

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

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

#### **on justice, evaluation and independence**

#### **Answers from the Netherlands**

### **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, individual evaluation exists.

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

The evaluations are meant to be a “mirror” for the functioning of the judges. They are part of a wider set of instruments like “feed-back” and training schemes. In the evaluation-interviews, all aspects of the way in which the individual judge functions can be addressed: the (global) quality of the judgments, the quality of the hearings, timeliness, the workload, the relations with the fellow-judges and with the members of the staff of the court, the personal professional development, the need or want for additional training etc. However, the content of the judgments of the judge may not be an issue in the evaluation. The purpose of the evaluation is twofold: to foster the quality of the judiciary and to foster the personal development of the judge. The evaluation is supposed to have a “horizontal” character, “taking into account however the hierarchical relation between the judge and the board of the court”, as it is expressed in an explanatory note to the Decree mentioned under Question 4. In the evaluation-

interview, the judge puts forward his or her views, the president of the court (or his or her delegate: the president of the relevant division or team of the court) puts forward his or her views on the way in which the judge functions.

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

They are compulsory and apply to all judges, whether they work at the district courts, the courts of appeal, the specialized appeal courts for administrative law or the Supreme Court. They may also take place at the request of the judges, e.g. with a view to promotion.

4. How it is established and regulated:

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

By subordinate legislation: article 37b of the Decree on the status of judicial officers ("*Besluit rechtspositie rechterlijke ambtenaren*") provides for the evaluation of the functioning of judges on a "regular basis". In practice, this is done once a year or every two years. This Decree is based on article 54 k of the Act on the status of judicial officers ("*Wet rechtspositie rechterlijke ambtenaren*"), that provides that regulations can be issued by Decree on "other rights and duties" of judicial officers .

On 1 July 2014, a new article 37b of this Decree will come into effect, in which the term "evaluation-interview" will be replaced by the words "interview on the functioning" of the judge. At present, guidelines are developed by the Council for the Judiciary and the Dutch Association of Magistrates on the way in which the interviews will be conducted.

## **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.

Quantitative aspects are taken into account, in a global way. In case there is a pattern of failure to meet average workload targets, measures will be discussed to remedy for this. Judges may be transferred from one division of a court to another (for instance from the Civil Law division to the Criminal Law division) in the framework of job-rotation and with a view to the organizational needs of the court. In practice, the performance of a judge in a given division of the court, also in view of quantitative aspects, plays a role in these decisions of transfer. However, these decisions are not considered to be a disciplinary measure.

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.

Yes, as is mentioned under question 2, the quality of the judgments and of the hearings can be a topic. However, the content of the judgments is not (and may not be) part of the evaluation. There is no formal system of taking into account the number or outcome of appeals.

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, but in case complaints of e.g. court users or lawyers have been put forward, they may be mentioned in the evaluation.

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

Yes, they may be part of the evaluation..

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

No. The evaluation procedure has a rather informal character, although a tendency can be observed towards a more formal approach.

### **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.

There is only one competent body: the “functional authority” of the judge, which is the president of the court (or his or her delegate, the president of the relevant division or team of the court). There is no role for the Minister of Security and Justice, for the Council for the Judiciary or for a superior court.

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

No, although the relevant topics for the evaluation may vary according to the specific functions of the judge: e.g. does the judge have managerial tasks, is he or she a judge

in a court of first instance or in an appellate court. The presidents of the courts have evaluation-interviews with the Council for the Judiciary.

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

In general once every year or once every two years, and also on request of a judge e.g. in case of promotion.

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

See under Question 12.

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 procedure is not very formal and may vary from one court to another. In general, the president asks written comments on the functioning of the judge from some fellow judges and from the staff – these persons are designated by the judge; the judge receives a copy of these comments. These comments as well as other relevant information will be discussed. After the interview, a report is drafted, to be signed by the two interlocutors, in which the judge can also put forward his or her comments on the interview. The report is kept in the personnel file of the judge. As mentioned under Question 4, at present guidelines are developed by the Council for the Judiciary and the Dutch Magistrates Association that may result in a more harmonised procedure for all the courts.

15. What are the ratings used during evaluations?

There are no formal ratings.

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).

There are no direct consequences, but the evaluation can play a role in decisions on job-rotation and on promotion. If relevant, the evaluation report will mention engagements for additional training schemes.

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?

As mentioned under Question 14, a report is drafted, to be signed by the two interlocutors. The report is added to the personal file of the judge. Access to this file is limited to the judge and the president of the court. The period of time that the report is added to the personal file may vary from one court to another: there are courts in which

all the reports are kept in the file, there are courts in which a new report replaces the previous one. As mentioned under Question 4, at present guidelines are developed by the Council for the Judiciary and the Dutch Magistrates Association that may result in a more harmonised procedure for all the courts, also about the filing aspects.

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).

The courts use different forms. As mentioned under Question 4, at present guidelines are developed by the Council for the Judiciary and the Dutch Association of Magistrates that may also result in (more) harmonized forms.

#### **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?

There is only one competent body: the president of the court (or his or her delegate: the president of the relevant division or team of the court). As mentioned before, the procedure is rather informal and varies from one court to another. At present, guidelines are developed by the Council for the Judiciary and the Dutch Association of Magistrates.

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

See above.

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

The evaluation takes place in the form of an interview between the president of the court and the judge. The report is signed by both of them and contains the observations of the judge.

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

Peer judges (as well as members of the staff) play a role in the evaluation, as mentioned under Question 14. As mentioned under Question 1, the evaluation is part of a wider set of instruments, like feedback and training schemes. Feedback is an instrument of evaluation by peers.

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)

Not applicable.

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?

In theory, the evaluation procedures and evaluation reports could be challenged before the Central Court of Appeal, competent in cases of judicial officers. There are, however, no examples of cases like this. But of course, the evaluation reports can play a role in formal decisions affecting directly the status of the judge: job-rotation, promotion etc. These formal decisions can be challenged before the Central Court of Appeal.

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

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

In the judiciary, the practice of evaluation interviews is, in general, accepted by the judges. Judges recognize the importance of this instrument, both for the organization as for the individual judge. In practice, the quality of the instrument of evaluation depends on a number of factors and may vary from one court to another. As mentioned under Question 1, guidelines are, at present, developed by the Council for the Judiciary and the Dutch Association of Magistrates on the way in which the interviews are conducted. These guidelines will hopefully increase the quality of the instrument. From the perspective of judges, it is essential to safeguard the rather informal and horizontal character of evaluation. Evaluation must not be a bureaucratic exercise. The topic of evaluation is complex and sensitive and it is, in the Netherlands, part of a broader debate on the relations between the judges and their administration (the boards of the courts and the Council for the Judiciary), on the issue of the internal independence of judges and on the issue of quantitative targets for judges.