

**Programmatic Cooperation Framework for
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**



**Theme II “Ensuring Justice” – Action 5: Regional dimension for 6 EaP
Project for Regional Dialogue on Judicial Reform in the EaP Countries**

**Working Group on Regional Dialogue on Judicial Reforms
in the Eastern Partnership Countries**

Expert Report on the outcomes of the Working Group’s meeting on:

SELECTION, EVALUATION AND PROMOTION OF JUDGES

With focus on the role of inspectorates in their evaluation and criteria for promotion

Chisinau, Republic of Moldova, 28 June 2016

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The opinions expressed in this work are the responsibility of the authors and do not necessarily reflect the official policy of the Council of Europe.

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BACKGROUND

The meeting of the Working Group (WG), on which this report is based, has been organized in implementation of the project for regional dialogue on judicial reforms, within the framework of the joint Council of Europe and European Union Eastern Partnership (EaP) Programmatic Co-operation Framework (PCF). The project aims at fostering dialogue, professional networking and exchanges of experiences among legal professionals in view of addressing outstanding common challenges and consolidating national processes of judicial reform. In this framework, representatives from judiciaries, ministries of justice and bar associations of the EaP countries selected a number of areas of shared interest perceived as most challenging for the respective national reform processes and established three Working Groups that were tasked to examine, with the support of international experts, one of the selected issues in a dedicated meeting.

Topics selected by participants for further analysis included: judicial ethics and disciplinary liability of judges, with a focus on their distinctions and interrelations; e-justice, in particular aspects of electronic case management; legal aid schemes, with special attention to ways to ensure independence of legal aid financed lawyers; independence of judges; selection, evaluation and promotion of judges; the role of Courts of Cassation/Supreme Courts; ways to ensure inclusive and transparent judicial reforms; alternative dispute resolution mechanisms, with a focus on criminal restorative justice and mediation in civil cases; equality of arms between lawyers and prosecutors.

The second round of meetings of the three WGs was hosted in Chisinau, Republic of Moldova, in June 2016 and focused on the following topics: judges' career (WG A), high courts (WG B) equality of arms (WG C). Discussions were facilitated by international experts, also tasked to produce a report on the outcomes of each meeting.

This paper provides an overview of the discussions held during the meeting of the WG A, focusing on judges' career. It is based exclusively on the information provided by the participants by filling in a questionnaire prepared by the experts and the discussions held during the meeting, supplemented with the comments and inputs by the independent expert. It does not in any way aim at providing an exhaustive presentation or a thorough assessment of the situation in the countries considered, but rather at reporting about the issues presented and discussed by the participants with the purpose of exchanging experiences and possibly identifying areas of common interest for further examination or co-operation.

Table of Acronyms used

CCJE	Consultive Council of European Judges of the Council of Europe
CCPE	Consultive Council of European Prosecutors of the Council of Europe
EaP	Eastern Partnership
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
ENCJ	European Networks of Councils for the Judiciary
UN	United Nations
The Venice Commission	The European Commission for Democracy through Law of the Council of Europe

Scope of the report, materials used and shared

1. This report provides an overview of the international standards in relation to the selection, evaluation, and promotion of judges and a discussion of the relevant regulations in the participating countries. The report focuses on the issues which emerged in the preparation of and the discussion during the meeting in Chisinau on June 28th. Thus, the report does not provide a detailed country-by-country analysis.

2. In preparation of the meeting in Chisinau, participants filled out questionnaires on their respective systems of selection, evaluation, and promotion of judges. The answers were compiled into a summary provided as annexe 2 to this report. In addition, translations of the relevant laws were studied. Documents of international standards were shared in advance in order to allow the participants to familiarize themselves with them. A list of the international standards is provided in annex 1 of the report.

3. The meeting itself was subdivided into three parts, selection and appointment (part I), evaluation (part II) and promotion (part III). In the beginning of each part, the international standards on the relevant topic were presented. Later, experiences of the countries of the participants and in the member states of the Council of Europe were compared and discussed. The participants were very active in the discussion and highly interested whether the approaches and solutions developed in their countries would be acceptable on an international level. This way, the participants shared their experiences actively and started a thinking and questioning process in relation to their own legal systems.

Part I. Selection of Judges and Appointment

I. Overview of relevant European and other international standards

4 International standards demand that all decisions regarding a judge's appointment and promotion should be taken by an independent body free from political influence and be based on objective, transparent criteria.

1. Responsible body and procedure

5. According to the ECtHR, judicial appointments by the legislature and the executive do not influence a court's impartiality and independence according to Article 6 of the ECHR negatively, as long as the appointed judges are free from influence or pressure when carrying out their adjudicatory role.¹ However, the notion of the separation of powers and its importance for judicial appointments has also been discussed by the ECtHR.² CoE Recommendation 2010(12) recommends that either an independent body like a Council for

¹ *Flux v. Republic of Moldova* of 3.7.2007 – 31001/03 - para 27.

² *Volkov v. Ukraine* of 9.1.2013 - 21722/11 - para 109 and *Maktouf and Damjanovic v. Bosnia and Herzegovina* of 18.7.2013 – 34179/08 - para 49.

the judiciary should take such decisions, or at least should make recommendations which the appointing authority follows in practice.³

6. The Venice Commission is of the opinion that an independent judicial council should have a decisive influence on the appointment and promotion of judges and on disciplinary measures against them.⁴ An appeal against disciplinary measures should be available. According to the Venice Commission, such a judicial council should must have a substantial number or majority of members being elected by the judiciary.⁵ Therefore, the Venice Commission considers appointment of ordinary judges by vote of Parliament inappropriate.⁶ The CCJE has also recommended the participation of an independent authority with substantial representation chosen democratically by other judges in decisions concerning the appointment or promotion of judges⁷.

7. The Report of the Bureaus of the CCJE and CCPE, "Challenges for judicial independence and impartiality in the member states of the Council of Europe", stresses that formal rules on selection processes and selecting bodies alone do not guarantee that decisions in relation to a judge's career are taken impartially, according to objective criteria and free from political influence. The application of formal rules and the work of institutions responsible for appointment decisions in practice are of crucial importance. For example, the composition of Councils for the Judiciary and the independent behaviour of its members are as important as the introduction of such institutions.⁸

8. In reaction to the CCJE and CCPE report, in his "Plan of Action on Strengthening Judicial Independence and Impartiality", the Secretary General of the Council of Europe underlined the importance of ensuring a truly independent and depoliticised composition and work of judicial councils. Moreover, the Plan of Action demands that the member state ensure an adequate participation of the judiciary in the selection, appointment and promotion of judges whilst limiting excessive executive or parliamentary interference. "Excessive" means according to the "Plan of Action on Strengthening Judicial Independence and Impartiality" any action taken beyond the existing legal framework that interferes with the processes referred to, to an extent that the independence and impartiality of the judiciary is significantly compromised.⁹

2. Criteria for the selection of judges

9. Recommendation 2010(12)¹⁰ recommends that decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the

³ Recommendation 2010(12) para 47.

⁴ The Venice Commission's Report on Judicial Appointments, 2007, para 25; see also Venice Commission Opinion 803/2015 on the proposed amendments of the Constitution of Ukraine, 23.-24-10.2015, para 16.

⁵ The Venice Commission's Report on Judicial Appointments, 2007, para 29.

⁶ The Venice Commission's Report on Judicial Appointments, 2007, para 12.

⁷ See the CCJE Opinion No. 1(2001), para 45, rec. 4; Opinion No. 10(2007), paras 48-51.

⁸ CCJE and CCPE Report: Challenges for judicial independence and impartiality in the member states of the Council of Europe, 2016, para. 9.

⁹ Plan of Action on Strengthening Judicial Independence and Impartiality, 2016 (CM(2016) 36 final, C p. 9.

¹⁰ Recommendation 2010(12) para 44.

qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity. Moreover, such decisions must not be based on discriminatory criteria.¹¹ The CCJE¹² has recommended that such decisions be taken by an independent authority or subject to guarantees, for example judicial review, to ensure that it is not taken other than on the basis of such criteria. The CCJE demands the introduction and publication of objective criteria based on merit both for the appointment as well as the promotion.¹³ Such criteria should have regard to qualifications, integrity, ability, and efficiency.¹⁴ Political considerations should be inadmissible¹⁵ irrespective of whether they are made within judicial councils, the executive, or the legislature. Objective standards are, however, not only required to exclude political influence but also to avoid the risk of favouritism, conservatism and cronyism (or "cloning") which exists if appointments are made in an unstructured way or on the basis of personal recommendations.¹⁶

10. The ENCJ in its 2011-2012 report declared that an unsuccessful candidate should be entitled to know why he or she was not appointed. According to this report, there is a need for an independent complaints or challenge process to which any unsuccessful applicant may turn if he or she believes that he/she was unfairly treated in the appointment process.¹⁷

II. An analysis of the situation in participating countries

11. The general situation of the judiciaries in most of the participating countries is roughly comparable. This is especially the case in relation to the number of judges: Armenia (234), Azerbaijan (552), Georgia (266) and Republic of Moldova (480) have between 200 and 560 judges each. Belarus and Ukraine have larger judiciaries. The Republic of Belarus has 1239 judges. However, with 7077 judges, Ukraine has by far the largest judiciary. The judiciaries in all countries have three instances and have recently been reformed or reforms are under discussion.

12. The participating countries also show similarities in the selection of judges. The countries each demands a law degree, participating in training courses and some practical experiences, be it as a lawyer, judge-assistant or civil servant in the administration as a precondition for becoming a judge. In each country, the selection of judges is made by a judicial council, just as international standards demand. Leaving Georgia¹⁸ aside, there was,

¹¹ Recommendation 2010(12) para 45.

¹² See the CCJE Opinion No. 1(2001), para 37.

¹³ See the CCJE Opinion No. 1(2001), para 25.

¹⁴ See the CCJE Opinion No. 1(2001), para 25.

¹⁵ See the CCJE Opinion No. 1(2001), para 17.

¹⁶ See the CCJE Opinion No. 1(2001), para 24.

¹⁷ Report 2011-2012 of the ENCJ on minimum standards on the selection, appointment and promotion of judges 2.11 p. 13 and 3.10, p.22.

¹⁸ According to Art 47.2 of the Organic Law of Georgia "on common court" the High Council of Justice consists of 15 members. Eight members of the Council shall be elected by a self-governing body of Georgian common court judges according to procedures prescribed by this Law, five members shall be elected by the Parliament of Georgia and one member shall be appointed by the President of Georgia. The chairperson of the Supreme Court is *ex officio* member of the High Council of Justice of Georgia.

however, not much information about the composition of those councils. Judges are appointed by the Council for the Judiciary, the President, or Parliament. As long as the latter follow the selection decision of the Council for the Judiciary, appointment by a president or parliament does not violate international standards.

13. In the participating countries, judges are not appointed until retirement immediately, but need to finish a try-out period between 3 and 5 years successfully. The Venice Commission cautions against try-out periods in general.¹⁹ Try out periods are not necessarily a violation of international standards, but need not be too long and must respect judicial independence. A try out period of more than 5 years would likely be too long.

14. In all participating countries, there are more applicants than positions to be filled with judges. The criteria according to which judges are chosen vary. In most countries, there is some form of exam or selection competition the results of which play a decisive role in the selection. Often, an interview or oral exam is part of the selection process. Academic degrees, publications, references and grades at university play an important, but often not decisive role in the selection process. Rather, the exam and a selection decision of the council of the judiciary stand at the heart of the selection process.

15. In **Armenia**, interviews are conducted according to fixed questions, which allow an appraisal of candidates against an objective standard. Afterwards, the interview is discussed and the decision taken in by secret vote in the judicial council.

16. In **Azerbaijan**, the selection includes a procedure where about 800 candidates take a test in the same hall. The questions are printed out in front of the candidates and the answers evaluated in front of all candidates. Thus, the participant from Azerbaijan explained, the test is conducted in a transparent and efficient manner. The vote selecting individual judges is only a formal decision on the basis of the test results.

17. In **Georgia**, candidates for the position of judges take a qualification exam, are then inscribed on a list from which judges are elected by 2/3 majority by secret ballot by the High Council of Justice.²⁰ Highly qualified candidates for the Supreme Court can be nominated by the President of Georgia without having taken the exam. There are also special rules for the nomination of former judges, who have served as judges before the preconditions for becoming a judge had taken effect.²¹ The new Georgian law on the selection and appointment of judges shows many interesting points. Under discussion is, however, that members of the High Council vote on the judges' selection in secret. The secret voting system was introduced to guarantee independent voting among members of the judicial council. While a right to an appeal had been introduced, without a substantiated decision, this right could only be used effectively in relation to violations of procedural rules. Since the reasons for a rejection of a candidate remained secret, improper reasons could not be

¹⁹ The Venice Commission's Report on Judicial Appointments, 2007, para 38-43.

²⁰ In accordance with Art. 34.1. Organic Law of Georgia „on common courts“ a competent citizen of Georgia of at least 30 years of age who has finished higher legal education with at least a master's or equal academic degree/higher education diploma, has completed at least five years of working experience in his or her specialty, has command of the official language, has passed a judge's qualification exam, has completed a full training course (of 10 months) of the High School of Justice is entered on the Justice Trainee Qualifications List may be appointed (elected) as a judge.

²¹ See: Art 34.4 and Art 34.5 of the Organic Law of Georgia „on common courts“

attacked in an appeal. According to the Georgian delegation, this might constitute a violation of the constitutional right to an appeal and the right of every Georgian to have access to any public office. A constitutional complaint is pending at the Georgian constitutional court.

18. International standards do not expressively address this problem. The ENCJ requests an independent complain process for unsuccessful candidates.²² Insofar, it can be argued that only substantiated decisions allowed a full appeal not only for procedural but also substantial reasons. However, a secret ballot has some advantages especially in case where there was the danger that High Court members formed coalitions to bring their candidates through. A compromise is suggested below.

19. In **Republic of Moldova**, the selection committee (seven people, four of them judges) have to clarify their criteria, allot scores to each candidate and vote accordingly. An appeal is possible.

20. In **Ukraine**, candidates are chosen after a first, initial competition. The successful candidates then participate in a training concluding with an exam. The ranking in this final exam then decides about the placement of each candidate in each contest for a concrete court he/she wants to be appointed to. This way, the selection decision by the Highest Council is predetermined by the exam.

21. According to the delegation from **Belarus**, their country uses a system with high standards tested in a clear procedure. Only the most qualified judges served on the selection committee. They made their decisions not after much discussion but according to complex criteria appraised in public with all candidates present. Such open testing helped avoiding appeals because candidates could witness the performance of other candidates and realised why they were not chosen.

22. All these selection procedures can work well in practice if objective standards are selected and tested by independent committees independently. However, after such a short insight, it is not possible to analyse the merits and problems of each system completely.

III. Selected examples of best practices, lessons learned and most challenging issues, both within the region and in other Council of Europe member states, with particular focus on the areas identified as most challenging by participating countries

23. Since exams and public competitions are at the heart of all the selection systems in the participating countries, the most challenging issues with respect to the selection of judges, was how to introduce a transparent, truly independent procedure for the selection of judges.

²² Report 2011-2012 of the ENCJ on minimum standards on the selection, appointment and promotion of judges 2.11 p. 13 and 3.10, p.22.

1. Effective judicial review

24. Questions of how to allow effective judicial review of selection decisions were an important part of this discussion. Georgian law shows that sometimes, different values such as fostering independent voting on the one hand and effective judicial review on the other hand can coincide. In this case there is a conflict between the confidentiality of the voting on the one hand, which might secure independent decision making and on the other hand a proper right to appeal, which can only be exercised on the basis of transparent, substantiated decision making. In general, even the best appeal process in court cannot replace a good appointment system since court decisions take time and can only detect mistakes in the procedure and unacceptable reasons for rejection and selection. They cannot select the best candidates. That should be done in a truly independent selection procedure. Therefore, both values should be reconciled. Unfortunately, there are not many experiences to draw from. In Germany, where judicial review is well established, selection decisions might be substantiated but are not made by secret ballot. Such secret voting might, however, be considered advantageous in Georgia and maybe also in other countries of the region at least until the professionalism and independence of councils of the judiciary is so well established that outsiders can be expected to fail in their attempts to influence their decision making.

25. An idea for a compromise might be that members of the High Council give anonymous, secret reasons which are collected in one closed envelope (which ensured that the reasoning remains anonymous), which may only be opened in case of an appeal. In this case, only the individual reasons, not one joint reasoning, could be attacked in court. However, if there was secret voting, this was exactly how the joint decisions were made: by the combination of different views and votes. An appeal would have to be directed against the individual reasons. An appeal could be successful if it could be shown that so many votes were made without a proper foundation that the whole result lacked a majority. Another way would be for the council to draft joint minutes, which included reasons for their decision. The drafting of such a joint opinion would, however, make the whole process more time consuming and is unlikely to bring the council members true objectives to the surface.

2. Transparency of the selection procedure

26. Reconciling the value of transparency with other values is not only a problem in relation to ensuring effective judicial review. Also the publication of test results and the participation of NGO-members were discussed among the participants. A Ukrainian participant argued that NGO participation could provide an important independent contribution. A participation of NGO-members in the selection process is not mentioned in the international standards. However, CCJE Opinion No. 17 (2014) mentions that professionals who are not judges could participate in the evaluation of judges in an advisory function if they had sufficient knowledge of the judicial system.²³ Therefore, it can be argued that there are in principle no reasons why NGO-members should not be allowed to participate in an advisory function. Such participation could encourage an observance of the rules by the selection committee. However, giving NGO-members a vote in the process is another issue altogether. The decision should remain with the competent authority. A Council for the Judiciary may however, include seats for NGO-members or other members of the civil society as long as there is a majority of judges.

²³ CCJE Opinion No. 17 (2014) para 38.

27. Another issue in relation to the transparency of the selection process was the publication of the results of candidates. In Georgia, candidates can refuse that their interviews and results are published. Knowing the results of all candidates might make the process more transparent and could ensure the public that fair questions are asked and that the best candidates were selected. However, having such data published could infringe the candidates right to their personal information. These two interests must be balanced. Giving the candidates themselves the choice whether to have their results published, just as Georgian law prescribes, can be seen as a compromise.

3. Optimal testing, optimal criteria

28. Selecting future judges according to transparent, objective criteria is no easy task in all legal systems. The assessment should be as objective and comparable as possible in order to ensure that the candidate who fulfils the criteria best is selected and not pushed to the side because of political or otherwise unacceptable considerations. Therefore, due care must be taken to develop the best ways to assess objective criteria like ability, integrity and effectiveness in a transparent and fair system. If one or several exams play an important role in the selections decision, questions of how the exam should be conducted, what kind of abilities, and how knowledge should be tested needed to be discussed. Also, comparing the performance of different candidates and attributing points are important issues to be solved. While the ENCJ has collected information on the procedure of the selection of judges,²⁴ detailed information on how the abilities of candidates are assessed seem not to be available. A detailed discussion of this issue would, however, require more detailed information.

29. Many systems, including those of the participating countries, introduce exams the results of which are analysed by a computer, as for example multiple-choice questions. While such systems seem to ensure equal chances for all candidates, the issue discussed in this context was whether all necessary qualities of a good judge can be ascertained this way. Communication skills and writing abilities are certainly important for a good judge but difficult to test through multiple-choice questions. The answers to multiple choice questions are easy to grade. However, the performance in other exercises, as for example in writing a judgement or organising a public hearing are more difficult to evaluate against an objective standard. Also, the integrity of a person who applies to become a judge is difficult to assess other than by making inferences from references or previous convictions. In order to select judges according to objective criteria, all criteria including qualities which are difficult to assess such as communication skills should be defined and the degree to which the selection decision depended on them be published in order to ensure the transparency and fairness of the process. In this respect, it is also necessary to discuss if and to what extend other considerations could play a role, for example if the fact that a candidate came from a certain region or ethnic minority could play a role in the selection process.

²⁴ ENCJ Report Questionnaire Report 2010-2011.

IV. Outstanding issues

30. International standards do not give much guidance in relation to how selection procedures should be conducted. Therefore, the responsibility of creating selection procedures which succeed in selecting independent, qualified and integer judges remain with each individual country. In this relation, the active exchange among participants proved fruitful. Moreover, as the joint report of the bureaus of the CCJE and CCPE shows, the best legal guarantees are not enough if they are not applied properly in practice. Therefore, sharing experiences and to discuss how a culture of selecting and promoting the best judges for appointment and promotion can be put into practice is very a good way forward. In this context, it is important that participants do not only have regard to optimal procedures but also to the content of exams and the way a potential judge's abilities can be assessed. The next step forward could be a more detailed comparison in which the selection process of judges with special regard to judicial education and exam taking for judge candidates is analysed in more detail with special regard to criteria and the procedure of the selection of judges. Such an analysis would require a more detailed comparison of the legal framework and of the practices in the participating countries.

31. Moreover, the selection process of members and voting procedures of Councils for the Judiciary could be analysed in another session in a format like the one used on June 28th. In his Plan of Action on Strengthening Judicial Independence and Impartiality²⁵ the Secretary General underlined the importance of Councils for the Judiciary. The discussion with the participants highlighted how the issues of independence and transparency can be difficult to put into practice. A meeting on the subject might therefore be interesting.

Part II. Evaluation

I. Overview of relevant European and other international standards

32. The CCJE has identified the reconciliation of judicial independence with the individual evaluation of judges as the decisive issue in relation to the individual evaluation of judges. Ultimately, judicial independence must prevail.²⁶ The CCJE also states the need that every member state of the Council of Europe provides a system of justice of the highest possible quality and to ensure the accountability of the judiciary in a democratic system. Some form of evaluation, the CCJE holds, is necessary to achieve these goals.²⁷ The CCJE recommends, that all member states reflect whether to introduce a system of formal evaluation.²⁸ The CCJE recommends that member state introduce informal evaluation tools that help

²⁵ Plan of Action on Strengthening Judicial Independence and Impartiality, 2016 (CM(2016) 36 final, C p. 9.

²⁶ CCJE Opinion 17 (2014) para 46.

²⁷ CCJE Opinion 17 (2014) para 23, recommendation 1.

²⁸ CCJE Opinion 17 (2014) para 23, recommendation 1, 2.

improving the skills of judges and thereby the overall quality of the judiciary, e.g. self-assessment, feedback and informal peer-review.²⁹

33. The CCJE states that all evaluation must aim at improving the judiciary as a whole.³⁰ If promotions are based on merit (in particular ability, integrity and experience) rather than seniority, as the CCJE and UN recommend³¹ some form of evaluation is necessary. Therefore, the CCJE expresses the view that gathering information for the suitability for promotion can be an important purpose of evaluation.³²

34. The CCJE endorses the view that evaluation must be based on objective criteria which should be published.³³ Such objective standards should be based on merit, having regard to qualifications, integrity, ability and efficiency³⁴ and consider all aspects that constitute good judicial performance. The CCJE, ENCJ, and Kyiv recommendations agree that such criteria should be tested by using qualitative indicators. In addition, quantitative indicators such as percentages and numbers of decisions made by the evaluated judge, may be used as well.³⁵ However, although the efficiency of a judge's work can be an important factor for evaluation, the CCJE considers that a heavy reliance on the number of cases a judge has decided is problematic because it might lead to false incentives. The quality of justice cannot be understood as if it were a synonym for mere "productivity" of the judicial system.³⁶

35. Expressing evaluation results by numbers, percentages or by ranking judges without further explanation should be avoided as this could create a false impression of objectivity and certainty. The CCJE expressly opposes any permanent ranking of judges as done in Albania.³⁷ However, the CCJE recognises that in specific situations, for example when more than one judge applies to be promoted to a certain position, some form of ranking of those candidates is inevitable.³⁸

36. The CCJE states that evaluators should be mainly judges in order to ensure judicial independence.³⁹ The evaluated judge should be informed who the evaluators are and the judge must have the right to ask for the replacement of any evaluator who might objectively be perceived as biased.⁴⁰

37. The sources of evidence on which evaluations are based must be sufficient and reliable, particularly if the evidence is to form the basis of an unfavourable evaluation.⁴¹ The CCJE stresses the necessity of procedural fairness in all elements of individual evaluations. Judges

²⁹ CCJE Opinion 17 (2014) para 25, recommendation 4.

³⁰ CCJE Opinion 17 (2014) para 24, recommendation 3.

³¹ See the CCJE Opinion No. 1(2001), paras 17 and 29; UN Basic Principles on the Independence of the Judiciary (1985), para 13.

³² CCJE Opinion 17 (2014) para 27.

³³ See Recommendation CM/Rec(2010)12, para 58.

³⁴ See the CCJE Opinion No. 1(2001), para 25.

³⁵ CCJE Opinion 17 (2014) para 31-35, recommendation 6; see also the Kyiv Recommendations (2010), para 27; and the ENCJ Report 2012-2013, section 4.8; CCJE Opinion NO. 17 (2014) para 34.

³⁶ CCJE Opinion No. 17 (2014) para 35, 36, see also the CCJE Opinion No. 6(2004), para 42.

³⁷ CCJE Opinion 17 (2014) para 42.

³⁸ CCJE Opinion 17 (2014) para 42-43, recommendation 7.

³⁹ CCJE Opinion 17 (2014) para 37.

⁴⁰ CCJE Opinion 17 (2014) para 36.

⁴¹ CCJE Opinion 17 (2014) para 39, 44, recommendation 9.

should be able to express their views in the evaluation process. They must also be able to challenge assessments, particularly when they affect the evaluated judge's "civil rights" in the sense of Art. 6 of the ECHR.⁴²

38. The Recommendations of Ministers of the Council of Europe⁴³ and the CCJE both take the view that the use of individual evaluations to determine the salary and pension of individual judges should be avoided as this process could influence judges' behaviour and so endanger judicial independence.⁴⁴

39. An unfavourable evaluation alone should not (save in exceptional circumstances) result in a judge's dismissal from office. Any action to remove incompetent or corrupt judges should live up to the high standards set by the principle of the irremovability of the judges whose independence must be protected.⁴⁵ This should only be done in a case of serious breaches of disciplinary rules or criminal provisions established by law or where the inevitable conclusion of the evaluation process is that the judge is incapable or unwilling to perform his or her judicial functions to an objectively assessed minimum standard.⁴⁶

40. The principles and procedures on which judicial evaluations are based must be made available to the public. However, the process and results of individual evaluations must, in principle, remain confidential so as to ensure judicial independence.⁴⁷

II. An analysis of the situation in participating countries

1. Procedures of evaluation

41. Evaluation of judges is under discussion or has only recently been introduced in the participating countries. The new law in Georgia was introduced in 2014; in Republic of Moldova, the evaluation started in 2013. In Georgia, judges are only evaluated during their three year probationary period. In the other countries, regular formal evaluations are undertaken according to a fixed set of criteria. Evaluations are undertaken by special evaluation committees, which are apparently part of the national Councils for the Judiciary. In some countries (Azerbaijan, Ukraine, Belarus), the chair person at the court where the evaluated judge works, plays a role in the evaluation process.

2. Criteria

42. In all countries, statistics play an important role in the evaluation of judges, such as the number of decisions and cases completed (Armenia, Georgia, Republic of Moldova, Ukraine, Belarus) and reversal rates (Azerbaijan, Georgia, Republic of Moldova, Ukraine, Belarus). Academic publications, teaching, administrative work etc. plays a role in Armenia, Georgia, Republic of Moldova, Ukraine, Belarus. While Georgia, Republic of Moldova and Belarus

⁴² CCJE Opinion 17 (2014) para 41, recommendation 11.

⁴³ See Recommendation CM/Rec(2010)12, para 55; see also the IAJ General Report (2006), Conclusions, para 12.

⁴⁴ CCJE Opinion 17 (2014) para 28, 45, recommendation 13.

⁴⁵ Report of 2013-2014 of the European Network of Councils for the Judiciary on Independence and accountability of the Judiciary, p 59.

⁴⁶ CCJE Opinion 17 (2014) para 29, 44, recommendation 12.

⁴⁷ CCJE Opinion 17 (2014) para 48, recommendation 14.

considered the role of statistical data of good importance; Ukraine and Azerbaijan thought such numbers were too important. Given the international standards, which stress that quantitative criteria should not be too important, this perception is probably correct.⁴⁸

43. The quality of a judge's decisions is important in Armenia, Georgia, Republic of Moldova, and Belarus. A judge's integrity plays an important role in the evaluation in Georgia, Republic of Moldova and Belarus, and a minor role in Ukraine. In Republic of Moldova, for example, a judges' number of decisions, the timeliness of decisions, reversal rates, IT-knowledge, the clarity of their writing, their qualifications, ethic, reputation, and knowledge of ECHR law is tested.

3. Consequences

44. In all countries (except of course Georgia) a judge's evaluation played an important role in his or her chances for promotion. In all participating countries, judges receive specific feedback after their evaluations, something the CCJE has recommended.⁴⁹ In Armenia and Belarus, evaluations affect a judge's remuneration, something CCJE Opinion No. 17 sees as highly problematic.⁵⁰ In Azerbaijan, Republic of Moldova, Ukraine, and Belarus, negative evaluations might lead to a dismissal from office. In Republic of Moldova, for example judge's score must reach a certain minimum and is ascertained by a public decision of the evaluation committee. According to CCJE Opinion No. 17 (2014) dismissal from office is only acceptable in exceptional circumstances.⁵¹ In Georgia, Republic of Moldova and Ukraine, evaluation results are published, which is considered problematic under CCJE Opinion No. 17 (2014).⁵² In Georgia, judges' whose final appointment has been rejected can request that their results are not published.

4. Special examples

45. In Ukraine, judges are evaluated after three years to collect information for the decision on their final appointment. Now, right after the introduction of the new system, all judges, even those who have been in office for many years, will now be evaluated. After this initial evaluation of all judges, evaluation should only be conducted before the final appointment (until retirement) and in case a judge applied for promotion. The personal file is evaluated first and then, judges participate in an exam. Apart from that, regular informal evaluations are undertaken by the teachers at the national school for the judiciary. The latter point could be laudable, as the CCJE has recommended using informal evaluation to improve the performance of judges.⁵³

46. Ukraine has also developed a questionnaire with professional psychologists which could be filled in by NGOs or other members of the public. The questionnaires were designed in a way that ensures that a lay person can answer the questions. The questions focus on the judge's behaviour. The results of the filled out questionnaires were also published on a

⁴⁸ See the Kyiv Recommendations (2010), para 27; See the ENCJ Report 2012-2013, section 4.8; CCJE Opinion NO. 17 (2014) para 34.

⁴⁹ CCJE Opinion No. 17 (2014) para 25, recommendation 4.

⁵⁰ CCJE Opinion No. 17 (2014) para 28, 45, recommendation 13.

⁵¹ CCJE Opinion No. 17 (2014) para 29, 44, recommendation 12.

⁵² CCJE Opinion No. 17 (2014) para 48, recommendation 14.

⁵³ CCJE Opinion No. 17 (2014) para 48, recommendation 14.

website and attached to the personal file of the judge. There, they could be taken into account in the evaluation of the respective judge. This way, the Ukrainian participants explained, a kind of public monitoring system could be introduced which might help to strengthen public trust in the judiciary.

47. In Georgia, the new system is only in force since 2014, so there are no experiences yet. However, the new Georgian law shows an interesting approach. During the three year period, every judge is evaluated three times by two members of the judicial council, a judge and a non-judge. This means, that in total six different evaluators assess the judge. Only the evaluated judge, not the other evaluators have access to the evaluations. This way, each evaluator is encouraged to come to a truly independent evaluation of the young judge and is not influenced by the impression other evaluators formed before him or her.

III. Selected examples of best practices, lessons learned and most challenging issues, both within the region and in other Council of Europe member states, with particular focus on the areas identified as most challenging by participating countries

1. Transparency and confidentiality

48. The main issue discussed with participants was if and how evaluations could be used to strengthen public trust in the judiciary. Publishing evaluation results and disciplinary decisions was seen as an important tool for reaching this aim. This important aim needs, however, to be balanced with the need that according to CCJE Opinion No. 17⁵⁴ evaluation procedures and results should - in principle - remain confidential in order to protect judicial independence. This question arose in relation to the publication in Ukraine of questionnaires filled in by members of the public organisations who had visited court hearings, but also in relation to the publication of evaluation results in Georgia.

49. In relation to the publication of the impressions of members of the public in court hearings, it should be noted that since in principle all court hearings are open to the public, members of the public can write about their experiences and publish their opinions. Moreover, the attendance of the public could deter at least some judges from corrupt behaviour. However, due care should be taken that public organisations do not attend hearings in order to disturb the order of the court or to prevent that clearly biased organisations abuse questionnaires to slander judges in public.

50. It was also discussed that the CCJE had also expressly rejected the introduction of permanent ranking systems and the publications of such rankings.⁵⁵ Judges are authority-figures whose public perception and independence must be protected. If a judge holds the last rank, for example, parties might not respect his or her decisions. This led to the question of the publication of disciplinary sanctions. If a judge had been "downgraded" as a disciplinary sanction could the public know, for example if a judge had been downgraded from a court of appeal to a local court as a disciplinary sanction, could this information be published? The importance of observing the judge's procedural rights in disciplinary

⁵⁴ CCJE Opinion No. 17 (2014) para 48.

⁵⁵ CCJE Opinion No. 17 (2014) para 42.

procedures was highlighted. Apart from that, the question if and to what extent the results of such procedures should be published is difficult. In most cases, disciplinary sanctions are internal matters, but in some cases such publications could have a beneficial, deterring effect.

51. In relation to the general problem of the publication of evaluation results, CCJE Opinion No. 17 (2014) states that evaluation procedures and results should in principle remain confidential in order to safeguard judicial independence. However, some participants criticised that transparency was an important value and that those values should be balanced with preserving the confidentiality of the judge. As a possible compromise, the evaluations of a judge's hearing by the public could be published, since as such information could also be published in newspapers exercising freedom of speech rights. Internal evaluation results could remain confidential.

2. Evaluation of public hearings

52. Since a judge's performance in court hearings is an important aspect in the public perception of the judiciary, a judge's performance in court hearings should be part of their evaluation. This could be done by a visitation of the hearing but also by listening to video- or tape recordings of a judge's hearings. Therefore, in principle the idea could be welcomed that lay persons, who are particularly well equipped to judge the communication skills of a judge and his or her ability to explain legal issues clearly and understandably, play a role in the evaluation of court hearings. Just like in Ukraine, such questionnaires should be developed by professionals in order to achieve good results.

3. The aims of evaluations, self-evaluation

53. The question was discussed why a judge should make an effort in order to receive good evaluations in the first place. This question led to the broader question of the purpose of evaluations in general, the improvement of the judiciary as a whole.⁵⁶ Good judges usually wanted to do their job well. So, in the beginning, the right judges must be selected. Afterwards, evaluation could be used to provide feedback, ascertain training needs and provide a bit of peer pressure for judges to improve. To provide feedback for self-improvement, informal means could also be used, for example by the teachers from the school of magistrates just as in Ukraine. Moreover, evaluations could be used to identify the best judges for promotion. In order to serve these objectives, evaluations must be timely. A judge's performance in the past should only be used as an indicator for his or her development and performance in the present. In this context, participants and experts agreed that self-assessment could provide valuable insights into the character of the judge and his or her ability to reflect on the quality of his or her own work as well as its shortcomings. It could also be added that self-evaluation could strengthen the effectiveness of the whole evaluation process because a judge who had already thought about the relevant issues might be more able and willing to use the feedback to improve his or her overall performance.⁵⁷

⁵⁶ CCJE Opinion 17 (2014) para 23, recommendation 1.

⁵⁷ This idea was suggested by Ralf Treibmann

4. Too much emphasis of quantitative criteria

54. Another problem of the participating countries, which became apparent from the participants' questionnaires, is that evaluation systems in the participating countries might put too much emphasis on numbers and reversal rates. Such numbers appear to provide objective standards but do not concern the quality of judicial decisions and courtroom hearings which are at least as important as quantitative benchmarks such as the number of cases solved.

IV. Outstanding issues

55. With CCJE Opinion Nr. 17 (2014), the ENCJ 2012-2013 report and the KYIV Recommendations, detailed international standards on the evaluation of judges were developed. The questionnaires and the discussion in Chisinau show that there are still many problems and open questions in this area, especially in relation to the reconciliation of transparency and confidentiality. These would, however, require a more focussed analysis and discussion. In this regard, a more detailed discussion of the different evaluation systems with international experts might be valuable. In addition, a sharing of the different experiences among participants proved valuable as well. The different countries have developed interesting approaches which could be developed further in other countries, for example the Georgian approach that a judges' evaluation should not be given to other evaluators in order to allow an independent assessment of subsequent evaluators.

56. Moreover, especially in relation to transparency and confidentiality, the issues of integrity and the fight against corruption comes into focus. The Report of the Bureaus of the CCJE and CCPE, Challenges for judicial independence and impartiality in the member states of the Council of Europe, 2016, highlighted this issue. It might be interesting to discuss the question how corruption can be prevented and trust in the judiciary improved among the six participating countries.

Part III. Promotion

I. Overview of relevant European and other international standards

57. Most international documents just repeat the standards for appointments very briefly but do not give detailed guidance about procedures and the possibility that judicial independence is not only threatened by external forces such as politicians but also by pressure from inside the judiciary, e.g, court president or chair persons in a chamber or senate. Hopefully, such standards will be developed in more detail in the future and can then be discussed more fully with the participants. The CCJE Opinion No. 19 (2016) for example, has the role of court presidents as its topic.

58. The ENCJ stated that where promotion of members of the judiciary is based on the periodical assessments of professional performance the assessment process must be conducted according to the same criteria and with the same guarantees as those provided for the initial selection and appointment process (i.e. it should be independent, fair, open

and transparent, and on the basis of merit and capability) and should be based on the judge's past performance.⁵⁸ In relation to promotion based on seniority, the CCJE stresses, that promotion should be based on objective criteria just like appointments and not on seniority alone. "Although adequate experience is a relevant pre-condition to promotion, the CCJE considered that seniority, in the modern world, is no longer generally acceptable as the governing principle determining promotion."⁵⁹

II. An analysis of the situation in participating countries

59. In the participating countries, not only promotion to a court of higher instance is regarded as a promotion but also being transferred to a bigger city, becoming chair-person or court president. In all participating countries, Councils for the Judiciary select judges for promotion. Insofar, the countries comply with international standards. In all countries, promotions happen not so often. Judicial review against a promotion decision for another candidate is only open in Republic of Moldova. The length of service plays a role in the decisions for promotion as well as - in most countries (except Armenia and Georgia) - the participation in training courses. Training courses are offered for judges in all countries. Evaluation results play an important role in all countries except Georgia. The length of service of a judge is considered in the promotion decision, but is not the only factor. Insofar, the participating countries have found solutions which are comparable to the systems on other Council of Europe members. There, seniority still plays a more or less important role in decisions on promotions.⁶⁰ Only in Luxembourg promotions are solely based on seniority.

III. Selected examples of best practices, lessons learned and most challenging issues, both within the region and in other Council of Europe member states, with particular focus on the areas identified as most challenging by participating countries

60. The discussion on the subject of promotion was the shortest. This was partly due to a lack of international standards on promotion. Another problem might have been that participants were not as ready to discuss how candidates for promotion are chosen in practice. Some participants stated that it was "easy" to be promoted in their system because the criteria for promotion were clear rather than complicated. Decisions on promotions were made in a transparent way, after healthy competition. While this seems to be an ideal situation, understanding the way the selection procedures for promotion work in practice would deserve more time, maybe even in order to provide a learning experience for other countries.

⁵⁸ Report 2011-2012 of the European Network of Councils for the Judiciary (ENCJ) on minimum standards on the selection, appointment and promotion of judges 2.13 p. 15.

⁵⁹ See the CCJE Opinion No. 1(2001), para 29..

⁶⁰ For example Austria, Ireland, Italy, Spain, Report 2011-2012 of the European Network of Councils for the Judiciary (ENCJ) on minimum standards on the selection, appointment and promotion of judges Questionnaire Report 2010-2011 of the ENCJ Project Team, p. 24, 26, 45, 49, 60, 77; for relatively old information: the CCJE Opinion No. 1(2001), para 28.

61. In relation to Georgia ideas for an evaluation system which could be used to determine candidates for promotion was discussed. In the discussion, the suggestion was made⁶¹ to use the new system of evaluation before lifetime appointment for inspiration: Judges should be evaluated in regular intervals, but such evaluations should only be opened in case of a possible promotion in order to avoid that one evaluator is influenced by the appraisal of previous evaluators.

IV. Outstanding issues

62. A proper discussion of promotion procedures in the region would require more time and preparation in order to highlight interesting (and maybe also problematic) details. In order to allow a more interesting discussion, it might be stimulating to include younger judges who want to be promoted rather than only judges who have been promoted and thus have been successful in the system.

Part IV. Conclusions

63. The exchange among the participants and with the international experts proved valuable and gave interesting insights to all. The topics selection, evaluation and promotion were all well chosen to enable a fruitful discussion.

64. Possible topics for the future could be:

- Fighting and preventing corruption in the judiciary
- Measures to strengthen public trust in the judiciary. Here best practices among the participating countries might be especially interesting to share.
- How to improve the quality of the judiciary?
- Composition and procedure of Councils for the Judiciary (with an eye to the recommendations of the Plan of Action on Strengthening Judicial Independence and Impartiality, of the Secretary General of the Council of Europe)

In all these cases, sharing experiences among the six participating countries could be valuable for all.

⁶¹ by Ralf Treibmann.

Annex 1 - International Standards

1. International Standards with respect to selection and promotion of judges

- Recommendation CM/Rec(2010)12 of the Committee of Ministers on judges: independence, efficiency and responsibilities (Recommendation CM/Rec(2010)12)
- Report of the Bureaus of the CCJE and CCPE, Challenges for judicial independence and impartiality in the member states of the Council of Europe, 2016
- Report 2011-2012 of the European Network of Councils for the Judiciary (ENCJ) on minimum standards on the selection, appointment and promotion of judges
- Questionnaire Report 2010-2011 of the ENCJ Project Team
- Venice Commission's Report on Judicial Appointments, 2007
- CCJE Opinion No. 1 (2001).

Apart from that, the Case law of the ECtHR on Art. 6 of the ECHR is of great importance.

2. International Standards with respect to evaluation of judges

- Recommendation CM/Rec(2010)12 of the Committee of Ministers on judges: independence, efficiency and responsibilities (Recommendation CM/Rec(2010)12)
- Report of 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 (ENCJ Report),
- Report of 2013-2014 of the European Network of Councils for the Judiciary on Independence and accountability of the Judiciary
- OSCE Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010) – Judicial Administration, Selection and Accountability (hereafter Kyiv Recommendations)
- CCJE draft summary report of the questionnaires answered in preparation of the CCJE Opinion 17 (2014) and CCJE Opinion 17 (2014) itself.

Annex 2 - Summary table of countries' replies to preparatory questionnaire

		Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
I. General Questions							
1	Instances	3	3	3	3	3	3
2	Judges	234	552	266	438	7077	
	Courts	17 – 3 – 1	375 – 135 – 41 (?)	200 – 53 – 13 (?)	47 – 4 – 1	765	142 – 14 – 1
3	Discussion	Yes	Yes		Yes	Yes	Yes
	Ideas of reform	Yes	Yes	recently third wave of judiciary reform ¹	Yes	recent reform ⁶²	No
4	Issues for discussion			legal clarity for the evaluation criteria	No	European criteria, international standards	No
5	Questions other countries			criteria for promotion and periodic evaluation	No	concrete stages of promotion	experience, entry-exams, test-content & other methods of assessment

⁶² For more information see at the end of the document.

		Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
II. Questions about the selection and education of Judges							
6	Education						
	- Law degree	Yes	Yes	Yes	Yes	Yes	Yes
	- Training courses	Yes	Yes	Yes	Yes	Yes	No
	- Practical experience	Yes	Yes	Yes	Yes	Yes	Yes
	- Other			10 months training			6 months training
7	Previous experience	Yes	Yes	Yes	Yes	Yes	Yes
8	- Lawyer	Yes		Yes	Yes	Yes	Yes
	- Judge-assistant	Yes		Yes	Yes	Yes	Yes
	- Administration	Yes		Yes	Yes	Yes	Yes
	- Other			≥ 5 years of work experience in any legal domain	work of last 5 years as judge, assistant of judge, prosecutor, law professor, lawyer, judicial assistant or clerk	≥ 5 (3?) years of work experience in the law	prosecutor, lawyer in a corporation or organisation
9	Choice of judges	exam → list by Council of Justice, approved by the President of the Republic → study at the Academy of Justice → list of graduates → assignment by the President of the Rep.	written & oral exam by Judges Selection Committee → long term training → evaluation & ranking → Judicial-Legal Council proposes to executive appoints (others as reserve or in administration)	≥ 30 years of age, judges qualification exam, inscription on list then election by 2/3 at secret ballot by Council; special rules for appointment to Supreme Court and former judges	exam of knowledge, selection procedure, selection by the Superior Council of Magistracy at the plenary meeting in presence of all the participants	≥ 30 years of age, selection exam & qualification Exam & competition for vacancies	state exam for judges, certification of the Qualification-Board → Reserve of the Court used for vacancies
10	By Whom			No	No		No
	- Court President						
	- Council for the Judiciary	Council of Justice	Yes	Yes	Superior Council of Magistracy	Highest Qualification Commission	Yes
	- Other			Parliament for Judges of the Supreme Court			Qualification Collegium as tender committee and for some criteria

		Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
11	Appointment by whom						
	- Ministry of Justice	No		No	No		No
	- Council for the Judiciary	No		Yes	No		No
	- President	Yes	1 st Instance	No	Yes	for the first time	Yes
	- Parliament	No	2 nd +3 rd Inst., Const.	No	Yes (Supreme Court)	for life	Yes
	- Other						Supreme Court President with consent of others
12	Criteria applied						
	- Grades at university	Irrelevant	Important	Irrelevant	Important	Irrelevant	Important
	- Academic degree	Not so Important		Important	Important	Irrelevant	Important / Nsl
	- Academic publications	Not so important		Important	Important	Irrelevant	Not so Important
	- Glass rank at university	Irrelevant		Irrelevant	Important	Irrelevant	Important
	- Interview	Important		Important	Important	Important	Important
	- Group discussion	irrelevant		Important / Irrelevant	Important	Irrelevant	Nsl / Irrelevant
	- References	Not so important, if so: by individuals or officials professionally related to applicant		Important/Irrelevant if so: by former and current employers, colleagues, family, friends, banks, police administration	Important by judges with seniority and other notorious personalities from this area	Not so important	Irrelevant
	- Other	qualification exam and an interview			selection exam & qualifying exam (test & practical task)		
13	Difficult to become a judge Applicants ≥ Positions	Yes some more	Yes many more	Yes some more	Yes some more	Yes many more	No some more
14	Appointment for Life						
	- Immediately	Yes	No	No	No	No	No
	- Try-out period		3 years	3-5 Years	5 Years	5 Years	> 5 Years
	- Other criteria	under 65 years		integrity & competence ⁶³	good evaluation results	No	high-quality work...

⁶³ integrity ((a) personal honesty and professional integrity b) independence, impartiality and fairness c) personal and professional conduct d) personal and professional reputation e) financial obligations) and competence (a) knowledge of legal norms b) ability and competence to provide legal arguments c) writing skills d) oral communication skills e) professional qualities, including conduct in a courtroom f) academic achievements and professional training g) professional activities).

		Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
III. Questions about the Promotion of Judge							
15	Possibilities of promotion						
	- Transfer to bigger city		Yes	No	Yes	No	No
	- Chairperson		Yes	No	Yes	No	Yes
	- Court President	Yes	Yes	No	Yes	Yes	Yes
	- Higher Court	Yes	Yes	Yes		Yes	Yes
- Other					Vice-President		
	Choice for promotion						
	- Ministry of Justice	No		No	No		Yes
	- Council of the Judiciary	Yes	Yes	Yes	Superior Council of Magistracy	after competition (higher level) Verkhovna Rada	Yes
	- Parliament	No		No	No		Yes
	- President	No		No	No	after competition (same level)	Yes
- Other					disciplinary action (lower level) Verkhovna Rada	Qualifications Collegium of Judges evaluates business (?), moral & psychological qualities	
16	Difficult to be promoted?	Difficult	Easy	Difficult	Easy	Difficult	Easy
	- Often or rare thing?	Not so often	Not so often	Not so often	Not so often	Not so often	Not so often
17	Action against promotion of colleagues?	No	No	No	Yes	No	No
	- What?				appeal if he too has been a candidate		
18	How to be promoted?	No	Yes	No	Yes	No	Yes
	- What?	length of work as a judge depending on work-type/position & lack of disciplinary sanctions	Good evaluations	For promotion of district (city) court judge to judge at the court of appeals: at least two years of work experience at a district (city) court.	length of work as a judge & lack of disciplinary sanctions, support by Board (?)		constantly improving prof. qualities, impeccable behaviour on duty and after work, analytical work

				<p>Earlier promotion possible if judge made a special contribution to the development of law, formulation of uniform judicial practice and effective administration of justice, also if he/she demonstrated high judicial skills during the exercise of judicial power (Art. 41.2.)</p> <p>No disciplinary penalties</p>			
19	Training Courses for All?	Yes	Yes	Yes	Yes	Yes	Yes
20	- Important for Promotion?	No	Yes	No	Yes	Yes	Yes

			Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine
IV. Questions about evaluation							
21	Ev. bevor life-appointment	Yes	Yes	Yes	Yes	Yes	Yes
22	Career-evaluations	periodically, starting after the second year in office	at least every five years	after 1 and 2 Years and 4 month bevor the end of 3 rd Year	Every third year	Regularly	ordinary: 6 months after appointment, after qualification class, periodically extraordinary in case of change of position
23	By Whom	Evaluation committee	Judicial-Legal Council	each time independently by 2 evaluators of the High Council of Justice	College Performance Evaluation of Judges from the Superior Council of Magistracy	<u>1st time:</u> Highest Qualification Commission of Judges <u>Regularly:</u> teachers of National School, other judges, public associations	Qualification Collegium of Judges
24	Influence of the chairperson	No	Yes	No	No	Yes	Yes
25	Specific feed-back?	Yes	Yes	Yes	Yes	Yes	Yes
26	Criteria for evaluation						
	- Number of decisions	Important		Important	Important	Important	Important
	- ~ of cases completed	Important		Important	Important	Important	Important
	- Percentage of reversal	Irrelevant	Important	Important	Important	Important	Important
	- Academic publications	Irrelevant		Important	Not so important	Important	Important
	- Teaching	Irrelevant		Important	Not so important	Important	Important
- Administrative work	Not so important		Important	Not so important	Important	Important	
- Other				integrity and competence	reversal rate, reasonable time, training of judges	depends on the Inspector	
27	Statistical data	quantitative criteria yearly with automated system; qualitative crit. in four year-periods		only in regard of integrity, honesty, duty-awareness, responsibility	percentage of maintained decisions but not in case of Appointment for the Supreme Court	Important	Yes
	- They are ...	[Very important]	Too important	Of good importance	Of good importance	Too important	Of good importance

		Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
28	Quality of the decisions	Yes	No	Yes	Yes	No	Yes
	- Criteria	ability to justify a judicial act: clarity, comprehensive written language, analytical skills		level of knowledge on substantive, procedural legislation and human rights law, substantiation and cogency, analytical, logical and writing capacity	clarity and quality of decisions motivation, assessed on 3 decisions proposed by the judge and 6 randomly chosen		accordance with the law, validity of decisions, legal literacy, understandable for any person, even those without legal training
29	Judge's integrity	Irrelevant		Important	Important	Not so important	Important
	- Criteria			integrity, honesty, duty-awareness, love of truth, transparency, civility & accuracy when performing duties, fulfilling financial & other obligations (e.g. completing a declaration of property, paying loans, utility bills or other charges, or a traffic fine), etc.	compliance with the Code of Ethics, professional reputation, presence of disciplinary violations, violations of ECHR		
30	Practical experience	No	Works effectively	Not yet known		Started recently	
31	Consequences of evaluation						
	- Increases in pay		No	No	No	No	Yes
	- Pay cuts	Yes	No	No	No	No	Yes
	- Disciplinary proceedings	Yes	Yes	No	Yes	Yes	Yes
	- Dismissal from office	No	Yes	No	Yes	Yes	Yes
	- Chances of promotion	Yes	Yes	No	Yes	Yes	Yes
	- Other		Improve quality, training	positive or negative decision on life appointment			
32	Publication of Results	No	No	Yes / No	Yes	Yes	No
	- Where?	to each judge individually within		no for rejected judges after their	website of the Superior Council of	website of the Highest Qualification	

		three days		request	Magistracy	Commission	
		Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
33	Appeal against evaluation	Yes	No	Yes	Yes	No	
34	Recourse bevor a court	Yes	No	Yes	Yes	Yes	Yes
	Recourse to other authority ...	Committee (?)	No		Superior Council of Magistracy	Highest Council of Justice	Qualification Board of Judges, then Chairman of the Supreme Court
35	Goodness of the system		No		No	Yes	Yes
	- What?	2015: constitutional reforms, new Draft Judicial Code is being developed; of special importance due to new constitutional decisions	No	No final experience since no judge has yet been appointed for life under the current system, only in place since 2014.		incentive for judges to improve permanently	system is open, accessible and promotes high quality of work & real career opportunities
36	Illness of the system		No		No	Yes	No
	- What?		No			Politicians should not interfere.	

3. Georgia: Within the third wave of the reform of judiciary amendments on **selection of judges** were introduced, particularly, all the candidates will occupy the position of a judge through participating in the open competition. Currently, according to the law the candidates might be the graduates of the High School of Justice and persons released from studying at the HSJ (former judges, etc.). However, the latter category of candidates has a chance to be appointed as a judge only if the graduates of the High School of Justice have not applied for the vacancy. The draft amendments make the procedure nondiscriminatory. The graduates of the HSJ and the people released from studying at the HSJ will all participate in the open competition.

Besides, currently the law is vague with regard to the procedure of the selection and appointment of the judges. The draft aims to regulate the issue together with the procedure for the background check of the possible candidates for the office. The selection process of judges shall be **carried out based on two basic criteria – good faith and competence.**

It is noteworthy that the draft gives the candidates the right to appeal the decisions on the appointment. The candidate has the right to appeal the decision on the refusal in a special board within the system of the Supreme Court of Georgia. In the latter case the judge will have to prove that there was a violation of the procedure that affected on the decision of the High Council of Justice. If the Board finds the violation of the procedure, the decision on the refusal is annulled and the High Council of Justice has an obligation to consider the issue again taking into consideration the findings of the Board.

Rules of evaluation of judges were prescribed within the second wave of the reform of judiciary which was completed In August 2014 through adoption of whole range of legislative amendments by the Parliament of Georgia.

According to Organic law of Georgia on General Courts, the evaluation shall be **carried out based on two basic criteria – good faith and competence**. During the three year probationary period the judge is evaluated every year throughout a month by one judge and one non-judge member of the High Council of Justice. All three assessments each of them containing two parallel assessments of the relevant period shall be undertaken by different members of the Council.

During the evaluation period the evaluators carry out all the necessary measures to obtain the needed information for assessing the judge according to the criteria. They study five judgments on the cases that were heard by the judge, attend the trials, meet with the judge in person and obtain other information according to the rules prescribed by law.

The competence of the judge is measured by scores. As for the good faith, in this criterion the result of the evaluation is whether the judge meets/fully meets with the requirements or does not satisfy them. The results are filled in the forms and submitted to the High Council of Justice.

After interviewing the judge and considering the results of the evaluation, the High Council of Justice makes a grounded decision on the life-time appointment of the judge by two thirds majority of votes. The judge has the right to appeal the decision on the refusal in a special board that is set up within the system of the Supreme Court of Georgia. In the latter case the judge will have to prove that there was a violation of the procedure that affected on the decision of the High Council of Justice. If the Board finds the violation of the procedure, the decision on the refusal is annulled and the High Council of Justice has an obligation to consider the issue again taking into consideration the findings of the Board.

3. Ukraine: On the 2 June 2016 the Parliament of Ukraine adopted the Law of Ukraine “On The Judiciary and The Status of Judges”, which deprives the President of Ukraine the right to appoint judges by the decree.

This Law of Ukraine abolishes the norm of the first time judges’ appointment for five years and establishes that judges are to be appointed indefinitely. Moreover, the President of Ukraine loses the powers of courts’ creation and liquidation under the decree.

The powers of the Verkhovna Rada of Ukraine to sanction the arrest or detention of a judge transfer to the authority of the justice system - the High Council of Justice.

The law also increases the requirements for the judiciary. So, as a judge must be a citizen of Ukraine, not younger than thirty and not older than sixty five years, who has a law degree and professional experience in the field of law for at least five years, are competent, virtuous and speaks the state language.

Annex 3 – Agenda and List of Participants

WORKING GROUP A

Selection, evaluation and promotion of judges
with focus on the role of inspectorates in their evaluation and criteria for promotion

PROGRAMME

Strasbourg, 21 June 2015

9:00-9:30	<u>Opening and Introduction</u> By Anne Sanders, the International Consultant <u>General overview</u>
9:30-10:30	<u>Introduction: international standards</u>
10:30-10:45	<i>Coffee Break</i>
10:45-12:30	<u>A. Appointment</u> 1. Summary of countries' situations, inputs and clarifications by participating countries 2. International standards and experiences in other countries 3. Discussions and proposals
12:30-14:00	<i>Lunch Break</i>
14:00-15:30	<u>B. Evaluation</u> 1. Summary of countries' situations, inputs and clarifications by participating countries 2. International standards and experiences in other countries 3. Discussion and proposals
15:30-15:45	<i>Coffee Break</i>
15:45-17:30	<u>C. Promotion</u> 1. Summary of countries' situations, inputs and clarifications by participating countries 2. International standards and experiences in other countries 3. Discussion and proposals <u>D. Summary, concluding remarks</u>

Working Group A

Selection, evaluation and promotion of judges
28 June 2016

List of Participants

Strasbourg, 21 June 2016

International Experts

1. Ms Anne Sanders Associate Professor University of Bonn
2. Mr Ralf Treibmann Researcher

RSG Members

3. Mr Vugar Aghayev Senior Adviser for Organization and Supervision at General Department of the Ministry of Justice of Azerbaijan
4. Ms Irina Tsakadze Head of the Legal Drafting Department of the Ministry of Justice of Georgia
5. Ms Shorena Gigauri Deputy Head of Department of International Cooperation and Quality Management of the High Council of Justice of Georgia
6. Ms Tatiana Raducanu Member of the Superior Council of Magistracy of the Republic of Moldova
7. Mr Oleksandr Sasevych Judge of the District Administrative Court of Lvov
8. Mr Ivan Nazarov Professor of the Department of Structure of Judicial and Law-Enforcement Bodies, Yaroslav Mudryi National Law University, Kharkiv
9. Ms Sviatlana Liubetskaya Head of the Directorate General of the Support of the judicial activities of the Supreme Court of the Republic of Belarus

Civil Society Representatives

10. Mr Ramil Iskandarli Chairman of Legal Analysis and Research Public Union; Member of Azerbaijan Lawyers Confederation
11. Mr Ruslan Mustafayev Lawyer at the project "Protection Freedom of Assembly"
12. Mr Roman Sukhostavets Project Manager at SONGO "European dimension" public sector
13. Ms Nataliia Vereshchinska Director of the Centre for Judicial Studies
14. Ms Ekaterine Tsimakuridze Project Coordinator at Georgian Young Lawyers Association
15. Mr Artak Zeynalyan Lawyer; Chairman at "Rule of Law" Human Rights NGO
16. Mr Pavel Grecu Legal Officer at Legal Resources Centre NGO Moldova
17. Ms Ketevan Kukava Lawyer at EMC NGO

Institutional experts

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| 18. Mr Arsen Mkrtchyan | First Deputy Minister of Justice of Armenia |
| 19. Mr Khagani Taghiyev | Member of Judicial Legal Council, President of Salyan District Court |

CoE Secretariat

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| Ms Sophio Gelashvili | Head of Unit |
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