

## The Report from Finland

Prepared by Mr Timo Esko,  
President of the Court of Appeal  
of Turku and  
Mr Pertti Nieminen, President of  
the Court of Appeal of Eastern Finland

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### **CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)**

#### **Questionnaire for the preparation of the CCJE Opinion No. 17 (2014)**

##### **on justice, evaluation and independence Reply from Finland**

#### **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?
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.

Finland is a country where courts are under the administration of the Ministry of Justice and where there is no such an independent institution as High Council of Judiciary. The Ministry has not recommended nor introduced any uniform evaluation or assessment procedures for judges. However, it is a common practice in different bodies of state administration that heads of bureau or department have regular individual discussions (“development discussions”, “career discussions”) with the members of their personnel concerning their progress in the career.

Nowadays this practice is followed also in most courts of law although it has not been made compulsory by any general order given within the judiciary or outside of it. The discussions cover all the different groups of the personnel.

As far as judges are concerned, the judges in a leading administrative position in a chamber of a court have this kind of discussions with the judges in their chamber and the president of the court with those in a leading administrative position in the different chambers. A discussion of this kind takes place every year or every second year.

It is usual that the judge being responsible for the discussion makes preparations for this occasion by giving the judge coming to the discussion a special form to be filled by the latter including questions concerning his expectations, experiences, criticism and wishes in the work. The form can also include a self-evaluation of the judge in his daily work. The leading judge can also ask the opinion of his colleagues in this issue before the discussion. After the discussion the leading judge or president gives his evaluation of the different skills of the judge and recommends measures to be taken so that progress can be made in the career path. A separate feed-back discussion can also follow.

<b>B. Criteria for evaluation and assessment</b>
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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.

As far as I know, in most cases only quantitative indicators are applied. The leading judge gathers beforehand information about the number of cases, average time spent, clearance rate etc. General attitude towards the use of qualitative indicators may be reluctant. It is, perhaps, thought that the independence of an individual judge is jeopardized if he is asked to explain, for example, why so many of his decisions have been reversed during the last year.

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?

In principle, such indicators could be taken into account. However, this requires that the quality of adjudication of the court in question has been evaluated from a larger perspective so that media surveys and other extensive surveys (different experts, "clients" etc) have been made beforehand. There are not many examples of this kind of court evaluation in Finland, perhaps only one or two.

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

It is my opinion that if such violations happen, they have to be dealt with in the discussion.

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

I am not aware of any such set scale. Anyway, the forms used in different courts to facilitate the discussions resemble, more or less, each other. The first questions usually concentrate on the issue how well the judge masters the substance of law he applies in his cases. The quality aimed for should be balanced with the nature of the cases the judge is dealing with.

### **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 president of the court takes care that the discussions will take place and gives the timetable for them.

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

The formal procedure is more or less the same but the set of questions to be taken up in the discussions is tailor-made and varies according to the position of the judge in the judicial hierarchy.

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

The process is of a continuous nature and the discussions take place every year or every second year.

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

Evaluations are made routinely. As they take place so often, there is in practice no reason for specific occasions.

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 framework of the evaluation discussion has been given above. The forms to be filled by the judge before the discussion have been prepared in cooperation with the groups of personnel concerned. A copy of that form filled by the judge is given to the leading judge before the discussion. The president of the court gives the time-table for the discussions and the discussions are carried out by the leading judges who also are responsible for giving feed-back to those concerned. The president carries out the discussions with the leading judges.

15. What are the ratings used during evaluations?

There is no uniform rating. The evaluation is verbal and descriptive.

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).

The main purpose of these evaluation discussions, which are often called “development discussions” or “career discussions”, is to give, on one side, the judge in question a possibility to tell his opinion of the general “state of affairs” or atmosphere in the court as well as his personal needs and expectations in work. The leading judge answers the questions and evaluates the judge’s contribution to the work of the court. The leading judge also points

out, if necessary, the areas on which the judge could improve his performance. For this purpose, it can be necessary to have a feed-back discussion later. Such direct consequences as promotion or dismissal are typically not part of this system.

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 leading judge takes notes of the discussion and saves them for the feed-back discussion. The notes are not saved any longer neither are they used for any other purpose.

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)

There may be many different kinds of private discussions but they never reach the status of an evaluation as used in this context.

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

Unfortunately no forms are available 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?

I don't think that transparency is a problem in the system described above. It is usual that the court's personnel is called to a meeting to discuss the different aspects of the coming discussions. Sometimes some experts in employment relations have been asked to give a presentation of the "ideology" behind these discussions. Also the forms to be used are discussed beforehand.

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

No, there are no specific measures of this kind. These questions can be dealt with on a general level. I am not aware of any such problems.

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

At least in my court there has been not one case of abstention. The system is based on voluntariness. When the leading judge has completed the discussions he makes a summary of the expectations, wishes and criticism presented by the judges and presents it to the president.

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

Self-evaluation is part of the “development discussion” system as presented 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)

To carry out these discussions is part of the duties of the leading judge. If there is a serious conflict situation between the leading judge and a judge in his chamber, the latter will be moved to another chamber by the president. I cannot recollect any such case.

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?

His disagreement is written down during the discussion. It will also be taken up in the feedback discussion.

**E. Achievements and problems**

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

The system described above is a smooth one and based on mutual understanding and discussion. It is a useful tool to create better atmosphere in the work place. It also helps the judge to see his strong and weak points and to develop his skills, but it is not an evaluation system in the real sense of the word.

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