

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

Reply from Poland

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

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

YES – apart from the means employed for the purposes of assessing judges' work when meeting other goals (as part of appointment procedures, in disciplinary proceedings, when hearing complaints against the excessive length of proceedings, pointing out judges' mistakes by presidents of courts), there is a separate system of periodic evaluations of judges' work (however, limited to judges of common and military courts and not applicable to administrative court judges).

The remaining questions were answered focusing on the system of periodic evaluations of judges' work.

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

The aim of the system of periodic evaluation of judges' work is to increase both the level of competence of courts and the efficiency of court proceedings. The aim of periodic evaluations is, in particular, to define standards of adequate performance of professional duties by judges, inspire and motivate judges to improve their professional skills, determine training needs and results of trainings, provide a basis for the evaluation of judges applying for higher positions (vertical promotion) or being offered administrative positions (horizontal move). The system of periodic evaluations of judges' performance is related to the system of inspections of particular court divisions conducted every four years by inspector judges. The adopted solution makes it possible to assess the work of all the judges in a given division at the same time and, in consequence, compare their performance.

Presidents of particular courts notify judges of the assessment of their work, including in particular its results and summary, and prepare the so-called individual career development plans for particular judges on its basis. Such individual career plans cover a period of at least four years. Its aim is to determine the training needs of particular judges and draw their attention to the areas of improvement in their work.

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

The system of periodic evaluations of judges' work is obligatory and applies to all judges working in common and military courts. However, it does not apply to presidents of administrative courts. Judges' work is appraised as part of periodic (conducted every four years) inspections of particular court divisions, with the exception of presidents of appeal courts (during the term of their office). The system of periodic evaluations of judges' work also does not apply to administrative court judges.

Apart from the periodic evaluations of judges' work carried out as part of the inspections, judges' work is also assessed (occasionally, for other purposes):

- in appointment proceedings (when a judge applies for a position in a higher court – vertical promotion);
- in disciplinary proceedings (judges face disciplinary sanctions for, among others, professional misconduct, including obvious and gross violation of provisions of law and offences against the dignity of the office);
- as part of appeals filed against the entered judgments in compliance with law (judicial supervision of a higher court);
- as part of appeals filed by a party on account of the violation of the right of the party to have the case heard in court proceedings without undue delay (complaint against the excessive length of court proceedings, applicable as of 2004 and compliant with art. 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, enforced by the European Court of Human Rights in the judgement entered in the case of *Kudła vs. Poland*).

4. How it is established and regulated:

a) by legislation;

The Act – Law on common courts organization provides for basic principles for periodic evaluations of judges' work and development of individual professional career plans for judges.

b) by subordinate legislation;

The Minister of Justice, having consulted the National Council of the Judiciary, specifies, by way of a regulation:

- 1) the evaluation sheet template, including the summary of the results of the evaluation, taking into account the need to carry out the evaluation efficiently and thoroughly and to adjust the assessment method to the scope of the analysis of judges' work;
- 2) the judge career development plan template, ensuring that such plans take into consideration the individual predispositions of a given judge as well

as the need of the justice system to continually improve the performance of duties by judges.

B. Criteria for evaluation and assessment

5. Are there quantitative performance indicators that have to be taken into account, such as:
- a) the number of cases in which a decision has been made by a judge?
 - yes (the number of cases in a month and in a year in which a decision was rendered)
 - b) the average time spent on each of these cases?
 - yes (the evaluation takes into account the average duration of proceedings in cases assigned to a given judge compared with the average duration of proceedings in a given division, court, circuit and in the country; the evaluation also takes into account the number of “old” cases lasting more than 6 months, over a year, over three years)
 - c) the average number of hearings per case?
 - no, but the evaluation takes into account the number of sessions convened in a month and in a year compared with the average result of a division, court and circuit;
 - d) clearance rate (number of the cases, where a decision has been made, vis-à-vis the total of the cases forwarded to the judge)?
 - yes;
 - e) the average time to judgment (the time required to deliver a judgment by a judge after the completed hearing)?
 - no, but evaluations take into account whether or not grounds for a decision were prepared in a timely manner (the statutory deadline for preparing grounds for a judgment is two weeks following the filing of a petition, while grounds for an order must be prepared within a week following the issuing of an order), and the evaluations carried out before 2014 took into account the right of a judge to defer the announcement of a decision until after the closure of a hearing (judges may defer the decision for two weeks following the closure of the hearing);
 - f) any other quantitative indicators
 - yes, e.g. the caseload of a judge (the number of cases assigned to a judge that need to be considered at the same time).

Calculations regarding quantitative evaluation criteria are based on a comparison with the average result of a division.

6. Are there qualitative performance indicators that have to be taken into account, such as:

- a) analysis of the type, subject and complexity of the cases dealt with by a judge and his/her decisions?
- yes; calculations concerning the quantitative criteria of evaluations (point 5 of the questionnaire) are performed taking into account the type and level of complexity of cases assigned to a given judge or tasks and functions the judge was entrusted with, workload and work conditions in the entire period subject to the evaluation;
- b) the number of appeals vis-à-vis the number of the cases, where a decision has been made)?
- yes; the evaluation includes the analysis of the so-called openness to challenge and the number of cases in which an appeal was filed compared with the number of cases in which a given judge prepared grounds for a judgment;
- c) the number of decisions reversed and/or cases remitted by the appellate court?
- yes; evaluations take into account the results of appeal proceedings, the so-called stability of case-law (decisions that were upheld/dismissed, reversed, changed or otherwise);
- d) the types of cases where decisions were reversed and/or cases remitted (criminal, civil, administrative or other)?
- indirectly; if judges perform their duties in more than one division, the evaluation of their work, as compared with the average result of a division, should specify in detail the types of cases with a greater or lesser stability; the analysis of the stability of judicial decisions includes only decisions concerning the subject matter of a case and not procedural decisions;
- d) the grounds for reversal and/or remittal?
- indirectly; in the case of more serious transgressions, the evaluation of judge's work should indicate them (e.g. reversal due to major procedural errors violating the procedural safeguards of the parties);
- e) any other qualitative indicators?
- yes; the legal system provides for the possibility of appealing against unlawful decisions (appeals to prove a given decision unlawful); apart from the course of proceedings before a court of a given instance, such appeals may be filed against valid and final decisions of a court if it is found that they are in serious breach of law; a finding that a given decision is unlawful opens the way to seeking damages from the State Treasury; evaluations also include checking if appeals were filed against the excessive length of proceedings or if appeals were filed to the European Court of Human Rights in cases heard by a given judge.

7. Are there any other indicators that are taken into account in assessing the judge, such as the opinions of the court users, the judicial hierarchy, court experts and others concerned in the judicial process, as well as press articles?

- yes; the evaluation takes into account the manner in which judges carry out their work (conduct, work organization, respect for the rights of parties to or participants in proceedings); in the case of judges performing administrative functions (e.g. presidents of divisions, etc.) evaluations also take into account the manner in which judges perform their tasks resulting from the functions (for more information see C.11); the evaluation criteria also include complaints against the conduct of a given judge filed to the president of a court by parties (as well as their attorneys, witnesses, expert witnesses and other participants in proceedings);

Even though, by principle, the evaluation of the work of a judge does not take into account such sources as press articles, the information they contain may result in initiating verification procedures (e.g. preliminary proceedings conducted prior to disciplinary proceedings).

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

- yes; in particular with regard to the most serious transgressions and conduct that raises concerns. In February 2003 the National Council of the Judiciary adopted a set of rules of professional ethics that each judge should know.

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

- not formally, but traditionally the number of cases that were dealt with (closed) by a judge and the results of appeal proceedings (the so-called stability of case-law) are given the most weight.

C. Procedures and mechanisms

10. Who is responsible for individual evaluation and/or assessment of judges? Please specify all institutions and officials taking part in this process (including the Ministry of Justice, presidents of courts, Council for the Judiciary, bodies for the inspection of courts), and indicate their specific roles.

- judges' work is appraised as part of inspections of court divisions carried out by **inspector judges** every four years by an order of the **president of a court**;
- **the board of a court** analyses the conclusions reached after an inspection and may, in particular, request the disciplinary proceedings representative to instigate preliminary proceedings (prior to disciplinary proceedings);
- **the Minister of Justice**, who exercises external administrative supervision over the presidents of courts, has an indirect influence on the manner in which judges perform their duties with respect to the evaluation of their work and may request the disciplinary proceedings representative to instigate preliminary proceedings and order that a court, court division or the supervisory actions of the president of a court be vetted;
- **the National Council of the Judiciary**, making decisions on the appointment of judges, assesses all the professional achievements of candidates taking part in a given appointment procedure using all available sources of information, including materials gathered by inspector judges and their opinions. The National Council of the Judiciary may also request the disciplinary proceedings representative to instigate preliminary proceedings and order that a given court or its organizational unit be inspected.

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

- The procedure is, by principle, the same for everyone. The assessment of judges' work takes into account the nature of duties performed by judges carrying out administrative functions in a court, e.g. the president of a court or a division. Evaluations also take into account their skills related to overseeing, planning and organizing work, ability to set priorities and make decisions, communicativeness, willingness to make decisions, ability to ensure that official orders are followed. Other analysed aspects include the timeliness of actions performed by particular judges, accuracy of their organizational activities, ability to cooperate with others and legitimacy of administrative complaints. Of course, the professional experience of particular judges is also given weight when carrying out periodic evaluation of their work.

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

- Evaluations of judges' work are carried out as part of periodic (conducted every four years) inspections of court divisions.

Moreover, judges' work is appraised in other ways (vide point A.3) systematically or occasionally as part of the usual functioning of the judiciary.

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

- Apart from the usual evaluations of the work of judges during inspections, evaluations may also be carried out as part of the rights and duties of authorities listed in point A.10.

14. How is the evaluation conducted? (please specify exact procedures, including possible pre-evaluation, interviews, hearings, oral and verbal submissions and the role of the evaluators and a judge)

- In accordance with the Act – Law on common courts organization:

Inspections of particular court divisions are conducted every four years. Divisions of appeal or circuit courts are inspected by inspector judges that are appeal court judges, while district court divisions are inspected by inspector judges who are circuit court judges.

Court divisions cannot be inspected by inspector judges who are married or related to one of the judges assigned to a given division or whose legal or actual relation with one of the judges may raise reasonable doubts as to the impartiality of the inspector judge. A given inspector judge cannot inspect a particular division two times in a row.

Presidents of courts and presidents of divisions are informed of the planned inspections at least thirty days prior to their commencement.

As part of the inspections, inspector judges assess the work of particular judges, filling in judges' work evaluation sheets.

Presidents of courts notify judges of the evaluation of their work, including but not limited to its results and summary, developing individual career development plans for the judges based on the evaluation (individual career development plans cover a period of at least for years).

Within two weeks following the notification of the assessment of their work, judges have the right to submit written comments together with grounds for the opinions. The comments are considered and the final summary of the evaluation of the work of a given judge is prepared by the president of a superior court and in the case of appeal court judges – president of another appeal court. Judges who are presidents of courts are notified of the results of the evaluation of their work by the president of a superior court. Comments on the evaluation are considered and the final summary of the evaluation of the work of a judge who is:

- 1) the president of a district court is prepared by the president of a superior appeal court;
- 2) the president of a circuit court is prepared by the president of another appeal court.

15. What are the ratings used during evaluations?

Evaluations of the work of judges are carried out taking into account the average results of a given division, court, circuit and the country.

16. What are the consequences of the evaluation and how may it affect the career of a judge? Can it result in:

a) the promotion or demotion of a judge?

- **yes** (promotion to a position at a higher court or entrusting with an assignment position, demotion, i.e. removal from an assignment position; a judge may not be demoted to a lower ranking position in a lower court)

b) a professional award to a judge?

- **no** (there is no system of cash awards for judges in Poland)

c) disciplinary or other measures?

yes

d) a requirement of further training;

yes

e) dismissal from office?

yes, in extreme cases and only as a result of a decision rendered by a disciplinary court;

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

When appraising the work of a judge, an individual career development plan is developed, identifying areas for improvement with regard to knowledge and skills and proposing forms and methods of their development based on the individual predispositions of a judge.

Documentation prepared as part of the evaluation is used to assess the candidacy of a given judge applying for a higher position or being entrusted with an administrative post.

17. How are the evaluation and the recommended measures recorded, where are the records deposited, who may examine them and for how long they are kept?

Information on performance evaluations as well as the development and implementation of an individual career development plan constitutes a secret protected under the law and is subject to the protection of confidential information bearing the 'reserved' clause provided for in the regulations on the protection of confidential information, unless the judge whom the information concerns consents to its disclosure. Such information is not publically available and may be used solely by court authorities (president of a court) for official purposes. It may also be disclosed to the National Council of the Judiciary.

18. Apart from the formal evaluations referred to above, are any informal evaluations undertaken? (for example, in the form of informal consultations and advice from more senior judges)

In the case of appointment proceedings, the authorities deciding about the promotion of a judge generally take into account, among others, formal official opinions or different types of recommendations. Informal consultations are not held, and informal opinions of senior judges are not formally taken into consideration.

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

- As the periodic assessment procedure was adopted in 2014, it is not possible to provide a filled-in questionnaire, but we enclose blank evaluation sheets.

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

20. By what means is the transparency of the evaluation process ensured? Is the evaluating body clearly defined? Are there published guidelines setting out evaluation criteria and the procedural rules to be applied?

The Act – Law on common courts organization clearly specifies which authorities have the right to perform particular actions in the evaluation procedure and provides for the rule stating that the scope of the performance evaluation of judges cannot include areas in which judges are independent.

As the judges' work evaluation system has not been functioning long (first evaluations were carried out at the beginning of 2014), no doubts have yet arisen as to the application of the discussed provisions.

The guidelines specifying the evaluation criteria as well as procedural rules are published, as they are provided for in the Act and the implementing regulations to the Act.

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

See point C.17 and D.20.

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

See point C.14 and D.20

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

Judges do not carry out their self-evaluation. It is only the appeal court judges that may be assessed by judges that are at the same level in the hierarchy.

24. Can a judge demand the dismissal or removal (temporary or permanent) of a member of the evaluation body from that body? (for example, where there are serious reasons to believe that such member may have an *a priori* negative attitude towards the evaluated judge)?

Judges whose work is evaluated may raise different objections when making comments about their individual career development plan. The comments are considered and the final summary of the evaluation of the work of judges is prepared by the president of a superior court and in the case of appeal court judges – president of another appeal court.

25. What are the possibilities of review (including judicial) of an evaluation of a particular judge, if a judge does not agree with the evaluation and the measures taken as a result of its conclusions?

Apart from the right to submit comments (see C.14), judges may point out any and all noticed transgressions in the procedure concerning the appointment of judges, and the National Council of the Judiciary may order that additional evaluations be carried out.

E. Achievements and problems

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

The first periodic evaluations of judges' work were carried out at the beginning of 2014. Therefore, no doubts have so far arisen as to the application of particular provisions. However, as early as at the stage of consultations concerning draft regulations, a possible problem was noticed concerning the fulfilment of the obligation of the presidents of courts to prepare individual career development plans for judges. Moreover, it was noticed that it is not possible for judges to question the results of their periodic performance evaluation.