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CONSEIL CONSULTATIF DE JUGES EUROPEENS (CCJE)
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CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

**Compilation des réponses au
Questionnaire pour la préparation de l'Avis n° 17 (2014) du CCJE sur justice, évaluation et indépendance**

/

**Compilation of replies to the
Questionnaire for the preparation of the CCJE Opinion No. 17 (2014)
on justice, evaluation and independence**

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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?

To identify professional values of judges for the effect of their career;
To identify Judges with professional insufficiency and judges with the highest performance;
To determine the problems faced in court during verification of their professional activity;
To identify ongoing training needs of judges, serving to increase the professionalism of the judges of the courts of first instance and the appellate courts, as well as the chairman's of these courts.

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

According to the Albanian law it's compulsory. The High Council of Justice, in November of each year, determines courts, whose judges will be evaluated in the following year and the evaluation period.

4. How it is established and regulated:

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

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; "yes"
- the average time spent on each of these cases; "yes"
- the average number of hearings per case; "yes"
- clearance rate (number of the cases, where a decision has been made, vis-à-vis the total of the cases forwarded to the judge); "yes"
- the average time to judgment (the time required to deliver a judgment by a judge after the completed hearing); "yes"
- any other quantitative indicators. "No"

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; "yes"
- the number of appeals vis-à-vis the number of the cases, where a decision has been made; "yes"
- the number of decisions reversed and/or cases remitted by the appellate court; "yes"
- the types of cases where decisions were reversed and/or cases remitted (criminal, civil, administrative or other); "yes"
- the grounds for reversal and/or remittal; "yes"

- any other qualitative indicators. “No”

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?

According to the Albanian legislation these indicators aren't part of the evaluation of judges. Regarding “Judicial hierarchy” the chairman of the court of first instance or of the appeal court evaluates the judges.

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

Yes. Article 9 “Legal professional and technical skills”, foreseen:” In the group of professional legal criteria and technical skills of the judges, are included: a) The clarity of writing of the decision; b) Ability to conduct litigation; c) Ability to create and administrate a judicial dossier. Article 14 “Judge ethic during and outside the process”, of the decision of the High Council of Justice for “Judge Assessment System” foreseen:” This criteria evaluate judges communication skills during court hearings, and the manner of their behavior”.

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

No. Professional and ethical evaluation of judges is conducted in accumulative way according to these criteria: a) professional, organizational and implementing skills; b) Legal professional and technical skills; c) human capacity and professional commitment.

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.

Chairman of the court, Inspectorate of the High Council of Justice, The chief inspector of the High Council of Justice, The School of Magistrates, High Council of Justice.

The chairman of the court of first instance or of the appeal court evaluates the judge in the form of a written act.

To judge the performance of a judge, the chief inspector assigns one or more inspectors of the Department of Inspection.

The assigned inspector deposits the final report of the evaluation immediately to the chief inspector.

The chief inspector of the High Council of Justice, after reviewing the final evaluation report of the judge or president of the court, and the judge's personal file that is located in the High Council of Justice, not further than 60 (sixty) days, prepares the draft evaluation.

The High Council of Justice, after examines the judge or chief judge file and the draft evaluation, take a decision on the final evaluation within four (4) months from the completion of the evaluation of the Inspectorate.

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

For chiefs of courts of first instance and appeal, the evaluation of human resources and professional commitments is made by the Inspectorate after they deposit their assessment materials.

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

Judge evaluation activity is done on the basis of a preliminary schedule proposed by the deputy chief of the High Council of Justice that within a 3-year period, all judges of courts of first instance and appeal courts have to be evaluated. The High Council of Justice, in November of each year, determines courts, whose judges will be evaluated in the following year and the evaluation period.

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

In most cases, evaluations are made on a periodic basis, but also when the high council of justice collects data of the decline in work efficiency and professional skills of judges.

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 chairman of the court of first instance or of the court of appeal evaluates the judge in the form of a written act. The chief judge no further than 60 (sixty) days from notice of the start of the evaluation procedure completes the statistical tables for the judge, the judge documenting decisions revised by higher courts and the judge's assessment. Once recognized with the Chairman's evaluation and its associated acts the judge has the right to conduct a professional and ethic evaluation of his work by a writing act, according to a specific form, through which outline its activities, make a general assessment and evaluate each skill. Completing the self-evaluation form is not mandatory. Self-evaluation of the judge is conducted within 5 (five) days from the moment of recognition with statistical tables and the assessment of the chief judge. In any case, the self-assessment must be accompanied with the necessary decisions the judges refers to. The chief judge, sends within 2 (two) days from the submission of the self evaluation of the judge, the assessment materials to the Inspectorate of the High Council of Justice.

For evaluation of the judge shall be used:

- Data arising from court files belonging to 7 decisions taken by the judge selected by lot by the Inspectorate. Judges that are not assigned to the trial chambers shall be selected by lot 4 civil conflicts and 3 criminal cases;
- Five decisions presented by the judge for each year of evaluation;
- Decisions of the judge revised by higher courts.
- Data arising from court files belonging 20% of cases judged further determined deadlines, selected by lot;
- The data resulting from the verification of complaints;
- The data resulting from the inspection of a judge or inspection of the court;
- Evaluation of chief judge of the court;
- Self-evaluation of a judge (if he decides to fill out the appropriate form)

Judicial records that are subject to observation by the inspector in charge are identified by random selection between the decisions given by the judge within the evaluation period. Subject of evaluation are decisions made by the judge in the court where he exercises his functions in a permanent way, as well as those given by him in the court where he or she is delegated to concrete issues. The Inspector identifies the chamber and the section where the judge has exercised the function for the evaluation period, and then, depending on the number of decisions made for each category of issues, determines the number of decisions that will be selected from each of them. The drawing is done in the court where the judge exercises his functions. The drawing is done in the presence of the judge when he or she wants to be present. The draw includes all decisions that involve the judge where he has been chairman or part of the judicial body, except decisions where is in minority.

The school of magistrates, as the only body responsible for the continuous training of judges, offer all the documentation and information to the High Council of Justice for the participation of judges in professional activities and training. The school of magistrates ensure that, within 10 (ten) days from the request of the inspector in charge, to send to the Inspectorate of the High Council of Justice the requested information.

The judge, after collecting all data's from the inspector in charge, through an act of writing, has the right to request a personal interview with the Inspector of the High Council of Justice, to discuss various elements of performance and evaluation. The judge submits his request in writing, reasoned, within three (3) days of the notice of data's collection. The judge will be interviewed within 5 (five) days from the request, by the chief inspector or the inspector in charge, who carry documentation of the interview, which is attached to the evaluation.

The inspector in charge, after collecting the acts and assessment file of the judge or the president of the court, within thirty (30) days compiles the draft report. The draft report describes: the evaluation period, the judge's personal data; chamber or section where he has conducted his functions during the evaluation period; disciplinary measures taken against him during that period as well as reflects in detail the data resulting from verifications. The inspector in charge deposits immediately the final evaluation report and assessment file to the chief inspector.

The chief inspector of the High Council of Justice, after reviewing the final evaluation report of the judge or chairman of the court, and the judge's personal file that is located in the High Council of Justice, not further than 60 (sixty) days, prepares the draft evaluation. In the draft evaluation a judge can be evaluated as follows: a) very good, b) good, c) acceptable, d) incompetent.

The final assessment is based on the general framework of the work of the judge taking into consideration the capacity of his / her associated with three groups of evaluation criteria mentioned in the question number 9. The overall rating of "very good" may be granted only if the job of a judge is either "very good" for the three sections or "very good" in section II and one of the other two and "good" for the other one. The overall rating of "incompetent" is mandatory if the exercise of functions of a judge is evaluated "incompetent" in two of three sections. The overall rating of "incompetent" may be granted if the judge's work is appreciated "incompetent" in section II and no more than "acceptable" in two other sections. The evaluation of judge cannot be more than "acceptable" if the judge is evaluated as "incompetent" in one of the sections.

The draft evaluation prepared by the chief inspector may be appealed by the judge in the High Council of Justice, within 10 days from the date of its communication. In the event of an appeal, the High Council of Justice examines not later than 2 (two) months the judge's assessment file. The council listens to the judge, after him the chief inspector, with the right to ask questions.

The High Council of Justice, after he examines the judge or chief judge file and the draft evaluation, take a decision on the final evaluation within four (4) months from the completion of the evaluation of the Inspectorate. The High Council of Justice, when considers that the assessment should be on a lower level than the assessment made by the chief inspector in the draft evaluation, assigns one of its members (elected by the Judicial Conference) to compile a new draft assessment and to communicate this draft to the judge. The judge has the right, within 10 (ten) days of receiving notice, to submit his objections. The final assessment of the judge is realized in a plenary session of the Council where the judge has the right to give his objections and the obligation to answer to the questions of the members of the Council. The act of evaluation of the High Council of Justice must be reasoned. If the Council agrees with the reasoning made by the chief inspector in the draft evaluation, is sufficient to make reference to this reasoning.

15. What are the ratings used during evaluations?

If the evaluation "very good" is achieved for each of the four groups of evaluation criteria, the judge gets 80 points in total.

If the evaluation "very good" is achieved by four possible in three groups of evaluation criteria, the judge gets 60 points in total.

If the evaluation "very good" is achieved by four possible in two groups of evaluation criteria, the judge gets 50 points in total.

Academic degree has a total of 10 points.

Scientific publications have a total of 5 points.

A judge who has exercised for a specified period one of the following functions, gets 3 points, but not more than 10 points in total.

- a) Judge of the Supreme Court
- b) Judge of the Constitutional Court
- c) Director of the Magistrates School
- d) Member of the High Council of Justice

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; "yes"
- a professional award to a judge; "yes"
- disciplinary or other measures; "No"
- a requirement of further training; "yes"
- dismissal from office; after disciplinary procedures "No"
- any other actions or measures (positive or negative). If the judge is evaluated as "incompetent", for a period of 2 years will be subject of frequent inspections.

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 records, judge Assessment document becomes part of the judge's personal file and is stored in the Legal Department, Human Resources and Research Department of the High Council of Justice until the next evaluation.

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 information of the form is confidential.

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 evaluation is realized over these bodies that guarantees the transparency of the process. Chairman of the court, Inspectorate of the High Council of Justice, The chief inspector of the High Council of Justice, the School of Magistrates, High Council of Justice. The procedural rules are defined according to the decision of the High Council of Justice for "Evaluation of Judges".

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

The procedure of evaluation guarantees a transparent process taking into account that also judges are part of evaluation process.

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

The judge has the right to conduct a self evaluation form through which outline its activities, make a general assessment and evaluate each skill.

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

Yes the judge has the right to conduct a self evaluation that is not mandatory. Judges of the same level cannot evaluate their colleagues.

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 chief inspector can replace the appointed inspector during the inspection procedure for justified reasons. Actions performed by replaced inspector or inspectors are valid until justified reasons aren't directly linked. Actually the procedure of dismissal or removal is not foreseen in the regulation but these requests can be evaluated according to concrete reasons.

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?

According to existing legislation, there is no specific provision to regulate the procedure of appeal against the evaluation's decision given by the High Council of Justice (HCJ).

Taking in consideration the latest decision given by High Court of Albanian,¹ permits a judge to object in the court of first instance to the act of his professional and ethical-moral evaluation given by the High Council of Justice (HCJ), an issue that has not been dealt with before. By this decision, the High Court of Albania ensure a new standard regarding the activity of the HCJ vis-à-vis with the judicial system, which is re-dimensioned, creating a larger "openings" of control over the HCJ by the judicial system itself.

¹ Decision no. 357 dates 6.7.2013 of High Court of Albania

Reasoning of the Court: "It was not taken into consideration by that court that the decision of the HCJ for the evaluation of judges is not a disciplinary measure, but an administrative act by means of which consequences are created for the plaintiff. Therefore, on the basis of article 140 of the Code of Administrative Procedures and article 328 of the Code of Civil Procedure, the right of plaintiff to turn to court to object to an administrative act will be done on the basis of general principles, turning to the Court of the Tirana Judicial District in respecting the right of plaintiff to go to court. The right of the individual to go to court does not only include the right to open a proceeding, but also the right to have a final resolution of the dispute that is the object of trial from the court. Access to court should be substantive and not simply formal. The denial of the right to go to court and to receive a final answer from it in connection with the claims raised constitutes a violation of the fundamental right to a due legal process provided by article 6 of the ECHR"

E. Achievements and problems

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

The criteria of the effectiveness of the judges should be approximated to international standards. In relation to qualitative criteria, I suggest to determine the meaning of the term "vulnerable decisions", predicting an exhaustive list. Assessment system must not infringe the inner conviction of a judge. In this regard, the effect of qualitative criteria should be inspected only violated decisions for procedural reasons, as required by the Code of Civil Procedure and the Penal Procedure Code, setting some standards for the quality of a decision. According to the criteria of reasonable time in judicial process, reference should be the criteria established in the jurisprudence of the ECHR. Determinant should be the causes of delays, to identify whether the judge has become cause of delays in the judicial process.

Civil Procedure Code and Criminal Procedure Code defines very short deadlines for reasoning the final decisions, a fact that affects the quality of the decision.

The methodology of work that must follow the HCJ Inspectorate in assessing judges, must avoid any subjective influence on this process. This means defining some criteria based on which the inspectors assess the skills of the judge for "written simply and clearly," or the ability "to direct and orient the judicial debate".

In the new system of evaluation is foreseen that assessment of the president of the court should focus on aspects of professional ethics, work discipline and solemnity. Despite this limitation, evaluation of the presiding judge, an objective evaluation, requires in this case to define some clear criteria, which should be based this evaluation.

Evaluation system and professional ethics of judges should focus on identifying the judges with professional values, for the effect of promoting their career (in appeal or Supreme Court.) Evaluation system should not serve as a reason for the disciplinary proceedings of judges.

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

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

Yes it exists

If yes, what is its purpose and rationale?

There is no rationale explicitly expressed in the law. So you may find the rationale in the consequences which follow the result of the evaluation: if a judge is evaluated with "not sufficient" a procedure to dismiss him/her on the grounds of incapability may be initiated. The results of the evaluation are one of the elements which will be considered when a judge applies for a new position (other court or "higher classified" position at the same court.

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

It is compulsory for each judge regarding the year which followed his appointment in a new position and in addition each judge and the president of the court may ask for a new evaluation if the performance of the judge considerably improved or worsened. Presidents of the Courts of Appeal and of the Supreme Court are excluded.

How it is established and regulated:

by legislation;

by subordinate legislation;

by internal institutional regulatory instruments.

It is established and regulated by legislation

B. Criteria for evaluation and assessment

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.

When the evaluation starts a table is provided for each judge which provides statistical data which give some information about the workload and how the judge copes with it. Number of new cases in the relevant year, number of old cases, which remained from previous periods, number of cases solved in the different ways, which are possible, and number of cases which were still pending at the end of the period.

There is no formula which relation between these figures is good or bad, these figures only give a first glance for the framework of the judge's work and the result of the judge's work, and insofar they are no criteria as such.

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.

Again the listed aspects are no criteria as such, but of course these aspects have to be taken into account. There is no counting how often one or the other of these aspects occurred, especially the number of appeals and the number of "successful" remedies is not counted.

The criteria, which are enumerated in the law, are.

Degree and completely of knowledge the judges needs for his tasks , including knowledge of new legal provisions

Good ability for perception

Diligence, high perseverance, conscientiousness , reliability, decisiveness and determination

Social awareness, ability to communicate, ability to deal with the parties

Articulateness (oral and in writing), language skills as far as they are necessary for the performance as judge

Conduct in court , on duty, communication with parties, colleagues, staff and parties of the procedures, private conduct as far as it influences the duties and image of the judge

If judges who may become presidents or get other managerial tasks, qualifications needed for such a position

Success of the performance

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?

The sources which are taken into account are:

Check of the register

Check of the statistics mentioned under 5

Personal File of the judge, which may contain information about training activities, extra duties the judge had taken, extra studies he/she did, data of leaf, results of disciplinary procedures

Report of the president of the respective court

Reports of the Chairs of the panels , which deal with remedies against the decisions of the respective judge

The report of the court inspection, which is in charge to evaluate the performance of the whole court especially the administration of the court, which does not deal with the content of the work of the judges but might have reported on organizational skills of the judge how to manage his/her cases.

The reporting judge of the Personalsenat (body which is in charge of evaluation) may look in a certain number of files, may interview the judge concerned etc.

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

Yes, it does

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

No, such a scale does not exist.

C. Procedures and mechanisms

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.

The evaluation of individual judges is entrusted to the Personalsenat. The Rapporteur of this body collects reports of the president of the court, of the chairs of the panels which have jurisdiction for the remedies against the decisions of the respective judge, he may look into files, visit hearings and check the report of the last inspection of the court. A remedy against the result of the evaluation is possible to the Personalsenat of the Court of next higher level.

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

No there are no different procedures. Judges who are in a management function of the administration of the court are also evaluated regarding to this part of their activities. The President of the Supreme Court and the Vice-presidents of the Supreme Court are not evaluated.

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

Judges are evaluated for the second year after they had come into a new position. If a judge changes this position several times he is evaluated every time after such a change. In addition every judge and every court president can initiate a new evaluation if he/she thinks that the last evaluation result does not fit any more. If the result of an evaluation is "sufficient" or "non sufficient" the judge is evaluated again for the next year.

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

See 12.)

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 10.)"

What are the ratings used during evaluations?

The ratings are "excellent", "very good", "good", "sufficient" and "non sufficient"

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;

not automatically but of cause the result of the evaluations play a role if several candidates apply for a certain position

a professional award to a judge; no

disciplinary or other measures;

no (but if on the occasion of the evaluation procedure some disciplinary offence is discovered it may lead to a disciplinary procedure)

a requirement of further training;

not directly, but of cause recommendations in such a direction could be given by the president of the court

dismissal from office;

if a judge is evaluated "not sufficient" for two years, which follow one after the other, he will be dismissed.

any other actions or measures (positive or negative).

If a judge is evaluated with "sufficient" or "non sufficient" he/she will be evaluated for the next year again.

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?

They are put in the file of personal data, which exists for each judge. They are kept without limits.

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)

The Association of Austrian Judges started a peer evaluation project. Two judges voluntarily consent that one watches the hearings of the other and discusses his/her observations with the other. Nobody else will be informed of these observations; basis of this evaluation is mutual trust between the two judges concerned.

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

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

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?

Regarding transparency, definition of the body and procedural rule yes, regarding the evaluation criteria, they are "defined in a broad not in a detailed way.

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

There is a procedure and there are remedies.

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

He/She may be interviewed, he/she will get the reasoned decision and he/she may appeal.

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

Why not, this does not need any formal provision. See also 18 above.

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).

It can be a reason for the appeal and of course the member of the Personalsenat who is biased in such a way should have to withdraw from the case. 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? Regarding the results of the evaluation there is a remedy to the Personalsenat of the court of the next higher level, regarding the measures taken as a result of the evaluation it depends on the respective procedure for the respective measure.

E. Achievements and problems

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

There is no real problem. One element which is criticized is that too many judges are evaluated with the highest possible result "excellent".

Gerhard Reissner

Appendix

1. Dienstbeschreibung

Dienstbeschreibung

Name: Itäg.illl ' ,i

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Kalenderjahr, für das die Beschreibung erfolgt; 20t}0]""'!....

Planstellen, Dienststellen und Verwendungsart während des betreffenden Kalenderjahres:

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A. Fragepunkte (S 54 Abs' 1 RDC):

1. Fachliche Kenntnisse, insbesondere der zur Amtsführung notwendigen Vorschriften:'

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. 2. Fähigkeiten und AuffassunS:

be\$üEns

1

3. Fleiß, Ausdauer, Gewissenhaftigkeit, Verlässlichkeit, Entschlußkraft und Zielstrebigkeit

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'+. Bewährung im Parteienverkehr und Außendienst

ketne Frsble\$a

5. a) Ausdrucksfähigkeit (schriftlich und mündlich) in der deutschen Sprache:

Behr guh

b) Kenntnis von Fremdsprachen, sofern es für den Dienst erforderlich ist

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Introduction

Le questionnaire vise à recueillir, autant que possible, des informations sur l'évaluation de la performance des juges en fonction. Par conséquent, le questionnaire n'est pas lié au processus de sélection et/ou de recrutement des juges. Les réponses au questionnaire permettront d'identifier les règles en vigueur dans les États membres, et seront utilisées pour la préparation de l'Avis n° 17 (2014) du CCJE, indiqué ci-dessus.

A. L'évaluation individuelle des juges: but et cadre réglementaire

1. L'évaluation individuelle des juges existe-t-elle dans votre pays?

Oui.

2. Si oui, quel est son but et la raison?

Le but de l'évaluation est de vérifier si le juge fonctionne correctement dans sa juridiction. Elle a pour objectif de déceler tout dysfonctionnement du juge ainsi que les problèmes auxquels il doit faire face.

Cette procédure ne saurait se réduire chez le magistrat dont le fonctionnement ou le comportement présentent des faiblesses, à faire l'inventaire de ses manquements mais doit, au contraire, attirer son attention sur les normes de conduite à atteindre et l'inciter à s'amender et à redresser le cap. Elle doit également mettre en évidence les qualités et points forts du juge afin de le stimuler.

Conformément à l'article 259novies du Code judiciaire, l'évaluation porte sur la manière dont les fonctions sont exercées, à l'exception du contenu de toute décision judiciaire, et est effectuée sur la base de critères portant sur la personnalité ainsi que sur les capacités intellectuelles, professionnelles et organisationnelles.

3. Est-elle obligatoire ou facultative, et s'applique-t-elle à tous les juges dans le pays?

Elle est obligatoire.

4. Comment est-elle établie et réglementée:

- par la loi;
- ~~par la législation subordonnée;~~
- ~~par des instruments réglementaires institutionnels.~~

Le principe de l'évaluation est établi par l'article 151, § 6, de la Constitution.

La mise en œuvre concrète est régie par les articles 259novies à 259undecies du Code judiciaire.

B. Les critères d'évaluation

5. Existe-t-il des indicateurs quantitatifs de performance qui doivent être pris en compte, tels que:

- le nombre d'affaires dans lesquelles la décision a été rendue par un juge;
- une durée moyenne de traitement de chaque affaire;
- le nombre moyen d'audiences par affaire;
- le taux de variation du stock d'affaires pendantes (le nombre d'affaires résolues par rapport au nombre total d'affaires transmises au juge);
- la durée moyenne de jugement (le temps nécessaire pour rendre un arrêt par un juge à la fin de l'audience);
- d'autres indicateurs quantitatifs.

Il n'y a pas, à proprement parler, d'indicateurs quantitatifs. Toutefois, l'évaluation a notamment pour objectif de vérifier si le juge est à même de faire face au flux des affaires qui lui sont confiées. Si un juge a du retard et que celui-ci lui est imputable, cet élément sera pris en compte dans l'évaluation. Notons que le chef de corps est normalement avisé des retards d'un juge en cours de la période d'évaluation. Dans ce cas, un entretien de fonctionnement peut avoir lieu en vue de trouver les solutions permettant de redresser la situation.

6. Existe-t-il des indicateurs qualitatifs de performance qui doivent être pris en compte, tels que:

- l'analyse du type, du sujet et de la complexité d'affaires traitées par un juge, et ses décisions;
- le nombre d'appels par rapport au nombre d'affaires dans lesquelles une décision a été rendue;
- le nombre de décisions renversées et/ou d'affaires renvoyées par la cour d'appel;
- les types d'affaires où les décisions ont été renversées et/ou d'affaires renvoyées (pénales, civiles, administratives ou autres);
- les motifs pour renverser des décisions et/ou renvoyer des affaires;
- d'autres indicateurs qualitatifs :

Conformément à l'article 259noviès, § 1^{er}, alinéa 4, du Code judiciaire, l'évaluation porte sur la manière dont les fonctions sont exercées, à l'exception du contenu de toute décision judiciaire, et est effectuée sur la base de critères portant sur la personnalité ainsi que sur les capacités intellectuelles, professionnelles et organisationnelles du juge.

Pour les chefs de corps, l'évaluation porte également sur les capacités de gestion, notamment sur la gestion du personnel et les initiatives prises pour lutter contre le retard judiciaire.

Les indicateurs qualitatifs sont essentiellement liés aux qualités professionnelles du magistrat. Ainsi, les indicateurs suivants sont pris en compte : la capacité d'analyse et de synthèse, l'organisation du travail, la capacité de décision, l'efficacité dans le travail, l'équilibre entre la quantité et la qualité du travail, la ponctualité, la capacité de stimuler les collègues et collaborateurs, le sens de la collégialité, la capacité d'écoute, les qualités d'expression orale et écrite, les qualités relationnelles et la courtoisie.

Il est également attaché beaucoup d'importance aux critères propres à l'éthique du magistrat : indépendance, intégrité, respect des droits de la défense, souci du procès équitable, etc.

7. Existe-t-il d'autres indicateurs qui sont pris en compte dans l'évaluation du juge, tels que les avis des usagers de la justice, de la hiérarchie judiciaire, des experts judiciaires et des autres parties concernées par la procédure judiciaire, ainsi que des articles de presse?

Non.

8. L'évaluation prend-elle en compte d'éventuelles violations des règles/normes éthiques et professionnelles de juges?

Ainsi qu'il est mentionné dans la réponse à la question 6, les critères liés à l'éthique du magistrat sont pris en compte.

9. Existe-t-il une échelle définie pour mesurer l'importance ou la priorité des différents indicateurs de performance? (veuillez préciser)

Non.

C. Les procédures et les mécanismes

10. Qui est responsable de l'évaluation individuelle des juges? Veuillez indiquer toutes les institutions et les fonctionnaires qui prennent part à ce processus (y compris le ministère de la Justice, les présidents des tribunaux, le Conseil de la Justice, des organismes d'inspection des tribunaux), et indiquer leurs rôles spécifiques.

Conformément à l'article 259decies du Code judiciaire, l'évaluation est effectuée par un collège d'évaluateurs composés du chef de corps et de deux membres de la juridiction, élus pour une durée de cinq ans par l'assemblée générale de celle-ci.

11. Existe-t-il des procédures d'évaluation différentes pour les différentes catégories de juges, en fonction de leur position dans la hiérarchie judiciaire, leur expérience ou tout autre aspect?

Il existe une différence selon que le juge occupe un mandat de vice-président, président ou premier président de son corps.

12. L'évaluation est-elle un processus continu ou périodique, si ce dernier, quelle est la périodicité de l'évaluation des juges?

En règle, l'évaluation est périodique. Cependant un entretien fonctionnel peut avoir lieu lorsqu'il existe des raisons d'adapter le profil de fonction ou les objectifs de la fonction. Cet entretien peut avoir lieu à l'initiative soit des évaluateurs, soit du magistrat.

13. Les évaluations sont-elles faites régulièrement, ou de manière unique ou supplémentaire pour des occasions et/ou des raisons spécifiques?

Elles sont faites de manière périodique et récurrente, sous réserve de ce qui est exposé ci-dessus en réponse à la question 12.

14. Comment l'évaluation est-elle effectuée? (veuillez préciser les procédures, y compris une éventuelle pré-évaluation, des entretiens, des audiences, des présentations orales et verbales et le rôle des évaluateurs et d'un juge)

La procédure est décrite à l'article 259novièsd du Code judiciaire. Elle concerne les entretiens de planification, de fonctionnement et d'évaluation et comporte essentiellement les étapes suivantes :

- *Au début de la période sur laquelle porte l'évaluation du magistrat, un entretien de planification a lieu entre le magistrat et ses évaluateurs ou l'un d'entre eux.*
- *Le lieu et le moment auxquels aura lieu l'entretien de planification sont communiqués au magistrat, par lettre recommandée à la poste ou contre accusé de réception daté, au plus tard quinze jours avant la date de cet entretien.*

L'entretien de planification vise à fixer les objectifs pour la période d'évaluation qui suit, sur la base d'une description concrète de la fonction du magistrat et en tenant compte du contexte organisationnel. Ces objectifs doivent être spécifiques, mesurables, acceptables et réalisables.

Les évaluateurs, ou l'un d'entre eux, déterminent quelle mention sera attribuée au magistrat s'il atteint les objectifs fixés. Si la mention attribuée n'est pas la plus élevée, l'évaluateur indique au magistrat quels sont les objectifs qui devraient être atteints pour obtenir une mention plus favorable.

Le magistrat rédige, à l'intention de ses évaluateurs ou de l'un d'entre eux, un rapport de l'entretien de planification.

Ce rapport mentionne les points sur lesquels un accord a été atteint. Pour les points sur lesquels aucun accord n'a été atteint, les différents points de vue sont exposés.

A défaut d'accord, la divergence d'opinions est décrite aussi précisément que possible. Si les évaluateurs, ou l'un d'entre eux, estiment que le rapport n'est pas une transcription fidèle du contenu de l'entretien de planification, ils y joignent leur version. Une copie est transmise au magistrat.

L'original du rapport et, le cas échéant, de la version des évaluateurs sont conservés dans le dossier d'évaluation.

- *Au cours de la période d'évaluation un entretien fonctionnel peut avoir lieu lorsqu'il existe des raisons d'adapter le profil de fonction ou les objectifs. Cet entretien intervient soit à l'initiative des évaluateurs ou de l'un d'entre eux, soit à la demande du magistrat.*

- *Le lieu et le moment sont déterminés de commun accord.*

A défaut de consensus, l'entretien fonctionnel a lieu au cours des quinze jours suivant la demande écrite d'une des parties, communiquée à l'autre partie par lettre recommandée à la poste ou contre accusé de réception daté.

Le magistrat rédige un rapport de l'entretien fonctionnel pour ses évaluateurs ou l'un d'entre eux, conformément à la procédure fixée au § 2, alinéas 6 à 8.

- *En ce qui concerne l'évaluation, le lieu et le moment auxquels aura lieu l'entretien d'évaluation sont communiqués au magistrat, par lettre recommandée à la poste ou contre accusé de réception daté, au plus tard 15 jours avant la date de cet entretien.*

- *Par le biais de cette notification le magistrat est invité à préparer l'entretien d'évaluation par écrit et à remettre cette préparation aux évaluateurs au plus tard trois jours avant l'entretien d'évaluation.*

Ensuite, les évaluateurs rédigent un projet d'évaluation provisoire. Celui-ci est communiqué au magistrat pendant l'entretien d'évaluation et est examiné avec lui. Le projet peut être adapté en fonction de l'entretien. Le magistrat peut faire valoir ses observations écrites qui seront reprises dans le rapport d'évaluation définitive.

L'entretien d'évaluation est suivi d'un entretien de planification pour la période suivante.

15. Quelles sont les appréciations (ratings) utilisées lors des évaluations?

« Très bon », « bon », « suffisant » et « insuffisant ».

16. Quelles sont les conséquences de l'évaluation et comment peut-elle affecter la carrière d'un juge? Quel peut-en être le résultat:

- la promotion ou la rétrogradation d'un juge;
- la distinction professionnelle d'un juge;
- les mesures disciplinaires ou autres;
- la demande de formation continue;
- la destitution;
- d'autres actions ou mesures (positives ou négatives).

L'article 259decies, § 3, du Code judiciaire prévoit que la mention « insuffisant » entraîne l'application de l'article 360quater du même code, lequel dispose que si un magistrat a obtenu la mention « insuffisant », celle-ci entraîne la perte pendant six mois de la dernière majoration triennale de rémunération, sans préjudice des conséquences disciplinaires.

Dans le cas d'une telle évaluation, le magistrat fait l'objet d'une nouvelle évaluation après un délai de six mois. S'il n'obtient pas la mention « bon », la sanction est à nouveau d'application.

17. Comment sont enregistrées l'évaluation et les mesures recommandées, où sont déposés les dossiers et pour quelle durée, et qui peut les examiner?

Conformément à l'article 259noviès, §§ 6 et 7, il est dressé un rapport des entretiens d'évaluation et de planification. Les dossiers sont conservés par le chef de corps. Une copie de la mention d'évaluation est, en outre, adressée au magistrat évalué et au ministre de la Justice et conservée pendant au moins dix ans. Les évaluations sont confidentielles et peuvent à tout moment être consultées par le magistrat évalué.

18. En plus des évaluations formelles indiquées ci-dessus, des évaluations informelles sont-elles effectuées? (par exemple, des consultations informelles et des conseils de juges de rang plus élevé)

Non.

19. Veuillez fournir, si possible, un exemple (anonyme) d'une forme/feuille/bulletin d'évaluation rempli (si possible, en anglais ou en français).

D. L'évaluation vis-à-vis de l'indépendance des juges

20. Par quels moyens la transparence du processus d'évaluation est-elle assurée? L'organisme d'évaluation est-il clairement défini? Existe-t-il des lignes directrices publiées pour définir les critères d'évaluation et les règles pertinentes de procédure?

Ainsi qu'il est mentionné dans la réponse à la question 17, les évaluations sont confidentielles et peuvent à tout moment être consultées par le magistrat évalué.

Quant aux critères et méthodes d'évaluation, ainsi que la pondération de ces critères, ils sont, conformément à l'article 259noviès, § 1^{er}, alinéa 6, du Code judiciaire, définis par arrêté royal sur la proposition du Conseil supérieur de la justice et ce en tenant compte de la spécificité des fonctions et des mandats. Ce même arrêté royal détermine les modalités d'application de ces critères.

Ces critères et modalités sont publics dès lors que l'arrêté royal qui les détermine est publié au Moniteur belge.

21. Existe-t-il des mesures de protection pendant l'évaluation afin d'éviter des avis personnalisés ou des pressions politiques?

Aucun mécanisme n'est prévu, mais, dès lors que l'évaluation est effectuée par un collège, le danger de pressions extérieures est minime. En outre, le magistrat évalué peut réagir au projet d'évaluation.

22. Comment est assurée la participation d'un juge dans la procédure d'évaluation et la prise en compte de son avis ?

Il y a lieu de se référer à ce qui est exposé dans la réponse à la 14^{ème} question.

23. Une auto-évaluation par un juge ou une évaluation par ses pairs au même niveau hiérarchique est-elle possible?

Ainsi qu'il ressort de la procédure décrite en réponse à la 14^{ème} question, elle fait partie du processus d'évaluation.

24. Un juge peut-il demander la destitution (temporaire ou permanente) d'un membre de l'organisme d'évaluation? (par exemple, en cas des raisons sérieuses de croire que ce membre peut avoir une attitude *a priori* négative envers le juge évalué)

Ce n'est pas prévu.

25. Quelles sont les possibilités d'une révision (y compris judiciaire) d'évaluation d'un juge, si ce dernier n'est pas d'accord avec l'évaluation et les mesures prises à la suite de ses conclusions?

Il n'y a pas, à proprement parler, de recours, mais, conformément à l'article 259noviès, § 5, alinéa 2, du Code judiciaire, le magistrat évalué peut toujours adresser ses observations écrites sur l'évaluation provisoire. Dans ce cas, l'évaluation définitive reprend les observations du magistrat.

E. Le progrès et les problèmes

26. Veuillez décrire brièvement le bilan et les problèmes du système d'évaluation utilisé dans votre pays.

L'évaluation d'un magistrat est un art difficile. En effet, une évaluation négative risque souvent d'avoir des effets néfastes sur les relations entre le magistrat évalué et ses évaluateurs qui sont issus de son propre corps. Apprécier la manière dont les fonctions sont exercées à travers le prisme des capacités intellectuelles, professionnelles et organisationnelles du juge est également périlleux, car la frontière entre cette manière de fonctionner et le contenu des décisions est parfois fort ténue. Or, L'évaluation ne saurait porter sur le contenu des décisions, ce qui pourrait d'ailleurs mettre en cause l'indépendance du juge. Enfin, évaluer le fonctionnement d'un magistrat sous l'angle de l'éthique de la profession est très délicat, car cette appréciation comporte souvent une part de subjectivité.

Tout cela fait que l'évaluation des magistrats est un exercice qui ne sera jamais satisfaisant.

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

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

Yes, individual performance evaluation of judges and court presidents is periodically conducted in Bosnia and Herzegovina.

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

Performance evaluation is carried out in order to objectively and impartially determine the success with which a judge or a court president performed his/her duties during the evaluation period.²

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

In accordance with the existing laws, performance evaluation of judges is compulsory and applies to all judges and court presidents in the country, except for the judges and court presidents of entity constitutional courts and the BiH Constitutional Court, as well as judges and court president of the Court of Bosnia and Herzegovina.

30. How it is established and regulated:

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

Legal grounds for the performance evaluation of judges above all include the existing legal provisions³, while the performance evaluation criteria and procedure are regulated through by-laws and other internal acts of the BiH High Judicial and Prosecutorial Council (HJPC).⁴

In that regard, it should be noted that, unlike the entity laws on courts or the Law on Courts in the Brčko District of BiH, the Law on the Court of BiH does not envision that judges and president of the court should be a subject of performance evaluation. It is for that reason, meaning the lack of any legal grounds, that there is no performance evaluation currently existing for Court of BiH judges and president.

Taking into account the aforementioned, it is necessary to bear in mind that responses to all questions from this questionnaire pertain exclusively to the procedure and method of performance evaluation of judges of entity courts and courts of the Brčko District of BiH.

B. Criteria for evaluation and assessment

31. 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;

² Article 2 of the Criteria for Performance Evaluation of Judges in Bosnia and Herzegovina; Article 2 of the Criteria for Performance Evaluation of Court Presidents in Bosnia and Herzegovina.

³ Law on the BiH HJPC, Law on Courts in the FBiH, Law on Courts in the RS, Law on Courts in the Brčko District of BiH.

⁴ Criteria for Performance Evaluation of Court Presidents in BiH, Criteria for Performance Evaluation of Judges in BiH, Rulebook on Orientation Criteria for the Performance of Judges and Legal Officers in BiH Courts, and the Rulebook on the Procedure of Performance Evaluation, Filing of Appeals and Deciding on Performance Evaluation Appeals and the Content of Performance Evaluation Forms for Judges, Court Presidents and Legal Officers (Rulebook on Performance Evaluation Procedure).

- 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.

In accordance with the Criteria for the Performance Evaluation of Judges, one of the performance evaluation elements is to assess whether the orientation quota, set according to the rules laid down in the Rulebook on Orientation Criteria for the Performance of Judges and Legal Officers in Courts in BiH, has been met.⁵ The Rulebook sets forth distinct orientation criteria for monitoring the performance of judges for each level of judicial authority, and within that also for each department. The Orientation Criteria are set according to the principle of operation of courts in BiH, the type of court cases and the manner of completion of the court case within the particular type of cases, taking as a starting point the lawful, proper and timely completion of cases.⁶

In other words, the Rulebook has precisely determined just how many court cases, of which type and with what manner of completion (decision on merits, procedural decision etc.) a judge needs to complete during a calendar year to satisfy the set quota.

In the performance evaluation procedure, depending on the percentage of the satisfied quota, a judge is allocated a number of points, which are then added to the points scored on account of other performance evaluation elements, so that the final evaluation is given based on the total points scored.

According to the Criteria for the Performance Evaluation of Court Presidents,⁷ in making performance evaluation of court presidents one takes into account not just the level of satisfied individual quota, but also the realization of the collective quota of the court he/she is the president of.⁸

Therefore, of all quantitative indicators listed in this question, in making a performance evaluation of judges one actually takes into account only the number of the decisions issued. Other indicators, such as, for instance, time spent working on each of the cases, average number of hearings per case, time needed to draft and issue a court decision, do not apply, which we believe is wrong (see response to Question 26).

32. 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.

One of the performance evaluation elements for judges and court presidents is the quality of judicial decisions, evaluated according to the number of reversed decisions in relation to the total number of decisions issued.⁹ Performance evaluation of a judge under this ground is made by allocating to the judge, depending on the percentage of reversed decisions, a smaller or larger number of points, which are then credited towards the total sum of points, based on which the final performance evaluation is ultimately made.

Therefore, out of all qualitative indicators listed in the question, during the performance evaluation of judges one takes into account only the number of reversed/remitted decisions, while other indicators, such as the complexity of cases, number of appeals, type of cases or legal grounds for the reversal of the decision, are not considered.

⁵ Article 14 of the Criteria for Performance Evaluation of Judges in BiH.

⁶ Article 2 of the Rulebook on Orientation Criteria for the Performance of Judges and Legal Officers in BiH Courts.

⁷ Pursuant to Article 3, the Criteria for the Performance Evaluation of Court Presidents in BiH do not apply to presidents of entity supreme courts and the President of the Brčko District Appellate Court. This Article stipulates that the HJPC shall set special criteria for their performance evaluation.

⁸ Article 16 of the Criteria for the Performance Evaluation of Court Presidents in BiH.

⁹ Article 14 of the Criteria for the Performance Evaluation of Judges in BiH; Article 16 of the Criteria for the Performance Evaluation of Court Presidents in BiH.

33. 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?

None of the foregoing indicators is taken into account during the performance evaluation of judges.

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

One of the performance evaluation elements is the evaluation of a judge's or court president's attitude towards work. Since some of the parameters based on which attitude towards work is assessed (such as, for example, timely dispatch of court decisions or compliance with judicial deadlines while scheduling hearings) are also indicators of judge's or court president's professionalism, one may say that compliance with the rules of profession is one of the criteria taken into account during performance evaluation.¹⁰

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

The Criteria for the Performance Evaluation of Judges and Court Presidents do not formally rank the performance evaluation elements according to their importance. However, since the performance evaluation elements that pertain to the quota fulfilment and quality of decisions carry a much larger number of points than other elements, and that because of that they have the greatest impact on the final performance evaluation, one may conclude that they are given higher level of importance in relation to the others.

C. Procedures and mechanisms

36. 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.

Performance evaluation of judges is made by the court president, while the evaluation of court presidents is made by the president of the immediately higher court. When it comes to presidents of the FBiH Supreme Court, RS Supreme Court and the Brčko District Appellate Court, their performance evaluation is made by the HJPC.¹¹

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

As already mentioned, performance evaluation procedure for court presidents as compared to judges differs insofar as they are evaluated by the president of the immediately higher court, or the HJPC when it comes to presidents of entity supreme courts and the Brčko District Appellate Court.

Besides the foregoing, the laws on courts and in the RS and Brčko District of BiH stipulate that the performance evaluation of the newly-appointed judges should be carried out once a year over the first three years of their mandate, unlike other judges whose performance evaluation is made once in three years.¹²

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

Performance evaluation of judges of courts at all levels of judicial authority in Republika Srpska and the Brčko District of BiH is carried out at least once in three years according to the criteria set by the BiH HJPC, while performance evaluation for the newly-appointed judges is carried out once a year during their first three years in office.

The Law on Courts in the FBiH stipulates that the performance evaluation of judges be carried out at least once a year.¹³

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

¹⁰ Article 17 of the Criteria for the Performance Evaluation of Judges in BiH; Article 19 of the Criteria for the Performance Evaluation of Court Presidents in BiH.

¹¹ Article 67 of the Law on Courts in the RS; Article 42 of the Law on Courts in BD BiH.

¹² Article 67 of the Law on Courts in the RS; Article 42 of the Law on Courts in BD BiH.

¹³ Article 41 of the Law on Courts in the FBiH.

The existing legal provisions stipulate that performance evaluation is compulsory for all judges in entity courts and Brčko District courts, while specifically defining the time periods performance evaluation is supposed to cover.

40. 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)

Performance evaluation procedure for judges is set forth by the Rulebook on the Procedure of Performance Evaluation, Filing of Appeals and Deciding on Performance Evaluation Appeals and the Content of Performance Evaluation Forms for Judges, Court Presidents and Legal Officers, issued by the BiH High Judicial and Prosecutorial Council (hereinafter: the Rulebook on Performance Evaluation Procedure).

According to the Rulebook, court president has the obligation to make a preliminary performance evaluation for judges in his/her court, as well as performance evaluation of presidents of immediately lower courts, within 60 days of the end of the evaluation period. Preliminary performance evaluation is conducted in accordance with the Criteria for the Performance Evaluation of Judges and Court Presidents, in line with the Performance Evaluation Form for Judges and Legal Officers, and the Performance Evaluation Form for Court Presidents, which make up an integral part of the Performance Evaluation Rulebook. The preliminary performance evaluation by way of filling out the relevant form is then made available to the evaluated judge within three days of the date of performance evaluation, together with a legal remedy note that he/she may file an appeal.

If the judge files an appeal from the preliminary performance evaluation, and the court president does not grant it, in whole or in relation to particular performance elements, the court president shall then provide the appealing judge, within eight days, with a reasoned response in writing.

If the judge is not satisfied or is only partially satisfied with the court president's response, he/she is entitled to file a reasoned written complaint against the final evaluation within eight days. If the court president does not grant the reasoned complaint against the final performance evaluation, he/she shall forward the complaint to the HJPC.¹⁴

Upon receiving the complaint against the final performance evaluation, the Judicial Administration Department of the HJPC Secretariat shall forward the complaint and all the available documentation to the Standing Committee tasked with assessing whether the complaint is well-founded, and with drafting an opinion on each individual complaint.¹⁵ The HJPC shall decide on the complaint within 30 days, and shall, within 15 days of the date when the decision was issued, provide the appellant with a written copy thereof.¹⁶ In deciding on the complaint, the HJPC may do the following:

- a) dismiss the complaint as untimely
- b) dismiss the complaint as deficient
- c) refuse the complaint as ill-founded
- d) grant the complaint in full and reverse the original evaluation, and
- e) partly grant the complaint and increase evaluation marks by particular elements with a possible reversal of the original evaluation.¹⁷

The HJPC shall make the decision on complaint by majority votes, and such a decision is final.¹⁸

When it comes to the presidents of supreme courts in the FBiH and the RS, and the President of the Brčko District Appellate Court, the HJPC, which gives performance evaluation, shall provide them with the performance evaluation immediately after the performance evaluation procedure has been completed. If they are not satisfied with their evaluation, presidents of the above courts may file with the HJPC a complaint against the evaluation within eight days of the date when they received the evaluation.¹⁹

41. What are the ratings used during evaluations?

The Criteria for the Performance Evaluation of Judges provide for the following ratings:²⁰

- a) unsatisfactory in performing judicial duties
- b) satisfactory in performing judicial duties

¹⁴ Article 4 of the Rulebook on the Performance Evaluation Procedure.

¹⁵ Article 6 of the Rulebook on the Performance Evaluation Procedure.

¹⁶ Article 7 of the Rulebook on the Performance Evaluation Procedure.

¹⁷ Article 9 of the Rulebook on the Performance Evaluation Procedure.

¹⁸ Article 9 and Article 10 of the Rulebook on the Performance Evaluation Procedure.

¹⁹ Article 12 of the Rulebook on the Performance Evaluation Procedure.

²⁰ Article 21 of the Criteria for the Performance Evaluation of Judges in BiH.

- c) good in performing judicial duties
- d) successful in performing judicial duties
- e) very successful in performing judicial duties.

The Criteria for the Performance Evaluation of Court Presidents provides for the following ratings:²¹

- a) unsatisfactory in performing duties of the court president
- b) satisfactory in performing duties of the court president
- c) good in performing duties of the court president
- d) successful in performing duties of the court president
- e) very successful in performing duties of the court president.

42. 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).

The criteria for the performance evaluation of judges or court presidents envision that performance evaluation be used in the procedure of appointment to other offices in judicial institutions, and also in considering their abilities, suitability and expertise for the purpose of career advance within the judicial system.²²

43. 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 existing laws and by-laws regulating the performance evaluation of judges do not include rules on the manner of keeping records.

The only thing that indeed is regulated in that regard is that HJPC decisions on complaints lodged by judges/court presidents, concerning final performance evaluations, shall be forwarded to the HJPC Secretariat's Appointment Department, and then put into the judge's personnel file.²³

44. 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)

The existing laws do not provide for any informal evaluation system. However, there are no legal obstacles for the judges, at sessions of their divisions, to discuss ongoing problems they face in their daily work and exchange experiences.

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

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

46. 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?

Legal provisions strictly define who is responsible for the performance evaluation of judges (see response to Question 10), while by-laws define in great detail the procedure and criteria according to which the performance evaluation of judges is carried out.

²¹ Article 24 of the Criteria for the Performance Evaluation of Court Presidents in BiH.

²² Article 2 of the Criteria for the Performance Evaluation of Judges in BiH; Article 2 of the Criteria for the Performance Evaluation of Court Presidents in BiH.

²³ Article 11 of the Rulebook on the Performance Evaluation Procedure.

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

The criteria for the performance evaluation of judges or court presidents stipulate that the person conducting the evaluation is responsible for the accuracy of data and the objectivity of performance evaluation.²⁴

Besides, as explained in the response to Question 14, the objectivity of performance evaluation is ensured by defining the right to file appeals/complaints against preliminary performance evaluation (on which the person doing evaluation or court president decides) and complaints against the final performance evaluation (the final decision on which is made by the HJPC).

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

Judge's participation in the performance evaluation procedure is ensured exactly through the possibility to lodge a complaint against the preliminary or final performance evaluation.

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

The existing legal provisions and by-laws in BiH do not provide for the possibility of self-evaluation by judges. When it comes to the possibility of evaluation of a judge by his peers at the same hierarchical level, for the purpose of evaluating the judge's attitude towards work, the Criteria for the performance evaluation of judges leave to the court president the possibility to obtain the opinion from the president of the court division to which the judge whose performance is being evaluated has been assigned, or the opinion of the professional collegium of judges if the relevant court division has not been formed within the court.²⁵

50. 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 existing legal provisions do not provide for such a possibility.

51. 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 Rulebook on the Performance Evaluation Procedure provides for the possibility of reassessing the given performance evaluation.

In that regard, judges have at their disposal the option to lodge a complaint against the preliminary evaluation, and after that also a complaint against the final performance evaluation (see response to Question 14).

E. Achievements and problems

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

One of the key shortcomings of the existing performance evaluation system is related to the application of the orientation criteria for the work of judges. The orientation judicial quota has been set primarily according to the number of cases necessary to complete during a calendar year, without taking into account factors that directly affect the fulfilment of the quota, such as, for example, the type and complexity of cases, then the time judges spend in the courtroom, the length of trials in complex cases (e.g. war crimes or organized crime cases where trials last for years), and the time necessary to draft and issue judicial decisions in complex cases. Such a reduction of orientation criteria to exclusively quantitative indicators, without leaving any possibility to apply any corrective factors, makes the already unrealistic judicial quota almost unattainable, which results in an inadequate valorisation of the judges work, which in turn has a direct impact on the final performance evaluation.

²⁴ Article 7 of the Criteria for the Performance Evaluation of Judges in BiH; Article 7 of the Criteria for the Performance Evaluation of Court Presidents in BiH.

²⁵ Article 6 of the Criteria for the Performance Evaluation of Judges in BiH.

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

53. Does individual evaluation and/or assessment of judges exist in your country? **Yes**
54. If yes, what is its purpose and rationale?
Individual evaluation is done in two cases:
1/ for the purpose of acquiring tenure, after completing a five year length of service as a judge
- the appraisal for acquiring tenure shall have the objective of making an objective assessment of the professional qualifications and the performance characteristics shown after the completion of a five-year length of service at the position of a judge; when making an appraisal for the purposes of acquiring tenure the results of the periodic appraisal of the judge shall be taken into consideration (Art.197(1) Judicial System Act (JSA))

2/ periodically, every four years after a previous appraisal, until completion of 60 years of age
- periodic appraisal shall be an assessment of the professional qualifications and the performance characteristics of a judge, of an administrative head and deputy administrative head for a period of four years (Art.197(2) JSA)
55. Is it compulsory or optional, and does it apply to all judges in the country? **Yes** - it is compulsory and it applies to all judges in the country
56. How it is established and regulated:
- by legislation – **Yes** (Judicial System Act);
 - by subordinate legislation – **Yes** (Judge, Prosecutor, Investigator, Administrative Head, Vice Administrative Head Attestation Methodology);
 - by internal institutional regulatory instruments - **No**.

B. Criteria for evaluation and assessment

57. 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.
- Yes**
58. 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

59. 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**

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

61. Is there any set scale of importance or of priority between various performance indicators? (please specify) – **Yes**

There are two kinds of criteria for appraisal of a judge – general and specific.

The general ones bring 0-20 points; the specific – 0-10points

There are indicators to each criterion which are explicitly established in the Attestation Methodology and put down in the appraisal form to be filled in.

Article 198 JSA general criteria/

(1) The criteria for the appraisal of a judge, prosecutor or an investigating magistrate shall be:

1. legal knowledge and skills for its implementation;
2. skills for analysis of legally relevant facts;
3. skills for optimal organisation of work;
4. expediency and discipline.

(2) In the course of the appraisal under paragraph 1 the following indicators shall be taken into account:

1. compliance with terms,
2. the number of acts confirmed and repealed and the grounds therefor,
3. the outcomes of inspections carried out by the Inspectorate at the Supreme Judicial Council,
4. the overall workload of the respective judicial area and judicial body as well as the workload of the appraised judge, prosecutor or investigating magistrate compared to other judges, prosecutors or investigating magistrates in the same judicial body.

(3) When appraising a junior judge and junior prosecutor the evaluation of the judge or prosecutor appointed as his/her mentor shall also be taken into account.

(4) The time served by the judge, prosecutor or investigating magistrate as a permanent professor at the National Institute of Justice shall also be included in the appraisal period. The evaluation of the work performance as a professor shall be given by the managing board.

Article 199.1. JSA /specific criteria/

(1) Specific criteria for the appraisal of judges shall be:

1. The compliance with the schedule of court hearings
2. The skills for conducting court hearings and drawing up records of 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

1/ Proposals and Attestation Commission (composed by Supreme Judicial Council members; in order to discharge its powers the commission shall form from its membership two sub-commissions - a sub-commission for judges and a sub-commission for prosecutors and investigating magistrates – Art.37(4) JSA)

2/ Auxiliary assessment commissions (composed by judges from the relevant upper court)

3/ Presidents of courts (where the judges who are evaluated work)

4/ Supreme Judicial Council

The Proposals and Attestation Commission

The Proposals and Attestation Commission shall:

1/ conduct the appraisal of judges, as well as the administrative heads and their deputies - by being supported by auxiliary assessment commissions in the bodies of the judiciary

2/ hold

- appraisal for acquisition of irremovability status of a judge
- periodical appraisal of the deputy administrative heads and the judges from the Supreme Court of Cassation and the Supreme Administrative Court
- periodical appraisal of the administrative heads in the bodies of the judiciary except for the Chairpersons of the Supreme Court of Cassation and the Supreme Administrative Court

- The Proposals and Attestation Commission is proposed by the auxiliary assessment commissions a summary report on the results of their examination and motivated complex evaluation mark. It might: refer the report back to the auxiliary assessment commission for further examination, hear the judge or collect addition information.

- The Proposals and Attestation Commission elaborates complex evaluation mark (positive – with grades satisfactory, good, very good, or negative) and refers it to the judge in question. The evaluation mark shall be motivated and may contain recommendations.

Auxiliary assessment commissions

- the auxiliary assessment commissions shall participate in the conduct of periodic appraisals of judges and of deputies of administrative heads, except for the cases of periodical appraisal of the deputy administrative heads and the judges from the Supreme Court of Cassation and the Supreme Administrative Court

- they shall assist the Proposals and Attestation Commission and shall be elected by the respective judiciary bodies on a random selection principle for each specific appraisal;

- the commissions shall consist of three regular members and one substitute; the administrative head may not be elected as a member of an assessment commission; the auxiliary assessment commission shall elect a chairperson from amongst its members; in case there is no possibility to form an assessment commission by the respective judiciary body its membership shall be supplemented by the higher judiciary body in the respective region; no auxiliary assessment commissions shall be elected at the district and the administrative courts

- auxiliary assessment commissions propose to the Proposals and Attestation Commission summary report on the results of their examination and motivated complex evaluation mark.

Presidents of Courts

The administrative heads of the courts where the judges who are evaluated work shall give opinion on their activity with regard to the appraisal to the Supreme Judicial Council. Their opinions constitute appendix II of the appraisal form (Article 30 (2) JSA).

The Supreme Judicial Council

The Supreme Judicial Council shall:

- hear the judge, who has submitted a written objection against the Proposals and Attestation Commission's complex evaluation mark – and either overrules the objection or refers it back to the relevant auxiliary assessment commission for a new complex evaluation;
- adopt the final complex evaluation mark

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

In certain cases the assessment is conducted by the Proposals and Attestation Commission itself without the assistance of auxiliary assessment commissions /appraisal for acquisition of irremovability status of a judge; periodical appraisal of the deputy administrative heads and the judges from the Supreme Court of Cassation and the Supreme Administrative Court; periodical appraisal of the administrative heads in the bodies of the judiciary except for the Chairpersons of the Supreme Court of Cassation and the Supreme Administrative Court/; in others – in fact in the majority of the cases, the assessment is conducted with the help of the auxiliary assessment

commissions, who propose The Proposals and Attestation Commission summary report on the results of their examination and motivated complex evaluation mark /see answer 10/

12. Is evaluation a continuous process or is it done periodically; if the latter, how often are judges evaluated? - **Periodically**, every **four years** after a previous appraisal, until completion of 60 years of age

11. Are the evaluations done routinely, or only or additionally for specific occasions and/or for specific reasons?
Individual evaluation is done in two cases:

1/ **routinely** - periodically, every four years after a previous appraisal, until completion of 60 years of age

2/ **for the purpose of acquiring tenure**, after completing a five year length of service as a judge

12. 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)

Initiative

The evaluation of a judge or administrative head is conducted upon proposal of the judge in question or proposal of the administrative head of the respective judicial body.

Terms

Proposal for appraisal for acquisition of tenure shall be lodged with The Proposals and Attestation Commission at least three months before the expiration of the 5year term.

The Proposals and Attestation Commission shall commence periodic appraisal at least 6 months before the expiration of the 4 year term

Evaluation

The evaluation is conducted by the Proposals and Attestation Commission, which, in certain cases, is assisted by auxiliary assessment commissions - composed by judges from the relevant upper court.

The evaluation of judges' work is done following the Judicial System Act and Methodology rules.

The auxiliary assessment commissions propose to the Proposals and Attestation Commission summary report on the results of their examination and motivated complex evaluation mark. The Proposals and Attestation Commission may: refer the report back to the auxiliary assessment commission for further examination, hear the judge or collect addition information. It elaborates complex evaluation mark (positive – with grades satisfactory, good, very good, or negative) and refers it to the judge in question. The evaluation mark shall be motivated and may contain recommendations. The judge who is evaluated can object in writing within 7 days time limit before the Supreme Judicial Council. In that case they shall be heard by the Supreme Judicial Council - which either overrules the objection or refers it back to the relevant auxiliary assessment commission for a new complex evaluation. The final complex evaluation mark is adopted by the Supreme Judicial Council.

In fact there are appraisal forms (approved with the Attestation Methodology) to be filled in by the commissions. The system works on points where every criterion is pointed by range of points. The forms contain criteria/results and points/marks.

Stages of assessment

The evaluation of the qualification, the achievements and the availability of a judge, an administrative head or a vice administrative head includes three stages:

1/ verbal findings on the indicators of the appraisal criteria on the basis of the facts and circumstances found regarding the activity of the judge who is evaluated;

2/ numeral mark to each criterion with number of points based on the findings regarding the indicators of the relevant criterion;

3/ formation of complex verbal mark on the basis of the sum of the points awarded to each criterion (Art.74 Attestation Methodology).

Criteria

There are two kinds of criteria for appraisal of a judge – general and specific. The general ones bring 0-20 points; the specific – 0-10points /see answer 9/.

Methods of evaluation

The helping commission evaluate judges' work through the following methods:

1/ evaluation of the quantity of the work - done on the basis of statistic data

- 2/ evaluation of the quality of the work – done on the basis of statistic data
- 3/ personal observation – including
 - a/ entire check up of files processed by the judge who is evaluated
 - b/ hearings' visits
 - c/ interviews with colleagues of the judge who is evaluated on questions related to the subject of attestation
 - d/ interview with the judge who is evaluated
 - e/ analysis of authentic written information about the relevant judge's activity (annual reports on the relevant court's activity, information, transmitted by the relevant ethic commissions, information from the Inspectorate of the Supreme Judicial Council, administrative heads' opinions, information from checks or data on Conflict of Interest Prevention and Ascertainment Act, National Institute of Justice opinions about the relevant judge's contribution in training activities, data about participation in trainings for improvement of qualification, etc.) (Art.46 Attestation Methodology)

Judicial System Act
Article 204a

- (1) When conducting the periodic appraisal the auxiliary appraisal commissions and the Commission on proposals and appraisal of judges, prosecutors and investigating magistrates shall carry out an inspection of the records, the protocols of the procedural actions performed by the judges, prosecutors and investigating magistrates and of their acts for the period of the appraisal.
- (2) In order to conduct the appraisal the auxiliary appraisal commissions and the Commission on proposals and appraisal of judges, prosecutors and investigating magistrates may hear the appraised judge, prosecutor, investigating magistrate and deputy administrative head as well as collect any additional information on the appraisal indicators.
- (3) After the appraisal the Commission on proposals and appraisal of judges, prosecutors and investigating magistrates shall draw up an aggregate evaluation which may be positive or negative. The grades of the positive aggregate evaluations shall be:
 - 1. satisfactory;
 - 2. good;
 - 3. very good.
- (4) The aggregate evaluation shall be substantiated and shall contain recommendations to the person appraised.

Article 205

- (1) The Commission on proposals and appraisal of judges, prosecutors and investigating magistrates shall present the aggregate evaluation under Article 203a, paragraph 3 to the appraised who may file within seven days a written objection to the Supreme Judicial Council.
- (2) In case of an objection the Supreme Judicial Council shall hear the appraised person and if necessary shall collect additional information. The appraised person shall be notified at least seven days prior to the date of the hearing.
- (3) When the Supreme Judicial Council complies with the objection the Commission on proposals and appraisal of judges, prosecutors and investigating magistrates shall draw up a new aggregate evaluation.

Article 206

The aggregate evaluation of the periodic appraisal together with the recommendations to the appraised person shall be adopted with a resolution of the Supreme Judicial Council.

- 13. What are the ratings used during evaluations?
The complex evaluation mark is;
 - 1/ positive – with grades satisfactory /41-65 points/
 - good /66-85 points/
 - very good /86-100 points/
 - 2/ negative /0-40/
- 14. 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 – **Yes** (it's relevant to promotion procedure):
ex. results of periodic appraisals are taken into account in the course of competition for promotion and transfer

Art.192(1) JSA The competition commission shall conduct the competition through an interview with the candidates on practical issues related to the implementation of the law; when determining the performance of each candidate the score from the interview and the **results of the periodic appraisals** conducted thus far shall be taken into account on the basis of which an aggregate score shall be made of the professional characteristics of the candidate.

- a professional award to a judge - **Yes**
- disciplinary or other measures - **Yes**
- a requirement of further training - **No**
- dismissal from office – **Yes**

ex. negative evaluation mark prevents acquiring tenure and results in relief from office

Art.207(1) JSA A judge shall acquire tenure after completing a five-year length of service at the respective position and after receiving a **positive aggregate evaluation from the appraisal**

Art.209 (5) JSA When the **aggregate evaluation is negative** the Supreme Judicial Council shall refuse the acquirement of tenure with a resolution and the appraised person shall be relieved from office.

Article 165(1)6 JSA

A judge shall be relieved from office upon a resolution of the Supreme Judicial Council refusing the status of tenure

- any other actions or measures (positive or negative)

ex. a positive "very good" aggregate evaluation is a prerequisite for obtaining a higher rank

Article 234 JSA On-the-job promotion of a judge, prosecutor and an investigating magistrate to a higher rank and remuneration may take place against substantiated high qualifications and the exemplary discharge of official duties, where the judge, prosecutor and investigating magistrate has served at least three years at this or an assimilated position and has a **positive "very good" aggregate evaluation from the last periodic appraisal.**

ex. a negative aggregate evaluation prevents the judge from receiving compensation upon relief

Article 225 Judicial System Act

(1) Upon relief from office, a judge, prosecutor or an investigating magistrate with more than 10 years in service at such position shall have the right to a one-off compensation at the number of gross monthly remunerations equaling the number of years in service with judicial system bodies, not exceeding 20.

(2) Compensation under paragraph 1 shall not be paid in cases under Article 165, paragraph 1, item 3, as well as where the **aggregate score of the last appraisal of the judge**, prosecutor or investigating magistrate concerned **has been negative**. No compensation shall be paid in cases referred to in Article 308(3).

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 Supreme Judicial Council maintains a service file for every judge, where appraisal forms are applied. The judges shall be entitled to familiarize themselves with their service files on request. The service files of candidates for elected members of the Supreme Judicial Council are published on the internet site of the Supreme Judicial Council

Art. 30a Judicial System Act

The Supreme Judicial Council shall open, maintain and keep a service file for every judge, prosecutor and investigating magistrate.

(2) The service file shall contain the documents related to the appointment and relieving from office of judges, prosecutors and investigating magistrates, to their professional development, results from inspections related to received complaints and alerts, incentives - distinctions and awards received and sanctions imposed. The declarations on incompatibility, copies of appraisal forms and other documents on the professional and moral characteristics shall also be attached to the service file.

(3) Copies of the documents under paragraph 2 shall be kept at the judiciary body in which the respective judge, prosecutor or investigating magistrate is appointed.

(4) Judges, prosecutors and investigating magistrates shall be entitled to familiarize themselves with their service files on request as well as to receive certified copies of the documents kept therein.

Art.20a JSA

(1) Nominations of candidates for elected members of the Supreme Judicial Council shall be immediately forwarded to the Supreme Judicial Council by the administrative heads of the judicial authorities that convoked the assemblies concerned. The nominations shall be sent only if they are supported by the candidate's written consent and detailed CV and the name and written reasons of the assembly participant who made the relevant nomination.

(2) The Supreme Judicial Council may also require other documents to be presented by the candidates.

(3) Within three business days from the date of receiving the documents under paragraph 1, the Supreme Judicial Council shall publish them on its website. Within the same time limit, the Supreme Judicial Council shall, of its own motion, also publish on its website each candidate's documents contained in his or her service file under Article 30a(2). The publication shall comply with the Personal Data Protection Act and the Classified Information Protection Act.

(4)....

(5)....

(6)....

(7)....

15. 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**
16. Please provide, if possible, an example (anonymous) of an evaluation/assessment form/sheet/record filled out (if possible, in English or French) /**please see: 1/ appraisal form in Bulgarian/English (texts regarding judges) – in the end; 2/ attachment - attestation methodology & appraisal form in Bulgarian/**

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

17. 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?

Yes

The evaluation body is clearly defined. The evaluation criteria and the procedural rules to be applied (including attestation forms) are also set in law and subordinate legislation, published and accessible to all.

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

The judge who is evaluated may challenge a member of the auxiliary assessment commission. Besides there are indicators, based on statistic data, which give objective information. However, the subjective factor is always present and it may result either positively or negatively.

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

The judges are interviewed in the process of elaboration of their evaluation. Thereafter, they are served with the appraisal. In case they disagree with the evaluation mark awarded, they can submit written objections with the Supreme Judicial Council. The latter shall hear the judge and either overrules the objection or refers it back to the relevant auxiliary assessment commission for a new complex evaluation.

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

No

20. 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) - **Yes**

The members of the auxiliary assessment commission are determined by order of the administrative head of the relevant judicial body at random through electronic distribution for each appraisal. The judge who will be evaluated may be present at the time the random electronic distribution takes place. Each member of the auxiliary commission shall declare the absence of the provided by law obstacles preventing them to participate in the assessment procedure.

The judge who will be evaluated may challenge by way of motivated objection a member of the auxiliary commission within 2 days time limit. The administrative head shall decide on the challenge immediately /art. 63-65 Attestation Methodology/.

21. 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?

No judicial review. The judge who is evaluated may lodge written objections with the Supreme Judicial Council and shall be heard by it /see answer 19/.

E. Achievements and problems

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

Achievements

- Clearly defined procedure, evaluation bodies and rules - published and accessible to all
- participation of the judge who is evaluated in the evaluation procedure /interview, written objections, hearing before the Supreme Judicial Council
- possibility to demand the removal of a member of the evaluation body

Problems

- high percentage of "very good" marks (93%-95% - according to Supreme Judicial Council member interviewed on questions related to judges' appraisal by 'Legal world", accessible on-line)
- absence of an unified appraisal body, conducting direct appraisal to all judges – in fact the majority of the judges are evaluated by auxiliary assessment commissions (who propose reports and evaluation marks to the Proposals and Attestation Commission), which have different members in each case, with different background and personal criteria when applying the appraisal rules; colleagues evaluate colleagues and that results in large amount of "very good" marks - thus preventing the real distinction of those who have exceptional performance from those who just work well or satisfactory.

Unified form for appraisal of judge, prosecutor, investigator, administrative head, vice administrative head

The unified form has the following content:

1. Part I – job reference
2. Part II – administrative head opinion under Article 30 (2) JSA
3. Part III – files inspected, hearings visited, interviews, authentic information used
4. Part IV – findings on general criteria under Article 198 JSA
5. Part V - findings on specific criteria under Article 199 JSA
6. Part VI – findings on additional criteria under Article 201 JSA /for occupying administrative position/
7. Part VII - findings and verbal evaluation by the board of the National Institute of Justice for the period of service of judges, prosecutors and investigators as permanent teachers at the National Institute of Justice
8. Part VIII - numerical score on the general criteria for the appraisal of judge, prosecutor, magistrate, administrative head and deputy administrative head
9. Part IX - numeric score on specific appraisal criteria
10. Part X - numeric score on additional criteria for occupying administrative positions
11. Part XI - auxiliary assessment commission's proposal for aggregate evaluation
12. Part XII - final proposal for aggregate evaluation of the Proposals and Attestation Commission

ЕДИНЕН ФОРМУЛЯР ЗА АТЕСТИРАНЕ НА СЪДИЯ, ПРОКУРОР И СЛЕДОВАТЕЛ, АДМИНИСТРАТИВЕН РЪКОВОДИТЕЛ И ЗАМЕСТНИК НА АДМИНИСТРАТИВЕН РЪКОВОДИТЕЛ

Unified form for the performance appraisal of judges, prosecutors and
Investigators, administrative heads and deputy
Administrative head

Част I
Кадрова справка

Part I
Job reference

Лични данни за лицето
(име, презиме, фамилия)

Personal information about the person
(name, surname)

Дата и място на раждане:
Date and place of birth

ЕГН
Identification number

Телефон, e-mail
Phone, e-mail

Орган на съдебната власт
Judicial body

Длъжност (включително адм. длъжност по чл. 172 от ЗСВ):
Position(including administrative position under Art.172 JSA)

Юридически стаж:
Legal experience

- в орган на съдебната власт
in the body of the judiciary

(конкретизира се всяка заемана длъжност и периода на заемането ѝ в съответния орган на съдебната власт)
(every position and the period for which it had been occupied shall be specified)

- извън органите на съдебната власт
outside the judiciary

Допълнителни квалификации и специализации
Additional qualification and specialisation

Повишаване на място в ранг и заплата
(последен ранг- решение на ВСС)

On the job promotion to a higher rank and salary
(last rank - Supreme Judicial Council decision)

Дата, място и резултати от предходната атестация
Date, place and results from previous appraisal

Период на атестацията:
Period of appraisal

Част II
Становище на административния ръководител по чл. 30, ал. 2 от ЗСВ

Part II
Opinion of the administrative head under Article 30 (2)JSA

Орган на съдебната власт
Judicial body

Административен ръководител
Administrative head

Становище:
Opinion

Подпис: (административен ръководител)
Signature (administrative head)

Част III

Проверени дела; посетени съдебни заседания; събеседвания; използвана
достоверна писмена информация

Part III

Files inspected; hearings visited; interviews, authentic written information used

Проверени дела:

Files inspected

Посетени съдебни заседания:

Hearings visited

Събеседвания:

Interviews

Достоверна писмена информация:

Authentic written information

Част IV

Констатации по показателите на общите критерии за атестиране

Part IV

Findings upon indicators to the appraisal general criteria

A. Съдии

A. Judges

1 Брой и вид на преписките и делата

Number and kind of cases

1.1 Първоинстанционни дела

1.1. First-instance cases

граждански civil

търговски commercial

администр. administrative

НДОХ penal cases (general character)

НДЧХ penal cases (private character)

ЧНД penal private cases

АНД penal-administrative cases

1.2 Въззивни дела

1.2 appeal cases

граждански civil

търговски commercial

НДОХ penal cases (general character)

НДЧХ penal cases (private character)

1.3 Касационни дела

1.3. Cassation cases

граждански civil

търговски **commercial**

администр. **administrative**

НДОХ **penal cases (general character)**

НДЧХ **penal cases (private character)**

АНД **penal-administrative cases**

Констатации:

Findings

2. Спазване на сроковете

Compliance with terms

2.1 Подготовка за разглеждане на делото от съдия докладчик

Preparation for handling the case by the judge rapporteur

2.2 Брой висящи дела /от датата на образуване/

Number of pending cases /from the date of institution/

до 3 месеца **up to 3 months**

от 3 до 6 месеца **3 to 6 months**

от 6 месеца до 1 година **6 months - 1 year**

над 1 година **over 1 year**

Срочност на изготвяне на съдебните актове

Compliance with terms regarding judgements delivered

2.3 Дела през периода на атестиране

Cases during the appraisal period

година

year

останали несвършени

pending

постъпили

instituted

насрочени

scheduled

свършени

done

2.4 Срокове за изготвяне на съдебните актове

Terms for delivery of judgements

година

year

брой свършени дела

number of cases done

свършени в срок до 1 месец

done within 1 month period

свършени в срок до 3 месеца

done within 3 months period

свършени в срок до 1 година
done within 1 year period

Констатации:
Findings

3. Брой потвърдени и отменени актове и основанията за това
Number of judgements and decisions upheld and reversed and grounds for reversal

Постановени актове
Judgements and decisions issued

Година
year

Подлежащи на обжалване
Appealable

Обжалвани
Appealed

Потвърдени
Upheld

Изцяло отменени
Entirely reversed

Изменени
Amended

Прекратени
Terminated

Уважени жалби за бавност
Complaints for slowness granted

Недопуснати до касационно обжалване
Not admitted to cassation

Констатации:
Findings

4. Разбираемо и обосновано мотивиране на актовете
Understandable and justified reasoning of acts

Констатации:
Findings

5. Резултати от проверките на Инспектората към Висшия съдебен съвет
Results from Supreme Judicial Council Inspectorate's inspections

Констатации:
Findings

6 (а) Поощрения през периода, за който се извършва атестирането
Incentives during the appraisal period

Констатации:
Findings

6 (б) Наказания през периода, за който се извършва атестирането
Penalties during the appraisal period

Констатации:

Findings

7. Спазване правилата за професионална етика

Compliance with Ethical rules

Констатации:

Findings

8. Обща натовареност на съответния съдебен район и орган на съдебната власт, както и натовареността на атестираните в сравнение с другите съдии, прокурори и следователи от същия орган на съдебната власт

Total workload of the respective judicial district and judicial authority, and workload of the evaluated compared with the other judges, prosecutors and investigators from the same judicial body

Констатации:

Findings

9. Способност за прилагане на процесуалните закони, свързани с образуването и движението на делата

Ability to apply the procedural laws related to institution and processing of cases

Констатации:

Findings

10. Правилна и законосъобразна оценка на относимите факти и обстоятелства и умение за тяхното систематизиране в хода на производството;

Proper and legitimate assessment of the relevant facts and circumstances and skill for their systematization in the proceedings

Констатации:

Findings

Б. Прокурори Prosecutors

1. Брой и вид на преписките и делата

Наказателни преписки и дела от общ характер

Наказателни преписки и дела от частен характер

Административни дела

Граждански дела

1.1 Общ брой възложени преписки-

1.2 Предмет

Изготвени обвинителни актове

Предложения за споразумение

Приключени бързи и незабавни полицейски производства

Изпълнение на присъди

Дежурства и извършване на лични проверки

Постановления за спиране и прекратяване

Прекратени наказателни производства от съд

1.3 Брой досъдебни производства, взети на специален отчет

1.4 Брой проведени и приключени разследвания-

Констатации:

2 Спазване на сроковете

2.1 Срок за приключване на преписките
Несвършени преписки в началото на периода

Възложени преписки

Приключени в 1-месечен срок

Приключени с разрешението до 2 месеца

Приключени в срок над 3 месеца

Приключени в срок над 6 месеца

Несвършени преписки в края на периода

2.2 Изпълнение на присъди

В 7-дневен срок

В срок до 1 месец

В срок над 1 месец

Констатации:

3. Брой потвърдени и отменени актове и основанията за това

година

потвърдени

изцяло отменени

изменени

оправдателни присъди по внесени обвинителни актове

дела, върнати от съда за доразследване

Констатации:

4. Разбираемо и обосновано мотивиране на актовете

Констатации:

5. Резултати от проверките на Инспектората към Висшия съдебен съвет

Констатации:

6 (а) Поощрения през периода, за който се извършва атестирането

Констатации:

6 (б) Наказания през периода, за който се извършва атестирането

Констатации:

7. Спазване правилата за професионална етика

Констатации:

8. Обща натовареност на съответния съдебен район и орган на съдебната власт, както и натовареността на атестираните в сравнение с другите съдии, прокурори и следователи от същия орган на съдебната власт

Констатации:

9. Способност за прилагане на процесуалните закони, свързани с образуването и движението на делата

Констатации:

10. Правилна и законосъобразна оценка на относимите факти и обстоятелства и умение за тяхното систематизиране в хода на производството;

Констатации:

В. Следователи Investigators

1. Брой и вид на преписките и делата

1.1 Приключени дела срещу известен извършител

Обвинителни заключения

Заключения с мнение за прекратяване

Заключения с мнение за спиране

1.2 Приключени дел срещу неизвестен извършител

Заключения с мнение за прекратяване

Заключения с мнение за спиране

1.3 Дела, останали на производство в края на периода

над 2 месеца

над 4 месеца

над 6 месеца

1.4 Брой следствени поръчки и извършени проверки

Възложени от прокурор

Възложени от други следствени служби

Международни следствени поръчки

Констатации:

2. Спазване на сроковете

Неприключили в началото на периода

Възложени

Неприключили над 6 месеца

Неприключени над 1 год с повдигнато обвинение за умишлено престъпление

Неприключени над 2 год. с повдигнато обвинение за тежко умишлено престъпление

Дела без искано разрешение за продължаване на срока

Неприключили в края на периода

Констатации:

3. Брой потвърдени и отменени актове и основанията за това

3.1 Съпоставимост между актовете на следователя и на прокурора

актове на следователя

актове на прокурора

вид

брой

вид

брой

Обвинително заключение

Обвинителен акт

Заключение с мнение за прекратяване

Постановление за прекратяване

Заключение с мнение за спиране

Постановление за спиране

3.2 Брой дела, върнати от съда за доразследване

Констатации:

4. Разбираемо и обосновано мотивиране на актовете

Констатации:

5. Резултати от проверките на Инспектората към Висшия съдебен съвет

Констатации:

6 (а) Поощрения през периода, за който се извършва атестирането

Констатации:

6 (б) Наказания през периода, за който се извършва атестирането

Констатации:

7. Спазване правилата за професионална етика

Констатации:

8. Обща натовареност на съответния съдебен район и орган на съдебната власт, както и натовареността на атестираните в сравнение с другите съдии, прокурори и следователи от същия орган на съдебната власт

Констатации:

9. Способност за прилагане на процесуалните закони, свързани с образуването и движението на делата

Констатации:

10. Правилна и законосъобразна оценка на относимите факти и обстоятелства и умение за тяхното систематизиране в хода на производството;

Констатации:

ЧАСТ V

Констатации по специфичните критерии за атестиране

Part IV

Findings on special appraisal criteria

A. Съдии

Judges

Констатации

Findings

Спазване на графика за провеждане на съдебни заседания – Умения за целенасочено разпределение и оптимална организация на работата на атестираните

Compliance with the schedule of hearings - Skills for targeted distribution and optimal organization of work of the appraised

Умение за водене на съдебно заседание и съставяне на протокол – ниво на познания на атестираните в областта на процесуалното право и практическото им приложение при разглеждане на делата.

Skills for conducting court hearings and drawing up records of proceedings - level of knowledge of procedural rules and their practical application when examining cases.

Б. Прокурори

Prosecutors

Констатации

Умения за планиране и структуриране на действията в досъдебното и съдебното производство – Оперативни умения на атестираните за целенасочено планиране и оптимална организация на работата му в досъдебното и съдебното производство

Изпълнение на писмените указания и разпореждания на по-горестоящия прокурор –Отговорно отношение на атестираните към работата му

Способност за организиране на работата и ръководство на разследващите органи и екипите, които участват в досъдебното производство – Способност на атестираните за сътрудничество и уменията му за оперативно ръководство и контрол

В. Следователи

Investigators

Констатации

Умения за планиране и структуриране на действията в досъдебното и съдебното производство – Оперативни умения на атестираните за целенасочено планиране и оптимална организация на работата му в досъдебното производство

Изпълнение на писмените указания и разпореждания на прокурора – Отговорно отношение на атестираните към работата му

Част VI

Констатации по специфичните критерии за заемане на ръководна длъжност

Part VI

Findings on specific criteria for occupying administrative position

Констатации

1. Способност за работа в екип и разпределение на задачи в него – Управленска, организационна и комуникационна компетентност на атестирания
2. Способност за вземане на правилни управленски решения – Умения на атестирания правилно да възприема и анализира ситуации, свързани с изпълнение на професионалните задължения и да реагира своевременно с вземане на управленски решения
3. Поведение, което издига авторитета на съдебната власт – Персоналните достижения на атестирания за подобряване на дейността на ръководения от него орган на съдебната власт и уменията му да защитава авторитета на съдебната власт
4. Умение за комуникация с други държавни органи, граждани и юридически лица - Способност за взаимодействие с държавните органи, граждани и юридически лица, участващи в процеса на правораздаване, както и осигуряване на атмосфера на доверие към органите на съдебната власт

Част VII

Констатации и словесна оценка от управителния съвет на Националния институт по правосъдието за времето, прослужено от съдия, прокурор и следовател като постоянен преподавател в НИП

Part VII

Findings and verbal evaluation by the board of the National Institute of Justice for the period of service of judges, prosecutors and investigators as permanent teachers at NIJ

Подписи на членовете на УС на НИП:

Signatures /Board of the National Institute of Justice/

Част VIII

Цифрови оценки по общите критерии за атестиране на съдия, прокурор, следовател, административен ръководител и заместник на административния ръководител

Part VIII

Numerical score on the general criteria for the appraisal of judge, prosecutor, magistrate, administrative head and deputy administrative head

№

Критерии на атестацията

Appraisal criteria

Оценка:

Score

Коментари и забележки

Comments

1 Правни познания и умения за прилагането им

Legal knowledge and skills for their application

2 Умение за анализ на правнорелевантните факти

Skills for analysis of relevant facts

3 Умение за оптимална организация на работата

Ability to optimal organization of work

4 Ефективност и дисциплинираност

Efficiency and discipline

Част IX

Цифрови оценки по специфичните критерии за атестиране

Part IX

Numeric score on specific appraisal criteria

A. Съдии

Judges

№

Критерии на атестацията
Appraisal criteria

Оценка:
Score

Коментари и забележки
Comments

1 Спазване на графика за провеждане на съдебни заседания
Compliance with the schedule of the hearings

2 Умение за водене на съдебно заседание и съставяне на протокол
Skills for conducting court hearings and drawing up records of proceedings

Б. Прокурори
Prosecutors

№
Критерии на атестацията

Оценка:
Коментари и забележки

1 Умения за планиране и структуриране на действията в досъдебното и съдебното производство

2 Изпълнение на писмените указания и разпореждания на по-горестоящия прокурор

3 Способност за организиране на работата и ръководство на разследващите органи и екипите, които участват в досъдебното производство

В. Следователи
Investigators

№
Критерии на атестацията

Оценка:

Коментари и забележки

1 Умения за планиране и структуриране на действията в досъдебното и съдебното производство

2 Изпълнение на писмените указания и разпореждания на прокурора

Част X
Цифрови оценки по допълнителните критерии за заемане на ръководна длъжност
Part X

Numeric score on additional criteria for occupying administrative positions

Критерии на атестацията

Оценка:

Коментари и забележки

1.Способност за работа в екип и разпределение на задачи в него

2.Способност за вземане на решения

3.Поведение, което издига авторитета на съдебната власт

4. Умение за комуникация с други държавни органи, граждани и юридически лица

Част XI

Предложение за комплексна оценка от помощната атестационна комисия

Part XI

Auxiliary assessment commission's proposal for aggregate evaluation

Положителна:

Positive

Точки

Points

Изпълнение на работата

Performance of duties

1. Задоволителна

Satisfactory

Задоволително изпълнение на работата

Satisfactory performance of duties

2. Добра

Good

Съответно на длъжността изпълнение на работата

Adequate to the position performance of duties

3. Много добра

Very good

Изключително изпълнение на работата

exceptional performance of work

Отрицателна:

Negative

Неприемливо изпълнение на работата

Unacceptable performance of work

Обобщен доклад от помощната атестационна комисия:

Summarised report of the auxiliary assessment commission

Помощна атестационна комисия в състав:

Auxiliary assessment commission composed of

1.....

(име и фамилия) (подпис)

name surname signature

2.....

(име и фамилия) (подпис)

name surname signature

3.....

(име и фамилия) (подпис)

name surname signature

Част XII

Окончателно предложение за комплексна оценка на комисията по предложенията и атестирането на съдии, прокурори и следователи към ВСС

Part XII

Final proposal for aggregate evaluation of the Proposals and Attestation Commission

Положителна:

Positive

Точки
Points

Изпълнение на работата
Performance of duties

1. Задоволителна
Satisfactory

Задоволително изпълнение на работата
Satisfactory performance of duties

2. Добра
Good

Съответно на длъжността изпълнение на работата
Adequate to the position performance of duties

3. Много добра
Very good

Изключително изпълнение на работата
Exceptional performance of work

Отрицателна:
Negative

Неприемливо изпълнение на работата
Unacceptable performance of work

Коментар от комисията по предложенията и атестирането на съдии, прокурори и следователи към ВСС относно комплексната оценка и препоръки към атестирания:

Comments of the Proposals and attestation Commission regarding the aggregate evaluation and recommendations to the evaluated

Единният формуляр е изготвен на.....
(дата)

The Unified form is composed on
/date/

Единният формуляр ми бе връчен на:
(дата)

.....

The unified form was served on
/date/

.....
(име и фамилия) (подпис)
(name surname) (signature)

.....

(имам/нямam възражения) (подпис)
(I have / I don' have objections) (signature)

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

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

YES

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

Purpose for evaluation is dual:

- 1. It sows is judge fulfilling his/hers duties as a judge.***
- 2. Evaluation is a main criterion for promotion to other or higher court and to become president of the court.***

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

It applies to all judges in the country with exception to judges of Supreme Court. It is not optional because each judge has to be evaluated if he/she is applying for promotion.

65. How it is established and regulated:

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

The frame is established by Law on Courts but it is also regulated with subordinate regulation developed by State Judiciary Council

B. Criteria for evaluation and assessment

66. 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.

Indicators which are taken in account are combination of:

- ***the number of cases in which a decision has been made by a judge;***
- ***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);***

67. 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.

Indicators which are taken in account are:

- **the number of decisions reversed and/or cases remitted by the appellate court showed in percentage and in absolute numbers;**
- **the grounds for reversal and/or remittal;**
- **the number of decisions reversed vis-a vis number of decision which have been appealed showed in percentage and in absolute numbers**

68. 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?

None of above mentioned but also to evaluate judge it is also taken in account his extrajudicial activities connected with his/hers position as a judge such as lecturing, writing legal articles and books etc.

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

Yes and also it is taken into account if a judge commits a disciplinary offence which is established in the disciplinary procedure before State Judicial Council.

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

Two main indicators are quantitative and qualitative performance which is evaluated on the base of subordinate regulation called "Frame measures to evaluate work of judges" In this document delivered by Minister of Justice but after an approval of General Assembly of Supreme Court criterion is set up for different fields of justice and for different type of cases within fields of justice / e.g. criminal, civil, commercial etc. / .

Quantitative performance of a judge is measured in relation to indicators set up in this bylaw. His/hers performance is then transferred in percentage and points regarding is a judge fulfilling duties in accordance to the criterion or above it or under it in a year.

Qualitative performance is also transferred in points according the criteria mentioned in answer No. 6.

Other indicators are also set up in the Law as well as point system to calculate the performance of a judge.

C. Procedures and mechanisms

71. 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.

Only two bodies are in charge for evaluation of judges.

Council of judges , body of self-governance elected by judges with a seat at each court of appeal which has a duty to collect data necessary to evaluate judge and to deliver a Ruling declaring what is performance of a judge (Excellent, Very good, Good, Average, Not sufficient) which can be appealed to Supreme Court.

State Judicial Council which in process of deciding on promotion of judges, evaluates other activities and performs an interview with a judge who is candidate for promotion.

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

No. Procedure is same for all judges.

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

Judges are evaluated when they apply for position of president of court, when they apply for transfer to another court and when they apply for promotion to higher court.

But presidents of courts monitor performance of each judge in their court on regular bases comparing their performance in relation to "Frame measures..... (see answer No.9.) Because if a judge for longer period of time does not meet quantitative criteria without justified reason it could lead to disciplinary responsibility of a judge.

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

Please see answer No.12.

75. 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)

In addition to answer under No. 10 the whole procedure could be in brief explained as follows:

- **announcement for vacancy in the court is announced,**
- **judges apply to State Judiciary Council (SJC),**
- **SJC asks Councils of Judges to deliver Ruling on performance of a judge taking in account his/her performance in previous five years (for post in Supreme Court for last ten years),**
- **Councils of Judges collect data form presidents of courts which are mostly computerized,**
- **Councils of Judges by majority vote deliver a Ruling,**
- **If a judge is not satisfied with the Ruling he/she can appeal to special panel of five judges of Supreme Court,**
- **A ruling is collected at SJC and after that SJC performs an interview with candidates. Result of the interview is marked with points which are added to the points gained regarding the Ruling on the performance of a judge.**

76. What are the ratings used during evaluations?

According to Law on Courts and Methodology for evaluation of judges delivered by SJC number of points gained in process of evaluation determines the rating which judge gained from Excellent to Not Sufficient (See answer No.10)

77. 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).

The result of evaluation can lead to promotion of a judge but not to demotion, and in most serious cases to disciplinary responsibility.

78. 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 documents are kept in SJC for ten years.

79. 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)

Not institutionally.

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

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

81. 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?

Evaluation bodies are clearly defined and elected by judges. Evaluation is performed on basis of Law and other regulations which are public and same rules are applied to all judges.

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

All steps in evaluation process are held by judges and judges are responsible for it and each decision can be challenged before court.

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

Through interview with a judge, with possibility for a judge do provide all data and evidence which are important for his/her evaluation and through right to appeal.

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

Yes and No. Please see answers explaining the role of Councils of Judges.

85. 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)

Yes, rules regulating excuse of a judge in proceedings apply to this procedure.

86. 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?

As mentioned before, each judge who has been evaluated by Council of Judges can apply to Supreme Court where panel of five judges decide on the grounds of appeal. This panel is formed each year at the beginning of a year so it is not possible to create ad hoc panel at the Supreme Court.

E. Achievements and problems

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

In my personal view main problem in creating the system which is objective and based on measurable mostly statistical data forces judges who seek for promotion to arrange their duties to please the process of evaluation.

In such system individuality, autonomy and free minded judges are not welcomed and they will hardly gain better results as those who are adjusting their performance to “please” the system of evaluation.

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 purpose is to assess the performance of each individual judge, both on the merits of his work, as well as on his general capability, his ability to cope with the work load and his readiness to try the cases put before him.
3. Is it compulsory or optional, and does it apply to all judges in the country? It applies to all judges and it is compulsory in the sense explained below.
4. How it is established and regulated:
 - by legislation; The general framework is given in the Constitution itself which provides that each judge must be of high professional and moral standard
 - by subordinate legislation; N/A
 - by internal institutional regulatory instruments. There exist a number of practice directions or circulars on the subject.

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; Yes
 - the average time spent on each of these cases; Yes
 - the average number of hearings per case; Yes
 - clearance rate (number of the cases, where a decision has been made, vis-à-vis the total of the cases forwarded to the judge); Yes
 - the average time to judgment (the time required to deliver a judgment by a judge after the completed hearing); Yes
 - any other quantitative indicators. No
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; No. This is dealt with when a case comes on for appeal.
 - the number of appeals vis-à-vis the number of the cases, where a decision has been made; No
 - the number of decisions reversed and/or cases remitted by the appellate court; No
 - the types of cases where decisions were reversed and/or cases remitted (criminal, civil, administrative or other); No
 - the grounds for reversal and/or remittal; This is shown in the appeal judgment.
 - any other qualitative indicators. No
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? The views of the Presidents of the Court may be taken into account but officially the criteria in assessing a judge are set by the Supreme Council of Judicature.

8. Does the evaluation take into account possible violations of ethical and professional rules/standards adopted for judges? Yes.
9. Is there any set scale of importance or of priority between various performance indicators? (please specify) No, but emphasis is given on the quality of performance.

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. Only the Supreme Court of Judicature, composed only of all the members of the Supreme 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. The criteria are the same for all.
12. Is evaluation a continuous process or is it done periodically; if the latter, how often are judges evaluated? It is a continuing process but the actual assessment is done on promotions.
13. Are the evaluations done routinely, or only or additionally for specific occasions and/or for specific reasons? As above.
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 evaluation is done by the members of the Supreme Council of Judicature without any oral submissions or interviews. The Council has before it the records and the statistics of each individual judge and is cognizant of the general and overall performance of judges.
15. What are the ratings used during evaluations? No specific ratings exist but prominence is given on the quality of judgments and decisions, followed by the productivity factor.
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; It may affect the promotion, otherwise there is no demotion.
 - a professional award to a judge; N/A
 - disciplinary or other measures; Yes
 - a requirement of further training; N/A
 - dismissal from office; Yes, but only on disciplinary proceedings.
 - any other actions or measures (positive or negative). No.
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 records are kept by the Chief Registrar at the Supreme Court without any time limit. Only the Supreme Court may examine them and they are kept in paper form.
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). Not available.

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 evaluating body is clearly defined but there not as yet published guidelines. All judges know that the evaluation is based on quality, productivity, general behaviour and overall performance.

21. Are there any protective measures during the evaluation process to avoid personalised opinions or political pressures? No, but no politics are involved in the whole process whatsoever.
22. How is the participation of a judge in the evaluation procedure ensured and how are his/her views taken into account? The judge to be evaluated does not participate in the process. Evaluation is not a disciplinary procedure.
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) No.
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? As the evaluation of a judge leading to promotion is considered a pure judicial act, and is not of an administrative nature, no review is possible by way of appeal, or an administrative recourse. There has been a case of non promotion against which an administrative recourse was filed but it was dismissed by the Supreme Court. There is now pending another case which is pending. On disciplinary proceedings the judge may defend himself using the services of a lawyer and has the full armour of the criminal procedure in his favour, including calling witnesses and cross-examination.

E. Achievements and problems

26. Please briefly describe achievements and problems of the evaluation system used in your country. As we follow the common law system the whole process is considered judicial in nature and not of an administrative kind with detail records etc. However there is room for improvement and there is a continuing dialogue at the Supreme Court on this.

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?
There does not exist any formal frame for evaluation or assessment of judges in the Czech Republic.
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.

B. Criteria for evaluation and assessment

No criteria are given.

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

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

C. Procedures and mechanisms

No procedures and mechanisms are given.

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.
11. Are there different evaluation procedures for different judges, depending on their position in the judicial hierarchy, their experience or any other aspect?
12. Is evaluation a continuous process or is it done periodically; if the latter, how often are judges evaluated?
13. Are the evaluations done routinely, or only or additionally for specific occasions and/or for specific reasons?
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)
15. What are the ratings used during evaluations?
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).
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?
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)
19. Please provide, if possible, an example (anonymous) of an evaluation/assessment form/sheet/record filled out (if possible, in English or French).

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?
21. Are there any protective measures during the evaluation process to avoid personalised opinions or political pressures?
22. How is the participation of a judge in the evaluation procedure ensured and how are his/her views taken into account?
23. Is any self-evaluation by a judge or evaluation by his/her peer judges at the same hierarchical level possible?
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)

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?

E. Achievements and problems

26. Please briefly describe achievements and problems of the evaluation system used in your country. The only occasion of evaluation of judges in the Czech Republic is the disciplinary proceeding based on complain on the bad quality of judges work. Greatest number of this complains is because of enormous number of the pending cases. It means, that the most important criteria is quantity of cases, not quality of hearing or decision.

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.

The Danish delegation takes cognizance of the fact that the questionnaire is not intended to relate to the process of selection of judges or the recruitment of judges. We understand that any evaluation, which is taking place in the process of promoting judges, is also not intended to be included in the present questionnaire.

In Denmark there is a lot of focus on evaluation and assessment in the process of appointing or promoting judges, and it is not possible to become a judge without having had a professional career of a high standard concerning legal matters – for instance as a deputy judge, a lawyer, a professor, etc. – during at least 10-15 years after having passed a university law degree.

However once a Danish judge is appointed no individual evaluation of performance will take place during his tenure.

Many diverse activities are continually going on to assure the quality of the jurisprudence in general, but none of these activities comprise evaluation of the performance of individual functioning judges.

In Denmark such evaluation is considered to be very problematic and not in harmony with the functional independence of the judiciary, which is secured by our Constitution.

Article 64 in The Danish Constitution guarantees the independence of the courts, inter alia by providing that the judges shall be directed solely by the law, including secondary legislation issued by the administration under statutory authority. Furthermore article 64 protects a judge against arbitrary removal, since removal and transfer against the will of the judge may take place only by court decision and only in case of gross misconduct or lasting illness. Such cases are according to the Danish Court Administration Act decided by a special court – The Special Court of Indictment and Revision (*Den særlige Klageret*) – chaired by a Supreme Court judge and composed of two judges from the lower courts, a practicing lawyer and a professor in law.

The Special Court of Indictment and Revision cannot review a judge's judicial decisions, but can take disciplinary actions against a judge in cases concerning complaints regarding improper or unseemly behavior of a judge, including complaints regarding marked inability to cope with the cases within a reasonable time. If the Court finds that the judge has behaved improperly or unseemly in his acts in office, the Court can state criticism or issue a fine, and in cases of gross misconduct, the Court can – as mentioned above – decide the removal or the transfer of the judge.

It follows however from the above mentioned, that the questionnaire aims at collecting information about evaluation systems concerning judges, which do not exist in Denmark.

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

1. Does individual evaluation and/or assessment of judges exist in your country? Only as a result of a concrete complaint against a judge concerning improper or unseemly behavior, or concerning gross misconduct or lasting illness, see the commentary under "Introduction"
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.

B. Criteria for evaluation and assessment

- 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.
- 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.
- 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?
- Does the evaluation take into account possible violations of ethical and professional rules/standards adopted for judges?
- Is there any set scale of importance or of priority between various performance indicators? (please specify)

C. Procedures and mechanisms

- 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.

As mentioned in the commentary under “Introduction” The Special Court of Indictment functions as a disciplinary body in cases of complaints regarding improper or unseemly behavior of a judge.

- Are there different evaluation procedures for different judges, depending on their position in the judicial hierarchy, their experience or any other aspect?
- No.
- Is evaluation a continuous process or is it done periodically; if the latter, how often are judges evaluated? Evaluation is only done as a result of a complaint.
- Are the evaluations done routinely, or only or additionally for specific occasions and/or for specific reasons? See the above answer.
- 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)

Normally during deliberating in writing after having got the acts of the case and written statements from the persons involved, including from the judge.

16. What are the ratings used during evaluations?
17. 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).

Se the commentary under “Introduction”

18. 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 Court’s evaluation of the case results in a judgement, which is recorded the same way as other judgements.

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

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

21. 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?
22. Are there any protective measures during the evaluation process to avoid personalised opinions or political pressures?
23. How is the participation of a judge in the evaluation procedure ensured and how are his/her views taken into account?
24. Se the answer to question 14.
25. Is any self-evaluation by a judge or evaluation by his/her peer judges at the same hierarchical level possible?
26. 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)
Is regulated by the general provisions [in](#) The Court Administration Act concerning incapacity.
27. 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 judgement of the Special Court of Indictment and Revision can be appealed to the Supreme Court.

E. Achievements and problems

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

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?
According to the law, assessment exists only for judges of less than three years length of service.

In 2011, Estonian Court en Banc made a resolution suggesting discussion between Court's President and a judge in order to give feedback both judge's performance and court management. These discussions are held on voluntary bases, as needed, and are not documented. Following answers concern assessment of new judges.*

**Estonian Court en Banc is a self governing body which consists of all Estonian judges.*

2. If yes, what is its purpose and rationale?
The purpose is to evaluate new judge's suitability for the office.
3. Is it compulsory or optional, and does it apply to all judges in the country?
It is compulsory.
4. How it is established and regulated:

It is regulated by the law (The Courts Act) and internal institutional regulatory instrument (the standard format of opinion is established by the Judge's Examination Committee).

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;
Yes, compared to particular court's and national average
 - the average time spent on each of these cases;
Observance of the procedural deadlines
 - the average number of hearings per case;
*Optional**
 - clearance rate (number of the cases, where a decision has been made, vis-à-vis the total of the cases forwarded to the judge);
*Optional**
 - the average time to judgment (the time required to deliver a judgment by a judge after the completed hearing);
*Optional**
 - any other quantitative indicators.
** List, set by the Examination Committee is open.*
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;
*Optional**
 - the number of appeals vis-à-vis the number of the cases, where a decision has been made;

- Yes
 - the number of decisions reversed and/or cases remitted by the appellate court;
Yes
 - the types of cases where decisions were reversed and/or cases remitted (criminal, civil, administrative or other);
Yes
 - the grounds for reversal and/or remittal;
*Optional**
 - any other qualitative indicators.
* *List, set by the Examination Committee is open. However, Court's President is supposed to give an opinion about judge's capabilities, personal characteristics and co-operation with colleagues and participants of the proceedings.*
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?
Yes. Any information available is taken into account. In practice, Bar Association's and Prosecutor's Office opinion has been asked.
8. Does the evaluation take into account possible violations of ethical and professional rules/standards adopted for judges?
Yes
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.
- a) *Once a year, chairmen (presidents) of courts shall submit their opinion concerning judges of less than three years length of service employed in the corresponding courts to the Judge's Examination Committee.*
 - b) *The Judge's Examination Committee* shall hold a session where the judge whose suitability is assessed is heard. The examination committee shall give its opinion.*
 - c) *The decision is made by the Supreme Court en banc**. Upon assessment of suitability for the office of judge, the Supreme Court en banc shall consider the proposal of a person or body entitled to commence disciplinary proceedings***, the opinion of the Judge's Examination Committee and other information characterising the work of the judge. At least ten days before the suitability of a judge is discussed at a session of the Supreme Court en banc, a reasoned proposal of a person or body entitled to commence disciplinary proceedings to release the judge from office and the opinion of the judge's examination committee shall be presented to the judge whose suitability for office is assessed, and he or she is allowed to examine the gathered materials.*
- * *The Judge's Examination Committee shall have ten members and be formed for five years. The judge's examination committee shall be comprised of two judges of the court of first instance elected by the Court en banc, two circuit court judges, two justices of the Supreme Court, one jurist designated by the council of the Law Faculty of the University of Tartu, a representative of the Ministry of Justice designated by the Minister of Justice, a sworn advocate designated by the leadership of the Bar Association and a public prosecutor designated by the Chief Public Prosecutor. In order to hold the examination, the chairman of the Judge's Examination Committee shall form a panel comprising of at least five members, three of whom shall be judges.*
- ** *The Supreme Court en banc consists of all Supreme Court justices.*
- ****The following have the right to commence disciplinary proceedings:*
- 1) *the Chief Justice of the Supreme Court, against all judges;*
 - 2) *the Chancellor of Justice****, against all judges;*
 - 3) *the chairman of a circuit court, against judges of courts of first instance in his territorial jurisdiction.*

4) the chairman of a court, against the judges of the same court;

5) the Supreme Court en banc against the Chief Justice of the Supreme Court.

**** The Chancellor of Justice is in his or her activities an independent official who reviews the legislation of general application of the legislative and executive powers and of local governments for conformity with the Constitution and the Acts of the Republic of Estonia.

11. Are there different evaluation procedures for different judges, depending on their position in the judicial hierarchy, their experience or any other aspect?
No.
12. Is evaluation a continuous process or is it done periodically; if the latter, how often are judges evaluated?
Evaluation is done every year for the first 3 years from appointment for office.
13. Are the evaluations done routinely, or only or additionally for specific occasions and/or for specific reasons?
Evaluations are done routinely.
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 p 10.
15. What are the ratings used during evaluations?
See p 10.
16. What are the consequences of the evaluation and how may it affect the career of a judge? Can it result in:
In case of negative evaluation - dismissal from office.
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?
No specific rules.
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).
See answers 5-9.

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?
Evaluating body is clearly defined by the law. The procedure is also set by the law and Statute of the Examination Committee.
21. Are there any protective measures during the evaluation process to avoid personalised opinions or political pressures?
There is no detected information about political pressure. Opinions are created by the discussion and voting of evaluating bodies.
22. How is the participation of a judge in the evaluation procedure ensured and how are his/her views taken into account?
The judge in question is heard by the Committee and the Supreme Court en banc.
23. Is any self-evaluation by a judge or evaluation by his/her peer judges at the same hierarchical level possible?
The judge in question does not have to make a self-evaluation. The Examination Committee members – see answer 10.

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)
It is possible to appeal against the decision of the Examination Committee to the Supreme Court en banc.
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?
See previous answer. The Supreme Court decision is final.

E. Achievements and problems

26. Please briefly describe achievements and problems of the evaluation system used in your country.
Personal characteristics of the judge plays increasing role in our system. However, it is unclear how to evaluate these characteristics.

Finland / Finlande

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?
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.

Finland is a country where courts are under the administration of the Ministry of Justice and where there is no such an independent institution as High Council of Judiciary. The Ministry has not recommended nor introduced any uniform evaluation or assessment procedures for judges. However, it is a common practice in different bodies of state administration that heads of bureau or department have regular individual discussions (“development discussions”, “career discussions”) with the members of their personnel concerning their progress in the career.

Nowadays this practice is followed also in most courts of law although it has not been made compulsory by any general order given within the judiciary or outside of it. The discussions cover all the different groups of the personnel.

As far as judges are concerned, the judges in a leading administrative position in a chamber of a court have this kind of discussions with the judges in their chamber and the president of the court with those in a leading administrative position in the different chambers. A discussion of this kind takes place every year or every second year.

It is usual that the judge being responsible for the discussion makes preparations for this occasion by giving the judge coming to the discussion a special form to be filled by the latter including questions concerning his expectations, experiences, criticism and wishes in the work. The form can also include a self-evaluation of the judge in his daily work. The leading judge can also ask the opinion of his colleagues in this issue before the discussion. After the discussion the leading judge or president gives his evaluation of the different skills of the judge and

recommends measures to be taken so that progress can be made in the career path. A separate feed-back discussion can also follow.

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.
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 far as I know, in most cases only quantitative indicators are applied. The leading judge gathers beforehand information about the number of cases, average time spent, clearance rate etc. General attitude towards the use of qualitative indicators may be reluctant. It is, perhaps, thought that the independence of an individual judge is jeopardized if he is asked to explain, for example, why so many of his decisions have been reversed during the last year.

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?

In principle, such indicators could be taken into account. However, this requires that the quality of adjudication of the court in question has been evaluated from a larger perspective so that media surveys and other extensive surveys (different experts, "clients" etc) have been made beforehand. There are not many examples of this kind of court evaluation in Finland, perhaps only one or two.

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

It is my opinion that if such violations happen, they have to be dealt with in the discussion.

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

I am not aware of any such set scale. Anyway, the forms used in different courts to facilitate the discussions resemble, more or less, each other. The first questions usually concentrate on the issue how well the judge masters the substance of law he applies in his cases. The quality aimed for should be balanced with the nature of the cases the judge is dealing with.

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.

The president of the court takes care that the discussions will take place and gives the time-table for them.

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

The formal procedure is more or less the same but the set of questions to be taken up in the discussions is tailor-made and varies according to the position of the judge in the judicial hierarchy.

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

The process is of a continuous nature and the discussions take place every year or every second year.

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

Evaluations are made routinely. As they take place so often, there is in practice no reason for specific occasions.

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 framework of the evaluation discussion has been given above. The forms to be filled by the judge before the discussion have been prepared in cooperation with the groups of personnel concerned. A copy of that form filled by the judge is given to the leading judge before the discussion. The president of the court gives the time-table for the discussions and the discussions are carried out by the leading judges who also are responsible for giving feed-back to those concerned. The president carries out the discussions with the leading judges.

15. What are the ratings used during evaluations?

There is no uniform rating. The evaluation is verbal and descriptive.

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).

The main purpose of these evaluation discussions, which are often called “development discussions” or “career discussions”, is to give, on one side, the judge in question a possibility to tell his opinion of the general “state of affairs” or atmosphere in the court as well as his personal needs and expectations in work. The leading judge answers the questions and evaluates the judge’s contribution to the work of the court. The leading judge also points out, if necessary, the areas on which the judge could improve his performance. For this purpose, it can be necessary to have a feed-back discussion later. Such direct consequences as promotion or dismissal are typically not part of this system.

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 leading judge takes notes of the discussion and saves them for the feed-back discussion. The notes are not saved any longer neither are they used for any other purpose.

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)

There may be many different kinds of private discussions but they never reach the status of an evaluation as used in this context.

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

Unfortunately no forms are available in English or French.

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?

I don't think that transparency is a problem in the system described above. It is usual that the court's personnel is called to a meeting to discuss the different aspects of the coming discussions. Sometimes some experts in employment relations have been asked to give a presentation of the "ideology" behind these discussions. Also the forms to be used are discussed beforehand.

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

No, there are no specific measures of this kind. These questions can be dealt with on a general level. I am not aware of any such problems.

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

At least in my court there has been not one case of abstention. The system is based on voluntariness. When the leading judge has completed the discussions he makes a summary of the expectations, wishes and criticism presented by the judges and presents it to the president.

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

Self-evaluation is part of the "development discussion" system as presented above.

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)

To carry out these discussions is part of the duties of the leading judge. If there is a serious conflict situation between the leading judge and a judge in his chamber, the latter will be moved to another chamber by the president. I cannot recollect any such case.

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?

His disagreement is written down during the discussion. It will also be taken up in the feed-back discussion.

E. Achievements and problems

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

The system described above is a smooth one and based on mutual understanding and discussion. It is a useful tool to create better atmosphere in the work place. It also helps the judge to see his strong and weak points and to develop his skills, but it is not an evaluation system in the real sense of the word.

Introduction

Le questionnaire vise à recueillir, autant que possible, des informations sur l'évaluation de la performance des juges en fonction. Par conséquent, le questionnaire n'est pas lié au processus de sélection et/ou de recrutement des juges. Les réponses au questionnaire permettront d'identifier les règles en vigueur dans les États membres, et seront utilisées pour la préparation de l'Avis n° 17 (2014) du CCJE, indiqué ci-dessus.

A. L'évaluation individuelle des juges: but et cadre réglementaire

1. L'évaluation individuelle des juges existe-t-elle dans votre pays?

L'évaluation des magistrats est prévue par l'ordonnance n° 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature (article 12 – de cette ordonnance) et est organisée dans son détail par un décret n° 93-21 du 7 janvier 1993 (articles 18 à 21).

2. Si oui, quel est son but et la raison?

Il s'agit, aux termes de l'article 12-1 de l'ordonnance susvisée, d'évaluer « l'activité professionnelle » du magistrat. L'article 20 du décret susvisé précise que l'autorité chargée de l'évaluation porte sur l'activité du magistrat une appréciation d'ordre général, énonce les fonctions auxquelles il est apte et définit, le cas échéant, ses besoins de formation.

3. Est-elle obligatoire ou facultative, et s'applique-t-elle à tous les juges dans le pays?

Elle est obligatoire et doit avoir lieu tous les deux ans.

Elle ne s'applique, ni aux magistrats hors hiérarchie de la Cour de cassation, ni aux chefs des cours d'appel.

4. Comment est-elle établie et réglementée:

- par la loi;
- par la législation subordonnée;
- par des instruments réglementaires institutionnels.

Comme indiqué ci-dessus, l'évaluation professionnelle des magistrats est établie par la loi et précisée par un décret.

B. Les critères d'évaluation

5. Existe-t-il des indicateurs quantitatifs de performance qui doivent être pris en compte, tels que:

- le nombre d'affaires dans lesquelles la décision a été rendue par un juge;
- une durée moyenne de traitement de chaque affaire;
- le nombre moyen d'audiences par affaire;
- le taux de variation du stock d'affaires pendantes (le nombre d'affaires résolues par rapport au nombre total d'affaires transmises au juge);
- la durée moyenne de jugement (le temps nécessaire pour rendre un arrêt par un juge à la fin de l'audience);
- d'autres indicateurs quantitatifs.

Il n'existe pas de normes générales d'ordre quantitatif s'appliquant à l'ensemble des juridictions.

Mais l'ensemble des critères susvisés est pris en compte par les évaluateurs, en tenant compte des spécificités de chaque juridiction, des contentieux traités par le magistrat et des contraintes auxquels il est soumis, notamment en cas de sous-effectif de la juridiction, spécialement de la formation de jugement auprès de laquelle le magistrat exerce ses fonctions.

Il est certain par exemple, qu'un magistrat exerçant ses fonctions dans un tribunal ne connaissant aucune difficulté particulière de fonctionnement et qui se trouve dans l'incapacité de rédiger ses jugements dans un délai raisonnable fera l'objet d'une évaluation professionnelle négative.

6. Existe-t-il des indicateurs qualitatifs de performance qui doivent être pris en compte, tels que:

- l'analyse du type, du sujet et de la complexité d'affaires traitées par un juge, et ses décisions;
- le nombre d'appels par rapport au nombre d'affaires dans lesquelles une décision a été rendue;
- le nombre de décisions renversées et/ou d'affaires renvoyées par la cour d'appel;
- les types d'affaires où les décisions ont été renversées et/ou d'affaires renvoyées (pénales, civiles, administratives ou autres);
- les motifs pour renverser des décisions et/ou renvoyer des affaires;
- d'autres indicateurs qualitatifs.

Bien que les décisions prises par la juridiction de recours soient communiquées à la juridiction dont les décisions sont réformées, le taux d'appel, le pourcentage de décisions approuvées ou contredites par la juridiction de recours ne font pas généralement partie des critères d'évaluation des magistrats, à moins que de graves défiances dans la connaissance ou l'application des règles de droit, souvent dues à une insuffisance de formation ou à une négligence dans les efforts de formation continue, soient signalées de manière réitérée à l'attention des évaluateurs.

Ceux-ci s'attachent surtout à l'existence et à la qualité des motivations données aux jugements, le juge étant par principe (sauf les défiances précédemment signalées) libre de statuer dans le sens qui lui paraît appropriée aux situations de fait et de droit qui lui sont soumises.

7. Existe-t-il d'autres indicateurs qui sont pris en compte dans l'évaluation du juge, tels que les avis des usagers de la justice, de la hiérarchie judiciaire, des experts judiciaires et des autres parties concernées par la procédure judiciaire, ainsi que des articles de presse?

Les avis des tiers à l'institution ne sont pas pris en compte en principe par les évaluateurs, en raison de leur caractère parcellaire et subjectif.

En revanche, si ces avis révèlent des dysfonctionnements (exemples : comportement anormal d'un magistrat à l'audience ; motivation comportant des appréciations excédant les limites de ce qui est admissible vis-à-vis des parties), les évaluateurs sont en droit, et ont même le devoir, d'en vérifier la réalité et, s'il y a lieu, d'en tenir compte au moment de l'évaluation

8. L'évaluation prend-elle en compte d'éventuelles violations des règles/normes éthiques et professionnelles de juges?

Le respect des normes éthiques et professionnelles est un élément important de l'évaluation.

9. Existe-t-il une échelle définie pour mesurer l'importance ou la priorité des différents indicateurs de performance? (veuillez préciser)

Non

C. Les procédures et les mécanismes

10. Qui est responsable de l'évaluation individuelle des juges? Veuillez indiquer toutes les institutions et les fonctionnaires qui prennent part à ce processus (y compris le ministère de la Justice, les présidents des tribunaux, le Conseil de la Justice, des organismes d'inspection des tribunaux), et indiquer leurs rôles spécifiques.

Ni le Conseil supérieur de la magistrature, ni les organismes d'inspection des tribunaux n'ont de rôle en ce qui concerne l'évaluation des juges.

L'évaluation est établie :

Par le premier président de la cour d'appel pour les magistrats du siège de leur ressort ;

Par le procureur général près la cour d'appel pour les magistrats du parquet de leur ressort ;

Par le premier président de la Cour de cassation pour les conseillers référendaires et les auditeurs à la Cour de cassation ;

Par le procureur général près la Cour de cassation pour les avocats généraux référendaires de cette Cour ;

Par le directeur ou le chef de service pour les magistrats de l'administration centrale du ministère de la justice en fonctions dans leur direction ou dans leur service.

Il existe quelques règles particulières, prévues par l'article 19 du décret susvisé, pour les magistrats exerçant des fonctions dans les collectivités territoriales d'outre-mer, pour ceux qui sont en position de détachement ou auprès de certaines juridictions particulières.

11. Existe-t-il des procédures d'évaluation différentes pour les différentes catégories de juges, en fonction de leur position dans la hiérarchie judiciaire, leur expérience ou tout autre aspect?

Comme indiqué précédemment, il n'y a pas d'évaluation pour les magistrats placés au sommet de la hiérarchie judiciaire.

Ceci ne signifie pas qu'ils soient soustraits à toutes règles :

Le régime disciplinaire des magistrats est applicable à tous ;

Les fonctions de chefs de cours d'appel sont limités à 7 ans et peuvent ne pas être renouvelées par le Conseil supérieur de la magistrature ;

L'activité professionnelle des magistrats de la Cour de cassation est contrôlée par les présidents des chambres de la Cour et par le premier président de cette Cour.

12. L'évaluation est-elle un processus continu ou périodique, si ce dernier, quelle est la périodicité de l'évaluation des juges?

L'évaluation doit avoir lieu tous les deux ans.

13. Les évaluations sont-elles faites régulièrement, ou de manière unique ou supplémentaire pour des occasions et/ou des raisons spécifiques?

En cas de présentation du magistrat pour un avancement, une évaluation spécifique de son activité doit être réalisée.

14. Comment l'évaluation est-elle effectuée? (veuillez préciser les procédures, y compris une éventuelle pré-évaluation, des entretiens, des audiences, des présentations orales et verbales et le rôle des évaluateurs et d'un juge)

L'évaluation commence par une présentation par le magistrat évalué de son activité.

Un entretien a lieu ensuite avec le chef de sa juridiction ou avec le chef du service dans lequel le magistrat exerce ses fonctions.

L'évaluation définitive est enfin faite par l'un des magistrats ou responsables de services précédemment indiqués.

15. Quelles sont les appréciations (ratings) utilisées lors des évaluations?

Appréciation sur les compétences professionnelles générales

Appréciation sur les compétences professionnelles juridiques et techniques

Appréciation sur les compétences professionnelles spécifiques, selon les fonctions exercées

Appréciation générale (aptitude générale à l'exercice des fonctions de responsabilités ; besoins de formation).

16. Quelles sont les conséquences de l'évaluation et comment peut-elle affecter la carrière d'un juge? Quel peut-en être le résultat:

- la promotion ou la rétrogradation d'un juge;
- la distinction professionnelle d'un juge;
- les mesures disciplinaires ou autres;
- la demande de formation continue;
- la destitution;
- d'autres actions ou mesures (positives ou négatives).

Aucune mesure de rétrogradation ou de destitution ne peut être prise sans procédure disciplinaire préalable. L'évaluation, si elle n'est pas favorable, peut en revanche avoir des incidences négatives sur les possibilités de promotion d'un magistrat.

17. Comment sont enregistrées l'évaluation et les mesures recommandées, où sont déposés les dossiers et pour quelle durée, et qui peut les examiner?

Les dossiers des magistrats comportent, pendant toute la durée de leur carrière, les évaluations dont ils ont fait l'objet.

Les dossiers sont consultables : par le magistrat lui-même ; par la commission qui statue sur les contestations des évaluations (voir infra) ; par les autorités de nomination en cas de proposition du magistrat pour un avancement ; par les autorités en charge de la discipline, si le magistrat fait l'objet d'une procédure disciplinaire.

18. En plus des évaluations formelles indiquées ci-dessus, des évaluations informelles sont-elles effectuées? (par exemple, des consultations informelles et des conseils de juges de rang plus élevé)

Elles peuvent avoir lieu, mais toute appréciation tirée de ce type de consultation doit indiquer sa source, car, en cas de contestation de l'appréciation par le magistrat évalué, celui-ci doit être en mesure de savoir l'origine d'une évaluation négative.

19. Veuillez fournir, si possible, un exemple (anonyme) d'une forme/feuille/bulletin d'évaluation rempli (si possible, en anglais ou en français).

D. L'évaluation vis-à-vis de l'indépendance des juges

20. Par quels moyens la transparence du processus d'évaluation est-elle assurée? L'organisme d'évaluation est-il clairement défini? Existe-t-il des lignes directrices publiées pour définir les critères d'évaluation et les règles pertinentes de procédure?

Les lignes directrices relatives à l'évaluation des juges ont été élaborées par le ministère de la justice, notamment par une circulaire du 18 février 2011.

L'organisme d'évaluation est l'un de ceux précédemment cités et dépend des fonctions exercées par le magistrat. Tout magistrat évalué a connaissance des évaluations dont il fait l'objet et peut la contester.

21. Existe-t-il des mesures de protection pendant l'évaluation afin d'éviter des avis personnalisés ou des pressions politiques?

Les mesures de protection consistent, d'une part en l'élaboration par le supérieur direct d'une évaluation provisoire portée à la connaissance du magistrat qui peut présenter ses observations, d'autre part en l'attribution du pouvoir d'évaluation définitive aux chefs des cours d'appel (ou de certaines autres autorités précédemment désignées pour des catégories particulières de magistrats), enfin en la possibilité de contestation de l'évaluation définitive ouverte au magistrat évalué devant la commission d'avancement, présidée par le président de chambre le plus ancien de la Cour de cassation et composée exclusivement de magistrats, désignés de droit ou élus par leurs pairs.

22. Comment est assurée la participation d'un juge dans la procédure d'évaluation et la prise en compte de son avis ?

Le juge doit élaborer un état de son activité au début du processus d'évaluation.

Il peut présenter toutes observations utiles lors des entretiens organisés, avec son supérieur direct et avec le chef de cour qui procède à l'évaluation définitive.

Il peut contester, comme indiqué ci-dessus son évaluation définitive.

23. Une auto-évaluation par un juge ou une évaluation par ses pairs au même niveau hiérarchique est-elle possible?

Elle n'est pas pratiquée en France.

24. Un juge peut-il demander la destitution (temporaire ou permanente) d'un membre de l'organisme d'évaluation? (par exemple, en cas des raisons sérieuses de croire que ce membre peut avoir une attitude *a priori* négative envers le juge évalué)

Non, pas de demande de destitution possible, mais, en cas de contestation de l'évaluation devant la commission d'avancement, ce moyen de préjugé à l'encontre de l'évaluateur fait partie de ceux qui peuvent être invoqués pour justifier une modification de l'évaluation.

25. Quelles sont les possibilités d'une révision (y compris judiciaire) d'évaluation d'un juge, si ce dernier n'est pas d'accord avec l'évaluation et les mesures prises à la suite de ses conclusions?

Comme indiqué ci-dessus, le magistrat évalué peut contester son évaluation devant la commission d'avancement de la magistrature.

Celle-ci émet un avis et peut demander au chef de cour de modifier son évaluation en cas d'erreur manifeste d'appréciation de sa part.

Si le chef de cour ne suit pas l'avis de la commission d'avancement, le magistrat évalué peut former un recours juridictionnel qui sera porté devant le Conseil d'Etat.

E. Le progrès et les problèmes

26. Veuillez décrire brièvement le bilan et les problèmes du système d'évaluation utilisé dans votre pays.

Le système d'évaluation des juges en France fait l'objet de critiques régulières émanant, soit des magistrats évalués qui lui reprochent notamment de ne pas tenir compte suffisamment de la réalité d'exercice des fonctions dans les différentes juridictions, soit des autorités de nomination à des fonctions supérieures qui estiment parfois que ces évaluations passent sous silence des éléments d'appréciation négatifs.

Cette tendance s'explique notamment par la crainte que l'élément négatif, s'il est d'une importance relative (par exemple, la difficulté à rendre les jugements dans les délais prescrits) et même s'il a disparu au fil du temps, pèse d'une manière défavorable sur les évolutions de carrière du magistrat.

Le système actuel d'évaluation devrait être reconsidéré, mais aucun consensus n'existe encore quant aux orientations susceptibles de l'améliorer.

ANNEXE

COUR DE CASSATION

FICHE D'EVALUATION 2011-2012

Nom :

Nom d'usage :

Situation de famille :

Fonctions exercées :

Prénom

Juridiction :

DESCRIPTION DE L'ACTIVITE DU MAGISTRAT

(à remplir par l'évaluateur dans la seule hypothèse où celui-ci ne serait pas totalement en accord avec la description opérée par le magistrat)

Le présent document, à **remplir par le chef de cour d'appel, le directeur ou chef de service**, est divisé en 2 thèmes et est clôturé par une appréciation d'ordre général.

Pour chacun des thèmes, il convient de rédiger une appréciation littéraire, illustrée par un tableau.

Vous trouverez ci-dessous la définition des qualificatifs utilisés (exceptionnel, insuffisant...) et de certaines rubriques.

La colonne «non renseigné» de la grille ne peut être utilisée que très exceptionnellement (mutation très récente, rubrique non pertinente eu égard aux fonctions exercées).

Il convient ensuite de renseigner les rubriques spécifiques à la fonction exercée par le magistrat (chef de juridiction, ou secrétaire général ou MACJ...)

DEFINITION DES QUALIFICATIFS UTILISES

Exceptionnel : cette qualification doit être attribuée aux magistrats qui maîtrisent avec un degré éminent de perfection leurs missions et dans lesquelles ils sont parvenus à un parfait niveau d'efficacité. Il est impératif de motiver cette appréciation qui doit rester d'un emploi particulièrement restreint.

Excellent : cette qualification est attribuée aux magistrats qui maîtrisent leurs missions avec un très haut niveau d'efficacité. Cette qualification doit rester d'un emploi restreint.

Très bon : cette qualification doit être attribuée aux magistrats qui maîtrisent et accomplissent remarquablement leurs missions.

Satisfaisant : cette qualification doit être attribuée aux magistrats qui remplissent leurs fonctions correctement.

Insuffisant : cette qualification doit être attribuée aux magistrats qui rencontrent des difficultés dans l'exercice de leurs fonctions. Elle traduit des manquements ou des insuffisances dans le travail fourni. Il est impératif de motiver cette appréciation.

I - COMPETENCES PROFESSIONNELLES GENERALES, JURIDIQUES ET TECHNIQUES

I - A - COMPETENCES PROFESSIONNELLES GENERALES

Bon sens et jugement

Connaissance du contexte socio-économique dans lequel s'exerce l'activité

Force de caractère, maîtrise de soi

Capacité d'écoute et d'échange : ce critère recouvre notamment l'ouverture d'esprit, l'attention et le respect portés à autrui, dans l'exercice des fonctions.

Sens des responsabilités : traduit en particulier la manière dont le magistrat mesure les conséquences des décisions prises.

Capacité à décider : il s'agit, pour le magistrat, de la capacité à résoudre les litiges qui lui sont soumis, à prendre les mesures relevant de sa compétence ou à traiter les affaires après un délai de réflexion raisonnable.

Capacité à s'organiser et à respecter les délais

Capacité à gérer les situations dans l'urgence

Puissance de travail et efficacité : cette rubrique doit permettre d'apprécier la capacité du magistrat à traiter, dans les meilleures conditions, sur les plans qualitatif et quantitatif, les affaires dont il a la charge.

Capacité d'adaptation : ce critère permet d'apprécier la capacité du magistrat à assimiler et mettre en œuvre les évolutions législatives, à s'adapter à de nouvelles fonctions ou attributions, à faire face à des transformations structurelles ou conjoncturelles de son service, aux techniques nouvelles et à des situations imprévues.

Esprit d'initiative

Respect du justiciable

Disponibilité et engagement professionnel

Capacité à mettre en œuvre les moyens nécessaires pour réaliser les objectifs fixés

Aptitude à exercer des fonctions d'encadrement

Qualité des relations avec les autres magistrats

Qualité des relations avec les agents du greffe

Implication dans le fonctionnement des greffes

Qualité des relations avec les autres professions et institutions : cette rubrique vise à apprécier la qualité des relations professionnelles entretenues, selon les fonctions ou attributions du magistrat avec les auxiliaires de justice, les services de police ou de gendarmerie, les administrations, les collectivités territoriales, les associations, les services sociaux, etc...

Implication dans le fonctionnement de la juridiction : cette rubrique concerne le fonctionnement de l'activité juridictionnelle et extra juridictionnelle.

Capacité à exercer l'autorité

Capacité à représenter l'institution judiciaire

I - B - COMPETENCES PROFESSIONNELLES JURIDIQUES ET TECHNIQUES

Précision et étendue des connaissances juridiques

Capacité à utiliser et actualiser ses connaissances juridiques : ce critère permet d'appréhender la capacité à analyser et à apprécier une situation de fait et de droit et à lui apporter une solution par un raisonnement juridique approprié et actualisé. Elle permet aussi d'apprécier les besoins de formation pour actualiser ou perfectionner les connaissances ou les méthodes de travail.

Capacité d'analyse
Capacité de synthèse
Qualité de l'expression écrite
Qualité de l'expression orale
Maîtrise des nouvelles technologies de l'information et de la communication (NTIC)

II – COMPETENCES SPECIFIQUES A CERTAINES FONCTIONS

L'évaluation de ces compétences concerne plus particulièrement les fonctions spécifiquement exercées.

Pour les fonctions de chef de juridiction, de chef de service ou de secrétaire général :

Capacité à mettre en œuvre les politiques judiciaires
Capacité à animer une juridiction ou un service et à exercer l'autorité : cette rubrique permet d'apprécier la capacité du magistrat à maîtriser des fonctions d'animation en recherchant l'adhésion et en faisant, le cas échéant, accepter le changement.
Capacité à la gestion dyarchique : capacité de définir en commun un projet de juridiction et de le mettre en œuvre.
Capacité d'anticipation et de proposition
Capacité à élaborer et conduire un projet
Capacité à communiquer : cette rubrique concerne aussi bien la communication interne que la communication externe.
Capacité à fixer des objectifs et adapter des moyens
Capacité à organiser et conduire des réunions
Capacité à gérer les ressources humaines : capacité à porter attention au parcours professionnel des magistrats, capacité à conduire le dialogue social.
Capacité d'organisation et de planification
Capacité à communiquer
Capacité de gestion (budgétaire, immobilier, équipement, hygiène et sécurité...)

Pour procureur de la République uniquement :

Capacité à conduire des politiques pénales
Capacité à s'inscrire dans la relation hiérarchique statutaire

Pour les fonctions du parquet :

Capacité à gérer un service
Capacité à mettre en œuvre les politiques pénales
Capacité à s'inscrire dans la relation hiérarchique statutaire
Capacité à s'inscrire dans une relation d'équipe
Capacité à conduire un projet
Capacité à requérir et à débattre à l'audience

Pour les fonctions du siège :

Capacité à rédiger une décision claire et applicable
Capacité à gérer un service
Capacité à conduire une audience et mener les débats : cette rubrique permet de rendre compte de la capacité à s'exprimer avec clarté et aisance, à exposer les différents aspects d'une affaire, à conduire les débats.
Capacité à gérer les conflits
Aptitude à la collégialité

Pour les fonctions de MACJ ou de magistrat détaché :

Capacité à élaborer et conduire un projet
Capacité rédactionnelle
Capacité à conduire des réunions
Capacité d'adaptation à des fonctions extra juridictionnelles
Capacité à s'inscrire dans une relation hiérarchique
Capacité à s'inscrire dans une relation d'équipe

Pour les fonctions d'encadrement uniquement :

Capacité à mettre en œuvre des politiques publiques
Capacité d'anticipation et de proposition
Capacité à animer un service et à exercer l'autorité
Capacité à fixer des objectifs
Capacité à gérer les ressources humaines
Capacité de gestion (budgétaire, immobilier, équipement, hygiène et sécurité...)

I - A – Appréciations littérales sur les compétences professionnelles générales

<u>I-A – Compétences professionnelles générales</u>	Exceptionnel	Excellent	Très bon	Satisfaisant	Insuffisant	Non renseigné
Bon sens et jugement						
Connaissances du contexte socio-économique dans lequel s'exerce l'activité						
Force de caractère, maîtrise de soi						
Capacité d'écoute et d'échange						
Sens des responsabilités						
Capacité à décider						
Capacité à s'organiser et à respecter les délais						
Capacité à gérer les situations dans l'urgence						
Puissance de travail et efficacité						
Capacité d'adaptation						
Esprit d'initiative						
Respect du justiciable						
Disponibilité et engagement professionnel						
Capacité à mettre en œuvre les moyens nécessaires pour réaliser les objectifs fixés						
Aptitude à exercer des fonctions d'encadrement						
Qualité des relations avec les autres magistrats						
Qualité des relations avec les agents de greffe						
Implication dans le fonctionnement des greffes						
Qualité des relations avec les autres professions et institutions						
Implication dans le fonctionnement de la juridiction						
Capacité à exercer l'autorité						
Capacité à représenter l'institution judiciaire						

I - B – Appréciations littérales sur les compétences professionnelles juridiques et techniques

<u>I-B –Compétences professionnelles juridiques et techniques</u>	Exceptionnel	Excellent	Très bon	Satisfaisant	Insuffisant	Non renseigné

Précision et étendue des connaissances juridiques							
Capacité à utiliser, actualiser et perfectionner ses connaissances juridiques							
Capacité d'analyse							
Capacité de synthèse							
Qualité de l'expression écrite							
Qualité de l'expression orale							
Maîtrise des nouvelles technologies de l'information et de la communication (NTIC)							

II – Appréciations littérales sur les compétences professionnelles spécifiques (selon les fonctions ci-dessous suivantes) :

FONCTIONS DU SIEGE	Exceptionnel	Excellent	Très bon	Satisfaisant	Insuffisant		Non renseigné
Capacité à rédiger une décision claire et applicable							
Capacité à gérer un service							
Capacité à conduire une audience et mener les débats							
Capacité à gérer les conflits							
Aptitude à la collégialité							

Appréciations générales : elles porteront notamment sur les besoins de formation et les fonctions auxquelles le magistrat est apte.

Fait le

Nom et prénom :

Qualité :

Signature :

NOTIFICATION DE L'ÉVALUATION PROVISOIRE

(En l'absence d'observation de la part du magistrat, la présente évaluation sera considérée comme étant définitive)

Pris connaissance le :

Signature du magistrat intéressé :

Observations du magistrat intéressé, le cas échéant :

**APPRECIATION COMPLEMENTAIRE DU CHEF DE COUR
(en cas d'observation)**

Nom, Prénom :

Date et signature :

NOTIFICATION DE L'EVALUATION DEFINITIVE

Pris connaissance le :

Signature du magistrat intéressé :

Le magistrat est avisé qu'il dispose, à compter de la date à laquelle la présente évaluation a pris un caractère définitif, d'un délai de :

- 15 jours pour saisir, par la voie hiérarchique, la commission d'avancement d'une contestation***
- ou de 2 mois pour saisir le Conseil d'Etat d'une requête.***

Toute saisine de la commission d'avancement d'une contestation a pour effet de suspendre le délai de recours contentieux.

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?

There are two types of assessment

- (i) Recently there were adopted amendments to the Law on General Courts (Act of Parliament), according to which all judges are appointed or reappointed for the term of 3 years (3 years examination period) during which the High Council of Justice shall appoint a member who will assess the activity of the judge after each of the above mentioned three years.
 - (ii) There is another assessment (adopted by Act of the High Council of Justice) is called Assessment of the Efficiency of Judge's Activity. It takes place once in 6 months.
2. If yes, what is its purpose and rationale?
 - (i) It's hard to say what is the purpose, probably the purpose is to appoint only the high qualified judges because from 2013 the judges are appointed for life term (if they pass the 3 year tenure - examination period - successfully).
 - (ii) To find out how efficient is a judge in his/her activities. When promoting the judge the purpose is to select the best candidate.
 3. Is it compulsory or optional, and does it apply to all judges in the country?
 - (i) Assessment set by the Law (Act of Parliament) is compulsory and applies only to all those judges of first instance court and of the appeals court who were appointed or reappointed for the 3 years term.
 - (ii) As for another assessment by Individual Act of the Council it also applies only to the judges of first instance court and of the appeals court.
 4. How it is established and regulated:
 - by legislation;
 - by subordinate legislation;
 - by internal institutional regulatory instruments.
 - (i) The general provision about 3 year tenure of the new judges (3 year examination period) as mentioned above is included in the law (Act of Parliament), however, the details of the procedure most probably will be included in by-laws or internal institutional regulations.
 - (ii) The assessment set by the Council itself is included in by-law (Act of the High Council of Justice).

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.

- (i) The details are not available yet for the first type of assessment (Act of Parliament)
(ii) By-law adopted by the Council stipulates that assessment includes the following components

- a) Quantity of ratio of finalized cases;
- b) Complexity of the cases finalized;
- c) Meeting with the procedural deadlines;
- d) Meeting with the terms of preparation of the motivated judgment;
- e) Stability of the judgments;

These components are assessed separately from each other and are then combined in one general assessment.

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.

- (i) There is no information available yet for the first type of assessment;
(ii) As for the assessment according to by-law of the Council, it includes the following qualitative indicators

- a) analysis of the type, subject and complexity of the cases dealt with by a judge and his/her decisions
- b) the number of decisions reversed and/or cases remitted by the appellate court;

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 there are no other indicators (mentioned in the question above) that are taken into account in assessing the judge.

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

The assessment set by the Council does not include any stipulation in this regards.

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

Yes, there is. In the assessment set by the Council each of the five components mentioned in the answer to question 5 has its own value in general assessment. For example-

- Quantity of ratio of finalized cases is 35% of the general assessment;
- Complexity of the cases finalized is 20% of the general assessment;
- Meeting with the procedural deadlines is 15% of the general assessment;
- Meeting with the terms of preparation of the motivated judgment is 10% of the general assessment;
- Stability of the judgments is 20% of the general assessment;

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.

- (i) As mentioned above, it is the High Council of Justice (based on the report of one of its members) which assesses the judges.
 - (ii) In second type of assessment it is the High Council of Justice too which is in charge of assessment.
11. Are there different evaluation procedures for different judges, depending on their position in the judicial hierarchy, their experience or any other aspect?

No, there are not different evaluation procedures for different judges. The only issue is that the judges of the Supreme Court do not fall within the scope of the assessment requirements.

12. Is evaluation a continuous process or is it done periodically; if the latter, how often are judges evaluated?
- (i) It's compulsory during first 3 years of the tenure and takes place after each year.
 - (ii) It's compulsory in every 6 months and when promoting the judges.
13. Are the evaluations done routinely, or only or additionally for specific occasions and/or for specific reasons?
- (i) Evaluations during examination period are done each year as mentioned in paragraph 12 above.
 - (ii) Evaluations set by Council are done once in 6 months.
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)
- (i) The details of the procedure is not stipulated yet. Most probably those issues will be addressed in by-laws.
 - (ii) The courts send all the statistical data necessary for the assessment and through special software all the statistics is calculated per each judge.

15. What are the ratings used during evaluations?
- (i) For the assessment set by the Act of Parliament there is no information available yet.
 - (ii) The rates of general assessment mentioned in answer to question 9 are calculated in percentages and the ratings below is applied
- A+ (101%-111%) The highest quality
 - A (91%-101%)
 - B (81%-91%)
 - C (71% - 81%)
 - D (61% - 71%)
 - E (51%-61%)
 - F (0%-51%) Non-satisfactory

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).
- (i) For those who are appointed for 3 years it may result either in reappointment for life term or for termination of their office.
 - (ii) It may influence the promotion and may result either in promotion or in non-promotion.
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?
- (i) Each year different members of the High Council of Justice prepare the reports that are submitted to the members of Council 3 months prior to termination of 3 years term. They will be deposited in the Council itself.
 - (ii) The evaluation is kept in the Council itself.

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, there are no other informal evaluations envisaged (however it's not excluded that the Council may ask for someone's opinion but this will not be kept in official recordings).

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

I am afraid it's not possible.

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?

For the first type of assessment (Act of Parliament) so far there are no clear rules set since the process has not started yet. There are no published guidelines and no procedural rules.

As for the second type of assessment (Act of the Council) the body is clearly defined, the rules are set in the Act which is published in the website. The procedure is not directly mentioned however, it is presumed that all the necessary data shall be sent to the Council by the courts.

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

No, there are no special protective measures during evaluation process. However, the evaluation set by the Council is mainly based on courts' statistics and in this regard may not be that much dependent upon political opinions.

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 the judge is not ensured at all and his/her views are not heard.

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

No, it is not possible (officially of course).

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)

Since the evaluation is carried out by the Council (the members of which are elected in different ways) the judge has no authority to demand their dismissal.

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?

There are no mechanisms to review the evaluation, however, the decision (based on the report) of the High Council of Justice can be appealed in the court.

E. Achievements and problems

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

The evaluation of the judge (set by Act of Parliament) is very new and there is not enough information yet to describe it. When the procedure is set for evaluation system then it may be possible to identify the shortcomings. The only thing to be said now is that evaluation of the judges each year during first three years is not in conformity with the principles of independence of judiciary.

As regards the procedure set by the Council itself, this is based too much on statistical data and the figures may not describe that well everything. Some flexibility maybe useful for such a procedure.

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 main purpose and rationale is to assess performance and aptitude of the judge, aiming at a comparative overview of the standing and ranking of all members of the judicial staff. This is necessary in preparation for decisions on judicial appointments, regardless whether they are promotions or transfers from one judicial position to another. Evaluations are especially essential if more than one judge applies for an open judicial position.

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

It is compulsory in all federal states (Länder), applying to all judges. Judges who have reached a certain position or a certain age (over 50 or over 55) may be exempted. Invariably, evaluation is necessary in case of an application for promotion.

4. How it is established and regulated:

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

The basic necessity of evaluation is established by legislation, usually in the act regulating the law of civil service or in the Land legislation concerning the judiciary. Details (content, point systems, intervals of evaluation) are usually established by internal regulatory instruments.

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.

All of the above mentioned indicators are, as a rule, being taken into account. Such statistical data may also be mentioned in the evaluation. With respect to judicial independence, it is however inadmissible to formulate specific expectations, to compare individual data or to weigh the judge's performance against any kind of absolute aim. Only if a judge falls clearly short of what may be perceived as an average performance, this might be expressed.

Note: At present, a court case is pending where a president of a court of appeal has reprimanded a judge or at least indicated to him that he is not meeting average performance standards. The president maintains that the judge is in effect handling only 68 percent of the average number of cases handled by other judges. The judge claims that he can only handle this volume of cases if he applies standards which – in his judicial independence and conscience - he believes necessary. The judge lost his case in the judicial service court (Richterdienstgericht) at first instance. The appeal is now pending. It is likely that the case will finally be brought before the federal constitutional court should the judge not be successful in the courts below.

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; - generally, yes -

- the number of appeals vis-à-vis the number of the cases, where a decision has been made; - *generally, not; the number of appeals is not in itself regarded as a significant quality indicator* -
- the number of decisions reversed and/or cases remitted by the appellate court; - *generally, not; with respect to judicial independence, it should be taken into account that the court below may be right and the appellate court could be wrong* -
- the types of cases where decisions were reversed and/or cases remitted (criminal, civil, administrative or other); - *no* -
- the grounds for reversal and/or remittal; - *generally not; in exceptional cases, e.g. severe procedural errors or grave misinterpretations of the law, this might be the case* -
- any other qualitative indicators.

Other qualitative indicators are, e.g.:

- *The judge's conduct vis-à-vis litigants, lawyers, witnesses, experts, officers of the court, other staff, lay judges, the public;*
 - *the way hearings are conducted (approach, openness, structure of the hearing, use of professional language, ability to "translate" into language understandable for the layperson)*
 - *ability to mediate and to reach settlements*
 - *ability to legal research*
 - *ability to draft clear and understandable judgments (structure, content, clear language)*
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?

This is principally possible; the evaluator is under a duty to take into account all possible aspects of professional performance. Therefore, he has to consider all relevant information that comes to his notice. This may especially include information received from senior judges, from other colleagues, from members of the bar.

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

Yes

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

Some of the Lander use evaluation sheets where separate points are awarded for several specified criteria. Such points are usually aggregated to a final mark, but not in a strict mathematical sense. Again, it is usually the individual responsibility of the evaluator to decide whether - given the professional task which has been assigned to the individual judge - certain aspects of evaluation should be weighed higher than others.

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.

Invariably, responsibility for the evaluation lies with the president of the regional court; in cases of judges of a court of appeal, the president of this court is responsible. In some of the Lander, there is also a final competence of the Ministry of Justice. In cases of judges of courts of first instance, the president of the Court of Appeal as a rule has to express whether he follows the assessment of the president of the court below; this re-evaluation is established in order to guarantee well balanced and uniform standards (otherwise the president of a court of first instance could award high marks to his judges with the result that the judges of his court might get promoted ahead of those of other courts).

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

No, individual positions, experience and knowledge have to be taken into account, however. The procedure remains the same.

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

As a rule, evaluation is a continuous process and done periodically, usually every 4 or 5 years. In most of the Lander, there exist regular "evaluation campaigns", in order to at a fixed date provide a comprehensive comparative view of performance and aptitude of all members of the judiciary.

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

Routinely, cf. 12, above; also on specific occasions, e.g. applications for promotions, transfers, leave of absence.

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 evaluator or a judge assisting him as a first step gathers all relevant information. This includes looking into court files, reading judgments, following court hearings or trials, receiving information from colleagues, court users etc..

As a second step, a draft evaluation is written and communicated to the judge, either solely in writing or in combination with an oral explanation.

The judge then has the opportunity to comment on the draft, present his objections and/or suggestions and to ask for a discussion with the evaluating court president.

Having taken possible objections into account, the court president decides on the final version of the evaluation which is then communicated in writing to the judge.

After this the judge is free to formally lodge his objections in writing and, if the evaluator does not follow his view, to challenge the evaluation in court. Such challenge can be done by bringing an action in the administrative court (for instance alleging that the evaluator has not diligently collected all relevant information, that he has erred in his conclusions, that he has not observed procedural rules). In the event that the judge feels that the content of the evaluation infringes his personal judicial independence, he may apply to the judicial service court (Richterdienstgericht) to have the matter reviewed.

15. What are the ratings used during evaluations?

The Lander use slightly different ratings. Usually there are rankings like "excellent", "good", "above average", "average", "not sufficient". Quite often, further rankings like "upper level" and "lower level" are used additionally. This equals a point ranking of between 10 and 15 levels.

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; - promotion yes, demotion no (demotion is only possible in cases of severe misconduct and only on the basis of a disciplinary decision of the judicial service court (Richterdienstgericht) -
- a professional award to a judge; - no -
- disciplinary or other measures; - no -
- a requirement of further training; - no -
- dismissal from office; - no, except with junior judges not yet appointed for life -
- any other actions or measures (positive or negative). - selection of candidates for promotion -

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?

Evaluations always become part of the personal staff file of the judge. They are continuously kept there throughout the judge's working life. The judge concerned may always examine them. They may also be examined by competent persons (court presidents, their assistants, the presidential staff council, the Ministry of Justice), e.g. in the context of decisions on promotion. Data, information and materials gathered in preparation of the evaluation have to be destroyed once it is clear that the evaluation itself is not being contested.

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)

Such informal evaluations do exist, on a voluntary basis. Peer review given by judges of seniority or of equal standing is fairly common.

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

See annex; some of the Lander also use point systems for specific criteria.

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?

Relevant regulations and guidelines are generally published and hence well known to all judges. Competences, procedural rules and, in so far as it is possible at all, criteria are clearly defined and transparent to all involved in the process.

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

All evaluation processes have a certain personalized component. External pressure is avoided because the evaluator, the court president, is himself a judge, because judges participate in the process and because, most important of all, all evaluations are subject to judicial review.

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

Cf. 14, above.

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)

Yes, under the same circumstances under which a party to litigation can demand that the judge be removed, i.e. if from the point of view of a reasonable person there is reason to believe that the evaluator may be prejudiced or biased.

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?

Cf. 14, above; there is always judicial review.

E. Achievements and problems

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

Achievements of the evaluation systems in Germany lie in the fact that an objective process is established, that there is a clear professional duty of the evaluator to consider all relevant facts and that he is under a duty to substantiate his judgment especially if it contains negative aspects. Judicial independence is clearly guaranteed. The right to judicial review is the cornerstone of this guarantee and also an efficient safeguard against arbitrary evaluations. In general, having such a system as a basis for decisions on promotion is regarded as superior to promoting on the basis of rumor or word of mouth.

Some judges, however, feel there is no necessity for regular evaluations. They feel watched and sometimes controlled by the court president whom they perceive as a distant person not sufficiently familiar with the problems of their daily work. They also feel that evaluations as such are already contrary to judicial independence (although the courts up to the constitutional court have long established that this is not the case). Another problem can be the practice of evaluation: evaluation systems do not make sense if they do not produce a sufficient and significant ranking of those evaluated. This necessitates establishment of a restrictive practice which avoids bringing to many judges in the highest ranking categories. To keep up such restrictive practice in the light of sometimes quite intensive pleadings and objections by individual judges is often quite difficult for evaluators. Decisions on promotions, however, could not possibly be based on evaluations if "friendly" evaluations would result in all those concerned being ranked "top" at the same level.

Appendix VII – German evaluation sheet

Name: Michael Everybody
Position: judge, court of appeal, Cologne
Date and Place of Birth: April 4, 1958, Boomtown
Address: Castlestreet 12, Cologne
Civil state: married, 3 children
Exams: first state exam 1984: “sufficient”
second state exam 1988: “fully satisfactory”
Appointments: 1985: Article Clerk
1988: (junior) Judge
1992: Judge (appointed for life), Regional Court Cologne
2003: Judge, Court of Appeal, Cologne
Assignments: 1992-1993: local court, Cologne
1999-2000: court of appeal, Cologne

Judge at the Court of Appeal Michael Everybody in his time in the regional court Cologne was a member of various panels for first and second instance civil cases and for first instance criminal cases. From 1993 to 1996 he was deputy presiding judge of a panel for homicide cases. After this he was a member of the panel for crimes against the state and from 1998 until his assignment to the court of appeal he sat in a panel for appeals in probate cases. After his assignment to the court of appeal he was a member and deputy presiding judge of two panels for first instance civil cases who had to deal mainly with construction cases. At the court of appeal, Judge Everybody sat from 2003 to 2005 in a panel on appeals in construction cases; in addition to this, for some months with half his working force he was assigned to a panel dealing with appeals on costs and another panel hearing company law cases. Between 2005 and 2007 he belonged first to a panel hearing appeals in international sale cases and again construction cases. Since 2008 Judge Everybody is a member and deputy presiding judge of the panel dealing with bank cases.

Judge Everybody has published books and articles on construction law and is teaching in seminars for lawyers. He is also sitting as an examiner in law exams.

Professional Competence

Judge of the court of appeal Everybody is a judge with complete experience in civil and criminal cases. He commands excellent, widespread and deeply founded knowledge of the law. He knows how to apply this knowledge of the law to the individual case with an ability for deep scientific research – where this is necessary -, but also with excellent practical skills, with a down-to earth and clear view of essential issues and with distinct social competence. He shows critical, independent thinking and judgment and a balanced, infallible intuition. His understanding of the role of a judge is exemplary. He meets litigants, advocates and witnesses with competence and at all times guarantees impartial conduct of hearings and of decision-making.

Due to his high professional and intellectual abilities judge Everybody is able to appraise exactly even very voluminous, complex and manifold cases, to analyze them clearly, to structure the issues and to write an easily understandable, structured report of the facts of a case with exact emphasis on important issues. Thanks to his laudable engagement and stamina he is able to acquaint himself shortly and thoroughly with legal fields so far not familiar to him. Hereby, at the court of appeal, in a very short period of time he has acquired profound knowledge in the fields of construction law, costs, company law, probate and the law of banking and stocks. He commands a remarkably wide judicial expertise and knowledge in these fields. Especially in the law of banking he is an expert with excellent, very profound knowledge. With his high engagement and great sense of duty he prepares even the most complex cases deeply and thoroughly and leads them to a very balanced and convincing outcome. His opinions are well structured and show complete and exact reception of the facts. They are phrased in easily understandable language. Relevant legal issues are reported thoroughly with reference to leading cases, textbooks and learned opinions. His draft judgments are in clear, transparent and consequential order; they show convincing reports of the deliberations of the court and are precise in their wording. The judge’s oral reports in the deliberations are well prepared, instructive and easy to follow. He stands to his opinion with thoughtful arguments but is always open to hear and discuss the views of his colleagues. In cases where he is not charged with the task of rapporteur he still intervenes in with thoughtful and knowledgeable ideas.

As deputy presiding judge of the panel judge Everybody regularly presides over one tenth of the cases of the panel. In these cases but also in times of absence of the presiding judge he conducts the business of the panel with great competence. He conducts hearings excellently prepared in a quiet, professional way and a very constructive, benevolent atmosphere. He is very successful in explaining the preliminary opinions of the panel in a convincing way to parties and advocates and hereby often reaches conciliatory settlements.

Personal Competence

Judge Everybody is a very learned, open-minded person with multiple interests. He works with great enthusiasm, industriously, with great concentration and swiftness but at the same time thoroughly and is absolutely reliable. His sense of duty and responsibility, his flexibility and personal preparedness as well as his social competence are exemplary. He is able to shoulder even long-lasting high workloads with no sign of fatigue and without shortcomings in the quality of his work. Repeated simultaneous assignments in two panels with different special fields were easily mastered by him. He is open for new working techniques and makes use of modern information technology.

Social Competence

With his collegiality and assistance judge Everybody helps creating and maintaining a good working climate in his panel. In court he is open, polite, competent and well-balanced towards all persons present. He explains preliminary views and opinions of the panel in an emphatic, open, easily understandable way which can be understood well even by lay litigants. Judge Everybody who shows a friendly, quiet, polite and (in a positive way) self-assured standing, is highly respected among his colleagues and the support staff.

Competence to Lead

With his own high commitment judge Everybody works towards efficient and rational organization of the work in the panel. This applies especially in those cases where he acts as presiding judge. By his own conduct he sets an example for other members of the panel, integrating them and motivating them. His co-operation with the support team is constructive and efficient. He knows how to incorporate interests and views of the support team in the conduct of the work of the panel for which he is responsible.

The overall view of the performance of judge Everybody shows excellent professional competence, a very distinct sense of duty and responsibility, great flexibility and preparedness to take over diverse fields and assignments of judicial work.

Knowledge, abilities and performance of this very industrious and engaged judge are at the date of this report (January 1, 2013)

High above average (upper level).

It is likely that even higher performance will be assessed in the future.

Cologne, February 2013
The president of the Court of Appeal

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 and/or assessment of judges exists in the judicial system of Greece.

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

The purpose of the evaluation is to record the performance and to evaluate the work and behaviour of judges.

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

It is compulsory and applies to all judges, except for the Judges of the Supreme Court.

4. How it is established and regulated:

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

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);

Note: In some cases, i.e. in labour cases the average time is shorter.

- any other quantitative indicators.

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.

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?

In assessing a judge the opinion of the local Bar Association via its President and the opinion of the judicial hierarchy are also taken into account.

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

Yes, there are statutory ethical and professional rules.

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

The legal substance of every case is examined and the replies provided by the judgment to the claims put forward by the litigants.

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.

Members of the Supreme Courts and the Presidents of the Appellate Courts are not evaluated except in certain cases, such as very serious violation of the code of ethics.

The Ministry of Justice is responsible only for members of the Supreme Courts. The Presidents of the Appellate Courts are responsible for the judges of the lower courts.

The evaluating body, i.e. the Supervisory Council of Courts and the evaluator/supervisor for every judicial district, and their jurisdiction is clearly defined in the Code of Organization of Courts and Code of Ethics for the Judiciary.

Every year the Supreme Court elects by draw in a plenary session the President of the Supervisory Council of Courts among the Vice-Presidents of the Court. The members of the Supervisory Council and the supervisor for every judicial region are also elected by draw among the members of the Supreme Court and the General Prosecutor's Office.

In order to prepare the evaluation report on each judge of his/her district, the evaluator/supervisor visits all courts in his/her region, has a personal interview with every judge, studies all penal and civil decisions issued by the judge, has a meeting with the President of each Court and the President of the local Bar Association. (S)he can also attend a trial, etc. Regarding lower courts, the evaluation can be done by the President of the district Court of Appeal, following the same procedure.

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

The evaluation rules are the same for all judges. The evaluating body, i.e. the Supervisory Council of Courts and the evaluator/supervisor and their jurisdiction is clearly defined in the Code of Organization of Courts and Code of Ethics for the Judiciary.

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

Evaluation is a continuous process conducted annually; however, a separate evaluation can be done in special circumstances.

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

Evaluations are done routinely.

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)

Every year the Supreme Court elects by draw in a plenary session the President of the Supervisory Council of Courts among the Vice-Presidents of the Court. The members of the Supervisory Council and the supervisor for every judicial region are also elected by draw among the members of the Supreme Court and the General Prosecutor's Office.

The evaluator/supervisor visits all courts in his region, has a personal interview with every judge, studies all penal and civil decisions issued by the judge, has a meeting with the President of each Court and the President of the local Bar Association. (S)he can also attend a trial, etc. Regarding lower courts, the evaluation can be done by the President of the district Court of Appeal, following the same procedure.

15. What are the ratings used during evaluations?

Evaluators/ supervisors evaluate the moral conduct and character of judges, their scientific expertise, their sound judgment and perception, their diligence, hard work, professional performance (in qualitative and

quantitative terms), their skills in awarding justice, in issuing judgments and coordinating the judicial process, as well as their social conduct and presence in court.

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;

Note: In very rare cases due to violations of ethical standards.

- any other actions or measures (positive or negative).

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 is a special record of the reports of each judge, which is kept in the Ministry of Justice and the Supreme Court (Areios Pagos) Reports can only be examined by the members of the Supervisory Council and the Supreme Court and the person concerned. The record is kept throughout a judge's career.

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)

There are no informal evaluations. Of course, senior judges may give their advice and share their experience with other judges.

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

Example:

The above-mentioned judge, ..., has served as a judge from ... to ..., 2013. He has served at the Courts of First Instance of Korinthos, Chalkis and Athens. He is now serving in the Department of Labor Law. After checking the decisions he has issued, I have noticed that almost all of them have very good structure, the legal problems posed are solved thoroughly and efficiently and he has provided the right solutions. Also, he has issued his decisions within reasonable time.

According to the meetings I have had with the President of the Court and the personal interview, I can attest that he also has a very good presence and conduct at the Court. His moral (character) is very good and his legal knowledge is sufficient.

Therefore, I have come to the conclusion that he is qualified to be promoted to the next rank.

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 the evaluation rules and criteria are the same for all judges.

The evaluating body, i.e. the evaluator/supervisor, and its jurisdiction is clearly defined in the Code of Organization of Courts and Code of Ethics of the Judiciary.

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

As mentioned above (in Answer 20), there are rules protecting every judge. Political pressure cannot be and is not imposed. However, any evaluation carries an amount of personal opinion.

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

There are personal interviews and meetings with every judge, and therefore the evaluator/supervisor acquires direct knowledge of the work produced by the specific judge.

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 statutory provision. (It is not possible).

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)

It can be done, but it almost never happens.

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?

If a judge does not agree with his/her evaluation, (s)he can ask for a review from the relevant Supervisory Council of the Courts.

E. Achievements and problems

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

The existing evaluation system guarantees uniform evaluation of the judiciary and a regular, thorough and complete inspection of serving judges.

The main problem is that in courts situated in big cities, the number of decisions is accordingly big, so the evaluator/supervisor faces a practical problem in his/her effort to take into account all the decisions issued by the judges under his/her supervision.

Hungary / Hongrie

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, it exists.

2 If yes, what is its purpose and rationale?

Its purpose is to assess whether the judge is able to fulfill his or her duty and to provide feedback to the judge from an independent source. The evaluation also aims to determine the skills and knowledge areas where the judge is really good at and where there is further room for improvement.

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

It is compulsory to complete it in every 8 year, but in special cases either the judge or the president of the court can ask for an ad hoc evaluation outside this period.

4 How it is established and regulated:

X by legislation;

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

B. Criteria for evaluation and assessment

5 Are there quantitative performance indicators that have to be taken into account, such as:

X 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.

6 Are there qualitative performance indicators that have to be taken into account, such as:

X analysis of the type, subject and complexity of the cases dealt with by a judge and his/her decisions;

X the number of appeals vis-à-vis the number of the cases, where a decision has been made;

X 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);

X the grounds for reversal and/or remittal;

- any other qualitative indicators.

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?

The opinion of the judges of upper court, who decide about the appeals against the judgments of the judge.

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

Only in the case, when the violation of ethical rules is stated in the Ethical Council's decision.

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

Such prioritization of performance indicators does not exist.

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.

The president of the court where the judge serves and the head of the department (e.g civil law department) or a judge appointed by him for the evaluation.

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

The judges who are in leading position (head or deputy head of departments, head of groups) are also evaluated based on their leadership skills.

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

The first evaluation takes place at the end of the 3. year after the judge's appointment. then in every 8 year. In the last 6 years prior to the retirement age the evaluation is not compulsory.

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

Both routinely and occasionally. Specific occasions are: promotion of the judge, suspect of incapability to fulfill his/her position.

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 evaluation is done based on examination of the selected cases, interview with the judge, written opinion of higher court judges and the experience of the attended hearings. The judge can express his or her opinion on the written evaluation. The president of the court makes the final statement as listed in question 15.

15 What are the ratings used during evaluations?

Excellent suitable for higher position, excellent, suitable, unsuited for the position

16 What are the consequences of the evaluation and how may it affect the career of a judge? Can it result in:

X the promotion or demotion of a judge;

- a professional award to a judge;

X disciplinary or other measures;

- a requirement of further training;

X dismissal from office;

- any other actions or measures (positive or negative).

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 evaluation is documented and the records are archived within the HR documents at the president of the court until the judge is in his/her position. The president and others authorized by him are entitled to access these documents, and the court on disciplinary matters.

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)

Informal evaluation does not exist.

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

1. HR information (information on previous professional experience, scientific and educational activities, special skills and knowledge)

2. Statements of the assessment (qualitative and quantitative assessment of the judge's cases from the assessment period [typically the previous calendar year], the experience from the attended hearings, and the level of collaboration of the assessed judge.

3. Evaluation

The assessment is completed in a table format, according to the ratings presented in question 15. e.g. decision making or communication skills

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?

Several different parties are involved in the evaluation process. In addition to the evaluation of the investigator, the examination of the cases concluded by the judge in the assessment period (partly chosen by the judge, and partly by the investigator) the opinion of the higher court judges about the quality of the work of the judge have great importance. The assessed judge is also interviewed and have the possibility to explain the working circumstances.

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

Political pressures are impossible because the evaluation is completed by judges, who are not entitled to make any political activities.

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

The judge can express his or her opinion in a long interview with the investigator.

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

It is not possible or anyway not usual.

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)

Such a possibility does not exist.

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 judge can put an appeal before the disciplinary court.

E. Achievements and problems

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

The interpersonal aspects might have greater importance than it should have.

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? **No. The only evaluation which takes place is when a judge (District Court judge or Supreme Court judge) is selected.**
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.

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.
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.
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?
8. Does the evaluation take into account possible violations of ethical and professional rules/standards adopted for judges?
9. Is there any set scale of importance or of priority between various performance indicators? (please specify).

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.
11. Are there different evaluation procedures for different judges, depending on their position in the judicial hierarchy, their experience or any other aspect? .
12. Is evaluation a continuous process or is it done periodically; if the latter, how often are judges evaluated? *Judges are evaluated just once or twice if they apply for a position of a judge at the Supreme Court.*
13. Are the evaluations done routinely, or only or additionally for specific occasions and/or for specific reasons?
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)
15. What are the ratings used during evaluations?
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).
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?
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)
19. Please provide, if possible, an example (anonymous) of an evaluation/assessment form/sheet/record filled out (if possible, in English or French).

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?
21. Are there any protective measures during the evaluation process to avoid personalised opinions or political pressures?
22. How is the participation of a judge in the evaluation procedure ensured and how are his/her views taken into account?
23. Is any self-evaluation by a judge or evaluation by his/her peer judges at the same hierarchical level possible?
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)
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?

E. Achievements and problems

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

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 purpose of the assessment procedure is to “describe with due completeness the qualities of each judge, in order to highlight in detail his or her professional features, the types of work carried out and his or her real aptitudes, framing such data within the parameters that are provided for under the existing provisions of law” (Resolution of the Italian High Council for the Judiciary – Consiglio superiore della magistratura, hereafter CSM - of 8 Oct. 2007, hereafter also quoted as Resolution of 2007).

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

The discipline to be described is applicable to all ordinary professional judges; this means that the procedure applies to judges active in the civil and criminal sectors of Tribunals, Court of appeals and Court of cassation, Juvenile courts, Penitentiary supervision courts and some other jurisdictions, as well as to members of public prosecution offices attached thereto (please consider that in Italy prosecutors belong to the same career as judges). The described procedures do not apply to justices of the peace, that are non professional judges, as well as to members of special professional jurisdictions, such as Administrative Tribunals, Council of State, Court of Auditors, Military tribunals, and to public prosecutors attached thereto; these special jurisdictions have their separate regulatory framework. Constitutional Court judges, serving a high constitutional office for a limited period of time, are not assessed.

4. How it is established and regulated:

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

The assessment procedure is established by law (art. 11, paragraph 3, of Legislative Decree no. April 5, 2006, n. 160, as amended by art. 2, paragraph 2, of the Law of 30 July 2007, n. 111, entered into force with effect from 31 July 2007). According to this article, the CSM, by October 30, 2007, was to issue a resolution governing "the bases on which assessments must be conducted on the judiciary, the parameters to be used to allow homogeneity of the evaluations, documentation that the Presidents of courts and prosecution offices shall submit to the local Judicial Councils ... ". Therefore, the law is implemented by way of an administrative regulatory instrument issued by CSM.

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.

Statistics relating to the work of the judge, compared to the work of other judges of the same chamber or court, are attached to assessment forms. Such statistics either directly show, or allow to calculate, the above quantitative indicators (please see chapter V of the Resolution of 2007).

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.

Analysis from a qualitative point of view of the work of the judge, compared to the work of other judges of the same chamber or court, has to be included in assessment forms. Reversal rates are kept into account, although such rates are not yet the object of statistics everywhere. Grounds for reversals are not usually considered.

Chapter V of the Resolution of 2007 expressly clarifies that evaluations were kept “objective”, so as to “prevent the reexamination of judicial and investigative activities and the merits of decisions or choices relating to investigations: the evaluation of professionalism, in fact, must be designed to only assess the quality of the methodology used, since otherwise it would interfere with constitutionally recognized independence of each 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?

The present discipline is characterized by the absence of a principle of typicality of sources and documents usable for assessment. So the Resolution of 2007, in order to ensure maximum completeness of the evaluation, allowed “the use of all documents that provide objective and relevant data related to professional activity and behaviours material to the professionalism of the magistrate”. The Resolution, on the one side, provides for a procedure necessarily including some sources (e.g., statistics): among those, reports formed within the judicial hierarchy. In particular, chief judges and prosecutors, on the basis of internal reports to them by chamber presidents and adjunct chief prosecutors, send a report to local Judicial Councils, composed of magistrates elected for a 4 yr. term in each district, which on their turn make an assessment proposal, then subjected to CSM for approval.

For what concerns other sources of information, Resolution of 2007 introduces some caution: “Obviously, to avoid any possible misunderstanding, in order to protect indisputable needs of the judge under scrutiny and to guarantee the objectivity of the evaluation, the absolute prohibition of use of anonymous sources and hearsay was established. It was deemed useful to provide a detailed indication of the sources of knowledge and documentation that can be acquired during the procedure, so as to provide the bodies responsible for the professional assessment of a list of acts, in relation to each parameter, allowing proper evaluation. It was therefore made clear what the relevant documentation that can be used is: among documents found at the CSM, only data placed in the personal file of the magistrate are relevant, as well as those existing at the offices of the First Committee and at the disciplinary section, obviously if not covered by secrecy, while the relevant documentation available from the Ministry of Justice consists in the inspection reports”. Therefore, claims from citizens etc. can be used for assessment only if CSM or the Ministry has deemed them material to at least start an action protecting the functionality of the Judiciary by way of a disciplinary action or the like. Lawyers’ claim can become relevant if the Bar association has given them relevance in writing.

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

Yes.

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

In general, no. Obviously, some indicators must necessarily be positive (impartiality etc.).

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.

Ministry of Justice, through the clerk serving in the court, provides statistics and inspection reports. They also provide a selection of decisions, taken randomly according to criteria objectively established "ex post" by local Judicial Councils (see below). The judge is then formally asked to submit a self-assessment (see below).

On the basis of such data, Presidents of Courts provide reports (on standard assessment forms) to local Judicial Councils (a Council is also established at the Court of Cassation); these bodies are composed of judges elected for a 4-yr. term.

Judicial Councils send their assessment proposals to CSM, which may approve, amend or ask to clarify assessment.

A new source of information may come from Committees established in each district to supervise case management and flow of cases.

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

In general, no. Please see above, for what concerns judges that are subjected to different or no assessment.

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

It is a periodical process, dealt with every 4 years.

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

They are done routinely. Should an assessment be negative, the next one will be performed in a set delay (see below) and must be positive. Assessments are kept separate from investigations and other inspections, that may be performed out of any periodical basis, should discipline be at stake.

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).

Please see above for the procedure and the roles of actors. One should add that the judge submits a self-drafted report as a starting point of the evaluation procedure, by which he or she may comment on the work done, difficulties, etc. Also, the judge may add to decisions selected randomly for the purposes of evaluation other decisions of his or her choice. The evaluation is substantially done in writing. Hearings are provided for upon request, both before local Councils or CSM, should any of the indicator be not positive.

15. What are the ratings used during evaluations?

Art. 11, paragraph 9, of Legislative Decree no. n. 160/2006 provides that the assessment must be carried out analytically, with reference to each of the parameters of the assessment referred to in paragraph 2 (capability, laboriousness, diligence and commitment), without adding any further specification; legislation then only states the consequences in cases in which the feedback referring to each of the aforementioned parameters is 'sufficient', 'insufficient' and 'seriously insufficient'. In light of this provision, the Resolution of 2007 by CSM distinguished, first, between three parameters, on one side (independence, impartiality and balance), which arguably are essential elements in the evaluation, and assessment regarding other parameters, on the other side (capability, laboriousness, diligence and commitment). The first three parameters, grouped in a single heading of the assessment form, are necessarily to be present in order for the evaluation to be positive and, should they not be, a motivation should be provided in the assessment (so the choices are "nothing to observe" or, as an alternative, an express inclusion of observations); for the other parameters, 'positive' (including sufficiency and degrees above), 'insufficient' and 'seriously insufficient' are the evaluations to be expressed in short, with motivation. The Resolution includes subparameters (see chapter VIII) and states that when some are missing the assessment is insufficient, when more are missing it is seriously insufficient.

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).

The Resolution states clearly the consequences of assessments:

a) *Positive Rating* . The assessment is positive when the assessment is positive in respect to all parameters examined. In this case, the judge passes the assessment, resulting in increased salary and acquisition of legitimacy to carry out higher functions (appeal judge, president of chamber, president of tribunal, etc.).

b) *Insufficient Rating*. If there are any deficiencies, in accordance with Chapter X of the Resolution, the whole assessment is not positive . In this case, after a year, the CSM conducts a new assessment of professionalism, acquiring a new opinion of the Judicial Council .

c) *Seriously Insufficient Rating*. If there are serious shortcomings within the meaning of the Chapters VIII and XI , the assessment will end with a negative opinion. In this case, the decision of CSM shall state explicitly the parameters missing and establishes whether the magistrate should eventually participate in additional training, indicating the nature and number of training initiatives, and whether the judge is unfit to carry out particular functions; in that case, CSM imposes assignment to another function until the next assessment, and decides whether exclusion should be applied from access to court or chamber president positions, or other specific functions. Copy of the decision must be forwarded to the School for the judiciary.

The CSM, in the case of a first negative assessment, proceeds to a new one two years after the expiry of the four-year period for which the assessment is given as negative. If the second evaluation is also negative, the magistrate is dismissed from service .

Against all assessments, the magistrate may request judicial review by the Regional Administrative Tribunal, the decision of which is subject to appeal before the Council of State.

For what concerns relationships between disciplinary procedures and assessment:

- 1) when a disciplinary proceeding is pending, depending on several circumstances the Resolution of 2007 establishes when the assessment is suspended necessarily and when it is suspended optionally;
- 2) when an assessment is negative, the CSM may initiate a disciplinary proceeding.

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 decision of CSM, relating to the status of the judge, is kept with no provision of any limitation, in the personal dossier of the judge; it is sent to the Minister of Justice. Access to the decision is governed by general regulations on access on public data.

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).

An empty form is enclosed, as provided by a Resolution amending Resolution of 2007. Both Recommendations are also enclosed.

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?

Seatings of local Judicial Councils and CSM are usually public; data are accessible; guidelines are published (above mentioned Resolutions, enclosed).

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

The above mentioned rules concerning filters for use of non judicial data for evaluation represent safeguards against personalized opinions and external pressures. Judicial review is always guaranteed.

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

The described role of a self-assessment, the possibility of hearings in front of local Councils and CSM, the possibility to submit observations in writing both on local reports and Judicial Council reports, as well as judicial review guarantee full participation of the judge.

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

For self-evaluation, see above. Judicial Councils are composed of peer judges, with the addition of the president of the Court of Appeal and the local Prosecutor General.

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)

No.

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?

See above for what concerns, during the assessment proceedings, the possibility to file written observations and to request hearings. After the proceedings, judicial review is possible.

E. Achievements and problems

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

Whereas the assessment process is still criticized on the press as being too lenient (on the basis of lack of information on actual data), the Reform introduced in 2006-2007 has now realized a very serious assessment procedure, against which many judges raise opposite objections of excessive severity, especially for what concerns negative assessments based on lack of respect by the judge of acceptable time to draft decisions, which may be caused by objective difficulties in organization of courts, backlogs and excess of caseloads. A recent Resolution of CSM is now effective, by which Court Chairs may provide a judge, in order to avoid negative assessments, specific programmes to deal with backlog of cases, e.g. by suspending assignment of new cases.

ANNEXE

Riformulazione dei modelli di rapporto del Capo dell'Ufficio e di parere del Consiglio giudiziario allegati alla circolare n. P. 20691 dell'8 ottobre 2007 in materia di "Nuovi criteri per la valutazione di professionalità dei magistrati a seguito della legge 30 luglio 2007, n. 111, recante modifiche alle norme sull'Ordinamento giudiziario".

(Delibera del 27 luglio 2011)

Il Consiglio superiore della magistratura, nella seduta del 27 luglio 2011, ha adottato la seguente delibera: "- In attesa di un intervento organico sulla circolare n. P. 20691 dell'8 ottobre 2007 in materia di "Nuovi criteri per la valutazione di professionalità dei magistrati a seguito della legge 30 luglio 2007, n. 111, recante modifiche alle norme sull'Ordinamento giudiziario" ha ritenuto opportuno dar corso ad una prima attività di semplificazione riguardante il modello di rapporto del Capo dell'Ufficio e di parere del Consiglio giudiziario allegati alla predetta circolare. - L'esigenza di una riflessione maggiormente approfondita nel necessario rispetto del quadro normativo di rango primario, ha indotto la Quarta Commissione a circoscrivere, allo stato, gli interventi all'ambito della riformulazione di alcuni degli indicatori dei diversi parametri.

In particolare, la riformulazione dei modelli ha interessato: 1. lo snellimento dei titoli dei paragrafi.

2. l'abbinamento delle voci omologhe nella numerazione dei parametri.

3. l'integrazione del parametro "indipendenza, ed imparzialità" con la voce "equilibrio", al fine della descrizione in concreto delle eventuali anomalie.

4. il riepilogo finale del giudizio, secondo gli esiti previsti dalla circolare, così da offrire una tavola sinottica di più agevole lettura.

5. l'inserimento di caselle da barrare in relazione alle diverse opzioni.

Tanto premesso il Consiglio delibera di approvare il nuovo modello di rapporto del Capo ufficio (Allegato 1) e il nuovo modello di parere del Consiglio giudiziario (Allegato 2) alla circolare n. P. 20691 dell'8 ottobre 2007 in materia di "Nuovi criteri per la valutazione di professionalità dei magistrati a seguito della legge 30 luglio 2007, n. 111, recante modifiche alle norme sull'Ordinamento giudiziario".

(Allegato 1)

RAPPORTO PER LA _____ VALUTAZIONE DI PROFESSIONALITÀ
del dott. _____

A. Dati generali del magistrato

Cognome e nome:

Luogo e data di nascita:

Decreto di nomina a magistrato ordinario (già uditore giudiziario):

Periodo di valutazione:

Funzioni ricoperte nel periodo in valutazione:

Ufficio e settore di appartenenza:

B. Fonti di conoscenza:

1. Relazione del

2. Rapporto del Capo dell'Ufficio.....del....

3. Parere del Consiglio Giudiziario del.....

4. Provvedimenti a campione del.....

5. Verbali a campione del.....

6. Statistiche.....

7. Produzioni spontanee.....

C. Giudizio in ordine all'indipendenza, imparzialità ed equilibrio

O Nulla da rilevare

O Profili che evidenziano difetti o criticità (da compilare nel solo caso in cui si ravvisino in concreto)

D. Valutazione del dirigente dell'ufficio in ordine al parametro della "capacità":

D.1

- a) Provvedimenti giudiziari
 - Tecnica redazionale ed espositiva
 - Uso dello strumento informatico
 - Aggiornamento dottrinale e giurisprudenziale
- b) Tecniche di indagine:
 - Correttezza
 - Aggiornamento dottrinale e giurisprudenziale

D.2 Sulle eventuali significative anomalie del rapporto esistente tra provvedimenti emessi o richiesti e provvedimenti non confermati o rigettati, in relazione all'esito, nelle successive fasi e gradi del procedimento, dei provvedimenti giudiziari emessi o richiesti, relativi alla definizione di fasi procedurali o processuali o all'adozione di misure cautelari:

D.3 Sulle modalità di gestione dell'udienza, in termini di corretta conduzione o partecipazione:

D.4 Sul livello dei contributi forniti in Camera di Consiglio

D.5 Sull'attitudine del magistrato ad organizzare il proprio lavoro e sulla capacità organizzativa e direttiva

D.6 Sulla capacità di rapportarsi in maniera efficace, autorevole e collaborativa con gli uffici giudiziari e i magistrati destinatari del coordinamento1:

E. Valutazione del dirigente dell'ufficio in ordine al parametro della "laboriosità":

E.1 Sulla congruità del numero di procedimenti e processi definiti per ciascun anno in relazione alle pendenze del ruolo, ai flussi in entrata degli affari ed alla complessità dei procedimenti assegnati e trattati:

E.2 Sul rispetto degli standard medi di definizione dei procedimenti (individuati ai sensi del Capo V

lett. b) Circolare prot. 20691 dell'8 ottobre 2007):

E.3 Sui tempi di trattazione dei procedimenti e dei processi (secondo quanto accertato ai sensi della lett. b) Capo V Circolare prot. 20691 del 2007):

E.4 Sulla collaborazione prestata per il buon andamento dell'ufficio

F. Valutazione del dirigente dell'ufficio in ordine al parametro della "diligenza":

F.1 Sul rispetto degli impegni prefissati e del numero di udienze, nonché dei termini per la redazione e il deposito dei provvedimenti o, comunque, per il compimento di attività giudiziarie :

1 Tale valutazione deve essere effettuata per i soli magistrati con funzioni di coordinamento nazionale.

F.2 Sulla partecipazione alle riunioni previste dall'ordinamento giudiziario per la discussione e l'approfondimento delle innovazioni legislative nonché per la conoscenza e l'evoluzione della giurisprudenza

G. Valutazione del dirigente dell'ufficio in ordine al parametro "impegno":

G.1 Sulla disponibilità alle sostituzioni riconducibili ad applicazioni e supplenze nonché della consistenza della collaborazione prestata su richiesta del dirigente dell'ufficio o del coordinatore della posizione tabellare o del gruppo di lavoro in ordine alla soluzione dei problemi di tipo organizzativo e giuridico:

G2 Numero di corsi di aggiornamento organizzati dalla Scuola Superiore della Magistratura2 , per i quali il magistrato abbia dato la disponibilità a partecipare o ai quali abbia effettivamente partecipato:

Giudizio finale:

- sull'indipendenza, imparzialità, equilibrio

positivo

negativo

- sulla capacità

positivo

carente

gravemente carente

- sulla laboriosità

positivo

carente

gravemente carente

- sulla diligenza

positivo

carente

gravemente carente

- sull'impegno

positivo

carente

gravemente carente

H. Valutazione di professionalità:

positiva

2 Fino a quanto non sarà operativa la Scuola Superiore della Magistratura, rilevano i corsi organizzati dal CSM anche nell'ambito della formazione decentrata.

non positiva

negativa

Data _____ Il Dirigente dell'Ufficio _____

ALLEGATI3:

3 Vanno allegati gli atti ed i documenti indicati al Capo XIV della richiamata circolare nonché le ulteriori e diverse fonti di conoscenza acquisite ai sensi del Capo VII.

(Allegato 2)

Consiglio Giudiziario presso la Corte di Appello di _____

PARERE PER LA _____ VALUTAZIONE DI PROFESSIONALITA' del dott. _____

A. Dati generali del magistrato

Cognome e nome:

Luogo e data di nascita:

Decreto di nomina a magistrato ordinario (già uditore giudiziario):

Periodo di valutazione:

Funzioni ricoperte nel periodo in valutazione:

Ufficio e settore di appartenenza:

B. Fonti di conoscenza:

- 1 Relazione del
- 2 Rapporto del Capo dell'Ufficio.....del....
- 3 Parere del Consiglio Giudiziario del.....
- 4 Provvedimenti a campione del.....
- 5 Verbali a campione del.....
- 6 Statistiche.....
- 7 Produzioni spontanee.....

B.1. Dati sulle precedenti valutazioni o progressioni in carriera: Ricostruzione della carriera:

- decreto ministeriale di nomina in data
- data delle precedenti valutazioni di professionalità

B.2 Sintesi dei pareri:

Ci si richiama integralmente, (salvo dissenso per ragioni da esplicitare) ai pareri precedenti

C. Giudizio in ordine all' indipendenza, imparzialità ed equilibrio:

- Nulla da rilevare
- Difetti o criticità (da compilare nel solo caso in cui si ravvisino in concreto)

D. Valutazione in ordine al parametro della "capacità":

D.1

- a) Provvedimenti giudiziari
 - Tecnica redazionale ed espositiva
 - Uso dello strumento informatico
 - Aggiornamento dottrinale e giurisprudenziale
- b) Tecniche di indagine:
 - Correttezza
 - Aggiornamento dottrinale e giurisprudenziale

D.2 Sulle eventuali significative anomalie del rapporto esistente tra provvedimenti emessi o richiesti e provvedimenti non confermati o rigettati, in relazione all'esito, nelle successive fasi e gradi del procedimento, dei provvedimenti giudiziari emessi o richiesti, relativi alla definizione di fasi procedurali o processuali o all'adozione di misure cautelari:

D.3 Sulle modalità di gestione dell'udienza, in termini di corretta conduzione o partecipazione:

D.4 Sul livello dei contributi forniti in camera di consiglio:

D.5 Sull'attitudine del magistrato ad organizzare il proprio lavoro e sulla capacità organizzativa e direttiva:

D.6 Sulla capacità di rapportarsi in maniera efficace, autorevole e collaborativa con gli uffici giudiziari e i magistrati destinatari del coordinamento1:

E. Valutazione in ordine al parametro della "laboriosità":

E.1 Sulla congruità del numero di procedimenti e processi definiti per ciascun anno in relazione alle pendenze del ruolo, ai flussi in entrata degli affari ed alla complessità dei procedimenti assegnati e trattati:

E.2 Sul rispetto degli standard medi di definizione dei procedimenti (individuati ai sensi del Capo V n.2 lett. b) Circolare prot. del 2007):

E.3 Sui tempi di trattazione dei procedimenti e dei processi (secondo quanto accertato ai sensi del Capo V n.2 della lett. b) Circolare prot. 20691 dell'8 ottobre 2007 approvata il 4 ottobre 2007):

E.4 Sulla collaborazione prestata per il buon andamento dell'ufficio

1 Tale valutazione deve essere effettuata per i soli magistrati con funzioni di coordinamento nazionale.

F. Valutazione in ordine al parametro della "diligenza":

F.1 Sul rispetto degli impegni prefissati e del numero di udienze in ordine al rispetto dei termini per la redazione ed il deposito dei provvedimenti o, comunque, per il compimento di attività giudiziarie:

F.2 Sulla partecipazione alle riunioni previste dall'ordinamento giudiziario per la discussione e l'approfondimento delle innovazioni legislative nonché per la conoscenza e l'evoluzione della giurisprudenza:

G. Valutazione in ordine al parametro "impegno":

G.1 Sulla disponibilità alle sostituzioni riconducibili ad applicazioni e supplenze nonché sulla consistenza della collaborazione prestata su richiesta del dirigente dell'ufficio o del coordinatore della posizione tabellare o del gruppo di lavoro in ordine alla soluzione dei problemi di tipo organizzativo e giuridico

G.2 Numero di corsi di aggiornamento organizzati dalla Scuola Superiore della Magistratura2, per i quali il magistrato abbia dato la disponibilità a partecipare o ai quali abbia effettivamente partecipato:

Giudizio finale :

- sull'indipendenza, imparzialità, equilibrio

positivo

negativo

- sulla capacità

positivo

carente

gravemente carente

- sulla laboriosità

positivo

carente

2 Fino a quanto non sarà operativa la Scuola Superiore della Magistratura, rilevano i corsi organizzati dal CSM anche nell'ambito della formazione decentrata.

gravemente carente

- sulla diligenza

positivo

carente

gravemente carente

- sull'impegno

positivo

carente

gravemente carente

I. Valutazione di professionalità:

I.1. Svolgimento del procedimento3:

I.2. Motivazione:

I.3. Dispositivo:

Data _____

Il Presidente del Consiglio giudiziario

ALLEGATI4:

3 Il Consiglio giudiziario deve dare conto dello svolgimento del procedimento e di eventuali attività istruttorie compiute.

4 Vanno allegati gli atti ed i documenti indicati ai Capi XIV e XV della richiamata circolare nonché le ulteriori e diverse fonti di conoscenza acquisite ai sensi del Capo VII.

Nuovi criteri per la valutazione di professionalità dei magistrati a seguito della legge 30 luglio 2007, n. 111, recante Modifiche alle norme sull'Ordinamento giudiziario.

(Circolare n. 20691 dell'8 ottobre 2007 – Deliberazione del 4 ottobre 2007)

Il Consiglio superiore della magistratura, nella seduta del 4 ottobre 2007, ha adottato la seguente delibera:

Relazione introduttiva

Premessa

L'esigenza di varare la presente circolare sulle valutazioni di professionalità nasce dall'espressa previsione dell'art. 11, comma 3, del D.lgs. 5 aprile 2006, n. 160, nel testo modificato dall'art. 2, comma 2, della legge 30 luglio 2007, n. 111, entrata in vigore a far data dal 31 luglio 2007. A norma di detto articolo, il Consiglio superiore della magistratura, entro il 30 ottobre 2007, deve disciplinare "gli elementi in base ai quali devono essere espresse le valutazioni dei Consigli giudiziari, i parametri per consentire l'omogeneità delle valutazioni, la documentazione che i capi degli uffici devono trasmettere ai Consigli giudiziari...". La necessità, tuttavia, di varare una circolare che sia completamente nuova nasce, ancor prima che dalla legge, dalla piena consapevolezza dell'insufficienza, dovuta allo *jus superveniens*, della circolare fino ad oggi applicata (n. 1275 del 1985 e succ. mod.), la quale si palesa oggi di impossibile adattabilità al sistema normativo vigente, fatto salvo un suo recupero meglio specificato nelle norme transitorie dell'articolato. Ed, inverso, il Consiglio ha preso atto, innanzitutto, che le qualifiche di uditore giudiziario senza o con funzioni, di magistrato di tribunale, di magistrato di appello, di magistrato di cassazione e di magistrato idoneo alle funzioni direttive superiori non esistono più, risultando sostituite oggi da sette fasce di anzianità, maturabili ogni quadriennio, ad ognuna delle quali è collegata l'astratta idoneità ad accedere a determinate funzioni oltre che altrettante classi stipendiali. A ciò si è aggiunta la necessità di definire con maggiore precisione gli indicatori dei parametri che i dirigenti degli uffici prima ed i Consigli giudiziari poi devono evidenziare e valutare, essendosi detti parametri - comunque rimasti ancorati ai concetti di capacità, laboriosità, diligenza ed impegno - riempiti di contenuti maggiormente tassativi e dettagliati rispetto ai preesistenti, al chiaro scopo di far emergere dall'attività consultiva degli organi locali di autogoverno quello che può essere definito un vero e proprio profilo completo e concreto delle reali caratteristiche professionali del magistrato, così da rendere quanto più possibile ottimale il livello di conoscenza del Consiglio superiore della magistratura, per tutti i fini istituzionali che tale organo deve perseguire. Parimenti si registra l'inevitabilità di disciplinare *ex novo* la procedimentalizzazione della valutazione, essendosi aggiunto al tradizionale doppio esito, negativo o positivo, un *tertium genus*, rappresentato dall'esito "non positivo", ed essendo state collegate ai giudizi improntati a negatività le conseguenze, gravi e fortemente invasive per la carriera del magistrato, descritte dai commi 11, 12 e 13 dell'art. 11 del D.lgs. n. 160 del 2006. L'obiettivo di dettare direttive puntuali e certe è altresì funzionale ad agevolare, per i dirigenti degli uffici prima e per i Consigli giudiziari poi, l'espletamento dei compiti consultivi, divenuto necessariamente più gravoso per effetto dell'aumento delle valutazioni da effettuare nell'arco della carriera del magistrato e dell'accorciamento dei segmenti temporali intercorrenti tra una valutazione e l'altra. Ciò posto, si è ritenuto di strutturare la presente circolare in più parti: una prima, di natura sostanziale, relativa alla disciplina dei parametri di valutazione e dei relativi indicatori; una seconda, procedimentale, relativa alla disciplina dell'iter amministrativo di valutazione; una terza, finale, interamente dedicata alla sostanziale integrazione in via di interpretazione della norma transitoria di cui all'art. 5, c. 2, della l. 30 luglio 2007, n. 111, secondo la quale "*Nei confronti dei magistrati in servizio alla data di entrata in vigore della presente legge, le valutazioni periodiche operano alla scadenza del primo periodo utile successivo alla predetta data, determinata utilizzando quale parametro iniziale la data del decreto di nomina come uditore giudiziario*".

La Parte I della Circolare

Il Capo I

La circolare disciplina tutte le valutazioni di professionalità previste dalla legge o da altre disposizioni normative: di conseguenza, i pareri dei Consigli giudiziari e del Consiglio direttivo della Corte di cassazione nonché i provvedimenti del Consiglio superiore della magistratura debbono essere formulati secondo le disposizioni in essa contenute.

Il Capo II

La valutazione di professionalità, compiuta dal Consiglio superiore della magistratura acquisito il parere del Consiglio giudiziario o del Consiglio direttivo della Corte di cassazione e tutte le fonti di conoscenza utili, deve ricostruire con completezza le qualità del magistrato, in modo da evidenziare in modo dettagliato le caratteristiche professionali, le tipologie di lavoro svolto e le reali attitudini, inquadrando le stesse nei parametri che sono previsti ai sensi delle vigenti disposizioni di legge. A tal fine, tutti i provvedimenti di valutazione di professionalità, e quindi anche i pareri dei Consigli giudiziari, dovranno procedere ad una indicazione analitica di ciascun parametro di valutazione e degli elementi di fatto positivi e negativi sui quali sono fondati i giudizi. Per facilitare questa attività e garantire omogeneità di valutazioni, sono stati predisposti modelli allegati alla presente circolare, ai quali dovranno uniformarsi i Consigli giudiziari e il Consiglio direttivo della Corte di cassazione nel formulare i pareri di loro competenza. Proprio in considerazione della natura e del fondamento delle valutazioni di professionalità, risulta doveroso fissare due direttive di carattere generale. Da un lato, non potrà tenersi conto degli elementi che attengono alla sfera privata del magistrato, salvo che gli stessi assumano rilevanza a fini penali, disciplinari o di fattispecie significative ex art. 2 R.d.I. 31 maggio 1946, n. 511, né dell'attività di interpretazione delle norme di diritto o della valutazione del fatto o delle prove, e neppure degli orientamenti politici, ideologici o religiosi dello scrutinato. Dall'altro, invece, costituirà oggetto di verifica la permanenza di elementi significativi già individuati nelle precedenti valutazioni.

Il Capo III

L'indipendenza, l'imparzialità e l'equilibrio, costituendo per espressa disposizione della Costituzione il fondamento e connotato distintivo dell'attività giurisdizionale, sono condizioni che debbono essere necessariamente presenti in ogni magistrato. Si è ritenuto, pertanto, di dedicare a tali requisiti un apposito Capo, in modo da distinguerli dai parametri di valutazione della professionalità, espressamente previsti dalla legge: capacità, laboriosità, diligenza e impegno. La verifica di tali profili risulta imposta anche dalla previsione contenuta nell'art. 11, comma 4, lett. f) del D.lgs. cit., nella parte in cui è stabilito che le segnalazioni provenienti dal Consiglio dell'ordine degli Avvocati assumono significatività "sempre che si riferiscano a fatti specifici incidenti sulla professionalità, con particolare riguardo alle situazioni eventuali concrete e oggettive di esercizio non indipendente della funzione e ai comportamenti che denotino evidente mancanza di equilibrio o di preparazione giuridica". L'indipendenza deve essere intesa come svolgimento delle funzioni giurisdizionali senza condizionamenti, rapporti o vincoli che possano influenzare negativamente o limitare le modalità di esercizio della giurisdizione. L'imparzialità, invece, si individua nel corretto atteggiamento del magistrato nei confronti di tutti i soggetti processuali. L'equilibrio, infine, consiste nell'esercizio della funzione condotto con moderazione e senso della misura, libero da determinazioni di tipo ideologico, politico o religioso. Dette condizioni costituiscono presupposto imprescindibile per una positiva valutazione di professionalità. Peraltro, il giudizio sulla loro sussistenza, quando non emergano dati di segno contrario, dovrà essere espresso con la formula <nulla da rilevare>.

Il Capo IV

I parametri in base ai quali debbono essere compiute le valutazioni di professionalità sono espressamente catalogati dall'art. 11, comma 2, L. n. 111/2007. La "capacità si desume: dalla preparazione giuridica e dal grado di aggiornamento rispetto alle novità normative, dottrinali e giurisprudenziali; dal possesso delle tecniche di argomentazione e di indagine, anche in relazione all'esito degli affari nelle successive fasi e nei

gradi del procedimento; dalla conduzione delle udienze da parte di chi le dirige o le presiede, dalla idoneità ad utilizzare, dirigere e controllare l'apporto dei collaboratori e degli ausiliari; dall'attitudine a cooperare secondo criteri di opportuno coordinamento con altri uffici giudiziari aventi competenze connesse o collegate. La 'laboriosità' si desume: dalla produttività, intesa come numero e qualità degli affari trattati in rapporto alla tipologia ed alla condizione organizzativa e strutturale degli uffici; dai tempi di smaltimento del lavoro; dall'attività di collaborazione svolta all'interno dell'ufficio. La 'diligenza' si desume: dall'assiduità e dalla puntualità nella presenza in ufficio, nelle udienze e nei giorni stabiliti; dal rispetto dei termini per la redazione e il deposito dei provvedimenti, o comunque per il compimento di attività giudiziarie; dalla partecipazione alle riunioni previste dall'ordinamento giudiziario per la discussione e l'approfondimento delle innovazioni legislative, nonché per la conoscenza e l'evoluzione della giurisprudenza. L' 'impegno' si desume: dalla disponibilità alle sostituzioni, riconducibili alle applicazioni e supplenze, se ed in quanto rispondano alle norme di legge e alle direttive del Consiglio superiore della magistratura, e siano necessarie al corretto funzionamento dell'ufficio; dalla frequenza nella partecipazione ai corsi di aggiornamento organizzati dalla Scuola superiore della magistratura o comunque, atteso che l'ammissione ai medesimi non dipende solo dalla richiesta del magistrato, nella disponibilità a partecipare agli stessi, con la precisazione che i corsi rilevanti, fino a quando non sarà operativa la precisata Scuola, sono quelli organizzati dal Consiglio superiore della magistratura; dalla collaborazione alla soluzione dei problemi di tipo organizzativo e giuridico, la quale, affinché sia evitata la corsa ad iniziative inutili e scoordinate, assume rilevanza se richiesta.

Il Capo V

La nuova disciplina - dopo aver previsto al comma 2 dell'art. 11 L. n. 111/2007 i parametri di valutazione - ha anche stabilito, al comma 3, lett. d), della medesima disposizione, la necessità che il Consiglio superiore della magistratura, individui "indicatori oggettivi per l'acquisizione degli elementi di cui al comma 2". In tal modo, è stata positivizzata l'esigenza di fissare, in ordine a ciascun parametro di valutazione, profili di riferimento precisi e, in quanto tali, idonei a consentire un giudizio analitico, completo ed ancorato a criteri predeterminati. Tenuto conto di ciò, si è reputato corretto individuare indicatori che consentissero di verificare adeguatamente, in relazione a fatti specifici ed oggettivamente delineati, tutti gli aspetti di ciascun parametro di valutazione, così come analiticamente precisati dalla legge e puntualizzati dalla presente circolare.

In particolare, per quanto attiene agli indicatori della capacità, si è inteso evitare che l'esame dei provvedimenti giudiziari e delle attività di indagine si traduca in un sindacato sul merito delle decisioni o delle scelte investigative: la valutazione di professionalità, infatti, deve avere ad oggetto esclusivamente la correttezza della metodologia impiegata, poiché altrimenti interferirebbe con l'indipendenza costituzionalmente riconosciuta a ciascun magistrato. Di conseguenza, la verifica circa l'esito, nelle successive fasi e nei gradi del procedimento, dei provvedimenti giudiziari emessi o richiesti, relativi alla definizione di fasi procedurali o processuali o all'adozione di misure cautelari, non deve essere compiuta in termini rigorosamente numerici, ma solo in quanto "presenti caratteri di significativa anomalia", valutata anche alla luce di criteri qualitativi: si pensi, ad esempio, alla vicenda di una pluralità di controversie 'seriali' in materia di previdenza decise nel rispetto di un orientamento giurisprudenziale di legittimità che venga poi modificato nelle more dei giudizi di impugnazione; in tal caso, l'elevato numero di riforme non può certamente ritenersi "significativo", perché spiegabile alla luce di una 'sopravvenienza' non controllabile dal magistrato in valutazione. D'altro canto, per ragioni di coerenza con la scelta affermata nel Capo 22 *bis* della Circolare sugli Incarichi extra-giudiziari ("Tutti gli incarichi extragiudiziari non sono valutabili ai fini del giudizio di professionalità"), lo svolgimento di attività qualificabili nell'ambito di questa tipologia non è stato in alcun modo considerato un indicatore rilevante ai fini del giudizio sulla capacità. Per quanto riguarda, invece, gli indicatori della laboriosità, si è tenuto conto che il mero raffronto della produzione di ciascun magistrato con la media dei provvedimenti emessi dagli altri magistrati appartenenti al medesimo ufficio dello scrutinato ed assegnati a funzioni omogenee, avrebbe potuto indurre, in qualche caso, a scelte di 'rallentamento coordinato' e, in altri casi, a valutazioni ingiuste. Si è perciò stabilito che il raffronto della produzione del singolo con quella media dell'ufficio di appartenenza deve essere compiuto anche tenendo conto dell'eventuale assegnazione dei magistrati alle sezioni distaccate, dei flussi in entrata degli affari, della complessità dei procedimenti e dei processi assegnati (si pensi, in particolare, ai maxi-processi), delle attività di collaborazione alla gestione dell'ufficio (si pensi ai titolari di uffici semidirettivi), delle attività istituzionali, dell'espletamento di incarichi di natura obbligatoria (si pensi a coloro che sono designati a comporre le commissioni per l'esame di avvocato), di esoneri dal lavoro giudiziario (quali quelli concessi ai componenti del Consiglio giudiziario o ai referenti per l'informatica), di assenze dal lavoro per ragioni diverse dal congedo ordinario (dovranno ovviamente essere presi in considerazione, tra gli altri, i congedi parentali, nonché le aspettative per motivi di salute o di famiglia). Si è inoltre previsto che il rispetto dei tempi di trattazione dei procedimenti e dei processi potrà essere valutato solo in caso di segnalazioni e rilievi specifici, sia perché, allo stato, non esistono adeguati strumenti di 'misurazione' di tempi accettabili, sia soprattutto perché, in molti casi, un procedimento o un processo possono essere trattati da più magistrati che si succedono tra loro nel tempo. Per ciò che si riferisce alla diligenza, poi, si è precisato che il rispetto dei termini per la redazione e il deposito dei provvedimenti, o comunque per il compimento di attività giudiziarie, deve essere considerato "alla luce della complessiva situazione degli uffici", al fine di consentire l'apprezzamento di situazioni particolari e di evitare giudizi positivi o negativi ancorati esclusivamente a dati numerici. Per quanto riguarda l'impegno, infine, si è specificato che i corsi di aggiornamento ai quali il magistrato ha partecipato o in relazione ai quali ha dato la disponibilità a partecipare, fino al momento in cui non inizierà ad operare la Scuola superiore della magistratura, sono quelli organizzati dal Consiglio superiore della magistratura.

Il Capo VI

La riforma ha regolamentato anche la valutazione di professionalità relativa ai magistrati fuori ruolo, stabilendo (cfr. il nuovo testo del comma 16 dell'art. 11 del D.lgs. n. 160/2006) che per questi si applicano "i parametri contenuti nel comma 2" e che "il parere è espresso sulla base della relazione dell'autorità presso cui gli stessi svolgono servizio, illustrativa dell'attività svolta, e di ogni altra documentazione che l'interessato ritiene utile produrre, purché attinente alla professionalità, che dimostri l'attività in concreto svolta". Da tali previsioni, si evince chiaramente che, per i magistrati fuori ruolo, il richiamo alla disciplina generale è stato compiuto esplicitamente in relazione ai soli parametri di valutazione, ma non anche agli indicatori. Tale limite di operatività alla disciplina generale, del resto, è del tutto comprensibile se si considera, da un lato, che gli indicatori elaborati con riferimento all'attività giurisdizionale non possono essere facilmente applicati ad attività non giurisdizionali e, dall'altro, che, attesa la pluralità di funzioni alle quali possono essere destinati i magistrati fuori ruolo, è impossibile delineare un catalogo di indicatori *ad hoc*.

Peraltro, proprio alla luce della peculiarità delle funzioni svolte dai magistrati fuori ruolo, si è deciso di puntualizzare che anche la disciplina sui parametri di valutazione si applica in quanto compatibile. Si consideri, infatti, a titolo di esempio, la posizione dei magistrati destinati ad incarichi amministrativi: la loro capacità non potrà mai essere valutata in relazione al possesso delle tecniche di argomentazione e di indagine o all'esito degli affari o alla conduzione dell'udienza.

Il Capo VII

La legge non contiene una disciplina organica in ordine alle fonti di conoscenza e, più in dettaglio, alla documentazione relativa alle valutazioni di professionalità. In linea generale, alla luce dell'assenza di un principio di tipicità delle fonti e dei documenti utilizzabili, e al fine di garantire la massima completezza della valutazione, si è stabilito di consentire "l'utilizzazione di ogni atto e documento che fornisca dati obiettivi e rilevanti relativi all'attività professionale e ai comportamenti incidenti sulla professionalità del magistrato". Ovviamente, per evitare ogni possibile equivoco, allo scopo di tutelare indiscutibili esigenze di garanzia dello scrutinato e di obiettività della valutazione, si è anche esplicitato l'assoluto divieto di impiegare fonti anonime e voci correnti. Peraltro, si è reputato utile fornire una dettagliata indicazione delle fonti di conoscenza e della documentazione acquisibile nel corso del procedimento, in modo da fornire agli organi deputati al giudizio di professionalità un elenco degli atti che, in relazione a ciascun parametro, consentono un'adeguata valutazione. Si è pertanto precisato che la documentazione rilevante che può essere reperita presso il Consiglio superiore della magistratura è quella inserita nel fascicolo personale del magistrato, nonché quella esistente presso le Segreterie della Prima Commissione referente e della Sezione disciplinare, ovviamente se non coperta da segreto, mentre la documentazione rilevante reperibile presso il Ministero della giustizia consiste nelle relazioni ispettive. Si è inoltre stabilito che, con riferimento (1) alla complessità dei procedimenti e dei processi trattati, (2) all'esito degli affari nelle successive fasi e nei gradi del procedimento, (3) al livello dei contributi in camera di consiglio, (4) all'attitudine ad organizzare il lavoro, (5) alla collaborazione nella gestione dell'ufficio su richiesta

del dirigente o del coordinatore della posizione tabellare o del gruppo di lavoro, (6) all'espletamento delle attività istituzionali e di incarichi giudiziari ed extragiudiziari,

(7) al rispetto degli impegni prefissati, (8) alla partecipazione alle riunioni previste dall'Ordinamento giudiziario, (9) alla disponibilità alle sostituzioni, applicazioni e supplenze, nonché (10) alla consistenza della collaborazione per la soluzione dei problemi di tipo organizzativo e giuridico, gli elementi di valutazione sono rappresentati dall'indicazione del dirigente dell'ufficio.

Il Capo VIII

L'art. 11, comma 9, del D.lgs. n. 160/2006 prevede che la valutazione deve essere compiuta analiticamente, in relazione a ciascuno dei parametri di valutazione di cui al comma 2 (capacità, laboriosità, diligenza e impegno); poi, senza aggiungere alcuna ulteriore specificazione, si limita a prendere in considerazione le conseguenze nei casi in cui le valutazioni in ordine a ciascuno dei predetti parametri risultino di 'sufficienza', 'carenza' e 'grave carenza'. Alla luce di tale disposizione, si è ritenuto corretto distinguere, innanzitutto, tra il giudizio sulle 'condizioni' di indipendenza, di imparzialità e di equilibrio, che indiscutibilmente "costituiscono elementi essenziali di valutazione dell'attività professionale", e i giudizi in materia di capacità, laboriosità, diligenza e impegno. Con riferimento al primo, infatti, l'assenza di specifiche prescrizioni legislative e l'inedefinita sussistenza delle tre 'condizioni' quale presupposto per un credibile esercizio della funzione giurisdizionale hanno indotto a prevedere risultati di giudizio più netti di quelli previsti per i parametri di cui al comma 2 dell'art. 11. L'indipendenza e l'imparzialità, infatti, o sussistono o non sussistono e non appare praticabile la formulazione di un giudizio di 'carenza' diversificato rispetto a quello di 'grave carenza'. Evidentemente, poi, mentre il giudizio 'positivo' viene normalmente espresso con la formula <nulla da rilevare>, il giudizio negativo deve essere ancorato alla gravità del fatto o dei fatti ascrivibili al magistrato, anche alla luce delle possibili ripercussioni negative nel tempo sulla credibilità dell'esercizio delle funzioni giudiziarie da parte del magistrato. Con riferimento ai secondi, il termine di riferimento della valutazione è stato individuato nei risultati desumibili alla luce degli indicatori: questi, infatti, come si è già evidenziato in precedenza, sono stati previsti per garantire l'acquisizione di elementi precisi e idonei a consentire un giudizio analitico, completo ed ancorato a criteri predeterminati. Si è, inoltre, ritenuto di prevedere un giudizio 'positivo' (da intendersi quale categoria generale ricomprendente tutti gli esiti favorevoli delle valutazioni, in particolare sia il giudizio "sufficiente" previsto espressamente dall'art. 11 comma 9 D.lgs. 160/06, sia ogni altro esito) e si è proceduto a specificare dettagliatamente quali sono le condizioni rilevanti ai fini della valutazione sul singolo parametro. In particolare, per quanto riguarda il parametro della capacità, il giudizio è 'positivo' se sussistono le seguenti condizioni: (a) i provvedimenti esaminati sono connotati da chiarezza, completezza espositiva e capacità di sintesi in relazione ai presupposti di fatto e di diritto, oltre che da congruità in relazione ai problemi processuali o investigativi affrontati, e, per i magistrati inquirenti, le tecniche di indagine impiegate risultano improntate a correttezza; (b) le conoscenze informatiche dirette alla redazione dei provvedimenti ed al miglioramento dell'efficacia dell'attività giudiziaria sono adeguate; (c) i contributi offerti in camera di consiglio sono qualitativamente accettabili; (d) l'organizzazione del lavoro è improntata a criteri di efficienza e di efficacia; (e) la verifica sull'esito degli affari nelle successive fasi e nei gradi del procedimento non evidenzia situazioni "di significativa anomalia" anche alla luce di criteri qualitativi; (f) non risultano violazioni di norme giuridiche, né errori di fatto rilevanti in sede disciplinare o di responsabilità civile dei magistrati; (g) le modalità di gestione delle udienze sono corrette e improntate al rispetto dei diritti delle parti; (h) nei magistrati inquirenti con funzioni di coordinamento nazionale, la capacità di rapportarsi con gli uffici giudiziari e i magistrati destinatari del coordinamento è efficace, autorevole e collaborativa. E', invece, 'carente' se anche solo una delle riferite condizioni difetta in modo significativo, pur senza mancare del tutto. E', infine, 'gravemente carente' se manca del tutto una delle predette condizioni o se difettano significativamente almeno due di esse. Per quanto attiene al parametro della laboriosità, il giudizio è 'positivo' se sussistono le seguenti condizioni: (a) la produzione di ciascun magistrato è in linea con la media dei provvedimenti emessi dagli altri magistrati appartenenti al medesimo ufficio dello scrutinato ed assegnati a funzioni omogenee, calcolata con riferimento a ciascuno dei due anni precedenti per ognuno degli anni in valutazione; (b) non vi sono rilievi di natura disciplinare e contabile in relazione ai tempi di trattazione dei procedimenti e dei processi; (c) è adeguata la collaborazione fornita all'interno dell'ufficio. Peraltro, al fine di evitare, da un lato, la 'ratifica' di tendenze a rallentamenti coordinati da parte di tutti i magistrati appartenenti ad uno stesso ufficio ed assegnati a funzioni omogenee e, dall'altro, valutazioni ingiustamente 'punitive' perché non rispondenti alla realtà, si è espressamente precisato che il raffronto della produzione del singolo con quella media dell'ufficio di appartenenza deve essere compiuto anche tenendo conto anche di quei criteri meglio specificati *sub* Capo IV. Il giudizio di laboriosità, poi, sarà 'carente' se anche solo una delle riferite condizioni difetta in modo significativo, pur senza mancare del tutto. Sarà, invece, 'gravemente carente' se manca del tutto una delle predette condizioni o se difettano significativamente almeno due di esse. In ordine al parametro della diligenza, il giudizio è 'positivo' se sussistono le seguenti condizioni:

(a) risulta adeguato il rispetto del calendario delle udienze e degli impegni prefissati, salvo l'esistenza di ragioni obiettivamente giustificabili (quali, ad esempio, le assenze per motivi di salute); (b) i termini generalmente osservati per la redazione e il deposito dei provvedimenti, o comunque per il compimento delle attività giudiziarie, sono conformi alle prescrizioni di legge o

sono comunque accettabili in considerazione dei carichi di lavoro, degli standard degli altri magistrati dello stesso ufficio addetti ad analoghe funzioni, e di altre situazioni obiettivamente giustificabili (quali, ad esempio, le assenze autorizzate in conformità della disciplina di ordinamento giudiziario o l'eccezionale complessità di particolari provvedimenti da redigere); (c) è assidua la partecipazione alle riunioni previste dall'Ordinamento giudiziario, salvo l'esistenza di ragioni obiettivamente giustificabili (quali, ad esempio, le assenze per motivi di salute). Il giudizio è, invece, 'carente' se anche solo una delle riferite condizioni difetta in modo significativo, pur senza mancare del tutto. E', infine, 'gravemente carente' se manca del tutto una delle predette condizioni o se difettano significativamente almeno due di esse. In relazione al parametro dell'impegno, il giudizio è 'positivo' se sussistono le seguenti condizioni: (a) è stata fornita adeguata disponibilità alle sostituzioni, applicazioni e supplenze necessarie per il funzionamento dell'ufficio; (b) è stata presentata almeno una domanda di partecipazione all'anno ai corsi di aggiornamento organizzati dalla Scuola superiore della magistratura o, nelle more, dal Consiglio superiore della magistratura, e si è registrata la partecipazione ai corsi in ordine ai quali è intervenuto provvedimento di ammissione, sempre che non sussistano ragioni ostative obiettivamente giustificabili (quali, ad esempio, le assenze per motivi di salute); (c) è stata fornita adeguata collaborazione alle richieste del dirigente dell'ufficio o del coordinatore della posizione tabellare o del gruppo di lavoro, in ordine alla soluzione dei problemi di tipo organizzativo e giuridico, salva l'esistenza di ragioni obiettivamente giustificabili. Il giudizio è, invece, 'carente' se anche solo una delle riferite condizioni difetta in modo significativo, pur senza mancare del tutto. E', infine, 'gravemente carente' se manca del tutto una delle predette condizioni o se difettano significativamente almeno due di esse.

Il Capo IX

Atteso l'inequivocabile disposto dell'art. 11, comma 9, D.lgs. n. 160/2006, il giudizio complessivo di professionalità sarà positivo solo quando risultano positivi tutti i parametri di valutazione. Ovviamente, premessa indispensabile per un giudizio positivo sarà la positiva valutazione in ordine alle condizioni di indipendenza, imparzialità ed equilibrio.

Il Capo X

Si è stabilito che il giudizio complessivo di professionalità 'non positivo' presuppone che uno o più dei quattro parametri di valutazione risulti carente, o solo uno di essi, risulti 'gravemente carente'. Peraltro, siccome l'indipendenza, l'imparzialità e l'equilibrio sono condizioni necessarie per l'esercizio dell'attività giurisdizionale (Capo III), si è stabilito che, per conseguire una valutazione di professionalità 'non positiva', è comunque necessario ottenere un giudizio positivo in ordine ai profili di indipendenza, imparzialità ed equilibrio.

Il Capo XI

Il giudizio sarà negativo quando risulta negativo il profilo dell'indipendenza, dell'imparzialità o dell'equilibrio; quando risultino 'gravemente carenti' due o più dei parametri di valutazione di cui all'art. 11, comma 2, D.lgs. n. 111/2007; infine quando, dopo un giudizio di professionalità 'non positivo', perduri per il secondo anno la valutazione di 'carente' in ordine al medesimo parametro.

Il Capo XII

Circa il rapporto tra valutazioni di professionalità e procedimenti disciplinari o penali pendenti, la circolare ha previsto due distinte modalità di comportamento della Quarta Commissione del Consiglio. Quest'ultima ha, infatti, in prima battuta l'obbligo di sospendere la procedura di valutazione di professionalità laddove il magistrato sia stato sospeso in via obbligatoria dalle funzioni e dallo stipendio ai sensi dell'art. 21,

D.L.vo n. 109/2006, in quanto sottoposto a misura cautelare personale nell'ambito di un procedimento penale, sia stato sospeso in via facoltativa dalle funzioni e dallo stipendio ai sensi dell'art. 22, D.Lvo n. 109/2006, in quanto sottoposto a procedimento penale per delitto non colposo, oppure sia stato sospeso in via facoltativa dalle funzioni e dallo stipendio ai sensi dell'art. 22 D.L.vo n. 109/2006, in quanto sottoposto a procedimento disciplinare. Viceversa l'obbligo di sospensione della valutazione cede il passo ad una mera facoltà di sospensione della valutazione, chiaramente all'esito di una scelta di tipo discrezionale e mediante provvedimento motivato, laddove si registri la pendenza di un processo penale e/o disciplinare nonché nelle ipotesi di formale apertura del procedimento di trasferimento d'ufficio ai sensi dell'art. 2 R.D.Lgs. n. 511/1946. In tali casi è evidente che la previsione di un altro obbligo di sospensione sarebbe parsa eccessiva, attesa l'ovvia opportunità di lasciare alla Commissione uno spazio di esame sulla gravità e sulla natura dei comportamenti ascritti al magistrato.

Parte II

Capi XIII-XVIII

Il procedimento – I commi da 4 a 15 dell'art. 11 L. n. 111/2007 disciplinano il procedimento in cui si articola la valutazione di professionalità, procedimento che si compone di una pluralità di fasi, alcune delle quali meramente eventuali: in considerazione di ciò, si è ritenuto necessario procedere anche ad una regolamentazione di dettaglio del procedimento per la formulazione dei pareri per le valutazioni di professionalità alla luce delle novità introdotte dalla normazione primaria. La presente disciplina si prefigge l'obiettivo di meglio valorizzare l'aspetto della proceduralizzazione dell'attività valutativa, per esaltare quei momenti che possono utilmente contribuire all'accertamento, consentendo anche al magistrato in valutazione di fornire un adeguato e corretto apporto al processo conoscitivo. Allo stesso tempo si intende esercitare un controllo più efficace sulle attività complessivamente svolte dal magistrato in valutazione, affinché vengano posti in risalto l'impegno e soprattutto la funzione giurisdizionale in concreto esercitata (i cc.dd. mestieri del giudice), evitando rischi di compromissione dell'indipendenza del magistrato e della funzionalità del servizio. L'introduzione di una specifica disciplina sul procedimento, nascente dall'esperienza applicativa, vale, pertanto, non solo ad adeguare l'efficacia della novità normativa sul piano operativo e a facilitare l'attività valutativa del Consiglio superiore della magistratura all'atto dell'attribuzione delle nuove qualifiche, ma anche ad articolare una disciplina quanto più possibile omogenea delle arie fasi di acquisizione degli elementi di giudizio.

§ 1. *L'avvio di procedimento e l'intervento del Consiglio giudiziario* – L'art. 11 L. n. 111/07, al primo comma, prevede la sottoposizione di tutti i magistrati a valutazione di professionalità ogni quadriennio: la disposizione va intesa nel senso che il procedimento per le sette valutazioni di professionalità debba sempre essere avviato di ufficio. Al fine di consentire una tempestiva valutazione, il Consiglio superiore della magistratura già nel corso dell'anno precedente alla maturazione del periodo in valutazione comunicherà ai Consigli giudiziari territorialmente competenti i nominativi dei magistrati per i quali nell'anno successivo matura uno dei sette quadrienni utili ai fini delle valutazioni di professionalità (v. capo XI della circolare). Particolare attenzione è, inoltre, stata prestata alla disciplina del rapporto informativo, che deve essere redatto a cura dei dirigenti degli uffici (al capo XIV), e del parere del Consiglio giudiziario, nonché ai documenti acquisibili al fine di assumere le informazioni, nella prospettiva di assicurare massima trasparenza al procedimento valutativo, tenuto conto del notevole ampliamento degli elementi di giudizio necessari per la formulazione della valutazione finale e della esigenza di garantire all'interessato la facoltà di interloquire. Del resto, nel procedimento valutativo potrebbero trovare ingresso episodi anche lontani nel tempo, occorsi fino ad un quadriennio precedente. È stata, quindi, dettata la normativa di attuazione della previsione di cui alla lettera f) del comma IV del nuovo articolo 11 D.lgs. 160/06 ove si indicano tra gli atti da acquisire e valutare anche "il rapporto e le segnalazioni provenienti dai capi degli uffici, i quali devono tenere conto delle situazioni specifiche rappresentate da terzi, nonché le segnalazioni pervenute dal Consiglio dell'ordine degli avvocati, sempre che si riferiscano a fatti specifici incidenti sulla professionalità, con particolare riguardo alle situazioni eventuali concrete e oggettive di esercizio non indipendente della funzione e ai comportamenti che denotino evidente mancanza di equilibrio o di preparazione giuridica". Il rapporto del capo dell'ufficio e le segnalazioni del Consiglio dell'ordine degli avvocati sono trasmessi al Consiglio giudiziario dal Presidente della Corte di appello o dal Procuratore generale presso la medesima corte, titolari del potere-dovere di sorveglianza, con le loro eventuali considerazioni e quindi trasmessi obbligatoriamente al Consiglio superiore della magistratura. Le fonti conoscitive tipiche, di cui al capo VII, possono essere ulteriormente integrate anche da iniziative istruttorie non tipizzate. In particolare, ai sensi del comma V dell'art. 11 L. n. 111/07, riportato al punto 2 del capo XV, "il Consiglio giudiziario può assumere informazioni su fatti specifici segnalati da suoi componenti o dai dirigenti degli uffici o dai Consigli dell'ordine degli avvocati, dandone tempestiva comunicazione dell'esito all'interessato, che ha diritto di avere copia degli atti, e può procedere alla sua audizione, che è sempre disposta se il magistrato ne fa richiesta". Nella sostanza, è escluso che nel regime generale di disciplina del procedimento di valutazione vi sia la possibilità di dare ingresso a fatti c.d. a sorpresa, senza sollecitare un contraddittorio con l'interessato. Di qui la espressa previsione al capo XV punto 3) delle audizioni fra le fonti di conoscenza.

Costituisce una fase meramente eventuale quella prevista dal comma 7 dell'art. 11 legge n. 111/2007, ai sensi del quale il magistrato, entro dieci giorni dalla notifica del parere del Consiglio giudiziario può far pervenire al Consiglio superiore della magistratura le sue osservazioni chiedendo di essere ascoltato personalmente. Tale atto segna l'avvio di una fase procedimentale caratterizzata da una serie di garanzie a tutela del magistrato interessato e disciplinate al capo XVII, punto 3, della circolare. Ulteriore innovazione è rappresentata dalle relazioni che i dirigenti degli uffici entro il mese di febbraio di ciascun anno dovranno inviare ai Consigli giudiziari, unitamente alle statistiche comparate, riguardanti l'andamento generale dell'ufficio, documenti che dovranno essere conservati (evidentemente al fine di esprimere più ponderate valutazioni di professionalità) presso la segreteria del Consiglio giudiziario, ai sensi del capo XIV punto 4), unitamente a pareri attitudinali. *La valutazione del Consiglio superiore della magistratura* – Da ultimo, il > Consiglio superiore della magistratura procede alla valutazione di professionalità sulla base del parere e della documentazione allegata, nonché delle risultanze delle ispezioni ordinarie e di tutti gli elementi di conoscenza ulteriori che ritenga di assumere, come previsto dal capo XVII. Per quanto concerne il rapporto intercorrente fra parere del Consiglio giudiziario e delibera del Consiglio superiore della magistratura, deve ritenersi che tale ultimo organo possa esprimersi in senso contrario rispetto al parere stesso, atteso che la valutazione di professionalità si configura come decisione riferibile in via esclusiva all'organo di autogoverno. Conferma di questa conclusione può trarsi dalla già richiamata possibilità espressamente riconosciuta al Consiglio superiore della magistratura di procedere a ulteriori atti di carattere istruttorio da cui trarre nuovi elementi conoscitivi e valutativi. Le previsioni di cui ai commi 8 e ss. dell'art. 11 legge n. 111/2007 forniscono importanti indicazioni anche con riferimento al contenuto della deliberazione del Consiglio superiore. In attuazione di tali norme, è stato previsto che il procedimento può concludersi con tre possibili esiti, da cui discendono differenti conseguenze, regolamentate in dettaglio nei capi XVII e XVIII. a) Giudizio positivo. Il giudizio di professionalità è positivo quando la valutazione è positiva in relazione a tutti i parametri esaminati. In questo caso il magistrato consegue la valutazione della professionalità, con conseguente aumento stipendiale e acquisizione della legittimazione a svolgere funzioni diverse. b) Giudizio non positivo. Qualora, invece, vi siano delle carenze, ai sensi del capo X il giudizio è non positivo. In questa ipotesi, dopo un anno il Consiglio superiore della magistratura procede a una nuova valutazione di professionalità, acquisendo un nuovo parere del Consiglio giudiziario. c) Giudizio negativo. Se emergono gravi carenze, ai sensi dei Capi VIII e XI, la valutazione di professionalità si concluderà con un giudizio negativo. In tal caso, la delibera deve indicare espressamente i parametri deficitari e specificare se il magistrato debba eventualmente partecipare a corsi di riqualificazione professionale, indicandone la natura ed il numero; se il magistrato sia inidoneo all'esercizio di particolari funzioni e se, in tal caso, si imponga un'assegnazione ad altra funzione fino alla successiva valutazione; se si imponga l'esclusione dall'accesso ad incarichi direttivi, semidirettivi o a funzioni specifiche, indicandone la natura. Copia della delibera va trasmessa alla Scuola superiore della magistratura, salvo quanto previsto dalla disciplina transitoria, o alle articolazioni consiliari competenti per l'ulteriore corso. Il Consiglio superiore, in caso di primo giudizio negativo, procede a nuovo scrutinio trascorsi due anni dalla scadenza del quadriennio per il quale si è riportata la valutazione negativa. Qualora la seconda valutazione del Consiglio superiore abbia esito negativo, il magistrato è dispensato dal servizio. Al riguardo deve osservarsi che i commi 11 e 13 dell'art. 11 legge n. 111/2007 stabiliscono che il magistrato sia previamente sentito, nell'ipotesi in cui alla prima valutazione negativa consegua l'assegnazione a diversa funzione o l'inidoneità ad incarichi direttivi o semidirettivi o a specifiche funzioni, o ancora nell'ipotesi in cui il Consiglio superiore debba esprimere un secondo giudizio negativo. In attuazione di tali previsioni, il Capo XVIII prevede l'applicazione di una procedura c.d. "garantita", che gli consenta la previa conoscenza degli elementi che fondano il giudizio di inidoneità e degli atti a disposizione del Consiglio superiore della magistratura, la possibilità di godere di termini a difesa, l'assistenza di altro magistrato, la possibilità di esporre le proprie ragioni

nell'obbligatoria audizione ed attraverso memorie e produzioni documentali. Infine, è stato previsto che la delibera del Consiglio superiore della magistratura, concernendo lo *status* del magistrato, deve essere trasmessa al Ministero della giustizia affinché adotti il relativo decreto. Tale atto va inserito nel fascicolo personale del magistrato, essendo destinato a costituire elemento di valutazione ai fini di ogni altro provvedimento riguardante lo stesso magistrato.

CAPO XIX

Si è mantenuta la previsione relativa alla formulazione dei pareri parziali da parte dei Consigli giudiziari, con le limitazioni che seguono. Il Consiglio giudiziario esprime parere parziale solo nel caso di trasferimento del magistrato ad altro distretto, che sia intervenuto oltre due anni dopo l'ultima valutazione di professionalità. In tale ipotesi, si è ritenuto di assegnare al Consiglio giudiziario del distretto ove il magistrato ha in prevalenza esercitato le funzioni giudiziarie nel corso del quadriennio, la redazione del parere funzionale alla valutazione di professionalità. Negli altri casi, il Consiglio giudiziario non è tenuto ad esprimere alcun parere, salvo quanto previsto nelle disposizioni transitorie della presente circolare.

PARTE III

DISPOSIZIONI TRANSITORIE E FINALI

CAPO XX

1. L'applicazione dei criteri di valutazione della professionalità previsti dal D.L.vo n. 260/2006, e successive modificazioni, nei confronti dei magistrati in servizio alla data di entrata in vigore della legge 30 luglio 2007 n. 111, recante modifiche alle norme sull'ordinamento giudiziario, pone rilevanti problemi di diritto intertemporale. Il principale problema si è posto con riferimento all'inquadramento da riconoscere a tutti i magistrati che avevano già maturato almeno quattro anni di servizio al giorno di entrata in vigore della legge n. 111/2007, per il periodo compreso tra questa data e quella in cui viene a compimento la prima concreta valutazione di professionalità. Si è considerato che questo periodo avrebbe potuto essere particolarmente lungo (si pensi ai magistrati che abbiano iniziato il quadriennio di valutazione qualche mese o addirittura qualche giorno prima dell'entrata in vigore della legge e che pertanto saranno sottoposti alla prima valutazione solo nei primi mesi del 2011) e causa di ingiuste sperequazioni tra i magistrati, atteso che il ritardato riconoscimento delle nuove valutazioni di professionalità determina rilevanti conseguenze, ai fini della legittimazione a partecipare a concorsi per il conferimento di particolari funzioni giudiziarie o per il godimento dell'ordinaria progressione economica. Si è esclusa l'ipotesi, non realistica, di risolvere il problema dell'esatto inquadramento degli appartenenti all'ordine giudiziario che avevano già maturato i quattro anni di servizio al giorno di entrata in vigore della legge n. 111/2007, sottoponendo costoro ad immediata valutazione. In tal caso, infatti, la valutazione avrebbe riguardato circa 8.000 magistrati. Neppure si è ritenuto di adottare il meccanismo della mera equiparazione tra qualifiche conseguite alla luce delle leggi previgenti e classi di valutazione di professionalità secondo la disciplina attuale (ad esempio, riconoscendo a colui che ha ottenuto la dichiarazione di idoneità alla nomina a magistrato di cassazione la quinta valutazione di professionalità, qualifiche entrambe conseguibili dopo venti anni di servizio). In tal caso, sarebbero stati comunque da valutare 3.740 magistrati atteso che la mera equiparazione non risolve il problema delle classi di valutazione intermedie, quali la seconda la terza la quarta e la sesta, che in base al periodo di servizio prestato dovrebbero essere già riconosciute. Si è, quindi, posto mano ad una articolata disciplina transitoria, che individua un rigoroso meccanismo finalizzato al riconoscimento, ai magistrati in servizio alla data di entrata in vigore della L. n. 111/2007, della valutazione di professionalità corrispondente all'anzianità effettivamente raggiunta; e si è stabilito di dare corso alle valutazioni di professionalità, al momento della maturazione del primo quadriennio utile maturato da ciascun magistrato successivamente al 30 luglio 2007.

In applicazione della norma transitoria di cui all'art. 5, comma 2, della L. 30 luglio 2007, n. 111, ove è stabilito che "*nei confronti dei magistrati in servizio alla data di entrata in vigore della presente legge, le valutazioni periodiche operano alla scadenza del primo periodo utile successivo alla predetta data, determinata utilizzando quale parametro iniziale la data del decreto di nomina come uditore giudiziario*", si è pertanto previsto che i magistrati in servizio alla data di entrata in vigore della l. 30 luglio 2007, n. 111, debbano essere sottoposti alle valutazioni quadriennali di professionalità nel momento in cui raggiungono, successivamente al 30 luglio 2007, il quarto (1° valutazione), l'ottavo (2° valutazione), il dodicesimo (3° valutazione), il sedicesimo (4° valutazione), il ventesimo (5° valutazione), il ventiquattresimo (6° valutazione) e il ventottesimo anno di servizio (7° ed ultima valutazione), a decorrere dalla data del decreto di nomina come uditore giudiziario. In tal modo, si garantisce che nell'arco del quadriennio a partire dalla data di entrata in vigore della riforma, tutti i magistrati che non abbiano superato il ventottesimo anno di servizio, e quindi la settima valutazione di professionalità, vengano valutati alla scadenza decorrente dalla legge n.

111/2007. La nuova valutazione deve abbracciare il periodo temporale decorrente dall'ultima valutazione positiva di professionalità. In tal modo, si sono realizzate le condizioni affinché la valutazione di professionalità riguardi l'attività complessivamente svolta dal magistrato, senza soluzione di continuità.

2. Onde evitare una inammissibile applicazione retroattiva della nuova disciplina, si è poi previsto che per la valutazione dell'attività compiuta dal magistrato sino alla data di entrata in vigore della presente circolare, il Consiglio superiore della magistratura debba applicare la Circolare n. P-1275/1985 recante *Criteri per la formulazione dei pareri per la valutazione di professionalità dei magistrati*; e che solo per la valutazione dell'attività posta in essere successivamente a tale data, vengano in rilievo le disposizioni previste dal D. L.vo 5 aprile 2006, n. 160, e successive modifiche così come disciplinate dalla presente Circolare.

3. Una specifica disposizione è stata dettata per disciplinare la definizione dei procedimenti di valutazione pendenti alla data del 31 luglio 2007. I magistrati che, al momento dell'entrata in vigore della L. n. 111/2007, avevano già maturato il diritto alla valutazione secondo le previgenti qualifiche di magistrato di tribunale, magistrato di appello, magistrato di cassazione e magistrato idoneo all'esercizio delle funzioni direttive superiori, per i quali non sia intervenuta la relativa delibera Consiliare, vengono valutati sulla base dei criteri dettati dalla Circolare n. P-1275/1985 recante *Criteri per la formulazione dei pareri per la valutazione di professionalità dei magistrati*. La stessa disciplina si applica nel caso in cui il magistrato sia stato dichiarato non idoneo secondo le previgenti qualifiche e sia maturato il periodo biennale (per la qualifica di magistrato di tribunale e d'appello) o triennale (per le qualifiche di magistrato di cassazione e di funzioni direttive superiori) per la nuova valutazione, secondo le normative previgenti, entro la data del 31.7.2007. In caso di esito positivo, al fine di aggiornare le predette valutazioni rispetto alla vigente disciplina, la delibera – ad eccezione di quella di nomina a magistrato di tribunale – contiene specifica menzione dell'intervenuto conseguimento, rispettivamente, della terza, con relativa decorrenza atteso che non vi è coincidenza rispetto alla anzianità di servizio funzionale al conseguimento della qualifica di magistrato di appello, della quinta e della settima valutazione di professionalità.

4. Il riconoscimento a ciascun magistrato in servizio alla data di entrata in vigore della L. n. 111/2007 della valutazione di professionalità corrispondente all'anzianità effettivamente raggiunta, in rapporto alla previsione di cui all'art. 11, D.L.vo n. 160/2006, è stato specificamente disciplinato nei termini che seguono. Le nuove fasce di valutazione vengono riconosciute ai magistrati in servizio alla data di entrata in vigore della L. n. 111/2007, subordinatamente alla ricorrenza di specifiche condizioni legittimanti. In particolare, l'inquadramento secondo le valutazioni di professionalità previste dal D.Lvo n. 160/2006 richiede che il magistrato: non sia stato dichiarato idoneo nell'ultima valutazione di professionalità ovvero non abbia riportato condanne disciplinari o penali passate in giudicato successivamente all'ultima valutazione di professionalità. In tali termini, si sono individuati degli specifici indicatori che consentono di adeguatamente censire i magistrati per i quali possa operare il meccanismo di riqualificazione. Ai magistrati che non rientrano in alcuna delle previsioni ora richiamate è immediatamente riconosciuta, ad ogni effetto giuridico ed economico, la corrispondente valutazione di professionalità prevista dall'art. 11, D. L.vo n. 160/2006, tenuto conto dell'anzianità di servizio maturata al 31 luglio 2007. Pertanto, con riferimento a tale data: al magistrato in servizio da almeno quattro anni è riconosciuta la prima valutazione di professionalità; al magistrato in servizio da più di otto anni e meno di dodici è riconosciuta la seconda valutazione di professionalità; al magistrato in servizio da più di dodici anni e meno di sedici è riconosciuta la terza valutazione di professionalità; al magistrato in servizio da più di sedici anni e meno di venti è riconosciuta la quarta valutazione di professionalità; al magistrato in servizio da più di venti anni e meno di ventiquattro è riconosciuta la quinta valutazione di professionalità; al magistrato in servizio da più di ventiquattro anni e meno di ventotto è riconosciuta la sesta valutazione di professionalità. Con riferimento al magistrato che ha maturato ventotto anni di anzianità, trattandosi dell'ultima valutazione di professionalità, si procede al riconoscimento della settima valutazione di professionalità, qualora risulti già conseguita l'idoneità alle funzioni direttive superiori; nel caso in cui il magistrato abbia maturato il diritto alla

valutazione secondo le previgenti qualifiche e il procedimento non risulti definito alla data del 31 luglio 2007, si procede a valutazione sulla base dei criteri dettati dalla Circolare n. P-1275/1985 e la delibera contiene specifica menzione dell'intervenuto conseguimento della settima valutazione di professionalità. Nel caso in cui ricorrano le condizioni per addivenire al riconoscimento delle fasce di valutazione previste dal D.L.vo n. 160/2006, il Consiglio provvede all'aggiornamento delle schede anagrafiche di ogni magistrato, sostituendo alle qualifiche ormai abrogate l'indicazione relativa alla nuova fascia di anzianità.

5. Con riguardo ai magistrati che abbiano riportato nell'ultima valutazione di professionalità una dichiarazione di non idoneità, secondo le previgenti qualifiche, non si è ritenuto che essi possano conseguire la valutazione di professionalità corrispondente alla fascia decorrente dal decreto di nomina, secondo il meccanismo di perequazione più sopra individuato. In tali casi, i magistrati saranno sottoposti a nuova valutazione di professionalità dopo un biennio decorrente dalla scadenza del periodo oggetto di valutazione negativa. Detto termine, conforme a quello previsto dalla legge per il caso di valutazione di professionalità negativa, risulta congruo rispetto alla necessità di una nuova valutazione (ad es., i magistrati di cui al D.M. 7 luglio 1994, che hanno maturato il diritto alla qualifica di appello l'8 luglio 2007 e che saranno valutati secondo le norme previgenti, in caso di dichiarazione di inidoneità, saranno sottoposti a nuova valutazione per il periodo decorrente dal 9 luglio 2007 sino all'8 luglio 2009). In tal modo, si garantisce al magistrato escluso dal procedimento di riqualificazione secondo le nuove fasce di valutazione, un tempestivo scrutinio di professionalità che si verifica utilizzando le diverse discipline come descritte al n. 2 della presente relazione. In caso di giudizio positivo, il magistrato consegue la valutazione di professionalità corrispondente alla fascia decorrente dal decreto di nomina, ma gravata dell'ulteriore biennio, come più sopra indicato (per ritornare all'esempio, il magistrato conseguirà nel luglio 2009 la terza valutazione di professionalità, con un solo anno di anzianità con i relativi benefici economici, diversamente dai colleghi di concorso che tale valutazione hanno conseguito due anni prima). Il successivo periodo utile di valutazione quadriennale decorrerà dal 9 luglio 2009. Se il giudizio "non positivo" ovvero "negativo", il Consiglio superiore procede a nuova valutazione di professionalità secondo la disciplina dettata dai commi 10, 11, 12, 13 e 14 dell'art. 11, D.L.vo n. 160/2006 e successive modificazioni e dai Capi XV e XVI della presente Circolare. Trovano così applicazione gli specifici adempimenti, e le correlate garanzie, per il caso di valutazioni negative, come previsto dalla nuova disciplina.

6. I magistrati che hanno riportato condanne disciplinari o penali, passate in giudicato, successivamente all'ultima valutazione di professionalità, sono immediatamente sottoposti a una nuova valutazione per la corrispondente fascia decorrente dal decreto di nomina e conseguibile ai sensi della disciplina transitoria dettata dalla presente circolare. Si tratta della situazione in cui si vengono a trovare i magistrati che secondo il meccanismo di perequazione descritto *sub* 4 conseguirebbero la valutazione di professionalità corrispondente alla fascia decorrente dal decreto di nomina. In tali ipotesi, il Consiglio ritiene indispensabile dare immediatamente corso ad una valutazione che abbia ad oggetto anche il fatto che ha determinato la condanna in sede disciplinare o penale. In tali casi, se il giudizio risulta positivo, il magistrato conseguirà la valutazione di professionalità corrispondente alla fascia decorrente dal decreto di nomina; mentre, se il giudizio sarà non positivo o negativo, si applica la disciplina già dettata in questi casi dalla nuova legge. In ogni caso la necessità della immediata valutazione non pregiudicherà le legittime aspettative del magistrato alla partecipazione ai concorsi.

7. Ai fini della valutazione del parametro dell'impegno desunto dalla frequenza nella partecipazione o nella disponibilità a partecipare ai corsi di aggiornamento, si è previsto che fino a quando i predetti corsi non saranno organizzati dalla istituenda Scuola superiore della magistratura, vengano in rilievo i corsi organizzati dal Consiglio superiore della magistratura, anche nell'ambito della formazione decentrata. Si è in tal modo aggiornata la previsione relativa agli indicatori dell'impegno del magistrato, sino alla operatività della Scuola superiore della magistratura, istituita dal D.L.vo 30 gennaio 2006, n. 26. Si osserva che la valorizzazione, a tali fini, delle attività formative rientranti nel circuito dell'autogoverno, sia in sede centrale che locale, risulta conferente rispetto alla *ratio* della disposizione di cui all'art. 11, comma 2, lett. d), D.L.vo n. 160/2006. Ciò che viene in rilievo, infatti, nel parametro dell'impegno, è la sensibilità del magistrato rispetto al tema della formazione permanente, che ben può essere dimostrata dalla sua disponibilità a partecipare ad incontri di studio - o ad altri moduli formativi - organizzati dal Consiglio superiore della magistratura.

CAPO XXI

Gli indicatori relativi alla capacità organizzativa ed alla laboriosità saranno oggetto di revisione nel termine di un anno a far data dalla entrata in vigore della presente circolare, pure in esito all'attività interistituzionale prevista al riguardo dal D.L.vo n. 160/2006, in materia di progressione economica e di funzioni dei magistrati. Occorre, in particolare, rilevare che nella fase di prima applicazione della presente Circolare ai richiamati indicatori di rendimento deve essere assegnata una valenza che non può risultare *ex se* decisiva, rispetto alla valutazione di professionalità del magistrato; ciò, sino a che gli standard medi di definizione dei procedimenti non saranno definiti d'intesa con il Ministero della giustizia, all'esito dei lavori che uno specifico gruppo misto è chiamato a svolgere, sulla base di aree omogenee individuate in relazione al territorio, alla tipologia dei procedimenti e alla dimensione degli uffici. Infatti, occorre adeguatamente considerare le molteplici difformità quantitative e qualitative che traggono origine dalla natura del procedimento, dalle specifiche realtà territoriali nonché dalla dimensione degli uffici. In tali termini, gli indicatori relativi alla laboriosità acquisiranno piena valenza solo con l'entrata a regime del richiamato sistema di monitoraggio. Si è prevista l'abrogazione della Circolare 22 settembre 1999 in materia di verifica periodica della professionalità dei magistrati, non residuando, alla luce delle disposizioni della circolare, alcun suo autonomo ambito applicativo.

CAPO XXII

La presente circolare entrerà in vigore il giorno successivo alla sua approvazione. La disciplina transitoria dettata dal Capo XX, volta a disciplinare l'applicazione dei criteri di valutazione della professionalità previsti dal D.L.vo n. 260/2006, e successive modificazioni, nei confronti dei magistrati in servizio alla data di entrata in vigore della legge 30 luglio 2007 n. 111, rende infatti superflua la previsione di specifici termini di *vacatio*.

CIRCOLARE IN MATERIA DI "NUOVI CRITERI PER LA VALUTAZIONE DI PROFESSIONALITÀ DEI MAGISTRATI A SEGUITO DELLA LEGGE 30 LUGLIO 2007, N.

111, RECANTE "MODIFICHE ALLE NORME SULL'ORDINAMENTO GIUDIZIARIO"

PREMESSA

La presente circolare disciplina tutti i casi in cui la legge o altre disposizioni normative richiedono valutazioni della professionalità dei magistrati; disciplina in particolare gli elementi, i parametri, la documentazione ed il procedimento per le valutazioni di professionalità.

PARTE I

CAPO I

I PARERI E LE VALUTAZIONI DI PROFESSIONALITÀ

1. I pareri dei Consigli giudiziari e del Consiglio direttivo della Corte di cassazione e le valutazioni di professionalità del Consiglio superiore della magistratura devono essere formulati secondo le disposizioni seguenti.

CAPO II

DISPOSIZIONI GENERALI

1. Il Consiglio superiore procede alla valutazione di professionalità acquisiti il parere del Consiglio giudiziario o del Consiglio direttivo della Corte di cassazione e la relativa documentazione, le risultanze delle ispezioni ordinarie e tutti gli elementi di conoscenza ulteriori che ritenga di assumere. 2. Il parere deve ricostruire con completezza le qualità del magistrato, al fine di consentire al Consiglio superiore la conoscenza dettagliata delle caratteristiche professionali, del tipo di lavoro effettivamente svolto e delle reali attitudini del magistrato medesimo, anche ai fini delle valutazioni per il tramutamento di funzioni, per il conferimento delle funzioni semidirettive e direttive - salvo quanto previsto dal capo XXI, punto 1 -, nonché per il conferimento delle funzioni di legittimità. 3. Il parere deve sempre indicare in modo analitico gli elementi di fatto positivi e negativi sui quali fonda le proprie valutazioni.

4. Ciascun parere deve avvalersi di tutti i parametri che ai sensi delle vigenti disposizioni sono comunque significativi in ordine alla ricostruzione delle qualità professionali del magistrato.

5. Nelle valutazioni di professionalità successive deve essere verificata la permanenza di elementi significativi già individuati in quelle precedenti.

6. Gli elementi di valutazione non possono attenersi alla sfera privata del magistrato, salvo che siano provvisti di rilievo ai fini dell'art. 2 r.d.l. 31 maggio 1946, n. 511, disciplinare o penale; in questi casi, il Consiglio giudiziario o il Consiglio direttivo della Corte di cassazione ne verificano l'incidenza sulle qualità professionali del magistrato, anche con riferimento al profilo dell'attualità qualora si tratti di elementi relativi a periodi oggetto di pregresse valutazioni. Gli orientamenti politici, ideologici o religiosi del magistrato non possono costituire elementi rilevanti ai fini della valutazione di professionalità.

7. La valutazione di professionalità, riferita a periodi in cui il magistrato ha svolto funzioni giudicanti o requirenti, non può riguardare l'attività di interpretazione di norme di diritto, né quella di valutazione del fatto e delle prove.

8. I pareri formulati per il conseguimento delle progressive valutazioni di professionalità devono essere redatti secondo il modello allegato alla presente circolare.

CAPO III

INDIPENDENZA, IMPARZIALITA' ED EQUILIBRIO NELL'ESERCIZIO DELLE FUNZIONI GIURISDIZIONALI

1. Costituiscono imprescindibili condizioni per un corretto esercizio delle funzioni giurisdizionali l'indipendenza, l'imparzialità e l'equilibrio.

2. L'indipendenza consiste nello svolgere le funzioni giurisdizionali senza condizionamenti, apporti o vincoli che possano influire negativamente o limitare le modalità di esercizio della giurisdizione.

3. L'imparzialità consiste nell'esercizio della giurisdizione condotto in modo obiettivo ed equo rispetto alle parti.

4. L'equilibrio consiste nell'esercizio della giurisdizione condotto con senso della misura e moderazione, non determinato dagli orientamenti ideologici, politici e religiosi del magistrato ed ancorato a fatti concreti, obiettivi e verificati.

5. Il giudizio, quando non emergano dati che evidenzino difetti di indipendenza, imparzialità ed equilibrio, deve essere espresso con la formula "nulla da rilevare".

CAPO IV

PARAMETRI DI VALUTAZIONE

1. I parametri normativi, cui occorre avere riguardo ai fini delle valutazioni di professionalità, sono individuati nella capacità, nella laboriosità, nella diligenza e nell'impegno.

2. La capacità si desume:

- dalla preparazione giuridica e dal grado di aggiornamento;
- dal possesso delle tecniche di argomentazione e di indagine, anche in relazione all'esito degli affari nelle successive fasi e nei gradi del procedimento;
- dalla conduzione delle udienze da parte di chi le dirige o le presiede;
- dall'idoneità a utilizzare e dirigere i collaboratori e gli ausiliari, nonché a controllarne l'apporto;
- dall'attitudine a cooperare secondo criteri di opportuno coordinamento con altri uffici giudiziari aventi competenze connesse o collegate.

3. La laboriosità si desume:

- dalla produttività, intesa come numero e qualità degli affari trattati, in rapporto alla tipologia ed alla condizione organizzativa e strutturale degli uffici;
- dai tempi di smaltimento del lavoro;
- dall'attività di collaborazione svolta nell'ufficio.

4. La diligenza si desume:

- dall'assiduità e dalla puntualità nella presenza in ufficio, nelle udienze e nei giorni stabiliti;
- dal rispetto dei termini per la redazione e il deposito dei provvedimenti, o comunque per il compimento di attività giudiziarie;
- dalla partecipazione alle riunioni previste dall'ordinamento giudiziario per la discussione e l'approfondimento delle innovazioni legislative, nonché per la conoscenza dell'evoluzione della giurisprudenza o, nell'ipotesi di presidenti di sezione e di coordinatori di gruppi di lavoro, dalla periodica convocazione di tali riunioni.

5. L'impegno si desume:

- dalla disponibilità alle sostituzioni di magistrati assenti;
- dalla frequenza della partecipazione o nella disponibilità a partecipare ai corsi di aggiornamento organizzati dalla Scuola superiore della magistratura, salvo quanto previsto dalla disposizione transitoria;
- dalla collaborazione alla soluzione dei problemi di tipo organizzativo e giuridico.

CAPO V

INDICATORI DEI PARAMETRI DI VALUTAZIONE

1. Gli indicatori dei parametri di valutazione hanno la funzione di consentire un giudizio analitico e completo, ancorato a criteri predeterminati, in ordine a ciascun parametro.

2. In particolare:

a) gli indicatori della capacità sono costituiti:

- dalla chiarezza, completezza espositiva e capacità di sintesi nella redazione dei provvedimenti giudiziari, in relazione ai presupposti di fatto e di diritto, nonché dalla loro congruità rispetto ai problemi processuali o investigativi affrontati, come accertati dall'esame degli atti acquisiti a campione nonché di quelli, eventualmente, prodotti dell'interessato; per i magistrati con funzione inquirente, inoltre, dall'impiego di corrette tecniche di indagine, desumibili dai suindicati atti nonché dal rapporto informativo del capo dell'ufficio relativamente alla generalità degli affari trattati; per i magistrati requirenti con funzioni di coordinamento nazionale, anche dalla capacità di rapportarsi in maniera efficace, autorevole e collaborativa con gli uffici giudiziari e i magistrati destinatari del coordinamento, desunta dal rapporto informativo del Procuratore Nazionale Antimafia;
- dalla complessità dei procedimenti e dei processi trattati, in ragione del numero delle parti e delle questioni giuridiche affrontate, come indicata dai dirigenti degli uffici o dai magistrati in valutazione;
- dall'esito, nelle successive fasi e nei gradi del procedimento, dei provvedimenti giudiziari emessi o richiesti, relativi alla definizione di fasi procedurali o processuali o all'adozione di misure cautelari, accertato attraverso la comunicazione dei dirigenti degli uffici e da valutarsi, ove presenti caratteri di significativa anomalia, anche alla luce del rapporto esistente tra provvedimenti emessi o richiesti e provvedimenti non confermati o rigettati, rapporto da valutarsi altresì avuto riguardo alla tipologia ed alla natura degli affari trattati ed alla evoluzione giurisprudenziale;
- dalle modalità di gestione dell'udienza in termini di corretta conduzione o partecipazione, nel rispetto dei diritti delle parti, accertata dall'esame dei verbali acquisiti a campione nonché prodotti dell'interessato, dal rapporto dei dirigenti degli uffici o da eventuali segnalazioni del Consiglio dell'Ordine degli Avvocati;
- dal livello dei contributi in camera di consiglio;

- dall'attitudine del magistrato ad organizzare il proprio lavoro;
 - dalle conoscenze informatiche applicate alla redazione dei provvedimenti ed all'efficace gestione dell'attività giudiziaria;
 - dall'aggiornamento dottrinale e giurisprudenziale dimostrato anche attraverso le pubblicazioni di provvedimenti giudiziari o di altri contributi aventi rilievo scientifico e le relazioni a convegni giuridici, inserite o comunque inseribili nel fascicolo personale del magistrato, e che abbiano comportato un arricchimento del lavoro giudiziario;
- b) gli indicatori della laboriosità sono costituiti:
- dal numero di procedimenti e processi definiti per ciascun anno in relazione alle pendenze del ruolo, ai flussi in entrata degli affari, e alla complessità dei procedimenti assegnati e trattati, verificati sulla base delle statistiche e dei dati forniti dai capi degli uffici ed eventualmente dai magistrati in valutazione;
 - dal rispetto degli standard medi di definizione dei procedimenti, individuati, salvo quanto previsto dalle disposizioni finali della presente circolare, dalla media statistica della produzione dei magistrati dell'ufficio di cui il magistrato sottoposto a valutazione fa parte ed assegnati a funzioni, sezioni, gruppi di lavoro omogenei a quest'ultimo, come desunta dalle statistiche ufficiali calcolate al 31 dicembre di ciascuno dei due anni precedenti rispetto ad ognuno degli anni in valutazione. Tali standard medi vanno, comunque, valutati unitamente ed alla luce: della complessiva situazione organizzativa e strutturale degli uffici; dei flussi in entrata degli affari; della qualità degli affari trattati, determinata in ragione del numero delle parti o della complessità delle questioni giuridiche affrontate; dell'attività di collaborazione alla gestione dell'ufficio ed all'espletamento di attività istituzionali; dello svolgimento di incarichi giudiziari ed extragiudiziari di natura obbligatoria; di eventuali esoneri dal lavoro giudiziario; di eventuali assenze legittime dal lavoro diverse dal congedo ordinario;
 - dal rispetto dei tempi di trattazione dei procedimenti e dei processi, accertato attraverso i rapporti dei dirigenti degli uffici, le segnalazioni eventualmente pervenute dal Consiglio dell'Ordine degli Avvocati competente per territorio, le informazioni esistenti presso la Prima Commissione e presso la Segreteria della Sezione Disciplinare del Consiglio superiore, quelle inserite nel fascicolo personale del magistrato, nonché mediante la verifica della insussistenza di eventuali rilievi di natura contabile o di giudizi di responsabilità civile;
 - dalla collaborazione prestata per il buon andamento dell'ufficio, anche su richiesta del dirigente o del coordinatore della posizione tabellare o del gruppo di lavoro, e da questi segnalata;
- c) gli indicatori della diligenza sono costituiti:
- dal rispetto degli impegni prefissati e dal numero di udienze tenute, in relazione a quanto stabilito dagli organi competenti, verificati sulla base dei dati forniti dai dirigenti degli uffici ed eventualmente dai magistrati in valutazione;
 - dal rispetto dei termini per la redazione e il deposito dei provvedimenti, o comunque per il compimento di attività giudiziarie, accertato mediante l'esame dei prospetti statistici comparati o attraverso le indicazioni dei dirigenti degli uffici, da valutarsi alla luce della complessiva situazione degli uffici;
 - dalla costante partecipazione alle riunioni previste dall'ordinamento giudiziario per la discussione e l'approfondimento delle innovazioni legislative, nonché per la conoscenza dell'evoluzione della giurisprudenza;
- d) gli indicatori dell'impegno sono costituiti:
- dalla disponibilità alle sostituzioni, in quanto riconducibili alle applicazioni e supplenze, previste dalle norme di legge e dalle direttive del Consiglio superiore;
 - dal numero di corsi di aggiornamento organizzati dalla Scuola superiore della magistratura, salvo quanto previsto dalla norma transitoria, per i quali il magistrato abbia dato la disponibilità a partecipare o ai quali abbia effettivamente partecipato;
 - dalla consistenza della collaborazione prestata su richiesta del dirigente dell'ufficio o del coordinatore della posizione tabellare o del gruppo di lavoro, in ordine alla soluzione dei problemi di tipo organizzativo e giuridico, segnalata dai dirigenti degli uffici.

CAPO VI

DISCIPLINA APPLICABILE PER I MAGISTRATI DESTINATI A FUNZIONI NON GIUDIZIARIE

1. Le disposizioni che precedono si applicano anche ai magistrati destinati a funzioni non giudiziarie, in quanto compatibili, ivi compresi coloro per i quali il parere è formulato dal Consiglio di amministrazione del Ministero della giustizia.
2. Il parere è espresso sulla base della relazione dell'Autorità presso cui gli stessi svolgono servizio, illustrativa dell'attività svolta, e di ogni altra documentazione che l'interessato ritiene utile produrre, purché attinente alla professionalità e che dimostri l'attività in concreto svolta.

CAPO VII

DOCUMENTAZIONE RELATIVA ALLA VALUTAZIONE DI PROFESSIONALITÀ.

FONTI DI CONOSCENZA.

1. La documentazione acquisibile ed utilizzabile ai fini della valutazione di professionalità è costituita:
 - dai rapporti dei dirigenti degli uffici;
 - dal rapporto informativo annuale del capo dell'ufficio relativamente all'andamento generale dell'ufficio;
 - dalle segnalazioni pervenute al Consiglio giudiziario o ai dirigenti degli uffici dal Consiglio dell'ordine degli avvocati competente per territorio;
 - dalle informazioni inserite nel fascicolo personale del magistrato;
 - dai verbali di audizione del magistrato;
 - dai verbali di seduta del Consiglio giudiziario;
 - da eventuali atti che si trovino nella fase pubblica di uno dei processi trattati dal magistrato in valutazione, acquisiti su specifica richiesta di un componente del Consiglio giudiziario;
 - dalla relazione del magistrato interessato illustrativa del lavoro svolto;
 - dalle informazioni esistenti presso la Prima Commissione del Consiglio superiore della magistratura;
 - dalle informazioni disponibili presso la Segreteria della Sezione Disciplinare del Consiglio superiore della magistratura;
 - dalle informazioni disponibili presso il Ministero della giustizia e contenute nelle relazioni ispettive. E' altresì consentita l'utilizzazione di ogni altro atto o documento che fornisca dati obiettivi e rilevanti relativi all'attività professionale e ai comportamenti incidenti sulla professionalità del magistrato.
2. Fatte salve le specifiche previsioni contenute nel Capo V in tema di indicatori, sono altresì utilizzabili:
 - 2.1. Ai fini della valutazione del parametro della capacità, in particolare:
 - gli atti acquisiti a campione secondo le indicazioni della Circolare P – 2084 del 1° febbraio 2005, assumendo come periodo di riferimento quello quadriennale, nonché eventualmente prodotti dall'interessato. Per periodi di valutazione inferiori al quadriennio, resta ferma la previsione dei quattro bimestri, che andranno individuati dai Consigli giudiziari nell'ambito del diverso arco temporale di riferimento;
 - la segnalazione dei dirigenti degli uffici, ed eventualmente dei magistrati in valutazione, sulla complessità dei procedimenti e dei processi trattati in ragione del numero delle parti e delle questioni giuridiche affrontate;
 - la comunicazione dei dirigenti degli uffici circa l'eventuale riforma o non accoglimento, nelle successive fasi e gradi del procedimento, dei provvedimenti giudiziari emessi o richiesti, relativi all'adozione di misure cautelari o alla definizione di fasi procedurali o processuali, da redigersi esclusivamente nel caso in cui risulti significativo il rapporto tra provvedimenti adottati e quelli non confermati;
 - i verbali di udienza acquisiti a campione, secondo le modalità indicate nella Circolare P – 2084 del 1° febbraio 2005 e modifiche che saranno successivamente approvate;
 - la segnalazione del dirigente dell'ufficio relativamente al livello dei contributi in camera di consiglio;
 - la segnalazione del dirigente dell'ufficio in merito all'attitudine del magistrato ad organizzare il proprio lavoro;
 - la segnalazione del dirigente dell'ufficio in merito alle conoscenze informatiche;
 - le pubblicazioni scientifiche e le relazioni a convegni giuridici, ove inserite o comunque inseribili nel fascicolo personale del magistrato;

- la segnalazione del Procuratore nazionale antimafia, per i magistrati requirenti con funzioni di coordinamento nazionale, in ordine alla capacità di rapportarsi in maniera efficace, autorevole e collaborativa con gli uffici giudiziari ed i magistrati destinatari del coordinamento.

2.2. Ai fini della valutazione del parametro della laboriosità, in particolare:

- il prospetto statistico relativo al numero di procedimenti e processi definiti per ciascun anno del quadriennio dal magistrato in valutazione e dagli altri magistrati dell'ufficio assegnati a funzioni, sezioni, gruppi di lavoro omogenei;
- il prospetto statistico relativo al numero di procedimenti e processi definiti dal magistrato in valutazione e dagli altri magistrati dell'ufficio assegnati a funzioni, sezioni, gruppi di lavoro omogenei per ciascuno dei due anni precedenti ad ognuno degli anni in valutazione;
- l'indicazione dei dirigenti degli uffici sulla complessità dei procedimenti e dei processi trattati dal magistrato in valutazione in ragione del numero delle parti o delle questioni giuridiche affrontate, sull'attività di collaborazione alla gestione dell'ufficio, sull'espletamento di attività istituzionale o degli incarichi giudiziari ed extragiudiziari di natura obbligatoria svolti dal magistrato in valutazione;
- l'indicazione dei dirigenti degli uffici in ordine alla collaborazione prestata su richiesta dal dirigente medesimo o del coordinatore della posizione tabellare o del gruppo di lavoro.

2.3. Ai fini della valutazione del parametro della diligenza, in particolare:

- il prospetto relativo al numero di udienze tenute, inerente al magistrato in valutazione ed agli altri magistrati del medesimo ufficio assegnati a funzioni omogenee;
- l'indicazione dei dirigenti degli uffici sul rispetto degli impegni prefissati;
- il prospetto comparato relativo ad eventuali ritardi nella redazione e nel deposito dei provvedimenti, o comunque nel compimento di attività giudiziarie;
- l'indicazione dei dirigenti degli uffici in ordine alla partecipazione alle riunioni previste dall'ordinamento giudiziario per la discussione e l'approfondimento delle innovazioni legislative, nonché per la conoscenza dell'evoluzione della giurisprudenza.

2.4. Ai fini della valutazione del parametro dell'impegno, in particolare:

- l'indicazione dei dirigenti degli uffici in ordine alla disponibilità alle sostituzioni, in quanto riconducibili alle applicazioni e supplenze previste da norme di legge e dalle direttive del Consiglio superiore;
- l'indicazione dei dirigenti degli uffici in ordine alla consistenza delle collaborazioni prestate per la soluzione dei problemi di tipo organizzativo e giuridico con contestuale segnalazione di quelle richieste dal dirigente dell'ufficio o dal coordinatore della posizione tabellare o del gruppo di lavoro;
- le domande di partecipazione agli incontri di studio di cui al Capo V della presente circolare o l'attestazione relativa all'effettiva partecipazione ai medesimi.

3. È vietato l'utilizzo di fonti anonime e di voci correnti.

CAPO VIII

CRITERI DI GIUDIZIO IN RELAZIONE AI SINGOLI PARAMETRI DI VALUTAZIONE

1. Il profilo dell'indipendenza, dell'imparzialità e dell'equilibrio del magistrato è 'positivo' quando il giudizio è espresso con la formula 'nulla da rilevare', come stabilito dal Capo III, punto 5, della presente circolare.

1.1. Il giudizio 'negativo' in ordine a tale profilo è determinato dalla gravità del fatto o dei fatti ascrivibili al magistrato. La gravità del fatto o dei fatti va valutata anche alla luce delle possibili ripercussioni negative nel tempo sulla credibilità dell'esercizio delle funzioni giudiziarie da parte del magistrato.

2. Il parametro della capacità può essere 'positivo', 'carente', 'gravemente carente'.

2.1. È 'positivo' quando sussistono le seguenti condizioni:

- sono accertate, nei provvedimenti esaminati, la chiarezza, la completezza espositiva e la capacità di sintesi in relazione ai presupposti di fatto e di diritto e la loro congruità in relazione ai problemi processuali o investigativi affrontati, nonché, per i magistrati inquirenti, anche l'utilizzazione di corrette tecniche di indagine;
- sono accertate le conoscenze informatiche dirette alla redazione dei provvedimenti ed al miglioramento dell'efficacia dell'attività giudiziaria;
- è accertata la qualità dei contributi in camera di consiglio;
- è accertata l'attitudine del magistrato ad organizzare il proprio lavoro;
- non risulta che una parte significativa dei provvedimenti giudiziari emessi o richiesti, e relativi all'adozione di misure cautelari o alla definizione di fasi procedurali o processuali, ha ricevuto un esito negativo nelle successive fasi o nei gradi del procedimento, per ragioni addebitabili al magistrato in valutazione;
- non risultano violazioni di norme giuridiche e errori di fatto rilevanti in sede disciplinare o di responsabilità civile dei magistrati;
- sono accertati, nei verbali esaminati, modalità di corretta gestione dell'udienza improntate al rispetto dei diritti delle parti;
- per i magistrati requirenti con funzioni di coordinamento nazionale è accertata la capacità di rapportarsi in maniera efficace, autorevole e collaborativa con gli uffici giudiziari e i magistrati destinatari del coordinamento.

2.2. È 'carente' quando difetta significativamente, senza mancare del tutto, una delle condizioni di cui sopra.

2.3. È 'gravemente carente' quando manca del tutto una delle condizioni di cui sopra o quando difettano significativamente almeno due delle condizioni di cui sopra.

3. Il parametro della laboriosità può essere 'positivo', 'carente', 'gravemente carente'.

3.1. È 'positivo' quando sussistono le seguenti condizioni:

- sono rispettati gli standard medi di definizione dei procedimenti, individuati, salvo quanto previsto dalle disposizioni finali della presente circolare, dalla media statistica della produzione dei magistrati dell'ufficio di cui il magistrato sottoposto a valutazione fa parte ed assegnati a funzioni, sezioni, gruppi di lavoro omogenei a quest'ultimo, come desunta dalle statistiche ufficiali calcolate al 31 dicembre di ciascuno dei due anni precedenti rispetto ad ognuno degli anni in valutazione. Tali standard medi vanno, comunque, valutati unitamente ed alla luce: della complessiva situazione organizzativa e strutturale degli uffici; dei flussi in entrata degli affari; della qualità degli affari trattati, determinata in ragione del numero delle parti o della complessità delle questioni giuridiche affrontate; dell'attività di collaborazione alla gestione dell'ufficio ed all'espletamento di attività istituzionali; dello svolgimento di incarichi di natura obbligatoria; di eventuali esoneri dal lavoro giudiziario;
- non sussistono rilievi di natura disciplinare o contabile in relazione ai tempi di trattazione dei procedimenti e dei processi;
- risulta adeguata la collaborazione fornita all'interno dell'ufficio, su richiesta del dirigente o del coordinatore della posizione tabellare o del gruppo di lavoro, salva l'esistenza di ragioni obiettivamente giustificabili.

3.2. È 'carente' quando difetta significativamente, senza mancare del tutto, una delle condizioni di cui sopra.

3.3. È 'gravemente carente' quando manca del tutto una delle condizioni di cui sopra o quando difettano significativamente almeno due delle condizioni di cui sopra. 4. Il parametro della diligenza può essere 'positivo', 'carente', 'gravemente carente'.

4.1. È 'positivo' quando sussistono le seguenti condizioni:

- si registra un apprezzabile rispetto del calendario delle udienze e degli impegni prefissati, salva l'esistenza di ragioni obiettivamente giustificabili;
- i termini generalmente osservati per la redazione e il deposito dei provvedimenti, o comunque per il compimento di attività giudiziarie, sono conformi alle prescrizioni di legge o sono comunque accettabili in considerazione dei carichi di lavoro e degli standard degli altri magistrati dello stesso ufficio addetti alla medesima tipologia di provvedimenti, salvo che sussistano ragioni obiettivamente giustificabili;

- risulta l'assidua partecipazione alle riunioni previste dall'ordinamento giudiziario per la discussione e l'approfondimento delle innovazioni legislative, nonché per la conoscenza dell'evoluzione della giurisprudenza, salva l'esistenza di ragioni obiettivamente giustificabili.

4.2. E' 'carente' quando difetta significativamente, senza mancare del tutto, una delle condizioni di cui sopra.

4.3. E' 'gravemente carente' quando manca del tutto una delle condizioni di cui sopra o quando difettano significativamente almeno due delle condizioni di cui sopra.

5. Il parametro dell'impegno può essere 'positivo', 'carente', 'gravemente carente'.

5.1. E' 'positivo' quando sussistono le seguenti condizioni:

- è stata fornita adeguata disponibilità alle sostituzioni, applicazioni e supplenze, necessarie al funzionamento dell'ufficio;
- è stata presentata almeno una domanda di partecipazione all'anno ai corsi di aggiornamento organizzati dalla Scuola superiore della magistratura, salvo quanto previsto dalla normativa transitoria, e si è registrata la partecipazione ai corsi in ordine ai quali è intervenuto provvedimento di ammissione, sempre che non sussistano ragioni ostative obiettivamente giustificabili;
- è stata fornita adeguata collaborazione alle richieste del dirigente dell'ufficio o del coordinatore della posizione tabellare o del gruppo di lavoro, in ordine alla soluzione dei problemi di tipo organizzativo e giuridico, salva l'esistenza di ragioni obiettivamente giustificabili.

5.2. E' 'carente' quando difetta significativamente, senza mancare del tutto, una delle condizioni di cui sopra.

5.3. E' 'gravemente carente' quando manca del tutto una delle condizioni di cui sopra o quando difettano significativamente almeno due delle condizioni di cui sopra.

CAPO IX

VALUTAZIONE DI PROFESSIONALITA' POSITIVA

1. Il giudizio di professionalità è 'positivo' quando risultano positivi tutti i parametri di valutazione.

CAPO X

VALUTAZIONE DI PROFESSIONALITA' NON POSITIVA

Il giudizio di professionalità è 'non positivo' quando ricorra almeno una delle seguenti condizioni:

- a) uno o più parametri (capacità, laboriosità, diligenza e impegno) risultino carenti;
- b) uno solo dei parametri sia giudicato 'gravemente carente';
- c) siano comunque positivi i profili dell'indipendenza, dell'imparzialità e dell'equilibrio.

CAPO XI

VALUTAZIONE DI PROFESSIONALITA' NEGATIVA

1. Il giudizio di professionalità è 'negativo' quando ricorra almeno una delle seguenti condizioni:

- a) risulta negativo il profilo dell'indipendenza, dell'imparzialità o dell'equilibrio;
- b) risultano 'gravemente carenti' due o più degli altri parametri (capacità, laboriosità, diligenza e impegno);
- c) dopo un giudizio di professionalità 'non positivo', perdura per il successivo anno la valutazione di 'carente' in ordine al medesimo parametro.

CAPO XII

RAPPORTO TRA VALUTAZIONI DI PROFESSIONALITA' E PROCEDIMENTI DISCIPLINARI O PENALI PENDENTI.

1. La Commissione competente del Consiglio superiore per le valutazioni di professionalità sospende, con provvedimento motivato, la relativa procedura nei casi in cui il magistrato: a) sia sospeso in via obbligatoria dalle funzioni e dallo stipendio ai sensi dell'art. 21, D.L.vo n. 109/2006, in quanto sottoposto a misura cautelare personale nell'ambito di un procedimento penale;

b) sia sospeso in via facoltativa dalle funzioni e dallo stipendio ai sensi dell'art. 22, D.Lvo n. 109/2006, in quanto sottoposto a procedimento penale per delitto non colposo; c) sia sospeso in via facoltativa dalle funzioni e dallo stipendio ai sensi dell'art. 22 D. L.vo n. 109/2006, in quanto sottoposto a procedimento disciplinare.

2. In tutti gli altri casi di pendenza di procedimento penale e/o disciplinare, anche anteriormente all'esercizio dell'azione penale e/o disciplinare, nonché nelle ipotesi di formale apertura del procedimento di trasferimento d'ufficio ai sensi dell'art. 2 R.D.Lgs. n. 511/1946, la Commissione può sospendere, con provvedimento motivato, la procedura per il conseguimento di ciascuna delle valutazioni di professionalità, sempre che l'accertamento dei fatti oggetto del procedimento penale e/o disciplinare incida sulla definizione della procedura di valutazione della professionalità.

PARTE II

PROCEDIMENTO DI VALUTAZIONE

Capo XIII

INIZIO DEL PROCEDIMENTO

1. Il Consiglio superiore della magistratura ogni anno individua i nominativi dei magistrati per i quali nell'anno successivo matura uno dei sette quadrienni utili ai fini delle valutazioni di professionalità ed invita i Consigli giudiziari competenti ad esprimere, secondo le indicazioni della presente circolare, il necessario parere per la formulazione della valutazione non appena scaduto il quadriennio.

Capo XIV

RAPPORTO E DOCUMENTAZIONE TRASMESSA DAI DIRIGENTI DEGLI UFFICI

1. I dirigenti degli uffici devono trasmettere ai Consigli giudiziari, in occasione della scadenza del quadriennio in valutazione o comunque dopo un anno a far data da un giudizio non positivo o decorsi due anni dal giudizio negativo, un rapporto sulla professionalità del magistrato, redatto secondo i parametri della presente circolare ed in conformità al modello allegato, che costituisce parte integrante della circolare stessa, unitamente alla documentazione di seguito indicata.

2. Il rapporto contiene, tra l'altro:

- la segnalazione sulla complessità dei procedimenti e dei processi trattati in ragione del numero delle parti e delle questioni giuridiche affrontate;
- la comunicazione dell'esito, nelle successive fasi e nei gradi del procedimento, dei provvedimenti giudiziari emessi o richiesti, e relativi all'adozione di misure cautelari o alla definizione di fasi procedurali o processuali, accertato attraverso la comunicazione dei dirigenti degli uffici e da valutarsi, ove presenti caratteri di significativa anomalia, anche alla luce del rapporto esistente tra provvedimenti emessi o richiesti e provvedimenti non confermati o rigettati, rapporto da valutarsi altresì avuto riguardo alla tipologia ed alla natura degli affari trattati;
- la segnalazione del dirigente dell'ufficio relativa al livello dei contributi in camera di consiglio;
- la segnalazione del possesso delle conoscenze informatiche dirette alla redazione dei provvedimenti ed al miglioramento dell'efficacia dell'azione giudiziaria;
- per i magistrati requirenti con funzioni di coordinamento nazionale la segnalazione relativa alla capacità di rapportarsi in maniera efficace, autorevole e collaborativa con gli uffici giudiziari ed i magistrati destinatari del coordinamento;
- la segnalazione relativamente all'attitudine del magistrato ad organizzare il proprio lavoro;
- l'indicazione della collaborazione fornita su richiesta del dirigente medesimo o del coordinatore della posizione tabellare o del gruppo di lavoro;
- l'indicazione del rispetto degli impegni prefissati;
- l'indicazione relativa alla partecipazione alle riunioni previste dall'ordinamento giudiziario

per la discussione e l'approfondimento delle innovazioni legislative, nonché per la conoscenza dell'evoluzione della giurisprudenza;
- l'indicazione in ordine alla disponibilità alle sostituzioni, applicazioni e supplenze.

3. Al rapporto sono allegati:

- la relazione del magistrato interessato illustrativa del lavoro svolto, contenente ogni indicazione utile ai fini della sua valutazione, ivi compresa la copia di atti e provvedimenti che il medesimo ritiene di sottoporre ad esame;
- gli atti acquisiti a campione, secondo le disposizioni di cui al Capo VII della presente circolare;
- i verbali di udienza acquisiti a campione, secondo le disposizioni di cui al Capo VII della presente circolare;
- i dati statistici calcolati al 31 dicembre dei due anni precedenti rispetto a ciascun anno in valutazione, elaborati su base annuale, e relativi al numero dei procedimenti e processi definiti, alle pendenze del ruolo, nonché ai flussi in entrata, inerenti al magistrato in valutazione e, comparativamente, agli altri magistrati del medesimo ufficio assegnati a funzioni omogenee;
- i dati relativi allo svolgimento di incarichi giudiziari ed extragiudiziari, di natura obbligatoria;
- la documentazione relativa ad eventuali esoneri dal lavoro giudiziari;
- la documentazione relativa ad eventuali assenze dal lavoro diverse dal congedo ordinario;
- il prospetto relativo al numero di udienze tenute, inerente al magistrato in valutazione ed agli altri magistrati del medesimo ufficio assegnati a funzioni omogenee;
- il prospetto comparato relativo ad eventuali ritardi nella redazione e nel deposito dei provvedimenti, o comunque nel compimento di attività giudiziarie;
- eventuali segnalazioni di situazioni specifiche rappresentate da terzi ovvero dal Consiglio dell'Ordine degli Avvocati, sempre che si riferiscano a fatti specifici incidenti sulla professionalità, con particolare riguardo alle situazioni concrete ed oggettive di esercizio non indipendente della funzione ed ai comportamenti che denotino evidente mancanza di equilibrio o di preparazione giuridica.

4. In ogni caso i dirigenti degli uffici entro il mese di febbraio di ciascun anno dovranno inviare ai Consigli giudiziari le statistiche comparate ed una relazione sull'andamento generale dell'ufficio, che deve riguardare la consistenza dell'organico dei magistrati dell'ufficio e del personale amministrativo, le eventuali vacanze, i flussi e la distribuzione degli affari nei vari settori di lavoro e i provvedimenti sulla destinazione interna dei magistrati per far fronte alle esigenze dell'ufficio. I documenti sopra indicati verranno conservati presso la segreteria del Consiglio giudiziario.

Capo XV

ATTIVITÀ DEI CONSIGLI GIUDIZIARI

1. Il Consiglio giudiziario, sulla base degli elementi indicati al Capo VII, esprime il parere, conformandosi al modello allegato alla presente circolare, immediatamente dopo la scadenza del periodo in valutazione.
2. Laddove lo ritenga necessario, il Consiglio giudiziario può assumere informazioni su fatti specifici segnalati dai suoi componenti o dai dirigenti degli uffici o dai consigli dell'ordine degli avvocati. All'esito dell'istruttoria, il Consiglio giudiziario ne dà tempestiva comunicazione all'interessato. L'interessato ha diritto di prendere visione ed estrarre copia degli atti a disposizione del Consiglio giudiziario.
3. In ogni caso, il Consiglio giudiziario, ove lo ritenga, può procedere all'audizione del magistrato in valutazione. Quest'ultimo ha comunque diritto ad essere ascoltato ove ne faccia espressa richiesta ed ha sempre facoltà di presentare atti e memorie scritte fino a sette giorni prima dell'audizione. Durante l'audizione il magistrato ha diritto di farsi assistere da altro magistrato.
4. Il parere redatto dal Consiglio giudiziario è comunicato all'interessato e trasmesso al Consiglio superiore della magistratura unitamente all'allegata documentazione ed ai verbali delle eventuali audizioni.

Capo XVI

FORMA DEI PARERI

1. La motivazione dei pareri si fonda sugli atti e sui documenti acquisiti ai sensi dei capi che precedono. Essa tiene distinti anche formalmente, per quanto possibile, i dati di fatto dalle valutazioni ed è, tendenzialmente, essenziale e non ripetitiva. I precedenti pareri e rapporti dei dirigenti degli uffici non devono essere riprodotti integralmente nel parere.
2. Il parere, nella parte dispositiva, indica se è approvato all'unanimità o a maggioranza. In questo ultimo caso riporta il risultato numerico dei voti espressi, omessa ogni indicazione nominativa. Le argomentazioni di minoranza nonché le dichiarazioni di voto dei componenti che ne facciano espressa richiesta sono sinteticamente riportate nel verbale di seduta.
3. Il dispositivo contiene il giudizio finale, positivo, non positivo o negativo, senza aggettivazioni relative a tali giudizi.
4. Il parere non può contenere valutazioni comparative tra singoli magistrati. Nelle valutazioni dei Consigli giudiziari le qualificazioni che indicano l'eccezionalità del livello (come: eccezionale, eccellente e simili) sono attribuite con il necessario rigore.

Capo XVII

ATTIVITÀ DEL CONSIGLIO SUPERIORE DELLA MAGISTRATURA.

1. Il Consiglio superiore procede alla valutazione di professionalità acquisiti il prescritto parere, la relativa documentazione, le risultanze delle ispezioni ordinarie e tutti gli elementi di conoscenza ulteriori che ritenga di assumere; i provvedimenti a campione sono trasmessi solo se espressamente richiesti.
2. L'interessato, qualora ne faccia richiesta, entro dieci giorni dalla notifica del parere del Consiglio giudiziario, può far pervenire al Consiglio superiore le proprie osservazioni ed eventuali documenti e chiedere di essere ascoltato personalmente, con il rispetto dei termini di cui all'art. 11, comma 14, D.Lgs. 160/2006 e successive modificazioni.
3. In tal caso il Consiglio superiore informa l'interessato della facoltà di prendere visione di tutti gli atti del procedimento e di estrarne copia e fissa la data dell'audizione, osservando i termini di cui all'art. 11 comma 14 D.Lgs. n. 160 del 2006.
4. Ove il Consiglio superiore abbia espresso giudizio "non positivo" procede a nuovo scrutinio trascorso un anno dalla scadenza del quadriennio rispetto al quale si è riportata la valutazione "non positiva".
5. Laddove il Consiglio superiore abbia espresso giudizio negativo la delibera deve indicare espressamente i parametri deficitari e, per l'effetto, specificare:
 - se il magistrato debba eventualmente partecipare a corsi di riqualificazione professionale, indicandone la natura ed il numero;
 - se il magistrato sia inidoneo all'esercizio di particolari funzioni e se, in tal caso, si imponga un'assegnazione ad altra funzione fino alla successiva valutazione;
 - se si imponga l'esclusione dall'accesso ad incarichi direttivi, semidirettivi o a funzioni specifiche, indicandone la natura.In tali casi copia della delibera va trasmessa alla Scuola superiore della magistratura, salvo quanto previsto dalla disciplina transitoria, o alle articolazioni consiliari competenti per l'ulteriore corso.
6. Il Consiglio Superiore, in caso di primo giudizio negativo, procede a nuovo scrutinio trascorsi due anni dalla scadenza del quadriennio per il quale si è riportata la valutazione negativa.
7. Qualora la seconda valutazione del Consiglio superiore abbia esito negativo, il magistrato è dispensato dal servizio.
8. La delibera di valutazione della professionalità è trasmessa al Ministro della Giustizia per l'adozione del relativo decreto ed è inserita nel fascicolo personale dell'interessato.

Capo XVIII

SPECIFICI ADEMPIMENTI PER IL CASO DI VALUTAZIONI NEGATIVE

1. In caso di prima valutazione negativa, qualora emergano elementi idonei a fondare un giudizio di inidoneità, con conseguente assegnazione ad altra funzione fino alla successiva valutazione, ovvero con esclusione dall'accesso ad incarichi direttivi, semidirettivi o a funzioni specifiche, la procedura si articola nelle seguenti fasi:
 - invio da parte della competente Commissione di comunicazione contenente la sommaria enunciazione degli elementi idonei a fondare un giudizio di inidoneità, con avvertimento all'interessato che ha diritto di essere sentito con l'eventuale assistenza di altro magistrato e che, in ipotesi di elezione di domicilio, tutti gli avvisi, in ogni fase della procedura, saranno fatti presso l'Ufficio giudiziario dell'interessato;

- compimento dell'attività istruttoria con il rispetto, per qualunque atto, del numero legale a norma del Regolamento Interno;
 - audizione dell'interessato con l'eventuale assistenza di altro magistrato. Qualora l'interessato lo richieda, è consentita l'acquisizione di una memoria difensiva in luogo dell'audizione. Nel caso in cui sia stato addotto un giustificato ed assoluto impedimento a comparire, la Commissione, anche alla luce degli accertamenti eventualmente disposti, fissa una nuova convocazione per altra seduta;
 - fra la data di ricezione della comunicazione e l'audizione deve intercorrere un termine non inferiore a 60 giorni, fatto salvo il diritto dell'interessato di rinunciare espressamente al termine;
 - in caso di impedimento del magistrato chiamato ad assistere colui che è in valutazione, l'audizione può essere differita per una sola volta;
 - deposito dei relativi atti al termine dell'istruttoria, con avviso all'interessato della facoltà di prenderne visione, ottenerne copia e presentare controdeduzioni scritte entro un termine non superiore a dieci giorni dalla ricezione del predetto avviso, prorogabile una sola volta di altri 10 giorni per giustificato motivo. Prima del deposito degli atti, all'interessato che ne faccia richiesta può essere rilasciata copia delle dichiarazioni dallo stesso rese in sede di audizione;
 - valutazione delle risultanze istruttorie e relativa proposta della Commissione;
 - avviso all'interessato della data fissata per la seduta del Consiglio superiore nel corso della quale avrà diritto di essere sentito con l'eventuale assistenza di altro magistrato subito dopo la relazione e prima della discussione, fermo il potere del Consiglio di convocarlo ugualmente in caso di ritenuta necessità. Fra la data di ricezione dell'avviso e l'audizione deve intercorrere un termine non inferiore a 60 giorni.
2. La medesima procedura si applica qualora, dopo un primo giudizio negativo, emergano elementi idonei a fondare un nuovo giudizio di inidoneità.

Capo XIX

PARERI PARZIALI

1. Il Consiglio giudiziario esprime pareri parziali solo in caso di trasferimento del magistrato ad altro distretto, intervenuto a distanza di più di due anni dall'ultima valutazione di professionalità conseguita. Negli altri casi, ed anche allorché il magistrato sia trasferito ad altro ufficio nell'ambito dello stesso distretto, il dirigente dell'ufficio di provenienza redige, secondo i criteri della presente circolare, rapporto sul periodo di servizio ivi prestato.

PARTE III

DISPOSIZIONI TRANSITORIE E FINALI

Capo XX – DISPOSIZIONI TRANSITORIE

1. L'operatività delle nuove valutazioni di professionalità.

1.1. In applicazione della norma di cui all'art. 5, comma 2, della L. 30 luglio 2007, n. 111, ove si stabilisce che *"nei confronti dei magistrati in servizio alla data di entrata in vigore della presente legge, le valutazioni periodiche operano alla scadenza del primo periodo utile successivo alla predetta data, determinata utilizzando quale parametro iniziale la data del decreto di nomina come uditore giudiziario"*, i magistrati in servizio alla data di entrata in vigore della l. 30 luglio 2007, n. 111, sono sottoposti alle valutazioni quadriennali di professionalità nel momento in cui raggiungono, successivamente al 30 luglio 2007, il quarto (1° valutazione), l'ottavo (2° valutazione), il dodicesimo (3° valutazione), il sedicesimo (4° valutazione), il ventesimo (5° valutazione), il ventiquattresimo (6° valutazione) e il ventottesimo anno di servizio (7° ed ultima valutazione), a decorrere dalla data del decreto di nomina come uditore giudiziario. 1.2. La nuova valutazione comprende il periodo temporale decorrente dall'ultima valutazione positiva di professionalità. In particolare, per la valutazione dell'attività svolta dal magistrato sino alla data di entrata in vigore della presente circolare, il Consiglio superiore della magistratura applica la Circolare n. P-1275/1985 recante *Criteria per la formulazione dei pareri per la valutazione di professionalità dei magistrati*, per la valutazione dell'attività svolta successivamente a tale data, si applicano le disposizioni previste dal D. L.vo 5 aprile 2006, n. 160, e successive modifiche così come disciplinate dalla presente Circolare.

2. La definizione dei procedimenti di valutazione pendenti alla data del 31 luglio 2007.

2.1. I magistrati che, al momento dell'entrata in vigore della L. n. 111/2007, hanno già maturato il diritto alla valutazione secondo le previgenti qualifiche di magistrato di tribunale, di magistrato di appello, di magistrato di cassazione e di magistrato idoneo all'esercizio delle funzioni direttive superiori, per i quali non sia intervenuta la relativa delibera Consiliare, sono valutati sulla base dei criteri dettati dalla Circolare n. P-1275/1985 recante *Criteria per la formulazione dei pareri per la valutazione di professionalità dei magistrati*. In tali ipotesi, i Consigli Giudiziari redigono, ove non vi abbiano già provveduto, i pareri previsti dalla Circolare n. P-1275/1985. In caso di esito positivo, ad eccezione di quella di nomina a magistrato di tribunale, la delibera contiene specifica menzione dell'intervenuto conseguimento, rispettivamente, della terza, con relativa decorrenza, della quinta e della settima valutazione di professionalità.

2.2 La disposizione precedente si applica anche nel caso in cui il magistrato sia stato dichiarato non idoneo secondo le previgenti qualifiche e sia maturato il periodo biennale o triennale per la nuova valutazione entro la data del 31 luglio 2007.

3. Il riconoscimento delle nuove fasce di valutazione.

3.1. Ai magistrati in servizio alla data di entrata in vigore della L. n. 111/2007, per i quali l'ultima valutazione di professionalità sia positiva ovvero che non abbiano riportato condanne disciplinari o penali passate in giudicato successivamente all'ultima valutazione di professionalità, è immediatamente riconosciuta, ad ogni effetto giuridico ed economico, la corrispondente valutazione di professionalità prevista dall'art. 11, D. L.vo n. 160/2006, tenuto conto dell'anzianità di servizio maturata al 31 luglio 2007. Pertanto, con riferimento a tale data:

- al magistrato in servizio da almeno quattro anni è riconosciuta la prima valutazione di professionalità;

- al magistrato in servizio da più di otto anni e meno di dodici è riconosciuta la seconda valutazione di professionalità;

- al magistrato in servizio da più di dodici anni e meno di sedici è riconosciuta la terza valutazione di professionalità;

- al magistrato in servizio da più di sedici anni e meno di venti è riconosciuta la quarta valutazione di professionalità;

- al magistrato in servizio da più di venti anni e meno di ventiquattro è riconosciuta la quinta valutazione di professionalità;

- al magistrato in servizio da più di ventiquattro anni e meno di ventotto è riconosciuta la sesta valutazione di professionalità;

- al magistrato che ha maturato ventotto anni di anzianità, qualora non ricorra l'ipotesi di cui al periodo precedente e risulti già conseguita l'idoneità alle funzioni direttive superiori, è riconosciuta la settima valutazione di professionalità.

3.2. In tutti i casi ora richiamati, il Consiglio provvede all'aggiornamento delle schede anagrafiche di ogni magistrato, sostituendo all'individuazione delle qualifiche oggi abrogate l'indicazione delle nuove fasce di anzianità, nonché agli ulteriori adempimenti conseguenti. 3.3. Ai magistrati, per i quali l'ultima valutazione di professionalità sia negativa, secondo le previgenti qualifiche, non si applica il riconoscimento delle nuove fasce di valutazione di cui al n.

3.1; essi sono sottoposti a nuova valutazione di professionalità dopo un biennio dalla scadenza del periodo oggetto di valutazione. La nuova valutazione comprende il periodo temporale decorrente dall'ultima valutazione negativa. Il Consiglio superiore procede allo scrutinio di professionalità utilizzando le diverse discipline, individuate secondo i criteri stabiliti al n. 1.2.

3.3.1. In caso di giudizio positivo, il magistrato consegue la valutazione di professionalità corrispondente alla fascia decorrente dal decreto di nomina, calcolata con l'ulteriore biennio come indicato nella disposizione precedente.

3.3.2. Se il giudizio è "non positivo" ovvero "negativo", il Consiglio superiore procede a nuova valutazione di professionalità secondo la disciplina dettata dai commi 10, 11, 12, 13 e 14 dell'art.

11. D.L.vo n. 160/2006 e successive modificazioni e dai Capi XVII e XVIII della presente circolare.

3.4. I magistrati che hanno riportato condanne disciplinari o penali passate in giudicato successivamente all'ultima valutazione positiva di professionalità, sono immediatamente sottoposti a nuova valutazione di professionalità per la corrispondente fascia decorrente dal decreto di nomina e conseguibile ai sensi dell'art. 5, comma 2, della Legge n. 111/2007.

3.4.1 In caso di giudizio positivo, il magistrato consegue la valutazione di professionalità corrispondente alla fascia decorrente dal decreto di nomina. Se il giudizio è "non positivo" ovvero "negativo" si applica la disposizione di cui al punto n. 3.3.2.

4. Disposizioni varie Al fine della valutazione del parametro dell'impegno desunto dalla frequenza nella partecipazione o nella disponibilità a partecipare ai corsi di aggiornamento, fino a quando questi non saranno organizzati dalla Scuola superiore della magistratura rilevano i corsi organizzati dal Consiglio superiore della magistratura anche nell'ambito della formazione decentrata.

CAPO XXI – DISPOSIZIONI FINALI

1. Gli indicatori relativi alla capacità organizzativa ed alla laboriosità saranno oggetto di revisione nel termine di un anno a far data dalla entrata in vigore della presente circolare, all'esito della definizione dei suddetti indicatori d'intesa con il Ministero della giustizia.

2. E' abrogata la Circolare 22 settembre 1999 in materia di verifica periodica della professionalità dei magistrati.

CAPO XXII

ENRATA IN VIGORE

La presente circolare entrerà in vigore il giorno successivo alla sua approvazione.

RAPPORTO PER LA VALUTAZIONE DI PROFESSIONALITA'1 del dott. _____

A. Dati generali del magistrato

Cognome e nome:

Luogo e data di nascita:

Decreto di nomina a magistrato ordinario (già uditore giudiziario):

Periodo di valutazione:

Funzioni ricoperte nel periodo in valutazione2:

Ufficio e settore di appartenenza3:

B. Fonti di conoscenza4:

1 Indicare a quale fascia corrisponde la valutazione, ai sensi dell'art.11 D.Lgs. 160/2006.

2 Precisare se requisiti (sostituto procuratore), giudicanti (giudice) o specializzate (magistrato di sorveglianza, per i minorenni o del lavoro).

3 Con riferimento all'ufficio, precisare – qualora ne ricorra l'ipotesi - se il magistrato sia assegnato in via esclusiva o prevalente ad eventuali sezioni distaccate o sia in assegnazione congiunta alle medesime. Con riferimento al settore, precisare se civile o penale, nonché se il magistrato sia addetto a funzioni monocratiche o collegiali. In caso di esercizio di funzioni sia civili sia penali, indicare "promiscue" e specificare l'eventuale settore prevalente.

4 Indicare, con numerazione progressiva, gli atti ed i documenti acquisiti e considerati per la formulazione del rapporto, avuto riguardo a quanto disposto al Capo VII della circolare prot. n. 20691 dell'8/10/2007 approvata il 4/10/2007.

C. Giudizio in ordine ai profili della "indipendenza ed imparzialità"5:

D. Valutazione del dirigente dell'ufficio in ordine al parametro della "capacità"6:

D.1 Valutazione dei provvedimenti giudiziari e delle tecniche di indagine, in relazione alla chiarezza e completezza espositiva dei primi ed alla correttezza delle seconde:

D.1.1 Valutazione della capacità di rapportarsi in maniera efficace, autorevole e collaborativa con gli uffici giudiziari e i magistrati destinatari del coordinamento7:

D.2 Segnalazione relativa alla complessità dei procedimenti e dei processi trattati in ragione del numero delle parti e delle questioni giuridiche affrontate:

D.3 Valutazione relativa ad eventuali significative anomalie del rapporto esistente tra provvedimenti emessi o richiesti e provvedimenti non confermati o rigettati, in relazione all'esito, nelle successive fasi e gradi del procedimento, dei provvedimenti giudiziari emessi o richiesti, relativi alla definizione di fasi procedurali o processuali o all'adozione di misure cautelari:

D.4 Valutazione delle modalità di gestione dell'udienza, in termini di corretta conduzione o partecipazione:

5 Il giudizio deve essere espresso con la formula "nulla da rilevare" ove non emergano dati che evidenziano difetti di indipendenza, imparzialità ed equilibrio. Il giudizio è "negativo" quando ricorrono le circostanze indicate al Capo VIII n.1.1; in tal caso è necessario indicare specificatamente le fonti di conoscenza i riportare i fatti rilevanti da esse desunti.

6 Per ciascuno degli indicatori va espressa motivata valutazione, precisando le fonti di conoscenza.

7 Tale valutazione deve essere effettuata per i soli magistrati con funzioni di coordinamento nazionale.

D.5 Valutazione del livello dei contributi forniti in camera di consiglio:

D.6 Valutazione dell'attitudine del magistrato ad organizzare il proprio lavoro:

D.7 Valutazione delle conoscenze informatiche applicate alla redazione dei provvedimenti ed alla efficace gestione dell'attività giudiziaria:

D.8 Valutazione dell'aggiornamento dottrinale e giurisprudenziale:

Giudizio finale8:

E. Valutazione del dirigente dell'ufficio in ordine al parametro della "laboriosità" 9:

E.1 Valutazione della congruità del numero di procedimenti e processi definiti per ciascun anno in relazione alle pendenze del ruolo, ai flussi in entrata degli affari ed alla complessità dei procedimenti assegnati e trattati:

E.1.1 Valutazione della capacità di rapportarsi in maniera efficace, autorevole e collaborativa con gli uffici giudiziari e i magistrati destinatari del coordinamento10: **E.2** Valutazione del rispetto degli standard medi di definizione dei procedimenti (individuati ai sensi del Capo V lett. b) Circolare prot. 20691 dell'8 ottobre 2007):

8 Indicare se positivo, carente ovvero gravemente carente a norma del Capo VIII n.2 della Circolare prot.

n. 9Per ciascuno degli indicatori va espressa motivata valutazione, precisando le fonti di conoscenza.

10 Tale valutazione deve essere effettuata per i soli magistrati con funzioni di coordinamento nazionale.

E.3 Valutazione dei tempi di trattazione dei procedimenti e dei processi (secondo quanto accertato ai sensi della lett. b) Capo V Circolare prot. 20691 del 2007):

E.4 Valutazione in ordine alla collaborazione prestata per il buon andamento dell'ufficio

Giudizio finale11:

F. Valutazione del dirigente dell'ufficio in ordine al parametro della "diligenza"12:

F.1 Valutazione del rispetto degli impegni prefissati e del numero di udienze:

F.2 Valutazione in ordine al rispetto dei termini per la redazione ed il deposito dei provvedimenti o, comunque, per il compimento di attività giudiziarie:

F.3 Valutazione della partecipazione alle riunioni previste dall'ordinamento giudiziario per la discussione e l'approfondimento delle innovazioni legislative nonché per la conoscenza e l'evoluzione della giurisprudenza:

Giudizio finale13:

11 Indicare se positivo, carente ovvero gravemente carente a norma del Capo VIII n. 3 della Circolare prot. n. 20691 dell'8 ottobre 2007

12 Per ciascuno degli indicatori va espressa motivata valutazione, precisando le fonti di conoscenza .

13 Indicare se positivo, carente ovvero gravemente carente a norma del Capo VIII n. 4 della Circolare prot. n. 20691

dell'8 ottobre 2007

G. Valutazione del dirigente dell'ufficio in ordine al parametro "impegno"14:

G.1 Valutazione della disponibilità alle sostituzioni riconducibili ad applicazioni e supplenze:

G2 Indicazione del numero di corsi di aggiornamento organizzati dalla Scuola Superiore della Magistratura15, per i quali il magistrato abbia dato la disponibilità a partecipare o ai quali abbia effettivamente partecipato:

G.3 Valutazione della consistenza della collaborazione prestata su richiesta del dirigente dell'ufficio o del coordinatore della posizione tabellare o del gruppo di lavoro in ordine alla soluzione dei problemi di tipo organizzativo e giuridico:

Giudizio finale16:

H. Valutazione di professionalità17:

Data _____ Il Dirigente dell'Ufficio _____

ALLEGATI18:

14 Per ciascuno degli indicatori va espressa motivata valutazione, precisando le fonti di conoscenza.

15 Fino a quanto non sarà operativa la Scuola Superiore della Magistratura, rilevano i corsi organizzati dal CSM anche nell'ambito della formazione decentrata.

16 Indicare se positivo, carente ovvero gravemente carente a norma del Capo VIII n.5 della Circolare prot. n. 20691 dell'8 ottobre 2007

17 Indicare se positiva, non positiva o negativa secondo quanto indicato ai Capi IX, X e XI della suindicata circolare.

18 Vanno allegati gli atti ed i documenti indicati al Capo XIV della richiamata circolare nonché le ulteriori e diverse fonti di conoscenza acquisite ai sensi del Capo VII.

Consiglio Giudiziario presso la Corte di Appello di _____

PARERE PER LA _____ VALUTAZIONE DI PROFESSIONALITÀ1

del dott. _____

A. Dati generali del magistrato

Cognome e nome:

Luogo e data di nascita:

Decreto di nomina a magistrato ordinario (già uditore giudiziario):

Periodo di valutazione:

Funzioni ricoperte nel periodo in valutazione2:

Ufficio e settore di appartenenza3:

B. Fonti di conoscenza4:

1 Indicare a quale fascia corrisponde la valutazione ai sensi dell'art. 11 D.Lgs. 160/2006.

2 Precisare se requisiti (sostituto procuratore), giudicanti (giudice) o specializzate (magistrato di sorveglianza, per i minorenni o del lavoro).

3 Con riferimento all'ufficio, precisare – qualora ne ricorra l'ipotesi - se il magistrato sia assegnato in via esclusiva o prevalente ad eventuali sezioni distaccate o sia assegnato congiuntamente alle medesime. Con riferimento al settore, precisare se civile o penale, nonché se il magistrato sia addetto a funzioni monocratiche o collegiali. In caso di esercizio di funzioni sia civili sia penali, indicare "promiscue" e specificare l'eventuale settore prevalente.

4 Indicare, con numerazione progressiva, gli atti ed i documenti acquisiti e considerati per la formulazione del parere, avuto riguardo a quanto disposto al Capo VII della circolare prot. n. 20691 dell'8 ottobre 2007 approvata il 4 ottobre 2007.

C. Dati sulle precedenti valutazioni o progressioni in carriera:

C.1 Ricostruzione della carriera:

- decreto ministeriale di nomina in data

- data delle precedenti valutazioni di professionalità5

C.2 Sintesi dei pareri6:

D. Giudizio in ordine ai profili della "indipendenza, imparzialità ed equilibrio"7:

E. Valutazione in ordine al parametro della "capacità"8:

E.1 Valutazione dei provvedimenti giudiziari e delle tecniche di indagine, in relazione alla chiarezza e completezza espositiva dei primi ed alla correttezza delle seconde:

E.1.1 Valutazione della capacità di rapportarsi in maniera efficace, autorevole e collaborativa con gli uffici giudiziari e i magistrati destinatari del coordinamento9:

5 Indicare la data di ciascuna delle delibere relative al magistrato in valutazione e la decorrenza dei relativi effetti.

Specificare se ciascuna delle precedenti deliberazioni sia relativa - se assunta sotto il vigore della precedente normativa - alla nomina a magistrato di tribunale, alla nomina a magistrato di appello, all'idoneità alla nomina a magistrato di cassazione, all'idoneità alle funzioni direttive superiori, o se sia relativa al conseguimento di ciascuna delle sette valutazioni di cui all'art. 11 d.lgs. 160/06.

6 Riportare, sinteticamente, ciascuno dei pareri resi dai competenti Consigli Giudiziari o dal Consiglio direttivo della Corte di Cassazione in occasione delle deliberazioni indicate *sub* C.1.

7 Il giudizio deve essere espresso con la formula "nulla da rilevare" ove non emergano dati che evidenziano difetti di indipendenza, imparzialità ed equilibrio. Il giudizio è "negativo" quando ricorrono le circostanze indicate al Capo VIII n.1.1; in tal caso è necessario indicare specificatamente le fonti di conoscenza e riportare i fatti rilevanti da esse desunti. 8 Per ciascuno degli indicatori va espressa motivata valutazione, precisando le fonti di conoscenza. 9 Tale valutazione deve essere effettuata per i soli magistrati con funzioni di coordinamento nazionale.

E.2 Valutazione della complessità dei procedimenti e dei processi trattati in ragione del numero delle parti e delle questioni giuridiche affrontate:

E.3 Valutazione relativa ad eventuali significative anomalie del rapporto esistente tra provvedimenti emessi o richiesti e provvedimenti non confermati o rigettati, in relazione all'esito, nelle successive fasi e gradi del procedimento, dei provvedimenti giudiziari emessi o richiesti, relativi alla definizione di fasi procedurali o processuali o all'adozione di misure cautelari:

E.4 Valutazione delle modalità di gestione dell'udienza, in termini di corretta conduzione o partecipazione:

E.5 Valutazione del livello dei contributi forniti in camera di consiglio:

E.6 Valutazione dell'attitudine del magistrato ad organizzare il proprio lavoro:

E.7 Valutazione delle conoscenze informatiche applicate alla redazione dei provvedimenti ed alla efficace gestione dell'attività giudiziaria:

E.8 Valutazione dell'aggiornamento dottrinale e giurisprudenziale:

Giudizio finale10:

F. Valutazione in ordine al parametro della "laboriosità" 11:

F.1 Valutazione della congruità del numero di procedimenti e processi definiti per ciascun anno in relazione alle pendenze del ruolo, ai flussi in entrata degli affari ed alla complessità dei procedimenti assegnati e trattati:

F.2 Valutazione del rispetto degli standard medi di definizione dei procedimenti (individuate ai sensi del Capo V n.2 lett. b) Circolare prot. del 2007):

F.3 Valutazione dei tempi di trattazione dei procedimenti e dei processi (secondo quanto accertato ai sensi del Capo V n.2 della lett. b) Circolare prot. 20691 dell'8 ottobre 2007 approvata il 4 ottobre 2007):

F.4 Valutazione della collaborazione prestata per il buon andamento dell'ufficio

Giudizio finale12:

G. Valutazione in ordine al parametro della “diligenza”¹³:

G.1 Valutazione del rispetto degli impegni prefissati e del numero di udienze:

10 Indicare se positivo, carente ovvero gravemente carente a norma del Capo VIII n. 2 della Circolare prot. n. 20691/2007

11 Per ciascuno degli indicatori va espressa motivata valutazione, precisando le fonti di conoscenza.

12 Indicare se positivo, carente ovvero gravemente carente a norma del Capo VIII n. 3 della Circolare prot. n. 20691/2007

13 Per ciascuno degli indicatori va espressa motivata valutazione, precisando le fonti di conoscenza.

G.2 Valutazione in ordine al rispetto dei termini per la redazione ed il deposito dei provvedimenti o, comunque, per il compimento di attività giudiziarie:

G.3 Valutazione della partecipazione alle riunioni previste dall'ordinamento giudiziario per la discussione e l'approfondimento delle innovazioni legislative nonché per la conoscenza e l'evoluzione della giurisprudenza:

Giudizio finale¹⁴:

H. Valutazione in ordine al parametro “impegno”¹⁵:

H.1 Valutazione della disponibilità alle sostituzioni riconducibili ad applicazioni e supplenze:

H.2 Indicazione del numero di corsi di aggiornamento organizzati dalla Scuola Superiore della Magistratura¹⁶, per i quali il magistrato abbia dato la disponibilità a partecipare o ai quali abbia effettivamente partecipato:

H.3 Valutazione della consistenza della collaborazione prestata su richiesta del dirigente dell'ufficio o del coordinatore della posizione tabellare o del gruppo di lavoro in ordine alla soluzione dei problemi di tipo organizzativo e giuridico:

14 Indicare se positivo, carente ovvero gravemente carente a norma del Capo VIII n.4 della Circolare prot. n. 20691/2007

15 Per ciascuno degli indicatori va espressa motivata valutazione, precisando le fonti di conoscenza.

16 Fino a quanto non sarà operativa la Scuola Superiore della Magistratura, rilevano i corsi organizzati dal CSM anche nell'ambito della formazione decentrata.

Giudizio finale¹⁷:

I. Valutazione di professionalità¹⁸:

I.1. Svolgimento del procedimento¹⁹:

I.2. Motivazione:

I.3. Dispositivo:

Data _____

Il Presidente del Consiglio giudiziario

ALLEGATI²⁰:

17 Indicare se positivo, carente ovvero gravemente carente a norma del Capo VIII n.5 della Circolare prot. n. 20691/2007

18 Indicare se positiva, non positiva o negativa secondo quanto indicato ai Capi IX, X e XI della suindicata circolare.

19 Il Consiglio giudiziario deve dare conto dello svolgimento del procedimento e di eventuali attività istruttorie compiute.

20 Vanno allegati gli atti ed i documenti indicati ai Capi XIV e XV della richiamata circolare nonché le ulteriori ediverse fonti di conoscenza acquisite ai sensi del Capo VII.

Introduction

Le questionnaire vise à recueillir, autant que possible, des informations sur l'évaluation de la performance des juges en fonction. Par conséquent, le questionnaire n'est pas lié au processus de sélection et/ou de recrutement des juges. Les réponses au questionnaire permettront d'identifier les règles en vigueur dans les États membres, et seront utilisées pour la préparation de l'Avis n° 17 (2014) du CCJE, indiqué ci-dessus.

A. L'évaluation individuelle des juges: but et cadre réglementaire

1. L'évaluation individuelle des juges existe-t-elle dans votre pays?

Non !

Il convient, cependant de remarquer qu'en 2012, le Gouvernement a déposé un projet de loi portant création d'un Conseil national de la Justice. Il est prévu qu'une des attributions de ce Conseil consisterait à procéder à l'évaluation individuelle des juges.

Mais, la majorité des autorités judiciaires ont émis de vives critiques justement en ce qui concerne ce volet du projet de loi.

Voilà pourquoi, nous estimons qu'il est inutile, sinon du moins prématuré, de reproduire à cet endroit les textes en question qui risquent encore de subir de profondes modifications.

2. Si oui, quel est son but et la raison?
3. Est-elle obligatoire ou facultative, et s'applique-t-elle à tous les juges dans le pays?
4. Comment est-elle établie et réglementée:
 - par la loi;
 - par la législation subordonnée;
 - par des instruments réglementaires institutionnels.

B. Les critères d'évaluation

5. Existe-t-il des indicateurs quantitatifs de performance qui doivent être pris en compte, tels que:
 - le nombre d'affaires dans lesquelles la décision a été rendue par un juge;
 - une durée moyenne de traitement de chaque affaire;
 - le nombre moyen d'audiences par affaire;
 - le taux de variation du stock d'affaires pendantes (le nombre d'affaires résolues par rapport au nombre total d'affaires transmises au juge);
 - la durée moyenne de jugement (le temps nécessaire pour rendre un arrêt par un juge à la fin de l'audience);
 - d'autres indicateurs quantitatifs.
6. Existe-t-il des indicateurs qualitatifs de performance qui doivent être pris en compte, tels que:
 - l'analyse du type, du sujet et de la complexité d'affaires traitées par un juge, et ses décisions;
 - le nombre d'appels par rapport au nombre d'affaires dans lesquelles une décision a été rendue;
 - le nombre de décisions renversées et/ou d'affaires renvoyées par la cour d'appel;
 - les types d'affaires où les décisions ont été renversées et/ou d'affaires renvoyées (pénales, civiles, administratives ou autres);
 - les motifs pour renverser des décisions et/ou renvoyer des affaires;
 - d'autres indicateurs qualitatifs.
7. Existe-t-il d'autres indicateurs qui sont pris en compte dans l'évaluation du juge, tels que les avis des usagers de la justice, de la hiérarchie judiciaire, des experts judiciaires et des autres parties concernées par la procédure judiciaire, ainsi que des articles de presse?
8. L'évaluation prend-elle en compte d'éventuelles violations des règles/normes éthiques et professionnelles de juges?

9. Existe-t-il une échelle définie pour mesurer l'importance ou la priorité des différents indicateurs de performance? (veuillez préciser)

C. Les procédures et les mécanismes

10. Qui est responsable de l'évaluation individuelle des juges? Veuillez indiquer toutes les institutions et les fonctionnaires qui prennent part à ce processus (y compris le ministère de la Justice, les présidents des tribunaux, le Conseil de la Justice, des organismes d'inspection des tribunaux), et indiquer leurs rôles spécifiques.
11. Existe-t-il des procédures d'évaluation différentes pour les différentes catégories de juges, en fonction de leur position dans la hiérarchie judiciaire, leur expérience ou tout autre aspect?
12. L'évaluation est-elle un processus continu ou périodique, si ce dernier, quelle est la périodicité de l'évaluation des juges?
13. Les évaluations sont-elles faites régulièrement, ou de manière unique ou supplémentaire pour des occasions et/ou des raisons spécifiques?
14. Comment l'évaluation est-elle effectuée? (veuillez préciser les procédures, y compris une éventuelle pré-évaluation, des entretiens, des audiences, des présentations orales et verbales et le rôle des évaluateurs et d'un juge)
15. Quelles sont les appréciations (ratings) utilisées lors des évaluations?
16. Quelles sont les conséquences de l'évaluation et comment peut-elle affecter la carrière d'un juge? Quel peut-en être le résultat:
- la promotion ou la rétrogradation d'un juge;
 - la distinction professionnelle d'un juge;
 - les mesures disciplinaires ou autres;
 - la demande de formation continue;
 - la destitution;
 - d'autres actions ou mesures (positives ou négatives).
17. Comment sont enregistrées l'évaluation et les mesures recommandées, où sont déposés les dossiers et pour quelle durée, et qui peut les examiner?
18. En plus des évaluations formelles indiquées ci-dessus, des évaluations informelles sont-elles effectuées? (par exemple, des consultations informelles et des conseils de juges de rang plus élevé)
19. Veuillez fournir, si possible, un exemple (anonyme) d'une forme/feuille/bulletin d'évaluation rempli (si possible, en anglais ou en français).

D. L'évaluation vis-à-vis de l'indépendance des juges

20. Par quels moyens la transparence du processus d'évaluation est-elle assurée? L'organisme d'évaluation est-il clairement défini? Existe-t-il des lignes directrices publiées pour définir les critères d'évaluation et les règles pertinentes de procédure?
21. Existe-t-il des mesures de protection pendant l'évaluation afin d'éviter des avis personnalisés ou des pressions politiques?
22. Comment est assurée la participation d'un juge dans la procédure d'évaluation et la prise en compte de son avis ?
23. Une auto-évaluation par un juge ou une évaluation par ses pairs au même niveau hiérarchique est-elle possible?
24. Un juge peut-il demander la destitution (temporaire ou permanente) d'un membre de l'organisme d'évaluation? (par exemple, en cas des raisons sérieuses de croire que ce membre peut avoir une attitude *a priori* négative envers le juge évalué)

25. Quelles sont les possibilités d'une révision (y compris judiciaire) d'évaluation d'un juge, si ce dernier n'est pas d'accord avec l'évaluation et les mesures prises à la suite de ses conclusions?

E. Le progrès et les problèmes

26. Veuillez décrire brièvement le bilan et les problèmes du système d'évaluation utilisé dans votre pays.

Introduction

Le questionnaire vise à recueillir, autant que possible, des informations sur l'évaluation de la performance des juges en fonction. Par conséquent, le questionnaire n'est pas lié au processus de sélection et/ou de recrutement des juges. Les réponses au questionnaire permettront d'identifier les règles en vigueur dans les États membres, et seront utilisées pour la préparation de l'Avis n° 17 (2014) du CCJE, indiqué ci-dessus.

A. L'évaluation individuelle des juges: but et cadre réglementaire

1. L'évaluation individuelle des juges existe-t-elle dans votre pays?

Oui.

2. Si oui, quel est son but et sa raison?

Selon la loi, elle permet, dans l'hypothèse où elle est favorable, un avancement de grade plus rapide des magistrats.

3. Est-elle obligatoire ou facultative, et s'applique-t-elle à tous les juges dans le pays?

Elle est obligatoire et intervient tous les deux ans pour les magistrats monégasques et français détachés à Monaco.

4. Comment est-elle établie et réglementée:

- par la loi;
- par la législation subordonnée;
- par des instruments réglementaires institutionnels.

Elle est réglementée par la loi en date du 16 novembre 2009 portant statut de la magistrature.

B. Les critères d'évaluation

5. Existe-t-il des indicateurs quantitatifs de performance qui doivent être pris en compte, tels que:

- le nombre d'affaires dans lesquelles la décision a été rendue par un juge;
- une durée moyenne de traitement de chaque affaire;
- le nombre moyen d'audiences par affaire;
- le taux de variation du stock d'affaires pendantes (le nombre d'affaires résolues par rapport au nombre total d'affaires transmises au juge);
- la durée moyenne de jugement (le temps nécessaire pour rendre un arrêt par un juge à la fin de l'audience);
- d'autres indicateurs quantitatifs.

La loi ne prévoit aucun indicateur quantitatif de performance.

6. Existe-t-il des indicateurs qualitatifs de performance qui doivent être pris en compte, tels que:

- l'analyse du type, du sujet et de la complexité d'affaires traitées par un juge, et ses décisions;
- le nombre d'appels par rapport au nombre d'affaires dans lesquelles une décision a été rendue;
- le nombre de décisions renversées et/ou d'affaires renvoyées par la cour d'appel;
- les types d'affaires où les décisions ont été renversées et/ou d'affaires renvoyées (pénales, civiles, administratives ou autres);
- les motifs pour renverser des décisions et/ou renvoyer des affaires;
- d'autres indicateurs qualitatifs.

La loi ne prévoit aucun indicateur qualitatif.

7. Existe-t-il d'autres indicateurs qui sont pris en compte dans l'évaluation du juge, tels que les avis des usagers de la justice, de la hiérarchie judiciaire, des experts judiciaires et des autres parties concernées par la procédure judiciaire, ainsi que des articles de presse?

L'évaluation de l'activité professionnelle de chaque magistrat est faite par le Président de la juridiction, ou le Procureur général qui recueille au préalable les observations des magistrats ayant un grade et donc une ancienneté plus élevés et ayant eu à connaître des aptitudes professionnelles du magistrat soumis à évaluation. En aucun cas, l'avis des experts judiciaires, des parties au procès, de leur avocat ou de tout autre auxiliaire de justice n'est sollicité.

8. L'évaluation prend-elle en compte d'éventuelles violations des règles/normes éthiques et professionnelles de juges?

Non. De tels manquements relèveraient d'une procédure disciplinaire distincte et soumise à ses propres règles et prévue par la loi précitée du 16 novembre 2009.

9. Existe-t-il une échelle définie pour mesurer l'importance ou la priorité des différents indicateurs de performance? (veuillez préciser)

Non.

C. Les procédures et les mécanismes

10. Qui est responsable de l'évaluation individuelle des juges? Veuillez indiquer toutes les institutions et les fonctionnaires qui prennent part à ce processus (y compris le ministère de la Justice, les présidents des tribunaux, le Conseil de la Justice, des organismes d'inspection des tribunaux), et indiquer leurs rôles spécifiques.

- Le Président du Tribunal est seul compétent pour procéder à l'évaluation des Juges du Tribunal de première instance.

- Le Juge de paix est, quant à lui, évalué par le Président du Tribunal, après avis du Premier Président de la Cour d'Appel.

- Les membres de la Cour d'Appel et les Juges d'instruction sont également évalués par le Premier Président de la Cour d'Appel.

- Les membres du Parquet sont évalués par le Procureur Général.

11. Existe-t-il des procédures d'évaluation différentes pour les différentes catégories de juges, en fonction de leur position dans la hiérarchie judiciaire, leur expérience ou tout autre aspect?

Les magistrats affectés à la Direction des Services Judiciaires (Ministère de la Justice) font l'objet d'une évaluation par le Directeur des Services Judiciaires et les Magistrats en position de détachement, par l'administration ou l'organisme auprès duquel ils sont détachés.

12. L'évaluation est-elle un processus continu ou périodique, si ce dernier, quelle est la périodicité de l'évaluation des juges?

L'activité professionnelle de chaque Magistrat fait l'objet d'une évaluation écrite tous les deux ans.

13. Les évaluations sont-elles faites régulièrement, ou de manière unique ou supplémentaire pour des occasions et/ou des raisons spécifiques?

La périodicité ci-dessus évoquée ne peut pas être modifiée quelles que soient les circonstances.

14. Comment l'évaluation est-elle effectuée? (veuillez préciser les procédures, y compris une éventuelle pré-évaluation, des entretiens, des audiences, des présentations orales et verbales et le rôle des évaluateurs et d'un juge)

Il ressort de la pratique que les évaluateurs convoquent par écrit chaque magistrat aux fins d'un entretien préalable au cours duquel sont évoquées les différentes attributions, les difficultés, y compris matérielles, rencontrées par le Magistrat, sa charge de travail et ses aspirations éventuelles pour l'avenir (changement de fonctions).

L'entretien fait l'objet d'un compte rendu communiqué au Magistrat intéressé, qui le signe et peut présenter toutes observations écrites qui seront jointes à son dossier.

15. Quelles sont les appréciations (ratings) utilisées lors des évaluations?

Les différentes appréciations portées sur la grille d'évaluation sont les suivantes :

- . parfaitable,
- . satisfaisant,
- . très bon,
- . excellent.

16. Quelles sont les conséquences de l'évaluation et comment peut-elle affecter la carrière d'un juge? Quel peut-en être le résultat:

- la promotion ou la rétrogradation d'un juge;
- la distinction professionnelle d'un juge;
- les mesures disciplinaires ou autres;
- la demande de formation continue;
- la destitution;
- d'autres actions ou mesures (positives ou négatives).

Selon la loi, l'évaluation permet seulement de réduire le nombre d'années nécessaires à un avancement en grade.

Dans la pratique, une évaluation qui relèverait des défaillances ou des faiblesses dans l'activité professionnelle d'un magistrat pourrait avoir pour effet de l'écarter de certaines fonctions. A l'inverse, des aptitudes particulières actées par le chef de juridiction dans l'évaluation, peuvent favoriser et justifier son affectation à certaines fonctions.

17. Comment sont enregistrées l'évaluation et les mesures recommandées, où sont déposés les dossiers et pour quelle durée, et qui peut les examiner?

Les évaluations, après avoir été signées par le Magistrat intéressé, sont transmises via le Premier Président de la Cour d'Appel au Directeur des Services Judiciaires et versées au dossier individuel du Magistrat.

Le chef de juridiction ayant procédé à l'évaluation en conserve une copie.

18. En plus des évaluations formelles indiquées ci-dessus, des évaluations informelles sont-elles effectuées? (par exemple, des consultations informelles et des conseils de juges de rang plus élevé)

Non.

19. Veillez fournir, si possible, un exemple (anonyme) d'une forme/feuille/bulletin d'évaluation rempli (si possible, en anglais ou en français).

D. L'évaluation vis-à-vis de l'indépendance des juges

20. Par quels moyens la transparence du processus d'évaluation est-elle assurée? L'organisme d'évaluation est-il clairement défini? Existe-t-il des lignes directrices publiées pour définir les critères d'évaluation et les règles pertinentes de procédure?

La transparence est garantie par la procédure contradictoire décrite ci-dessus.

21. Existe-t-il des mesures de protection pendant l'évaluation afin d'éviter des avis personnalisés ou des pressions politiques?

Non.

22. Comment est assurée la participation d'un juge dans la procédure d'évaluation et la prise en compte de son avis ?

Cf. réponse 14.

23. Une auto-évaluation par un juge ou une évaluation par ses pairs au même niveau hiérarchique est-elle possible?

Une évaluation par un pair au même grade, mais plus ancien est possible. (Un président d'une formation de jugement collégiale) évalue ses assesseurs qui ont nécessairement une ancienneté ou un grade inférieur).

24. Un juge peut-il demander la destitution (temporaire ou permanente) d'un membre de l'organisme d'évaluation? (par exemple, en cas des raisons sérieuses de croire que ce membre peut avoir une attitude *a priori* négative envers le juge évalué)

Non, aucune destitution ou révocation de l'évaluateur n'est prévue par les textes en vigueur.

25. Quelles sont les possibilités d'une révision (y compris judiciaire) d'évaluation d'un juge, si ce dernier n'est pas d'accord avec l'évaluation et les mesures prises à la suite de ses conclusions?

Il n'existe aucun recours possible concernant l'évaluation du magistrat.

E. Le progrès et les problèmes

26. Veuillez décrire brièvement le bilan et les problèmes du système d'évaluation utilisé dans votre pays.

Depuis l'entrée en vigueur de la loi du 16 novembre 2009, seuls deux processus d'évaluation de chaque magistrat ont été menés.

Il en ressort que 4 magistrats, consécutivement à leur évaluation, ont bénéficié d'une réduction d'ancienneté et donc d'un avancement en grade (du troisième au deuxième grade).

**Questionnaire rempli par Mme. Stéphanie MOUROU VIKSTRÖM
Et M. Jérôme FOUGERAS LAVERGNOLLE
Membres du Conseil Consultatif des Juges européens**

ANNEXE 3

COUR D'APPEL DE :
INSTITUTION DE DETACHEMENT :
ADMINISTRATION CENTRALE :

ANNEES 2012 & 2013

OBSERVATIONS DES MAGISTRATS AYANT EU A CONNAITRE
DE L'ACTIVITE PROFESSIONNELLE DU MAGISTRAT

Nom et prénom du magistrat faisant l'objet d'observations :

Nom et prénom du magistrat ayant renseigné le document :

Qualité :

Fait le :

Signature :

Pris connaissance le :

Signature du magistrat intéressé :

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

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

Yes, individual evaluation exists.

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.

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.

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

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.

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.

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.

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..

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

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.

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.

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.

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

See under Question 12.

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.

What are the ratings used during evaluations?

There are no formal ratings.

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.

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.

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.

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

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.

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

See above.

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.

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.

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.

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

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.

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 – apart from the means employed for the purposes of assessing judges' work when meeting other goals (as part of appointment procedures, in disciplinary proceedings, when hearing complaints against the excessive length of proceedings, pointing out judges' mistakes by presidents of courts), there is a separate system of periodic evaluations of judges' work (however, limited to judges of common and military courts and not applicable to administrative court judges).

The remaining questions were answered focusing on the system of periodic evaluations of judges' work.

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

The aim of the system of periodic evaluation of judges' work is to increase both the level of competence of courts and the efficiency of court proceedings. The aim of periodic evaluations is, in particular, to define standards of adequate performance of professional duties by judges, inspire and motivate judges to improve their professional skills, determine training needs and results of trainings, provide a basis for the evaluation of judges applying for higher positions (vertical promotion) or being offered administrative positions (horizontal move). The system of periodic evaluations of judges' performance is related to the system of inspections of particular court divisions conducted every four years by inspector judges. The adopted solution makes it possible to assess the work of all the judges in a given division at the same time and, in consequence, compare their performance.

Presidents of particular courts notify judges of the assessment of their work, including in particular its results and summary, and prepare the so-called individual career development plans for particular judges on its basis. Such individual career plans cover a period of at least four years. Its aim is to determine the training needs of particular judges and draw their attention to the areas of improvement in their work.

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

The system of periodic evaluations of judges' work is obligatory and applies to all judges working in common and military courts. However, it does not apply to presidents of administrative courts. Judges' work is appraised as part of periodic (conducted every four years) inspections of particular court divisions, with the exception of presidents of appeal courts (during the term of their office). The system of periodic evaluations of judges' work also does not apply to administrative court judges.

Apart from the periodic evaluations of judges' work carried out as part of the inspections, judges' work is also assessed (occasionally, for other purposes):

- in appointment proceedings (when a judge applies for a position in a higher court – vertical promotion);
- in disciplinary proceedings (judges face disciplinary sanctions for, among others, professional misconduct, including obvious and gross violation of provisions of law and offences against the dignity of the office);
- as part of appeals filed against the entered judgments in compliance with law (judicial supervision of a higher court);
- as part of appeals filed by a party on account of the violation of the right of the party to have the case heard in court proceedings without undue delay (complaint against the excessive length of court proceedings, applicable as of 2004 and compliant with art. 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, enforced by the European Court of Human Rights in the judgement entered in the case of *Kudła vs. Poland*).

4. How it is established and regulated:

a) by legislation;

The Act – Law on common courts organization provides for basic principles for periodic evaluations of judges' work and development of individual professional career plans for judges.

b) by subordinate legislation;

The Minister of Justice, having consulted the National Council of the Judiciary, specifies, by way of a regulation:

- 1) the evaluation sheet template, including the summary of the results of the evaluation, taking into account the need to carry out the evaluation efficiently and thoroughly and to adjust the assessment method to the scope of the analysis of judges' work;
- 2) the judge career development plan template, ensuring that such plans take into consideration the individual predispositions of a given judge as well as the need of the justice system to continually improve the performance of duties by judges.

B. Criteria for evaluation and assessment

5. Are there quantitative performance indicators that have to be taken into account, such as:

a) the number of cases in which a decision has been made by a judge?

- yes (the number of cases in a month and in a year in which a decision was rendered)

b) the average time spent on each of these cases?

- yes (the evaluation takes into account the average duration of proceedings in cases assigned to a given judge compared with the average duration of proceedings in a given division, court, circuit and in the country; the evaluation also takes into account the number of "old" cases lasting more than 6 months, over a year, over three years)

c) the average number of hearings per case?

- no, but the evaluation takes into account the number of sessions convened in a month and in a year compared with the average result of a division, court and circuit;

d) clearance rate (number of the cases, where a decision has been made, vis-à-vis the total of the cases forwarded to the judge)?

- yes;

e) the average time to judgment (the time required to deliver a judgment by a judge after the completed hearing)?

- no, but evaluations take into account whether or not grounds for a decision were prepared in a timely manner (the statutory deadline for preparing grounds for a judgment is two weeks following the filing of a petition, while grounds for an order must be prepared within a week following the issuing of an order), and the evaluations carried out before 2014 took into account the right of a judge to defer the announcement of a decision until after the closure of a hearing (judges may defer the decision for two weeks following the closure of the hearing);

f) any other quantitative indicators

- yes, e.g. the caseload of a judge (the number of cases assigned to a judge that need to be considered at the same time).

Calculations regarding quantitative evaluation criteria are based on a comparison with the average result of a division.

6. Are there qualitative performance indicators that have to be taken into account, such as:

a) analysis of the type, subject and complexity of the cases dealt with by a judge and his/her decisions?

- yes; calculations concerning the quantitative criteria of evaluations (point 5 of the questionnaire) are performed taking into account the type and level of complexity of cases assigned to a given judge or tasks and functions the judge was entrusted with, workload and work conditions in the entire period subject to the evaluation;

b) the number of appeals vis-à-vis the number of the cases, where a decision has been made)?

- yes; the evaluation includes the analysis of the so-called openness to challenge and the number of cases in which an appeal was filed compared with the number of cases in which a given judge prepared grounds for a judgment;

c) the number of decisions reversed and/or cases remitted by the appellate court?

- yes; evaluations take into account the results of appeal proceedings, the so-called stability of case-law (decisions that were upheld/dismissed, reversed, changed or otherwise);

d) the types of cases where decisions were reversed and/or cases remitted (criminal, civil, administrative or other)?

- indirectly; if judges perform their duties in more than one division, the evaluation of their work, as compared with the average result of a division, should specify in detail the types of cases with a greater or lesser stability; the analysis of the stability of judicial decisions includes only decisions concerning the subject matter of a case and not procedural decisions;

d) the grounds for reversal and/or remittal?

- indirectly; in the case of more serious transgressions, the evaluation of judge's work should indicate them (e.g. reversal due to major procedural errors violating the procedural safeguards of the parties);

e) any other qualitative indicators?

- yes; the legal system provides for the possibility of appealing against unlawful decisions (appeals to prove a given decision unlawful); apart from the course of proceedings before a court of a given instance, such appeals may be filed against valid and final decisions of a court if it is found that they are in serious breach of law; a finding that a given decision is unlawful opens the way to seeking damages from the State Treasury; evaluations also include checking if appeals were filed against the excessive length of proceedings or if appeals were filed to the European Court of Human Rights in cases heard by a given 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?

- yes; the evaluation takes into account the manner in which judges carry out their work (conduct, work organization, respect for the rights of parties to or participants in proceedings); in the case of judges performing administrative functions (e.g. presidents of divisions, etc.) evaluations also take into account the manner in which judges perform their tasks resulting from the functions (for more information see C.11); the evaluation criteria also include complaints against the conduct of a given judge filed to the president of a court by parties (as well as their attorneys, witnesses, expert witnesses and other participants in proceedings); Even though, by principle, the evaluation of the work of a judge does not take into account such sources as press articles, the information they contain may result in initiating verification procedures (e.g. preliminary proceedings conducted prior to disciplinary proceedings).

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

- yes; in particular with regard to the most serious transgressions and conduct that raises concerns. In February 2003 the National Council of the Judiciary adopted a set of rules of professional ethics that each judge should know.

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

- not formally, but traditionally the number of cases that were dealt with (closed) by a judge and the results of appeal proceedings (the so-called stability of case-law) are given the most weight.

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.

- judges' work is appraised as part of inspections of court divisions carried out by inspector judges every four years by an order of the president of a court;

- the board of a court analyses the conclusions reached after an inspection and may, in particular, request the disciplinary proceedings representative to instigate preliminary proceedings (prior to disciplinary proceedings);

- the Minister of Justice, who exercises external administrative supervision over the presidents of courts, has an indirect influence on the manner in which judges perform their duties with respect to the evaluation of their work and may request the disciplinary proceedings representative to instigate preliminary proceedings and order that a court, court division or the supervisory actions of the president of a court be vetted;

- the National Council of the Judiciary, making decisions on the appointment of judges, assesses all the professional achievements of candidates taking part in a given appointment procedure using all available sources of information, including materials gathered by inspector judges and their opinions. The National Council of the Judiciary may also request the disciplinary proceedings representative to instigate preliminary proceedings and order that a given court or its organizational unit be inspected.

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

- The procedure is, by principle, the same for everyone. The assessment of judges' work takes into account the nature of duties performed by judges carrying out administrative functions in a court, e.g. the president of a court or a division. Evaluations also take into account their skills related to overseeing, planning and organizing work, ability to set priorities and make decisions, communicativeness willingness to make decisions, ability to ensure that official orders are followed. Other analysed aspects include the timeliness of actions performed by particular judges, accuracy of their organizational activities, ability to cooperate with others and legitimacy of administrative complaints. Of course, the professional experience of particular judges is also given weight when carrying out periodic evaluation of their work.

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

Evaluations of judges' work are carried out as part of periodic (conducted every four years) inspections of court divisions.

Moreover, judges' work is appraised in other ways (vide point A.3) systematically or occasionally as part of the usual functioning of the judiciary.

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

Apart from the usual evaluations of the work of judges during inspections, evaluations may also be carried out as part of the rights and duties of authorities listed in point A.10.

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)

- In accordance with the Act – Law on common courts organization:

Inspections of particular court divisions are conducted every four years. Divisions of appeal or circuit courts are inspected by inspector judges that are appeal court judges, while district court divisions are inspected by inspector judges who are circuit court judges.

Court divisions cannot be inspected by inspector judges who are married or related to one of the judges assigned to a given division or whose legal or actual relation with one of the judges may raise reasonable doubts as to the impartiality of the inspector judge. A given inspector judge cannot inspect a particular division two times in a row.

Presidents of courts and presidents of divisions are informed of the planned inspections at least thirty days prior to their commencement.

As part of the inspections, inspector judges assess the work of particular judges, filling in judges' work evaluation sheets.

Presidents of courts notify judges of the evaluation of their work, including but not limited to its results and summary, developing individual career development plans for the judges based on the evaluation (individual career development plans cover a period of at least for years).

Within two weeks following the notification of the assessment of their work, judges have the right to submit written comments together with grounds for the opinions. The comments are considered and the final summary of the evaluation of the work of a given judge is prepared by the president of a superior court and in the case of appeal court judges – president of another appeal court. Judges who are presidents of courts are notified of the results of the evaluation of their work by the president of a superior court. Comments on the evaluation are considered and the final summary of the evaluation of the work of a judge who is:

- 1) the president of a district court is prepared by the president of a superior appeal court;
- 2) the president of a circuit court is prepared by the president of another appeal court.

15. What are the ratings used during evaluations?

Evaluations of the work of judges are carried out taking into account the average results of a given division, court, circuit and the country.

16. What are the consequences of the evaluation and how may it affect the career of a judge? Can it result in:

a) the promotion or demotion of a judge?

- yes (promotion to a position at a higher court or entrusting with an assignment position, demotion, i.e. removal from an assignment position; a judge may not be demoted to a lower ranking position in a lower court)

b) a professional award to a judge?

- no (there is no system of cash awards for judges in Poland)

c) disciplinary or other measures?

yes

d) a requirement of further training;

yes

e) dismissal from office?

yes, in extreme cases and only as a result of a decision rendered by a disciplinary court;

d) any other actions or measures (positive or negative).

When appraising the work of a judge, an individual career development plan is developed, identifying areas for improvement with regard to knowledge and skills and proposing forms and methods of their development based on the individual predispositions of a judge.

Documentation prepared as part of the evaluation is used to assess the candidacy of a given judge applying for a higher position or being entrusted with an administrative post.

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?

Information on performance evaluations as well as the development and implementation of an individual career development plan constitutes a secret protected under the law and is subject to the protection of confidential information bearing the 'reserved' clause provided for in the regulations on the protection of confidential information, unless the judge whom the information concerns consents to its disclosure. Such information is not publically available and may be used solely by court authorities (president of a court) for official purposes. It may also be disclosed to the National Council of the Judiciary.

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)

In the case of appointment proceedings, the authorities deciding about the promotion of a judge generally take into account, among others, formal official opinions or different types of recommendations. Informal consultations are not held, and informal opinions of senior judges are not formally taken into consideration.

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

As the periodic assessment procedure was adopted in 2014, it is not possible to provide a filled-in questionnaire, but we enclose blank evaluation sheets.

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 Act – Law on common courts organization clearly specifies which authorities have the right to perform particular actions in the evaluation procedure and provides for the rule stating that the scope of the performance evaluation of judges cannot include areas in which judges are independent.

As the judges' work evaluation system has not been functioning long (first evaluations were carried out at the beginning of 2014), no doubts have yet arisen as to the application of the discussed provisions.

The guidelines specifying the evaluation criteria as well as procedural rules are published, as they are provided for in the Act and the implementing regulations to the Act.

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

See point C.17 and D.20.

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

See point C.14 and D.20

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

Judges do not carry out their self-evaluation. It is only the appeal court judges that may be assessed by judges that are at the same level in the hierarchy.

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)?

Judges whose work is evaluated may raise different objections when making comments about their individual career development plan. The comments are considered and the final summary of the evaluation of the work of judges is prepared by the president of a superior court and in the case of appeal court judges – president of another appeal court.

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?

Apart from the right to submit comments (see C.14), judges may point out any and all noticed transgressions in the procedure concerning the appointment of judges, and the National Council of the Judiciary may order that additional evaluations be carried out.

E. Achievements and problems

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

The first periodic evaluations of judges' work were carried out at the beginning of 2014. Therefore, no doubts have so far arisen as to the application of particular provisions. However, as early as at the stage of consultations concerning draft regulations, a possible problem was noticed concerning the fulfilment of the obligation of the presidents of courts to prepare individual career development plans for judges. Moreover, it was noticed that it is not possible for judges to question the results of their periodic performance evaluation.

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

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

Yes

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

The evaluation aims to establish the level of knowledge and professional skills of judges, as well as the ability to apply theoretical knowledge and skills in the practice of the profession of judge, setting the weak and strong aspects of the work of judges, boost the trend of improvement of professional skills and enhancing the efficiency of judges at the individual level and at the level of courts of law.

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

All judges are subject to mandatory periodic performance evaluation once in every three years. In the case of the qualification "insufficient", the judge is subject to extraordinary assessment time limit set by the College. Giving the qualification "insufficient" to two consecutive special assessments constitute the basis for initiation of the Superior Council of Magistracy, the procedure for the release of the judge.

29. How it is established and regulated:

1. Law no. 154 from 05.07.2012 on the selection, assessment performance and career of judges

2. Regulation on criteria, indicators and procedures for evaluating the performance of judges, approved by the Resolution of the Supreme Council of Magistracy no. 212/8 from 05 March 2013.

B. Criteria for evaluation and assessment

30. Are there quantitative performance indicators that have to be taken into account, such as:

- 1. The settlement rate of the folders*
- 2. Observance of the reasonable term during the implementation of justice*
- 3. Adherence to deadlines amended by resolution*

31. Are there qualitative performance indicators that have to be taken into account, such as:

- 1. Percentage of decisions/opinions supported from appealed*
- 2. Number and percentage of decisions/opinions scrapping of considered, with a view statement confirming of PIGD*
- 3. The presence of violations to the European Convention on Human Rights (ECHR) found in the European Court On Human rights (ECHR) - In this sense will be considered, if of the reasons. It is the fault of the judge, the ECtHR found no violation of the ECHR by the final resolution. It is taken into account only the conduct of the judge, which took place later than 6 years before to assess*

32. 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?

1. *Execute the lawful period other powers prescribed by the law - By the execute of other functions can be considered the guidance of the practice of people staying in practice, participation in the development of statutory acts, the generalization of judicial practice, participation in meetings or training courses with law enforcement representatives, where were discussed issues related to holding of justice and other.*
2. *Knowledge and application of information technologies - will take into account the knowledge, application of knowledge by the judge of the programs MS Word and Excel, ability to work in the Internet and use e-mail, as well as the level of uses PIGD and Femida Programs.*
3. *Procedure for organization of professional activity - In this regard will be considered by the order of preparation of cases for review, punctuality, leading, as the court hearings (ensuring discipline in the meeting listened to the parties, etc) and behavior (use of language politely, proper respect to participants in the process, avoiding the expression of negative thoughts, etc) of the judge.*
4. *Professional forming of a judge - In this regard, will be the professional forming of a judge in the period under evaluation. It will be considered as vocational training, conducted by the National Institute of Justice, and in the other direction.*

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

1. *Observance of professional ethics - In this sense, will be evaluated compliance by the judge the norms of the Code of ethics of judges, to the extent that this is not a disciplinary offence. If it is a disciplinary offence.*
2. *Professional reputation - In this regard will be taken into account public opinion about judge, as well as judge authority in justice sector.*

3. *The presence of disciplinary violations - In this regard, there will be taken into consideration disciplinary violations found by the disciplinary College during the period subject to assessment. In the case of the extremely assessment, will be taken into consideration disciplinary violations found by the disciplinary College disciplinary in the last 3 years.*

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

Yes, THE REGULATION of the criteria, indicators and the procedure for the assessment of performance judges, approved by the resolution Superior Council of the Magistracy no 212/8 from 05 March 2013 has 2 Annex:

- ** Annex 1 indicators for the evaluation of the performance of the activity of judges*
- ** Annex 2 indicators for the evaluation of the performance of the court presidents and vice presidents courts of appeal and the Supreme Court of Justice.*

According to these Annexes, each indicator of pag. 5-8 are valued with points:

Depending on the number of points accumulated, the judges will gain the following qualifiers (for the judges of the judges and courts of appeal):

less than 40 points - failed; 41 - 60 points - insufficient; 61-75 points - well; 76 - 90 points - very well; 91- 100 points - excellent.

The judges of the Court of Justice (will gain the following qualifiers:

less than 40 points - failed; 41 - 60 points - insufficient; 61 - 70 points - well; 71 - 80 points - very well; 81 - 90 points - excellent.

Depending on the number of points accumulated, the chairman or vice-chairman courts will provide the following qualifiers:

less than 30 points - failed; 31 - 49 points - insufficient; 50 - 56 points - well; 57 - 63 points - very well, 64 - 70 points - excellent

C. Procedures and mechanisms

35. 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.

The College of evaluation, which is set up under the Superior Council of the Magistracy and is aimed at ensuring performance evaluation of judges.

The College of evaluation enables the following component:

a) 5 judges, the courts of all levels, as follows: 2 judges of the Supreme Court of Justice, 2 judges of the courts of appeal and 1 judge from the judges;

The members of the College of evaluation among judges are elected/appointed as follows:

(a) 3)are elected by the general meeting of the judges;

(b) 2 are appointed by the Superior Council of the Magistracy.

b) 2 representatives of the civil society.

The members of the College of evaluation from civil society representatives are appointed by the Council of Magistrates, being chosen by public contest, organized by the Council.

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

No

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

With regard to judges, look pag. 3

With regard to evaluation Presidents and vice presidents courts (1-st instance, Courts of Appeal, Supreme Court of Justice), we can store the following:

Evaluation of the activity of the chairman or vice-chairman court is happening at the same time with periodic assessment of the work of the committee as a judge. However, the points are given separately for the activity as a judge and the activity in his capacity as president or vice president in the International Court of Justice.

Evaluation takes place in the following indicators:

- ***Equidistant distribution of the tasks to the staff court**
- ***Effective planning of the budget and efficient management of the financial resources earmarked**
- *** Verify the manner in which activates the Chancellery and the administrator court**
- ***Checking for the allocation process of random files**
- ***Checking process of audio recording of meetings and electronic management of the files and to publish the decisions of the court**
- ***To check process the display of information about the causes fixed for examination**
- ***Transmission in term the complaints the behavior of judges by the CSM**
- ***Helping to unification judicial practice**
- ***Correct and efficient communication with the judges and court staff, external communication, outside the process referring to the justice including the capacity of the settlement of the conflict situations**
- *** transparency in led court activity**

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

look pag. 3

39. 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)

Each member of the College is completed sheet evaluation and provides judge assessed, according to his own belief, the score for each indicator above but no earlier than the maximum provided for in the Annex no. 1 to the Regulation. Final score is established after his interview with the judge assessed, evaluation sheet signed and sent to College secretary. After the submission of the

evaluation sheet to College secretary, the member of the College may not modify or supplement evaluation sheet. Evaluation sheets are kept for at least 4 years.

Final score obtained as a result of the evaluation is the sum score given by the members of the College divided by the number of members of the College who have evaluated the judge.

After the creating points, the members of the college adopt a resolution stating the main findings as a result of the evaluation, including deficiencies of professional, administrative or organizational activity in evaluated judge. The College indicates in the resolution recommendations for the evaluated judge with a view to enforcement shortcomings discovered and improve the professional performance of evaluated judge. The decision shall be taken by majority vote of its members.

40. What are the ratings used during evaluations?

look pag. 9

41. What are the consequences of the evaluation and how may it affect the career of a judge? Can it result in:

look pag. 3 and 9

42. 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?

Look the above points

43. 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

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

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

45. 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 evaluation process is completely transparent.

The judge is having access to all coming materials in the evaluation committee.

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

No

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

The judge may bring any documents, materials, which would demonstrate its performance.

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

No

49. 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)

Yes

50. 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?

College decisions may be challenged by the Superior Council of the Magistracy, through college, in term of 10 working days from the date on which they are adopted, by the judges in respect of which the college has adopted resolutions and only in the part that refers to the procedure of issue and adoption.

E. Achievements and problems

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

In R. Moldova has barely completed the process of judges' performance evaluation

Introduction

Le questionnaire vise à recueillir, autant que possible, des informations sur l'évaluation de la performance des juges en fonction. Par conséquent, le questionnaire n'est pas lié au processus de sélection et/ou de recrutement des juges. Les réponses au questionnaire permettront d'identifier les règles en vigueur dans les États membres, et seront utilisées pour la préparation de l'Avis n° 17 (2014) du CCJE, indiqué ci-dessus.

A. L'évaluation individuelle des juges: but et cadre réglementaire

1. L'évaluation individuelle des juges existe-t-elle dans votre pays?

Oui.

2. Si oui, quel est son but et la raison?

L'évaluation des juges et procureurs a pour objectif d'établir le niveau de compétence professionnelle de ceux-ci et vise à améliorer leurs performances professionnelles, à améliorer l'efficacité des instances et parquets et la confiance du public en l'autorité de la justice, à maintenir et renforcer la qualité du système judiciaire.

3. Est-elle obligatoire ou facultative, et s'applique-t-elle à tous les juges du pays?

La première évaluation des juges et procureurs a lieu 2 ans après leur nomination, dans les conditions de l'art. 31 al. (1) de la Loi n° 303/2004 portant sur le statut des juges et procureurs, republiée avec les modifications et ajouts ultérieurs. Les évaluations ultérieures ont lieu tous les trois ans, d'habitude au mois de février de l'année suivante. L'évaluation peut aussi être effectuée au cours d'une autre période de l'année, à la demande du juge ou du procureur, dans la mesure où la chose est nécessaire pour la promotion à des fonctions exécutives où la nomination à des fonctions dirigeantes. Mais uniquement après l'écoulement de l'intervalle de 2 ou 3 ans prévu par la loi à cet effet. Pour les juges et procureurs du Conseil Supérieur de la Magistrature, l'évaluation intervient trois ans après la fin du mandat. L'évaluation professionnelle des juges et respectivement des procureurs, qui ont aussi rempli la fonction de procureur, respectivement de juge, durant la période soumise à évaluation sera faite dans les deux années qui suivent leur nomination aux fonctions de juge, respectivement de procureur, par décret du Président de la Roumanie, conformément aux dispositions de l'art. 39 al. (2) de la Loi n° 303/2004, republiée avec les modifications et ajouts ultérieurs.

4. Comment est-elle établie et réglementée:

- par la loi;
- par la législation subordonnée;
- par des instruments réglementaires institutionnels.

L'évaluation de l'activité professionnelle des juges et procureurs est réglementée au niveau de la législation primaire et secondaire.

B. Les critères d'évaluation

5. Existe-t-il des indicateurs quantitatifs de performance qui doivent être pris en compte, tels que:

- le nombre d'affaires dans lesquelles la décision a été rendue par un juge;
- la durée moyenne de traitement de chaque affaire;
- le nombre moyen d'audiences par affaire;
- le taux de variation du stock d'affaires pendantes (le nombre d'affaires résolues par rapport au nombre total d'affaires transmises au juge);
- la durée moyenne de jugement (le temps nécessaire à un juge pour rendre un arrêt à la fin de l'audience);
- d'autres indicateurs quantitatifs.

- oui, le volume de l'activité (nombre de dossiers) est pris en compte dans l'analyse des indicateurs concernant l'efficacité de l'activité.
- oui, la durée raisonnable de solution d'une affaire est prise en compte pour l'évaluation.
- non, le nombre moyen de termes pour un dossier n'est pas un indicateur d'évaluation.
- oui, l'opérativité dans la solution des causes est un indicateur d'évaluation.
- oui, le respect du terme légal pour la rédaction des arrêts est un indicateur.
- la solution dans les délais de la loi d'autres attributions fixées par ordre du service.

6. Existe-t-il des indicateurs qualitatifs de performance qui doivent être pris en compte, tels que:

- l'analyse du type, du sujet et de la complexité des affaires traitées par un juge, et ses décisions;
- le nombre d'appels par rapport au nombre d'affaires dans lesquelles une décision a été rendue;
- le nombre de décisions renversées et/ou d'affaires renvoyées par la cour d'appel;
- les types d'affaires où les décisions ont été renversées et/ou d'affaires renvoyées (pénales, civiles, administratives ou autres);
- les motifs pour renverser des décisions et/ou renvoyer des affaires;
- autres indicateurs qualitatifs.

- oui.

- oui, la complexité des affaires est prise en compte dans l'analyse des indicateurs portant sur l'efficacité de l'activité.

- non, le nombre de solutions attaquées n'est pas un indicateur.

- non, le nombre de solutions modifiées ou supprimées dans les voies d'attaque n'est pas un indicateur.

- non, le type des affaires dans lesquelles les arrêts ont été modifiés ou renvoyés à un nouveau jugement ne constitue pas, non plus, un indicateur de performance qualitative.

- non.

- tel n'est pas le cas.

7. Existe-t-il d'autres indicateurs pris en compte dans l'évaluation du juge, tels que les avis des usagers de la justice, de la hiérarchie judiciaire, des experts judiciaires et des autres parties concernées par la procédure judiciaire, ainsi que des articles de presse?

- Non

8. L'évaluation prend-elle en compte d'éventuelles violations des règles/normes éthiques et professionnelles des juges?

Oui. C'est un indicateur de l'intégrité et du respect des normes de conduite et il est pris en compte dans l'évaluation.

9. Existe-t-il une échelle définie pour mesurer l'importance ou la priorité des différents indicateurs de performance? (veuillez préciser)

Non, il n'existe pas de hiérarchie des indicateurs, ils ont tous un poids égal dans le processus d'évaluation.

C. Les procédures et les mécanismes

10. Qui est responsable de l'évaluation individuelle des juges? Veuillez indiquer toutes les institutions et les fonctionnaires qui prennent part à ce processus (y compris le ministère de la Justice, les présidents des tribunaux, le Conseil de la Justice, des organismes d'inspection des tribunaux), et indiquer leurs rôles spécifiques.

L'évaluation des juges est faite par des commissions constituées sur décision du Conseil Supérieur de la Magistrature, séparément pour les juges et procureurs, ces commissions étant constituées comme suit:

a) pour les juges de la Haute Cour de Cassation et Justice, elles comprennent le président de la Haute Cour de Cassation et Justice, 2 juges désignés par le collège directeur de l'instance suprême et un membre suppléant;

b) pour les juges des maisons de justice, tribunaux, tribunaux spécialisés et cours d'appel et pour les procureurs des parquets près ceux-ci, elles comprennent le président de l'instance ou, selon le cas, le chef du parquet, 2 juges, respectivement 2 procureurs désignés par le collège directeur de l'instance ou du parquet et un membre suppléant;

L'activité spécifique de la fonction de juge ou procureur, déployée par les membres de la commission d'évaluation, suppléants compris, même s'ils n'ont fait aucun acte d'évaluation, sera évaluée par la commission respective de l'instance hiérarchiquement supérieure ou de l'unité du parquet hiérarchiquement supérieur à celle où la commission fonctionne.

L'évaluation des 3 juges - 2 membres désignés et un suppléant - faisant partie de la commission d'évaluation de la Haute Cour de Cassation et Justice – est faite par une commission formée de 2 juges au grade professionnel adéquat, désignés par la section des juges du Conseil Supérieur de la Magistrature, parmi ses membres.

Le président de chaque commission est le chef de l'instance ou du parquet.

Pour les instances ou parquets dont la liste du personnel prévoit un nombre de moins de 10 juges, l'évaluation sera faite par la commission constituée au niveau de l'instance hiérarchique supérieure.

L'évaluation des juges militaires de toutes les instances militaires est faite par une commission constituée au niveau de la Cour militaire d'appel; formée du président de cette instance, de 2 juges désignés par le collègue directeur et d'un suppléant.

L'évaluation des juges déplacés vers d'autres institutions que les instances a lieu après la fin du déplacement, lorsque sont accomplis 3 ans d'activité effective en tant que juges, en cumulant la période antérieure au déplacement et celle ultérieure à celui-ci.

Les juges mécontents du qualificatif reçu, peuvent le contester auprès de la section appropriée du Conseil Supérieur de la Magistrature, dans un délai de 30 jours après en avoir été informés.

11. Existe-t-il des procédures d'évaluation différentes pour les différentes catégories de juges, en fonction de leur position dans la hiérarchie judiciaire, leur expérience ou tout autre aspect?
Oui, voir la réponse au point n°10.

12. L'évaluation est-elle un processus continu ou périodique ? Dans ce dernier cas, quelle est la périodicité de l'évaluation des juges?
Oui, l'évaluation professionnelle est périodique, mais elle porte sur trois années d'activité.

13. Les évaluations sont-elles faites régulièrement, ou de manière unique ou supplémentaire pour des occasions et/ou des raisons spécifiques?
Non, les évaluations ne sont pas occasionnelles. Elles sont effectuées tous les 3 ans, généralement au mois de février de l'année suivante. L'évaluation peut être faite à une autre période de l'année, à la demande du juge, dans la mesure où elle est nécessaire pour la promotion à des fonctions exécutives ou la nomination à des fonctions dirigeantes, mais seulement au bout des 2 ou 3 années prévues par la loi pour une évaluation.

14. Comment l'évaluation est-elle effectuée? (veuillez préciser les procédures, y compris une éventuelle pré-évaluation, des entretiens, des audiences, des présentations orales et verbales et le rôle des évaluateurs et d'un juge).

L'évaluation de l'activité professionnelle comporte les étapes suivantes :

- L'autoévaluation est le processus à travers lequel le juge formule ses propres estimations concernant l'activité déployée durant la période évaluée et il accorde des notes motivées pour chaque indicateur, le rôle de la note étant de préparer le juge à un dialogue constructif avec les membres de la commission d'évaluation, dans le cadre de l'entretien.

- l'entretien est la discussion du juge évalué et des membres de la commission d'évaluation, au bout de la période d'évaluation, après l'autoévaluation, aussi bien sur les aspects qui n'ont pas pu être tirés au clair suite à la collecte des données et informations nécessaires, ainsi que sur les aspects au sujet desquels le juge avait formulé des remarques et objections.

- rédaction d'un rapport d'évaluation provisoire

- éventuelles remarques ou objections formulées par le juge évalué sur le projet d'évaluation

- rédaction d'un rapport d'évaluation définitif.

15. Quelles sont les appréciations (ratings) utilisées lors des évaluations?

Les qualificatifs accordés suite à l'évaluation peuvent être : très bien, bien, satisfaisant ou insatisfaisant.

16. Quelles sont les conséquences de l'évaluation et comment peut-elle affecter la carrière d'un juge? Quel peut en être le résultat:

- la promotion ou la rétrogradation d'un juge;
- la distinction professionnelle d'un juge;
- les mesures disciplinaires ou autres;
- la demande de formation continue;
- la destitution;
- d'autres actions ou mesures (positives ou négatives).

- Les juges ayant obtenu le qualificatif « bien » ne peuvent participer au concours de promotion à l'instance supérieure. Les juges ayant obtenu le qualificatif « insatisfaisant » ou le qualificatif « satisfaisant », suite à deux évaluations consécutives, sont obligés de suivre pendant une période de 3 à 6 mois des cours organisés par l'Institut National de la Magistrature. Pour les juges qui reçoivent, suite à deux évaluations consécutives, le qualificatif « insatisfaisant », le Conseil supérieur de la magistrature propose au président de la Roumanie de les libérer de leurs fonctions pour incapacité professionnelle.

- Non.

- Non.

- Voir la réponse au premier paragraphe de la question n° 16.

- Les cours de 3 à 6 mois auxquels participent les juges ayant eu les qualificatifs « insatisfaisant » ou « satisfaisant » suite à deux évaluations consécutives prennent fin sur un examen. La commission d'examen est formée de 2 juges, ayant au moins le même grade professionnel que le juge examiné et un membre du personnel enseignant de l'Institut National de la Magistrature, nommés par décision du Conseil Supérieur de la Magistrature, sur proposition de l'Institut National de la Magistrature. L'absence injustifiée équivaut à la perte de l'examen. Pour les juges n'ayant pas réussi leur examen, le Conseil Supérieur de la Magistrature propose au président de la Roumanie de les libérer de leurs fonctions pour incapacité professionnelle.

- tel n'est pas le cas.

17. Comment sont enregistrées l'évaluation et les mesures recommandées, où sont déposés les dossiers, pour quelle durée, et qui peut les examiner?

Les éventuelles recommandations faites au juge sont insérées dans le rapport final d'évaluation, rédigé en trois exemplaires, dont l'un est communiqué au juge, un autre est conservé au dossier d'évaluation et un autre est rattaché au dossier professionnel conservé par le Conseil Supérieur de la Magistrature.

L'accès au rapport d'évaluation est limité, ses données étant confidentielles et sa conservation - permanente, conformément au Nomenclateur des archives de l'instance en question, soit du Conseil Supérieur de la Magistrature, nomenclateur qui est en accord avec les délais imposés par la loi des Archives Nationales.

18. En plus des évaluations formelles indiquées ci-dessus, des évaluations informelles sont-elles effectuées? (par exemple, des consultations informelles et des conseils de juges de rang plus élevé).

Non.

19. Veuillez fournir, si possible, un exemple (anonyme) d'une forme/feuille/bulletin d'évaluation rempli (si possible, en anglais ou en français).

Oui, car il a un caractère public – annexes de la HCSM n° 839/2010.

D. L'évaluation vis-à-vis de l'indépendance des juges

20. Par quels moyens la transparence du processus d'évaluation est-elle assurée? L'organisme d'évaluation est-il clairement défini? Existe-t-il des lignes directrices publiées pour définir les critères d'évaluation et les règles pertinentes de procédure?

La procédure d'évaluation de l'activité professionnelle est établie par la HCSM n°676/2007, avec les modifications et ajouts ultérieurs, publiée au « Monitorul Oficial » n°18/10.01.2014.

21. Existe-t-il des mesures de protection pendant l'évaluation afin d'éviter des avis personnalisés ou des pressions politiques?

Tel n'est pas le cas.

22. Comment est assurée la participation d'un juge à la procédure d'évaluation et la prise en compte de son avis?

Voir la réponse à la question n° 14.

23. Une auto-évaluation par un juge ou une évaluation par ses pairs au même niveau hiérarchique est-elle possible?

Voir la réponse aux questions n° 10 et 14.

24. Un juge peut-il demander la destitution (temporaire ou permanente) d'un membre de l'organisme d'évaluation? (par exemple, au cas où il existe des raisons sérieuses de croire que ce membre peut avoir une attitude *a priori* négative envers le juge évalué).

- si l'un des membres de la commission d'évaluation est l'époux, ou un parent, ou un proche jusqu'au quatrième degré compris du juge ou du procureur évalué ;

- si un litige a existé, durant la période de 5 ans précédant l'évaluation, entre l'un des membres de la commission d'évaluation et le juge évalué ;

- si le président de la commission d'évaluation est un membre élu du Conseil Supérieur de la Magistrature, à l'activité non-permanente.

Si un membre de la commission d'évaluation se trouve dans une situation qui, sans faire partie des cas d'incompatibilité susmentionnés, est de nature à affecter son objectivité dans l'évaluation d'un juge ou d'un procureur, il a l'obligation d'en avertir de suite le collègue directeur de l'instance ou du parquet. Dans les situations antérieurement prévues, le membre incompatible de la commission d'évaluation sera remplacé par le membre suppléant, sauf dans le cas où il est président de la commission et il sera alors remplacé par le vice-président de l'instance. Ne peuvent faire partie de la même commission d'évaluation les juges qui sont époux, parents ou proches jusqu'au quatrième degré y compris.

25. Quelles sont les possibilités d'une révision (y compris judiciaire) d'évaluation d'un juge, si ce dernier n'est pas d'accord avec l'évaluation et avec les mesures prises suite à ses conclusions?

Les juges mécontents du qualificatif accordé peuvent le contester auprès de la section adéquate du Conseil Supérieur de la Magistrature, dans un délai de 30 jours suivant la communication de la note.

Les juges mécontents du qualificatif accordé peuvent le contester auprès de la section adéquate du Conseil Supérieur de la Magistrature, dans un délai de 30 jours suivant la communication de ce résultat. La contestation est remise au président de la commission d'évaluation qui la transmet dans un délai de 3 jours au Conseil Supérieur de la Magistrature, avec le rapport d'évaluation, accompagné de copies des documents pris en compte pour l'évaluation et le point de vue de la commission concernant la contestation formulée. Pour régler cette contestation, les sections du Conseil Supérieur de la Magistrature peuvent demander aux commissions d'évaluation toute information qui leur semble nécessaire. La contestation est réglée avec citation obligatoire du juge ou du procureur, selon le cas. L'audition du juge ou du procureur n'est pas obligatoire. Les juges et procureurs évalués par les commissions respectives des sections du Conseil Supérieur de la Magistrature peuvent présenter leur contestation à la section adéquate du Conseil Supérieur de la Magistrature dans un délai de 3 jours. Les magistrats ayant fait partie de la commission d'évaluation ne peuvent participer à la solution de la contestation par la section du Conseil Supérieur de la Magistrature. Les décisions des sections peuvent être attaquées dans les 5 jours après leur communication, au Plénum du Conseil Supérieur de la Magistrature. Les résolutions du Plénum du Conseil Supérieur de la Magistrature **sont définitives et irrévocables.**

Cependant, l'art. 29d de la Loi 317/2004 prévoit que :

(5) Les résolutions du plénum concernant la carrière et les droits des juges et procureurs sont rédigées dans un délai de 20 jours au plus et sont communiquées sans tarder.

(6) Les résolutions prévues à l'al. (5) sont publiées au « Buletinul Oficial al Consiliului Superior al Magistraturii » et sur la page d'internet du Conseil Supérieur de la Magistrature dans les 10 jours suivant leur rédaction.

(7) **Les résolutions prévues à l'al. (5) peuvent être attaquées en contestation par toute personne intéressée**, dans les 15 jours suivant leur communication ou publication, à la Section de contentieux administratif et fiscal de la Haute Cour de Cassation et Justice. La contestation est jugée par un collège formé de 3 juges.

E. Le progrès et les problèmes

26. Veuillez décrire brièvement le bilan et les problèmes du système d'évaluation utilisé dans votre pays.

Les principaux objectifs du Conseil Supérieur de la Magistrature, dans le cadre de ses orientations pour mettre en œuvre les recommandations de la Commission Européenne, à propos de la responsabilité du système judiciaire, visent entre autres la prise de décisions concernant la carrière des magistrats, en toute transparence et objectivité, ce qui comprend aussi la révision du système d'évaluation professionnelle et de promotion des juges et procureurs.

Mentionnons, parmi les réalisations, l'aboutissement en temps voulu des évaluations, le petit nombre de contestations concernant les qualificatifs accordés, la solution avec célérité des contestations formulées.

Le processus de révision du système d'évaluation est en plein déroulement, dans le sens que des propositions de modification législative ont été formulées.

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?
Please see answer to the question 12.
3. Is it compulsory or optional, and does it apply to all judges in the country?
It is compulsory for all Judges except of the Constitutional Court Judges.
4. How it is established and regulated:
 - by legislation;
 - by subordinate legislation;
 - by internal institutional regulatory instruments.**It is regulated by legislation – Art 27a – Art 27g of the Judges Act No 385/2000 Coll.**

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;
Yes.
 - the average time spent on each of these cases;
Yes.
 - the average number of hearings per case;
Yes.
 - clearance rate (number of the cases, where a decision has been made, vis-à-vis the total of the cases forwarded to the judge);
Yes.
 - the average time to judgment (the time required to deliver a judgment by a judge after the completed hearing);
Yes.
 - any other quantitative indicators.
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;
Yes.
 - the number of appeals vis-à-vis the number of the cases, where a decision has been made;

No.

- the number of decisions reversed and/or cases remitted by the appellate court;

Yes.

- the types of cases where decisions were reversed and/or cases remitted (criminal, civil, administrative or other);

Yes.

- the grounds for reversal and/or remittal;

Yes.

- any other qualitative indicators.

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?

Opinion of appellate panels, president of the Court and opinion of Council of Judges in the Court are taken into account.

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

Yes.

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.

President of the Court's gremium or division (civil, administrative, criminal or commercial gremium) assesses a judge who is a member of the gremium (1st instance courts) or division (appellate courts and Supreme Court), judge of the Special Criminal Court who assesses other judges of the Special Criminal 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.

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

Evaluation is done periodically – first evaluation is done after first five years of the service or after one year if the result of the previous evaluation was “unfit”. It can be also done occasionally in cases of disciplinary proceedings concerning a judge, when judge asks for evaluation, and in case of selection proceedings of judges to a higher court.

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

Please, see answer to the 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)

15. What are the ratings used during evaluations?

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;
No.
 - a professional award to a judge;
No.
 - disciplinary or other measures;
Yes.
 - a requirement of further training;
Yes.
 - dismissal from office;
No.
 - any other actions or measures (positive or negative).
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?
Person responsible for evaluation completes the evaluation record.
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).

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?
Evaluation body and evaluation proceedings are clearly defined in Art 27a – Art 27g of the Judges Act No. 385/2000 Coll. No, there are no additional guidelines.
21. Are there any protective measures during the evaluation process to avoid personalised opinions or political pressures?
Evaluated judge may ask for revision of the evaluation – Council of Judges in the Court review the evaluation report and decide on amendment of the evaluation report or dismisses the judge’s petition for review. Evaluation report cannot be reviewed by Court in civil proceedings or judicial review proceedings.
22. How is the participation of a judge in the evaluation procedure ensured and how are his/her views taken into account?
Judge may choose five files (in which the decision came into force) a lodge it to the evaluation person, evaluation is also made during the hearings.
23. Is any self-evaluation by a judge or evaluation by his/her peer judges at the same hierarchical level possible?
Yes. Please see answers to questions 12, 17.
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).
This right of a judge is not regulated by the Act no. 385/2000 Coll.
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?

Please, see answer to question 21.

E. Achievements and problems

26. Please briefly describe achievements and problems of the evaluation system used in your country. **Described system has been working since 2012 so this year is the first one in which the evaluation proce**

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.

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 judges 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

Introduction

Le questionnaire vise à recueillir, autant que possible, des informations sur l'évaluation de la performance des juges en fonction. Par conséquent, le questionnaire n'est pas lié au processus de sélection et/ou de recrutement des juges. Les réponses au questionnaire permettront d'identifier les règles en vigueur dans les États membres, et seront utilisées pour la préparation de l'Avis n° 17 (2014) du CCJE, indiqué ci-dessus.

A. L'évaluation individuelle des juges: but et cadre réglementaire

Remarque préliminaire : La Suisse est un Etat fédéral composé de 26 cantons et demi-cantons. Au niveau cantonal s'ajoute le niveau de la Confédération qui possède trois tribunaux de première instance et le Tribunal Fédéral Suisse qui est la Cour suprême de la Suisse. Chacun des cantons et la Confédération possèdent leur organisation judiciaire propre, y compris la façon de gérer les tribunaux, les juges et le personnel employé par les tribunaux. Les réponses ci-après correspondent à la situation qui existe dans la majorité des cantons et se basent en grande partie sur les réponses fournies par les cantons au questionnaire relatif aux systèmes judiciaires européens de la Commission européenne pour l'efficacité de la justice (CEPEJ).

1. L'évaluation individuelle des juges existe-t-elle dans votre pays?

NON

En revanche, les performances des tribunaux sont examinées par les autorités de surveillance [tribunal cantonal (= 2^e instance cantonale = cour d'appel cantonale), Conseil supérieur de la magistrature ou tout autre organe prévu par le droit cantonal pour les tribunaux de première instance des cantons ; Tribunal Fédéral Suisse pour les tribunaux de première instance de la Confédération] et de haute surveillance (Parlement cantonal ou fédéral pour les tribunaux cantonaux respectivement les tribunaux de la Confédération).

2. Si oui, quel est son but et la raison?

/ (= inexistant ou pas applicable vu la réponse donnée à la question 1)

3. Est-elle obligatoire ou facultative, et s'applique-t-elle à tous les juges dans le pays?

/

4. Comment est-elle établie et réglementée:

- par la loi;
- par la législation subordonnée;
- par des instruments réglementaires institutionnels.

/

B. Les critères d'évaluation

5. Existe-t-il des indicateurs quantitatifs de performance qui doivent être pris en compte, tels que:

- le nombre d'affaires dans lesquelles la décision a été rendue par un juge;
- une durée moyenne de traitement de chaque affaire;
- le nombre moyen d'audiences par affaire;
- le taux de variation du stock d'affaires pendantes (le nombre d'affaires résolues par rapport au nombre total d'affaires transmises au juge);
- la durée moyenne de jugement (le temps nécessaire pour rendre un arrêt par un juge à la fin de l'audience);
- d'autres indicateurs quantitatifs.

NON, vu l'absence d'évaluation individuelle des juges.

Cependant, tous les cantons et la Confédération utilisent des applications de gestion de dossiers de tribunaux. La plupart de ces applications sont en mesure de produire des statistiques relatives au nombre d'affaires traitées par les juges. En règle générale, ces données quantitatives sont transmises aux juges afin de leur permettre de se situer par rapport à leurs collègues ou bien elles sont communiquées de façon bilatérale aux juges concernés par le président du tribunal ou de la section du tribunal dans lequel il est affecté. Lorsqu'un juge possède un rendement nettement inférieur aux attentes, il est rendu attentif à cette situation et motivé pour améliorer ses performances. Cependant ces discussions ont lieu en dehors de tout processus formel d'appréciation des prestations des juges, en raison de l'indépendance dans le traitement des affaires dont ils jouissent.

Lorsque les décisions sont prises par un collège de juge, l'on distingue en règle générale le nombre d'affaires dans lesquelles le juge a instruit l'affaire (préparation d'une proposition de jugement) de celui dans lesquelles il a simplement pris position sur un projet de jugement préparé par le juge instructeur ou rapporteur.

6. Existe-t-il des indicateurs qualitatifs de performance qui doivent être pris en compte, tels que:

- l'analyse du type, du sujet et de la complexité d'affaires traitées par un juge, et ses décisions;
- le nombre d'appels par rapport au nombre d'affaires dans lesquelles une décision a été rendue;
- le nombre de décisions renversées et/ou d'affaires renvoyées par la cour d'appel;
- les types d'affaires où les décisions ont été renversées et/ou d'affaires renvoyées (pénales, civiles, administratives ou autres);
- les motifs pour renverser des décisions et/ou renvoyer des affaires;
- d'autres indicateurs qualitatifs.

NON, vu l'absence d'évaluation individuelle des juges.

Cependant, lors de l'analyse des données statistiques mentionnées à la question précédente, il est en règle générale tenu compte de critères qualitatifs tels que la complexité de l'affaire.

Il convient de relever que le nombre d'appels, par rapport au nombre d'affaires dans lesquelles une décision a été rendue, ne constitue en règle générale pas un critère approprié pour évaluer la prestation d'un juge ou d'un tribunal. En effet, il constitue une information très incomplète dans la mesure où l'issue de l'appel ou du recours (confirmation ou non du jugement de l'autorité précédente) doit aussi être pris en considération. Ensuite, il convient aussi de prendre en compte si le litige porte sur une question nouvelle ou sur une question qui fait l'objet d'une jurisprudence établie.

7. Existe-t-il d'autres indicateurs qui sont pris en compte dans l'évaluation du juge, tels que les avis des usagers de la justice, de la hiérarchie judiciaire, des experts judiciaires et des autres parties concernées par la procédure judiciaire, ainsi que des articles de presse?

/

8. L'évaluation prend-elle en compte d'éventuelles violations des règles/normes éthiques et professionnelles de juges?

/

9. Existe-t-il une échelle définie pour mesurer l'importance ou la priorité des différents indicateurs de performance? (veuillez préciser)

/

C. Les procédures et les mécanismes

10. Qui est responsable de l'évaluation individuelle des juges? Veuillez indiquer toutes les institutions et les fonctionnaires qui prennent part à ce processus (y compris le ministère de la Justice, les présidents des tribunaux, le Conseil de la Justice, des organismes d'inspection des tribunaux), et indiquer leurs rôles spécifiques.

/

11. Existe-t-il des procédures d'évaluation différentes pour les différentes catégories de juges, en fonction de leur position dans la hiérarchie judiciaire, leur expérience ou tout autre aspect?

/

12. L'évaluation est-elle un processus continu ou périodique, si ce dernier, quelle est la périodicité de l'évaluation des juges?

/

13. Les évaluations sont-elles faites régulièrement, ou de manière unique ou supplémentaire pour des occasions et/ou des raisons spécifiques?

/

14. Comment l'évaluation est-elle effectuée? (veuillez préciser les procédures, y compris une éventuelle pré-évaluation, des entretiens, des audiences, des présentations orales et verbales et le rôle des évaluateurs et d'un juge)

/

15. Quelles sont les appréciations (ratings) utilisées lors des évaluations?

/

16. Quelles sont les conséquences de l'évaluation et comment peut-elle affecter la carrière d'un juge? Quel peut-en être le résultat:

- la promotion ou la rétrogradation d'un juge;
- la distinction professionnelle d'un juge;
- les mesures disciplinaires ou autres;
- la demande de formation continue;
- la destitution;
- d'autres actions ou mesures (positives ou négatives).

/

17. Comment sont enregistrées l'évaluation et les mesures recommandées, où sont déposés les dossiers et pour quelle durée, et qui peut les examiner?

/

18. En plus des évaluations formelles indiquées ci-dessus, des évaluations informelles sont-elles effectuées? (par exemple, des consultations informelles et des conseils de juges de rang plus élevé)

Des évaluations informelles existent mais elles ne sont pas effectuées en plus des évaluations formelles qui ne sont pas pratiquées en Suisse. Pour les détails sur les évaluations informelles, voir les réponses apportées aux questions 5 et 6.

19. Veuillez fournir, si possible, un exemple (anonyme) d'une forme/feuille/bulletin d'évaluation rempli (si possible, en anglais ou en français).

/

D. L'évaluation vis-à-vis de l'indépendance des juges

20. Par quels moyens la transparence du processus d'évaluation est-elle assurée? L'organisme d'évaluation est-il clairement défini? Existe-t-il des lignes directrices publiées pour définir les critères d'évaluation et les règles pertinentes de procédure?

/

21. Existe-t-il des mesures de protection pendant l'évaluation afin d'éviter des avis personnalisés ou des pressions politiques?

L'absence d'évaluation formelle des prestations individuelles des juges et la remise de statistiques sous une forme anonyme seulement à l'autorité de haute surveillance garantissent en principe suffisamment l'indépendance des juges. Le fait que la quasi-totalité des juges effectuent leur travail de façon correcte contribue aussi à écarter toute pression extérieure. En cas de prestations insuffisantes d'un juge sans motifs valables, les organes directeurs des tribunaux concernés s'engagent en règle générale à régler eux-mêmes le problème et informent l'organe de surveillance ou de haute surveillance des mesures prises et des résultats obtenus.

22. Comment est assurée la participation d'un juge dans la procédure d'évaluation et la prise en compte de son avis ?

/

23. Une auto-évaluation par un juge ou une évaluation par ses pairs au même niveau hiérarchique est-elle possible?

Voir réponse à la question 5.

24. Un juge peut-il demander la destitution (temporaire ou permanente) d'un membre de l'organisme d'évaluation? (par exemple, en cas des raisons sérieuses de croire que ce membre peut avoir une attitude *a priori* négative envers le juge évalué)

/

25. Quelles sont les possibilités d'une révision (y compris judiciaire) d'évaluation d'un juge, si ce dernier n'est pas d'accord avec l'évaluation et les mesures prises à la suite de ses conclusions?

/

E. Le progrès et les problèmes

26. Veuillez décrire brièvement le bilan et les problèmes du système d'évaluation utilisé dans votre pays.

Lorsque l'on examine les performances des tribunaux suisses selon les indicateurs de performance de la CEPEJ (clearance rate et disposition time notamment) ainsi que la perception de la corruption en Suisse, y compris au sein de la Justice, selon les rapports annuels de l'organisation non gouvernementale Transparency International, on peut constater que, d'une façon globale, les tribunaux suisses fonctionnent correctement.

La conscience professionnelle et l'identification à la mission de la Justice sont très grandes chez les juges et les motivent à fournir de bonnes prestations tant d'un point de vue quantitatif que qualitatif. Dans ce contexte, il n'existe aucune nécessité d'introduire un système formel d'évaluation des prestations individuelles des juges qui serait plus contraignant et impliquerait une charge administrative supplémentaire pour les organes directeurs des tribunaux, en particulier pour les présidents de juridiction ou de section de tribunal.

Le Professeur Lienhart de la Faculté de droit de l'Université de Berne est en train de mener un travail de recherche, financé par le Fonds National suisse de la recherche scientifique, en collaboration avec d'autres universités de Suisse et des Pays-Bas. L'objectif de cette recherche est de définir des outils appropriés de gestion des affaires au sein des tribunaux suisses. La question de l'évaluation des prestations des juges y est aussi étudiée. Les résultats de cette étude sont attendus dès 2015 et feront l'objet de publications.

The « former Yugoslav Republic of Macedonia »

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 aim of the monitoring and assessment of the work of the judge shall be the affirmation of the judiciary as an independent and autonomous authority, the strengthening of the personal motivation of the judges, securing further professional development of the judges on the basis of their personal and professional capabilities without any influence, as well strengthening the independence and the impartiality of the judge during the exercise of the judicial office.

The monitoring and the assessment of the work of the judge shall be conducted without disrupting the independence and the impartiality of the judge during the exercise of the judicial office.

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

The evaluation of the judges is compulsory and it applies to all the judges in the country. The evaluation / the assessment of the work of the judge can be conducted regularly or extraordinarily.

4. How it is established and regulated:

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

It is regulated by legislation – the Law on Judicial Council and the Law on Courts

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 quantitative criteria regarding the work of the judge are:
-the data and the information received regarding the work of the judge through the Automated Court Case Management and Information System (ACCMIS) regarding the number, the type and the resolved cases in respect to the orientation number of cases that the judges is to resolve monthly (the orientation number of cases that the judge is to resolve monthly shall be determined in accordance with the legal area, the complexity of the material wherein the case is and the type of courts in accordance with the real competence).**

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.

Qualitative criteria for assessment of the work of the judge shall be determined in respect to the work of the judge, wherefore the following shall be taken into consideration:

-respecting the legal time periods for undertaking the process activities,
-respecting the legal time periods for adoption, publication and preparation of the decisions, and
-the relation between the number of confirmed, abolished or altered decisions in respect with the total number of resolved cases (this qualitative criteria for assessment of the work of the judge shall be taken into consideration when calculating the assessment of the work of the judge against whose decision legal means have been raised).

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?

Assessment of judges, pursuant to law, is carried out on the basis of:

- continuing annual monitoring of the work of the respective judge;
- overall results from the work of the judge; and
- the contribution of the judge to the development of the system of law and professional thought.

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

The type of sanctions and the procedure for establishing violations to the principles of ethical conduct as provided in the Code of Ethics for Judges are regulated through a special Rulebook that should be adopted by the Management Board of the Association and confirmed by the Assembly of the Association of Judges of the Republic of Macedonia ??

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

Quantitative and qualitative criteria are established in the law without any special priority.

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.

The responsible body for evaluation and assessment of the judges is the Judicial Council of the Republic of Macedonia, and its specific roles are:

- to select and dismiss judges,
- to select and dismiss judges - presidents of the courts,
- to determine the termination of the judicial office,
- to select and dismiss the lay judges,
- to follow and assess the work of the judges,
- to decide on the disciplinary responsibility of the judges,
- to determine unprofessional and reckless holding of the judicial office;
- to determine the termination of the judicial office due to permanent incapability to contract as a judge,
- to decide on revoking the immunity of a judge,
- to decide upon requests for approving detention for a judge;
- to nominate two judges of the Constitutional Court of the Republic of Macedonia from among the judges;
- to examine the annual report of the Supreme Court of the Republic of Macedonia regarding the determined fundamental principles and fundamental legal opinions upon issues of importance for the purpose of securing unity in the application of the laws;

- to decide on the temporary suspension of a judge from the judicial office;
- to determine the number of necessary judicial positions for the courts;
- to review and assess the quarterly and annual reports on the work of the courts;
- to care for the reputation of the judges and the trust of the citizens in the judiciary;
- to act upon complaints and grievances by citizens and legal entities about the work of the judges and the courts;
- to submit a report on its work;
- to adopt the Rules of Procedure and other general acts regulating the work in its competence,
- to determine an orientation number of cases upon which the judge has to monthly decide, and
- to carry out other activities determined by law.

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

If the work of the judge and his/her decisions are not subjected to a supervision by a higher court, that is legal remedies have not been raised thereon, the Council shall assess the work of the judge on the bases of the immediate continuous monitoring of the work of the judge, his/her attitude towards the work, the respect of the priority of the cases he/she is working on, and in accordance with the report on the work of the judge, the attitude towards the parties, the judges and the court servants which is determined on the bases of the submitted complaints and grievances regarding the work of the judge, as well as other activities (participation in the judicial councils, mentorship and alike).

Also, the orientation number of cases that the judge is to resolve monthly in the first-instance, the appellate, the Administrative court, the Higher Administrative court and the Supreme Court of the Republic of Macedonia are determined in accordance with the legal area, the complexity of the material wherein the case is and the type of courts in accordance with the real competence. During the determination of the orientation number of cases that the judge is to resolve monthly in the first-instance, the appellate, the Administrative court, the Higher Administrative court and the Supreme Court of the Republic of Macedonia, the Council shall by an act prescribe the methodology of determining the complexity of the matter wherein the case is. The Council shall each year by a decision determine the orientation number of cases and the necessary number of cases for the purpose of realization of the orientation number of case that judge is supposed to monthly resolve.

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

The assessment of the work of the judge can conduct regularly or extraordinarily.

The regular assessment of the judge is conducted once a year, concluding with the end of April for the current year, based on the inspection of the annual work regarding the work of the court and the judges in the previous year.

The Council is assessing the newly elected judge during the year when he/she has been selected, provided that during that year he/she has been effectively working as a judge for at least six months.

The extraordinary assessment of the work of the judge can be conducted only upon an opinion of the Council.

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

-See the answer above-

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)

Assessment of the judge is carried out on the basis of the results of the work of each judge for a period of 10 and a half months effective work in the course of the current year. Prior to the assessment of the work of the judge and the president of the court by the Council, an opinion has to be prepared by a Commission formed at the court comprising the president of the respective court and two judges (in the case of a president of a court, the Commission comprises the president of the court and two judges - presidents of departments), elected at a session of judges in the court in which the assessed judge – president of court performs his/her function, taking into account criteria established by law. The draft opinions of the Court Commission are submitted to the Judicial Council of the Republic of Macedonia; the Council then forms a three-member Commission for Assessment of the Work of the Judge from among its composition. The Judicial Council Commission then prepares and submits to the Judicial Council a Report with an Assessment Proposal; the Judicial Council during a session decides on the assessment of the work of the

judge - president of court, for which a formal decision is prepared containing an explanation of the reasons for the assessment. The decision for assessment is delivered to each judge. The judge – president of the court who is dissatisfied with the awarded decision is entitled to requesting a re-assessment within 8 days as of the day of receipt of the Decision for Assessment. The Council is required to carry out within 30 days as of the date of receipt of the request for re-assessment a new assessment of the work of the judge - president of court on the basis of the Report of a Commission comprising three members of the Council, whereby the Commission which may not include members who had taken part in the Commission what had carried out the initial assessment.

15. What are the ratings used during evaluations?

The assessment of the Council regarding the work of the judge can be positive or negative.

On the basis of the received sum of points upon all criteria for monitoring and assessment of the work of the judges, the Council shall assess the judges with the following marks: positive mark (that has three degrees: satisfactory, good or very good) and negative mark.

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).
-

If the judge is awarded a negative assessment for the following year as well, that is grounds for his/her dismissal. Also, he/she can not be promoted to a higher position.

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 Decision for Assessment of the work of the Judge - President of Court is confidential in nature and is kept in the file of the judge at the Judicial Council, whereas a Report with statistical data on the assessment of judges for all courts in the RM is publicly presented.

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).

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?

In accordance with the procedure for conducting the assessment established by law.

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

The data which represent the basis for the assessment of the work of the judge are taken directly from the ACCMIS system of each court, without the possibility for any influence whatsoever. The court commission responsible for the preparation of draft opinions for the assessment of the work of the judge is required before submitting the opinion to the Judicial Council to submit it for review to the respective judge, who verifies the reliability of the data by affixing his/her signature onto the opinion.

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

The answer to Question 21 also pertains to Question 22.

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)

No. there have not been such complains from out the judges.

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 Council shall adopt a decision for the assessment of the work of the judge containing an explanation of the reasons thereon. The decision for the assessment of the work of the judge for whom the procedure for assessment has been conducted shall be delivered to the judge, within a time period of eight days (the content of the decision for the assessment of the work of the judge and the President of the court is confidential).

Provided that the judge is not content with the assessment, they can request a new assessment to be conducted. The Council shall, within a time period of 30 days as of the day of accepting the request for assessment, be obliged to reassess the work of the judge and the President of the court. The reassessment of the work of the judge is conducted on the bases of a report by a Commission composed of three members of the Council, wherein the persons who have assessed the judge during the first assessment cannot participate (the judge and the President of the court doesn't have the right to an appeal against the decision for reassessment adopted by the Council).

E. Achievements and problems

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

The benefit from the assessment of the work of judges and courts lies in increasing the promptness and efficiency in working, as well as the motivation of judges for achieving better results, since the assessment of the judge is one of the criteria for his/her promotion according to the merit system.

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

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

If yes, what is its purpose and rationale?

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

How it is established and regulated:

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

B. Criteria for evaluation and assessment

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>		<i>PROMOTION IN BOOK (A)</i>	<i>PREFERENTIAL PROMOTION IN BOOK (B)</i>				<i>PRIVILEGED PROMOTION IN BOOK (C)</i>	
		<i>Work Percentage</i>	<i>Work Percentage</i>				<i>Work Percentage</i>	
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%	
<i>Percentages of business requested for the forms of promotion degree by the resolution</i>		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	

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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.

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.

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

ANSWER:

Yes, it is taken into account.

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

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.

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.

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

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).

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.

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).

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.

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.

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.

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

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.

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.

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.

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.

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.

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

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.

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? NOT IN ANY OFFICIAL FORM. THE ONLY WAY IT EXISTS IS BY JUDGES OF A SUPERIOR COURT (eg THE COURT OF APPEAL OR THE SUPREME COURT) CONSIDERING THE JUDGMENT OF THE LOWER COURT IN THE COURSE OF AN APPEAL.
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.

B. Criteria for evaluation and assessment

5. Are there quantitative performance indicators that have to be taken into account, such as: NO
 - 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.
6. Are there qualitative performance indicators that have to be taken into account, such as: NO
 - 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.
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? THE JUDICIAL HIERARCHY, AS INDICATED ABOVE.
8. Does the evaluation take into account possible violations of ethical and professional rules/standards adopted for judges? YES.
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. THERE IS NO OFFICIAL SYSTEM SO THERE IS NO PARTICULAR RESPONSIBILITY
11. Are there different evaluation procedures for different judges, depending on their position in the judicial hierarchy, their experience or any other aspect? NO
12. Is evaluation a continuous process or is it done periodically; if the latter, how often are judges evaluated? IT IS ONLY DONE PERIODICALLY BY REFERENCE TO INDIVIDUAL DECISIONS OF JUDGES AND WHEN THE JUDGE MIGHT BE UNDER CONSIDERATION FOR PROMOTION
13. Are the evaluations done routinely, or only or additionally for specific occasions and/or for specific reasons? ONLY WHEN PROMOTION IS BEING CONSIDERED.
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) IT IS CONSIDERED BY THOSE WHO ARE INVOLVED IN THE PROMOTION PROCESS, THAT IS ALL THE JUDGES WHO ARE CONSULTED ABOUT IT. THESE ARE USUALLY THE PARTICULAR JUDGE'S SUPERIORS BUT ALSO HIS PEERS.
15. What are the ratings used during evaluations? THERE ARE NO OFFICIAL "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; IT COULD RESULT IN PROMOTION BUT NEVER DEMOTION.
 - a professional award to a judge; NO
 - disciplinary or other measures; NO UNLESS THERE ARE SPECIFIC DISCIPLINARY PROCEEDINGS AGAINST THE JUDGE FOR A PARTICULAR ALLEGATION
 - a requirement of further training; NO
 - dismissal from office; NO, UNLESS THERE HAS BEEN A SPECIFIC ALLEGATION OF MISCONDUCT AND THEN THE MATTER IS DEALT WITH UNDER THE SPECIAL PROCEDURE FOR THAT.
 - any other actions or measures (positive or negative). NO.
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? NOT APPLICABLE.
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) THERE ARE INFORMAL CONSULTATIONS IF A JUDGE APPLIES FOR A PROMOTION, AS INDICATED IN 14 ABOVE.
19. Please provide, if possible, an example (anonymous) of an evaluation/assessment form/sheet/record filled out (if possible, in English or French). NOT POSSIBLE

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 ONLY OCCASIONS ON WHICH THERE IS EVALUATION (AND EVEN THEN IT IS NOT FORMAL) IS WHEN A JUDGE APPLIES FOR PROMOTION. THAT PROCESS IS UNDERTAKEN BY THE JUDICIAL APPOINTMENTS BOARD WHICH IS AN INDEPENDENT BODY. ITS CRITERIA FOR MAKING APPOINTMENTS ARE DEFINED AND PUBLISHED AND CAN BE SUBJECT TO REVIEW.
21. Are there any protective measures during the evaluation process to avoid personalised opinions or political pressures? THERE ARE NO POLITICIANS INVOLVED IN THE JUDICIAL APPOINTMENT PROCESS. INEVITABLY BECAUSE OPINIONS ON THE ABILITY OF A CANDIDATE ARE INVITED THE OPINION GIVEN IS BOUND TO BE "PERSONALISED".

22. How is the participation of a judge in the evaluation procedure ensured and how are his/her views taken into account? ANY JUDGE WHO APPLIES FOR PROMOTION OBVIOUSLY TAKES PART IN THE PROCESS.
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) NO
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? I SUPPOSE IT WOULD BE POSSIBLE TO HAVE A JUDICIAL REVIEW OF AN APPOINTMENT PROCESS. IT HAS NOT HAPPENED YET!

E. Achievements and problems

26. Please briefly describe achievements and problems of the evaluation system used in your country. CONSIDERATION IS BEING GIVEN TO HAVING A SYSTEM OF EVALUATION OF PART TIME JUDGES. THERE ARE NO PLANS FOR ANY SYSTEM OF EVALUATION OF FULL TIME JUDGES SAVE IN THE MANNER I HAVE INDICATED ABOVE.