

Questionnaire
HOW CAN THE APPOINTMENT AND ASSESSMENT (QUALITATIVE AND QUANTITATIVE) OF JUDGES BE MADE CONSISTENT WITH THE PRINCIPLE OF JUDICIAL INDEPENDENCE¹

Country: LITHUANIA

We do not consider the question of the initial appointment of the "judge", because we want to discuss the question of appointment together with the question of assessment. We therefore deal with the appointment of judges to another position/function. The question of (first) appointment has already been discussed by the First Commission several times².

1. Are there assessments on the occasion of the appointment (of a judge) to another position or function?

According to the Law on Courts of the Republic of Lithuania, activities of judges are assessed:

- 1) When they are reappointed until the retirement age (district court judges)³
- 2) When they seek judicial promotion (that is apply to be appointed as judges of higher courts, presidents, vice-presidents of courts or presidents of court divisions);

In case of transfer of a judge to another court of the same level or appointment to the lower court assessment is not conducted.

If a judge seeks judicial promotion, assessment is made as a part of selection procedure. Selection of persons seeking promotion in judicial office is held in accordance with the Regulations of Selection of Persons Seeking Promotion in Judicial Office approved by the Judicial Council. The criteria for the assessment of persons seeking promotion in judicial office are also determined by the Judicial Council.

2. Are there assessments on other occasions?

According to the Rules on the Periodical Assessment of Judicial Activities, approved by the Resolution of the Judicial Council of Lithuania of 7th of May 2004, activities of district court judges, appointed for the probationary term of 5 years, must be assessed 2 times – after the first 2 years of service (aim of this assessment is to perceive the existing shortcomings and make recommendations how to correct them) and at the end of the probationary appointment (aim of this assessment is to see whether a judge can be reappointed until the retirement age). Periodical assessment of the activities of other judges must be carried out every 10 years, unless there are conditions for the extraordinary assessment. Extraordinary assessment of activities of a judge may be carried out on the initiative of the president of court where the judge works, the president of court of higher instance or a judge himself/herself if taking into account the results of activities of this judge there is a ground to believe that he/she needs deepening of professional knowledge.

3. Who is in charge of the assessments?

For the periodical assessments (ordinary or extraordinary) – assessment is made by the ad hoc assessment commission consisting of 3 judges of higher court (judges of the court where the judge works for the judges of courts of the last instance). Commission is formed by the president of the

¹ De quelle manière la nomination et l'évaluation (qualitative et quantitative) des juges est-elle mise en concordance avec les principes de l'indépendance judiciaire?

² See General Reports of the 1st Study Commission of the I.A.J. of 2001 (Madrid) and 1999 (Taipei).

³ In Lithuania all judges of district courts are firstly appointed for the probationary term of 5 years and only after the end of this term can be reappointed until the retirement age.

higher court (president of the court where the judge works for the judges of courts of the last instance). Only a judge serving as a judge for at least 7 years and who had not disciplinary actions brought against him/her the last 5 years can be appointed a member of the assessment commission.

When a judge seeks judicial promotion – assessment is made by the special Selection Commission composed of seven members and formed for a period of three years. The President of the Republic, the President of the Judicial Council and the Chairperson of the Seimas (parliament) each appoint two members of the Commission, and one member is appointed by the Minister of Justice. The President of the Judicial Council appoints the Chairperson of the Selection Commission from among the members of the Commission. Members of the Judicial Council may not be appointed members of the Selection Commission.

It should be noted that presently the draft of the new wording of the Law on Courts is submitted to the Seimas (parliament). The mentioned draft Law introduces some changes into the selection procedure (mostly to the composition of the Selection Commission) and regulates in more detail the periodical assessment of judicial activities (presently there are no provisions on the periodical assessment in the Law, it is regulated by the resolutions of the Judicial Council). However, as the mentioned draft is still at the initial stage of consideration, the answers to this questionnaire are restricted to the analysis of the present legal regulation.

4. Please describe how an assessment is conducted?

Periodical assessment (ordinary or extraordinary) is carried out in the oral sitting of the Assessment commission. The judge whose activities are evaluated must be informed about the sitting at least two weeks before it. The time of the sitting must be agreed with the judge, taking into account his/her scheduled hearings and trainings. During the preparation to the sitting, National Administration of Courts provides the assessment commission with all the necessary information (statistics, data on judicial trainings, etc). The president of court where the judge works and the president of the higher court provide the commission with the reasoned written conclusions on the professional and personal characteristics of the judge whose activities are evaluated. The judge whose activities are evaluated must be informed about the content of those conclusions at least two weeks before the sitting of the evaluation commission. If he/she disagrees with the conclusions, he/she has a right to submit written explanations to the assessment commission.

The judge whose activities are evaluated as well as president (vice-president, president of the division) of court where the judge works has a right to participate in the sitting of the evaluation commission. A judge is firstly presented and his/her professional and personal characteristics are described by the president (vice-president, president of the division) of court where he/she works or, if the president (vice-president, president of the division) is not participating in the sitting, by the chairperson of the assessment commission. Then the commission hears the judge and can pose him/her questions. Finally a reasoned written conclusion of the assessment commission is made.

Assessment as a part of selection procedure (if a judge seeks judicial promotion) is carried out according to the Regulations of Selection of Persons Seeking Promotion in Judicial Office approved by the Judicial Council in the oral sitting of the Selection Commission. The procedure is very similar to that of periodical assessment. The main difference is that during the selection procedure all the candidates to the vacant judicial position in higher court are given marks from 1 to 10 and after the assessment the Selection Commission makes the rating list of all the candidates, starting from the best one. Conclusion of the Selection Commission is not binding on the President of the Republic while deciding on the appointment; however, in practice decisions of the Selection Commission are observed.

5. Has this assessment a quantitative character (eg. number of cases undertaken; files completed)? Please describe. What figures are taken into consideration?

Assessment is of overall character. Quantitative criteria are used, but they are not determinate. For example, when a judge seeks judicial promotion one of the main criteria for the assessment is conclusion of judges of a higher court hearing appeals on judgements of the judge seeking promotion.

According to the Criteria for the assessment of persons seeking promotion in judicial office, approved by the Judicial Council, this conclusion must be reasoned and contain information on the professional and personal qualities of the candidate, quality of his/her procedural documents and main reasons for the reversals on appeal. Statistical data can also be used; however, Criteria for the assessment of persons seeking promotion in judicial office contain a direct provision saying that only the number of judgements reversed on appeal can not be regarded as criterion determining the quality of judicial activities.

Quantitative criteria that are used in the assessment procedure (among other criteria) are: number of cases heard, number of judgements reversed on appeal, violation of procedural terms.

6. Has this assessment a qualitative character (eg. someone assesses how well the judge performs at various tasks)? Please describe. What aspects are taken into consideration?

According to the Law on Courts, when selecting persons seeking promotion in judicial office, the quality of work in judicial office, professional and personal qualities, organisational abilities and priority advantages of each applicant must be assessed. Candidates are assessed according to the criteria for the assessment of persons seeking promotion in judicial office, approved by the Judicial Council. The entirety of those criteria must be taken into account by the Selection Commission. Those criteria are: 1) written reasoned conclusion on the efficiency of work of the candidate made by judges of the higher court, hearing civil, criminal or administrative appeals on the candidates' decisions; 2) seniority; 3) personal characteristics of the candidate: organizational abilities, ethics, professional culture (evaluated by the reasoned conclusion of the president of court (president of the division), whereat the candidate works at present); 4) motivation of the candidate (presented orally at the session of the Selection Commission or in written in case if candidate does not participate in the session); 5) absence of valid disciplinary sanctions. Additional criteria (advantages) are: 1) scientific degree in law; 2) intensity of in-service training; 3) previous judicial service in specialized court if a candidate applies to the position of judge of specialised court; 4) other criteria that are found important by the reasoned decision of the Selection Commission. (e.g.: knowledge of foreign languages, foreign internships, scholastic or pedagogical activities of the candidate, participation of the candidate in the preparation of draft laws, participation of the candidate in the national and international working groups as legal expert, etc.).

According to the Rules on the Periodical Assessment of Judicial Activities, approved by the Judicial Council, while assessing the activities of a judge periodically, the following criteria must be taken into account: 1) theoretical and legal knowledge of a judge; 2) knowledge of judicial practice; 3) expedition and efficiency of hearing of cases; 4) personal characteristics of a judge (politeness, punctuality, attentiveness to the parties, respectability, fairness, etc.). This information can be gained by directly observing the trial conducted by the judge, evaluating the results of randomly selected cases, evaluating the statistical data on the activities of the judge, analysing judgements of higher courts, abolishing, amending or upholding decisions of the judge whose activities are evaluated, evaluating data on judicial training, results of testing of the knowledge gained, foreign internships, pedagogical and scientific activities of a judge, analysing the opinions of other persons (e.g. president and judges of the court where the judge works, non-judicial personnel of this court, judges of higher court, etc.), evaluating written or oral explanation of the judge whose activities are evaluated.

7. Do the number and/or the outcome of the cases handled by the judge play any role in the assessment? Please explain.

Yes, they are taken into account together with other criteria (see the answer to question 5).

8. Is the duration of a case dealt with by a judge an item which is considered in an assessment? In what way? Please, explain.

Only if there is a violation of procedural terms fixed by law. Frequent violation of procedural terms can lead to the extraordinary assessment of activities of a judge or even disciplinary responsibility, however, the reasons for such delay must be always taken into account.

9. How are judges who sit in court assessed?

See the answer to question 2.

10. What are the consequences of these assessments?

According to the Rules on the Periodical Assessment of Judicial Activities, the main aim of periodical assessment is to analyse the abilities of judges to apply theoretical knowledge in practice, to find out strengths and weaknesses of the professional activity of judges, to use negative results of the assessment in the organization of judicial training, to stimulate judges to raise their professional qualifications. Data of periodical assessments is kept in the personal file of a judge and can be used if a judge seeks judicial promotion.

If during the assessment shortcomings in activities of a judge are found, assessment commission makes the proposal to the institution responsible for the training of judges which judges need to raise their professional qualification and in which fields.

Extraordinary assessment may sometimes also lead to the initiation of the disciplinary responsibility of a judge.

11. Is there any connection between assessment and remuneration?

No.

12. Do you see any infringement on the independence by virtue of the assessment of judges in your country? Please, explain.

It must be noted that periodical assessment of activities of judges in Lithuania is quite new – it was introduced only in 2004. Insofar no precise conclusions can be made about how this procedure really functions in practice. Legal regulation of assessment does not infringe the independence of the judiciary, as an assessment is carried out by the judiciary itself, it has no connections with the social guarantees of judges and the results are intended to be used for the development of activities of a judge rather than punishment.

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<p>Please send the answers to this questionnaire by E-Mail to the presidency of the First Study Commission and to the Secretariat of the IAJ not later than by 30-06-2006</p>
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