,

4. the overall workload of the respective judicial area and judicial body as well as the workload of the appraised judge, prosecutor or investigating magistrate compared to the workload of other judges, prosecutors or investigating magistrates in the same judicial body.

More indicators are listed and explained in the Regulation adopted by the Judicial Council. They correspond with the specific functions of the appraisee /judge or prosecutor or investigating magistrate/.

When conducting the evaluation the competent body applies the following methods:

a/ quantitative assessment of the work of the evaluated person on the basis of statistical data /comparing and analysis/;

b/ qualitative assessment of the work of the evaluated person on the basis of statistical data /comparing and analysis/;

c/ direct observation;

d/ personal impressions;

e/ analysis of any reliable written information relevant to professional performance of the evaluated person.

The primary legislation provides several additional criteria for evaluation of the professional performance of administrative heads and their deputies. As the Questionnaire refers exclusively to evaluation of the professional performance of judges/prosecutors, the abovementioned additional criteria will not be explained here.

CZECH REPUBLIC

Indicators are the level of the court and specificity of the agenda. Result is a



minimum number of cases to be delt by each judge monthly.

FRANCE

Criteria taken into account in this appraisal system consist in the general professional abilities, legal and technical knowledge, but objective indicators do not exist.

GERMANY

The bodies responsible for administrative supervision must base their evaluation on provable facts. Independently of specific cases, criteria include the typical judicial skills such as understanding of the factual situation, legal knowledge, knowledge of court procedure and ability to cope with high workloads. Also relevant are factual and legal competence, personal competence, social competence as well as competence in leadership. As one example, reference is made to the response to question 1.a. and the administrative guidelines of the Free State of Bavaria mentioned there. Some of the evaluation criteria mentioned at point 3 include: The judge's ability to work on the assigned cases with the requisite thoroughness, to glean the important issues and to come to legally founded and practically feasible solutions in an appropriate period of time, independence and self-initiative, planning skills, organisational and time management skills (e.g. goal-oriented work processes, compliance with statutory deadlines) and ability to work in a team (trusting cooperation with superiors, colleagues and staff, effective use of personnel capacities, conduct in sharing information and communicating), judgment and decision-making skills, his/her willingness to take on responsibility, his/her understanding of social and economic contexts, and willingness to engage in advanced training. As an additional example, we refer to point V. 1. of the administrative regulations of the Land of North Rhine-Westphalia: "Professional evaluations of judges and public prosecutors AV d. JM dated 2 May 2005 (2000 – Z. 155)."

HUNGARY

The indicators applied in the Hungarian legal system for the evaluation of the professional performance of judges are regulated both by the referred Act (ALSRJ) and a decree.

Annex No. 5 to ALSRJ enumerates the skills and competencies to be assessed in the course of candidacy proceedings and judicial evaluations : „ decision-making skills,

cooperation skills, analytic mind, foresight, discipline, responsibility, firmness of mind and determination, aiming high, integrity, communication, conflict management, creativity, self-confidence, firmness, independence, problem and situation assessment, troubleshooting skills, application of professional knowledge, organizational and planning skills, verbal and written communication skills, objectivity”.

ITALY

The indicators used for assessing magistrates are: legal expertise, mastery



of the techniques used in the different judicial sectors; the outcome of the judicial decisions issued in subsequent instances of the proceedings; the quantity and quality of judgements issued; compliance with deadlines for drafting and filing provisions; degree of participation and actual contribution to the proper operation of the office (if available for replacing colleagues, frequency of attendance of refresher courses, contribution to solving organisational issues, etc.).

Statistics are collected in order to check the overall amount of work dealt with by the single judge or public prosecutor, in comparison with the performance displayed by the other members of the same office. Further on, the reform provides for the identification of average standards for settling proceedings to which to compare the activity carried out by every individual magistrate. The determination of individual productivity *standards* is an aspect of the assessment of magistrate's industriousness that was entrusted exclusively to the Council.

LITHUANIA

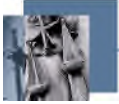
The criteria for the evaluation of the professional performance of judges are defined in the Description of the Assessment of Judges' Activities approved by the resolution of the Judicial Council (hereinafter referred to as the Description).

According to the Description, the Permanent Commission for the Assessment of Judges' Activities (hereinafter – the Commission) assessing the activities of judges shall take into account the quantitative and qualitative professional performance indicators, personal and performance characteristics of a judge, jurisdictional and non-jurisdictional activities of judges.

When assessing the jurisdictional activities of judges, the following factors directly related to the professional performance shall be analysed:

1. statistical data about the procedural decisions adopted by the judge in cases and quashed by the court of a higher level due to obvious violations of the material and procedural law norms;
2. instances related to the unjustifiable delays of case hearings;
3. the quality of managing the proceeding (e.g. perceptiveness, consideration, behaviour with parties of the proceedings and other participating persons, ability to hear speeches of every person participating in the proceeding, attentiveness);
4. the clarity, consistency and the expression of the procedural decisions adopted by the judge;
5. data concerning the concluded peace agreements while examining civil cases, number of cases transferred to the examination by way of judicial mediation and number of cases examined by the judge – the mediator by way of judicial mediation.

When assessing the non-jurisdictional activities of judges, the following



factors related to the professional performance shall be analysed:

1. the communication abilities of the judge (e.g. professional communication with other judges, lawyers, prosecutors, employees and other persons of the court where the judge works, other courts and institutions);
2. the abilities to organise the work (e.g. proper planning and organisation of work, the ability to devote enough time for each issue under consideration, diligence, punctuality, compliance with the terms established by the law performing duties related to the professional activities of the judge);
3. other performance characteristics of the judge (e.g. in service training, scientific–pedagogical activities, participation in the self-governance of courts, social activities of the community, drafting of legal acts, usage of common and procedural language, knowledge of the foreign languages, working skills related to the use of information technologies and other);
4. personal characteristics of the judge (responsibility, communication skills, tact and others);
5. compliance with the requirements of the Judicial Code of Ethics.

NETHERLANDS

The Constitution holds that only judges can judge each other. The Judiciary Organization Act prohibits any intervention by the presidents of the courts and other managers, or by the Council for the Judiciary, in the way in which a judge delivers his decisions and opinions.

The limits of this instrument of personnel management are also the frequency of these conversations, the way they will be reported or kept in a personnel file and, as mentioned before, the Constitutional guarantees.

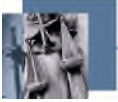
POLAND

In conclusion of a point a), the evaluation of work of a judge carried out in connection with the promotion is based rather on certain fixed practices (habits), and not a detailed legal regulation. The statutory criterion of interim evaluation of the judge is efficiency and professional competence in the field of methodology of work and business culture, as well as expertise in identifying specific types of matters, and the exercise of individual functions.

PORTUGAL

Pursuant to article 34 of the Statute, the classification must consider:

- The way the judge fulfill his duties;
- The amount, difficulty and management of the work assigned;
- His capacity to simplify the procedures;
- The conditions under which the work is done;
- His technical preparation;



- His intellectual category;
- Published legal works;
- Suitability.

Pursuant to article 37, n° 1, of the Statute, in evaluation of judges' performance are always considered: the seniority, the result of previous evaluations, disciplinary decisions and any additional elements in the judge personal file.

The criteria mentioned above are developed in article 13 of the Regulation. Pursuant to this article inspections must focus on:

1/ Human ability to exercise the function (art. 13°, n° 2), under which must be taken into account the following factors:

- a) Civic competence;
- b) Independence, impartiality and dignity of conduct;
- c) Relationship with other procedural interveners and with public in general;
- d) Personal and professional prestige;
- e) Reserve and serenity while exercising the function;
- f) Ability to understand the specific situations under consideration and sense of justice, given the socio-cultural environment where the function is exercised;
- f) Ability and dedication in the training of judges.

2/ Adjustment to the service (n° 3), under which must be taken into account the following factors:

- a) Assiduity, zeal and dedication;
- b) Productivity;
- c) Method;
- d) Speed in the decision;
- e) Ability to simplify procedures;
- f) Direction of the court, of the hearings and of other steps, namely concerning the punctuality and the scheduling.

3/ Technical preparation (n° 4), under which must be taken into account the following factors:

- a) Intellectual category;
- b) Ability to grasp the legal situations in question;
- c) Capacity to convince based on the quality of the arguments used in the reasoning of decisions, with particular emphasis on the original ones;
- d) Juridical level of the work inspected, assessed, essentially, by the synthesis capacity in the enunciation of the issues and their resolution, the clarity and simplicity of exposition and argumentative discourse, the practical and legal sense and the reflection and knowledge revealed in the decisions.



Judges can have the following classifications: "Very Good", "Good with Distinction", "Good", "Sufficient" and "Mediocre" (article 33.^o of the Statute).

- "Very Good" is the recognition of a highly meritorious performance throughout the judge's career (art. 16.^o, n.^o 1, al. a), of the Regulation).

- "Good with Distinction" is the recognition of a meritorious performance throughout the judge's career (art. 16.^o, n.^o 1, al. b), of the Regulation).

- "Good" is the recognition that the judge revealed, in the exercise of his duties and under the conditions he performed them, qualities deserving emphasis (art. 16.^o, n.^o 1, al. a), of the Regulation). This is the classification that is presumed in case of lack of classification not imputable to the judge.

- "Sufficient" is the recognition that the judge has the indispensable conditions for the exercise of his duties and that his performance was merely satisfactory (art. 16.^o, n.^o 1, al. d), of the Regulation).

- "Mediocre" is the recognition that the judge had a less than satisfactory performance (art. 16.^o, n.^o 1, al. e), of the Regulation).

Apart from exceptional circumstances, the initial classification should not be over "Good".

The improvement of classification must be gradual, not rising more than one step at a time, unless in exceptional cases, but in no circumstances must be consequence of the judge's seniority.

The mark of "Very Good" only exceptionally may be given to judges who have not exercised judiciary for 10 years, and this can only occur if the high merit is clearly shown by his personal and professional qualities revealed in the performance of particularly complex service.

ROMANIA

In order to verify the accomplishment of the professional performance criteria, judges and prosecutors shall be evaluated every 3 years. These criteria refer to the efficiency, the quality of their activity, the integrity, the condition of attending the in-service training programs and the evaluation of the managerial tasks, if the case may be. Such criteria/indicators are the following:

Indicators in terms of assessing professional efficiency

- observing the reasonable deadline for solving cases and for editing court decisions; observing the principle of celerity;
- the workload and complexity of cases;
- the operability of the activity both in courts and at the prosecution offices;
- the solutions given to remedy deficiencies in the activity of courts/prosecution offices;

Indicators in terms of quality of the magistrates' activity:

- quality of the court decisions and of prosecution works;



- professional behavior in court/prosecution office;
- capacity for analyses and synthesis;
- coherence, clearance and logics of the argumentation and expression;
- abilities in terms of professional social communication;
- number of defendants, of indictments, of defendants sent to court, the number of convictions and of acquittals definitive solutions;
- number of admitted appeals and second appeals.

Indicators in terms of evaluating magistrates' integrity

- observing the standards in terms of professional behavior, of dignity, impartiality;
- the existence of irrevocable disciplinary sanctions for magistrates

SLOVAKIA

Criteria for judge's evaluation:

- a) review of the decision-making activity, smoothness and dignity of trying cases in the evaluated period
- b) opinions of appellate panels or cassation panels respectively
- c) statement of the Court president on activity of the judge under evaluation
- d) own knowledge of the person who carries out the evaluation and based on the Court President statement
- e) state and reasons of older backlogs and delays
- f) statement of the council of judges on observing the principles of the judicial ethics

SLOVENIA

The criteria for selecting and promoting judges is set in Chapter 4 of the Judicial Service Act:

Article 29

(1) The assessment of judicial service shall be compiled in consideration of the following criteria:

- a. professional knowledge, whereby consideration shall be taken of the judge's professional activities, the judge's specialist and postgraduate studies, and the reputation achieved by the judge in the legal profession;
- b. working capabilities, whereby consideration shall be taken of the ratio of the volume of judicial work performed to that expected, whether the judge fixes and conducts the hearings in a continuous way, delivers the written judgements in time and handles the lodged legal remedies in time;
- c. the ability to resolve legal questions, whereby consideration shall be taken of the level of correctness and legality achieved in the judge's



decision-making as determined primarily in procedures with legal remedies, of the judge's consideration of the relevant case-law and of the judge's ability to solve complicated and complex matters;

d. the success at eliminating or preventing judicial backlogs, especially solving matters in accordance with the time of assignation to the judge, taking into account the number of assigned cases and the ratio between the solved cases that were considered a judicial backlog and all cases solved, the ratio between the solved important cases that were considered a judicial backlog and all important cases solved as well as the number of court settlements;

e. the safeguarding of the reputation of the judge and the court as determined from the way in which procedures are conducted, communication with parties and other bodies, the upholding of independence, impartiality, reliability and uprightness, and behaviour inside and outside the service

f. the ability of verbal and written expression, as proceeds from the records of the cases handled, the rulings formulated and the judge's professional action

g. additional work undertaken in holding judicial office, within the framework of mentorship, and involvement in legislative procedures and in education and professional training

h. the attitude towards colleagues in performing judicial work

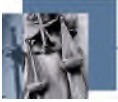
i. the ability to perform the functions of a managerial position, if the judge is appointed to such a position, as shown by the work results in the area entrusted to the judge

(2) The assessment of judicial service must contain details of the fulfilment of all the criteria specified in the previous paragraph.

The Judicial Council also adopts the Guidelines for the assessment of the quantity and quality of work of judges and a part of these guidelines is also the minimum number of cases each judge should resolve.

SPAIN

The criteria and indicators of the evaluation of Spanish judges are only referred to objective quantitative data (such as, incoming cases; closed cases; decisions issued by each judge/court; pending cases and backlogs). These indicators basically provide information regarding workload and quantitative performance of judges (and indirectly speed and timeliness of proceedings), but do not assess other aspects (quality and contents of the judicial decisions, impartiality, integrity and expertise of judges, uniform application of the law, etc.), the evaluation of which could collide with judicial independence, according to the Spanish approach on this matter. Thus, no body of self-governance or self-administration of the Judiciary (including the Judicial Inspection Department, the Standing Committee and the Plenary of the General Council for the Judiciary) may correct or evaluate any judge's application or interpretation of the Law outside of the system of statutory appeals and remedies, under the pretext of assessing the performance of



the judge.

In this respect, the main element is the comparison of the performance of each judge with a predefined standard regarding the number of judgments and decisions to be issued by each court or judge, depending on the branch of the jurisdiction, kind of court, etc. The procedure used to define the performance target is based on a survey on the functioning of different courts in order to assess the average length of each kind of proceeding and the average work time devoted to each kind of proceeding or action by the judge or judges responsible for its adjudication. Thus, the Council for the Judiciary has established the workload that can be assumed by judges, setting the target for each type of judicial body and fixing a scoring for each type of case in each branch of the jurisdiction.

In order to set the maximum number of cases that judicial bodies can assume, the Plenary of the Council has recently approved a new model that has entered into operation in January 2013. The model takes into consideration

- The statistical data provided by the Council's Statistics Department with regards to the bodies whose ruling rate (ratio between the number of incoming cases and cases adjudicated) varies between 0.9 and 1.1, and on which the statistical mean for the past three years is based. Therefore, the evaluation takes into account the actual workload supported by the judicial bodies, rather than the number of incoming cases alone, thus making the statistical information used to calculate the means more reliable. In addition, the result obtained is refined by calculating the average of the mean, to which the reducing percentages are applied on the basis of the overload of work detected in each branch of the jurisdiction. This is because some judicial bodies have been saturated by working at levels much higher than the standards set by the Council. The idea underlying the model is to prevent that an exceptional situation in the courts could be considered a normal or reasonable workload.

- Distinctions based on types of procedure are not contemplated, and therefore, rather than using a single figure, the statistics are based on a range of incoming cases capable of absorbing annual fluctuations in the complexity of the procedures and notable variations between territories. Therefore, it is a matter of establishing minimum and maximum values within which the adequate workload can be measured, taking into account the type and peculiarities of each judicial body at the time the evaluation is made (number of court staff, mobility, percentage of contracts for substitutions in staff, implementation of the new judicial office, complexity of the incoming cases, territorial singularities, etc.). Said range has been set at +/-9% for all bodies.

SWEDEN

Criteria

Ability and willingness to take responsibility

- have the ability and desire to take responsibility for the work and work



situation

- have the ability to prioritize the right questions
- provides feedback to managers and colleagues
- take responsibility for court operations

Results and skills in relation to operation goals and individual targets agreed at the staff dialogue

- works effectively and efficiently
- use of operational support and technical aids
- contributes to the court objectives
- ability to communicate and to give and receive feedback
- handles many task/workload while maintaining high quality

Quality

- have a good response/manners both internally and externally
- follows established procedures
- fulfills time targets

Ability and willingness to cooperate

- the ability and willingness to cooperate
- contributing to team development
- is responsive to the needs of others

Knowledge

- take responsibility for their own professional development
- sharing of knowledge and experiences
- take responsibility for new law clerks

Operation and development

- adapting to changes
- comes with suggestions for constructive solutions and changes of operation
- shows interest and are commitment to work

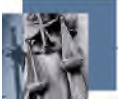
Market sensitivity

- has labor skills/competence that is attractive at the labor market

TURKEY

As it is mentioned above, the promotion form is identified as A, B and C in the examinations of promotions which made in every 2 years and also every 3 years after promoting to the first class.

While promoting judges and prosecutors it is decided that if they merit



promotion in consideration of;

- a) their convenience of ethical values,
- b) their professional knowledge and insights,
- c) their efforts and diligence,
- d) whether they cause a pile of business,
- e) the amount and quality of the business they do,
- f) the loyalty and continuity to their judicial office,
- g) performance evaluation and progress forms prepared by senior officials and inspectors and, register and achievement forms prepared for prosecutors by the chief prosecutor, for investigation judges working under Supreme Court of Appeal, Council of State and Ministry of Justice by the chiefs of their office,
- h) affairs that undergo the investigation of Remedy, (the decisions of approval and reversal of the Supreme Court of Appeal and the Council of State),
- i) their precedents, comments and possible professional works and writings and their general registration condition.



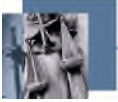
- d. In the evaluation of the work and professional performance of judges and/or prosecutors, is there any reference to data on the overall number of cases dealt with by the single judge/prosecutor and by the court/prosecutor's office to which they belong? Please describe in what way such data features are used in the evaluation of judges and/or prosecutors.

AUSTRIA

Work evaluations of judges are conducted by the staff panels (Sections 36 seqq. Service Act for Judges and Public Prosecutors = RStDG), which mostly consist of elected judges. The president and one vice-president of the court of law are members ex officio. A staff panel shall be formed at each court [Section 36 (1) RStDG]. Staff panels appointed on the basis of the provisions of Art. 86 seqq. Federal Constitution Act (B-VG) shall serve to handle the judicial administrative matters mentioned there. Nevertheless their activities fall into the scope of jurisdiction. Inasmuch as judicial administrative tasks have to be performed by panels, judges shall exercise their "judicial function" pursuant to Art. 87 (2) B-VG and shall become active, free from any instructions – the staff panel shall therefore be qualified as judicial body. For this very reason there cannot be any interference in the independence of judges.

At present, pursuant to Section 51 (2) RStDG, staff panels have to evaluate [exceptions: vice presidents and presidents of the senate of the higher regional courts and presidents of courts of first instance, Supreme Court judges, judges with fixed income] generally all judges of district, regional and higher regional courts for the second calendar year following their appointment (no immediate beginning of the evaluation period). But the persons excepted (see above) may request a work evaluation. The President and the Vice-Presidents of the Supreme Court are absolutely exempt [Section 52 (1) clause 3 RStDG]. The president of the court of law or the manager of the district court shall request a revised work evaluation of a judge, if there are good reasons for revising the previous total evaluation of the respective judge. The judge him/herself may request a revised evaluation, if in his/her opinion his/her previous total evaluation is no longer valid, and at least one calendar year has passed since his/her previous total evaluation.

Therefore, the competent staff panel shall become active either ex officio or upon application pursuant to the provisions of Section 51 RStDG. The first stage of the procedure of conducting a work evaluation consists by the appointed rapporteur submitting a draft evaluation, the draft being based on the questions contained in Section 54 RStDG. The rapporteur has to carry out appropriate investigative measures, such as inspecting the court files dealt with by the person to be evaluated during the evaluation period. Concerning district court judges the rapporteur has to obtain an opinion from the manager of the respective district court and hear the respective chairperson of the appeal panel of the court. The staff panel shall finalise the work evaluation upon examining the draft and conducting additional



explanatory investigations, if necessary.

BELGIUM

See answer c. -> Group A criterion nr 2 “effectiveness and efficiency”.

BULGARIA

Under Art.198, par.2, item 4 of JSA the overall workload of the respective judicial area and judicial body as well as the individual workload of the appraised judge/prosecutor/investigating magistrate compared to the workload of other judges, prosecutors or investigating magistrates working in the same judicial body is taken into consideration. The abovementioned statistical data is used as one of the indicators for assessing the criteria “skills for optimal organisation of work”.

The workload of the respective judicial body is compared with the workload of judicial bodies of the same type and level. The individual workload of the appraisee is compared with the individual workload of the other judges/prosecutors/investigating magistrates in the same judicial body.

CZECH REPUBLIC

Head of the courts focuses mainly on the number of cases, no other evaluation is done.

FRANCE

The evaluated magistrate must describe his/her activity, even by statistic data, but there are no quantitative references established at the national or the local level.

The process of individual appraisal is very different from the evaluation of judicial performances assessed with criteria and indicators at the local or national level (for instance the overall number of cases dealt with).

GERMANY

Criteria such as judgment, decision-making skills and ability to cope with high workloads are also evaluated in the context of completion figures. Therefore, completion figures – in addition to other criteria – are taken into account in the evaluation.

HUNGARY

There is a reference in the evaluation of the performance to data on the overall number of cases dealt with by the judge.

Section 67 of ALSRJ provides that „ A statement shall be drafted with respect to the judge’s annual activities on the basis of case administration and activity data, decisions of second instance and review decisions. The President of the NOJ shall identify the data content of the statement in rules. The data of statement shall be taken into consideration upon the screening and evaluation of the judge.”

In case of a particular evaluation the above means that the data referred to concerning the judge subject to evaluation , the data of the court where



the judge works and the data of the county court to which that court belongs to are all used in the evaluation of the judge.

ITALY

Statistics are collected in order to check the overall amount of work dealt with by the single judge or public prosecutor, in comparison with the performance displayed by the other members of the same office. Further on, the reform provides for the identification of average standards for settling proceedings to which to compare the activity carried out by every individual magistrate. The determination of individual productivity *standards* is an aspect of the assessment of magistrate's industriousness that was entrusted exclusively to the Council.

This prompted the Council in 2008 to establish a working group and to indicate the scope and the methodological approach for defining the *average standards* for settling proceedings.

The industriousness *standards* were defined by identifying the types of activity performed by magistrates and the basic functional characteristics of each of these different activities in order to unite the evaluation of work quality and quantity.

To achieve this outcome, the chosen methodology compares the nationwide data on productivity, which is aggregated according to magistrate functions and activities and periodically verified by means of *clustering* analysis.

The magistrates are partitioned into homogeneous groups based on the different predefined criteria for activity types, office size and organizational data and assigned workload, and the productivity data for the magistrates in each group is used to identify the *standard*.

The working group is ongoing, no final rules or regulations have been issued since this experimentation is still under way and subject to debate.

LITHUANIA

Assessing the work of the judge, the judge's activity report, generated by the Lithuanian judicial information system LITEKO, which reflects the number of the overruled or modified judgements, is presented (ref. to the previous question). This report also encompasses other information including the number of the cases resolved by every judge of the identified court and the common statistics of the cases resolved by the specified instance courts. However, this data is not indicated in the criteria list, which is applied for the assessment of the judge's activity (ref. to the previous question).

NETHERLANDS

For each judge there is a reference to data of the overall number of cases dealt with because there appointments are made about the workload of a judge. There are no direct consequences if the judge doesn't meet the workload requirements, but it will be a topic in the annual conversation about the functioning. Should there be a pattern of failure to meet the targets, provisions will be made for a better way of functioning as a judge, not concerning the content of the decisions and opinions, but dealing with a



reasonable workload. In the end the president may decide to transfer the judge to another division (for instance from the Civil Law to the Criminal Law Division).

NORTHERN IRELAND

Comprehensive court performance statistics are produced quarterly and annually by independent statisticians. The statistics do not relate to an individual judge but relate to numbers and length of time for cases to be dealt with in particular types of work and in geographical court areas. The Chief Justice, through the hierarchy of presiding Judges, is regularly appraised of the statistics and would be able to identify any areas where his standards are not being met. He would know which Judges were sitting in those areas or who mostly deal with a particular type of work and would if necessary discuss any issues with judges.

NORWAY

No.

POLAND

See above.

PORTUGAL

As follows from the previous response, the classification must consider the amount of the work assigned and the productivity of the evaluated. As we will see below, statistical data shall be used for the evaluation of judges.

The CSM – based on the normative method – has established the number of actions that each judge should end per year in the courts of appeal, as well as in the courts of first instance integrated in the three pilot geographical jurisdictions.

ROMANIA

Yes, among the evaluation criteria an important indicator is the workload referring both to the number of cases distributed and solved by the individual judge / prosecutor and to the number of cases per court/prosecution office.

According to art. 4 (2) of the Regulation on professional evaluation, judges shall be evaluated under their individual workload, the complexity of cases and the ratio between the number of cases distributed to the judge under evaluation and the average workload in courts.

According to art. 8 (2), art. 9 (2), art. 10 (2) and art. 11 (2) of the Regulation on professional evaluation, prosecutors shall be evaluated under their individual workload, the workload within the particular prosecution office and the complexity of cases for each stage of the criminal procedure (the criminal investigation, the criminal judgement in court).

SLOVAKIA

Annual statistical statement of judge is made public at the website of the Ministry of Justice. However in this case the statement does not relate to the



evaluation of judges work, but to the specific form of statistical survey of judge's efficiency level. However, the statement is one of the preconditions for the regular evaluation of judge.

SLOVENIA

One of the criteria for the assessment of judicial service is working capability of the judge. Working capability is assessed also by a comparison of the overall number of cases resolved by the single judge to the minimum number of cases each judge should resolve (Judicial Council's Guidelines) and to the average of cases other judges in the same division of the court resolved in the same period.

SPAIN

Yes. Please refer to the answer to question 1 c.

SWEDEN

5. The number of cases disposed by a judge may be a factor for evaluation of judges' professional performance at individual level but that this must be seen in context of other factors like type of case, time, parties' delays and specific factors in every individual case. When The Swedish National Courts Administration follows up the courts goal achievement and performance, one aspect of several is to observe the number of cases disposed by a judge. Such statistics can be monitored at individual level and also be used in discussions between chief and the judge.

5.1. Annual report

Every year The Swedish National Courts Administration present the annual report which includes statistics contains filed, determined and pending cases for all courts. This type of statistics is something that The Swedish National Courts Administration is monitoring continuously during the year and it is a part of the process of follow up the results of the courts.

TURKEY

To promote A, B and C, the judges and prosecutors of our country should achieve work percentage or file in a certain extent stated in the following chart.



<u>DEGREE</u>		PROMOTION IN BOOK (A)	PREFERENTIAL PROMOTION IN BOOK (B)				PRIVILEGED PROMOTION IN BOOK	
		Work Percentage	Work Percentage				Work Percentage	
JUDGE OF JUDICIARY (1st, 2nd and 3rd Area)		60%	70%				80%	
4th and 5th Areas		50%	60%					
JUDGE OF CADASTRE	WHO TOOK OFFICE BY TRANSFER	30%	40%				50%	
	WHO TOOK OFFICE BY SESSION	50%	60%				70%	
PUBLIC CHIEF PROSECUTORS AND PROSECUTORS (1st, 2nd and 3rd Areas)		60%	70%				80%	
4th and 5th Areas		50%	60%					
JUDGES OF ADMINISTRATIVE JURISDICTION		60%	80%				90%	
Percentages of business requested for the forms of promotion degree by the resolution		6 Months	7 Months	8 Months	9 Months	10 Months	11 Months	
Annual Percentage-Monthly Percentage								
40%	3.33	20	23	27	30	33	37	
50%	4.16	25	29	33	37	42	46	
60%	5.00	30	35	40	45	50	55	
70%	5.83	35	41	47	52	58	64	
80%	6.66	40	47	53	60	67	73	
90%	7.50	45	53	60	68	75	83	



Promotion of Degree	(A)	(B)	(C)
High Criminal Court and High Juvenile Court	400	500	700
Civil Courts of General Jurisdiction	1000	1200	1400
Criminal Court of General Jurisdiction and Juvenile Courts	1000	1200	1400
Criminal Courts for Intellectual and Industrial Property Rights	800	900	1000
Court of Peace and Criminal Court of Peace	1200	1400	1600
Commercial Courts	800	900	1000
Civil Court for Intellectual and Industrial Property Rights	600	700	800
Consumer and Labour Court	1400	1600	1800
Land Registration Court	500	600	700
Penalty Affairs of Execution	3000	4000	5000
Legal Affairs of Execution	1600	1800	2000
ADMINISTRATIVE COURTS	800	1000	1200
TAX COURTS	1000	1200	1400
PUBLIC PROSECUTORS	Investigation:1600	Investigation:2000	Investigation:2400
	Judgement:6000	Judgement:8000	Judgement:10.000



- e. Which is the competent body in your legal system in order to conduct the evaluation of the professional performance of judges and/or (where relevant) of prosecutors? What is the composition of this body? What role do the Ministry of Justice, the Council for the Judiciary, Chief Prosecutor or Chairman of the Court, etc. play in the process of evaluation, if any?

AUSTRIA

See 1d.

BELGIUM

Periodic evaluations of judges and prosecutors are done by 3 magistrates of the same court/prosecutor office: the president of the court and two judges / the chief prosecutor and two prosecutors. For courts or prosecutor offices with less than 5 magistrates the evaluation is done by the president of the court/chief prosecutor.

The two evaluators are appointed by the court's general assembly or by the assembly of the prosecutor's office.

Judges of the peace and police judges are evaluated by the president of the general assembly of judges of the peace and police judges and two colleagues active in the district of the court of appeal.

Evaluations of adjunct mandates and specific mandates are done by the same evaluation team.

Evaluation of the mandates of chief prosecutor is done by one of the two language chambers of the evaluation college (This kind of evaluation is not applicable to court chiefs).

Each chamber is composed of 7 members:

- Two chief prosecutors
- Two magistrates of the Advisory and Investigation commission of the HCJ
- One member of the supreme audit office
- One specialist in human resources management
- The general director at the Ministry of Justice who has authority regarding the judiciary.

Election for chief prosecutors/ general assembly for the HCJ magistrates/ First president of the supreme audit office/ Minister of Justice for the human resources expert (after nomination by the Minister of Civil Service Affairs).

No particular skills are officially requested for the evaluator to be appointed or elected. An evaluator in the periodic evaluation panel must have at least the evaluation grade "good".

Evaluation of the mandates of chief prosecutor: expertise seems to be



guaranteed on the basis of the occupied functions.

Role played by the different evaluators involved in the evaluation process.

Periodic evaluation: with regard to the evaluation the different evaluators play the same role. The three evaluators vote about each criterion. Majority of votes determines the evaluation decision per criterion. Then quantification and arithmetic apply.

The first president or president of the court, prosecutor general, chief prosecutor and president of the general assembly of judges of the peace and police judges take care of the administrative necessities.

Evaluation of the mandates of chief prosecutor: the seven members of the evaluation chamber play the same role. Of course they bring their specific expertise to the evaluation college.

Role played by the President of the Court or the Chief prosecutor in the evaluation process.

Periodic evaluation: They have officially the same role as the other evaluators.

Evaluation of the mandates of chief prosecutor: the oldest chief prosecutor in point of service chairs the (chamber of the) evaluation college. He/she has officially the same role as the other evaluators.

The role played by the colleagues of the evaluated judge or prosecutor in the evaluation process.

Periodic evaluation: Two direct colleagues of the evaluated magistrate are members of the evaluation team. That makes it some kind of peer review.

Evaluation of the mandates of chief prosecutor: Two magistrates are colleagues at a similar level. Two others magistrates are lower level colleagues.

There is no special evaluation system for evaluators.

Which body takes the final decision about the professional evaluation?

Periodic evaluation:

- the evaluation team (3 members).
- in courts and prosecutor offices with less than 5 magistrates the court chief or the chief prosecutor is the only evaluator.

Evaluation of the mandates of chief prosecutor: the concerned chamber of the evaluation college.

BULGARIA

Two types of bodies are entitled to conduct the assessment depending on the type of evaluation and the position of the evaluated person.

1.The Commission on the proposals and appraisal at the High Judicial Council. It is competent to conduct the evaluation procedure in cases of:

- a/ appraisals for acquiring the “status of irremovability” by judges,



prosecutors and investigating magistrates;

b/ periodic appraisal of the deputies of the administrative heads and of the judges at the Supreme Court of Cassation and the Supreme Administrative Court, of the deputies of the Prosecutor General and of the prosecutors at the supreme cassation prosecution office and the supreme administrative prosecution office and of the investigating magistrates at the National Investigating Service;

c/ periodic appraisal of the administrative heads of judiciary bodies, except for the Chairpersons of the Supreme Court of Cassation, the Supreme Administrative Court, and the Prosecutor General.

This Commission is composed of members of the HJC. Its composition is permanent throughout the mandate of the Council /5 years/. It is divided into two sub-commissions – for judges and for prosecutors/investigating magistrates.

2. Auxiliary appraisal commissions - The auxiliary appraisal commissions participate in carrying out periodic appraisals of:

a/ judges, prosecutors and investigating magistrates;

b/ deputies of administrative heads of all the judiciary bodies, with the exception of deputies of Supreme Court of Cassation, Supreme Administrative Court and the Prosecutor General.

They are composed of judges or prosecutors or investigating magistrates depending on the job position of the evaluated person.

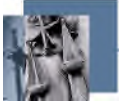
The auxiliary appraisal commissions assist the Commission on proposals and appraisal of judges, prosecutors and investigating magistrates. They are elected by the respective judiciary bodies on a random selection principle /by computer program/ for each specific appraisal. They consist of three regular members and one substitute. The administrative head may not be elected as a member of an appraisal commission. An auxiliary appraisal commission formed at a higher level judiciary body assesses the judges/prosecutors working at the lower level. Example: An auxiliary appraisal commission elected at the Supreme Administrative Court conducts the appraisal of a judge working at an Administrative Court

The auxiliary commission presents its report on the appraisal of the evaluated person to the Commission on proposals and appraisals at the Judicial Council within 7 days after completing its work. The Commission at the High Judicial Council prepares the final aggregate evaluation. It is adopted by a decision of the HJC.

The Minister of Justice, The Prosecutor General, The Head of the Supreme Administrative Court and the Head of the Supreme Court of Cassation are members ex officio of the HJC. They may not be members of any appraisal commission. They vote when the final decision on the respective appraisal is adopted.

CYPRUS

As mentioned above even though no evaluation system exists in our legal



system, the Supreme Court monitors whether a case has been delayed. Also the Supreme Council of judicature when it comes to its knowledge that judgment has not been delivered within 6 months asks the judge to present its case and will issue an order that the judgment must be given within a set period or order for the retrial of the case by another judge.

CZECH REPUBLIC

Council of the Judiciary does not exist in the Czech Republic, Ministry of justice sets binding numbers of judges and number of cases they have to manage.

FRANCE

The competent body to conduct the evaluation is the chief of court who is provided with data about the evaluated magistrate's work by the chief of the trial court or by others magistrates who know the evaluated magistrate's work. Furthermore, the chief of court has statistical data on all the court activity. There is no intervention from the CSM or from the ministry of justice in this appraisal system.

GERMANY

The office with responsibility for administrative supervision, i.e. the professional superior, is responsible for carrying out and submitting evaluations. Pursuant to section 46 of the German Judiciary Act in conjunction with section 3 para. 2, first sentence of the Act on Federal Civil Servants, this is the person responsible for civil service personnel decisions on civil servants in subordinate authorities. For judges, this corresponds to competence for decisions regarding professional service.

Land law governs the details. As an example, we refer to point 2 of the administrative guidelines of the Bavarian State Ministries of Justice and Consumer Protection, Interior, Finance as well as for Labour and Social Order, Families and Women mentioned at question 1.a. It states the following:

In ordinary jurisdiction, the presidents of the higher regional courts evaluate the judges of their court, the presidents of the regional and local courts of their district, as well as the professional and full-time working groups in their district. The presidents of the regional courts evaluate the judges of their court and, to the extent that they exercise professional supervision, the judges of the local courts of their district. The presidents of the local courts evaluate the judges of their court. The public prosecutors general evaluate the public prosecutors in their authority and the heads of the public prosecution offices of their district. The chief senior public prosecutors evaluate the public prosecutors of their authority.

In administrative jurisdiction, the president of the Bavarian Superior Administrative Court evaluates the judges of his court and the presidents of the administrative courts. The presidents of the Bavarian administrative courts evaluate the judges of their court.

In labour jurisdiction, the presidents of the Land labour courts evaluate the



judges of their court and, to the extent that they exercise direct professional supervision, the judges of the labour courts in their district. The presidents of the labour courts evaluate the judges of their courts.

In social jurisdiction, the president of the Bavarian Land Social Court evaluates the judges of his court and the presidents of the social courts. The presidents of the social courts evaluate the judges of their court.

In fiscal jurisdiction, the presidents of the fiscal courts evaluate the judges of their courts.

As an additional example, we also refer to Point IV of the provisions of the Land of North Rhine-Westphalia, mentioned at 1.c.

Evaluation guidelines are normally issued by the superior official authority; cf. the mentioned examples from the Free State of Bavaria and the Land of North Rhine-Westphalia.

HUNGARY

The Ministry of Public Administration and Justice or the National Judicial Council plays no role in the process of evaluation in Hungary. The person appointing the judge is entitled to order evaluation, thus that person is the Chairman of the county court, the chairman of the tribunal or the President of the Curia.

The investigation ordered by the concerned persons shall be conducted by the division head with competence to the judge's posting and area of specialization, or by a judge appointed by the head of division (for example the head of the civil case division appoints a court of appeal judge to conduct the investigation).

The chairman of the court, etc. should evaluate the professional performance of the judge on the basis of the investigation material and the documents and opinions obtained.

ITALY

The C.S.M. makes professional assessments on the basis of the opinion expressed by the Judicial Council and the documents acquired.

LITHUANIA

The procedure for the assessment of the activities of judges shall be established by the Judicial Council.

The assessment of the activities of judges shall be performed by the Assessment Commission. 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 shall be appointed by the President of the Republic. The Chairperson of the Assessment Commission shall be elected by the Judicial Council from the members of the Assessment Commission. The activities of the Assessment Commission shall be serviced by the National Courts Administration.

The Chairperson of the Court, his Deputy, the Chairperson of the court of



higher level, his Deputy, the Chairperson of the division have a right to initiate the extraordinary assessment of the judges' activities. The Chairperson of the court, Deputy-chairperson of the court or Chairperson of the division, having initiated extraordinary assessment of the activities of the judge, if he is a member of the Assessment Commission, has to withdraw from the assessment of activities of this judge. The initiator of the extraordinary assessment and the member of the Assessment Commission, who participated in assessing the activities of this judge, may not adopt decisions on the judicial promotion.

The Ministry of Justice does not take part in the process of judges' assessment.

NETHERLANDS

There is only one competent body: the president of the court. There is absolutely no role for the Minister of Justice or the Council for the Judiciary.

NORTHERN IRELAND

The Chief Justice is the head of the judiciary and is statutorily responsible for their welfare training and guidance. He is supported in this by a presiding Judge at each judicial tier. This is a hierarchical system which provides for evaluation at all levels.

The Minister for Justice has no role in relation to judicial performance

The Judges' Council (comprised solely of judiciary) will bring issues of concern or interest to the attention of the Chief Justice and represent the views of judiciary more generally.

The Judicial Studies Board has oversight of collective judicial training needs and will develop study programmes as necessary. These are tailored to a largely adversarial system.

NORWAY

Norway has, as mentioned under Q 1 a, the Supervisory Committee for Judges which make decisions in complaints on these areas:

- Misbehaviour in duty
- Offence of duties in service
- Misconduct when not in duty

The Committee is a separate, administrative, collegiate body composed of five members: two representatives from the public, two judges, one judge from the Land Consolidation Courts (replacing one of the professional judges in complaints against land consolidation judges) and one lawyer – all appointed by the Government.

The Norwegian Court Administration (NCA) operates a secretariat to the Committee. NCA has also a possibility to complain upon the behavior of a



judge. The same possibility is given to Ministry of Justice.

The president of the Court is asked to make his say about a complaint.

It is important to stress that the Supervisory Committee is not vested with authority to dismiss judges or impose fines. Their reaction is limited to decision of criticism or warning, the latter being the most serious reaction.

Pursuant to the Norwegian Constitution a judge can only be dismissed by a judicial decision. The filing of dismissal for the courts is a prerogative for the Government. Inter alia based on these reactions from the Committee, the Government may decide to file a case of dismissal.

PORTUGAL

The CSM is, according to the Portuguese Constitution and to the Statute, the self-governing body of the Portuguese Judges. (There is another different High Council for the Public Prosecutors and another one for the Administrative Courts).

It is thus exclusively responsible for the appointment, transfer, promotion, evaluation and disciplinary measures concerning judges and, for those purposes, has financial and administrative autonomy.

To perform its competences on evaluation and discipline of judges of the first instance, the CSM has a body of 20 judicial inspectors, assisted by 20 secretaries of inspection. Two of those inspectors are currently assigned to the disciplinary action and 18 to the evaluation procedures, and these are distributed by 18 geographic areas.

The inspectors are chosen among judges from the Courts of Appeal or, in exception, among judges from first instance with classification of "Very Good" and no less than 15 years of seniority. They are appointed for a 3 years term, with one possible renewal for 3 years more. The choice of the candidates is done by secret vote in the Plenary of the High Council.

Among the 20 inspectors, one is the Inspector Coordinator who seeks to harmonize and standardize inspection procedures. He is appointed by the High Council on the proposal of its President.

To perform its competences on evaluation and discipline of judges of the superior courts, the CSM appoints ad hoc inspectors, chosen among judges from the Supreme Court.

Inspectors gather information about the service and the merit of judges, analyze it and make concrete proposals for classification.

The final decision is taken by the CSM.

The decisions taken by the CSM in these (and other) matters can be appealed to a special chamber of the Supreme Court.

The Ministry of Justice plays no role in this process.

The Chairman of the court has no evaluation competences, but he may be heard during the assessment.

ROMANIA



The professional evaluation of judges and prosecutors within the Romanian judicial system is carried out by specific commissions that are settled by the decision of the Superior Council of Magistracy separately for judges and prosecutors.

The members of these commissions are appointed for a 3 year term of office with the possibility of renewal. The composition of these commissions is the following: the president of the court / prim prosecutor of the prosecutor's office, 2 judges/ prosecutors assigned by the leading board of the court/prosecution office and a substitute member.

The president of each commission is the person in leading position of the referred court/prosecution office.

For the courts/prosecution offices with a smaller scheme of personnel (less than 10 judges/prosecutors) the evaluation shall be carried out by the commission of the superior court/prosecution office.

For granting an objective evaluation, the members of the commissions should attend specialised courses organised by the National Institute of Magistracy and obtain a diploma of professional evaluator.

SLOVAKIA

Evaluation of judge is carried out by a judge discharging a higher judicial office, i.e. the president of "gremium board", president of board or judge of the Special Criminal Court depending on what court does the judge under evaluation belongs to. Each year the president of the court elaborates an annual statistical statement of judge. The pattern of this statement is published by the Ministry of justice at its website.

SLOVENIA

The evaluation is conducted by Personnel councils, which are formed in district and high courts as well as in the Supreme Court. The personnel council of a high court is responsible for forming opinions on the suitability of candidates for judges of high courts, for the assessment of the judicial service of judges of local and district courts and for other tasks related to personnel. The personnel council of a district court is responsible for forming opinions on the suitability of candidates for judges of district and local courts.

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. Personnel council members are elected for a four-year period in a manner and under the procedure determined in the Courts Act.

The Judicial Council and the court president or president of the relevant higher court can request the personnel councils to evaluate the professional performance of judges.

See also answer f and g.

SPAIN

In Spain, the General Council for the Judiciary is the body for self-



governance and self-administration of the Judiciary and has exclusive competence regarding the evaluation of professional performance of Spanish judges. The Council for the Judiciary is composed by 20 members and one Chairperson, who is also the Chairperson of the Supreme Court. The General Council for the Judiciary has full competence concerning the organization and management of the judicial profession, from the selection of judges to their training, promotion, specialism, posting, disciplinary liability, etc.

The competences of the General Council for the Judiciary in the field of evaluation of professional performance of judges are exercised by means of the Judicial Inspection Department under the General Council, which has a special unit devoted to assessing judges' performance. The Head of the Inspection Department is a very high official of the Council, who is appointed by the Plenary of the Council. The Organic Law on the Judiciary (sections 148 & 171), allocates the verification and control of the functioning of the judicial administration's services to the Inspection Department, via proceedings and inspections that must be approved by the General Council for the Judiciary. The Judicial Inspection Department under the General Council for the Judiciary is structured in several Inspection Units composed by judges and court registrars and other civil servants with at least 5 years of professional experience who are seconded to the Judicial Inspection Department on the basis of a decision made the Plenary of the Council.

The decisions on the evaluation of professional performance of Spanish judges are formally made by the Standing Committee of the Council on the basis of the proposals of the Judicial Inspection Department. Under the Organic Law on the Judiciary (section 130.1) the Standing Committee of the Council is composed by the Chairman of the General Council (who also chairs this Committee) and four other members of the Council appointed to sit at the Standing Committee by a majority of three fifths of the members of the Council, following a decision passed by the Plenary of the Council.

Neither the Ministry of Justice nor the Chairman of the respective court plays any role in the process of evaluation of professional performance of Spanish judges. However, it has to be born in mind that the Ministry of Justice is the body responsible for the payment of judicial salaries. This means that the contents of the decision issued by the Standing Committee of the Council as to the evaluation of professional performance and the accomplishment of performance targets by all Spanish judges must be formally notified to the Ministry of Justice (in particular to the Secretary of State of Justice), so that the Ministry proceeds to pay the bonuses of the judicial salary which are linked to the achievement of the performance targets.

SWEDEN

6. There is no such authority that is separate designated to evaluate judges' performance.

6.1 Supervision of public authorities

6.2. It is crucial that authorities comply with laws and ordinances, in order to maintain public confidence in the public administration, and ultimately in



democracy. The possibility of appealing against a public authority's decision to a general administrative court means that the public authorities' application of the law is subject to supervision by the courts. The judicial examination by the courts also serves to create case law that the public authorities are obliged to follow.

6.3. For other reasons as well, it is important to have control over the way in which public authorities fulfill their duties. Such control is exercised by the Parliamentary Ombudsmen and the Chancellor of Justice.

6.4. The Parliamentary Ombudsmen (JO)

The Ombudsmen for Justice (JO) are elected by the Swedish Riksdag (Parliament). On behalf of the Riksdag, the Parliamentary Ombudsmen are responsible for ensuring that the bodies involved in public administration comply with laws and other provisions and in general fulfill their duties. The Parliamentary Ombudsmen respond to complaints (notification) from the public, but can also initiate their own investigations.

6.4.1. JO-decision

The outcome of the Ombudsman's investigation is documented in a decision or a protocol.

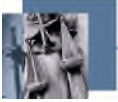
The decisions and protocols make JO statements clarifying whether the review authority has acted in accordance with the law or not. If the agency acted improperly pronounces JO criticism that can be directed both to the authority against individual officials. JO's decisions are not legally binding, which means that the criticized public authority does not formally have to comply with JO's criticism. In practice however, this is almost always the case. Public authorities often use the statements issued by JO to improve their internal procedures and rules.

6.5. The Chancellor of Justice (JK)

The Chancellor of Justice, who is the Government's supreme ombudsman, is responsible for inspecting the bodies involved in public administration on behalf of the Government. The public can also turn to the Chancellor of Justice with their complaints. In addition to these supervisory tasks, the Chancellor of Justice also examines claims for damages directed at the state. The Chancellor focuses primarily on detecting systematic errors in the public sector. JK is thus central administrative law enforcement. Board comes under the government but independent of this, its existence and activities are partly determined by the constitution.

6.5.1. Offences by officers

As part of the Chancellor of Justice (JK) oversight of the public sector JK has certain powers to initiate investigation and prosecution of crimes officers have committed in the service, see § 5 Act (1975:1339) on the Chancellor of Justice oversight. This power does not mean that the Chancellor will replace police and prosecutors common tasks within their normal responsibilities. The power is primarily meant to be used when a suspected crime emerges in connection with the processing of a case that the Chancellor of Justice has decided to examine further. According to the Chancellor of Justice instructions should a complaint be considered by the Chancellor of Justice



only if the query condition gives Chancellor reason to take the matter to trial.

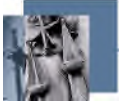
6.6 Neither the Parliamentary Ombudsmen nor the Chancellor of Justice can review or modify the decisions of another public authority or court. The Constitution prevents The Ombudsmen for Justice (JO) or the Parliamentary Ombudsmen (ombudsmän) and The Chancellor of Justice, (JK) interferes in the judicial function of the courts and cannot give directives on how a matter of a judicial or administrative authority shall be dealt with or resolved.

TURKEY

The evaluation of performances and promotion processes are made by High Council of Judges and Prosecutors. The Ministry of Justice has no authority on this matter.

The Plenary of High Council of Judges and Prosecutors consists of 22 members. The president of the Council is the Minister of Justice, and the Undersecretary of the minister is ex-officio member of the Council. Other members of the Council are as follows: 7 members elected by & among civil judges and prosecutors of first instance; 3 members elected by & among administrative judges and prosecutors of first instance; 3 members elected by & among the members of Plenary of Supreme Court (Court of Cassation); 2 members elected by & among the members of Plenary of Council of State; 1 member elected by & among the members of Plenary of Turkish Justice Academy; and 4 members selected/appointed by the President of the Republic among academicians of law and attorneys. High Council of Judges and Prosecutors is independent exercising its powers and performing its duties; no institutions, bodies or people can give directions or orders. High Council of Judges and Prosecutors performs its duties within the principles of impartiality, integrity, consistency, equality, capability & liability, and preserving the independence of courts and tenure of judges & prosecutors (Article 3 of Law 6087 on HCJP).

High Council of Judges and Prosecutors is the only competent body on assessment of promotions for judges & prosecutors.



f. Which is the competent body for the inspection of courts and/or prosecutors' offices? Does the competent body in the field of judicial inspection have the role to deal with evaluation of the professional performance of judges and/or prosecutors, too?

AUSTRIA

The internal control system (ICS) of the Austrian Justice involves also the instrument of "internal auditing". The function of internal auditing is ensuring the fulfilment of all entities in consideration of legality, advisability, economic efficiency and thriftiness. The legal basis for the "internal audit" of courts and public prosecution offices is Section 78a Court Organisation Act (GOG).

The Federal Ministry of Justice also has formally defined the purpose, authority and responsibility of the internal audit in an internal audit charter "Revisionsordnung" in 1986. The competent bodies are the internal auditing unit in the Federal Ministry of Justice, the departments of internal auditing in the higher regional courts and assigned public prosecutors. The periodic examinations of courts and public prosecution offices within the internal auditing process take place in intervals of between 4 and 7 years. All members of the internal audit units are independent and must be objective in performing their work. Interference in the independent jurisdiction is forbidden, for that matter.

BELGIUM

The prosecutor's office for the inspection of the administration of the clerk's offices (courts and prosecutor offices).

The united advisory and investigation commission (UAIC) of the High Council of Justice for judges, prosecutors, courts and prosecutor offices (tools: audit and investigation)

BULGARIA

The Inspectorate at the High Judicial Council is the competent body for the inspection of courts and prosecutor' offices. It is established under Art. 132a of the Constitution. It consists of an Inspector General and ten inspectors.

The Inspectorate examines the operation of the judicial authorities without affecting the independence of judges, prosecutors and investigating magistrates.

The Inspector General and the Inspectors are independent when performing their functions and they are subservient only to the law. The Inspectorate shall act on its own initiative, on the initiative of citizens, legal persons or state bodies, including judges, prosecutors and investigating magistrates.

This body has no direct role or functions in the evaluation process of judges/prosecutors/investigating magistrates. Nevertheless, the law provides that the outcomes of the inspections /if any/ are taken into account in the evaluation procedure. These outcomes are considered as one of the indicators for assessing the criteria "expediency and discipline".



CZECH REPUBLIC

Ministry of Justice has its department for court supervision and follow statistics of the length of the procedure, number of cases etc. They have are right to carry inspection to the court to see its case management.

FRANCE

A general inspection for judiciary services does exist in France. This inspection service is place under the authority of the minister of justice. This inspection body does not intervene in the appraisal system and is not related with the CSM.

GERMANY

See response to 1.e.

HUNGARY

In the Hungarian legal system there is no competent body for the inspection of courts. The President of the National Office for the Judiciary (NOJ) shall manage and control– with the exception of presidents of district, administrative and labour courts – the administrative activities of court presidents, in the course of monitoring the observance of rules regarding the administration of courts, the observance of procedural deadlines and rules. Besides this the President of NOJ should monitor the court leaders under his/her appointment authority.

In accordance with the cited provision the chairman of the court shall inform the President of the National Office for the Judiciary, the plenary conference of judges and the other employees of the court annually on the operation of the court, the processing of cases and the management of cases, and on the implementation and results of goals and measures identified in the previous calendar year.

The chairman of the court shall manage and monitor the administrative activities of senior court personnel in positions inferior to him by the same way as the President of the NOJ does it in his/her relation.

ITALY

In the Italian judiciary system the body responsible for judicial inspection is the Inspectorate General of the Ministry of Justice. It plays no direct role in the professional evaluation of judge and public prosecutors, since it refers to the Minister only on issues relate to the overall functioning of the system, or of specific offices.

Inspection are periodically conducted on each judiciary office, but can also be addressed to single specific cases of malfunctioning. The inspection can lead to the opening of disciplinary proceeding if it reveals misconduct or breaches of discipline by judge or public prosecutors.

LITHUANIA

According to Article 104 of the Law on Courts, supervision of administrative activities of courts should be exercised by the following subjects only:



1. of district courts - by the Chairperson of the relevant regional court;
2. of regional administrative courts - by the Chairperson of the Supreme Administrative Court;
3. of regional courts - by the Chairperson of the Court of Appeals;
4. of the Court of Appeals – by the Chairperson of the Supreme Court of Lithuania;
5. of all courts – by the Judicial Council.

The subjects referred above performing the functions of administrative activities' supervision can also perform investigations of court's administrative activities or judges' performance, which is not associated with the administration of justice. For this purpose the Investigation Commission may be composed, which may include judges of several courts or other officials, as well as the specialists, academics of other institutions, agencies', society representatives. These persons are involved in the implementation of judicial administration functions based on transparency, impartiality and voluntary principals. The powers and composition of the Investigation Commission shall be approved by the Judicial Council.

The subjects mentioned above do not take part in the evaluation of the professional performance of judges.

For the role of the Chairperson of the courts in the evaluation of the professional performance of judges (initiation of the extraordinary assessment of the judges' activities) see 1 e).

NETHERLANDS

There is no competent body for the inspection of courts. The Council for the Judiciary is the competent body for control over the policy of the courts as an organization (financial, personnel, safety precautions, etc.). But this never pertains to an evaluation of the professional performance of judges.

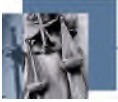
NORTHERN IRELAND

The office of the Chief Inspector of Criminal Justice is an independent body with statutory powers to inspect the operation of the criminal courts It is excluded however from inspecting judicial decisions

POLAND

Periodic assessment of the work of the judge of the Court shall be carried out in the framework of the visitations. The assessment is carried out by the judges of county courts or appeal called the visitors. In the process of periodic evaluations of judges nor the Ministry of Justice, nor the Council has competence.

The candidate for the post of a judge shall be assessed in the procedure of evaluating of qualifications by the College of the competent court. The Council shall examine the qualifications of candidates for a specific position, and then selects the best of them. Polish President makes nominations of the candidate proposed by the Council.



PORTUGAL

The CSM Inspectorates, mentioned in the previous response, is also responsible for the inspection of courts.

ROMANIA

As previously mentioned, the professional evaluation of judges and prosecutors is the exercise of the commissions for evaluation, while the competent body in the field of inspection of judges and prosecutors is the Judicial Inspection.

According to art. 641() of the Law no. 317/2004, Judicial Inspection is a legal entity within the Superior Council of Magistracy that operates in accordance with the principle of operational independence and it performs through the judicial inspectors, having attributions of analyse, verification and control in the specific fields of activity.

SLOVAKIA

The body competent for the inspection of courts is the Ministry of Justice; however this body does not have the competence to deal with the evaluation of the professional performance of judges.

SLOVENIA

Beside the regular assessment of the judges there is also a possibility of the official supervision of judges' work. The findings of the official supervision can also be the ground for the disciplinary proceedings. The official supervision of judges' work is set in Article 79a of the Judicial Service Act.

The president of the court and the immediately superior court can conduct official supervision of judges' work. The immediately superior court shall conduct supervision of judges designated in respect of field of work by the president of the court from among the judges designated for official supervision by the annual work roster. Official supervision shall comprise all the measures necessary for determining the fulfilment of judicial duties pursuant to law and the court rules and for eliminating the causes of inappropriate volume, quality and expertise of work and backlogs in work. Within the framework of official supervision the files of all cases assigned to the judge and all cases in which a final ruling has already been issued shall be inspected, information on the judge's work shall be obtained and analysed, and an interview with the judge shall be held.

During official supervision a warning may be delivered to the judge, and a period after which official supervision is to be repeated may be stipulated. If during official supervision or in connection with a supervisory appeal it is determined that the right to a decision-making without unnecessary delay is endangered or violated, the priority resolution of a case may be ordered upon the judge and a deadline by which the judge must report on individual acts in the procedure may be stipulated. Within the framework of official supervision it shall not be permissible to prejudice the independence of the judge in performing of judicial office.

The president of the court shall conduct official supervision with regard to



his/her own findings on the judge's work or at the initiative of the Human Rights Ombudsman, or compulsorily at the proposal of the president of the immediately superior court or the president of the Supreme Court, the Minister responsible for justice, the competent personnel council or the Judicial Council. The immediately superior court shall conduct official supervision with regard to its own findings on the work of a court and on the work of individual judges within the framework of ruling on legal remedies or at the proposal of the president of the court or the president of the Supreme Court, the Minister responsible for justice, the competent personnel council or the Judicial Council. At the request of the president of the court a final ruling on whether a proposal for official supervision is well-founded shall be made by the Judicial Council.

Official minutes shall be kept on the findings and measures of official supervision and shall be delivered to the initiator or proposer, the judge, the president of the court if the supervision is conducted by the immediately high court, and the competent personnel council, and shall be kept in the judge's personal file.

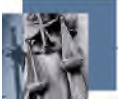
Any judge who does not agree with the findings and measures during official supervision may request an assessment of judicial service in the extent covered by the official supervision.

SPAIN

In Spain the competent body for the inspection of courts is the Inspection Department under the General Council for the Judiciary. According to the relevant provision of the Spanish Constitution (section 122.2) the General Council for the Judiciary exercises its function "in connection with appointments, promotions, inspection and the disciplinary system" (of the Judiciary). Developing the constitutional provision, the Organic Law on the Judiciary currently in force (sections 148 & 171), allocates the verification and control of the functioning of the judicial administration's services to the Inspection Department, via proceedings and inspections that must be approved by the General Council for the Judiciary. In order to fulfill its mission, the Inspection Department must adopt the necessary measures, and state the dysfunctions and need for human and material resources that become apparent in the course of the inspections.

The inspections are normally carried out by the Department in situ, with the judicial inspectors making the visits required to evaluate the situation and functioning of the judicial body, as well as the quality of the service provided. Furthermore, the inspections may also be performed on-line from the seat of the Department, to check the situation of all the Spanish judicial bodies. As it has already been explained, the Judicial Inspection Department under the General Council for the Judiciary is structured in several Inspection Units composed by judges and court registrars and other civil servants with at least 5 years of professional experience who are seconded to the Judicial Inspection Department. The Inspection Units operate under the supervision of the Head of the Inspection Department.

In order to determine the quality of the service provided by the inspected body, the Inspection Unit responsible for the inspection of a judicial body



collects data related to quantitative and qualitative parameters (such as, response time for processing, ruling and notifications, stays of proceedings, rulings index, organization and management of cases, compliance with the principle of immediacy, legal reasoning and language of the rulings and decisions, accessibility of the judge and staff for legal professionals and citizens, correct behaviour, adequate enforcement of the rulings and decisions, etc.). After the Inspection Unit has finished an inspection a report is drawn up, setting out the proposals deemed necessary to improve the body inspected and, consequently, the quality of the service it provides. The proposals may vary widely, depending on the dysfunctions detected, which in some cases may be due to a lack of resources, and are generally made after the inspections and as a result thereof. The Inspection Department under the Council for the Judiciary is also responsible for the implementation of the proposals approved by the Inspection Department's Management. The implementation of the proposals is monitored by the respective Inspection Unit in the terms stipulated in the inspection report.

Apart from the competences of the Inspection Department under the General Council for the Judiciary concerning judicial inspections, the Inspection Department also plays an important role in the evaluation of professional performance of Spanish judges. As it has already been explained the competences of the General Council for the Judiciary in the field of evaluation of professional performance of judges are exercised by means of the Judicial Inspection Department of the General Council, which has a special unit devoted to assessing judges' performance. The basic functions of the Inspection Department as regards the evaluation of professional performance are the following: a) To provide technical advice regarding the proposals made by members of the General Council as to the criteria and indicators for the evaluation of Spanish judges, including the standards (performance targets) regarding the number of judgments and decisions to be issued by each court or judge, depending on the branch of the jurisdiction, kind of court, etc., which define the maximum workload of every judge/court of the country through the system of "input measures/output measures" (módulo de entrada de asuntos/módulo de dedicación) according to the specificities of each court. The proposals by the members of the General Council are submitted to the Plenary of the Council for discussion and subsequent approval; b) To make proposals to the Standing Committee of the Council as to the accomplishment of the performance targets by each Spanish judge, on the basis of the statistical data collected by the Inspection Department. The decisions of the Standing Committee on this matter establish the list of Spanish judges entitled to obtain a bonus up to 10% of the judicial salary as a compensation for achieving the specific performance targets.

SWEDEN

Please see Sweden 1.a, 1.e.

TURKEY

Inspection/supervision of professional performances of judges & prosecutors is carried out by the Inspection Board subordinated to High Council of



Judges and Prosecutors. Additionally, there is another Inspection Board subordinated to Ministry of Justice, which is responsible for inspecting/supervising judges & prosecutors on account of their administrative duties only.

The Inspection Council functions as dependent to the Inspection Department and High Council of Judges and Prosecutors. Their roles in Performance Evaluation are explained in section “a”.



- g. In case the body responsible for the inspection of courts and/or prosecutors plays a role in the evaluation of the professional performance of judges and/or prosecutors is it an independent body or does it function under the supervision of the respective Council for the Judiciary, the Supreme Court or the Executive (government)? What is the level of dependence of the body responsible for the inspection of courts and/or prosecutor's offices?**

AUSTRIA

See answer 1f

BELGIUM

The High council of Justice is an independent constitutional body (independent of the three branches of government).

The UAICommission is a part of the High Council (16 members of the 44). Audit reports are approved by the UAIC.

The council's general assembly (44 members) approves the investigation reports (= investigation of individual and systemic dysfunctions) prepared by the UAIC.

BULGARIA

As it is explained above, the Inspectorate has no direct involvement or competences in the evaluation procedure. It is an independent body, elected by the Parliament. The Inspector General and the Inspectors are elected by the National Assembly by a majority of two-thirds of the National Representatives for a term of five years /Inspector general/, and four years /inspectors/.The budget of the Inspectorate is adopted by the National Assembly within the budget of the Judiciary.

The Inspector General and the inspectors are independent when performing their functions and shall be subservient only to the law.

CZECH REPUBLIC

Department for court supervision is a body of the Ministry of Justice, it can also propose a disciplinary action to the minister.

GERMANY

The office/person as specified at 1.e. compiles the examination under their own responsibility and competence, without being dependent in any way on an additional office which would be responsible for control of the court or similar office.

HUNGARY

There is no competent body, only a competent person (President of the NOJ, chairman of the court).



ITALY

In the Italian judiciary system the body responsible for judicial inspection is the Inspectorate General of the Ministry of Justice. It plays no direct role in the professional evaluation of judge and public prosecutors, since it refers to the Minister only on issues relate to the overall functioning of the system, or of specific offices.

Inspection are periodically conducted on each judiciary office, but can also be addressed to single specific cases of malfunctioning. The inspection can lead to the opening of disciplinary proceeding if it reveals misconduct or breaches of discipline by judge or public prosecutors.

LITHUANIA

Subjects performing the administration in courts are independent, nevertheless the chairpersons of courts of a higher instance supervise their administrative activities. The Judicial Council performs the overall administrative supervision of all courts in Lithuania. Currently, seeking to perform a complex or objective inspection in court, the relevant Inspection Commission is formed. The composition of this Commission, the object of inspection and its term are approved by the decree of the Chairperson of the Judicial Council or by the Judicial Council itself by its decision. Forming the Inspection Commission the question of its composition is solved on an ad hoc basis.

POLAND

See above.

PORTUGAL

It functions under the supervision of the respective Council, as follows from the previous answers. The Inspectorates must provide to the CSM a perfect knowledge of the state, needs and gaps of the services, in order to enable the Council to take the appropriate measures or to propose to the Minister of Justice the measures that depend on the government intervention. In addition, inspection services are designed to gather information about the service and the merit of judges.

ROMANIA

As mentioned before, the body entitled with magistrates' inspection is the Judicial Inspection and it plays no role in magistrates' professional evaluation.

Referring to the Judicial Inspection, it is an independent body that functions with autonomy. According to art. 648(), of the Law no. 317/2004, the judicial inspectors carry out their activity independently and with impartiality.

Among the guarantees of independency and professionalism we can mention the following:

- the inspectors within the Judicial Inspection are appointed into office by the chief inspector, based on a competition, for a 6 years term of office, among the judges and prosecutors who have at least 8 years length in the judiciary,



being magistrates at least within tribunals or prosecutor offices attached to the tribunals and had the "very good" rating at the last evaluation;

- during the term of office of chief inspector, deputy chief inspector and judicial inspector, the judges and prosecutors are suspended by law from their positions within courts and prosecutor offices;

- the inspectors within the Judicial Inspection are dismissed from office if they are subject to a disciplinary sanction;

- according to art. 648(2) the judicial inspectors cannot perform the disciplinary investigation or any other works concerning the judges or prosecutors functioning within the courts or prosecutors offices where they've previously functioned. In this situation, the case shall be randomly distributed to another judicial inspector;

- by the art. 6413(1) Law no. 317/2004 regulates the evaluation of the professional activity of the judicial inspectors that shall be performed annually by a commission composed of the chief inspector and 2 other members elected by the general assembly of the judicial inspectors, by granting one of the following ratings: „very well”, „well”, „satisfactory” and „unsatisfactory”.

SLOVENIA

See answer e and f.

SPAIN

The Judicial Inspection Department under the General Council for the Judiciary functions under the supervision of the Council for the Judiciary. It is completely independent from the Executive (government, in particular the Ministry of Justice) and from the Supreme Court, which in the Spanish system plays no role concerning the governance or administration of the Judiciary. Nevertheless, pursuant to section 171.4 of the Organic Law on the Judiciary currently in force “the Ministry of Justice when deemed appropriate may request the Council to order the inspection of any Court or Tribunal. In this case, the Council will notify the Ministry of Justice about the resolution adopted and of the measures in place, when appropriate”.

The Head of the Inspection Department is a very high official of the Council, who is appointed by the Plenary of the Council and is accountable to it. Furthermore, all judges, court registrars and other civil servants with at least 5 years of professional experience who are seconded to the Judicial Inspection Department are appointed for the post on the basis of a decision made the Plenary of the General Council for the Judiciary.

Under the Organic Law on the Judiciary currently in force “the Inspection Department will undertake under the supervision of the General Council the verification and inspection functions with regard to the adequate performance of judicial bodies by conducting visits and proceedings in the terms determined by the General Council” (section 148), and to this purpose “the Council or its Chairperson, when deemed necessary, may order the Inspection Department under its supervision, or the Chief Justices, Judges or Magistrates or any Court or Tribunal to conduct inspection of Courts and



Tribunals or to obtain information on the functioning and compliance of their duties by the judiciary staff” (section 171.3).

SWEDEN

There is no such formal authority/body that is designated to evaluate judges' performance. Please see 1.a, 1.e

TURKEY

Pursuant to the Article 150 of the Constitution, High Council of Judges and Prosecutors carries out the processes of judges and prosecutors on acceptance into profession, appointment, conveyance, temporary authorization, promotion, promotion to the first class, distribution of cadres, determining those who are disapproved to carry on their profession, disciplinary punishment and dismissal. According to the Constitution, all personnel affairs of judges and prosecutors are carried out by HCJP. High Council of Judges and Prosecutors is an independent Council, and the Minister of Justice – though being the president of the Council – cannot cast votes in agenda of the Chambers.



h. Is there a specific or formal procedure envisaged in your legal system in order to conduct the evaluation of the professional performance of judges and/or (where relevant) prosecutors? Please describe the basic stages or phases of the procedure.

AUSTRIA

See answer 1d

BELGIUM

Periodic evaluation :

- Every three years by an evaluation college of 3 members (court president or chief prosecutor + 2 judges/prosecutors)
- If less than 5 judges/prosecutors: by court president or chief prosecutor
- The 3-year period starts with a planning interview (-> setting individual goals)
- During the evaluation period functioning interviews can take place
- 5 evaluation grades (very good, ,insufficient)
- “Insufficient” has financial consequences
- The evaluation result (evaluation grade) must be communicated to the minister of justice.

Evaluation of mandates:

- Only for adjunct and specific mandates
- At the end of the mandate
- 2 evaluation grades (“good” / “insufficient”)
- Good = automatic mandate renewal
- Insufficient = end of mandate/ no renewal

Evaluation of chief prosecutors:

- Length = 5 years
- Purpose: Renewal of the mandate. The HCJ’s Nomination commission takes the decision to renew the mandate or not
- Before, an evaluation college of 7 experts must evaluate the way in which the mandate was executed (‘management capacities’): this is done in 2 steps

1st step:

- Within the second year of the mandate, a follow up conversation must be held with the concerned chamber of the evaluation college
- Recommendations by the evaluation college are possible



2nd step:

- The evaluation will take place within the fifth year of the mandate
- The evaluatee (chief prosecutor) has to ask the renewal of the mandate
- The evaluatee should draw up a report concerning the realization of the objectives during his/her mandate
- The general director for the judiciary (ministry of justice) and the court assembly or general assembly of the prosecutor's office can give advice
- Process: Evaluation interview -> provisional evaluation -> evaluatee's comments -> definitive evaluation
- Possible grades are: 'good' or 'insufficient'

BULGARIA

The basic stages of the evaluation procedure are as follows:

1/ Initiative for starting the procedure

Under art.203 of JSA the appraisal procedure commences at the proposal of the respective judge/prosecutor/investigating magistrate or of the administrative head of the respective judicial body. The proposal is addressed to the permanent Commission on proposals and appraisals at the HJC. The Commission is competent to open the relevant individual procedure.

2/ Selecting the members of the respective appraisal commission /auxiliary commission or sub - commission at HJC/. The Judiciary System Act and the Regulation adopted by the Judicial Council provide for the procedure of selecting the members of the relevant appraisal commission. The members of the appraisal commissions are selected on a random selection principle.

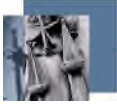
3/ The appraisal commission collects information about the evaluated person – statistical data; written information of any kind referring to the professional performance of the appraisee; personal impressions – talks with the evaluated; direct observation of the appraisee's work.

4/ Drawing conclusions on each of the relevant criteria; working out an aggregate evaluation. The respective appraisal commission fills in the "General Form for Evaluating Judges /Prosecutors/ Investigating Magistrates.

5/ The appraisal commission presents a summary report on the evaluation of professional performance to the permanent Commission on proposals and appraisals at the HJC.

6/ The evaluated person is acquainted with the aggregate assessment. If he/she agrees with it all the documentation is presented to the HJC for adopting the final decision. If the evaluated person has any objections, he/she may file within seven days a written objection addressed to the High Judicial Council. /See also answer to question "j"/.

7/ In case of an objection the High Judicial Council shall hear the



appraised person at an open session and if necessary shall collect additional information. The appraised person shall be notified at least seven days prior to the date of the hearing. When the High Judicial Council complies with the objection, the Commission on proposals and appraisal of judges, prosecutors and investigating magistrates shall draw up a new aggregate evaluation.

8/ Final decision on the individual appraisal is adopted by the SJC at an open session. The aggregate evaluation can be negative or positive. The grades of the positive aggregate evaluation could be: satisfactory; good; very good. The aggregate evaluation should be substantiated and contains recommendations to the evaluated person.

CZECH REPUBLIC

No.

FRANCE

Yes, a formal procedure does exist to conduct the appraisal. The basic phases of this procedure can be described as follows :

- 1) Description of his/her activity by the evaluated magistrate,
- 2) Appraisal interview between the magistrate and his/her chief of trial court on issues as the conditions of the exercise of the functions, qualitative and quantitative results and objectives of his/her activities, his/her training needs, the next responsibilities or functions desired,
- 3) Filling by the chief of trial court of a very detailed questionnaire (attached bellow) about the professional competencies according to the position held, in fields as various as legal, managerial, human competencies (more than 30 items to evaluate on a five level scale),
- 4) Redaction by the chief of trial court of literal appraisals upon most important points : general competencies, legal and technic competencies, specific competencies, and of a global appraisal,
- 5) Notification of the opinion of the chief of the trial court following the interview with possibility to respond
- 6) Appraisal by the chief of court of appeal, according to the same scheme as the chief of trial court,
- 7) Notification of opinion of the chief of court of appeal with another possibility for respond

Find attached : the « Circulaire d'évaluation de l'activité professionnelle des magistrats au titre des années 2011-2012 (SJ.12-271.RHM4/26.09.2012)» and its annexes.

GERMANY

Provisions in the respective Länder contain rules regarding the evaluation procedure. The superior official, as a general rule, gains a personal impression of the work of the individual subject to evaluation. He/she may consult drafts of decisions and/or gain information from the presiding judge



of the panel or senate if he/she alone is unable to come to a founded conclusion, as may be the case for large courts. It is usual for superiors to attend hearings. The evaluation is to be disclosed to the evaluated person and is communicated in a personal meeting.

HUNGARY

The Hungarian legal system provides a specific, formal procedure in order to conduct the evaluation of professional performance of judges, consisting of two parts: investigation and evaluation.

The basic stages of the procedure:

1. The investigation is ordered by the Chairman of the county court, or tribunal court or by the President of the Supreme Court.

It is either a regular investigation (ex officio), or an irregular evaluation (ex officio) or the initiative of a person mentioned by the act.

2. The investigation should be completed within 60 days from its institution and the evaluation should be conducted within 15 days from the completion of the investigation.

3. The investigation ordered by the persons concerned shall be conducted by the division head with competence to the judge's posting and area of specialization, or by a judge appointed by the head of division (for example the head of the civil case division appoints a judge of the court of appeal to conduct the investigation).

4. The provisions of the ALSRJ regulate the data, the documents, and the opinion of a particular judge (eg. chairman) which should be taken into consideration upon the screening and evaluation of the judge.

5. The head of division or the judge appointed by the head of division should send the investigation report and the draft of the evaluation on a preliminary basis to the person who has initiated the investigation.

The written draft of the evaluation should be handed to the judge minimum 15 days prior to the date of the disclosure of the evaluation.

6. The chairman of the court evaluates the professional activity of the judge on the basis of the investigation material and the documents and opinions obtained. The evaluation may only feature factually well-founded value judgements.

ITALY

The procedure starts with the report on his own activity drafted by the judge or public prosecutors. Samples of the activity displayed by the individual involved are taken collecting a number of decision drafted by him, chosen by chance. The judge or public prosecutors can also deliver other decisions or acts chosen by himself to represent his professional skills. Statistics data are collected regarding the number of procedure pending and settled in the period subject to analysis compared to the office's workload, and the timeliness of his activity.



A report is drafted by the heads of the judicial offices.

The C.S.M. makes professional assessments on the basis of the opinion expressed by the Judicial Council and the documents acquired.

The judge or public prosecutor involved is allowed to access to all the document used in the evaluation and the report and the opinion drafted.

He can submit further written comments and can ask to be heard personally both by the territorial judiciary council and by the High Council.

The Council expresses a favourable professional appraisal when the assessed magistrate is given a pass mark on each of the above mentioned parameters. In that case, the magistrate gets the professional appraisal corresponding to his seniority.

A “non positive” appraisal is expressed when there are shortcomings in respect of one or more of the above parameters.

LITHUANIA

The procedure of the evaluation of the professional performance of judges is defined in the Description.

The judge, whose activities are subject to the assessment, shall be informed about the assessment with a written notice no later than 30 (thirty) calendar days before the established date of the Commission meeting.

The Secretary of the Commission no later than 10 (ten) calendar days before the established date of the Commission meeting shall inform all the members of the Commission about the date, time and place of the meeting defined by the Chairperson and about the judges, whose activities are subject to the assessment. Informing about the intended assessment of the activities of concrete judge the Secretary shall provide all the information necessary to the assessment of judge's activities to the Commission, i.e. the statistics of cases, the data concerning the training, in-service training of the judge, the reasoned conclusion.

The Chairperson of the court of a higher level no later than 20 (twenty) calendar days before the date of the assessment of a judge shall present information about jurisdictional and non-jurisdictional activities of the judge to the Commission.

In case the activities of the judge of the Supreme Administrative Court and the Supreme Court of the Republic of Lithuania are assessed, the reasoned conclusion shall be presented to the Commission and prepared in accordance with the approved form by the Chairperson of this court. In case the Chairperson of the Supreme Administrative Court or the Supreme Court of Lithuania are assessed, the reasoned conclusion shall be accordingly prepared by the commission of five judges (including the person, who established it) which may be established either by the Chairperson of the Division of the Supreme Court having the longest term of office in this court or by the Vice Chairperson of the Supreme Administrative Court.

The judge, whose activities are subject to the assessment, shall be acquainted with the information about jurisdictional and non-jurisdictional



activities by the persons identified above. The judge, who disagrees with the statements presented by the Chairperson of the court in which the judge to be assessed is employed, as well as the Chairperson of the court of a higher level no later than 3 (three) working days left until the meeting of the Commission shall have a right to present his written explanations to the Commission.

The terms set above shall be applied to the ordinary assessments, whereas the adequate terms for the extraordinary assessments shall be determined by the Commission.

Judges' activities shall be assessed during the meeting of the Commission. During the ordinary assessment of judges' activities the participation of the assessed judge shall not be necessary unless the Commission decides otherwise. During the extraordinary assessment of judges' activities the assessed judge shall participate in the Commission meeting.

The judge, whose activities shall be assessed, until the day of the Commission meeting may present the reasoned motion for removal of the Commission members.

The member of the Commission, who is appointed for the presentation of the information related to the assessed judge in the meeting of the Commission shall present the working results of the assessed judge, describe his subject, organisational and personal characteristics.

After the presentation of the conclusion introduced by the Commission member concerning the professional activities of the assessed judge, the members of the Commission shall listen to the judge, whose activities are subject to assessment and ask the questions. The questions about the professional activities, subject, organisational and personal characteristics and other important circumstances shall be addressed to the judge.

The Chairperson of the Commission or the member of the Commission, who was authorized to present the information about the assessed judge after the consideration of questions and hearing the opinions of all members participating in the Commission meeting on the assessment of judges' activities, shall present the summarized arguments of the Commission members and suggest to vote for the Commission conclusion after presenting one or a few alternative variants of the conclusion. The conclusion shall be adopted by the majority of votes. If there is a tie, the Chairperson of the Commission shall have a casting vote. Adopting the conclusion neither of the Commission members shall have a right to suspend one's judgement. The Commission member, who disagrees with the opinion of the majority, shall have a right to present a dissenting opinion.

The Chairperson and the Secretary of the Commission shall sign the conclusion no later than 10 (ten) working days after the meeting.

Commission draws up the conclusion in free from. 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, as well other information which according to the Commission is important.



The minute of the meeting shall be made by the Secretary of the Commission. To record the process of the Commission meeting the audio recording, which is the constituent part of the minute and is kept together with the minute in the National Courts Administration, shall be made. The minute no later than within 10 (ten) working days after the meeting date shall be signed by the Chairperson and the Secretary of the Commission. The copies of the conclusion concerning the judge, whose activities were assessed and the dissenting opinion of the Commission member shall be added to the minute.

NETHERLANDS

There is no formal procedure to conduct the evaluation of professional performance as far as it relates to the content of the decisions and opinions or the number of cases that are not decided after the court hearing. As mentioned before, the way a judge operates within the court organization is subject to evaluation. In other words, there is no formal or specific procedure in a judgmental way, but only more or less in an evaluative way.

NORTHERN IRELAND

There is no formal process

PORTUGAL

There is no regular evaluation for the judges of the superior courts.

But the CSM may determine extraordinary inspections to the service of the judges of the courts of appeal.

These judges may also request extraordinary inspections to the work performed in those courts, if they are in conditions of being candidates to the Supreme Court.

Judges of the first instance are evaluated (in ordinary inspection) one year after their permanent appointment and, then, every four years.

There may also be room for extraordinary inspections, as provided by law (judges classified below "Good", by decision of the CSM or at the request of the judge - articles 36^o, n^o 2, of the Statute, and 7^o of the Regulation).

The CSM approves until the month of November of each year the plan of inspections for the following year.

The following sources of information shall be used for the evaluation of judges:

- Elements in power of the CSM regarding courts in which the judge has served, including previous inspection procedures, even if they have not had classificatory purposes;
- Biographical and disciplinary registration of judges and content of previous evaluation decisions;
- Examination of processes, books and papers, completed and pending, to the extent deemed necessary to secure a safe conviction on the merits of



the inspected;

- Statistical data;
- View of the facilities;
- Papers presented by judges, up to a maximum of 10, outside the scope of previous classifications;
- The clarifications that may be requested by the inspected;
- Interviews with the inspected at the beginning and end of inspection.

The judges under evaluation may also make known to the inspector certain acts, steps, orders or procedural/administrative determinations in order to enable him to better appreciate the service and the judge.

Following the end of the inspection it must be prepared the corresponding report within 30 days, which may be extended by order of the Vice President.

The inspector includes in the inspection report his appraisal – stating the facts on which it is based and motivating especially the unfavorable references – and his proposal of classification.

Shortly after the report, the inspected is notified to exercise its right to reply, add elements and request demarches deemed convenient.

The inspector, after the demarches he considers relevant, may provide some information on the matter of the reply and then shall send the whole process to CSM within 30 days unextendable.

If the inspected doesn't disagree with the proposal of the inspector, the inspection report is inscribed for consideration by the Plenary or by the Permanent of the CSM.

If the evaluated or the CSM disagrees with the proposal, the process is assigned to one of the members, who drafts a project of decision.

The competence to decide belongs to the Plenary Council (composed by all the 17 members of the CSM) when the proposed classification is mediocre or when it comes to evaluate a judge of a Court of Appeal. The competence belongs to Permanent Council (composed by 10 of the 17 members of the CSM) in the remaining cases.

The decisions of the Permanent Council can be challenged before the Plenary of the CSM.

The decisions of the Plenary Council can be appealed before a special chamber of the Supreme Court.

Less than "Good" implies an extraordinary inspection two years after the beginning of the last inspection.

"Mediocre" implies the suspension of the judge and the establishment of an inquiry to investigate the possible inability for the exercise of his office (art. 34.^o, n.^o 2, of the Statute).

ROMANIA



The procedure of magistrates' professional evaluation is regulated by the Law no. 303/2004 art. 39 – 42. In view of verifying whether the requirements of professional competence and performance are met, once every three years, the judges and prosecutors shall be subject to an evaluation. Their first evaluation shall be performed after the first 2 years from their appointment.

According to art.1 para.2 of the Regulation on magistrates' professional evaluation, the evaluation process involves the following steps: the analyse of the professional activities of the magistrate under evaluation, the analyse of the relevant documents referring to the results of the magistrate's activity, the self-evaluation, the interview and the settlement of an agreed individual plan for professional development and granting one of the following results/qualifications: "very good", "good", "satisfactory" or "unsatisfactory" (see note below) .

The detailed evaluation procedure is regulated in Chapter IV of the Regulation. After accomplishing the above mentioned steps of evaluation, the commission issues a draft assesement report to be submitted to the magistrate under evaluation for observations. The final report shall be issued in 15 days since the draft report has been submitted for comments.

Note: Art. 41 of the Law no. 303/2004 – (1) Judges and prosecutors who receive the reading "unsatisfactory" shall be obliged to undergo 3 to 6 months of special courses held at the National Institute of Magistracy. (2) Judges and prosecutors who receive the reading "satisfactory" following two consecutive evaluations shall be obliged to undergo 3 to 6 months of special courses held at the National Institute of Magistracy. (3) The courses provided under paragraphs (1) and (2) shall be finalized by an exam, under the present law. (4) Judges or prosecutors who receive the reading "unsatisfactory" following two consecutive evaluations or who have not succeeded in the examination in paragraph (3) shall be released from office for professional incapacity, by the President of Romania, on proposal of the Superior Council of Magistracy.

SLOVAKIA

The field of evaluation of the professional performance of judge has already been regulated in our legal system. The evaluation of judge shall be carried out:

- after 5 years of the office of judge
- in relation to the selection procedure
- based on the proposal of the entity, which is competent to initiate the disciplinary proceeding
- based on the request of a judge for evaluation
- after 1 year in case that the previous evaluation of judge was concluded as "unsatisfactory"

SLOVENIA

The procedure is set in Chapter 3 of the Judicial Service Act. Article 31



determines that the assessment of judicial service shall be 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. (see answer c). 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 shall be recorded in the personal file. The judge to whom the file relates shall immediately be informed of the details of any entry.

The personnel council shall use 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.

If it proceeds from the assessment that the judge is unsuitable for judicial service, his/her judicial office shall be terminated. It is necessary to submit an assessment specified in the previous paragraph to the Judicial Council for confirmation before it is put into effect.

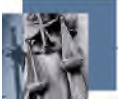
The personnel council at a high court shall formulate the assessment of judicial service for county and district judges performing judicial service at county and district courts in its area and for judges assigned to the high court. The personnel council at the Supreme Court shall formulate the assessment of judicial service for high court judges and Supreme Court judges.

SPAIN

Yes. The procedure for the evaluation of professional performance is regulated in the legal norms that develop the system, such as the Act on Judicial salaries currently in force (Act nº 15/2003, of 26th May) and the secondary legislation passed by the General Council for the Judiciary on the basis of its regulatory powers (such as Regulation nº 2/2003 of the General Council for the Judiciary, and decisions of the Plenary of the Council of 31st May 2000, 9th October 2003, 8th February 2006, 21st February 2006, 24th June 2006, and 22nd April 2010).

Under the new guidelines of the Inspection Department under the General Council for the Judiciary the procedure begins with the collection of the relevant information concerning the professional performance of each judge, which is normally gathered by the Inspection Department on the basis of the statistical data provided by the courts to the General Council. Taking into account the statistical data collected the Judicial Inspection Department of the General Council for the Judiciary submits a proposal concerning the level of achievement of performance targets to the Standing Committee of the Council, which is the responsible body to make the decision as to the level of achievement of the performance targets.

The decision made by the Standing Committee of the General Council for



the Judiciary is formally notified to the Ministry of Justice (Secretary of State of Justice), which is the body responsible for the payment of judicial salaries. As already explained, the evaluation of professional performance is taken into account under the Act on Judicial Salaries currently in force, in order to fix the amount of the variable component of the judicial salary (bonus), which is connected to the achievement of performance targets.

On the other hand, it is necessary to bear in mind that the system of evaluation of professional performance does not contemplate the grading of judges, since it only contemplates the percentage of accomplishment of a predetermined standard/target regarding the number of judgments/decisions or other judicial actions, depending on the type of court, branch of the jurisdiction, etc..

TURKEY

It is mentioned above.



- i. Is the judge (or prosecutor) subject to the process of evaluation of professional performance entitled to be heard in the context of the proceedings (for instance, drawing up reports on themselves or providing a profile of their professional activities)? Please describe the involvement of the individual judges (and/or prosecutors) in the process of evaluation of professional performance.

AUSTRIA

The total evaluation shall be communicated confidentially and in writing to the person evaluated, who has a right to examine any individual evaluation point and the total evaluation. Within two weeks of being served such communication, the judge may lodge an appeal against it with the staff panel of the higher-level court of law. The decision of such staff panel, acting as instance of appeal, is final and cannot be appealed against. There are no legal remedies against a total evaluation issued by the staff panel of the Supreme Court (Section 55 RStDG).

BELGIUM

Sources

Every document regarding the execution of the judicial function or mandate could be a source.

Self-evaluation

Periodic evaluation: self-evaluation intervenes

(1) when the evaluated judge/prosecutor prepares the evaluation interview and sends a written document to the evaluators.

(2) when the judge/prosecutor expresses his/her professional goals for the next evaluation period.

Evaluation of the mandates of chief prosecutor: the evaluated chief prosecutor has to submit to the evaluation college a written report on the functioning of his prosecutor's office.

Interview

Periodic evaluation: the interview is intended to stimulate the judge/prosecutor to correct/improve his/her behavior and define new goals for the next evaluation period.

Evaluation of mandates of chief prosecutor: the interview is intended to check if the management plan was executed and/or corrected and understand why parts of it were not.

BULGARIA

Under Art.204a of JSA the competent body conducting the appraisal may hear the appraised judge, prosecutor, investigating magistrate as well as collect any additional information on the appraisal indicators. This possibility is regulated as an informal one and it is not an obligatory step during the



whole evaluating process.

One of the methods applied by the appraisal commission during the evaluation procedure is collecting personal impressions of the work of the evaluated person acquired via talks with him/her.

CZECH REPUBLIC

During the inspection of a certain case, a judge can provide their comments. If there is a disciplinary procedure, judge has full rights in this proceedings.

FRANCE

1) The evaluated magistrate is the one who describes his/her activity in quantitative and qualitative ways.

2) He or she can express himself/herself during the interview organized with his/her direct chief.

GERMANY

Yes; cf. the response to question 1.h.

HUNGARY

The ALSRJ provides strict provisions on the involvement of the individual judge in the process of evaluation on professional performance.

1. The judge should be informed in writing about the institution of an investigation giving rise to evaluation.

2. The written draft of the evaluation should be handed to the judge minimum 15 days prior to the date of the disclosure of the evaluation.

3. The judge subject to evaluation may make comments orally and in writing at the evaluation procedure at the latest (or during the investigation of course).

4. The judge concerned must attend the disclosure procedure (evaluation meeting).

5. On the request of the judge, the chairman of the court should provide an opportunity to present his/her point of view regarding the assessment in the form of a personal hearing.

ITALY

The judge or public prosecutor involved is allowed to access to all the document used in the evaluation and the report and the opinion drafted.

He can submit further written comments and can ask to be heard personally both by the territorial judiciary council and by the High Council.

LITHUANIA

For involvement of the individual judges (and/or prosecutors) in the process of evaluation of professional performance see 1 f).

NETHERLANDS



If this pertains to a judgmental procedure, there is none. In the meaning of evaluation it can be arranged that the judge makes the report of this evaluation himself, upon which the president gives his consent to the content. The procedure is in a way 'form free'.

As soon as the new law on discussions about functioning is in force, a procedure will be designed as to forms, ways of archiving, who is responsible for the report, which persons will be consulted about the way of functioning in the organization, etc.

NORWAY

Before the Supervisory Committee for Judges make their decision, the accused/defendant Judge is allowed to give their point of view. This is made by one or several letters, which are quoted in the decisions.

Criticism or warning (the latter being the harshest reaction)

PORTUGAL

Yes. As we already said, the inspector may interview the inspected at the beginning and end of inspection; the inspected can provide written information about his work to the inspector; the inspected can reply to the report prepared by the inspector, add elements and request demarches deemed convenient.

ROMANIA

The individual involvement of the judges/prosecutors under evaluation is very consistent within the evaluation process and it refers to the following:

- the magistrate under evaluation may be asked to present relevant works, decisions etc to be presented to the evaluation commission; annually the magistrate shall select 10 cases/working documents for being subject of assessment;
- self-evaluation is a very important step of this procedure, according to art. 33 of the Regulation and it consists of presenting a self opinion on the activity carried out during the 3 year period of evaluation; this evaluation shall follow the indicators for efficiency, quality, integrity and it prepares the judge/prosecutor under evaluation for a constructive dialog during the next procedural step, the interview;
- participation of the magistrate under evaluation to the interview, that according to art. 34 of the Regulation, represents a discussion between the judges/prosecutors under evaluation and the members of the commission on any aspect of the evaluation process; the refusal to participate at the interview shall not affect the other steps of the procedure;
- another form of the constructive involvement of the magistrate under evaluation to the assessment procedure is also the possible observations to the draft evaluation report of the commission that shall be taken into account in the final report.

SLOVAKIA



Under the law a judge has only right to ask for amendment or specification of the evaluation within 15 days since its delivering.

SLOVENIA

The personnel council shall send 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; the assessment for a judge who is the president of a court shall be sent to the president of the immediately superior court. 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 an assessment specified in the first paragraph of Article 35 of the Judicial Service Act, the personnel council at the supreme court shall reject the appeal, amend the assessment, or annul the assessment and request that the personnel council at the high court repeat the assessment. The personnel council at the Supreme Court shall rule on an appeal against an assessment specified in the second paragraph of Article 35 of the present act via a two-thirds majority of the votes of all its members. After reprocessing the assessment the personnel council shall amend the assessment or reject the appeal.

SPAIN

According to the new guidelines of the Inspection Department under the General Council for the Judiciary the relevant information concerning the professional performance of each judge is now gathered by the Inspection Department on the basis of the statistical data provided by the courts to the General Council for the Judiciary. These statistical data are collected by the registrar of each court, who directly sends the information to the Inspection Department of the General Council with no participation of the judge subject to evaluation.

Consequently, under the new system reports or statements of achievement of standards by evaluated judges are used very rarely. In any case, it has to be stressed that there is no document of self-evaluation by the judge as such, since the report/statement of the judge subject to evaluation only contains statistical data concerning the number of judgments and decision issued by the judge. On the other hand, it must be stressed that, although the individual judge subject to evaluation is no longer heard in the context of the process of evaluation of professional performance, he/she is fully entitled to challenge the decision issued by the Standing Committee of the General Council for the Judiciary.

TURKEY

During the inspections of the inspectors, the judges and prosecutors can arrange a self-evaluation form. However, it has not a direct effect on our promotion system. Besides, as stated above, precedents and comments and if any, professional works and writings are also evaluated in the examination of promotions.



- j. Is the judge (or prosecutor) subject to the process of evaluation of professional performance entitled to challenge/appeal the decision or findings issued in the context of the evaluation process? Which is the body with jurisdiction to decide on the challenge/appeal? Please describe the procedure for challenging/appealing this decision and whether he/she can be represented at that stage and if so by whom.**

AUSTRIA

Yes. Refer to the answer ad 1i. There are no specific rules on permissible legal representation of any judge evaluated in the work evaluation procedure and in any appeal proceedings. But legal representation is not excluded either, and therefore it may be permissible in accordance with the provisions on defence counsels pursuant to Section 120 Service Act for Judges and Public Prosecutors (RStDG). The judge him/herself may act as defence counsel or employ an active judge, a public prosecutor or any person on the list of defending counsels as defence counsel, or else be represented by a lawyer.

BELGIUM

Final decisions regarding professional evaluation cannot be appealed before the State Council. The Court of cassation stated that it is a judicial procedure in the sense of art. 2 of the Judicial Code which means that the dispositions of the Judicial Code apply to it.

BULGARIA

Under art 204a, par.3 JSA after the appraisal procedure is finished and the aggregate evaluation is drawn, the Commission on proposals and appraisal of judges, prosecutors and investigating magistrates at the HJC shall present it to the appraised person who either agrees with the evaluation or may file within seven days a written objection addressed to the High Judicial Council.

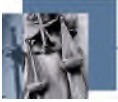
In case an objection is filed, the High Judicial Council shall hear the appraised person and if necessary shall collect additional information. The appraised person shall be notified at least seven days prior to the date of the hearing. The legislation doesn't provide explicitly that the appraisee could be represented at this stage. So, it is possible that at this stage the evaluated person is represented by someone - a colleague or a lawyer. Although not forbidden such type of representation is not practiced.

When the High Judicial Council accepts the objection, the Commission on proposals and appraisal shall draw up a new aggregate evaluation.

The final decision on the appraisal is adopted by a decision of HJC. This decision can not be challenged/appealed before court.

CZECH REPUBLIC

No such process of evaluation exists.



FRANCE

Yes the evaluated magistrate can appeal the final opinion of the appraisal. His/her appeal is dealt with by a special commission which is named “commission d’avancement” and which is composed in majority with magistrates but which contains also representatives of the ministry of justice, of the national school of magistrates and of the inspection body for judiciary services.

The evaluated magistrate is neither present, neither represented during this procedure of appeal.

GERMANY

Evaluations are measures of professional supervision which may be reviewed in a court proceedings pursuant to section 26 (3) of the German Judiciary Act. This may take place in a disciplinary or an administrative court proceeding. In the disciplinary proceeding, the evaluation is not thoroughly assessed as to its objective accuracy, but rather only as to whether judicial independence is impaired and the evaluation is therefore impermissible. If the judge wishes to have the facts underlying the evaluation, the general accuracy or merely the language reviewed, he/she may do this in the administrative proceeding. The evaluated judge may file an objection against the evaluation. If and to the extent that the objection is denied, he/she may assert a court proceeding in which he/she appears as a party.

HUNGARY

The judge subject to the process of evaluation of professional performance, and the head of division with competence to the judge’s posting are entitled to challenge the decision or the findings issued in the context of the evaluation process.

They may submit an appeal to the service court of first instance within 30 days of the receipt of the result of the evaluation.

The appointed chamber of the service court of first instance appoints an investigating commissioner for the implementation of preliminary investigation.

The investigating commissioner is obliged to clarify all necessary circumstances for establishing the facts of the case. Consequently he/she may hear the judge or the chairman of the court, obtain the opinion of the related head of division or the chairman of the competent court of appeal, may hear witnesses and of course may gain insight at the judge’s evaluation documents.

The appointed chamber of the service court of first instance by its justified decision :

1. establishes the judge’s inaptitude;
2. alters the evaluation grade awarded by the assessor;
3. terminates the proceedings instituted against the judge in the case of a procedural breach and orders a new evaluation of the judge’s activities.



In case the decision establishes the judge's ineptitude, the appointed chamber must send the decision to the President of the NOJ in order to take measures for the judge's removal.

ITALY

Each unfavourable decision by the council can be appealed by the judge or public prosecutor involved in front of the administrative court, which decides following its own procedural rules stated by law.

LITHUANIA

The judge, whose activities were subject to the assessment, shall be entitled to be acquainted within one month of the day on which he was acquainted with the assessment results to appeal against the results to the Judicial Council. The reasoned complaint against the conclusion of the Commission shall be presented in writing. The complaint against the conclusion shall be heard during the nearest meeting of the Judicial Council.

After the review of the complaint the Judicial Council may decide:

- to meet the complaint and revoke the conclusion of the Commission on the judge's assessment fully or partially;
- to reject the complaint.

The Judicial Council shall quash the conclusion of the Commission and inform the person, who brought the complaint against the conclusion and the Chairperson of the Commission in case it establishes that the conclusion of the 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 Description.

The Judicial Council shall reject the complaint and inform the person, who brought the complaint against the conclusion and the Chairperson of the Commission in case it establishes that the conclusion of the Commission concerning the assessment of judge's activities is valid.

The judge, whose complaint was satisfied and the conclusion concerning the results of the assessment of his activities adopted by the Commission was quashed, shall be assessed once again during the nearest meeting of the Commission.

There are no specific rules concerning the representation of a judge in the evaluation and/or appeal procedure. However, the general provisions of the right to be legally advised and represented should apply.

NETHERLANDS

No, this would not be necessary because there are no direct consequences in the context of evaluation.

In other decisions vis a vis the judge in the field of personnel or his status as a civil servant, the judge can appeal directly to the Central Court of Appeal for civil servants, after a procedure of objection and possible revision of the



original decision.

NORWAY

A judge or any other part can bring a decision of the Supervisory Committee for Judges to a general court.

PORTUGAL

Yes.

As we said before, the decisions of the Permanent Council can be challenged before the Plenary Council, within 30 days. The deadline for the decision on the complaint is three months. The complaint suspends the effectiveness of the decision and returns to the Plenary Council the competence to decide definitively.

The decisions of the Plenary Council can be appealed before a special chamber of the Supreme Court, composed by the oldest of its vice-presidents, who have the casting vote, and one judge from each section, annually appointed. The grounds of this appeal are the ones provided by law for an appeal to the acts of the Government. The deadline for filing an appeal is 30 days (45, if the appellant lives abroad). The application is signed by the applicant or his attorney.

The filing of the appeal does not suspend the effectiveness of the contested act, unless if requested by the appellant and the court consider that the immediate implementation of the act is likely to cause irreparable harm (or difficult to repair) to the appellant.

If the appeal should proceed, the CSM and the other interested parties are heard.

ROMANIA

According to art. 40(2) of the Law no. 303/2004 the judges or prosecutors who do not agree with the granted results may lodge a complaint to the relevant Section of the Superior Council of Magistracy within 30 days since the result is communicated; actually, the complaint shall be submitted to the president of the evaluation commission who must send it in no longer than 3 days to the Superior Council of Magistracy together with the evaluation report and with copies of the relevant documents that had been taken into account in assessing the magistrate's performance and together with the commission's opinion on the complaint; (3) When solving a complaint, the sections of the Superior Council of Magistracy may request from the person in charge of the court or prosecutor's office or from the boards or from the persons in Article 39 paragraph (3) or (4) any information that they see as necessary, and it shall be mandatory to summon the judge or prosecutor for being heard; (4) the decisions rendered by the sections may be appealed in 5 days before the Plenum of the Superior Council of Magistracy. The decisions rendered by the Plenum of the Superior Council of Magistracy, sitting as a court, are final and irrevocable.

SLOVAKIA



A judge has right to ask for amendment or specification of the evaluation within 15 days since its delivering. Unless he does so, the evaluation of judge is considered final.

If the evaluator does not meet the judge's objections, it is up to the council of judges of the respective court, where the judge acts, to make an opinion on the controversial issues, which should be enclosed to the evaluation of a judge. The evaluation of judge is not subject to the judicial review.

SLOVENIA

see answer i

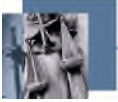
SPAIN

Evaluation of professional performance is the responsibility of both the Judicial Inspection Department under the General Council for the Judiciary and the Standing Committee of the Council. The evaluated judge can challenge the initial result of the assessment made by means of the decision the Standing Committee (which is normally grounded by reference to the statistical data provided by the Inspection Department) before the Standing Committee of the General Council or the Judiciary, which can review its initial decision on the basis of the representations made by the judge in order to challenge that initial decision. In most of the cases the challenge is based on errors or mistakes in the statistical information collected by the Inspection Department under the Council on the basis of the reports sent by the respective registrars of the courts. The decision issued by the Standing Committee of the General Council in response to the challenge by the individual judge is always reasoned and can be appealed by the evaluated judge before the Plenary of the General Council for the Judiciary. This final decision of the Plenary of the General Council for the Judiciary regarding the evaluation of professional performance is subject to judicial review before the Administrative Division of the Supreme Court. In order to conduct the proceedings of judicial review before the Administrative Division of the Supreme Court the individual judge must be normally represented by counsel.

In the same vein, the discretionary decisions made by the Plenary of the General Council for the Judiciary on the appointment of Chairpersons of the respective courts and Justices of the Supreme Court (which are based on quantitative and qualitative aspects of professional performance of Spanish judges, according to the provisions of Regulation n° 1/2010 of the 25th February 2010, on decisions regarding appointment of holders of high judicial offices) are subject to judicial review before the Administrative Division of the Supreme Court. Again, in order to conduct the proceedings of judicial review before the Administrative Division of the Supreme Court the individual judge must be normally represented by counsel.

TURKEY

Pursuant to the Article 33 of the Act on Judges and Prosecutors, the judges and prosecutors can make a request of reexamination in 10 days after the board's first decision is issued them. In the case of the request is rejected



they can file an appeal to the general assembly in 10 days after the decision is issued. During these phases, only written statements are valid. In case of removal from the office, the concerned judges/prosecutors may personally present their cases, or may be represented by their attorneys/representatives.

(HCJP functions as 3 chambers. The second chamber deals with the Promotions and the quorum for meetings consists of 5 and the quorum for decisions consists of 4 people. And the General Assembly, under the presidency of the Minister of Justice, has 22 members, the quorum for meetings is 15 and the quorum for decision is 12.)



k. Are there any safeguards in force in order to guarantee that the process for evaluation of professional performance of judges and/or (where relevant) of prosecutors is consistent with the principle of judicial independence?

AUSTRIA

Pursuant to the provisions of the Federal Constitution Act (B-VG) and the Service Act for Judges and Public Prosecutors (RStDG) judges exercise pronounced self-administration. As a case in point, mention may be made of the special public service and organisational status of judges per se, as enshrined in the B-VG - (such as independence from instructions in jurisdiction, absolute irremovability and independence from transfer to another position), of judicial administration by panels enshrined in, and safeguarded by the Constitution and performed through collegial bodies of judges free from any instructions in matters of special impact to the judges' position, such as the staff panels, which are free from any instructions and consist mostly of elected judges, the right of participation by the Association of Judges established by the Court Organisation Act (GOG) and the statutory time-off quotas for top-level functionaries of the Association of Judges (or for works council members of the Union of Public Services) also established by the GOG.

BELGIUM

- a) Periodic evaluation: this process completely takes place within the courts and prosecutor's offices.
- b) There is no evaluation system for chief judges (for chief prosecutors the evaluation commission is also composed of people who are external to the prosecutor offices).

BULGARIA

The following rules governing the appraisal procedure are considered to be safeguards in order to guarantee that the evaluation process is consistent with the principle of judicial independence.

a/ Art.4 of the Regulation adopted by HJC provides that the evaluation procedure shall not infringe on the independence and the fundamental rights of the members of Judiciary - judges/prosecutors/investigating magistrates;

b/ The evaluation is not done in an arbitrary manner. It is based on detailed rules adopted by the Parliament and the High Judicial Council.

c/ Evaluation of professional performance is based on objective statistical data collected from the respective judicial body.

d/ The evaluation procedure is carried out by professionals - judges or prosecutors who are sitting at the upper levels of the judicial system and usually have personal impressions of the professional performance of the appraisee because of their functions to perform control as a higher instance.



e/ The content of the decisions/acts of the appraisee is not assessed by the Appraisal Commissions. Only the statistical information concerning the number of acts confirmed, repealed or modified by the upper instances and the grounds therefor are taken into account and interpreted by the Appraisal Commission.

f/ The appraisee is entitled to challenge the findings and conclusions of the Appraisal Commission before the High Judicial Council.

CZECH REPUBLIC

Court inspection can focus only on case management, length of the procedure and its time line. It does not include merits of the case.

FRANCE

No, there are no safeguards. It depends on the ethical of the evaluator. Nevertheless, the double levels of the appraisal system for magistrate in function in trial courts constitute a good guaranty. In the same way, the appraisal is confidential and the professional files of the magistrates are classified and accessible only for authorities in charge of the management of the justice.

GERMANY

The principle of judicial independence is also to be taken into account in the evaluation. If judicial independence is impaired, the professional evaluation is impermissible. The independence of the judge is violated if the evaluation can be equated with direct or indirect instructions as to how the judge is to proceed and/or decide in the future. In cases of dispute, the question of whether the evaluation violated judicial independence is to be decided pursuant to the procedure described at 1.j.

HUNGARY

The ALSRJ is a cardinal act, therefore its modification requires a decision with a two-thirds majority of the Parliament. The existence of the Constitutional Court provides a kind of guarantee that the regulation of evaluation process on professional performance of judges is consistent with the constitutional principle of judicial independence.

ITALY

In order to safeguard the autonomy and independence of magistrates, in no case can a professional appraisal reconsider the law applied to individual cases.

LITHUANIA

According to the Law on Courts and the Description, jurisdictional and non-jurisdictional activities of judges shall be evaluated strictly in accordance with the principle of the judicial independence using the statistical data related to the administration of justice without checking the legitimacy and validity of separate procedural judgments.



NETHERLANDS

The basic safeguard is Article 116, Section 4 of the Constitution, which determines the control over the fulfillment of the function by members of the judiciary: judges by judges. This is the main guarantee for judicial independence. The appointment for life by Royal Decree is a guarantee, just as dismissal, suspension and all other items concerning the legal position of judges must be regulated by law.

The procedure for appointment as a judge is arranged by law. A judge is appointed for life at a certain court, which means that he cannot be replaced to another court *against his will* and that at the age of 70 the judge is discharged of his duties by Royal Decree.

So a judge is free to make the legal decisions he finds necessary. He does not have to fear for his position, not even when he applies the law unfavourably to the government.

NORWAY

The process for the Supervisory Committee for Judges is regulated in law and secure the principal of judicial independence.

PORTUGAL

The principle of judicial independence is enshrined in the Constitution of the Portuguese Republic (CRP) and in the Statute.

Nevertheless, article 1 of the Regulation provides that the inspection services cannot interfere with the independence of the Judges, namely pronouncing about the substantive merits of judicial decisions.

ROMANIA

The Regulation on magistrates' evaluation provides concrete safeguards in order to guarantee the compliance of the evaluation procedure with the independence of the judiciary.

Thus, the procedure's main characteristics are the professionalism and the impartiality.

For example, according to art. 26 (1), the judges and prosecutors are assigned by the leading boards as members or substitute members in the evaluation commissions on basis of professionalism and competences, considering the following criteria: individual knowledge and professional expertise, professional reputation, communication skills and on the results to their own professional evaluation. Therefore, the judges and prosecutors who haven't been evaluated yet or who have been disciplinary sanctioned by irrevocable decision within the last 3 years may not be assigned as members in the evaluation commissions.

Moreover, art. 26 (8) institutes several incompatibilities regarding the members of the evaluation commissions, such as the situation where they are related to the magistrates subject of evaluation, they have had judicial disputes with those magistrates or the situation where the president of the evaluation commission is member of the Council.



Another example of safeguarding in terms of the procedure's fairness is the provision of art. 27 according to which the members of the evaluation commission can be subject of dismissal/revocation since they haven't fulfilled their tasks and attributions.

Moreover, the objective criteria for evaluation, previously presented can also guarantee the compliance with the principle of independency.

SLOVAKIA

Evaluation of the professional performance of judges is stipulated directly in the Act on Judges and Lay Judges, which is in itself a guarantee that it is in line with the principle of the judicial independence.

SLOVENIA

see answer f, g, h, i

SPAIN

Yes. In Spain the principle of judicial independence is enshrined in section 117.1 of the Constitution, pursuant to which "Justice emanates from the people and is administered in the name of the King by Judges and Magistrates who are members of the judicial power and are independent, irremovable, responsible, and subject only to the rule of the law". The principle of judicial independence is also enshrined in the Organic Law on the Judiciary currently in force (section 1, whose wording is the same of that of section 117.1 of the Constitution). In this respect, section 13 of the Organic Law on the Judiciary states that "all citizens are obliged to respect the independence of Magistrates and Judges" and section 12 establishes specific guarantees of the principle of judicial independence. According to this provision:

"1. In the exercise of their jurisdictional duties, Magistrates and Judges are independent with regard to any and all other judicial and governance bodies of the Judiciary.

2. Neither the Judges nor the Courts may amend the application or construction of the legal system made by lower courts in the judicial hierarchy except when they are hearing a matter on appeal in the terms foreseen by law.

3. No court or judge, nor their governing bodies or the General Council for the Judiciary may issue general or specific instructions to the lower courts or officers on the application or construction of the legal system which they carry out in their own jurisdiction".

Indeed, the principle of judicial independence is a limit to the activities of the Judicial Inspection Department under the General Council for the Judiciary. Thus, pursuant to section 176.2 of the Organic Law on the Judiciary "construction and application of statutes by Judges or Courts in the course of their duties may not be subject to approval, sanctioning or amendment following any inspection activities". This limit also has an impact on the activities of the Judicial Inspection Department and the decisions of the Standing Committee of the General Council for the Judiciary in the field of



evaluation of professional performance of judges, since the evaluation does not focus on the quality or contents of the decisions (and other judicial actions) of the judge subject to evaluation. Consequently, it is a general principle of the Spanish system of evaluation of professional performance of judges that no body of self-governance or self-administration of the Judiciary (including the Judicial Inspection Department, the Standing Committee and the Plenary of the General Council for the Judiciary) may correct or evaluate any judge's application or interpretation of the Law outside of the system of statutory appeals or remedies, under the pretext of assessing the performance of the judge.

SWEDEN

In this respect we would like to refer to the rule contained in the agreement between The Swedish National Courts Administration and Jusek (trade union) that salaries for judges may not be done in a way that is objectively a reaction or effect on how the judge sentencing in individual cases or in general applies a rule in a particular case. The parties have agreed on having a specific board to take care of questions from any of the parties about the rule mentioned above.

TURKEY

The independence of the courts is regulated by the Article 138 and the assurance of judges and prosecutors is regulated by the Article 139 of the Constitution.



I. Is any consideration given to the merit of judicial decisions issued by the judges/prosecutors subject to evaluation, both in relation to the specific content of the ruling and to the outcome of subsequent levels of appeal of the decision?

AUSTRIA

No, this would be incompatible with the independence of judges enshrined in the Constitution.

BELGIUM

The quality of the judicial decisions is taken into account in an informal way by the evaluation commissions (periodic evaluation).

BULGARIA

One of the indicators when assessing the criteria “legal knowledge and skills for its implementation” is the number of acts confirmed, repealed or modified by the upper instance and the grounds therefor. So, the outcomes of subsequent levels of appeal of the decision are taken into account by the appraisal commission but not the specific content /result/ of the judicial act/decision.

CZECH REPUBLIC

No

FRANCE

Not really, but the appraisal of legal knowledge is founded on the sufficiency of the motivation of the judgment, its clearness and upon the rigor of legal reasoning. Usually the rapidity in which the magistrate gives his/her decision is taken into account.

GERMANY

No. This is impermissible and not compatible with judicial independence (cf. response to 1.k.).

HUNGARY

There is no consideration given to the merit of judicial decisions issued by the judge subject to evaluation, but the memorandum – provided by competent chambers of court of appeal during the period covered by the investigation – are parts of the investigation materials.

ITALY

In order to safeguard the autonomy and independence of magistrates, in no case can a professional appraisal reconsider the law applied to individual cases.

LITHUANIA

No, only statistical data about the procedural decisions adopted by the judge



in cases and quashed by the court of a higher level due to obvious violations of the material and procedural law norms are objects for the assessment.

NETHERLANDS

No such consideration exists, nor is there a system which counts the number of decisions overruled on appeal. Nevertheless, a judge is always free to have his own decisions discussed by his colleagues.

NORTHERN IRELAND

Judges are not assessed on the basis of the merits of their decisions or the outcome of any related appeals nor are they assessed on intellectual ability save on appointment.

NORWAY

No.

PORTUGAL

As follows from the previous responses, only the technical aspects of judicial decisions may be assessed (ability to understand the specific situations under consideration, speed in the decision, intellectual category, ability to grasp the legal situations in question, capacity to convince based on the quality of the arguments used in the reasoning of decisions, with particular emphasis on the original ones, juridical level of the work inspected, etc.).

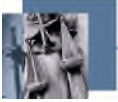
Therefore, the reversal rate shall not be used as an evaluation criterion, unless the decisions are reversed due to technical errors.

ROMANIA

As previously mentioned, among the criteria for evaluating the quality of the activity carried out within the 3 years for which the magistrate is subject of evaluation the main important indicators are the following:

- the quality of editing the court decisions reflecting the capacity for analyse and synthesis, the coherence and clearness and logics of argumentations (art. 5 (1), (2) of the Regulation regarding the evaluation of judges);
- the quality of the criminal investigation activity carried out by the prosecutors (conducting and supervising the criminal investigation) shall be reflected by the following indicators: solutions imputable to the prosecutor – definitive acquittal decisions, solutions of restoring files, non-approving the indictments, proposals for pretrial arrest followed by acquittal solutions or reopening the criminal investigation, also the quality of editing the prosecution solutions in terms of logics and accuracy of expression (art. 12, 13 of the Regulation);
- the quality of the prosecutors' performance in court shall be reflected in the logics, accuracy of the conclusions, of the arguments for the appeals and even in their own contribution to unifying the judicial practice (art. 14 of the Regulation).

SLOVAKIA



Evaluation of judge is based on review of the decision-making activity, smoothness and dignity of trying cases in the evaluated period. No special consideration is given to the merit of judicial decision.

SLOVENIA

Yes, one of the criteria for the assessment of judicial service is also her/his ability to resolve legal questions, whereby consideration is taken of the level of correctness and legality achieved in the judge's decision-making as determined primarily in procedures with legal remedies, of the judge's consideration of the relevant case-law and of the judge's ability to solve complicated and complex matters.

SPAIN

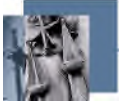
No. The system of evaluation of professional performance which applies in Spain focuses on the quantitative aspect of the judicial performance subject to evaluation. This means that the criteria and indicators of the evaluation of Spanish judges are only referred to objective quantitative data (such as, incoming cases; closed cases; decisions issued by each judge/court; pending cases and backlogs). These indicators basically provide information regarding workload and quantitative performance of judges (and indirectly speed and timeliness of proceedings), but do not assess other aspects (quality and contents of the judicial decisions, impartiality, integrity and expertise of judges, uniform application of the law, etc.), the evaluation of which could collide with judicial independence, according to the Spanish approach on this matter. It can therefore be stated that the Spanish system of evaluation of professional performance of judges gives no consideration to the merit or contents of judicial decisions issued by the judge subject to evaluation, in relation to the specific contents of the rulings or decisions as such or in connection with the outcome of the subsequent levels of appeal of those rulings or decisions.

SWEDEN

No.

TURKEY

It is ensured that the affairs passing through the right to appeal will be evaluated by the Article 21 and 33 of the Act 2802. Before 2011, as a result the examination of the Supreme Court of Appeals and Council of State, the judges and prosecutors were graded as fail, average and good. The ratio of good plus average to good was considered as ratio of mark. Yet, this mark ratio is abolished by the law. In the Law it was regulated that judicial remedy was considered in a professional context. There has been no evaluation criteria regarding this issue yet, the decisions of the judges and prosecutors who discharge a lot are being examined.



m. Is the process for the evaluation of the professional performance of judges and/or (where relevant) of prosecutors in its different levels relevant in terms of defining the professional career (promotion or demotion) of the judges/prosecutors subject to evaluation.

AUSTRIA

Ref. answer ad question 1b

BELGIUM

Yes, see question nr 1.b for the consequences of an evaluation “insufficient”.

For promotion the evaluation grade is part of the candidate’s dossier. The evaluation is not a deciding factor in the professional career of judges and prosecutors. A bad grade can of course hamper a career (depends on the point of view of the nomination commission of the High Council of Justice)

BULGARIA

The results of the appraisal procedure and the grade of the aggregate evaluation are relevant in several cases

a/ “on-the-job” promotion of a judge, prosecutor and an investigating magistrate to a higher rank and higher remuneration. “On the job’ promotion may take place if the judge/prosecutor has served at least three years at this position and has a positive “very good” aggregate evaluation from the last periodic appraisal.

b/ when the judge/prosecutor/investigating magistrate is participating in competitions for promotion to upper levels of judicial body and transfers. The competition commission determines the performance of each candidate on the basis of an interview and the results of the periodic appraisals conducted so far.

CZECH REPUBLIC

No directly. Within prosecution service, this is organized more in hierarchy, superior prosecutors can control and give instructions to their subordinated prosecutors.

FRANCE

Yes the appraisal is relevant in terms of defining the professional career. Indeed, most of the time, the direct chief identifies the next suitable function for the evaluated magistrate. Concerning the best colleagues, long term perspectives can be indicated, for instance that the evaluated magistrate has the capacity of becoming chief of trial court or chief of court.

For the CSM the appraisal is taken into account in the process of nomination. For instance, the nomination of a judge with less seniority in comparison to another one could be accepted if his/her appraisal is very good.



Appraisals are also taken into account by the CSM during a disciplinary procedure.

GERMANY

Cf. the response to question 1.b. above. (performance evaluation).

HUNGARY

Yes, the result of the evaluation of the professional performance of judges is relevant in terms of defining the professional career.

As a result of the evaluation the judge may be awarded the following evaluation grades:

- 1, excellent, suitable for promotion;
- 2, excellent and fully eligible;
- 3, eligible;
- 4, ineligible.

The ALSRJ has provisions on the ranking of applications for a judicial post. Due to the regulation, the result of evaluation of professional performance is one of the criteria to be taken into consideration upon the ranking of applications.

ITALY

The Council expresses a favourable professional appraisal when the assessed magistrate is given a pass mark on each of the above mentioned parameters. In that case, the magistrate gets the professional appraisal corresponding to his seniority.

A “non positive” appraisal is expressed when there are shortcomings in respect of one or more of the above parameters.

A “negative” appraisal is expressed when there are serious shortcomings in respect of one or more of the above parameters.

The law provides for specific consequences, both professional and economic, as a result of a “non positive” or “negative” appraisal; in particular, the law provides for a magistrate to be released from service in case of a double adverse appraisal.

In the second appraisal is favourable, the judge or public prosecutor can go on in his career, but he has irremediably lost the two years after the first negative appraisal, and the advancement – professional and economic – connected to those.

LITHUANIA

No, the selection to judicial vacancies of persons seeking judicial office shall be carried out according to the Regulations of Selection of Persons Seeking Judicial Office approved by the Judicial Council. Selecting the persons seeking judicial office, the quality of work of every candidate to judicial office, subject and personal qualities, organizational capacities and priority giving advantages shall be evaluated according to the Criteria for the Selection of



Persons Seeking Judicial Promotion established by the Judicial Council. However, 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 Commission to the Selection Commission for the Selection of Candidates to Judicial Office. However, when necessary, copies of the conclusion of Commission concerning the assessment of judges' activities may be provided to the Judicial Council.

NETHERLANDS

No.

NORTHERN IRELAND

Northern Ireland does not have a judicial career structure in the same way as some other European jurisdictions. Judges can of course move to a higher tier if they apply for appointment at the higher tier (this has happened although not frequently). All applications for judicial appointment are dealt with by the Northern Ireland Judicial Appointments Commission which is an independent body. The Commission selects persons for appointment solely on the basis of merit and all applicants would be subject to the same assessment process. It follows that the judicial performance of an applicant who is a judge at a lower tier would not be expressly part of the assessment of his suitability for appointment at the next tier. No doubt however a Judge looking for a further judicial appointment would draw on his experience to demonstrate the competences required for the new post.

NORWAY

No such system. (In Norway anyone (within certain standards given by law) can apply for any judge position. An independent Appointment Board nominates applicants to each position. The Judicial Appointments Board will then nominate candidates to the Government (the King in Council), and the Government will then formally appoint the judge.

POLAND

In accordance with the regulations that came in force on 28 March 2012, the evaluation of the work of the judge shall be made in the framework of the visit of the Court (every 4 years). Visits in the district courts are carried by visitors of the district courts and the courts of appeal by the visitors of appeal court.

The President of the Court takes note in particular of the results and the summary of the assessment and creates a professional development plan for the individual judge. The judge, within two weeks from the moment he knows the results of the assessment, has the right to submit written comments and the reasons for it. The President of the superior court makes a summary of the results of the assessment, and in the case of a judge of the Court of appeal - the President of another court of appeal.

The President of the Court gives to the judge the results of assessment and, if necessary, makes on that basis an individual professional development



plan changes that the judge finds necessary. Assessment of the work of the judge shall be made from the point of view of the efficiency and effectiveness and should lead to improvement of the efficiency of his work. The scope of the assessment of the work of a judge may not enter in the field, in which the judges are independent.

In addition, currently, judges are subject to assessment in connection with the promotion. However, the assessment carried out in the framework of the vacancies in the courts cannot effectively and fully improve the effectiveness of the functioning of the courts. Is it because first of all, a narrower scope (some judges may not be subject to evaluation by the entire career), and also the irregularity, it is carried out exclusively for the needs of a specific recruitment for the post and not periodically.

In accordance with the new legal status, interim evaluation has the following parameters:

- subject (criteria) of evaluation-evaluation is to be basically lifetime for each judge, beginning with organizational performance (performance) and activeness in raising the qualifications, through the trial management skills (personal culture, a way of communication with the participants in the court proceedings), until after the "skills in a clear and complete formulation of the statements and the taking of decisions". The relevance and accuracy of the judgments will not be subject to evaluation.
- assessing body - the work carried out by judge should take place every four years, in the framework of the visit of the courts carried out already by the judges-inspectors working in the district courts, appeal and the Ministry of Justice. The Act provides for the establishment of a separate body of judges - evaluators.
- the rights of the assessed judge - pursuant to the new provisions of law the President of the Court, in which the assessment of the judge took place discuss with him the results of the evaluation. The judge, who has been negative assessed has the right to submit to the President of the Court of Appeal, within two weeks from the date of the assessment protocol, written comments to review. After considering the comments, the judge- visitor can uphold the assessment of the judge or change it. The position of judges-inspectors should be expressed in writing with reasons and shall be subject to the delivery to the judge.

The negative assessed judge, has the right to submit, within a week from the date of delivery of the negative position of the judges-inspectors, a reference to the Judicial Council, through the President of the Court of Appeal. Council decides about the result of the periodic evaluation of the judge's work within two months of the date of the appeal. It follows from the foregoing that evaluated judge will not be able to formulate his comments and proposals in the course of the assessment. He can make the reference to the Council, but only in the case of a negative assessment. The decision of the Council will be final.

- the consequences of the evaluation - evaluation will result in an extension of the period required to obtain the next increasement of the basic salary of



a judge. You can therefore speak about the financial sanctions following a negative evaluation. In addition, periodic assessment is a part of the assessment of the qualifications of a judge, which is one of the elements determining promotion of the judge.

PORTUGAL

Yes.

The placement of the judges, following their appointment or their transfer, is based on their classification (the seniority criterion is used to untie judges with the same classification).

Only Judges classified with no less than “Good with distinction” can be appointed to courts with jurisdiction over civil demands worth more than € 30000,00 and criminal cases where imprisonment for more than five years is possible.

The promotion of judges to courts of appeal is made on the basis of merit, assigning a weight of 60% to the classification (and 40% to the curricula).

Classifications are also considered in the appointment of career judges to the Supreme Court.

ROMANIA

One of the aims of the professional evaluation of magistrates is to guarantee the professionalism of the judges/prosecutors participating in the contest for promotion to superior courts/prosecution offices. Moreover, this is one of the mandatory conditions to be met in order to participate to these open competitions - according to art. 44 (1) of the Law no. 303/2004, the judges and prosecutors who have received the reading “very good” in the last evaluation, who were not sanctioned disciplinarily within the last 3 years and who meet the legal minimum requirements of length of service may sit for the promotion exam to the immediately superior courts or prosecutor's offices.

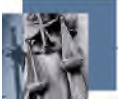
SLOVAKIA

Evaluation of judge shall be carried out also in connection with the selection procedure, which aim is to verify the judge's ability of creative thinking, decision-making, verbal expression and personality presumptions. Therefore, the evaluation of judge is relevant in terms of his professional career.

SLOVENIA

If it proceeds from the assessment that the judge fails to fulfil the conditions for promotion, he/she may not be appointed to a superior judicial position or to the position of councillor, and may not be allocated to a higher wage class, until it is determined via an assessment that he/she fulfils the conditions for promotion.

If pursuant to the provisions of the present act there is no obstacle to promotion, i.e. if it proceeds from the assessment that the judge fulfils the conditions for promotion, the Judicial Council shall allocate the judge to a



higher wage class or appoint him/her to the position of councillor in accordance with the conditions of the Judicial Service Act.

If it proceeds from the assessment that the judge fulfils the conditions for accelerated promotion, the judge:

j. shall be promoted to the wage class that is the next higher in sequence from the wage class to which he/she would be promoted pursuant to Article 26 of the Judicial Service Act ;

k. may be promoted to a superior judicial position after the first promotion to a higher wage class, irrespective of the provisions of Articles 10, 11 and 12 and the first paragraph of Article 27 of the Judicial Service Act ;

l. shall be promoted to the position of councillor at a high court or the judge Supreme Court during the second promotion to a higher wage class or to the position of councillor at county or district court in accordance with the fourth paragraph of Article 27 of the Judicial Service Act .

SPAIN

In principle, there is no direct relationship between the evaluation of professional performance by the Judicial Inspection Department and the Standing Committee of the General Council for the Judiciary and the assignment of judges to specific judicial roles, particularly to the positions of Chairpersons of Courts and Justices of the Supreme Court, which are appointed by the Plenary of the General Council on a discretionary basis. However, as is has been already explained, the different (quantitative and qualitative) aspects of professional performance of Spanish judges are assessed on a discretionary basis by the relevant Committees of the General Council for the Judiciary and by the Plenary of the Council when making decisions concerning the appointment of Chairpersons of the respective courts and the appointment of Justices of the Supreme Court. In order to regulate its discretionary power in this matter, the Plenary of the General Council for the Judiciary has adopted Regulation n° 1/2010 of the 25th February 2010, on decisions regarding appointment of holders of high judicial offices, which stipulates the merits and criteria of competence to be assessed when adopting decisions on appointment and contains some provisions in respect of the procedure for the adoption of decisions in this field. All proposals for appointment must be consistent with the principles of merit and capacity in the performance of jurisdictional duties, objectivity, transparency and gender balance (securing a number of appointments for female judges). The merits and criteria of competence stipulated in the Regulation include seniority in judicial service and particularly in court panels consisting of more than one judge, previous judicial practice in courts of the same branch of the jurisdiction, importance of previous judicial decisions from the technical point of view, practice of other relevant legal professions, qualification as a Doctor in Law, publications in legal subjects, previous experience or practice in any of the organs of self administration of the Judiciary, and the contents of the specific programme for the direction of the court (in the case of candidates to the office of chairpersons of any of the courts or divisions).



On the other hand, if the evaluation of professional performance carried out by the Judicial Inspection Department under the General Council for the Judiciary and by the Standing Committee of the Council shows a very poor level of performance in terms of achieving the performance targets fixed to define the maximum workload of every judge/court of the country through the system of “input measures/output measures” (módulo de entrada de asuntos/módulo de dedicación), according to the specificities of each court, or if this poor level of performance is revealed in the context of an ordinary or extraordinary inspection carried out by the Judicial Inspection Department, this could lead to the adoption of disciplinary measures against the single judge responsible for the poor level of professional performance, in as far as it can constitute a disciplinary offence envisaged in the Organic Law on the Judiciary currently in force (sections 417.9; 418.11; 419.3, which refer to delay or disregard in initiating, conducting or deciding on any proceedings or suits or in the exercise of any of his judicial functions). The adoption of the disciplinary measures (which could even lead to the dismissal of the judge in the most serious cases of poor professional performance) falls within the jurisdiction of the Plenary or the Disciplinary Committee of the General Council for the Judiciary, depending on the seriousness of the disciplinary infraction.

SWEDEN

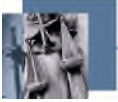
No, the process of evaluating judges mentioned above is not directly relevant in questions about promotion.

Judges Committee/Board

Judges Committee/Board is a state agency whose primary task is to submit proposals to the government on matters of appointing judges. The Board will also conduct active and long-term efforts to address recruitment of permanent judges. In the process of ranking candidates and determine who is most suitable to qualify as permanent Judge, the Committee/Board obtain statement from former employers. The board is interesting to know about the candidate's background and professional practice in general. The following is usually something that the

Board asks for.

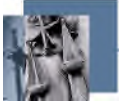
- The applicant's performance
- Legal knowledge
- Analytical skills
- Review and personal maturity
- Autonomy and integrity
- Ability to express themselves in speech and writing
- Behavior
- Working capacity
- Stress management skills
- Cooperation with other colleagues and helping colleagues



-Contribution to the big picture (operation)

TURKEY

Those who are appointed to the higher level are requested to promote qualified promotions. (A, B or C subject to the promotion) To be chosen to the Supreme Court of Appeals, the judges and prosecutors are needed to service successfully for three years after promoting first class and to be chosen as a board member it is needed to be first class. There are some criteria to be a senior administrator in the Ministry of Justice or HCJP, such as being promoted to the first class. To be Inspector, Chief Judge or Chief Prosecutor, the promotions should be qualified.



2) Irremovability of Judges and/or Prosecutors:

- a. **Is the principle of irremovability of judges and/or prosecutors enshrined in the Constitution or in any piece of primary legislation in your legal system? What is it that contains this principle?**

AUSTRIA

The independence of judges is enshrined in the Austrian Constitution and includes freedom from instructions on the merits of the case [Art. 87 (1) Federal Constitution Act (B-VG)], irremovability and independence from transfer to another position [Art 88 (2) B-VG]. This pre-vents a judge from being relocated at any given time. Also irremovability is a safeguard that a judge cannot be arbitrarily removed from office. As judges are appointed for life, this practically precludes any interference in decisions of a judge.

An exception from irremovability and independence from transfer is constituted by any judgement by a professional or disciplinary court in cases when a judge has seriously violated or else can no longer perform his official duties. Such professional or disciplinary courts consist of independent judges from a different court precinct and may in certain cases – apart from other measures – also order transfer to a different work location or early retirement. The judge involved may lodge an appeal against such decisions of the professional or disciplinary courts. Any decision by the Supreme Court as professional or disciplinary court cannot be appealed against.

BELGIUM

The principle is inserted in the Constitution: it is only applicable to judges (see art. 152 of the constitution)

Art. 151.<L 1998-11-20/30, art. 1, 009; En vigueur : 24-11-1998> § 1er. Les juges sont indépendants dans l'exercice de leurs compétences juridictionnelles. Le ministère public est indépendant dans l'exercice des recherches et poursuites individuelles, sans préjudice du droit du Ministre compétent d'ordonner des poursuites et d'arrêter des directives contraignantes de politique criminelle, y compris en matière de politique de recherche et de poursuite.

§ 2. Il y a pour toute la Belgique un Conseil supérieur de la justice. Dans l'exercice de ses compétences, le Conseil supérieur de la justice respecte l'indépendance visée au § 1er.

Le Conseil supérieur de la justice se compose d'un Collège francophone et d'un Collège néerlandophone. Chaque Collège comprend un nombre égal de membres et est composé paritairement, d'une part, de juges et d'officiers du ministère public élus directement par leurs pairs dans les conditions et selon le mode déterminés par la loi, et d'autre part, d'autres membres nommés par le Sénat à la majorité des deux tiers des suffrages exprimés, dans les conditions fixées par la loi.



Au sein de chaque Collège, il y a une Commission de nomination et de désignation ainsi qu'une Commission d'avis et d'enquête, qui sont composées paritairement conformément à la disposition visée à l'alinéa précédent.

La loi précise la composition du Conseil supérieur de la justice, de ses collèges et de leurs commissions, ainsi que les conditions dans lesquelles et le mode selon lequel ils exercent leurs compétences.

§ 3. Le Conseil supérieur de la justice exerce ses compétences dans les matières suivantes :

1° la présentation des candidats à une nomination de juge, telle que visée au § 4, alinéa premier, ou d'officier du ministère public;

2° la présentation des candidats à une désignation aux fonctions visées au § 5, alinéa premier, et aux fonctions de chef de corps auprès du ministère public;

3° l'accès à la fonction de juge ou d'officier du ministère public;

4° la formation des juges et des officiers du ministère public;

5° l'établissement de profils généraux pour les désignations visées au 2°;

6° l'émission d'avis et de propositions concernant le fonctionnement général et l'organisation de l'Ordre judiciaire;

7° la surveillance générale et la promotion de l'utilisation des moyens de contrôle interne;

8° à l'exclusion de toutes compétences disciplinaires et pénales :

- recevoir et s'assurer du suivi de plaintes relatives au fonctionnement de l'Ordre judiciaire;

- engager une enquête sur le fonctionnement de l'Ordre judiciaire.

Dans les conditions et selon le mode déterminés par la loi, les compétences visées aux 1° à 4° sont attribuées à la Commission de nomination et de désignation compétente et les compétences visées aux 5° à 8° sont attribuées à la Commission d'avis et d'enquête compétente. La loi détermine les cas dans lesquels et le mode selon lequel les commissions de nomination et de désignation d'une part, et les commissions d'avis et d'enquête d'autre part, exercent leurs compétences conjointement.

Une loi à adopter à la majorité prévue à l'article 4, dernier alinéa, détermine les autres compétences de ce Conseil.

conditions et selon le mode déterminés par la loi.

Sans préjudice des dispositions de l'article 152, la loi détermine la durée des désignations à ces fonctions.

...

§ 6. Selon le mode déterminé par la loi, les juges, les titulaires des fonctions visées au § 5, alinéa 4, et les officiers du ministère public sont soumis à une évaluation.



Art. 152. Les juges sont nommés à vie. Ils sont mis à la retraite à un âge déterminé par la loi et bénéficient de la pension prévue par la loi.

Aucun juge ne peut être privé de sa place ni suspendu que par un jugement.

Le déplacement d'un juge ne peut avoir lieu que par une nomination nouvelle et de son consentement.

Art. 153. Le Roi nomme et révoque les officiers du ministère public près des cours et des tribunaux.

Art. 154. Les traitements des membres de l'ordre judiciaire sont fixés par la loi.

Art. 155. Aucun juge ne peut accepter d'un gouvernement des fonctions salariées, à moins qu'il ne les exerce gratuitement et sauf les cas d'incompatibilité déterminés par la loi.

BULGARIA

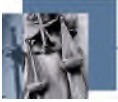
The principle of irremovability of judges/prosecutors/investigating magistrates is enshrined in the Constitution. Under art.129, par.3 of the Constitution after completing five years in office and after undergoing an appraisal procedure completed with a positive aggregate evaluation, judges, prosecutors and investigating magistrates shall become irremovable by a decision of the High Judicial Council. When the aggregate evaluation is negative the HJC refuses to give a status of irremovability by a resolution and the appraisee shall be relieved from office.

After acquiring the 'status of irremovability' a judge/prosecutor/ investigating magistrate may be removed from office solely upon the grounds listed in art.129 of the Constitution. The respective person can not be moved from office even in cases of closing of the respective judicial body or in cases of cutting down the number of judicial positions. Art.194 of JSA provides that in cases of closures of courts, prosecution offices or investigation bodies or cuts of positions therein the High Judicial Council shall open the respective positions in a different judiciary body of an equal rank, if possible in the same appellate area and shall reappoint in them without a competition the judges, prosecutors and the investigating magistrates.

When an "irremovable" judge/prosecutor/investigating magistrate leaves the office on grounds of "submission of resignation" or 'sustained actual inability to discharge the duties thereof for a period exceeding one year" he/she can restore the status of irremovability if he/she is appointed later again as a judge/prosecutor/investigating magistrate.

CYPRUS

According to our Constitution Supreme Court Judges hold office until the age of 68. The Courts of Justice Law (law 14/1960) provides in its article 8 that judges are permanent members of the judiciary. District Court Judges and Judges of special jurisdiction courts retire at the age of 63 (article 8(2). Once appointed a Judge cannot be removed except under very exceptional circumstances.



CZECH REPUBLIC

Act No. 6/202 Coll. On Courts and Judges states in its art. 67 that judges are assigned to a specific court after taking the oaths by the minister of justice with judges consent. A judge can be moved to a different court only with his/her consent or upon its request.

ENGLAND AND WALES

1. I suggest that 2) (a) to (c) can be presented together.
2. In England and Wales the irremovability of judges has been guaranteed by law at least since the Act of Settlement of 1701. It provided that the commissions of judges should be “quamdiu se bene gesserint” – which is while the behave themselves.
3. Section 11(4) Superior Courts Act 1981, in respect of senior judges (i.e. High Court and above), states the judge “... shall hold office during good behavior, subject to a power of removal...”
4. The procedure for removal of senior judges is now governed by the Constitutional Reform Act 2005. (“the Act”)
5. The grounds for removal of judges are restricted to them becoming incapable of performing the functions of office or misbehavior. The senior judges are often involved in giving judgments which may be adverse to the government or politically unpopular and therefore justifies the procedure for removal containing vital safeguards.
6. The latter necessitates a finding by a tribunal set up under the Act that the judge has become incapable of performing the functions of office or misbehavior. The report of the tribunal has to be laid before Parliament and a motion for an “address” to the Queen has to be moved by the Prime Minister in the House of Commons and by the Chancellor in the House of Lords. If the motion is passed in both Houses then an address is made to the Queen to exercise her power as head of state to remove the judge from office.
7. Such an address has only been made once when in 1830 an Irish Judge absconded, having fled to France, with funds paid into the court!
8. The remaining judges are dealt with under the Judicial Discipline Regulations which in England and Wales are currently going through a process of revision.
9. A complaint against a judge is investigated by the Judicial Complaints Commission. Only complaints of misconduct are admissible and only a finding of serious misconduct (or incapacity) may lead to suspension and removal from office.
10. A previous Lord Chancellor has indicated that, as to serious misconduct, he would include drink-driving, conviction of an offence involving violence, dishonesty or immorality. It could also include other offensive behavior such as racial or sexual harassment.
11. The process involves a judge of higher rank being engaged to investigate the complaint and findings are made by a panel which includes a



judge of the same rank and a lay person. The errant judge may make representations. Less serious transgressions are dealt with in a number of ways, including simply the giving of informal advice. Only the Lord Chancellor can remove the judge from office and that course must be agreed upon by the Lord Chief Justice.

12. Any party aggrieved by the complaints process may refer the grievance for investigation by the Judicial Ombudsman. He has no power to interfere with the outcome of the complaints process but may examine, report and make recommendations in respect of how the complaint was handled.

FRANCE

Article 64 of the French constitution provides that judges are irremovable. Prosecutors do not have the same guaranty.

GERMANY

Article 97 of the Basic Law states that judges are independent and subject only to the law. Full-time and permanently employed judges can be terminated before completion of their term against their will, or removed from office permanently or temporarily, or transferred to another office or mandatorily retired, only pursuant to a judicial decision and only for reasons and formal grounds provided by law (...) If the organisation of courts or their districts is changed, judges may be transferred to another court or removed from office, but only at full salary.

Section 30 of the German Judiciary Act places this in concrete terms: "A judge for life or for a specified term can only be transferred to another office or discharged from office without his own written consent (...) (1) in judicial impeachment proceedings (Article 98 paragraph 2 and 5 of the Basic Law), (2) in formal disciplinary proceedings, (3) in the interests of the administration of justice (section 31 of the German Judiciary Act), (4) on changes being made in the organisation of the courts (section 32.)

The term "transfer" means to a concrete judicial office at a certain court.

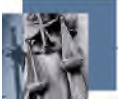
HUNGARY

Section 26 of the Fundamental Law safeguards the principle of judges' irremovability in the Hungarian legal system. This provision of the Fundamental Law states that judges are independent and are only submitted to the rules of law, and they may be removed from their positions only for reasons and by a procedure regulated in a cardinal act.

The cardinal act (ASLRJ) states that judges are independent in their administration of justice, and they are entitled to the same immunity as Members of Parliament.

IRELAND

The principle of irremovability of judges is enshrined in the Constitution of Ireland and, in particular, by way of Article 35 which states at 35.2 that:-



“All judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law.”

And further at 35.4.1:-

“A judge of the Supreme Court or the High Court shall not be removed from office except for stated misbehaviour or incapacity and then only upon resolutions passed by Dáil Éireann and by Senate Éireann calling for his removal.”

And further at Article 35.4.2:-

“The Taoiseach (Prime Minister) shall notify the President of any such resolutions passed by Dáil Éireann and by Senate Éireann and shall him a copy of every such resolution certified by the Chairman of the House of the Oireachtas by which it shall have been passed”

And further at 35.4.3:-

“Upon receipt of such notification and of copies of such resolutions the President shall forthwith by an order under his hand and seal remove from office the judge to whom they relate.”

As previously indicated, barristers who appear as prosecutors in criminal matters before the courts are retained by the Director of Public Prosecutions and if their work was not up to an adequate standard, it is unlikely that they would continue to be retained.

ITALY

Judges and public prosecutors are safeguarded by irremovability provisions. Indeed, independence of judges might be seriously jeopardised if they were exempted from service or else transferred between different districts.

With a view to preventing this risk, Italy's Constitution provides (art. 107) that a judge or public prosecutor may only be suspended, exempted from service, or transferred upon a resolution by the CSM either with his/her consent or on account of the reasons set forth in the laws regulating the judicial system in compliance with the defence mechanisms laid down therein.

LITHUANIA

The principle of irremovability of judges is enshrined in the Constitution of Republic of Lithuania and the Law on Courts.

MALTA

Judges and Magistrates have their security of tenure protected by the Constitution and can only be removed by a two thirds majority of Parliament after recommendation by the Commission.

NETHERLANDS

In the Constitution is regulated that judges are appointed for life by Royal Decree and that all items re the legal position is subject to law.

A judge can be dismissed, but only in very special circumstances and



guarded by a lot of guarantees. Normally, judicial officers are dismissed at their own request by Royal Decree. When a judge is inadequate in his performance, he should be dismissed. But that is only possible by a court that is part of the judiciary: the Supreme Court of the Netherlands.

There are other circumstances under which dismissal is possible, but they are strictly regulated. The possibilities for dismissal are divided in 'will', 'can' and 'shall'.

A judge *will* be dismissed on his demand, by Royal Decree of the Queen and also signed by the Minister of Justice.

A judge *can* be dismissed for instance in case he is permanently unsuitable to fulfil his duties because of long term illness or by final conviction for a serious criminal offence and/or imprisonment.

A judge *shall* be dismissed for instance by loss of the Dutch nationality of if there is unsuitability to perform his tasks not caused by illness. A special committee will advise the Supreme Court about the unsuitability.

NORTHERN IRELAND

'Irremovability' in the European sense of 'Non Transferability' is not a major issue as our judges do not enjoy any conventional protection from being geographically removed from a district (or area of work) in which they have been falling short of performance targets. Such a transfer could be required in Northern Ireland without the judge having any entitlement to representation at hearing or on appeal. The question of potential damage to the 'standing' of the judge (implicit in such a transfer) is regarded somewhat differently in a small jurisdiction in which there is an understanding that flexibility is essential.

NORWAY

The principle of irremovability is enshrined in the Constitution section 22. The protection of tenure is also enshrined in the Court Act § 55. He or she can only be discharged after a trial / court decision.

In Norway there has not been any such case for the last 60 years. (But it might happen this year). This does not mean that Norwegian judges never violates penal provisions. Judges have in several cases resigned voluntarily.

POLAND

From 1989, the judges shall be appointed by the President on the proposal of the National Council of the Judiciary.

In Poland the position of the judges, their rights and obligations, rules of appointment and dismissal and remuneration shall be governed by:

- the Constitution of the Republic of Poland,
- the law on the Supreme Court,
- common courts law,
- common administrative courts law,



-common military courts law.

The basic principles, in all types of the judiciary, are:

-independence,

-removability,

-inadmissibility of transfer to other place without the consent of the judge (with exceptions),

-a formal immunity.

PORTUGAL

The principle of irremovability of judges is enshrined in the Constitution («Judges are irremovable and can not be transferred, suspended, retired or dismissed unless in cases established by law») and in the Statute («Judges are appointed for life and can not be transferred, suspended, promoted, retired, fired or otherwise have their situation changed, unless in cases provided by this Statute»).

ROMANIA

The principle of judges' irremovability is provided both by the Romanian Constitution and by the Law no. 303/2004 on the status of magistrates. According to art. 125 (1) of the Constitution, judges appointed by the Romanian Presidency are irremovable according to law.

According to art. 2 (1) the judges appointed by the President of Romania are irremovable according to the present law.

The principle of irremovability does not refer to prosecutors, as the Constitution specifies expressly the irremovability of judges and the Law no. 303/2004 in art. 3 (1) provides that prosecutors appointed by the President of Romania enjoy stability and are independent, according to the law.

SCOTLAND

There is no written Constitution as such in the United Kingdom. In the legal system of Scotland the principle of irremovability of judges is not enshrined in such terms in the Constitution or in any piece of primary legislation. However, there are provisions in primary legislation (of the UK Parliament and the Scottish Parliament) which provide that judges in Scotland may only be removed from office in accordance with special procedures. These are set out in the Scotland Act 1998 (which was constitutional reform legislation of the UK Parliament) and the Judiciary and Courts (Scotland) Act 2008 (of the Scottish Parliament).

SLOVAKIA

Judge shall be appointed by the President of the Slovak Republic for an indefinite period. The Constitution of the Slovak Republic and the Act on Judges and Lay Judges set up reasons of removing a judge from his office.

The principle of irremovability is also related to the transfers of judges. The



Judicial Council can transfer a judge to a different court only upon his agreement, on his request or based on the decision of the disciplinary panel.

SLOVENIA

The transfer and assignment of judges is set in the Judicial Service Act .

Article 66

At the joint proposal of the presidents of the two courts in question, judges may with their prior written consent be transferred to another court of the same or inferior status and powers.

Exceptionally judges may be transferred to another court without their consent:

- d. if the court where the judge performs judicial service closes
- e. if the volume of work at the court where the judge performs judicial service decreases significantly for an extended period
- f. if the organisation of the courts is changed
- g. in other cases stipulated by law

In the cases specified in the previous paragraph it shall be necessary to provide judges with the same judicial position and the same wage class as those held before the transfer. If this is not possible, judges shall be transferred to another court but shall have the right to retain their previous judicial position as a title and their previous wage class if they were higher, and the right to promotion as held before the transfer.

The Judicial Council shall rule on the transfer of judges pursuant to the provisions of the previous paragraphs, and shall carry out the transfer without an invitation in the case of a disciplinary resolution having been pronounced.

Upon transfer judges shall be deemed to have been appointed to the judicial position at the court to which they have been transferred.

The Judicial Council shall rule on all other transfers on the basis of an invitation.

Article 67

Judges may be assigned to perform judicial service at another court of the same or inferior status for full-time or part-time work hours without the consent of the judge:

- m. if so required in order to facilitate the ordinary execution of judicial power at the court
- n. if so required in order to eliminate backlogs in the court's work
- o. if they cannot achieve the expected volume of work at the court to which they are appointed because of a temporary reduction in the caseload

The judge's prior consent is obligatory if the court is distant more than 70 km, if the judge is pregnant or is breast-feeding the child or is nursing a child younger than 3 years. The assignation without the consent should last no



more than two years.

SPAIN

Yes. The principle of irremovability of judges is enshrined both in the Spanish Constitution and in the Organic Law on the Judiciary currently in force. According to section 117 of the Constitution (1) “Justice emanates from the people and is administered in the name of the King by Judges and Magistrates who are members of the judicial power and are independent, irremovable, responsible, and subject only to the rule of the law”. (2) “The Judges and Magistrates cannot be separated, suspended, transferred, or retired except for causes and with the guarantees provided for in the law”. Pursuant to section 378.1 of the Organic Law on the Judiciary, “Magistrates and Judges are considered irremovable officers while they perform judicial duties”.

The basic contents of the principle of judicial irremovability under the Spanish Constitution is to grant tenure to all judicial officers once they have been formally appointed and assumed their offices. The principle fully applies to all holders of judicial offices of all levels (from lay justices of the peace to justices of the Supreme Court), but there is a limit to judicial irremovability regarding holders of judicial offices who have been appointed on a temporary basis, since, pursuant to section 378.2 of the Organic Law on the Judiciary, “those officers who have been appointed for a certain period of time will be considered irremovable officers only for that time”.

Indeed, the principle of judicial irremovability does not prevent some cases of transfer or removal of judges from office if the transfer or removal is based on the voluntary decision of the concerned judge. Thus, section 378.3 of the Organic Law on the Judiciary specifies that the principle of irremovability does not apply to the “the events or resignation, leave of absence, transfer and promotion” (of judges), which are governed by the specific provisions envisaged in the Law.

Furthermore, the principle of judicial irremovability determines: a) a *numerus clausus* of grounds for removal of judges from office, which are listed in section 379.1 of the Organic Law on the Judiciary and include resignation from office, loss of Spanish nationality, disciplinary sanction which entails their removal from office, conviction for any malicious offence followed by imprisonment for this reason, disability to perform the office, and retirement. b) Specific procedural guarantees that apply to the proceedings for the removal of judges, including disciplinary proceedings that might lead to removal from office as a disciplinary sanction. c) Additional guarantees applicable to the temporary suspension of judges as a precautionary measure in the context of proceedings that might lead to the removal from office. Thus, according to section 383 of the Organic Law of the Judiciary, “suspension of Magistrates and Judges will only take place in the following cases: (1) When proceedings have been instituted against them for offences perpetrated by them in the discharge of their duties. (2) When they are convicted for a malicious offence and an imprisonment order has been decreed against them or they are on bail or indicted. (3) When so decreed in the course of disciplinary or incapacitating proceedings either on a



temporary or final basis. (4) If a final sentence imposes suspension or removal from office as the main or accessory penalty applicable to a judge”.

However, the principle of irremovability does not apply with the same intensity to Spanish public prosecutors, since in Spain public prosecutors are not part of the Judiciary and do not enjoy the same status of judges regarding independence and irremovability, in so far as they are subject to the principles of unity and hierarchical dependence.

SWEDEN

4.1. The Swedish Constitution contains basic national rules on courts and judges. Through the recent reform of the Constitution, most of these measures have been included in a separate chapter of justice (Chapter 11 of The Instrument of Government). The purpose of the change was to highlight the courts' special role in the constitutional system and to highlight the importance of the principle of justice independence.

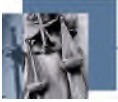
15.1. The most central provision of the courts and judges independence are enshrined in chapter 11 section 3 § of The Instrument of Government (RF). It states that no authority, nor Parliament, may determine how a court will rule on the case or how the courts in general should apply a rule of law in a particular case.

15.2. A specific rule of law guarantee considered to be the requirement that permanent judges should be protected against being separated from employment in cases other than when there is reasonable cause to do so. Provisions on that and what constitutes reasonable cause are enshrined in chapter 11 section 7 of The Instrument of Government (RF).

TURKEY

According to Turkish Republic Constitution Article 139. Judges and public prosecutors shall not be dismissed, or retired before the age (65) prescribed by the Constitution; nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of court or post.

Exceptions indicated in law relating to those convicted for an offence requiring dismissal from the profession, those who are definitely established as unable to perform their duties on account of ill-health, and those determined as unsuitable to remain in the profession, are reserved.



b. Are there any specific safeguards of the principle of irremovability of judges and/or prosecutors in your legal system? How do these safeguards operate in the context of the disciplinary process or transfer process of judges and/or prosecutors?

AUSTRIA

See answer 2a

BELGIUM

Judges: only by a judicial decision (see art 152, 2nd al of the constitution)

BULGARIA

After acquiring the 'status of irremovability' a judge/prosecutor/ investigating magistrate may be removed from office solely upon exhaustively listed grounds provided for in art.129 of the Constitution. He/she can not be moved from office even in cases of closing of the respective judicial body or in cases of cutting down the number of judicial positions. Art.194 of JSA provides that in cases of closures of courts, prosecution offices or investigation bodies or cuts of positions therein the High Judicial Council shall open the respective positions in a different judiciary body of an equal rank, if possible in the same appellate area, and shall reappoint in them without a competition the judges, prosecutors and the investigating magistrates.

During the first five years of working as a judge/prosecutor/investigating magistrate when he/she has not acquired the status of irremovability, his/her job position is not guaranteed in cases of closures of judicial bodies or reducing the number of positions.

A judge/prosecutor/investigating magistrate can be commissioned to a vacant position in another judicial body for a certain period of time only with his/her consent.

CYPRUS

The Constitution provides that judges of the Supreme Court may be dismissed on the ground of misconduct. Furthermore the Supreme Court Rules of 2000 provide that disciplinary proceedings may be brought against a judge for improper conduct or for the commission of a disciplinary offence.

A Judge may be removed from office on grounds of misconduct, physical or mental incapacity or infirmity. The removal of a Judge can be sanctioned only by the Supreme Council of Judicature, which is composed by the 13 Judges of the Supreme Court, in the context of judicial proceedings. The terms of service of Judges cannot be altered to their disadvantage after appointment.

CZECH REPUBLIC

There are no specific safeguards, a judge can be moved only with its consent. Only when the structure of court system changes by the legislation,



a judge can be moved without his/her consent, conditions are set by the law too.

FRANCE

Yes, for judges, each new position is conditioned on the agreement of the moving judge and is submitted to the positive opinion of the french CSM.

For judges, only the CSM following a disciplinary procedure can interfere with the principle of irremovability.

In contrast, prosecutors can be moved in the interest of the judiciary services, however the opinion of the CSM has to be solicited. This kind of movement could be appealed in front of the State Council.

GERMANY

Cf. the response to question 2.a. Transfer may – except in case (4) – be ordered only pursuant to a final and binding judicial decision.

Most Länder have taken advantage of the possibility of ordering transfer to another judicial office at the same basic salary as a disciplinary measure. This can be the reaction, for example, to violations of official duties with regard to the conduct of a judge at a certain court (detailed discussion and authority at Claudius Fischer, Disziplinarrecht und Richteramt, Frankfurt am Main 2012, p. 154, margin no. 893).

HUNGARY

The existence of the Constitutional Court is a guarantee that the provisions of ASLRJ - on the specific grounds of removal of judges from their offices - are consistent with the constitutional principle of judges' irremovability .

IRELAND

The specific safeguard in Ireland is the Constitution and effectively a judge can only be removed by Parliament. In the Irish system the President of each court would handle any matters requiring the admonishment in any way of a judge and it is a matter for the President of each division to assign work to judges and thus, the question of the nature of the work that a judge engages in or the location of the court in which the judge is required to sit is a matter for the President of each particular division. In the particular context of the Irish situation, a disciplinary process or transfer of prosecutors does not arise.

ITALY

The decision on transfer is taken at the end of an administrative procedure that - although arising from the reports submitted by heads of judicial offices and/or citizens - is handled wholly inside the CSM and results into an administrative measure that is implemented ultimately by allocating a different office to the given judge or public prosecutor; he or she may appeal against the measure in question via administrative courts.

The provisions applying to this type of transfer - on grounds of no-fault incompatibility with the local conditions - differ from those applying to the ex-



officio transfer applied as a disciplinary measure

The disciplinary measure is imposed upon establishing the magistrate's liability based on his/her fault in the course of a judicial proceeding instituted against the judge or public prosecutor; this leads to a judgment passed by the disciplinary division of the CSM, which can be challenged before the Joint Divisions for civil matters at the Court of Cassation. In this s case the transferral is a sanction provided for by law.

LITHUANIA

According to Article 115 of the Constitution of the Republic of Lithuania judges of courts of the Republic of Lithuania shall be dismissed from office according to the procedure established by law in the following cases:

1. of their own will;
2. upon expiration of the term of powers or upon reaching the pensionable age established by law;
3. due to the state of health;
4. upon the election to another office or upon their transfer, with their consent, to another place of work;
5. when they discredit the name of the judge by their behaviour;
6. upon coming into effect of court judgements convicting them.

According to Article 116 of the Constitution of the Republic of Lithuania, the President and judges of the Supreme Court as well as the President and judges of the Court of Appeal may be removed from office for a gross violation of the Constitution, breach of oath, or when transpires that a crime has been committed, by the Seimas (the parliament) according to the procedure for impeachment.

According to Article 45 of the Law on Courts, a judge may be appointed, transferred, dismissed or removed from office only on the grounds and in accordance with the procedure provided for in the Constitution and the Law on Courts.

A person shall be appointed to hold the post of a judge for a definite period of time and the term of office of an appointed judge may not be shortened. A judge may be appointed to a court of a lower level only upon his consent, except when a person is appointed a judge of a lower level when applying a disciplinary measure. A judge may be transferred to another court of the same level, or to the court of the other jurisdiction or to the court of a lower level, only upon his consent, except the cases of reorganization, liquidation of the courts, need to ensure the functioning of the court or when the Judicial Council finds the substantial difference in the workload of courts.

As it was mentioned before, the judges of courts of the Republic of Lithuania shall be dismissed from office when they discredit the name of the judge by their behaviour and a judge may be appointed a judicial position of a lower level when applying a disciplinary measure.

The transfer of a judge to another court of the same level or a court of the



same level but another jurisdiction is regulated more specifically by Article 63 of the Law on Courts. According to this Article, a judge of a district court, a regional administrative court or a regional court may be permanently transferred, subject to his consent, to another court of the same level or the court of the same level but of different jurisdiction, after the Judicial Council finds it necessary. If, in this case, there are two or more judges willing to be transferred to one position, the general selection procedure for the candidates to judicial vacancies at a district court shall be applied when deciding the issue of transfer of the judge to another court. However, in this case only those judges who are willing to be transferred to another court are allowed to participate in the selection procedure.

In those cases, when the Judicial Council finds the substantial difference in the workload of courts, and there are no judges willing to be transferred to another court, a judge of a district court, a regional administrative court or a regional court may be permanently transferred without his consent to another court of the same level or the court of the same level but of different jurisdiction, located in the same area. In this case, a judge from the court with the lowest workload, having the least experience of working as a judge, shall be transferred.

In addition to this, the consent of a judge shall not be necessary for a temporary transfer of a judge to another court in cases when there is a need to ensure the functioning of the court (in cases where the judge of this court is unavailable due to ill health, where there is a vacancy in the court or where the judge of this court is not able to carry out his functions for other reasons). In this case, a judge may be temporary transferred to another court of the same level or the court of the same level but of different jurisdiction, a judge of regional court – to the district court, a judge of the Court of Appeals – to the regional court, a judge of the Supreme Administrative Court – to the regional administrative court, a judge of the Supreme Court – to the Court of Appeals. However, the salary of the judge transferred in this case shall remain the same as it was before the transference. Moreover, such a transfer of a judge may not last longer than one year and may not occur more frequently than once every three years.

NETHERLANDS

As under a.

NORWAY

A decision from the Supervisory Committee for Judges will not have any judicial consequences by itself. It might be a part/evidence of case brought to a court.

PORTUGAL

Only the Plenary of the CSM can decide the removal of judges.

The grounds for removal of judges are only the ones described in the next response.

The decisions taken by the CSM in this regard may be appealed to a special



chamber of the Supreme Court.

ROMANIA

The Law no. 303/2004 provides several safeguards in terms of guaranteeing judges' irremovability and prosecutors' stability. According to art. 2 (2) the irremovable judges may not be transferred, delegated or promoted without their consent and they may be suspended or removed from office only according to the conditions provided by the present law; (3) judges are independent; they are subject only to the law and must be impartial; (4) any person, organisation, authority or institution has the duty of respecting the independence of judges. According to art. 3 (2) the prosecutors who are granted with stability may not be transferred, seconded or promoted without their consent; they may be delegated, suspended and removed from office only according to the provisions of the present law. The SCM is the only entitled entity to approve/reject the transfer, delegation and secondment of magistrates, according to the law on the status of magistrates and to the Regulation on transfer, delegation and secondment.

Moreover, the transfer may be applied as disciplinary sanction, according to art. 100 letter c) of the same law, namely the disciplinary transfer for a period from one to 3 months to a court or prosecutor's office within the jurisdiction of the same court of appeal or within the jurisdiction of the same prosecutor's office attached to it.

Another important safeguard in terms of irremovability, stability and independency is the provision of art. 75 of the same law, referring to protecting magistrates' professional reputation, as it follows: (1) the Superior Council of Magistracy is entitled and obliged to protect the judges and prosecutors against any act that is likely to affect their independence or impartiality or to give rise to suspicion with regard to these; (2) the judges or prosecutors who consider that their independence or impartiality is affected in any way by acts of interference with the professional activity may address to the Superior Council of Magistracy, in order to decide the necessary measures, according to the law.

SCOTLAND

There are safeguards in the special procedures set out in the Scotland Act 1998 and the Judiciary and Courts (Scotland) Act 2008. The provisions of the Judiciary and Courts (Scotland) Act only allow the process for possible removal of a judge from office to be initiated by the First Minister of Scotland, either if he himself thinks fit or at the request of the Head of the Scottish Judiciary (the Lord President of the Court of Session). The Act makes provision for the setting up of an independent tribunal, constituted by the First Minister, to investigate and report on whether the judge is unfit for office. The composition of the tribunal depends on the judicial office held by the judge whose fitness is being investigated, but it must consist of at least one very senior judge, a judge from the same judicial group as the judge whose fitness is being investigated, a member of the legal profession and a lay member. The report of the tribunal must be laid before the Scottish Parliament by the First Minister. In terms of the Scotland Act, senior (Court



of Session) judges may only be removed from office by the Queen on the recommendation of the First Minister, following a resolution of the Scottish Parliament on the motion of the First Minister. Under the Judiciary and Courts (Scotland) Act judges at the level of Sheriff Principal and Sheriff may only be removed from office by the First Minister by a statutory order which is subject to annulment by the Scottish Parliament before it takes effect.

The procedure for considering fitness for, and removal from, judicial office is separate from the “disciplinary process” for the investigation and determination of any matter concerning judicial conduct. In terms of the Judiciary and Courts (Scotland) Act 2008 the formal disciplinary powers of the Lord President following an investigation of judicial conduct are formal advice, formal warning and a reprimand. There are no specific procedures or powers for transfer of a judge for disciplinary reasons.

SPAIN

Yes. The principle of irremovability of judges entails a set of specific safeguards applicable to judges, which refer both to the grounds for mandatory transfer or removal of judges and to the procedure for the adoption of the decision that may lead to the mandatory transfer or removal of a judge. Grounds for mandatory transfer or removal of judges must be specified in the relevant provisions of the Organic Law on the Judiciary.

The grounds for removal of judges are envisaged in section 379 of the Law on the Judiciary currently in force (see answer to question 2c) and include, among others, resignation, loss of Spanish nationality, retirement, inability to perform the duties of the office, conviction for a malicious offence punishable with a custodial sentence, and disciplinary sanction for the perpetration of a very serious disciplinary infraction. According to section 420.1 & 2 of the Law on the Judiciary mandatory transfer can be imposed as a disciplinary sanction for the perpetration of a very serious disciplinary infraction. It can also be imposed on the grounds of incompatibility based on the close connection of the concerned judge with other judges, public prosecutors and advocates who practice in the same judicial district (see answer to question 2c).

The basic safeguard concerning the process for the removal or mandatory transfer of a judge is related to the competent body for the adoption of those measures: they can only be imposed by the General Council for the Judiciary (section 388 of the Organic Law on the Judiciary), which is the constitutional body for self-governance and self-administration of the Judiciary and has full competence concerning the organization and management of the judicial profession, from the selection of judges to their training, promotion, specialism, posting, disciplinary liability, etc..

The safeguard concerning the body with jurisdiction to decide on mandatory transfer and removal of holders of judicial offices is complemented by the provisions of the Law on the Judiciary that stipulate the procedural guarantees applicable to the proceedings for mandatory transfer or removal of judges. Pursuant to section 379.2 of the said Law, removal based on loss of Spanish nationality, inability to perform the duties of the office, conviction for a malicious offence punishable with a custodial sentence, and



disciplinary sanction for the perpetration of a very serious disciplinary infraction, requires the institution of proceedings by the General Council for the Judiciary with the participation of the Public Prosecutor. Section 388 of the Organic Law on the Judiciary specifies that the concerned judge is entitled to be heard in the context of proceedings for removal, transfer or retirement due to permanent inability. Moreover those proceedings require a report by the Public Prosecutor and the respective Board of Governance of the court where the judge sits, and are adjudicated by the General Council for the Judiciary. The decision of the Plenary of the General Council on removal or mandatory transfer of judges is subject to judicial review before the Administrative Division of the Supreme Court. In order to conduct the proceedings of judicial review before the Administrative Division of the Supreme Court the individual judge must be normally represented by counsel.

Finally, it has to be underlined that the relevant provisions of the Organic Law on the Judiciary establish additional guarantees that operate in the context of disciplinary proceedings instituted against holders of judicial offices for the commission of a disciplinary infraction (sections 421 to 427). The most serious sanctions -which include removal from office, mandatory transfer to another court located at least one hundred kilometers away from the one in which the judge had served office and suspension of up to three years- can only be imposed by the Plenary of the General Council for the Judiciary for the perpetration of a very serious infraction defined in section 417 of the Organic Law on the Judiciary. When determining the sanction the Plenary of the General Council “must take into account that a fair correlation exists between the nature of the breach and the sanction imposed” (section 421.3 of the Organic Law on the Judiciary). The disciplinary proceedings are instituted following a reasoned proposal made by the Board of Governance or the Chairperson of the respective Court, by the Disciplinary Committee or the Plenary of the General Council for the Judiciary, on the basis of a request or a complaint lodged. The Public Prosecutor may also file a petition for the institution of disciplinary proceedings. Following the institution of disciplinary proceedings an examining judge of at least the same rank as the one against whom the proceedings are conducted is appointed. The examining judge will carry out all actions required to determine and verify the facts and liabilities. Both the Public Prosecution Services and the concerned judge will be party to the disciplinary proceedings. The concerned judge may avail himself of legal counsel from the institution of the proceedings and is entitled to be heard in the context of the proceedings: he may make representations concerning both the statement of counts and the draft decision written by the examining judge, and may also adduce relevant evidence in the course of the disciplinary proceedings. As already explained, the decision of the Plenary of the General Council concerning the imposition of the sanctions of removal, mandatory transfer or suspension is subject to judicial review before the Administrative Division of the Supreme Court. In order to conduct the proceedings of judicial review before the Administrative Division of the Supreme Court the individual judge must be normally represented by counsel.



SWEDEN

15.2. A specific rule of law guarantee considered to be the requirement that permanent judges should be protected against being separated from employment in cases other than when there is reasonable cause to do so. Provisions on that and what constitutes reasonable cause are enshrined in chapter 11 section 7 of The Instrument of Government (RF).

16.1. A person who has been appointed permanent judge may be removed from employment only if

- 1) he or she through crime or gross or repeated neglect of the obligations of employment, has proved obvious inappropriate to hold the position, or
- 2) he or she has attained the relevant retirement age or is legally obliged to resign because of permanent incapacitation.

If necessary for organizational reasons, the person who has been appointed as permanent judge may be transfer to another court. Act (2010:1408).

16.2. Chapter 11 section 9 § of The Instrument of Government (RF) states that a judge always can call for judicial review of decisions by an authority other than the court that has separated him from the position. This safeguard applies not only at decisions on dismissal but also for suspended from their jobs or be required to undergo a medical examination.

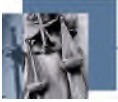
TURKEY

The law numbered 2802 which called The law of Judges and Prosecutors enacts the whole process of disciplinary matters.

According to article 68 in some disciplinary matters, High Council of Judges and Prosecutors can award any judges with the disciplinary punishment of Change of location. This punishment is change of place of office to stay at the region which is at least one degree below than the existing region for the minimum service term of that region.

The sanction of change of location shall be imposed under the following circumstances:

- a) Lose of the honor and ascendancy of profession or personal honor and dignity by faulty or improper conducts and affairs,
- b) Causing a perception that he cannot perform his duty properly and impartially by his performance and conducts,
- c) Causing a perception that he performs his duties according to his individual emotions or in one's favors,
- d) Being fractious with his colleagues in a way that affect the service because of his own faults,
- e) Causing a perception that he has been involved in bribery or extortion even though no material evidence is obtained.
- f) Demanding gifts directly or through an intermediary or accepting gifts given for obtaining benefits even out of duty or requesting or taking debt



from clients in courts.

In some serious disciplinary matter judges may face more serious punishment which is defined on article 69.

Dismissal

Article 69- (Amended by Law No:5720, Art.4, Date:01.12.2007) Dismissal: is termination of the profession without the possibility of re-employment.

Those who are sanctioned twice with change of location under subparagraph (e) of Article 68 regardless of his degree and grade, for other reasons sanctioned twice at the same degree or three times sanctioned with change of location or suspension of degree promotion regardless of his degree and grade or except negligent offences, convicted with a final judgment under Article 8/h even though he is imprisoned with minimum 6 months or a pardon is granted, shall be sanctioned with dismissal.

However, where punishment is not imposed for the offences listed in Article 8/h and postponed and converted into one of the sanctions envisaged in Article 50 of Penal Code or punishment is a judicial fine for more than 180 days, change of location shall be sanctioned instead of dismissal.

Considering the nature of offence, disciplinary sanctions covered by Articles 64, 65, 66, 67 or 68 shall be imposed regardless of whether penal convictions excluding the convictions under the first paragraph have been suspended or converted into punishments or sanctions in Article 50 of the Penal Code or not.

Where it is considered that the offence requiring conviction is of a nature violating the dignity and honor of the profession or general respect and trust in profession, unless a lesser disciplinary sanction is envisaged by the Law, dismissal shall be imposed regardless of the amount of the punishment or whether it has been suspended or converted into one of the punishments or sanctions in Article 50 of the Penal Code or not.

Even though the disciplinary conduct does not result a criminal offence and not require a conviction, dismissal shall be imposed where it is considered that it violates the honor and dignity of the profession or ascendancy and honor of the position he/she holds.

This process is completely implemented by High Council of Judges and Prosecutors. If anyone dismissed according to disciplinary matters he/she may apply for re examination process, if his demand was refused than he may object to plenary session after this, the decision of plenary session may be subject to judicial review on Council of State.



c. Which are the specific grounds for removal of judges and/or prosecutors from their offices in your legal system? Are these grounds related disciplinary measures, to the evaluation of professional performance of judges and/or prosecutors, or to other circumstances (such as connection to the parties, advocates, other judges of the court, etc.)?

AUSTRIA

See answer 2a

BELGIUM

- judges and prosecutors - removal from their office: related to disciplinary measures (a bad evaluation can be (part of) a starting point for a disciplinary action)

Art. 404. Ceux qui manquent aux devoirs de leur charge, ou qui par leur conduite portent atteinte à la dignité de son caractère, peuvent faire l'objet des sanctions disciplinaires déterminées au présent chapitre.

(Les sanctions disciplinaires prévues par le présent chapitre peuvent également être infligées à ceux qui négligent les tâches de leur charge et qui portent ainsi atteinte au bon fonctionnement de la justice ou à la confiance dans l'institution.) <L 2002-07-07/43, art. 2, 103; En vigueur : 14-02-2005>

- disqualifying the judge in a proceeding: related to other circumstances (conflict of interest, the judge is related to a litigating party, the judge was the counselor of a party, etc.). In general the judge takes the initiative to abstain from participation (by application of art 831 of the judicial code)

see art 828 and following of the judicial code

Art. 828. Tout juge peut être récusé pour les causes ci-après:

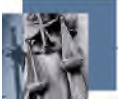
(1° s'il y a suspicion légitime;) <L 2001-06-10/75, art. 4, 056; En vigueur : 02-10-2001>

(2°) si lui-même ou son conjoint a un intérêt personnel à la contestation; <L 2001-06-10/75, art. 4, 056; En vigueur : 02-10-2001>

(3°) si lui-même ou son conjoint est parent ou allié des parties ou de l'une d'elles en ligne directe, (...); ou en ligne collatérale jusqu'au quatrième degré; ou si le juge est parent ou allié au degré ci-dessus du conjoint de l'une des parties; <L 1987-03-31/52, art. 79, 006; En vigueur : 06-06-1987> <L 2001-06-10/75, art. 4, 056; En vigueur : 02-10-2001>

(4°) si le juge, son conjoint, leurs ascendants et descendants ou alliés dans la même ligne, ont un différend sur une question pareille à celle dont il s'agit entre les parties; <L 2001-06-10/75, art. 4, 056; En vigueur : 02-10-2001>

(5°) s'ils ont un procès en leur nom devant un tribunal où l'une des parties est juge; s'ils sont créanciers ou débiteurs d'une des parties; <L 2001-06-10/75, art. 4, 056; En vigueur : 02-10-2001>



(6°) s'il y a eu procès criminel entre eux et l'une des parties ou leurs conjoints, parents ou alliés en ligne directe; <L 2001-06-10/75, art. 4, 056; En vigueur : 02-10-2001>

(7°) s'il y a procès civil entre le juge, son conjoint, leurs ascendants et descendants, ou alliés dans la même ligne, et l'une des parties, et que ce procès, s'il a été intenté par la partie, l'ait été avant l'instance dans laquelle la <récusation> est proposée; si, ce procès étant terminé, il ne l'a été que dans les six mois précédant la <récusation>; <L 2001-06-10/75, art. 4, 056; En vigueur : 02-10-2001>

(8°) si le juge est tuteur, subrogé tuteur ou curateur, administrateur provisoire ou conseil judiciaire, héritier présomptif ou donataire, maître ou associé de l'une des parties; s'il est administrateur ou commissaire de quelque établissement, société ou association, partie dans la cause; si l'une des parties est sa présomptive héritière ou sa donataire; <L 2001-06-10/75, art. 4, 056; En vigueur : 02-10-2001>

(9°) si le juge a donné conseil, plaidé ou écrit sur le différend; s'il en a précédemment connu comme juge ou comme arbitre, sauf si, au même degré de juridiction: <L 2001-06-10/75, art. 4, 056; En vigueur : 02-10-2001>

1. il a concouru à un jugement ou à une sentence avant faire droit;
2. ayant statué par défaut, il connaît de l'affaire sur opposition;
3. ayant statué sur un pourvoi, il connaît ultérieurement de la même cause, chambres réunies;

(10°) si le juge a pris part à un jugement en premier degré, et qu'il soit saisi du différend sur l'appel; <L 2001-06-10/75, art. 4, 056; En vigueur : 02-10-2001>

(11°) s'il a déposé comme témoin; si, depuis le commencement du procès, il a été reçu par une partie à ses frais ou a agréé d'elle des présents; <L 2001-06-10/75, art. 4, 056; En vigueur : 02-10-2001>

(12°) s'il y a inimitié capitale entre lui et l'une des parties; s'il y a eu, de sa part, agressions, injures ou menaces, verbalement ou par écrit, depuis l'instance, ou dans les six mois précédant la <récusation> proposée. <L 2001-06-10/75, art. 4, 056; En vigueur : 02-10-2001>

Art. 829. Les dispositions relatives à la <récusation> des juges sont applicables aux conseillers sociaux et juges sociaux ou consulaires.

En outre, le conseiller ou le juge social ou consulaire peut être récusé:

- 1° s'il a été lié avec une des parties par un contrat de louage de travail;
- 2° s'il a été membre du personnel, d'un organe d'administration ou de gestion d'une personne morale à laquelle une des parties a été liée par un contrat de louage de travail.

Art. 830. Il n'y a pas lieu à <récusation>, dans les cas où le juge serait parent du tuteur, du curateur, de l'administrateur provisoire ou du conseil judiciaire de l'une des deux parties, ou des administrateurs ou commissaires d'un établissement, société ou association, partie dans la cause, à moins



que lesdits tuteurs, administrateurs ou intéressés, n'aient un intérêt distinct ou personnel.

Art. 831. Tout juge qui sait cause de <récusation> en sa personne est tenu de s'abstenir.

Art. 832. Les causes de <récusation> relatives aux juges sont applicables au ministère public, à moins qu'il n'agisse comme partie principale.

Art. 833. Celui qui veut récuser doit le faire avant le commencement de la plaidoirie, à moins que les causes de la <récusation> ne soient survenues postérieurement et, si la cause est introduite par requête, avant que la requête ait été appointée.

Art. 834. La <récusation> contre les juges commis aux descentes, enquêtes et autres opérations, ne peut être proposée, à peine de déchéance, que dans les trois jours qui courent:

1° si le jugement est contradictoire, du jour du jugement;

2° si le jugement est par défaut et qu'il n'y ait pas d'opposition, du jour de l'expiration du délai de l'opposition;

3° si le jugement a été rendu par défaut et qu'il y ait eu opposition, du jour du débouté d'opposition, même par défaut.

Art. 835. <L 2003-12-22/42, art. 375, 069; En vigueur : 10-01-2004> Sous peine de nullité, la demande en <récusation> est introduite par un acte au greffe, contenant les moyens et signée par un avocat inscrit depuis plus de dix ans au barreau.

BULGARIA

Under Art.129, par. 3 of the Constitution after acquiring the “status of irremovability” judges, prosecutors and investigating magistrates may be removed from office solely upon the following grounds:

1. attainment of the age of 65 years;

2. submission of resignation;

3. entry into effect of a sentence imposing a penal sanction of deprivation of liberty for a premeditated offence;

4. sustained actual inability to discharge the official duties for a period exceeding one year;

5. grave breach or systematic dereliction of the official duties, as well as actions damaging the prestige of the judiciary.

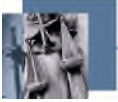
6. in the following cases of incompatibility; if the person

- is a member of the National Assembly, a mayor or municipal councillor;

- is in office in state or municipal bodies, as well as in EU institutions;

- exercises trade or is a partner, manager, or a member of supervisory, management boards or boards of directors or control bodies of commercial companies

- Exercises a liberal profession or another remunerate professional



activity;

- is a member of political parties or coalitions, carries out political activity, as well as be a member of organisations or carrying out business interfering with judicial independence;

- is a member of a trade union organisation outside the judicial system.

CYPRUS

See above

CZECH REPUBLIC

A judge (prosecutor) can be removed from his function as a result of the disciplinary procedure, if he commits severe breach of his obligations as a judge.

FRANCE

Judges can only be moved after and by a disciplinary sanction, sanction that can be decided for a serious professional incompetence.

Sanctions are essentially linked to disciplinary issues, they are of various kinds, various levels from the lowest to the highest, the most important one is the revocation.

The evaluation of the professional performance is not in itself a base for a sanction, but important and usual delays in the treatment of cases could lead to a disciplinary procedure.

GERMANY

Cf. the responses to questions 2.a. and 2.b.

Section 21 of the German Judiciary Act contains a precise description of the reasons for dismissal. Section 22 of the German Judiciary Act specifically applies to the dismissal of judges on probation. Grounds for termination are also contained in Section 24 of the German Judiciary Act.

Dismissal or removal from office as a reaction to a general or professional evaluation is not an option.

HUNGARY

There are some specific grounds – and specific procedures - for removal of judges in the Hungarian legal system :

1. The procedure of professional inaptitude

When a judge is graded ineligible in the evaluation process, the chairman of the court – simultaneously with the communication of the evaluation – calls upon the judge to resign from office as a judge within 30 days. If the judge fails to resign , the chairman of the court initiates a professional inaptitude proceeding by informing the service court of first instance. The rules of this procedure are the same as the rules of the procedure



challenging the decision of the evaluation process.

2. The ineligibility proceedings on health grounds

It occurs when a judge is unable to fulfill his/her duties for health related reasons on a long term basis. The chairman of the court may be the initiator.

3. A judge should be exempted by the regulation of the ALSRJ :

If a prison sentence or a sentence of community service was imposed on the judge on a final and absolute basis or the judge was subjected to forced medical treatment

If the judge is elected as a Member of Parliament, (conflict of interests)

If the judge willfully fails to meet the obligation of making a financial disclosure statement

If the judge fails to attend the medical examination ordered by the employer because of the ineligibility proceedings on health grounds (point 2)

If in disciplinary proceedings instituted against the judge, removal from the office of the judge was proposed as a final and absolute disciplinary sanction.

4. Temporary seconding

A judge may be assigned to another service post with a view to ensure an even distribution of caseload between courts or to promote his/her own professional development. A judge may be assigned to a judicial position at another service post without his/her consent once every three years.

5. Transfer

If a judge fills in a judicial position at another court on the basis of an application, the judge shall be transferred by the President of the National Office for the Judiciary.

IRELAND

Specific grounds for removal of judges in Ireland is stated misbehaviour or incapacity. In the history of the State no judge has actually been removed by a vote of Parliament, but in recent times four judges have resigned on the basis of alleged stated misbehaviour. To my knowledge the competence or evaluation of the professional performance of a judge was not a factor in any of these resignations.

The specific grounds for removal of prosecutors does not arise having regard to the matters as already stated herein.

ITALY

With a view to preventing this risk, Italy's Constitution provides (art. 107) that a judge or public prosecutor may only be suspended, exempted from service, or transferred upon a resolution by the CSM either with his/her consent or on account of the reasons set forth in the laws regulating the



judicial system in compliance with the defence mechanisms laid down therein.

Accordingly, a judge or public prosecutor may as a rule be transferred to another district and/or entrusted with different functions exclusively with his/her consent upon a resolution by the CSM.

The exceptions to this rule, i.e. the cases in which judge or public prosecutor may be transferred ex officio, are set forth exclusively by law.

In this connection, reference should be made to the initial allocation of tasks to trainee magistrates as well as to the cases in which the ex-officio transfer is intended to meet administrative requirements to cover specific positions on the need to cover positions in disadvantaged districts.

Additionally, the CSM is empowered to transfer judges or public prosecutors ex-officio if the relevant office is cancelled as well as "whenever they are unable to discharge their functions in the current position in an independent, impartial manner because of reasons for which they may not be held liable" (section 2(2) of royal legislative decree no. 511/1946). In the latter case, the derogation from the non-transferability rule is justified by the need (regarded as overriding) to ensure that the magistrate is enabled to discharge jurisdictional functions independently and impartially in the relevant office/district, whilst independence and impartiality would be jeopardised if the magistrate were to remain in the given office/district.

It should be pointed out that the only material ground applying to this ex-officio transfer consists in an objective obstacle to discharging jurisdictional functions in a given office/district - i.e. no reference is made to circumstances entailing the magistrate's liability.

The law provides that the same procedure can be applied if the judge or public prosecutors has a close relative working in the same court as judge or public prosecutors or acting as lawyer in front of it.

The decision on transfer is taken at the end of an administrative procedure that - although arising from the reports submitted by heads of judicial offices and/or citizens - is handled wholly inside the CSM and results into an administrative measure that is implemented ultimately by allocating a different office to the given judge or public prosecutor; he or she may appeal against the measure in question via administrative courts.

The provisions applying to this type of transfer - on grounds of no-fault incompatibility with the local conditions - differ from those applying to the ex-officio transfer applied as a disciplinary measure

The disciplinary measure is imposed upon establishing the magistrate's liability based on his/her fault in the course of a judicial proceeding instituted against the judge or public prosecutor; this leads to a judgment passed by the disciplinary division of the CSM, which can be challenged before the Joint Divisions for civil matters at the Court of Cassation. In this case the transferral is a sanction provided for by law.

Finally, demotion of judges or public prosecutors can be caused by sanitary



reasons if he or she is not physically or mentally fit to fulfil the jurisdictional functions. The ex officio transferral cannot be issued on the ground of professional evaluation.

LITHUANIA

For grounds for removal of judges see 2 b).

In addition to this, it should be mentioned that according to the Article 91⁵ of the Law on Courts, if the assessment of the results of activities of judges shows that:

1. the Chairperson, the Deputy Chairperson and the Chairperson of a division of the court during the assessment of judge's activities it has been established that he inappropriately performs the administrative tasks prescribed by law;
2. a judge performed an action demeaning the judicial office;
3. a judge violated other requirements of the Code of Ethics of Judges;
4. a judge violated the limitations on the work and political activities of judges provided by law;
5. when a judgment of the conviction of the judge becomes effective;

This may be grounds for starting a new separate investigation regarding the possibility to start a disciplinary proceedings against the judge, to dismiss the judge or remove him from office according to the procedure established in the Law on Courts.

According to Article 86 of the Law on Courts, the Judicial Court of Honour (the body of judicial self-governance hearing disciplinary cases of judges and petitions of judges against defamation) may, by its judgment:

1. suggest the President of the Republic or the Seimas to dismiss the judge from office according to the procedure established by law;
2. suggest to the President of the Republic to apply to the Seimas to institute impeachment proceedings against the judge.

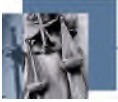
NETHERLANDS

The main rule is: appointed for life and dismissal at own request.

See also under a.

A written warning in case of neglecting the dignity of his office, his official tasks or duties. This sanction of written warning can be taken by the president of the court. Also possible is suspension in case a judge is in custody for a criminal offence pending a possible dismissal. Just as dismissal, the measure of suspension is a prerogative of the Supreme Court, on demand of the Procurator General of the Supreme Court.

Soon there will be a new set of instruments of disciplinary sanctions. Then it will be possible to issue a written reproach by the president of the court, suspension by the Supreme Court as a measurement of disciplinary order



and dismissal by the Supreme Court also in case of repeatedly violating the dignity of the profession. Also measurement of order will be possible, namely withholding salary in case the judge deliberately refuses to do his duties, to appoint a judge in a different court only in case of incompatibilité des humeurs (not as a sanction!), and finally temporarily suspension by the president at the same time the president requests the Procurer General of the Supreme Court for the dismissal of a judge.

The system of 'removal' consists of three ways:

Transfer within the court. This is possible as a measurement of order.

Transfer to another court. This is only possible at request of the judge and within short as a new measurement of order in case there is a situation of incompatibilité des humeurs.

Dismissal, at request of the judge and in the situations mentioned above.

NORWAY

As mentioned we do not have any practice related to removal of judges. Violation of penal provisions, or serious misconduct related to obligations pursuant to work contract might serve as examples.

POLAND

For misconduct, including the insulting the dignity of the Office and of legal provisions, the judge is liable to disciplinary proceedings. Disciplinary penalties are:

- a warning,
- reprimand,
- removal from the occupied function,
- the transfer to another place,
- submission of a judge from the Office.

The jurisdiction in matters of disciplinary proceedings is given to the courts of appeal and the Supreme Court acting as the disciplinary courts. In disciplinary matters of judges of administrative courts, including judges of the Supreme Administrative Court the jurisdiction is given to the Supreme Administrative Court, which acts as both a Court of first and second instance. In matters of military judges - disciplinary military courts and the Supreme Court's military Chamber.

In disciplinary matters of judges of the Supreme Court in both instances the jurisdiction has the Supreme Court.

PORTUGAL

The grounds for removal of judges are:

- Disciplinary punishment (transfer, compulsory retirement or dismissal);
- Retirement due to physical or mental disability;



- Retirement due to age (the limit is currently 70 years old).

Sometimes, disciplinary infractions and mental or physical disability are identified during the evaluation process. Other times stem from complaints from lawyers, parties, prosecutors, etc.

ROMANIA

The specific grounds for removal magistrates from their office, regulated by art. 65 (1) the Law no. 303/2004 are the following: resignation, retirement, transfer to another office, professional incapacity, exclusion from magistracy as a disciplinary sanction, final conviction of the judge or prosecutor for an offence; violation of art. 7 according to which magistrates may not be operative employees, including undercover, informers or collaborators of the intelligence services, failure to succeed in the examination in art. 33 (14) according to which persons appointed in magistracy having at least 5 years seniority in legal functions shall be delegated, seconded, transferred or promoted to other courts or prosecutor offices only after a period of at least three years from the appointment into office, failure to meet the requirements provided by art 14 referring to the conditions to be met for admission to magistracy; (2) the removal from office of the judges and prosecutors shall be decided by decree of the President of Romania, at the proposal of the Superior Council of Magistracy.

Some of these measures represent disciplinary sanctions, namely the exclusion from magistracy and the disciplinary transfer, according art. 100 of the Law no.303/2004.

Referring to the importance of the professional evaluation process, according to art. 41 (4) (see note below) of the law no. 303/2004 judges or prosecutors who receive the reading “unsatisfactory” following two consecutive evaluations or who have not succeeded in the examination in paragraph (3) shall be released from office for professional incapacity, by the President of Romania, on proposal of the Superior Council of Magistracy.

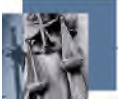
Note: (1) Judges and prosecutors who receive the reading “unsatisfactory” shall be obliged to undergo 3 to 6 months of special courses held at the National Institute of Magistracy.

(2) Judges and prosecutors who receive the reading “satisfactory” following two consecutive evaluations shall be obliged to undergo 3 to 6 months of special courses held at the National Institute of Magistracy.

(3) The courses provided under paragraphs (1) and (2) shall be finalized by an exam, under the present law.

SCOTLAND

The Judiciary and Courts (Scotland) Act 2008 makes provision for the setting up of tribunals to investigate and report on whether a judge is unfit to hold office “by reason of inability, neglect of duty or misbehaviour”. These reasons are not further defined. They are not related to any system of evaluation of professional performance.



SLOVAKIA

The Constitution of the Slovak Republic and the Act on Judges and Lay Judges set up the obligatory and facultative conditions to remove judge from his office.

(1) President, upon proposal of Judicial Council, shall remove judge from office:

- a) by virtue of final judgement imposing sentence for premeditated criminal offence,
- b) if such judge was sentenced for criminal offence with final judgement and the Court in his case had not ruled on suspension of imprisonment sentence,
- c) by virtue of decision of disciplinary panel for action, which is incompatible with execution of judicial office,
- d) if his electability to the National Council of the Slovak Republic had expired.

(2) President, upon proposal of Judicial Council, may remove a judge from office, if:

- a) his health is preventing him over extended period of time, during at least one year, to duly execute judicial duties,
- b) had reached the age of 65 years.

SLOVENIA

The transfer to another court is also one of the disciplinary sanctions. According to Article 83 of the Judicial Service act transfer to another court one level inferior in status or to a court of the same status in another area may be pronounced for a period of six months to three years. It shall not be possible to pronounce this sanction on a judge of the Supreme Court.

SPAIN

Under the Organic Law on the Judiciary currently in force (section 379):

“1. Magistrates and Judges will lose their condition in the following cases:

- a) If they renounce to the Judicial career. The circumstances foreseen in articles 322 and 357(3) hereunder apply.
- b) Loss of Spanish nationality.
- c) By virtue of disciplinary sanction which entails their removal from the Judicial Career.
- d) If they have been convicted for any malicious offence and imprisoned for this reason. If the term of the conviction does not exceed six months, the General Council for the Judiciary in view of the offence perpetrated may on a justified basis replace the loss of such condition by the sanction foreseen in article 420.1.(d) (i.e. suspension of up to three years).
- e) If they are under incapacitating circumstances, except if they qualify for



retirement.

f) Retirement.

2. Removal in the terms foreseen in indents b), c) and d) of this article will require opening proceedings and notification to the Public Prosecutor”.

Grounds for removal specified in section 379 of the Organic Law on the Judiciary are not directly linked to the evaluation of professional performance of judges, since in the Spanish legal system the evaluation of professional performance of judges does not lead to the removal from office of the concerned judge unless a very poor level of performance in terms of achieving the performance targets previously defined is revealed and the decision of removal is adopted in the context of disciplinary proceedings on the basis of section 417.9 of the Law on the Judiciary currently in force.

The disciplinary measure of removal from office referred to in section 379.1c) of the Organic Law of the Judiciary is envisaged in section 420.1e) of the said Law as a disciplinary sanction for the most serious disciplinary infractions committed by judges (section 420.2).

Those disciplinary infractions are listed in section 417 of the Organic Law on the Judiciary, which describes 16 disciplinary offences, such as: breach of duty of loyalty to the Spanish Constitution as provided under sections 5 hereunder when such breach has been established in a final judgment; affiliation to political parties or trade unions, or performing duties or services for them; provoking repeated serious incidents with the authorities of the judicial district in which the Judge or Magistrate sits for reasons outside the discharge of his judicial duties; unwarranted interference by means of orders or pressure in any sense in the exercise of the judicial functions of any other Judge or Magistrate; actions or omissions which have been considered in a final judgment to entail civil liability on the part of the Judge or Magistrate in the exercise of his office having appreciated misconduct or gross negligence on his part in the terms of section 411 of the Organic Law on the Judiciary; unjustified and repeated delay or disregard in initiating, conducting or deciding on any proceedings or suits or in the exercise of any of his judicial functions; taking leave of service in a continued and unjustified manner for seven or more calendar days, abandoning the seat of the jurisdiction where the Judge or Magistrate holds office; not providing for his own challenge in spite of being aware that he is under any of the legal circumstances that bar his adjudication of the suit, etc..

Removal from office in the form of mandatory transfer can also occur under the Organic Law on the Judiciary currently in force (sections 391 to 394) on the basis of the close connection of the judge with other judges, public prosecutors and advocates who practice in the same judicial district. This close connection is defined in section 391.1 of the Organic Law on the Judiciary and applies to judges who happen to “have matrimonial ties between them or a de facto relationship, kinship up to the second degree of consanguinity or affinity”, and sit in the same division of a court, or in different courts if one of them has jurisdiction to decide on the appeals of the decisions issued by the other or to try the cases investigated by the other in his/her capacity of examining judge. As already explained this ground for



mandatory transfer also applies to judges connected by the said relationship to public prosecutors and advocates who practice in the same judicial district in the circumstances envisaged in sections 392 and 393 of the Organic Law on the Judiciary and to other persons connected by the said relationship “who have business interests or vested interests (in the judicial district) which would make it difficult to perform the judicial duties fairly”, as well as to judges who have previously practiced as advocates in the judicial district “in the last two years prior to their (judicial) appointment”. However, mandatory transfer does not apply in the cases of judicial districts where there are more than three sections of the Provincial Court or more than ten Courts of First Instance (for judges connected with public prosecutors or practicing advocates) or where the capital of the district is a city with more than one hundred thousand inhabitants (for judges connected with persons with interests in the judicial district).

Pursuant to section 394 of the Organic Law on the Judiciary, where a judicial appointment may lead to incompatible positions in the terms already specified, the appointment will be discharged and “the judge will be subject to a mandatory transfer notwithstanding any disciplinary liabilities incurred”. If the incompatibility arises by virtue of subsequent events, the General Council for the Judiciary will provide for the mandatory transfer of the judge whose appointment may lead to incompatible positions, or of the last appointed of the remaining ones. Where appropriate the General Council for the Judiciary may ask from the Government for the transfer of the incompatible member of the Prosecutor’s Office if he had held office for a shorter period of time. The mandatory transfer is always implemented so that the concerned judge must not change his current residence if there is a judicial vacancy in the place of residence, and in that case such vacancy will not be covered by means of a public competition.

SWEDEN

16.1. A person who has been appointed permanent judge may be removed from employment only if

- 1) he or she through crime or gross or repeated neglect of the obligations of employment, has proved obvious inappropriate to hold the position, or
- 2) he or she has attained the relevant retirement age or is legally obliged to resign because of permanent incapacitation.

If necessary for organizational reasons, the person who has been appointed as permanent judge may be transfer to another court. Act (2010:1408).

17.1. National Disciplinary Offence Board

Board considers matters relating to disciplinary liability, prosecution, dismissal, suspension, and medical examination with coercion with regard to state employees in higher positions. Eg head of authority, judges, prosecutors and professors associated with this circuit. The purpose of a trial outside the agency where the employee works and have a higher position is that it should not be suspected that colleagues take unauthorized account in the examination. The Board's decision, like other decisions of the employer, can be subject to a labor dispute.



17.2. Right but also the duty to report a matter to the National Disciplinary Offence Board has the authority where the employee is employed.

17.3. Right to report has also the Parliamentary Ombudsmen (JO) or the Chancellor of Justice (JK).

17.4. National Disciplinary Offence Board takes up matters only on the notification of appointment authority, the Parliamentary Ombudsman or the Chancellor of Justice.

17.5. Composition and organization (National Disciplinary Offence Board)
Responsibility of the Board, composition and organization are regulated by the instruction. The Board consists of a chairman, a deputy chairman and three other members. The last three members shall have its own personal deputy. Chairman and Vice Chairman must be lawyers and have experience as a judge. The Board has two secretaries. The members, deputies and the secretary is appointed by the government for a specified period of time. Board has no employees. Svea Court of Appeal is responsible for the Board's secretariat.

18. The Public Prosecution service (continue 2-2.5.)

18.1. Matters concerning violation of a prosecutor or other employee of the prosecution system under the regulations (ÅFS 2006:12) will handled by the National Police-related Crimes Unit. At the Unit serves only prosecutors who are Deputy Chief Public Prosecutor or higher. Prosecutors at the Unit are supported by special police at the Department of Internal Investigations at the National Police. In the event that there will be no criminal charges, the matter may still be subject to review under supervision.

18.2. Individual cases may be subject to supervision by the Supervision Department at the Prosecutor-General's office if it is necessary to ensure public confidence in the prosecution service and to facilitate an eventual submission to the National Disciplinary Board (Statens Ansvarsnämnd). The National Disciplinary Board may decide about disciplinary responsibility for the prosecutor. Such disciplinary measures may result in a warning, a payroll deduction or dismissal. Also a supervision regarding an individual case may be made if there seem to be grounds for criticism from the Prosecutor-General, although the grounds do not qualify to constitute a disciplinary matter at the National Disciplinary Board.

18.3. The Prosecution Authority has a right but also a duty to report such a matter to the National Disciplinary Board. Also Parliamentary Ombudsmen (Justitieombudsmannen) or the Chancellor of Justice (Justitiekanslern) has a right to report a matter. The Board consists of five members. Chairman and Vice Chairman must be lawyers and have experience as a Judge. The Board is authorized to make a decision when the chairman and at least three other members are present.

18.4. At the Swedish Prosecution Authority there is also a Staff Disciplinary Board (Personalansvarsnämnd) – in case an eventual dismissal the Board may consider a pre-dismissal action regarding an employee. The Staff



Disciplinary Board consists of five members: the Prosecutor-General, two staff representatives and two other members. The Prosecutor-General is the Chairman of the Board. The Staff Disciplinary Board is authorized to make a decision when the Chairman, a staff representative, and at least one other member are present. The Board's decision cannot be appealed.

18.5. A case is initiated at the Staff Disciplinary Board by notification submitted by a Chief Public Prosecutor, a Director of Public Prosecution at a Prosecution Development Centre or a head of a department of the Prosecutor General's Office. The notification must be in writing and specify the circumstances on which it is based. The Board may also initiate a matter ex officio.

18.6. At this moment, there does not exist a formal national regulation on Ethical Principles and Rules of Conduct in the Prosecution Authority. The supervision of the prosecutors in this aspect is made from the Supervision Department at the Prosecutor-General's office, the Prosecution Development Centres and from external supervision organs, i.e. the Parliamentary Ombudsman (Justitieombudsmannen) and the Chancellor of Justice (Justitiekanslern).

18.7. Rules on conflicts of interest of prosecutors are to be found in Chapter 4 section 13 and Chapter 7 section 6 in the Code of Judicial Procedure. The purpose of these rules is that they should serve to safeguard the impartiality of the prosecution service. The rules should ensure that the prosecution service is exercised without undue consideration. According to the rules, the same circumstances that could constitute disqualification for judges will also constitute disqualification of prosecutors (the rules are presented below). Circumstances like kinship and private interests in the outcome of the matter are to be assessed in the same manner as for judges. Chapter 58 in the Code of Judicial Procedure form the basis for new trial unless it is obvious that the conflict of interest did not affect the outcome of the case.

18.8. The detailed content of these rules has been developed through case law and interpretations of legal doctrine.

18.9. Prosecutors personally notify the Court or the Parties of circumstances that may constitute a conflict of interest. The prosecutor can naturally also withdraw voluntarily from the case if he /she is disqualified.

18.10. The rules are supplemented by requirements for prosecutors in ÅFS 2012:2 clarifying that if there is an objection that a prosecutor in a certain case should be disqualified, the objection shall be handled by a Director of Public Prosecution at one of the Prosecution Development Centres. Such an investigation should be done regardless of at what stage of the underlying investigation the complaint is made.

A prosecutor shall thus be disqualified from a case:

1. if he is a party therein, or otherwise has an interest in the matter at issue, or can expect extraordinary advantage or injury from the outcome of the case;



2. if he and one of the parties are, or have been, married or are related by blood or marriage in lineal ascent or descent, or are siblings, or are so related by marriage that one of them is, or has been, married to a sibling of the other, or if he is similarly related to one of the parties;

3. if he is related as specified in 2 to anyone who has an interest in the matter at issue or can expect extraordinary advantage or injury from the outcome of the case;

4. if he, or any relation as specified in 2, is a guardian, custodian or administrator or otherwise serves as legal representative of a party, or is a member of the board of a corporation, partnership, association or similar society, foundation or similar institution which is a party, or, when a municipality or similar community is a party, if he is a member of the board in charge of the public administration of the function affected by the case;

5. if he or any relation as specified in 2, is related in the way stated in 4 to anyone who has an interest in the matter at issue or can expect extraordinary advantage or injury from the outcome of the case;

6. if he is the adversary of a party, though not if the party has sought issue in order to disqualify him;

7. if he, acting in another court as a judge or officer, has rendered a decision concerning the matter at issue, or if he, for an authority other than a court, or as an arbitrator, has dealt with the matter;

8. if he, in the case of a main hearing of a criminal case, has prior to this main hearing determined the issue of whether the defendant has committed the act;

9. if he has served in the case as an attorney for, or counselled, one of the parties, or has been a witness or an expert therein; or

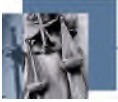
10. if some other special circumstance exists that is likely to undermine confidence in his impartiality in the case.

18.11. Article 6 of the ECHR requires that each party shall have the right to a fair trial. The ruling of the European Court regarding fair trial may be indicative of issues when prosecutors shall be considered disqualified.

18.12. As noted in 18.7 above, the so the so-called general clause in Chapter 4 section 13 § 10 of the Code of Judicial Procedure also applies to prosecutors. The prosecutor is therefore disqualified if there is a special circumstance that is likely to undermine confidence in the prosecutor.

Sections 7–7c in the Public Employment Act (1994:260) states that an employee may not have any employment or engagement in any activity that may undermine the confidence in his or any other employee's impartiality, or the authority's reputation. The prohibition includes ancillary activities which may be regarded as partiality and lead to disqualification. But it goes further than that because it includes ancillary activities which could damage confidence also for other workers or authority reputation.

Also, the Public Employment Act states that the employee is obliged, at the employer's request, the information necessary for the worker to assess the



employee's outside activities. From section 7c follows furthermore that the employer shall determine that an employee who has or intends to commit a side-line that is not allowed to stop or not to undertake the activity.

TURKEY

One judge may only be removed from his or her office because of disciplinary matters which are defined above.



Table of countries

A

AUSTRIA, 4, 15, 23, 47, 54, 65, 72, 76, 87, 91, 97,
102, 105, 113, 124, 133

B

BELGIUM, 4, 16, 23, 48, 54, 65, 72, 76, 87, 91, 97,
102, 105, 113, 124, 133
BULGARIA, 4, 17, 35, 48, 55, 65, 72, 77, 87, 91, 97,
102, 105, 115, 124, 135

C

CYPRUS, 4, 56, 115, 124, 136
CZECH REPUBLIC, 5, 17, 36, 48, 57, 66, 72, 78, 88,
91, 98, 102, 105, 116, 124, 136

E

ENGLAND AND WALES, 5, 116

F

FRANCE, 7, 17, 37, 48, 57, 66, 78, 88, 92, 98, 102,
105, 117, 125, 136

G

GERMANY, 7, 18, 37, 48, 57, 66, 72, 78, 88, 92, 98,
102, 106, 117, 125, 136

H

HUNGARY, 8, 18, 37, 48, 58, 66, 72, 79, 88, 92, 98,
102, 106, 117, 125, 136

I

IRELAND, 8, 117, 125, 137
ITALY, 8, 18, 37, 49, 58, 66, 73, 79, 88, 93, 98, 102,
106, 118, 125, 137

L

LITHUANIA, 8, 18, 38, 49, 58, 66, 73, 80, 88, 93, 98,
102, 106, 118, 126, 139

M

MALTA, 9, 118

N

NETHERLANDS, 9, 18, 39, 49, 59, 67, 82, 88, 93, 99,
103, 107, 118, 127, 139
NORTHERN IRELAND, 10, 19, 50, 59, 67, 82, 103,
107, 119
NORWAY, 10, 19, 50, 59, 89, 94, 99, 103, 107, 119,
127, 140

P

POLAND, 11, 19, 39, 50, 67, 73, 107, 119, 140
PORTUGAL, 11, 19, 39, 50, 60, 68, 73, 82, 89, 94, 99,
103, 109, 120, 127, 140

R

ROMANIA, 11, 19, 41, 50, 60, 68, 73, 83, 89, 94, 99,
103, 109, 120, 128, 141

S

SCOTLAND, 12, 120, 128, 141
SLOVAKIA, 12, 19, 42, 50, 61, 68, 84, 89, 94, 100,
103, 109, 120, 142
SLOVENIA, 12, 19, 42, 51, 61, 68, 74, 84, 90, 95, 100,
104, 109, 121, 142
SPAIN, 12, 19, 43, 51, 61, 69, 74, 85, 90, 95, 100,
104, 110, 122, 129, 142
SWEDEN, 13, 20, 44, 51, 62, 70, 75, 111, 123, 131,
144

T

TURKEY, 14, 22, 45, 51, 64, 70, 75, 86, 90, 95, 101,
104, 112, 123, 131, 148