

Strasbourg, 14 January 2014

[Danish answers, 16 February 2014](#)

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

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

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.

[The Danish delegation takes cognizance of the fact that the questionnaire is not intended to relate to the process of selection of judges or the recruitment of judges. We understand that any evaluation, which is taking place in the process of promoting judges, is also not intended to be included in the present questionnaire.](#)

[In Denmark there is a lot of focus on evaluation and assessment in the process of appointing or promoting judges, and it is not possible to become a judge without having had a professional career of a high standard concerning legal matters – for instance as a deputy judge, a lawyer, a professor, etc. – during at least 10-15 years after having passed a university law degree.](#)

[However once a Danish judge is appointed no individual evaluation of performance will take place during his tenure.](#)

[Many diverse activities are continually going on to assure the quality of the jurisprudence in general, but none of these activities comprise evaluation of the performance of individual functioning judges.](#)

[In Denmark such evaluation is considered to be very problematic and not in harmony with the functional independence of the judiciary, which is secured by our Constitution.](#)

Article 64 in The Danish Constitution guarantees the independence of the courts, inter alia by providing that the judges shall be directed solely by the law, including secondary legislation issued by the administration under statutory authority. Furthermore article 64 protects a judge against arbitrary removal, since removal and transfer against the will of the judge may take place only by court decision and only in case of gross misconduct or lasting illness. Such cases are according to the Danish Court Administration Act decided by a special court – The Special Court of Indictment and Revision (*Den særlige Klageret*) – chaired by a Supreme Court judge and composed of two judges from the lower courts, a practicing lawyer and a professor in law.

The Special Court of Indictment and Revision cannot review a judge's judicial decisions, but can take disciplinary actions against a judge in cases concerning complaints regarding improper or unseemly behavior of a judge, including complaints regarding marked inability to cope with the cases within a reasonable time. If the Court finds that the judge has behaved improperly or unseemly in his acts in office, the Court can state criticism or issue a fine, and in cases of gross misconduct, the Court can – as mentioned above – decide the removal or the transfer of the judge.

It follows however from the above mentioned, that the questionnaire aims at collecting information about evaluation systems concerning judges, which do not exist in Denmark.

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

1. Does individual evaluation and/or assessment of judges exist in your country? Only as a result of a concrete complaint against a judge concerning improper or unseemly behavior, or concerning gross misconduct or lasting illness, see the commentary under "Introduction"
2. If yes, what is its purpose and rationale?
3. Is it compulsory or optional, and does it apply to all judges in the country?
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;
 - 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.

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.
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?
8. Does the evaluation take into account possible violations of ethical and professional rules/standards adopted for judges?
9. Is there any set scale of importance or of priority between various performance indicators? (please specify)

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.

[As mentioned in the commentary under "Introduction" The Special Court of Indictment functions as a disciplinary body in cases of complaints regarding improper or unseemly behavior of a judge.](#)

11. Are there different evaluation procedures for different judges, depending on their position in the judicial hierarchy, their experience or any other aspect?
No.
12. Is evaluation a continuous process or is it done periodically; if the latter, how often are judged evaluated?
Evaluation is only done as a result of a complaint.
13. Are the evaluations done routinely, or only or additionally for specific occasions and/or for specific reasons?
See the above answer.
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)
Normally during deliberating in writing after having got the acts of the case and written statements from the persons involved, including from the judge.
15. What are the ratings used during evaluations?

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;
- a professional award to a judge;
- disciplinary or other measures;
- a requirement of further training;
- dismissal from office;
- any other actions or measures (positive or negative).

[Se the commentary under "Introduction"](#)

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 Court's evaluation of the case results in a judgement, which is recorded the same way as other judgements.](#)

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).

D. Evaluation and assessment vis-à-vis the independence of judges

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?

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

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

[Se the answer to question 14.](#)

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

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)

[Is regulated by the general provisions in The Court Administration Act concerning incapacity.](#)

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?

[The judgement of the Special Court of Indictment and Revision can be appealed to the Supreme Court.](#)

E. Achievements and problems

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