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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

REPUBLIC OF ARMENIA

DRAFT CONSTITUTIONAL LAW SUPPLEMENTING AND AMENDING
THE CONSTITUTIONAL LAW
"JUDICIAL CODE OF THE REPUBLIC OF ARMENIA"
AND EXPLANATORY NOTE

DRAFT CONSTITUTIONAL LAW
OF THE REPUBLIC OF ARMENIA
SUPPLEMENTING AND AMENDING THE CONSTITUTIONAL LAW
"JUDICIAL CODE OF THE REPUBLIC OF ARMENIA"

Article 1. In Article 45 of the Constitutional Law "Judicial Code of the Republic of Armenia" of 7 February 2018 (hereinafter referred to as "the Law"):

- (1) in the title, the words "members of the Commission for Performance Evaluation of Judges (hereinafter referred to as the "Evaluation Commission")" shall be added after the words "members of the Commissions of the General Assembly";
- (2) in part 1,
 - a. the words ", and Evaluation of Performance of Judges Commissions" in point 2 shall be replaced by word "Commission";
- (3) point 5.3 shall be added to read as follows:

"(5.3) 80 per cent for members of the Evaluation Commission; "

Article 2. In part 2 of Article 56 of the Law, the words ", except for increments to be paid to the judge as prescribed by the Supreme Judicial Council based on the evaluation results, " shall be added after the word "increments".

Article 3. In part 2 of Article 57 of the Law, the words "increments to be paid to the judge as prescribed by the Supreme Judicial Council based on the evaluation results and" shall be added after the words "except for".

Article 4. In part 2 of Article 70 of the Law:

- (1) in point 9, the words "except for the cases provided for by Law" shall be added

after the word "programmes";

- (2) in point 15, the words "or of the Evaluation Commission" shall be added after the words "or of the Commission of the General Assembly".

Article 5. In part 5 of Article 74 of the Law:

- (1) in point 2, the words "as well as commission for performance evaluation of the judges," shall be deleted;
- (2) point 5.1 shall be added to read as follows:
"(5.1) elect the judge members of the Evaluation Commission."

Article 6. In Article 77 of the Law:

- (1) in point 1, the words ", Commissions for Performance Evaluation of Judges" shall be deleted;
- (2) parts 13-15 shall be repealed;
- (3) in part 16 and 17, the words "performance evaluation of judges and the Training Commissions" shall be replaced by the words "the Training Commission".

Article 7. Part 4 of Article 78 of the Law shall be repealed.

Article 8. Part 1 of Article 89 of the Law shall be supplemented with points 4.2-4.3 which read as follows:

- "(4.2) elect non-judge members of the Evaluation Commission and approve the composition of the Evaluation Commission;
- (4.3) prescribe the amount of increments paid to judges based on evaluation of performance of judges, the procedure and methodology for calculation for the payment thereof."

Article 9. In point 2 of part 1 of Article 115 of the Law:

- (1) the words "the longest experience" shall be replaced by the words "higher scores based on the performance evaluation of the judge";
- (2) shall be supplemented as follows; "Where judges having passed the evaluation and those having not passed the evaluation have submitted an application for

secondment, preference shall be given to the judge having passed the evaluation, and in case several judges having passed the evaluation, the preference shall be given to the one having gained the highest scores."

Article 10. Part 2 of Article 119 shall be supplemented as follows; "When reviewing the applications prescribed by this Article, the Supreme Judicial Council may also take into consideration, the results of evaluation of performance of the judge".

Article 11. Chapter 18 of the Law shall be amended as follows:

"CHAPTER 18 PERFORMANCE EVALUATION OF JUDGES

Article 136. General Provisions of Performance Evaluation of Judges

1. A judge with at least two years of work experience as a judge shall be subject to evaluation. Evaluation shall be carried out once every two years.
2. The aim of performance evaluation of judges shall be to:
 - (1) contribute to the selection of the best candidates when compiling the promotion lists of judge candidates;
 - (2) contribute to the selection of the areas of training of judges;
 - (3) reveal ways of improving the effectiveness of the work of the judge;
 - (4) contribute to the self-improvement of the judge;
 - (5) contribute to the improvement of the effectiveness of activities of the court.
 - (6) promote the performance of the best work by judges, demonstrate the highest professionalism and observance of the rules of conduct and ethics in the best possible way.
3. Results of the performance evaluation of a judge shall be provided to the following bodies:
 - (1) the Training Commission, to select the areas of training of judges;

- (2) the judge being evaluated, to improve the effectiveness of his or her work and for the latter to self-improve;
 - (3) the Ethics and Disciplinary Commission, to consider the issue of instituting disciplinary proceedings against the judge, in the case provided for by this Chapter;
 - (4) the chairperson of the court, for the purpose of improving the effectiveness of the activities of the given court.
 - (5) the Supreme Judicial Council, to perform his or her powers prescribed by this Code.
4. Results of performance evaluation of a judge, as well as data and information obtained with that regard shall be confidential, except for cases provided for by this Code. Results of performance evaluation of a judge may be disclosed upon the decision of Supreme Judicial Council.
 5. Performance evaluation of a judge shall be carried out according to the procedure prescribed by the Supreme Judicial Council.

Article 137. Commission for Performance Evaluation of Judges

1. Commission for Performance Evaluation of Judges shall:
 - (1) conduct the performance evaluation of judges;
 - 2) apply to the Committee on Ethics and Disciplinary Matters to discuss the issue of initiating disciplinary proceedings against the judge where violation of a material or procedural norm or a violation of the Code of Conduct of the judge (including essential disciplinary violations) are detected during the evaluation prescribed by Article 142 of this Code.
 - (3) exercise other powers reserved thereto by this Code.
2. The Commission for Performance Evaluation of Judges is an independent body formed as prescribed by this Code and by Supreme Judicial Council to carry out parallel evaluation of all judges with two years of work experience in the position of a judge in the Republic of Armenia.
3. The Evaluation Commission for Performance Evaluation of Judges shall be composed of at least 25 members, of which: at least ten shall be judge members who are elected by the General Assembly, and at least fifteen - non-judge members, who are elected by the Supreme Judicial Council with

equal proportion from candidates prescribed by part 4 of this Article. Taking into consideration the scope of evaluation, the Supreme Judicial Council may, upon its decision, establish a higher number of members of Evaluation Commission. The procedure for approving the number of members of Evaluation Commission and formation thereof shall be established by a decision of the Supreme Judicial Council.

4. Candidates for non-judge members of Evaluation Commission shall be nominated by higher education institutions, non-commercial organisations, Judicial Department, the procedure and particulars for nomination and election of candidates submitted thereby shall be established by the Supreme Judicial Council. The Supreme Judicial Council shall also establish the requirements to non-commercial organisations.
5. A judge having at least five years of work experience as a judge and in the case of being evaluated for performance, based on the final evaluation results, to be rated as either good or high may be elected as a member of the evaluation commission.
6. Judge member candidates of the Evaluation Commission shall be nominated by self-presentation or by nomination by another judge and upon the consent of the candidate and shall be elected by the General Assembly through a secret ballot.
7. Two members of the Commission shall be elected from the Court of Cassation, three from judges of the Court of Appeal, and five shall be elected from the Court of First Instance.
8. When electing judge members of Evaluation Commission, the presence of civil, criminal, administrative, and anti-corruption judges in the Commission should be guaranteed.
9. The chairpersons of courts, the chairpersons of the chambers of the Court of Cassation, the members of the Supreme Judicial Council and the members of Committees of the General Assembly may not be members of the Evaluation Commission.
10. After two weeks of the date when the position of judge members of Evaluation Commission elected by the General Assembly remains vacant,

- the Supreme Judicial Council shall, within a period of ten days, elect the member as prescribed by the Supreme Judicial Council.
11. When nominating non-judge members of Evaluation Commission, the presence of lawyers specialised in civil, criminal, administrative, and anti-corruption matters in the Commission shall be guaranteed.
 12. A legal scholar demonstrating political restraint and neutrality, having high professional qualities and having scientific degree in law and at least five years of professional work experience may be nominated by higher educational institutions as a member of the Evaluation Commission..
 13. A legal scholar demonstrating political restraint and neutrality, having high professional qualities, having at least eight years of professional work experience or scientific degree in law and at least five years of professional work experience may be nominated by non commercial organisations as a member of Evaluation Commission.
 14. The Judicial Department may nominate the following persons as a member of Evaluation Commission:
 - (1) a former judge having held office during the last 5 years, having at least 10 years of professional work experience, at least three years of which - in the position of a judge; or
 - (2) candidate for a judge; or
 - (3) the lawyer demonstrating political restraint and neutrality, having high professional qualities and having at least five years of professional work experience.
 15. The limitations set forth in part 2 of Article 111 of this Code shall be applied to persons prescribed by point 1 of part 14 of this Article.
 16. Candidate provided for by parts 12-13 and point 3 of part 14 of this Article, from the date of election to the members of the Evaluation Commission until expiry of the term of office thereof, may not engage in advocacy (human rights protection) activities through court representation in courts of general jurisdiction, specialised courts, Court of Appeal and Courts of Cassation of the Republic of Armenia.

17. In order to engage the candidates provided for in part 12-14 of this Article, the Judicial Department, shall at least thirty days prior to formation of the Evaluation Commission, make an announcement.
18. The Supreme Judicial Council shall approve the list of members of the Evaluation Commission by judges elected by the General Assembly, as well as a result of election from the list of candidates nominated as prescribed by the parts 12-14 of this Article.
19. Where the bodies provided for by parts 12-14 of this Article fail to nominate candidates within the established time limits, the Supreme Judicial Council shall, within a period of ten days, fill the vacancies for the members of Evaluation Commission from the list of judges meeting the requirements set forth in part 6 of this Article according to the procedure prescribed by the Supreme Judicial Council.
20. The Evaluation Commission shall be considered as formed from the moment the decision of the Supreme Judicial Council on approving the list of the members of the Commission is approved.
21. Evaluation Commission shall, by a majority vote of the members of the Commission, elect a chairperson of the Commission, who shall manage the current activities of the Commission. Where the Commission fails to elect a chairperson of the Commission for two consecutive times, the duties of the Chairperson shall be performed by the oldest member of the Commission.
22. A member of the Evaluation Commission may not hold the position of a member of the Commission for two consecutive times.
23. The rules set forth in parts 1-4 of Article 77.1 of this Code shall be applied to the matters related to termination or discontinuation of powers of the members of the Evaluation Commission.
24. Where a vacancy for a member of the Evaluation Commission opens, the Chairperson of the Commission shall, within a period of seven days, apply to the Judicial Department to initiate the process of recruiting a new member.
25. Evaluation Commission shall operate until the results of the evaluation of the performance of judges are summarised. For the subsequent assessment, a

new Commission shall be formed in accordance with the procedure established by this Article.

26. The procedure for the operation of the Commission and the groups thereof shall be approved by the Supreme Judicial Council.
27. The non-judge member of the Evaluation Commission shall be compensated in the manner and in the amount prescribed by the Supreme Judicial Council.

Article 138. Criteria for performance evaluation of judges

1. Performance evaluation of judges shall be based on the applicable criteria prescribed by this Article that characterise the quality and effectiveness of the work of a judge, as well as the professionalism and conduct of the judge.
2. Criteria for evaluation of the quality and professionalism of the work of a judge shall be:
 - (1) ability to justify the judicial act;
 - (2) ability to preside over the court session and conduct the court session as prescribed by law.
3. Criteria for evaluation of the effectiveness of the work of a judge shall be:
 - (1) effective workload management skill and work planning;
 - (2) examination of cases and delivery of judicial acts within reasonable time limits;
 - (3) observance by a judge of time limits prescribed by law for the performance of individual procedural actions;
 - (4) ability to ensure an efficient working environment.
4. Criteria for evaluation of the ethics and rules of conduct of a judge shall be:
 - (1) observance of the rules of conduct and ethics;
 - (2) contribution to the public perception of the court and to the confidence therein, attitude towards other judges and the staff of the court.
5. For evaluation based on the criteria prescribed by this Article, the Commission group shall:
 - (1) review the audio recordings of at least 10 court sessions for cases examined by the judge (where it is not available — simple paper records) and at least 7 judicial acts resolving the case on the merits and

- 3 intermediate judicial acts (by random selection, so that the examination of cases of different complexity is guaranteed);
- (2) review the questionnaire filled in by the chairperson of the given court regarding the attitude demonstrated by the judge to be evaluated towards other judges and the court staff. The chairperson of the court may also conduct an interview with the view to obtain additional information on the judge to be evaluated or the judge's work with the court staff and the efficiency criteria of his or her staff management.
6. In the cases for performance evaluation of the chairperson of the court the questionnaire shall be filled in by the oldest judge of the given court.

Article 139. Procedure for performance evaluation of judges

1. Performance evaluation of judges shall be carried out by the Evaluation Commission on the basis of the criteria prescribed by this Code within four-month time period following the formation thereof which may be extended once for up to two months upon the reasoned decision of the Commission.
2. The Supreme Judicial Council shall prescribe the procedure and the methodology of the performance evaluation of judges, including the criteria for evaluation prescribed by Article 138 of this Code, the procedure for collecting data necessary for the evaluation and other particulars necessary for the performance evaluation of judges.
3. The Evaluation Commission shall carry out the performance evaluation of the judges at least five in groups each comprising five members. When conducting performance evaluation of judges the groups shall act as a Commission.
4. The Evaluation Commission groups shall be formed by drawing lots so that two judges, as well as one member nominated by non-commercial organisations, higher education institutions and the Judicial Department are represented in each group. The supreme Judicial Council shall approve the composition of the groups of the Evaluation Commission.
5. The Supreme Judicial Council shall, within a period of one week from the moment the Evaluation Commission groups are formed, approve the list of

all judges operating in the Republic of Armenia to be evaluated, dividing the list into five equal sub-lists as prescribed by the Supreme Judicial Council.

6. Sub-lists approved by part 5 of this Article shall be distributed randomly among the five groups of the Commission for Performance Evaluation of Judges.
7. Each group of the Evaluation Commission shall conduct the evaluation of the performance of all judges included in one sub-list of the list approved by the Supreme Judicial Council.

Article 140. Summarising and appealing the results of the performance evaluation of judges

1. A draft conclusion on the evaluation results shall be drawn up by each group of Evaluation Commission, which shall include a summary of the evaluation results.
2. Draft conclusion on the evaluation results shall be forwarded to the judge, who shall have the right to submit, within a period of seven days following the receipt of the draft, his or her considerations thereon.
3. The Evaluation Commission group shall review the considerations of the judge on the evaluation results and shall render a conclusion on the evaluation results.
4. The Evaluation Commission shall evaluate the performance of judges as high, good, average, or low, based on the overall evaluation results, taking as a basis the evaluation scores prescribed by the Supreme Judicial Council which, among others, include the indicators for performance evaluation of the judge based on each criterion, the method of determining the unit based on each indicator, the maximum amount of units, as well as the scope of data documented and serving as a ground for performance evaluation of the judge based on the given indicator and the procedure for gathering those data.
5. The performance score of a judge shall be formed by the average of the scores assigned to the judge by each member of the group of the Evaluation commission based on all the evaluation criteria.

6. The grounds, the procedure for and the peculiarities of self-recusal and recusal of a judge and non-judge member of the Evaluation Commission group shall be established by a Decision of the Supreme Judicial Council, by excluding the participation of a judge member of the Commission for Performance Evaluation of Judges in evaluation and summarisation of the results of his or her performance.
7. The conclusion drawn up by the Evaluation Commission group may be appealed to the Appeal Committee within a period of five days following the drawing of the conclusion. The Appeal Committee shall be set up from other Evaluation Commission groups. The procedure for getting involved in the Appeal Committee and the activity of the Commission shall be established by the Supreme Judicial Commission.
8. The Appeal Committee shall review the appeal and render a decision thereon within a period of ten days following the expiry of the time period established for appealing the conclusion. The Appeal Committee may partially or fully reject or grant the appeal lodged against the evaluation results adjusting the evaluation results.

Article 140.1. Consequences of performance evaluation of judges

1. Where the performance of a judge is evaluated as low or average based on the overall evaluation results, the Evaluation Commission group shall render a decision on sending the judge to additional training, prescribing the criteria by which he or she needs to improve his or her skills.
2. Where, as a result of performance evaluation of a judge by the Evaluation Commission, prima facie grounds for subjecting a judge to disciplinary liability are detected as provided for by Article 142 of this Code, the Commission shall render a decision to apply to the Ethics and Disciplinary Commission to consider the issue of instituting disciplinary proceedings against the judge.

Article 12. Article 144 of the Code shall be supplemented with part 3 which reads as follows:

"3. In case of applying to the Ethics and Disciplinary Commission where prima facie grounds for subjecting a judge to disciplinary liability are detected by the Evaluation Commission, disciplinary proceedings may not be instituted on the grounds provided for point 1 of part 1 of this Article within a period of one year following the receipt of the application, and on the ground provided for by point 2 of the same part - within a period of three months following the receipt of the application, but not later than two years after committal of the violation".

Article 13. Final part and transitional provisions

1. This Law shall enter into force from the moment the Evaluation Commission is formed, except for the provisions on nomination and election of candidates to members of the Commission, which shall enter into force on the tenth day following the official promulgation of this Code.
2. The powers of the Judges Evaluation Commission of the General Assembly shall be terminated after this Law enters into force.
3. The Supreme Judicial Council shall, within a period of one month following the entry into force of this Law, approve the requirements to non-commercial organisations provided for by this Law, bring the procedure and particulars of the nomination and election of candidates nominated by higher educational institutions, non-commercial organisations, the Judicial Department, decisions pertaining to the evaluation of performance of judges compliant to the requirements of this Law, and also establish the procedure for the activities of the Commission for Performance Evaluation of Judges and groups.
4. The Judicial Department shall, within one week following the adoption of decisions prescribed by part 4 of this Article, make an announcement for non-commercial organisations provided for in the same Article with the view to nominate members of the Commission for Performance Evaluation of Judges.
5. The Judicial Department shall, within one week following the adoption of decisions prescribed by part 4 of this Article, apply to higher education

institutions to submit data on at least five candidates provided for by this Law with the view to form a Commission for Performance Evaluation of Judges.

6. Commission for Performance Evaluation of Judges shall be formed within a period of three months following the official promulgation of this Law.

LAW

OF THE REPUBLIC OF ARMENIA

ON MAKING SUPPLEMENTS AND AMENDMENTS TO THE LAW

"ON REMUNERATION FOR PERSONS HOLDING STATE

POSITIONS"

Article 1. Sub-point "b" of point 2 of part 1 of Article 3 of Law of 12 December 2013 "On remuneration for persons holding state positions" (hereinafter referred to as "the Law"), the words ", increment in the official pay rate in accordance with the procedure established by the Supreme Judicial Council on the basis of evaluation of activities of persons holding a position of a judge of First Instance Court, Court of Appeal and Court of Cassation" shall be added after the words "state service positions in the State Revenue Committee,".

Article 2. In Article 7 of the Law:

- (1) in part 1, the words "or performance evaluation" shall be added after the words "record of work and/or service or activitiesu".
- (2) in part 7, the words "increments prescribed by Decision of the Supreme Judicial Council based on evaluation of the activities of the judge and" shall be added after the word "except for".

Article 3. In part 2 of Article 12.1 of the Law, the words ", except for increment prescribed by part 1.1. of Article 13 of this Article" shall be added after the words "the amount prescribed by part 2 of Article 6 of this Law".

Article 4. In Article 13 of the Law:

- (1) part 1.1 shall be added to read as follows:

"1.1. Increment may be provided to persons holding a position of a judge of the Court of First Instance, Court of Appeal and Court of Cassation from the savings/economies generated during the given budget year on the basis of evaluation of the activities of the judge".

(2) in part 3, the words "except for the increment prescribed by part 1.1 of this Article" shall be added after the words "increments paid to judges";

(3) in part 4, the words "the increment prescribed by part 1.1 of this Article and" shall be added after the words "including increments, except for".

Article 5. Final part and transitional provisions

1. This Law shall enter into force on the tenth day following the day of its official promulgation.

LAW

OF THE REPUBLIC OF ARMENIA

**ON MAKING A SUPPLEMENT TO THE LAW "ON THE ACADEMY OF
JUSTICE"**

Article 1. Second sentence shall be added to part 2 of Article 22 of the Law HO-50-N of 2 May 2013 "On the Academy of Justice", which reads as follows: "The mentioned amount of hours shall not be binding on judges who receive high evaluations based on the results of evaluation of activities of judges.".

Article 2. Final part and transitional provisions

1. This Law shall enter into force on the tenth day following the day of its official promulgation.

LAW

OF THE REPUBLIC OF ARMENIA

ON MAKING AN AMENDMENT TO THE LAW

"ON SERVICE IN THE JUDICIAL DEPARTMENT"

Article 1. The words "and Masters" shall be deleted from point 2 of part 2 of Article 9 of Law HO-336-N of 13 June 2018 "On service in the Judicial Department".

Article 2. Final part and transitional provisions

1. This Law shall enter into force on the tenth day following the day of its official promulgation.

EXPLANATORY NOTE

TO THE DRAFTS OF THE CONSTITUTIONAL LAW "ON MAKING SUPPLEMENTS AND AMENDMENTS TO THE CONSTITUTIONAL LAW "JUDICIAL CODE OF THE REPUBLIC OF ARMENIA"" AND RELATED LAWS

1. Current situation and the need to adopt the legal act

The rule of law in a democratic society requires not only judicial independence, but also the establishment of a judicial system, the efficient activities and high quality of judicial acts of which are unequivocal.

In this sense, the Consultative Council of European Judges (hereinafter referred to as "the CCJE") pays attention to two fundamental principles. The first principle concerns the protection of judicial independence, and the second principle concerns maintenance and improvement of the quality and efficiency of judicial systems.

One of the directions for implementation of these principles is the introduction of a system of performance evaluation of judges as toolset ensuring high quality of the judiciary.

A number of documents of the Consultative Council of European Judges directly state that in countries where there are systems of evaluation of judges' work, the evaluation should aim at improving the judiciary while ensuring the highest quality possible, and this evaluation must be done in the interests of the public as a whole, noting also that the fundamental rule for individual evaluation of judges' work must be full maintenance of the independence of a judge (Opinion No. 17 of the CCJE)¹.

In Council of Europe member states the evaluation of judges' work is undertaken in order to assess the abilities of individual judges and the quality and quantity of the tasks they have completed. Individual evaluation is used, for example, to provide feedback, to identify training needs and to determine "performance based" salaries. It can also be used in order to seek out suitable candidates for promotion².

It should be mentioned that the Venice Commission states that the aim of periodic evaluations of judges is to clarify the individual needs of a judge in order to ensure his or her qualification development and promotion. Periodic evaluations serve as major tools for the practice of judges so that the latter improve their work, and these evaluations may also serve as a ground for promotion. It is important for the evaluation to be highly qualitative and focus on the professional competence, as well as personal competence and social competence of the particular judge.

¹ Opinion No. 17 of the Consultative Council of European Judges on the work of judges, the assessment of the quality of justice and respect for the independence of the judiciary (2014), <https://rm.coe.int/16807481ea/>:

² Opinion No. 17 of the Consultative Council of European Judges on the work of judges, the assessment of the quality of justice and respect for the independence of the judiciary (2014), <https://rm.coe.int/16807481ea/>:

Currently, evaluation of judges in the Republic of Armenia is conducted as prescribed by Articles 136-140.1 of Chapter 18 of the Constitutional Law "Judicial Code of the Republic of Armenia" (hereinafter referred to as "the Constitutional Law") and Decision of the Supreme Judicial Council (hereinafter also referred to as "the Council") No BDKh-53-N-9 of 10 August 2020 "On establishing the procedure and time limits for performance evaluation of judges, the procedure, methodology, scales and the form of evaluation sheet for gathering information required for evaluation" by the Commission for Performance Evaluation of Judges set up by the General Assembly of Judges (hereinafter referred to as "the Commission"), and the performance evaluation of judges is based on the regular schedule for evaluating the performance of judges approved by the Supreme Judicial Council, according to the corresponding years and judges.

In fact, it is safe to record that the objective of introducing the system of evaluation of judges was to establish an active system of evaluation of judges through which, while forming the lists of judge candidates suitable for promotion, it would be possible to contribute to the selection of the best candidates, contribute to the selection of the areas for training of judges, identify the paths for improving efficiency of judges' work, contribute to self-improvement of judges and improvement of efficiency of judges' performance. However, time showed that the existing regulations are unable to ensure objective evaluation of judges' performance based on the criteria and indicators provided for by law; thus, it is impossible to fully implement the established goals. And so, what is problematic is the first period of evaluation (1 September 2020-1 September 2024), which even though was prescribed by law, yet fails to ensure contribution to the process of replenishing the lists of promotion based on the goals of evaluation in any way. To observe legislative requirements, judges would apply for extraordinary evaluation, as a result of which the process of regular evaluation became simply unfeasible, as a large number of judges had applied to the Commission for extraordinary evaluation.

It should be mentioned that from April 2021 until February 2023, the Commission regularly evaluated the performance of 128 judges, and the performance evaluation of another 16 judges was in progress. Moreover, in the same period, extraordinary evaluations of 51 judges were conducted, of which 35 are completed, and 16 were in progress. The number of extraordinary evaluations particularly grew sharply in 2022 alone, which is, in practice, a factor required for the promotion of judges. However, on the other hand, the Commission stated that due to lack of human and technical resources, taking into consideration also the growing number of applications for extraordinary evaluations, it is difficult to conduct regular evaluations and extraordinary evaluations at the same time.

Besides, when selecting judge candidates seeking promotion, the Supreme Judicial Council does not have the opportunity to achieve selection of the best candidates in comparison, as in 98% of cases the candidates are evaluated in the range of points envisaged for a high indicator; the indicators of evaluated judges were almost identical (90-100 points). Due to this, it is also impossible to identify the shortcomings in judges' work, for the elimination of which it is necessary to develop the directions for training, the paths for improving efficiency of judges' work; it is difficult to contribute to the improvement of efficiency of judicial

performance. There is also no proper ground for establishing the directions for self-improvement of judges.

What is also problematic is the number of members of the evaluation commission, as, based on the existing legislative regulations, the Commission has 5 members, which is a rather small number, and, as a result, the Commission works in overload mode and often does not manage to conduct the evaluations within the prescribed time limit; what is also not ensured is the opportunity for specialised evaluation by the Commission which, in essence, may be of essential significance from the perspective of quality evaluation.

Besides, judges are evaluated based on the regular schedule for performance evaluation of judges, by the corresponding years and judges. Thus, simultaneous evaluation of judges is out of the question, taking into consideration also the scarcity of members of the existing evaluation commission.

The amendments propose also to evade regular and extraordinary evaluation procedures and try to show and present the performance of judges in a more effective way; it is proposed to introduce an evaluation mechanism according to which judges will be evaluated once every two years.

Touching upon the periodicity of evaluation, it should be mentioned that even though the four-year period of performance evaluation of judges — enshrined by the legislation of the Republic of Armenia — was approved in the Opinions of the CCJE and the Venice Commission based on the rationale that evaluation must not be conducted more often in order to not create the impression of permanent control which, in essence, may pose a risk for judicial independence, nevertheless, it should be stated that this period does not ensure flexibility of the process from the perspective of responding to the reforms taking place in the legal system and assessing the implementation impact of legislative developments, in line with the dynamic social developments, and does not contribute to the motivation factor.

By taking into consideration the aforementioned, as well as taking as a basis the professional knowledge of judges and their ability to conduct trials, their ability to cope with the workload and development of other skills³, a need has emerged to reform and modify the evaluation system.

In this regard, we deem it necessary to first touch upon the international practice for the performance evaluation of judges:

According to the Minimal Standards regarding evaluation of professional performance and irremovability of members of the judiciary (Report 2012-2013⁴) — developed by the European Network of Councils for the Judiciary (ENCJ), in order to avoid political influence, the procedures for the evaluation of professional performance of judges or (where relevant) prosecutors, ought to be placed in the

³ Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, 2010 November, available at <https://www.osce.org/odihr/KyivRec>:

⁴ 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, available at https://www.ency.eu/images/stories/pdf/workinggroups/final_report_encj_project_minimum_standards_iii_corrected_july_2014.pdf:

hands of a body or bodies independent of government in which a relevant number of members of the judiciary are directly involved. The body in charge of evaluation of professional performance of judges could be the appropriate national Council for the Judiciary (or a specific committee or department within the Council for the Judiciary), national or regional independent evaluation boards or committees, or the heads of the appropriate courts or even the head of the judiciary. The latter proposals would seem appropriate in those jurisdictions where a body such as the Council for the Judiciary does not exist but where other independent and autonomous bodies have the necessary competence.

According to Opinion No. 14 of the CCJE, other professionals who can make a useful contribution to the evaluation process may participate in it⁵. The studied international practice attests to the fact that Council of Europe member states apply extremely differentiated approaches in terms of selection of the model of an evaluation body.

In Lithuania, performance evaluation of judges is conducted by the Permanent Commission for the Assessment of Activities of Judges adjunct to the Judicial Council. The Commission comprises 7 members (4 judges who shall be elected by the Judicial Council and 3 non-judge members who shall be appointed by the President of the Republic of Lithuania)⁶.

In Georgia, performance evaluation of judges appointed on probation is conducted by one judge member and one non-judge member of the High Council of Justice, whom the High Council of Justice shall select by lot. The activities of judges shall be evaluated independently from each other⁷.

In Spain, evaluation of the activities of judges is reserved for the General Council for the Judiciary, and evaluation is conducted by the Technical Evaluation Unit⁸.

In North Macedonia, evaluation is conducted by the Judicial Council.

In Albania, evaluation is conducted through a number of bodies (persons), particularly by the judge being evaluated — via self-evaluation, by the chairperson of the court — by writing a detailed opinion on the judge, and by the Commission for Assessment of the High Council of Justice — through the prescribed criteria⁹.

It should be noted that, pursuant to the bulletin of the responses of Council of Europe member states to the questionnaire for preparation of Opinion No. 17 of the Consultative Council of European Judges (2014), in most countries, evaluations are conducted regularly and periodically, with certain intervals. In many member states where evaluations are conducted regularly and periodically, additional evaluations may be conducted in special situations, especially when a

⁵ Opinion No. 17 (2014) of the Consultative Council of European Judges (CCJE) on the Evaluation of Judges' Work, the quality of justice and respect for judicial independence, <https://rm.coe.int/16807481ea/>.

⁶ <https://www.teismai.lt/en/self-governance-of-courts/permanent-commission-for-the-assessment-of-activities-of-judges/about-commission/676>

⁷ Organic law of Georgia on General courts, <https://matsne.gov.ge/en/document/view/90676?publication=34>:

⁸ <https://www.cnj.gob.sv/index.php/unidad-tecnica-de-evaluacion>

⁹ Law on the Status of Judges of Albania, 2018:

judge applies for promotion or if there is a possibility that the judge is incapable of fulfilling his or her duties as a judge.

As far as the periodicity of evaluations is concerned, in countries with an official system of evaluation of judges, evaluations are conducted with the following periodicity: **In Belgium**, the first evaluation is conducted a year after appointment, and then once every three years, **in France** — once every two years, **in Slovenia** — once every three years, **in Austria** — once every two years, etc.

It is also established that the results of periodic evaluation of a judge may have an impact on remuneration of the judge in the form of additional payments. For instance, **in Italy**, passing the stages of evaluation with positive results is one of the conditions for increase of remuneration of a judge. **In Spain** and **Sweden**, the results of evaluation are used to distinguish between the remunerations of judges. **In Belgium**, a financial penalty is imposed against a judge having received an unsatisfactory score as a result of evaluation, cutting the remuneration of the judge for six months, after which the judge will be re-evaluated. If the results of evaluation are unsatisfactory again, the specified penalty shall still be imposed.

2. Nature of the proposed regulation:

The Draft envisages granting absolute autonomy to the Commission for Performance Evaluation of Judges. The Commission will be formed under the ad hoc principle and will act for the purpose of conducting performance evaluation of judges in a specific period, and after the process is over, the powers of the ad hoc Commission will also be terminated until the next period of evaluation. The aim of the Draft is to solve the issue of full independence of the Commission, ensure impartiality of the evaluators and rule out the possibility of conducting evaluation conditioned by personal interest or motives.

It should be mentioned that the Venice Commission has also touched upon the aforementioned problem, stating that the use of serving judges to evaluate their colleagues has the potential of causing some difficulties. In particular, it was mentioned that this could lead to bad personal relationships between judges on the one hand, and on the other hand, if judges receive good evaluations, this may serve as a ground for the emergence of "friendly relations" between the judges. In this regard, establishing a mixed team of evaluators, inviting legal professionals from outside the current judicial system may be the least bad option. In this case, the Venice Commission attached importance to ensuring the establishment of an evaluation team with a balanced composition, which will allow to avoid cronyism and the perception of self-protection. The Venice Commission once again recorded that the evaluation must be conducted in a transparent manner and impartially.¹⁰

¹⁰ CDL-AD(2014)007, Joint opinion on the draft law amending and supplementing the Judicial code

The proposed amendments envisage that the Commission for Performance Evaluation of Judges be composed of at least 25 members, 10 of which will be judges who shall be elected by the General Assembly of Judges, and the other 15 members will be members who are not judges and are elected by the Supreme Judicial Council. Moreover, it is necessary to emphasise that out of the aforementioned 15 members, 5 academic lawyers will be nominated by higher education institutions, 5 lawyers will be nominated by non-governmental organisations, and 5 academic lawyers will be nominated by the Judicial Department. As a warranty clause, it is also envisaged that the number of members of the Commissions may be added upon the decision of the Supreme Judicial Council. Through the specified regulation, an attempt was made to reduce the risks that may have emerged due to impossibility of conducting evaluation of judges within the prescribed period due to a large number of judges.

Pursuant to the proposed amendments, a judge who has at least five years of work experience as a judge and whose performance was rated good or high in the last evaluation results may be elected as a member of the Commission for Performance Evaluation of Judges.

Out of the judge members of the Commission for Performance Evaluation of Judges, 2 will be elected from among the judges of the Court of Cassation, 3 from among the judges of the appellates, 5 from among the judges of the first instance courts, guaranteeing within the Commission the presence of judges who examine civil, criminal, administrative and anti-corruption cases.

According to the proposed amendments, a person who shows political restraint and neutrality may be nominated as a non-judge member of the Commission for Performance Evaluation of Judges. At the same time, it is essential to state that the judge candidate and the judge having discontinued his or her term have been envisaged as candidates nominated by the Judicial Department. Through this regulation, the representation of former and future members of the judiciary is secured, neutralising the risks that may have emerged with regard to having numerical superiority of non-judge members within the Commission.

At the same time, accepting the fact that keeping confidentiality of the results of evaluation of judges is a guarantee for judicial independence, the proposed amendments envisage the scope of entities to which the results of evaluation may be provided. The main goals of providing information to the Supreme Judicial Council are to ensure election of the best candidate during the selection of judges seeking promotion, as well as for the Supreme Judicial Council to calculate and pay the additional payments. Moreover, the aim of providing the Supreme Judicial Council with data and information on evaluation and publishing them in the cases

prescribed by a sub-legislative act is to encourage judges, including ensuring transparency in the process of granting additional payments.

3. Expected outcome:

Adoption of the Draft will help better the system of performance evaluation of judges by best reflecting the performance of judges, as a result of which the evaluations of the abilities of judges will be conducted more efficiently, and by best reflecting the quality and volume of the works which they carry out and which are geared towards selection of the best candidates while forming the lists of candidates for judges suitable for promotion, needs assessment of judges, development of the judicial system, improvement of efficiency of judges' work; based on the results of evaluation, it will be possible to present to the public the volume of work done by the particular judge, and this will help to increase the reputation of judges.

4. Institutions involved in the process of elaboration of the Draft

The Draft was elaborated by the Ministry of Justice and the Judicial Department

5. On the essential increase or decrease of revenues and expenditures in the State Budget with regard to adoption of the Draft:

A need for increase of expenditures in the State Budget will not emerge in case of adoption of the Draft.

6. Relation to strategic documents: Armenia Transformation Strategy 2050, 2021-2026 Programme of the Government, sector-specific or other strategies:

There is no relation to strategic documents.