



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

CCJE-BU (2014)1

Strasbourg, 24 July 2014

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

Summary of replies to the questionnaire for the preparation of the CCJE Opinion No. 17 (2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence

Introduction

The questionnaire aimed at collecting information on the individual evaluation of judges. 33 questionnaires were handed in by the following member states: Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Italy, Luxemburg, Moldova, Monaco, The Netherlands, Norway, Poland, Rumania, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, and the United Kingdom (UK).

The questionnaires allow an insight into different approaches to the individual evaluation of judges. Those approaches are rooted in the different cultures and legal systems of the member states that have developed them. The questionnaires show that there is no agreement on the general question if an individual evaluation of judges is desirable at all: In 22 member states, formal systems of individual evaluation of judges are used. Eleven member states denied using such a system, even though some of them apply evaluation tools in order to prepare career development discussions/salary discussions or decisions on permanent tenure for young judges. While Nordic countries like Denmark, but also Switzerland, refuse evaluating judges in order to respect judicial independence, some eastern European countries believe that evaluation helps improving judicial independence and judicial accountability.

Among the countries that use evaluation systems, the questionnaires reveal a broad range of approaches both with respect to the purpose of evaluation as well as the criteria and methods applied for the individual evaluation of judges.

In member states which use a system of individual evaluation, the evaluation of judges can be an important factor in relation to a judge's chances for promotion and - for a young judge - for obtaining security of tenure. Evaluation may also play a role in determining performance oriented salaries and pensions. Moreover, in some member states, poor performance can lead to the initiation of disciplinary procedures, pay-cuts and even a judge's dismissal from office. However, evaluation may also be used in order to provide feedback and thus foster the individual development of judges.

In almost all member states, judges are responsible for the evaluation process. The evaluation might either be conducted by a commission appointed by a council of judges or by the president of the court where the evaluated judge performs his or her duties. In some countries, evaluation is conducted in the form of an informal discussion. In other countries, evaluations are undertaken in a more formal way.

While the ratings used to classify judges are roughly comparable in the member states, the methods of ascertaining those ratings differ. In most member states, both qualitative and quantitative criteria are used. In many countries, countable facts like the number of decisions delivered by a judge or the number or percentage of decisions reversed on appeal play a major role. In such systems, the performance of each judge is appraised against a benchmark of fixed expectations. The judge's performance is then assessed by awarding points or percentages which makes the work of each judge comparable to other judges. In some countries, such are ranked according to their ratings. In other countries, the quality of judicial decisions is at the center of a judge's individual assessment.

Almost all member states try to reconcile judicial independence and the evaluation of judges. In almost all countries, the evaluated judge is heard in the evaluation process. Moreover, in most member states, a judge who is unsatisfied with the result of the evaluation has a right to demand a review of the decision, be it through judicial review or by appealing to a special review board.

A. Individual evaluation and assessment of judges: purpose and regulatory framework
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1. Does individual evaluation and/or assessment of judges exist in your country?

The majority of member states which replied to the questionnaire (33), explained that a more or less formal system of individual evaluation of judges does exist (22). Those countries are: Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, France, Georgia, Germany, Greece, Hungary, Italy, Moldova, Monaco, The Netherlands, Poland, Rumania, Slovenia, Spain, The former Yugoslav Republic of Macedonia, Turkey. Especially in eastern European countries, the evaluation of judges seems to be an important issue. The former Yugoslav Republic of Macedonia and Rumania explained that judicial independence (The former Yugoslav Republic of Macedonia) and the trust of the public in the judicial system (Rumania) could be promoted through the individual evaluation of judges. Slovenia stated evaluation ensured judicial accountability and with it the quality of the judicial service.

The remaining ten member states (Czech Republic, Denmark, Estonia, Finland, Iceland, Luxemburg, Norway, Sweden, Switzerland, Ukraine, UK) denied using a system of individual evaluation. Denmark and Switzerland explained that individual evaluation of judges were incompatible with judicial independence. Therefore, a judge's conduct may

only be judged in the course of disciplinary procedures. In addition, Switzerland argued that it maintained a judiciary of high quality without introducing a system of formal evaluation. However, Sweden, Switzerland and Finland use certain evaluation tools in order to ascertain performance-linked wages (Sweden), to provide feedback for judges in order to improve their work and efficiency (Switzerland) or in preparation of career development discussions (Finland). In the UK, informal evaluation takes place when a judge's promotion is in question. Using the terminology of the ENCJ-Report (Report 2012-2013 of the European Network of Councils for the Judiciary (ENCJ) on Minimum Standards regarding evaluation of professional performance and irremovability of members of the judiciary, para. 10), such systems could be described as using "informal evaluation systems". Estonia, Luxemburg and Ukraine only evaluate young judges before their life appointment.

Additionally, in relation to recent political developments, in Ukraine, in April 2014, the Law "On Restoration of Trust in the Judiciary of Ukraine" introduced a special vetting of judges. This law allows investigating the decisions and behavior of judges who ruled on people who participated in demonstrations, marches and mass protests between November 21, 2013 and April 2014. This vetting procedure is said to be a temporary measure by which it could be determined if certain judges had breached their oath and thus deserved disciplinary or criminal prosecution.

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

The purpose and rationale of the different evaluation systems differ and allow both an insight into the importance of evaluation in some legal systems as well as into the reasons for not using such a system in other legal systems.

In the majority of countries, evaluation aims at maintaining and improving the quality of the work of judges and the judicial system, the professionalism and efficiency of judges and ensures that judges perform their duties adequately (Albania, Austria, Belgium, Bosnia and Herzegovina, Croatia, Italy, The Netherlands, Slovenia). Some member states just gave the assessment of the quality and efficiency of their judges' work and performance as a reason for evaluation (Cyprus, France, Georgia, Germany, Greece, Moldova, Poland, Rumania, Turkey).

Many countries explained that evaluation aimed not only at assessing achievements and skills but also at identifying training-needs and providing feedback (Albania, Belgium, Hungary, The Netherlands, Poland).

Moreover, many member states use evaluation as a basis for decisions on the promotion of judges (Austria, Bulgaria, Croatia, Germany, Monaco, Poland, Spain, Turkey, informally: UK). In Luxemburg, where promotions are made according to a judge's seniority, evaluation is not necessary for that purpose.

For some member states, evaluation is especially important when deciding on the lifetime appointment of young judges (Estonia, Georgia, Germany, Luxembourg, Ukraine). In the Nordic countries and the UK, experienced practitioners become judges later in their professional life (see questionnaire Denmark), which might be another factor in considering evaluation of judges problematic in that legal culture and – given the professional experience of even newly appointed judges - unnecessary.

Spain and Sweden evaluate judges in order to ascertain performance-based salaries. However, on the occasion of a judge's promotion, Spain uses another evaluation system.

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

Evaluation is compulsory for most judges in all member states that use evaluation systems. Exceptions are often made for judges at the highest court(s) (Albania, Bosnia and Herzegovina, Croatia, France, Greece, The Netherlands, Slovenia, Sweden) or for judges later in their career who do not apply for promotion (Germany). In Croatia, only judges who apply for promotion are evaluated.

Some legal systems use special rules for the evaluation for newly appointed judges (Austria, Bulgaria, Estonia, Rumania, Slovenia, Ukraine) or after a judge has been transferred to a new position.

4. How it is established and regulated:

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

In many countries that use systems of individual evaluation, legislation provides basic principles of evaluation while details of the evaluation process like methods and criteria are regulated in subordinate legislation or internal institutional regulatory instruments (Albania, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, France, Germany, Italy, Moldova, Poland, Rumania). In some member states, evaluation is regulated by legislation alone (Austria, Estonia, Georgia (evaluation of newly appointed judges) Greece, Hungary, The former Yugoslav Republic of Macedonia, Turkey, Ukraine). In other countries, the constitution provides the basis for the evaluation of judges (Belgium, Cyprus, Turkey). Only in Georgia, evaluation is regulated by subordinate legislation alone. In Slovenia, basic principles are set out in legislation while details are regulated by an instrument drafted by the country's Judicial Council. In the Netherlands, evaluation is only regulated by subordinate legislation.

In Sweden, for all civil servants including judges, part of the salary is determined by the results of an individual evaluation. The framework for this evaluation is negotiated by the Swedish Agency for Government Employers and central employees' organisation.

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.

In many member states, a number of the quantitative criteria listed in the question play an important role in the evaluation of judges. Especially the number of cases, the time spent on each case and the average time to judgment is taken into account (Albania, Austria, Bulgaria, Croatia, Cyprus, France, Germany, Greece, Italy, Poland, Rumania, Slovenia, Turkey). In other member states, only one quantitative criterion, the number of decided cases, is considered (Bosnia and Herzegovina, Estonia, Hungary, for the purpose of ascertaining a judges performance based salary: Spain, The former Yugoslav Republic of Macedonia, Ukraine). One can speculate that the great emphasis put on the productivity of judges might at least in part be due to economic restraints put on the judiciary. In Bosnia and Herzegovina and Spain, for example, a judge is evaluated according to the extent he or she has met a fixed quota (orientation quota set in the Rulebook on Orientation Criteria for the Performance of Judges and Legal Officers in Courts in BiH, in Spain, the quota is ascertained by the Council for the Judiciary). In the evaluation process, a judge is allocated a number of points depending on the percentage of the quota he or she has achieved. Other criteria are settlement rates and the observance of statutory time lines for deciding cases (Moldova, Italy).

The way such criteria are used in the evaluation differs widely. In some member states, data on such quantitative criteria, as for example the number of cases decided, is concerted into a percentage or points reflecting the performance of each individual judge compared to other judges (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, The former Yugoslav Republic of Macedonia, Italy, Turkey). In other states, such quantitative factors only provide the starting point for an individual assessment (Austria, France, Germany, Slovenia).

Other member states do not use a fixed set of criteria in the evaluation (Belgium, Monaco).

Swiss courts use electronic filing systems which enable collecting performance based data (e.g. on the number of cases a judge has decided). Such information is provided to the judges for self-evaluation and is often taken as the basis of informal discussions with the president of the respective courts.

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.

Some countries stated that all listed criteria were used in the evaluation process (Albania, Austria, Bulgaria).

In many member states, the quality of the judge's analysis and the complexity of the cases he or she has worked on are considered of great importance in the evaluation process (Albania, Belgium, France, Georgia, Germany, Greece, Italy, Poland, Rumania, Slovenia).

The way countries consider the number of a judge's decisions reversed on appeal is especially interesting. In many member states, the number of decisions reversed on appeal or the percentage of decisions reversed on appeal are of great importance in the evaluation process (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Georgia, Greece, Hungary, The former Yugoslav Republic of Macedonia, Moldova, Poland, Rumania, Turkey, Ukraine). In France and Germany, because of the principle of judicial independence and the assumption that appeal courts may also be wrong, neither the numbers of decisions reversed on appeal nor the reasons for the reversal are taken into account, unless they reveal gross mistakes. In Italy, reversal rates are considered, but not part of statistics. Grounds for reversal were not usually taken into account. The Italian report stressed the importance that only a judge's methodology, not the merits of each individual case he or she has decided should be evaluated in order to respect judicial independence.

Spain stated that in order to protect judicial independence, qualitative criteria were only applied when a judge applied for promotion. However, performance-based salaries were determined according to quantitative data alone.

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?

Apart from the qualitative and quantitative factors mentioned above, other criteria are taken into account in many member states. Such criteria concern aspects like a judge's conduct towards litigants, lawyers and colleagues (Germany, Moldova, Poland, Slovenia), as well as his or her personal commitment (Sweden).

Other factors to be considered in certain member states are the judge's organization skills and work ethic (Germany, Moldova, Poland, Slovenia, Sweden), leadership skills (Germany, Hungary) the ability to mediate, draft clear and understandable judgments (Germany) and use information technologies (Croatia, Moldova). A Judge's scholarly activities such as teaching, publications and lecturing can also be taken into account (Croatia, Germany, Slovenia).

In Italy and Slovenia, a judge's integrity, impartiality and uprightness are mentioned as special factors to be evaluated. In Germany and Slovenia, the ability to cooperate and readiness to take on extra activities within the court's administration like mentoring and educating younger lawyers are considered important. In Germany and Austria, a judge's flexibility to change positions and to work in areas of law previously unfamiliar to him or her is also considered worth mentioning. In Austria, an engagement in judges' associations and language skills can also be a positive factor.

The question of what kind of information can be used has only been sporadically addressed in the questionnaires. The opinion of bar associations (Greece, Estonia), peers and more senior judges are taken into account in some member states (Austria, Germany, Hungary, Monaco, UK). The Italian report stated that all documents that provide objective and relevant data for the evaluation process could be considered. In 2007, a Resolution stressed that no anonymous sources or hearsay information should be used in order to protect the evaluated judge. In Germany, all decisions regarding a judge's evaluation and promotion can be challenged in court. Therefore, it is necessary that all information, on

which a judge's evaluation is based, especially if the evaluation comes to a negative conclusion, can be proven in court.

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

All member states differentiate between evaluation and disciplinary measures. Nevertheless, violations of ethical and professional rules/standards are considered in the evaluation process in almost all member states which evaluate judges (except Georgia, Monaco, Sweden).

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

Often, the number of cases decided or the percentage of decisions reversed on appeal are considered decisive (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Georgia, Greece, Hungary, The former Yugoslav Republic of Macedonia, Moldova, Poland, Rumania, Turkey: which, however, considered the absence of disciplinary punishments as more important). Other countries denied using a fixed set of criteria (Belgium, Finland, The Netherlands) or used various criteria to develop a comprehensive, individual assessment (France, Germany, Slovenia).

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.

In almost all member states, the evaluation of judges is conducted by judges. In many member states, the president of the court where the evaluated judge performs his or her duties is responsible for the evaluation (Bosnia and Herzegovina, Finland, France, Germany, Hungary, Monaco, The Netherlands).

In other countries, a committee of judges elected or appointed by the national council of judges conducts the evaluation (Albania, Belgium, Bulgaria, Croatia, Estonia, Georgia, The former Yugoslav Republic of Macedonia, Moldova, Italy, Poland, Rumania, Slovenia, Turkey). In some member states, the president of the court is a member of this group (Belgium, Rumania) or is at least involved in the evaluation process (Albania, Bulgaria, Italy, Slovenia). In Estonia, not only judges but also one representative of the Faculty of Law of the University of Tartu, one representative of the Ministry of Justice and one representative of the Bar Association is a member of the evaluation commission.

In Austria, a group of judges at each court (Personalsenat) conducts the evaluation. In Cyprus the Supreme Court is responsible for evaluations. In Germany, in some Länder (states within the Federal Republic of Germany), the Ministry of Justice of the respective Land has a final competence for the individual evaluation of judges. In Poland, inspector judges visit each court for an inspection of the court and its judges. In Greece uses a roughly comparable system, where judges from higher courts elected by draw evaluate the members of lower courts. In Slovenia, personnel councils, which are established at four higher courts and at the Supreme Court for the evaluation of lower court judges, perform

the evaluation. A personnel council consist of judge from a higher court, elected among their peers by other judges.

In Ukraine, judges are elected permanently after a first appointment has expired after five years. The presidents of appeal courts make a recommendation regarding the election of a judge for a permanent position. The Supreme Qualification Commission conducts an evaluation and makes a recommendation to appoint or not to appoint the evaluated judge permanently. This recommendation can be challenged before the High Council for the Judiciary. The Ukrainian parliament (Verkhovna Rada) appoints the judge to a permanent position.

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, the same evaluation criteria and procedures are applied to all judges. However, in some member states, members of the highest courts are exempt from evaluation (Bosnia and Herzegovina, Croatia, France, Greece, Slovenia, Sweden) or special rules apply for them (Albania, Bulgaria).

In Germany, judges of a certain age (in the Land Nordrhein-Westfalia judges older than 55) are only evaluated if they apply for promotion. In some legal systems, there are special rules for the evaluation of court presidents (Albania, Bosnia and Herzegovina, Germany), and heads of panels of judges which allow the evaluation of leading skills (Belgium, Hungary).

Some legal systems use special rules for the evaluation for newly appointed judges or after a judge has been transferred to a new position (Austria, Belgium, Bosnia and Herzegovina, Estonia, Georgia, Germany, Hungary, Rumania, Slovenia). Judges who have been evaluated poorly are sometimes reevaluated after a shorter time than the usual period (Albania, Austria, Moldova).

In Turkey, judges are subdivided into four classes according to their qualifications. Most judges are evaluated every second year, judges of the first class every third year.

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

The answers to questions 12 and 13 are summarized under question 13.

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

In most countries, evaluations are conducted routinely and periodically in regular intervals. However, the time frame varies. Evaluation can be conducted every 6th month (Georgia), every year (Estonia, Greece, The former Yugoslav Republic of Macedonia, Sweden) every second year (Finland, France, Monaco, The Netherlands, Turkey) every third year (Albania, Bosnia and Herzegovina, Moldova, Rumania, Slovenia) every fourth year (Bulgaria, Italy, Poland) fourth or fifth year (Germany) every eighth year (Hungary).

Many member states evaluate newly appointed judges in shorter intervals (Austria, Belgium, Bosnia and Herzegovina, Estonia, Georgia, Germany, Hungary, Rumania,

Slovenia). In Albania, Austria, Moldova, and Italy, judges who have been evaluated poorly must be reevaluated after a shorter time as well.

In many member states where evaluation takes place routinely and periodically, additional evaluations can be conducted in specific situations (Austria, Belgium, Greece, Hungary), especially when a judge applies for promotion or if he or she seems incapable of performing his or her judicial duties (Hungary). In Slovenia, an extraordinary evaluation can be undertaken upon a request of the Judicial Council and the evaluated judge him or herself.

In a smaller number of countries, only judges who apply for promotions are evaluated (Croatia, UK, a special evaluation is used for judges in Spain) or those who fall short on their duties (Croatia).

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 procedures in the member states differ especially with respect to the formality of the procedure. Thus, the ENCJ-Report (Report 2012-2013 of the European Network of Councils for the Judiciary (ENCJ) on Minimum Standards regarding evaluation of professional performance and irremovability of members of the judiciary, p. 10) distinguished countries using formal and informal evaluation systems. Among the countries that replied to the CCJE's questionnaire, more or less formal evaluation systems can be detected as well. However, the line between formal and informal systems is not neatly drawn. Rather, each evaluation systems can be arranged on a continuum between the poles of informality and formality. Finland, The Netherlands, Switzerland and the UK use rather informal evaluation system. All do not use ratings and the evaluation as such has no direct consequences. In Finland and Switzerland, informal discussions are used to help a judge improve his or her performance and decide on career goals. In the UK, only in the process of deciding on the promotion of a judge, information on his or her performance and skills are gathered informally by asking for the impressions of judges of the next instance.

In Sweden, the salary of judges, like all civil servants, is partly determined according to the results of annual salary review talks. Such review talks take place between the head of the respective court and the individual judge and are conducted according to a framework negotiated by the Swedish Agency for Government Employers and a central employees' organisation.

Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, France, Georgia, Germany, Greece, Hungary, Italy, The former Yugoslav Republic of Macedonia, Moldova, Monaco, Poland, Rumania, Slovenia, Spain and Turkey use more formal evaluation systems.

Some countries (Austria, Bulgaria), report that the inspection of courts and the individual inspection of judges are undertaken separately. However, the information gathered during the inspection of a court may be taken into account in the individual evaluation of a judge. In Poland, individual evaluations are carried out by inspector judges and conducted as part of the inspection of whole court or court division.

With respect to different procedures, four distinct approaches can be identified:

Discussion model: In some countries, the evaluation process is conducted in form of a discussion, in which the judge presents his or her work and the evaluator/the evaluating commission agree with the judge on career and development goals (Belgium, Finland, France, Monaco, Romania) or discuss how a judge might improve his work and performance (Switzerland). Such discussions can be informal (Finland, Switzerland) or it can be conducted in a formal way and end with a rating (Belgium, France, Monaco, Rumania). Often, the evaluation process starts with a self-assessment of the evaluated judge which is then discussed further (France, Rumania).

Council model: In other countries, a judicial council or a subgroup of that council gathers information on the work of the evaluated judge and decide on the evaluation (Albania, Austria, Bulgaria, Austria, Croatia, Estonia, Italy, the former Yugoslav Republic of Macedonia, Moldova, Slovenia, Spain, Turkey). In some countries, different levels of the council and/or the president of the judge's court participate in the process. In Albania, the evaluation is undertaken by inspector judges under the supervision of a chief inspector judge of the High Council of Justice. In Greece, members of the Supervisory Council conducting evaluations are elected by draw among the members of the Supreme Court and the General Prosecutor's office. Usually, the evaluated judge may give his or her views on the draft opinion and the final decision.

Court president evaluator model: In other member states, a single evaluator is responsible for the evaluation. Usually, the evaluator is the president of the court where the evaluated judge performs his or her duties (Germany, Hungary, The Netherlands). The individual evaluator gathers the relevant information on the judge's work which often includes reading the judge's decisions, visiting hearings chaired by the judge and interviewing the judge him- or herself. Often, the evaluator makes the final decision after having given the judge the opportunity to comment on a preliminary draft (Germany, Hungary, The Netherlands).

Inspection model

In Poland, individual evaluation of judges is undertaken in the course of regular court inspections carried out by inspector judges from other courts.

15. What are the ratings used during evaluations?

Most countries using formal evaluation systems use roughly comparable ratings with four or five grades of marks:

- (excellent),
- very good,
- good,
- satisfactory
- unsatisfactory¹

In some countries, ratings refer to the judge's suitability for promotion (Hungary, Italy, Slovenia). Turkey just uses three grades: A, B and C. In Italy, a judge must be considered independent, impartial, and balanced to make evaluation positive. Moreover, his or her capability, laboriousness, diligence and commitment must be assessed as positive (sufficient and degrees above), insufficient, or seriously insufficient. In Spain, judges are

¹ Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia France, Germany, Italy, Moldova, Monaco, Rumania, Slovenia, Spain??, "the former Yugoslav Republic of Macedonia".

subdivided into three groups according to their performance. Performance based salaries are paid depending on the group the judge has been placed in.

Some countries add points or use percentage systems that allow comparing the judge's performance with the performance of his or her peers (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, The former Yugoslav Republic of Macedonia, Moldova, Turkey). Hungary determines the respective grade by calculating a productivity factor. Cyprus also uses a productivity factor, but does not use formal ratings. Other member states use individual written assessments (Austria, Belgium, Estonia, Finland, France, Germany, Greece, Monaco, Rumania, Slovenia, Sweden).

In Finland, Greece, The Netherlands, Sweden, Switzerland and the UK, no formal ratings are used.

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).

In most member states, evaluation results are of great importance when decisions on a judge's promotion are made (Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, France, Georgia, Germany, Greece, Hungary, Italy, The former Yugoslav Republic of Macedonia, Monaco, Poland, Rumania, Slovenia, Turkey, UK). In Rumania and Italy only judges who have received the highest grade (Rumania) or at least a positive evaluation (Italy) may apply for promotions.

In some countries, a young judge can be dismissed before his or her lifetime appointment because of poor evaluation results (Bulgaria, Estonia, Georgia, Germany, Greece, Ukraine). However, this question, which concerns the appointment of judges rather than the evaluation of acting judges, is not discussed in detail in this questionnaire.

Other legal systems allow the dismissal of judges after poor evaluations (Austria, Estonia, only in rare cases: Greece, Hungary, Italy, Moldova, Poland, Rumania, Slovenia, The former Yugoslav Republic of Macedonia) In Austria, Italy, Moldova and Rumania for example, a judge can be dismissed who has received the grade "insufficient" twice. The initiation of disciplinary proceedings might also be the consequence of a poor evaluation (Belgium, Bulgaria, Croatia, Cyprus, Greece, Hungary, Poland, Slovenia). In some countries, a judge who has been poorly evaluated may be required to participate in special training courses (Albania, Italy, Rumania).

Evaluation results may also affect a judge's salary as, for example in Spain and Sweden. In Sweden, evaluation is undertaken only for the purpose of salary review talks required by labour law for public servants. In other countries, poor evaluation results may lead to pay cuts and/or cuts in a judge's pension (Belgium, Bulgaria, Turkey).

In Bulgaria and Albania, judges may receive a professional award because of positive evaluation results.

In Finland, the Netherlands and Switzerland, evaluations have no purpose and consequences but to provide feedback for the individual judge. In the Netherlands, however, a judge's evaluation might be a factor in decisions with respect to promotions. In the UK, a judge is informally evaluated when he or she is discussed as a candidate 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?

In member states where the evaluation process falls in the responsibility of a council of judges, evaluation results and records are often kept at the council. In some countries, the records are kept for a certain number of years (Croatia: 10 years, Moldova: 4 years), in others indefinitely (Albania, Bulgaria, Georgia, Italy, The former Yugoslav Republic of Macedonia). Often, the evaluated judge receives a copy.

In some legal systems, often those where judges are evaluated by the presidents of their courts or a commission of judges from that court, evaluations are kept in the personal dossier of each judge (Albania, Austria, Bosnia and Herzegovina, France, Germany, Hungary, Italy, Monaco, The Netherlands, Rumania, Slovenia, Turkey). In the Netherlands, the period of time for which the reports are kept varies from court to court.

In Belgium, the president of the court keeps the evaluation records for ten years while a copy is sent to the evaluated judge and the Ministry of Justice. In Greece, records of evaluations are kept at the Ministry of Justice and the Supreme Court. In Cyprus, they are only kept at the Supreme Court.

In Bosnia and Herzegovina and Estonia, there are no rules on the recordings of evaluation results. Only complaints on the results of an evaluation must be kept in the judge's personal dossier in Bosnia and Herzegovina.

In Finland or Switzerland, neither notes nor records are kept of the informal discussions.

Not all questionnaires commented on who may access such records with evaluation results. In many countries, namely Albania, Belgium, the Netherlands, Poland, Rumania and the former Yugoslav Republic of Macedonia, information on a judge's evaluations is confidential. Usually, the evaluated judge has access to files concerning his or her evaluation (except Cyprus). Apart from that, the president of the court where the evaluated judge performs his or her duties and the responsible judicial council (Slovenia), disciplinary authorities and the institutions responsible for promotion (France, Germany, Hungary) may also have access. In Italy and Sweden, access to evaluation results is governed by the same rules as access to other official documents. In the former Yugoslav Republic of Macedonia, statistical data on a judge's performance are published while the decision on his or her assessment is confidential.

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)

Almost all countries have answered this question negatively. Some questionnaires commented, however, that informal advice and feedback were common among colleagues in the judiciary (Germany, Finland). In Austria, a peer-evaluation project was initiated by

the Association of Austrian Judges. Judges participating in it may voluntarily visit each other's hearing in order to provide informal advice and feedback on a basis of mutual trust.

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

Only a few countries have supplied an example of an evaluation sheet (Austria (in German), Bulgaria (in Bulgarian with English translation), France (in French), Germany (in English), Greece (in English), Italy (in Italian), Turkey (in English)). The Bulgarian and Austrian evaluations answer a number of questions regarding the evaluated judge with short sentences or single words. The Greek example consists of a short text, reporting impressions from reading the evaluated judge's files and decisions: it is interesting to note that the evaluator mentions that the judge has reached the "right" solutions in his judgements. The German example consists of a long text that discusses the judge's abilities, achievements and experiences in detail.

All Examples are very positive, which raises the question of how – if at all – negative impressions are recorded.

The Turkish example shows numbers and percentages but no text.

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

It is interesting to note how differently member states approached the problem of reconciling judicial independence and individual evaluation. Slovenia explained that individual evaluation touched upon the relation between independence and judicial accountability. Both were necessary elements in a legal system of high quality. The former Yugoslav Republic of Macedonia stated that judicial independence could be promoted through the individual evaluation of judges. Spain argued, while ascertaining a part of the salary according to the number of cases would respect judicial independence, evaluating judges according to qualitative criteria would endanger judicial independence. Germany and France, on the other hand, stated evaluating quantitative performance only might endanger judicial independence. However, other countries, for example Denmark and Switzerland stated that individual evaluation of judges was simply incompatible with judicial independence.

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?

Many questionnaires stress that the evaluation process and evaluation criteria as well as the persons and authorities responsible for the evaluation were clearly defined by law (Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, France, Germany, Greece, Turkey). Moreover, the evaluated judge's right to participate in the process (Hungary, Moldova, Poland) and demand a review of the relevant decisions (Albania, Germany, Italy) was mentioned.

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

Many questionnaires stressed that no political pressure was put on the authorities and persons responsible for the evaluation of judges. Some member states explained that

political pressure was unlikely, because the evaluation was undertaken by judges rather than politicians (Albania, Croatia, Germany, Hungary). The questionnaire of the former Yugoslav Republic of Macedonia stresses that all relevant data were taken out of the official data bank and thus could not be influenced. Moreover, the evaluated judge must confirm the correctness of the relevant data before the evaluation process.

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

In most legal systems the judge participates in some form in the evaluation process, for example by being interviewed as part of the evaluation process (Albania, Austria, Bulgaria, Croatia, Estonia, Greece, Hungary). Only in Cyprus and Georgia, the evaluated judge does not participate in the evaluation process.

In those member states that use a discussion model in their evaluation process, the judge's participation is ensured by his or her taking part in the discussion (Belgium, Finland, Monaco, The Netherlands, Switzerland). In France and Rumania, the evaluated judge presents his or her work to the evaluators.

In some member states, the judge's participation is ensured by his or her right to comment on a preliminary draft of the evaluation (Albania, Bosnia and Herzegovina, Germany, The former Yugoslav Republic of Macedonia, Poland). Moreover, in The former Yugoslav Republic of Macedonia, the evaluated judge must confirm the correctness of the relevant data taken from the court's data bank.

In Turkey, the judge may demand a reexamination.

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

Most countries answer this question negatively (Bosnia and Herzegovina, Bulgaria, Cyprus, Georgia, Germany, Greece, Hungary, The former Yugoslav Republic of Macedonia, Moldova, Poland, Turkey, UK). In Albania, Belgium, France and Rumania, a self-evaluation of the evaluated judge is part of the evaluation process. In Monaco, an evaluation by a senior judge is possible. The chief judge of penal evaluates his/her colleagues who are necessarily less senior.

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)

In many member states, a judge cannot demand the dismissal or removal of a member of the evaluation body (Austria, Belgium, Bosnia and Herzegovina, Cyprus, Estonia, Finland, France, Georgia, Hungary, The former Yugoslav Republic of Macedonia, Monaco, Poland Sweden). In some of those countries, however, the judge may challenge the evaluation report itself on the basis that a prejudiced person took part in the evaluation-process (Austria, Estonia, France, Poland).

In other countries, the evaluated judge may demand the removal of members of the evaluation body (Albania, Bulgaria, Greece, Moldova, Rumania, Turkey). In Germany and

Croatia, a removal may be demanded under the same procedural rules regulating the removal of a (possibly) prejudiced judge in a trial.

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?

In most countries (except Belgium, Finland and Moldova) there are possibilities for the evaluated judge to demand some form of review. Usually, judges may apply to a special body (Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, France, Greece, Hungary) in order to demand a review of the evaluation, for example the plenum of the Judicial Council if the report has been made by a committee of that council (Bosnia and Herzegovina, Estonia, Moldova) or a number of judges at the Supreme Court (Croatia). In Poland, the evaluated judge may present his or her opinion in writing. In Turkey, the judge may ask for a reexamination. In Sweden, salary discussions are regulated by labour law. Disagreements on evaluation results are handled by the union and the Swedish Agency for Government Employers. In Albania, Georgia, Germany, and Italy, evaluation results can be challenged in court. In Albania, the possibility to demand judicial review of decisions of the High Council of Justice has just been confirmed in a 2013 decision of the High Court of Albania. In Germany, judicial review of all decisions regarding a judge's evaluation and promotion are well established.

E. Achievements and problems

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

Not all questionnaires provided answers to this question.

The former Yugoslav Republic of Macedonia stressed that evaluation increases the judge's efficiency and the motivation of judges. Germany and The former Yugoslav Republic of Macedonia argued that evaluation allowed promoting judges on the basis of merit rather than rumours and word of mouth. Germany described its approach as an objective process with clear criteria that respects judicial independence. Slovenia explained that the Slovenian system used objective criteria and entailed adequate safeguards to ensure balance between accountability and judicial independence. The Netherlands reported that its informal procedure was generally accepted by judges. Evaluation must not be bureaucratic exercise. At present, however, the relation between internal judicial independence and the administration was under discussion not so much because of judicial evaluation as such but because of budgetary restrictions.

It is interesting to note that the problems reported differ widely among the member states. Albania stressed the importance of developing international standards for the evaluation of judges. Germany, Georgia, and Italy explained that some judges felt controlled and not respected in their judicial independence by the evaluation. The Croatian questionnaire stated that the process might disadvantage free minded, independent judges in favour of more conformist judges. Slovenia noted that the comparability of evaluation results could be questionable because the same criteria could be applied differently by different evaluators.

Austria and Bulgaria reported that too many high marks were given which made a realistic comparison difficult. Some countries criticised details of their respective evaluation

systems. Bosnia and Herzegovina regretted that only the number of decisions, not the complexity of the decided cases, were considered in the evaluation procedure. The Greek questionnaire explained that the different workloads of judges in big and smaller cities made it difficult to compare them. Some countries remarked that personal characteristics of judges became increasingly important in the evaluation process (Estonia, Hungary).

In Italy, though the evaluation process was still criticised as too lenient, a reform of 2006/2007 introduced a serious, severe evaluation procedure which may be criticised as too harsh, especially with respect to the time limits a judge has to observe to draft decisions. Delays might not be the fault of a judge but due to court organisation, backlogs and excessive caseloads. Therefore, a recent resolution of the High Court of the Judiciary introduced special programmes that allowed judges to deal with the severe backlog of cases in order to avoid negative evaluation.

In some countries, the evaluation process was described as fairly new, so that experiences could not yet be fully shared (Moldova, Georgia, Monaco, Poland).

In France, the whole system was reported to be under discussion without a clear direction for reform yet.

Switzerland and Denmark reported that they saw no need to introduce a formal evaluation system. Especially Switzerland stressed that it maintained a judiciary of high quality with a low corruption rate without it. Introducing such a system would only put pressure on highly motivated judges and increase bureaucracy.