

Strasbourg, 14 January 2014

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

Questionnaire for the preparation of the CCJE Opinion No. 17 (2014) on justice, evaluation and independence

Reply from Albania

Introduction

The questionnaire aims at collecting information, as much as possible, about the evaluation of performance of functioning judges. Therefore, the questionnaire is not related to the process of selection and/or recruitment of judges. The replies to the questionnaire will serve to identify the prevailing practices in the member States, and they will be used in the process of preparation of the CCJE Opinion No. 17 (2014), indicated above.

A. Individual evaluation and assessment of judges: purpose and regulatory framework

1. Does individual evaluation and/or assessment of judges exist in your country?

Yes.

2. If yes, what is its purpose and rationale?

**To identify professional values of judges for the effect of their career;
To identify Judges with professional insufficiency and judges with the highest performance;
To determine the problems faced in court during verification of their professional activity;
To identify ongoing training needs of judges, serving to increase the professionalism of the judges of the courts of first instance and the appellate courts, as well as the chairman's of these courts.**

3. Is it compulsory or optional, and does it apply to all judges in the country?

According to the Albanian law it's compulsory. The High Council of Justice, in November of each year, determines courts, whose judges will be evaluated in the following year and the evaluation period.

4. How it is established and regulated:
- **by legislation;**
 - by subordinate legislation;
 - **by internal institutional regulatory instruments.**

B. Criteria for evaluation and assessment

5. Are there quantitative performance indicators that have to be taken into account, such as:
- the number of cases in which a decision has been made by a judge; **“yes”**
 - the average time spent on each of these cases; **“yes”**
 - the average number of hearings per case; **“yes”**
 - clearance rate (number of the cases, where a decision has been made, vis-à-vis the total of the cases forwarded to the judge); **“yes”**
 - the average time to judgment (the time required to deliver a judgment by a judge after the completed hearing); **“yes”**
 - any other quantitative indicators. **“No”**
6. Are there qualitative performance indicators that have to be taken into account, such as:
- analysis of the type, subject and complexity of the cases dealt with by a judge and his/her decisions; **“yes”**
 - the number of appeals vis-à-vis the number of the cases, where a decision has been made; **“yes”**
 - the number of decisions reversed and/or cases remitted by the appellate court; **“yes”**
 - the types of cases where decisions were reversed and/or cases remitted (criminal, civil, administrative or other); **“yes”**
 - the grounds for reversal and/or remittal; **“yes”**
 - any other qualitative indicators. **“No”**
7. Are there any other indicators that are taken into account in assessing the judge, such as the opinions of the court users, the judicial hierarchy, court experts and others concerned in the judicial process, as well as press articles?

According to the Albanian legislation these indicators aren't part of the evaluation of judges. Regarding “Judicial hierarchy” the chairman of the court of first instance or of the appeal court evaluates the judges.

8. Does the evaluation take into account possible violations of ethical and professional rules/standards adopted for judges?

Yes. Article 9 “Legal professional and technical skills”, foreseen:” In the group of professional legal criteria and technical skills of the judges, are included: a) The clarity of writing of the decision; b) Ability to conduct litigation; c) Ability to create and administrate a judicial dossier. Article 14 “Judge ethic during and outside the process”, of the decision of the High Council of Justice for “Judge Assessment System” foreseen:” This criteria evaluate judges communication skills during court hearings, and the manner of their behavior”.

9. Is there any set scale of importance or of priority between various performance indicators? (please specify)

No. Professional and ethical evaluation of judges is conducted in accumulative way according to these criteria: a) professional, organizational and implementing skills; b) Legal professional and technical skills; c) human capacity and professional commitment.

C. Procedures and mechanisms

10. Who is responsible for individual evaluation and/or assessment of judges? Please specify all institutions and officials taking part in this process (including the Ministry of Justice, presidents of courts, Council for the Judiciary, bodies for the inspection of courts), and indicate their specific roles.

Chairman of the court, Inspectorate of the High Council of Justice, The chief inspector of the High Council of Justice, The School of Magistrates, High Council of Justice.

The chairman of the court of first instance or of the appeal court evaluates the judge in the form of a written act.

To judge the performance of a judge, the chief inspector assigns one or more inspectors of the Department of Inspection.

The assigned inspector deposits the final report of the evaluation immediately to the chief inspector.

The chief inspector of the High Council of Justice, after reviewing the final evaluation report of the judge or president of the court, and the judge's personal file that is located in the High Council of Justice, not further than 60 (sixty) days, prepares the draft evaluation.

The High Council of Justice, after examines the judge or chief judge file and the draft evaluation, take a decision on the final evaluation within four (4) months from the completion of the evaluation of the Inspectorate.

11. Are there different evaluation procedures for different judges, depending on their position in the judicial hierarchy, their experience or any other aspect?

For chiefs of courts of first instance and appeal, the evaluation of human resources and professional commitments is made by the Inspectorate after they deposit their assessment materials.

12. Is evaluation a continuous process or is it done periodically; if the latter, how often are judges evaluated?

Judge evaluation activity is done on the basis of a preliminary schedule proposed by the deputy chief of the High Council of Justice that within a 3-year period, all judges of courts of first instance and appeal courts have to be evaluated. The High Council of Justice, in November of each year, determines courts, whose judges will be evaluated in the following year and the evaluation period.

13. Are the evaluations done routinely, or only or additionally for specific occasions and/or for specific reasons?

In most cases, evaluations are made on a periodic basis, but also when the high council of justice collects data of the decline in work efficiency and professional skills of judges.

14. How is the evaluation conducted? (please specify exact procedures, including possible pre-evaluation, interviews, hearings, oral and verbal submissions and the role of the evaluators and a judge)

The chairman of the court of first instance or of the court of appeal evaluates the judge in the form of a written act. The chief judge no further than 60 (sixty) days from notice of the start of the evaluation procedure completes the statistical tables for the judge, the judge documenting decisions revised by higher courts and the judge's assessment. Once recognized with the Chairman's evaluation and its associated acts the judge has the right to conduct a professional and ethic evaluation of his work by a writing act, according to a specific form, through which outline its activities, make a general assessment and evaluate each skill. Completing the self-evaluation form is not mandatory. Self-evaluation of the judge is conducted within 5 (five) days from the moment of recognition with statistical tables and the assessment of the chief judge. In any case, the self-assessment must be accompanied with the necessary decisions the judges refers to. The chief judge, sends within 2 (two) days from the submission of the self evaluation of the judge, the assessment materials to the Inspectorate of the High Council of Justice.

For evaluation of the judge shall be used:

- **Data arising from court files belonging to 7 decisions taken by the judge selected by lot by the Inspectorate. Judges that are not assigned to the trial chambers shall be selected by lot 4 civil conflicts and 3 criminal cases;**
- **Five decisions presented by the judge for each year of evaluation;**
- **Decisions of the judge revised by higher courts.**
- **Data arising from court files belonging 20% of cases judged further determined deadlines, selected by lot;**
- **The data resulting from the verification of complaints;**
- **The data resulting from the inspection of a judge or inspection of the court;**
- **Evaluation of chief judge of the court;**
- **Self-evaluation of a judge (if he decides to fill out the appropriate form)**

Judicial records that are subject to observation by the inspector in charge are identified by random selection between the decisions given by the judge within the evaluation period. Subject of evaluation are decisions made by the judge in the court where he exercises his functions in a permanent way, as well as those given by him in the court where he or she is delegated to concrete issues. The Inspector identifies the chamber and the section where the judge has exercised the function for the evaluation period, and then, depending on the number of decisions made for each category of issues, determines the number of decisions that will be selected from each of them. The drawing is done in the court where the judge exercises his functions. The drawing is done in the presence of the judge when he or she wants to be present. The draw includes all decisions that involve the judge where he has been chairman or part of the judicial body, except decisions where is in minority.

The school of magistrates, as the only body responsible for the continuous training of judges, offer all the documentation and information to the High Council of Justice for the participation of judges in professional activities and training. The school of magistrates ensure that, within 10 (ten) days from the request of the inspector in charge, to send to the Inspectorate of the High Council of Justice the requested information.

The judge, after collecting all data's from the inspector in charge, through an act of writing, has the right to request a personal interview with the Inspector of the High Council of Justice, to discuss various elements of performance and evaluation. The judge submits his request in writing, reasoned, within three (3) days of the notice of data's collection. The judge will be interviewed within 5 (five) days from the request, by the chief inspector or the inspector in charge, who carry documentation of the interview, which is attached to the evaluation.

The inspector in charge, after collecting the acts and assessment file of the judge or the president of the court, within thirty (30) days compiles the draft report. The draft report describes: the evaluation period, the judge's personal data; chamber or section where he has conducted his functions during the evaluation period; disciplinary measures taken against him during that period as well as reflects in detail the data resulting from verifications. The inspector in charge deposits immediately the final evaluation report and assessment file to the chief inspector.

The chief inspector of the High Council of Justice, after reviewing the final evaluation report of the judge or chairman of the court, and the judge's personal file that is located in the High Council of Justice, not further than 60 (sixty) days, prepares the draft evaluation. In the draft evaluation a judge can be evaluated as follows: a) very good, b) good, c) acceptable, d) incompetent.

The final assessment is based on the general framework of the work of the judge taking into consideration the capacity of his / her associated with three groups of evaluation criteria mentioned in the question number 9. The overall rating of "very good" may be granted only if the job of a judge is either "very good" for the three sections or "very good" in section II and one of the other two and "good" for the other one. The overall rating of "incompetent" is mandatory if the exercise of functions of a judge is evaluated "incompetent" in two of three sections. The overall rating of "incompetent" may be granted if the judge's work is appreciated "incompetent" in section II and no more than "acceptable" in two other sections. The evaluation of judge cannot be more than "acceptable" if the judge is evaluated as "incompetent" in one of the sections.

The draft evaluation prepared by the chief inspector may be appealed by the judge in the High Council of Justice, within 10 days from the date of its communication. In the event of an appeal, the High Council of Justice examines not later than 2 (two) months the judge's assessment file. The council listens to the judge, after him the chief inspector, with the right to ask questions.

The High Council of Justice, after he examines the judge or chief judge file and the draft evaluation, take a decision on the final evaluation within four (4) months from the completion of the evaluation of the Inspectorate. The High Council of Justice, when considers that the assessment should be on a lower level than the assessment made by the

chief inspector in the draft evaluation, assigns one of its members (elected by the Judicial Conference) to compile a new draft assessment and to communicate this draft to the judge. The judge has the right, within 10 (ten) days of receiving notice, to submit his objections. The final assessment of the judge is realized in a plenary session of the Council where the judge has the right to give his objections and the obligation to answer to the questions of the members of the Council. The act of evaluation of the High Council of Justice must be reasoned. If the Council agrees with the reasoning made by the chief inspector in the draft evaluation, is sufficient to make reference to this reasoning.

15. What are the ratings used during evaluations?

If the evaluation "very good" is achieved for each of the four groups of evaluation criteria, the judge gets 80 points in total.

If the evaluation "very good" is achieved by four possible in three groups of evaluation criteria, the judge gets 60 points in total.

If the evaluation "very good" is achieved by four possible in two groups of evaluation criteria, the judge gets 50 points in total.

Academic degree has a total of 10 points.

Scientific publications have a total of 5 points.

A judge who has exercised for a specified period one of the following functions, gets 3 points, but not more than 10 points in total.

- a) Judge of the Supreme Court**
- b) Judge of the Constitutional Court**
- c) Director of the Magistrates School**
- d) Member of the High Council of Justice**

16. What are the consequences of the evaluation and how may it affect the career of a judge? Can it result in:

- the promotion or demotion of a judge; **"yes"**
- a professional award to a judge; **"yes"**
- disciplinary or other measures; **"No"**
- a requirement of further training; **"yes"**
- dismissal from office; after disciplinary procedures **"No"**
- any other actions or measures (positive or negative). **If the judge is evaluated as "incompetent", for a period of 2 years will be subject of frequent inspections.**

17. How are the evaluation and the recommended measures recorded, where are the records deposited, who may examine them and for how long they are kept?

The records, judge Assessment document becomes part of the judge's personal file and is stored in the Legal Department, Human Resources and Research Department of the High Council of Justice until the next evaluation.

18. Apart from the formal evaluations referred to above, are any informal evaluations undertaken? (for example, in the form of informal consultations and advice from more senior judges).

No.

19. Please provide, if possible, an example (anonymous) of an evaluation/assessment form/sheet/record filled out (if possible, in English or French).

The information of the form is confidential.

D. Evaluation and assessment vis-à-vis the independence of judges
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20. By what means is the transparency of the evaluation process ensured? Is the evaluating body clearly defined? Are there published guidelines setting out evaluation criteria and the procedural rules to be applied?

The evaluation is realized over these bodies that guaranties the transparency of the process. Chairman of the court, Inspectorate of the High Council of Justice, The chief inspector of the High Council of Justice, the School of Magistrates, High Council of Justice. The procedural rules are defined according to the decision of the High Council of Justice for “Evaluation of Judges”.

21. Are there any protective measures during the evaluation process to avoid personalised opinions or political pressures?

The procedure of evaluation guarantees a transparent process taking into account that also judges are part of evaluation process.

22. How is the participation of a judge in the evaluation procedure ensured and how are his/her views taken into account?

The judge has the right to conduct a self evaluation form through which outline its activities, make a general assessment and evaluate each skill.

23. Is any self-evaluation by a judge or evaluation by his/her peer judges at the same hierarchical level possible?

Yes the judge has the right to conduct a self evaluation that is not mandatory. Judges of the same level cannot evaluate their colleagues.

24. Can a judge demand the dismissal or removal (temporary or permanent) of a member of the evaluation body from that body? (for example, where there are serious reasons to believe that such member may have an *a priori* negative attitude towards the evaluated judge).

The chief inspector can replace the appointed inspector during the inspection procedure for justified reasons. Actions performed by replaced inspector or inspectors are valid until justified reasons aren't directly linked. Actually the procedure of dismissal or removal is not foreseen in the regulation but these requests can be evaluated according to concrete reasons.

25. What are the possibilities of review (including judicial) of an evaluation of a particular judge, if a judge does not agree with the evaluation and the measures taken as a result of its conclusions?

According to existing legislation, there is no specific provision to regulate the procedure of appeal against the evaluation's decision given by the High Council of Justice (HCJ).

Taking in consideration the latest decision given by High Court of Albanian,¹ permits a judge to object in the court of first instance to the act of his professional and ethical-moral evaluation given by the High Council of Justice (HCJ), an issue that has not been dealt with before. By this decision, the High Court of Albania ensure a new standard regarding the activity of the HCJ vis-à-vis with the judicial system, which is re-dimensioned, creating a larger "openings" of control over the HCJ by the judicial system itself.

Reasoning of the Court: "It was not taken into consideration by that court that the decision of the HCJ for the evaluation of judges is not a disciplinary measure, but an administrative act by means of which consequences are created for the plaintiff. Therefore, on the basis of article 140 of the Code of Administrative Procedures and article 328 of the Code of Civil Procedure, the right of plaintiff to turn to court to object to an administrative act will be done on the basis of general principles, turning to the Court of the Tirana Judicial District in respecting the right of plaintiff to go to court. The right of the individual to go to court does not only include the right to open a proceeding, but also the right to have a final resolution of the dispute that is the object of trial from the court. Access to court should be substantive and not simply formal. The denial of the right to go to court and to receive a final answer from it in connection with the claims raised constitutes a violation of the fundamental right to a due legal process provided by article 6 of the ECHR"

E. Achievements and problems

26. Please briefly describe achievements and problems of the evaluation system used in your country.

The criteria of the effectiveness of the judges should be approximated to international standards. In relation to qualitative criteria, I suggest to determine the meaning of the term "vulnerable decisions", predicting an exhaustive list. Assessment system must not infringe the inner conviction of a judge. In this regard, the effect of qualitative criteria should be inspected only violated decisions for procedural reasons, as required by the Code of Civil Procedure and the Penal Procedure Code, setting some standards for the quality of a decision.

According to the criteria of reasonable time in judicial process, reference should be the criteria established in the jurisprudence of the ECHR. Determinant should be the causes of delays, to identify whether the judge has become cause of delays in the judicial process.

Civil Procedure Code and Criminal Procedure Code defines very short deadlines for reasoning the final decisions, a fact that affects the quality of the decision.

¹ Decision no. 357 dates 6.7.2013 of High Court of Albania

The methodology of work that must follow the HCJ Inspectorate in assessing judges, must avoid any subjective influence on this process. This means defining some criteria based on which the inspectors assess the skills of the judge for "written simply and clearly," or the ability "to direct and orient the judicial debate".

In the new system of evaluation is foreseen that assessment of the president of the court should focus on aspects of professional ethics, work discipline and solemnity. Despite this limitation, evaluation of the presiding judge, an objective evaluation, requires in this case to define some clear criteria, which should be based this evaluation.

Evaluation system and professional ethics of judges should focus on identifying the judges with professional values, for the effect of promoting their career (in appeal or Supreme Court.) Evaluation system should not serve as a reason for the disciplinary proceedings of judges.