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## **SELECTION AND EVALUATION OF JUDGES - IMPACT OF CRITERIA AND PROCEDURE ON INDEPENDENCE OF JUDICIARY**

*Ever since the adoption of the Constitutional amendments in February 2022, Serbia has been accelerating judicial reform, including adoption of new judicial package of laws in early 2023. Dozens of bylaws have to be adopted in 2023 to ensure implementation of the reforms. One of the key discussion topics is criteria and procedure for selection and evaluation of judges as instruments that ensure independence of judiciary. The selection and evaluation of judges are raising discussions in all countries that are in the process of the judicial reforms. The EU accession process is the main driver of judicial reforms across Western Balkan countries. In order to fulfil EU requirements, the Western Balkan countries are putting efforts to align the judiciary with the EU standards on independence. The article provides the brief comparative analysis on the criteria for the recruitment and evaluation of judges. The analysis consists of best practices of selected jurisdictions for the recruitment and evaluation of judges, with the focus on the competences judges need to have, criteria to apply for judicial office, weighting of different factors for selection/evaluation, including the mandatory nature of the decision of the selection committee. The article puts special focus on EU member states and EU candidate countries with the aim to ensure a combination of different practices and factors. Selected countries are grouped in three categories: old EU member states, EU-11\*\* and the EU candidate countries. Lessons learned from comparative examples and from previous Serbian experience could provide useful input for decision makers in the process of judicial reforms to establish legislative framework that ensures independence of judiciary.*

**Keywords:** selection, evaluation, criteria, independence of judiciary, European standards.

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\*\* Poland, Czech Republic, Slovakia, Slovenia, Estonia, Lithuania, Latvia, Hungary, Romania, Bulgaria, and Croatia.

## 1. INTRODUCTION

In February 2022, the Republic of Serbia adopted amendments to the Constitution in the area of judiciary<sup>1</sup> with the aim to align provisions with the relevant European standards and Venice Commission recommendations, especially related to the removal of shortcomings reflected in the influence of legislative branch over the judiciary.<sup>2</sup> Council of Europe developed some of the main European judicial standards, which are further elaborated by the EU institutions (Matić Bošković & Nenadić, 2018, p. 39). EU standards on judiciary are defined based on the goal that should be achieved, specifically independence, impartiality, integrity, efficiency, and trial within the reasonable time (Matić Bošković, 2020, p. 334). Independence of judiciary is based on the right of the individual to a fair trial.<sup>3</sup>

European standards that relate to the independence of judiciary include recommendations on procedure for selection of judicial candidates, appointment of judges, irremovability, career path and promotion, accountability, tenure.<sup>4</sup>

Although there is no doubt that selection and evaluation of judges is relevant for independence of judiciary, it is also important for the efficiency and quality of justice. The judiciary can only achieve its objectives if the selection and evaluation process is based on proven competence, integrity, and independence of judges. An independent, impartial, competent, and ethical judiciary is essential for the rule of law and for the fair and impartial resolution of disputes and predictable application of the law. Ensuring that the judiciary is capable to perform these tasks requires specific competences and integrity of individual judges.

For the appointment and career development of judges there must be clearly defined criteria which are known in advance not only to prospective candidates, but also to the public for transparency purposes.<sup>5</sup> The article assesses the European standards on selection and evaluation of judges, expressed in the Venice Commission Opinions, Opinions of the Consultative Council of European Judges, UN Basic Principles, and other relevant documents.

To align relevant legislation with the Constitutional amendments, authorities in Serbia adopted the new package of judicial laws in February 2023.<sup>6</sup> The next step is drafting

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<sup>1</sup> Ustav Republike Srbije, *Službeni glasnik RS* no. 98/2006-3, 115/2021-3 (Amendmani I-XXIX), 16/2022-3. Available at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/ustav/2006/98/1/reg> (29. 9. 2023).

<sup>2</sup> Venice Commission, Opinion No. 405/2006, Opinion on the Constitution of Serbia, 19 March 2007, para. 60.

<sup>3</sup> See: Bangalore principles of judicial conduct adopted in 2002. Value 1 is independence and it is defined as “a pre-requisite to the rule of law and a fundamental guarantee of a fair trial”.

<sup>4</sup> European Charter on the statute for judges and Explanatory Memorandum, Council of Europe, 1998.

<sup>5</sup> UN Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

<sup>6</sup> Law on Judges, *Official Gazette of the Republic of Serbia* no. 10/2023; Law on High Judicial Council, *Official Gazette of the Republic of Serbia* no. 10/2023; Law on organization of courts, *Official Gazette of the*

relevant bylaws, including those that regulate selection and evaluation of judges, by spring 2024. In the process of drafting, it is important to transpose a spirit of the Constitution and intention to ensure stronger guarantees of judicial independence. Existing system of selection and evaluation of judges has shortcomings that have to be overcome in the new legislative framework. Some of the challenges were absence of obligatory power of the proposal for the candidates for judicial office,<sup>7</sup> lack of clear link between performance evaluation and career advancement,<sup>8</sup> and assessment of majority of judges with the highest mark which eliminates purpose of the evaluation.

The article can inform decision makers of the process of judicial reforms in Serbia, but also across Europe. The brief comparative analysis is prepared to facilitate identification of objective criteria for the recruitment and evaluation of judges. The comparative analysis consists of best practices from selected jurisdictions for the recruitment and evaluation of judges. The analysis focuses on the competences judges need to have, criteria to apply, weighting of different factors for selection and evaluation, including the mandatory nature of the decision of the selection committee. The analysis also provides an overview of the level of the normative act that regulates procedures of the selection and evaluation.

In the comparative analysis, special focus is put on EU member states and EU candidate countries with the aim to ensure a combination of different practices and factors. Selected countries are grouped in three categories: old EU member states, EU-11<sup>9</sup>, and the EU candidate countries. The old EU member states (i.e., Germany, Italy, the Netherlands) are selected since they present good practices developed over the centuries with the aim to protect independence of judiciary. Furthermore, three different models were taken, Italy as a representative of the Southern model of the Judicial Councils, the Netherlanders as a representative of the Northern model of the Judicial Council and Germany as a country in which there is not the Judicial Council (Castillo-Ortiz, 2019, p. 505). As the EU founding treaty highlighted, the EU is based on common values, including the rule of law.<sup>10</sup> The “old” EU member states are characterized as a society in which pluralism, non-discrimination, tolerance, justice, solidarity, and equality prevail. However, during the EU enlargement to the East,<sup>11</sup> the EU faced the situation that countries in the transition, with different economic, political, and social environment, are aspiring to become members. To address this challenge, the EU developed approach that included, among other requirements,

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*Republic of Serbia* no. 10/2023.

<sup>7</sup> Although the problem was within the Parliament that did not appoint candidates selected and proposed by the High Judicial Council, there is a possibility that in the future the High Judicial Council will not respect the proposal of the selection panel.

<sup>8</sup> European Commission, Serbia 2021 Report, SWD(2021) 288 final, p. 22.

<sup>9</sup> Poland, Czech Republic, Slovakia, Slovenia, Estonia, Lithuania, Latvia, Hungary, Romania, Bulgaria, and Croatia.

<sup>10</sup> According to Article 2 of the Treaty of European Union, the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

<sup>11</sup> Ten countries that joined in 2004 – Poland, Czech Republic, Slovakia, Slovenia, Estonia, Lithuania, Latvia, Hungary, Malta and Cyprus; Romania and Bulgaria in 2007 and Croatia in 2013.

stability of institution guaranteeing democracy, rule of law, human rights, and the respect for and protection of minority rights. The EU-11 countries are thus good example how ex-communist countries reformed their judiciaries to fulfil EU requirements of independent and efficient judiciary (i.e., Croatia, Slovenia, Estonia).<sup>12</sup> The EU candidate countries are in the third group (i.e., Bosnia and Herzegovina, Montenegro, and Albania) since they are in the process of the alignment of the judicial system with the EU requirements. Examples from other countries are provided across the analysis to highlight specific questions. Although Cyprus and Malta are countries with the common law legal tradition, they were included in the article due to the relevant Venice Commission Opinions related to the normative framework on the judges' selection.

## 2. LEVEL OF NORMATIVE ACT

Level of normative act that regulates selection and evaluation of judges is an important element for guarantying judicial independence, however it has to be aligned to the normative tradition of the country to avoid too many technical issues being regulated by the law instead by secondary legislation.

However, the recent case law of the European Court of Human Rights<sup>13</sup> and the Court of Justice of the EU<sup>14</sup> highlighted that citizen is entitled to have the case trialed by a tribunal that is established in accordance with law and this includes that the judges on the tribunal should also be appointed in accordance with the law (Karlsson, 2022, p. 1060).

The general normative framework on selection and evaluation of judges is usually established by laws. In some countries the key provisions in relation to the procedure and criteria for appointment and promotion of judges are regulated by a specific law, such as the Law on Judges in Serbia<sup>15</sup> that in detail envisages procedure for application for judicial office, process of interview and selection of judges for different levels and court specialization, as well as criteria for evaluation. A similar approach is taken in Albania where Law no. 96/2016 on the status of judges and prosecutors of the Republic of Albania,<sup>16</sup> in relation to the appointment includes provisions on the scores achieved in the initial training organized by the Schools of Magistrates. A comparable solution is applied in Estonia, where the Courts Act<sup>17</sup> in detail regulates the appointment of judges

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<sup>12</sup> Some EU-11 countries, like Poland and Hungary, were not taken into consideration since they are facing with rule of law backsliding.

<sup>13</sup> *Astradsson v Iceland*, application no. 26374/18. Participation of judge whose appointment was vitiated by undue executive discretion without effective domestic court review and redress.

<sup>14</sup> Joined Cases 585, 624, 625/18, *A.K. v. Najwyższy*, ECLI:EU:C:2019:982

<sup>15</sup> Articles 34-40 on evaluation and Articles 48-59 on selection, *Official Gazette of the Republic of Serbia* no. 10/2023.

<sup>16</sup> Articles 35, 36 and 47 of the Law on the status of judges and prosecutors. Available at: <https://www.eurallius.eu/index.php/en/library/albanian-legislation?task=download.send&id=198&catid=86&m=0> (29. 9. 2023).

<sup>17</sup> Courts act of Estonia. Available at: <https://www.riigiteataja.ee/en/eli/502032022003/consolide> (29. 9. 2023).

including requirements and judgeship examination (Arts. 47-69). Furthermore, In Italy criteria are regulated by the Legislative Decree (Law) 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.

The Venice Commission in the recent Opinion on Cyprus stated that the Judicial Council as deciding body should be bound by “pre-existing, clear and transparent criteria for appointment” that would be elaborated in the normative act.<sup>18</sup> The Venice Commission assessed that inclusion in the law of the criteria such as years of experience and high moral are not sufficient since these are very basic criteria that offer little guidance on the selection process in search of suitable candidates.<sup>19</sup> Similarly, the Venice Commission in the Opinion on Malta<sup>20</sup> and Report on the Independence of the Judicial System<sup>21</sup> highlighted that all decision concerning appointment and the professional career of judges “*should be based on merit, applying objective criteria within the framework of the law*”. Having in mind the Venice Commission standards, the detailed regulation of the criteria and selection procedure should be included in the normative framework to ensure proper guidance and legal security. However, the Venice Commission leaves decision to each country to decide what is the level of details that will be included in the law, and which issues will be regulated by bylaws and internal acts.

Nonetheless in most countries details of the procedure and indicators are regulated in secondary legislation and internal acts. In most countries, the laws include provisions on general requirements for judgeship, such as citizenship of the country, years of relevant experience and clear criminal record, while details related to the procedure of testing and/or interviewing and needed results are part of bylaws. In Croatia detailed provisions are included in the law,<sup>22</sup> however specific issues are regulated by the State Judicial Council normative acts. In Bosnia and Herzegovina selection criteria are regulated at the state level in the Law on the High Judicial and Prosecutorial Council,<sup>23</sup> while there are several bylaws to ensure implementation. The High Judicial Council of the Republic of Serbia adopted in June 2023 new Rulebook on conducting and evaluating interview with the candidate for judicial office.<sup>24</sup> However, the Rulebook did not accomplish to establish objective procedure. It is not clear how Commission will evaluate communication skills, readiness of the candidate to conduct judicial office or professional integ-

<sup>18</sup> Venice Commission, CDL-AD(2018)028, Malta - Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement, para. 44.

<sup>19</sup> Venice Commission, CDL-AD(2021)043, Cyprus – Opinion on Three Bills Reforming the Judiciary, para. 43.

<sup>20</sup> Venice Commission, CDL-AD(2018)028, Malta, para. 44.

<sup>21</sup> Venice Commission, CDL-AD(2010)004, Report on the Independence of the Judicial System Part I: para. 27.

<sup>22</sup> Article 51, Law on State Judicial Council, *Narodne novine* no. 116/2019, 75/2011, 130/2011, 13/2013, 28/2013, 82/2015, 67/2018, 126/2019, 80/2022, 16/2023.

<sup>23</sup> Article 43, *Official Gazette of Bosnia and Herzegovina* no. 25/2004, 93/2005, 48/2007, 15/2008.

<sup>24</sup> *Official Gazette of the Republic of Serbia*, no. 48/2023-116.

ity. It is to be seen if the future Rulebook on criteria for selection of judges will provide more details and guideline for the selection process, including an interview.

At the same time, there are examples where the procedure for appointing and promoting judges is provided by the Constitution. Article 90 of the Greek Constitution<sup>25</sup> includes details on the appointment and promotion of judges. However, this is rather an exception, and this provision also requires further regulation by law. Amendments to the Constitution of the Republic of Serbia ensures inclusion of one article (Art. 145) that prescribes those conditions for selection of judges will be determined by law. Although there were expectations in the professional public that amendments will include more guarantees and precision, this approach ensures that criteria for selection has to be regulated by law, not by secondary legislation.

The regulation of the selection and evaluation of judges in a dedicated law could be a good solution for fragile democracies, however, further elaboration in bylaws will be necessary.<sup>26</sup> The incorporation of the provisions on selection and evaluation of judges in the law could be an adequate mitigation measure for countries in which there is a risk of abuse, if procedure, criteria, indicators and the verification means are clearly defined to reduce discretionary power of competent body.<sup>27</sup> The technical details of the selection and evaluation should be further regulated by the secondary legislation.

### 3. CRITERIA FOR SELECTION AND EVALUATION OF JUDGES

#### 3.1. Selection of Judges

Choosing the appropriate system for selection of judges is one of the primary challenges with which newly established democracies are faced, where often concerns related to the independence and political impartiality of the judiciary persist (Resnik, 2004, p. 579). Through the selection and appointment process decision makers control who enters the judicial profession and under which conditions (Spač, 2019, p. 2077). However, there is no ideal model of selection which guarantees independence of judiciary. In some older democracies, systems may work well in practice and allow for independent judiciary because the executive is restrained by legal culture and traditions (Volcansek, 2007, p. 368). New democracies, however, did not have a chance to develop these traditions and they are incorporating explicit provisions in the constitution and laws to ensure merit-based selection of judges.

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<sup>25</sup> Constitution of Republic of Greece. Available at: <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf> (29. 9. 2023).

<sup>26</sup> Examples provided below on criteria and their weighting, as well as detailed procedure and work of selection panels are too technical to be regulated by law.

<sup>27</sup> The monitoring of the selection and promotion mechanism applied by the Superior Council of Magistracy of Moldova revealed that the SCM did not organize proper interview with candidates nor explained in its decisions reasons for scoring each candidate's performance. More information on the shortcoming of the SCM selection available in the Chirtoaca, I. 2020. *Resetting the System of Selection and Promotion of Judges – Lessons Learned and (New) Challenges*. Legal Resource Centre from Moldova (LRCM).

To better understand criteria for selection of judges it is important to understand methodology of the selection process. Specifically, it is important to understand sources of information and validation of data.

### 3.1.1. Criteria for Selection of Judges

The requirement that judges should be appointed on the bases on clearly defined criteria also expresses a necessity of the public to be informed of the characteristics that qualify persons for judicial office (Van Zyl Smit, 2015, p. 3). Merit is central in the selection process but needs to be defined by the establishment of objective criteria (Malleon, 2006, p. 128). The principle that judges should be appointed on merit is central to many international declarations and statements on the judiciary. The Committee of Ministers of the Council of Europe, in its Recommendation to Member States on Judges: Independence, Efficiency and Responsibilities, provides that outline of a definition by requiring that appointments “*should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity*”.<sup>28</sup> These formulations confirm that merit is to be understood in relation to the role which a judge has to perform.

The most common criteria for selection of judges are professional competence (knowledge of law, ability to conduct court proceeding, capacity to write reasoned decisions), personal competence (ability to handle the workload, ability to decide, openness to new technologies) and social competence (ability to mediate), respect for the parties and the ability to lead for those whose position requires it (Bulmer, 2017, p. 18).

Furthermore, many countries introduced selection criteria that relate to the personal characteristics of a judicial candidate as part of the assessment of their integrity. For example, in Estonia, the suitability of the personal characteristics of a judicial candidate is evaluated by the judgeship examination committee. In the evaluation of the personal characteristics of a judicial candidate, the judgeship examination committee takes into account the information which is important for the performance of the duties of a judge and may make inquiries.<sup>29</sup> A judicial candidate has to pass a security vetting before being appointed as a judge, unless they hold a valid security clearance for access to state secrets classified as ‘top secret’ or unless at the time of becoming a candidate, they hold a position which provides the right of access to any level of state secret by virtue of office.

In Finland,<sup>30</sup> the applicants’ qualifications are assessed by looking at the knowledge and skills they have acquired through their education and earlier work experience. The focus is on the applicants’ actual ability to perform the duties required in the position. Knowledge includes issues such as substantive and process knowledge, command of legal information, problem analysis and solving skills, ability to understand the facts and legal material of a case, process management skills, reasoning skills and language skills.

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<sup>28</sup> Para. 44, Recommendation CM/Rec(2010)12 adopted by the Committee of Ministers of the Council of Europe on 17 November 2010, Judges: independence, efficiency and responsibilities.

<sup>29</sup> Article 54, Courts Act.

<sup>30</sup> Courts Act of Finland. Available at: <https://www.finlex.fi/fi/laki/kaannokset/2016/en20160673.pdf>. (29. 9. 2023).

In Montenegro, legal knowledge is assessed through written test, while in the interview the following criteria are evaluated: the motivation for work, communication skills, ability to adopt decision and resolution of conflicts, understanding of the judge's role in the society.<sup>31</sup>

In Bosnia and Herzegovina selection criteria are specified by the Rulebook of the High Judicial and Prosecutorial Council and in addition to knowledge and education communication skills are required.<sup>32</sup> The assessment of a candidate to become a judge is based on the following criteria: a) candidate's experience, b) abilities of legal analysis; c) the candidate's ability to responsibly, independently and impartially perform the position he or she applied for, professional impartiality and reputation, and behavior outside of work, d) previous work experience of the candidate, e) acquired knowledge and competences of the candidate, f) education and training, publication of scientific works and other activities in the profession, and g) communication skills. For candidates who are holders of judicial office, the criteria a) and b) are determined based on performance evaluation, while other criteria are assessed at the interview. For candidates who are not holders of judicial office, the criteria a) and b) are determined based on the results of the written and qualification test.

### *3.1.2. The Selection Process*

The methodology for conducting the selection usually consists of a combination of oral hearing and written exam, while some countries that have introduced Judicial Academy usually ensures direct entry to judicial profession for graduates from the Academy (Guarnieri, 2018, p. 170). However, there are jurisdictions that in addition to the graduation from the Judicial Academy envisage interview with the candidates for judge position. For example, in Croatia the results from the final exam at the Judicial Academy are combined with the points achieved at interview in front of the Judicial Council and evaluation of work as judicial assistants (after graduation from the Judicial Academy).<sup>33</sup>

In Italy, the selection process is carried out through written and oral exam on legal subject,<sup>34</sup> passing the public competition for exams and successful completing an internship period. The winners of the competition assume the qualification of "ordinary magistrates in apprenticeship" and carry out a period of apprenticeship, for a total duration of eighteen months and divided into theoretical-practical in-depth courses and sessions at judicial

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<sup>31</sup> Articles 48-49, Law on Judicial Council and Judges.

<sup>32</sup> Poslovnik Visokog sudskog i tužilačkog vijeća Bosne i Hercegovine. Available at: <https://vsts.pravosudje.ba/vstvfo/B/141/kategorije-vijesti/1172/1180/4570>. (29. 9. 2023).

<sup>33</sup> Article 17, Rules on evaluation of candidates in the process of appointment of judges in first instance, regional and high courts, State Judicial Council, No. OU-114/22. Available at [https://narodne-novine.nn.hr/clanci/sluzbeni/2022\\_11\\_132\\_1992.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2022_11_132_1992.html) (29. 9. 2023).

<sup>34</sup> There are three written exams consisting of three compositions in which they have to consider specific questions concerning civil law, criminal law, and administrative law. There are nine oral exams: civil procedure; criminal law; criminal procedure; administrative law, constitutional law and fiscal law; labor law and social security law; European community law, international law and elements of juridical information technology; a foreign language chosen by candidate among the official languages of the EU member states.



offices. Once the internship is completed, the Superior Council of the Judiciary, based on the reports drawn up by the magistrates assigned to the judicial offices and by the *tutors* of the Superior School of the Judiciary, and pertaining to the activity carried out during the internship period, evaluates the suitability of the magistrate to exercise judicial functions. If the judgment is positive, jurisdictional functions are conferred and a place of employment is assigned. In case of negative evaluation, the ordinary magistrate is admitted to a new one-year traineeship period. Any second negative evaluation determines the termination of the employment relationship of the ordinary magistrate in traineeship.<sup>35</sup>

In some countries the process of conducting interview is regulated in detail to ensure equal opportunities for candidates. For example, in Germany, the federal state of North-Rhine-Westphalia, in court in Dusseldorf, candidates have to go through a 10-minute interview on the role of a judge, a 5-minute role play concerning a situation at a court trial, a 20-minute general interview designed to obtain an impression of the candidate's personality, a 10-minute role play, a 30-minute group discussion (Frederico, 2005, p. 82).

In addition to the written test and interview, some countries introduced intelligence test and psychological assessment as a step for admission to the judicial profession. In the Netherlands, the procedure of selection for entry consists of an intelligence test, followed by an interview with the selection committee of candidates that fulfil requirements.<sup>36</sup> The candidates admitted by the selection committee have to go through a psychological assessment and another interview with the selection committee. The psychological assessment consists of a test and real working life situation under observation (Frederico, 2005, p. 166). Access is granted according to the test results and according to the number of vacancies.

### 3.2. Criteria for Evaluation of Judges

Most Council of Europe countries use some form of individual evaluation of judges with the aim of assessing and improving the quality of their work and for decisions on the promotion of judges.<sup>37</sup> Moreover, evaluation is used for identification of training needs of judges and to ensure accountability of judges.

The approach to evaluating judges reflects the difficulty of finding the right balance between the aim of promoting the best qualified members and the aim of the judiciary to maintain and encourage individual judicial independence (McIntyre, 2014, p. 901). The additional difficulty lies in the problem of how to characterize individual judges as “high performers”, “average performers” and “poor performers”.

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<sup>35</sup> Article 22 of the Legislative Decree 26 of 2006.

<sup>36</sup> Formal demands are: having graduated at a law faculty with the *effectus civilis* exams in civil law, criminal law and administrative law; to be of Dutch nationality and to have the following personal characteristics – analytical capabilities, juridical expertise, decisiveness, being able to produce adequately under pressure, good communication skills, having a clear judgement.

<sup>37</sup> International Association of Judges (2006). 1<sup>st</sup> Study Commission, How can the appointment and assessment (qualitative and quantitative) of judges be made consistent with the principle of juridical independence. Available at <https://www.iaj-uim.org/iuw/wp-content/uploads/2013/02/1-SC-2006-conclusions-E.pdf>. (29. 9. 2023).

Professional evaluation of judges is conducted regularly in most European jurisdictions. In Germany, most of the federal states have regulations providing for evaluation of judges at regular intervals, usually every four or five years. In Bosnia and Herzegovina evaluation of work of judges is conducted annually. In Italy, judges are subjected to professional evaluation every four years. Frequency of the evaluation also depends on the assessment of the complexity of the procedure and its burdensome effect for the judicial administration and management.

In most member states, a combination of quantitative and qualitative criteria is used for the individual evaluation of judges, albeit in very different ways. Quantitative criteria are usually based on statistical data such as the number of resolved cases, clearance rate, time to judgement, number of reversed decisions. In the process of selection of quantitative criteria decision makers should have in mind availability of statistical data in the justice system, existence of the automatized case management system and reliability of collected statistics. Working with incomplete or paper records is possible, but the compilation of data set is time consuming and may require additional checks on data accuracy. Quantitative criteria enable monitoring of different aspects of judges' work (efficiency, quality, but also integrity). Qualitative criteria are more challenging to define, as well as to ensure reliable and objective sources for their collection. Qualitative criteria are usually focused on treatment of the parties/users, judicial quality, fairness, and integrity of judges. Different tools are used for collecting information on qualitative criteria, such as surveys (users' satisfaction survey), self-assessment and peers' assessment, review of case files, monitoring of trials, etc. While statistical data are relatively easily accessible through case management system, the collection of quantitative data is complex, time consuming and could depend on the culture (peer assessment in some countries failed due to lack of objectivity).

Criteria could be grouped in relation to the efficiency, quality, and independence/integrity of judges. Sometimes countries are using point systems with point values assigned to certain criteria. Productivity figures (the number of cases solved by the judge compared with an average workload of all judges) are considered as relevant. In relation to the quality of work, the outcome of cases appealed from the judge are usually taken into account.<sup>38</sup>

There are jurisdictions with elaborate evaluation systems, fairly strict procedures, and very detailed catalogue of evaluation criteria (Croatia, France, Italy, the Netherlands, Serbia, Montenegro, Bosnia and Herzegovina). However, there are countries in which evaluation of individual judges does not exist. For example, in Sweden there is no evaluation of individual judges, but there is the evaluation of system performance, while

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<sup>38</sup> For example, in Croatia efficiency of work is evaluated based on following indicators: the number of cases in which a decision has been made by a judge; clearance rate (number of cases, where a decision has been made, vis-à-vis the total of the cases forwarded to the judge); the average time to judgment (the time required to deliver a judgment by a judge after the judge completed hearing). To assess quality of work, in Croatia the Council is using indicators such as the number of decisions reversed and/or cases remitted by the appellate court showed in percentage and in absolute numbers; the grounds for reversal and/or remittal; the number of decisions reversed vis-a vis number of decisions which have been appealed showed in percentage and in absolute numbers.

in Denmark evaluation of judges is a result of a concrete complaint against a judge concerning improper or unseemly behavior.

The methodology for conducting evaluation usually is a combination of the assessment of the statistical data and interview with the respective judge, and in some countries the analysis of case files, monitoring of hearings and feedback of superior is also taken into consideration (superior judge or court president) as well as self-assessment (assessment by colleague).

Germany is an example of the country with the complex evaluation procedure that requires inspection of the case files, statistical data (performance and quality) and monitoring of trials. The person who conducts evaluation is always the president of the court. Evaluation is the personal responsibility of the court president which means that it cannot be delegated to anyone else (except the vice-president). Considering the number of judges which may well amount to 200 or more in one regional court, periodic evaluation at a given date is an enormous task. While preparing the evaluation it is necessary to look into court files, to read judgments handed down by the judge, to go through statistics and to gather other information (e.g., from lawyers, from other judges - especially those presiding over the panel of which the respective judge is a member, from appeal court judges).

In Germany, in the federal state of North-Rhine-Westphalia, the evaluation is conducted in line with employee profiles that describe criteria of certain judicial position.<sup>39</sup> The evaluation relates to four areas – professional competence (e.g. knowledge of substantive and procedural law, ability to conduct trials), personal competence (e.g. ability to cope with the workload, ability to decide, openness for new technologies), social competence (e.g. ability to mediate, respect for concerns of parties, ability to lead constructive discussions), and competence to lead (administrative experience, ability to lead and instruct teams). Based on the results, the judges could be in one of the following categories: below average, average, above average, high above average and excellent.<sup>40</sup>

There are countries in which evaluation relies only on statistical data. This approach depends on sophisticated case management system that captures all relevant information; however, it has some shortcomings since judges are focused to achieve only quantitative elements. Croatia and Bosnia and Herzegovina are good examples of this approach. The Priebe Report on Bosnia and Herzegovina concluded that system is over-reliant on quantitative criteria and statistics, which has shown to lead to distorted incentives for judges.<sup>41</sup> However, transition towards a more quality-based system of evaluation of judges could cause difficulties.

<sup>39</sup> The classification of professional competence, personal competence, social competence and competence to lead has found widespread acceptance following an expert meeting on judicial independence organized by OSCE in Kyiv, Ukraine, in 2010. The “Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia”, paras. 27 to 31 have incorporated these elements (Organization for Security and Co-Operation in Europe 2010).

<sup>40</sup> Majority of judges are in the category above average and high above average, while among excellent there are 5-10% of judges.

<sup>41</sup> Expert Report on Rule of Law issues in Bosnia and Herzegovina, Brussels, 5 December 2019, para 72.

Available at: <http://europa.ba/wp-content/uploads/2019/12/ExpertReportonRuleofLawissuesinBosniaandHerzegovina.pdf> (29. 9. 2023).

In Bosnia and Herzegovina, evaluation is based on the data stored in the electronic case management system. Evaluation is based on the record of the achieved orientation norm<sup>42</sup>; records on the quality of judges' decisions; records on the duration of solved and unsolved cases and records on absences from work.<sup>43</sup>

In Croatia, the evaluation of judges is based on thoroughly defined criteria. The State Judicial Council prepares an assessment of a judge's judicial duties based on the following criteria:<sup>44</sup> efficiency - the number of decisions judge made during the evaluated period compared to the number prescribed by the Framework Standards for the Work of Judges;<sup>45</sup> quality of decisions - based on the percentage of annulled decisions regarding the regular legal remedy directly to the higher court, during the evaluation period; the proper performance of judicial duties - respecting deadlines for the preparation of written decisions, regular schedule of hearings, respecting the order in which cases were resolved; experience in performing judicial duties; and other activities of the judge.<sup>46</sup> A similar approach is taken in Montenegro where the quality and quantity of work is evaluated based on statistical data and inspection of cases (randomly selected, selected by the judges and cases in which decision was annulled).<sup>47</sup>

In Serbia, new Law on judges defined in Article 36 eight criteria for the evaluation of judges and most of them are qualitative, which implies that procedure of the evaluation of judges will include at least inspection of cases and maybe participation at the hearings to ensure collection of all relevant data. Prescribed criteria are: professional knowledge and ability to apply it; the ability to think analytically and solve legal issues; ability to make a decision within a reasonable time; the skill of conducting discussion

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<sup>42</sup> Many countries have the defined number of cases that judges have to achieve during the month. Each category of law has different monthly norm (i.e. civil, criminal, commercial, administrative). The norm is very often combined with application of the case weighting methodology. More on case weighing is available at: <https://documents1.worldbank.org/curated/en/529071513145311747/pdf/Case-weighting-analyses-as-a-tool-to-promote-judicial-efficiency-lessons-substitutes-and-guidance.pdf> (29. 9. 2023).

<sup>43</sup> Article 5(3) Rulebook on the procedure for evaluating work of court presidents, judges and judicial assistants, High Judicial and Prosecutorial Council, 14.12.2016, No. 06-02-3-3488/2016.

<sup>44</sup> Article 6, Methodology for evaluation of judges, State Judicial Council, No. OU-132/19. Available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/full/2019\\_12\\_125\\_2509.html](https://narodne-novine.nn.hr/clanci/sluzbeni/full/2019_12_125_2509.html). (29. 9. 2023).

<sup>45</sup> The result of the work by type of case, in absolute numbers and percentage, work on more difficult cases, and indicate whether they are justified reasons if the judge did not make the number of decisions prescribed by the Framework Standards for the Work of Judges.

<sup>46</sup> Other activities listed in the bylaw could be: - Did he or she participate in some forms of professional development as a lecturer of legal topics, at seminars and workshops?

- As an author or co-author, has he or she published professional papers, scientific papers or books in the field of legal sciences, has he or she completed a university program of lifelong learning in the field of law in which he or she has obtained a minimum of 10 ECTS points?
- Whether he or she completed a postgraduate specialist study in legal sciences, obtained an academic degree of master's degree or doctor of science in the field of legal sciences?
- Whether he or she is a teacher or associate in the teaching of legal subjects at a university graduate or postgraduate study?
- Whether he or she was a member of the judicial council?

<sup>47</sup> Articles 89-92, Law on Judicial Council and Judges.

and hearing; the ability of oral and written expression and argumentation; the ability to organize the judge's work; the ability to perform the task of a managerial position; taking on additional work and responsibilities. It will be very challenging to include objectively measurable indicators for abovementioned criteria and it should be carefully designed to reduce lack of trust in the evaluation system. The High Judicial Council in the new bylaws that must be adopted by spring 2024 should consider comparative practice in selection of casefiles that will be evaluated, as well as possibility of monitoring of trials as it exists in Germany.

### ***3.3. Innovative Approaches in Evaluation***

There are few examples of innovative approaches in evaluation of judges that put focus on qualitative elements, such as assessment of judges' behavior through "interview" or user-satisfaction surveys.

The Netherlands judiciary<sup>48</sup> has developed an instrument of self-reflection – "interview" and has been encouraging their judges to observe and discuss each other's behavior during court session. The legal content of the case is not the issue. The underlying idea is that the judge influences the course of the proceedings with his or her behavior during the court session. If the judge doesn't listen carefully, draws conclusions too quickly, divides his attention unevenly between the parties or fails to keep things under control, the litigants will read things into this. Their observations of the judge's behavior will determine how they see their chances and what their next move will be. The judge's behavior is therefore of crucial importance.

The Swedish National Court Administration introduced users-satisfaction surveys to gauge and improve the court user experience.<sup>49</sup> Although the user feedback is not developed to evaluate work of individual judge, it is used to improve judges and court staff behavior. The four criteria were used to determine how a person experiences procedural justice: the possibility to make your voice heard, that the court is perceived as neutral, that the court respects the users and their rights, and that the court employees are perceived as trustworthy. The findings of the survey are discussed among judges and staff. Common problems are identified, brainstorming ensues, and low-cost solutions are then proposed and implemented by judges and staff. The experience of the Swedish courts demonstrates that impressive results can be achieved to improve user satisfaction and courts and judges' performance. The Swedish model offers a practical tool that is easy to implement in other countries and could be also used for evaluation of judges.

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<sup>48</sup> Recruitment, Professional Evaluation and Career of Judges and Prosecutors in Europe. Available at: <http://www.difederico-giustizia.it/wp-content/uploads/2010/09/recruitment-evaluation-and-career.pdf> (29. 9. 2023).

<sup>49</sup> More information are available at World Bank (2017) Court User Feedback: A Swedish Case Study. Available at: <https://documents1.worldbank.org/curated/en/338251513700016007/pdf/122136-WP-P165762-PUBLIC-Court-User-Feedback-A-Swedish-Case-Study.pdf> (29. 9. 2023).

### 3.4. Evaluation of Independence and Impartiality

The independence, impartially and fairness are standards required from judges, however very few countries introduced mechanism for assessing these criteria. In Italy, the independence, impartiality and balance are assessed based on the report from the head of department and report received from the Bar Chamber. Reports refer to facts specifically relevant for independence and behavior that denote an evident lack of balance. However, this approach might raise concerns of objectivity.

The criteria established for the evaluation of judges in Italy is slightly different than previous examples and includes independence, impartiality and fairness, capacity, commitment, diligence and conscientiousness.<sup>50</sup> Independence, impartiality and balance are the so-called “prerequisites” for the judicial function and present the ability to exercise judicial functions independently from internal or external interference, in a position of impartiality with respect to the subjects involved in the process, and with a balanced attitude. The capacity criterion relates to the technique of drafting the provisions, the techniques of conducting investigations, the organization of work, the methods of holding hearings, and the coordination with other offices. Diligence pertains to the presence in the office and/or in the hearing, the observance of the deadlines established for the drafting of deeds and provisions or for the fulfillment of judicial activities, the participation in the meetings of the office. The commitment criterion concerns cooperation in solving organizational or juridical problems, the willingness to replace absent magistrates, participation in refresher courses. The conscientiousness criterion relates to the quantity of procedures dealt with, the time of treatment of the same, and the cooperation in the activities of the office to which one belongs.

Italy is an example of a country that is using a self-assessment report.<sup>51</sup> The decision on the evaluation is based on numerous activities and documents which allow the assessment of professional aspects of the judge. The most relevant are the following documents: “self-report”, a document in which the interested party gives an account of all the elements he or she deems necessary or useful to bring to the attention of the Superior Council of Judiciary in relation to the profiles being assessed; the deeds and provisions of the magistrate, as well as the minutes of the hearing, acquired “on a sample” basis within the context of those drawn up in the four-year period under evaluation; the “informative report”, which consists of a report on the various relevant aspects for the purposes of the assessment, drawn up by the manager of the office to which the magistrate belongs, i.e. the subject who, due to her or his role and proximity to the interested party, knows best the professional profile; statistics relating to the number of provisions drawn up, the time for dealing with the proceedings, the time for filing the documents, also in comparison with the other magistrates of the office; any scientific publications; and any reports from the Bar.

<sup>50</sup> Article 10, Legislative Decree 160 of 2006. Available at <https://www.csm.it/documents/21768/112811/Decreto+legislativo+5+aprile+2006+n.+160/590b9611-b703-4a78-8eec-340467b9185c> (29. 9. 2023).

<sup>51</sup> [https://www.csm.it/web/csm-internet/magistratura/ordinaria/percorso-professionale?redirect=/web/csm-internet/magistratura/ordinaria/percorso-professionale&show=true&title=valutazioni%20di%20professionalit%C3%A0&show\\_breadcrumb=valutazioni%20di%20professionalit%C3%A0](https://www.csm.it/web/csm-internet/magistratura/ordinaria/percorso-professionale?redirect=/web/csm-internet/magistratura/ordinaria/percorso-professionale&show=true&title=valutazioni%20di%20professionalit%C3%A0&show_breadcrumb=valutazioni%20di%20professionalit%C3%A0).

However, introduction of the complex system of evaluation does not always reach the goal. Although the evaluation system in Italy was expected to introduce effective evaluation of judges, it failed in practice. It looks quite unlikely that almost all the 9,000 magistrates reach a positive assessment.<sup>52</sup>

In Slovenia there is criteria of safeguarding of the reputation of the judge and the court as determined from the way in which procedures are conducted, communication with parties and other bodies, the preserving of independence, impartiality, reliability and uprightness, and behavior inside and outside the service.<sup>53</sup> The criteria is elaborated in the bylaw and should be assessed by following qualities: ability to make independent decisions, dedication to the profession, honesty and fairness, legal and moral courage, critical and self-critical assessment, impartiality, and diligence, perseverance and precision.<sup>54</sup>

### 3.5. Consequences of the Evaluation

Results of the evaluation are commonly used for the promotion of judges. However, the Council of Europe highlighted that if an individual evaluation has consequence for a judge's promotion, salary and pension or may even lead to his or her removal from office, there is a risk that the evaluated judge will not decide cases according to the objective interpretation of the fact and the law, but in a way that may be meant to please the evaluators.<sup>55</sup>

In Germany, professional evaluation of judges plays a major role in their career as decisions on higher judicial appointments are largely based on the results of evaluations in regular intervals as well as of evaluations made on applicants seeking promotion. The process of promotion is quite formalized. It resembles the process of initial recruitment and selection (Riedel, 2014, p. 980).

Some countries have separate procedures and criteria for promotion. On the recommendation of the GRECO IV Evaluation round<sup>56</sup> the Supreme Judicial Council of Cyprus in October 2019 adopted a Procedure and Criteria for the Promotion of Judges.<sup>57</sup>

In very few countries results of the evaluation could be ground for demotion of judges, initiation of disciplinary procedure, reduction of salaries and even dismissal from the office. In Bosnia and Herzegovina violation of timelines, as one of the evaluation criteria, could be ground for initiation of disciplinary procedure against the judge.

<sup>52</sup> See: Fabri, M. 2015 *Regulating Judges in Italy*, Research Institute on Judicial Systems, Bologna. Available at: <https://www.ippapublicpolicy.org/file/paper/1432887610.pdf> (29. 9. 2023).

<sup>53</sup> Article 29, Law on judicial service, *Official Gazette*, no. 13.4.1994 & 13.3.2015.

<sup>54</sup> Article 5, Measurements for the selection of candidates for the post of judge, *Official Gazette* no. 64/17.

<sup>55</sup> Consultative Council of European Judges, Opinion No. 17 (2014) on the Evaluation of Judges' Work, the Quality of Justice and Respect for Judicial Independence, para. 6.

<sup>56</sup> GRECO RC4(2020)17 Fourth Evaluation Round – Second Compliance Report, Cyprus, para 55. Available at: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a06389> (29. 9. 2023).

<sup>57</sup> Available at: <http://www.supremecourt.gov.cy/judicial/sc.nsf/All/AC0BEE644B92B162C2258488001F-633D?OpenDocument> (29. 9. 2023).

In some countries poor performance results of the judges could be ground for requirement of the specific and obligatory training (Serbia, Montenegro) or for initiation of disciplinary procedure (for example in Belgium, Bulgaria, Croatia, Cyprus, Greece, and Slovenia). Dismissal from the office as a consequence of poor evaluation results is possible in Austria, Estonia and in rare cases in Greece, Italy, and Slovenia.<sup>58</sup> In Austria dismissal is a consequence of two negative evaluations (“not sufficient”) which follow one after the other. In Italy, if the negative judgement is confirmed twice, the judge is dispensed from the service.<sup>59</sup>

Evaluations might be accompanied by recommendations for improvement of the results. For example, in Bosnia and Herzegovina, the evaluator is obliged to propose measures to improve the work of a judge who has been evaluated with the grade of “unsatisfactorily performs the judicial function” or “satisfactorily performs the judicial function”. Recommended measures are listed in the bylaw, such as a change of department, organization of internal education in the court, additional specific training, including training and engagement of mentor judge if there is a need for an additional period of professional support.<sup>60</sup>

Having in mind the purpose of the evaluation of judges, the mitigation measures should be priority for the low performance of judges to enable improvement of knowledge and skills. If these educational measures do not improve performance, then it should be considered introduction in legislation of ground for initiation of disciplinary procedure for continues poor evaluation results.

### ***3.6. Criteria Weighting***

Selection bodies need formula for weighting different criteria to ensure selection of candidate who is fitting judicial office (Malleon, Russell, 2006, 8). Furthermore, the country should establish flexible approach to enable different weighting of criteria depending on the judicial vacancy that has to be filled. For example, oral communication may be particularly valuable in first instance court, while the written communication skills are more relevant for the appellate courts.

Only few countries have in details elaborated weighting of criteria for selection and evaluation. Most of the countries that have complex criteria weighting are those in the process of the EU accession or which recently joined EU (i.e., Croatia).

Evaluation criteria and their weighting depend on the goals set in front of judiciary. If judiciary is facing efficiency challenges, then focus will be on efficiency indicators

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<sup>58</sup> Consultative Council of European Judges, Compilation of replies to the Questionnaire for the preparation of the CCJE Opinion No. 17 (2014) on justice, evaluation and independence. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680640ff1> (29. 9. 2023).

<sup>59</sup> Available at: [https://www.csm.it/web/csm-internet/magistratura/ordinaria/percorso-professionale?show=true&title=valutazioni%20di%20professionalit%C3%A0&show\\_breadcrumb=valutazioni%20di%20professionalit%C3%A0](https://www.csm.it/web/csm-internet/magistratura/ordinaria/percorso-professionale?show=true&title=valutazioni%20di%20professionalit%C3%A0&show_breadcrumb=valutazioni%20di%20professionalit%C3%A0) (29. 9. 2023).

<sup>60</sup> Article 20, Criteria for evaluation of work of judges in Bosnia and Herzegovina, No. 06-08-1-4014-2/2022. Available at: <https://portalfo1.pravosudje.ba/vstvfo-api/vijest/download/98435> (29. 9. 2023).



(i.e., number of resolved cases, clearance rate, disposition time) and these indicators will bring more points in the evaluation of judges. Furthermore, in young democracies quantitative criteria and statistics are prevailing since these elements are undisputable and easily verifiable.

#### 4. OBLIGATORY POWER OF ELECTION COMMITTEE DECISION

The aim of selection and evaluation is merit-based appointment and promotion and in most countries the scores assessed for candidates is obligatory for the decision-making body (Judicial Council, Ministry, Parliament, President). Exceptions are possible in very limited cases and should be reasoned.

In Germany, the final marks reached in the evaluations play a decisive role in the decision on promotion, and generally the Ministry is not in a position to promote a person with a lower final result over an applicant who has reached a better result in the evaluation. The rule is well established by a long series of decisions of the federal administrative court, where the court has pointed out that selection among applicants for higher posts has to follow, above all, the results of professional evaluations including evaluations that may date back some time; other criteria which are not related to professional performance (age, rank, time spent in office) can only be taken into account if, in view of their professional performance, applicants can be regarded as “by and large” of equal standing.<sup>61</sup> Exceptions to this rule would have to be well founded in order to be upheld on judicial review; they may be possible, for example, where applicants have been evaluated by different bodies (different court presidents, a government ministry, another Land judicial administration) and if there is evidence that the practice of evaluation in one case may have been more lenient than with other applicants. If several applicants hold the same result after evaluation, additional criteria may be brought in. These may be the period for which the relevant evaluation result has been achieved by the applicants, the time served in the judiciary, their age, or laws asking for preferential treatment of female applicants.

In Bosnia and Herzegovina, the rank list is obligatory, while deviation from the rank list could be done on an exceptional basis.<sup>62</sup> According to the High Judicial and Prosecutorial Council Policy note on election and appointment of judges and prosecutors from 2023, the decision on selection of candidate with the lower score should be reasoned.

In Croatia the State Judicial Council has discretionary right to appoint judges from a maximum of 15 candidates who have achieved the highest number of points. Only limitation envisaged by the legislation is that the difference between the selected candidate and the candidate with the highest number of points must not exceed 15 points.<sup>63</sup> This

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<sup>61</sup> Cf. Bundesverwaltungsgericht, judgments of December 19, 2002 – BVerwG 2 C 31/01 – and of February 27, 2003 – BVerwG 2 C 16/02 -. Oberverwaltungsgericht Lüneburg, Decision of June 5, 2003, - 2 ME 123/03 -; Oberverwaltungsgericht Berlin, Decision of January 15, 2004, - 4 S 77.03 -.

<sup>62</sup> Available at: <https://vsts.pravosudje.ba/vstvfo-api/vijest/download/98483> (29. 9. 2023).

<sup>63</sup> Article 17, Rules on evaluation of candidates in the process of appointment of judges in first instance, regional and high courts, State Judicial Council, No. OU-114/22.

solution gives significant power to the Council to deviate from the selection list, which might result in abuses of power and undue influence over the appointment process.

The opinion of the Italian Superior Council of Judiciary on the evaluation process is not binding on the Board of Governors which formulates the final assessment. The Superior Council draws up the opinion, based on the documents indicated above, giving specific reasons on the various profiles subject to evaluation and formulating a judgment, which can be “positive”, “deficient”, “seriously deficient” or “negative”, on each of the elements into which the evaluation itself is broken down.

Although most countries allow for the selection of candidates that are not first on the rank list, the German approach and practice is the most relevant for ensuring merit-based approach in the selection process. The German approach prevents any misuse of the selection process and should lead to increased integrity and transparency of the process.

## 5. CONCLUSIONS

Regulation of selection and evaluation criteria and process by law is common across Europe to ensure transparency of the process for both general public and candidates/judges. Details of both processes are usually regulated by the secondary legislation.

Existence of robust and objective criteria for selection of judges is characteristic of majority of European countries, even those that have established Judicial Academies. In addition to the criteria that relates to the performance and test results, some countries introduced different integrity or psychological assessment that could provide comprehensive insight into the profile of future judge. Countries that are in the process of the judicial reform could consider introduction of such tools to ensure selection of adequate candidates.

Evaluation of individual judges is perceived as accountability tool, but also raises concerns that could jeopardize independence of judiciary. Ensuring balance between standards of independence and accountability is important task for legislator. Furthermore, different sources are used for evaluation and Serbian authorities should consider to expand source to statistics to include inspection of case and monitoring of trials. In only few countries negative evaluation can lead to demotion of judges, initiation of disciplinary procedure, reduction of salaries and even dismissal from the office. Countries should be very careful in introducing such consequences of the evaluation. There are good examples of envisaging mitigation measures for poor evaluation results, that are focused on improvement of judge’s performance (i.e., mentoring work, additional trainings, transfer to another chamber). Furthermore, evaluation results should be directly linked with promotion of judges.

Although prevalence of the statistical indicators for evaluation of judges has its shortcomings, it is a good starting point for young democracies. Indicators that are based on interviews, surveys, inspections or monitoring of hearings inevitably include subjective aspect to the evaluation which raises concerns among professionals and public (Spigelman, 2006, p. 72).

Obligatory power of the selection and evaluation results is ensuring merit-based approach. Limitation of discretionary power to avoid rank list of candidates (both in the selection and the evaluation process) ensures objectivity of the process and prevents any abuses. If country introduces comprehensive selection and evaluation indicators and process, establishment of the obligatory power of the selection and evaluation results will lead to the trust in the system.

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