

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?

Yes.

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

**The aim of the monitoring and assessment of the work of the judge shall be the affirmation of the judiciary as an independent and autonomous authority, the strengthening of the personal motivation of the judges, securing further professional development of the judges on the basis of their personal and professional capabilities without any influence, as well strengthening the independence and the impartiality of the judge during the exercise of the judicial office.**

**The monitoring and the assessment of the work of the judge shall be conducted without disrupting the independence and the impartiality of the judge during the exercise of the judicial office.**

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

The evaluation of the judges is compulsory and it applies to all the judges in the country. The evaluation / the assessment of the work of the judge can be conducted regularly or extraordinarily.

4. How it is established and regulated:

- by legislation;
- by subordinate legislation;
- by internal institutional regulatory instruments.

It is regulated by legislation – the Law on Judicial Council and the Law on Courts

## **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.

The quantitative criteria regarding the work of the judge are: -the data and the information received regarding the work of the judge through the Automated Court Case Management and Information System (ACCMIS) regarding the number, the type and the resolved cases in respect to the orientation number of cases that the judges is to resolve monthly (the orientation number of cases that the judge is to resolve monthly shall be determined in accordance with the legal area, the complexity of the material wherein the case is and the type of courts in accordance with the real competence).

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.

Qualitative criteria for assessment of the work of the judge shall be determined in respect to the work of the judge, wherefore the following shall be taken into consideration:

- respecting the legal time periods for undertaking the process activities,
- respecting the legal time periods for adoption, publication and preparation of the decisions, and
- the relation between the number of confirmed, abolished or altered decisions in respect with the total number of resolved cases (this qualitative criteria for assessment of the work of the judge shall be taken into consideration when calculating the assessment of the work of the judge against whose decision legal means have been raised).

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?

**Assessment of judges, pursuant to law, is carried out on the basis of:**

- continuing annual monitoring of the work of the respective judge;
- overall results from the work of the judge; and
- the contribution of the judge to the development of the system of law and professional thought.

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

The type of sanctions and the procedure for establishing violations to the principles of ethical conduct as provided in the Code of Ethics for Judges are regulated through a special Rulebook that should be adopted by the Management Board of the Association and confirmed by the Assembly of the Association of Judges of the Republic of Macedonia ??

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

**Quantitative and qualitative criteria are established in the law without any special priority.**

<b>C. Procedures and mechanisms</b>
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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 responsible body for evaluation and assessment of the judges is the Judicial Council of the Republic of Macedonia, and it's specifics roles are:**

- to select and dismiss judges,
- to select and dismiss judges - presidents of the courts,
- to determine the termination of the judicial office,
- to select and dismiss the lay judges,
- to follow and assess the work of the judges,
- to decide on the disciplinary responsibility of the judges,
- to determine unprofessional and reckless holding of the judicial office;
- to determine the termination of the judicial office due to permanent capability to contract as a judge,
- to decide on revoking the immunity of a judge,
- to decide upon requests for approving detention for a judge;
- to nominate two judges of the Constitutional Court of the Republic of Macedonia

from among the judges;

- to examine the annual report of the Supreme Court of the Republic of Macedonia regarding the determined fundamental principles and fundamental legal opinions upon issues of importance for the purpose of securing unity in the application of the laws;
- to decide on the temporary suspension of a judge from the judicial office;
- to determine the number of necessary judicial positions for the courts;
- to review and assess the quarterly and annual reports on the work of the courts;
- to care for the reputation of the judges and the trust of the citizens in the judiciary;
- to act upon complaints and grievances by citizens and legal entities about the work of the judges and the courts;
- to submit a report on its work;
- to adopt the Rules of Procedure and other general acts regulating the work in its competence,
- to determine an orientation number of cases upon which the judge has to monthly decide, and
- to carry out other activities determined by law.

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

If the work of the judge and his/her decisions are not subjected to a supervision by a higher court, that is legal remedies have not been raised thereon, the Council shall assess the work of the judge on the bases of the immediate continuous monitoring of the work of the judge, his/her attitude towards the work, the respect of the priority of the cases he/she is working on, and in accordance with the report on the work of the judge, the attitude towards the parties, the judges and the court servants which is determined on the bases of the submitted complaints and grievances regarding the work of the judge, as well as other activities (participation in the judicial councils, mentorship and alike).

Also, the orientation number of cases that the judge is to resolve monthly in the first-instance, the appellate, the Administrative court, the Higher Administrative court and the Supreme Court of the Republic of Macedonia are determined in accordance with the legal area, the complexity of the material wherein the case is and the type of courts in accordance with the real competence. During the determination of the orientation number of cases that the judge is to resolve monthly in the first-instance, the appellate, the Administrative court, the Higher Administrative court and the Supreme Court of the Republic of Macedonia, the Council shall by an act prescribe the methodology of determining the complexity of the matter wherein the case is. The Council shall each year by a decision determine the orientation number of cases and the necessary number of cases for the purpose of realization of the orientation number of case that judge is supposed to monthly resolve.

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

The assessment of the work of the judge can conduct regularly or extraordinarily. The regular assessment of the judge is conducted once a year, concluding with the end of April for the current year, based on the inspection of the annual work regarding the work of the court and the judges in the previous year.

The Council is assessing the newly elected judge during the year when he/she has been selected, provided that during that year he/she has been effectively working as a judge for at least six months.

The extraordinary assessment of the work of the judge can be conducted only upon an opinion of the Council.

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

-See the answer above-

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)

Assessment of the judge is carried out on the basis of the results of the work of each judge for a period of 10 and a half months effective work in the course of the current year. Prior to the assessment of the work of the judge and the president of the court by the Council, an opinion has to be prepared by a Commission formed at the court comprising the president of the respective court and two judges (in the case of a president of a court, the Commission comprises the president of the court and two judges - presidents of departments), elected at a session of judges in the court in which the assessed judge – president of court performs his/her function, taking into account criteria established by law. The draft opinions of the Court Commission are submitted to the Judicial Council of the Republic of Macedonia; the Council then forms a three-member Commission for Assessment of the Work of the Judge from among its composition. The Judicial Council Commission then prepares and submits to the Judicial Council a Report with an Assessment Proposal; the Judicial Council during a session decides on the assessment of the work of the judge - president of court, for which a formal decision is prepared containing an explanation of the reasons for the assessment. The decision for assessment is delivered to each judge. The judge – president of the court who is dissatisfied with the awarded decision is entitled to requesting a re-assessment within 8 days as of the day of receipt of the Decision for Assessment. The Council is required to carry out within 30 days as of the date of receipt of the request for re-assessment a new assessment of the work of the judge - president of court on the basis of the Report of a Commission comprising three members of the Council, whereby the Commission which may not include members who had taken part in the Commission what had carried out the initial assessment.

15. What are the ratings used during evaluations?

The assessment of the Council regarding the work of the judge can be positive or negative.

On the basis of the received sum of points upon all criteria for monitoring and assessment of the work of the judges, the Council shall assess the judges with the following marks: positive mark (that has three degrees: satisfactory, good or very good) and negative mark.

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).
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If the judge is awarded a negative assessment for the following year as well, that is grounds for his/her dismissal. Also, he/she can not be promoted to a higher position.

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 Decision for Assessment of the work of the Judge - President of Court is confidential in nature and is kept in the file of the judge at the Judicial Council, whereas a Report with statistical data on the assessment of judges for all courts in the RM is publicly presented.

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?

In accordance with the procedure for conducting the assessment established by law.

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

The data which represent the basis for the assessment of the work of the judge are taken directly from the ACCMIS system of each court, without the possibility for any influence whatsoever. The court commission responsible for the preparation of draft opinions for the assessment of the work of the judge is required before submitting the opinion to the Judicial Council to submit it for review to the respective judge, who verifies the reliability of the data by affixing his/her signature onto the opinion.

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

The answer to Question 21 also pertains to Question 22.

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

No

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)

No. there have not been such complains from out the judges.

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 Council shall adopt a decision for the assessment of the work of the judge containing an explanation of the reasons thereon. The decision for the assessment of the work of the judge for whom the procedure for assessment has been conducted shall be delivered to the judge, within a time period of eight days (the content of the decision for the assessment of the work of the judge and the President of the court is confidential).

Provided that the judge is not content with the assessment, they can request a new assessment to be conducted. The Council shall, within a time period of 30 days as of the day of accepting the request for assessment, be obliged to reassess the work of the judge and the President of the court. The reassessment of the work of the judge is conducted on the bases of a report by a Commission composed of three members of the Council, wherein the persons who have assessed the judge during the first assessment cannot participate (the judge and the President of the court doesn't have the right to an appeal against the decision for reassessment adopted by the Council).

#### E. Achievements and problems

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

The benefit from the assessment of the work of judges and courts lies in increasing the promptness and efficiency in working, as well as the motivation of judges for achieving better results, since the assessment of the judge is one of the criteria for his/her promotion according to the merit system.