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HIGH JUDICIAL COUNCIL

DECISION

NO. 263, Date 21.11.2019¹

“SUPPLEMENTARY RULES ON THE EVALUATION OF JUDGES”

The High Judicial Council, based on Article 147, paragraph 1, letter “a” of the Constitution, as well as on Articles 2, 68-72, 74-78, 84-95, 97 and 171 of the Law No. 96/2016 “On the Status of Judges and Prosecutors in the Republic of Albania”, as amended, Article 25 of the law no 48/2019 "On Some Additions and Amendments to Law 96/2016 ", upon the proposal of the Committee of Ethics and Professional Evaluation,

DECIDED:

1. The approval of supplementary rules of the ethical and professional evaluation of judges, according to the text attached to this decision and which is an integral part of the “Evaluation scheme of judges”.

This decision shall enter into force on the date of its publication in the Official Journal.

FOR THE HIGH JUDICIAL COUNCIL

THE COUNCIL CHAIRPERSON

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Ministry of Justice,
Boulevard “Zogu I”
Tirana, Albania
Tel: +355 4 22 40 333
E-mail: info@euralius.eu
Web: www.euralius.eu



SUPPLEMENTARY RULES ON THE EVALUATION OF JUDGES

CHAPTER I

GENERAL PROVISIONS

Article 1

Object

The object of this decision is to determine the rules that complement the scheme of ethical and professional evaluation of judges based on and for the implementation of Law no. 96/2016 'On the status of judges and prosecutors in the Republic of Albania', as amended.

Article 2

Field of application

1. This decision applies to the evaluation of judges assigned to a position in court who have served as judge during the evaluation period.
2. These rules do not apply to the ethical and professional evaluation of:
 - a. the Chairperson of the Court;
 - b. a judge member of the High Judicial Council for the time s/he is in this office;
 - c. judges in the mobility scheme or seconded to the High Judicial Council or to the High Court.

The rules that supplement the scheme of ethical and professional evaluation of these subjects are approved by special decision of the High Judicial Council.

3. These rules shall not apply to a judge seconded to structures other than those specified in point 2, who retains the status of magistrate. His/her activity is evaluated by the institution itself, according to the evaluation system of the relevant structure, where the judge is seconded.

Article 3

Definitions

For the purposes of this decision, the terms below have the following meanings:



- a) "Evaluation file" is the file opened for each judge containing the documents listed in Article 90 of the Status Law;
- b) "Council" is the High Judicial Council;
- c) "Chairperson" is the chairperson of the court where the judge has been in office during the evaluation period;
- ç) "Committee" is the Standing Committee on the Evaluation of Ethics and Professional Activity in the Council;
- d) "Status Law" is the law no. 96/2016 'On the status of judges and prosecutors in the Republic of Albania' as amended;
- dh) "Officer responsible for the evaluation" is the member of the Committee's support unit responsible for preparing the acts necessary for the evaluation process;
- e) "Analytical Report" is the act prepared by the official responsible for the evaluation, under the supervision of the rapporteur;
- ë) "Rapporteur" is a member of the Standing Evaluation Committee of Ethics and Professional Activity in the Council and/or the substitute member, appointed by lot for each evaluation;
- f) "Evaluation draft report" is the act drafted by the rapporteur containing, for each judge, the data and information under Article 93 of the Status Law, their analysis and proposal for the evaluation grade;
- g) "Accelerated evaluation upon request" is the evaluation carried out pursuant to Article 97 of the Status Law;
- gj) "Compulsory accelerated evaluation" is the evaluation carried out by the Council in the transitional period, according to Article 25 of Law 48/2019 "On some additions and amendments to Law 96/2016".

Article 4

Principles of evaluation

The judges' evaluation is based and implemented through the principles of independence, meritocracy and career development, efficiency, due process and confidentiality.

Article 5

Implementation period



1. For each judge the period of evaluation shall be determined on the basis of the years of professional experience in accordance with the provisions of Article 84, paragraphs 1 and 2 of the Status Law.
2. The period of unpaid leave is not counted as professional experience for the purpose of determining the evaluation period.
3. The evaluation period consists of calendar years and begins on January 1st of the first year of the evaluation period.
4. During the three- or five-year evaluation period, the Council evaluates the judge notwithstanding the period in which he or she has been in office, which nonetheless may not be shorter than one year.

Article 6

Manner of evaluation

1. The judge's ethical and professional evaluation is carried out according to the evaluation criteria, measured by the constituent indicators, according to the methodology and the scoring scheme adopted by the Council, which are an integral part of the evaluation scheme of judges.
2. The standards required for measuring the legal indicators are adopted by the special decision of the Council. The measuring standards are applied by individualizing the position of the judge in the court, with respect to the instance, jurisdiction, branch of the court and affiliation to the adjudication section.
3. If the judge has held office in a variety of positions within a calendar year, the measurement standards of evaluation associated with the position where the judge has held office for the longest time shall apply.
4. Ethical and professional evaluation strictly follows the formalization rule, documenting in written form every completed action, which is subsequently included in the evaluation file.

Article 7

Completion of the procedure without a final decision

When the Council decides on the termination of the status of a judge, in relation to whom the ethical and professional evaluation has begun, the evaluation procedure shall be declared as terminated without a final decision on the merits.

Article 8

The rapporteur's role



1. The rapporteur is responsible for the processing of the judge's ethical and professional evaluation procedure, and takes the following measures:
 - a. notifies the judge and chairperson on the commencement of the evaluation procedure;
 - b. collects the evaluation documentation, collaborates and communicates with the judge, the court chairperson and any other institution;
 - c. oversees the creation of the evaluation file and the preparation of the analytical report;
 - ç. notifies the chairperson of the Committee on the creation of the evaluation file and on the preparation of the analytical report; and
 - d. drafts the draft report on the judge's evaluation.
2. In carrying out its functions, the rapporteur is supported by the administrative structure of the Council.

Article 9

The role of the Committee

After the creation of the evaluation file and preparation of the analytical report, the Committee assesses whether the documents of the evaluation file are complete and if it may be proceeded with the drafting of the evaluation draft-report; otherwise it asks the rapporteur to gather additional data from the evaluation sources, by specifying such data.

CHAPTER II

ETHICAL AND PROFESSIONAL EVALUATION PROCEDURE

Article 10

Evaluation phases

The ethical and professional evaluation takes place according to the following stages:

- a) preliminary actions, which include drafting, approving and publishing the annual evaluation program and designating the rapporteur and the officer responsible for each evaluation;
 - b) collecting documentation and creating the evaluation file by the responsible officer under the supervision of the rapporteur;
 - c) drafting the analytical report by the officer responsible for the evaluation;
 - ç) review of the completion of evaluation procedures by the Committee;
 - d) drafting of the evaluation draft-report by the rapporteur;
 - dh) adoption of the evaluation draft-report by the Council.
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Article 11

Evaluation program

1. Upon a proposal by the Committee, the Council shall adopt the annual program of ethical and professional evaluations within November of each year. The annual program contains, to the extent possible, the quarterly planning of individual evaluations, ensuring an efficient organization of evaluation procedures as well as facilitating the development of the lottery.
2. In preparing the draft program, the Committee is supported by the human resources unit. This unit shall, within September, submit to the Committee a nominal list of judges, updated with the following information:
 - a) tenure of each judge;
 - b) position of the judge;
 - c) the period for which the judge was last assessed;
 - d) any other data that the Committee deems necessary for the purpose of drawing up the program.
3. The draft program is compiled based on the principle of conducting ethical and professional evaluation of judges in a timely manner. The list of judges shall necessarily include all judges whose evaluation period in the respective year has completed or is about to complete.
4. The decision on the adoption of the program shall be published in the official website of the Council.
5. Within January, the Chairpersons of the Courts shall submit to the Council statistical data in accordance with the standard form adopted by the Council, for all judges involved in the evaluation program. Along with the statistical data, the Chairperson shall send to the Council the information related to the chamber and section where the judge has served during the evaluation period.

A copy of the individual statistical data forwarded to the Council shall be submitted simultaneously to the judge subject to evaluation.

Article 12

Assignment of the rapporteur

1. Before the beginning of each quarter, the Council shall by proposition of the Committee, determine the list of judges that are subject to evaluation under the approved program.
2. Based on the above list, the plenary meeting of the Council shall assign by lot the rapporteur and the officer responsible for each evaluation, taking into account, to the extent possible, an equal distribution of work. Due to the workload and when the Committee deems it necessary, substitute members are also included in the lottery for the selection of the rapporteur.



3. The rapporteur shall notify the judge on the initiation of the evaluation procedure under Article 85, paragraph 2 of the Law on Status, on the name of the officer responsible for the evaluation and on the right to request their recusal.
4. In case the judge submits the request for the recusal of the rapporteur or of the officer responsible for the evaluation, the Council shall decide not later than three days from its submission. If the rapporteur of the case or the officer responsible for the evaluation is recused, the Council shall promptly carry out the lottery procedure on the designation of the new rapporteur or of the responsible officer.
5. The notification on the commencement of the evaluation process is sent to the Chairperson and the chancellor of the court where the judge has served during the evaluation period.

Article 13

Collection of documentation and establishment of evaluation file

1. Within three weeks of receiving the notice on the commencement of the evaluation procedure, the judge shall prepare a self-evaluation act in accordance with the standard form adopted by the Council and shall submit it to the Chairperson of the court in which he or she has served.
2. Within two months of receiving the rapporteur's notification, the Chairperson shall conduct the procedure under Article 87 of the Law on Status, deliver the opinion according to the standard form adopted by the Council, and shall forward the evaluation acts to the Council. The evaluation acts that are sent by the Chairperson are defined in Article 88, point 2 of the Status Law.
3. Based on the statistical data, the rapporteur determines the section in which the judge has held office during the period for which the evaluation is made and, depending on the number of cases for each category, determines proportionately the number of cases to be selected, according to the criteria set out in Article 91 of the Law on Status.
4. The date of the drawing of the lot shall be determined by the rapporteur and notified to the Chairperson and to the chancellor of the respective court. The lottery takes place with the mandatory presence of the officer responsible for the evaluation.
5. To the extent possible, the lottery shall be carried out electronically, in accordance with the procedure adopted by special decision of the Council.
6. The conduct of the lottery shall be documented according to the standard form approved by the Council. The minutes shall be signed by all participants.

Article 14

Evaluation file



1. The rapporteur shall, within two weeks of the submission of the evaluation acts by the Chairperson according to Article 88 of the Status Law, take measures to establish the evaluation file. The judge has the right to obtain copies or extracts of updated acts at any time.
2. The evaluation file shall, in addition to the acts and information provided for in Articles 90 and 92 of the Law on Status, include information from other auditing or controlling institutions, which are required where necessary.
3. Within two weeks from the creation of the evaluation file, the responsible officer shall, under the supervision of the rapporteur, draw up the analytical report in accordance with the standard form adopted by the Council. The analytical report contains the list of acts collected during the evaluation process and analyses in a detailed and structured way the acts in the evaluation file.

Article 15

Drafting the evaluation draft report

1. Within one month from the submission of the acts by the chairperson of the Court, and after the Committee has deemed the procedures as completed, the rapporteur shall draft the draft report on ethical and professional evaluation in accordance with the standard form adopted by the Council.
2. The draft report drawn up by the rapporteur shall be notified to the judge, who shall be informed of the right to access the evaluation file and to lodge an objection in written form within 2 weeks from the date of receipt of the notification, in accordance with Article 94 of the Status Law.
3. The judge has the right to be heard by the Council at the plenary meeting at which the draft evaluation report will be examined.

Article 16

Examination of the evaluation and Council's decision

1. The evaluation draft report is forwarded to the plenary meeting for review by the rapporteur. As a rule, the matter is included in the agenda of the next meeting of the Council.
2. Each member of the Council has access to the evaluation file.
3. If the judge has not requested to be heard by the Council, the matter shall be examined on the basis of the report of the case prepared by the rapporteur, who shall also answer any questions raised by the Council members.
4. If the judge has asked for a hearing, the case shall be examined on the basis of the report of the case prepared by the rapporteur and the explanations of the judge, who during the hearing shall not repeat the content of the written objection. Any member of the Council can ask questions to the rapporteur and to the judge. Upon the request of the judge, or due to the need to clarify the facts, the Council calls also other persons at the hearing.



5. The Council decides on the evaluation in accordance with the rules of Article 95 of the Status Law.
6. In conclusion, the Council shall publish on its official website extracts of the evaluation report and of the decision, pursuant to the standard form adopted by it.

CHAPTER III

ACCELERATED EVALUATION

Article 17

Accelerated evaluation cases

1. Accelerated evaluation is done only upon written request of the judge, when s/he requests:
 - a) to be transferred;
 - b) to be promoted.
2. The Council decides to initiate an accelerated evaluation procedure for the period which includes the last calendar year, only if the professional and ethical performance of the judge has not been assessed for the last two calendar years.
3. Unless expressly provided otherwise, the accelerated evaluation shall, to the extent possible, be carried out in accordance with the ethical and professional evaluation rules set by the Status Law and this Decision.

Article 18

Special Rules

1. The Council adopts a special program for judges to be evaluated by an accelerated procedure. Together with the adoption of the program, the Council shall elect the rapporteur and the responsible officer and shall notify the judge and the court chairperson on the commencement of the proceedings. Not later than 5 days from the adoption of the program the rapporteur shall notify the Chairperson on the submission of statistical data for the evaluation year.
2. Within two weeks of receiving the rapporteur's notice, the judge shall prepare the standard self-evaluation act.
3. Within one month of receiving the rapporteur's notification, the Chairperson shall conduct the procedure under Article 87 of the Law on Status, deliver the opinion according to the standard form adopted by the Council, and shall forward the evaluation acts to the Council. The acts of evaluation submitted by the Chairperson are set out in Articles 88, paragraph 2 and 97, paragraph 3 of the Law on Status.

4. The rapporteur and the officer responsible for the evaluation shall arrange for the collection of the acts, the creation of the evaluation file, and the drafting of the analytical report and the draft evaluation report as soon as possible, and in any case not later than two months from the submission of the evaluation acts by the court chairperson.
5. The draft evaluation report shall be notified to the judge and included in the agenda of the next Council meeting.
6. The calendar year for which the judge is evaluated in an accelerated manner is excluded from the periodic evaluation period.

CHAPTER IV COMPLETION OF EVALUATION

Article 19 Complaint of the judge

1. The judge has the right to appeal the decision of the Council only for serious procedural violations.
2. The appeal shall be filed with the Administrative Court of Appeal within 15 days of the date of notification of the Council's reasoned decision.

Article 20 Archiving the evaluation file

3. When a judge's evaluation is final, the outcome of the evaluation is included in the judge's personal file.
4. The evaluation file shall be archived according to the general rules for archiving the Council's acts.

CHAPTER V TRANSITORY PROVISIONS

Article 21 Transitional re-evaluation period

1. The Transitional Re-evaluation Period 08.10.2013 - 08.10.2016 will be considered as an evaluation period which ends with the determination of the level of evaluation (grading) of each judge who has successfully passed the transitional re-evaluation process. For this period, the judge's organizational ability will be assessed by reference to the measuring criteria of judicial activity under Annex 1 of the decision of the High Judicial Council, no. 261/2, 14 April 2010.

2. The 2013–2016 period is considered a full evaluation period for judges undergoing a transitional re-evaluation process. From January 1, 2017, the Council calculates the individualized evaluation period for each judge under Article 84 of the Status Law.
3. Until the transitional re-evaluation is completed, the annual ethical and professional evaluation program shall consider cases for which the transitional re-evaluation bodies have submitted professional transitional re-evaluation files to the Council pursuant to Article 171, paragraph 5 of the Law on Status.
4. As evaluation sources for determining the evaluation grade of a judge, shall serve the data included in the evaluation file of the judge sent by the transitional re-evaluation bodies, as well as 6 additional files selected by lot for the evaluation pursuant to the rules adopted by the Council.

Article 22

Special rules for ethical and professional evaluation during the transitional period

1. During the transitional period, pursuant to Article 25 of Law 48/2019 "On some additions and amendments to Law 96/2016", whenever a promotion or lateral transfer is requested, the Council shall carry out a compulsory accelerated evaluation of the judge.
2. The rules laid down for the accelerated evaluation upon request shall also apply to this evaluation, but with halved the deadlines compared to those provided in Article 19 of this Decision.

Article 23

Design of the evaluation program in the transitional period

Until the implementation of ethical and professional evaluation is ensured, in parallel with the regular evaluation of judges according to Article 84 of the Law on Status, in its annual evaluation program the Council shall prioritize the following:

- a) timely completion of ethical and professional evaluation to grade the judges who have successfully passed the transitional re-evaluation process according to Article 21 of this Decision;
- b) completion of the compulsory accelerated evaluations under Article 22 of this Decision.