

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

on justice, evaluation and independence

from UKRAINE

A. Individual evaluation and assessment of judges: purpose and regulatory framework

1. Does individual evaluation and/or assessment of judges exist in your country?

Individual evaluation and/or assessment of judging as a separate procedure doesn't exist in Ukraine. Although can be named resembling procedures, such as background check of a candidate for a position of a permanent judge, inspection of grounds for bringing a judge to disciplinary liability, special vetting of judges according to "lustration policy" of the modern Ukrainian state.

The Law of Ukraine "On Judicial System and Status of Judges" establishes a background check of a candidate for a permanent position of a judge (after expiring a five year term of the first appointment on a position of a judge) which includes examining performance indicators (art.74 The Law of Ukraine "On judiciary and status of judges").

In April 2014 the Parliament of Ukraine adopted the Law "On Restoration of Trust in the Judiciary of Ukraine", which envisaged the procedure of the special vetting of judges as a temporary measure for restoration public trust in judicial system of Ukraine. These measures can be considered as an assessment of an individual judge. but it should be mentioned that under this law not every judge should be an object of an assessment.

After "The Revolution of Dignity" legislation concerning functioning of the judicial system constantly changes and it is a focus of society's attention because it can be regarded as instrument for eradication of corruption and injustice. If there will be any significant changes in current legislation, we will inform the Working Group of the CCJE.

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

The purpose of the background check of a candidate for a permanent position of a judge is to improve quality of selection of candidates.

The purpose of the inspection carried out by the Supreme Qualification Commission of Judges is to bring a judge to disciplinary liability, as it stated in legislation.

The purpose of vetting of judges according to art.1 of the Law "On Restoration of Trust in the Judiciary of Ukraine" is to strengthen the rule of law in society and legality in court administration; restore trust in the judiciary of Ukraine; find facts that show signs of the breach of oath by judges, availability of grounds to discipline judges or bring them to criminal liability; establish principles of independence and impartiality in judicial performance.

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

Election process for a permanent judge position begins only with a written application of a candidate for such position, after such application background check of a judge is compulsory.

After receiving a complaint on an individual judge the Supreme Qualification Commission of Judges decides whether this complaint is admissible. If it is admissible, the inspection of grounds for bringing a judge to a disciplinary responsibility is compulsory.

According to the Law "On Restoration of Trust in the Judiciary of Ukraine" a judge of a general jurisdiction court shall be subject to vetting in case of rendering the following decisions as a single judge or as a member of a panel:

1) on restricting the rights of citizens to hold meetings, rallies, marches and demonstrations in Ukraine within the period from November 21, 2013 through the moment this law comes into force;

2) on opting for measures of restraint such as detention\keeping in custody, upholding those measures, extending the detention term, guilty verdicts, decisions of courts of appeals and cassation on reviewing guilty verdicts which did not result in overturning the verdict regarding the persons who are recognized as political prisoners, for actions related to their political and civic activity;

3) on opting for measures of restraint such as detention, upholding those measures, extending the detention term, guilty verdicts regarding persons who participated in mass protests within the period from November 21, 2013 through the moment this law comes into force, due to their participation in such actions;

4) on imposition of administrative sanctions on persons who were participants of mass protest actions within the period November 21, 2013 through the moment this law comes into force based on article 122² of the Code of Ukraine on Administrative Offences to deprive drivers of the right to drive vehicles as a punishment for drivers who did not respond to the demand of a militiaman to stop the vehicle and on upholding such decisions by court of appeals within the period from November 21, 2013 through the moment this law comes into force;

5) on imposition of administrative sanctions on persons who were participants of mass protest actions within the period November 21, 2013 through the moment this law comes into force based on article 185 of the Code of Ukraine on Administrative Offences for flagrant disobedience to lawful order or demand of the militiaman, member of civic group preserving public order and state borders, and serviceman, as well as on upholding those decisions by courts of appeals within the period from November 21, 2013 through the moment this law comes into force;

6) on imposition of administrative sanctions on persons who were participants of mass protest actions within the period November 21, 2013 through the moment this law comes into force based on article 185¹ of the Code of Ukraine on Administrative Offences for violating the procedure for organizing and conducting meetings, assemblies, street marches, and demonstrations and on upholding the above decisions and leaving them without changes by court of appeals within the period from November 21, 2013 through the moment this law comes into force;

7) on imposition of administrative sanctions on persons who were participants of mass protest actions within the period November 21, 2013 through the moment this law comes into force based on article 185² of the Code of Ukraine on Administrative Offences for creating conditions for organizing and conducting with violating the established procedure of meetings, assemblies, street marches, and demonstrations and on upholding the above decisions and leaving them without changes by court of appeals within the period from November 21, 2013 through the moment this law comes into force;

8) regarding the cases related to conducting elections to the Verkhovna Rada (the Parliament) of the VIIth convocation, cancelling their results or depriving a person of the status of parliament member who was elected to the Verkhovna Rada of the VIIth convocation. (vetting shall be conducted upon the initiative of the subject of election process whose rights or interests were violated or upon the initiative of the High Council of Justice);

9) on granting permission to conduct investigative actions and covert investigations against persons who have participated in mass protests within the period from November 21, 2013 through February 21, 2014 due to their participation in such actions; and

Vetting shall be also conducted with regard to judges, who as a single judge or as a member of a panel of judges, considered a case or rendered a decision with violations of the Convention for the Protection of Human Rights and Fundamental Freedoms, established in a decision of the European Court of Human Rights.

4. How it is established and regulated:

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

The basic law which regulates election procedure for a permanent judge position is the Law "On Judiciary and Status of Judges". The order of consideration questions concerning election of permanent judges is regulated additionally by the Law "On the Committees of the Verkhovna Rada", the Law "On the Procedural Regulations of the Verkhovna Rada". The Procedural Regulations of the Supreme Qualification Commission of Judges also contain some provisions concerning the assessment of judicial performance. Also the Council of Judges of Ukraine (judicial self-government body) has adopted the Decision on 02.12.2005 "Procedure with regard to preparation of materials concerning appointment or election for a position of a judge, transfer to another court, dismissing from a position of a judge".

Vetting of judges is established by the Law "On Restoration of Trust in the Judiciary of Ukraine".

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 Law "On Judicial System and Status of Judges" envisages that Supreme Qualification Commission checks data about a candidate for a permanent position of judge and considers performance indicators. The Supreme Qualification Commission considers performance indicators during past 5 years being on a position of a judge (The Procedural rules of the Supreme Qualification Commission of Judges, adopted on 08.06.2011).

While preparing materials for the elections of the permanent judges Presidents of the higher instance courts provide the Supreme Qualification Commission of Judges with following information:

1) reference on performance indicators of a judge during last 5 years (number of cases in which a decision was made by a judge in civil, criminal, administrative cases separately; other data concerning quality of judicial performance)

2) information concerning rendering special court rulings by higher instance court against a judge.

Other requested information will be specified in the following question 6.

Considering that a separate procedure of assessment/evaluation of judges doesn't exist in Ukraine, it may be possible to exemplify assessment of judicial performance prepared in contemplation of disciplinary case against a judge. During disciplinary inspection member of the Supreme Qualification Commission of Judges has a right to study case files, to make copies, to interview other judges, to receive replies to the requests from public authorities, local authorities, individuals, institutions.

According to the Law "On Restoration of Trust in the Judiciary of Ukraine" the Interim Special Commission is entitled to request copies of the case files.

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.

As it was mentioned in the previous response presidents of the appeal court provide the Supreme Qualification Commission of judges with a reference on indicators of judicial performance during past 5 years. Aside from quantitative indicators this reference contains information on number of cases in which decisions, rendered by a judge, weren't changed by higher instance courts, number of cases in which decisions were changed or overruled. These indicators are designated vis-à-vis the total of the cases forwarded to the court, and the total of cases forwarded to the courts of the whole region.

Also presidents of the appeal court provide a reference on reasons for reversal and overruling of the decisions rendered by a judge; information on grounds for recommendation/non-recommendation for a permanent position of a judge.

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?

During assessment of a judicial performance for candidates on a permanent position of a judge the Supreme Qualification Commission of Judges regards applications of citizens, non-governmental organizations, entities, institutions, organizations of all forms of ownership, public and local authorities (art.76 the Law "On restoration of trust in the judiciary of Ukraine", p.8.12 of The Procedural rules of the Supreme Qualification Commission of Judges).

While disciplinary inspection the Supreme Qualification Commission of Judges is entitled to interview judges and other persons, concerning grounds for disciplinary liability, to request information from public authorities and local authorities, individuals and organizations.

According to the Law "On restoration of trust in the judiciary of Ukraine" the Interim Special Commission is entitled to receive explanations from judges who obtained administrative positions in the courts, where a judge has been working as of the time of rendering a decision; to study personal data file of a judge.

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

Yes, if during the inspection/assessment of a judicial performance the facts of possible violations of ethical and professional rules arise, members of the relevant bodies will take these facts into account and will assess them on their own discrete.

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

Legislation doesn't specify scale of importance between performance indicators although members of bodies for assessment of judges divide these indicators according to general practice and on their own discrete.

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.

Inspection of data and evaluation of judges, who are candidates for permanent positions of judges, are conducted by the Supreme Qualification Commission of Judges.

Presidents of the appeal courts give recommendations on presence/absence grounds for election for a permanent position of a judge.

Local offices of the Public judicial administration gather information on judicial performance.

The Supreme Qualification Commission of Judges gives a decision on recommending or non-recommending a candidate for a permanent position of a judge. This decision can be challenged in the High Council for the Judiciary.

Submission of the Supreme Qualification Commission of Judges with a decision on recommending candidate for a permanent position of a judge are headed to the Verkhovna Rada of Ukraine.

Disciplinary proceedings against judges of district and appellate courts is conducted by the Supreme Qualification Commission of Judges, against judges of high specialized courts and of the Supreme Court – by the High Council for the Judiciary.

According to the Law "On restoration of trust in the judiciary of Ukraine" the Interim special Commission is composed for the purposes of special assessment of judges of general jurisdiction courts. Upon the results of vetting of judges the Interim Special Commission shall adopt the opinion which must be justified and published on the official website of the High Council of Justice.

The opinion of the Interim Special Commission on breach of oath by a judge along with vetting materials shall be forwarded to the High Council of Justice for it to consider that and adopt a decision within the term not more than three months from the moment it was received following the procedure established by law. The opinion of the Interim Special Commission on violation of oath by a judge is subject for mandatory consideration by the High Council of Justice.

In case the Interim Special Commission did not find upon the results of vetting the facts certifying the violation of oath by a judge, but the grounds for disciplining a judge have been found, the vetting materials shall be forwarded to the High Council of Justice or High Qualifications Commission of Judges of Ukraine.

The materials on vetting of judges by the Interim Special Commission confirming the availability of the signs of criminal offence in the actions of a judge shall be forwarded by the Interim Special Commission to the Prosecutor General's Office for reviewing whether judge's action really have signs of criminal offence.

If, based on the results of vetting of a judge, no facts certifying the violation of oath by a judge, no grounds to discipline a judge or to bring him/her to criminal liability are found, the Interim Special Commission, by majority vote, shall approve an opinion and make a decision on terminating vetting regarding the given judge. Vetting materials along with the opinion and decision of the Interim Special Commission shall be forwarded to the High Council of Justice or High Qualifications Commission of Judges of Ukraine.

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

Assessment of judges concerns an individual judge and procedure never differs depending on position of the judicial hierarchy.

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

Need for evaluation judicial performance for election on a permanent position of a judge arises after expiration of the term of authority (first 5 years after appointment to the position of a judge) in case of submitting relevant application by a judge. Also within 3 years after expiration of the 5-year term of authority for the first appointed judge, a candidate for a permanent position of a judge can also submit relevant application.

Evaluation during disciplinary proceedings begins only after receiving a claim from an individual or organization and after deciding whether this claim is admissible.

According to the Law "On restoration of trust in the judiciary of Ukraine" vetting of judges is a temporary measure and shall be conducted within one year from the moment the Interim Special Commission is created.

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

As mentioned above, evaluation of judicial performance as a part of elections for permanent position procedure begins after submitting an application by a judge, evaluation as a part of disciplinary proceedings begins with a claim submitted by an individual or organization.

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).

Whereas there is no such separate procedure as evaluation of judges, we mention the most resembling procedure within the disciplinary proceedings. The Supreme Qualification Commission of Judges holds a session, hears report of the member of the Commission, who inspected materials in a judge, hear arguments of a judge and other concerned parties. A judge or his/her representative are allowed to give explanations, ask questions, express objections, make applications and demand for removal.

The Supreme Qualification of judges discuss results of the disciplinary inspection in the absence of a judge and other concerned parties.

A judge being vetted, he/she shall be granted a right to be present personally or through his/her representative at the meeting of the Interim Special Commission and provide his/her explanations, both orally and in writing, as well as any evidence in his/her defense.

A judge shall have a right to get familiarized with an application concerning his/her vetting and relevant materials.

If a judge being vetted cannot be personally present at the meeting of the Interim Special Commission, he/she may be represented during the meeting by a representative whose powers are certified by a power of attorney, or if a representative has a certificate on the right to legal practice, his/her powers shall be certified by an order or agreement on providing legal aid to a judge being vetted.

15. What are the ratings used during evaluations?

Any ratings used for evaluation of judges are not provided by the legislation.

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).

Evaluation of judicial performance within the election procedure for permanent positions of judges results in making a decision by the Supreme Qualification Commission of Judges on recommendation a candidate for permanent position and submitting an application to the Verkhovna Rada. The Committee of the Verkhovna Rada, which is entitled to consider questions on election and dismissal of judges, considers an application for election on a permanent position and decides whether to recommend a candidate and to direct the decision to the Verkhovna Rada. The Verkhovna Rada makes a decision to elect or to deny election for the permanent position of a judge.

Disciplinary proceedings may result in making a decision by the Supreme Qualification Commission of Judges about lack of bases for responsibility, to impose disciplinary penalty, to forward a recommendation to the High Council for the Judiciary for the decision on making submission on a dismissal of judge.

The opinion of the Interim Special Commission on breach of oath by a judge along with vetting materials shall be forwarded to the High Council of Justice for consideration.

In case the Interim Special Commission did not find upon the results of vetting the facts certifying the violation of oath by a judge, but the grounds for disciplining a judge have been found, the vetting materials shall be forwarded to the High Council of Justice or High Qualifications Commission of Judges of Ukraine.

The materials on vetting of judges by the Interim Special Commission confirming the availability of the signs of criminal offence in the actions of a judge shall be forwarded by the Interim Special Commission to the Prosecutor General's Office for reviewing whether judge's action really have signs of criminal offence.

If, based on the results of vetting of a judge, no facts certifying grounds for responsibility, the Interim Special Commission, by majority vote, shall approve an opinion and make a decision on terminating vetting regarding the given judge.

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?

There are no such provisions concerning keeping materials and possibility to examine them after inspection.

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)

Legislation of Ukraine and international law establishes judicial independence as a fundamental principle in democratic society, which realizes through non-interferences into professional performance of judges by other persons. Though there can be no precaution for informal communication between judges. Far less, the Law "On judicial system and status of judges" among other duties of the appeal courts establishes providing guidance for lower courts, meaning giving advice by more experienced judges.

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

Unfortunately, this information cannot be provided.

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?

Transparency in evaluation of judges is provided by publishing the procedure and terms of inspection of judges (which are candidates for a permanent position of a judge) on the web-sites of the Supreme Qualification Commission of Judges and the High Council for the Judiciary. While preparing information concerning candidates, the announcement of such preparation is published on the Supreme Qualification Commission of Judges web-site. After the inspection results are immediately published on the web-site.

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

Among protective measures during evaluation process we only can name establishing the bodies responsible for that.

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

While considering the disciplinary case the judge or his representative have the right to give explanations, to ask questions to other participants, to state objections, to declare petitions, dismissals.

Within the special vetting a judge can be present at the hearing of the Interim special commission, has a right for giving explanations, evidences. A judge get acquainted with an application for vetting and materials concerning this application.

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

There is no such procedure in Ukraine.

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 Procedural Rulings of the Supreme Commission of Judges enables a judge to demand the removal during disciplinary proceedings. Other possibilities aren't provided.

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?

The decision of the Supreme Qualification Commission of Judges on non recommending a judge for a permanent position can be challenged to the High Council for the Judiciary.

A judge of a district or appellate court can challenge the decision of the Supreme Qualification Commission of Judges on bringing to disciplinary responsibility to the High Council for the Judiciary or to the High administrative Court of Ukraine.

A judge can challenge the decision of the High Council for the Judiciary based on the opinion of the Interim Special Commission in order provided by the Administrative Procedural Code.

E. Achievements and problems

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

Evaluation procedure in Ukraine is still at a development stage. As for today Ukraine doesn't have such individual procedure but it can be an effective and unbiased instrument in judicial system functioning. It also can have a big future after stabilization situation in Ukraine.