

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 the Republic of Moldova

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 evaluation aims to establish the level of knowledge and professional skills of judges, as well as the ability to apply theoretical knowledge and skills in the practice of the profession of judge, setting the weak and strong aspects of the work of judges, boost the trend of improvement of professional skills and enhancing the efficiency of judges at the individual level and at the level of courts of law.

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

All judges are subject to mandatory periodic performance evaluation once in every three years. In the case of the qualification "insufficient", the judge is subject to extraordinary assessment time limit set by the College. Giving the qualification "insufficient" to two consecutive special assessments constitute the basis for initiation of the Superior Council of Magistracy, the procedure for the release of the judge.

4. How it is established and regulated:

·1. Law no. 154 from 05.07.2012 on the selection, assessment performance and career of judges

2. Regulation on criteria, indicators and procedures for evaluating the performance of judges, approved by the Resolution of the Supreme Council of Magistracy no. 212/8 from 05 March 2013.

B. Criteria for evaluation and assessment
--

5. Are there quantitative performance indicators that have to be taken into account, such as:

- 1. The settlement rate of the folders*
- 2. Observance of the reasonable term during the implementation of justice*
- 3. Adherence to deadlines amended by resolution*

6. Are there qualitative performance indicators that have to be taken into account, such as:

- 1. Percentage of decisions/opinions supported from appealed*
- 2. Number and percentage of decisions/opinions scrapping of considered, with a view statement confirming of PIGD*
- 3. The presence of violations to the European Convention on Human Rights (ECHR) found in the European Court On Human rights (ECHR) - In this sense will be considered, if of the reasons. It is the fault of the judge, the ECtHR found no violation of the ECHR by the final resolution. It is taken into account only the conduct of the judge, which took place later than 6 years before to assess*

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?

- 1. Execute the lawful period other powers prescribed by the law - By the execute of other functions can be considered the guidance of the practice of people staying in practice, participation in the development of statutory acts, the generalization of judicial practice, participation in meetings or training courses with law enforcement representatives, where were discussed issues related to holding of justice and other.*
- 2. Knowledge and application of information technologies - will take into account the knowledge, application of knowledge by the judge of the programs MS Word and Excel, ability to work in the Internet and use e-mail, as well as the level of uses PIGD and Femida Programs.*
- 3. Procedure for organization of professional activity - In this regard will be considered by the order of preparation of cases for review, punctuality, leading, as the court hearings (ensuring discipline in the meeting listened to the parties, etc) and behavior (use of language politely, proper respect to participants in the process, avoiding the expression of negative thoughts, etc) of the judge.*
- 4. Professional forming of a judge - In this regard, will be the professional forming of a judge in the period under evaluation. It will be considered as vocational training, conducted by the National Institute of Justice, and in the other direction.*

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

- 1. Observance of professional ethics - In this sense, will be evaluated compliance by the judge the norms of the Code of ethics of judges, to the extent that this is not a disciplinary offence. If it is a disciplinary offence.*

2. Professional reputation - In this regard will be taken into account public opinion about judge, as well as judge authority in justice sector.

3. The presence of disciplinary violations - In this regard, there will be taken into consideration disciplinary violations found by the disciplinary College during the period subject to assessment. In the case of the extremely assessment, will be taken into consideration disciplinary violations found by the disciplinary College disciplinary in the last 3 years.

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

Yes, *THE REGULATION of the criteria, indicators and the procedure for the assessment of performance judges, approved by the resolution Superior Council of the Magistracy no 212/8 from 05 March 2013 has 2 Annex:*

- * Annex 1 indicators for the evaluation of the performance of the activity of judges
- * Annex 2 indicators for the evaluation of the performance of the court presidents and vice presidents courts of appeal and the Supreme Court of Justice.

According to these Annexes, each indicator of pag. 5-8 are valued with points:

Depending on the number of points accumulated, the judges will gain the following qualifiers (for the judges of the judges and courts of appeal):

less than 40 points - failed; 41 - 60 points - insufficient; 61-75 points - well; 76 - 90 points - very well; 91- 100 points - excellent.

The judges of the Court of Justice (will gain the following qualifiers:

less than 40 points - failed; 41 - 60 points - insufficient; 61 - 70 points - well; 71 - 80 points - very well; 81 - 90 points - excellent.

Depending on the number of points accumulated, the chairman or vice-chairman courts will provide the following qualifiers:

less than 30 points - failed; 31 - 49 points - insufficient; 50 - 56 points - well; 57 - 63 points - very well, 64 - 70 points - excellent

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 College of evaluation, which is set up under the Superior Council of the Magistracy and is aimed at ensuring performance evaluation of judges.

The College of evaluation enables the following component:

a) 5 judges, the courts of all levels, as follows: 2 judges of the Supreme Court of Justice, 2 judges of the courts of appeal and 1 judge from the judges;

The members of the College of evaluation among judges are elected/appointed as follows:

(a) 3 are elected by the general meeting of the judges;

(b) 2 are appointed by the Superior Council of the Magistracy.

b) 2 representatives of the civil society.

The members of the College of evaluation from civil society representatives are appointed by the Council of Magistrates, being chosen by public contest, organized by the Council.

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?

With regard to judges, look pag. 3

With regard to evaluation Presidents and vice presidents courts (1-st instance, Courts of Appeal, Supreme Court of Justice), we can store the following:

Evaluation of the activity of the chairman or vice-chairman court is happening at the same time with periodic assessment of the work of the committee as a judge. However, the points are given separately for the activity as a judge and the activity in his capacity as president or vice president in the International Court of Justice.

Evaluation takes place in the following indicators:

- **Equidistant distribution of the tasks to the staff court*
- **Effective planning of the budget and efficient management of the financial resources earmarked*
 - ** Verify the manner in which activates the Chancellery and the administrator court*
 - **Checking for the allocation process of random files*
 - **Checking process of audio recording of meetings and electronic management of the files and to publish the decisions of the court*
 - **To check process the display of information about the causes fixed for examination*
 - **Transmission in term the complaints the behavior of judges by the CSM*
 - **Helping to unification judicial practice*
 - **Correct and efficient communication with the judges and court staff, external communication, outside the process referring to the justice including the capacity of the settlement of the conflict situations*
- ** transparency in led court activity*

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

look pag. 3

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)

Each member of the College is completed sheet evaluation and provides judge assessed, according to his own belief, the score for each indicator above but no earlier than the maximum provided for in the Annex no. 1 to the Regulation. Final score is established after his interview with the judge assessed, evaluation sheet signed and sent to College secretary. After the submission of the evaluation sheet to College secretary, the member of the College may not modify or supplement evaluation sheet. Evaluation sheets are kept for at least 4 years.

Final score obtained as a result of the evaluation is the sum score given by the members of the College divided by the number of members of the College who have evaluated the judge.

After the creating points, the members of the college adopt a resolution stating the main findings as a result of the evaluation, including deficiencies of professional, administrative or organizational activity in evaluated judge. The College indicates in the resolution recommendations for the evaluated judge with a view to enforcement

shortcomings discovered and improve the professional performance of evaluated judge. The decision shall be taken by majority vote of its members.

15. What are the ratings used during evaluations?

look pag. 9

16. What are the consequences of the evaluation and how may it affect the career of a judge? Can it result in:

look pag. 3 and 9

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?

Look the above points

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?

The evaluation process is completely transparent.

The judge is having access to all coming materials in the evaluation committee.

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

No

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

The judge may bring any documents, materials, which would demonstrate its performance.

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)

Yes

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?

College decisions may be challenged by the Superior Council of the Magistracy, through college, in term of 10 working days from the date on which they are adopted, by the judges in respect of which the college has adopted resolutions and only in the part that refers to the procedure of issue and adoption.

E. Achievements and problems

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

In R. Moldova has barely completed the process of judges' performance evaluation