



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Recommendation of the ENCJ workshop on the evaluation of judges

**Rome
5 - 6 December 2019**

Representatives of the following ENCJ Members and Observers gathered in Rome on 5-6 December 2019:

HRJ/CSJ Belgium, VSS Bulgaria, DSV Croatia, JC England and Wales, CSM France, SJC CCJ Greece, OBT Hungary, CSM Italy, TP Latvia, TT Lithuania, Rvdr Netherlands, CSM Portugal, CSM Romania Sudna Rada Slovakia, Sodni Svet Slovenia, KLGJ Albania, MoJ Austria, MoJ Estonia, MoJ Finland and Domstolsverket Sweden.

The objective of the seminar was to promote access to fair and impartial courts and to further the implementation of ENCJ guidelines and standards in the fields of independence, efficiency and quality of Justice. The ENCJ has been developing minimum judicial standards and the relevant indicators in particular fields as a tool for self-evaluation for judicial systems. It is believed that this would further the approximation and ultimately the improvement of the judicial systems in Europe and contribute to the development of independent Councils for the Judiciary and contribute to the attainment of a European judicial culture. The workshop was the second in a series of workshops where awareness for these standards will be furthered and compliance enhanced.

The idea of the workshop, was not to compare the various systems, but to analyse to which extent each of the systems are in compliance with the standards set out, if they do not how this could be remedied, if they so how could the system be improved.

The members and observers gathered in Rome on 5 and 6 December 2019, have agreed on the following recommendations and conclusions:

The ENCJ Standards on the Evaluation of judges as laid down in the report of 2013 are still a good reflection of the diversity of the systems in place in Europe. The diversity of the systems was also reflected in the replies to the pre-workshop survey that was carried out.

I. As regards the aims of the evaluation of Judges

Irrespective of the specificities of each system of evaluation of professional performance of judges, the main aims of the system of evaluation of professional performance are:

- To safeguard of professional quality of judges, in order to improve the service provided by the judicial systems to the public.
- Skill development of judges, including continuing training if this appears to be necessary in view of the outcome of the evaluation.
- To improve the motivation and satisfaction of judges in the development of their professional activities.
- To improve the efficiency of the judicial systems. This specific aim links evaluation of professional performance of judges with the systemic evaluation of the judicial systems.

In general, there are two systems in Europe for the evaluation of judges. The first group of systems is very formal, locked in legally and with consequences for the judges under review. In some cases, the evaluations results are made public or not difficult to get access to judges operating in these systems seem rather relaxed about it.

The other group of systems the evaluation is for development purposes only. These systems have less possibilities to remove judges that are underperforming. The divide follows the old and established versus the recently set up legal systems in Europe.

Evaluation reports are used in most countries for any career advancement decision. These might have a formal or informal character. Countries with a semi-automatic promotion system mostly, do not take evaluation reports into account for promotion decisions.

II. The body in charge of the evaluation of judges

The participation of non-judges in the process is perceived to be positive in the few countries where this is part of the system. Non-judges such as academics, can be more free to express their opinion, because there is no peer-pressure and tend to be stricter.

Meetings in which judges and lawyers participate is a good instrument for reflection. An interesting best practice is also to have a group of certain stakeholders (i.e. victims of certain crimes) meet with the judges dealing with these cases to share what they experienced during the court proceedings and how this could be improved.

When looking at the standards that the evaluation should be done by judges elected by their peers, does that apply to all stages of the evaluation process or is it sufficient that the guarantees are part of the procedure as a whole? In most countries the evaluation body is composed of judges elected by their peers. If this is not the case, guarantees to exclude undue influence should be in place for instance in the second level of the evaluation process.

III. Criteria, process and consequences of Evaluation

Most systems use both quality and quantity criteria for assessing the performance of the judge. The question is how to balance these two criteria. Quality criteria should prevail, at the same time respecting judicial independence. In some systems the quantity of the work done, is seen as a quality aspect. Integrity criteria also need to be considered.

Recommendations

Recommendation 1 on the composition of the body in charge of evaluation:

An external view may be useful for the evaluation of judges, the participation of lay members in certain parts of the evaluation process could be interesting and may contribute to the accountability of the judiciary.

Recommendation 2 on the link between evaluation and judicial training

Training, and further improvement of judges should be linked to the results of the evaluation process. This should not only be the case in when deficiencies have been established, but all judges should be involved in continuous training.

Recommendation 3 on the drawing up of evaluation criteria

The Councils for the Judiciary should be involved in the drawing up of criteria. It is not recommended that all criteria are regulated in the law; there should be ample discretionary authority for the judiciary.

Recommendation 4 on the quality of judgements

The quality of decisions should be taken into account when evaluating the performance of judges. However, quality should be determined not based on the merits of the decision, but on formal elements of the decision such as procedural issues and judicial craftsmanship.