

# Revision of the Methodology for Evaluating the Work of Judges

## I. Introduction

This paper is based on a project that was carried out in relation to the revision of the evaluation of the work of judges in the Republic of Croatia. The project “Revision of the Methodology for Evaluating the Work of Judges” was carried out within the framework of the Norwegian Financial Mechanism 2014-2021 in cooperation with the Norwegian Courts Administration, as a donor partner in the program, and the Council of Europe, as an international partner in the program, and in accordance with the Justice and Home Affairs program, the purpose of which is strengthening the rule of law in the Croatian judicial system. The project was implemented by the Directorate for the Organization of the Judiciary of the Ministry of Justice and Public Administration, in cooperation with the Norwegian Courts Administration, in the capacity of the donor partner, and the State Judicial Council, in the capacity of the project partner.

The main goal of this project is to improve the system for evaluating the work of judges in the Republic of Croatia, in the sense of realizing a more efficient and fair system for the evaluation of judges by comparing the evaluation systems of three member states of the European Union. In order to achieve the goal of the project, the existing system for evaluating the work of judges in the Republic of Croatia was analyzed, a comparative analysis of the evaluation of the work of judges in the Republic of Austria, the Kingdom of the Netherlands and the Republic of Portugal was carried out, and recommendations were made for improving the Methodology for Evaluating the Performance of Judicial Duties.

In accordance with the current legislative framework, the system for the formal and individual evaluation of the work of judges is regulated by the Courts Act and by-laws, the Methodology for Evaluating the Performance of Judicial Duties (hereinafter: the Methodology), which is adopted by the State Judicial Council, and the Framework Criteria for the Performance of Judges, which are prescribed by the minister responsible for judiciary affairs. Therefore, the subject of this analysis encompasses the Courts Act (Official Gazette, No. 28/13, 33/15, 82/15, 82/16, 67/18, 21/22), the Methodology for Evaluating the Performance of Judicial Duties (Official Gazette, No. 125/19) and the Framework Criteria (1 January 2022).

## II. Analysis of the existing system for evaluating the work of judges in the Republic of Croatia

### 2.1. The Courts Act (*de lege ferenda*)

The Courts Act<sup>1</sup> regulates the rights and duties of judges<sup>2</sup>, which also encompasses the monitoring of the work of judges, which takes place on two levels: one is determining whether the judge fulfills their duties as a judge<sup>3</sup>, to which all judges are subject once per year and which is the responsibility of the president of the court at which the judge performs their judicial duties, and the second is an evaluation of the performance of judicial duties, which is carried out only for the judges who are candidates for appointment to another court and for the position of president of the court, and this is under the jurisdiction of the judicial council of the competent court in relation to the court at which the judicial position is to be filled.<sup>4</sup>

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<sup>1</sup> Official Gazette No. 28/13, 33/15, 82/15, 82/16, 67/18, 126/19, 130/20, 21/22, 60/22, 16/23, 155/23

<sup>2</sup> Chapter IX, Articles 85 through 105

<sup>3</sup> Articles 94 and 95

<sup>4</sup> Articles 94, 96 and 97

### 2.1.1. Fulfillment of judicial duties

The rule of law<sup>5</sup>, as one of the highest values of the constitutional order, also includes requirements regarding the content of the law, and one of the fundamental elements of the principle of the rule of law is the requirement for definiteness and precision of the legal norm. Indefinite and imprecise legal norms enable arbitrary decision-making in all branches of law and particularly threaten demands for a uniform application of law.<sup>6</sup> The Courts Act does not prescribe the necessary content of the decision on determining the fulfillment of judicial duties, neither in the operative part nor in the explanation of judgments, which results in the adoption of very different decisions by the president of the courts, which often do not even contain the minimum that should be contained by the nature of the matter, from incomplete sentences and explanations to those that do not have an explanation. The importance of determining the content of the decision lies in harmonizing the position of judges of different courts when submitting objections against decisions, as well as enabling high-quality examination of the decisions in the event of an appeal being submitted to the president of an immediately higher court. In addition, as a consequence of passing a decision that determined that a judge did not adopt the number of decisions prescribed by the Framework Criteria for the Performance of Judges without justifiable reasons, it is the duty of the president of the court to initiate disciplinary proceedings against such a judge.

The Courts Act does not specify the criteria which are the basis for making a decision on the fulfillment of judicial duties, but only refers to the criteria prescribed for the decision on the evaluation of the performance of judicial duties by the judicial council.<sup>7</sup> However, the criteria which are the basis for adopting a decision on the performance of the judicial duties do include the duties and rights of the judge<sup>8</sup>, and in order to determine whether a judge fulfilled their judicial duties for the previous calendar year, it is only important to determine whether they have fulfilled their duties, and not whether they participated in some other activities that are not included in the duties of a judge, but in the scope of their rights, which will affect their higher assessment of the performance of judicial duties. Therefore, the criteria which are the basis for adopting a decision on the fulfillment of judicial duties should be limited only to the criteria related to judicial duties, namely, to the number of decisions that the judge adopted in relation to the number of decisions that they should have adopted based on the Framework Criteria for the Performance of Judges, specifically with regard to the total number and the type of cases, expressed in absolute numbers and in percentage (Article 97, paragraph 1, item 1), the quality of decisions (Article 97 paragraph 1 item 2) and on the proper performance of judicial duties (Article 97, paragraph 1, item 3). Namely, the decision on whether a judge has fulfilled their judicial duties is not influenced in any way by the judge's potential participation as a lecturer at seminars during the calendar year, the publication of professional and scientific papers, etc. (Article 97, paragraph 1, item 5), and neither by their seniority (Article 97, paragraph 1, item 4).

We deem that it would be useful to prescribe the duty of informing a judge of the court's final statistical data on the fulfillment of their judicial duties for the previous calendar year, with the

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<sup>5</sup> Article 3 of the Constitution of the Republic of Croatia (Official Gazette No. 50/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 5 /14)

<sup>6</sup> Decision and Resolution of the Constitutional Court of the Republic of Croatia No. U-I-722/2009 dated 6 April 2011

<sup>7</sup> Article 95 paragraph 1

<sup>8</sup> Article 97 paragraph 1

possibility of the judge stating the accuracy of the data on the fulfillment of their judicial duties and providing reasons on why they did not adopt the number of decisions within a one-year period which is prescribed by the Framework Criteria for the Performance of Judges.

The prescribed content of the decision on the fulfillment of judicial duties should contain an introduction, an operative part, an explanation and an instruction on the legal remedy, with the provision that the operative part should state the proportions in which the judge fulfilled their judicial duties based on the Framework Criteria for the Performance of Judges, the proportions in which they did not fulfill their judicial duties, whether there are justified reasons for a lesser number of decisions adopted compared to the number prescribed by the Framework Criteria for the Work of Judges and in what proportion. The operative part of the decision should also contain data on compliance with the deadlines, while the sentence of the decision on the fulfillment of the judicial duties of a judge of the court of first instance should also contain the number of confirmed, reversed, annulled and modified decisions according to the quality criteria of the decisions according to which the judicial council evaluates the work of the judge in cases of candidacy for another court or for the position of president of the court<sup>9</sup>. For judges of the court of second instance, the decision does not contain criteria for the quality of decisions, considering that all judges of the court of second instance are evaluated with the same number of points based on the quality of decisions according to the Methodology for Evaluating the Performance of Judicial Duties.

The current provisions of the Courts Act prescribe that the duty of the president of the court is to explain the decision only in cases when they adopt a decision in which they determine that a judge did not adopt the required number of decisions but that there are justified reasons<sup>10</sup> therefor, in which case they must state what those justified reasons are, while this obligation does not exist when adopting the decision determining that there are no justified reasons for not adopting the number of decisions determined by the Framework Criteria for the Performance of Judges. Since the decisions of the president of the court also fall within the reach of the right to a reasoned decision, which forms an integral part of the right to a fair trial guaranteed by Article 29 paragraph 1 of the Constitution of the Republic of Croatia, we are of the opinion that it should be a requirement that the explanation of the decision related to determining the fulfillment of judicial duties, in cases when it is determined that a judge did not adopt the number of decisions determined by the Framework Criteria for the Performance of Judges without justifiable reasons, must also provide an explanation of why the reasons that the judge presented in their statement regarding the number of decisions they have adopted in a one-year period upon reviewing the court's final statistical data are not justified.

#### 2.1.2. The role of judicial councils in the evaluation of judges

According to the generally accepted standards that regulate the issue of the evaluation of judges, which are best and most clearly reflected in:

1. Recommendation of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (CM/Rec (2010)12)<sup>11</sup>, which in paragraph 58 prescribes:

„58. Where judicial authorities establish a system for the evaluation of judges, the basis of such systems should be objective criteria that should be published by the relevant judicial authority. This procedure should allow judges to express their opinion about their own activities

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<sup>9</sup> Article 97 paragraph 1 item 2 of the Courts Act

<sup>10</sup> Article 95 paragraph 4 of the Courts Act

<sup>11</sup> Accepted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of deputy ministers

and the evaluation of these activities, as well as to challenge the evaluations before an independent body or court. “

Furthermore, the Conclusions of Opinion No. 17 (2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence, stipulate:

“10. Individual evaluation of judges should - in principle - be kept separate, both from inspections assessing the work of a court as a whole, and from disciplinary procedures (paragraphs 29, 39).

11. It is essential that there is procedural fairness in all elements of individual evaluations. In particular judges must be able to express their views on the process and the proposed conclusions of an evaluation. They must also be able to challenge assessments, particularly when it affects the judge's “civil rights” in the sense of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (paragraph 41).

14. The principles and procedures on which judicial evaluations are based must be made available to the public. However, the process and results of individual evaluations must, in principle, remain confidential so as to ensure judicial independence and the security of the judge (paragraph 48).“

The fundamental question is whether the current provisions of the Courts Act ("Official Gazette" No. 28/13, 33/15, 82/15, 82/16, 67/18, 126/19, 130/20, 21/22, 60/22, 16/23, 155/23) are in line these criteria and recommendations.

Within the complex of the evaluation of judges, in addition to the provisions on the evaluation of judges, the judicial council has an important and unique role. Articles 49 through 62 of the Courts Act regulate the matter of the judicial council, and the question of interest for us is the question of jurisdiction and composition of the judicial councils as regulated by Article 49 paragraph 1 item 1 and Article 50 paragraph 3 of the Courts Act. Those provisions stipulate that the judicial council evaluates the duties of a judge, and that the work of the judicial councils for the High Misdemeanor Court of the Republic of Croatia, the High Criminal Court of the Republic of Croatia and the Supreme Court of the Republic of Croatia is performed by the sessions of all the judges of the aforementioned courts. The evaluation of judges is prescribed by provisions 96 through 104 of the Courts Act.

With regard to the evaluation of judges who are candidates for the Supreme Court of the Republic of Croatia, the evaluation of the performance of judicial duties is carried out by the Judicial Council of the Supreme Court of the Republic of Croatia, which according to the provisions of Article 53 of the Courts Act consists of all the judges of that court, except for the ones who cannot serve as members of the judicial council in accordance with the general provision on the incompatibility between membership in the judicial council and other duties or due to other circumstances, which state that a member of the judicial council cannot be the president of the court, a member of the State Judicial Council nor a judge to whom a disciplinary measure was imposed in the previous four years (Article 54 paragraph 3 of the Courts Act). Therefore, judges who are candidates for being elected as a judge of the Supreme Court of the Republic of Croatia are evaluated by the judicial council of that court, which is made up of all the judges of that court, with the exception of the president of the court and two judges who are among the judges of the Supreme Court of the Republic of Croatia, members of the State Judicial Council and three judges who decide on appeals against decisions on the evaluation of judicial duties, and in accordance with the provisions of Article 102 paragraph 1 of the Courts

Act. This leads us to the absurd situation where the decision of all the judges of the Supreme Court of the Republic of Croatia on the evaluation of the candidate for the position of judge of the Supreme Court of the Republic of Croatia is evaluated by a council consisting of only three judges.

We deem that, by intervening in the Courts Act *de lege ferenda*, such an unnatural situation in which a council with a smaller composition decides on the matters of appeals on the validity and regularity of a decision by a council with a larger composition should be changed, all the more so since it is in some way a remonstrative legal remedy, because the same court decides on the legal remedy for the decision made by the same court within a first-instance procedure.

At first glance, this would appear to be unnecessary “nagging”, but when we look at the aforementioned CCJE Opinion No. 17 (Conclusion No. 11), which states that the criteria from Article 6 of the European Convention on Human Rights, the issue of an effective legal remedy in a fair procedure becomes a very important element of the process of evaluating the work of judges. This is because such a situation, where the council of the same court and with a smaller composition than the composition of the first-instance council decides on an appeal, does not exist in any other procedure in the Republic of Croatia, but also due to the question of the decision-making freedom of the three-member council, which could possibly oppose the decision of all the judges of the Supreme Court of the Republic of Croatia regarding the evaluation of the performance of judicial duties of candidates for the position of a judge of the Supreme Court of the Republic of Croatia, and which also falls within the scope of the fair trial criteria because it concerns the matter of real independence of the council that decides in the appeal procedure. There are two ways out of this situation:

1. That the candidate for a judge of the Supreme Court of the Republic of Croatia does not have the right to appeal against the assessment of the judicial council of the Supreme Court of the Republic of Croatia (all the judges of that court)<sup>12</sup> and
2. That the issue of the composition of the judicial council of the Supreme Court of the Republic of Croatia be reformed, and thus expand the composition of the body that would decide on appeals against the decisions of the judicial council of the Supreme Court of the Republic of Croatia.

According to our assessment, the first option is not acceptable because candidates for appointment as judges, even when it comes to candidates for judges of the Supreme Court of the Republic of Croatia, must also be given the right to appeal, which is also the standard of the Council of Europe. Therefore, a judge must have the possibility to dispute the assessment according to all the guarantees of Article 6 of the European Convention on Human Rights. In view of the above, it is proposed that certain provisions of the Courts Act be amended *de lege ferenda* so that:

- the Judicial Council of the Supreme Court of the Republic of Croatia has 7 members,
- the Judicial Council of the Supreme Court of the Republic of Croatia decides on appeals against the evaluation of all the judges, except for appeals against the evaluation of candidates for judges of the Supreme Court of the Republic of Croatia,
- a session of all the judges of the Supreme Court of the Republic of Croatia, which does not include the president of the court, members of the State Judicial Council from the ranks of the judges of the Supreme Court of the Republic of Croatia and judges who are

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<sup>12</sup> Which, in our opinion, would be against the principles of the Council of Europe, and the authors do not advocate this solution but only mention it as a possible one.

members of the Judicial Council of the Supreme Court of the Republic of Croatia, decides on appeals against the evaluation of candidates for the position of judge of the Supreme Court of the Republic of Croatia. The session should be chaired by a judge designated on an annual basis as deputy president of the Supreme Court of the Republic of Croatia.

Given that the proposal is to establish a Judicial Council of the Supreme Court of the Republic of Croatia, which would be competent to make evaluations on the performance of judicial duties for judges who are candidates for the election to the position of judge of the Supreme Court of the Republic of Croatia and to decide on appeals against evaluations of the performance of judicial duties of other judicial councils of lower courts, this Article of the Courts Act was supplemented in accordance with the proposed amendment, and a new competence of the Session of Judges of the Supreme Court of the Republic of Croatia was introduced, which has the sole role of deciding on appeals against the evaluations of the Judicial Council of the Supreme Court of the Republic of Croatia. We deem that these changes would significantly improve the system for evaluating the work of judges and introduce a vertically consistent system where at each level of judicial practice there is a body (judicial council) that evaluates judges based on the same provisions of the Courts Act, the State Judicial Council Act and by-laws (Methodology for Evaluating the Performance of Judicial Duties and Framework Criteria for the Performance of Judges).

Furthermore, taking into account that the promotion process or the process of appointing the president of the court involves the competition of several candidates and that the evaluations of all candidates have an impact on the evaluation and order of candidates on the list, it is clear that the rights of a candidate judge can be violated not only by omissions in making their evaluation, but also failing to evaluate other candidates who are competing for the same judicial positions in a competition for appointment to a certain court. That is why we deem that judicial councils should abandon the practice whereby a legal remedy can only be brought in relation to one's own assessment, and that the judge should also be given the right to bring a legal remedy in relation to the assessment of a judge who is ranked ahead of them after the assessment, if there are certain objections that some of the evaluation criteria and the points that are awarded to that judge or judges are wrongly recognized, evaluated and awarded.<sup>13</sup> An appropriate intervention with regard to the Courts Act is also possible in order to explicitly prescribe this right of a judge so as to state that a judge also has the right to, within 8 days from the day when the decision on their evaluation was first delivered to them, inspect the evaluations of other judges who were evaluated in the same appointment procedure and then, within 8 days, file an appeal against the evaluation(s) of the judges who obtained a higher number of points in the evaluation process.

### **III. Comparative Report Evaluation of Judges**

#### **3.1. Methodology of Evaluation of Judges in Croatia**

##### **3.1.1. Basics of Evaluation of Judges**

In most member states of the Council of Europe, judges are evaluated in some way. The decision whether and how judges are evaluated is inextricably linked to the history and culture

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<sup>13</sup> There is an analogy with the right to legal remedy to other priority lists

of a country and its legal system.<sup>14</sup> The goals of evaluations<sup>15</sup> are to improve the quality of judges' work, to ensure accountability of judges and increase trust in the judiciary. In many member states results of evaluations are of great importance when decisions about a judge's promotion are made. The goal is to provide an objective basis for merit-based appointments and thus avoid cronyism. Because of the importance of evaluation for the quality of the judiciary and its possible effects on judicial independence, both the ENCJ<sup>16</sup> and CCJE<sup>17</sup> have prepared guidelines on the evaluation of judges.

The approaches of the ENCJ in 2012 and the CCJE distinguish formal or informal systems of evaluation of judges. The majority of member states in the Council of Europe use a **formal system** of individual evaluation of judges. In a formal system, judges are evaluated according to specific rules and procedures. **Informal evaluation** tools include discussions, informal feedback, self-evaluation and peer review.

Since 2022, the ENCJ<sup>18</sup> distinguishes between different goals of evaluation systems:

- A. Personal learning and professional development of a judge.
- B. Performance evaluation by management, not aimed at individual resource/career decisions but at improving the administration of justice in general.
- C. Performance evaluation aimed at helping human resource/career decisions in relation to judges, such as promotions.

The more important such an evaluation is for the career of individual judges, the more important are safeguards to secure judicial independence.

### 3.1.2. Process of evaluation

In some member states, the **president** of the court evaluates judges (e.g. Germany, Hungary). The president gathers the relevant information on the judge's work which often includes reading the judge's decisions, visiting hearings and interviewing the judge and his or her colleagues. The evaluator makes the final decision after having given the judge the opportunity to comment on a preliminary draft. Usually, the decision can be challenged in court.

In other countries, a **Council for the Judiciary** or a subgroup of that council gathers information on the work of the evaluated judge and decides on the evaluation (Bulgaria, Estonia, Italy, the Northern Macedonia, Moldova, Portugal Slovenia, Spain, Turkey). In some other countries, both a council and the president of the judge's court cooperate in the process

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<sup>14</sup> CCJE Opinion 17 (2014) para 22.

<sup>15</sup> See for a comparative summary CCJE-BU 2014-1

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680640ff2>.

<sup>16</sup> ENCJ report on minimum standards regarding evaluation of professional performance and irremovability of members of the judiciary Report 2012–2013

<sup>17</sup> CCJE Opinion No. 17 (2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence

<sup>18</sup> ENCJ Report Independence, Accountability and Quality of the Judiciary 2021-2022 1.2.3

(Albania, Austria). In some more systems, the evaluation process starts with a self-evaluation of the judge (Albania, France, Romania).

### 3.1.3. Criteria

In many Council of Europe member states, **quantitative criteria** play a role in the evaluation of judges. These criteria focus on the amount of work a judge has completed. Especially the number of cases in which a judge has made a decision, the time spent on each case and the average time to reach a judgement is taken into account (Austria, Bulgaria, Croatia, France, Germany, Greece, Italy, Poland, Romania, Slovenia and Turkey). In Bosnia and Herzegovina and Spain, for example, a judge is evaluated according to the extent she has met a fixed quota.

The way such criteria are used in the evaluation differs widely. In some member states, data is converted into a percentage or points reflecting the performance of each individual judge compared to other judges (Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, North Macedonia, Italy and Turkey). In other states, such quantitative factors only provide the starting point for an individual assessment (Austria, France, Germany and Slovenia).

Most countries use **qualitative criteria** as well in the evaluation process, such as the quality of judgements, the behaviour of judges in oral hearings, and their communication skills with advocates, citizens and colleagues. The complexity of the cases, work ethic, organisational and leadership skills can also be taken into account. Some countries stress that the quality of a judgement, rather than the "correctness" of an individual decision is tested in order to respect a judge's independence. A judge's scholarly activities such as teaching, publications and lecturing can also be considered. Such criteria focus on assessing the quality of the judge's work. This is no easy task, because the quality of a judge's work requires a value judgement which necessarily involves a subjective element. Reversal rates, i.e. the percentage of cases in which a judge's decisions are overturned by a court of appeal, are a tool through which legal systems aim at making evaluations more objective. A problem with this approach is, however, that the reversal of a decision can have reasons which have nothing to do with the judge's quality of work.

In some countries, there are also rules about how to weigh different criteria. Such systems may distinguish different competence areas and ask the evaluator to assign grades or points in each category and then calculate an overall grade.

### 3.1.4. Examples for the evaluation of judges

After different systems for the evaluations of judges have been presented in a general way, the following part provides specific examples collected in the three study visits of the project.

#### a) Austria

Austria has no Judicial Council, but the administration of the judiciary is under the responsibility of the Ministry of Justice. The Ministry of Justice appoints the Courts' presidents who preside over the administration of courts for the Ministry of Justice. However, there are strong elements of judicial self-administration in Austria, especially the staff panel (*Personalsenat*) in relation to the appointment of judges. There are staff panels at Regional

Courts, Higher Regional Courts and the Supreme Court consisting of five judges (President, vice-president and three judges elected for four years by their peers). Staff panels have three major functions: They evaluate judges, they decide about the distribution of cases within the court and send lists of recommendations for the appointment and promotion of judges to the Minister of Justice who usually follows them.

Compared to the Croatian system, where judges are evaluated when applying for promotion to a higher court but also applying for the position of president of a court, all judges are evaluated by in Austria by the staff panel in their respective court to ensure a high standard of judicial work. Judges who underperform have to be reevaluated again. If they do not agree with the result, they can apply to the staff panel at the respective higher court. If a respectable standard is achieved in the early years of a career, judges are only reevaluated if they choose to do so. This allows concentrating on difficult cases and separates evaluation and a specific promotion procedure. Theoretically, evaluation results are important for promotion. However, in the Austrian system, given that most judges are evaluated excellently, in practice the informal assessment of a court president may play a more important role than evaluations.

Compared to the Croatian system, qualitative elements seem more important in Austria. However, in the internal revision, quantitative data especially concerning the organisation of judicial procedures and backlogs play a great role and is used to improve the judicial system. In particular, there is no fixed quota of cases a judge needs to solve in a given period. While this might be regarded as a lack of objectivity from the Croatian perspective, it is doubtful if quotas can be determined in a realistic and fair manner across different legal areas.

It seems noteworthy that in the context of internal revisions (evaluation type B), recommendations to the court's president and the Ministry of Justice are given outside the scope of evaluation procedures. Using data for improving the judiciary as a whole seems important in every judicial system.

#### b) Portugal

The Portuguese judiciary is led by a Judicial Council, the Conselho Superior Da Magistratura (CSM), the highest governing and disciplinary authority of judicial courts in Portugal since 1976. The Portuguese judicial council has personnel competences with respect to the appointment, promotion and disciplinary responsibility of judges. The CSM also plays the decisive role in the Portuguese system of evaluation of judges.

In Portugal, the evaluation of judges (evaluation type C, according to the ENCJ) and the monitoring of courts (type B) are both undertaken by inspectors, who are part of the Division of Judicial and Inspection which is a service unit of the CSM. There are 18 inspectors appointed for a three year term which can be renewed once. Inspectors need to be judges at second instance who have been evaluated with the top grade. For judicial inspections, the country is subdivided into 16 legal areas for which 16 inspectors are responsible. Judges at the Court of Appeal and Supreme Court are not evaluated by the inspectors. There are also 2 inspectors for disciplinary procedures, responsible for a northern and a southern area of the country.

Inspections are based mainly on data including the report of the judge's previous inspection, inquiries of disciplinary proceedings, if any, files and recordings of proceedings chaired by the judge which the inspector can access electronically. Both the CSM and the Ministry of Justice have impressive electronic tools to monitor courts' and individual judges' performance.

Moreover, the inspector is expected to travel to the respective court to interview the judge and colleagues. The criteria used are mainly quantitative with broad categories such as human capacity, organisational skill, legal skills and intellectual capacity.

After the inspector has delivered the draft, the inspection report and the evaluation and grade it suggests is deliberated within the responsible Section of the Permanent Council. The result may be challenged within the CSM or by the inspected judge or through an administrative action to the Supreme Court of Justice.

#### c) The Netherlands

In the Netherlands, each court has a management board composed of judges that oversees the general management and day-to-day running of the court.<sup>19</sup> The Council for the Judiciary (*Raad voor de rechtspraak*) is responsible for the allocation of budgets, supervision of financial management, personnel policy, ICT, housing etc.<sup>20</sup> Both the Council and the courts promote quality within the judiciary system, *inter alia* by using a common and overarching quality system, applied by all courts, with the aim to enable the courts to improve quality. Under the ENCJ scale, this might be classified as a **system type B**.

The individual evaluation of judges is informal, carried out as a peer review with the aim to improve the quality of the judge's work. It might be classified as an evaluation type A. The evaluation can in principle be considered in question of promotion within the same court, but it plays no role in the case of appointment to a court of the same or a higher rank. Beyond this, there is no evaluation of the work of permanently appointed judges in the Netherlands.

However, before being appointed to a permanent position as a judge, candidates undergo a training program which includes a rigorous evaluation of the candidates' performance during the training period.

### 3.2. Conclusion

Neither of the three systems seems adequate for Croatia. While The Netherlands and Portugal both have a Council for the Judiciary comparable to that in Croatia, in Austria, court administration is performed by the Ministry of Justice. The Dutch system is just informal, which is not adequate to influence promotions and the Portuguese system focusses very much on qualitative criteria while the Croatian judges expect the objectivity of fixed numbers and quotas.

## IV. Recommendations for improving the Methodology for Evaluating the Work of Judges

The provision of Article 97 of the Courts Act<sup>21</sup> prescribes criteria for evaluating the performance of judicial duties<sup>22</sup> with the explanation that the criteria will be elaborated by the

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<sup>19</sup> The Judiciary Act section 15

<sup>20</sup> See [Judicial system Netherlands | Dutch judiciary \(rechtspraak.nl\)](https://www.rechtspraak.nl) and the Judiciary Act Part 6 on Council for the Judiciary

<sup>21</sup> Official Gazette No. 28/13, 33/15, 82/15, 82/16, 67/18, 126/19, 130/20, 21/22, 60/22

<sup>22</sup> This Article prescribes the following elements as criteria:

Methodology for Evaluating the Performance of Judicial Duties. The Methodology for Preparing the Evaluation of the Performance of Judicial Duties (hereinafter: Methodology) determines the evaluation criteria, their scoring and the method of calculating the evaluation period, as established by the Courts Act. The Methodology for Evaluating the Performance of Judicial Duties is adopted by the State Judicial Council, with the prior opinion of the Council consisting of the presidents of all judicial councils in the Republic of Croatia and the General Session of the Supreme Court of the Republic of Croatia.

During the period up to now, the criteria for evaluating judges through adopted methodologies have been changed and evaluated differently, which, inter alia, is perhaps most evident in the number of points that a judge could achieve according to the criteria from a particular Methodology. Thus, according to the Methodology of 2007<sup>23</sup>, a judge could achieve even more than 400 points, while according to the Methodology of 2010<sup>24</sup>, as well as the Methodology of 2012<sup>25</sup>, a judge could achieve the maximum number of 150 points.

The Methodology that is currently in effect is the Methodology for Evaluating the Performance of Judicial Duties adopted on the basis of the provisions of Article 98 of the Courts Act ("Official Gazette" No. 28/13, 33/15, 82/15, 82/16 and 67/18), in accordance with the prior opinion of the Council of Presidents of all Judicial Councils in the Republic of Croatia number: Sv-29/19-3 dated 27 November 2019, and the General Session of the Supreme Court of the Republic of Croatia number: SU-IV-408-/2019-3 dated 21 November 2019, which the State Judicial Council adopted at its session held on 11 December 2019 (hereinafter: Methodology of 2019).<sup>26</sup> According to the provisions of the Methodology that is currently in effect, a judge can also achieve a maximum of 150 points when evaluating their performance of judicial duties.

#### 4.1. General information about the Methodology

The Methodology for Evaluating the Performance of Judicial Duties determines the evaluation criteria, their scoring and the method of calculating the evaluation period, as established by the Courts Act, while the performance of judicial duties of all judges in the Republic of Croatia, except for the judges of the Supreme Court of the Republic of Croatia, is evaluated on the basis

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1. the number of decisions adopted by a judge in relation to the number of decision they should have adopted based on the Framework Criteria for the Performance of Judges, specifically with regard to the total number and the type of cases classified, expressed in absolute numbers and in percentage,
  2. quality of decisions – the number of confirmed, reversed, annulled and modified decisions in relation to the total number of decisions adopted and in relation to the number of decisions against which legal remedies have been brought, and the number of decisions in which a significant violation of the procedure has been determined in relation to the number of decisions against which legal remedies have been brought,
  3. proper performance of judicial duties – meeting deadlines, setting hearings, respecting the order in which cases are resolved, etc.,
  4. experience in the performance of judicial duties,
  5. other activities of a judge – participation in the professional training of judges as a lecturer at seminars and workshops, publication of professional and scientific papers in the field of legal sciences, membership in judicial councils, etc.

<sup>23</sup> The Methodology for Preparing the Evaluation of Judges, which was adopted by the Council of Presidents of all Judicial Councils in the Republic of Croatia on 26 July 2007;

<sup>24</sup> The Methodology for Preparing the Evaluation of Judges, which was adopted by the State Judicial on 18 July 2010;

<sup>25</sup> The Methodology for Preparing the Evaluation of Judges from 6 September 2012, which was adopted by the State Judicial Council at its session on 6 September 2012

<sup>26</sup> The Courts Act of 2013 has been renamed in relation to earlier laws, because the name "Methodology for Preparing the Evaluation of Judges" was previously used, while now it has been changed to "Methodology for Preparing the Evaluation of the Performance of judicial duties"

of the judge's application to an announcement for appointment to another court, to a higher court and to the position of president of the court.<sup>27</sup> Therefore, judges in the Republic of Croatia are evaluated only when applying to an announcement for appointment to another court, in case of a promotion to a higher court, or in case of appointment to the position of president of the court, whereby the evaluation of the performance of judicial duties is conducted by the competent judicial council based on the criteria established in the Methodology. The Courts Act prescribes the criteria for evaluating the work of judges, while the Methodology determines how many points a judge can achieve according to the criteria prescribed by the Courts Act. It follows from the above that the Courts Act set the criteria according to which the number of points will be determined, and the Methodology can only work out those criteria while remaining within the limits set by the Courts Act. Since points according to the Methodology are calculated on the basis of previously collected information in accordance with the Framework Criteria (except for those related to length of service and extrajudicial activities), we can safely say that the evaluation of judges proceeds from the Courts Act, through the Methodology and to the Framework Criteria. Namely, although the work of judges cannot be reduced to numbers, in this way an attempt was made to evaluate the entirety of the work of judges in an objective way, establishing a balance between the evaluation of quantity and quality and other circumstances that reveal the work of judges, in order to ensure transparency and objectivity in the appointment and promotion of judges. The methodology is divided into several parts, including the part that refers to the evaluation period, the part covering the criteria for calculation and work performance, and the part covering the content and form of the evaluation of the performance of judicial duties.

#### 4.2. The necessity and purpose of revising the Methodology

The decision on whether and how to evaluate judges is inextricably linked to the history and culture of the country and its legal system, and the goal is to improve the quality of the judges' performance, ensure the accountability of judges and increase trust in the judicial system. We deem that the Methodology adopted by the State Judicial Council at the session held on 11 December 2019 (hereinafter referred to as Methodology of 2019), compared to the Methodology of 2012, presented much better solutions for evaluating the work of judges in a more precise, fair and objective way. However, since there is always room for improvement, i.e. progress, the revision of the existing Methodology was carried out as part of the project "Revision of the Methodology for Evaluating the Work of Judges in the Republic of Croatia",<sup>28</sup> which aims to improve the system of evaluating judges and make it more efficient and fair. Therefore, the proposals were primarily focused on improving the existing solutions in such a way so as to clearly define and specify certain evaluation criteria that can cause doubts and ambiguities, which will eliminate certain shortcomings in order to obtain a Methodology that will more comprehensively and precisely regulate the criteria for evaluating the work of judges in the Republic of Croatia. Therefore, the purpose of revising the Methodology is to improve the system for evaluating judges and make it more efficient and fair, which can be achieved in two ways; by introducing new methods and mechanisms as well as by improving or perfecting the existing ones.

#### 4.3. The evaluation system

Most of the member states of the Council of Europe use a formal system of individual evaluation of judges, in which judges are evaluated according to special rules and procedures.

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<sup>27</sup> Article 1 paragraphs 1 and 2 of the Methodology of 2019

<sup>28</sup> The project was implemented with funding from the Government of the Kingdom of Norway

Due to this, we deem that the existing point system for evaluating judges in the Republic of Croatia should be maintained and that we should not resort to what we call the informal or semi-formal system of evaluation of judges which would violate the standards of objectivity and which contains a significant amount of subjective elements. Namely, from the practice and comparative analysis of the system, and especially the Conclusion of the Report on Independence, Accountability and Quality of the Judiciary 2021-2022 of the European Network of Councils for the Judiciary<sup>29</sup>, in which it is pointed out that in the last years the differences between the systems have decreased, with the informal system being in a process of formalization as a more objective evaluation system. In order to emphasize that in the Republic of Croatia there is a formal method of evaluation in place, Article 1 paragraph 1 of the Methodology prescribes this same notion that the evaluation criteria, as well as their method of assessment and the method of calculating the evaluation period prescribed by the Courts Act are determined using the point system for evaluating judges.

#### 4.4. Evaluation process and the period of evaluation of the work of judges

The provision of Article 94 of the Courts Act prescribes that the work of judges is monitored by determining whether the judge fulfills their duties as a judge and by evaluating the performance of judicial duties. In accordance with the provisions of Article 95 paragraph 1 of the subject Act, the president of the court at which the judge performs judicial duties determines by way of a decision regarding the previous calendar year whether the judge has fulfilled their judicial duties according to the criteria referred to in Article 97 of the Courts Act. From the provisions of Article 94 paragraph 1 of the Courts Act it clearly follows that judges are evaluated every year by the president of the court. Furthermore, considering that the president of the court assesses the performance of a judge in accordance with the criteria referred to in Article 97 of the Courts Act, that is, through the prescribed criteria elaborated by the Methodology itself; quantity, quality, proper performance of judicial duties and activities – therefrom it clearly follows that judges are evaluated by the president of the court every year as to whether they performed their judicial duties, and this is done by a decision of the president of the court determining whether the judge performed their judicial duties.

Therefore, the president of the court uses the same criteria that are used by judicial councils when evaluating the performance of judicial duties. Therefore, we believe that regardless of whether Article 1 paragraph 2 of the Methodology of 2019<sup>30</sup> stipulates that judges have to be evaluated when applying for appointment to another court, to a higher court and for appointment to the position of president of a court, the fact is that presidents of the courts evaluate and control judges every year in the manner described, which also provides a more complete insight into the skills and efficiency of the performance of all judges. We deem that such a control system is a sufficient mechanism for ensuring and directing the improvement of the judicial system as a whole, as well as strengthening trust in the judicial system.

There is therefore no need for judges to be evaluated more often, and this is in accordance with the ENCJ Report on Independence, Accountability and Quality of the Judiciary 2021/2022, the recommendations of which are to the effect that “a higher frequency of evaluation is seen as unnecessarily distracting the judge from his/her tasks, while a lower frequency reduces the usefulness for learning and advancement”. At the same time, there is also the question of the practical implementation of this frequent evaluation, i.e. how the judicial councils would, for example, evaluate judges every three years. For this reason, in Article 1 of the Methodology,

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<sup>29</sup> ENCJ Report on Independence, Accountability and Quality of the Judiciary 2021/2022 1.2.3

<sup>30</sup> Article 1 paragraphs 1 and 2 of the Methodology of 2019

paragraph 3 was added after paragraph 2 which states: „The evaluation of the fulfillment of judicial duties (the number of decisions, the quality of decisions and proper performance of judicial duties) is determined and made by the president of the court at which the judge performs judicial duties, in the form of decision with explanation, for the previous calendar year according to the criteria elaborated in the Methodology“.

Regarding the number of years that are taken into account when evaluating the performance of judicial duties, it should be noted that the previous regulations regulated the number of years that are taken into account when evaluating judges with regard to the promotion process in a completely adequate manner.

However, in practice a question arose of how to evaluate the performance of judicial duties when a judge applies to the announcement for the appointment to another court, i.e. whether the data of the last five calendar years should be added up and divided by 5, after which points would be awarded, or should each of those five years be scored separately and then added up and divided by 5 (years).

In order to eliminate doubts, it is recommended to supplement and amend Article 2 paragraph 1 of the Methodology so that it now reads: “(1) The evaluation period comprises the number of calendar years prescribed by the Courts Act and determined by the Methodology, which precede the year in which an announcement was published on the occasion of which the performance of judicial duties referred to in Article 1 paragraph 2 of the Methodology is evaluated, which is calculated in such a way that the data from the five calendar years preceding the year of publication of the announcement are summed up, and that such sum is divided by five, which yields an average to which the prescribed number of points is assigned.” We believe that this was the very intention of the legislator, which would derive from the Courts Act, because it is stipulated that the performance of a judge is evaluated in the period of the last five years, while otherwise it would have been stipulated that the performance of a judge is evaluated every year in the period of the last five years.

#### 4.5. Criteria for calculating the score of the performance of judicial duties

The Methodology elaborates on the criteria set by the Courts Act. Namely, the Courts Act prescribes the maximum number of points that can be achieved for each criterion, while the Methodology elaborates the classes within the maximum points set.<sup>31</sup>

Therefore, the Methodology elaborates and specifies in more detail the amount of points that can be achieved in relation to a certain criterion within the points determined by the Courts Act, in relation to the number of decisions that a judge should have adopted with regard to the Framework Criteria (so-called quantity), in relation to the quality of the decisions, i.e. the percentage of reversed decisions in relation to the total number of decisions adopted by a judge during the evaluation period, against which a regular legal remedy was prescribed to the court of immediately higher rank, in relation to the number of decisions returned for adjudication by the court of immediately higher rank during the evaluation period, and in relation to the number of decisions returned for adjudication by the court of immediately higher rank during the

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<sup>31</sup> Article 97 paragraph 2 of the Courts Act - according to all criteria referred to in paragraph 1 of this Article, a judge can achieve a maximum of 150 points, whereby for the criteria referred to in paragraph 1, items 1 and 2 of this Article, a maximum of 60 points can be achieved, and for the criteria referred to in paragraph 1, items 3, 4 and 5 of this Article, a maximum of 10 points can be achieved.

evaluation period, and which were reversed due to significant procedural violations or which were confirmed or modified despite such a violation being committed.

#### *4.5.1. Work performance – the quantitative performance of a judge for the entire evaluation period*

The basis for calculating points according to work performance are the Framework Criteria for the Performance of Judges, that are valid for each individual calendar year that is included in the evaluation period, whereby, for the purposes of applying the Methodology, a calendar year refers to 220 working days, the actual time that a judge has spent at work in court during the evaluation period and the quantitative performance of a judge during the entire period of evaluation.<sup>32</sup> The Courts Act of 2018, as well as the Methodology of 2019, reduces the influence of the quantity of resolved court cases (from 80 to a maximum of 60 points according to these criteria) on the score of the evaluation of the performance of judicial duties, which allows for and increases the influence of other criteria such as quality, regardless of the amount of files the judge has resolved.

Furthermore, the Methodology specifically regulates situations and scoring if a judge performs other tasks and does not adopt decisions, which refers to presidents of the courts, presidents of departments, judges authorized to monitor and study court practice.

Through the inquiries of the judicial council, it became apparent that, in practice, the interpretation of the provisions of Article 7 paragraph 11 of the Methodology is questionable, because it is unclear how, for example, the president of the court, who performed in part the tasks of adjudicating and adopting decisions, will be scored proportionally on both bases. Therefore, the proposal is that Article 7 paragraph 11 be amended so as to read: “(11) If, during the evaluation period, a judge performed partly the tasks referred to in paragraph 8 of this Article, and partly the tasks of adjudicating and adopting decision, points will be awarded by summing up on both bases, with the proviso that the quantitative performance may not exceed 100%, unless the judge’s quantitative performance in the tasks of adjudicating and adopting decisions alone exceeds 100%, which shall be recognized in such an event.”

#### *4.5.2. Proper performance of judicial duties*

The Courts Act of 2018<sup>33</sup> amended Article 97 paragraph 1 item 3 in the sense that, in addition to meeting the deadlines for adopting and writing decisions, the criterion for evaluation is the proper performance of judicial duties, which includes meeting deadlines, setting hearings, respecting the order in which cases are resolved, etc. In their work, a judge is obliged to meet the deadlines for the publication and drafting of judgments; they are also obliged to take into account the timely setting of hearings, they are to resolve cases according to the order of receipt, whereby the above is almost impossible to achieve in the scope of 100%.

We deem that this is also a qualitative criterion that takes into account the behavior of judges, efficiency, and organization of the work of judges, which should ensure success in the work of judges. Therefore, it is necessary to amend the existing criteria with keeping up-to-date with work on cases through the analysis of standstill cases, which is why Article 6 item 3 should be amended so as to read: „3. “3. Proper performance of judicial duties – whether a judge met the deadlines for writing decisions, whether they regularly scheduled hearings, whether they respected the order in which cases are resolved, and whether they have been keeping up to date

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<sup>32</sup> Article 7 paragraph 1 of the Methodology of 2019

<sup>33</sup> “Official Gazette” No. 67/2018

with cases through the analysis of standstill cases (cases in which the judge has taken actions no longer than six months), while Article 8 of the Methodology prescribes the scoring system by setting three classes of scoring on this basis.”

#### *4.5.3. Quality of decisions*

Points based on the quality of work are obtained by the first-instance judge on the basis of the percentage of reversed decisions (in the sense of this Article, a decision is considered to be any decision examined by a court of immediately higher rank regarding a legal remedy) during the evaluation period by the court of immediately higher rank. We deem that the current system of determining quality should be maintained, since it ensures the determination of this criterion in an objective manner. Namely, the number of confirmed or reversed decisions and serious violations committed is a clear and objective indicator of the quality of the judge's work, which excludes elements of subjectivity and indicates a lack of the necessary legal knowledge.

The Courts Act of 2018<sup>34</sup> changed the number of maximum points that a judge can achieve based on the quality of work, so that now - based on the quality of the judge's work - the number of confirmed, reversed, annulled and modified decisions in relation to the total number of decisions adopted, and in relation to the number of decisions against which legal remedies were brought and the number of decisions in which a significant violation of the procedure was determined in relation to the number of decisions against which legal remedies were brought, a judge can achieve a maximum of 60 points, in contrast to the previous situation when they could achieve a maximum of 45 points on this basis.

In practice, ambiguities appeared in connection with the interpretation of the evaluation of partial reversal due to a material violation, i.e. whether it is then necessary to count 0.5 material violation since a part of the first-instance decision has been confirmed or 1 material violation since the decision is burdened with a material violation in its entirety.

There have been occurrences in practice when due to different interpretations of the judicial councils, in cases when a candidate applied to announcements at several county courts, they have a different number of decisions encompassed with a significant violation, and therefore a different number of points.

We deem that in such cases the position should still be taken that the decision is partially encompassed by a significant violation, only in one part, and not in its entirety, and in this sense it is proposed that when calculating the percentage of reversed decisions in accordance with this Article, in the case where the decision is partially cancelled, such a case be counted as half (0.5) of the cancelled case. If the decision is partially confirmed and partially reversed or modified due to a significant violation, for the purposes of calculation such a violation is counted as half (0.5) of the significant violation.

The Methodology of 2019, unlike the previous methodologies for evaluating judges, also took into account some special types of procedures in which there is less possibility of reversal in an effort to evenly satisfy the quality evaluation, so in Article 9 paragraph 8 it is stipulated that when calculating points, decisions in land registry, registry, bankruptcy and non-litigation cases are not taken into account.

Therefore, if a judge adopted decisions only in land registry, registry, bankruptcy and non-litigation cases during the entire evaluation period, they are awarded 50 points based on quality,

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<sup>34</sup> “Official Gazette” No. 67/2018

and if they only partly adopted decisions in land registry, registry, bankruptcy and non-litigation cases, and partly in other cases for at least one year, points will be awarded only on the basis of decisions adopted in other cases. We deem that this method of assessing the quality represents an objective solution because the judges in question are not deprived of the possibility of obtaining points on this basis, because a judge who, for example, works on enforcement files for the entire period of their performance of judicial duties certainly does not have knowledge and experience in other cases, which would surely be handled at a higher court. It is necessary to exclude “enforcement cases” and “bankruptcy cases” from such cases because in such proceedings there is also a large number of appellate decisions, which can be an indicator of legal knowledge during the period of control performed by a higher court due to legal remedy and therefore it is not necessary to classify them in a special category, for which the same records as for civil cases should be kept.

Furthermore, it is necessary to regulate the evaluation of the quality of the work of judges in a situation where, during the evaluation period, the judge partly made decisions in civil cases, and partly in special types of procedures (land registry, registry). In this sense, the provision of Article 9 paragraph 8 of the Methodology should be amended so as to state “When calculating points in accordance with this Article, decisions in land registry, registry, bankruptcy and non-litigation cases are not taken into account. If a judge adopted decisions during the entire evaluation period only in land registry, registry, bankruptcy and non-litigation cases, except for enforcement cases and bankruptcy cases they are awarded 50 points on the basis of quality. If, during the evaluation period of five years, a judge adopted decisions partly in land registry, registry, bankruptcy and non-litigation cases, and partly in other cases, points shall be awarded only on the basis of decisions adopted in cases on which they have been working for three or more years, regardless of the evaluation period. If, during the evaluation period of five years, a judge adopted decisions partly in land registry, registry, bankruptcy and non-litigation cases, and partly in other cases, points shall be awarded only on the basis of decisions adopted in other cases if the number of such decisions drafted by the judge exceeds 50% of the total number of other cases resolved.”

The criterion of the quality of work applies only to first-instance judges because the decisions adopted by second-instance judges are not subject to regular legal remedies, which is why it is stipulated that second-instance courts are awarded the highest number of points that can be achieved according to the criterion of quality. This is regulated by Article 9 paragraph 11 of the Methodology, from which it follows that second-instance judges and judges who work on first-instance criminal cases under the jurisdiction of USKOK, or on first-instance war crime cases will be scored with 60 points on the basis of quality.

This provision should be further clarified because in the practice of judicial councils, doubts arose when evaluating judges at the first level of municipal courts who have 3 cases of war crimes. In this sense, the suggestion is to change the provision of Article 9 paragraph 11 so as to state: „Second-instance judges and judges who work on first-instance criminal cases under the jurisdiction of USKOK, or on first-instance war crime cases at County Courts will be awarded 60 points on the basis of quality.”

Likewise, problems have arisen in practice with calculating the quality of decisions by the presidents of courts who have 100% exemption from the Framework Criteria and who do not perform the tasks of adjudicating and passing judgments. Therefore, in Article 9, the proposal is to add paragraph 13 after paragraph 12, which would read: „Presidents of the courts who are 100% exempted from the framework criteria and who do not perform the tasks of adjudicating

and adopting decisions shall be awarded 55 points on the basis of quality, and if they also perform the tasks of adjudicating and adopting decisions in addition to the 100% exemption, they shall be awarded points on the basis of quality pursuant to decisions adopted in cases, depending on the type of case.

Finally, a problem appeared in practice with regard to keeping records of decisions due to legal remedies because not all courts keep the statistical data on reversed and altered decisions in the same way. Thus, at some courts the reversal statistical data are recorded and kept by a judge authorized to monitor and study court practice, which we find to be more appropriate and necessary, in contrast to some courts that obtain data from the e-File application, where data on the reversal or modification of decisions, as well as material violations, are entered by recording secretaries when uploading the decision to the e-File, the result of which is that judges at these courts achieve a higher level of points on the basis of quality which indicates that there is a need to regulate such issues. Therefore, the proposal is to add paragraph 14 after paragraphs 12 and 13 of Article 9, which would read: "The records including data on which the determination of the quality of the judge's performance depends shall be collected, kept and published by the judge determined by the annual work schedule at the court."

In conclusion, we can state that the proposed amendments take into account the specifics of certain types of proceedings during the evaluation, taking into account the fact that the job of a judge is not uniform and that it is therefore necessary to take into account all the circumstances during the evaluation in order to ensure equal evaluation of each form of judicial work.

#### *4.5.4. Other activities, procedures and circumstances that are taken into account when evaluating the performance of judicial duties*

As one of the criteria for evaluating the performance of judicial duties, the provision of Article 97 of the Courts Act prescribes other activities of a judge – participation in professional training of judges as a lecturer at seminars and workshops, publication of professional and scientific papers in the field of legal sciences, membership in judicial councils, etc. The specified criterion is prescribed in order to reward judges for the activities, actions and circumstances outside of their regular judicial work.

The Courts Act of 2018 stipulated that a maximum of 10 points<sup>35</sup> can be obtained on the basis of this criterion, so it is evident that the focus and priority when evaluating the performance of judicial duties is placed on the performance of judicial work, because the number of points out of 10 represents 6.66 % of the number of points that a judge can achieve in total. Therefore, the priority is given primarily to the results that can be achieved during the performance of judicial work, which is also logical because it is an assessment of the performance of the duties of a judge. It is evident that the priority is given exclusively to the judge's work, from the fact that points according to this criterion cannot be obtained if a judge achieves less than 105 points according to the quantity and quality of the judge's work.<sup>36</sup>

The criteria that are evaluated on this basis refer to the judge's participation as a lecturer in forms of legal training at seminars, workshops of the Judicial Academy, the State School for Judicial Officials, etc., as well as at faculties, polytechnics, universities and professional studies

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<sup>35</sup> The Courts Act of 2013 stipulates that, based on this criteria, a judge could have achieved a maximum of 12 points, so the Methodology of 2012 regulated scoring on this basis in this regard as well

<sup>36</sup> Article 10 paragraph 8 of the Methodology - "Points referred to in this Article can only be obtained by a judge who, according to Articles 7 and 9 of the Methodology, has obtained at least 105 points"

in the field of legal subjects, if they present proof of work as a lecturer, if they held a lecture at least twenty times they are entitled to 4 points, and if they held a lecture at least ten times they are entitled to 2 points.<sup>37</sup>

We found it necessary to consider whether all activities, i.e., lectures and professional articles, should be scored in the evaluation of the judges, because the criteria evaluated in the evaluation should not only serve as a motivation for “collecting points” and to prevent that, due to the large number of these activities, not enough attention and time is given to the high-quality performance of judicial duties.

Therefore, it was necessary to edit and amend the aforementioned provisions so that only lectures in the field of legal subjects are evaluated for the purpose of training lawyers or law students, and not, for example, expert symposia, round tables, and that a lecture, workshop or expert article on the same topic cannot be evaluated more than once, and in this sense changes were proposed to evaluate only lectures at seminars, workshops of the Judicial Academy, the State School for Judicial Officials, etc., as well as at faculties, polytechnics, colleges and professional studies in the field of legal subjects with the aim of training or educating lawyers or law students in the Republic of Croatia, with proof of lecture presented, while a lecture, workshop or professional article on the same topic can only be taken into account once, even if it is performed before the same or different organizers more than once, or published in different publications.

The criteria for evaluation on this basis also apply to the membership in a judicial council, as well as to the judges who were assigned to work at a higher court during the evaluation period. The problem that arose in practice during the evaluation as per this criterion related to referral to a higher court is related to the doubt on whether it is necessary for a judge to work at a higher court for a minimum of two years in order to exercise the right to 1 point, or whether they exercise the right to 1 point regardless of the time spent at the higher court, even if they were referred to a higher court for a month. Therefore, the proposal to amend the aforementioned provision in such a way that, in Article 10, the previous item 6 became item 7, which reads: „A judge who, during the evaluation period or earlier during the performance of their duties as a judge, was assigned to work at a higher court for a minimum of 2 years is entitled to 1 point only after the minimum amount of time the judge has spent at the higher court is equal to the amount of time for which they were referred to the higher court.”

#### *4.5.5. Experience in the performance of judicial duties - Evaluation of a judge's length of service*

The Courts Act of 2018 increased the possibility of obtaining points for seniority so that now a maximum of 10 points can be obtained, while under the previous Courts Act, experience in the performance of judicial duties was not provided as a separate criterion at all, but was included in the criterion of other activities of a judge. Thus, according to the Methodology of 2012, a judge could obtain a maximum of 4 points based on judicial experience, while according to the Methodology of 2019, which is harmonized with the Courts Act of 2018, a judge can obtain a maximum of 10 points based on judicial experience, with details of the classes of necessary work experience according to which points are earned.

In the practice of judicial councils, doubts have also arisen on the matter regarding the calculation of the timeline of a judge's length of service when making an evaluation of the

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<sup>37</sup> Article 10 paragraph 1 of the Methodology;

performance of judicial duties, and different interpretations were taken, for example, some judicial councils considered that a judge's length of service should be counted from the date of appointment to the court until the end of the time of announcement for a higher court, other judicial councils took the position that the length of service is counted from the beginning of judicial duties etc., and likewise, a problem also arose in practice on how to calculate the length of service of a candidate for president of the county and high court. Namely, it is unclear whether a candidate who has applied for the position of president of a county or high court will be recognized for their entire length of service, i.e. including experience achieved at a court of first instance, or whether the experience at a higher court (or at the level of that court), for which he or she is applying for the position of president, will be credited, so in order to resolve this doubt, new items were added in Article 11 which prescribe that when evaluating the performance of judicial duties, experience in the performance of judicial duties is counted from the day of appointment as a judge until the day of publication of the announcement for appointment to a higher court or the position of president of the court, and also that during the process of selection of presidents of county courts or high courts, when conducting an evaluation of the performance of judicial duties the judge's entire length of service from the day of appointment as a judge to the date of publication of the announcement for the position of president of the court is taken into account.

## V. Concluding observations

As is evident from all of the above, it was necessary in principle to keep the previous solutions that are adapted to our system, mindset and historical heritage, and not to introduce new informal solutions that are not applicable in our conditions because they would very quickly threaten the standards and principles of objectivity.

However, as there were certain gaps and ambiguities that caused doubts in practice, these amendments sought to improve the current evaluation system with recommendations for regulating a fair, efficient and objective system for the evaluation of the work of judges.

Namely, although the work of judges cannot be reduced to literal numbers, in this way an attempt was made to evaluate the entirety of the work of judges in the best and most objective way, establishing a balance between the evaluation of quantity and quality and other circumstances that reveal the work of judges, in order to ensure transparency and objectivity in the promotion of judges and the appointments of presidents of the courts.

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