

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 Georgia

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?

There are two types of assessment

- (i) Recently there were adopted amendments to the Law on General Courts (Act of Parliament), according to which all judges are appointed or reappointed for the term of 3 years (3 years examination period) during which the High Council of Justice shall appoint a member who will assess the activity of the judge after each of the above mentioned three years.
- (ii) There is another assessment (adopted by Act of the High Council of Justice) is called Assessment of the Efficiency of Judge's Activity. It takes place once in 6 months.

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

- (i) It's hard to say what is the purpose, probably the purpose is to appoint only the high qualified judges because from 2013 the judges are appointed for life term (if they pass the 3 year tenure - examination period - successfully).
 - (ii) To find out how efficient is a judge in his/her activities. When promoting the judge the purpose is to select the best candidate.
3. Is it compulsory or optional, and does it apply to all judges in the country?
- (i) Assessment set by the Law (Act of Parliament) is compulsory and applies only to all those judges of first instance court and of the appeals court who were appointed or reappointed for the 3 years term.
 - (ii) As for another assessment by Individual Act of the Council it also applies only to the judges of first instance court and of the appeals court.
4. How it is established and regulated:
- by legislation;
 - by subordinate legislation;
 - by internal institutional regulatory instruments.
- (i) The general provision about 3 year tenure of the new judges (3 year examination period) as mentioned above is included in the law (Act of Parliament), however, the details of the procedure most probably will be included in by-laws or internal institutional regulations.
 - (ii) The assessment set by the Council itself is included in by-law (Act of the High Council of Justice).

B. Criteria for evaluation and assessment
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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.
- (i) The details are not available yet for the first type of assessment (Act of Parliament)
 - (ii) By-law adopted by the Council stipulates that assessment includes the following components
 - a) Quantity of ratio of finalized cases;
 - b) Complexity of the cases finalized;
 - c) Meeting with the procedural deadlines;
 - d) Meeting with the terms of preparation of the motivated judgment;

e) Stability of the judgments;

These components are assessed separately from each other and are then combined in one general assessment.

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.

(i) There is no information available yet for the first type of assessment;

(ii) As for the assessment according to by-law of the Council, it includes the following qualitative indicators

- a) analysis of the type, subject and complexity of the cases dealt with by a judge and his/her decisions
- b) the number of decisions reversed and/or cases remitted by the appellate court;

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?

No there are no other indicators (mentioned in the question above) that are taken into account in assessing the judge.

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

The assessment set by the Council does not include any stipulation in this regards.

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

Yes, there is. In the assessment set by the Council each of the five components mentioned in the answer to question 5 has its own value in general assessment. For example-

- Quantity of ratio of finalized cases is 35% of the general assessment;
- Complexity of the cases finalized is 20% of the general assessment;
- Meeting with the procedural deadlines is 15% of the general assessment;
- Meeting with the terms of preparation of the motivated judgment is 10% of the general assessment;
- Stability of the judgments is 20% of the general assessment;

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.

- (i) As mentioned above, it is the High Council of Justice (based on the report of one of its members) which assesses the judges.
- (ii) In second type of assessment it is the High Council of Justice too which is in charge of assessment.

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 not different evaluation procedures for different judges. The only issue is that the judges of the Supreme Court do not fall within the scope of the assessment requirements.

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

- (i) It's compulsory during first 3 years of the tenure and takes place after each year.
- (ii) It's compulsory in every 6 months and when promoting the judges.

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

- (i) Evaluations during examination period are done each year as mentioned in paragraph 12 above.
- (ii) Evaluations set by Council are done once in 6 months.

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)

- (i) The details of the procedure is not stipulated yet. Most probably those issues will be addressed in by-laws.

- (ii) The courts send all the statistical data necessary for the assessment and through special software all the statistics is calculated per each judge.

15. What are the ratings used during evaluations?

- (i) For the assessment set by the Act of Parliament there is no information available yet.
(ii) The rates of general assessment mentioned in answer to question 9 are calculated in percentages and the ratings below is applied

A+ (101%-111%) The highest quality

A (91%-101%)

B (81%-91%)

C (71% - 81%)

D (61% - 71%)

E (51%-61%)

F (0%-51%) Non-satisfactory

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).

(i) For those who are appointed for 3 years it may result either in reappointment for life term or for termination of their office.

(ii) It may influence the promotion and may result either in promotion or in non-promotion.

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?

(i) Each year different members of the High Council of Justice prepare the reports that are submitted to the members of Council 3 months prior to termination of 3 years term. They will be deposited in the Council itself.

(ii) The evaluation is kept in the Council itself.

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, there are no other informal evaluations envisaged (however it's not excluded that the Council may ask for someone's opinion but this will not kept in official recordings).

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

I am afraid it's not possible.

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?

For the first type of assessment (Act of Parliament) so far there are no clear rules set since the process has not started yet. There are no published guidelines and no procedural rules.

As for the second type of assessment (Act of the Council) the body is clearly defined, the rules are set in the Act which is published in the website. The procedure is not directly mentioned however, it is presumed that all the necessary data shall be sent to the Council by the courts.

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

No, there are no special protective measures during evaluation process. However, the evaluation set by the Council is mainly based on courts' statistics and in this regard may not be that much dependent upon political opinions.

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

The participation of the judge is not ensured at all and his/her views are not heard.

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

No, it is not possible (officially of course).

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)

Since the evaluation is carried out by the Council (the members of which are elected in different ways) the judge has no authority to demand their dismissal.

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?

There are no mechanisms to review the evaluation, however, the decision (based on the report) of the High Council of Justice can be appealed in the court.

E. Achievements and problems

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

The evaluation of the judge (set by Act of Parliament) is very new and there is not enough information yet to describe it. When the procedure is set for evaluation system than it maybe possible to identify the shortcomings. The only thing to be said now is that evaluation of the judges each year during first three years is not in conformity with the principles of independence of judiciary.

As regards the procedure set by the Council itself, this is based too much on statistical data and the figures may not describe that well everything. Some flexibility maybe useful for such a procedure.