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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.

GENERAL OVERVIEW

As is in the Continental Europe, the promotion of judges and prosecutors is an adopted system which is given to the authority of High Council of Judges and Prosecutors in accordance with the article 159 of the Constitution. The principles of promotion are regulated in the principle decrees by the Council and promulgated in Official Gazette.

In line with the article 18 of Law 2802 on Judges and Prosecutors, judges and prosecutors receive one degree of promotion every two years until they are classified as first class; and in line with the article 33 of the said law, those who are classified as first class go through a success review every three years.

Requirements for one degree of promotion;

- *Two years of active duty, or duties as counted for two years,*
- *No court judgment or disciplinary sanction finalized to prevent promotion,*
- *Moral values/conducts,*
- *Professional knowledge and comprehension,*
- *Enthusiasm and diligence,*

- *Whether they cause overload in the works they deal with or not,*
- *Amount and content of the works they deliver,*
- *Commitment to the duty and absence,*
- *Condition papers and records written by superiors and inspectors about them,*
- *Their works/decisions that were untouched after judicial remedy/by the courts of appeal,*
- *Precedent judgments and comments/reasoning,*
- *Professional works and articles,*
- *In-service and specialized training attended,*
- *General records.*

Professions of Judge and Prosecutor consist of four classes/stages;

- *Third Class,*
- *Second Class,*
- *Designated as First Class,*
- *First Class*

Requirements to be designated as first class;

- *Promoted to first class,*
- *10 years of professional experience as a judge or prosecutor,*
- *Distinguished among her/his peers with her/his scientific power and talent and professional achievements,*
- *Not having been subjected to transfer punishment,*
- *Not being under investigation due to an action to result in dismissal or transfer,*
- *Not being under investigation due to an action to result in prevention of promotion*
- *Not having been subjected to condemnation, prevention of promotion etc. more than once even individually,*
- *Even if pardoned, not having been convicted of any crime concerning her/his duty that may undermine the prestige and honour of the profession,*
- *Having received more than half of her/his promotions on preference,*
- *The last promotion should be carried out over the score of 70 of her/his records.*

Requirements to be promoted to first class;

- *Performing successfully for 3 years after designated as first class,*
- *Possessing the qualifications and requirements to be promoted as first class.*
- *This 3-year performance has to be considered successful according to register book B and C.*

A. Individual evaluation and assessment of judges: purpose and regulatory framework
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1. Does individual evaluation and/or assessment of judges exist in your country?
2. If yes, what is its purpose and rationale?
3. Is it compulsory or optional, and does it apply to all judges in the country?
4. How it is established and regulated:
 - by legislation;
 - by subordinate legislation;
 - by internal institutional regulatory instruments.

1) Yes.

Answers to the questions 2, 3 and 4:

In our country, there is law 2802 on judges and prosecutors. Personnel rights of judges and prosecutors are laid down in it, and they have the same personnel rights. Judges and prosecutors go through routine supervisions by the inspectors of HCJP every two years. These inspections/supervisions include evaluations on work, duties and responsibilities. Each item on the document/form is scored at the end of supervision. The average scores are as follows: 0-39 (insufficient), 40-69 (need improving), 70-79 (as expected), 80-94 (above expected), 95-100 (excellent).

On the other hand, there is another promotion system in which this form/document is evaluated, which is: judges and prosecutors start their career at level 8, and every two years they go through supervision for “level” promotion. When they receive level 1, they go through another supervision for “designation as first class” if they have also completed their 10th year of active duty. 3 years after designated as first class, they go through another supervision “to be promoted as first class”, and afterwards they go through routine promotion supervisions every 3 years.

The evaluations in the promotion supervisions are as follows: C (the best), B (good) and A (average). In order to be designated as first class, it is a pre-condition that the number of B has to exceed the number of A, in which C equals two B’s. It is necessary to receive B, in order to be promoted as first class and to be successful at the supervisions to be carried out every 3 years. The principles of promotion A, B and C is laid down in the principle decision by HCJP, which is detailed below.

Promotion system primarily aims to distinguish judges & prosecutors who work hard from those who do not. Successful performances by judges & prosecutors are considered in case of promotions to higher positions, and of appointments/transfers to places where they prefer to work. Judges & prosecutors, who get promoted in Books B or C, are rewarded with the increase of their monthly indicators.

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.

ANSWER:

There are some quantitative performance indicators are taken into account, such as, the number of cases in which a decision has been made by a judge and clearance rate and the results the type of promotion of a judge.

To promote A, B and C, the judges and prosecutors of our country should achieve work percentage or file in a certain extent stated in the following chart.

<u>DEGREE</u>		PROMOTION IN BOOK (A)	PREFERENTIAL PROMOTION IN BOOK (B)				PRIVILEGED PROMOTION IN BOOK (C)	
		Work Percentage	Work Percentage				Work Percentage	
JUDGE OF JUDICIARY (1st, 2nd and 3rd Area)		60%	70%				80%	
4th and 5th Areas		50%	60%					
JUDGE OF CADASTRE	WHO TOOK OFFICE BY TRANSFER	30%	40%				50%	
	WHO TOOK OFFICE BY SESSION	50%	60%				70%	
JUDGES OF ADMINISTRATIVE JURISDICTION		60%	80%				90%	
Percentages of business requested for the forms of promotion degree by the resolution		6 Months	7 Months	8 Months	9 Months	10 Months	11 Months	
Annual Percentage-Monthly Percentage								
40%	3.33	20	23	27	30	33	37	
50%	4.16	25	29	33	37	42	46	
60%	5.00	30	35	40	45	50	55	
70%	5.83	35	41	47	52	58	64	
80%	6.66	40	47	53	60	67	73	
90%	7.50	45	53	60	68	75	83	

Promotion of Degree	(A)	(B)	(C)
High Criminal Court and High Juvenile Court	400	500	700
<i>Civil Courts of General Jurisdiction</i>	1000	1200	1400
Criminal Court of General Jurisdiction and Juvenile Courts	1000	1200	1400
<i>Criminal Courts for Intellectual and Industrial Property Rights</i>	800	900	1000
Court of Peace and Criminal Court of Peace	1200	1400	1600
<i>Commercial Courts</i>	800	900	1000
Civil Court for Intellectual and Industrial Property Rights	600	700	800
<i>Consumer and Labour Court</i>	1400	1600	1800
Land Registration Court	500	600	700
<i>Penalty Affairs of Execution</i>	3000	4000	5000
Legal Affairs of Execution	1600	1800	2000
ADMINISTRATIVE COURTS	800	1000	1200
TAX COURTS	1000	1200	1400

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.

ANSWER:

The results of the appeals are evaluated within the promotion 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?

ANSWER:

There is not such an assessment regarding judges while an evaluation form is prepared for the public prosecutors by the public prosecutors.

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

ANSWER:

Yes, it is taken into account.

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

ANSWER:

Although there is not a direct priority certain conditions should be ensured primarily, e.g. term condition is required for promotion degree and the best part of the promotions should be qualified as well as it is required not to receive certain disciplinary punishments.

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.

ANSWER:

All promotion processes of judges are carried out by HCJP. Performance assessment and development forms organized by the inspectors and the records / success report forms of public prosecutors organized by public prosecutors are taken into account during this process.

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

ANSWER:

Although there is not a hierarchy in terms of evaluation, judges not promoted to the first class are subject to a promotion investigation for every other year while judges and prosecutors that promoted to the first class are subject to a promotion investigation once every three years.

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

ANSWER:

The evaluations are done periodically. As it is mentioned above, judges not promoted to the first class are subject to a promotion investigation for every other year while judges and prosecutors that promoted to the first class are subject to a promotion investigation once every three years.

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

ANSWER:

The evaluations are done routinely (every 2 or 3 years).

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)

ANSWER:

Data regarding the evaluation criteria (work percentage, works that are appealed, performance forms organized by the inspectors, etc.) are gathered and so that a promotion book is made up and accordingly HCJP decides on the performance evaluation. The assessed judge cannot contribute directly to that process or an interview cannot be carried out. However, the judge who is against the assessment has the right of re-examination to the chamber that make the assessment as well as the right of objection to the general assembly. The judges uses this right in written.

15. What are the ratings used during evaluations?

ANSWER:

As stated above, a rating system is used such as A, B or C (C means the most qualified).

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).

ANSWER:

By completing 10 years in office the judges and prosecutors promote, their promotion and point investigation as well as pension criterion rates increases and they have the right to be elected as a member of the Supreme Court and the Council of State.

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?

ANSWER:

The evaluations are recorded after determined, the evaluation results are entered into the registers of the relevant persons and these records are kept permanently.

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)

ANSWER:

Apart from the formal evaluations, informal evaluations are not undertaken.

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

ANSWER:

Please find the promotion record enclosed.

D. Evaluation and assessment vis-à-vis the independence of judges
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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?

ANSWER:

The transparency of the evaluation process is ensured by the Law no. 2802 as well as by the law based resolutions. The resolutions are issued in the Official Gazette before the evaluation. After the rules and criteria are identified, they are announced to the judges. The organ to evaluate is clearly prescribed in Law no. 2802 and Law no. 6067 as well. In addition, the evaluation result is submitted to the relevant judge so that the judge can use the right of rejection against the mentioned evaluation.

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

ANSWER:

There is not any member among the members who is sent by political parties or designated by the parliament. As the composition of the Council is independent of the politics, political pressures cannot be applied. The Minister of Justice as the president of the Council can only demand re-examination against the promotion procedures of the judges and prosecutors.

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

ANSWER:

As stated above, the relevant judge has the right of re-examination and objection to the evaluation result. The judges can report their opinions in the re-examination and objection.

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

ANSWER:

The same hierarchical evaluation is made by HCJP. There is not self-evaluation.

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)

ANSWER:

In what way a member of the evaluation body could be dismissed is prescribed by Law of Judges and Prosecutors numbered 6087. On Article 28 Termination of membership is prescribed as follows;

ARTICLE 28 - (1) With the exception of the President, the membership of regular and substitute members of the Council shall be terminated;

a) spontaneously in cases of conviction of a crime which requires removal from the profession of judgeship or prosecutors under the Law on Judges and Prosecutors, withdrawal or turning 65 years of age,

b) by decision of 2/3 majority of the total number of members of the Plenary determining that they do not carry one of the qualifications to be member of the Council or they have lost this qualification in the office, .

(2) Council membership shall be terminated by decision of 2/3 majority of the total number of members of the Plenary in case it is ascertained with the report of health

committee that the Council member is unable to continue to function or in case the Council member fails to attend to work for a consecutive fifteen days or for thirty days in one year without permission and excuse.

(3) a) Those, elected from among the high courts and whose Council membership has ended, shall return to their previous membership to the high court without need for any proceedings and vacant position; the first left position for membership shall be entrusted to them.

b) The members elected from among the judges and prosecutors of the civil and administrative judiciary;

1) Those whose Council membership has ended before their term shall be appointed by the Plenary,

2) Those whose Council membership has ended due to the completion of their term shall be appointed by the Plenary to be established after them;

to the appropriate positions in one of three locations they have preferred suitable to their achievement.

c) Those, elected from among other public officials and whose Council membership has ended, shall be, upon their applications, appointed to their previous posts by their respective institutions or to other posts suitable to their acquired rights, salaries and classes.

ç) The appointments envisaged in (b) and (c) sub-paragraphs shall be made within thirty days following the termination of Council membership. The persons concerned shall be considered to be on leave until the appointment is made, and they continue to enjoy the personal rights of being a member of the Council.

(4) The period which the Council members serve in the Council shall be considered in their service according to the provisions of the law to which they are subject.

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?

ANSWER:

Yes, there are possibilities of review. In line with the Law no. 6087, the evaluation is done by a chamber of HCJP composed of 7 members. Against the decision of the chamber, the relevant judge has the right of objection to the board composed of 1 head and 21 members. Also, judicial remedy is possible against inspector evaluation forms and Public prosecutor evaluation forms which are essential documents for the evaluation.

E. Achievements and problems

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

ANSWER:

The studies are continuing under “The Performance Evaluation of Judges and Prosecutors and Renewal of the Promotion System” project regarding the work percentage reckoning, register file, evaluation of appeals, performance evaluation and development forms which are still being used in the evaluation system and also in the determination of success of the judges and prosecutors.