

RAPPORT GENERAL

Union Internationale des Magistrats (U.I.M.); Réunion annuelle à Siófok, Hongrie

1ère commission d'études; 28 septembre – 2 octobre 2006

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.

A. RESUME

Ce rapport général est basé sur les rapports de **32 pays** suivants ¹

Allemagne, Angleterre et Pays de Galles, Autriche, Belgique, Brésil, Bulgarie, Canada, Chypre, Côte d'Ivoire, Croatie, Danemark, Ecosse, Estonie, France, Hongrie, Islande, Italie, Japon, Lituanie, Liechtenstein, (F.Y.R.O.M.) Macédoine, Maroc, Mexique, Norvège, Pays-Bas, Pologne, Portugal, R.O.C. (Taiwan), Rép. Tchèque, Slovaquie, Suède, Suisse, Uruguay

Note : Nous ne traiterons pas de la question de la nomination initiale du juge, parce que le but du présent rapport est de discuter de l'évaluation en vue du changement de fonction. La question de la première nomination a déjà fait l'objet de nombreuses discussions à la 1^{ère} commission.

1 – Les évaluations peuvent-elles être à l'origine de la nomination d'un juge à une autre fonction ?

Pays	Réponses aux questions	Remarques additionnelles	
Autriche	<i>When there are applications</i> for a new position, the "Personalsenat" (commission composed of 5 judges), which is in charge to make a proposal to the President of the Republic (or the minister of justice) whom to appoint, ranks the candidates. The "Personalsenat" will use the last regular assessment (see question 2) and collect additional information. A hearing is possible but not compulsory		
Belgique	Non. Les systèmes officiels d'évaluation ne sont jamais à l'origine de la nomination à une autre fonction.	La loi du 22 décembre 1998 a introduit dans le Code judiciaire un système d'évaluation de fonction de magistrat. But: instaurer un contrôle périodique de la qualité interne dans chaque juridiction.	
Brésil	There is an assessment by the tribunal to which the judge is related, financed by the National Council of Justice	To get a superior job in the hierarchy of the judiciary	
Bulgarie	Yes there are competitive written and oral exams		

¹ Les rapports arrivés après la date limite (.....) n'ont pas été pris en compte. Néanmoins ces rapports sont disponibles auprès des associations respectives ou du Secrétariat Général de l'UIM.

Canada	There is no formal mechanism in place for the assessment of judges who are candidates for a higher position in the judiciary. The decision rests with the Minister of Justice who probably makes informal inquiries.		
Croatie	Judge can only be appointed to position within Ministry of Justice. On that occasion no assessment of his/her work. No formal assessment procedure		
Chypre	Not possible to assign to different function such as prosecutor, but may take up different judicial post. Continual assessment of work; no formal procedure.		
Rép. tchèque	There are no uniform provisions. For promotion to an appellate court the opinion of the appellate court is sought. For promotion to the position of president or vice – president of a court the decision of the Minister of Justice is decisive, although the opinion of the judicial council of the relevant court may be taken.		
Estonie	No.	The Supreme Court may appoint a judge to another court of the same level or a lower one by consent of the judge and on proposal of the Minister of Justice. A judge may be transferred to the Supreme Court or the Ministry of Justice at his request with the consent of the chairman of the court.	
Allemagne	Whenever a judge wishes to be appointed to another position he is assessed by the president of the court.	Because the Länder have responsibility for judicial matters there are many differences between the 16 Länder	
Hongrie	No there are no such assessments		
Islande	There is an assessment when applying for a position at the Supreme Court	The Icelandic court system has only two levels	
Italie	There were radical proposals for changes by the previous government, but the new government is committed to stay those proposals. On the basis of the existing law, a judge advances to higher positions by means of assessments made by the High Council of the Judiciary (CSM); but the necessary seniority has to be obtained before promotion can be considered by the CSM. A judge or prosecutor may be declared fit for appointment to a more senior position without actually obtaining that position, but the judge/prosecutor will, in that circumstance, obtain a rise in salary.		
Côte d'Ivoire	Oui, les évaluations peuvent permettre de nommer un juge soit à un emploi supérieur, soit à un emploi inférieur si les évaluations		

	révèlent une insuffisance professionnelle.		
Japon	There are no assessments on the occasion of appointment to another position but the regular assessments (see question 2) are taken into account.		
Liechtenstein	There is not formal assessment procedure		
Lituanie	Yes; as part of the selection procedure if a judge applies for a position in a higher court; and when a judge is reappointed after the probationary term.		
Macédoine	Yes. For an appointment to the Appellate Court and the Administrative Courts at least 5 years of judicial experience are required followed by recognized working results. For an appointment to the Supreme Court: at least 8 years.		
Mexique	No. Evaluations do not exist.		
Norvège	Yes. All applicants will be assessed.		
Pologne	Yes, in certain circumstances when judges are appointed to the highest position in the court itself (e.g. from the Regional Courts to the Circle Courts and further on).		
Portugal	There are no assessments.	Promotion or appointment to other courts is based on the merit (= result of regular assessments) and the time of service.	
ROC (Taiwan)	The Yuan (which carries out the same function as the Ministry of Justice) deals with applications for appointments of judges to another function.		
Slovénie	No. There is no formal assessment procedure.		
Suède	Yes. The judges are assessed on the merits by a recruitment committee within the Court Administration Agency.		
Suisse	Au niveau des juges d'instructions, il peut y avoir évaluation en cas de promotion. Pour ce qui est des juges de juridiction, il peut y avoir évaluation, en cas de place vacante à repourvoir, par l'autorité chargée de la nomination ou de l'élection d'un juge.		
Royaume Uni	There are assessments of candidates, but the degree of formality varies. The further up the judicial hierarchy a person gets, the less formal is the assessment. The system is currently being overhauled, because of the creation of a Judicial Appointments Commission, which will in future control the issue of assessment.	This represents the position in England and Wales. It is not exactly similar in Scotland, which maintains a separate and distinct system as does Northern Ireland.	

2 – Y-a-t-il évaluation pour d'autres raisons ?

Pays	Réponses aux questions	Remarques additionnelles
Autriche	Yes there is an assessment of every judge after two years after the judge was appointed to a new position. There might be an extraordinary assessment if the president of the court or the judge asks for if a change in the performance of the judge might result <i>in</i> a change in the outcome of the assessment.	
Belgique	Quand un juge postule pour une autre fonction, un dossier est constitué de différents avis et sur la base de ce dossier, le Conseil supérieur de la justice choisit le candidat le plus apte pour la fonction.	
Brésil	There is a regular assessment of the judged in respect of quantity and quality of their work by a institution (“Corregestorias”) within the own court	
Bulgarie	Yes on the occasion of achieving the status of irremovability and on being promoted to a higher rank of office	
Canada	There are no formal assessments of competence after appointment. There are obvious informal reviews: (i) by the court of appeal; (ii) by the chief justice if a particular problem in a case arises that needs his attention; (iii) by the press and other media who make comments on particular cases.	
Croatie	There is assessment when the judge's appointment for life is confirmed (after 5 years in service); when there is a vacancy in a higher court or when there is a vacancy for the position of president of a court.	
Chypre	There is continuous assessment of the work of each judge.	
Rép. tchèque	Not regularly, but there may be assessments in cases where a judge has been investigated in disciplinary proceedings.	
Estonie	No, but there are plans to create one.	
Allemagne	Yes: judges in trial courts will be assessed by the president every 4 – 5 years until the judge is aged 50. Presiding judges and appellate court judges will only be assessed when they apply for a higher judicial post.	
Hongrie	Judges are assessed on achieving the status of immovability and twice again after 6 and 12 years; extraordinary assessment if there is a procedure to establish the disability of a judge or if a judge asks for an assessment	
Islande	No assessment but an annual review of how many cases each judge has finished and how many are pending	
Italie	There are recurrent evaluations of professional performance of magistrates throughout their	

	career.	
Côte d'Ivoire	Oui ; les évaluations sont faites chaque année judiciaire pour permettre l'avancement des magistrats dans les différents grades de la hiérarchie judiciaire	
Japon	There are annual assessment, the results thereof are used as reference material for the promotion of an assistant judge to a judge, for reappointment of a judge or for transfer of a judge	
Liechtenstein	There are assessments from time to time, but there is no legal provision	The constitution gives parliament the right to control the administration; but control of court decisions is expressly excluded from its control.
Lituanie	During the probationary term of 5 years judges are assessed after 2 years and at the end of the term; other judges are assessed every 10 years; extraordinary assessments can be carried out on the initiative of the president of the court, or the president of a court of higher instance or of the judge himself/herself.	
Macédoine	Yes. Assessment for the purpose of determining the salary of a judge.	
Mexique	Yes. There is an exam for the candidate for the office of a judge. There is also an evaluation after 6 years of service: reports on the incoming and outgoing files, the number of hearings per year, complaints of the public, exams in continuous training etc.	Realizar un curso de preparación al examen de juez y inscribir a la convocatoria, para que se realice las tres etapas del concurso de oposición (selection courses).
Norvège	No.	
Pologne	The judge is assessed about 9 months after appointment to the higher court to which he has been temporarily appointed.	
Portugal	There are assessments every 4 years at courts of 1 st instance. At courts of appeal level there may be assessments for judges who apply for the Supreme Court.	Assessments can also be initiated by the High Council of Justice.
ROC (Taiwan)	There is an annual assessment of the merits of the judges by a Merits Commission in each court. The Merits Commission of each court is composed of judges of the court that are elected for that purpose.	
Slovénie	A judge is assessed every 3 years by the Personal Council. In the first 3 years of judicial function a judge is assessed every year.	
Suède	Yes, in connection to a raise in salary.	New agreement between the parties of the labour market (will be in force on October 1 st 2006).
Suisse	Non, le système de réélection périodique des juges n'implique généralement pas d'évaluation.	Il arrive qu'une commission de présentation doive donner un préavis sur la réélection des juges, ce qui implique une

		telle évaluation.
Royaume uni	Not generally, unless a judge is under investigation in disciplinary proceedings.	

3 – Qui est chargé de ces évaluations ?

Pays	Réponses aux questions	Rmarques additionnelles
Autriche	The "Personalsenat" of the court, composed of the president of the court, the oldest vice-president and three judges elected by their peers. There is the possibility of appeal to the "Personalsenat" of the court of appeal.	
Belgique	Le ministère de la justice demande un avis écrit sur chaque candidat aux personnes et aux autorités de son milieu de travail et du lieu où la place est vacante (chefs des corps concernés, représentant de l'ordre local des avocats), Puis les dossiers de nomination sont transmis au Conseil supérieur de la magistrature. Là, ils sont confiés à la Commission de Nomination et de Désignation (il y a une commission francophone et néerlandophone). La commission doit entendre le candidat qui le demande. Cette procédure doit aboutir à la présentation d'un candidat déterminé. La décision de la commission exige la majorité des deux tiers des membres. Si la Commission refuse de faire une présentation, la place est à nouveau déclaré vacante. Il incombe enfin au Roi (au Ministère de la justice) de nommer formellement la personne présentée.	
Brésil	See answer to question 2;	in addition the National Council of Justice can revise administrative acts of the courts
Bulgarie	The Supreme Judicial Council	according to the constitution
Canada	This does not apply as there is no formal assessment.	
Croatie	The Council of Judges.	
Chypre	The supreme court council, consisting of 13 judges of the Supreme Court, which is responsible for the appointment and promotion of all judges except Supreme Court Judges.	
Rép. tchèque	This depends on the particular judicial post concerned: see answer to question 1.	
Estonie	There is no assessment.	
Allemagne	The president of the courts	
Hongrie	The president of the court or another judge designated by the president	
Islande	The Supreme Court ; the annual report is done by the chief judges of each court	
Italie	The final assessment is always made by the CSM.	
Côte d'Ivoire	les chefs de cours et de juridictions ainsi que	

	par les chefs des parquets. Pour les magistrats du siège c'est le président du tribunal ou le président de la cour d'appel. Pour les magistrats du parquet, c'est le procureur de la république ou le procureur général.	
Japon	The assessment is conducted by the chief judge of the court; the chief judge of the high court is in charge of coordinating the procedure.	
Liechtenstein	There are no legal regulations. Normally <i>ad hoc</i> an experienced judge from Austria or Switzerland is entrusted with the assessment	
Lituanie	The regular periodical assessments are made by an <i>ad hoc</i> assessment commission of 3 judges of a higher court, appointed by the president of that court; the assessments on the occasion of applying to a higher court are performed by the Selection Commission, which is formed for a period of 3 years, is composed of 7 members (2 appointed by the President of the Republic, 2 by the President of the Parliament, 2 by the President of the High Council of the Judiciary and 1 by the minister of Justice).	A new law is in discussion
Macédoine	Judicial Council of the Rep. of Macedonia.	
Mexique	The judges are responsible as well as other bodies: councils of the High Council of judges where it exists, Judicial Institutes (make so called "Exams of acutalization" "exámenes de actualización").	
Norvège	There is an independent Nomination Committee established by law with 7 members: 3 judges, 1 advocate, 1 lawyer working in the public sector and 2 others (not lawyers).	
Pologne	The Supervisory Departments established by various courts, including the Circle Courts, Court of Appeal and Supreme Court.	
Portugal	The High Council of Justice.	
ROC (Taiwan)	The Personnel Examination Committee of the Yuan is in charge of the assessments. The Committee consists of judges. The president of the Committee is the President of the Judicial Yuan.	
Slovénie	A Personnel Council. The Personnel Council of the Supreme Court assesses the candidates for the Supreme Court, the judges of the Supreme Court and those of the higher courts. The Personnel Council of the Higher Court is in charge of assessing the candidates for the Higher Courts and the judges of the District and County Courts. A Personnel Council of a District Court is assessing the candidates for District and County Courts.	
Suède	The chief judge in the specific court.	
Suisse	L'autorité d'élection ou de nomination.	Cette autorité peut parfois

	Généralement il s'agit d'une autorité à caractère politique pour les juges de juridiction supérieure.	comprendre en son sein des personnalités indépendantes choisies en fonction de leur connaissance de l'activité judiciaire.
Royaume uni	At present it is a mixture of the Lord Chancellor, the Lord Chief Justice and the Judicial Appointments Commission. Within the next 2 years, it will become the exclusive responsibility of the Judicial Appointments Commission, which consists of judges, lawyers and non – lawyers and whose Chairman is a non – lawyer/judge.	

4 – SVP, décrivez la procédure d'évaluation.

Pays	Réponses aux questions	Remarques additionnelles
Autriche	The "Personalsenat" collects information by asking the president of the court, the presiding judges of the chambers which deal with the remedies against the judgements of the judge, looks at some statistics concerning the number of cases, with an exceptional duration period, sometimes looks at some of the files and finally gives a written statement with reasons and a final mark ranging from excellent to incapable.	
Belgique	Voir 3.	
Brésil	There is no formal process ; the criteria are seniority and merits; the problem is that “merit” has never been found to be a satisfactorily objective criterion; in practice it is necessary that the judge be in the first fifth part of the seniority list; plus security, efficiency, exercise of jurisdiction are taken into account; together with the frequency and progress in training courses, which are also recognized	
Bulgarie	There is an evaluation of the work of the judge in connection with his/her cases; there is a statement of the administrative head of the respective court; when applying to an other court or other rank there is a competitive exam. To achieve the status of irremovability the law requires assessment for a longer period of time	
Canada	Not applicable	
Croatie	The Council of the judges of the Supreme Court together with the presidents of the Council of Judges of the Court of Appeal have produced a “Methodology to assess Judge’s Performance”, which sets out four grades of performance (extraordinarily good to unsatisfactory) and also whether the judge has produced the number of decisions required and	

	the time it has taken him to produce them. The means of assessment is quantitative but more weight is attached to quality than quantity.	
Chypre	It is not a formal process. But it is understood that the Supreme Judicial Council will evaluate the performance of each judge from time to time. The bench is small so the Supreme Court Judges know the work of each judge.	
Rép. tchèque	Not formally agreed. In cases of promotion the opinions of the higher courts will be considered.	
Estonie	There is no assessment	
Allemagne	There is no formal procedure. The presiding judge will prepare an assessment at the request of the president of the court. The assessment will evaluate the last 4 – 5 years of the judge's work.	
Hongrie	The whole complex work of the judge is taken into account; how the judge applies the law and the procedural law and the order of the prosecution.	
Islande	All the nine justices of the Supreme Court give a report on the candidate	In the recent past the minister of justice has not always followed the result of the assessment, which has promoted a debate amongst the public.
Italie	When a position becomes vacant – eg. in the Court of Appeal or Court of Cassation, the CSM publishes the post and all eligible are invited to apply if they wish to do so. On the basis of the application and documents submitted, the CSM selects the most suitable candidate in accordance with published rules.	
Côte d'Ivoire	Chaque année, chaque magistrat reçoit un bulletin de notation: qu'il remplit et soumet à son supérieur hiérarchique en vue de sa notation. Les éléments de la notation sont : tenue et présentation, bon sens, jugement, esprit de synthèse culture générale, autorité, sens des responsabilités, sens de caractère, pondération, sens de la mesure. puissance de travail méthode et sens de l'organisation, connaissance juridique et sens de l'application du droit, qualité de rédaction aptitude à la présidence des audiences qualité d'administrateur, aptitude à la parole.	
Japon	Information is collected from inside and outside the court from various perspectives. There is an interview with the judge, and documents on the cases the judge has administered are looked at	
Liechtenstein	Each department is assessed; the judicial work is mainly examined for delays in the procedure and the delays in rendering judgements.	

Lituanie	In every assessment procedure data are collected (statistics, opinions of president of court, of division of higher court and so on). The collected material will be handed to the judge who can comment on it. There is a hearing of the commission where the judge is questioned about the findings and his/her performance. Then the commission gives written conclusions with reasons. In the case of a hearing of the Selection Commission the candidates are given marks from 1 to 10 and the result is a ranking list.	
Macédoine	A member of the Judicial Council has to supervise the work of a specific judge. He/she makes a report for the Council.	
Mexique	Productivity (number of settled cases), quality of judgements according to numbers of appealed cases, quality of sentences (argumentation, form, size, editing), punctuality and presence, participation in training and scientific courses, special knowledge, lectures at the judicial schools of the tribunals, exams of "actualization" etc.	
Norvège	Interviews with the applicants. No formal procedure. There is a discussion in the plenary commission who makes a nomination of three candidates (by majority vote). The King (government) will finally appoint the judge out of the three nominees.	
Pologne	An initial assessment is made by the Supervisory Department of the Court where the judge hopes to work. After a judge has been working in the new post for some time, he is assessed again. If his assessment is satisfactory, then he is confirmed in his appointment. But there are, at present, no formal criteria and the Polish Judges Association has pressed that such criteria be established.	
Portugal	A so called "inspector", nominated by the HCJ evaluates the judge's performance by examining the case handling of the judge at his court.	
ROC (Taiwan)	The Judicial Yuan considers: seniority; the merits of the judge's career over the last 5 years; his disciplinary record over the same period and his age – seniority is given priority.	
Slovénie	Monitoring by the Judicial Council (?).	
Suède	Discussion between the judge and the chief judge. This serves as a basis for the negotiations between the Court Administration Agency and "Jusek", the Association of Graduates in Law. The judge's raise of salary will be decided between the parties in a collective agreement.	
Suisse	Pas de procédure formelle.	

Royaume uni	If there is any proper process of assessment at all (which is doubtful) it is covered in mystery and no one other than those who do the assessment themselves (the very top judges) has the slightest idea what is done or how it is done.	
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5 – L'évaluation a-t-elle un aspect quantitatif (ex: nombre d 'affaires jugées ; de dossiers) SVP décrivez la. Quels sont les éléments pris en compte?

Pays	Réponses aux questions	Remarques additionnelles
Autriche	Only insofar, as there is an examination of-the statistics if the judge has a remarkable different number of long pending cases, or judgements which have not been delivered within a certain time, compared with other judges. The figures are compared with-the number of new cases and the over all workload.	
Belgique	Non. L'aspect quantitatif proprement dit n'est pas pris en compte. Il n'y a pas de système objectif en Belgique pour mesurer la charge de travail.	Sauf prestations insuffisantes claires au niveau de la quantité d'affaires traitées.
Brésil	Every month every judge fills in a form of statistics (number of sentences, of hearings, of witnesses , cases handled); this is considered at assessments	
Bulgarie	Every aspect of the judicial conduct is taken into account. The most important are the number of cases undertaken and the results of the appeals	
Canada	Not applicable.	
Croatie	Monthly monitoring of the number of cases, but more weight attached to quality than quantity. But informally there are rules about how many cases a judge should do.	
Chypre	The number of cases considered is monitored monthly. However more weight is attached to quality than quantity.	
Rép. tchèque	No statistics to suggest quantitative.	
Estonie	There is no assessment	
Allemagne	The assessment of a judge should be in accordance with Art 33 Se 2 of the German Basic Law. The effect of that is that is that the quality of the work should be of first importance.	
Hongrie	There is a quantitative character	
Islande	The report on number of cases (see question 2) is not meant to be an assessment	
Italie	Yes; the number of cases undertaken and files completed are considered in the evaluation of each candidate – as well as other factors.	
Côte d'Ivoire	: l'évaluation a un caractère qualitatif et quantitatif. Les éléments pris en compte sont ceux énumérés ci-dessus	

Japon	One aspect in the assessment is the capability to handle cases appropriately, which includes making a judgement within a reasonable period; here various statistical data are used	
Liechtenstein	Only insofar as effective and rapid work are taken into consideration	
Lituanie	Quantitative criteria are only used among other criteria; they do not determine the result of the assessment. In particular, the number of judgements reversed on appeal cannot be regarded as a criterion for determining the quality of judicial activities	
Macédoine	The assessment includes a consideration of the expected and realized/managed amount of cases, engagement in additional work such as mentoring, training etc.,	
Mexique	See above. In principle, productivity is evaluated according to the number of sentences passed. The quality is evaluated, too, according to the number of cases which were appealed.	
Norvège	No. In rare cases it could be an argument against a judge applying for a new position that he/she is slow in proceeding with cases.	
Pologne	There is no direct quantitative assessment of a judge's work.	
Portugal	There is a quantitative element in the assessment: number of cases handled by the judge, number of settled cases, respecting time limits in delivering decisions, number of daily hearings, number of appeals, results of previous assessments, length of tenure of office.	There is no ruling prescribing the number of cases settled by a judge.
ROC (Taiwan)	The Yuan takes into account the following quantitative characteristics: (i) number of cases undertaken, (ii) files completed; (iii) files delayed beyond the time permitted (usually 16 months for civil and criminal cases).	
Slovénie	The number of settled cases is of prime importance. The Judicial Council determinates the minimum number of cases that has to be dealt with by each judge. The number of cases settled by each judge (monthly and annually) is monitored for reasons of assessment and statistics.	
Suède	No, there is no direct quantitative assessment of a judge's work.	
Suisse	L'évaluation s'effectue sur la base de l'aptitude du juge à exercer sa fonction et l'efficacité démontrée jusqu'alors dans celle-ci.	Il se peut que la rapidité dans le traitement des dossiers soit un des critères d'appréciation.
Royaume uni	The assessment, such as it is, is much more qualitative than quantitative.	

6 – L'évaluation a-t-elle un caractère qualitatif (ex: quelqu'un évalue-t-il aussi bien le travail du juge que le nombre de ses tâches) ? SVP développez. Quels sont les éléments pris en compte?

Pays	Réponses aux questions	Remarques additionnelles
Autriche	Insofar as the reports of the presiding judges of the chambers dealing with the remedies sometimes comment on the application of the procedural law, the way how reasons of judgement are given, how effective the judge deals with cases etc.	
Belgique	L'évaluation intermédiaire a un caractère qualitatif. L'évaluation porte sur des critères portant sur la personnalité ainsi que sur les capacités intellectuelles, professionnelles et organisationnelles. L'évaluation périodique (tous les 3 ans pour les magistrats du siège). a aussi un caractère qualitatif. L'évaluation lors d'une postulation pour une autre fonction est basé sur les différents formulaires d'avis.	Voir: article 259 nonies Code judiciaire. Voir: www.hrj.be/FR/index.htm
Brésil	Yes the quality of decisions is considered but not the contents itself; the "legal security" is taken into account; but there are no concise facts about this. The way judicial activity is assessed is very subjective (might be a concern of internal independence)	
Bulgarie	Yes the legal complexity of the cases decided is taken into account, as well as the ratio between the cases approved by the higher instances and the total number of cases decided	
Canada	Not applicable.	
Croatie	Yes. See 5 above.	
Chypre	Yes. See 5 above.	
Rép. tchèque	Yes. Either when an appellate panel considers the quality of the judgments of a judge of first instance or when a judge has a study visit to a higher court. The assessment considers whether the judge has correctly followed the substantive and procedural law and also the quality of the written judgment itself.	
Estonie	There is no assessment	
Allemagne	Yes. See 5 above.	
Hongrie	Yes	
Islande	The quality of the judicial work and other work of legal nature is taken into consideration, mainly based from the cases which had come to the Supreme Court. Besides other activities (e.g. teaching at University) play a role.	In a small country like Iceland normally the performance of each candidate is widely known
Italie	Impartiality, diligence, seriousness and professionalism and the degree of vocational training undertaken are all relevant factors to be considered.	
Côte d'Ivoire	: l'évaluation a un caractère qualitatif et quantitatif. Les éléments pris en compte sont ceux énumérés ci-dessus	

Japon	The following capabilities are taken into account: case handling capabilities, organizational operation capabilities, and general capabilities to serve as a judge.	
Liechtenstein	Only in aspect of effectiveness looking at delays or no delays	
Lituanie	There exist criteria issued by the Judicial Council: efficiency of work, organizational abilities, ethics, professional culture, absence of disciplinary sanctions, intensity of in-service training; theoretical and legal knowledge, personal characteristics like behaviour to the parties, fairness etc.	
Macédoine	Yes. Expert knowledge, postgraduate studies, continuing education, conducting the hearings, internal and external communicative skills, verbal and written expression, managerial tasks.	
Mexique	See answers to question 4.	
Norvège	Yes, in general terms.	
Pologne	There are no formal qualitative criteria during assessment, but it assists if sentences/decisions have been approved by the Court of Appeal. The degree of difficulty of cases undertaken by the judge may also be a relevant factor.	
Portugal	Yes. Nature and difficulties of the cases are taken into consideration as well as the ability of the judge to simplify the proceedings. Furthermore: working conditions, technical preparation, management of the agenda, individual capacity, and publications on legal matters, civic integrity.	
ROC (Taiwan)	Yes. This comes about as part of the appeal process; any disciplinary process and a supervision of the behaviour of judges both within court and outside.	
Slovénie	Professional knowledge, working abilities, protection of judge's and court's reputation, oral and written communication, social competence, managerial skills.	
Suède	Yes. An assessment in connection with a salary raise is made on elements such as experience, ability to take responsibilities for the result	
Suisse	Cf. ci-dessus.	
Royaume uni	There is no formal qualitative evaluation. But the quality of judgments is assessed by the court that hears any appeal. If there are complaints against the judgment then the quality will be assessed as part of an investigation of the complaint.	

7 – Le nombre et/ou les résultats d ‘affaires traitées par le juge jouent-ils un rôle au niveau de l’évaluation? SVP, expliquez.

Pays	Réponses aux questions	Remarques additionnelles
Autriche	Only insofar as a special effectiveness can be discovered, without harming the quality.	
Belgique	Non. Le résultat des affaires traitées ne peut être pris en considération pour l'évaluation. Il paraît cependant clair que si les décisions d'un juge étaient systématiquement réformées ou cassées, l'évaluation de sa compétence professionnelle en serait affectée.	
Brésil	See answer to question 5	
Bulgarie	Yes the assessment counts the work load of every judge	
Canada	Not applicable	
Croatie	See 4 and 5 above.	
Chypre	See 5 above.	
Rép. tchèque	Usually this is only relevant if there is a complaint against a judge or there is otherwise an investigation into the judge's work for some reason.	Since 1989 it has been most unusual for there to be any assessment based on the outcome of cases or the number of cases considered by a judge.
Estonie	There is no assessment	
Allemagne	See 5 above.	
Hongrie	Yes, both components play an important role	
Islande	Not directly, see above	
Italie	Not relevant save that if the judge has done more cases than would be expected of him, that is a plus point.	
Côte d'Ivoire	l'évaluation est faite de façon discrétionnaire par des personnes habilitées à cet effet à savoir les chefs de cours et de juridiction. Ceux peuvent prendre en compte les aspects quantitatifs c'est à dire le nombre de dossiers traités et qualitatifs c'est-à-dire la qualité des décisions rendus la durée es traitements des dossiers	
Japon	Assessments do not cover whether or not individual judgements are appropriate	
Liechtenstein	No	The cases are allocated in advance assigning approximately the same workload to each judge
Lituanie	They are taken into account together with other criteria (see question 5)	
Macédoine	Yes. Expected and realized work (see above).	
Mexico	Yes, because this is the basic data of the assessment of the quality of the judicial work. The higher the number of appeals which are approved the worse is the quality of the judgement.	"Ante más revocadas, mayor error y mala calidad."
Norway	No.	
Pologne	There are no specific “target” numbers of cases	

	to be achieved. The outcome of particular cases is irrelevant – indeed consideration of that factor is prohibited because it might be an interference with judicial independence.	
Portugal	Only the number of cases plays an important role in the assessment, not the outcome of a case.	
ROC (Taiwan)	This is not generally a factor, unless the judge has handled less than an average number of cases. No consideration is given to the outcome of the cases.	
Slovénie	See answer to question 5. The most important indicator for the assessment is the ratio between the total number of settled cases and the cases approved by the higher instances.	
Suède	No, neither the productivity nor the outcome of a judgement play any role in the assessment.	
Suisse	Cf. ci-dessus.	
Royaume uni	Yes. Most obviously the outcome of a case is considered if there is an appeal from the judgment to the appeal court, when the higher court must consider the outcome. But this consideration is not used formally as part of an assessment of the judge whose judgment is appealed. The number of cases considered by a judge does not play any part in assessment unless it appears that the judge has been extremely slow with hearings or dilatory in producing judgments.	

8 – Est-ce que la durée d’une affaire traitée par le juge est un élément pris en compte dans l’évaluation? SVP, développez.

Pays	Réponses aux questions	Remarques additionnelles
Autriche	As one of the aspects the number of long lasting cases is compared with the workload and with the performance of other judges.	
Belgique	Non, mais si un juge est systématiquement en retard dans le prononcé des ses jugements, il semble évident que cela pourra influencer son évaluation,	
Brésil	Usually yes; but it is taken into account that some cases take a longer time out of their nature; disregard of judges in the conduction is considered	
Bulgarie	Yes the number of times and the grounds the a case has been delayed and the responsible persons and the sanctions imposed on the parties for having caused ungrounded delay are counted	For failure to follow the law on these matters judges bear disciplinary sanctions
Canada	Not applicable.	
Croatie	Not at present	
Chypre	The time between the end of a trial and delivery of judgment is monitored. It must	

	not exceed 6 months for a trial and 2 months for applications.	
Rép. tchèque	This is not formally part of any assessment, but every 3 months a president of a court will monitor “old cases” which have not been decided within 3 to 5 years. If one judge has a high number of such cases, then a procedure to assist/control the judge will be started. Disciplinary procedures are possible in extreme cases.	
Estonie	There is no assessment	
Allemagne	This is considered if, without good reason, the judge does not finish a case within a reasonable time.	
Hongrie	Yes. The assessment counts the frequency and the grounds of the procrastinations, as well as the sanctions against the judge, who does not finish the cases within a reasonable time	
Islande	Effectiveness is important. If a judge is exceptionally slow this may have a negative effect on the assessment; but speed has to go hand in hand with quality	
Italie	No, unless a delay was totally unjustified.	
Côte d'Ivoire	Voir 7	
Japon	Assessments do not cover whether or not the manner in which a judge handled individual cases is appropriate	
Liechtenstein	Only if there are delays in handling the cases or rendering judgements	
Lituanie	Only if there is a violation of procedural terms fixed by law	
Macédoine	Yes. The judge should resolve cases within a reasonable time. If this time is exceeded, the party is entitled to take action against the judge (art. 36 Law of Courts) before a higher court.	
Mexique	It is a part of the assessment of the productivity. The time which a judge needs for settling the cases is taken into consideration.	
Norvège	No.	
Pologne	No	
Portugal	Yes, if the judge does not finish the case in a reasonable time.	
ROC (Taiwan)	The normal time for consideration of a case is 16 months. If the judge has too many delayed cases and more than the average number, this will mean he will be marked down by the Merits Committee.	
Slovénie	Yes. The time between the end of a trial and the delivery of the judgment is monitored on a monthly basis.	
Suède	No.	
Suisse	Il n'y a en principe pas de référence à une ou des affaires déterminées. L'appréciation se porte sur l'ensemble de l'activité du juge concerné.	

Royaume uni	In civil and administrative cases at first instance and with all types of case on appeal, a court is expected to deliver its judgment either straight away (<i>ex tempore</i>) or within 3 months of the conclusion of the hearing, of whatever type – trial or application - unless it is a particularly long/complicated. A judge is obliged to report to the Lord Chief Justice all instances where a judgment has been delayed beyond 3 months and to explain the reason for the delay. If a judge is habitually late in delivering judgments, this could be taken into account in any assessment.	
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9 Comment les juges qui siègent sont-ils évalués?

Pays	Réponses aux questions	Remarques additionnelles
Autriche	See questions above	
Belgique	Cf. réponses aux questions 3 à 8 ci-dessus.	
Brésil	The assessment has been other than within the court, but recently the possibility to review the assessment by the National Council of Justice or an ex officio assessment by the NCJ was introduced.	
Bulgarie	All judges are assessed under the same procedure	
Canada	Not applicable	
Croatie	See 4 and 5 above.	
Rép. tchèque	Judges may be assessed by the president of the relevant court, the appellate court or the judicial council.	
Chypre	All judges sit in court. No formal assessment.	
Estonie	There is no assessment. In reality however, the head of the court analyses the statistics of the duration of cases, the number of cases etc. Unreasonable duration of a case can be a basis for imposing disciplinary punishment.	
Allemagne	All judges must sit in court apart from some judges who are delegated to the Ministry of Justice.	
Hongrie	50 cases which were finished with final judgement are analysed in detail, chosen with the help of the monthly statistics, the hearing of trials and the complaints against the judge. Every assessment must be founded on facts only.	
Islande	There is no regular assessment	
Italie	There is an assessment by the District Judicial Council, based on the report of the First President of the particular court, which will report on the judge's capability and daily performance in court.	
Côte d'Ivoire	Ils sont évalués selon la méthode indiquée ci-dessus comme tous les autres magistrats	
Japon	There may be information obtained from other	

	judges in the panel, or from court clerks; information from outside may be considered if there are underlying facts, that are proofed	
Liechtenstein	See above	
Lituanie	The results of the periodical assessment are kept in the personal file of the judge and might be considered if this judge seeks promotion. There might be a recommendation to the institution responsible for the training to organize a training on certain topics..	
Macédoine	Reports referring to a specific time interval (1 to 3 months) in which the number of annulled, confirmed and solved cases is stated.	
Mexique	Judicial councils, judges and ex judges take part in the assessments. Moreover there are "visitadores" who are responsible for the supervision in expert/professional matters moreover there are the "contralores" who are responsible for the supervision in administrative matters.	
Norvège	There is no assessment.	
Pologne	There is generally no formal assessment of judges in court.	
Portugal	See above. Judges are not directly assessed while sitting in court.	
ROC (Taiwan)	All judges who sit in court are assessed, in particular their behaviour whilst dealing with cases. The court advocates have also set up an assessment system, which is taken into account by the Yuan.	
Slovénie	Every 6 months there is an assessment for the judges.	
Suède	There is no assessment.	
Suisse	Cf. ci-dessus.	
Royaume uni	All judges sit in court. There is no formal assessment of the manner in which judges conduct proceedings in court. But if a judge has conducted a trial in an unreasonable or apparently biased manner that may be a ground of appeal and this would therefore be assessed by the appeal court.	

10 Quelles sont les conséquences de cette évaluation ?

Pays	Réponses aux questions	Remarques additionnelles
Autriche	The assessments may be used, when the judge applies for another position, when the "Personalsenat" has to rank the applicants for the vacant position. If the overall assessment end with a mark less than good, there is an assessment for every following year; if the mark is that a judge is found as incapable during two consecutive periods, the judge will loose his office.	

Belgique	Evaluation périodique: si un magistrat a obtenu la mention "insuffisante", cela entraîne la perte pendant 6 mois de la dernière majoration triennale de traitement, sans préjudice des conséquences sur le plan disciplinaire. Nouvelle évaluation après 6 mois. Si le magistrat n'obtient pas au moins la mention "bon", il subira la même perte de traitement pendant 6 nouveaux mois.	
Brésil	See answers above	
Bulgarie	A negative assessment means that the promotion to the position one applies for will be denied ; that the status of irremovability will not be gained, which means that one will be expelled	
Canada	The results of informal assessments will depend on the context in which the assessment was undertaken. If it is a result of some complaint and the judge ignores/fails to follow the advice or suggestions of a Chief Justice, then that may result in the judge's assignments being limited to areas where there are no known competence problems.	
Croatie	A judge who is assessed favourably may be promoted to a more senior post (if vacant) for which the judge has applied.	The body responsible for appointment and promotion of judges is the State Judicial Council which consists of 7 judges, 2 lawyers and two law professors.
Chypre	A judge who is assessed favourably may be promoted to a more senior post in preference to a judge with longer service.	
Rép. tchèque	The assessment may have consequences depending upon the circumstances in which it was undertaken: for disciplinary reasons; for possible promotion or simply to enable a judge to know how well he is performing his tasks.	
Estonie	Voir au-dessus.	
Allemagne	The assessment determines whether or not a judge will be promoted.	
Hongrie	The result of the assessment can be taken into account when appointing judges to the status of immovability or to a higher position. A judge who was assessed as disable may be dismissed	
Islande	Ne joue pas un rôle.	
Italie	There are two possible situations in which this can be relevant: (i) the advancement in rank; and (ii) the actual appointment to a higher position – e.g. to the Appeal Court. In the first case the approval of the District Judicial Council is mandatory before the judge can be promoted to a higher rank. In the second case a positive evaluation by the District Judicial Council is an advantage to winning the	

	competitive examination of the CSM.	
Côte d'Ivoire	Cette évaluation permet de faire l'avancement et la promotion des juges	
Japon	Assessments are documented	There is no scale, but a text indicating the result of the assessment
Liechtenstein	If delays are discovered the judge may have to report periodically on the reduction of this delays, in serious cases there may be a report to the disciplinary court	
Lituanie	The results of the periodical assessments are kept in the personal file of the judge and may be used when the judge seeks judicial promotion There may be a proposal to the institution responsible for the training of judges to organize a training on certain topics.	
Macédoine	If a judge is found disciplinarily liable, the Judicial Council can apply various sanctions: written notice, public reprimand, decrease of the judge's salary (15-30%) for 1-6 months. If malpractice in the execution of the judicial function is established, the Council can ask the judge to resign.	
Mexique	removal, suspension, change of tribunal, sanctions for misuse of authority and failure to perform the function of judge etc.	
Norvège	Pas de conséquences.	
Pologne	It can affect the chances of promotion	
Portugal	The progression on the judge's career depends on the results of the assessments (the tenure of office is considered, too). A favourable assessment may promote the judge to a senior post or a higher court. A judge whose assessment is "unsatisfactory" is suspended from his functions while an inquiry on his aptitude is under way.	
ROC (Taiwan)	It does have an influence on the decision of the Yuan as to appointment of a judge to another position or function.	
Slovénie	The assessment is crucial for the question whether a judge will be promoted or not (or even if he will be eliminated from judicial function).	
Suède	Rien.	
Suisse	Une éventuelle évaluation négative pourrait avoir pour conséquence la non-re-nomination ou la non-réélection d'un juge.	Ce sont des cas extrêmement rares.
Royaume uni	The informal assessments will be considered when there is a vacancy for a higher court. If the assessment has been undertaken because of a complaint about a judge's handling of a case, then the result of the assessment may be disciplinary action against a judge.	Since April 2006 a new body has been responsible for making recommendations for promotion – the Judicial Appointments Commission. It has not yet published details of the procedure it will follow for determining its

		recommendations for promotion. The final decision and recommendation to the Queen is still made by the Lord Chancellor and Prime Minister.
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11 Existe-t-il un lien entre évaluation et rémunération?

Pays	Réponses aux questions	Remarques additionnelles
Autriche	No, except that to get from level 3 to level 4 in the remuneration scheme your performance must not be lower than average	(within a scheme of 8 levels judges are promoted automatically form one level to the next every 4 th year in office)
Belgique	Oui. Voir réponse à la question 10 ci-dessus.	
Brésil	No (indirectly a good assessment gives better chance to get a higher (better paid) position	
Bulgarie	No	
Canada	No. All judges are paid the same except for Associate Chief Justices, Chief Justices and Judges of the Supreme Court of Canada, each of whom is paid the same as the others in the same group.	
Croatie	No	
Chypre	No. But if a judge is promoted he receives higher remuneration.	
Rép. tchèque	At present, no. But there is political pressure to have some kind of link.	
Estonie	No.	
Allemagne	No.	
Hongrie	No.	
Islande	No.	
Italie	No	
Côte d'Ivoire	Il n'y a de lien entre l'évaluation et la rémunération de façon directe mais la rémunération est fonction du grade or les avancements en grade sont faits sur la bases des évaluations on peut donc en déduire que les rémunérations sont liées aux évaluations.	
Japon	Only for high ranking judges assessment may lead to an increase of pay	
Liechtenstein	No.	
Lituanie	No.	
Macédoine	The achieved results in the execution of the judicial function influence the fixation of the salary of a judge (art. 60 Law of Courts).	
Mexique	No.	
Norvège	No.	
Pologne	No	
Portugal	No.	
ROC (Taiwan)	No	
Slovénie	No, but if a judge is promoted to a higher post, he receives higher remuneration.	

Suède	Yes, see above.	
Suisse	Non.	
Royaume uni	No, but if a judge is promoted he receives higher remuneration.	

12 Voyez-vous une atteinte à l'indépendance judiciaire dans l'évaluation des juges qui est faite dans votre pays? SVP, expliquez.

Pays	Réponses aux questions	Remarques additionnelles
Autriche	No, because it is performed by a panel of judges	
Belgique	Dans la mesure où l'évaluation des juges est effectuée en interne, c-à-d. au sein du pouvoir judiciaire, sans aucune intervention des autres pouvoirs, et où les conséquences de cette évaluation sont limitées, il ne paraît pas qu'elle (l'évaluation) mette en cause l'indépendance judiciaire ou y porte atteinte.	
Brésil	Sometimes the internal independence within the own tribunal is more crucial than the external independence ; one point is the subjective aspects of promotion for superior posts	
Bulgarie	No, on the contrary it leads to greater discipline, higher success and improvement of the public confidence in the judiciary	
Canada	No	
Croatie	It is not possible to give a plain and simple answer to this question.	
Chypre	No, because the assessment is made by the Supreme Judicial Council, which consists of judges.	
Rép. tchèque	The quality of work is assessed by judges so it should not be a problem. However there is some uncertainty and concern at the power of the Ministry of Justice. The position of the presidents of courts needs to be made more responsible as well as more independent of the Ministry.	
Estonie	There is a plan to introduce an annual assessment of every single judge. The assessment will be based on quality and quantity of cases (duration, complaints of the parties to a hearing against the judge etc.). The assessment could be a basis for the removal from office of the judge. Moreover, every year Parliament will have the right to make a proposition to remove the Chief Justice of the Supreme Court from office. These plans could infringe on the independence of the judiciary. The next year will show if these plans are to be realized. The author of these ideas is the actual Chief Justice of the Supreme Court, a former politician. The Chief Justice is appointed by	

	Parliament on the proposal of the President of the Republic for tenure of 9 years.	
Allemagne	No	
Hongrie	No there is not any infringement; there cannot be	
Islande	No	In a small society any assessment may have some effect on reputation
Italie	No	
Côte d'Ivoire	Le système actuel de notation comporte trop d'éléments subjectifs relevant de l'appréciation discrétionnaire de celui qui a le pouvoir de noter. Ceci peut conduire certains magistrats à plaire au supérieur hiérarchique pour être bien noté, sacrifiant ainsi son indépendance	
Japon	No	
Liechtenstein	No	A new law will guarantee that evaluation is performed by judges only, and that the contents decisions of judges must not be evaluated
Lithuanie	Legal regulation of assessment does not infringe the independence if it is carried out by the judiciary itself	
Macédoine	No, except if the assessment on his/her work influences his/her judgments.	
Mexique	No, because the assessment is restricted to the quality of the judicial function and the administrative skills.	"No, ya que únicamente se limitan a evaluar lo realtive a la calidad de su función jurisdiccional y dministra-iva."
Norvège	No.	
Pologne	No	
Portugal	No. The HCJ is a independent body.	
ROC (Taiwan)	No	
Slovénie	No, because the assessment is made by a Personal Council of a certain court. The Personal Council consists of judges only.	
Suède	Before salary negotiations an assessment has to be made by the chief judge for the parties to the labour market. Therefore the individual salary level becomes a control instrument for the employer or the body of decision. If a judge needs to be assessed as skilful in order to receive a higher salary or a bonus this might influence him/her to subconsciously subordinate him/herself to his/her colleagues' and chiefs' opinions instead of using his/her own judgment in the judging activities. A skilful judge who works slower but more safely than others might become a victim when productivity and efficiency through experience, taking on more responsibilities or more difficult assignments are considered the most desirable thing in the assessments. There	

	is an increased focus on productivity and efficiency and quantitative goals. In the budget the fulfilment of goals is connected to the distribution of funds to the courts. This link endangers the independence of the judges. This kind of criterion leads to an indirect quantitative assessment of the judges.	
Suisse	La risque d'une atteinte à l'indépendance peut devenir réel dans la mesure où l'évaluation à laquelle procède l'autorité politique lors de la réélection d'un juge devait aboutir à la mise à l'écart de celui-ci pour des motifs liés à des prises de position du juge concerné où à sa participation à des décisions dans tel ou tel domaine ayant un certain retentissement médiatique.	Une récente décision du Tribunal fédéral ayant trait à l'application de la disposition sur la discrimination raciale a déclenché des remous suite aux menaces proférées par un parti politique d'extrême droite de s'opposer à la réélection de juges ayant participé à la décision en cause.
Royaume uni	Not at present.	

13 Quel sujet proposez-vous pour la prochaine réunion ?

Pays	Réponses aux questions	Remarques additionnelles
Autriche	Judges and Public Prosecutors	
Brésil	Judicial hierarchy and aspects of internal independence – conscientiousness of the judge versus legal security	
Bulgarie	Structure and manner of establishment of Supreme Judicial Councils	
Canada	Judicial remuneration	
Rép. tchèque	Uniformity of Jurisdiction – reason and limits	
Allemagne	(i) Ethics of judges and public prosecutors; (ii) the impact of IT on the work of judges.	
Hongrie	The judges Code of Ethics in practice	
Islande	The appointment process for international courts	
Italie	The transfer of magistrates – whether requested by themselves or by the administration.	
Côte d'Ivoire	modes de nomination des juges et indépendance de la justice	
Macédoine	Monitoring of the cases. Specialization in judicial education. Salary of the judges and impartiality in the execution of the judicial function.	
Mexique	The Evaluation of the oral judgments.	"La evaluación de los juicios orales.
Portugal	The judge's appointment to superior courts.	
Slovénie	The structure/composition of the Judicial Council and the independence of judges.	
Suisse	Les limites fixées à la haute surveillance de la justice par le pouvoir politique.	
Royaume uni	Legislature or judiciary – who should have the ultimate decision in a democracy?	

B. CONCLUSIONS

Note : Nous ne traiterons pas de la question de la nomination initiale du juge, parce que le but du présent rapport est de discuter de l'évaluation en vue du changement de fonction. La question de la première nomination a déjà fait l'objet de nombreuses discussions à la 1^{ère} commission.

1) Le devoir essentiel de la Justice est de permettre l'application de la Loi et de mettre le juge en situation de régler les litiges entre les parties, de présider correctement une audience et, si nécessaire, de statuer sur une plainte / une action dirigée contre une personne, ainsi que, cela est très important, de protéger les droits de l'homme et les libertés fondamentales. Ce devoir doit être accompli avec efficacité et efficience. Il est de la responsabilité du juge de s'assurer que ces objectifs sont atteints. Pour cela les juges possèdent et doivent appliquer leurs connaissances spécialisées, leur expérience et leurs capacités. En outre, les juges doivent agir de façon indépendante et impartiale. Ils ne doivent subir aucune influence, que ce soit des autres pouvoirs de l'Etat, d'autres influences extérieures ou de celles du pouvoir judiciaire lui-même. Tout système d'évaluation des magistrats, dont le but est d'indiquer comment les juges accomplissent leur travail après leur désignation initiale, doit tenir compte non seulement des devoirs des juges, mais aussi absolument respecter leur indépendance et leur impartialité.

2) Les juges en ce qu'ils sont soit inamovibles / installés de façon permanente dans leurs fonctions, soit nommés pour une durée déterminée, ne peuvent être mutés / radiés que s'ils se sont rendus coupables d'une faute disciplinaire grave ou s'ils se trouvent dans l'incapacité d'exercer leurs fonctions, et selon une procédure préexistante fixée par la Loi.

3) Compte tenu des garanties de stabilité accordées aux juges dans l'exercice de leurs fonctions, il est extrêmement important qu'il y ait une procédure de sélection entièrement objective, afin de pouvoir choisir les personnes les plus aptes parmi celles qui se portent candidates à une fonction. Ne doivent être sélectionnés comme juges que les candidats qui ont montré qu'ils ont les connaissances les plus approfondies du droit et ceux qui possèdent les capacités de juger (par exemple, la capacité d'agir d'une manière déterminée et de communiquer, d'organiser sa vie professionnelle etc.).

4) De même, il est important que la question de la nomination des juges à une autre fonction ne soit basée que sur les mérites et les capacités des candidats. Les résultats de l'évaluation du juge dans ses fonctions actuelles peuvent néanmoins jouer un rôle important dans le processus de sélection.

5) Toute ingérence quelconque des autres pouvoirs de l'Etat dans l'évaluation des juges doit être prohibée. Elle violerait le principe de la séparation des pouvoirs et de l'indépendance judiciaire.

6) Le risque existe que ces évaluations ne soient utilisées pour imposer à un juge de quitter son poste. C'est pourquoi, les questions de la révocation du juge (pour défaut de compétence) et celle de l'évaluation courante doivent être traitées de façon indépendante.

7) Pour éviter tous préjugés, et exclure toute influence externe ou interne qui pourrait mettre en danger l'indépendance de la procédure d'évaluation ou l'impartialité du notateur, les évaluations doivent être effectuées selon une procédure transparente. Cette procédure doit appliquer des critères clairs définis préalablement. Elle doit aboutir à une décision motivée, remise au juge concerné et ouverte à recours. Certains systèmes d'évaluations reposent trop largement sur des éléments subjectifs qui donnent à l'évaluateur / commission d'évaluation un large pouvoir discrétionnaire. Cela pourrait pousser un juge à vouloir "plaire" aux évaluateurs en vue de recevoir une "bonne note".

8) La motivation / le bien-fondé d'un jugement ne peut pas faire partie de l'évaluation d'un juge à moins qu'il ne résulte clairement de l'évaluation que le juge semble arriver à des conclusions de droit

incorrectes dans des cas si nombreux que cela n'est plus acceptable. La motivation / le bien-fondé d'un jugement ne peut être revu que par une cour supérieure.

9) Il faut se garder des fausses conclusions que l'on pourrait tirer du fait que les décisions d'un juge ont été infirmées ou cassées par une cour supérieure. Ce fait ne signifie pas que le juge en question ne soit pas compétent.

10) Si la productivité et "l'efficacité managériale" peuvent être des paramètres clés pour une évaluation, un juge capable qui travaille plus lentement, mais de façon plus consciencieuse que les autres peut devenir la victime de sa façon de travailler. En plus si ces paramètres / buts sont retenus pour déterminer le budget des juridictions ou plus largement de la Justice entière, cela augmente la pression sur les tribunaux. Des exigences de ce genre seraient inappropriées si elles s'appliquent à un juge en particulier et elles menaceraient alors l'indépendance judiciaire.

11) La durée du traitement d'une affaire ou d'une procédure ne doit pas en soi être un critère significatif de l'évaluation d'un juge à l'exception des cas extrêmes. Pour être efficace et travailler avec succès, un juge doit essayer de parvenir à ce qu'il considère comme étant la solution correcte dans le temps le plus bref possible et de fournir des motifs adéquats pour le cas en cause. Tout commentaire sur cet aspect du travail du juge est complexe. Souvent le nombre des cas traités dans un certain laps de temps n'est qu'un indice concernant la performance d'un juge. C'est pourquoi qu'il faut être prudent avec la statistique.

12) Le résultat d'une évaluation ne doit pas influencer la rémunération des juges.² Si un juge doit être évalué, même par ses pairs, pour qu'il obtienne une rémunération plus importante ou un bonus il peut être poussé à plaire à l'évaluateur, même en ce qui concerne les jugements qu'il rend.

13) Dans les limites relevées ci-dessus, la procédure d'évaluation d'un juge lors de son activité professionnelle peut représenter un moyen valable de lui faire prendre conscience de sa propre valeur et de lui signaler individuellement les améliorations possibles dans ses performances. L'évaluation peut aussi aider à trouver le meilleur candidat pour une promotion.

14.) Dans ce sens l'évaluation judiciaire (dans les limites discutées ci-dessus) peut aider à renforcer la confiance du public dans la Justice des sociétés démocratiques.

C. SUJET DE L'ANNEE 2007

«L'accès à la Justice»

Siofók, Hongrie, le 01 octobre 2006

La Présidence de la 1^{ère} Commission d'étude de l'U.I.M.

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Voir conclusion 7 du Rapport général 2005, 1^{ère} Commission d'études de l'U. I. M.