Model for Selection and Evaluation of Judges and Judge candidates

Project summary

2022

Table of Contents

1 Context for the development of a Model for Selection and Evaluation of Judges

Amendments to Article 55[1] of the Law on Courts of the Republic of Lithuania entered into force on the 1st of January 2022, enforcing changes in the assessment of personal qualities during the selection process of judges, ensuring that this assessment is carried out objectively and impartially by independent professionals with appropriate competences and relevant experience.

Changes in the legal regulation were prompted by the decision of the Supreme Administrative Court of Lithuania in 2017 September 19 in administrative case no. I-11-492/2017, stating that psychological assessment carried out during the clinical examination may not be used without consent from the assessed person, in the selection processes of judges and assessment of the activities of judges. Personal and cognitive qualities are undoubtedly significant in assessing a person's suitability to hold the office of a judge; therefore, it was proposed to establish a different procedure for the assessment – professional assessment of personal competences using certified methodologies and tools. This assessment would allow for the objective use of the assessment results of personal and cognitive qualities in selecting candidates to judicial office and judges seeking judicial career.

Nevertheless, until 2022, the competences required of a judge were not defined and reliable, scientifically-based instruments, which would allow an objective assessment of the judge's personal style and cognitive qualities, have not yet been defined in legislation.

Another precondition for the development of a Model for Selection and Evaluation of Judges (hereinafter referred to as the MSEJ) is possible changes in the process of selection of judges, which, if adopted, would establish a procedure for creating a reserve of judges.

For these reasons, the National Courts Administration (hereinafter referred to as the NCA) has initiated a project for the development of a model for selection and evaluation of judges (hereinafter referred to as the Project), which includes:

- 'As is' and Foreign good practice analyses;
- MSEJ;
- legal acts governing the application of the MSEJ.

2 Results of 'As is' and Foreign good practice analyses of the selection and evaluation processes of judges

In order to determine and define the personal and cognitive competences required of a judge and to establish the instruments enabling an objective assessment of these competences, 'As is' and Foreign good practice analyses of the selection and evaluation of judges were carried out. The results of these analyses are summarised below in Sections 2.1 and 2.2.

2.1 Results of the 'As is' analysis of the selection and evaluation processes of judges

Scope and methodology

The 'As is' analysis of the selection and evaluation processes of judges consisted of two activities:

1. analysis of the legal framework of judge selection and evaluation processes. The analysis was performed using the following methods:
   - systematic and teleological (intentions of the legislator);
   - analytical (logical);
   - comparative;
   - critical;
   - linguistic (grammatical);
   - expert judgment.

   The problems identified in the scope of the analysis and the proposed solutions were validated through interviews and discussions with representatives of the judiciary and academics.

2. Qualitative research of target groups and stakeholders.

   The research was conducted using interview and group discussion methods. The target group of the qualitative research is judges, current and former members of The Selection Commission of Candidates to Judicial Office (hereinafter referred to as the Selection Commission) and The Permanent Commission for the Assessment of Activities of Judges (hereinafter referred to as the Evaluation Commission), representatives of the Prosecutor's Office and the Bar Association, as well as academics. A total of 14 interviews and 5 discussions were conducted, and, in total, more than 100 representatives of the target group attended.

Conclusions: key challenges and recommended solutions

Based on the 'As is' analysis, the most prominent challenges were identified and the recommended solutions addressing the context of the amendments to Article 55[1] of the Law on Courts of the Republic of Lithuania were prepared. Key challenges and proposed solutions are presented in the table below.

Table 1. The most important areas for improvement and proposed solutions based on the 'As is' analysis

Issue 1: Regulation of engagement of external experts
The procedure for engagement of external experts to assess the personal competences of candidates for judicial positions shall be established in a resolution of the Judicial Council, which comprises all aspects of the selection process of judges that fall within the responsibility of the Judicial Council.
Proposed solutions
Essential aspects of the selection procedure carried out by external experts:

1. the outsourcing organisation – the NCA;
2. external experts are natural and / or legal persons providing professional psychological assessment services, whose services are publicly procured by the NCA (it is not proposed to form an additional commission of evaluation experts from individual members or to entrust this to psychologists of the Ministry of the Interior);
3. the activities of external experts are financed from the state budget;
4. the proposed deadline for the use of external experts is 3 years (maximum deadline according to the public procurement regulations without exceptions);
5. the qualification requirements for external experts and the scope of services are determined by the NCA.

Essential aspects of personal competence evaluation:

1. the evaluation of a person's competences begins after the entry in relevant lists / registers or databases, of candidates or persons pursuing a career as a judge, which is administered by the NCA;
2. sufficient methodological measures for the evaluation of personal competences – preparation is ensured by the NCA;
3. outcome of the evaluation – the experts prepare a conclusion and additional questions for the meeting of the Selection Commission (the conclusion would include aspects of improvement to assess possible changes during the validity period of the result) in a standardised form;
4. the conclusion is submitted before the meeting of the Selection Commission and sufficient time is allowed for the candidate to get acquainted with the conclusion;
5. the participation of experts in the meeting of the Selection Commission is not foreseen.

Issue 2: Uncertainty in the list of personal and professional characteristics of judges, the content of the characteristics

The personal and cognitive competences list must be clearly defined, detailed, and available to both the Selection and Evaluation Commissions and the candidates.

Proposed solutions

1. to develop a judicial competency model, which would describe the personal competences of judges;

2. to develop a competency evaluation scheme;

3. to identify a separate set of competences for court managers (judges);

4. to determine the need to differentiate competency models by groups (positions, functions);

5. to evaluate the possibilities to form three levels of competences: inadequate, sufficient and high;

6. when preparing the description of the competence of *cooperation*, take into account the Code of Ethics of Judges and the principles of cooperation set out therein;

7. the competency model could include competences identified in the analysis of good practice in foreign countries and qualitative research.

Issue 3: Uncertainty of judge selection criteria and subjectivity of evaluation

The criteria for the selection and evaluation of judges must be clearly defined and detailed.

Proposed solutions

1. the list of selection criteria for judges in Lithuania could consist of objective (for example, based on the length of relevant work experience, statistical information on legal proceedings) and subjective (based on recommendations, interviews) criteria;

2. a separate stage of the procedure could continue to be used to test the candidate's professional competences, i.e., legal and professional knowledge;

3. based on the foreign good practice analysis, general selection requirements for judges could be:

- country Citizenship;

- obtained Master's degree in law;

- professional experience in the legal system;

- impeccable reputation and high moral standards;

- motivation to become a judge.

4. it is recommended to give more weight to criteria that reveal the candidates' professional competences that are not directly related to the application of the law, such as knowledge of foreign languages, computer literacy, participation in public activities related to the courts / justice, etc.

5. the selection criteria could be partially harmonised for all candidates in the interests of simplicity and clarity for the members of the Selection Commission, as the completion of different tables for different types of candidates makes it

difficult to award scores even according to the same criteria, making it difficult to ensure comparability of the evaluation.

6. information on the candidate's compliance with the criteria should provide information to the Selection Commission, but not replace the Commission's evaluation.

2.2 Results of the Foreign good practice analysis

The scope of the Foreign good practice analysis included three countries – Latvia, Finland and Slovakia. In addition, analysis of Norway and the Netherlands was reviewed and included in the summary. The analysis was based on desk research (legal acts and studies) and interviews with representatives of the Latvian, Finnish, Dutch and Norwegian judicial systems. The analysis consisted of four parts:

1. analysis of legal acts, processes, participants and selection requirements governing the judge selection and evaluation process of foreign countries (Latvia, Finland, Slovakia);

2. analysis of models for selection and evaluation of judges applied in foreign countries (Latvia, Finland, Slovakia). This includes an overview of assessed competences and assessment process and the methodological tools used in the evaluation;

3. summary of good practices in Latvia, Finland, Slovakia, Norway and the Netherlands;

4. recommendations based on the conclusions of the analysis.

Conclusions and recommendations

Based on the foreign good practice analysis, it was established that in all analysed foreign countries, a separate stage of the selection and evaluation procedure is intended for the evaluation of the personal skills and cognitive characteristics of the candidates. In all countries analysed, this type of evaluation is carried out by external experts.

The following recommendations, which are related to the amendment of Article 55[1] of the Law on Courts of the Republic of Lithuania and based on the conclusions of the analysis, were proposed:

1. according to the practice of all analysed countries, the selection and evaluation of candidate judges and career-seeking judges could be supplemented by a stage for the personal skills and cognitive competences assessment. This evaluation could be carried out by external experts;

2. according to Finnish and Dutch practices, the personal skills and cognitive competences assessment could be carried out by experts selected through public procurement. The use of external experts would contribute to ensuring the independence and quality of evaluation through industry-standard practices and methodologies;

3. based on the practice of all countries analysed, the personal skills and cognitive competences to be assessed could be specifically defined. Also, these competences could be detailed, as in Latvia, for example;

4. based on the practice of all the countries analysed, standardised tools could be used to assess the candidate's personal skills and professional characteristics;

5. the tools used by external experts could be compatible with the selection authority. In Slovakia, for example, specific methods are chosen by the Ministry of Justice. In the case of other analysed countries, the methodology is chosen by the service provider who won the public tender.

Considering the foreign countries practice, the judicial competency model in Lithuania could consist of three main groups of competences, detailed in Chapter 3 of this summary:

1. cognitive skills;

2. personal skills;

3. social skills.

Additional guidance on criteria and process for the selection and evaluation of judges:

1. according to the practice of all the countries analysed, the selection and evaluation process of judges should consist of objective and subjective criteria, therefore it is not advisable to abandon subjective criteria altogether;

2. based on the practice of Slovakia and Finland, and to ensure that future judges can become acquainted with current political issues and changes in international and foreign law, candidates' knowledge of foreign languages (especially English) could be tested. Depending on the needs of the court to which the judge is a candidate, there may be requirements for proficiency in the languages of national minorities of that country, for example, in the case of Lithuania it is Polish, Russian;

3. according to Finnish practice, degrees and academic competences acquired can be considered as an alternative to working experience;

4. according to the practice of Finland and Norway, the recommendations of the candidate's current and former jobs could be used as a source of additional information about the candidate in the judge selection procedures in Lithuania. Such recommendations could be: (a) provided by the candidate, together with the application and supporting documents; (b) collected by the Selection Commission by contacting the current and former jobs indicated by the candidate. The recommendations collected could provide additional objective information in the selection process;

5. according to Finnish practice, the opinion of the court to which the candidate is applying could be used instead of the opinion of the Selection Commission and the Chairman. The components of this evaluation are: recommendations from the candidate's previous jobs and interviews with representatives of the relevant court;

6. according to Norwegian and Finnish practice, personal and professional qualities, values and morals may be further assessed by the Selection Commission in an interview with the candidate, as well as based on recommendations made about the candidate, which is subjective;

7. to ensure the transparency of the process and the objectivity of the evaluation, it is worth continuing the following practices currently applied in Lithuania:
    a. candidates are assessed based on several data sources, such as information on work experience gained, recommendations from current and previous jobs, results of knowledge testing and competency evaluation tests;
    b. the evaluation of candidates consists of several evaluation components / stages (for example, the conclusions of the Selection and Evaluation Commissions, psychological evaluation, recommendations, etc.) which are given proportionate weight;
    c. the Selection Commission is made up of people with different competences and from different institutions: judges (of different instances and / or specialisations) and members of the public (political scientists, psychologists, human resources specialists and others).

3 MSEJ

The MSEJ was developed based on the results of the 'As is' and Foreign good practice analyses of the selection and evaluation processes of judges and the information collected through the participatory monitoring method. The MSEJ consists of the following parts:

1. presentation of the selection process from the perspective of the organiser and the candidate and the lists of candidates, maintained by the NCA;

2. criteria for the selection and evaluation of judges with methodological descriptions (guidelines for scoring points, recommended sources of information and what weight each criterion has in the selection);

3. competency model for judges: the structure of the competency model, definitions of competences and descriptions of their levels are presented;

4. competence assessment methodology: a description is provided of how personal and cognitive competences indicated in the competency model should be assessed;

5. annex: Methodological tools for the assessment of personal and cognitive competences indicated in the judicial competency model for experts carrying out the assessment.

3.1 Selection Process

Additional stage into the selection and evaluation processes was proposed – the assessment of the candidate's personal competences carried out by external experts. The main purpose of the personal competence assessment is to provide the Selection Commission with conclusion on the competences of candidates and career-seeking judges and their potential to perform duties of a judge.
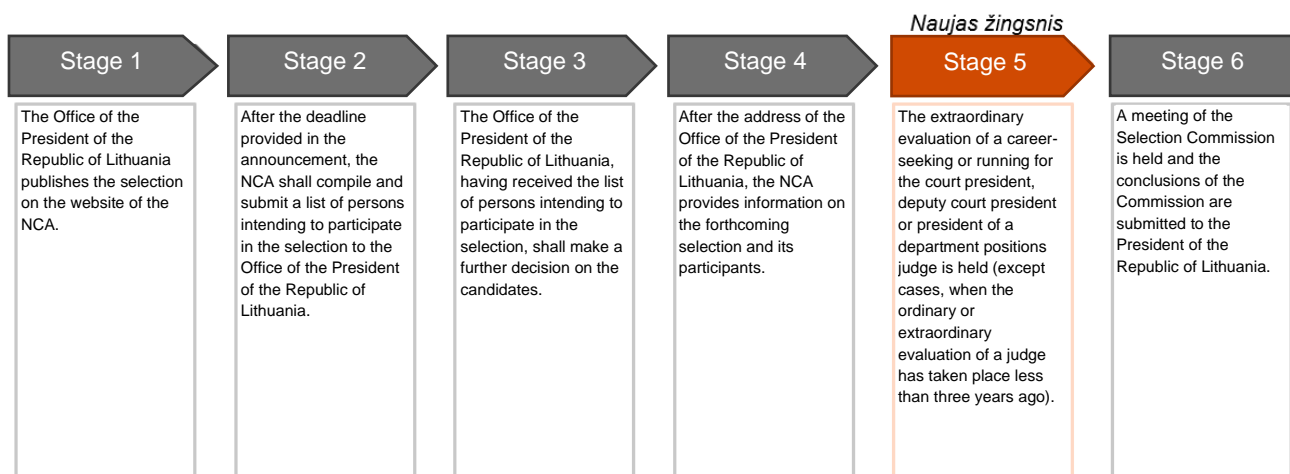
Stage 1	Stage 2	Stage 3	Stage 4	Stage 5 *Naujas žingsnis*	Stage 6
The Office of the President of the Republic of Lithuania publishes the selection on the website of the NCA.	After the deadline provided in the announcement, the NCA shall compile and submit a list of persons intending to participate in the selection to the Office of the President of the Republic of Lithuania.	The Office of the President of the Republic of Lithuania, having received the list of persons intending to participate in the selection, shall make a further decision on the candidates.	After the address of the Office of the President of the Republic of Lithuania, the NCA provides information on the forthcoming selection and its participants.	The extraordinary evaluation of a career-seeking or running for the court president, deputy court president or president of a department positions judge is held (except cases, when the ordinary or extraordinary evaluation of a judge has taken place less than three years ago).	A meeting of the Selection Commission is held and the conclusions of the Commission are submitted to the President of the Republic of Lithuania.

Figure 1. Stages selection of judges process.

3.2 Competency Model

In MSEJ, competence is defined as a characteristic of a person that is causally related to the ability to perform certain activities and responsibilities well, which encompasses personal behavioural and cognitive characteristics and manifests itself through specific work behaviours.

The competency model for judges was developed based on the 'As is' and Foreign good practice analyses, the mission and vision of the courts, the principles of ethics of a judge and the activities performed by a judge. The competency model consists of:

- a structured list of personal competences required to properly perform duties of a judge;

- behavioural components describing these competences;
- competence levels.

Positions covered by the judicial competency model:

- judge of a District Court;
- judge of a Regional Court;
- judge of a Regional Administrative Court;
- judge of the Lithuanian Court of Appeal;
- judge of the Supreme Administrative Court of Lithuania;
- judge of the Supreme Court of Lithuania.

Court managers:

- President of the Court;
- Deputy President of the Court;
- President of the Department.

Competences are grouped into four competency areas: Thinking and Decision Making, Personal Effectiveness, Social Skills, and Managerial skills[1], as shown in the table below.

Table 2. Judicial Competency Model.

Competences area	Thinking and Decision Making	Personal Effectiveness	Social Skills	Managerial skills
Competences	Objectivity Decision making	Organisation and responsibility Self-improvement Resilience Resistance to corruption	Conflict management Communication Cooperation Leadership	Strategic thinking Performance management
Application	For all judges and court managers			For court managers only

Each competence is described by its justification (why is it important?), its components (what behaviour does this competence cover?) and levels (examples of behaviour illustrating sufficient and high expression of competence). The assessment of candidates' competences is carried out in accordance with the principles of respect for the individual, ethics, objectivity, confidentiality and equal opportunities for all candidates.

The results of the competency evaluation shall be presented in a report in the prescribed format, which shall specify:

- summary of the evaluation conclusion;
- assessment of individual competences according to the competency model;
- strengths of the candidate and recommendations for the future development of competences. In this section, the expert, who carried out the assessment, provides possible directions for the development of specific competences so that the candidate has guidelines for personal development.

3.3 Changes in Selection and Evaluation Criteria

Seven criteria are used to select judges:

---

[1] MSEJ is complemented with Management competences defined as a result of a project "Preparation of a Study on Strengthening the Competences of Court Managers for Efficient Management of Court Resources"

1. length of legal work experience;

2. nature and quality of legal or academic-pedagogical work;

3. judicial exam result (applies only to candidates for District Court Judges);

4. professional competence and knowledge;

5. personal competences;

6. motivation;

7. experience in administrative (managerial) work (applies only to candidates for the position of court manager).

The proposed changes to the MSEJ include standardisation of the criteria and changes in their relative weight to the overall score. None of the criteria would be decisive in calculating the overall score of the candidate.

Key changes in evaluation criteria and criteria scores:

1. simplification and unification of principles for awarding points for the length of legal experience. All target groups (except for persons wishing to be transferred or reassigned to another court of the same or lower instance) are awarded points for the length of legal experience using the same principle.

2. updated score for the legal service experience and quality criteria – 35 points out of 100;

3. increased score for the professional competences and knowledge criteria – up to a maximum score of 20 points;

4. assessment of persons, aiming for a career in courts of the same instance. Persons, aiming for a career in the courts of the same instance are assessed using the same criteria as other candidates, however, two additional criteria are added: Experience in administrative (managerial) work and managerial skills.

According to the current practice of recruitment, the evaluation of personal competences should contribute approximately one-third of the final score, approximately one-third of the score should be the evaluation of work experience, the remaining third – professional competences, knowledge, motivation. The redistribution of criteria weights aims to balance the significance of the different selection criteria: the calculation of scores for the length of legal work experience is standardised and simplified, and the weight of the criterion of the nature and quality of the work is reduced, however, the weight of the criterion of professional competence and knowledge is increased. The criteria and the number of points awarded for them are given in the table below.

Table 3. Criteria Used in the Judge Selection and Their Scores.

Criterion	Scores for selection criteria for persons seeking to become a judge of a higher court		Scores for selection criteria for persons seeking the appointment to the position of presidents, vice-presidents or department chairmen of courts and other persons who, in the course of their selection to the judges of the court concerned, also seek appointment to the office of presidents, vice-presidents or department chairmen of courts		Scores for selection criteria for persons wishing to be transferred or reassigned to another court of the same or lower instance		Scores for selection criteria for candidates to become District Court Judges	
	Previous	Current	Previous	Current	Previous	Current	Previous	Current
Legal work experience	5	5	5	5	5	5	5	5
Nature and quality of legal or academic-pedagogical work and judicial exam result / or nature and quality of work	45	35	40	35	40	35	35	35
Professional competence and knowledge	10	20	10	20	5	20	10	20
Personal competences	40	30	40	30	40	30	50	30
Motivation	-	10	-	10	10	10	-	10
Experience in administrative (managerial) work (applies only to candidates for the position of court manager)	-	*Not applicable*	5	5	-	*Not applicable*	-	*Not applicable*
Managerial skills (applies only to candidates for the position of court manager)	-	*Not applicable*	-	10	-	*Not applicable*	-	*Not applicable*
In total:	100	100	100	115	100	100	100	100

After completing a review of Judicial activity assessment criteria, criteria of personal competence were updated to include competences and their groups as per developed MSEJ.

3.4 Practical Implementation of the MSEJ

To implement the MSEJ, a procedure for the use of external experts to assess competences has been developed.

General requirements for the assessment of personal competences and managerial skills

Each evaluated candidate is assessed by two experts. One expert participates in the assessment directly, the other indirectly: listens to the audio recording of the assessment and evaluates the results of the personality questionnaire.

Minimum qualification requirements for experts:

- at least a master's degree in psychology or an equivalent higher education qualification;
- practical work experience in the field of personal competence assessment.

The conclusions of the assessment – personal competences and managerial skills – are valid for five years independently of each other. The assessment may be re-carried out at the request of the candidate more than three years after the previous assessment.

Assessment of personal competences of judge candidates and career-seeking judges

Two alternatives were evaluated during the analysis of practical possibilities of implementation of the MSEJ – 4-hour and 2-hour assessments. The alternative of 2 hours of the evaluation was chosen (by the decision of the Judicial Council):

- the duration of the evaluation is not more than 2.5 hours, of which up to 90 minutes are devoted to the interview and up to 30 minutes to the completion of the questionnaire (at the request of the candidate, the duration of filling in the questionnaire can be extended, but not more than by 30 additional minutes);
- during the interview, 2–3 behavioural questions would be asked per candidate's competence (20-25 questions in total).

Assessment of the personal competences and managerial skills of persons participating in the selection of presidents of courts, their deputies or presidents of departments

Managerial skills are assessed during a separate assessment:

- an additional tool is used – structured interviews to assess managerial skills;
- depending on whether the candidate has a valid assessment of personal competences, the assessment of managerial skills may be performed separately or in combination with the assessment of personal competences;
- the estimated duration of the structured interview for the assessment of managerial competences is 60 minutes. If a managerial skills interview is conducted in conjunction with an assessment of other personal competences, the total duration of the personal competences assessment shall not exceed 3.5 hours (excluding rest breaks).

The table below provides information on the tools used to assess personal competences,

Table 4. Competence assessment tools

Competences assessed		Interview	Personality test
Thinking and decision making	Objectivity	x	
	Decision making	x	
Personal effectiveness	Organisation and responsibility	x	x
	Self-improvement	x	x
	Strength	x	x
	Resistance to corruption	x	
Social skills	Conflict management	x	x
	Communication	x	
	Cooperation	x	x
	Leadership	x	
Managerial skills (for court managers only)*	Strategic thinking	x	
	Performance management	x	

The evaluation of court managers is carried out in accordance with a separate procedure developed during the project "Preparation of a Study on Strengthening the Competences of Court Managers for Efficient Management of Court Resources".

Markings: x – measure fully assess a competence.

4 Regulation of application of MSEJ in legal acts

The following legal acts regarding the application of the MSEJ have been developed and approved within the scope of the Project:

1. by Resolution No. 13P-33-(7.1.2.) of the Judicial Council of the 28th of January 2022, the description of the procedure for the use of experts for vacant or available positions of judges of the district court as well as for assessing the personal manner and cognitive qualities and personal competences of persons seeking a career as a judge was approved. The description establishes the procedure for the use of external experts to assess personal and cognitive competences;

2. by Resolution No. 13P-33-(7.1.2.) of the Judicial Council of the 28th of January 2022, the description of the criteria for the selection of candidates for judges, the criteria for the evaluation of persons seeking a career as a judge and the procedure for the evaluation of personal competences was approved. The description presents the judicial competency model, criteria and judge selection and evaluation procedure. The resolution was supplemented with the competences of the court managers (judges), their descriptions and the evaluation procedure, which were developed during the project "Preparation of a Study on Strengthening the Competences of Court Managers for Efficient Management of Court Resources".

The provisions of the approved Resolutions shall be implemented by the Director of the NCA in 2022 March 2 by order No. 6P-35- (1.1.E) "On the Approval of the Description of the Procedure for the Organisation and Coordination of the Assessment of the Personal Competences of Applicants for Vacant or Vacant District Court Judges and Persons Seeking a Career as a Judge in the National Judicial Administration".