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(CEPEJ)**

**GUIDELINES
ON THE EVALUATION OF THE QUALITY OF WORK OF JUDGES¹**

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INTRODUCTION

The evaluation of judges is an essential element of an accountable judiciary. The aim of introducing by a State an individual judicial evaluation, which comprises the assessment of the work and professional abilities, must be to ensure the quality of the work of the judges and, thereby, a whole national judicial system.

According to its terms of reference and notably based on Opinion No 17 (2014) on the *Evaluation of Judges' Work, the Quality of Justice and Respect for Judicial Independence*² of the Consultative Council of European Judges (hereafter CCJE), the CEPEJ Working Group on quality of justice (CEPEJ-GT-QUAL) decided to focus on identifying specific criteria and methods for measuring the quality of a judge's work during his/her individual evaluation.

The Guidelines on the evaluation of the quality of work of judges (hereafter Guidelines) underline the importance of basing evaluation both on quantitative and qualitative criteria with an emphasis on the latter and aim to provide concrete guidance on how to assess the quality of a judge's work, identifying the method of evaluation and criteria. To prepare for these Guidelines, a comparative analysis on how to assess the work of judges has been drawn up³, based on the replies from 26 member States of the Council of Europe.

The aim of the Guidelines is not to harmonise the very different approaches existing in the member States regarding the type of evaluation, its frequency, the evaluating body etc. Instead, it is to offer concrete guidance by building on the existing principles, therefore respecting the diversity of evaluation practices within member States and allowing for flexibility and adaptation to each country's unique judicial structure and traditions.

In addition to the CCJE Opinion No. 17, the Guidelines include references to relevant European standards, insofar as they may be used as guidance on key issues, in particular the Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (adopted by the Committee of Ministers on 17 November 2010), the Report 2012-2013, adopted by the European Network of the Councils for the Judiciary (hereafter ENCJ): "Development of Minimal Judicial Standards III: Minimum Standards regarding Evaluation of Professional Performance and Irremovability of Members of the Judiciary", and ENCJ's Report 2021-2022: "Independence, Accountability and Quality of the Judiciary". They will be referred throughout these guidelines as they are of significant relevance due to their complementarity with the herein matter.

GUIDING PRINCIPLES REGARDING EVALUATION OF JUDGES

- (i) The evaluation shall not impede on the independence of judges.

A key tenet of the evaluation of judges is that it must not undermine judicial independence. It must not lead to any restriction, undue influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary which could undermine independence of judges in performing their judicial duties. In particular, individual evaluation should not involve an assessment of the merits of a case which should fall under appellate proceedings, as provided for by law. Moreover, in order to protect judicial independence, an evaluation should be undertaken mainly by judges.

- (ii) The evaluation is differentiated from the disciplinary procedure.

² [Opinion n°17 on the evaluation of judges' work, the quality of justice and respect for judicial independence - Consultative Council of European Judges \(coe.int\)](#)

³ See Appendix to the present document.

If violations of ethical and professional rules/standards can be considered in the evaluation process, it should be clearly differentiated between evaluation and disciplinary measures and processes. The principles of security of tenure and of irremovability are well-established key elements of judicial independence and must be respected. A permanent appointment should not be terminated simply because of an unfavourable evaluation. It should only be terminated in a case of serious breaches of disciplinary 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/her judicial duties to a minimum acceptable standard, objectively assessed. In all cases there must be proper procedural safeguards for the judge being evaluated, including the right to challenge the evaluation result, and these must be scrupulously observed.

GUIDELINES ON THE EVALUATION OF THE QUALITY OF THE WORK OF JUDGES

The 21 guidelines, as shown below, have been structured around the following 8 themes:

1. type of evaluation
2. scope of the evaluation
3. frequency of evaluation
4. evaluating body
5. evaluation criteria
6. transparency of the evaluation criteria and procedure
7. sources of information
8. method and report structure

1. TYPE OF EVALUATION

Formal or informal evaluation systems are being used across Europe. The strict dichotomy of evaluation systems may not exist to the extent it did before, due to some convergence among judiciaries, in particular with informal systems being in a process of formalization. Despite this evolution, the distinction between the two categories, based on the results of the Comparative analysis⁴, remains valid.

In the case of formal evaluation, the aims of the evaluation, the criteria used, the composition of the evaluating body, the procedure for evaluation and its consequences are all clearly set out in advance of an evaluation exercise. The rights and duties of the evaluated judge and the evaluating body are regulated by means of primary or subordinate legislation.

On the other hand, an informal evaluation does not use either formalised ratings or criteria. It usually has no formal consequences for the evaluated judge. The evaluation process is conducted by way of a discussion with the court president or head of department, who have meetings on a regular basis (once or twice a year) with each judge. The matters discussed include issues such as compliance to deliver justice in a reasonable time, setting career goals, the number of cases resolved, the judge's need for training, and his/her satisfaction with salary, work and workplace. It should be noted however that informal evaluation does not offer any safeguards against misuse of the process of evaluation.

Guideline 1.

The formal evaluation system should be complemented with a type of informal evaluation, such as self-assessment, peer review, or mentoring of junior judges.

Various forms of informal evaluation can be effective ways of improving the skills of judges thereby improving the overall quality of the judiciary. A formal evaluation system of work of judges alone is less effective than when complemented by types of informal evaluation, which usually presuppose an inclusive process, participation of the evaluated judge and

⁴ See Comparative analysis in appendix, Question 2.

confidentiality of the process, thereby contributing to the judge's acceptance of the evaluation system.

Guideline 2.

Self-evaluation should be encouraged as an evaluation tool. It should be completed objectively and with the goal of improvement.

An increasing number of member States seem to have introduced a system where the evaluation is preceded by self-evaluation or in which self-evaluation forms part of the evaluation. A key benefit of self-assessment is that it opens a line of communication for the judges to give feedback on their performance, but also the negative sides of their job. It can also give the evaluated judge the chance to look at his/her work through the eyes of court administration, that is the perspective they usually do not have. The evaluated judge may be invited to present a report describing implemented activities and undergone training courses, along with professional goals. The judge may also prepare a SWOT analysis⁵ and fill out a self-assessment form of their professional activity, which is then submitted to the evaluating body.

Guideline 3.

Peer review should be encouraged as a tool of evaluation among colleagues. It should not lead to formal consequences for the judge.

Peer review can be seen as a tool of informal evaluation among colleagues where a judge has an informal talk about his/her work and career with a senior or more experienced judge, aimed at professional development. A peer review is often used to identify each other's strengths and weaknesses⁶. It can either happen where cases are heard in panels of two or three judges or under the intervision of peer during a hearing⁷.

Managing judges should not participate to this type of evaluation as evaluator in order to maintain the confidentiality and candidness of the process. The aim is to create a space where judges can engage in open and honest discussions among peers about their work and career without concerns about potential managerial influence. The results of a peer review should be kept confidential.

Peer review should not be applied as a method for regular systematic professional evaluation. The inherent confidentiality of peer review makes it inappropriate for making career and human resources decisions.

Guideline 4.

Mentoring system should be encouraged as a tool of informal evaluation for junior judges.

A mentoring system can be seen as a tool of informal evaluation where a junior judge is mentored in their everyday work by a senior judge who hears the same case types. While fully respecting judicial independence, it is aimed at helping junior judges in expanding their professional knowledge and obtaining self-reliance in conducting hearings and managing cases while providing a supportive and non-judgmental environment where junior judges can seek guidance and advice without the fear of being formally assessed.

The duration of the mentoring depends on the individual needs of the judge and can last from a few months to a longer period, such as for "junior" judges appointed for a definite term on

⁵ A SWOT analysis is a technique used to identify the strengths, weaknesses, opportunities, and threats that surround the analyzed topic.

⁶ An example of peer review is shoulder to shoulder advice among peers by using a video camera in court hearings and discussing the judge's behaviour (how they conduct a hearing, what body language they use, how they address parties and witnesses etc.).

⁷ Breaking up judges' isolation - Guidelines to improve the judge's skills and competences, strengthen knowledge sharing and collaboration, and move beyond a culture of judicial isolation (12/2019).

probationary period. It should be adjusted to the individual needs of the judge. At the beginning of the process, a mentorship individual plan should be created. This plan should focus on the specific areas where the junior judge seeks improvement or further development, ensuring that the support provided is relevant and effective.

Again, mentoring should not be done by managing judges should be kept confidential. This confidentiality ensures that the mentoring relationship remains a safe space for growth and learning. Including details about their strengths and weaknesses in the report generated from this process could undermine this trust, potentially discouraging open communication and thus hindering the learning process.

2. SCOPE OF APPLICATION OF EVALUATION

Guideline 5.

The evaluation process should, in principle, encompass all judges periodically, including those performing managerial tasks. Any exemptions from this process should be objectively justified.

In most member States, evaluation takes place regularly and periodically. Ideally, regular evaluation should encompass all judges, including those performing managerial tasks and those temporarily seconded to another court, a Council for the Judiciary or any other body guaranteeing the independence of judges, the Judicial Academy or the Ministry of Justice.

Bodies responsible for judges' evaluation must exercise caution when determining categories of judges exempt from regular evaluation. The selective exclusion of certain groups, such as those in managerial roles (e.g., court presidents), may create the perception of favouritism, casting doubt on the fairness of the evaluation system and the equal treatment of all judges. Any exemptions must be objectively justified,

On the contrary, extraordinary evaluations can be initiated in specific situations, for example upon a request of a court president or the evaluated judge himself/herself when he/she applies for promotion⁸.

3. FREQUENCY OF EVALUATION

Informal evaluation systems, which are less complex and more flexible, allow for a specific and relatively high frequency of evaluations, typically ranging from six months to one year. Formal evaluation systems, which are prevalent in the vast majority of Member States, occur at less frequent intervals, spanning from two to five years⁹.

Guideline 6.

For formal evaluations, the recommended frequency is every two to four years. For newly appointed judges, a more frequent evaluation may be advisable, such as annually during the first three years after their assignment to the position.

In its Opinion No. 17, the CCJE takes the view that regular evaluations should not happen too frequently, to avoid an impression of constant supervision, which could, by its nature, undermine judicial independence¹⁰. Conversely, an excessively long span between evaluations also raises concern because it can hinder the timely identification and addressing of judge's work-related issues. Moreover, a prolonged gap between evaluations may limit the effectiveness of feedback and impede judges' professional development.

⁸ See comparative analysis in appendix, Question 4.

⁹ See comparative analysis in appendix, Question 4.

¹⁰ CCJE Opinion No. 17, para. 40.

There may be, depending on the national judicial appointment system, compelling reasons to advocate for a more frequent assessment for newly appointed judges, particularly in member States where judges are recruited at the beginning of professional career.

4. EVALUATING BODY

The individual evaluation of judges is organised by national laws in a variety of ways across the member States, ranging from evaluation by the Council for the Judiciary or other body guaranteeing judicial independence, by peers (trained, licenced and listed judges), the president of the relevant court, by judges of higher instance, and inspectors¹¹.

The CCJE, in its Opinion No. 17, expressed the key principles concerning the evaluating body as follows: "In order to protect judicial independence, evaluation should be undertaken mainly by judges. The Councils for the Judiciary (where they exist) may play a role in this exercise. However, other means of evaluation could be used, for example, by members of the judiciary appointed or elected for the specific purpose of evaluation by other judges. Evaluation by the Ministry of Justice or other external bodies should be avoided; nor should the Ministry of Justice or other bodies of the executive be able to influence the evaluation process."¹²

Guideline 7.

The evaluators should undergo specific training with the aim of harmonising evaluation standards and ensuring consistency in approach of evaluators.

The Comparative analysis¹³ suggests that judges' mistrust in evaluation procedures often stems not from the criteria, expressed in general terms, but from how these criteria are practically applied. Uniformity in the application of evaluation criteria is therefore essential. Firstly, it promotes fairness by ensuring that judges are evaluated against the same set of standards, regardless of the evaluator. This consistency is fundamental for maintaining trust in the evaluation process. Secondly, a uniform approach allows for comparisons between judges and their performance.

When evaluators undergo specific training¹⁴, it not only enhances their understanding of the evaluation criteria but also helps them develop a common understanding of the criteria's nuances and intricacies, fostering a shared framework for evaluation. A practical type of training, intended to establish benchmarks, compare approaches and identify areas of improvement consistently across the judiciary, should be given primacy.

5. EVALUATION CRITERIA

Based on the Comparative analysis, statistical/quantitative criteria for the evaluation are complemented with qualitative criteria in most member States¹⁵.

Guideline 8.

To establish an effective evaluation system that motivates judges and identifies areas for improvement, it is crucial to implement the evaluation criteria in a manner that objectively reflects the quality of the judges' work.

In a number of member States, the professional evaluation system categorises almost everyone into the same (i.e. most performing) group, irrespective of judges' actual quality of

¹¹ See comparative analysis in appendix, Question 17.

¹² CCJE Opinion No. 17, para. 37.

¹³ See comparative analysis in appendix, Question 12.

¹⁴ In the majority of member States, specific training for evaluators is not provided at present, See comparative analysis in appendix, Question 20.

¹⁵ See comparative analysis in appendix, Questions 10, 10b and 11.

work, even judges with room for improvement. This weakens the objectivity of the process, resulting in demotivation and potential negative impacts on court efficiency and the quality of the justice system. An effective evaluation system should not only establish clear criteria and methods but also assess judges' actual work quality. Accordingly, it should include both criteria to identify judges and to distinguish the highest performing judges.

Guideline 9.

The choice of criteria should clearly demonstrate that the quality of work of a judge is distinct from the quality of the system as a whole.

By way of example, while the 'clearance rate' indicator (ratio between resolved and incoming cases) is an excellent indicator of the overall judicial system's quality and effectiveness, it provides little or insufficient information on the work of an individual judge.

Guideline 10.

Evaluation criteria must be exhaustive and varied. It is essential to strike a balance between qualitative and quantitative criteria.

Striking a balance between qualitative and quantitative criteria is paramount, as placing excessive emphasis on quantitative criteria may subject evaluated judges to undue pressure.

Whether a decision is given in a reasonable time in accordance with Article 6 of the European Convention on Human Rights (ECHR) can be regarded as an important element of its quality. However, tension can arise between the speed with which a proceeding is conducted and other factors relevant to quality such as those of the right to a fair trial also safeguarded by Article 6 ECHR.

In the same vein, while the number of resolved cases may play a role in professional evaluation because the judge must be able to handle cases efficiently and organize and conduct hearings in an effective manner, the quality of justice cannot be equated with simple 'productivity'. Therefore, the number of resolved cases should be complemented with other criteria, such as the analysis of the type, subject, and complexity of cases, which can help counterbalance the 'side-effect' of purely result-oriented criteria.

The time element must obviously be considered but is not the only factor to be taken into account. Also, a heavy reliance on the efficiency of judge's work is problematic because it might lead to a situation where judges concentrate their work toward less complicated cases, while complex cases remain unsolved.

Non-exhaustive list of qualitative and quantitative criteria that may be taken into account in the evaluation of the judges' work

(i) Professional quality of decisions:

- **analysis of written skills**
- **analysis of the quality of legal reasoning**
- **analysis of the type, subject and complexity of cases**
- **analysis of the rate of confirmation/success rate in appeal considering the analysis of grounds for the reversal or modification of the judgement**

By giving reasoned judgments which are made available to the public, individual judges explain their actions and their decisions to the litigants. Thus, the professional quality of decisions should be a cornerstone of every judge's work. The statement of the reasons not only makes the decision easier for litigants to understand and accept but is above all a safeguard against arbitrariness.

'Analysis of written skills' involves assessing whether a judicial decision is intelligible, coherent and drafted in clear, simple language, which is essential for ensuring understanding by the parties involved and the general public. 'Quality of legal reasoning' encompasses various factors, including the methodology applied, understanding of procedural rules, ability

in analysis and synthesis, utilization of persuasive legal arguments, and knowledge of relevant case-law and international law.

A careful interpretation of the 'rate of confirmation/ success rate in appeals' indicator, is necessary, with additional considerations, particularly the analysis of the reasons for the reversal or modification of the judgement, offering a more nuanced evaluation of judge's work.

(ii) Number of resolved cases:

- **number of resolved cases**
- **ratio between received and resolved cases**

(iii) Duration of proceedings and managing of cases:

- **average length of resolved cases**
- **average length of pending cases**
- **average time between the final hearing and delivering a judgment**
- **average number of hearings per case**

When considering these criteria, the complexity of cases should be taken into account¹⁶. Criteria related to average length of resolved cases and of pending cases can be used in the context of the specific jurisdiction in which the evaluated judge works, not in the context of the whole justice system.

(iv) Conduct of hearings:

- **ability to encourage settlement between parties**
- **respect for the rights of the parties**
- **communication skills and other social competences**
- **ability to prepare case files for the hearing**
- **ability to identify relevant issues according to procedural and substantive law**
- **ability to conduct hearings in an expedient manner (when it is deemed necessary)**

(v) Integrity, compliance with ethical and professional standards:

- **ability to cooperate with judicial colleagues, court staff, and lawyers**
- **work ethic**
- **respect for the parties of proceedings, witnesses, and victims**
- **disciplinary offenses determined by final disciplinary decisions**

The complexity of the act of judging means that many virtues and qualities must be combined so that justice can be done. Confidence in justice is not only guaranteed by a competent judge. A judge should perform his or her role with wisdom, loyalty, humanity, courage, seriousness, and prudence, while having the capacity to listen, communicate and work. Consequently, a judge's professional conduct can be considered in the evaluation process in most countries¹⁷.

'Integrity' appears to be frequently used as an umbrella term, encompassing various aspects such as the absence of disciplinary sanctions, compliance with asset declaration regulation, and adherence to codes of conduct, among others. Putting aside theoretical concepts, a comparative review suggests that assessing judges' integrity typically involves considerations beyond mere compliance with the code of ethics.

(vi) Aptitude for professional practice:

- **organisational skills**
- **adaptability to new tasks, including to new technologies**

¹⁶It should be noted that case weighting systems already exist or are being envisaged in member States in order to improve efficiency and better distribution of workload among judges based while taking into account the complexity of the cases. In this regard, see Case weighting in judicial systems - CEPEJ Studies No. 28

¹⁷ See comparative analysis in appendix, Question 14.

- **capacity to represent the judicial institution**

These criteria aim at assessing if the evaluated judge is not only capable of fulfilling his/her legal duties but also of upholding several competencies essential in the daily professional practice of a judge. Adaptability to new tasks, particularly in relation to new technologies, is important in a rapidly evolving legal landscape where digital tools play an increasing role. Furthermore, the ability to represent the judicial institution is essential, as judges often serve as the public face of the judiciary.

(vii) Others:

- **readiness to take on extra activities within the court's administration such as mentoring and educating recently appointed judges or lawyers**
- **compliance with training and development targets**

When non-judicial activities are treated as criteria of the evaluation, their role should not be essential. A Judge's primary responsibility is to dispense justice and adjudicate legal matters. Non-judicial activities, while potentially valuable, should not overshadow or compromise the core duties of a judge. Overemphasizing non-judicial activities might divert attention and resources from the primary role of delivering justice.

Guideline 11.

Specific criteria for the evaluation of court presidents and judges holding managerial positions should be adjusted to their specific responsibilities and tasks.

In general, the work of court presidents is evaluated in the same way as the work of ordinary judges, with all the necessary safeguards to be respected. Based on the specific role of the court presidents, evaluation could also take place to assess the overall work done, including the managerial functions. Such evaluation should be appropriate for the presidents' tasks and responsibilities.

These criteria could also include:

- **ability to ensure the independence and impartiality of judges and preserve the reputation of the court**
- **Communication skills and ability to ensure transparency of the court**
- **ability to manage material and human resources and to ensure the correct and timely work of the court**
- **ability to represent the court and fellow judges in relation to other state organs, organisations, parties, participants in the proceedings and general public**

The evaluation criteria should also be adjusted to reflect the specific responsibilities and tasks performed by judges who hold managerial functions or are temporarily not engaged in judicial duties. Different criteria may be necessary to accurately assess their performance during such periods.

Guideline 12.

Evaluators should not issue a negative evaluation of a judge's quality of work due to matters beyond the judge's control, such as delays caused by massive backlogs or poor working conditions.

As already mentioned, the quality of the work of a judge is distinct from the quality of the judicial system as a whole. A judge should not be evaluated negatively because of problems he or she cannot influence, such as for example delays caused by massive backlogs. A situation in which a diligent judge, despite having resolved a very high number of cases, at the end of the

monitored period has more cases on his or her docket than at the beginning, illustrates this point.

Guideline 13.

In judicial systems where judges are assigned targets, the results of the evaluated judge should generally be compared to judges who have comparable functions or workloads.¹⁸

The quantitative criteria, when not interpreted with caution, might lead to wrong conclusions. The targets achieved by the evaluated judges should be compared with the targets achieved by judges with comparable functions or workload judges¹⁹.

Overall, general targets may be valuable tools that help monitor the efficiency of judges' work on condition that the number of cases and their complexity is evenly distributed among the courts in the country. However, the experience shows that this is often not the case. When there are differences in the caseload of courts and/or in the complexity of cases they adjudicate, caution is needed not to cause inequality by using general timeframes among judges who are not in the same position.

Guideline 14.

When targets are used as points of reference, the evaluated judge should be able to give reasons for any divergence from the targets, and evaluators should express a view on it.

Any evaluation procedure which includes reference to targets should enable the judge to give reasons for any divergence from the targets, and evaluators should indicate whether they agree with these reasons. This process affords an opportunity for evaluators to become aware of specific and objective circumstances on the side of the judge, as well as of wider trends within the judiciary, to recognise that some targets are proving especially hard to meet or have imposed burdens not originally envisaged.

6. TRANSPARENCY OF EVALUATION CRITERIA AND PROCEDURES

The efficacy of the evaluation system is intricately tied to the acceptance of its criteria and procedures by judges. While the criteria themselves may be clear and objective in general terms, their successful application, as shown in the Comparative analysis²⁰, hinges on addressing concerns related to transparency, perception of subjectivity, and participation of the evaluated judge.

Furthermore, the use of informal evaluation forms can considerably enhance the quality of the overall evaluation process. Other relevant factors, such as the involvement of a competent and impartial evaluating body in drafting the criteria, and the clear structure and content of the evaluation report, which also have the potential to foster judges' trust in the evaluation system, are addressed in other parts of the present document.

Guideline 15.

Clear evaluation criteria should not only be defined but also made public, with disclosure to judges of all relevant information.

The basis and main elements for formal evaluation (where it exists) should be set out clearly and exhaustively in primary legislation. Details may be regulated by subordinate legislation which should also be published. As already mentioned, judges' mistrust in evaluation

¹⁸ To be interpreted conjointly with the Guidelines in section 6. Transparency of evaluation criteria and procedures.

¹⁹ As the Comparative analysis (Question 10.b) shows, the results of judge's work across member States are assessed by comparing them to other judges at the same level, to average values calculated for judges at the same level, or to predetermined timeframes.

²⁰ See Comparative analysis in appendix, Question 12.

procedures often stems not from the criteria, typically expressed in general terms, but from how these criteria are practically applied.

In a number of member States, some criteria carry more weight than the others. Based on the Comparative analysis²¹, two approaches may be distinguished. The first approach is characterised by an evaluation system with formalised ratings regulated by law where different weight (i. e. number of points or percentage) is awarded to individual criteria. Accordingly, the rating scale reflects the importance that the evaluation system attaches to quantitative and qualitative criteria, respectively.

Special attention must be brought in evaluation systems under the second approach, in which despite their formal character, no such numerical rating scale has been foreseen, yet a distinction between more and less important criteria has nevertheless been made in practice by attaching more attention to some criteria than the others (e.g. the quality of reasoning or the number of resolved cases). Emphasizing transparency becomes crucial in such instances.

Guideline 16.

The evaluated judge, in addition to exercising procedural rights, should have the opportunity to comment on a preliminary draft.

As already mentioned, a system where the formal evaluation is preceded by self-assessment, can be an interesting approach. Additionally, allowing the evaluated judge to provide comments on a preliminary draft ensures a fair and transparent process²². Participation in the drafting process promotes a sense of collaboration and mutual understanding between the evaluator and the judge. The judge is then more likely to accept and trust the evaluation outcome when he/she has had the opportunity to actively participate in the process. Furthermore, this approach provides a chance to address any misconceptions and ensures that the judge's perspective is considered, thus contributing to a more objective evaluation process.

7. SOURCES OF INFORMATION

Guideline 17.

For a comprehensive understanding of judge's work, the sources of information used in the evaluation should be reliable and based on sufficient evidence. These should encompass all aspects of judge's work.

Relying on a single source may provide a limited perspective on judges' work. Sufficient evidence requires the incorporation of diverse sources to ensure a more complete and accurate understanding of the work of a judge, allowing for cross-verification and validation of information. This approach ensures a more balanced, and credible assessment of judge's work.

Sources for evaluation can either be randomly selected or chosen by the evaluated judge. While random selection of final decisions or completed case files reduces the risk of cherry-picking specific cases, there is a possibility that the selected sources may not represent the judge's overall work. Alternatively, a combination of both methods may be considered.

Sources may notably include:

Regarding the professional quality of decisions:

- **sufficient number of selected final decisions on the merits**

²¹ See Comparative analysis in appendix, Question 12.

²² Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para 58.

- report from a higher instance

Regarding the managing of cases:

- statistical data
- selected completed case files
- report from a higher instance
- report from the court president

Regarding the conduct of hearings:

- selected completed case files
- evaluator's visits and observations of the hearing
- information gathered from legal practitioners or bar association
- feedback from other court users

Regarding the integrity, compliance with ethical and professional standards:

- judge's personal file²³
- final disciplinary decisions
- information gathered from legal practitioners
- feedback from colleagues, other court users and court staff
- report from the court president

Regarding the aptitude for professional practice:

- information gathered from legal practitioners
- feedback from other users and court staff
- report from the court president

Specific sources for the evaluation of court president and judges holding managerial positions:

- internal reports from the court president on the functioning of the court
- feedback from higher instance
- feedback from colleagues, court staff and court users including legal practitioners

Guideline 18.

Seeking the opinion of higher instance may be implemented to foster the judges' trust in the evaluation process.

The involvement of court presidents in professional evaluation is seen as an appropriate method because their proximity to the judge enables them to gather direct information on their work, to meet with them and to listen to them. However, the weight of the hierarchy can also interfere in the process, potentially leading to dissatisfaction of judges²⁴. To mitigate this risk and help foster judges' trust in the evaluation system, in preparing the court president's evaluation report, measures such as seeking the opinion of a higher instance may be implemented.

²³ A judge's personal file is a confidential record that contains detailed information about the judge's professional career and personal background. This file typically includes documents such as the judge's resume, performance evaluations, disciplinary records, training certificates, and any other relevant personal and professional information. The personal file is maintained for administrative purposes and is used to track the judge's career progression, achievements, and any issues that may arise during their tenure.

²⁴ In several member States where court presidents conduct the professional evaluation, judges have been looking for reforms of their professional evaluation system.

Guideline 19.

Gathering input from court staff, legal practitioners familiar with the judge's work, and other court users may further enhance the evaluation process.

In some cases, court staff and legal professionals familiar with the judge's work can also take part in the evaluation process. In France, a "360 degree professional evaluation" of court presidents, evaluation method provided for by law but not applied to date, gathers feedback on the concerned person from a number of sources who know him/her. These might be colleagues and those outside the judiciary but who are also stakeholders in the work of the court president – such as court officials or legal practitioners. In the Netherlands, the evaluated judge gives the evaluator the names of four court staff members who, at the request of the evaluator, then provide information about the judge.

By considering feedback from those who work within or interact with the judicial system, and granted that they have sufficient knowledge and experience of the judiciary, it becomes possible to gain valuable insights into the work of the evaluated judge. However, to maintain the integrity of the evaluation process and safeguard judicial independence, it is imperative to implement measures that prevent the abuse of this feedback channel. Moreover, their role should also be solely advisory and not decisive.

As far as court users' participation in the evaluation process is concerned, the requirement for identifying the person providing information is fundamental to strike a balance between acknowledging the general value of feedback from court users and safeguarding judicial independence. The information should also be communicated to the judge that is being evaluated.

There are also growing debates on the possibility of associating non-judicial members with the body responsible for evaluation, in an advisory role. In this approach, the evaluation panel includes members from outside the judicial system, who are impartial, have legal training and sufficient knowledge and experience of the judicial system. This model emerged from ongoing discussions in several Member States, highlighting a recurrent concern about the accountability of the judiciary.

8. METHOD AND REPORT STRUCTURE

The results of the Comparative analysis show that there is a variety of structures and evaluation methods used in the evaluation reports, as for example essay based²⁵, scaling-based²⁶, point-based and percentage-based²⁷.

The essay-based evaluation, usually combined with scaling for certain specific evaluation criteria and an overall final evaluation that is scaling-based, is the most common method used in member States. Point based method seems less common²⁸.

Guideline 20.

The evaluation report's structure and contents should be balanced between qualitative and quantitative elements to provide judges with a thorough and constructive assessment of their judicial activities.

²⁵ An essay based method is written in a narrative style, the evaluator draws out an in-depth report addressing numerous aspects of professional performance of the evaluated judge.

²⁶ A scale based method is systematic and quantifiable grounded on predefined criteria for assessing performance. Achieved results are put against a scaling system.

²⁷ In a point method, predefined criteria are used for assessing performance, each criteria is assigned a range of points based on the criteria's relative importance and weighted (divided into levels or degrees) which are then assigned points summed to form a total point score.

²⁸ See comparative analysis in appendix, Question 24.

The structure and content of the evaluation report should strike a careful balance between qualitative and quantitative elements, leveraging textual descriptions, statistical data, and evaluation of quantitative and statistical data, observations on the quality of judicial activity supported by factually substantiated data. The possibility to combine textual descriptions with scaling or point-based approach for specific evaluation criteria allows evaluators to capture the nuances of judicial work while maintaining a structured and quantifiable assessment for certain criteria.

Guideline 21.

The evaluation report should follow a clear structure, preferably predefined by (subordinated) legislation.

A structured report provides a clear and organised presentation of the evaluation findings. This ensures that both evaluators and judges can easily navigate through different aspects of the evaluation, fostering a better understanding of the evaluation. In this way, the report can systematically cover various dimensions of a judge's work, including quantitative criteria, qualitative observations, and specific evaluation criteria. This comprehensive and standardised approach ensures that no critical aspect is overlooked and helps maintain objectivity and consistency in the evaluation process. It facilitates the comparison of quality of work across different judges or evaluation periods. This can be particularly valuable for identifying trends, patterns, or areas of improvement across the judiciary. Finally, it enhances transparency by clearly outlining the criteria and methodologies used in the evaluation.

APPENDIX

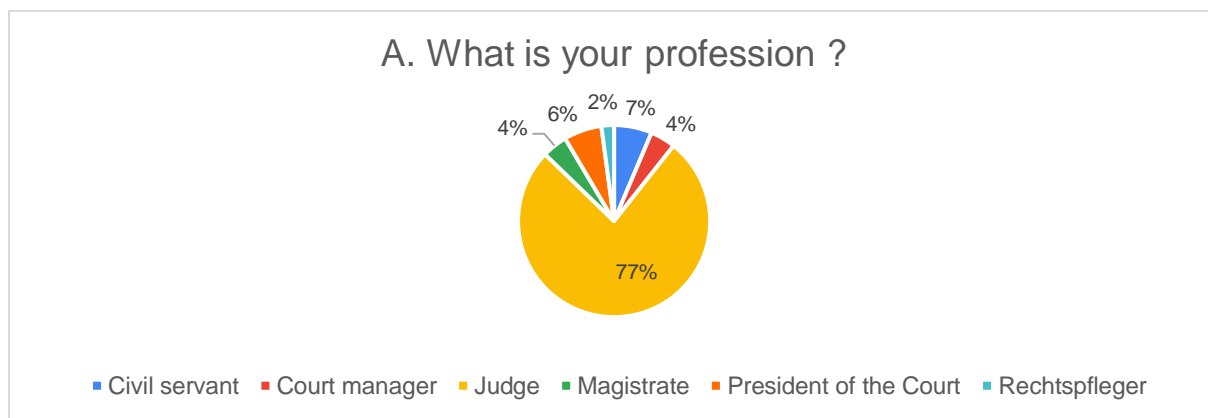
HOW TO ASSESS THE QUALITY OF THE WORK OF JUDGES? COMPARATIVE ANALYSIS²⁹

Introduction

The Consultative Council of European Judges (hereafter CCJE) adopted its Opinion No. 17 in (2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence (hereafter Opinion No. 17). In line with this Opinion, 'individual evaluation of Judges' comprises the assessment of the work and professional abilities of individual judges. In addition, the Opinion stresses the importance of basing evaluation on quantitative and qualitative criteria with an emphasis on the latter. The tool developed by CEPEJ-GT-QUAL should therefore usefully complement CCJE's Opinion with concrete guidelines on how the quality of a judge's work should be measured (method and criteria).

A computer questionnaire was designed to gather data from member States about the individual work evaluation of judges. CEPEJ received 48 valid replies from 26 member States: Andorra, Austria, Azerbaijan, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Latvia, Luxemburg, Republic of Moldova³⁰, North Macedonia, Norway, Poland, Portugal, Romania, Slovak Republic, Serbia, Sweden, Switzerland, and Ukraine³¹. The questionnaire response rate was relatively good; nevertheless, the results of the analysis must be interpreted within the context of the limitations of the research. To obtain a better insight into the evaluation process, template evaluation forms from 15 member States were also collected.³²

The table below shows information about the structure of respondents:



The quality of the data acquired through questionnaire is highly contingent on the respondents' capacity and willingness to provide complete and reliable answers. While answers obtained through closed-ended questions (including multiple choice questions) were analysed using

²⁹ The document CEPEJ-GT-QUAL(2023)11PROV2 was prepared by Nina Betetto and Pierre Thiriar, under the supervision of the CEPEJ-GT-QUAL and presented to the CEPEJ Plenary in December 2023.

³⁰ In regard to the Republic of Moldova, on 21.06.2023 entered into force the Law on the selection and work appraisal of judges, no. LP147/2023 of 09.06.2023. In order to take into account the new provisions regulating the evaluation of judges, subsequently a new set of responses to the questionnaire has been provided to the CEPEJ Secretariat which has been used for this Study.

³¹ Findings of the "Legal Analysis on the Status of the institutional and functional aspects as well as the existing challenges for judicial evaluation and training in Ukraine" drawn up within the framework of the project "Ensuring the effective implementation of the right to a fair trial (Article 6 of the ECHR) in Ukraine" were also taken into account for Ukraine.

³² Austria, Azerbaijan, Belgium, Croatia, France, Georgia, Germany, Greece, Hungary, Latvia, Republic of Moldova, North Macedonia, Portugal, Romania, Switzerland.

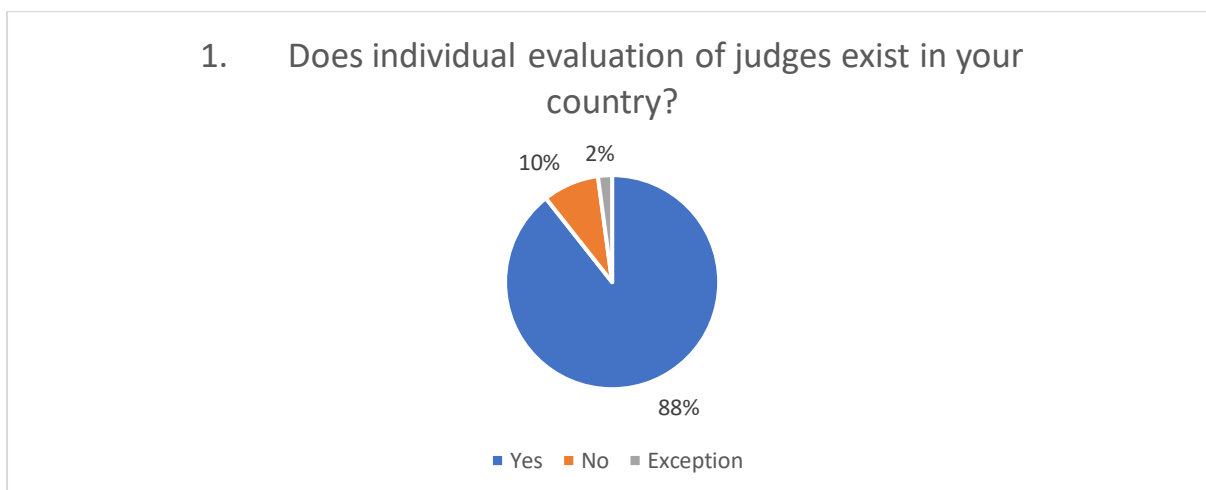
quantitative methods, the answers obtained through open-ended questions were analysed using qualitative methods³³ involving a more critical approach.

Finally, to add value to the presented data, the study includes conclusions of the authors based on their expertise and understanding of the collected replies to the questionnaire.

Analysis

1. Does individual evaluation of judges exist in your country?

Three countries replied that individual evaluation of judges did not exist at all in their country.³⁴ A more analytical approach reveals that despite the fact that official evaluation of judges is not undertaken to assess the individual ability of judges in those countries, there nevertheless seem to exist some forms of evaluation aimed at assessing, maintaining and improving the quality of the work of judges and the judicial system. Apart from traditional methods of judicial accountability, namely the appellate court review of the legal merits of individual decisions and working in chambers or teams,³⁵ other mechanisms, such as regular file checks looking primarily into dilatory tactics and delays, but also procedural errors,³⁶ have been put in place.



2. If yes, is it formal or informal?

2.a If the system of individual evaluation of judges in your country is informal, please describe it.

In Europe there are countries using formal and/or informal evaluation systems.³⁷ In the case of formal evaluation, the aims of the evaluation, the criteria used, the composition of the evaluating body, the procedure for evaluation and its possible consequences are all clearly set out in advance of an evaluation exercise. The rights and duties of the evaluated judge and the evaluating body are regulated by means of primary or subordinate legislation. An informal evaluation will not use either formalised ratings or criteria. It will usually have no direct consequences for the evaluated judge. In addition, the evaluation of judges may also result

³³ Quantitative research collects numerical data and analyses it using statistical methods to identify patterns, and make predictions. Qualitative research, on the other hand, collects non-numerical data, such as opinions, attitudes and experiences to produce a deeper description of the phenomenon being studied.

³⁴ Czech Republic, Denmark, Andorra.

³⁵ Czech Republic, Denmark.

³⁶ Czech Republic.

³⁷ The terms formal and informal evaluation of judges were coined by the ENCJ. See Development of minimal judicial standards III: Minimum standards regarding evaluation of professional performance and irremovability of members of the judiciary, Report 2012-2013 (hereafter ENCJ Report), p. 10.

from the work organisation, where judges work together in teams or chambers and maintain certain quality standards informally.

The evaluation of work of judges in four specific jurisdictions tends to be made in an informal way.³⁸ In all other member States where individual evaluation of judges exists a formal system of evaluation has been identified.³⁹

In member States with an informal system of evaluation, the evaluation process is conducted by way of a discussion with the court president or head of department, who have meetings on a regular basis (once or twice a year) with each judge. The matters discussed include issues such as compliance to deliver justice in a reasonable time, setting career goals, the number of cases resolved, the judge's need for training, and his/her satisfaction with salary, work and workplace.⁴⁰ Otherwise, as cases are heard in panels of two or three judges, a peer review feedback is used to identify each other's strengths and weaknesses.⁴¹

Compared to the CCJE Summary of replies from 2014, there seems to be a slightly higher tendency towards evaluating judges, either formally or informally. The requirement to produce justice of the highest quality and proper accountability implies that some form of individual evaluation of judges is necessary to meet this requirement. The answer whether such evaluation must be of a formal character should be rooted in the judicial system, traditions, and culture of each member State.

3. In the case of formal evaluation, is there any informal assessment undertaken (e.g. advice from senior colleagues, consultation), apart from formal evaluation?

24 Member States replied that there is no informal assessment undertaken in conjunction with the formal evaluation., A further 10 Member States responded that both formal and information assessments are undertaken. Divergent replies from the same member State to this question may be attributable to the fact that informal or semi-formal assessment mechanisms of evaluation, rather than being regulated by law on national level, depend on the initiative of court presidents and senior judges who discharge management and mentoring responsibilities.

The experts recall that various forms of informal assessment can be effective ways of improving the skills of judges and thereby improving the overall quality of the judiciary. A formal evaluation system of work of judges alone is less effective than evaluations complemented by forms of informal assessment, which usually presuppose an inclusive process and participation of the evaluated judge. Two good practices highlighted in the replies to the questionnaire deserve attention in this regard. In a formal evaluation system, the possibility to discuss the results of the evaluation must be offered to the evaluated judge, apart from his/her procedural rights.⁴² Besides formal evaluation, a mentoring system for "junior" judges appointed for a definite term of three years was introduced.⁴³ These judges are mentored in their everyday work by a senior judge who hears the same case types and usually has spent several decades on the bench. While fully respecting judicial independence, the mentoring system is aimed at helping "junior" judges in expanding their professional knowledge and obtaining self-reliant routine in conducting hearings and managing cases on their docket.⁴⁴

³⁸ Finland, Norway, Sweden, Switzerland (*Tribunal fédéral suisse*).

³⁹ In Summary of replies to the questionnaire for the preparation of the CCJE Opinion No. 17 (2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence, an informal system of evaluation was also found to have existed in common law countries, such as Cyprus, England and Wales, and Malta. CEPEJ did not receive replies to the questionnaire from those countries.

⁴⁰ Finland, Norway, Sweden.

⁴¹ Norway.

⁴² Germany.

⁴³ Estonia, Hungary.

⁴⁴ Hungary.

4. What is the frequency of evaluation?

Informal evaluation systems, less complex and formalized by nature, allow for a relatively high frequency of evaluation, ranging from six months⁴⁵ to one year,⁴⁶ thereby forming a special category.

In a much larger group of member States where there is formal evaluation of the work of judges, a distinction should be made between member States which decided to evaluate judges regularly and those that evaluate judges for specific reasons, such as a candidacy for promotion,⁴⁷ or evaluate certain categories of judges, such as newly appointed judges as a part of their appointment to permanent posts,⁴⁸ or court presidents.⁴⁹ In the former group, the frequency of evaluation ranges from one year to five years.⁵⁰ A system of evaluation where judges are evaluated one year after starting their new duties or whenever they change position may also be considered as a regular form of evaluation.⁵¹ An innovative approach is used in two member States where the frequency of evaluation decreases in proportion to the years of judicial office of the evaluated judge.⁵²

In its Opinion No. 17, the CCJE took the view that regular evaluations, to avoid an impression of constant supervision, which could endanger judicial independence, should not take place too frequently.⁵³ In this context, it appears that two- and three-year intervals are at the upper end of the scale when compared with Council of Europe member States.

Additionally, in several member States, apart from ordinary evaluation, which takes place routinely and periodically, evaluations can be initiated in specific situations (extraordinary evaluation), for example upon a request of a court president⁵⁴ or the evaluated judge,⁵⁵ when a judge applies for promotion,⁵⁶ in case of transfers,⁵⁷ when any case heard by the judge has been pending for more than two years without any change as to the person of the judge(s), and examination of the files of the case suggests that the case has failed to be adjudicated within a reasonable time because of a failure on the judge's part.⁵⁸

⁴⁵ Sweden, Switzerland (*Tribunal fédéral suisse*).

⁴⁶ Finland, Norway.

⁴⁷ Poland, Ukraine. In Ukraine, the evaluation is called "qualification assessment" and is primarily supposed to be conducted when a judge applies for sitting for qualifications evaluation including participation in the competition. It has not been practised since the suspension of the High Qualification Commission of Judges of Ukraine in 2019.

⁴⁸ Estonia, Georgia. For example in Georgia, the newly appointed judges are evaluated three times: one year and two years after their assignment to the position, and four months before the expiration of the three-year term of judicial office. In Estonia, the evaluation is carried out only during the first three years of work by the Judges' Examination Committee based on statistical data.

⁴⁹ Croatia.

⁵⁰ One year: Greece. Two years: France. Three years: Belgium, Republic of Moldova. Four years: Germany, North Macedonia. Five years: Azerbaijan, Latvia, Luxemburg, Portugal, Serbia, Slovak Republic.

⁵¹ Austria.

⁵² Hungary, Romania. In Hungary, the work of judges who have already been appointed for an indefinite term shall be evaluated in the third year following the appointment, and after that, the evaluation process shall be conducted every eight years. The last evaluation may be conducted six years before reaching the upper age limit applicable to the judge.

⁵³ Opinion No. 17, para. 40.

⁵⁴ Austria, Luxemburg.

⁵⁵ Austria, Hungary.

⁵⁶ Croatia, Germany, North Macedonia.

⁵⁷ Germany.

⁵⁸ Hungary.

5. What is the purpose of evaluation?

Based on the replies to the questionnaire, it can be concluded that in informal evaluation systems, the purpose of evaluation is self-improvement of judges⁵⁹, career coaching of younger judges⁶⁰ as well as feedback to the management.⁶¹

In a similar vein, in member States with a formal system where evaluations are undertaken routinely and periodically, the purpose of evaluation is self-improvement of judges;⁶² career coaching of younger judges;⁶³ pointing out of lack or existence of specific skills;⁶⁴ part of appointment to permanent post or promotion procedures;⁶⁵ to determine the level of professional knowledge and skills of judges⁶⁶ and to identify the capability of a judge to administer justice.⁶⁷ The results of the evaluation for used with the purpose of organising quality professional training of judges.⁶⁸ Typically, the respondents selected more than one option from the list of answers above.

In brief, the evaluation of judges in both formal and informal systems of evaluation is aimed at maintaining and improving the quality of the work of judges in order to strengthen public trust in judiciary⁶⁹ as well as providing information which can assist in improving the organisational structure of courts and the working conditions of judges.

In member States with a formal system where judges are evaluated only for specific reasons, such as a candidacy for promotion,⁷⁰ or only certain categories of judges are evaluated, such as newly appointed judges as a part of their appointment to permanent post⁷¹ or court presidents,⁷² the goal of evaluation is, by its very nature, more targeted.

⁵⁹ Finland, Norway, Sweden, Switzerland.

⁶⁰ Estonia, Finland, Sweden.

⁶¹ Sweden.

⁶² Austria, Belgium, France, Germany, Hungary, Latvia, Luxemburg, North Macedonia, Portugal, Romania, Serbia, Switzerland.

⁶³ Belgium, France, Germany, North Macedonia, Portugal, Serbia.

⁶⁴ Azerbaijan, Belgium, France, Germany, Latvia, Portugal, Slovak Republic.

⁶⁵ Austria, Azerbaijan, France, Germany, Hungary, Latvia, Poland, Portugal, Romania, Serbia.

⁶⁶ Republic of Moldova.

⁶⁷ Ukraine.

⁶⁸ Republic of Moldova.

⁶⁹ In the same vein, Hungary formulated its response as follows: "The aim of evaluating the performance of judges appointed for a definite (3-year) term is to determine whether they are suitable to be appointed for an indefinite term. Evaluating the performance of judges appointed for an indefinite term on a regular basis is to ensure efficiency and high quality of judicial work, while fully respecting judicial independence, as well as to provide judges with feedback on their strengths and skills they need to improve, based on the results of an objective examination process. Evaluation is the basis and the incentive for further improvement; besides that, it serves as a basis for a uniform system of promotion and for the acknowledgment of high-quality performance. Finally, it gives a real and comparable picture of the professional activity of judges."

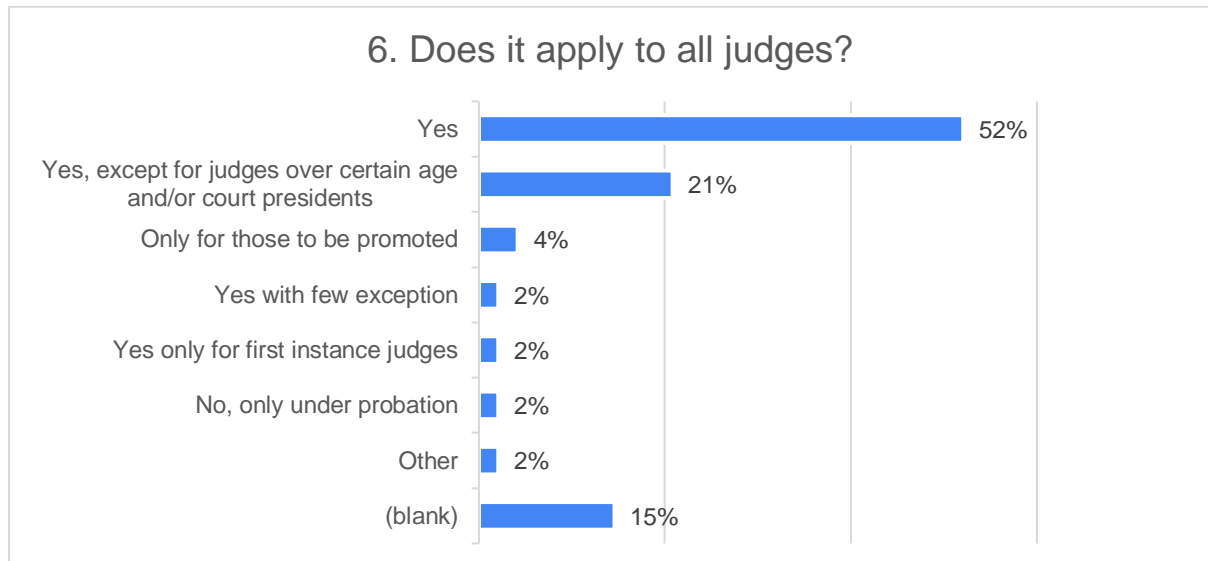
⁷⁰ Poland.

⁷¹ Estonia, Georgia, Greece..

⁷² Croatia.

6. Does evaluation apply to all judges?

Data from the respondents' replies to the question are presented in the table below:



The replies show that in the majority of member States regular evaluations apply to all judges. When it comes to exceptions, in the view of experts, some caution is needed. While exceptions based on factual basis, such as those often made for judges of the highest court(s)⁷³ or for judges later in their career, are less problematic,⁷⁴ exemptions not objectively justified, such as limiting evaluations to first instance judges⁷⁵ or excluding court presidents,⁷⁶ may create an impression of favouritism, thereby raising doubt as to the fairness of the evaluation system and equal treatment of all judges. Bodies responsible for the evaluation of judges should, therefore, be very careful in determining the categories of judges exempt from evaluation.

⁷³ Croatia, France, Greece, Hungary, Serbia.

⁷⁴ This approach is based on the assumption that regular evaluation of the most experienced judges is not necessary.

⁷⁵ For example, Portugal.

⁷⁶ For example, France. The CCJE in its Opinion No. 19 (2016) on the role of court presidents (para. 41) took the view that the performance of court presidents should be subject to evaluation in the same way as the work of ordinary judges.

7. Is self-evaluation practised as part of the individual evaluation of judges?

Data from the respondents' replies to the question are presented in the table below:



The experts wish to stress that a self-assessment, when completed without bias, and with the goal of improvement, can be an excellent work review tool for both judges and evaluators. A key benefit of self-evaluation is that it opens a line of communication for the judges to give feedback on their work, but also the negative sides of their job. Also, it can give the evaluated judge the chance to look at his or her work through the eyes of court administration, that is the perspective they usually do not have. It is therefore welcome that an increasing number of member States seem to have introduced a system where the evaluation is preceded by self-evaluation or forms part of the individual evaluation.

In member States with an informal system of evaluation, the evaluated judge is typically invited during a discussion to address issues such as his or her satisfaction with work and workplace, career goals, and his or her strengths and weaknesses related to work.⁷⁷ Self-evaluation is also common to member States with a formal system of evaluation. Preceding the evaluation, judges are invited to present a report describing his or her activities, training courses, in which they participated, and setting professional goals;⁷⁸ prepare a SWOT⁷⁹ analysis; fill in a self-assessment form of their professional activity consisting of several topics and submit it to the evaluating body.⁸⁰ Furthermore, a judge's right to self-assessment may be recognized by law.⁸¹

8. Is peer evaluation practised as part of the individual evaluation of judges?

For this question peer evaluation is considered as a type of informal evaluation as opposed to formal evaluation (with pre-established criteria, procedure, etc.) where a judge has an informal talk about his/her work and career with a senior or more experienced judge.

Five respondents replied to this question in the affirmative by giving the following examples: peer evaluation is conducted by way of a discussion with the local court president or senior court president;⁸² the evaluation body is composed of the president of the court, the division president and a fellow judge who volunteered to be an evaluating judge;⁸³ some courts and judges practice shoulder to shoulder advice among peers by using a video camera in court

⁷⁷ Finland, Norway, Sweden.

⁷⁸ France, Portugal.

⁷⁹ Strengths, Weaknesses, Opportunities, Threats. Belgium.

⁸⁰ Latvia, Luxemburg, Romania.

⁸¹ Serbia.

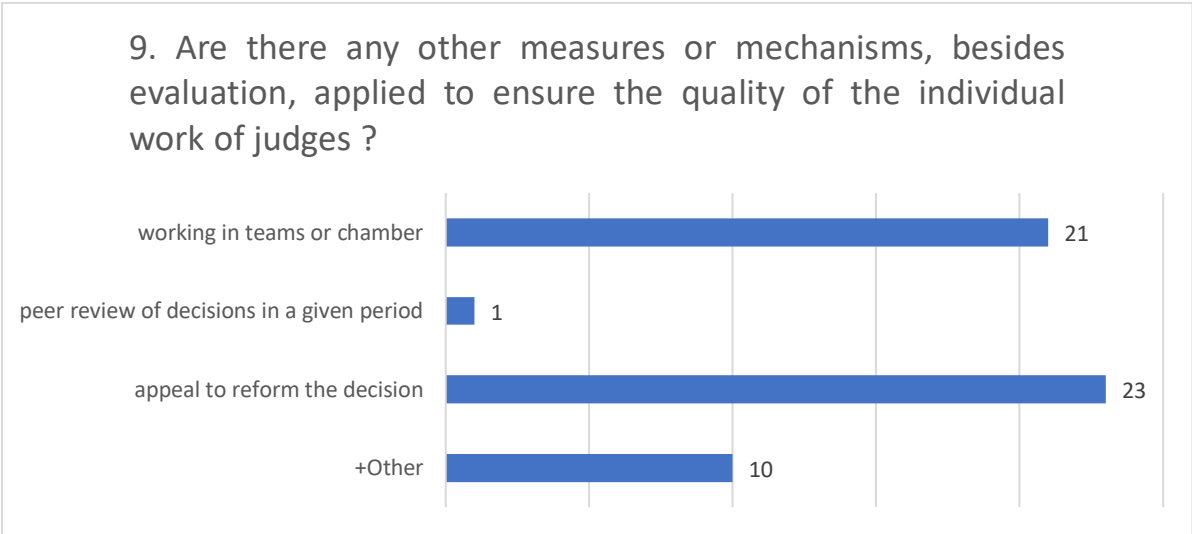
⁸² France.

⁸³ Belgium.

hearings and discussing the judge's behaviour (how they conduct a hearing, what body language they use, how they address parties and witnesses etc.).⁸⁴ A “360 degree professional evaluation” of court presidents undertaken on an experimental basis also merits a mention.⁸⁵ The High Judicial Council agreed on a pilot experimentation of that system on the basis that the evaluation would be circumscribed to the managerial role of court presidents. “A 360 degree professional evaluation” is an evaluation system that gathers feedback on an individual from a number of sources who know him / her. Typically, these might be colleagues and those outside the judiciary but who are also stakeholders in the work of the court president – such as court officials or legal practitioners. This approach seems worthwhile, subject to assessing its impact.

9. Are there any other measures or mechanisms, besides evaluation, applied to ensure the quality of the individual work of judges?

Data from the respondents’ replies to the question are presented in the table below:



The judiciary must be accountable through the work of the judges in deciding the cases brought before them, more particularly through their decisions and the reasons given for them. Judicial decisions must be open to scrutiny and appeal. The CCJE named this “judicial accountability”.⁸⁶ In accordance with the fundamental principle of judicial independence, the appeal system is in principle the only way by which a judicial decision can be reversed or modified after it has been handed down and the only way by which judges can be held accountable for their decisions, unless they were acting in bad faith.⁸⁷ Accordingly, the vast majority of respondents note that appellate court review of the legal merits of individual decisions is applied to ensure the quality of the individual work of judges. Pursuing the same goal, working in chambers is a well-established practice. By way of example, cases are heard in panels of two or three judges so as to provide a peer review feedback to identify each other’s strengths and weaknesses.⁸⁸

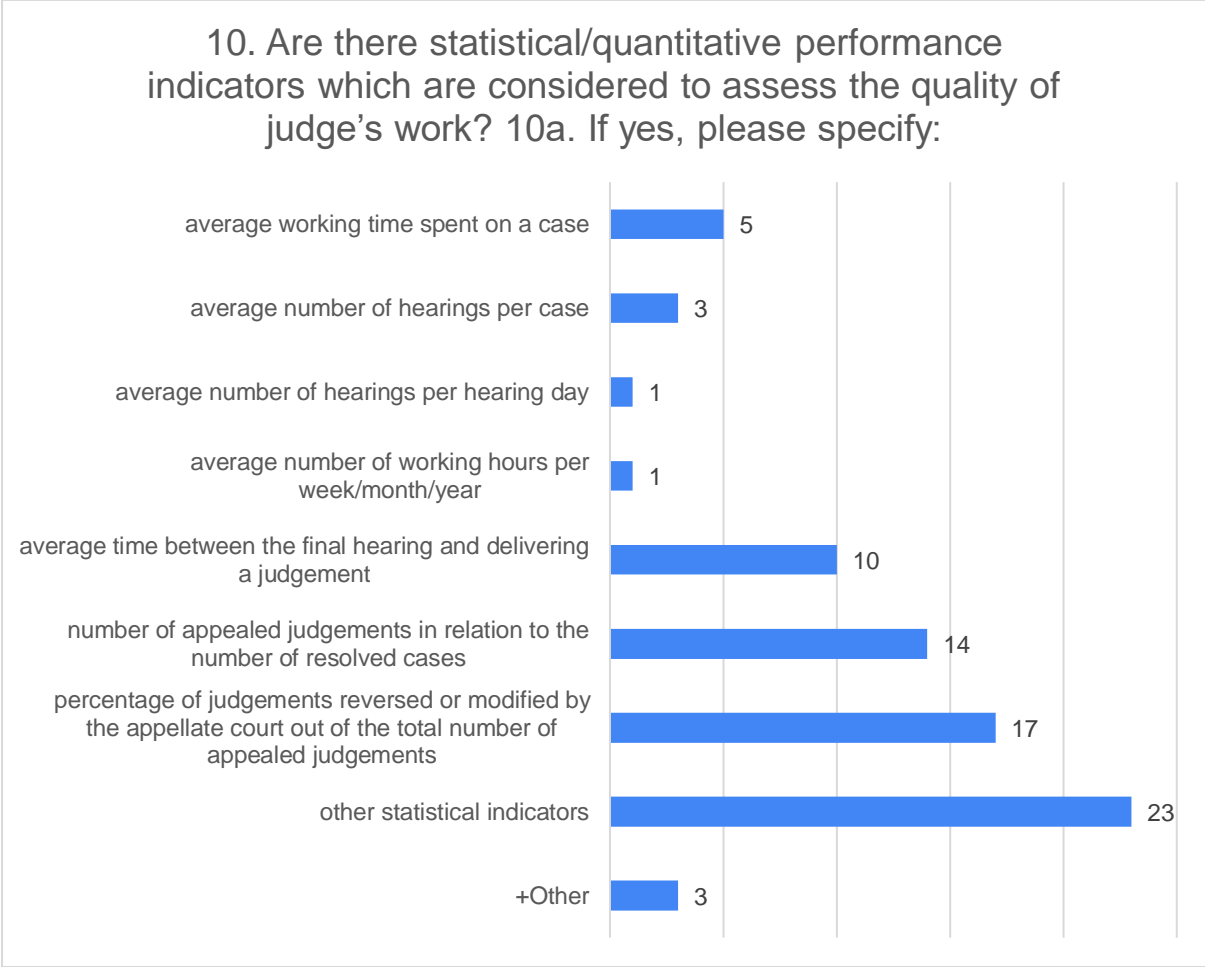
Among other mechanisms, the respondents report on training on management, leadership, legal issues, judgecraft, judicial ethics, etc.;⁸⁹ meetings held by the chambers (bodies of judges

⁸⁴ Norway.
⁸⁵ France.
⁸⁶ See Opinion No. 18 on the position of the judiciary and its relation with the other powers of state in a modern democracy (para. 23; hereafter Opinion No. 18).
⁸⁷ Opinion No. 18, para. 23.
⁸⁸ Norway.
⁸⁹ Azerbaijan, Georgia, Romania, Switzerland.

adjudicating the same case types, such as civil, criminal or administrative matters) at high courts, regional courts of appeal and the highest court in the country;⁹⁰ analyses of specific areas of judicial work conducted by the highest court as a part of its duties ensuring the uniformity of jurisprudence;⁹¹ judicial inspection.⁹²

10. Are there statistical/quantitative performance indicators which are considered to assess the quality of judge’s work? If yes, please specify.

Based on the responses to the questionnaire, to assess the quality of a judge’s work, statistical/quantitative performance indicators have been found to be used in virtually all member States with both formal and informal system of evaluation of judges.⁹³



All indicators predetermined in the questionnaire, among which the category “other statistical indicators (number of resolved cases, ratio between resolved and received cases, ratio between pending and resolved cases, average length of resolved cases, average length of pending cases, age of pending cases, backlog, etc.)” is the most widely applied across the member States, have been identified. In addition, the respondents mention the following quantitative indicators: number of reversed or modified judgements for procedural errors;⁹⁴

⁹⁰ Hungary.
⁹¹ Hungary. The so-called jurisprudence-analysing working groups analyse a specific area on the basis of finished cases and summarize their findings in analysis reports which are made available to all judges.
⁹² Poland.
⁹³ The only exception is Luxemburg.
⁹⁴ Azerbaijan.

percentage of judgements delivered in due time;⁹⁵ average time between receiving a case and delivery of final judgement;⁹⁶ number of hearing days.⁹⁷

The experts wish to recall that the efficiency of judge's work can be an important factor for evaluation, especially in the context of heavy backlogs and insufficient number of judges; nonetheless, a heavy reliance on this aspect is problematic because it might lead to a situation where judges concentrate their intellectual resources toward less complicated cases, while complex cases remain unsolved. The age of pending cases may play a role in individual evaluation because it demonstrates, when properly construed, whether a judge decides cases on the docket following a chronological order, from oldest to newest, without giving unfair precedence to new cases. When coupled with the "clearance rate" indicator (i. e. number of resolved cases), it may help counterbalance the "side-effect" of purely result-oriented indicators.

Furthermore, the quantitative indicators, when not interpreted with caution, might lead to wrong conclusions. First, targets achieved by the evaluated judges, with a few exceptions, including average number of hearings per case and average time between the final hearing and delivering a judgement, should be compared with the targets achieved by comparable judges (i. e. judges who hear the same type of cases and have a similar workload). Second, a judge should not be evaluated negatively because of problems he or she cannot influence, such as for example delays caused by massive backlogs. A hypothetical scenario – imagining a diligent judge who despite having resolved a very high number of cases, at the end of the monitored period has more cases on his or her docket than at the beginning – illustrates this point.

It follows that 1) individual professional evaluation must rely on a reasonable balance between qualitative and quantitative criteria or indicators;⁹⁸ 2) an evaluation system based on objective criteria in most cases requires that the results be seen by comparison to the targets achieved by comparable judges. These aspects of evaluation are further examined below (point 10b and 11).

Based on the responses, the indicators "number of appealed judgements in relation to the number of resolved cases" and "percentage of judgements reversed or modified by the appellate court out of the total number of appealed judgements" are also widely used. In order to evaluate the quality of a judge's decision, evaluators should concentrate on the methodology a judge applies in his/her work overall, rather than assessing the legal merits of individual decisions. Appeal is the only legitimate way to challenge the substantial quality of any judgment. In this context, the experts wish to recall the words of the ENCJ and CCJE: "The conclusion reached is that the rate of success of the appeals against decision should be used cautiously as one of the various criteria for the evaluation, since it does not necessarily reflect the quality of the decisions subject to appeal",⁹⁹ unless 'the number and manner of the reversals demonstrate clearly that the judge lacks the necessary knowledge of law and procedure.'¹⁰⁰

⁹⁵ Estonia.

⁹⁶ Georgia.

⁹⁷ Hungary.

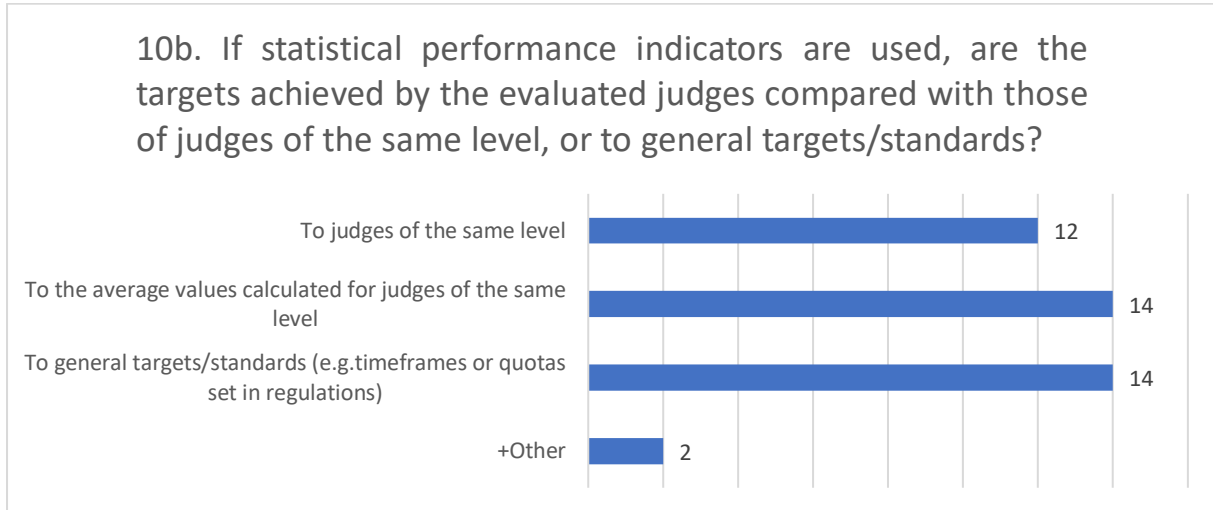
⁹⁸ Opinion No. 17, para. 34, Rec. 6

⁹⁹ ENCJ Report, p. 16.

¹⁰⁰ Opinion No. 17, para. 35.

10.b If statistical performance indicators are used, are the targets achieved by the evaluated judges compared with those of judges of the same level, or to general targets/standards?

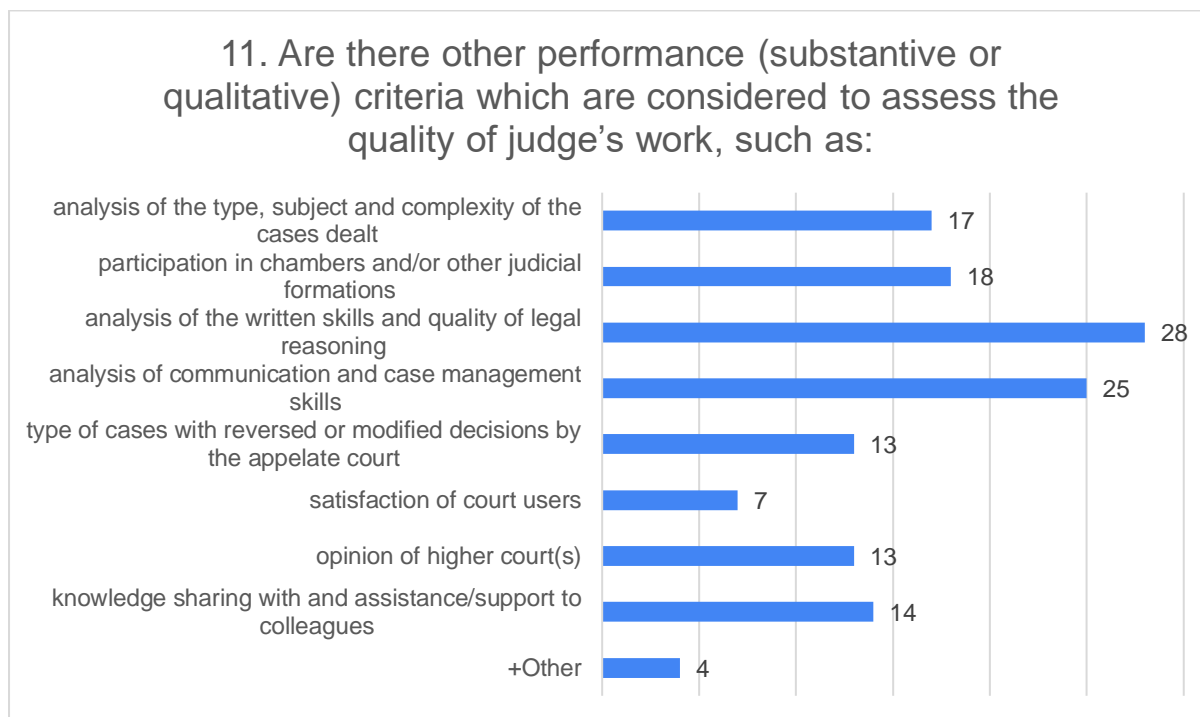
In all member States, including those with an informal system of evaluation, the results of a judge's work are assessed by comparing them to other judges at the same level, to average values calculated for judges at the same level, or to predetermined timeframes. The responses to the question are almost evenly distributed between the three possible answers, as follows:



Overall, general targets may be valuable tools that help monitor the efficiency of judges' work on condition that the number of cases and their complexity is evenly distributed among the courts in the country. However, the experience shows that this is often not the case. When there are differences in the caseload of courts and/or in the complexity of cases they adjudicate, caution is needed not to cause inequality by using general timeframes among judges who are not in the same position.

11. Are there other performance (substantive or qualitative) criteria which are considered to assess the quality of judge’s work?

The following (substantive or qualitative) criteria are considered across member States to assess the quality of judge’s work:



All indicators predetermined in the questionnaire have been identified. In addition, the respondents mention the following qualitative indicators: extrajudicial activities;¹⁰¹ scientific expertise, adaptability to new tasks, including to new technologies, cooperation skills, ability to deal with extra duties, compliance with remarks made during previous evaluation;¹⁰² the judge’s activities related to preparation of hearings and decisions (the way the judge prepares for the hearings and conducts the hearings), application of substantive and procedural law provisions, respect of case-law, measures taken after a decision has become final and binding, observing procedural time limits, postponement practices.¹⁰³

It is welcome that quantitative indicators for the evaluation are complemented by qualitative criteria in most member States, with both formal and informal system of evaluation.¹⁰⁴ The analysis of the written skills and quality of legal reasoning analysis of communication and case management skills seem to be by far the most important assessment criteria. New and additional indicators have been developed over the last years, with “satisfaction of court users” gaining in popularity in several member States.¹⁰⁵

¹⁰¹ Germany.

¹⁰² Greece.

¹⁰³ Hungary.

¹⁰⁴ Among members with the informal system, the use of qualitative performance criteria has been reported in Norway and Sweden.

¹⁰⁵ For example in Belgium, Estonia, Norway, Portugal, Switzerland.

12. In your opinion, are the criteria for evaluation of the quality of the work of judges clear, objective, and verifiable?

Forty respondents replied to the question, which is a fairly good response. Before analysing them, the replies have been divided into three groups: 1) the group, consisting of 23 respondents from 16 member States, who replied positively;¹⁰⁶ 2) the group, consisting of 11 respondents, who replied negatively; 3) the group, consisting of respondents who replied positively, but at the same voiced reservations as to the existing evaluation system, respondents who gave mixed answers, or the respondents who did not or could not reply concisely.¹⁰⁷

The respondents in the first group believe that the criteria for evaluation of the quality of the work of judges are clear, objective, and verifiable for the following reasons: the basis and main elements for evaluation are adopted, known in advance¹⁰⁸ and published by the competent judicial authority,¹⁰⁹ that is the judiciary itself;¹¹⁰ the criteria are objective¹¹¹ enough given that it is hard to assess judges' work through analysis bases on objective parameters;¹¹² it is as good as it can be without jeopardizing judge's independence;¹¹³ the criteria are mainly based on court statistics and therefore clear and verifiable;¹¹⁴ the evaluation is subject to appeal;¹¹⁵ the evaluation is based not only on the conclusions drawn by the evaluator but also on the opinion of the head of chamber, as well on the decisions by higher level;¹¹⁶ the criteria are clear;¹¹⁷ the criteria are defined by law and therefore measurable;¹¹⁸ before the final assessment, the evaluated judge receives a draft and can ask questions about it.¹¹⁹

Conversely, the respondents in the second group believe that the criteria for evaluation of the quality of the work of judges are unclear, subjective, and not verifiable for the following reasons: there is no common standard – one colleague would evaluate the same judge as perfect, another one would describe him or her as only fulfilling minimal standards;¹²⁰ quantitative indicators are clear and verifiable, whilst the qualitative indicators are not;¹²¹ the evaluation is based mainly on statistical indicators, moreover, it is hard to assess the quality of judgements;¹²² the criteria are very nonspecific and subjective, the decisions are not fully transparent;¹²³ the criteria are not clear and depend on the evaluator/inspector, which is aggravated by the fact that judges are evaluated using a rating scale without motivating the decision;¹²⁴ there is too much focus on the quantitative evaluation;¹²⁵ it depends on who prepares it and how, there is a high degree of discretion and unpredictability in making

¹⁰⁶ Azerbaijan, Belgium, Croatia, Estonia, France, Georgia, Germany, Hungary, Latvia, Luxemburg, Norway, Portugal, Romania, Sweden, Switzerland, Ukraine.

¹⁰⁷ For example, in Serbia, a new system of evaluation has just been adopted. Czeck Republic where there is no evaluation of judges.

¹⁰⁸ Norway.

¹⁰⁹ Azerbaijan, Hungary, Latvia, Ukraine.

¹¹⁰ Latvia.

¹¹¹ Portugal.

¹¹² Belgium, Germany.

¹¹³ Sweden.

¹¹⁴ Estonia, Georgia.

¹¹⁵ France.

¹¹⁶ Hungary.

¹¹⁷ Luxemburg.

¹¹⁸ North Macedonia.

¹¹⁹ Norway.

¹²⁰ Belgium.

¹²¹ Finland.

¹²² France.

¹²³ Germany.

¹²⁴ Greece

¹²⁵ Norway.

assessments;¹²⁶ it is unfair not to consider the opinion of fellow judges and satisfaction of court users.¹²⁷

The following comments fall into the third group: the criteria are clear and objective, but their application is vague and unclear;¹²⁸ the criteria are clear and objective, but they cannot cover all situations, notably when a judge is dealing with new or complex legal questions;¹²⁹ the criteria will never be clear, and it will always be difficult to verify.¹³⁰

In today's judiciaries, the evaluation of judges relies on a mix of objective and subjective measures.¹³¹ The experts wish to caution that the worst disadvantage with objective measures of performance is the over-emphasis of measuring goal achievement. Those goals risks becoming the standard that judges all activities. Consequently, objective measures fail and stagnate the workforce in a desire to achieve those goals when complex processes, such as judiciary, are distilled into a single score.¹³² Subjective measures, in contrast, are very good at allowing heads of judiciary to exercise judgement about judges' work.

There seem to be opposing viewpoints on several issues regarding evaluation of judges, not only in different member States but also within the same member State. Nevertheless, several conclusions may be deduced from the replies to this question. Some judges, despite recognising that being a judge is a job that is not easily measured, are critical of the excessive use of quantitative indicators. Still others feel that the criteria, whether quantitative or qualitative, and ratings based upon them are often unfair, punitive, subjective, and arbitrary. It seems that the root of the problem lies in aligning theory and reality, and not that much in the criteria themselves, which are often bound to be in general terms. Or in the words of one of the respondents: "The criteria are clear and objective, but their application is vague and unclear." The replies of respondents who approve of the existing indicators clearly support this assumption. Their satisfaction has been shown to be positively related to factors such as transparency of indicators; a fair assessment procedure with reasoned decisions and a right to challenge the evaluation; participation of the evaluated judge providing him or her the chance to share his or her views on the work, also in a form of a discussion; gathering feedback from different levels and perspectives (for example, from court users, fellow judges and judges from a higher instance); involvement of a competent judicial authority in drafting the criteria.

13. In your opinion, are there other criteria that should be considered to assess the quality of judge's work? If yes, please list them.

Only a few additional suggestions have been made in this regard: satisfaction of court users;¹³³ judge's compliance with disciplinary rules, case management and communication skills, focus on self-improvement, readiness to use modern information and communication tools, ethical behaviour outside the court;¹³⁴ personal behaviour in professional relations, team work;¹³⁵ human approach to files;¹³⁶ whether the judge employs creative attitude towards his/her work

¹²⁶ Austria, Poland.

¹²⁷ Ukraine.

¹²⁸ Belgium.

¹²⁹ Georgia.

¹³⁰ Norway.

¹³¹ Objective performance measures (sometimes referred to as 'key performance indicators or KPIs' are independent of the observer. The measurement, by relying on factual data, is done using something other than the person observing (e. g. time or record of goals). In contrast, subjective performance measures are dependent on the observer and bases on opinions, feelings and general impressions. It is important to note that these are not clear cut categories and performance is often assessed using both.

¹³² For example, it would be absurd to measure judges solely on the quantity of judgements they write each month.

¹³³ Austria, Ukraine.

¹³⁴ Azerbaijan.

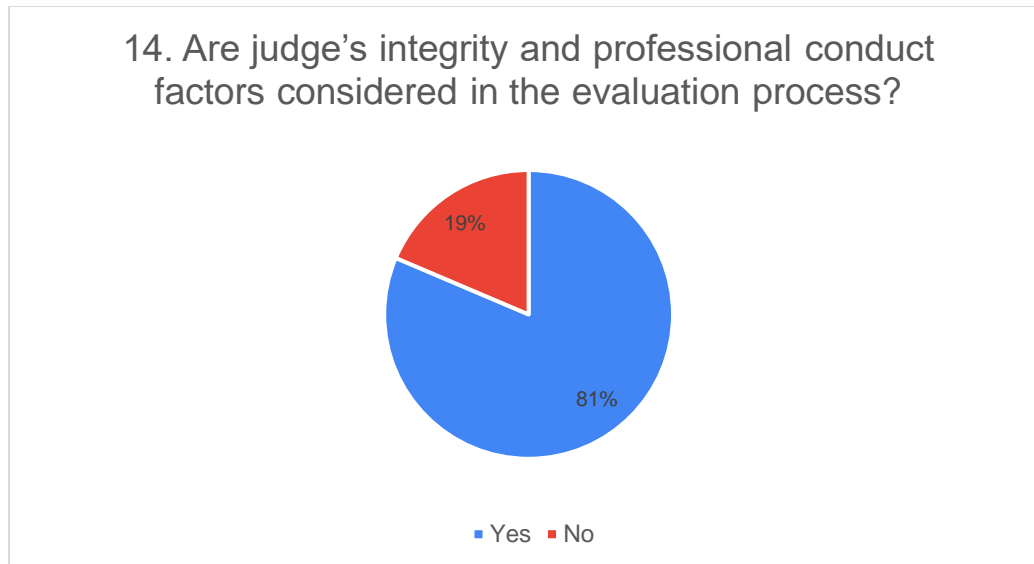
¹³⁵ Belgium, Norway.

¹³⁶ France.

ensuring individualism;¹³⁷ case management;¹³⁸ effectiveness is overemphasized;¹³⁹ clarity of judgement;¹⁴⁰ additional statistical indicators.¹⁴¹

14. Are judge's integrity and professional conduct factors considered in the evaluation process? If yes, how is it done?

Data from the respondents' replies to the question are presented in the table below:



As shown above, judge's integrity and professional conduct factors are considered in the evaluation process in most countries.

In some jurisdictions, the legislation appears to lay down a very detailed description of the integrity and professional conduct factors considered in the evaluation process. By way of example, the characteristics of a integrity criteria are: a) personal honesty and professional integrity; b) independence, impartiality and fairness; c) personal and professional conduct; d) personal and professional reputation; e) financial obligations.¹⁴² Integrity is assessed based on the following indicators: a) observance of professional ethics; b) number of disciplinary

¹³⁷ Georgia.

¹³⁸ Greece.

¹³⁹ Norway.

¹⁴⁰ Switzerland.

¹⁴¹ Ukraine.

¹⁴² Georgia. When assessing a judge based on personal honesty and professional integrity, the following qualities of a person, as a judge and a citizen, shall be taken into consideration: integrity, honesty, appropriate awareness of one's duties and responsibility, love of truth, transparency, civility and accuracy when performing official and other duties and fulfilling financial and other obligations (e.g. when completing a declaration of assets, paying bank or other loans). When assessing a judge based on independence, impartiality and fairness, account shall be taken of his/her adherence to principles, ability to independently make a decision, and resistance to influence, personal steadfastness and firmness, political or other type of impartiality, fairness, etc. When assessing a judge based on personal and professional conduct, account shall be taken of his/her adherence to judicial ethics, civility with regard to colleagues and other persons, conduct and image appropriate for a judge's high rank, restraint, the ability to manage one's emotions, appropriate conduct during disciplinary proceedings against him/her, in litigation to which the judge is a party, existence of criminal charges against the judge, etc. When assessing a judge based on personal and professional reputation, account shall be taken of his/her business and moral reputation and authority in legal circles and society, the nature and quality of relations with legal circles. When assessing a judge based on financial obligations, account shall be taken of information on his/her source of income, assets, property owned and/or used, and on debts and liabilities related to this property and income. Examination of financial obligations is intended to establish whether there are grounds for a conflict of interest, which may compromise judge's impartiality.

sanctions applied during the period subject to evaluation; c) non-involvement in political activities; d) professional reputation; e) financial integrity.¹⁴³

Perhaps more interestingly, a number of member States provided a description of the methodology used in the evaluation process to examine the compliance with ethical standards and principles, among which several good practices may be identified. In the process of evaluation, the opinion of the relevant court president as to the professional conduct of a judge is taken into account.¹⁴⁴ '360 degree professional evaluation' and absence of complaints and disciplinary sanctions are considered.¹⁴⁵ The behaviour of a judge at hearings and his or her attitude towards parties are relevant factors.¹⁴⁶ The evaluating person (the court president) can remark on personal conduct of a judge and will do so, especially if there are concerns in this regard.¹⁴⁷ The evaluator holds a personal interview with each judge in order to form a personal opinion of the judge's propriety and conduct and seeks the opinion of the president of each chamber of the court regarding the conduct, cooperation skills of the judge. Possible complaints made by other judges and complaints filed by lawyers etc. are also considered.¹⁴⁸ The examination report must include disciplinary procedures initiated against the judge (if any) and whether any complaint against the evaluated judge has been filed, and whether any of such complaint proved to be founded.¹⁴⁹ A member of the judicial commission may deduct a maximum of two points per sub-item from the applicant's assessment form if the judicial ethics commission has issued an opinion on the conduct of the applicant, stating that the conduct did not comply with the canons of the code of ethics.¹⁵⁰ Integrity can be part of the informal interview with the judge.¹⁵¹ Integrity assessment consists of analysing declarations of assets and complaints filed against the judge.¹⁵² The president of the court and head of the court issue a formal opinion to the attention of the evaluation committee.¹⁵³ In the process of evaluating a judge, the High Qualification Commission submits a request to the Public Integrity Council regarding the judge's compliance with integrity criteria. To this end, the Public Integrity Council analyses activities of the judge, his or her declaration of assets, reputation, etc.¹⁵⁴

15. Do all the criteria or standards to evaluate individual judges have the same 'weight' (degree of importance)? If not, which ones carry the most 'weight' and for what reasons?

In a number of member States, some criteria carry more weight than the others. It should be noted though that often from the replies it is not apparent whether the weighting is set out in the legislation or implemented in practice lacking any foundation in law. The respondents mention the following practices: The criteria are divided into groups A, B and C and those in group A (relevant legal knowledge, effectiveness, communication skills, decisiveness and integrity) carry the most "weight".¹⁵⁵ The points based on quality of work carry the most 'weight' because it is the most important criterion.¹⁵⁶ In theory, all indicators are equivalent, but in practice the efficiency of the judge seems to have a certain predominance, even though his or her professional behaviour and human relations are taken into account.¹⁵⁷ The degrees of importance are not specified, but in practice the quantity and quality of adjudicated cases and

¹⁴³ Republic of Moldova.

¹⁴⁴ Azerbaijan.

¹⁴⁵ Belgium.

¹⁴⁶ France.

¹⁴⁷ Germany.

¹⁴⁸ Greece.

¹⁴⁹ Hungary.

¹⁵⁰ Latvia.

¹⁵¹ Norway.

¹⁵² Portugal.

¹⁵³ Slovak Republic.

¹⁵⁴ Ukraine.

¹⁵⁵ Belgium.

¹⁵⁶ Croatia.

¹⁵⁷ France.

the speed in proceedings are decisive.¹⁵⁸ Formally, the criteria have the same weight, informally, quantitative performance criteria, which are more easily verifiable, seem to play a bigger role.¹⁵⁹ The quality of work is the most important.¹⁶⁰ The weight depends on the judge making the assessment.¹⁶¹ All criteria have the same weight, but according to the law, in defining the final mark of the judge, quantitative criteria have a share of 40 % and qualitative 60 %.¹⁶² The evaluation is based on the following criteria: a) professional competence, which has a share of 50 % of the total evaluation; b) organisational competence, which has a share of 20 % of the total evaluation; c) integrity, which has a share of 30 % of the total evaluation.¹⁶³ The weight of the criteria is established by law, respectively: each of the efficiency criteria, that is the quantity and the quality of judge's work, is awarded with no more than 40 points, for the criterion regarding integrity the maximum given score is 10 points, and for the criterion regarding the obligation to continuous professional training 10 points.¹⁶⁴ There is a scale of points a judge can earn in the monitored period.¹⁶⁵

Based on the replies, two approaches may be distinguished across member States: the first approach is characterised by an evaluation system with formalised ratings regulated by law where different weight (i. e. number of points or percentage attributed to each value) is awarded to individual criteria. Accordingly, the rating scale reflects the importance that the evaluation system attaches to quantitative and qualitative indicators, respectively. The second approach is characterised by an evaluation system where, despite its formal character, no such numerical rating scale has been conceived, yet a distinction between more and less important indicators has nevertheless been made in practice by attaching more attention to some indicators (e. g. efficiency) than to the others.

16. Are judges informed of the criteria and standards used to evaluate the quality of their individual work, and if so in what way?

The CCJE takes the view (Opinion No. 17, para. 30) that, where a system of formal individual evaluation is applied, its basis and main elements (criteria, procedure, consequences of the evaluation) should be set out clearly and exhaustively by primary legislation. Details can be regulated in subordinate legislation.

It is therefore welcome that the majority of respondents have confirmed that there is a legal basis for the evaluation of judges covering main aspects of the evaluation process, including criteria used. However, the overall impression from replies is that, in general, a step forward could be made as regards the transparency of the process. Transparency in (self)-governance context refers to being open and honest. As part of evaluation good practices, this requires, apart from setting out main elements of evaluation in (primary and subordinate) legislation and making them public, disclosure of all relevant information so that judges can act accordingly. Based on the replies, the following practices could serve as an example: judges are familiar with the questions in the evaluation form and can comment on the draft if they wish so;¹⁶⁶ at the end of the year, the judges whose activities are to be evaluated in the next year should be informed by the members of the judicial council which is responsible for the evaluation, the judge whose work is being evaluated is entitled to participate at the judicial council's meeting;

¹⁵⁸ Germany. One respondent mentions the number of resolved cases and the speed in proceedings while another pinpoints quality and quantity.

¹⁵⁹ Greece.

¹⁶⁰ Hungary,

¹⁶¹ Poland.

¹⁶² North Macedonia.

¹⁶³ Republic of Moldova.

¹⁶⁴ Romania.

¹⁶⁵ Slovak Republic.

¹⁶⁶ Austria.

¹⁶⁷ judges receive evaluation forms¹⁶⁸ and must provide a SWOT analysis preceding the evaluation;¹⁶⁹ the ministry of justice disseminates an information circular;¹⁷⁰ knowledge related to evaluation forms part of the legal professional examination, and it is passed on to future judges during their socialisation process within the court system, i.e. already during the years spent as a trainee judge, then (after passing the legal professional exam) as a judicial assistant, following the appointment, they are informed on all the applied criteria and standards through training programs organised by the National Academy of Justice;¹⁷¹ apart from primary and subordinate legislation on the issue, there is a handbook for evaluating the professional activity of judges, known to all judges;¹⁷² there is a template on how discussion should be held;¹⁷³ the judge can access the relevant data and check them.¹⁷⁴

17. Who is responsible for the individual evaluation of judges (e.g. independent body, president of court, body of peers)? Please specify all institutions and persons involved in the process and indicate their roles.

The individual evaluation of judges is organised in a variety of ways across the member States, ranging from evaluation by an independent body¹⁷⁵, by peers (trained, licenced and listed judges¹⁷⁶), the president of the relevant court¹⁷⁷ or by judges of higher instance¹⁷⁸, by the Judicial Council¹⁷⁹, and inspectors¹⁸⁰. In addition, the self-assessment of the evaluated judge as well as responses from to a questionnaire from judges and court employees are also taken into consideration¹⁸¹. There is only one exception where the evaluation is left to the judge's first line manager or Head of court concerned, as the evaluation is used for individual setting of salaries.¹⁸²

It is worth mentioning the case where respondents from the same member State (Belgium) have provided different answers to the question, this might indicate that the evaluation procedure, its objectives and consequences, are insufficiently known to judges. The periodic evaluation of judges can become an administrative formality, to which little or no substantial importance nor concrete consequences are attached.¹⁸³

Interesting approaches to consider would be establishing a body of evaluators composed of trained, certified and nominated judges, which could also be mandated to visit different courts, the evaluation shall be also based on concrete rules and criteria, or establishing a professional evaluation panel which could include members outside of the judiciary.

¹⁶⁷ Azrbaijan.

¹⁶⁸ Belgium, France, Luxemburg.

¹⁶⁹ Belgium.

¹⁷⁰ France.

¹⁷¹ Hungary.

¹⁷² Romania.

¹⁷³ Sweden.

¹⁷⁴ Switzerland.

¹⁷⁵ Latvia, Ukraine (as regards the assessment of integrity and professional ethics).

¹⁷⁶ Austria (*Personalsenat*), Hungary.

¹⁷⁷ Belgium, Croatia, Estonia, France, Germany, Luxembourg, Norway, Poland, Romania

¹⁷⁸ Greece, Portugal,

¹⁷⁹ Azerbaijan, Georgia, North Macedonia, Republic of Moldova, Serbia, Slovakia

¹⁸⁰ Austria (inspector judges), Ukraine (as regards the assessment of competence).

¹⁸¹ Latvia

¹⁸² Sweden, It important to note that neither the handling of a certain case nor the application of the law in the case may have any impact on the salary,

¹⁸³ Belgium

18. How is the evaluation conducted? Please specify exact procedures and the interaction between the judge and the evaluator.

A common denominator in nearly all member States is that the evaluation is adversarial and involves an interview or evaluation hearing¹⁸⁴. It may also include attendance at a number of hearings of the judge concerned to evaluate him or her¹⁸⁵. In some member States the evaluation also take into account the statistical data analysis¹⁸⁶. It is noteworthy that in some member States, the evaluation also involves a review of the content of court decisions.¹⁸⁷ In one member State, the evaluation is carried out through written tests and practical assignments.¹⁸⁸

The CCJE takes the view (Opinion No. 17) that the quality of a judge's decisions must be at the heart of individual evaluation and in order to evaluate it, evaluators should concentrate on the methodology a judge applies in his/her work overall, rather than assessing the legal merits of individual decisions, in line with the principle of judicial independence.

An interesting example is the "360 degree"¹⁸⁹ evaluation which aims to gather information on the evaluated judge from various sources which know him/her. It would be advisable to ponder on the role and weight of the court president in the evaluation process while the inclusion of external lay members could contribute to the accountability of the judiciary.

19. How are evaluators designated?

There are a variety of practices in Member States. Evaluators are appointed by the president of the court,¹⁹⁰ elected,¹⁹¹ drawn by lot¹⁹² or appointed by the judicial council.¹⁹³ In some cases there is complementary legislation establishing commissions for evaluation.¹⁹⁴

Only one member State reported that judges conducting the evaluation are specifically trained, licenced and listed for that assignment.¹⁹⁵

Of note is an interesting practice where the evaluation is carried out by the president of the court concerned, assisted by two evaluators¹⁹⁶. These evaluators are colleagues of the evaluated judges, who were elected by the general assembly of the court concerned. The expert notes the fact that colleagues are charged with evaluating other colleagues may result in the evaluation procedure being diluted into an administrative formality with little substance or consequence.

¹⁸⁴ Austria, Belgium, France, Germany, Greece, Hungary, Latvia, Luxembourg, Norway, Republic of Moldova, Sweden, Switzerland.

¹⁸⁵ Austria, Belgium, Georgia, Germany, Hungary, Republic of Moldova.

¹⁸⁶ Hungary, Latvia, Portugal.

¹⁸⁷ Georgia, Greece, Hungary, Poland, Republic of Moldova.

¹⁸⁸ Ukraine.

¹⁸⁹ Belgium and France.

¹⁹⁰ Hungary, Poland.

¹⁹¹ Belgium, Latvia, Luxembourg, Republic of Moldova, Slovak Republic, Ukraine.

¹⁹² Georgia, Greece.

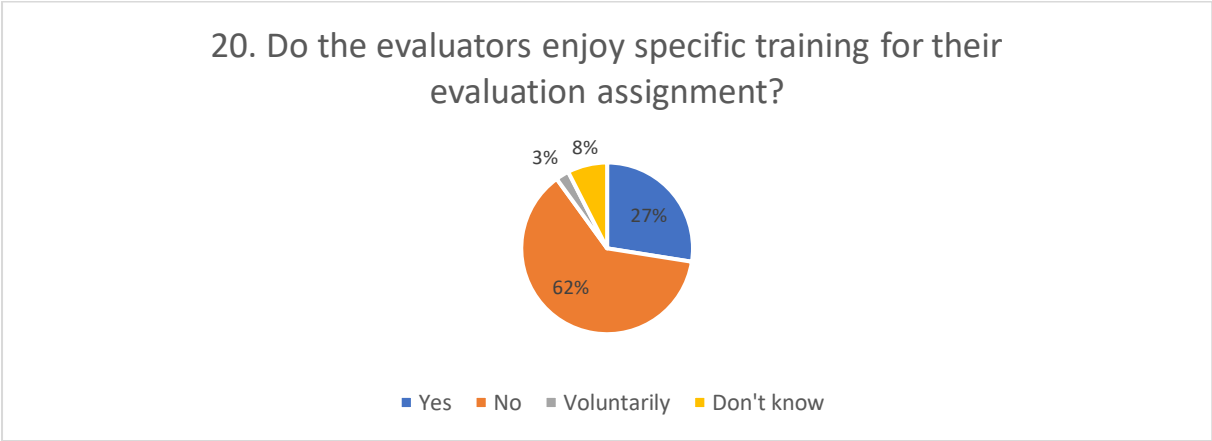
¹⁹³ Azerbaijan, Croatia, Romania Serbia.

¹⁹⁴ North Macedonia.

¹⁹⁵ Hungary (Q17).

¹⁹⁶ Belgium.

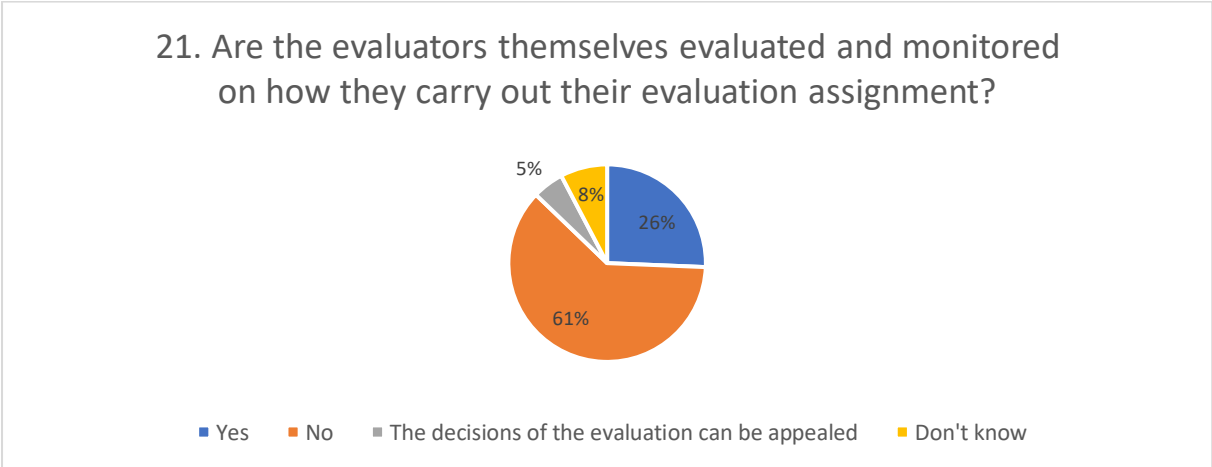
20. Do the evaluators enjoy specific training for their evaluation assignment?



Specific training for the evaluators for their evaluation assignment is not provided according to a majority (62%) of respondents. In a minority of member States, the respondents report of training of evaluators.¹⁹⁷ Semi-formal and informal mechanisms, such as regularly scheduled or occasional meetings and conferences intended to provide uniform interpretation and application of standards for evaluation have also been detected.¹⁹⁸

It is worth noting that qualitative evaluation of judges can only be carried out by persons who have received appropriate training to conduct the assignment. The training should provide a common understanding and uniform application of the evaluation procedure and criteria. Furthermore, it is worth noting that only judges should be the ones reviewing some qualitative criteria such as the ability to write judgements.

21. Are the evaluators themselves evaluated and monitored on how they carry out their evaluation assignment?



This is not the case according to a majority (61%) of respondents. Eight member States¹⁹⁹ confirmed that the evaluators are evaluated and monitored on how to carry their assignment. By way of example, in performing their administrative tasks, the presidents of higher courts

¹⁹⁷ France, Georgia, Germany, Greece, Hungary, Latvia, Luxembourg, North Macedonia, Norway, Poland, Portugal, Republic of Moldova, Romania, Serbia. For example, compulsory and/or optional training of evaluators is practiced in several German federal states.

¹⁹⁸ Germany, in some federal states.

¹⁹⁹ Azerbaijan, Germany, Norway, Portugal, Romania, Sweden, Switzerland, Ukraine.

have the power to address issues such as inconsistent interpretation and application of standards for evaluation and subjective approach of evaluators (presidents of lower courts).²⁰⁰

The experts want to stress that qualitative evaluation of judges can only be carried out by persons who are themselves evaluated and monitored on how they carry out their evaluation assignment.

22. Do litigants, lawyers, other actors of justice, NGOs, the public have a say in the evaluation of the quality of work of individual judges and, if so, how is this participation organised?

This does not appear to be the case according to 70% of respondents (20% provided affirmative responses²⁰¹).

As this is a matter that can contribute to the accountability of the judiciary, some member States are considering adapting legislation to this effect²⁰².

In one case, “the evaluators take into account the results of the relevant satisfaction surveys among the different target groups, i.e. court users, professional lawyers, staff etc”²⁰³.

In another, the “fact that an evaluation process has been undertaken, is public. The litigants, lawyers, other actors of justice, NGOs, or the public in general have the right to apply to the High Council of Justice and provide for some information. They may apply in written or schedule a meeting. They are free to publish information about the judge who is being evaluated on different platforms and these sources – such as articles, posts, TV programs, etc. – will be gathered by a designated department of the Council and sent to the evaluators, who take these pieces of information into account. Besides that, on the institutional level, the High Council of Justice has five non-judge members as well, who are representatives of academic circles and civil society. These members are elected by the Parliament. The evaluation is carried out by one judge and one non-judge member of the Council. [It is considered that] this model creates an opportunity for public input on behalf of civil society and/or other actors of justice”²⁰⁴.

Also, “evaluators have to consult with the members of the board of the local bar association regarding issues concerning the well-functioning of local courts and they have to take under consideration any written complaint or report. In practice it is not common for the bar association to make specific remarks on individual judges, except for exceptional cases of judges that have caused serious problems with their conduct towards lawyers, litigants etc”²⁰⁵.

The experts would like to stress that input from users and actors of justice should be formalised and objectified in a way that ensures the independence of the judge and safeguards the judge from undue pressure from actors of justice and public opinion.

²⁰⁰ Germany.

²⁰¹ Azerbaijan, Belgium, Georgia, Greece, Norway, Republic of Moldova, Ukraine.

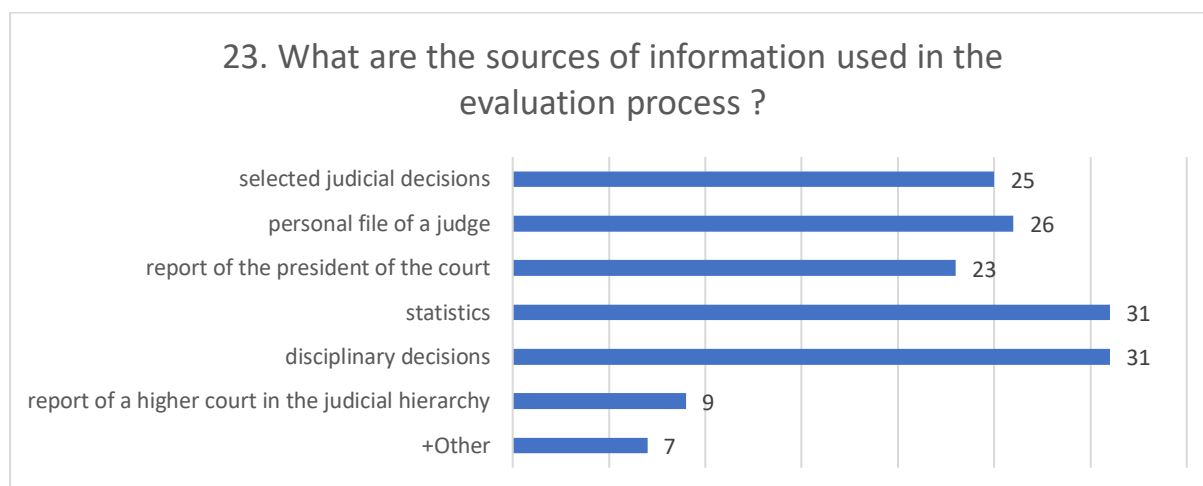
²⁰² France.

²⁰³ Azerbaijan.

²⁰⁴ Georgia.

²⁰⁵ Greece.

23. What are the sources of information used in the evaluation process?



Twenty-five respondents representing 15 member States indicated that the evaluation takes into account the content of a number of court decisions of the evaluated judge²⁰⁶. As it is of importance to combine qualitative and quantitative evaluation criteria, this criterion should be carefully applied while considering the recommendations of CCJE Opinion 17.²⁰⁷ To evaluate the quality of a judge's decision, evaluators should concentrate on the methodology a judge applies in his/her work overall, rather than assessing the legal merits of individual decisions.

Twenty-three respondents representing 15 member States indicated that the evaluation takes into account a report by the president of the relevant court²⁰⁸. The experts would like to note that this criterion, although not contrary to international standards, might bear the risk that the evaluation will be misused to exert hierarchical pressure on the evaluated judge.

Thirty-one respondents representing 19 member States indicated that disciplinary decisions are considered²⁰⁹. A full and clear distinction should be made between discipline and evaluation of the quality of judges' work. As stresses in the CCJE Opinion 17²¹⁰, "although violations of ethical and professional rules/standards can be considered in the evaluation process, member States should clearly differentiate between evaluation and disciplinary measures and processes. The principles of security of tenure and of irremovability are well-established key elements of judicial independence and must be respected, a permanent appointment should not be terminated simply because of an unfavourable evaluation. It should only be terminated in a case of serious breaches of disciplinary 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/her judicial duties to a minimum acceptable standard, objectively judged. In all cases there must be proper procedural safeguards for the judge being evaluated and these must be scrupulously observed."

²⁰⁶ Austria, Belgium, France, Georgia, Germany, Greece, Hungary, Latvia, North Macedonia, Poland, Portugal, Republic of Moldova, Romania, Slovak Republic, Ukraine.

²⁰⁷ Evaluation should be conducted according to the following criteria: professional competence (knowledge of law, ability to conduct court proceedings, capacity to write reasoned decisions), personal competence (ability to cope with the workload, ability to decide, openness to new technologies), social competences, i.e. ability to mediate, respect for the parties, and, in addition, the ability to lead for those whose positions require it.

²⁰⁸ Austria, Azerbaijan, Belgium, Croatia, Estonia, France, Germany, Greece, Hungary, Latvia, Luxembourg, Portugal, Republic of Moldova, Slovak Republic, Ukraine.

²⁰⁹ Austria, Azerbaijan, Belgium, Croatia, Estonia, Finland, Georgia, Germany, Greece, Hungary, Latvia, North Macedonia, Norway, Poland, Portugal, Republic of Moldova, Romania, Slovak Republic, Ukraine.

²¹⁰ Opinion No. 17, para. 29 and 44, recommendations 10 and 12.

Nine respondents representing seven member States indicated that the evaluation takes into account the report of a higher court²¹¹.

Last but not least important is the use of statistical data, so that an evaluation process can combine a reasonable balance between qualitative and quantitative criteria and indicators. Thirty-one respondents (19 member States) indicated that statistical data were also taken into account.²¹² As noted under Question 15, the quantitative performance criteria, which are more easily verifiable, seem to play a big role, nonetheless, the quality of work is and should be given more importance.

24. Please describe the structure and appraisal method used in the evaluation report (e.g. is it essay based, point-based, scaling-based, percentage-based, rating-based).

In some countries, there appears to be no written report of the evaluation²¹³ or no established template for the evaluation report²¹⁴. Point based method is the least common²¹⁵ even when combined with other methods. Scale-based method appears to be a bit more frequent²¹⁶. The biggest common denominator seems to be that the evaluation is essay-based²¹⁷, as indicated by 13 respondents, usually combined with scaling for certain specific evaluation criteria and an overall final evaluation that is scaling-based²¹⁸. As an example of good practice is the clear regulation of the Evaluation report. "Overall, the examination/evaluation report's structure and contents combine textual, essay-like descriptions, a presentation and evaluation of quantitative and statistical data, observations on the quality of judicial activity that are supported by factually substantiated data relevant to the examination, and a tabular evaluation proposal that can be found in the Regulations"²¹⁹. Another example indicated which elements are included for the "essay-based method, namely a description of cases overturned or amended, file references of selected cases, cases in which delayed proceedings were adjudicated, sometimes statistical data, and data on the timeliness of writing reasons for judgements. Nonetheless this leads to providing a grade which has the most importance (an outstanding grade, a positive grade, a qualified grade, or an unacceptable grade)"²²⁰.

25. If statistical indicators are used as a starting point in the evaluation report, can an evaluator deviate, and if yes, under which circumstances, from the numerical rating?

Under question 23, 32 respondents²²¹ (19 member States) affirmed that statistical data are among the sources of information used in the evaluation process. Among these member States the vast majority stated that the statistical indicators are not used as starting point nor can the evaluator deviate from them, with the exception in few cases: "the evaluator may deviate from the statistical indicators if the case-flow is excessive (taking into consideration the fact that the judiciary in Georgia is comprised of much less judges than it is needed to deal with current rate of application to common courts, the excessive number of cases allocated to an individual judge is taken into consideration by the evaluators)"²²², as well as "considering other factors, such as the judge's physical capacity and the difficulty and magnitude of his work"²²³, or "vacant

²¹¹ Austria, Azerbaijan, Belgium, Hungary, Latvia, Poland, Slovak Republic.

²¹² Austria, Azerbaijan, Belgium, Croatia, Estonia, Finland, Georgia, Germany, Greece, Hungary, Latvia, North Macedonia, Norway, Poland, Portugal, Republic of Moldova, Romania, Slovak Republic, Ukraine

²¹³ E.g. Finland, Norway and Sweden.

²¹⁴ E.g. Switzerland.

²¹⁵ North Macedonia.

²¹⁶ Croatia, Greece, Poland.

²¹⁷ Austria, Belgium, Germany, Latvia, Slovak Republic and Ukraine.

²¹⁸ Hungary, Georgia.

²¹⁹ Hungary.

²²⁰ Poland.

²²¹ Austria, Azerbaijan, Belgium, Croatia, Estonia, Finland, Georgia, Germany, Greece, Hungary, Latvia, North Macedonia, Norway, Poland, Portugal, Republic of Moldova, Romania, Slovak Republic, Ukraine.

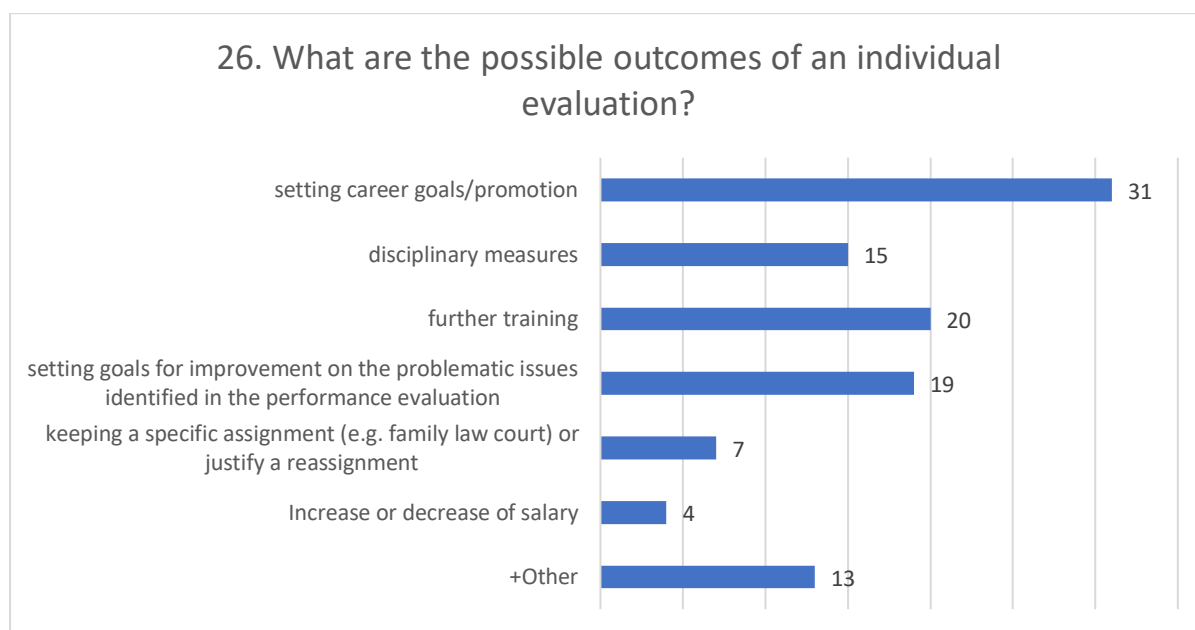
²²² Georgia.

²²³ Portugal.

positions of judges and high complexity of cases”²²⁴, “statistical information has to be individually rated by the evaluator”²²⁵. It can be concluded that indicators related to the workload and complexity of cases are important factors to be considered ²²⁶.

In one example, this freedom to take statistical material into account is negatively formulated by one respondent, in the sense that here there would rather be arbitrariness on the part of the evaluators: “The evaluator has complete freedom to interpret any data, especially since the evaluator is not held accountable for anything afterwards.”²²⁷

26. What are the possible outcomes of an individual evaluation?



The evaluation of judges aims to monitor and improve the quality of judges' work. It is therefore noticeable that according to a large number of respondents, a low quality evaluation can have rather sanctioning consequences for the judge concerned such as disciplinary measures (15 replies²²⁸), mutation (7 replies²²⁹) or financial repercussions (4 replies²³⁰).

According to 31 respondents²³¹, evaluation affects career goals and promotions. Only according to a minority of respondents, evaluation in member States is linked to possible further training (20 answers²³²) or setting goals for improvement (19 answers²³³) and thus to improving the quality of judges' work.

²²⁴ Romania.

²²⁵ Germany, Poland.

²²⁶ E.g. Azerbaijan, Estonia, Georgia, Germany, Poland, Portugal, Romania, Serbia and Slovak Republic.

²²⁷ Poland.

²²⁸ Austria, Azerbaijan, Belgium, Greece, Hungary, Latvia, North Macedonia, Poland, Portugal, Republic of Moldova, Slovak Republic, Ukraine.

²²⁹ Austria, Belgium, Estonia, Finland, France, Hungary, Latvia, Luxembourg, Norway, Republic of Moldova, Romania, Sweden.

²³⁰ Belgium, Sweden.

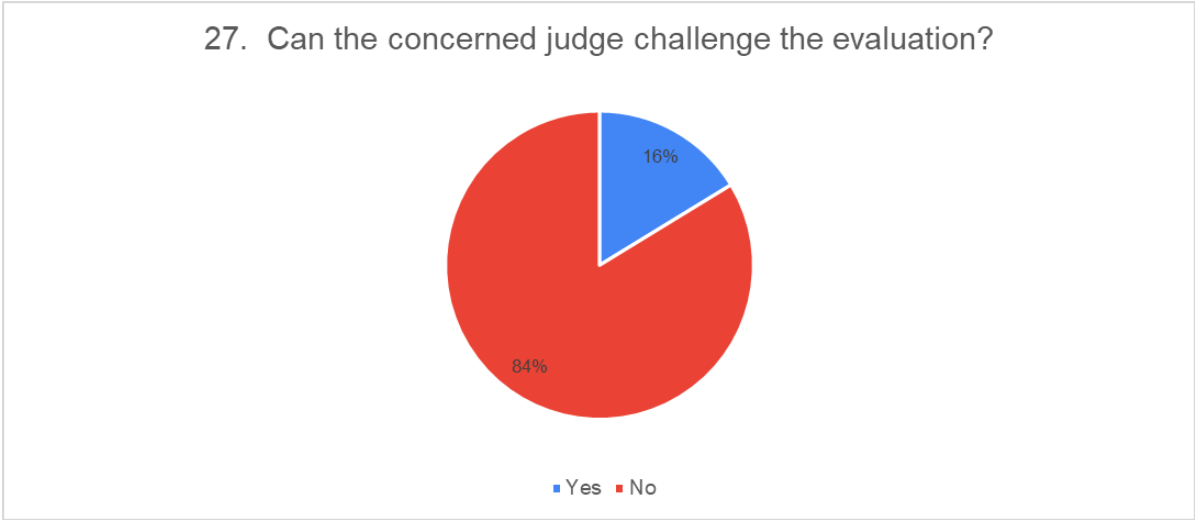
²³¹ Austria, Azerbaijan, Belgium, Croatia, France, Georgia, Germany, Hungary, Latvia, Luxembourg, North Macedonia, Norway, Poland, Portugal, Republic of Moldova, Romania, Serbia, Sweden, Ukraine.

²³² Austria, Azerbaijan, Belgium, Estonia, Finland, France, Latvia, Luxembourg, Norway, Republic of Moldova, Romania, Serbia, Sweden, Ukraine.

²³³ Austria, Belgium, Estonia, Finland, France, Hungary, Latvia, Luxembourg, Norway, Republic of Moldova, Romania, Sweden.

Furthermore, it is noted that in one case an interview could be followed up by a jointly established individual professional development plan²³⁴.

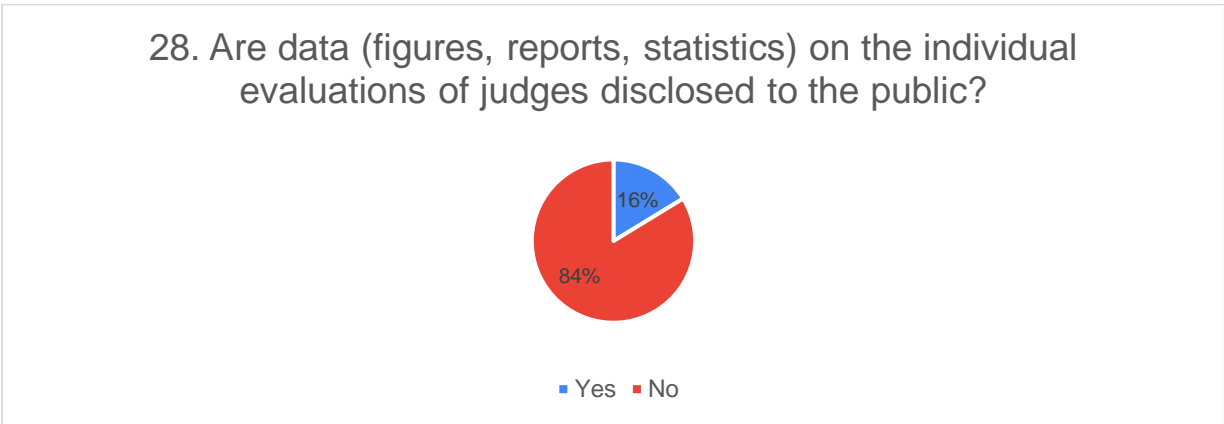
27. Can the concerned judge challenge the evaluation?



This is the case according to a vast majority (85%) of respondents and is consistent with the fact that a majority of respondents said the evaluation process was adversarial. The responses stating that the concerned judges cannot challenge the evaluation were not conclusive and it is not possible to indicate in which member States it cannot be challenged and for which reasons.²³⁵

In this regard, Opinion 17 of CCJE states that “it is essential that there is procedural fairness in all elements of individual evaluations. In particular judges must be able to express their views on the process and the proposed conclusions of an evaluation. They must also be able to challenge assessments, particularly when it affects the judge’s “civil rights” in the sense of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (paragraph 41²³⁶).”

28. Are data (figures, reports, statistics) on the individual evaluations of judges disclosed to the public?



²³⁴ Romania.

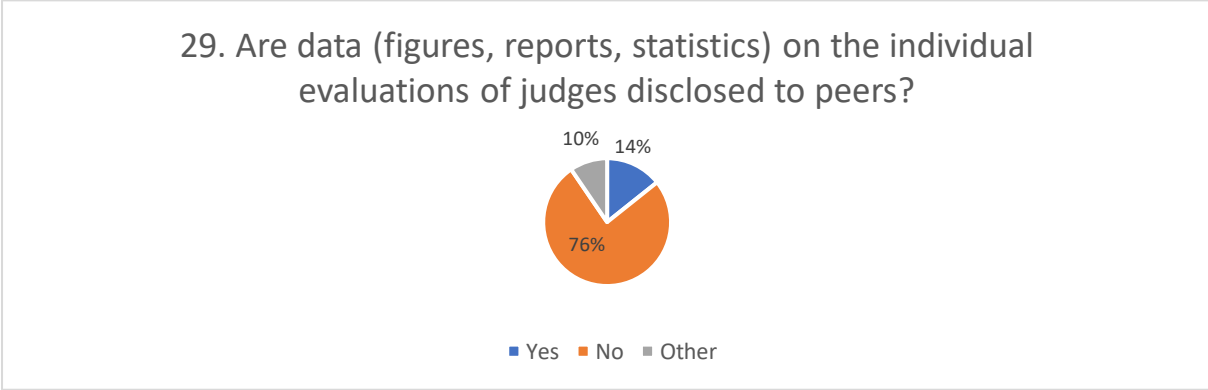
²³⁵ Finland provided a clear negative response, for Poland the responses were divided (1 positive and 1 negative), while for Norway we have obtained 2 positive and 1 negative response.

²³⁶ CCJE Opinion 17, Recommendation 11.

This is not the case according to the vast majority (84%) of respondents and is consistent with the independence of judges and public trust in the functioning of the judiciary²³⁷.

As noted by CCJE (Opinion 17, paragraph 48) “the formal individual evaluation of judges, where it exists, should help to improve and maintain a judicial system of high quality for the benefit of the citizens of member States. This should thereby help maintain public confidence in the judiciary. This requires that the public must be able to understand the general principles and procedure of the evaluation process. Therefore, the procedural framework and methods of evaluation should be available to the public. Moreover, the individual evaluation process for career or promotion purposes should not take account of public views on a judge. They may not always be the result of complete or fully understood information or such views may possibly even be based on a misunderstanding of the judges’ work overall. The process and results of individual evaluations must, in principle, remain confidential and must not be made public. To do so would almost certainly endanger judicial independence, for the obvious reason that publication could discredit the judge in the eyes of the public and possibly make him/her vulnerable to attempts to influence him/her. In addition, publication may mean the judge is subjected to verbal or other attacks.”

29. Are data (figures, reports, statistics) on the individual evaluations of judges disclosed to peers?

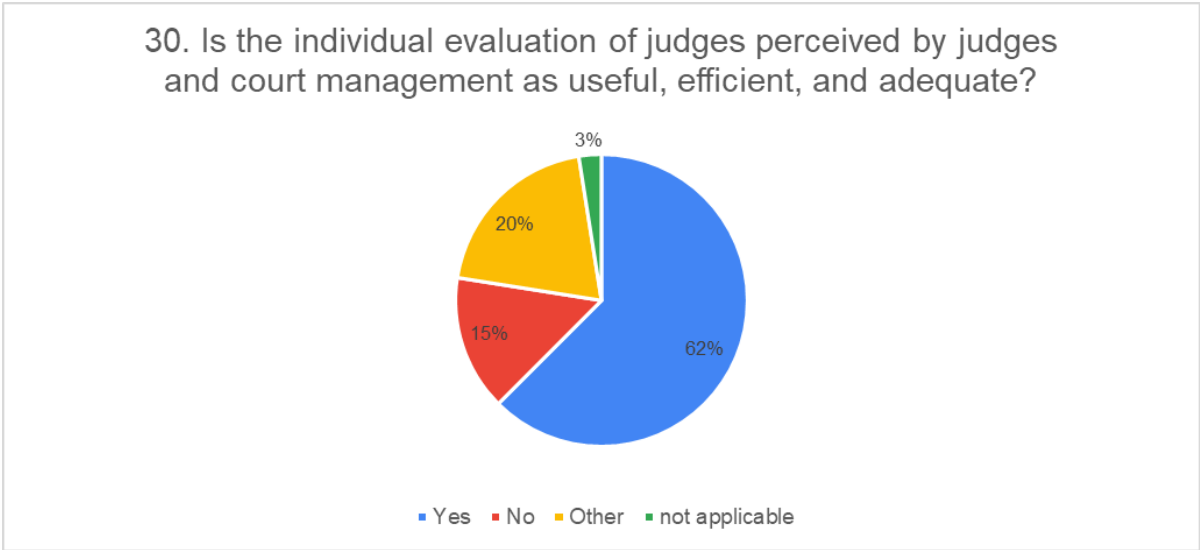


This is not the case according to a vast majority (76%) of respondents²³⁸. It can be concluded that by keeping the results of process and results of individual evaluations confidential a safeguard measure is introduced so to ensure judicial independence and the security of the judge.

²³⁷ Georgia, North Macedonia, Portugal, Slovak Republic and Ukraine do disclose the information to the public.

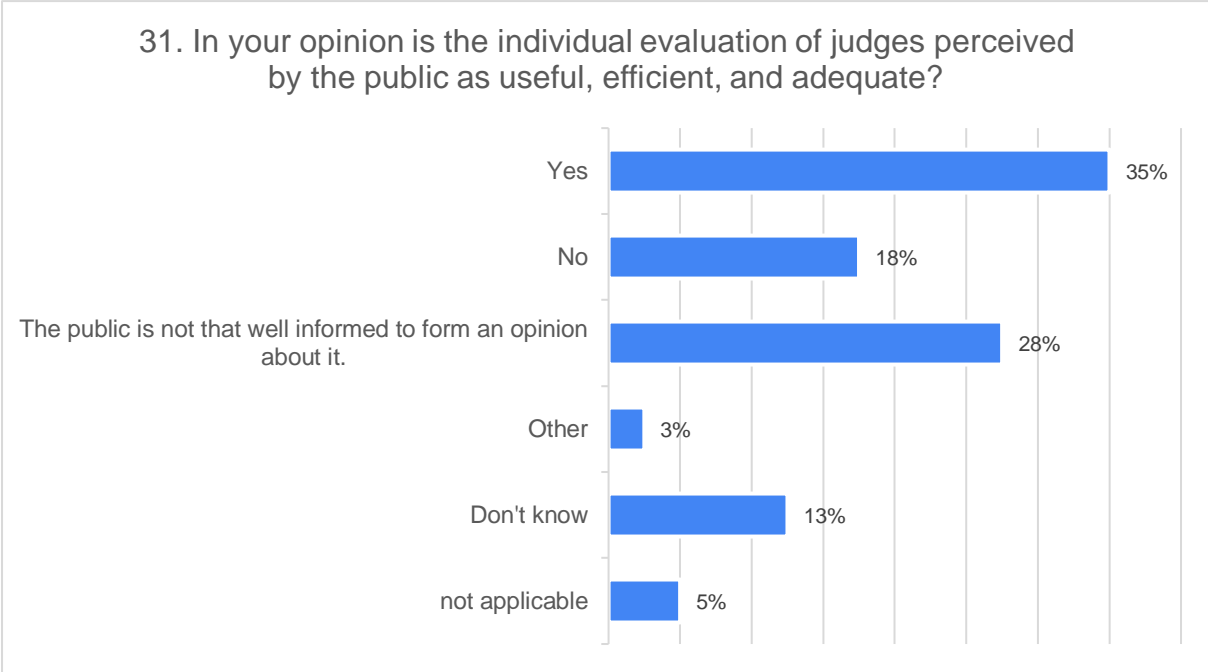
²³⁸ Croatia, France, Germany, Slovak Republic and Switzerzland disclose the information to peers.

30. Is the individual evaluation of judges perceived by judges and court management as useful, efficient, and adequate?



The majority (62% which represent 25 respondents) of respondents perceived the evaluation of judges in their countries as useful, efficient and adequate. Even though these responses represent subjective perceptions on the matter it can be noted that there is a margin for improving the evaluation procedure and their outcomes, for it to be considered useful, efficient and adequate in the judicial systems which conduct individual judge’s evaluations.

31. In your opinion is the individual evaluation of judges perceived by the public as useful, efficient, and adequate?



Even though the responses to this question are based on subjective perceptions of the respondents, it is interesting to note when comparing these answers to the ones from question 30, there is a substantial decrease, about 50%, in what might be the perception of the evaluation by the public.

Additionally, it is worth noting that 28%²³⁹ of respondents believe that the public is not sufficiently informed about the existence and content of evaluation procedures of judges. This indicates a clear area for action in all member States: "the principles and procedures on which judicial evaluations are based must be made available to the public" namely inform the public that judges are being evaluated, according to what criteria and what the consequences of the process for the judge concerned.

32. What measures do you think could enhance the quality of individual evaluation of judges in your country?

From the respondents' answers to this question, the following suggestions can be distilled to improve evaluation procedures:

1. Ensure a fixed periodicity of evaluations²⁴⁰
2. Ensure input from other actors of the judiciary and court users in the evaluation process²⁴¹ and raise awareness about it²⁴²
3. Ensure a 360° evaluation procedure²⁴³
4. Ensure procedures are available to challenge the evaluation,²⁴⁴ and of sanctioning intervention in the event of persistent poor evaluations²⁴⁵ as well as evaluating the evaluators²⁴⁶
5. Ensure independence of the evaluation, whereby the evaluators are not direct colleagues or superiors
6. Clear, uniform, objective, transparent and well-known evaluation criteria²⁴⁷ with a higher focus on quality rather than efficiency²⁴⁸
7. Education and training of the evaluators themselves²⁴⁹

33. Do you have any thoughts, recommendations, or comments you would like to share with us on the subject of this questionnaire?

The following answers to this question are worth noting:

- *"In my country we do not evaluate individual judges the way that it is described in this questionnaire. But we do have different kind of evaluations concerning each courts practises."*²⁵⁰
- *"Trainings on creativity, judgecraft, seminars for evaluators."*²⁵¹
- *"Due to the principle of separation of powers and the independence of judges, it is essential that the evaluation remains internal to the judiciary and is not transmitted to representatives of other powers (executive or parliament)."*²⁵²

²³⁹ Belgium, Croatia, Finland, France, Greece, Luxembourg, Poland.

²⁴⁰ Austria, Norway.

²⁴¹ Austria, Greece, Luxembourg.

²⁴² Norway.

²⁴³ France; Essentially, it is an evaluation process by utilizing feedback from peers, court employees, court users, superiors and members of other court divisions. Each evaluator is asked to share their view of the evaluated judges' behaviour, skills and performance. Additionally, it is common for the evaluation process to include a self-evaluation, which allows persons to see how their self-perception compares against the cumulative feedback of their evaluators.

²⁴⁴ Poland.

²⁴⁵ Belgium.

²⁴⁶ Poland.

²⁴⁷ Belgium, Germany, Poland, Sweden.

²⁴⁸ Germany.

²⁴⁹ Belgium, North Macedonia, Poland, Sweden.

²⁵⁰ Finland.

²⁵¹ Georgia.

²⁵² Sweden.