

Horizontal Facility for Western Balkans and Turkey



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**A joint project between the European Union and the Council of Europe**

Updated Report on the Individual Evaluation of Judges in Albania

DRAFT

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**I. Acknowledgements.**

## **II. Introduction**

1. This report provides an analysis of the new system of individual evaluation of judges in Albania established in the Law No 96/2016 "On the Status of Judges and Prosecutors in the Republic of Albania" against international standards, especially those developed by the CCJE in its Opinion 17 (2014) "On the evaluation of judges' work, the quality of justice and respect for judicial independence".

2. As in its previous version (hereafter SEJ Report 2015), this report provides a summary of the practice of individual evaluation of judges in the member states of the Council of Europe (II). Secondly, the Report summarises the CCJE standards (III). Next, the Report recalls the recommendations made in the SEJ Report (2015) (IV) further to which it describes the new legal framework of the individual evaluation of judges in Albania (V). This is followed by analyses of and discussion around the new legal framework with respect to the European standards, mainly those developed by the CCJE (VI). Lastly, the report concludes with recommendations (VII).

## **II. Evaluation of judge's work in the member states of the Council of Europe**

### **1. Materials used**

3. The following section is based on a) Recommendation CM/Rec(2010)12 of the Committee of Ministers on judges: independence, efficiency and responsibilities (hereafter Recommendation CM/Rec(2010)12), b) the 2012-2013 Report from the European Network of Councils for the Judiciary (ENCJ) on minimum standards regarding evaluation of professional performance and irremovability of members of the judiciary (hereafter ENCJ Report),<sup>2</sup> c) the 2013-2014 report from the ENCJ on Independence and accountability of the Judiciary) the OSCE Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010) – Judicial Administration, Selection and Accountability (hereafter Kyiv Recommendations, e) the CCJE draft summary report of the questionnaires answered in preparation of the CCJE Opinion 17 (2014) and CCJE Opinion 17 (2014) itself.

### **2. Formal and informal evaluation**

4. The ENCJ-Report<sup>3</sup> and CCJE Opinion 17 (2014)<sup>4</sup> distinguish between formal and informal systems of individual evaluation of judges. If individual evaluation is undertaken in a formal way, the purpose of the evaluation, the criteria used, the composition and responsibilities of the evaluating body as well as the possible consequences of an evaluation are clearly set out, often by means of primary legislation. In a formal system of evaluation, the judge usually receives an official rating. Moreover, the evaluation often has direct consequences, such as better chances of promotion, an increase in salary or even a dismissal from office. A system of informal evaluation does not generally use either formalised ratings or criteria. The informal evaluation does not usually have any direct consequences other than to provide feedback to the judge in question. However, a gathering of information about a judge who is

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<sup>2</sup> 2012-2013 Report from the European Network of Councils for the Judiciary (ENCJ) on minimum standards regarding evaluation of professional performance and irremovability of members of the judiciary, hereafter ENCJ-Report, Chapter 2, p. 10.

<sup>3</sup> 2012-2013 Report from the European Network of Councils for the Judiciary (ENCJ) on minimum standards regarding evaluation of professional performance and irremovability of members of the judiciary, hereafter ENCJ-Report, Chapter 2, p. 10.

<sup>4</sup> CCJE Opinion 17 (2014) para 9, 10.

a candidate for promotion, (such as practised in the UK by the Judicial Appointments Commission (JAC) ), might also be considered informal.

### **3. The practice in the member states of the Council of Europe**

5. The practice of evaluating judges as explained in this text is based on the Summary Report of the questionnaires submitted by 33 member states of the Council of Europe in preparation for CCJE Opinion 17 (2014). As the CCJE pointed out, the decision whether and how judges are evaluated is inextricably linked to the history and culture of a country and those of its legal system.<sup>5</sup> The majority of member states in the Council of Europe use a formal system of individual evaluation of judges. Those countries are: Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, France, Georgia, Germany, Greece, Hungary, Italy, Moldova, Monaco, Poland, Romania, Slovenia, Spain, The Former Yugoslav Republic of Macedonia and Turkey. The evaluation of judges is an important issue, especially in Eastern European countries. The Former Yugoslav Republic of Macedonia explained that judicial independence could be encouraged through the evaluation of judges. Romania argued that the trust of the public in the judicial system could be promoted this way. Slovenia stated evaluation ensured judicial accountability and by implication, the quality of the judicial service.

6. The Czech Republic, Cyprus, Denmark, Estonia, Finland, Iceland, Luxemburg, The Netherlands, Norway, Sweden, Switzerland, Ukraine, and UK do not use formal systems of evaluation. Such countries often consider evaluation of judges as a possible threat to judicial independence. However, these countries do often use informal evaluation tools which can provide valuable insight for the development of methods which can improve a judicial system. Sweden, Switzerland, Finland and The Netherlands, for example, use certain evaluation tools in order to ascertain performance-linked wages (Sweden), to provide feedback for judges in order to improve their work and efficiency (The Netherlands, Switzerland) or in preparation of career development discussions (Finland). In the UK, a specific kind of evaluation takes place by the Judicial Appointment Committee (JAC) when a judge's promotion is in question. Estonia, Luxembourg and Ukraine only formally evaluate recently appointed judges before their permanent appointment.

### **4. Different models of evaluation with special regard for new democracies**

7. The approach in the member states of the Council of Europe differs both in respect to (a) the way the evaluation is undertaken (b) the person or body responsible for the evaluation process.

#### **a. Process of evaluation**

##### ***aa. Discussion model***

8. In some countries, the evaluation process is conducted in the form of a discussion, in which the evaluated judge presents his or her work and the evaluator/the evaluating commission agree with the judge on career and development goals (Belgium, Finland, France, Monaco and Romania). During the discussion, the evaluated judge might also receive feedback that can help to improve his or her work and performance (Switzerland). Such discussions can be informal (Finland, Switzerland) or they can be conducted in a formal way and end with a rating (Belgium, France, Monaco, Romania). In the latter case, the evaluation process often starts with a self-assessment (France, Romania).

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<sup>5</sup> CCJE Opinion 17 (2014) para 22.

### ***bb. Report model***

9. In many member states, especially young democracies, a group or single evaluator gathers the relevant information about the evaluated judge and prepares a draft evaluation (Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Georgia, Germany, Greece, Hungary, Italy, Moldova, Poland, Slovenia, Spain, The Former Yugoslav Republic of Macedonia and Turkey). Only when the draft report is ready, the evaluated judge may comment on the draft. Only in Cyprus and Georgia, the evaluated judge does not participate in the evaluation process.

## **b. Body responsible for the evaluation**

### ***aa. Court president model***

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

### ***bb. Council model***

11. In other countries, especially in young democracies, a Council for the Judiciary or a subgroup of that council gathers information on the work of the evaluated judge and decides on the evaluation (Albania, Austria, Bulgaria, Croatia, Estonia, Italy, the Former Yugoslav Republic of Macedonia, Moldova, Slovenia, Spain, Turkey). In some countries, different levels of the council and/or the president of the judge's court participate in the process. In the UK, both laypersons and members of the legal professions and judiciary participate in the evaluation process.

### ***cc. Inspection model***

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

## **5. Criteria**

13. In many member states, a number of quantitative criteria play a role in the evaluation of judges. Especially the number of cases in which a judge has made a decision, the time spent on each case and the average time to reach a judgement is taken into account (Austria, Bulgaria, Croatia, Cyprus, France, Germany, Greece, Italy, Poland, Romania, Slovenia and Turkey). In other member states, only one quantitative indicator, the number of decided cases, is considered (Bosnia and Herzegovina, Estonia, and Hungary, for the purpose of ascertaining a judge's performance based salary: Spain, The Former Yugoslav Republic of Macedonia and Ukraine). In Bosnia and Herzegovina and Spain, for example, a judge is evaluated according to the extent s/he has met a fixed quota (orientation quota set in the Rulebook on Orientation Criteria for the Performance of Judges and Legal Officers in Courts in BiH; in Spain, the quota is ascertained by the Council for the Judiciary). In the evaluation process, a judge is allocated a number of points depending on the percentage of the quota s/he has achieved. Other criteria are settlement rates and the observance of statutory time lines for deciding cases (Moldova, Italy).

14. The way such criteria are used in the evaluation differs widely. In some member states, data on such quantitative criteria, as for example the number of cases decided, is concentrated into a percentage or points reflecting the performance of each individual judge compared to other judges (Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, The Former Yugoslav Republic of Macedonia, Italy and Turkey). In other states, such quantitative factors only provide the starting point for an individual assessment (Austria, France, Germany and Slovenia). Other member states do not use a fixed set of criteria in the evaluation (Belgium, Monaco).

15. Most countries use qualitative criteria as well in the evaluation process, such as the behaviour of judges in oral hearings, and their communications skills in talking with advocates, citizens and colleagues (Germany, Moldova, Poland and Slovenia). Reversal rates i.e. the percentage of cases in which a judge's decisions are overturned by a court of appeal, are also taken into account (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Georgia, Greece, Hungary, The Former Yugoslav Republic of Macedonia, Moldova, Poland, Rumania, Turkey, and Ukraine). In many member states, the quality of the judge's analysis and the complexity of the cases she has worked on are considered of great importance in the evaluation process (Albania, Belgium, France, Georgia, Germany, Greece, Italy, Poland, Romania, and Slovenia). In Germany, a judge's ability to identify the critical point on which a case turns is considered a decisive factor for gauging a judge's competencies. Many countries stress that the quality of a judgement, not the merit of an individual decision, is tested in order to respect a judge's independence. Other factors to be considered in certain member states are the judge's organisation skills and work ethic (Germany, Moldova, Poland, Slovenia and Sweden), leadership skills (Germany, Hungary) the ability to mediate, draft clear and understandable judgements (Germany) and use information technologies (Croatia, Moldova). A Judge's scholarly activities such as teaching, publications and lecturing can also be taken into account (Albania, Croatia, Germany and Slovenia).

The Judicial Appointment Committee (JAC) in the UK assesses a candidate according to the following criteria: intellectual capacity, personal qualities, an ability to understand and deal with issues fairly, authority and communication skills and efficiency. For posts requiring management skills, a candidate's leadership and relevant competencies may be assessed instead of her efficiency.

## **6. Consequences**

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

17. In some countries, a newly appointed judge can be dismissed before obtaining security of tenure because of poor evaluation results (Bulgaria, Estonia, Georgia, Germany, Greece, and Ukraine). However, this question, which concerns the appointment of judges rather than the evaluation of acting judges, shall not be pursued in this report.

18. Other judicial systems allow the dismissal of acting judges after poor evaluations (Albania, Austria, and Estonia, only in rare cases: Greece, Hungary, Italy, Moldova, Poland, Romania, Slovenia and The Former Yugoslav Republic of Macedonia). In Austria, Italy, Moldova, and Romania for example, a judge can be dismissed who has received the grade "insufficient" twice. The initiation of disciplinary proceedings may also be the consequence of



a poor evaluation (Belgium, Bulgaria, Croatia, Cyprus, Greece, Hungary, Poland, and Slovenia). In some countries, a judge who has been evaluated poorly can be required to participate in special training courses (Italy, Romania).

19. Evaluation results may also affect a judge's salary as, for example in Belgium, Bulgaria, Spain, Sweden and Turkey. In Sweden, only a very small percentage of a judge's salary is set individually and stringent safeguards are in place to protect the judges' independence in the process.

In Finland and Switzerland, evaluations do not have any direct consequences other than to provide feedback for the individual judge.

## **7. Protection of the evaluated judge**

20. In most judicial systems, the judge participates in some form in the evaluation process, for example, by providing a self-assessment as a starting point for discussion, or by being interviewed. In some member states of the Council of Europe, the judge has a right to comment on a preliminary draft of the evaluation (Albania, Bosnia and Herzegovina, Germany, The Former Yugoslav Republic of Macedonia, and Poland). Moreover, in the Former Yugoslav Republic of Macedonia, the evaluated judge must confirm the accuracy of the data which form the basis of the evaluation and are taken for this purpose from the court's data bank.

21. In some countries, the evaluated judge may demand the removal of members of the evaluation body for good reason, for example in case a member can objectively be perceived as biased (Albania, Bulgaria, Greece, Moldova, Romania, and Turkey). In Germany and Croatia, a removal may be initiated under the same procedural rules regulating the removal of a (possibly) prejudiced judge in a trial. However, in other member states, a judge cannot demand the dismissal or removal of a possibly prejudiced member of the evaluation body (Austria, Belgium, Bosnia and Herzegovina, Cyprus, Estonia, Finland, France, Georgia, Hungary, The Former Yugoslav Republic of Macedonia, Monaco, Poland, and Sweden). In some of those countries, however, the judge may challenge the evaluation report itself on the basis that a prejudiced person took part in the evaluation process (Austria, Estonia, France, and Poland).

22. In most countries (except Belgium, Finland and Moldova), the evaluated judge is afforded the opportunity to demand some form of evaluation review. Usually, the evaluated judge may apply to a special body (Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, France, Greece, Hungary), for example the plenum of the Council for the Judiciary, where the report has been made by a committee of that council (Bosnia and Herzegovina, Estonia, Moldova), or by a number of judges at the Supreme Court (Croatia). In Poland, the evaluated judge may present his or her opinion in writing. In Albania, Georgia, Germany and Italy, evaluation results can be challenged in court.

## **III. CCJE Standards**

### **1. Judicial independence**

23. The CCJE stresses the importance of judicial independence as a pre-requisite to the maintenance of the rule of law and the fundamental guarantee of a fair trial.<sup>6</sup> Judicial independence must not only be protected against external influences, for example from the

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<sup>6</sup> Opinion Nor. 1(2001) para 10; Recommendation CM/Rec(2010)12 para 3,11; CCJE Magna Charta of Judges (2010) para 2.

executive, but also against influences from within the judiciary. Therefore, the CCJE identifies the reconciliation of judicial independence with the individual evaluation of judges as decisive. Ultimately, judicial independence must prevail.<sup>7</sup> The CCJE also states the need that every member state of the Council of Europe provides a system of justice of the highest possible quality and to ensure the accountability of the judiciary in a democratic system. Some form of evaluation, the CCJE holds, is necessary to achieve these goals.<sup>8</sup>

## **2. Informal yes, formal if needed**

24. In Opinion 17 (2014), the CCJE endorses the view that some form of evaluation is necessary.<sup>9</sup> However, the CCJE does not demand that a member state introduces a formal system of evaluation if a system of high judicial quality is achieved by other means. The CCJE recommends, however, that all member states reflect on whether to introduce a system of formal evaluation.<sup>10</sup>

25. The CCJE recommends that member states introduce informal evaluation tools that help improve the skills of judges and thereby the overall quality of the judiciary, e.g. self-assessment, feedback and informal peer-review.<sup>11</sup>

## **3. Purpose: judicial system of the highest possible quality**

26. The CCJE states that all evaluation must aim at improving the judiciary as a whole.<sup>12</sup> If promotions are based on merit (in particular ability, integrity and experience) rather than seniority, as the CCJE and UN recommend<sup>13</sup>, some form of evaluation is necessary. Therefore, the CCJE expresses the view that gathering information for the suitability for promotion can be an important purpose of evaluation.<sup>14</sup>

27. The CCJE also encourages the member states to use the material gathered during the process of evaluation of judges to improve the organisational structure of courts and the working conditions of judges.<sup>15</sup>

## **4. The legislative framework and the criteria of evaluation**

28. The CCJE holds the view that the basis and main elements of a formal evaluation system should be set out clearly and exhaustively in primary legislation. The Council for the Judiciary (where it exists) should play an important role in assisting in formulating these matters, especially the criteria for evaluation.<sup>16</sup>

29. The CCJE endorses the view that evaluation must be based on objective criteria which should be published.<sup>17</sup> Objective standards are required not merely in order to exclude political influence, but also to avoid the risk of possibly giving the impression of favouritism,

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<sup>7</sup> CCJE Opinion 17 (2014) para 46.

<sup>8</sup> CCJE Opinion 17 (2014) para 23, recommendation 1.

<sup>9</sup> CCJE Opinion 17 (2014) para 23, recommendation 1.

<sup>10</sup> CCJE Opinion 17 (2014) para 23, recommendation 1, 2.

<sup>11</sup> CCJE Opinion 17 (2014) para 25, recommendation 4.

<sup>12</sup> CCJE Opinion 17 (2014) para 24, recommendation 3.

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

<sup>14</sup> CCJE Opinion 17 (2014) para 27.

<sup>15</sup> CCJE Opinion 17 (2014) para 26.

<sup>16</sup> CCJE Opinion 17 (2014) para 30, recommendation 5.

<sup>17</sup> See Recommendation CM/Rec(2010)12, para 58.

which exists if appointments/evaluations are made in an unstructured way or on the basis of personal recommendations.<sup>18</sup> Such objective standards should be based on merit, having regard to qualifications, integrity, ability and efficiency<sup>19</sup> and consider all aspects that constitute good judicial performance. Such criteria should be tested by using qualitative indicators. In addition, quantitative indicators such as percentages and statistics may also be used.<sup>20</sup>

30. Expressing evaluation results by numbers, percentages or by ranking judges without further explanation should be avoided as this could create a false impression of objectivity and certainty. The CCJE expressly opposes any permanent ranking of judges as done in Albania.<sup>21</sup> However, the CCJE recognises that in specific situations, for example when more than one judge applies to be promoted to a certain position, some form of ranking of those candidates is inevitable.<sup>22</sup>

31. The CCJE urges member states not to give judges bad evaluations based on the effects of poor working conditions that they cannot influence. As an example, the CCJE refers to delays caused by massive backlogs owing to a lack of judicial personnel or an inadequate administrative system.<sup>23</sup>

## **5. Procedure and protection of the evaluated judge**

32. The CCJE states that evaluators should be mainly judges in order to ensure judicial independence.<sup>24</sup> Moreover, evaluators should have sufficient time and resources. The evaluated judge should be informed of whom the evaluators are and the judge must have the right to ask for the replacement of any evaluator who might objectively be perceived as biased.<sup>25</sup>

33. The sources of evidence on which evaluations are based must be sufficient and reliable, particularly if the evidence is to form the basis of an unfavourable evaluation.<sup>26</sup>

34. Individual evaluation of judges should – in principle - be kept separate, both from inspections assessing the work of a court as a whole, and from disciplinary procedures.<sup>27</sup>

35. The CCJE stresses the necessity of procedural fairness in all elements of individual evaluations. Judges should be able to express their views in the evaluation process. They must also be able to challenge assessments, particularly when they affect the evaluated judge's "civil rights" in the sense of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>28</sup>

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<sup>18</sup> CCJE Opinion 17 (2014) para 31; See the CCJE Opinion No. 1(2001), para 24.

<sup>19</sup> See the CCJE Opinion No. 1(2001), para 25.

<sup>20</sup> CCJE Opinion 17 (2014) para 31-35, recommendation 6.

<sup>21</sup> CCJE Opinion 17 (2014) para 42.

<sup>22</sup> CCJE Opinion 17 (2014) para 42-43, recommendation 7.

<sup>23</sup> CCJE Opinion 17 (2014) para 26.

<sup>24</sup> CCJE Opinion 17 (2014) para 37.

<sup>25</sup> CCJE Opinion 17 (2014) para 36.

<sup>26</sup> CCJE Opinion 17 (2014) para 39, 44, recommendation 9.

<sup>27</sup> CCJE Opinion 17 (2014) para 29, 39, recommendation 10.

<sup>28</sup> CCJE Opinion 17 (2014) para 41, recommendation 11.

## 6. Consequences

36. The Recommendations of Ministers of the Council of Europe<sup>29</sup> and the CCJE both take the view that the use of individual evaluations to determine the salary and pension of individual judges should be avoided. There is concern that the process could influence judges' behaviour and so endanger judicial independence.<sup>30</sup>

37. An unfavourable evaluation alone should not (save in exceptional circumstances) result in a judge's dismissal from office. Any action to remove incompetent or corrupt judges should meet the high standards set by the principle of the irremovability of the judges whose independence must be protected.<sup>31</sup> This should only be done in a) cases of serious breaches of disciplinary rules or criminal provisions established by law b) where the inevitable conclusion of the evaluation process is that the judge is incapable or unwilling to perform his judicial functions to an objectively assessed minimum standard.<sup>32</sup>

38. The principles and procedures on which judicial evaluations are based must be made available to the public. However, the process and results of individual evaluations must, in principle, remain confidential so as to ensure judicial independence.<sup>33</sup>

## IV. The SEJ Report (2015) and its recommendations

39. The SEJ Report (2015) on the evaluation of judges in Albania (2014/2015) provided an analysis of the previous evaluation scheme. It concluded with a number of recommendations:

1. The Republic of Albania should aim at improving its judicial system in order to provide judicial services of the highest possible quality. The individual evaluation of judges, but also continuing legal education and disciplinary proceedings should be used to pursue this goal in the interest of the Albanian citizens.

2. The second round of evaluations should be finished by the HCJ.

3. The whole evaluation system, including the criteria used, should be carefully evaluated. The experiences of the HCJ Inspectorate as well as that of judges should be considered in order to improve both the evaluation process, as well as the Albanian judiciary as a whole.

4. The experiences of the HCJ-Inspectorate should be used to assess carefully the judges' training needs and shortcomings. Judges should be given the opportunity to effectively remedy shortcomings discovered in an evaluation. Judges should be encouraged to study their evaluations carefully and learn from them. Judges should also be invited to attend specific training courses at the School of Magistrates.

5. Once training needs and shortcomings are identified by the HCJ Inspectorate as well as by international reports, improvement of the curriculum of the School of Magistrates as well as the introduction of informal means to improve judicial work, such as feed-back among colleagues, should be discussed.

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<sup>29</sup> See Recommendation CM/Rec (2010)12, para 55; see also the IAJ General Report (2006), Conclusions, para 12.

<sup>30</sup> CCJE Opinion 17 (2014) para 28, 45, recommendation 13.

<sup>31</sup> Report of 2013-2014 of the European Network of Councils for the Judiciary on Independence and accountability of the Judiciary, p 59.

<sup>32</sup> CCJE Opinion 17 (2014) para 29, 44, recommendation 12.

<sup>33</sup> CCJE Opinion 17 (2014) para 48, recommendation 14.

6. The permanent scoring list should be abandoned, or at least removed from the HCJs homepage.

7. In the future, the main elements of judicial evaluation including the criteria applied should be set out clearly in primary legislation.

8. At present, the HCJ Inspectorate evaluates judges using a large amount of abstract criteria, divided into three sections that are difficult to understand. After careful evaluation of the first two rounds of evaluation, the criteria could be simplified. However, this should only be done with judges and inspectors involved, using their experiences. For example, Section I could be reduced to “efficiency and timeliness”, using the present criteria in Articles 5, 7 and 8. Articles 7 and 8 could possibly be summarised in one Article. Section II could remain as it is, with Article 11 “ability to manage a fair legal process” and Article 6, “methodology” and Article 14 “communication skills” combined into one article. The ability to “manage a fair legal process” and “steer the legal debate” requires communication skills. Section III could assess a judge’s ethical behaviour, his participation in training courses and scholarly activities.

9. After a careful evaluation of the experiences of the HCJ- inspectorate, abstract criteria such as the “ability to write clearly” or the “methodology” in Article 6 “solemnity and discipline at work” Article 15 should be further explained using examples.

10. Judges should be evaluated according to a well-balanced set of quantitative and qualitative indicators which facilitate the assessment of their qualifications, integrity, ability and efficiency. According to the current Albanian system, evaluation should not be based on statistical data alone. The writing of clear, well reasoned judgements and the ability to hold effective, fair hearings should be at the heart of the evaluation.

11. The criteria presented in Section V, 2( cc) in this report should be reviewed carefully in order to enable the evaluators to deeply assess a judge’s efficiency. The timelines and the prescribed annual workload should be realistic and fair, taking into consideration the rights of the litigants as well as working conditions and certain complex legal areas. False incentives, such as focussing on “easy cases” in order to produce a high number of decisions, should be avoided.

12. A judge’s conduct in court hearings is an important factor for a transparent, accessible legal system. Therefore, evaluations should take into consideration how a judge organises court hearings and how he or she is able to lead the legal debate in a court hearing. In order to assess such important aspects effectively, evaluators should visit the evaluated judge’s hearings.

13. There should be further discussion on whether judge evaluations should take into account the use of courtrooms and the effective referral of appropriate cases to mediation.

14. The High Council of Justice Inspectorate should publish guidelines and examples based on its previous decisions, explaining how it understands certain criteria in order to make it easier for judges to understand what is asked of them. This could improve both the judicial performance of judges, as well as their trust in the work of the HCJ Inspectorate.

15. The evaluation process must be made more time efficient. Several years ago, judges were evaluated for their performance. Evaluation can only provide up to date information for decisions on promotions and provide feedback and useful information on a judge’s training needs if it is timely. In order to enable efficient evaluation, the reversal rates of a judge should be abandoned or given less importance.

16. There should be further clarification of the criteria and procedural rules in the Law No. 9877 "On the organisation of the judicial power in the Republic of Albania", according to which a judge who has been evaluated as "incapable" can be dismissed from office. Moreover, it must be carefully assessed if the strict standards of CCJE Opinion 17 (2014) for a dismissal of a judge are to be respected by the law.

17. Judicial review must be available against decisions of the HCJ. Clear legal rules on the availability and the procedural rules governing judicial review must be introduced in primary legislation.

18. Following the recommendations of the CCJE,<sup>34</sup> the evaluated judge should have the right to ask for the replacement of an inspector evaluator who might objectively be perceived as biased.

19. The very best and most experienced judges should serve as evaluators. In order to attract qualified inspectors, appropriate measures must be taken to make the position of an inspector more attractive.

20. Although there are legal rules on promotion and transfer of judges, those rules seem not to be very well known among judges. Such rules might be taught in the initial legal training of judges at the School of Magistrates.

21. Clear legal rules should be instated by legislation to distinguish the competences of the MoJ and the HCJ in respect of judicial inspections. In general, it might be preferable to concentrate all judicial inspections at the HCJ. However, disciplinary proceedings and judicial evaluations should be kept separate, both in respect to the appropriate rules as well as to the persons applying them. Before such a basic reform can be agreed upon, the HCJ as well as the MoJ should have the right to initiate disciplinary proceedings.

## **V. Law No 96/2016 "On the Status of Judges and Prosecutors in the Republic of Albania"**

### **1. Materials used**

40. The description forthwith and analysis of the new Albanian evaluation scheme is based on the following documents translated into English:

41. Laws of the Assembly of the Republic of Albania

- Law No 84/2016 "On the transitional re-evaluation of judges and prosecutors in the Republic of Albania"
- Law 96/2016 "On the status of judges and prosecutors in the Republic of Albania"
- Law no. 98/2016 "On the Organisation of the Judicial Power in the Republic of Albania"
- Law 115/2016 "On Governance institutions of the justice system"

42. Moreover, the expert had the privilege of meeting Ms Marsida Xhaferllari (Chief Inspector of the HCJ Inspectorate) as well as representatives of Euralius IV, (in particular Ms Anita Mihailova), with Mr Florian Kalaja, legal advisor at the High Court) and numerous Albanian judges during a stay in Tirana from 30 October to 1 November 2017. The views and opinions expressed in those meetings were taken into account during the analysis.

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<sup>34</sup> CCJE Opinion 17 (2014) para 36.

The expert is particularly grateful for the valuable insights provided by the CoE mission Albania, especially its consultant, Ms Aida Bushati.

## **2. Evaluation of judges according to the new legislative framework**

### **a. Primary Legislation**

43. The new evaluation scheme is regulated by primary legislation, in Part IV, Articles 68-99, "Evaluation of Magistrates" in Law 96/2016 and "On the status of judges and prosecutors in the Republic of Albania". Most of the rules apply to magistrates, i.e. to judges and prosecutors alike. However, this report focuses only on the evaluation of judges.

### **b. Institutions involved**

44. The main bodies responsible for the evaluation of the judges is the Committee of Ethical and Professional Performance Evaluation of the High Judicial Council.<sup>35</sup> The committee co-operates with the Chairperson of the court,<sup>36</sup> and with the High Justice Inspectorate. In addition, judges participate in the evaluation process by providing a self-assessment as a starting point of discussion<sup>37</sup> and by commenting on the draft during the process.

### **c. Evaluation**

#### ***aa. Purpose and general principles***

45. The purpose of the evaluation of judges is set out in Article 68. The evaluation therefore aims to enhance the ethical and professional skills of judges; establish quality standards in relation to the judges' work; help decision making in relation to the career of judges and provide information in respect to training needs of judges, and make possible improvements to the organisational structure of courts and prosecution offices. According to Article 69, the evaluation system shall be based on the principles of judicial independence, meritocracy, efficiency, due legal process and confidentiality.

According to Article 70, all magistrates i.e. judges and prosecutors (including chairpersons of courts) shall be evaluated.

#### ***bb. Evaluation Process***

46. The evaluation process is set out in Articles 85-97. Chairpersons of courts are evaluated as judges but in addition also in their capacity as chairpersons (Articles 79-83). The evaluation process combines different institutions and brings together the input of different institutions. The evaluation process is set out below. The principles also apply to the evaluation of chairpersons.

1. Preparation and approval of the Evaluation Program by the High Judicial Council (Article 85 (1)).
2. Notification of the chairpersons and the magistrates who will be evaluated (Article 85 (2))
3. Self-Evaluation of the magistrate in respect to his or her ethical and professional performance. The magistrate also selects two decisions/acts (prepared by a

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<sup>35</sup>Article 62 of the law no. 115/2016 on Governance Institutions of the Justice System in the Republic of Albania.

<sup>36</sup>Article 37 of the law no. 98 / 2016 on the Organisation of the Judicial Power in the Republic of Albania

<sup>37</sup>Article 85 of the law no 96/2016 on the Status of Judges and Prosecutors in the Republic of Albania.

prosecutor per year, which evidences the commitment in inter-institutional professional activities during the evaluation period,) to be submitted for evaluation (Article 86).

4. Chairperson drafts an opinion on the activity of the magistrate (Articles 87, 88)
5. The High Judicial Council assigns a rapporteur for each evaluation (Article 89 (1)) and prepares the necessary documentation to create the evaluation file which includes, the evaluation of the chairperson and the magistrate, statistical data, cases selected for the evaluation (not more than 21 selected by lot, see for selection: Article 91) and data on complaints about the magistrate (Article 90).
6. Draft evaluation report (Article 93)
7. Right of the magistrate to object to the draft evaluation report (Article 94)
8. Decision on the evaluation (Article 95)

### **cc. Criteria**

47. Magistrates are evaluated according to four criterias (Article 71):

1. Judicial (Article 72) or prosecutorial professional capacity (Article 73)
2. Organisational skills (Article 74);
3. Ethics and commitment to judicial and prosecutorial professional values (Article 74)
4. Personal qualities and professional commitment (Article 75)

48. The first criterium, the professional capacity of the judge (Article 72), takes into account the judge's ability for legal reasoning, his or her ability to interpret the law, analyse the case law and use legal theory (Article 72 (2)). Article 72 (4) emphasises that the evaluator should not assess the correctness of the judge's decision while evaluating his or her professional capacities.

49. The second criterium, organisational skills (Article 74) refer to a judge's ability to handle the workload, to meet deadlines and also to avoid unproductive court hearings and use procedural measures in an effective way.

50. The third criterium "ethics and commitment to judicial and prosecutorial professional values" (Article 75) refers to a judge's commitment to professional values, work ethic, integrity and impartiality. An important aspect are also a judge's sense of his or her accountability. This commitment is supposed to be assessed referring to the opinion of chairperson, final decision regarding disciplinary measures and complaints. For assessing a judge's integrity, reports of the High Inspectorate for the Declaration and Audit of Assets and Conflicts of interest shall be used. A judge's impartiality shall be assessed referring to a judge's respect for vulnerable groups, his or her use of discriminatory language or an extraordinarily high number of admitted requests from parties to recuse the magistrate.

51. The fourth criterium, a judge's personal qualities and professional commitment (Article 76) shall be assessed by evaluating his or her communication skills, the skills to cooperate with colleagues and parties and his or her readiness to engage in other activities such as mentoring, professional training or legal publications.

52. A chairperson shall be evaluated according to his or her leadership and organisation skills (Article 70, 80) and his or her communication skills (Article 79, 81).

### **dd. Rating**

53. A magistrate shall be evaluated separately for his or her performance in relation to all four criteria (Article 78). The overall assessment shall be "excellent" if a magistrate is evaluated as "excellent" in all four qualities, "very good" if the magistrate is evaluated at least



as very good in three criteria and not less than good in the remainder. In relation to the criteria "ethics and commitment" and "judicial capacities", a judge must be evaluated as very good to achieve the overall assessment as "very good".

54. The general evaluation "good" is awarded if the judge has achieved "good" for two criteria and "acceptable" for the remaining ones. This also applies for the evaluation as "acceptable". A judge is evaluated overall as "incapable" if he or she is evaluated as "incapable" in at least in three criteria.

55. In its decision of 10.4.2017, the Constitutional Court declared parts of the evaluation law as unconstitutional and void which definitively gave importance to the evaluation of the Chairperson.

Chairpersons of a court are evaluated only using the grades "very good", "good" and "acceptable".

### ***ee. Review and final decision***

56. The evaluated magistrate has a right to object to the draft evaluation report (Article 94) and can request to be heard in a hearing before the High Judicial Council. After the hearing, the Council makes the final decision on the evaluation and determines the evaluation grade (Article 95). In case the magistrate is evaluated as incapable, he or she will receive a 2% salary reduction during the two calendar years following the evaluation (Article 95 (5)) and will forward the evaluation report to the High Justice Inspector (Article 95 (6)).

57. Within 15 days following the notification date of the decision, the magistrate has a right to appeal the decision to the High Court. The Constitutional Court declared it unconstitutional, to limit this legal remedy only to cases where the magistrate had been evaluated with a grade less than "good". Article 95 (9) states that the Council shall publish extracts from the evaluation report and decision respecting the confidentiality principle.

## **VI. Analysis with special regard to the SEJ I Report 2015 and against international standards**

### **1. General observations and recommendations**

58. As a general observation, it must be pointed out that the new legislative schemes shows many positive aspects. The legislative scheme clearly benefited from the input of the work carried out under the first project SEJ (January 2014-June2016). The new scheme, in particular the evaluation procedure and criteria are set out in primary legislation.<sup>38</sup> The aims of the evaluation (Article 68) and the evaluation principles (Article 69) are especially deserving of praise. The legislator has evidently taken on board Recommendation 1 of the SEJ Report (2015) which strongly suggested that the objective of individual evaluation of judges should be to improve the Albanian judicial system in order to provide judicial services of the highest possible quality. The evaluation principles, especially the demand for respect for judicial independence, conform to international standards. Moreover, the introduction of judicial review and the possibility that a judge objects against a possibly biased evaluator are to be welcomed.

59. The effect an evaluation can have on a judge's salary (Article 95 (5)) is open to criticism. This is in conflict with CCJE Opinion No 17 (2017). Moreover, as commendable as the new scheme generally is, it can only have positive outcomes if it is effectively put into practice.

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<sup>38</sup> Which follows Recommendation 7 of the SEJ I Report (2015).

Therefore, this report recommends that the SEJ II Action provides support in its practical implementation. This can be done by developing and regularly updating best-practice guides which make the application of the law easier in practice. Article 95 (9) states that the Council shall publish extracts from the evaluation report and decision respecting the confidentiality principle.<sup>39</sup> The material published this way should be used in best practice guidelines. Best practices and guidelines should be developed in close cooperation with judges, chairpersons and the High Judicial Council. Moreover, the experiences of persons who worked with the old evaluation scheme should not be disregarded but used in implementing and constantly improving the new scheme.

## **2. The Evaluation Process**

### **a. General observations**

60. The new legislative scheme introduces an elaborate evaluation process which involves different institutions including a self-evaluation of the respective judge, an opinion from the court Chairperson as well as the evaluation committee of the High Judicial Council. The positive aspect of this scheme is that the involvement of different institutions and individuals increases the chance that the evaluation of judges is conducted in a transparent and objective way. The number of different parties involved make it more unlikely that personal relationships can be used to gain a positive evaluation. It is also a very encouraging development that the reforms have introduced rules according to which a magistrate can ask for a replacement if he or she has reason to suspect that an evaluator is biased.<sup>40</sup>

61. However, the fact that the scheme is so elaborate could make its application slow and complicated. To avoid this risk, help must be made available to the different institutions responsible for its application to implement the new law in a transparent and professional manner. This could be done by introducing and constantly updating best-practice guides and forms, and by offering training courses for chairpersons at the School of Magistrates.

### **b. The timeliness of the evaluation**

62. In the SEJ Report (2015), Recommendation 15 stressed the importance of making the evaluation process more timely. Judges can only learn from evaluations and promotion systems can only benefit from them, when the present performance of judges is assessed, not when - as in the past - the evaluation concerned their work of many years ago. The new scheme takes this up. It introduces timelines for the drafting of materials and the holding of meetings and hearings. It also states that judges should be evaluated under the new scheme every third year and after 15 years every fifth year. Moreover, the law allows for evaluations upon request (Article 97). Most importantly, the law states that present skills and training of the judge's needs must be assessed. This is all very much to be welcomed. Now, it is necessary that the new scheme is properly implemented to ensure that those important goals can be met.

### **c. Opinion of the chairperson**

#### ***aa. Assessment of the scheme***

63. The new evaluation scheme introduces an opinion of the court's chairperson as a mandatory part of the evaluation file. The involvement of the chairperson of a court cannot be

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<sup>39</sup> This reflects Recommendation 14 of the SEJ I Report (2015).

<sup>40</sup> This takes up Recommendation 18. See law no. 115/2016 on Governance Institutions of the Justice System has provided the criteria of the incompatibility of a member of the HJC.

objected according to international standards as long as it respects the evaluated judge's independence<sup>41</sup>. However, following the decision of the Constitutional Court of 10.4.2017, the Chairperson's opinion has no binding force on the High Judicial Council. This might prove to be of particular benefit for the Albanian judges, who expressed in discussions that they would not approve of a chairperson having too much power in the evaluation process. Now, the Chairperson has a say in the process, which is to be welcomed because he or she should have the best insight into the daily work of the evaluated judge over a long period. Moreover, the necessity to write an opinion about individual judges might increase the chairperson's interest in their work. According to Article 87 (4,5), the chairperson has a right to discuss the chairperson's draft opinion with the judge. It might be worth considering whether chairpersons should be encouraged to use the insights they gain when drafting their opinion as informal feedback which might help the judge's professional development.

### ***bb. Recommendations***

64. It was possible to submit opinions of the Court Chairperson even under the old evaluation scheme. However, this opportunity has apparently rarely been used. Since a mandatory opinion of the chairperson is a new requirement, he or she might be uncertain how to approach the task. Article 87, sets out important guidelines but it might also be useful to provide chairpersons with a list of aspects they might cover in their opinion. A best practice guide for chairpersons should be drawn up which should be continuously updated.. The School of Magistrates offers already offers training for chairpersons as part of its continuous academic programme. This course should be amended to include the skills necessary for their role (leadership, communication, organisational and administration), including helping with the evaluation opinions as provided for in the justice reform laws. . Best practice guides on evaluation - once developed - should be made part of the curriculum on evaluations.

### **c. Self evaluation of the judge**

#### ***aa. Assessment***

65. The scheme also introduces a mandatory self-assessment of the magistrate to be evaluated. International standards do not discourage such a self-evaluation. A self-assessment is the starting point of evaluations in Belgium, France and Romania. However, during the process, it is necessary to ascertain what purpose the judge's self-assessment should serve, which qualities it could reveal if done well and what kind of useful information it might provide. A judge can certainly use this tool to explain certain professional or private challenges which must be taken into account to fully appreciate his or her performance. The capacity for introspection and realistic self-assessment are certainly to be welcomed in a judge and can be ascertained by way of their self-evaluation. However, it must be kept in mind that not every judge is comfortable with writing about themselves. The purpose of the law is to evaluate the professional qualities of a judge and not his or her ability for public soul-bearing.

#### ***bb. Recommendation***

66. It would be useful to (provide) produce/publish a leaflet and develop a best practice guide to inform judges which points they might think of bringing up in their self-evaluation. In the preparation of such a leaflet, the experiences of other legal systems which use self-assessments (France, Belgium, Romania) should be taken into account. The judge's self-evaluation should also be potentially considered as the basis for informal feedback and an opportunity to discuss career development with the chairperson outside the formal evaluation procedure. Such informal

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<sup>41</sup> See CCJE Opinion No. 17 (2014) para 6.

assessments/appraisals are recommended by the CCJE.<sup>42</sup> They can only work, however, in an atmosphere of mutual trust. The best practice guide should be developed by the High Judicial Council in close collaboration with judges and chairpersons in order to facilitate the development of a uniform practice which is followed in all courts as part of the evaluation process.

### **3. Evaluation Criteria**

67. The SEJ Report (2015) made a number of recommendations regarding the evaluation criteria (7-11). The new evaluation scheme has benefited from these recommendations. In particular, it is to be welcomed that the number of criteria was reduced.

#### **a. Judicial or prosecutorial professional capacity (Article 72)**

68. In relation to the first evaluation criterium, it is to be welcomed that according to Article 72 (4) the evaluator should not assess the correctness of the decision. Reversal rates are not mentioned as a criterium for the evaluation of a judge in Article 90. If at all, they could only be introduced according to Article 90 (1) c iii "other statistical data determined by the Council". However, it must be pointed out clearly, that neither the ENCJ<sup>43</sup> nor CCJE<sup>44</sup> encourage taking into account reversal rates, unless the decisions in question clearly show a lack of legal competence. The approach and skills of the judge, not the outcome of his or her decisions, must be the object of the evaluation. However, reversal rates might be mentioned by judge in self-evaluation or by chairperson of the court.

#### **b. Organisational skills (Article 74)**

69. The criteria used here are to be welcomed; efficiency is certainly an important quality in a judge. Unproductive court hearings should be avoided, especially bearing in mind that the conduct of a judge during proceedings is an important part of how the judicial system is perceived by the public (ibid Recommendation 12 in the SEJ Report (2015)). It is unclear how this criterium will be handled in practice in future. If guidelines are used to ascertain a judge's efficiency, it is recommended that they are developed with great care. It must be kept in mind that cases will vary in length depending on complexity. As already pointed out in SEJ Report (2015), the expected workload must be realistic (Recommendation 11). The timelines and the prescribed annual workload should be realistic and fair, taking into consideration the rights of the litigants as well as working conditions and the complications in certain legal areas. False incentives, such as focussing on "easy cases" in order to produce a high number of decisions, should be avoided.

#### **c. Ethics and commitment to judicial and prosecutorial professional values (Article 74)**

70. The ethics and commitment of a judge are an important evaluation factor. However, the reliability of the sources on which the assessment will be based is of the utmost importance. Moreover, it should be stressed that an evaluation is not a disciplinary procedure. Nevertheless, this important criterium certainly requires more attention so that it can be correctly handled. It would be useful to form a working group which includes judges and

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<sup>42</sup> CCJE Opinion No. 17 (2014) para 25.

<sup>43</sup> ENCJ Report 2012-2013, section 4.12.

<sup>44</sup> CCJE Opinion No. 17 (2014) para 35.

prosecutors to amend the Ethical Code for Judges adopted in 2006 by the National Conference on Judges in the light of the new judicial reforms.. .

#### **d. Personal qualities and professional commitment (Article 76)**

71. A judge's personal qualities, especially communication skills, are of great importance for a legal system. In particular, a judge's interaction with parties during court hearings greatly influences how they perceive the judiciary (see Recommendation 12, SEJ Report 2015). A judge's ability to cooperate with colleagues and to engage in other professionally related activities is certainly to be welcomed. It improves the working environment for all judges. However, such abilities should not be the focus of a judge's evaluation. It is of course desirable that judges are good colleagues. Nonetheless, deficient 'people skills' during court hearings can make them bad judges rather than just bad colleagues. Moreover, in the evaluation process, evaluators should be sensitive of cases of mobbing of colleagues.

72. In order to help the evaluators assess such personal qualities, some guidelines might be developed. As in relation to the other criteria, such guidelines should be constructed/drafted in close cooperation with judges and prosecutors. Moreover, such guidelines must take adequate care not to demand conformity among judges. Good judges should be individuals whose motivation is based on their sense of justice and judicial independence. It would be counterproductive to treat them like 'naughty' school children. Instead, good ethics and professional values should form an essential part of their daily responsibilities.

### **4. Judicial Review**

73. Recommendation 17 of the SEJ Report (2015) suggested that clear rules on the availability of judicial review for evaluation should be included in the legislation regulating the assessment process. The right to appeal the evaluation decision is provided in Article 97 (6). The decision of the Constitutional Court of 10.4.2017 declared words with lower grade than good“ unconstitutional. The law instead now provides the possibility of judicial review for all magistrates, irrespective of how they have been evaluated. This is to be welcomed. Judicial review of a decision concerning the assessment of a judge is necessary in particular if the evaluation concerns a judge's "civil rights" under Article 6 ECHR.

74. Article 95 (7) i of this report states "to the High Court only regarding questions of law surrounding the non-consistent implementation of the law". When the expert asked about the meaning of the section, she was told that the Albanian version stated that complete judicial review of the evaluation decision was possible. If this is the case, it is to be welcomed. Judicial review is necessary, not only in relation to questions of law but also in relation to the material used in the evaluation process and the procedure applied. However, it must be understood that most evaluations have a certain subjective element which makes it difficult to determine one right answer. Thus, judicial review has its limits.

### **5. Evaluators**

75. Firstly, the provision in the new law, which permits a judge to request a replacement evaluator where there is a risk of bias, is to be commended.<sup>45</sup> Secondly, SEJ Report (2015) suggested in Recommendation 19 that the very best judges should be encouraged to serve as evaluators. In order to attract qualified inspectors, appropriate measures must be taken to make the position of an inspector more attractive. Under the new scheme, the High Judicial

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<sup>45</sup> See law no. 115/2016 on Governance Institutions of the Justice System has provided the criteria of the incompatibility of a member of the HJC.

Council is responsible for the evaluation. Their members are entitled to the salary and benefits of the High Court judge. Being a member of this Council is likely to be a great incentive. One of the requirements that the candidates must meet is the fact that he should have received an evaluation grade of at least “very good” in the last two ethical and professional performance evaluations. The quality of any judges on secondment who are involved in the evaluation process must also be ensured.

## **6. Evaluation of chairpersons**

76. It is to be welcomed that chairpersons are evaluated as judges<sup>46</sup> and in their capacity as chairpersons.<sup>47</sup> CCJE Opinion 19 (2016) recommend that, pointing out that the managerial capacity of chairpersons demands special appraisal.

77. The development of best-practices for the work of chairpersons might be useful. A good chairperson can considerably help the development of judges and improve the work of the court. However, they need the right leadership and organisational skills to accomplish the task. Such skills, like any other, must be developed.

## **7. Vetting Scheme**

78. This Report does not discuss the vetting process stipulated in the Law 84/2016 "The Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania. According to this law, judges must undergo an asset assessment, background assessment and proficiency assessment. The criteria according to which the proficiency assessment is apparently to be undertaken, are the same as in the new evaluation scheme established under the Law 96/2016 "on the status of judges and prosecutors". It is therefore recommended that the experiences gained from the vetting process where the new evaluation scheme is used are used in the regular evaluation process.

## **8. Effective use of the information obtained through the evaluation of judges**

79. In order to improve the judicial system, the information obtained through the evaluation of judges must be used effectively. This means that it should not only be used to ascertain whether judges are eligible for promotion but also their training needs. Information of the latter kind should be transferred to the School of Magistrates so that it can constantly improve and update its course programme.

80. The evaluation of judges is not enough to ensure that a judicial system provides services of the highest possible quality. The working conditions of judges must also be adequate and there must be a sufficient number of judges to ensure that cases can be decided quickly. In this context, it must be kept in mind that according to international standards it is the responsibility of the state to provide adequate funding for their judiciary.<sup>48</sup> The information gathered through the evaluation of judges should be used to ascertain if the Republic of Albania fulfills this obligation.

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<sup>46</sup> See CCJE Opinion 19 (2016) para 41.

<sup>47</sup> See CCJE Opinion 19 (2016) para 42.

<sup>48</sup> See Recommendation [CM/Rec\(2010\)12](#), para 32, and CCJE Opinion No. 2(2001), para 4; CCJE Opinion No 17 (2014) para 35.

## VII. Recommendations

81. In general, the new evaluation scheme provides a good framework for the evaluation of judges. Apart from the effects the assessment has on the remuneration of judges, the new framework conforms to international standards. The most important challenge is now to ensure that the new framework is applied in a transparent and professional way. The best legal framework is of no use if not properly/adequately applied. Therefore, the most important task now must be to enable relevant institutions to apply the new legislative framework in the best possible way.

1. A judge's evaluation should have no influence on his or her salary. Reviewing Article 95 (5) could be considered.

2. The effective implementation of the new evaluation scheme should be the priority of the relevant institutions as well as the pertinent international projects in the Republic of Albania.

3. In order to implement the new scheme, best-practices and guidelines should be developed and constantly updated in close cooperation with judges, chairpersons, the High Judicial Council and with persons who were able to gain experiences in the evaluation of judges under the old scheme. In particular, such guidelines may address the assessment of :

- A judge's efficiency. Expectations used as a benchmark to assess a judge's efficiency must be realistic and developed and handled with care, taking into consideration the working conditions of judges.
- Ethics and commitment to professional values. If guidelines on this subject have not yet been established, they should be developed in close cooperation with judges and prosecutors.
- Personal and professional qualities. Guidelines concerning such qualities must encourage a sense of individual responsibility rather than demand conformity among judges.
- The skills of a chairperson

Guidelines should also be developed in relation to the issues to be addressed in

- A judge's self-evaluation.
- A chairpersons's opinion.

4. The School of Magistrates is encouraged to offer special training for chairpersons as part of its continuous academic programme. Such courses should be amended in order to facilitate the development of skills necessary for their role (leadership, communication, organisational and administration), including the drafting of evaluation opinions as provided for in the justice reform laws.

5. Chairpersons and judges should be encouraged to use the insights they gain when drafting their opinions/self-assessment for informal feedback beyond the evaluation process. Such informal feedback - if conducted in an atmosphere of mutual trust - can help the development of the individual judge and the court.

6. Since judicial review is of importance to meet the requirements of Article 6 ECHR, it should be verified whether the wording of Article 95 (7) provides for a full judicial review of an evaluation decision.

where the new evaluation scheme is used

7. The information obtained through the evaluation of judges should be shared with the School of Magistrates to enable it to constantly update and improve its courses to meet training needs.

8. The information obtained/gleaned through the evaluation of judges should be used by parliament and the government to critically assess if and how the working conditions of judges are adequate and if more funding, is necessary, especially to appoint more judges..