

**International Association of Judges; Annual Meeting in Siofók, Hungary  
1<sup>st</sup> Study Commission; September 27<sup>th</sup> to October 02<sup>nd</sup> 2006**

**Questionnaire**  
**HOW CAN THE APPOINTMENT AND ASSESSMENT (QUALITATIVE AND QUANTITATIVE) OF JUDGES BE MADE CONSISTENT WITH THE PRINCIPLE OF JUDICIAL INDEPENDENCE<sup>1</sup>**

**Country: .....AUSTRIA.....**

We do not consider the question of the initial appointment of the "judge", because we want to discuss the question of appointment together with the question of assessment. We therefore deal with the appointment of judges to another position/function. The question of (first) appointment has already been discussed by the First Commission several times<sup>2</sup>.

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

On the occasion of applying for a new position, be it at higher court, be it another court of the same level, be it a special position at the same court like president of court the Personalsenat (commission composed of 5 judges), which is in charge to make a proposal to the President of the Republic (or the minister of justice) whom to appoint, has to make a ranking of the candidates. The criteria to decide who is the best appropriate candidate for the vacant position are fixed in the law: the knowledge of the law; the diligence, the reliability, the decisiveness, the behaviour in court, the ability of communication, and the success in the former position. The Personalsenat will use the last regular assessment (see question 2) and collect additional information. A hearing is possible but not compulsory.

2. Are there assessments on other occasions?

Yes there is an assessment of every judge after two years after the judge was appointed to a new position. There might be an extraordinary assessment if the president of the court or the judge asks for it, considering that the change of the performance of the judge will cause a change in the outcome of the assessment.

3. Who is in charge of the assessments?

The Personalsenat of the court, composed of the president of the court, the oldest vice-president and three judges elected by their peers. There is the possibility to appeal to the Personalsenat of the court of appeal.

4. Please describe how an assessment is conducted?

The Personalsenat collects information by asking the president of the court, the presiding judges of the chambers which deal with the remedies against the judgements of the judge, the controlling department of the court of appeal (Abteilung Innere Revision), looks at some statistics concerning the number of cases, with an exceptional duration period, sometimes looks at some of the files and finally gives a written statement with reasons and a final mark ranging from excellent to incapable.

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

Only insofar, as there is a look into the statistics if the judge has an remarkable different number of long pending cases, or judgements which have not been delivered within a certain time, comparing this figures with the number of new cases and the over all workload.

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

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

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

Insofar as the reports of the presiding judges of the chambers dealing with the remedies sometimes comment on the application of the procedural law, the way how reasons of judgement are given, how effective the judge deals with cases etc.

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

Only insofar as a special effectivity can be discovered, without harming the quality.

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

As one of the aspects the number of long lasting cases is compared with the workload and with the performance of other judges.

9. How are judges who sit in court assessed?

See questions above

10. What are the consequences of these assessments?

The assessments may be used, when the judge applies for another position, when the Personalsenat has to rank the applicants for the vacant position. If the overall assessment end with a mark less than good, there is an assessment for every following year, if the mark a judge is found as incapable during two periods following each other the judge will loose his office.

11. Is there any connection between assessment and remuneration?

No, except that to get from level 3 to level 4 in the remuneration scheme your performance must not be lower than average (within a scheme of 8 levels judges are promoted automatically from one level to the next every 4<sup>th</sup> year in office)

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

No, because it is performed by a panel of judges

13. What topic do you suggest for next meeting?

Judges and Public Prosecutors

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Binningen, April 13<sup>th</sup> 2006

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