

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 Sweden

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?

Sweden has no formal mechanism in the legal system for the evaluation of the professional judicial performance of permanent judges.

However, salaries are reviewed annually and the salary is, for permanent judges in first and second instance, set individually. That process includes a form of evaluation. Responsible for the review of the salaries in the first and second instance is the Head of court or first-line manager. Of great importance is that neither the handling of a certain case nor the application of law in a case may have any impact on the salary.

When composing this answer account has not been taken to assistant or associate judges who, during their education and training, undergo an individual evaluation regarding how suitable they are for the profession.

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

The purpose and rationale of the individual setting of salaries is to reach the aims and goals of the overall activity. The individual setting of salaries is held to have a positive effect on the wage setting which, in turn, makes it easier to attract as well as to maintain the competence needed to achieve aforementioned goals. Another rationale is to increase the level of commitment to and individual development in the workplace.

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

The individual setting of salaries applies to all permanent judges in the first and second instance.

4. How it is established and regulated:

The general framework regarding employment issues and salaries for all governmental employees is negotiated between The Swedish Agency for Government Employers and the central employee's organization. Regarding the Swedish judicial system this adaptation is handed over to each court for complementation including salary review conducted in direct meetings between the employees within the judicial system including judges.

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 annual pay review is based on a set of basic criteria stated in the Swedish courts salary policy. These criteria are aimed at making an assessment of the employees' contribution to the overall activity. For example, the interest and commitment to the development within the specific court, or to the courts of Sweden in general, constitutes one criterion, another is willingness and ability to cooperate with colleagues. The pay review process can also be based on the ability to achieve goals set individually in talks between each judge and the first line manager or Head of court. Depending on these goals, both quantitative and qualitative performance indicators can be taken into account. However, of crucial importance is that neither the handling of a certain case nor the application of law in a case are to be considered or allowed, in any way, to influence the pay review process.

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 answer to question 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?

No.

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

No.

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

No.

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.

Responsible for the review of the salaries for permanent judges in the first and second instance is the Head of court or first-line manager.

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

The individual setting of salaries applies only to permanent judges in the first and second instance.

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

The salaries are reviewed annually.

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

See answer to 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)

See answers to question 1 and 5.

15. What are the ratings used during evaluations?

Not applicable (N/A).

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).

Since the only form of evaluation that takes place is that of the salary review, the only part affected is the level of the annual salary increase.

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 salary of each judge constitutes an official document.

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)

N/A.

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

N/A.

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 criteria on which the pay review is based on as well as each judge's salary constitute official documents.

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

The question of the level of a permanent judge's salary is subject to labour law. An individual pay review conducted in an unlawful matter can therefore be brought to court or handled in negotiations between the union in question and The Swedish Agency for Government Employers.

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

The pay review is carried out in direct talks between each judge and the first line manager or the Head of court, depending on the individual court's structure.

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)

N/A

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?

N/A

E. Achievements and problems

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

N/A