

NCA WEBINAR

“Towards an ideal court president profile”

Online webinar – 10 June 2021

SUMMARY

Background:

The aim of the webinar was to cover court management profiles, as well as a more principled debate on evaluation systems-giving an overview over performance management and evaluation tools for courts and judiciary and purpose of such assessments (e.g. what are appropriate methods to evaluate and for what reason? for instance professional learning, court management and organization development, upholding judicial values, measuring performance with a view to human resources management etc.) Speakers from various countries then presented their respective systems for performance measurement and evaluation tools for courts/presidents /judges- hereunder possible pros and cons with the systems. Lastly, the participants broke out in groups to discuss different scenarios and answer 3 main issues, namely:

- Who should do selection and evaluation
- What criteria should be used
- Who should make decisions on re-appointment and for how long

Speakers:

1. Netherlands

Prof. Philip Langbroek, Professor of Justice Administration and Judicial organisation, Utrecht University. *“Selection and Evaluation of Court Presidents. Challenging Judges, Judicial Policymakers and Politicians”*.

Background: Court presidents have a special role in courts and how to select and evaluate performance of courts/presidents touches upon questions of authority and who is in control of selection processes:

- **The Controversy:** Oppositions - Judiciary dominates selection and appointment vs. Judiciary dominates selection and appointment→ sensitive subject.
- **Values:** Accountability, Court efficiency, Court Authority, Accessibility, Judicial Independence and Impartiality, Ethics.
- **Context: complexities**
 - Judicial independence in a democracies under the rule of law
 - Courts in Society
 - Judges and Court Staff in Court Organisations
 - Interactions between courts, national court administration (MoJ, CotJ), and government.

- **Criteria:** on what constitutes a good manager but also interactions between courts, national court administration (MoJ, CotJ), and government. Problem: A good judge is not automatically a good manager. **Solution**→**Hire a good manager from elsewhere, establish management development program, allow non-judges to do managerial work, integrate management training.**
- **Procedures** in evaluation of presidential performance—difficult to establish criteria and who evaluates, when and how.
- **Evaluation Criteria** - Difficulty is, evaluation criteria are not related to judicial values, it is about how the organisation was led, managed. **Solution** → **joint committee of MoJ/CotJ/Judges (variety in composition), ask for feedback from peers, judges, court staff, superiors, bar, ask for feedback from peers, judges, court staff, superiors, bar.**

Q&A:

Q: Have you seen any negative sides of evaluation for the judiciary?

A: Evaluation and evaluation processes/reports can be used as a tool to put pressure on the judiciary and judges. Relations between judiciaries and politics is always under tension so the question is how to manage the tension, how can you organise the rule of law, stability, continuity of judicial work and of political work - and if you have democratic conscience- how to combine the forces to do that.

Q: How make a court president's work more successful, effective and easier?

A: Advice that not only applies to court presidents; for things one is less good at, organize help – from the court or outside court. Sometimes the consultant industry can help as well.

Q: Any specific country that has a model that you can recommend, that seems to be working reasonably well?

A: A bit reluctant to answer that question in a decisive way, one cannot say that one model is better- it is all about how people work, manage their relationships, good communication between court managers and judges and staff, then the formal aspects of evaluation are not so important anymore. Switzerland however is one favourite country, in how they organise courts. Norway too, has no large problems, and is doing pretty well because you are not pressurising judges but playing with professional pride instead.

2. Norway

Arnfinn Agnalt, President of the Court, Søndre Østfold District Court and Head of the Judicial Appointments Board. *“Appointment and evaluation of judiciary in Norway (with a focus on head of courts)”*

- **The Judicial Appointments Board** in Norway consists of:
 - 3 judges, 1 lawyer, 2 members of the public, 1 lawyer who works in the ministry or general public
 - One of the judges is Head of Board

- Members are appointed by the Royal Ministry of Justice (MoJ), for a period of 4 years
- The Judicial Appointments Board is independent
Neither the Government, the Royal Ministry of Justice or the Courts Administration can instruct the board
- **Secretarial services:**
 - The Norwegian Courts Administration (NCA) is the secretariat for the board-giving administrative support
 - The NCA representative joins the board meetings, but does not have a right to vote
 - Vacant positions are announced and published by NCA
 - Candidates apply online
- **Recruitment policy of President/Judges:**
 - The NCA handles the application procedure
 - A call for candidates is open for 3 weeks
 - In the application the candidates provide their resume
 - The head of the Judicial Appointments Board appoints a leader among the board judge members to conduct the interviews
- **Application process:**
Closing date for application → Employee representative (union) and Personnel safety representative → Selection of candidates for interview → Personal Profile Test (only for President of the Court)
- **Personal profile - Leadership profile:**
 - [Belsenso - Executive Search and Selection](#)
 - Personal Profile Test (personal test with 60 questions)
 - Test results are available to the interview group
 - Managing partner in Belsenso will take part in the interviews
- **The interview:**
 - Normally up to 5 candidates are called in for a 2 hours interview by the NCA
 - Introduction by leader of interview group
 - Focus on Leadership
 - Leader criteria
 - Qualifications
 - Colleagues
 - Development and change
 - Behaviour
 - Effective handling of cases
 - Questioning (concerning CV/education, work, behaviour, leadership, social intelligence and reference checks (minimum 3 references))
- **After the interview:**
 - Board discussions after each interview

- Interviews with the reference persons (regarding candidates CV, work behaviours, leadership skills, social intelligence etc).
- Board members meet to prepare ranking of candidates → nomination
- **Nomination & appointment of judges:**
 - Candidates are informed about nomination
 - Nomination is published by the NCA
 - Nomination and documentation are sent to The Royal Ministry of Justice
 - The MoJ prepares and sends the files to the Government
 - Appointment by the King in Council
- **Board meetings** (the board is independent and cannot be instructed by govt. or NCA):
 - Approx. 10 meetings per year
 - 5 to 8 recruitments processed each time
 - Each recruitment folder contains:
 - Application with attachments
 - Summary of the reference interviews
 - Ranking av candidates – nomination
 - Certificate of good conduct
 - The best 3 candidates are nominated
 - The responsible person for the interview (leader) gives a summary
 - The members give their opinion
 - Finally the representative from the Norwegian Courts Administration give his/her opinion
 - Usually agreement is reached

Q&A:

Q: When appointing court presidents, how do you weigh competence for the management skills with competence in law/being a good judge- and has it developed over the years?

A: Importantly, we look at the skills of a good judge, then skills and experience in leadership, management, economics. For presidents of court there is a lot of focus on management and leadership in particular.

Q: Who is evaluating head of courts, how are you evaluated/how does it function in Norway? Further, what is your mandate- how long is the appointment for head of courts?

A: There is no formal system for evaluation of judges/heads of courts in Norway (mentoring for judges is however practiced). Rather heads of courts have discussions with the Director of the NCA. 4 times a year, the NCA calls court presidents to a meeting to discuss problems or cases. Each court also sends a yearly report to NCA with a resume of activities; statistics, economy, what is needed of resources etc and NCA give feedback to the report. Judges have lifelong appointments and can serve for life if they wish. There has been discussions to introduce 6 year limits, but the commission have not proposed any such changes.

Q: Court presidents are not evaluated as such after appointment, but how successful are the selection processes? Did you have any cases with selection failures?

A: There are no evaluations as such, but should court presidents fail in their job, the NCA will discuss the situation with the person in question. In certain cases, the president will resign his/her position. This however happens rarely.

3. Lithuania

Judge Marius Bartnikas, Chairman of Civil cases division at Kaunas regional court and member of the Judicial Council. *“Evaluation and selection of court leaders in Lithuania”*

The main question is what competencies professional knowledge, leadership skills organizational abilities are most essential for successful performance?

- The chairperson/court president must be a judge but as a rule has no background as strategic management, or HR.
- **Challenges:**
 - The lack of educational and theoretical background
 - Workload performing as a judge
 - Evaluation criteria based on the quality of professional activities

No more than 2 consecutive 5 year-terms to be appointed to same office.

- Evaluation criteria (focused on assessing quality acting as a judge):
Professional activities - 4 formal criteria carrying equal weight:
 - a. workload of cases 25 points
 - b. duration of proceedings 25 points
 - c. quality of judgements 25 points
 - d. procedural quality and organizational skills 25 points

Personal qualities/characteristics?

Performance as a chairperson?

Max: 100 points

- **Evaluation procedure:**
 - The Permanent Commission for the Assessment of Activities of Judges: 4 judges (selected by Judicial Council) + 3 public representatives (selected by the President of the Republic)
 - Periodical (3 years after appointment and then every 7 years) and Extraordinary
 - Tools:
 - Documentation
 - Statistical data
 - Opinions
 - Interviews

- **Selection procedure:**
 - Selection Commission of Candidates to Judicial Office: 3 judges (selected by Judicial Council) + 4 public representatives (selected by the President of the Republic).
 - Appointment
 - Relocation
 - Judicial carrier
 - Administrative position

- **Selection criteria:**

	Administrative work	Judicial career
○ Professional performance	40 points	45 points
○ Length of legal work	5 points	5 points
○ Administrative experience	5 points	5 points
○ Professional competence	10 points	10 points
○ Personal characteristics	40 points	40 points

- **Personal characteristics and competencies:**
 - Constructiveness, erudition
 - Maturity of personality, emotional balance, decision-making efficiency
 - Responsibility, ability to effectively organize work
 - Communication and collaboration skills
 - Motivation, professional identity, aspiration to learn and improve, activity in the legal / judicial community

- **Selection procedure:**
 - Initiation of procedure by office of President
 - Submission of applications
 - Publication of the list of candidates
 - Collection of data (including interviews)
 - Decision of Selection commission on suitability
 - Nomination by the President
 - Approval by Judicial Council
 - Appointment by President or Parliament

Thoughts about the future: *Statistics or...professional skills vs. personal characteristics?*
Selection criteria: unification vs. diversity? Further promotion of leadership?

Q&A:

Q: How do you use the feedback from the evaluation? To initiate discussions? Is it used to improve?

A: Depends on the point of view. The sharing culture is of high importance. Not easy to implement such a culture. The idea is not to make judges feel threatened but to find ways to optimize the system, look for better quality. Sending a strong message about purposes of these procedures is an efficient tool.

4. Norway

Frank Egil Holm, Senior advisor, Norwegian Courts Administration (NCA),

„Case statistics - Monitoring the Norwegian Judiciary Court statistics relevant for judicial evaluation in Norway”

- **Statistics and court management:**

- Role of Norwegian Courts Administration (NCA)
 - Providing courts with manpower, ICT-systems, good courthouses, improving knowledge and competence etc
 - Cooperation with the Ministry of Justice (securing sufficient budgets and monitoring of the activity in the judiciary)
 - Dialogue with the court presidents (solving needs, providing guidelines and expectations).
- Reform in 2021: → from 60 to 23 district courts, from 34 to 19 land consolidation courts
 - Yearly meetings between the NCA and the court president of each court
 - Case statistics and information about the case flow, productivity and efficiency are some of the aspects that are covered in these meetings.
 - Main goal: using limited resources in the best possible way
- The courts
 - The court president has an important role in securing the best possible use of resources and good practices in his/her court. Very little contact between NCA and individual judges with regard to how they work with their cases and juridical work

- **Lovisa is the court management system:**

- Information elements connected to each case are registered: Case type, duration of meetings, use of manpower, complexity of decisions etc.
- Supports the judge and administrative personnel in the management of each case. When your specific task is solved → the case is sent to the person responsible for the next task

- **Yearly statistics:**

- Data from LOVISA provides a basis for the production of yearly statistics. NCA produce statistics for the aggregate, national level, and for each court.
 - Incoming case
 - Cases solved
 - Backlog
 - Case handling time
- Several purposes:
 - Dialogue with each court
 - Input to the budgetary priorities
 - Information towards MoJ and the National Assembly

- Information to researchers, students, the media and the general public
- **Length of proceedings 2020- district courts:**
 - Civil disputes: average case handling time (months): 5,6
 - Composite cases: average case handling time (months): 3,2
 - Criminal cases (single judge) average case handling time (months): 0,4
 - Targets: 6/3/1 months set by the National Assembly in 1991

All six appeal courts outside target. Around half of district courts do not meet the target. Are the 6/3/1-month-targets too ambitious?

- **Dashboards:**
 - Once every year the NCA produce dashboards for the district courts and the appeal courts. Each court could compare with other courts on key indicators:
 - Case management time
 - Average number of cases/verdicts per judge
 - Hours in courtroom per case/verdict/judge
 - Age distribution of backlogs
 - % share of cases ending with mediation
- **Statistics and management of the courts:**
 - National level (Norwegian Courts Administration)
 - Assessing **court** workload
 - Statistics (transparency and trust)
 - Budgetary processes (nationally and courtwise)
 - **Case handling time and backlogs**
 - Court level (Court Presidents/Heads of administration)
 - From the adopted management criteria: "*...The court president must be a driving force for efficient use of the court's computer systems. ...*"
 - Assessing court and **judge** workload
 - Assessing the **productivity of each judge**

Based on experience, we know that to be able to produce case handling times within the targets, we in the NCA and each individual court (president) have to cooperate closely with an aim of using the manpower in the courts in the most efficient way.

5. Croatia

Martina Vrdoljak, Adviser to the Minister of Justice and Public Administration Judicial
„Evaluation of judges in the Republic of Croatia- purpose, criteria and methods”

- Evaluation of the work of judges- previous legislative solutions-Courts Act from 2013 tried to resolve shortcomings of previous law changes:
 - Uneven work of Judicial councils (Councils composed of 15 members, selected from judges and established on higher courts responsible for evaluation of

work of judges – regular evaluation of judges work **every five years**, evaluation for the purpose of promotion of a judge on a higher instance and evaluation of candidates for president of the court)

- Out of court's activities were evaluated relatively high
- Too many obligations for judicial councils
- **Courts act currently in force (2018):**
 - Judges are evaluated only if applied for promotion on a higher instance or for the position of president of the court
 - Evaluation process is still in hands of competent Judicial councils
 - The president of the court every year establishes **the fulfillment of framework criteria for every judge (decision) possibility of initiating disciplinary proceeding against judge who, without legitimate reason did not fulfill framework criteria in previous year**
- **Improvements of the evaluation process in 2018:** Amendments to the Courts Act from 2018 tried to further resolve shortcomings of the previous prescribed arrangement:
 - Clearer evaluation criteria (quality, quantity, orderliness of performing judicial duty, professional experience and other activities)
 - Both qualitative and quantitative evaluation criteria are prescribed by law
 - more equal position of candidates in the promotion process instead of previous uneven application of the methodology by 18 judicial councils across the country
 - New timeframe in which the judicial councils have to make a decision on the performance of judicial duty (45 instead of 60 days) and special council of the Supreme Court of the RoC has to make a decision upon appeals (15 instead of 30 days)
 - Change in appointment of members of special council of the Supreme Court of the RoC competent to decide on appeals against evaluation decisions

In general, all these amendments were introduced with aim to **ensure more objective criteria for the promotion.**

- **Criteria of evaluation: Article 97. of Courts Act:**
 - Number of decisions a judge issued in ratio to the number of decisions a judge had to issue according to Framework Criteria
 - Quality of decisions
 - Orderly performance of duties - meeting deadlines, scheduling hearings, adherence to order of case resolving, etc.
 - Experience in performing judicial duty
 - Other activities of a judge (participation in professional development as lecturers, publication of professional and scientific papers, participation in judicial councils etc.)
 - **Every criteria is prescribed in details in the Methodology for evaluation of the work of judges**

According to all criteria, a judge may achieve a maximum of 150 points – for the first two criteria a maximum of 60 points and a maximum of 10 points for other criteria

- **Acceleration in the process of implementation of the new Framework Criteria** (from 2018):
 - Shorter timeframe in which the General Session of the Supreme Court of the Republic of Croatia has to propose the Framework criteria and its amendments to the Minister of Justice – 1 month instead 2 months
 - If the General Session does not propose within the prescribed timeframe, the Minister is allowed to adopt or amend the Framework criteria without the proposal
 - New Framework criteria were adopted in December 2019, entered into force from 2020.

- **Problems encountered:**
 - Framework criteria (biggest part of evaluation of the work of judges):
 - **Uneven evaluation of specific case categories on different court types**
 - disproportion of case weighting between case categories (eg. criminal and civil cases)
 - Uneven methodology of case weighting (weighting according to case type on one type of courts/ weighting according to type of decision on other type of courts)
 - **Number of points according to the Methodology**
 - **High percentage of candidates get highest number of points**