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COMPARATIVE STUDY ON THE PROFESSIONAL EVALUATION OF JUDGES AND PROSECUTORS

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1. PRELIMINARY REMARKS

This comparative study on the professional evaluation of judges and prosecutors (hereinafter referred to as: individual evaluation) is one of the components of the twinning project outputs.

The comparative data and indications set out below are taken from the information provided in the fiches on the system of individual evaluation regarding the countries chosen for the comparison: Belgium, France, Italy, Spain, The Netherlands, Austria and Germany/Bavaria.

Those fiches are included in the material the project team has worked out as an integral part of the project results.

The scheme of the fiche was prepared by the project team.

The foreign experts invited to the final conference of the project have given a fundamental contribution in the preparation and finalization of the individual fiches.

There are separate fiches for each of the compared countries. It is hence possible to have a complex view of the system of individual evaluation for each of the selected country reading through the fiche devoted to the illustration of the specific country. The present study is intended to

organize and compare the information and indications according to the different aspects concerning the individual evaluation.

Furthermore the present study has to be associated with the other papers submitted by the twinning project team as listed below:

- draft concept paper, containing findings, considerations and recommendations, on the individual evaluation submitted by the project team and annexed to the quarterly interim report deposited in March 2010;
- draft concept paper on the systemic evaluation, submitted in May 2010 and discussed during the 2-June workshop.
- fiches on the evaluation of the efficiency and fairness of the judiciary (hereinafter: systemic evaluation) regarding Spain, The Netherlands, France and Italy.
- questionnaires and elaborated answers regarding the individual evaluation (annexed to the quarterly report;
- questionnaires and elaborated answers regarding the systemic evaluation.

2. THE COUNCILS FOR THE JUDICIARY

The individual evaluation is highly swayed by the presence of a Council for the judiciary as the guarantor of the judiciary independence. As recalled by the OPINION no. 10 of the Consultative Council of the European judges (CCJE) *“the composition and the functions of the Council for the Judiciary can vary from one country to another. Conscious of this diversity but noticing at the same time a trend to create an independent Council for the Judiciary, the CCJE considered it necessary:*

§ to stress the importance of the existence of a specific body entrusted with the protection of the independence of judges, in the context of respecting the principle of separation of powers;

§ to set guidelines and standards for member States wishing to implement or reform their Council for the Judiciary”.

Romania has a Council for the judiciary.

Among the compared state Italy, Belgium, Spain, France and The Netherlands have a Council for the judiciary; Austria and Germany have not.

Italy and Belgium have a unique Council for both Judges and Prosecutors. Romania and France have a Council with two sections, one for the Prosecutors and one for the judges, with competences split between the sections and the plenum. In Spain and in The Netherlands there is just one proper Council for the judiciary regarding the judges.

2.1 THE COMPOSITION OF THE COUNCILS FOR THE JUDICIARY.

2.1.1 BELGIUM

The High Council of Justice (HCJ) is a constitutional body composed of 44 members who are elected to a four year term that may be renewed once. The HCJ is divided into two sections, a French and a Dutch, with 22 members each. Each section consists of 11 magistrates (judges or prosecutors) and 11 non-judges (lay members – lawyers, professors and civil society).

The magistrates (judges and prosecutors) are elected by secret ballot among magistrates (judges and prosecutors) in active status. The French-speaking magistrates are elected by the French electoral college (all the French speaking magistrates in active status) and the Dutch-speaking members by the corresponding Dutch electoral college.

Lay members of the HCJ are appointed by the Senate by a two-thirds majority vote.

The double parity (French/ Dutch speaking and magistrate/non-magistrate) is applied to all HCJ organs.

The HCJ consists of the following organs:

- General Assembly (44 members);
- 2 Nomination and Appointment commissions (a French and a Dutch speaking NAC) of 14 members each. Together they form the Joint Nomination and Appointment commission of 28 members (JNAC). Note: The words “Nomination and Appointment” in the commission’s name are a literal translation of the French words “*Nomination et Désignation*”. The word “*Nomination*” here means “a lifetime appointment in a judicial position”; “*Désignation*” means “a fixed term appointment in a mandate of first president or president of a court, prosecutor general or chief prosecutor. Such a mandate is once renewable in the same court or prosecutor’s office with the exception of the first president and the general prosecutor of the court of cassation. Conclusion: the NACs nominate candidates for “*Nomination*” or “*Désignation*” by the King.
- Advisory and Investigation commissions of 8 members each. They form together the Joint advisory and investigation commission (16 members);
- The Bureau is composed of the presidents of the above mentioned 4 basic commissions: 1 French speaking magistrate, 1 Dutch speaking magistrate, 1 French speaking lay member and 1 Dutch speaking lay member. The Bureau members are the Council’s only full time members. Each member of the Bureau is president of the HCJ for one year (and as such chairs the Bureau and the General Assembly during that period). The Bureau is the coordination organ of the HCJ.

The administration (language parity) supports the activities of the HCJ, develops specific expertise (e.g. audit and investigation capacity, HRM capacity, ...), is the secretary of the HCJ.

2.1.2 FRANCE

Before the 2008 constitutional reform (former article 65 of the Constitution):

The High Council of the Judiciary shall be presided over by the President of the Republic. The Minister of Justice shall be its ex officio Vice-president. He may deputize for the President of the Republic.

The High Council of the Judiciary shall consist of two sections, one with jurisdiction over judges, the other over public prosecutors.

The section with jurisdiction over judges shall comprise, in addition to the President of the Republic and the Minister of Justice, five judges and one public prosecutor, one Conseiller d’État appointed by the Conseil d’État, and three prominent citizens who are not members either of Parliament or of the Judiciary, appointed respectively by the President of the Republic, the President of the National Assembly and the President of the Senate.

The section with jurisdiction over public prosecutors shall comprise, in addition to the President of the Republic and the Minister of Justice, five public prosecutors and one judge, and the Conseiller d’État together with the three prominent citizens referred to in the preceding paragraph.

The section of the High Council of the Judiciary with jurisdiction over judges shall make recommendations for the appointment of judges to the *Cour de cassation* (Court of Cassation), the Chief Presidents of Courts of Appeal and the Presidents of the *Tribunaux de grande instance* (TGIs, the first instance largest Courts). Other judges shall be appointed after consultation with this section.

This section shall act as disciplinary tribunal for judges. When acting in such capacity, it shall be presided over by the Chief President of the *Cour de cassation*.

The section of the High Council of the Judiciary with jurisdiction over public prosecutors shall give its opinion on the appointment of public prosecutors, with the exception of posts to be filled at meetings of the Council of Ministers.

It shall give its opinion on disciplinary measures regarding public prosecutors. When acting in such capacity, it shall be presided over by the Chief Public Prosecutor at the *Cour de cassation*.

After the 2008 constitutional reform (Article 65):

The High Council of the Judiciary shall consist of a section with jurisdiction over judges and a section with jurisdiction over public prosecutors.

The section with jurisdiction over judges shall be presided over by the Chief President of the *Cour de cassation*. It shall comprise, in addition, five judges and one public prosecutor, one Conseiller d'Etat appointed by the Conseil d'Etat and one barrister, as well as six qualified, prominent citizens who are not members of Parliament, of the Judiciary or of public administration. The President of the Republic, the President of the National Assembly and the President of the Senate shall each appoint two qualified, prominent citizens. The procedure provided for in the last paragraph of article 13 shall be applied to the appointments of the qualified, prominent citizens. The appointments made by the President of each House of Parliament shall be submitted for consultation only to the relevant standing committee in that House.

The section with jurisdiction over public prosecutors shall be presided over by the Chief Public Prosecutor at the *Cour de Cassation*. It shall comprise, in addition, five public prosecutors and one judge, as well as the Conseiller d'Etat and the barrister, together with the six qualified, prominent citizens referred to in the second paragraph.

The section of the High Council of the Judiciary with jurisdiction over judges shall make recommendations for the appointment of judges to the *Cour de cassation*, the Chief Presidents of Courts of Appeal and the Presidents of the *Tribunaux de grande instance*. Other judges shall be appointed after consultation with this section.

The section of the High Council of the Judiciary with jurisdiction over public prosecutors shall give its opinion on the appointment of public prosecutors.

The section of the High Council of the Judiciary with jurisdiction over judges shall act as disciplinary tribunal for judges. When acting in such capacity, in addition to the members mentioned above, it shall comprise the judge belonging to the section with jurisdiction over public prosecutors.

The section of the High Council of the Judiciary with jurisdiction over public prosecutors shall give its opinion on disciplinary measures regarding public prosecutors. When acting in such capacity, it shall comprise, in addition to the members mentioned in paragraph three, the public prosecutor belonging to the section with jurisdiction over judges.

The High Council of the Judiciary shall meet in plenary section to reply to the requests for opinions made by the President of the Republic in application of article 64. It shall also express its opinion in plenary section, on questions concerning the deontology of judges or on any question concerning the operation of justice which is referred to it by the Minister of Justice. The plenary section comprises three of the five judges mentioned in the second paragraph, three of the five prosecutors mentioned in the third paragraph as well as the Conseiller d'Etat, the barrister and the six qualified, prominent citizens referred to in the second paragraph. It is presided over by the Chief President of the *Cour de cassation* who may be substituted by the Chief Public Prosecutor of this court.

The Minister of Justice may just participate in all the sittings of the sections of the High Council of the Judiciary except those concerning disciplinary matters.

According to the conditions determined by an Institutional Act, a referral may be made to the High Council of the Judiciary by a person subject to trial. The Institutional Act shall determine the manner in which this article is to be implemented.

2.1.3 ITALY

According to article 104 of the Italian Constitution, the Italian High Council of the judiciary (*Consiglio Superiore della Magistratura*, in short: CSM) includes three *ex officio* members: the President of the Republic, who also chairs the CSM, the President of the Court of Cassation, and the General Prosecutor attached to the Court of Cassation.

As for the elected members, the Constitution does not specify their number; however, it provides for that two-thirds shall be elected by all magistrates (the so-called "career members"), whilst the remaining one-third shall be elected by the joint session of the two Houses of the Parliament among university law professor and lawyers with at least fifteen years of professional seniority (the so-called "lay members").

According to the Constitution, members hold office for four years and may not be immediately re-elected. The members elect the Vice President among the lay members. The Vice President chairs the plenary of the CSM whenever the President of the Republic is absent or upon the President's delegation; he/she chairs the Presidency Board, a body in charge of fostering the Council's activities, implementing the resolutions adopted by the CSM, and managing budgetary funds – considering that the CSM has counting and financial autonomy.

The precise number of the elected members and the mechanisms of their election are set forth in Laws: Law no. 195 dated 24 March 1955, as subsequently amended by Law no. 695/1975 and Law no. 44/2002, along with Presidential decree no. 916 dated 16 September 1958. The internal regulations adopted by the CSM dictate the specific rules regarding the organization and functioning of the CSM.

As of date, Law 44/2002 - which amended section 1 of Act no. 195/1958 - provides for 24 elected members, of which 16 career members and 8 lay members. The latter are elected by the two Houses of Parliament in a joint session by secret ballot; a majority of three-fifths of the members of the two Houses is required at the first two ballots, whilst a majority of three-fifths of the voting members is sufficient as from the third ballot onwards.

The composition of the career members is as follows: two magistrates from the Court of Cassation or from the General Prosecutor office attached to the Court of cassation; four magistrates among those acting as Prosecutors of the first or second instance Court; ten magistrates among those acting as judges of the first or second instance Courts.

2.1.4 SPAIN

The General Council for the Judiciary of the Kingdom of Spain (GCJ) is the constitutional body for the self-governance and self-administration of Spanish judges.

It is composed by 20 members and one chairperson, who is also the Chair of the Supreme Court. Twelve members are judges and eight are jurists or representatives of legal professions.

All the members are appointed by the Parliament followed by formal ratification issued by the king.

2.1.5 THE NETHERLANDS

The Council of the Judiciary is a new body instituted on January 1st, 2002 after amendments of the organic law on the judicial power.

The Council for the Judiciary is composed by five members, three of whom come from the judiciary and two from senior positions at a government department. According to section 84 and 85 of the judicial organization act (JOA), the Members of the Council are appointed by a Royal Decree based on a "list of recommendations" drafted by the Minister of justice (MoJ). Before making recommendations the MoJ must draw up, in agreement with the Council, a list of not more than six persons who appear eligible to fill the relevant vacancy. The list must be made available to a committee of recommendation, a board composed by a president of Court, a representative of the Dutch Association for the judiciary, a member of the board of delegates, a director of operations of a court and a representative of the MoJ.

One of the judicial members of the Council is appointed as chairperson of the Council by a Royal Decree. Members are appointed for six years, renewable once for three years.

As regards the career of judges, the Council performs its activity and carries out its tasks in this sector in close cooperation with the "management boards" foreseen by sections 15 through 23 of the JOA. These boards are commissions established within each court and composed by the President of the Court, heads of sectors and a non judicial member (the director of operation).

The management board members are appointed by Royal Decree upon recommendations of MoJ and nominations (proposals) of the Council for a term of six years with the right to be reappointed.

They deal with matters related to career of judges, performing their activity in cooperation with the Council.

2.2 THE POWERS OF THE COUNCILS REGARDING THE JUDGES' AND PROSECUTORS' CAREER

2.2.1 BELGIUM

With regard to the judges' and prosecutors' career, the Nomination and appointment commissions are competent to:

- propose candidates for appointment ("*Nomination*") as judges or prosecutors in a particular court or prosecutor's office;
- propose candidates for appointment ("*Désignation*") as First President of the Court of Cassation, General prosecutor of the Court of Cassation, First President of a court of appeal, General Prosecutor, Presidents of courts (first instance, labour, commercial) and Chief prosecutors;
- deal with examinations for admission to judicial traineeship;
- deal with two types of examinations for direct access to the selection for appointment ("*Nomination*") as judge or prosecutor (professional capacity exam and oral evaluation examination);
- prepare guidelines regarding the training of judges and prosecutors.

[The Joint Advisory and Investigation commission:

- draws up opinions and proposals on the functioning and organization of the judiciary; draws up opinions on law proposals;
- monitors and promotes the use of internal controls;
- investigates the functioning of the judiciary.

Some of its products (e.g. opinions) have to be approved by the General Assembly.

The Advisory and Investigation commissions handle complaints about the functioning of the judiciary.]

2.2.2 FRANCE

The main competences of the CSM in the judicial career are the following :

1) as regards sitting judges:

The CSM decides the appointment as presidents of lower courts (TGIs), presidents of courts of appeal and judges of the *Cour de Cassation*.

The CSM chooses candidates among the applicants, generally after a hearing.

The other judges, namely judges at first level and at courts of appeal, are appointed upon proposal of the Ministry of Justice and with the approval ("*avis conforme*") of the CSM, which for these cases has a power of "*veto*".

The Constitution says the CSM makes recommendations, but all the recommendations are compulsory (the President of the Republic has to sign the act of appointment).

2) as regards prosecutors

All prosecutors are appointed upon the proposal of the Ministry of Justice.

As regards prosecutors' appointment the CSM expresses an opinion on the proposal of the Ministry of Justice, which, if negative, is not binding ("*avis simple*").

The Ministry has the power to override a negative opinion, and he does exercise this power.

The chief prosecutors at the Court of Cassation and chief prosecutors at Courts of appeal are appointed by the executive without consultation of the CSM. According to the 2008 constitutional reform that will be implemented, the CSM will give an opinion on prosecutors' appointments.

On the basis of the “statute of magistrates” and the criminal procedure code, prosecutors work under the direction and the supervision of their hierarchical superior and under the authority of the MoJ. On the basis of the statute and considering the characteristic of their functions the position of prosecutors cannot be totally assimilated to that of judges.

2.2.3 ITALY

The CSM takes decision on the professional performances of the magistrates in two occasions:

1. a periodic evaluation (every 4 years). This evaluation ends when the magistrate positively overcomes the seventh evaluation;
2. an episodic evaluation in case of application of the magistrates (judges or prosecutors) to leading positions or semi-leading positions.

2.2.4 SPAIN

The GCJ has exclusive responsibility for professional evaluation in all its aspects. The Ministry has no competences in this field.

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 GCJ. 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.

2.2.5 THE NETHERLANDS

The Council is part of the judiciary system, but does not administer justice itself.

It has taken responsibility over a number of tasks from the Minister of Justice particularly in allocation of budgets, supervision of financial management, personnel policy, ICT and housing and in supporting courts in discharging their tasks in these areas.

The MoJ provides the budget that is based on a workload measurement system maintained by the Council; if there is a disagreement between the Council and the Minister, the legislative body makes the decision.

Another central task of the Council is to promote quality within the judiciary system and to advise on new legislation related to justice administration.

The Council acts as a spokesperson for the judiciary at both national and international levels.

The Council of the Judiciary has no competences regarding the Council of State and the Supreme Court, even though they fulfil important judicial functions.

According to section 91 of the JOA, the Council, among the above-mentioned competences, is responsible for the nationwide activities relating to the recruitment, selection, appointment and training of court staff.

Therefore, as regards the career of judges, the Council “supports” those activities (i.e. it sends the list of candidates to the government for appointment of proposed candidates for the management boards, supports evaluation of judges and appointment to Courts of higher level) and carries out its tasks in those sectors in close cooperation with the “management boards”.

According to the JOA (section 91, paragraph 2) a management board is responsible for the day-to-day management, organisation, in particular for: a) information systems and the provision of management information; b) preparation, adoption and implementation of the budget; c) accommodation and security; d) the quality of the administrative and organisational procedure of the court; e) personnel matters. It is also responsible for promoting legal quality and the uniform application of the law and in performing this duty the management board may issue general and specific directions to all officers. Management boards can also apply disciplinary measures and deals with complaints.

Even though the Crown (the government on advice of the MoJ) has competences in appointing and selecting judges, the career of judges is considered as a joint responsibility of the Council, the Courts and the Minister of Justice.

As regards prosecutors, with the exception of selection carried out through the system called “law school graduated”, after their selection the Board of Procurators-General has specific competences for appointment of public prosecutors, chief prosecutors and Chief Advocates General. The latter are appointed by the Crown on recommendation by the College of Procurators General and advice of the Minister of Justice.

2.3 THE COUNCILS FOR THE JUDICIARY AND THE MINISTRY OF JUSTICE

2.3.1 BELGIUM

The Minister of Justice or his representative may be heard at the invitation of the Council for the judiciary or at its own request.

2.3.2 FRANCE

After the 2008 constitutional reform the Minister of Justice may participate in all the sittings of the sections of the High Council of the Judiciary except those concerning disciplinary matters, with no powers of vote.

2.3.3 ITALY

The CSM is independent from the Minister of Justice. The latter is not a member of the Council. The Minister of justice is called to give his agreement to the appointments proposed by the Council to the leading positions. In case of objection by the MoJ on the appointment proposed by the CSM, the latter has to take into consideration the observations of the MoJ; if the CSM insists on its original proposal of appointment the Minister is obliged to uphold the proposal.

2.3.4 SPAIN

The Spanish GCJ has no relation of dependency or subordination to the Ministry of Justice or to any other Government Department or Ministry. The GCJ relates to the Ministry through the GCJ-Ministry 'mixed committee'.

These two institutions work together to decide which new courts should be established and where. The GCJ has a certain degree of initiative in this respect. This is the matter that provokes most friction between the two bodies. The General Council for the Judiciary and the Ministry of Justice also cooperate in order to appoint the members of the panels for the competitive examination, since this examination is common for the recruitment of judges and prosecutors.

2.3.5 THE NETHERLANDS

The Council has some accountability for its financial and managerial responsibility towards the MoJ.

Furthermore the MoJ may request that one or more members of the Council be dismissed on the basis of their unsuitability other than for reasons of ill-health. The Minister may also recommend that the membership of the Council of one or more members be suspended if he has good reason to suspect their unsuitability, other than for reasons of ill-health.

The suspension or dismissal is effected by a Royal Decree and this decree can be appealed before the Supreme Court (section 107 of the JOA)

3. THE COUNTRIES WHICH HAVE NOT COUNCILS FOR THE JUDICIARY

3.1. THE GOVERNING BODIES

3.1.2 AUSTRIA

The Minister of Justice is responsible for all matters of administration in the judicial branch including the appointment of judges and public prosecutors.

3.2 GERMANY - BAVARIA

Due to the federal system in Germany the administration of justice falls within the competence of the Bundesländer (federal states). Therefore there are – besides the federal level – 16 Ministries of Justice and as a result of this there are differences between the federal states.

The Ministry of Justice of each federal State is responsible for magistrates, public prosecutors and judges, which are working in its jurisdiction

4. THE RECRUITMENT: evaluation for the first appointment and evaluation in view of the definitive tenure of the office

4.1 BELGIUM

Recruitment of magistrates

The JNAC proposes examination programs for:

(1) professional competency exam (e.g., 2 written and 1 oral examination). Admission requirement: law degree;

(2) competitive examination for admission to judicial traineeship (e.g. 2 written and 1 oral examination). Admission requirements: law degree and 1 year of experience in a juridical function during the last 3 years;

(3) oral evaluation-examination (commonly called “the third way”) (e.g. 3 oral examinations). Admission requirements: 20 years of experience as lawyer or 15 years as lawyer + 5 years as legal adviser/expert;

After approval by the General Assembly the programs are ratified by the Minister of Justice and published in the Belgian official journal (“Belgisch Staatsblad”/“Moniteur”).

Each NAC organizes the examinations and prepares the questions.

Initial Training

The judicial trainees and newly appointed magistrates are obliged to follow the initial training. See the Act of January 31, 2007 on judicial training and establishing the “Judicial Training Institute”.

All magistrates have the right to follow continuous trainings during 5 days/year. There are also trainings to prepare for future careers (e.g. a mandate).

The Judicial Training Institute (www.igo-ifj.be) is responsible for organizing and evaluating training for magistrates and other members of the judiciary (e.g. court clerks).

All training organized by the Institute must be consistent with the guidelines set out by the HCJ.

The definitive evaluation at the end of the traineeship is an information element received by the NAC about a candidate that passed the competitive examination.

After accomplishing the traineeship the trainee has to solicit a vacant position (published in the official journal). Sometimes he/she will have to compete with candidates who also succeeded in an examination and magistrates who want to move to another judicial function or change their job location.

Selection and appointment of magistrates for a vacancy

The Dutch and French-speaking Nomination and Appointment commission as well as the Joint Nomination and Appointment commission formulate proposals for appointment by the King.

After the announcement of the vacancy, the candidates have one month to submit their candidacy to the Ministry of Justice. The Ministry of Justice gathers all the advices (e.g. the president of the court where the candidate works, the president of the court where the vacancy exists and the bar for a vacancy at first instance level) concerning the candidates. The candidates' complete dossiers are then forwarded to the HCJ and the concerned NAC will organize a meeting to hear the candidates.

During this meeting the competent NAC decides which candidate will be proposed to the King for appointment:

- in a lifetime judicial position: judge of a first level court, labour court, commercial court, court of appeal, the court of cassation and prosecutor at a public prosecutor's office attached to one of the fore-mentioned courts.
- in a mandate of: first president of the court of cassation, first president of a court of appeal, president of a court of first instance, of a labour court, general prosecutor, chief prosecutor, etc.

The Constitution requires the NAC's to evaluate the respective capabilities and suitability of candidates, nominate candidates for appointment with a 2/3 majority vote (minimum 10 members must be present) and motivate the nomination.

The King is not obliged to appoint the nominated candidates and can refuse the requested appointment by a reasoned decision.

4.2 FRANCE

As regards selection, there are two main systems:

- 1) the recruitment through "*the Ecole nationale de la magistrature*" – NATIONAL SCHOOL OF THE MAGISTRACY", (hereinafter ENM);
- 2) external recruitment which foresees cases of temporary basis or permanent basis .

1) The recruitment through the ENM.

The ENM is responsible for the initial training and in-service training of all professional members of the judiciary, known as "*magistrats*".

According to article 16 of the Organic Law there are three kinds of examinations:

1) the first examination for candidates in possession of a four-year degree in law issued by a French or a European member country. The conditions for applying are: French nationality, possession of civil rights, good moral character and psychic conditions suitable to perform judicial activities.

2) The second examination is open to civil servants who have served at least four years in their offices. The general conditions are the same established for the "first examination" as above-mentioned.

3) The third competitive examination is open to candidates who, for eight years have been active professionally as elected members of local councils or as non-professional member of a court and that at that time, were not civil servants or members of the judiciary.

Furthermore, according to article 17 of the Organic law a cycle of courses "is opened for candidates that fulfill the conditions indicated in point 3) and that had been positively evaluated in a previous selection".

The three competitive examinations above-mentioned follow the same format, with a few exceptions, due to the specific features of the second and third system.

The first part of selection is based on written examinations on specific group of topics in a pre-established time. To each group specific coefficients are attributed. Candidates who pass the written examination can sit at the oral part of the examination.

The recent amendments to the examination have included a physiological test in addition to topics like social, legal, political and cultural aspects of the present world, civil law, criminal law, public and European law, administrative report on a legal problem.

Candidates are evaluated by an examination board composed by the following members: a judge of the Court of Cassation who presides the board, a member of the "*Conseil d'Etat*", four magistrates, a university professor, a lawyer, a psychologist, an expert on "recruitment" and one in topics different than those above-mentioned.

The examination board issues a report which contains information and data concerning statistical information on the number of candidates, the number of people who passed the selection, considering also the percentage of women and men, the kind of University degree held by the successful candidates, general remarks on the quality of the written and oral examination considering the specific topics.

Finally the board issues specific recommendations.

B) The external recruitment

Other systems for entering the judiciary are based on external recruitment on temporary or permanent basis.

Entering the judiciary on a temporary basis

The "systems" of entering the judiciary on temporary basis are:

1) Civil servants recruited through the Ecole nationale d'administration (ENA) and University professors may be seconded to the judiciary for a non-renewable limited period, after a selection performed by the "*commission d'avancement*" (see below for more information on this commission). The name of this procedure is "*détachement judiciaire* – judiciary secondment".

2) Candidates who have special requirement and high professional level may enter the Court of Cassation either as a judge or as a member of the "Parquet" (a body composed by the General Prosecutor, his deputy and eleven prosecutors of the Prosecutor's office attached to the Court of Cassation), for a limited term. In these cases candidates are appointed after a binding opinion ("*avis conforme*") of the CSM;

3) The third system of recruitment of judges on temporary basis is related to the "*magistrats temporaires*". They may be appointed as judges of first instance courts (TGIs) by the Ministry of Justice following an endorsement by CSM. They must be under 65 and be qualified by their experience and professional competence. The idea consists of recruiting persons with sufficient professional experience (such as court clerks, civil servants, barristers or members of other legal professions). They have to be vetted by the "*commission d'avancement*." It is considered a part-time occupation and they are allowed to perform private activities.

4) Members of the lower courts and of courts of appeal who have reached the retirement age may, if they wish, stay a longer period of three years, but not as president of the court or chief prosecutor.

5) Two statutes (issued on 26.2.2003 and in 2004) concern the "*juges de proximité*" who are part-time lower court judges. They are former members of the judiciary or of the legal professions, or people with at least 25 years' experience in the legal field. They are appointed for seven years, a non-renewable term, after vetting by the CSM and receive special training.

Entering the judiciary on permanent basis:

1) candidates fulfilling requirements relating to the length and nature of their professional experience (e.g. former court clerks or civil servants, etc) may be appointed after vetting by the "*commission d'avancement*", which has the power of veto.

2) candidates who fulfil specific requirements (regarding minimum and maximum age, University degrees and professional experience) and who sit for a series of written and oral examinations may be appointed in order to fill a pre-established number of vacancies ("*concours exceptionnel*")

Candidates who passed the examination receive adequate and specific training at the ENM.

Final appointment is subject to the vetting of the CSM

The ENM deals both with the initial and with the continuous training.

The government appoints the ENM's director who, so far, has been chosen among representatives of the judiciary

There are many links between the ENM and the judiciary: its directors have always been so far members of the judiciary; the majority of members of the board come from the judiciary and all permanent teachers and instructors are also members of the judiciary. In lower courts as well as in the court of appeal, one or two members, chosen by the ENM, are in charge of overseeing the training of the future judges during their internship, guiding and evaluating them.

Initial training. This kind of training is arranged along a time period of 135 weeks during which specific seminars and stages are organised: seminars of legal studies, stages at criminal, civil, juvenile and appeal Courts, stages with lawyers and at police offices.

Finally for students it is foreseen a stage devoted to acquiring ability and improve capacity with regard to their first judicial functions.

The scope is that they use and apply knowledge they acquired at the ENM during the seminars. For this reason they are involved in the practical daily work of the courts: they prepare civil or criminal cases, hear witnesses, have contacts with the police and the Gendarmerie, draft judgments and prepare hearings.

They are carefully evaluated by each seminar-leader or teacher and by the local judges and prosecutors at the Courts-office where they performed training.

Students take a final examination, called "*examen de classement*" – ranking examination, the result of which, combined with the outcome of the evaluations of the internship at the ENM, determines their position in the ranking list for their first assignment.

This final examination is evaluated by a panel appointed by the Ministry of Justice and composed by nine members: a judge of the Court of Cassation, a director of judicial services or coming from the Minister of Justice, a representatives of the "*Conseil d'Etat*", three magistrates, two professor of university and one lawyer.

This board is empowered to decide whether an "auditeur" has to stay one more year at the ENM or if he/she is unfit to enter the judiciary.

The panel may also make recommendations concerning the nature of the first assignment of the "auditeur" - students. After the choice of their first assignment students spend 4 months in the "*stage de pré-affectation*" – pre-destination stage, then they sit in the same position of their first assignment, but in a different court.

4.3 ITALY

In order to become a full time magistrate (judges or prosecutor), candidates have to pass a competitive public examination pursuant to article 106, paragraph 1, of the Constitution; the provisions regulating access to the Judiciary have been amended several times over recent years by the lawmaker, with the aim, on the one hand, to expedite the examination procedure and, on the other, to ensure that candidates have a better qualification.

Legislative Decree 398/97 has set up a post-graduate Schools for Legal Professions within the Universities; the graduates who have successfully attended the two-year course of the School get a diploma which is a requirement for the application to the examination for the appointment as judge or prosecutor.

The competitive public examination for the appointment as judge or prosecutor is regulated by Legislative Decree no. 160/2006, Chapter I, which sets forth the conditions for participating in the exam, the modalities for presenting the application, the composition and functions of the examining committee, the conduction of the written and oral exams and the modalities to be followed by the examiners.

As said candidates who have a law degree and the diploma issued by the above mentioned post-graduate Schools for Legal Professions are admitted to the examination. In addition, administrative and accounting magistrates, university professors, civil servants having a law degree and at least a five-year seniority, lawyers who have not been subjected to disciplinary sanctions, honorary

magistrates who have practiced the profession for at least six years and have not been evaluated unsatisfactory, and law graduates who have a PhD in legal matters are also admitted to the exam. The examination for the appointment as judge or prosecutor is made up of three written tasks (civil law, criminal law, administrative law) and an oral examination in several legal subjects (almost all the fields of the legal system and a foreign language).

Those who pass the mentioned examination have to undergo a training period of 18 months.

During the training stage the newly appointed magistrates cannot take any judicial action.

The training consists of theoretical courses and practical stages within the judicial offices. The theoretical courses are organized by the Superior School of the Judiciary, a newly body set up by the recent reform of the judicial system.

The recent reform stipulates that magistrates at the end of the initial training period cannot take the functions as prosecutor, criminal single judge, pre-trial investigation judge and preliminary hearing judge. These positions can be covered only by the magistrates who have positively overcome the first professional evaluation (after 4 years of judicial functions).

At the end of the training the CSM assesses whether the trained magistrates have the necessary professional skills for taking the judicial functions. In case of a favourable appraisal, a magistrate is conferred judicial functions by the C.S.M.. In case a negative assessment a new training period of one year is mandatory. A second negative appraisal results in the dismissal of the concerned magistrate from the judiciary.

4.4 SPAIN

The common system for the selection of judges and public prosecutors is a competitive examination. Candidates must have a degree in law. The examination is common to both judges and public prosecutors, although subsequent training and the profession itself are independent of each other. After passing the competitive examination candidates decide whether to become judges or prosecutors and the process of initial training and further appraisal for appointment is different depending on their choice.

There is also a secondary system established for one in every four vacant positions in the category of senior judge, which are reserved for legal professionals (with at least 10 years of professional experience) of renowned reputation or prestige. This procedure has two stages: presentation of the candidate's qualifications and a personal interview by a panel of experts appointed by the GCJ.

One in every five positions in the Spanish Supreme Court is covered by highly prestigious legal professionals (professors, advocates, prosecutors, etc.) with at least 15 years of professional experience through a competition based on qualifications. The decision on the appointment is made by the GCJ in a plenary session.

Candidates who have been selected through the competitive examination procedure receive their initial two years training at the Judicial School. The initial training comprises two phases: a theoretical one implemented at the seat of the Judicial School in Barcelona (one year) and an internship period of another year implemented at decentralised level (i.e. in courts all over the country) under the supervision of mentor judges. The process of initial training is subject to academic evaluation by the permanent trainers of the Judicial School and has a selective nature, in as far as candidates with very poor standards of performance could be excluded from appointment as junior judges.

Once the whole period of initial training is over, candidates are subject to a general evaluation which determines their final appointment as junior judges and their position in the rank of judges according to their seniority. The position in this rank plays a very important role in the subsequent professional career of Spanish judges, since most of the positions in the courts of the country (with the exception of leading positions as chairpersons of courts and positions in the Supreme Court) are assigned to applying judges on the basis of their seniority according to the official rank.

On the other hand, newly recruited judges are assigned after their official appointment to small courts in towns and cities all over Spain, where they sit alone and have jurisdiction, both in civil cases -as first instance judges- and in criminal cases -as investigating judges-.

After their official appointment as junior judges and their assignment to a court all Spanish judges enjoy tenure of office in the judiciary.

4.5 THE NETHERLANDS

SELECTION AND APPOINTMENT OF JUDGES AND PROSECUTORS

Because the Council is responsible for the quality of the courts and for the judiciary, personnel policies belong to its domain, but because the Crown (the executive upon proposal of the MoJ) has also competences in appointing judges, policies concerning recruitment, selection and judicial career are in effect considered as a joint responsibility of the MoJ, the Court and the Council.

Thus, formally, the MoJ is responsible for recruitment, selection and training of candidate judges, sets up the Committee for recruitment of members of the judiciary (commissie aantrekken leden rechterlijke macht) and the RAIO selection committee (judicial public servant in training) and appoints its members. The same persons are members of both committees. The committees operate autonomously. Members are judges (the chairman is a member of the Supreme Court), public prosecutors, professional lawyers and a few non-lawyers with managerial positions within the industry or the public sector.

As regards selection of the judges there are many systems for entering the judiciary.

1) law school graduate

After law school, a graduate may apply for becoming a 'judicial public servant in training' (raio). The recruitment and selection process follows 4 major steps, in which the number of candidates is gradually reduced.

Step 1: application for admission: candidates have to fill out a form, and send it to "the raio-selection committee" attesting the presence of the main requirements: a) to be a graduated at a law faculty, to be of Dutch nationality, to have personal qualities (analytical capabilities, juridical expertise, decisiveness, capacity in working adequately under pressure, good communicative skills, clear judgement) .

Step 2: tests and interview: The procedure of selection consists of a test on intelligence followed by an interview with the selection committee of those candidates that fulfilled established requirements.

Step 3: Assessment and selection interview: the candidates admitted by the selection committee, have to go through a psychological assessment and another interview with the raio-selection committee. Access is granted according to the test results and according to the number of vacancies. The tests are designed to select the most talented candidates.

Step 4: Six years of courses and training on the job: after admission to the training, candidates will be assigned to a court for training. The training consists of courses and training on the job, under supervision of a 'mentor', who is usually an experienced judge or public prosecutor.

The training period for selected law school graduates is 6 years. Their scheme of basic training consists of attending specific courses divided in four different internships. After 38 months of basic training **candidates have to choose either for a career as a judge or as public prosecutor**, then they have to follow an in-depth training of 10 months and a two year period of an internship outside judicial organisation or in a juridical function in a business company.

Step 5: for candidate judges: application for appointment at a specific court: after the sixth year of courses, candidates have to apply for a judicial job. The final part is an interview with judges from the court that has vacancies, this may be the court where a candidate had been trained before, but not necessarily so. By means of this interview Courts want to be sure that a candidate fits into their organisation.

Step 5/A: for candidate public prosecutors

The fifth step is different for public prosecutors: they have to discuss their preferences for assignment to a district prosecutions-office with the Public prosecutions service placement committee. They may seek a positive advice to the committee from a Chief Public Prosecutor, a committee of the Public Prosecutions Service . It functions under responsibility of the Board of Procurators-General, and is composed by Chief Public Prosecutor's and occasionally a member of the Board.

2) Selection of experienced lawyers as candidate-judges or prosecutors

Experienced lawyers may also apply for recruitment as a judge or as a public prosecutor. They must fulfil the formal obligations of having a law school degree/diploma, have reached at least the age of 31 and 6 years of working experience as a professional lawyer (advocate, public servant, business employee).

Different procedures have been established for a) candidate judges and b) candidate public prosecutors.

a) Candidate judges

Step 1: application: the procedure consists of filling out an information form.

Step 2: pre-selection: a pre-selection for deciding if an applicant is (formally) admissible.

Step 3: selection: if a candidate is accepted for the selection procedure, he/she is submitted to a psychological examination and three interviews with three different couples of members of “the recruitment and selection committee”.

Step 4: finding entry into a court: after the selection procedure, the candidate judge, after having found availability of a court for starting his/her professional training as judge, is appointed as a deputy-judge for one day a week.

Step 5: part-time training on the job until the candidate qualifies: after that, candidate has to follow a period of professional training, under the guidance and judgment of an experienced judge who implement his/her activity as a tutor.

The training is usually directed at learning how to conduct hearings at court and at drawing up judgments. After completing this phase, depending on the experience and knowledge of the candidate, deputy-judge attends a number of law courses at the judicial training-centre. The training programs still differ from court to court. Finally, if the trainer is satisfied with the results of the implemented training, candidate may apply for a judicial position.

Evaluation drawn up by the trainer with reference to the result of his-her attendance to training courses is relevant for the candidate: sometimes candidates take two or three years before passing qualification. If their tutor are satisfied, they can demand of handling cases in courts and writing judgments. They may get a positive advice from their court and be appointed as a full time judge.

b) Candidates public prosecutors

Step 1: application: experienced lawyers have send their CV to the Public Prosecutions' Departments' recruitment and selection committee (Selectiecommissie OM). This selection committee consists of public prosecutors of different ranks.

Step 2: primary selection: a primary selection takes place. The primary selection is oriented only towards formal requirements to become a public prosecutor.

Step 3: selection: candidates who pass the primary phase are assessed psychologically and after that they have three interviews with different pairs of members of the selection committee. The selection procedure is oriented on specific competences (problem-analyses, juridical judgment and opinion, social consciousness, decisiveness).

Different interviews are about the CV and background of the candidates, juridical insight and opinion and on their functioning in an organization.

Step 4: training on the job and evaluation: once selected, candidate public prosecutors are appointed to a public prosecutor's office as a full time deputy public prosecutor for one year. This implies a paid job on a temporary basis. In that year they have to follow special courses at the judicial training centre and a tutor (an experienced public prosecutor) teach them in doing everyday public prosecutors' work. For experienced lawyers working in a temporary position as a deputy public prosecutor, evaluation after one or two years is decisive. If the evaluation is positive, they are appointed as a public prosecutor on the advice of the Chief public prosecutor.

Career possibility for office staff at the Public Prosecutor's Offices.

A third possibility to become a public prosecutor exists for office staff members at the Public Prosecutor's Offices. They can apply for a function as a public prosecutor for cases of competence of single-judge courts.

They should have an experience for at least four years as juridical clerk and send a letter and their CV to the selection committee. After passing the psychological assessment and with a positive advice of their Chief Public Prosecutor, they can be appointed by the Crown.

APPOINTMENT OF JUDGES AND PROSECUTORS

A) Appointment of judges

The management board of the court where there is a vacancy prepares a list of three candidates for their appointment, then the board can ask advices from the Courts' assembly which is composed of all judges of a court.

The management bodies sends a list of candidates to the Council of the Judiciary which presents this list to the government for their appointment.

As regards Dutch Supreme Court members (Hoge Raad) they are appointed by Crown according to a list prepared by the Lower House of Parliament (Tweede Kamer) following a list of six candidates presented to them by the Supreme Court (Constitution art. 118, section1).

b) Appointment of public prosecutors

After the selection process, the College of Procurators-General sends the list of selected persons to the MoJ. The Minister of Justice propose their appointment to the cabinet, generally the selected persons are appointed almost automatically.

Before that phase, selected candidates have an interview with the Placement Committee and with the Chief public prosecutor of the district where they want to be appointed. However this does not apply for Chief public prosecutors and Chief Advocates General. They are appointed by the Crown upon recommendation of the Board of Procurators General and advice of the MoJ.

With reference to judges as already underlined, after the sixth year of course a candidate has to apply for a judicial job to a court. The final part of selection consists of an interview with judges of a court which published a vacancy. By means of this occasion the Court wants to be sure that the candidate fits into their organisation.

In this sense it can be stated an evaluation process is made with the perspective to fill specific vacancies.

As regards prosecutors, after the selection process the selected candidates have "to talk" with the Placement Committee and with the Chief public prosecutor of the district where they want to be appointed. In this sense these bodies evaluate the main profiles of selected candidates in order to appoint them taking into account their main qualifications.

4.6 AUSTRIA

The Ministry of Justice decides that there are vacant positions of judges or prosecutors and distributes them to the individual courts or offices of public prosecution according to an Austrian-wide plan of posts. The presidents of the *Oberlandesgerichte* (Superior regional courts– there are four of them in Austria, namely Innsbruck, Graz, Linz and Vienna) or the heads of the correspondent *Oberstaatsanwaltschaften* (General Senior Prosecutors' services) publish the announcement for the position. Anybody who has the necessary qualifications can apply for the position. There are special senates at the courts and special personnel commissions at the general senior offices of public prosecution that evaluate the candidates and propose the possible appointees to the Federal Ministry of Justice. The final decision is taken by the Minister of Justice who in the end appoints the future judge or public prosecutor. Very often the Minister of Justice follows the proposals of the senates or commissions but under certain circumstances he/she has the right to appoint someone else.

The personnel senates at the courts are established especially for questions regarding personnel matters (evaluation, selection and appointment,...). Their role is basically the same as that of the personnel commissions of the offices of public prosecution. Personnel senates have to be established in all courts with the exception of district courts. The president of the court and one vice-president of the court have to be members. The other members are elected by all the judges of the court and the district courts belonging to it from among all judges of the court who have been

appointed since at least one year. Normally three judges are elected, however, if there are more than 100 judges at one court, five judges are elected to the personnel senate.

At the superior regional courts and the Supreme Court a second type of senate has to be established besides the personnel senate. It is called the "exterior senate". This exterior senate also consists of the president and one vice-president and elected members. At the superior regional courts three judges are elected, at the Supreme Court five judges are elected. The members are elected by all the members of the personnel senates belonging to the particular superior regional court for the exterior senate of the superior regional court or by the members of the personnel senates of the superior courts for the exterior senate of the Supreme Court from among all judges appointed for more than one year.

Most of the training takes place before the actual appointment. The initial stage of the career is a "trainee internship" in the judicial system called as "*Rechtspraktikant*". Every person completing their law degree has the right to serve for 9 months as trainee in the judicial system. During this time he/she is assigned to various judges or public prosecutors who supervise the practical training. In addition there are several courses and seminars in order to improve the theoretical knowledge of the trainees. Each judge or public prosecutor, to whom the trainee is assigned, has to fill in a standardized evaluation form. This form contains an evaluation of the knowledge and the practical application of this knowledge as well as of the social skills of the trainee.

If there are posts available for candidate judges ("*Richteramtsanwärter*") they are assigned to the different *Oberlandesgerichtssprengel* (area of jurisdiction of the Superior Regional Courts) by the Federal Ministry of Justice. Each *Oberlandesgericht* organizes the selection procedure according to its own discretion. There are no uniform rules according to which criteria the trainees are allowed to participate. In Innsbruck for instance it is necessary to have completed a minimum of eight months of practice in the judicial system. The selection procedure in general consists of a written exam, a hearing before a panel of judges and a psychological evaluation. After this procedure a list of suggestions for the posts of candidate judges is proposed to the Minister of Justice, who appoints them.

After their appointment, the candidate judges serve for a period of a total of four years (including the time as trainees) at the various courts and offices of public prosecution. They also have to do an internship of a minimum of five months with a lawyer's office, three weeks practicing at penitentiary institutions and two weeks at an institution for victim's rights. During this period of training they have to attend several courses and seminars and there is the possibility of voluntarily attending (depending on the places available) in general all of the seminars and courses for judges and public prosecutors. They are assigned to various judges or prosecutors for periods of three months and individually trained by those judges or prosecutors. They are given different practical tasks and they are supposed to learn everything the judge or prosecutor does. At the end of each period the judge or prosecutor evaluates the candidate judge with the same standardized form as for trainees. All the evaluations are collected in the personnel file of the candidate judge.

At the end of this training period they take the final exam which is the same for future judges and public prosecutors and after that they can apply for positions as judges and public prosecutors. As soon as they are appointed they have to fulfill the same tasks as any judge or prosecutor according to the individual position. After the appointment they are "full" judges or prosecutors in their own departments.

The evaluations the applicants for posts of candidate judges receive during their initial internship are used in order to decide whether they are suitable for being appointed as candidate judges. Also the evaluations the candidate judges get during their four years of training are used for the decision of whether they are appointed as judge or prosecutor. For all proposals of appointees the candidates have to be arranged according to their qualification. Those with the best evaluations and best results in the final exam are listed first in the proposal. The definite appointment to a certain position does however not mainly depend on the qualification but on the seniority of the applicants. There are no fixed rules although usually the applicants with more seniority are considered more qualified. The evaluation/description of the particular judge or prosecutor is however taken into consideration. Basically, it is a discretionary decision.

After the appointment as judge or public prosecutor there is neither a probation period nor any restriction on the type of position a newly appointed judge can assume. In general however, there

are more senior applicants for “higher” positions so that the newly appointed judges or public prosecutors get positions at district courts or courts of first instance.

4.7 GERMANY – BAVARIA

The Human Resources department of the Ministry of Justice decides autonomously on the recruiting of judges and public prosecutors. No independent Council is involved in the recruiting of young professionals.

The formal precondition to get the position of a judge or a public prosecutor is the successful passing of the First and Second State Examination in Law. A superb result in the Second State Examination in law and the rating compared to other competitors are the crucial points for the appointment as judge or public prosecutor. The higher the grade/mark is the more probable is for the candidate to fill a vacancy as judge or prosecutor. An officer of the personnel department of the Ministry of Justice conducts an interview with the candidate. The result of his/her impression is also important for the decision.

After the successful degree of the First State Examination in Law, the young professionals can work in a kind of internship training program which includes the judiciary, public administrations and legal practice in law firms. When having successfully passed the Second State Examination, the graduated can submit their application for the position of a public prosecutor or a judge. The decision for the appointment is prepared by the personnel department of the Ministry of Justice. The Minister of Justice is responsible for the final decision on the appointment.

Occupation as public prosecutor or judge

During the first three months of their occupation the newly recruited public prosecutors get in their office on-the-job training. They have to deal with the same number of cases like their experienced colleagues, but they are trained by these colleagues and the result of their work is scrutinized by the head of the department. In addition to that they take part in two advanced training courses - each lasting one week - in the first year of their occupation.

Young judges also have to participate at advanced training courses for two weeks during the first year. Contrary to public prosecutors they are independent in their decisions from the first day because of the principle of judicial independence.

Judges and public prosecutors have to pass a probation period of three years after their appointment. Usually after 15 months and then after two years and 6 months they are evaluated to show whether they are qualified for the job. If the result is positive they get an appointment for life, otherwise they would be dismissed.

Responsible for the professional evaluation is the head of the office in which the public prosecutor or the judge is working. More specifically:

- the Chief Public Prosecutor evaluates the prosecutors working in his/her prosecution office. The General Prosecutor evaluates the prosecutors working in his/her General prosecution office;
- the President of the regional court is responsible for the professional evaluation of the judges of his/her court and for the judges sitting in the “magistrate courts”, which are situated in the judicial district of the regional court. The President of the High Regional Court is competent for the evaluation of the judges of his/her court.

The specialty in Bavaria is that usually the young professionals start their career as public prosecutors. After a period of some years they move to the courts and become judges. In the following years they have also the opportunity to work as judge or to apply again for a vacant position at the public prosecutors’ office. In other German federal states it is not possible to move between the position of a public prosecutor or judge.

The two evaluations during the probation period are the only means of selection. In the second evaluation the person carrying out the evaluation has also to comment for which career the young professional is best qualified, for example as a judge at a magistrate or a regional court.

5. THE EVALUATION OF IN-SERVICE JUDGES/PROSECUTORS

5.1 THE MAIN NORMATIVE SOURCES

5.1.1 BELGIUM

Magistrates are subject to an evaluation system as established by Article 151, § 6 of the Constitution.

The Law dated 22.12.1998 introduced in the Judicial Code a chapter about the periodic evaluation of magistrates and the evaluation of adjunct and specific mandates. It may be considered a novelty (no legal provisions existed previously in this sector). In 2006 a system for the evaluation of mandates of court chiefs and chief prosecutors was added (Law 18.12.2006; Royal Decree 09.5.2008 concerns the evaluation criteria).

5.1.2 FRANCE

The main sources of evaluation are the following:

- 1) Ordinance n° 58-1270, 22 December 1958, about organic law relating to the “*Statut de la Magistrature* - Statute of the magistracy”
- 2) Decree n° 93-21, 7 January 1993, application of ordinance 22 December 1958;
- 3) Decree n° 94-314, 20 April 1994 (J.O. 23 April 1994);
- 4) Organic law n° 2001-539, 25 June 2001, relating to the “*Statut des magistrates* – Statute of the magistrates and CSM” (J.O., 26 June 2001);
- 5) Decree n° 2001-1380, 31 December 2001, who modifies the decree n° 93-21, 7 January 1993.

5.1.3 ITALY

The main normative provisions are contained in:

- 1) the reform of the judicial system done by the Legislative Decree no. 160/2006, as amended by Law no. 111/2007;
- 2) The C.S.M.’s deliberation no. 20691 issued on 4 October 2007, which 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.
- 3) Another important regulation is the CSM’s deliberation on the transfer of the head offices (P-13000 Circular, 8 July 1999, as amended on 7 March 2001 and 22 June 2005)

5.1.4 SPAIN

The current evaluation system is based on the provisions of the Act on Judicial salaries currently in force (Act n° 15/2003, of 26th May) and on secondary legislation (Regulation n° 2/2003 of the GCJ, partially annulled by the judgment of the Administrative Division of the Spanish Supreme Court of the 3rd May 2006). The system has also been endorsed by several decisions of the plenary session of the GCJ (decisions of 31st May 2000, 9th October 2003, 8th February 2006, 21st February 2006 and 24th June 2006).

5.1.5 THE NETHERLANDS

- Constitution of the Kingdom of the Netherlands
- Court Sectors (funding) decree on 28.1.2005
- Judicial organisation Act as amended on 1-1-2002.

5.1.6 AUSTRIA

For judges and prosecutors the relevant sources of law is the “*Bundesgesetz über das Dienstverhältnis der Richterinnen und Richter, Staatsanwältinnen und Staatsanwälte und Richteramtsanwärterinnen und Richteramtsanwärter*“ (*Richter- und Staatsanwaltschaftsdienstgesetz – RStDG*), which was published originally in the Federal Law Gazette N° 305/1961 and subsequently amended. The title could be translated as „Judges and Prosecutors Act“. The most relevant provisions are sections 51, 53, 54 and 203.

5.1.7 GERMANY – BAVARIA

The two main law on the subject are:

- German law on judges (*Deutsches Richtergesetz*), adopted on 8. September 1961 by the German Parliament, in its current version of 5 February 2009; paragraph 26
- Bavarian law on judges (*Bayerisches Richtergesetz*), adopted by the Bavarian Parliament on 11. January 1977, in its current version of 29.7.2008

5.2 THE OUTLINE OF THE EVALUATION SYSTEMS

5.2.1 BELGIUM

Evaluations of active magistrates are written and reasoned. In order to respect the independence of magistrates, the evaluations of judges and prosecutors don't involve the content of judicial decisions.

A) Periodic evaluations: judges and prosecutors are subject to periodic evaluation. It concerns the evaluation of the way they executed their function to the exclusion of the content of judicial decisions. The first evaluation is held one year after the first appointment and then every three years.

The grades and final overall grades are: 'very good', 'good', 'sufficient' and 'insufficient'.

"Insufficient" brings about a reduction of the magistrate's salary.

The evaluation details (e.g. reasons of the evaluation) remain internal to the judiciary. Only the final mark is sent to the ministry of Justice.

B) Evaluation of adjunct mandates (e.g. vice president of a court) and specific mandates (e.g. juvenile judge)

The evaluation takes place at the end of the mandate.

C) Evaluation of mandates of general prosecutors and chief prosecutors

The evaluations take place before the expiry of their first mandate. These evaluations concern the way they executed their function as well as their management capacities (particularly human resources management and initiatives taken to decrease judicial backlog).

The evaluation of mandates applies only to general prosecutors and chief prosecutors because the constitutional court annulled the law insofar it applies to court chiefs (first president/president of a court).

The concerned NAC receives the evaluation and decides if the chief prosecutor may be prolonged or not at the same office.

5.2.2 FRANCE

Periodic evaluation is mandatory with the exception of the Presidents of Courts of Appeal, chiefs prosecutors attached to courts of appeal and members of the Court of cassation.

The periodic evaluation takes place every two years.

According to a case-law of the Conseil d'Etat, other evaluations may take place before the two years, if justified by particular circumstances related to the professional activity of judges and prosecutors.

According to article 19 of the decree n. 93-21 dated 7.1.1993 the authorities with the final competence in the periodic evaluation procedure are:

- the first president of the court of appeal for the judges;
- the general prosecutor of the prosecutors' office attached to the court of appeal for the prosecutors.

With reference to the "*conseillers référendaires*", "*auditeurs*" and "*avocats généraux référendaires*" of the Court of Cassation the competent authorities are respectively the first president of the Court of Cassation (for the judges) and the General Prosecutor at the prosecutors' office attached to that Court for the prosecutors.

A relevant role is also played by the "*Commission d'avancement*" (see below for further details) as regards the evaluation in occasion of promotion.

The evaluation procedure is always preceded by a personal hearing of the concerned magistrate. The evaluation form contains a description of his/her professional activity and is accompanied by observations of other judges (in the fiche used for performing evaluation there is a devoted part). Every element relating to the evaluation must be communicated in advance to the evaluated judge or prosecutor.

Moreover the evaluation report may also contain the indications of the trainings the concerned magistrate should attend.

The whole set of documents is shown to the evaluated magistrate, then sent to the Ministry of Justice and included into personal file.

The French Judiciary is composed of three **career** levels:

- grade 2: the initial grade;
- grade 1: to have access to grade 1, judges and prosecutors have to be mentioned in the promotion list drawn up by the "*commission d'avancement*", a committee in charge of promotion within the judiciary (for data related to this commission see below).
- top level grade (*hors hiérarchie*): sitting judges of Court of cassation, Heads of Courts of appeal, presidents of Courts' chambers and *avocats généraux* in these courts; presidents and higher ranking member of Paris TGIs; Heads of the 21 TGIs.

Access to top level is decided by the CSM.

The professional evaluation of judges and prosecutors is relevant for their career development considering that the result of the performed periodic evaluation is taken into account both in case of designation to specific functions and in case of their promotion. As a matter of fact the content of the performed evaluation in the part related to "general evaluations" contains a devoted section concerning the specific capacity of the evaluated judge/prosecutor for performing specific functions ("*appréciation générale; les fonctions auxquelles le magistrat est apte*").

Therefore, the periodic evaluation is the main element at disposal of the CSM in order to evaluate specific aptitudes and capacity of a magistrate in performing specific activities.

Furthermore, as regards their promotion, the *commission d'avancement* in evaluating candidates for their promotion, can require the body that had performed evaluation of the candidate to provide information concerning the content of documents contained in the personal file of the magistrate.

The acquired data and observations of the periodic evaluation are inserted in the personal file.

5.2.3 ITALY

Career advancement is the same for judges and prosecutors.

The reform of the judicial system by Legislative Decree no. 160/2006, as amended by Law no. 111/2007, contemplates that all magistrates have to be evaluated every four years, until they overcome the seventh professional appraisal.

The positive evaluation is indispensable for economic progressions and is a condition for the application to leading positions in the judiciary and for the application to vacant seats in courts of appeals, court of cassation and the attached prosecutors' offices.

Independence, impartiality and balance are considered indispensable pre-conditions for a proper exercise of the judicial functions. These qualities may only be graded as positive or not positive.

The main indicators of the professional evaluation of the magistrates are:

- ✓ professional capacity,
- ✓ laboriousness,
- ✓ diligence,
- ✓ commitment.

5.2.4 SPAIN

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. The qualitative aspect of professional performance of Spanish judges is assessed by the relevant Committees of the GCJ when appointing chairpersons of the respective courts and justices of the Supreme Court, since the GCJ should make this appointment on the basis of merits and professional qualification of the candidates. However, the GCJ keeps a discretionary power concerning these appointments and has some discretion as to how to assess the merits and professional qualification of judges who apply for positions as chairpersons of courts and justices of the Supreme Court.

Professional evaluation of judges is also taken into account in order to fix the amount of judicial salaries, under the act on judicial salaries currently in force. On the other hand performance evaluation could also be helpful in order to make decisions concerning disciplinary liability of Spanish judges by the relevant Committees of the GCJ.

5.2.5 THE NETHERLANDS

Evaluation of judges and prosecutors

The ways of evaluating judges and public prosecutors is different.

1) Evaluation of judges

Article 46a of the law called *Wet Rechtspositie rechterlijke ambtenaren* states that the functional authority (= the court board) devotes its attention to the manner in which the judge working within its jurisdiction exercises his/her function by means of evaluation interviews.

Further to this article, the courts boards have committed themselves to hold an evaluation interview with each judge once a year. There are no specific criteria at the national level as to the content of these interviews. Each court is in principle free in how it organizes the evaluation interviews. However, the profiles for the different positions within the judiciary may serve as a benchmark during these interviews.

The evaluation of individual judges can be based on the following elements:

Comparative statistical data by sector of activity is often used in the evaluation of (the output of) individual judges (i.e. the number of judgements/injunctions/decrees/etc issued by the judge being evaluated can be compared to the average output per judge of the sector within which (s)he works).

Within the civil sector, individual judges/justices often commit themselves to write a minimum amount of judgments within a given period of time. When evaluating the output of an individual judge, the team leader or presiding judge can compare the output of the judge in question with the average output per judge within the evaluated judge's sector. The figures on the individual judge's output are laid down in a report, which goes to the sector head and to the president of the court. The data on the output per judge/justice is often divulged within the team, so that every judge can see where (s)he (and his or her colleagues) stand(s). Furthermore, lists of issued decisions/judgments and lists of adjourned cases are frequently divulged within the sector.

In practice, the managing vice-president of the chamber in which the judge in question works will take care of collecting the materials needed to evaluate that judge's performance. The Council for the Judiciary does not play any role in the collection of materials needed to evaluate the performance of individual judges.

When evaluating the performance of an individual judge/justice, consideration is given to his/her participation in hearings and/or the manner in which (s)he fulfils his/her functions as team leader or examining judge. Generally, all activities are taken into account when evaluating the performance of an individual judge.

In appraising the outcome of the professional activities carried out by individual judges, no consideration is given to the merit of judicial orders in relation to the specific content of the ruling and to the outcome on subsequent levels of judgement.

Judges do not have to pass examinations once they are appointed as judges nor is their salary dependent of the outcome of the evaluation.

Regarding the same point it is worthy mentioning the following information regarding the evaluation of judges in The Netherlands, provided within the working group of the European Network of the Council for the judiciary (ENCJ) during the meeting held on 28.3.2007 in Rome. In order to evaluate the efficiency of the performed activities of judges, statistical and comparative data are considered to assess the single judge (in terms of number of decisions issued by him and comparing that data with the medium level of activities performed by other judges in same sectors). Thus, during the evaluation process the head of the commission compares the level of professional activities performed by the concerned judge with the medium level of the professional activities performed by his colleagues in similar sectors. The outcome of this evaluation is included in a report which is sent to the head of the sector and to the Chief of Court. In order to make aware each judge of the results of the evaluation of their colleagues and with the purpose to give to each judge opportunity to verify their own professional level and condition (comparing their professional data with those of their colleague) the results of evaluations of judges are distributed among judges of the same court.

The Council every four months distributes data concerning a “medium level” of professional productivity relating to each sector and each Court. These data are relevant considering that they represent useful indicators in order to have an average of productivity in terms of professional efficiency. Heads of sectors of courts use these data in order to verify efficiency of their court in comparison with data of other sectors or sectors of other courts.

Furthermore in the Netherlands the so-called system of ‘intervision’ (or peer review or mutual coaching) is another tool used for the evaluation of the judges performances.

The idea is that periodically a colleague, chosen at random within the same section, observes the hearing of a colleague (or a panel), providing a feedback on the colleague’s professional quality performance (participation in the hearings, his/her communication skills) and giving the results of his observation. Another colleague can perform same activity with regard to judgments.

According to this system is essential that evaluation takes place amongst equals and its scope consist of helping each other to improve functioning without mentioning qualifications (good or bad).

According to evaluations made by the working group held on 28.3.2007 in Rome within the activities performed by the ENCJs, this special system is considered as “a scientific” means for evaluation judges.

The Council pursues a policy that all courts support this way of ‘keeping professionals on track’ involving in its implementation in particular the management boards of each court: they should stimulate and facilitate activities of ‘mutual coaching’ on a regular basis.

Mutual coaching takes time and skill: therefore opportunities are offered to judges to learn this ability, especially in cases of appointment of judges as vice president or for managerial functions assessments of capacity and skills takes place; access to management training is granted only under condition of a positive outcome of an evaluation.

Most of courts are familiar with the EFQM-model. This is a managerial model for organization development. It is to be combined with a system for measuring the quality of how judges function at court level.

This model takes into consideration the following factors:

- Impartiality and integrity of judges
- Rapidity and timeliness per sector, as far as judges are capable of influencing
- Legal unity (of jurisprudence by a court)
- Expertise
- Treatment of the cases of clients and professionals by judges

These factors are made operable by formulating standards and designing measurement instruments.

Evaluation of Public Prosecutors Offices and public prosecutors

The Public Prosecutions Offices at the district courts and appeal level apply the EFQM management model. With the aid of the 'Prisma' audit office of the MoJ they analyze their organizational position regarding leadership, personnel and personnel-policies, resources, strategy, policy, customer focus, societal appreciation, results, improving from periodical surveys and measurements.

The outcomes of these procedures have consequences for the personnel policies: human resources are considered as a crucial factor in the success or failure of the public prosecutions department and the Public prosecutor's offices.

Public prosecutors every year have talks about their functioning and every three year career with their superior prognoses talks, fundamental for their promotion (see below).

CAREER DECISION FOR JUDGES AND PROSECUTORS

Career decisions for judges and public prosecutors have been laid down in a different manner.

Career-decisions for judges.

Judges are appointed for life. Formally, career decisions are not related to performance measurement of individual judges. There are several ranks for members of the judiciary.

- At the court of first level: judge, vice president, coordinating vice president (sector chair), vice-president senior (judicial function, held by the same person as the president), president.

- At the appeal court level: councillor-judge, vice president, coordinating vice-president (sector chair), vice-president senior (judicial function, office held by the same person as the president), president.

As already stated the Crown appoints judges. Therefore in order to be appointed to a higher level, candidates have to apply for a function if a vacancy exists.

The procedure formally is the same of judges' appointment: the management board of a court draws a list of three persons and sends it to the Council of the Judiciary. The Council sends the list to the Minister of Justice.

Currently, following the newly developed personnel policies special competency profiles are being developed for the managerial functions. Judges with career aspirations follow management courses, organized and financed by the Council of the Judiciary (mockingly called: 'the Councils' Class').

Career decisions for public prosecutors

Public prosecutors are judicial public servants, but they are not appointed for life and their functions are organised in a typical bureaucratic hierarchy.

The general policy of the Board of Procurators General is that career decisions are based on merit. Within the Public Prosecutions service there are the following ranks at the level of the district-public prosecutions offices: Public prosecutor for single judge-court cases, substitute public prosecutor, public prosecutor, public prosecutor first class, functioning chief public prosecutor, chief public prosecutor

At the level of the "resort", the ranks are: resort-advocate general, substitute chief advocate general Chief advocate general.

The Crown, on the recommendation of the chief-public-prosecutor takes career decisions in the ranks of public prosecutor for single judge-court cases, substitute public prosecutor and public prosecutor.

Prosecutors at a single-judge-court public who apply for higher positions have to follow the same assessment procedure established for being appointed as public prosecutor at a three-judge-court.

As consequence the position of public prosecutor for single judge-court cases can be considered both as the final career stage for elder juridical clerks in a Public prosecutor's office and the starting point of a career in the ranks of public prosecutors for talented law clerks with at least 4 years experience.

For other higher ranks, the policy of the Board of Procurators General is that candidates have passed the so called “career prognoses talks” with their chief public prosecutor or chief advocate general. These managing prosecutors are assisted by a management development advisor from the public prosecutions service in order to assess their professional capabilities.

As regards functions of Chief Public Prosecutor and of Chief Advocate General, they are appointed by the Crown upon proposal of the Board of Procurators General and advice of the MoJ . Generally the Minister of Justice has an interview with the proposed candidates before advising appointment by the cabinet.

5.2.6 AUSTRIA

For public prosecutors there is a form for the professional evaluation / description. Public prosecutors - with the exception of the first deputy-heads of the senior offices of public prosecution and the heads of the offices of public prosecution - have to be evaluated for the second calendar year following their appointment. If the total evaluation is not at least “very good” the public prosecutor also has to be evaluated for the following year. The head of the senior office of public prosecution or the head of the office of public prosecution can apply for a new evaluation of a public prosecutor if there are reasons to believe that the last evaluation does not apply anymore. A public prosecutor can apply for a new evaluation if he/she is of the opinion that the last evaluation does not apply anymore.

The principles for the evaluation/description of judges are the same as for the description of public prosecutors as they are based on the same source of law. The difference is that judges are evaluated by the personnel senate and prosecutors by the personnel commission. The **general** criteria mentioned are the same as they are explicitly mentioned in the law. The **specific** criteria are different because there is a different form for the evaluation of judges.

The procedure for appointing judges is quite similar to that of appointing prosecutors. In Austria it is possible for judges to apply for positions as public prosecutors and vice versa because the training and career advancement are similar.

5.2.7 GERMANY – BAVARIA

1. Probation period

This time normally takes three years. Usually after 15 months and after two years and six months judges and public prosecutors are to be evaluated.

2. Period of lifetime appointment

Until the age of 55, judges and public prosecutors are to be evaluated every four years (so called “periodical evaluation”).

5.3 THE QUALIFICATIONS GIVEN BY THE EVALUATORS

5.3.1 BELGIUM

The final results of the evaluations are expressed with the following grades:

- Periodic evaluation: 'very good', 'good', 'sufficient' and 'insufficient'
- Evaluation of mandates: 'good' and 'insufficient'

5.3.2 FRANCE

Evaluation is composed by a general assessment (“*appreciation generals*”) based on the grade of “exceptional”, “excellent”, “very good”, “sufficient” and “insufficient” attributed with regard to the specific indicators established by the system of professional evaluation.

5.3.3 ITALY

The C.S.M. expresses a favourable professional appraisal when the assessed magistrate is given a positive qualification on each of the above four mentioned parameters. In that case, the magistrate gets the professional appraisal corresponding to his seniority.

There is just one passing grade: positive.

A "not positive" appraisal is expressed when there are **shortcomings in respect of one or more of the above parameters.**

A "negative" evaluation is expressed when there are **serious shortcomings in respect of one or more of the above parameters.**

In other words the non positive or negative appraisal of just one parameter of evaluation impedes the career development.

The law provides for specific consequences, both professional and economic, as a result of a "not positive" or "negative" appraisal; in particular, the law provides for a magistrate to be released from service in case of a double **negative** appraisal as is explained below.

5.3.4 SPAIN

The system does not contemplate grades or marks, since it only contemplates the percentage of accomplishment of a predetermined standard/target regarding the number of judgments/decisions.

5.3.5 THE NETHERLANDS

The system does not foresee grades or marks for the evaluation considering that the individual evaluation is strictly functional to the evaluation of efficiency and fairness of the entire system.

5.3.6 AUSTRIA

Public Prosecutors and judges are given the following grades: excellent, very good, good, satisfactory, not satisfactory.

5.3.7 GERMANY/BAVARIA

A point-system based evaluation is adopted in a scale which ranges from 1 to 16. The point-system evaluation is correlated to five qualification levels as follows:

1 to 2 points	below average	(unsatisfactory)
3 to 6 points	average	(satisfying)
7 to 10 points	above average	(good)
11 to 14 points	considerable above average	(very good)
15 to 16 points	excellent	(excellent)

5.4 THE PARAMETERS / CRITERIA / INDICATORS OF THE EVALUATION

5.4.1 BELGIUM

The evaluation criteria are the following:

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 prosecutors (i.e. general prosecutor, federal prosecutor, other chief prosecutor, including 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.

5.4.2 FRANCE

There are four parameters for assessing judges and prosecutors :

1) General professional ability

I) Capacity to decide: it consists of settling disputes, adopting adequate decisions and measures and deciding proceedings in a reasonable time;

II) Capacity to listen and exchange views with others: it consists of the capacity to pay attention and respect towards cases submitted to the court/prosecution office.

III) Capacity to adapt to new situations: it is based on the capacity of the magistrate in adapting to changes of his/her office, relevant transformations of his/her work, legislative and procedural evolutions, new technologies and unexpected situations.

2) Legal and technical skills

I) Capacity to use his/her own knowledge: it regards ability of analysing and assessing facts and finding solutions applying in a proper way the legal rules ;

II) Aptitude for leading hearings: it concerns capacity to speak in public clearly and easily, to explain the different points of the view, to conduct the debate or to intervene in a pertinent way;

III) Aptitude for managing meetings: this indicator regards the activities exercised within the central administration

IV) Aptitude for elaborating instructions: this indicator regards the ability of judges and prosecutors to work out and update clear session fiches in order to ensure the other magistrates of the panel can get a precise knowledge of the case.

3) Organisational skills

I) Capacity to conduct specific actions or to strength a service or an office: ability to take initiatives, make new proposals and obtain the approval of the colleagues;

II) Capacity to plan objectives and organise human and material resources: this indicator regards magistrates who exercise administrative functions.

4) Professional engagement

I) Working capacity and efficiency: ability to solve the assigned cases taking into account aspects related to quantity and quality ;

II) Updating and improvement of legal culture: this indicator concerns the activity carried out by the magistrate with regard his/her attendance to training in order to improve his/her professional knowledge and his/her method of work.

III) Professional relations with other institutions: this indicator refers to the capacity of the magistrate to create proper relationships with his/her staff, police services, administrative authorities, private associations, etc..

5.4.3 ITALY

Independence, impartiality and balance are considered indispensable pre-conditions for a proper exercise of the judicial functions. These qualities may only be regarded as positive or not positive, without any grades or marks.

The main parameters of the professional evaluation of the magistrates are:

- ✓ professional capacity,
- ✓ laboriousness,
- ✓ diligence,
- ✓ commitment.

In order to safeguard the autonomy and independence of magistrates, in no case the professional evaluation may reconsider how the law has been applied to individual cases.

When collecting information needed to make a professional appraisal, one of the sources of information are the reports drafted by the heads of the judicial offices where the concerned magistrate has worked in the past four years.

The Superior Council of the Judiciary makes professional assessments on the basis of the opinion expressed by the Judiciary Councils (for further information see below in the section of the evaluator) and the documents acquired.

For all the magistrates:

1) The **professional capacity** consists of:

- the juridical preparation and the knowledge of the recent developments in the legal systems. The publication of decisions or scientific contributions in legal reviews as well as lecturers in conferences or similar events are also considered in this respect, provided that they have relevant for the judicial activity and included in the personal file of the magistrate;
- the capability of using appropriate techniques of legal reasoning. In this respect they are relevant the clarity, efficient synthesis, and completeness in drawing up the judicial acts, considering the relevant legal and factual circumstances of the cases and the clear identification and solution of the procedural issues. For the prosecutors, the correct management of the investigative techniques is an additional indicator.
- the ability to conduct the hearings and the efficient and correct case-management of the procedures, considering the number of the parties and the complexity of the legal issues tackled;
- the contributions given in the decisions adopted by panels of judges;
- the skills in directing and organizing the court personnel for the support of the judicial activity;
- the attitude to establish fruitful cooperation and coordination with other judicial offices having interconnected competences;
- the efficient use of the information technology instruments in drawing up the judicial acts and in cooperating for the efficient management of the judicial activity.

The **laboriousness** is made up of:

- the number and quality of the cases settled, considering the complexity of the cases, the pending cases, the new assigned as well as the structural and organizational conditions of the offices;
- the time consumed for settling the judicial affairs;
- the energies spent for the well functioning of the judicial office.

2) The **diligence** consists of:

- the continued and timely presence in the office and in the hearings
- the respect of deadlines established for issuing the judicial acts or in general for discharging the judicial activity;
- the number of hearings held;
- the participation in the meetings convened, according to the law, for debating and analysing the legislative innovations and the case-law evolutions;

3) The **commitment** is made up of:

- the willingness to substitute the absent magistrates;

➤ the frequency of attendance or the availability to attend the trainings organized by Superior School of Magistracy;
the collaboration given to solve the organizational problems of the judicial office, upon the request of the Court President or Chief Prosecutor.

5.4.4 SPAIN

The main element is the comparison of the performance of each judge with a predefined standard regarding the number of judgements and decisions to be issued by each court or judge, depending on the branch of the jurisdiction, kind of court, etc.

5.4.5 THE NETHERLANDS

Evaluation of judges and prosecutors

The ways of evaluating judges and public prosecutors is different.

1) Evaluation of judges

There are not lists of criteria/parameters/indicators to be necessarily appreciated and marked.

As described above in practice comparative statistical data by sector of activity is often used in the evaluation of (the output of) individual judges (i.e. the number of judgements/injunctions/decrees/etc issued by the judge being evaluated can be compared to the average output per judge of the sector within which (s)he works).

Within the civil sector, individual judges/justices often commit themselves to write a minimum amount of judgments within a given period of time. When evaluating the output of an individual judge, the team leader or presiding judge can compare the output of the judge in question with the average output per judge within the evaluated judge's sector. The figures on the individual judge's output are laid down in a report, which goes to the sector head and to the president of the court. The data on the output per judge/justice is often divulged within the team, so that every judge can see where (s)he (and his or her colleagues) stand(s). Furthermore, lists of issued decisions/judgments and lists of adjourned cases are frequently divulged within the sector.

In practice, the managing vice-president of the chamber in which the judge in question works will take care of collecting the materials needed to evaluate that judge's performance. The Council for the Judiciary does not play any role in the collection of materials needed to evaluate the performance of individual judges.

When evaluating the performance of an individual judge/justice, consideration is given to his/her participation in hearings and/or the manner in which (s)he fulfils his/her functions as team leader or examining judge. Generally, all activities are taken into account when evaluating the performance of an individual judge.

Within the evaluation tool called intervision or peer review or mutual coaching (illustrated above) judge provides a feedback on another colleague's professional quality performance (participation in the hearings, his/her communication skills) and giving the results of his observation. Another colleague can perform same activity with regard to judgments.

According to this system is essential that evaluation takes place amongst equals and its scope consist of helping each other to improve functioning without mentioning qualifications (good or bad).

The adoption of EFQM-model, a managerial model for organization development, has resulted in the measuring of the following qualitative factors:

- Impartiality and integrity of judges
- Rapidity and timeliness per sector, as far as judges are capable of influencing
- Legal unity (of jurisprudence by a court)
- Expertise
- Treatment of the cases of clients and professionals by judges

These factors are made operable by formulating standards and designing measurement instruments.

Evaluation of Public Prosecutors Offices and public prosecutors

The Public Prosecutions Offices at the district courts and appeal level apply the EFQM management model. With the aid of the 'Prisma' audit office of the MoJ they analyze their organizational position regarding leadership, personnel and personnel-policies, resources, strategy, policy, customer focus, societal appreciation, results, improving from periodical surveys and measurements.

The outcomes of these procedures have consequences for the personnel policies: human resources are considered as a crucial factor in the success or failure of the public prosecutions department and the Public prosecutor's offices.

Public prosecutors every year have talks about their functioning; every three year Prosecutors they hold a prognoses talk with their respective superior, a talk fundamental for their promotion.

5.4.6 AUSTRIA

The general parameters regarding **the prosecutors** are the following:

PARAMETERS

- Professional knowledge of the law
- Capacity of comprehension
- Diligence, endurance, assiduousness, reliability, determination and strength of purpose
- Social skills, communication skills and ability to deal with parties
- Oral and written expression in the German language, and if necessary for the service, also in foreign languages (referring especially to those areas of Austria with official minority languages)
- General behavior in service, especially towards seniors, colleagues and parties as well as the behavior outside the office as far as this can have repercussions for the profession
- For prosecutors applying for leading positions their leadership qualities
- The good results in the current position

*The evaluation form provides a number of detailed **indicators** that have to be evaluated under the above-listed headings.*

Specific indicators for efficiency and quality of the activity:

- suitable investigation measures
- content of orders
- interrogations
- formulation of formal writs of charges
- reasoning in formal writs of charges
- reasoning when dismissing charges
- reasoning in appeals
- maintenance of the files, including appearance
- conduct in the main trial
- time during which the files are in the office of the public prosecutor

5.4.7 GERMANY – BAVARIA

The main general criteria, provided for by the system, for assessing judges and prosecutors are the following:

1. Assignment: description of what the evaluated have been dealing with.
2. Quality of the work.
3. Capacity of the evaluated judge/prosecutor

The specific indicators for assessing judges and prosecutors are as follows:

1. Quality of work

Efficiency in discharging the work's tasks, capacity to work in team, skills in communication in the office with colleagues and others (lawyers, citizens etc.)

2. Capacity

Capability of understanding, intellectual flexibility, qualitative judgments, resolution, readiness for duty, ability to cope with pressure, leadership, professional skill, verbal and written articulateness, motivation for advanced training

5.5 THE APPRAISAL OF THE INTEGRITY – IMPARTIALITY - INDEPENDENCE

5.5.1 BELGIUM

As above illustrated integrity is an evaluation criterion included in group A (the most important), for judges and prosecutors. A more detailed definition for the appraisal is mentioned again below.

In order to comply with the integrity criterion judges or prosecutors have:

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

Integrity is also included in the group A criteria for the evaluation of the special mandated of the Chiefs prosecutors. The detailed definition is the following:

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

5.5.2 FRANCE

There is not a specific criterion although the other parameters of evaluation, globally considered, presuppose a judge and a prosecutor independent and impartial.

5.5.3 ITALY

Independence, impartiality and balance are considered indispensable pre-conditions for a proper exercise of the judicial functions. These qualities may only be regarded as positive or not positive, without any grades or marks. The not-positive appraisal impedes the career progression irrespective of the level of the other criteria.

The Italian regulation mainly focuses on the need that allegations concerning deficiency of impartiality or independence have to consist of precise and concrete facts and events, duly

supported with evidence. In this respect also lawyers are given the chance to provide information on this aspects to the evaluators provided that they comply with the need of concreteness and duly grounded allegation.

5.5.4 SPAIN

There is not a specific criterion regarding integrity, independence and impartiality of judges.

5.5.5 THE NETHERLANDS

As above mentioned the qualitative model of evaluation of the Courts' performances include impartiality and integrity of judges

5.5.6 AUSTRIA

Integrity is not being evaluated as a separate item but would have to be described under the specific circumstances and indicators of the evaluation of the prosecutors.

5.5.7 GERMANY- BAVARIA

Integrity is a precondition for the work as judge or public prosecutor and therefore there are not particular evaluation criteria.

5.6 THE ATTENDANCE IN CONTINUOUS TRAINING

5.6.1 BELGIUM

As mentioned above training is included in the **group C** criteria (the least important) for the evaluation of judges and prosecutors. The definition provided is the following.

1. Willingness to learn:

- Indicators; the judge and prosecutor has:
- to be concerned about supplementing or improving his skills;
 - take initiative to further his education;
 - maintain balance between work and education

5.6.2 FRANCE

As regards **continuous training**, according to article 14 of the Organic Law all magistrates are obliged to attend every year training arranged by the ENM. In order to allow judges to apply every year the ENM publishes in advance the program of in-service training for the following year.

The program offers a variety of topics and formats: one week sessions, seminars, conferences. Conditions of the mentioned training are established by a decree of the "Couseil d'Etat".

Concerning the evaluation of the professional training it has been mentioned above that among the evaluation parameter of PROFESSIONAL ENGAGEMENT, a specific criterion is the following:

II) Updating and improvement of legal culture: this indicator concerns the activity carried out by the magistrate with regard his/her attendance to training in order to improve his/her professional knowledge and his/her method of work.

5.6.3 ITALY

Concerning the evaluation of the professional training it has been mentioned above that among the evaluation criterion of COMMITMENT/PROFESSIONAL ENGAGEMENT, a specific indicator is the following:

the frequency of attendance or the availability to attend the trainings organized by Superior School of Magistracy.

Furthermore within the criterion of DILIGENCE a specific indicator is the participation in the meetings convened according to the law by the leaders of the courts / prosecutors' service, for debating and analysing the legislative innovations and the case-law evolutions.

5.6.4 SPAIN

In principle there is no obligation to undergo continuing professional training in the Spanish system. However, under the Spanish legislation regarding the Judiciary currently in force, there are some specific cases of compulsory continuing training of judges, when a judge specializes in some areas of professional activity (such as administrative, commercial, youth or labour judges or judges specialized in domestic violence).

5.6.5 THE NETHERLANDS

Attendance to training courses is taken into consideration especially for the appointment to leading positions with reference to specialized training over management and organization of human and material resources, considering the managerial skills required for the apical positions.

5.6.6. AUSTRIA - PROSECUTORS

For each public prosecutor there is a list of all the training activities and seminars he/she participated in. This list is included in the personal file of the public prosecutor and has to be attached to the application form when applying for a wished position by the aspirants.

5.6.7 GERMANY

Although training is considered a factor of professional progression, the attendance is normally based on voluntary decisions of the judges and prosecutors. Only at the beginning of the career, as mentioned above, judges and prosecutors have mandatory training courses

5.7. DIFFERENT RELEVANCE/WEIGHT OF THE EVALUATION CRITERIA

Periodic evaluation. As already mentioned the evaluation 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 following 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.

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).

Evaluation of the different 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".

5.7.2 FRANCE

The evaluation parameters/criteria have the same relevance

5.7.3 ITALY

The evaluation parameters and indicators have the same importance.

As already said independence, impartiality and balance are regarded as indispensable pre-conditions and accordingly any kind of deficiency conveys the stop to the career development.

Another important aspect already highlighted above is that the "not positive" or "negative" evaluation of one of the three groups of criteria brings about the halt to the career development, irrespective of the evaluation of the other two groups of criteria.

5.7.4 SPAIN

There is not any difference importance attached to the evaluation criteria, almost exclusively based on the achievement of the quantitative targets.

5.7.5 The NETHERLANDS

It does not emerge that criteria for evaluating judges and prosecutors have different relevance.

5.7.6 AUSTRIA

There are no regulations regarding the different importance of the various criteria.

5.7.7 GERMANY - BAVARIA

At the end of the evaluation process the above criteria and indicators are pondered in order to come to the final qualification. Some indicators are very important, like the quality of work, while some other indicators may have no particular importance, like statistics.

5.8. THE EVALUATORS

5.8.1 BELGIUM

COMPOSITION

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

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

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.

Evaluation of the different 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 as a consequence of a judgement of the Constitutional Court).

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.

WAY OF APPOINTMENT OF THE EVALUATORS

As for the election members of the evaluation commission carrying out the periodic evaluation: the two evaluators are appointed by the court's general assembly or by the assembly of the prosecutor's office.

As to the evaluation of adjunct/specific mandates: the same as the periodic evaluation.

As regards the appointment of the members of evaluation chamber of the different mandates of chief prosecutors: election for chief prosecutors; general assembly for the HCJ magistrates; first president of the supreme audit office for the member of the supreme audit office; minister of Justice for the human resources expert (after nomination by the Minister of Public Function).

REQUIREMENTS OF THE EVALUATOR

No particular skills are officially requested. An evaluator in the periodic evaluation panel must have at least the evaluation grade "good".

Evaluation of the different mandates of chief prosecutor: expertise seems to be guaranteed on the basis of the occupied functions of the members of the evaluation chamber.

THE ROLE PLAYED BY THE DIFFERENT EVALUATORS

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

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

Evaluation of the different 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.

THE ROLE PLAYED BY THE PRESIDENTS/CHIEFS

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

Evaluation of the different 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 OTHER COLLEAGUES

Periodic evaluation: as said two direct colleagues of the evaluated magistrate are members of the evaluation team. That makes it a kind of peer-review.

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

THE SYSTEM OF EVALUATION/MONITORING OF THE ACTIVITY DONE BY EVALUATORS

There is not a an evaluation system of the evaluators or a systematic monitoring of their activity as evaluator.

5.8.2 FRANCE

The authorities playing a role in the periodic evaluation procedure are

- for judges: the first president of the Court of appeal and the president of the court where the evaluated judge has been acting (where different from the first one).
- for prosecutors: the general prosecutor at the Court of appeal and the chief prosecutor where the evaluated prosecutor has been acting (where different from the first one).

With reference to the “conseillers referendaires”, “auditeurs” and “avocats généraux referendaires” working at the Court of Cassation the evaluation is made by the first president of the Court of Cassation for the judges and the General Prosecutor attached to that Court for the prosecutors.

The evaluation procedure is accompanied for the evaluated magistrate by observations of colleagues. In the evaluation fiche used during the evaluation procedure there is a part devoted to collect those kinds of information.

For judges the final decision is adopted by the Chief of the Court of Appeal, whereas for prosecutors by the General Prosecutor at the prosecutors’ office attached to the Appeal Court.

A role in the evaluation procedure is also attributed to the “*Commission d’avancement*”. As a matter of fact the system has also established that a judge or prosecutor may challenge an evaluation before the “*Commission d’avancement*”. The commission issues a motivated decision on the basis of the observations drawn up by the concerned magistrate and the information sent by the authority that had performed the evaluation.

The “*Commission d’avancement*” have the specific competences of drawing up the list of judges and prosecutors for their promotion (*tableau d’avancement and d’attitude* – table of career development and aptitudes).

The commission is composed by the first president and presidents of the Court of cassation, the general prosecutor attached at the Court of Cassation, the general inspector of the judicial services, two magistrates of the court of cassation, two first presidents and two general prosecutors of courts of appeal respectively elected by the assembly of first presidents and general prosecutors and ten magistrates (seven of first level and three of second level) elected by the assembly of the respective judges.

They stay in office for three years and the mandate is not renewable.

As regards the list of judges every year the commission draws up the aforesaid table of career development.

The commission can require the body that had performed evaluation of the candidate to provide information concerning the content of the documents regarding the magistrate's personal file; the acquired data and observations are inserted in the personal file.

Before being signed by the President of the Republic, the "*tableau d'avancement*" is communicated to the Council of the judiciary

Every year the "*Commission d'avancement*" publishes the result of the activity performed during the year.

A decree issued by the "*Conseil d'Etat*" establishes the conditions related to the implementation of the concerned system of advancement, the general requirements in order to be included in the aforesaid list and the specific functions for the magistrate included in the list.

5.8.3 ITALY

THE BODIES INVOLVED

The **final decision** regarding the appreciation of the magistrate is adopted by the CSM. The CSM has to take into consideration the reasoned opinion issued by the **Judiciary Council (JC)**.

THE APPOINTMENT OF THE EVALUATOR

The final decision regarding the appreciation of the magistrate is adopted by the CSM. The CSM has to take into consideration the reasoned opinion issued by the Judiciary Council (JC). The JC is a collegial body set up at the level of the Court of appeal. For the magistrates of the Court of Cassation and of the attached Prosecutors' office there is a board of directors, who observes the same rules of the JCs. The JCs give non-binding opinions although whenever the CSM departs from the grounded advices issued by the JCs, it has to justify in details the adverse decision. The composition and way of appointment of the JCs' members are indicated below.

THE REQUIREMENTS FOR THE APPOINTMENT

The way of appointment of the CSM's members has been set out above. As said the JCs established in each Court of appeals are composed by the:

- a) the president of the Court of Appeal
- b) the General Prosecutor of the Court of Appeal;
- c) elected/appointed members. According to the dimension of the Courts of appeals (number of judges and prosecutors working in the respective jurisdiction) the JCs have different number of additional elected/appointed members. In the smallest jurisdictions (up to 350 magistrates) there are 9 members (6 elected magistrates, two lawyers and one law professor); in the medium-sized jurisdictions (from 351 to 600 magistrates) there are 14 members (10 magistrates, 1 law professor, 3 lawyers); in the largest jurisdictions (more than 600 members) there are 20 members (14 magistrates, 2 law professors and 4 lawyers). Among the magistrates there must be a representation of the judges and prosecutors (according to the size: a) 4 judges – 2 prosecutors, b) 7 judges – 3 prosecutors, c) 10 judges – 4 prosecutors) while the lawyers must have at least an experience of at least 10 years in their profession. The magistrates are elected by the judges and prosecutors working the respective Court of appeal territorial jurisdiction.

THE ROLE PLAYED BY THE DIFFERENT EVALUATOR

As described above the final assessment is given by the CSM, although as a matter of fact a great importance is attached to the grounded opinions rendered by the JCs. The CSM may depart from the advice given by the JC only explaining in details why the JC's opinion is not acceptable.

The JC's opinion have to be drawn up following a template approved by the CSM conceived with the aim to ground the advice on concrete data.

THE ROLE PLAYED BY THE COLLEAGUES

There is not any kind of formal involvement of the colleagues apart from the magistrates elected in the JCs, as set out above.

THE SYSTEM OF EVALUATION/MONITORING OF THE ACTIVITY DONE BY EVALUATORS

There is not any specific assessment on the way the evaluators have fulfilled their tasks. The assessment reports of the Presidents/Chiefs Prosecutors on the magistrate is considered one of their duties and the way they discharge this task may be appreciated while assessing their professional performances.

5.8.4 SPAIN

The Inspectorate of the GCJ has a fundamental role. The Inspectorate is structured in several Inspection Units. Besides, the qualitative aspect of professional performance of Spanish judges is assessed by the relevant Committees of the GCJ when appointing chairpersons of the respective courts and justices of the Supreme Court.

Advisers at the Inspectorate under the GCJ are selected and appointed by the GCJ among judges and other qualified high officials (civil servants) with at least 5 years of professional experience. Advisers who work in the Inspection Units of the Inspectorate are selected among judges and registrars (courts' clerks) with at least 5 years of professional experience.

Professional experience as a judge, registrars (courts' clerks) or qualified high official with some knowledge of the judicial system is a requirement for being appointed in the Inspectorate.

There is no specific system of evaluation of evaluators. However, the Inspectorate and the Inspection Units under the GCJ are accountable before the relevant Committees of the GCJ. The Head of the Inspectorate is a very high official of the GCJ, who is appointed in a plenary session of the GCJ. There has been some discussions within the Inspectorate under the GCJ as to whether some system of self-evaluation of the Inspectorate itself should be adopted, although no decision on this issue has been adopted so far.

5.8.5 THE NETHERLANDS

As above stated the Council pursues a policy that all courts support the so called of 'keeping professionals on track' involving in its implementation in particular the **management boards** of each court: they should stimulate and facilitate activities of 'mutual coaching' or "peer-review" on a regular basis.

As aforementioned the management boards also organize periodic interviews with the judges.

The "management boards" are foreseen by sections 14 through 23 of the JOA. These boards are commissions established within each court and composed by the President of the Court, heads of sectors and a non judicial member (the director of operation).

The management board members are appointed by Royal Decree upon recommendations of MoJ and nominations (proposals) of the Council for a term of six years with the right to be reappointed.

As already mentioned, according to the system of 'intervision' (or peer review) a colleague of the evaluated judges, chosen at random within the same section, is asked to observe the hearing of a colleague and provide feedback on the colleague's professional performance (participation in the hearings, his/her communication skills) and give the judge the results of his observation. An other colleague can perform similar activities with reference to judgments.

5.8.6 AUSTRIA

Public prosecutors are evaluated by the personnel commissions of the senior offices of public prosecution (General prosecutors' office) to which they belong.

The heads of the offices of public prosecution and the first deputy-heads of the senior offices of public prosecution as well as those public prosecutors working at the Ministry of Justice are evaluated by the personnel commission at the Federal Ministry of Justice.

The Federal Ministry of Justice is responsible for the publication of vacant positions of heads of the senior offices of public prosecution. All other vacant positions are published by the heads of the senior offices of public prosecution for their area of competence. The personnel commission at the Ministry of Justice proposes the candidates for the position as head of a senior office of public prosecution. This personnel commission is established for a term of five years and consists of four members. Two members, one woman and one man, are nominated by the Federal Minister of Justice herself, one by the Public Prosecutor's Union and one by the so-called "*Zentralausschuss*", which is the committee for public prosecutors at the Federal Ministry of Justice, also an organ of professional representation.

The personnel commissions at the senior offices of public prosecution also consist of four members, namely the head of the senior office of public prosecution, the head of the office of public prosecution to which the prosecutor to be evaluated belongs, one member of the Public Prosecutor's Union and one member of the body of professional representation of the office of public prosecution.

The mentioned representative bodies and the Union decide themselves according to their statutes those to be nominated as member of the personnel commission.

The required skills depend on the position the member of the commission is holding. Heads of offices always have to prove leadership qualities and there are also various training programs on leadership, team management, management in the justice system ect.

All members of one office of public prosecution are evaluated by the personnel commission at the senior office of public prosecution. The head of the office of public prosecution to which one public prosecutor belongs has to deliver a statement prior to the decision on the evaluation by the personnel commission at the senior office of public prosecution.

As mentioned above, the personnel commission at the senior office of public prosecution is also responsible for the evaluation of the prosecutors belonging to it.

5.8.7 GERMANY – BAVARIA

Responsible for the evaluation are the leading judges and leading prosecutors where the evaluated judge or prosecutor is working.

More specifically the Chief Public Prosecutor for the prosecutors working in the Public Prosecutor's Offices, the General Prosecutor for prosecutors working at the General Prosecutor's office, the President of the Regional Court for the Magistrates' Court and the Regional Court, the President of the High Regional Court for the judges working in this court.

Those evaluators are supervised by the superior authority; for example:

the Chief Public Prosecutor by the Prosecutor General,

the Prosecutor General by the Ministry of Justice,

the President of the Regional Court by the President of the High Regional Court,

the President of the High Regional Court by the Ministry of Justice.

There is a public announcement for the vacant positions as Senior Public Prosecutor or President of the Regional Court. The decision on the promotion is made by the Ministry of Justice.

The position of the Prosecutor General and the President of the High Regional Court is assigned by the Bavarian Government without any public announcement.

The task of evaluation is part of the job of the above mentioned organs. Therefore there is a special appointment selection.

To become head of a public prosecutor office or a court, a previous long and positive activity as public prosecutor or judge is required with experience in administrative matters. Judges and public prosecutors with above average or outstanding grades and with experience also in administrative matters have the possibility to take part in advanced training courses to improve their skills, particularly in administration or evaluation during their occupation.

5.9 THE ROLE OF THE INTERVIEWS AND SELF-EVALUATION

5.9.1 BELGIUM

SELF-EVALUATION

Periodic evaluation: self-evaluation intervenes

- (1) when the evaluated magistrate prepares the evaluation interview and sends a written document to the evaluators.
- (2) when the magistrate expresses his/her professional goals for the next evaluation period.

As for the evaluation of the different mandates of the chief prosecutors, 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 magistrate to correct/improve his/her behavior and define new goals for the next evaluation period.

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

5.9.2 FRANCE

A self evaluation is not foreseen by the evaluation system. The evaluated magistrate can provide data and information of his professional experience by an interview held before the "Chef de juridiction", namely the Head of his/her Court – Prosecution office.

5.9.3 ITALY

The self report is one of the sources of information for assessing the magistrate's professionalism. The JCs and the CSM may interview the magistrate when they deem it opportune; the evaluated magistrate has the right to be interviewed upon his/her request.

5.9.4 SPAIN

There is no document of self-evaluation as such. However, in some cases the evaluated judge writes a report/declaration stating the qualitative aspects of his performance (number of judgments/decisions issued in a specific period of time), which is verified by the relevant Inspection Unit. According to the new guidelines of the Inspectorate under the GCJ the relevant information concerning the professional performance of each judge is gathered by the Inspectorate on the basis of the statistical data provided by the courts to the GCJ, so that reports/declarations by evaluated judges are used more rarely.

In principle, there are no interviews with judges during the evaluation procedure.

5.9.5 THE NETHERLANDS

The system does not foresee that judges and prosecutors draw up self-evaluations. Nevertheless they are allowed to set up a self-evaluation which is included in the report drafted by evaluators.

As regards prosecutors every year they have talks about their functioning with their superior.

As to promotion of prosecutors for the higher ranks candidates have to pass the "career prognoses talks" with their chief prosecutors or chief general advocates every three years. Moreover candidates for chief public prosecutors and chief general advocate have interview with the MoJ

According to the information provided for by ENCJ "the management board established in Courts evaluates each judge on a regular basis and "discusses" the evaluation with the concerned judge"

5.9.6 AUSTRIA

There is not a self-evaluation and there is not an interview.

5.9.7 GERMANY – BAVARIA

There is not a self-evaluation.

As to the interview the first interview is meant to illustrate to the evaluated judge/public prosecutor the spirit and purpose of the evaluation. He/She can articulate his wishing regarding his/her career. After having collected and scrutinized the facts, the evaluator can talk to the evaluated about the ascertained facts, possible mistakes, and the general impression of the preliminary findings. Then he/she drafts the written evaluation and informs the evaluated orally about it.

The following conversation normally focuses on career opportunities.

5.10 THE AIMS AND EFFECTS OF THE EVALUATION

5.10.1 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 link between the content of professional evaluations and the assignment of judges or prosecutors to specific judicial roles.

The evaluation of a mandate of general prosecutors and chief prosecutors does not automatically result in a mandate prolongation. A decision by the concerned NAC is needed.

Also the periodic evaluation is only one element of the total information that the NAC needs in order to nominate candidates to the vacant judicial positions.

Of course it is possible that some periodic evaluations are at the basis of (informal) assignments of internal judicial roles.

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.

5.10.2 FRANCE

Professional evaluation allows the authorities responsible for the management of the judicial system to be aware of the qualities and defects, and, more generally, of the personal qualities of members of the judiciary, in order to prepare and take appropriate decisions and improve quality of the system. As above described in the French system these authorities are the MoJ, the CSM, the promotion commission ("*commission d'avancement*") and the chiefs of Courts / prosecutors' offices".

Professional evaluation of judges and prosecutors has a relevant role for the career of magistrates considering that the result of the performed periodic evaluation is taken into account for attributing them specific functions. As a matter of fact the content of the performed evaluation ("general evaluations") contains a devoted section concerning the specific capacity of the evaluated judge/prosecutor for performing specific functions ("*appreciation generals - .les fonctions auxquelles le magistrat est apte*").

Therefore, evaluation is the main element at disposal of the CSM in order to evaluate specific aptitudes and capacity of a magistrate in performing specific activity.

The result of the professional evaluation is relevant for the promotion of judges or prosecutors. As a matter of fact the "*commission d'avancement*" in evaluating candidates for their promotion, can

require information to the body that had performed evaluation of the concerned candidate on the content of the documents included in the personal file of the evaluated magistrate. A positive evaluation of judges and prosecutor is a fundamental requirement to be appointed at higher level. Moreover, further qualities are taken into consideration for those cases. The dismissal is a disciplinary sanction and not the consequence of evaluation, although it may be an element of appreciation for the disciplinary commission.

5.10.3 ITALY

The first aim is to ensure a good level of professionalism of the magistrates in light of the difficult and delicate tasks that they are called to perform; a second goal is to detect those magistrates who have not decent skills and need to recover the professional attributions.

There is **not a direct and immediate** link between the periodic evaluation and the possibility to cover specific working posts in the judiciary. Nonetheless the information collected during the evaluation process is considered when there is an application of the magistrate for a leading position. **The other indirect or “monetary” effects are set out below.**

As said the Italian magistrates are evaluated every 4 years until they overcome the seventh evaluation. The positive assessment is indispensable for the application to some leading positions; for instance the third positive consecutive evaluation is necessary for the application to the seats of president or chief prosecutor of the smaller judicial offices, while the fifth positive evaluation is required for the leading positions in the bigger courts or prosecutors' offices.

Furthermore the positive appreciation is also an indispensable requirement for the salary increases; those who receive a not positive or negative evaluation does not get the better payment associated to the evaluation they have not been able to achieve.

Finally the application to vacancies in the appellate Courts and the Court of Cassation is subordinated to the achievement, respectively, of the third and fifth evaluation. Nonetheless it has to be stressed that the increase of salary is associated to the overcoming of the evaluation although the positive magistrate remains in the same position in the judicial; in other words the economic progression is linked to the evaluation, irrespective of the seat within the judiciary he/she holds. For instance a magistrate who have overcome the seventh evaluation may well take office at the first instance level.

A magistrate who receives a negative evaluation is reassessed at the end of the two following years; the second negative appraisal convey his/her dismissal.

5.10.4 SPAIN

Performance evaluation is intended to justify the payment of a variable component of the judicial salary, which is connected to the achievement of performance targets. On the other hand performance evaluation could also be helpful in order to make decisions of the relevant Committees of the GCJ concerning disciplinary liability of Spanish judges.

In principle, there is no direct relationship between professional evaluations by the Inspectorate under the GCJ and the assignment of judges to specific judicial roles. 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 GCJ when appointing chairpersons of the respective courts.

In principle, there is not a direct relationship between professional evaluations by the Inspectorate under the GCJ and the assignment of judges to higher levels of jurisdiction. As 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 GCJ when appointing justices of the Supreme Court.

Evaluation 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, which is connected to the achievement of performance targets.

The dismissal of judges must be based on a decision adopted by the plenary session of the GCJ on the basis of a very poor professional performance, in as far as this poor professional performance constitutes a disciplinary offence envisaged in the Act on the Judiciary currently in

force. The proposal for the dismissal is made by the Disciplinary Committee of the GCJ to the plenary session after a due procedure in the context of which the affected judge is heard and can adduce evidence.

5.10.5 THE NETHERLANDS

By means of “interviewing” or “mutual coaching” and the standard level of performed activities, the system helps judges to improve the efficiency of the courts’ functioning.

Salaries may differ for managerial functions, according to the size of the district court. Generally speaking judges at higher courts have a higher salary compared with judges at district courts

As regards judges, in general, their dismissal is not related to negative evaluation of their activities: a judge may be dismissed by the Supreme Court after being unfit for work (because of illness) for two uninterrupted years. Losing Dutch Nationality is also a reason for dismissal. Moreover judges may be suspended from their office when they are formally accused of committing a crime. If convicted they will be dismissed by the Supreme Court.

Malfunctioning of the management board of a court or of a member of a court management board may lead to a proposal for removal from office by the Council of the Judiciary to the MoJ and the Crown. The judge involved may appeal against such decision at the Supreme Court. Such removals, however, would not lead to removal from judicial office, but only to removal from the managerial position.

Public prosecutors can be dismissed for being unfit for the job. So, just as ordinary public servants, a public prosecutor may be dismissed from office because of malfunctioning. Superiors of the malfunctioning public prosecutor have to gather evidence and give plenty of possibilities for improvement, e.g. by offering courses.

Dismissal formally takes place by the office that had appointed prosecutors. Thus deputy public prosecutors are dismissed by the MoJ and all other public prosecutors are dismissed by the Crown.

5.10.6 AUSTRIA

The aim of the evaluation is to get an overview over the performance of the newly-appointed prosecutors after their second year and also in exceptional cases, mainly if the prosecutor applies for a different position. General aims of the evaluation of judges and prosecutors are to ensure the quality of the judicial service as well as to guarantee ongoing training of all members of the judiciary. Evaluation is also meant to help judges and prosecutor to find out in which areas they might need additional training and/or improvement.

If public prosecutors apply for specific positions they have to be evaluated by the competent personnel commission in order to help with the decision of whether they are suitable for the position or not.

There are no direct relations between the evaluations of the professional performance of judges and prosecutors and their salary improvement as the salary is fixed in the law and the steps of improvement are also determined.

If a prosecutor is evaluated as “not satisfactory” for two calendar years in a row, he/she is released from office as of the date on which the second negative evaluation becomes final and binding.

5.10.7 GERMANY – BAVARIA

The evaluation is the basis for the decisions of the Human Resources Department.

The evaluated is induced to consider his/her actual job situation and is motivated and stimulated to develop his/her professional skills.

In the evaluation report is described for which position the evaluated is especially adapted.

Crucial for the promotion to higher levels of jurisdiction is the quality of the legal work, for example the convincing reasoning of verdicts or the way of presenting and arguing with questions of law.

A good evaluation is a precondition for a promotion. The higher the position is, the more money you get.

A judge or a prosecutor can be dismissed only during probation time as described above

5.11 CHALLENGING THE EVALUATION

5.11.1 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 article 2 of the Judicial Code which means that the dispositions of the Judicial Code apply to it.

5.11.2 FRANCE

The Council of State (Conseil d'Etat) controls if the performed evaluations fulfil the legal criteria, using criteria as "error in law", "error in appreciating elements or abuse of power". The presence of one of these negative elements affects the legality of the performed evaluation.

5.11.3 ITALY

The decisions regarding the evaluation of the magistrates, as well as any other decision on their career and rights can be challenged before the Courts dealing with administrative controversies. More specifically the CSM decisions can be challenged before Regional administrative Tribunal. The judgments of this Tribunal can be appealed before the Council of State. The judgments rendered by these two judicial Courts cannot replace the CSM decision; they may just annul the impugned decision on the basis of legal deficiencies in terms of violation of laws or unreasonable motivation. The CSM is hence called to readopt the decision taking into consideration the indication of the administrative Courts.

5.11.4 SPAIN

Evaluation is the responsibility of the Inspectorate under the GCJ. The evaluated judge can challenge the initial result of the assessment made by the Inspectorate (which is normally ungrounded) before the Standing Committee of the GCJ. The decision made by the Standing Committee of the GCJ includes reasons of the decision and can be challenged by the evaluated judge before the plenary session of the GCJ. This final decision of the plenary session of the GCJ is subject to judicial review before the Administrative Division of the Supreme Court.

Furthermore the discretionary decisions of the GCJ (relevant committees or plenary session) 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 judge) are subject to judicial review before the Administrative Division of the Supreme Court.

5.11.5 THE NETHERLANDS

On the basis of the collected information there is not a remedy against decisions related to evaluations of judges and prosecutors.

5.11.6 AUSTRIA

The evaluated prosecutor can appeal against his/her evaluation within two weeks after he/she is informed of the result; the complaining note is served to the personnel commission at the Federal Ministry of Justice. There is no possibility to challenge the decision before a court.

5.11.7 GERMANY – BAVARIA

Judges or prosecutors can apply for suspension or modification of the evaluation. The competent superior of his/her office decides on this motion. The judge/public prosecutor can lodge an objection against the rejection of the petition within a month. If the objection is rejected, they can file a lawsuit to the administrative court.