

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
Answer Austria

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 it exists

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

There is no rationale explicitly expressed in the law. So you may find the rationale in the consequences which follow the result of the evaluation: if a judge is evaluated with "not sufficient" a procedure to dismiss him/her on the grounds of incapability may be initiated. The results of the evaluation are one of the elements which will be considered when a judge applies for a new position (other court or "higher classified" position at the same court).

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

It is compulsory for each judge regarding the year which followed his appointment in a new position and in addition each judge and the president of the court may ask for a new evaluation if the performance of the judge considerably improved or worsened. Presidents of the Courts of Appeal and of the Supreme Court are excluded.

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

It is established and regulated by legislation

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;
 - the average time spent on each of these cases;
 - the average number of hearings per case;
 - clearance rate (number of the cases, where a decision has been made, vis-à-vis the total of the cases forwarded to the judge);
 - the average time to judgment (the time required to deliver a judgment by a judge after the completed hearing);
 - any other quantitative indicators.

When the evaluation starts a table is provided for each judge which provides statistical data which give some information about the workload and how the judge copes with it. Number of new cases in the relevant year, number of old cases, which remained from previous periods, number of cases solved in the different ways, which are possible, and number of cases which were still pending at the end of the period.

There is no formula which relation between these figures is good or bad, these figures only give a first glance for the framework of the judge's work and the result of the judge's work, and insofar they are no criteria as such.

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;
 - the number of appeals vis-à-vis the number of the cases, where a decision has been made;
 - the number of decisions reversed and/or cases remitted by the appellate court;
 - the types of cases where decisions were reversed and/or cases remitted (criminal, civil, administrative or other);
 - the grounds for reversal and/or remittal;
 - any other qualitative indicators.

Again the listed aspects are no criteria as such, but of course these aspects have to be taken into account. There is no counting how often one or the other of these aspects occurred, especially the number of appeals and the number of "successful" remedies is not counted.

The criteria, which are enumerated in the law, are.

- Degree and completely of knowledge the judges needs for his tasks , including knowledge of new legal provisions
- Good ability for perception
- Diligence, high perseverance, conscientiousness , reliability, decisiveness and determination
- Social awareness, ability to communicate, ability to deal with the parties
- Articulateness (oral and in writing), language skills as far as they are necessary for the performance as judge
- Conduct in court , on duty, communication with parties, colleagues, staff and parties of the procedures, private conduct as far as it influences the duties and image of the judge
- If judges who may become presidents or get other managerial tasks, qualifications needed for such a position
- Success of the performance

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?

The sources which are taken into account are:

- Check of the register
- Check of the statistics mentioned under 5
- Personal File of the judge, which may contain information about training activities, extra duties the judge had taken, extra studies he/she did, data of leaf, results of disciplinary procedures
- Report of the president of the respective court
- Reports of the Chairs of the panels , which deal with remedies against the decisions of the respective judge
- The report of the court inspection, which is in charge to evaluate the performance of the whole court especially the administration of the court, which does not deal with the content of the work of the judges but might have reported on organizational skills of the judge how to manage his/her cases.
- The reporting judge of the Personalsenat (body which is in charge of evaluation) may look in a certain number of files, may interview the judge concerned etc.

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

Yes, it does

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

No, such a scale does not exist.

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.

The evaluation of individual judges is entrusted to the Personalsenat. The Rapporteur of this body collects reports of the president of the court, of the chairs of the panels which have jurisdiction for the remedies against the decisions of the respective judge, he may look into files, visit hearings and check the report of the last inspection of the court. A remedy against the result of the evaluation is possible to the Personalsenat of the Court of next higher level.

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

No there are no different procedures. Judges who are in a management function of the administration of the court are also evaluated regarding to this part of their activities. The President of the Supreme Court and the Vice-presidents of the Supreme Court are not evaluated.

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

Judges are evaluated for the second year after they had come into a new position. If a judge changes this position several times he is evaluated every time after such a change. In addition every judge and every court president can initiate a new evaluation if he/she thinks that the last evaluation result does not fit any more. If the result of an evaluation is "sufficient" or "non sufficient" the judge is evaluated again for the next year.

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

See 12.)

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)

see 10.)"

15. What are the ratings used during evaluations?

The ratings are "excellent", "very good", "good", "sufficient" and "non sufficient"

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;
not automatically but of course the result of the evaluations play a role if several candidates apply for a certain position

- a professional award to a judge; no
- disciplinary or other measures;
no (but if on the occasion of the evaluation procedure some disciplinary offence is discovered it may lead to a disciplinary procedure)
- a requirement of further training;
not directly, but of course recommendations in such a direction could be given by the president of the court
- dismissal from office;
if a judge is evaluated “not sufficient” for two years, which follow one after the other, he will be dismissed.
- any other actions or measures (positive or negative).
If a judge is evaluated with “sufficient” or “non sufficient” he/she will be evaluated for the next year again.

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?

They are put in the file of personal data, which exists for each judge. They are kept without limits.

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)

The Association of Austrian Judges started a peer evaluation project. Two judges voluntarily consent that one watches the hearings of the other and discusses his/her observations with the other. Nobody else will be informed of these observations; basis of this evaluation is mutual trust between the two judges concerned.

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

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?

Regarding transparency, definition of the body and procedural rule yes, regarding the evaluation criteria, they are “defined in a broad not in a detailed way.

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

There is a procedure and there are remedies.

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

He/She may be interviewed, he/she will get the reasoned decision and he/she may appeal.

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

Why not, this does not need any formal provision. See also 18 above.

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).

It can be a reason for the appeal and of course the member of the Personalsenat who is biased in such a way should have to withdraw from the case. 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?

Regarding the results of the evaluation there is a remedy to the Personalsenat of the court of the next higher level, regarding the measures taken as a result of the evaluation it depends on the respective procedure for the respective measure.

E. Achievements and problems

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

There is no real problem. One element which is criticized is that too many judges are evaluated with the highest possible result "excellent".

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