

# CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

**CCJE Opinion No. 17 (2014)**

**Answers to the questionnaire**

**SLOVENIA**

## **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 objectives of the criteria relating to the professional assessment of judges are twofold: first, the assessment of the quality of the judicial system and, second, the professional ability of judges.

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

It is compulsory. The evaluation does not apply to certain categories of judges (e.g. the president of the Supreme Court) and there are extenuated criteria for judges holding certain positions related to court management or performing other specific tasks (e.g. heads of departments). From the point of view of an individual judge professional evaluation plays a major role in his/her career because promotion is largely based on the results of evaluations.

4. How it is established and regulated:

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

Besides criteria set out in the Judicial Service Act (hereinafter: JSA), the Judicial Council (with a two-thirds majority vote) 14. 11. 2013 adopted new and more detailed criteria for

the assessment of judges (*Criteria on the quality of performance of judges for the assessment of the judicial service*: hereinafter the Criteria), which entered into force 1. 1. 2014.

## **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 assessment of judicial service is carried out in consideration of the following criteria:

1. professional knowledge, whereby consideration is especially taken of the judge's professional activities, the judge's specialist and postgraduate studies, and the reputation achieved by the judge in the legal profession (*qualitative*);
2. working capabilities, whereby consideration is especially taken of the ratio between the volume of judicial work performed and the expected volume, of whether the judge schedules and conducts hearings continually, of timeliness of drawing up judicial decisions and timeliness of proceeding with regard to applied legal remedies (*quantitative*);
3. the ability to resolve legal questions, whereby consideration is especially taken of the level of correctness and legality achieved in the judge's decision-making as determined primarily in procedures with legal remedies, of whether the judge is taking into consideration good judicial practice and of judge's abilities to resolve complicated and complex cases (*quantitative and qualitative*);
4. work performed in elimination and prevention of the judicial backlog, especially processing of cases in the order they are being filed, taking into account the number of assigned cases as well as the ratio between the number of completed cases defined as judicial backlog and the number of all completed cases, the ratio between the number of completed urgent cases defined as judicial backlog and the number of all completed urgent cases, and the number of concluded court settlements (*quantitative*);
5. safeguarding of the reputation of the judge and the court as determined from the way in which procedures are conducted, communication with parties and other bodies, the preserving of independence, impartiality, reliability and uprightness, and behaviour inside and outside the service (*qualitative*);
6. the ability of verbal and written expression, as proceeds from the records of the cases handled, judicial decisions drawn up and the judge's professional action (*qualitative*);
7. additional work undertaken in holding judicial office, within the framework of mentorship, participation in education, professional training, preparation of regulations and carrying out other demanding professional tasks (*quantitative and qualitative*);
8. the attitude towards colleagues in performing judicial work (*qualitative*);
9. the ability to perform the functions of a managerial position, if the judge is appointed to such a position, as shown by the work results in the area entrusted to the judge (*qualitative*).

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.

See supra under 5.

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?

By order of the president of the court, the president of a superior court, the personnel council or the Judicial Council or at the request of the judge, all information significant to the preparation of the assessment of judicial service shall be recorded in the personal file. Therefore, practically any information can be recorded in the personal file. However, its meaning and significance is assessed by the competent personnel council. It should be added that within the preparation of an assessment of judicial service, for determination of fulfilment of criteria from points 2 and 6 of the first paragraph of article 29 JSA, files of cases assigned to the judge and finally decided cases can be examined.

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

The criteria from points 5 and 8 of the first paragraph of article 29 JSA read as follows:  
safeguarding of the reputation of the judge and the court as determined from the way in which procedures are conducted, communication with parties and other bodies, the preserving of independence, impartiality, reliability and uprightness, and behaviour inside and outside the service;  
the attitude towards colleagues in performing judicial work.

Based on these criteria, it can be concluded that possible violations of ethical and professional rules/standards are an important element in the assessment of judicial service of judges.

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

There is no scale of importance or of priority between various performance indicators as the principle of free evaluation applies in the assessment procedure. It follows that the competent personnel council is not bound by any formal rules as to the relevance of particular indicator. The evaluation of an individual judge is based upon the opinion that the personnel council takes after a careful and thorough evaluation of every indicator in itself, of indicators as a whole, and considering the outcome of the entire proceedings.

## 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.

A work performance assessment is carried out by the relevant personnel council and forms part of the candidate's file. Personnel councils are bodies established at four higher courts and the Supreme Court, which are in charge of the evaluation of the work performance of judges of lower courts. Their members are elected by judges from among their peers.

The personnel council at the Supreme Court conducts the assessment for judges assigned to work at the Constitutional Court, the Supreme Court, the expert services at the Judicial Council, the education centre and the ministry of justice in cooperation with the heads of these bodies.

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

As mentioned supra under 3, the evaluation does not apply to certain categories of judges (e.g. the president of the Supreme Court) and there are extenuated criteria for judges holding certain positions related to court management or performing other specific tasks (e.g. heads of departments).

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

Personnel councils carry out an assessment of judicial service for judges every three years or before such period has elapsed at the request of the Judicial Council, the president of the court, the president of a superior court or the judge himself. An assessment of judicial service is carried out every year for judges during their first three years of judicial service.

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

See supra under 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 assessment of judicial service is conducted on the basis of information from the judge's personal file and other information (e.g. statistical data) on the fulfilment of the criteria specified in JSA. Within the preparation of an assessment of judicial service, for determination of fulfilment of criteria from points 2 and 6 of the first paragraph of article 29 JSA, files of cases assigned to the judge and finally decided cases can be examined.

The judge's personal file shall be administered at the office of the president of the court where the judge is performing judicial service while the personal file of the president of the court shall be administered at the office of the president of the immediately superior

court. If the judge is transferred to another court, the personal file shall be transferred to the office of the president of such court.

By order of the president of the court, the president of a superior court, the personnel council or the Judicial Council or at the request of the judge, all information significant to the preparation of the assessment of judicial service shall be recorded in the personal file. The judge to whom the file relates shall immediately be informed of the details of any entry.

Information from the personal file may only be viewed by the persons and bodies specified in the previous paragraph, the disciplinary prosecutor and the disciplinary courts of first and second instances for reason of the execution of powers pursuant to JSA and the Courts Act. Judges have the right to view their own personal files.

The personnel council sends the assessment of judicial service in written and confidential form to the assessed judge and the president of the court where the judge performs judicial service; the assessment for a judge who is a president of a court is sent to the president of the immediately superior court. Any assessed judge or president of a court who does not agree with the assessment may appeal to the personnel council at the Supreme Court within eight days.

When deciding on an appeal against an assessment, the personnel council at the Supreme Court rejects the appeal, amends the assessment, or annuls the assessment and requests that the personnel council at the higher court repeats the assessment. It decides on an appeal against an assessment via the majority of votes of all its members.

15. What are the ratings used during evaluations?

According to article 32 JSA the assessment provides for the following grades: 1) the judge is unsuitable for judicial service; 2) the judge fails to fulfil the conditions for promotion; 3) the judge fulfils the conditions for promotion; 4) the judge fulfils the conditions for accelerated promotion; 5) the judge fulfils the conditions for extraordinary promotion to a superior judicial position.

The assessment from point 4 is issued if the personnel council establishes that the judge fulfils all the criteria from the first paragraph of Article 29 of JSA, exceeds the average in professional knowledge, working capabilities and the capability of resolving legal questions and is above the average in elimination and prevention of judicial backlog (points 1 to 4 of the first paragraph of Article 29 JSA).

The assessment from point 5 of the first paragraph is issued if the personnel council establishes that the judge is above the average in fulfilling all criteria from the first paragraph of Article 29 of JSA, exhibits exceptional professional knowledge, exceptional working capabilities and exceptional capability of resolving legal questions and is exceptionally successful in elimination and prevention of judicial backlog (points 1 to 4 from the first paragraph of Article 29 JSA).

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).

From the point of view of an individual judge the evaluation plays a major role in his/her career because promotion is largely based on the results of evaluations. If it proceeds from the assessment that the judge is unsuitable for judicial service, his/her judicial office is terminated. This decision, however, must be submitted to the Judicial Council for confirmation before it is put into effect.

The evaluation can indirectly entail disciplinary proceedings (e.g. as a consequence of failure to carry out judicial duties; unconscientious, late, inappropriate or negligent performance of judicial service; failure to achieve the expected work results for more than three months consecutively without justifiable grounds; breach of the case roster or priority handling of cases defined by law). After the personnel council has sent the assessment of judicial service to the president of the court where the judge performs judicial service the president may put forward the initiative to introduce disciplinary proceedings.

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?

All the information relevant to the preparation of the assessment of judicial service is recorded in judge's personal file. The judge's personal file is administered at the office of the president of the court where the judge is performing judicial service while the personal file of the president of the court is administered at the office of the president of the immediately superior court. If the judge is transferred to another court, the personal file is transferred to the office of the president of such court.

Information from the personal file may only be viewed by the president of the court, the president of a superior court, the personnel council or the Judicial Council, the disciplinary prosecutor and the disciplinary courts of first and second instances for reason of the execution of powers pursuant to JSA and the Courts Act, or at the request of the judge.

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).

Such forms do not exist – the assessment of judicial service for each judge is written in a descriptive way without any prepared templates or 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?

The transparency of the evaluation process is ensured by the fact that it is regulated by law and by clear definition of competences of the evaluating body. The guidelines setting out evaluation criteria are regulated by law, the (more detailed, see supra under 4) Criteria adopted by the Judicial Council are published on the official site of the Judicial Council. The procedural rules to be applied are regulated by law and thus transparent.

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

The objectivity and the impartiality of the process are ensured by the transparency of the evaluation, the right to appeal of any assessed judge who does not agree with the assessment and the right of any judge to be informed of the details of any entry into his personal file.

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 a judge is ensured by his right to appeal and by his right to be informed of the details of any entry into his personal file.

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)

The judge can demand exclusion of a member of the evaluation body in such cases. Similarly, the member of the evaluating body can also demand his/her exclusion where there are serious reasons to believe that such member may have an *a priori* negative attitude towards the evaluated judge (e.g. when a member of the evaluating body examined files of cases assigned to the judge whose performance is assessed). Exclusion grounds are not regulated by JSA, but the Administrative Procedure Act may be applied *mutatis mutandis* in this respect.

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?

Any assessed judge or president of a court who does not agree with the assessment may appeal to the personnel council at the Supreme Court within eight days. A judicial review of the assessment is possible.

## **E. Achievements and problems**

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

The Slovenian system for the assessment of judges is, without doubt, based on objective criteria. The assessment criteria are either set down by law or adopted and published by the competent authority – the Judicial Council. However, it can be argued that the assessment of

the judge's performance criteria could be improved. Occasionally, the same criteria are assessed differently by different personnel councils and given a different weight. In this connection, the fact that the procedure is decentralised, adds an element of vulnerability to the system. This creates risks of an at least perceived lack of objectivity in the selection of candidates. The new Criteria adopted by the Judicial Council are a more uniform, transparent and predictable basis for the evaluation of judges and represent a safeguard against possible perceptions that undue influence might be a determining factor in the recruitment and career of judges.

The periodic evaluation of judges touches upon the relation between independence and accountability. On the one hand such evaluations are necessary to ensure judicial accountability (and with it the quality of the judicial service). At the same time measures must be taken to avoid the risk that professional evaluations be used to indirectly influence judicial decisions. The evaluation procedure in Slovenia enables judges to express their view on their own activities and on the assessment of these activities, as well as to challenge assessments before an independent authority or a court. In my view, these are adequate and sufficient safeguards to ensure balance between the independence and accountability of judges.