

REPORT ON

**“PERFORMANCE ASSESSMENT SYSTEM
OF MAGISTRATES”**

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INTRODUCTION

The professional performance evaluation of judges varies from country to country with regard to methods and timing, the rigour with which reviews are conducted, and the agents that conduct the evaluations. In some Member States, evaluations take place only at the time judges are scrutinized for promotion. In other Member States, all judges are periodically evaluated at regular intervals (for example, in Austria, France, and the 16 states of the German Federation where periodic evaluations take place at intervals that vary from two to five years). Such evaluations are thereafter taken into account when the need arises to choose among them the more qualified ones for promotion to higher levels and to fill the vacancies in those levels of jurisdiction.¹ Regular annual assessment of magistrates/ judges performance is necessary should the country need to end corruption practices in the judiciary system, Mr Hamza Hassan Juma, the ‘House Committee chairperson,’ has said.

“Delays in court proceedings and questionable dismissal of cases may be an indication of corruption. Justice delayed is justice denied,” Mr Gowda said before members of the House approved a 14.2bn/- budget for the Ministry of Constitution and Legal Affairs for the year 2015/2016. He argued that it is important to assess magistrates/ judges in terms of cases they each handle per year, because many people are unhappy with the judiciary system in handling cases particularly abuse cases.

The backbencher also raised concern over moral decay, saying that many youths are now engaged in unethical lifestyle, putting the Zanzibar culture and religious teachings at their back.

“Gender Based Violence (GBV) remain a problem in our society, divorce and corruption should also be addressed by financially empowering Muftis Office so that it can increase education programmes for behaviour change,” said Mr Juma. However, the Attorney General (AG), Mr Said Hassan Said, informed the House that there has been development recorded in war against graft in the islands with improved judiciary system.

1

http://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf

“It is not possible to assess magistrates/judges in terms of how quick they hear cases, because case delays involve many issues. Sometimes witnesses are to blame because they avert courts when summoned.

Let us push the judiciary staff to observe ethics,” the AG said. He said magistrates and judges should be independent, but must comply with the laws and ethics for improved effectiveness of the courts.

Criteria of professional evaluation in European civil law countries: the examples of Austria, France, Germany, Italy and Spain

In France, the evaluation form provides four categories (general professional ability, such as capacity to decide, to listen and exchange views with others, to adapt to new situations; legal and technical skills, such as the capacity to use one’s own knowledge, capacity to preside; organizational skills, such as the capacity to lead a team, to manage a court; and working capacity, professional relations with other institutions). **In the state of 16 German federal republic**, the criteria are the same as those indicated above for the evaluations of judges on probation; not only are they analytically stated but they also include criteria that go well beyond those concerning legal knowledge, legal skills and diligence. In general, the last decades have seen the criteria for the evaluation of judges become (in some countries more than in others) on the one hand more analytical in assessing legal knowledge, judicial skills and diligence, and on the other hand taking into account “qualities” other than those strictly related to *jus dicere* (organizational skills, social skills, knowledge of the techniques and technologies that make more functional the work of the judge and of the court as a whole, etc.). Variations worthy of note do occur with regard to the rigour with which professional evaluations are made. In some countries analytical evaluations are summed up in a scale of grades. In one of the German states for example it has been estimated that only 5 to 10 per cent of the judges receive the highest grade of “excellent;” the same in Austria, where judges who receive the lower grades may suffer financial losses, or be asked to retire. In other countries professional evaluation is far from being selective. **In Italy**, for example, the laws and regulations on professional evaluations have been interpreted in an extremely indulgent

manner by the Superior Council of the Magistracy, so much so that in the last 40 years all the judges have been promoted to the highest level of the career and salary, short of very grave disciplinary or criminal sanctions. **In Spain, promotion from the first to the second level of the career, i.e. from “judge” to “magistrate,” can be obtained simply on the basis of seniority of service.**² The periodic evaluation of judges in Member States with a bureaucratic system of recruitment touches upon the relation between independence and accountability. On the one hand such evaluations are necessary to ensure judicial accountability (and with it the quality of the judicial service). At the same time measures must be taken to avoid the risk that professional evaluations be used to indirectly influence judicial decisions.³ **In some states, such as Austria, Belgium, France and Germany, the responsibility to make decisions on the status of judges from recruitment to retirement is, in various ways and degrees, a shared responsibility of the heads of courts, of judicial councils or ad hoc agencies that include representatives of the judges (usually higher ranking judges are overrepresented), ministers of justice and in some states of the German Federation also parliamentary commissions.** In other states, such as Italy and Spain, the overriding role in managing judicial personnel from recruitment to retirement is played by centralized judicial councils usually composed in various proportions by representatives of the judges and of “lay” people, usually practising lawyers or university professors.⁴

AUSTRALIA

² a Esterling K. M. (1999), Judicial Accountability the Right Way: official performance evaluations help the electorate as well as the bench, in *Judicature*, Vol. 82, no. 5, pp. 2006-215. The term “magistrate” has a different meaning in different countries. In Italy, as well as in France, it is used to include both judges and public prosecutors. In Spain, instead, the term “magistrate” is used to indicate a specific level of the career of judges. In the United Kingdom and in the United States it is used to indicate judges having specific functions.

³ http://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf

⁴ Esterling K. M. (1999), Judicial Accountability the Right Way: official performance evaluations help the electorate as well as the bench, in *Judicature*, Vol. 82, no. 5, pp. 2006-215.

There are a number of measures used for assessing performance at an institutional level in Australian courts, such as disposition rates or backlog. Court staff involved in workload allocation experience considerable pressure to ensure that matters are processed through the court in a timely fashion to meet these measures.⁵ In some jurisdictions, courts operate to targets for disposition rates set by the executive. There is also concern among court staff and judicial officers to ensure that allocation of work was fair and equitable as between judicial officers, and that court staff allocating workload did not ‘flog the willing horses’ (as one interviewee expressed it), along with recognition that institutional workload measures are not appropriate to assess individual judicial performance, especially in a master calendar system. As Opeskin has pointed out⁶,

In Australia, there is no formal process for recognising judicial specialisation, such as the ‘ticketing’ system used in parts of the United Kingdom, and no formal performance appraisal for promotion as in some European countries. However, perceived differences in subject matter, expertise and relevant skills may be taken into account in the allocation process. See Wallace, Mack and Roach Anleu, above n 46, for a fuller discussion of these factors in the allocation process.⁷

There is little or no empirical data on many important aspects of the Australian judicial system.⁸ While there has been examination of case management in Australian courts,⁹ there has been surprisingly little investigation of the process by which cases are allocated. A substantial literature has investigated workload allocation practices in United States courts¹⁰ however, US courts generally use individual docket systems that, as noted above, are rarely used in Australia, particularly in the state courts that are the focus of this research.¹¹ Given the lack of legislative detail, understanding the actual practices of judicial workload allocation in Australian courts requires considerable original empirical research. The workload study reported in this article began with preliminary consultations with court staff and judicial officers in several courts to develop the research strategy. Systematic, semi-

⁵ <http://www.magistratescourt.wa.gov.au/>

⁶ http://sydney.edu.au/law/slr/slr_36/slr36_4/SLRv36n4WallaceMackRoachAnleu.pdf

⁷ *IBID* http://sydney.edu.au/law/slr/slr_36/slr36_4/SLRv36n4WallaceMackRoachAnleu.pdf

⁸ http://sydney.edu.au/law/slr/slr_36/slr36_4/SLRv36n4WallaceMackRoachAnleu.pdf

⁹ For a recent overview, see Australian Centre for Justice Innovation, *The Timeliness Project: Background Report* (Monash University, October 2013) ch 4

¹⁰ See, eg, Steelman, Goerdts and McMillan, above n 7.

¹¹ Opeskin, above n 5

structured interviews were undertaken with judicial officers and court staff in a variety of roles at different courts and locations. This qualitative research method enabled them to discuss a wide range of issues, based on their own experiences and knowledge.¹² Data from the interviews was supplemented by examination of internal court documents, and later consultations in several courts after the release of a draft report. The results of this innovative research provide descriptive information and insight into key aspects of the workings of the Australian judicial system that is not accessible outside the courts and is not always well understood internally.¹³ Analysing actual judicial workload allocation practices discloses the significant roles played by court staff in the allocation process. This entails complex interaction with the judiciary while balancing important, but often implicit, principles of judicial independence and neutral case allocation, with organisational demands for efficiency in work processing and fairness in work allocation.

Notwithstanding that legislation vests this responsibility in the chief judicial officer, in practice, this function is often carried out primarily by a court officer (or perhaps a master, in higher courts¹⁴ who works in close consultation with, and under the supervision of, the chief judicial officer or another senior judicial officer with delegated responsibility. For example, the judicial officer responsible for allocation will generally provide the relevant court officer with details of those judicial officers in the court who are available for particular lists or types of work within a certain time frame. The court officer then allocates those available judicial officers to the lists. With a trial list, the decision as to which judicial officer will be allocated which case may be made by a court officer, depending on judicial availability, determined quite close to or even on the trial date.¹⁵

UNITED KINGDOM

This is the executive summary of the report by Her Majesty's Crown Prosecution Service Inspectorate (HMCPPI) on the performance assessment of the Crown Prosecution Service

¹² See Anselm Strauss and Juliet Corbin, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (Sage Publications, 2nd ed, 1998)

¹³ For more detail, see Mack, Wallace and Roach Anleu, above n 6

¹⁴ Now often called an 'associate judge' in Australian courts.

¹⁵ In Australia, there is no formal process for recognising judicial specialisation, such as the 'ticketing' system used in parts of the United Kingdom, and no formal performance appraisal for promotion as in some European countries. However, perceived differences in subject matter, expertise and relevant skills may be taken into account in the allocation process. See Wallace, Mack and Roach Anleu, above n 46, for a fuller discussion of these factors in the allocation process.

(CPS) London, Hounslow borough. The borough performance assessment (BPA) process provides a benchmark for the performance of the CPS London borough units in ten key aspects of work. Each of the aspects is assessed as being Excellent, Good, Fair or Poor. The borough is then assessed on its overall performance in the light of these markings. The BPA also evaluates the management of resources at borough level. The overall performance assessment of CPS London, Hounslow borough was POOR. The table below provides a breakdown of the assessed level of performance against the ten aspects:

Aspect Score Assessment Pre-charge advice and decisions 0 Poor. Decision-making, preparation and progression in magistrates' court cases 0 Poor. Decision-making, preparation and progression in Crown Court cases 0 Poor. The prosecution of cases at court 2 Fair. Serious violent and sexual offences, and hate crimes 0 Poor .Disclosure 2 Fair Custody time limits 3 Good The service to victims and witnesses 0 Poor. Managing performance to improve 2 Fair Managing resources Not scored Management and partnership working 2 Fair
OVERALL ASSESSMENT 11 Poor¹⁶

ASPECT	SCORE	OUT OF	ASSESSMENT
Pre-charge advice and decisions	0	5	Poor
The prosecution of cases at court	0	5	Poor
Decision-making, preparation and progression	2	5	Fair
The service to Victim and witnesses	2	5	Fair

¹⁶ <http://www.londoncourt.com.au/Core/Content/Public-Home-Page/Content1170.aspx>

	Managing performance to improve	3	5	Good
	Managing resources	3	5	Good
	Management and partnership working	5	5	Excellent
	TOTAL SCORE	15	35	POOR

Assessments Assessments and judgements have been made by HMCPSI based on absolute and comparative assessments of performance. These came from national data; CPS self-assessment; HMCPSI assessments; and by assessment under the criteria and indicators of good performance set out in the performance assessment framework, which is available to CPS London. Evidence has also been taken from a number of sources, including the findings from the examination of a file sample, the view of staff, representatives of criminal justice partners and the judiciary. Inspectors have also conducted observations of the quality of case presentation in the magistrates' courts and the Crown Court. The performance assessment has been arrived at by rating the unit's performance within each category as either Excellent, Good, Fair or Poor in accordance with the criteria outlined in the framework. The inspectorate uses a points based model for assessment, with a borough's overall assessment determined by the cumulative total of points for all of the ten aspects that are scored. There are two limiters within the model. A borough cannot be rated Good or Excellent unless it is assessed as Good in at least two of the first four aspects. This is designed to give pre-eminence to the ratings for the core aspects of the borough's work. Similarly, if a borough is scored as Poor in three or more aspects its final assessment will be reduced by one grade from that which the overall points indicate. The findings from the borough performance assessments undertaken are drawn together in a pan-CPS London report which provides an

overall picture of the performance of the area. The pan-London report addresses a number of significant issues that have emerged as the assessments have progressed including the effectiveness of CPS London headquarters operations, and CPS London Direct which now makes a significant proportion of the charging decisions in the area. It will be published simultaneously with this report.¹⁷

BELGIUM

Does Belgium have an assessment system covering all its magistrates (judicial and/or administrative)?

There is a functioning appraisal system in the Republic of Bulgaria covering all the magistrates – judges, prosecutors, investigating magistrates, administrative heads and deputies of administrative heads within the judicial system bodies. The appraisal is performed via assessment which represents a valuation of their standard of professionalism and ethics, and is the basis of their professional development. The assessment of judges, prosecutors, investigating magistrates, administrative heads and deputies of administrative heads within the judicial system bodies is made by the Supreme Judicial Council on a decision of the Commission on Proposals and Performance Appraisal of judges, prosecutors and investigating magistrates, following a proposal made by the concerned judge or prosecutor or investigating magistrate themselves, or by not less than one-fifth of the members of the Supreme Judicial Council, or by the respective administrative head.

Within court, does the assessment system vary depending on the function of individual magistrates ?

¹⁷ <http://magistrates-court.co.uk/city-of-london-magistrates-court/>

The Judiciary System Act (JSA) provides for the general criteria for the assessment of magistrates' qualification, as well as for specific criteria for the assessment of judges, prosecutors and investigating magistrates. The assessment of administrative heads and deputies of administrative heads comprises the appraisal of their qualification as judges, prosecutors or investigating magistrates plus the appraisal for their leading position taken. The qualification appraisal is made on the basis of both general and specific criteria for judges, prosecutors and investigating magistrates, and the assessment criteria for holding a head position are the following ones: 1. **ability to working in a team** and allocating assignments within it; 2. **ability to decision making**; 3. **presentability**. When performance of administrative heads or deputies of administrative heads is subject to appraisal, the performance of the judicial system body they are the head of is also analysed and taken into consideration¹⁸

Assessment system or systems used for magistrates in court?

The appraisal system in the Supreme Administrative Court (SAC) does not vary from the appraisal system applied in the other courts in Bulgaria. Assessment is made by the Commission on Proposals and Performance Appraisal with the Supreme Judicial Council. According to Article 37 of the JSA, the Supreme Judicial Council elects the Commission from among its members, and it acts as a standing Commission. According to Article 39(1) of the JSA, the Commission on Proposals and Performance Appraisal of judges, prosecutors and investigating magistrates carries out the performance appraisal of judges, prosecutors and investigating magistrates, in which it is assisted by auxiliary appraisal commissions. Support performance appraisal commissions are set up with all judicial system bodies, and each committee is composed of three judges, prosecutors or investigating magistrates designated by the administrative head of the respective judicial system body

What criteria are magistrates in your court assessed ?

The assessment of magistrate qualification is done on the basis of both general and specific criteria.

¹⁸

https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CCMQFjAB&url=http%3A%2F%2Fwww.raadvst-consetat.be%2F%3Fpage%3Dabout_history&ei=nOhvVdD3EoKduQS9oYLgDQ&usg=AFQjCNF1zo5YKaOK37EQyNsp1dOuvRg_jw&sig2=WeUADqHufvidVX9b86gT3Q

The general criteria for the assessment of a judge, prosecutor or an investigating magistrate are:

- The number, type, complexity, and grade of files and cases; - Compliance with terms; - The number of acts confirmed and acts repealed, and the grounds therefore; - The presence of easy to understand and justified reasoning of the acts; - The outcomes of inspections carried out by the Inspectorate at the Supreme Judicial Council; - The presence of incentives or sanctions in the period to which the performance appraisal refers; - Observation of professional ethics rules for judges, prosecutors and investigating magistrates.

Is there any Specific criteria for the performance appraisal of judges ?

- compliance with the schedule of court hearings, - skills for conducting court hearings and drawing up records of proceedings. The performance appraisal of an administrative head or of a deputy of an administrative includes an evaluation of their qualification as a judge, prosecutor or an investigating magistrate, and an evaluation of their suitability to occupy the position of a head.

Assessment chart or Point table ?

1. The number, type and complexity of files and cases – up to 10 (ten) points;
 2. Compliance with terms – up to 15 (fifteen) points;
 3. The number of acts confirmed and repealed and the grounds therefore – up to 15 (fifteen) points;
 4. The presence of easy to understand and justified reasoning of the acts – up to 15 (fifteen) points;
 5. The outcomes of inspections carried out by the Inspectorate with the Supreme Judicial Council – up to 5 (five) points;
 6. The presence of incentives and sanctions in the period to which the performance appraisal refers – up to 5 (five) points;
 7. Observation of professional ethics rules for judges, prosecutors and investigating magistrates – up to 10 (ten) points.
- (2) The overall workload in the judicial area and of the specific judicial system body concerned, as well as the workload of the appraised judge, prosecutor or investigating magistrate, shall also be taken into consideration when appraisal is made – up to 5 (five) points. Article 4. Specific criteria for the performance appraisal of judges shall be: 1. Compliance with the

schedule of court hearings – up to 10 (ten) points; 2. Skills for conducting court hearings and drawing up records of proceedings – up to 10 (ten) points.

8. Article 7. While appraising the performance of an administrative head or a deputy of an administrative head, the performance of the judicial system body they are the head of shall also be analysed and taken into consideration.

9. Article 8. The specific criteria for evaluation of head position suitability are:

1. Ability to work in a team and to allocate the assignments within the team – up to 15 (fifteen) points;

2. Ability to make decisions – up to 20 (twenty) points;

3. Present ability – up to 15 (fifteen) points, including: a) presence of conduct contributing to the heightening of the Judiciary respectability – up to 10 (ten) points;

4. Skills to communicate with other government bodies, and with citizens and legal entities – up to 5 (five) points.

5. Article 10. (1) The positive appraisal of judges, prosecutors and investigating magistrates is of three levels: - fair – from 30 (thirty) to 50 (fifty) points; - good – from 51 (fifty one) to 80 (eighty) points; - very good – from 81 (eighty one) to 100 (one hundred) points. (2) If the appraisal is of less than 30 (thirty) points, the complex evaluation is negative. (3) The positive appraisal of administrative heads or deputies of administrative heads is of three levels: - fair – from 50 (fifty) to 80 (eighty) points; - good – from 81 (eighty one) to 120 (hundred and twenty) points; - very good – from 121 (hundred and twenty one) to 150 (hundred and fifty) points. (4) If the appraisal is of less than 50 (thirty) points, the complex evaluation is negative.

6. A negative appraisal, if given, is a ground for denying a salary increase for the magistrate assessed until a positive appraisal is given.”

What is the procedure of assessment?

The magistrate assessment is made on a decision of the Commission on Proposals and Performance Appraisal following a proposal made by the concerned judge or prosecutor or investigating magistrate, or by not less than one-fifth of the members of the Supreme Judicial Council, or by the respective administrative head. Proposal for assessment for acquiring tenure or for periodic assessment is made not later than three months before the expiration of

the five-year period. In cases where an administrative head or a deputy of an administrative head is appointed, the Commission on Proposals and Performance Appraisal makes an assessment of all candidates. The Commission on Proposals and Performance Appraisal may assign to a support performance appraisal commission the inspection of work of the appraised magistrate, administrative head or deputy of administrative head, based on the established appraisal indicators. In such cases the support performance appraisal commission shall submit to the Commission on Proposals and Performance Appraisal a summary report on the outcomes of the inspection, which shall also set out a proposed complex evaluation. The Commission on Proposals and Performance Appraisal may hear the appraised magistrate, as well as it may gather additional information, based on the established performance appraisal indicators. The appraised magistrate is provided with the results of the performance appraisal prior to their submission for discussion to the Supreme Judicial Council. The appraised magistrate may give objections in writing, which they file with the Commission on Proposals and Performance Appraisal. The latter shall examine the written objections and shall give an opinion thereon. The Commission on Proposals and Performance Appraisal submits, within 14 days after the assessment is finished, the results of the performance appraisal, the assessed magistrate's written objections, if any, its comments on the objections and a proposal for a complex valuation to the Supreme Judicial Council for its consideration. The Supreme Judicial Council shall hear the appraised magistrate, where the Commission on Proposals and Performance Appraisal has proposed a negative complex valuation. The appraised magistrate is notified at least 7 days before the session date and they are given the opportunity of submitting objections in writing. Outside the cases of proposals for negative complex valuation, the Supreme Judicial Council may hear the appraised judge, prosecutor, investigating magistrate, administrative head or deputy of an administrative head. The Supreme Judicial Council determines by resolution the complex valuation of the performance appraisal, which appraisal is not subject to separate appeal. The resolution may also contain recommendations to the appraised magistrate, the implementation of which shall be taken into consideration in the following performance appraisal. In cases where performance appraisal has been carried out for the purpose of acquiring tenure, promotion in rank or for appointment of an administrative head or a deputy of an administrative head and if the complex valuation is negative, a new performance appraisal may take place two years later, at the earliest.¹⁹

¹⁹ <http://justice.belgium.be/fr/>

ASSESSMENT OF JUDGES IN MOLDOVA

Magistrates in Moldova were subject to continuous attestation throughout their tenure. Attestation was a theoretical exam that judges had to take every three years to confirm their qualification grades and whenever they wished to obtain a qualification grade, promotion to another court or to a managerial position within the same court, as well as when the judge him/herself requested attestation. The system of attestation was criticized by both judges and experts as being an administrative burden rather than helpful to judges in carrying out their work.²⁰ The methodology of the assessment included an analysis of laws, the regulatory and institutional framework (regulations, decisions, bodies) and practices in light of international standards (taking into consideration recommendations and opinions that further define those international standards such as the OSCE/ODIHR Kyiv Recommendations and CoE Venice Commission opinions)²¹.

Complemented by interviews/meetings with 12 judges, two judge members and two civil society members of the Evaluation Board (hereafter: Board) and three judge members of the SCM. The interviews followed a list of questions developed by the assessment team⁷ on the basis of the analysis conducted (legislative review, decisions of the Board and additional research). These interviews served to support a detailed analysis of the system's functioning in practice, clarify inconsistencies and better understand the concerns identified during the desk analysis of laws, regulations and randomly selected decisions of the Board. Interviews were conducted with seven female and five male judges from every judicial level (first instance, court of appeal and Supreme Court of Justice– hereafter SCJ), who had received different grades, including judges who had challenged the decision of the Board but also one

²⁰ 2 OSCE ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, June 2010, para. 28. The Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia were developed by a group of independent experts at a regional expert meeting organized by ODIHR and the Max Planck Institute for Comparative Public Law and International Law – Minerva Research Group on Judicial Independence, in June 2010. Available in English and Romanian at <http://www.osce.org/odihhr/KyivRec>.

²¹ Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, see at note 2; among Venice Commission opinions, in particular one that concerns the draft legislation introducing a system with comparable features in Armenia: Venice Commission and Directorate of Human rights of the Directorate General of Human Rights and Rule of Law of the Council of Europe, 'Joint Opinion on the Draft Law Amending and Supplementing the Judicial Code (Evaluation System for Judges) of Armenia', CDL-AD(2014)007 [hereafter: VC Opinion Armenia].

judge who had not yet been through an evaluation. Additionally, the assessment team met with four members of the Board and three members of the SCM. Both these meetings were conducted as focus group discussions. During the meeting with the SCM, the assessment team also consulted the present members on some of their initial draft recommendations to test their relevance and potential acceptance. Finally, the assessment team also consulted the Report on the new system of performance evaluation of judges, elaborated by the Moldova NGO “Institute for Penal Reform” in 2013 (hereafter IPR Report).²²

LAW ON PERFORMANCE ASSESSMENT

Performance evaluation of judges is governed primarily by the Law on Selection, Performance Evaluation and Career of Judges,²³ This law sets out the broad objectives of evaluation of judges, and the institution responsible for the evaluating procedures. Primarily, the aim of performance evaluation of judges as defined by Law nr. 154 is to determine the “knowledge and professional skills of judges, as well as the ability to apply theoretical knowledge and necessary skills in practice of the profession of judge, determining weak and strong aspects in the work of judges, boosting the trend of improving professional skills and increasing the efficiency of individual judges and at court level”.²⁴

JUDGE’S EVALUATION :

- Efficiency of work²⁵:
- Case files’ clearance rate (maximum 10 points),
 - Respect of reasonable terms²⁶ in the process of delivering justice (maximum 10 points),
 - Respect of the term for drafting the judgment²⁷ (maximum 8 points),
 - Execution of other functions within the deadline provided by law (maximum 6 points),

²² The report is available in Romanian only at <http://irp.md/library/publications/416-raportul-privind-noul-sistem-de-evalua-re-a-performanelor-judecorilor.html> [hereafter: IPR Report].

²³ Law on selection, performance evaluation and career of judges, nr. 154, of 5 July 2012.

²⁴ Law on the selection, performance evaluation and career of judges 2012, Article 12,1.

²⁵ Annex I of the SCM regulation establishes the maximum amount of points assigned per each indicator and the total per criteria. Regarding the first criterion, efficiency of work, there seems to be a clerical error in the annex, which assigns a total of 38 points to this criterion, while the sum of the maximum points allocated per each indicator included in this criterion is 40.

²⁶ Terms is used in this context as ‘timelines’ or time

²⁷ This indicator was amended by SCM decision nr. 796/34 of 5 November 2013 by excluding the phrase “and of publication of judgments on the court’s website”. This amendment was welcomed by judges interviewed for this assessment, in particular for the fact that publication on the court’s website of judgments is not a judicial obligation.

- Knowledge and application of information technology (maximum 6 points);

QUALITY OF WORK

- Percentage of upheld judgments/court orders out of the total number of appealed judgments/court orders, except the judgments reversed due to reasons not attributable to the judge (maximum 10 points),
- Number and percentage of reversed judgments/court orders out of the total number of examined cases²⁸ (maximum 6 points),
- Clarity of drafting and the quality of reasoning of the judgments (maximum 10 points),
- The way of organising judge's professional activity (maximum 10 points),
- Continuing professional development of the judge (maximum 10 points);

PROFESSIONAL INTEGRITY

- Respect of professional ethics (maximum 7 points),
- Professional reputation (maximum 7 points),
- Committed disciplinary offences (up to minus 5 points),
- Violations of the ECHR established by the European Court of Human Rights (up to minus 5 points);
- Optional criteria (mentioned only in annex 1 of the SCM regulation): knowledge of working languages of the ECtHR, information technology knowledge (MS Word, Excel, internet skills and use of e-mail) (maximum 4 points)

NEW ZEALAND

As an institution, the judiciary is accountable to society to administer and organise itself so as to provide the resolution of disputes. This must be done in a way that is not only fair, just and in accordance with the law, but also efficient, cost-effective, whilst employing a high degree

²⁸ This indicator was introduced by SCM decision nr. 796/34 of 5 November 2013. The opinion of the interviewed judges is split regarding this indicator, more details are provided below.

of professionalism and skill. Judicial independence means that judges cannot be accountable in a sacrificial sense, in the way that public servants would be accountable to their minister. However, the judiciary is a branch of government which makes decisions in individual cases which determine and uphold people's rights. The judiciary also makes administrative decisions at the Chief Judge level which have a significant impact on the efficiency and quality of the justice process. Growing attention is being paid to these administrative decisions and to the organisation of the judiciary as an institution. The judges of the District Courts are not exempt from this scrutiny.²⁹ In New Zealand, the District Courts have taken a lead in developing proposals to measure judicial accountability in an explanatory way for their organisation and administration. A paper (authored by the National Executive Judge, and Judges' Research Counsel) and presented at an international conference for jurists, judges and court administrators in March 2013, proposed that this administrative accountability should mirror judicial accountability in respect of judicial decisions. The result of that accountability is that reasons must be provided which the public can scrutinise and comment upon, while judicial independence remains preserved. The paper proposed that to withstand scrutiny, it is imperative that the efforts of the judiciary are fully supported and resourced by the executive, particularly in an institutional model like that of New Zealand, where the judiciary has no independent budgetary or resource control. It also emphasised the importance of sufficient information being available to the public, so that the public confidence in the judiciary as a well organised, professional, efficient and independent institution is not misplaced. In recognition of this accountability, the District Courts proposed a minimum set of performance measurement areas for the judicial administration, namely: the timeliness of decisions, the giving of appropriate reasons for decisions, the level of judicial training and appropriate workloads for judges³⁰. We intend to develop these concepts in the ensuing year, with a view to settling upon a process of formulating and publishing appropriate measures.

The general criteria for an magistrate are: - The number, type, complexity, and grade of files and cases;

- Compliance with terms; - The number of acts confirmed and acts repealed, and the grounds therefore; -

²⁹ <https://www.courtsofnz.govt.nz/district/district/annual-reports-of-the-district-court-judiciary/district-court-judiciary-annual-report-2013-3.pdf>

³⁰ <http://www.justice.govt.nz/courts/district-court>

The presence of easy to understand and justified reasoning of the acts;

- The outcomes of inspections carried out by the Inspectorate at the Supreme Judicial Council;
- The presence of incentives or sanctions in the period to which the performance appraisal refers;
- Observation of professional ethics rules for judges, prosecutors and investigating magistrates³¹

CONCLUSION

Different countries have experimented with various models of performance measurement or evaluation for many decades. A vast body of research has captured the successes and failures of these efforts. Since it would be foolish not to consider this research when one plans to adjust a particular system of performance measurement, this chapter aims at emphasising some of the major findings. Since it is a necessary prerequisite for performance evaluation to consider in some debt what constitutes “good” or even “excellent” performance, a positive bi-product of embarking upon evaluation of performance can be an increased clarity of objectives, also in the “top” of the organization.

³¹ <http://www.aca-europe.eu/seminars/Brussels2009/Bulgaria.pdf>