

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

#### 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?  
*According to the law, assessment exists only for judges of less than three years length of service.*

*In 2011, Estonian Court en Banc\* made a resolution suggesting discussion between Court's President and a judge in order to give feedback both judge's performance and court management. These discussions are held on voluntary bases, as needed, and are not documented. Following answers concern assessment of new judges.*

*\*Estonian Court en Banc is a self governing body which consists of all Estonian judges.*

2. If yes, what is its purpose and rationale?  
*The purpose is to evaluate new judge's suitability for the office.*
3. Is it compulsory or optional, and does it apply to all judges in the country?  
*It is compulsory.*
4. How it is established and regulated:

*It is regulated by the law (The Courts Act) and internal institutional regulatory instrument (the standard format of opinion is established by the Judge's Examination Committee).*

## **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, compared to particular court's and national average*
  - the average time spent on each of these cases;  
*Observance of the procedural deadlines*
  - the average number of hearings per case;  
*Optional\**
  - clearance rate (number of the cases, where a decision has been made, vis-à-vis the total of the cases forwarded to the judge);  
*Optional\**
  - the average time to judgment (the time required to deliver a judgment by a judge after the completed hearing);  
*Optional\**
  - any other quantitative indicators.  
*\* List, set by the Examination Committee is open.*
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;  
*Optional\**
  - 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;  
*Optional\**
  - any other qualitative indicators.  
*\* List, set by the Examination Committee is open. However, Court's President is supposed to give an opinion about judge's capabilities, personal characteristics and co-operation with colleagues and participants of the proceedings.*
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?  
*Yes. Any information available is taken into account. In practice, Bar Association's and Procecutor's Office opinion has been asked.*

8. Does the evaluation take into account possible violations of ethical and professional rules/standards adopted for judges?  
Yes
9. Is there any set scale of importance or of priority between various performance indicators? (please specify)  
No

### 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.
- a) *Once a year, chairmen (presidents) of courts shall submit their opinion concerning judges of less than three years length of service employed in the corresponding courts to the Judge's Examination Committee.*
  - b) *The Judge's Examination Committee\* shall hold a session where the judge whose suitability is assessed is heard. The examination committee shall give its opinion.*
  - c) *The decision is made by the Supreme Court en banc\*\*. Upon assessment of suitability for the office of judge, the Supreme Court en banc shall consider the proposal of a person or body entitled to commence disciplinary proceedings\*\*\*, the opinion of the Judge's Examination Committee and other information characterising the work of the judge. At least ten days before the suitability of a judge is discussed at a session of the Supreme Court en banc, a reasoned proposal of a person or body entitled to commence disciplinary proceedings to release the judge from office and the opinion of the judge's examination committee shall be presented to the judge whose suitability for office is assessed, and he or she is allowed to examine the gathered materials.*

*\* The Judge's Examination Committee shall have ten members and be formed for five years. The judge's examination committee shall be comprised of two judges of the court of first instance elected by the Court en banc, two circuit court judges, two justices of the Supreme Court, one jurist designated by the council of the Law Faculty of the University of Tartu, a representative of the Ministry of Justice designated by the Minister of Justice, a sworn advocate designated by the leadership of the Bar Association and a public prosecutor designated by the Chief Public Prosecutor. In order to hold the examination, the chairman of the Judge's Examination Committee shall form a panel comprising of at least five members, three of whom shall be judges.*

*\*\* The Supreme Court en banc consists of all Supreme Court justices.*

*\*\*\*The following have the right to commence disciplinary proceedings:*

- 1) the Chief Justice of the Supreme Court, against all judges;*
- 2) the Chancellor of Justice\*\*\*\*, against all judges;*
- 3) the chairman of a circuit court, against judges of courts of first instance in his territorial jurisdiction.*
- 4) the chairman of a court, against the judges of the same court;*
- 5) the Supreme Court en banc against the Chief Justice of the Supreme Court.*

*\*\*\*\* The Chancellor of Justice is in his or her activities an independent official who reviews the legislation of general application of the legislative and executive powers and of local governments for conformity with the Constitution and the Acts of the Republic of Estonia.*

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 judges evaluated?  
*Evaluation is done every year for the first 3 years from appointment for office.*
13. Are the evaluations done routinely, or only or additionally for specific occasions and/or for specific reasons?  
*Evaluations are done routinely.*
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 p 10.*
15. What are the ratings used during evaluations?  
*See p 10.*
16. What are the consequences of the evaluation and how may it affect the career of a judge? Can it result in:  
*In case of negative evaluation - dismissal from office.*
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?  
*No specific rules.*
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).  
*See answers 5-9.*

<b>D. Evaluation and assessment vis-à-vis the independence of judges</b>
--

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?  
*Evaluating body is clearly defined by the law. The procedure is also set by the law and Statute of the Examination Committee.*
21. Are there any protective measures during the evaluation process to avoid personalised opinions or political pressures?  
*There is no detected information about political pressure. Opinions are created by the discussion and voting of evaluating bodies.*
22. How is the participation of a judge in the evaluation procedure ensured and how are his/her views taken into account?  
*The judge in question is heard by the Committee and the Supreme Court en banc.*

23. Is any self-evaluation by a judge or evaluation by his/her peer judges at the same hierarchical level possible?  
*The judge in question does not have to make a self-evaluation. The Examination Committee members – see answer 10.*
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 is possible to appeal against the decision of the Examination Committee to the Supreme Court en banc.*
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?  
*See previous answer. The Supreme Court decision is final.*

#### **E. Achievements and problems**

26. Please briefly describe achievements and problems of the evaluation system used in your country.  
*Personal characteristics of the judge plays increasing role in our system. However, it is unclear how to evaluate these characteristics.*