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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
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**DRAFT LAW OF THE REPUBLIC OF ARMENIA ON AMENDING
AND SUPPLEMENTING THE JUDICIAL CODE**

**CHAPTER 17 OF THE JUDICIAL CODE
ON DISCIPLINARY LIABILITY OF JUDGES AND TERMINATION
OF POWERS (law currently in force)**

**RATIONALE FOR THE ADOPTION OF THE LAW OF THE REPUBLIC
OF ARMENIA
“ON MAKING AMENDMENTS AND SUPPLEMENTS
TO THE JUDICIAL CODE”**

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DRAFTLAW OF THE REPUBLIC OF ARMENIA
ON AMENDING AND SUPPLEMENTING THE JUDICIAL CODE

Article 1. The Judicial Code of the Republic of Armenia of 21 February 2007 (hereinafter referred to as "the Code") shall be supplemented with Chapter 12.1, which reads as follows:

"CHAPTER 12.1 EVALUATING ACTIVITIES OF JUDGES

Article 96.1. Evaluating activities of judges

1. Activities of a judge of a court of first instance and a court of appeal shall be subject to regular evaluation after elapse of two years from the date of his or her appointment.
2. The aim of evaluating activities of judges shall be:
 - (1) to identify and point out to judges means of increasing efficiency of their work;
 - (2) to encourage judges to engage in self-analysis of their activities;
 - (3) to serve as a basis for selection of best candidates when compiling promotion lists of judges.
3. The Ethics and Disciplinary Commission of the Council of Judges shall organise and conduct evaluation of activities of judges, presenting final results of the evaluation to the Council of Judges.
4. The Council of Judges shall define the procedure, schedule and methodology for evaluating activities of judges.

Article 96.2. Criteria for Evaluating Activities of Judges

1. Evaluation of activities of judges shall be carried out on the basis of quantitative and qualitative criteria.
2. Evaluation of activities of judges based on quantitative criteria shall be carried out annually.
3. Evaluation of activities of judges based on qualitative criteria shall be carried out once every two years - on the basis of data collected during the two years included in the period of evaluation.
4. Quantitative criteria for evaluating activities of judges of courts of first instance, in regard to civil, criminal and administrative cases, shall be:
 - (1) quantitative performance and workload of a judge,
 - (2) observance of procedural periods by a judge,
 - (3) stability of judicial acts rendered by a judge,

- (4) average duration of examination of cases (unit of calculation - day) for different types of cases.
5. Quantitative performance and workload of a judge provided for in point ((1) of Part 4 of this Article shall be evaluated by means of the coefficient of individual workload of a judge, which is determined by the ratio of the coefficient of individual quantitative performance of a judge for the year to the coefficient of average annual quantitative performance of a court - according to parts 6 and 7 of this Article.
6. The coefficient of individual quantitative performance of a judge for the year shall be determined by the ratio of all cases disposed of by the judge during the year to the sum of legal cases pending since previous year and all new legal cases assigned to the judge during the year (not counting all legal cases pending before the judge during the year that are suspended).
7. The coefficient of average annual quantitative performance of a court shall be determined by the ratio of all legal cases disposed of by the court during the year to the sum of all legal cases pending since previous year (before all judges) and all legal cases brought before the court during the year (not counting all legal cases pending before all the judges of the court during the year that are suspended).
8. Stability of judicial acts provided for in point ((3) of Part 4 of this Article shall be evaluated by the percentage ratio of acts rendered by a judge to acts reversed as a consequence of a judicial error. The Council of Judges shall prescribe the maximum threshold after which the number of reversals shall have an impact on the evaluation of judges, serving basis for ranking as per the rating points. The Council of Judges may prescribe other exceptions for excluding reversed acts in the number of reversals for evaluating stability of judicial acts.
9. The Council of Judges shall determine standard time frames for average duration of examination of cases for different types of civil, criminal and administrative cases in order to evaluate average duration of examination of cases as provided for in point ((4) of Part 4 of this Article.
10. Qualitative criteria for evaluating activities of judges shall be:
 - (1) Legal knowledge:
 - (a) expertise in applying substantive and procedural law;
 - (b) quality of justification of judicial acts on disposition of a case on the merits.
 - (2) Professional abilities:
 - (a) ability to withstand pressure and threats,
 - (b) observance of rules of professional conduct;
 - (c) impartial attitude towards participants of the proceedings;
 - (d) appearing on time for court sessions;

(e) ability to maintain self-control.

(3) Communication skills:

(a) clarity, logical and comprehensible composition of judicial acts;

(b) clarity and comprehensibility of speech during court sessions;

(c) ability to listen during court sessions;

(d) polite manners.

(4) Skills of communicating with colleagues:

(a) quality of relations with colleagues and judicial officers;

(b) willingness to exchange professional knowledge and experience.

(5) Professional involvement:

(a) participation in works of self-governing bodies of the judiciary, professional unions of judges;

(b) participation in measures aimed at improving legislation;

(c) participation in educational activities for the purpose of improving knowledge and skills (including non-legal knowledge and skills);

(d) computer skills and skills in using other technical means, necessary for administration of justice.

(6) Organisational skills (shall be evaluated only for chairpersons of courts):

(a) ability to set objectives and organise human and material resources for achieving them;

(b) ability to motivate colleagues and staff.

11. For quantitative evaluation of activities of a judge of a court of appeal, the quantitative criteria provided for in Part 4 of this Article shall be assessed in regard to the panels of judges, on which the judge whose activities are being evaluated, served. Where a judge has expressed special opinion during examination of a case by a panel of judges, reversals in regard of respective cases as well as features provided for in point ((1) of Part 10 of this Article in regard of respective cases shall not be considered during evaluation of stability of judicial acts provided for in Part 8 of this Article.

12. Evaluation of activities of judges on the basis of qualitative criteria pursuant to Part 10 of this Article shall be conducted according to the procedure and methodology prescribed by the Council of Judges - using the following methods of gathering information:

(1) by means of peer evaluation, when judges, selected as a result of drawing a lot, evaluate activities of a judge by taking part in court sessions, listening to records of minutes of court sessions or studying judicial acts:

(2) **OPTION 1.** by means of being evaluated by prosecutors, advocates having professional relations with the judge - only in the case of criteria provided for in points 2 and 3 of Part 10 of this Article;

OPTION 2 Prosecutors and advocates shall not take part in evaluation of judges.

(3) by means of being evaluated by all judges of the respective court - only in the case of the criterion provided for in point ((6) of Part 10 of this Article.

13. Only judges, who have served in the position of a judge for at least three years and, based on overall results of the last evaluation, have received good or excellent grade provided for in Part 10 of Article 96.3, can take part in the evaluation provided for in point ((1) of Part 11 of this Article. Members of the Council of Judges cannot take part in the evaluation.

14. Data on at least five court sessions, on minutes of at least five court sessions and on at least five judicial acts on disposition of a case on the merits must be taken into account for the evaluation provided for in point ((1) of Part 11 of this Article.

15. Only advocates and prosecutors, who, in the capacity of a party or its representative, took part in at least 10 sessions with the participation of the respective judge during the period of evaluation and were engaged in professional activities as an advocate or a prosecutor for at least three years, may take part in the evaluation provided for in point ((2) of Part 11 of this Article. Evaluation of a judge provided for in point ((2) of Part 11 of this Article shall be conducted by at least three advocates or prosecutors.¹

16. The Council of Judges shall prescribe the format of questionnaires and self-evaluation reports filled in by persons referred to in Part 11 of this Article, as well as the procedure for filling in and evaluating those questionnaires.

17. The identity of persons provided for in Part 11 of this Article conducting evaluation of activities of judges shall be kept confidential, except in cases of examining issues in the Council of Judges where the results of evaluation are appealed against as provided for in Article 96.3 of this Code.

18. While evaluating activities of a judge, evaluator must provide brief justification of grades given for each criterion by indicating facts, which served as a basis for grading.

19. Judges shall be assigned respective rating points for each criterion subject to evaluation within the interval of maximum and minimum rating points prescribed by the Council of Judges.

20. Grade for activities of a judge based on quantitative criteria shall constitute 60 per cent of the overall results of evaluation provided for in Part 12 of Article 96.3 of this Code, whereas assessment on the basis of qualitative criteria - 40 per cent.

¹ This norm shall be observed if it is decided that the advocates and prosecutors are to participate in evaluation of judges.

Article 96.3. Summarising results of evaluation of activities of judges

1. While summarising results of evaluation of activities of judges the Ethics and Disciplinary Commission of the Council of Judges shall verify:
 - (1) observance of evaluation procedures,
 - (2) credibility of the evaluation taking into account justifications available in the evaluation sheets, as well as communications received pursuant to Part 1 of Article 154 of this Code.
2. Where evaluation questionnaires do not contain justification or are insufficiently justified, the Ethics and Disciplinary Commission of the Council of Judges shall have the competence of sending the questionnaires to persons who conducted evaluation for re-justification, and where credibility of the evaluation may be questionable - to organise reevaluation under the procedure prescribed by the Council of Judges.
3. Based on results of evaluation of activities of judges, the Ethics and Disciplinary Commission of the Council of Judges shall prepare individual evaluation sheets for every judge specifying grades and justifications for each criterion.
4. Individual evaluation sheet of a judge shall be sent to the respective judge so as he or she can provide comments and recommendations.
5. Within a period of two weeks after the date of receiving the individual evaluation sheet, the judge shall submit his or her self-evaluation report to the Ethics and Disciplinary Commission of the Council of Judges, which must include information significant for evaluation of criteria provided for in parts 4 and 11 of Article 96.2.
6. Based on information contained in self-evaluation reports submitted by judges, the Ethics and Disciplinary Commission of the Council of Judges shall summarise the results of evaluation reviewing grades contained in individual evaluation sheets of judges as necessary.
7. Individual evaluation sheet of a judge, prepared in compliance with Part 6 of this Article, shall be sent to the respective judge. Where the judge has neither comments nor recommendations regarding the individual evaluation sheet, he or she shall sign it and send it to the Ethics and Disciplinary Commission of the Council of Judges within a period of two weeks after the date of receipt.
8. Where the judge disagrees with evaluation results contained in the individual evaluation sheet, he or she may appeal against the evaluation results to the Council of Judges within a period of two weeks after the date of receiving it through submission of his or her reasoned objections in writing.

9. In cases provided for in Part 8 of this Article the Council of Judges shall function as a court. The procedure for examining cases shall be subject to the norms of the Administrative Procedure Code of the Republic of Armenia to the extent that such norms, in their essence, are applicable to examination of cases by the Council of Justice and do not contradict the norms of this Code.

10. The Council of Judges shall examine the cases regarding evaluation results within a reasonable time period.

11. Evaluation results may be challenged before the Council of Judges only with regard to observance of evaluation procedures and facts underlying the evaluation. The evaluator shall bear the burden of proving the facts underlying the evaluation. Decisions of the Council of Judges regarding evaluation results arrived at as a result of appeal provided for in Part 8 of this Article must be well-reasoned and shall be attached to individual evaluation sheets of judges.

12. Overall results of evaluation of activities of judges shall be calculated on the basis of results of a two-year evaluation provided for in Part 2 of Article 96.2 and evaluation provided for in Part 3 of Article 96.2 of this Code.

13. Activities of judges shall be evaluated either only on the basis of results of a two-year quantitative evaluation provided for in Part 2 of Article 69.2 of this Code or on the basis of overall results of evaluation provided for in Part 12 of this Article. Based on evaluation and in accordance with rating scale determined by the Council of Judges, activities of judges shall be classified into the following four groups:

- (1) excellent,
- (2) good,
- (3) average,
- (4) low.

14. General problems identified based on results of evaluation of activities of judges, as well as low results in regard to individual judges shall be subject to discussion in the Council of Judges.

15. Following the annual evaluation of activities of judges provided for in Part 2 of Article 96.2 of this Code, as well as based on overall results of evaluation provided for in Part 12 of this Article, the Ethics and Disciplinary Commission of the Council of Judges shall compile a list in which all judges subjected to evaluation will be ranked in accordance with rating points assigned to them as a result of evaluation.

16. The list provided for in Part 15 of this Article shall be a document for internal use only, which shall be sent to all judges, to the Council of Justice and the Staff of the President of the Republic of Armenia within a period of two weeks after being approved by the Council of Judges.

17. Individual evaluation sheets regarding results of evaluation of judges shall be kept in personal files of judges.

18. Individual evaluation sheets regarding results of evaluation of qualitative criteria shall be provided to members of the Council of Judges, to the Council of Justice, to the Staff of the President of the Republic of Armenia, to the respective judge and to the chairperson of the court, where the judge works.

Article 96.4. Implications of evaluation of activities of judges

1. Where activities of a judge are classified as low based on overall results of evaluation provided for in Part 12 of Article 96.3 of this Code, the Council of Judges shall render a decision to send the judge for additional mandatory training specifying the focus of the training.

2. Based on overall results of evaluation of activities of judges provided for in Part 12 of Article 96.3 of this Code, the Council of Judges may suggest that the judge participates in an additional training course, where according to evaluations of the Council of Judges it is necessary to perfect his or her skills in certain aspects.

3. Where activities of a judge are classified as low two times consecutively based on overall results of a two-year quantitative evaluation provided for in Part 2 of Article 96.2 of this Code, the Ethics and Disciplinary Commission of the Council of Judges shall instigate disciplinary proceedings against the judge which may result in the Council of Justice imposing penalty on the judge provided for in point (1) or (2) of Part 1 of Article 157 of this Code. Penalty may not be imposed, where activities of a judge are classified as average based on results of overall evaluation provided for in Part 12 of Article 96.3 of this Code.

4. Where activities of a judge are classified as low three times consecutively based on overall results of a two-year quantitative evaluation provided for in Part 2 of Article 96.2 of this Code, the Ethics and Disciplinary Commission of the Council of Judges shall instigate disciplinary proceedings against the judge which may result in the Council of Justice imposing penalty on the judge provided for in point (3) or (4) of Part 1 of Article 157 of this Code. Penalty may not be imposed, where activities of a judge are classified as average based on results of overall evaluation provided for in Part 12 of Article 96.3 of this Code.

5. In cases provided for in parts 3 and 4 of this Article, the Council of Justice shall verify observance of evaluation procedures and decide on the type of proportionate disciplinary penalty during examination of the issue of subjecting to disciplinary action.

6. Where activities of a judge have been classified as low or average based on overall results of evaluation provided for in Part 12 of Article 96.3 of this Code, the judge may not apply for being included in promotion lists or being assigned to the vacant position of the

court chairperson - until the next summarisation of results of evaluation provided for in Part 12 of Article 96.3 of this Code.

7. The judges, whose activities have been classified as excellent three times consecutively based on overall results of evaluation provided for in Part 12 of this Article, have a preferential right to be included in the promotion list of judges when applying for being included in such a list, except for cases when the Council of Justice, with a reference to substantial arguments, justifies its decision not to include the judge in the promotion list of judges.

8. Where the number of candidates with a preferential right who have applied for being included in the promotion list exceeds the number necessary for filling the respective section of the list, the Council of Justice holds a vote for them according to the procedure provided for in Articles 137 and 138 of this Code.

9. Judges, whose activities have been classified as at least good three times consecutively based on overall results of evaluation provided for in Part 12 of Article 96.3 of this Code, shall have a preferential right to be included in the promotion list for judges, when applying for being included in such a list, after persons provided for in Part 6 of this Article in accordance with the procedure prescribed in parts 7 and 8- of this Article."

Article 2. Article 109 of the Code shall be amended as follows:

"Article 109. Procedure for examining issues in the Council of Justice

1. The chairperson of the session shall open the session of the Council of Justice by announcing the issue that has to be examined, as well as, with the consent of members of the Council, shall define the procedure for examining issues placed on the session agenda, and shall chair the session.

2. Sessions of the Council of Justice shall be held in camera, with the exception of cases concerning subjecting a judge to disciplinary action.

3. Examination of cases on subjecting a judge to disciplinary action shall be conducted in camera pursuant to the decision of the Council of Justice - in cases and according to the procedure provided for by law for the purpose of protecting public morals, public order, national security, privacy of persons participating in proceedings, or interests of justice."

Article 3. Article 135 of the Code shall be amended as follows:

"Article 135. Features taken into account when voting with ballots in regard to compiling promotion list for judges or appointing a court chairperson, a judge of a court of appeal, or a chamber judge or a chamber chairperson of the Court of Cassation

1. When voting with ballots in regard to compiling promotion list for judges or appointing a court chairperson, a judge of a court of appeal, a chamber judge and a chamber chairperson of the Court of Cassation, members of the Council of Justice shall take into account the results of evaluation of activities of judges provided for in Chapter 12.1 of this Code, and, in particular, the following features:

- (1) quantitative performance of the judge;
- (2) legal knowledge and professional abilities of the judge;
- (3) upholding the reputation of the court and of the judge and observance of the judicial code of conduct by the judge;
- (4) written and verbal communication skills;
- (5) attitude towards colleagues while performing his or her duties as a judge;
- (6) professional and postgraduate education of the judge, participation of the judge in educational and professional training programmes;
- (7) participation of the judge in the self-government of the judiciary;
- (8) participation of the judge in programmes aimed at development of law;
- (9) organisational abilities of the judge, in case of performing managerial work - qualities demonstrated by the judge in the course of his or her work (only for a court chairperson and a chamber chairperson of the Court of Cassation).

2. Overall results of at least the last two evaluations of activities of judges provided for in Part 8 of Article 96.3 of this Code shall be taken into account during compilation of promotion lists of judges.

3. Results of evaluation of up to last six years for all judges, who have applied for being included in the promotion list of judges, shall be provided to the Council of Justice during compilation of the lists.”

Article 4. Part 2 of Article 153 of the Code shall be amended as follows:

"2. Judges may be subjected to disciplinary action on the following grounds:

- (1) apparent and gross violation of a substantive norm in the process of administering justice;
- (2) apparent and gross violation of a procedural norm in the process of administering justice;
- (3) regular or gross violation of the code of conduct by a judge;
- (4) failure of the judge to fulfil the duty of participating in mandatory training, as well as duties set out for him or her by the probation supervisor provided for in Article 12, Article 72, Part 1 of Article 96.4, Part 2 of Article 105, Part 3 of Article 156, Part 3 of Article 159, Part 3 of Article 167 of this Code, as well as in the Law of the Republic of Armenia "On Justice Academy;
- (5) failure to notify the Ethics Commission of any interference with his or her activities of administering justice or exercising other powers stipulated by law, or of other influence not provided for by law - in accordance with the procedure prescribed in this Code."

Article 5. The Code shall be supplemented with Articles 153.1 and 153.2 which read as follows:

"Article 153. 1. Time frames for instigating proceedings with a view to subjecting to disciplinary action

1. Proceedings with a view to subjecting a judge to disciplinary action may be instigated:

- (1) within a period of one year upon entry into force of a final judicial act regarding given case or issue based on grounds provided for in points 1 and 2 of Article 153 of this Code;
- (2) within a period of one month upon revealing the ground for subjecting to disciplinary action provided for in point (3) of Article 153 of this Code, but no later than within six months after such a ground arises;
- (3) proceedings may be instigated within a period of three months upon revealing the ground for subjecting to disciplinary action provided for in point (4) of Article 153 of this Code, but no later than within a year after such a ground arises;

(4) proceedings on the ground provided for in point (5) of Article 153 of this Code may be instigated within a period of one month after the judge has committed the violation;

(5) proceedings on the ground provided for in point (6) of Article 153 of this Code may be instigated within a period of three months upon revealing the violation, but no later than one year after the violation has been committed.

Article 153. 2. Apparent and gross violation of substantive and procedural norms

1. Within the meaning of this Chapter apparent violation occurs when a judge commits such a violation of a substantive or procedural norm in the administration of justice, the existence of which cannot be questioned by any reasonable legal assumption or argument.

2. Within the meaning of this Chapter gross violations of substantive or procedural norms shall be:

(1) applying a regulatory legal act or a provision of a regulatory legal act that does not have legal force;

(2) subjecting a person to liability not provided for by law;

(3) rendering a judicial act contradicting with the constitutional and legal meaning of a provision of a law, revealed in the final part of decisions of the Constitutional Court of the Republic of Armenia;

(4) rendering a judicial act contradicting with the final part of a decision of the European Court of Human Rights;

(5) vesting such powers in state or local self-government bodies through a judicial act, that are not provided for by the Constitution or laws of the Republic of Armenia;

(6) rendering a judicial act in violation of the principle of separation and balance of powers provided for in the Constitution of the Republic of Armenia;

(7) imposing disproportionate measure of liability;

(8) applying a law imposing or aggravating liability retroactively;

(9) violating basic rights and freedoms of persons and citizens provided for in the Constitution of the Republic of Armenia, where this has the effect of violating the right to personal liberty and security of a person provided for by Article 16 of the

Constitution of the Republic of Armenia, including incorrect application of an act of amnesty;

(10) rendering a judicial act inconsistent with the principle of legal certainty;

(11) regularly and without a reasonable basis postponing examination of a case in the absence of grounds provided for by law;

(12) examining a case in the absence of one of the parties to the case, who has not been duly notified of the time and place of the session;

(13) examining a case by a panel of judges not provided for by law or rendering a judicial act, signing of a judicial act by a judge (judges) other than the one (ones) who rendered it;

(14) rendering a judicial act directly concerning the rights and responsibilities of persons not parties to the case, except where the court notified the respective persons of the case being examined, but the latter did not wish to be involved in the case;

(15) arriving at a decision on quashing the proceedings of a case in violation of the law;

(16) other apparent or gross violations of substantive or procedural norms, which led to strict limitation of rights of persons guaranteed by respective legal acts or to deprivation of such rights and had an impact or could have had an impact on rendering a proper judicial act regarding the case."

Article 6. The words "workplace discipline or" shall be deleted from Part 1 of Article 154 of the Code.

Article 7. Point (2.1) of Part 1 of Article 162 of the Code shall be amended as follows:

"2.1. the person instigating the proceedings has violated time frames provided for by this Code for the course of disciplinary proceedings against a judge".

Article 8. Point (2) of Part 1 of Article 25, point (7) of Part 1 of Article 78 and point (1) of Part 5 of Article 155 shall be repealed.

Article 9. Final and transitional provisions

1. This Law, except for Article 3, shall enter into force from 1 January 2014.
2. Article 3 of this Law shall enter into force from 1 January 2015.
3. Parts 2 and 3 of Article 3 of this Law shall be applied only when the results of evaluation of judges are available in quantity provided for in parts 2 and 3 of Article 3 of this Law.
4. The Council of Judges shall implement testing of the programme for evaluation of activities of judges in courts of first instance and courts of appeal of the Republic of Armenia after this Law enters into force, starting from 1 March till 30 December 2014.
5. The first evaluation of activities of all judges of courts of first instance and courts of appeal of the Republic of Armenia, provided for in Part 2 of Article 96.2 of this Code, shall be conducted starting from 1 January 2015.
6. Evaluation of activities of judges in respect of court chairpersons, provided for in Chapter 12.1 of this Code, shall be conducted starting from 1 January 2015.

CHAPTER 17 OF THE JUDICIAL CODE ON DISCIPLINARY LIABILITY
OF JUDGES AND TERMINATION OF POWERS (law currently in force)

Article 153. Grounds for subjecting a judge to disciplinary liability

1. The power to subject a judge to disciplinary liability is vested in the Council of Justice.
2. A judge may be subjected to disciplinary liability on the following grounds:
 - (1) Obvious and grave violation of substantive law norms in the administration of justice. Proceedings for subjecting a judge to disciplinary liability on this ground may be instituted within a one-year period after the judge rendered the judicial act resolving the case in substance;
 - (2) Obvious and grave violation of procedural law norms in the administration of justice. Proceedings for subjecting a judge to disciplinary liability on this ground may be instituted within a one-year period after the judge issued the judicial act on the merits of the relevant case;
 - (3) Regular violations of or grave violation of work discipline. Proceedings for subjecting a judge to disciplinary liability on this ground may be instituted within a one-month period after disclosing the ground of disciplinary liability, but not later than six months after the emergence of such ground;
 - (4) Regular violations of or grave violation by the judge of the Code of Conduct. Proceedings for subjecting a judge to disciplinary liability on this ground may be instituted within a three-month period after disclosing the ground of disciplinary liability, but not later than one year after the emergence of such ground;
 - (5) Failure by the judge to carry out his or her duties laid down by Article 12, Article 72, part 2 of Article 105, part 3 of Article 156, part 3 of Article 159, Article 191, part 3 of Article 167, and Article 193 of this Code. Proceedings for subjecting a judge to disciplinary liability on this ground may be instituted within a one-month period after the judge committed the violation;
 - (6) Failure to notify the Ethics Committee, in accordance with the procedure stipulated by this Code, of any interference with his or her activities of administering justice or exercising other powers stipulated by law, or of other influence not envisaged by law: Proceedings for subjecting a judge to disciplinary liability on this ground may be instituted within a three-month period after discovering the violation, but not later than within one year after the violation.

3. The quashing or amending of a judicial act shall not per se give rise to the liability of a judge that rendered such judicial act.

4. Subjecting a judge to criminal, administrative, civil, or other liability prescribed by law does not preclude the possibility of subjecting the judge to disciplinary liability, and vice-versa.

5. In case when it is established by a judicial act issued by an international court acting with the participation of the Republic of Armenia that a court of the Republic of Armenia violated human rights and fundamental freedoms set by a relevant international treaty to which the Republic of Armenia is a party, the periods laid down in points 1 and 2 of part 2 of this Article shall be calculated from the moment of delivering the judicial act.

(Article 153 supplemented by HO-12-N of 8 April 2008)

(Article 153 amended by Law HO-51-N of 2 May 2013 shall enter into force on 1 January 2014)

Article 154. Discussion by Ethics Committee of a communication about a disciplinary infringement committed by a judge

1. When receiving a report about or encountering a fact of a judge violating the rules of work discipline or the rules of conduct, the Ethics Committee shall, when examining another matter that is within the scope of its competence, organise a discussion, by engaging the judge therein. If, as a result of the discussion, the Committee finds that the violations are neither grave nor regular, then it may limit its action to the discussion of the matter. Otherwise, the Committee shall file a motion requesting the Disciplinary Committee of the Council of Justice to institute disciplinary proceedings.

2. Having received the information laid down by parts 3 or 4 of Article 95, as well as by Article 96 of this Code, the Ethics Committee may, if it finds that the information is incomplete or doubtful, organise at its initiative a discussion of the matter, to which it shall invite the respective judge. The results of the discussion shall be determined in accordance with the procedure stipulated by part 1 of this Article.

Article 155. Instituting disciplinary proceedings against a judge

1. The following shall have the right to institute disciplinary proceedings against judges and chairmen of first instance and appellate courts:

(1) The Minister of Justice;

(2) The Disciplinary Committee of the Council of Justice.

2. The following shall have the right to institute disciplinary proceedings against a chamber judge and chamber chairman of the Court of Cassation:

(1) The Chairman of the Court of Cassation;

(2) The Disciplinary Committee of the Council of Justice, upon motion by the Ethics Committee of the Council of Court Chairmen.

3. The Disciplinary Committee of the Council of Justice, upon motion by the Ethics Committee of the Council of Court Chairmen, shall be entitled to institute disciplinary proceedings against the Chairman of the Court of Cassation.

4. If the Minister of Justice or the Chairman of the Court of Cassation institutes disciplinary proceedings, then such initiation including the alleged infringement shall be notified to the Disciplinary Committee of the Council of Justice. In case of instituting disciplinary proceedings against a judge or chairman of a first instance or appellate court, the Disciplinary Committee of the Council of Justice shall notify the Minister of Justice of such institution and of the alleged infringement. In case of instituting disciplinary proceedings against a chamber judge or chamber chairman of the Court of Cassation, the Disciplinary Committee of the Council of Justice shall notify the Chairman of the Court of Cassation of such institution and of the alleged infringement. Two concurrent sets of proceedings shall not be instituted against the same person in connection with the same infringement.

5. The reasons for instituting disciplinary proceedings are the following:

(1) A decision of the Court of Cassation, which confirms that an apparent illegal judicial act was made in the administration of justice when resolving the case or matter on the merits, or the judge committed an obvious and grave violation of the rules of procedural law in the administration of justice;

(2) An application by a person;

(3) A communication from a state or local government body or official;

(4) A motion filed by the Ethics Committee of the Council of Court Chairmen;

(5) The finding, as a result of summarising or studying court practice, of an act that gives rise to disciplinary liability;

(6) The finding, by the persons instituting the proceedings, of an act that gives rise to disciplinary liability;

(7) A judicial act issued by an international court acting with the participation of the Republic of Armenia, which establishes that a court of the Republic of Armenia violated human rights and fundamental freedoms set by a relevant international treaty to which the Republic of Armenia is a party while examining the case.

6. The application, communication, or motion provided for by points 1, 2 and 3 of part 5 of this Article, which does not contain prima facie evidence of a judge having committed an act that gives rise to disciplinary liability, shall be returned to the person that submitted it, without any proposal.

7. In case of not instituting proceedings on the basis of the application, communication, or motion provided for by points 1, 3 and 4 of part 5 of this Article, the person responsible for instituting proceedings does not have to substantiate in his response the reasons for not instituting proceedings.

(Article 155 amended by HO-281-N of 28.11.07, and added by HO-12-N of 08.04.08)

Article 156. Conduct of disciplinary proceedings against a judge

1. The duration of disciplinary proceedings may not be longer than six weeks, except where the judge is absent. The duration of disciplinary proceedings may be extended for a period equal to the duration of the absence of a judge.

2. Within the framework of disciplinary proceedings, the person instituting the proceedings shall be entitled to:

(1) Demand from court and study materials of any criminal, civil or any other case on which there is a judicial act entered into legal force;

(2) In court, get acquainted with the materials of any criminal, civil or any other case on which there is still no judicial act entered into legal force;

(3) Demand written explanations from a judge;

(4) Summon and hear witnesses;

(5) Demand and receive materials from state and local government bodies and officials;

(6) Make a suggestion to the person that submitted the application based on which disciplinary proceedings were instituted to provide additional clarifications. State and local government bodies and officials must provide clarifications.

3. A judge against whom disciplinary proceedings were instituted must provide written explanations to the person that instituted the proceedings.

4. As a result of studies made, the person that instituted the proceedings shall take either of the following decisions:

(1) Decision to halt the disciplinary proceedings;

(2) Decision to file a motion requesting the Council of Justice to subject the judge to disciplinary liability.

5. If the Minister of Justice or the Chairman of the Court of Cassation has halted the disciplinary proceedings, he shall inform the Disciplinary Committee of the Council of Justice thereof. In case of halting the disciplinary proceedings against a judge or chairman of court of first instance and court of appeal, the Disciplinary Committee of the Council of Justice shall inform the Minister of Justice thereof. In case of halting the disciplinary proceedings against a chamber judge or chamber chairman of the Court of Cassation, the Disciplinary Committee of the Council of Justice shall inform the Chairman of the Court of Cassation thereof. After deciding to halt disciplinary proceedings, the person that instituted the proceedings may not institute proceedings again on the same ground.

6. If the person that instituted the proceedings decides to file a motion requesting the Council of Justice to subject the judge to disciplinary liability, he shall prepare an opinion on the disciplinary infringement, which shall describe each act committed by the judge, which constitutes a disciplinary infringement, and provide evidence proving that such act was committed and substantiation for qualifying an act as a disciplinary infringement, including the judge's guilt for the committed act and the type of guilt.

7. Before sending the materials of the disciplinary proceedings to the Council of Justice, the judge against whom disciplinary proceedings have been instituted may get acquainted with them. The materials shall be provided to the judge no later than two weeks before the deadline stipulated by part 1 of this Article. Within a week of receiving the materials, the judge may present additional explanations or file a motion requesting additional investigation to be performed. Based on additional explanations of the judge or additional investigation, the person that instituted the proceedings may change his opinion, unless it aggravates the situation of the judge.

8. The person that instituted the proceedings shall send the materials of the disciplinary proceedings to the Council of Justice and to the judge against whom disciplinary proceedings have been instituted, together with an advice of delivery. From the moment the materials of the disciplinary proceedings are sent to the Council of Justice, the person that

instituted proceedings may not withdraw the materials of proceedings, and the materials are subject to examination on the merits at the Council of Justice.

9. Within a week of receiving the materials of the disciplinary proceedings, the judge may send a response to the Council of Justice. The failure of the judge to send a response shall not hinder the Council of Justice to review the disciplinary case against the judge. Upon motion by the judge, the Council may extend the mentioned period granted to the judge.

10. The person that instituted the proceedings, witnesses to the case, and other persons must maintain the confidentiality of the disciplinary proceedings. All documents communicated in the framework of the disciplinary proceedings must be sent in closed envelopes marked "Confidential".

Article 157. Disciplinary sanctions imposed on judges

1. As a result of reviewing the matter related to the disciplinary liability of a judge, the Council of Justice may impose any of the following disciplinary sanctions against the judge:

(1) Warning;

(2) Reprimand, which shall be combined with depriving the judge of 25% of his salary for a period of six months;

(3) Severe reprimand, which shall be combined with depriving the judge of 25% of his salary for a period of one year;

(4) Filing a motion requesting the President of the Republic to terminate the powers of the judge.

2. A warning is a formal reproach of a judge, which is imposed by the Council of Justice for a disciplinary infringement of the least gravity, unless the judge has another pending sanction.

3. The type of disciplinary sanction provided for by point 4, part 1 of this Article shall be imposed where a grave disciplinary infringement or the regular disciplinary infringements committed by the judge renders him or her incompetent with the position of a judge.

4. The disciplinary sanction imposed on a judge shall be proportionate with the infringement. When applying a disciplinary sanction, the Council of Justice shall also take into account the consequences of the infringement, the personal characteristics of the judge, the degree of guilt, any pending sanctions and other noteworthy circumstances characterising the judge.

5. If a judge is not subjected to a new disciplinary sanction within two years after the date of receiving a reprimand or severe reprimand, or within one year after the date of receiving a warning, he shall be considered not to have a disciplinary sanction.

6. If a judge is consecutively subjected to disciplinary sanctions that lower the salary, the total lowering of the salary for each month cannot exceed 50% of the salary.

Article 158. Examination of proposal to subject a judge to disciplinary liability

1. When examining matters of subjecting a judge to disciplinary liability, the Council of Justice shall act as a court. When the Council of Justice acts as a court, the procedure of examining cases shall be subject to the rules of the Administrative Proceedings Code of the Republic of Armenia to the extent that such rules are substantively applicable to the case proposal by the Council of Justice and do not contradict the rules of this Code.

2. A member of the Council of Justice may not recuse himself or herself.

3. The obligation to prove that there are grounds for subjecting a judge to disciplinary liability lies with the person that instituted the proceedings. In a session of the Council of Justice, any unfounded suspicion as to the commitment of disciplinary infringement by a judge shall be dispelled in his favour.

4. The Council of Justice shall examine a case on subjecting a judge to disciplinary liability within a reasonable period.

5. Documents examined by the Council of Justice shall be attached to the case materials, either in originals or duly endorsed copies.

Article 159. Procedure for examining the matter of subjecting a judge to disciplinary liability by the Council of Justice

1. The proposal of the matter in the Council of Justice shall start with the report of the person that instituted the proceedings, which shall cover the essence of the matter and the opinion on the disciplinary infringement. If the disciplinary proceedings in relation to the judge were instituted by the Minister of Justice, the latter must be present in the Council of Justice session and has the right to appear personally or through a public servant of the Ministry of Justice. If the disciplinary proceedings against a judge were instituted by the Chairman of the Court of Cassation, the latter shall personally report on the matter. If the disciplinary proceedings in relation to the judge were instituted by the Disciplinary Committee of the

Council of Justice, one of the members of the Disciplinary Committee, commissioned by the latter, shall report about the opinion on the disciplinary infringement at the session of the Council of Justice.

2. Where, after sending the materials of disciplinary proceedings to the Council of Justice, the person that instituted the proceedings has discovered circumstances that mitigate the situation of the judge or preclude the subjecting of the judge to disciplinary liability, the person that instituted the proceedings must so inform the Council of Justice.

3. Following the report of the person that instituted the proceedings in the Council of Justice, the latter shall hear the explanations of the judge against whom the proceedings were instituted. In the Council of Justice, the judge shall provide an explanation about each infringement mentioned in the opinion on the disciplinary infringement. He may deny the fact of committing the act that is considered a disciplinary infringement, challenge the qualification of the act as a disciplinary infringement, or do both simultaneously. Where the judge does not challenge the factual existence of a disciplinary infringement and agrees that the act is to be qualified as a disciplinary infringement, the Council of Justice shall immediately start the discussion of imposing a disciplinary sanction against the judge.

4. Where the judge contests committing a disciplinary infringement, the Council of Justice, after hearing his explanations, shall start the proposal of materials of the proceedings and the evidence.

5. The Council of Justice shall also have the proprio motu right to summon and interrogate witnesses in its session. In case of default by the side of witnesses, the Council of Justice is entitled to issue a decision to apprehend the witness.

6. The Council of Justice shall notify the witnesses summoned in a case of the liability envisaged for refusing or avoiding to testify, or giving obviously false testimony. and shall notify the experts summoned in a case about the liability envisaged for refusing or avoiding to provide an opinion, or providing an obviously false opinion.

7. After examining the materials of the case, the Council of Justice shall hear the final speeches of the persons participating in the session, and shall adjourn to the consultation room to make its decision.

8. In the consultation room, the Council of Justice shall first vote on the guilt of the judge in committing the act, after which it shall vote on the type of disciplinary sanction to be imposed.

Article 160. The rights and responsibilities of a judge in the procedure for proposal of the matter of subjecting him or her to disciplinary liability by the Council of Justice

1. A judge shall be entitled to:

- (1) get acquainted with, take excerpts from and make copies of the materials serving as a basis for the proposal of the matter by the Council of Justice;
- (2) ask questions to the speakers, file objections, provide explanations, and file motions;
- (3) provide evidence and participate in their proposal;
- (4) participate in the session in person or through an advocate.

2. The advocate of the judge shall, in all cases, have a right to participate in the proposal of the matter concerning the judge and shall enjoy the rights provided for by part 1 of this Article.

3. In case disciplinary proceedings are instituted against a judge, it shall be the responsibility of the judge to give explanations to the Council of Justice.

4. Where the Council of Justice examines the matter of subjecting a judge to disciplinary liability, the judge shall be entitled to the safeguards provided for by Article 19 of the Constitution of the Republic of Armenia and paragraph 1 of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

5. If a judge fails to appear without good reason when summoned by the Council of Justice, the Council of Justice shall be entitled to examine the matter of subjecting the judge to disciplinary liability in his absence.

Article 161. Decision of the Council of Justice on subjecting a judge to disciplinary liability

1. The Council of Justice shall, within the framework of one set of disciplinary proceedings and in case of the same judge having committed several disciplinary infringements, make one decision.

2. The decision shall be made in the consultation room. For the purpose of making a decision on a matter examined by the Council of Justice, only members of the Council of Justice may be present in the consultation room. Where the disciplinary proceedings were instituted by the Disciplinary Committee of the Council of Justice, the members of the

Disciplinary Committee instituting such proceedings shall not be present in the consultation room. The decision shall be made by an open vote of the members of the Council of Justice. In case of equal votes, the decision that is more favourable for the judge shall be considered as adopted.

3. Matters discussed by the Council of Justice in the consultation room, positions of the members of the Council of Justice and the results of the vote shall not be publicised either during the session or after the completion of the examination of the case, except for the case of a special opinion submitted by a member of the Council pursuant to part 2.1 of Article 163 of this Code within the scope of the position expressed by a member of the Council.

4. As a result of examining the matter of subjecting a judge to disciplinary liability, the Council of Justice may take either of the following decisions:

- (1) subjecting a judge to a disciplinary sanction provided for by this Code;
- (2) terminating the case.

(Article 161 supplemented by HO-320-N of 8 December 2011)

Article 162. Grounds for terminating a case of subjecting a judge to disciplinary liability by the Council of Justice

1. The Council of Justice shall terminate a case of subjecting a judge to disciplinary liability, where:

- (1) there are no good ground for subjecting the judge to disciplinary liability;
- (2) the proceedings were instituted in violation of the periods laid down in part 2 of Article 153 of this Code, provided that the judge agrees to termination of proceedings on such ground;
- (3) the powers of the judge have been terminated, or he has been dismissed from his position.

2. If the Council of Justice does not find it appropriate to impose a disciplinary sanction against the judge, then it may limit the process to a discussion of the matter, specifying in its decision the presence of the grounds for subjecting the judge to disciplinary liability and terminating the case of subjecting the judge to disciplinary liability. This part may be applied in relation to a judge only once.

Article 163. Requirements for and publication of the decision of the Council of Justice on subjecting a judge to disciplinary liability

1. The Decision of the Council of Justice on subjecting a judge to disciplinary liability must contain:

- (1) the name and composition of the Council of Justice;
- (2) the place and date of proposal of the matter by the Council of Justice;
- (3) the name, surname and position of the judge against whom the disciplinary proceedings were instituted;
- (4) the name, surname, and position of the person that instituted the proceedings;
- (5) the circumstances of the case;
- (6) the position of the person that instituted the proceedings or, in the case provided for by this Code, the position of the representative of the person;
- (7) the explanations of the judge against whom proceedings were instituted;
- (8) the explanations of the persons summoned to the session of the Council of Justice;
- (9) Circumstances characterising the judge as a person;
- (10) a substantiated opinion of the Council of Justice, invoking available evidence;
- (11) the decision provided for by part 4 of Article 161 of this Code.

2. After declaring the examination of the case as completed, the Council of Justice shall enter a consultation room to make a decision. The decision provided for by part 4 of Article 161 of this Code shall be promulgated on the day of completion of the examination of the case. In addition to promulgating the decision provided for by part 4 of Article 161 of this Code, the Council of Justice shall declare the place and the date of promulgating the decision on subjecting a judge to disciplinary liability provided for by part 1 of Article 163 of this Code. The decision on subjecting a judge to disciplinary liability shall be promulgated within 15 days from the day of promulgating the decision provided for by part 4 of Article 161 of this Code.

2.1. When making a decision on subjecting a judge to disciplinary liability, a member of the Council of Justice may submit a special opinion which shall, in addition to the decision of the Council of Justice, be promulgated in the official Internet website of the judicial power of the Republic of Armenia and in the Official Journal of the Republic of Armenia.

3. Within a five-day period of promulgation, the decision shall be sent to the person that instituted the proceedings, the judge concerned, and the Judicial Department. If a decision was made to file a motion requesting the President of the Republic to terminate the powers of the judge, then such decision shall, within a five-day period of its promulgation, be also sent to the President of the Republic.

4. Decisions of the Council of Justice shall be published in the Official Journal of the Republic of Armenia and on the official website of the judiciary authority of the Republic of Armenia.

(Article 163 edited, supplemented by HO-320-N of 8 December 2011)

Article 164. Review by the Council of Justice of the decision on subjecting a judge to disciplinary liability on the basis of new circumstances

1. On the basis of new circumstances, the Council of Justice may review its decision to subject a judge to disciplinary liability.

2. A motion to the Council of Justice to review its decision may be submitted by the person that instituted the disciplinary proceedings in relation to the judge or by the judge in whose regard a decision on disciplinary proceedings was taken.

3. The responsibility for proving the circumstances that serve as grounds for reviewing the decision of the Council of Justice subjecting a judge to disciplinary liability shall rest with the person filing the motion.

4. If the Council of Justice finds that there are no grounds to review the decision on subjecting a judge to disciplinary liability on the basis of new circumstances, it shall decide to uphold the decision on subjecting the judge to disciplinary liability.

5. If there are grounds to review the Council of Justice decision to subject a judge to disciplinary liability on the basis of new circumstances, the Council of Justice shall revoke its decision and make a new one.

6. If the disciplinary sanction applied by the Council of Justice is a motion requesting the President of the Republic to terminate the powers of a judge, and the President of the Republic, based on such motion, terminated the powers of the judge, then the Council of Justice shall, when revoking its decision based on new circumstances, request the President of the Republic to reinstate the judge subjected to disciplinary sanction in his position.

7. The President of the Republic shall reinstate the judge in his position within a ten days of receiving such motion. The appointment of another person to the position of the judge subjected to disciplinary sanction before the reinstatement of the judge shall not impede such reinstatement. In this case, the reinstated judge shall acquire a status of redundant judge provided for by part 6 of Article 14 of this Code.

RATIONALE FOR THE ADOPTION OF THE LAW OF THE REPUBLIC OF ARMENIA
“ON MAKING AMENDMENTS AND SUPPLEMENTS TO THE JUDICIAL CODE”

1. Necessity

1.1 Courts, lawyers, and the public in general have a vital interest in having an efficient and professional judiciary. The measures provided for by the 2012-2016 Programme for Judicial and Legal Reforms (JLR) of the Republic of Armenia are designed to achieve this aim.

The 2012-2016 JLR programme provides for "Developing **objective criteria** for the evaluation of the activities of judges and clarifying the **criteria for the promotion of judges** betaking as a basis also the results of evaluation of activities for those criteria, September 2013. The first ten days of September 2014 have been envisaged as a time limit for the implementation of the action plan "On Computerised System of Evaluation of the Activities of Judges". **Testing** the system of evaluation of the activities of judges in individual courts and eliminating software deficiencies (one year, January-December 2014). **Using** the system of evaluation of the activities of judges in all courts (January 2015).

The necessity to introduce the system of evaluation of judges is defined in numerous international documents. Point 42 of the Recommendation (2010)12 of the Committee of Ministers of the Council of Europe "On Judges: Independence, Efficiency and Responsibilities" states: "with a view to contributing to the efficiency of the administration of justice and continuing improvement of its quality, member states may introduce systems for the assessment of judges by judicial authorities".

Evaluation of judges is a doctrine developed in the past decades, which is currently widely applied in Europe (Belgium, France, the Netherlands, Italy, Spain, Austria, Croatia and other countries) and in the USA.

The aim of evaluation of judges is as follows:

1. to promote self-analysis of judges;
2. to identify the ways of improving the efficiency of the work of judges and introduce them to judges;
3. to assist the selection of the best candidates for promotion of judges;
4. to contribute to raising the level of public confidence in the judiciary.

With regard to the evaluation of the activities of judges the principles and approaches set forth in various international documents and analyses underlie the draft, including:

1. Kyiv Recommendations on "Judicial Independence in Eastern European, South Caucasus and Central Asia: Challenges, Reforms and Way Forward" in 2010, parts 27-31,
2. American Bar Association: "Black Letter Guidelines for the Evaluation of judicial performance", 2005, which were initially developed for the USA, however have been widely applied in other countries as a result of active advisory activities of the American Bar Association;
3. 2006 Summary Report on International Association of Judges on Systems of Evaluation of Judges;
4. Comparative Analysis on Professional Evaluation of Judges and Prosecutors implemented in the framework of the Twinning programme of the European Union, 2007;²
5. Methodology of Evaluation of Judges approved by the Council of Court Chairpersons of Croatia, 2007.³
6. Recommendations of the working meeting on the introduction of a system of evaluation of judges implemented by the Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe (OSCE ODIHR) in Moldova.

The experience of the systems of evaluation of judges in Belgium, France, the Netherlands, Italy, Spain, Austria, Croatia, the USA, as well as the results of studies of advisory activities implemented by the OSCE ODIHR in Moldova in respect of the issue of introduction of a system of evaluation of judges was taken as a basis during the development of the draft. Moreover, another study of the systems of evaluation of judges was implemented by America CJSC and Human Dynamics-public sector consulting upon the order placed by the Judicial and Legal Reforms Project Implementation Union (PIU), which was presented in the "Provision of Technical Support and Advisory Services to the Council of Justice and Judicial Department for the Purpose of Institutional Reforms" report published in May 2010.

²https://www.google.am/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCUQFjAA&url=http%3A%2F%2Fwww.csm1909.ro%2Fesm%2Flinkuri%2F06_01_2011_38069_ro.doc&ei=FO34UZieC4n CtQbm-IHICg&usg=AFQjCNEjuUPgLi7ijw7cOx5_o8C3_Qunig&bvm=bv.49967636,d.Yms

³ <http://pak.hr/cke/propisi.%20zakoni/en/MethodologyForEvaluationofJudges/Methodology.pdf>

Analysis of international experience

There are two main documents prescribing internationally acceptable and applicable standards in the sphere of evaluation of judges - Kyiv Recommendations and the above mentioned guideline of the American Bar Association (ABA).

The Kyiv Recommendations point out that the evaluation of judges should be significantly qualitative by paying attention to the skills necessary for being a judge. In this regard, the Recommendations point out the following criteria subject to evaluation:

- **Professional competence**, which evaluates the knowledge of a judge in the sphere of procedural law, substantive law and law of evidence, the ability to hold a court sitting, the ability to write down the reasoned decisions;
- **Personal competence**, which evaluates capabilities of a judge to overcome the certain volume of cases, willingness to apply new technologies, ability to take decisions;
- **Social competence**, which evaluates abilities of a judge to bring the parties to reconciliation, to treat them with respect;
- **Administrative skills**, where a judge may be appointed to an administrative position, he or she must have leadership and management skills;
- **Quantitative evaluation**, which evaluates the efficiency of a judge and is to serve as a basis for self-enhancement of judges, should not be the main element of evaluation of the activities of judges.

According to Kyiv Recommendations, based on international standards of independence of a judge, judges must in no case be evaluated based on the content of acts rendered by them as well as deciding on a certain case by a judge must not serve as a basis for subjecting to liability (points 27, 28). That means that during the evaluation process judicial acts must be studied and considered in respect of their form but not in respect of the content.

According to the Recommendations the criteria for professional evaluation must be clearly defined, transparent and uniform. The fundamental standards must be defined by law. The time limits and mechanisms for conducting evaluations may be specified by secondary legislative acts (point 29).

Evaluation of judges must be conducted mainly by judges. Court chairpersons must not have exclusive competences of evaluating judges, and apart from their role, they should be supplemented by a group of judges from the same court or from a court of another instance. The latter shall, when evaluating diligence of judges, their abilities to treat the

parties with respect and to observe procedural norms, take into account opinions of outsiders who keep contact with the judge on a regular basis (for instance, advocates, lawyers-scientists etc.) (point 30).

The evaluations must include a study of written acts rendered by a judge as well as consideration of the procedure of holding a court sitting by the judge.

Evaluations must be transparent. The opinion of a judge must be also heard. They must be notified of the results of the evaluation and have an opportunity to appeal against (point 31).

The Guidelines of the American Bar Association provides for the evaluation of judges based on the following criteria:

- **Legal knowledge which considers the ability of reasoning of judicial acts by a judge, his or her knowledge of substantive and procedural law and up-to-date status of knowledge.** Meanwhile, both Kyiv Recommendations and the American guidelines also emphasise that evaluation must not come into the sphere of deciding on the case by the judge on the basis of his or her inner conviction.
- **Impartiality and integrity** which consider the avoiding on the part of a judge to demonstrate an improper conduct, the ability to treat people with dignity, impartially and honestly, the ability to take complicated decisions.
- **Communication skills**, abilities of a judge to be clear and logical in his or her oral or written speech;
- **Professionalism and temper:** a judge must be able to maintain self-control, calmness, to establish public confidence at court, to be polite.
- **Managerial abilities**, which evaluate the punctuality of a judge, appearing by him or her at court sittings in time, the ability to maintain good order at court room, the abilities to render judicial acts in time, the abilities to observe procedures and procedural time periods, the abilities to use new technologies for the purpose of enhancement of the quality of administration of justice.

In Belgium the first evaluation is conducted one year after the appointment of a judge, and — once in three years thereon. Judges are evaluated according to *excellent*, *good*, *satisfactory*, *unsatisfactory* “rating scale.

Details of evaluation remain within the judicial system and the only final grades are sent to the Ministry of Justice.

Criteria subject to evaluation

There are three groups of criteria in Belgium; among them Group A is more important than Group B and the latter is more important than Group C.

Group A

- Judicial knowledge — knowledge of substantive and procedural law, quality of justification of judicial acts
- Efficiency and communication skills
- Impartiality

Group B

- Collegiality — abilities to work in a team, to share experience with colleagues and other abilities
- Self-control

Group C

- Willingness to learn
- Adaptability
- Ability to have leading-edge thinking, willingness to assume responsibilities.⁴

In course of evaluation of judges each group of judges has its own scale of rating points. Thus:

Group A	Group B	Group C
Excellent =+6	Excellent =+4	Excellent =+2
good = +3	good = +2	good = +1
satisfactory =0	satisfactory =0	satisfactory =0
unsatisfactory = -3	unsatisfactory = -2	unsatisfactory = -1

⁴ The details of each criterion of evaluation are available in "Comparative study of the professional Evaluation of judges and prosecutors, Twining RO 2007/IB/JH-25TL" document, pp 29-32.

A judge gets the following grades as a result of all mentioned:

Excellent =+22
good = from +11 to +22
satisfactory =from -11 to +11
unsatisfactory = from -22 to -11

Implications of evaluation

- 1) Training — for the purpose of development of skills
- 2) Identification of deficiencies in the operation of the judicial system
- 3) Imposing a sanction on a judge — withholding his or her salary or bonus up to a period of six months.

Evaluation shall not directly impact the promotion of a judge.

In France evaluation is conducted once in two years. Evaluation does not cover only judges of a court of cassation and chairpersons of a court of appeals. Where necessary, evaluation may be held more frequently as well, in case of existing problems in respect of the professional activities of a judge. Evaluation is always combined with the possibility to hear a judge and that of submitting by him or her a report. Judges are evaluated according to “*excellent*”, “*good*”, “*satisfactory*”, “*unsatisfactory*” rating scale.

Criteria subject to evaluation

Judges are evaluated based on four criteria:

- 1) General professional abilities
 - a. Ability to take decisions
 - b. Ability to listen and exchange opinions
 - c. Ability to be adapted to new situations (including to legislative, technological ones etc.).
- 2) Legal and technical skills
 - a. Abilities to use his or her knowledge, including with regard to analysing facts, applying law
 - b. Abilities to hold court sittings, including the ability to maintain clarity of oral speech, calmness etc. during the sitting.
 - c. Abilities of drawing up instructions.
- 3) Organisational skills

- a. Ability to carry out certain actions, to demonstrate initiative, to obtain consent of colleagues
- b. Ability to set targets and organise human resources
- 4) Professional involvement
 - a. Efficiency of work
 - b. Participation in trainings
 - c. Quality of professional relations with other structures.⁵

Implications of evaluation

Positive evaluation is a mandatory condition for the promotion of judges. A judge may be dismissed based on the information revealed as a result of the evaluation but within the framework of a separate disciplinary proceedings.

In Italy all judges of a court of first instance are subject to evaluation once in four years until their seventh positive evaluation.

Criteria for the evaluation of judges are as follows:

- 1) Professional capabilities
 - a. Awareness of the developments of law
 - b. Quality of reasoning the judicial acts
 - c. Abilities to hold a court sitting
 - d. Abilities to use technologies
- 2) Performance
 - a. Number of cases decided on, including their complexity
 - b. Time period provided for court cases
- 3) Diligence
 - a. Appearing at a court sitting in time
 - b. Observance of procedural time periods
 - c. Number of court sittings
 - d. Participation in measures aimed at development of law

⁵ in "Comparative study of the professional Evaluation of judges and prosecutors, Twining RO 2007/IB/JH-25TL" document, p 37.

- 4) Willingness
 - a. Willingness to substitute judges who are absent
 - b. Frequency of participation in training programmes
Judges are evaluated positively or negatively.

Implications of evaluation

Evaluation is directly linked to the promotion of a judge. Thus, positive grades got for three times consecutively constitutes a necessary prerequisite for the appointment of a judge as a chairperson, whereas positive grades got for five times consecutively — for the transfer thereof to higher instances.

In the Netherlands evaluation is conducted once a year. Peer evaluation by colleagues and peer education and exchange of experience are attached great importance in the process of evaluation. Evaluation of judges in the Netherlands is conducted based on EFQM management model, under which the performance of a judge is evaluated in comparison with other judges.

Implications of evaluation

- 1) Identification of deficiencies in the operation of the judicial system
- 2) Dismissal of judges, working with deficiencies, from the system.

In Germany, judges are evaluated once in four years. Judges are evaluated based on the following scale:

- 1-2 rating points - below average
- 3-6 rating points - average
- 7-10 rating points - above average
- 11-14 rating points - significantly above average
- 15-16 rating points - excellent

The criteria for the evaluation of judges are as follows:

- 1) Quality of work of a judge — abilities to perform the works assigned, abilities to work in a team, communication skills

2) General abilities of a judge — perception abilities, flexibility of thinking, willingness to assume responsibilities, ability to withstand pressures, leadership ability, professional skills, quality of written and oral speech etc.

Implications of evaluation

- 1) Training for the purpose of development of skills
- 2) Identification of deficiencies in the operation of the judicial system
- 3) Promotion of a judge

In Croatia the evaluation of judges is conducted on the basis of the following criteria.⁶

1) Capacity

a. In this case a judge is considered to have fulfilled the plan for 100 per cent if he or she complies with guiding requirements of the Council regarding the volume of cases to be decided on during one year. In case a judge fails to comply with guiding requirements of performance, a certain rating point is deducted for each percent of the cases not decided on.

2) Observance of the time limit:

- the judge observes the average time limits in respect of the cases constituting 100 per cent	10 rating points
- the judge observes the average time limits in respect of the cases constituting 76 and more per cent	5 rating points
- the judge observes the average time limits in respect of the cases constituting 75 and less per cent	0 rating points

3) Quality of acts rendered — by means of evaluating the number of remittals:

remittals constituting less than three per cent	100 rating points
remittals constituting 3-6 per cent	75 rating points
remittals constituting 6-10	50 rating points

⁶ Methodology of Evaluation of Judges approved by the Council of Court Chairpersons of Croatia, 2007, Articles 3-17.

per cent	
remittals constituting 10-15 per cent	25 rating points
remittals constituting more than 15 per cent	0 rating points

4) Professional development

a. Respective rating points are granted to a judge for participation in education programmes, having a scientific degree, a diploma, for publishing a draft law, a scientific work etc.

A judge loses a rating point during his or her evaluation, in the following cases:

- for being subjected to disciplinary liability on the part of a judge	200 rating points
- in case when a warning has been imposed or when in case of	100 rating points

In Croatia a judge is evaluated based on the following scale:

Unsatisfactory fulfilment of the duties of a judge	below 100 rating points
Satisfactory fulfilment of the duties of a judge	100-140 rating points
Successful fulfilment of the duties of a judge	140-180 rating points
Excellent fulfilment of the duties of a judge	180 and more rating points

Thus, generalising results of the study of international experience, one may say, that the models of evaluation of judges applied in different countries have common approaches. Common features refer both to criteria subject to evaluation and implications of evaluation.

As for criteria, the targets of evaluation are as follows:

1) Capacity of a judge

- 2) Legal knowledge
- 3) Professionalism and impartiality
- 4) Communication skills
- 5) Skills of communicating with colleagues
- 6) Professional involvement and development
- 7) Organisational skills

As for implications, the evaluation of judges has a number of main implications:

- 1) A judge may be sent to additional training upon the decision of the evaluation body, if the evaluation proves the need for the improvement of his or her skills in a certain sphere
- 2) A discussion with judges having demonstrated low results is organised within the self-government body, including with the participation of the chairperson of respective court so that solutions on the improvement of the qualities of a judge are proposed jointly with the judge;
- 3) Impact on the process of taking decisions regarding the issues of promotion of a judge;
- 4) Financial implications — in the form of deprivation of bonus and withholding salary;
- 5) Dismissal in the case of availability of recurring gross performance deficiencies.

Study of international experience also shows that the evaluation of judges may not itself lead to the application of a disciplinary penalty, except for the cases when respective grounds for instigation of disciplinary proceedings, provided for by law, emerge during or as a result of the evaluation.

In individual countries being subjected to disciplinary liability on the part of a judge is considered as a separate criterion for the evaluation of a judge, the expediency whereof is deemed as a matter for discussion. In Great Britain a judge may be subjected to an extraordinary evaluation in the framework of disciplinary proceedings, if it is necessary to find out professional qualities of that judge.

Based on the requirements of the above mentioned international documents and principles enshrined by the Executive Order of 2012-2016 JLR, the system of evaluation of judges should be based on a number of important principles:

- evaluation must be conducted on the basis of clearly prescribed, transparent and uniform criteria and indicators, the fundamental ones wherefrom must be prescribed by law;
- evaluation of judges must be conducted with full observance of their external and internal independence;

- The results of evaluation must not impact the remuneration of a judge.⁷

1.2. There are certain problems also in the regulations in force on subjecting judges to disciplinary liability, in particular:

(1) At present an apparent and gross violation of a norm of substantive or procedural law is classified under the grounds for subjecting judges to disciplinary liability according to the Judicial Code of the Republic of Armenia. However, the Code does not anyhow clarify the content of the concept of "apparent and gross violation", which gives rise to varying interpretations in the framework of disciplinary proceedings. In this case each participant in the disciplinary proceedings gives his or her own interpretation thereto, which results in a practice of non-uniform administration of disciplinary proceedings. Thus, for the purpose of ensuring the uniformity of the practice of subjecting judges to disciplinary liability on the ground of apparent and gross violation of law it is necessary to clarify, under the Judicial Code of the Republic of Armenia, the criteria for the evaluation of an apparent and gross violation, to a possible extent. The need for such amendment is also provided for by point 1.4.4 of the "List of measures arising from 2012-2016 Strategic Programme on Legal and Judicial Reforms of the Republic of Armenia" approved by the Executive Order of the President of the Republic of Armenia No NK-96-A of 20 June 2012.

(2) At present the sittings of the Council of Justice are held behind closed doors when subjecting a judge to disciplinary liability, except for the cases when a judge demands public hearing in respect of his or her case. The above mentioned contradicts to some extent the approach that when examining a case on subjecting a judge to disciplinary liability the Council of Justice actually acts as a court, which has been enshrined also by the Judicial Code of the Republic of Armenia (Article 158). Public hearing in respect of subjecting to disciplinary liability may serve as an additional important guarantee of impartial examination of the case. For this purpose it is necessary to establish a procedure for holding open-door sittings of the Council of Justice for the examination of cases on subjecting a judge to disciplinary liability, by prescribing at the same time also the exclusive cases where it will be possible to hold, if necessary, sittings behind the closed doors.

"Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia" of the OSCE/ODIHR⁸ also speak in favour of open-door sittings when subjecting a judge to disciplinary liability, according to point 26 whereof:

⁷ 2006 Summary Report of International Association of Judges on Systems of Evaluation of Judges, points 8,9, 12, Kyiv Recommendations, parts 27-31.

⁸ <http://www.osce.org/hy/odihr/75436?download=true>

"...Transparency shall be the rule for disciplinary hearings of judges. Such hearings shall be open, unless the judge who is accused requests that they be closed. In this case a court shall decide whether the request is justified ...".

This is also provided for by point 1.4.3 of the "List of measures arising from 2012-2016 Strategic Programme on Legal and Judicial Reforms of the Republic of Armenia" approved by the Executive Order of the President of the Republic of Armenia No NK-96-A of 20 June 2012.

(3) Some omissions exist in respect of reinforcement of legislative guarantees for the independence and protection of a judge within the framework of instigated disciplinary proceedings. In particular, the course of disciplinary proceedings is regulated in detail and the time limits for each stage of the proceedings are clearly prescribed in the Code in force. However, legal consequences of not observing those time limits are not prescribed. Actually, violation of those time limits does not anyhow impact the course of the instigated disciplinary proceedings, which does not derive from the necessity to reinforce legal guarantees for the protection of a judge within the framework of disciplinary proceedings. Thus, it is necessary to include the violation of those time limits among the grounds for striking off the disciplinary proceedings. This will make the subjects having instigated the proceedings act in strict compliance with the wording of the law by observing all the time limits prescribed by law, as a result of which legislative guarantees for the independence and protection of a judge within the frameworks of disciplinary proceedings will be reinforced to a greater extent.

The issue of reinforcement of legislative guarantees for the independence and protection of a judge in the framework of disciplinary proceedings is also provided for by point 1.4.2 of the "List of measures arising from 2012-2016 Strategic Programme on Legal and Judicial Reforms of the Republic of Armenia" approved by the Executive Order of the President of the Republic of Armenia No NK-96-A order of 20 June 2012.

(4) At present it is possible to instigate disciplinary proceedings against a judge on the basis of an apparent and gross violation of substantive or procedural law immediately after rendering a judicial act even where that act yet has not entered into force. A situation emerges where the Council of Justice obtains an opportunity to discuss the issue of subjecting a judge to disciplinary liability and to approve or refute the fact of violation of a substantive or a procedural norm in the case where the fact of that violation is still at the stage of being challenged at a higher court as a result of appealing against the judicial act. In such a case the Council of Justice may, by means of its decision, constrain or predetermine the decision of the higher court instance, which obviously does not arise from constitutional powers of the Council of Justice. Besides, a possible situation emerges where

the Council of Justice and a court of appeals or a court of cassation will render decisions regarding the violation of a norm of law by a judge, which will obviously contradict each other. Thus, in order to avoid such situations it is necessary to prescribe that disciplinary proceedings on the basis of an apparent and gross violation of a substantive or procedural norm may be instigated only in the case where the respective judicial act has entered into force.

2. Aim and nature of regulation

2.1 Aim of evaluation of judges

Evaluation of the activities of judges provided for by the draft is aimed at:

- identifying the ways of improving the efficiency of the work of judges and introduce them to judges;
- contributing to self-analysis of the activities of judges by the judges themselves;
- serving as a basis for the selection of the best candidates during the official promotion of judges.

2.2 General approaches of introduction of the system of evaluation

- The fundamentals of the system of evaluation of judges in the Republic of Armenia must be provided for by the Judicial Code of the Republic of Armenia.
- The system of evaluation of judges shall cover judges of a court of first instance and those of court of appeals.
- It is important to take into account that the system of evaluation of judges is, first of all and mostly, considered as a tool for internal use, it is applied by judicial self-government bodies; the results of evaluation are considered and analysed within judicial self-government bodies. While it is a tool for internal use, the judicial self-government bodies are the ones responsible for introducing it, ensuring its smooth application and taking all the necessary measures arising from it. Based on these considerations:
 - 1) Being an important function of self-governance, the evaluation of judges must be conducted by the Judicial Self-Government Body. We suggest to conduct the evaluation by the Ethics and Disciplinary Commission of the Council of Judges, which will submit the final results to the Council of Judges.

2) The Judicial Code must prescribe only the key principles, approaches, criteria and evaluation indicators of the system of evaluation of judges, whereas the methodology and procedures for conducting the evaluation must be established by the Council of Judges.

3) Decisions of two types shall be rendered upon the results of evaluation of judges — individual decisions which reflect the results demonstrated by a certain judge with regard to the criteria and indicators subject to evaluation, and decisions of general nature which shall reflect the decisions of general nature for all judges with regard to the results and tendencies. Individual decisions shall be confidential (except for the quantitative data) and available to the Council of Judges, Council of Justice, the respective judge, the Staff to the President of the Republic and the chairperson of the court where the judge works.

2.3 General description of the criteria for the evaluation of judges

- Evaluation of judges shall be conducted based on the quantitative, i.e. **objective** and qualitative, i.e. **subjective** criteria.
- Objective quantitative data shall constitute the main part of evaluation of judges.
- Objective quantitative data for each judge shall be evaluated annually and shall be publicly available. Evaluation based on qualitative, i.e. subjective criteria shall be conducted once in two years.
- Judges shall be granted respective rating points for each indicator subject to evaluation — in the quantity prescribed by the Council of Judges — depending on the significance of that indicator.
- The Council of Judges shall establish, upon its decision, a methodology/procedure for organisation of the process of evaluation of judges.
- As a result of final evaluation and according to the rating scale established by the Council of Judges, the activities of judges shall be classified into the following four groups:
 - (1) high,
 - (2) good,
 - (3) average,
 - (4) low.
- Evaluation based on objective data must constitute not less than 60 per cent of the grade got by a judge, whereas the evaluation based on qualitative criteria — 40 per cent thereof.

2.4 Objective quantitative criteria for the evaluation of judges

• Quantitative criteria for the evaluation of the activities of judges of a court of first instance dealing with civil, criminal and administrative matters, are as follows:

- (1) quantitative performance and workload of a judge,
- (2) observance of procedural time periods by a judge,
- (3) stability of judicial acts rendered by a judge,
- (4) average duration of examination of cases (unit of calculation — day) as of individual types of cases.

• Quantitative performance and workload of a judge shall be calculated by means of the coefficient of individual workload of a judge (CIW): based on $CIW = H / L$, $H = A / (I + J - K)$, $L = C / (M + N - O)$, $CIW = A / C * (M + N - O) / (I + J - K)$ formula, where:

H=coefficient of annual individual quantitative performance of a judge

A=all cases decided on by a judge during one year

I=all court cases pending before a judge since the previous year

J=all new court cases assigned to a judge during one year

K=all pending court cases suspended by a judge during one year

L=average coefficient of quantitative performance for a period of one year

C=all court cases decided on by a court during one year

M=all court cases pending in the court (before all judges) since the previous year

N=all court cases brought to the court (assigned to a judge) during one year

O=all court cases pending in the court (before all judges) that are suspended during one year.

• Evaluation of individual quantitative performance of a judge shall, in practice, be interconnected with the process of Programme Budgeting⁹ on the basis of which the Council of Judges must provide for framework indicators of annual performance of judges, where a

⁹The Law “On making supplements and amendments to the law of the Republic of Armenia on budgetary system” prescribes mandatory fundamental provisions on programme budgeting as of which a new model of financing is to be introduced starting from 2014. Advisory recommendation of the International Centre for Human Development in respect of the introduction of a programme budgeting system entitled “Introduction of programme budgeting indicators in Judicial Department” is also available to this regard.

judge shall be considered to have fulfilled his or her plan in case of complying with these indicators for 100 per cent.

- In order to evaluate the average duration of examination of cases as of time periods the Council of Judges must prescribe framework time limits for average duration of examination of cases as of types. For instance, please see the above mentioned example of Croatia.

2.5 Subjective — qualitative criteria for evaluation of a judge

- The other part of the system of evaluation of judges constitutes the evaluation on the basis of qualitative, i.e. subjective criteria. Evaluation by this method should be conducted once in two years based on the duration and labour intensity of the process of evaluation and summarisation of results.
- Study of international experience gives opportunity to recommend that subjective evaluation in respect of judges of the courts of first instance and courts of appeals be carried out on the basis of the following criteria and indicators:

Criterion	Indicator	Maximum rating point
Legal knowledge	(1) He or she demonstrates appropriate knowledge of substantive and procedural law;	
	(2) He or she duly justifies judicial acts rendered thereby;	
Professionalism and impartiality	(1) He or she is capable of withstanding pressures, threats;	
	(2) He or she observes the rules of professional ethics;	
	(3) He or she treats the participants of the proceedings fairly and impartially;	
	(4) He or she appears at court sittings on time;	
	(5) He or she appears at all court	

	sessions having been prepared therefore;	
	(6) He or she is able to maintain self-control.	
Communication skills	(1) Judicial acts are clear, logical, and formulated in a comprehensible language;	
	(2) He or she speaks in a clear and comprehensible way at a court sitting;	
	(3) He or she demonstrates ability to listen during the court sitting;	
	(4) He or she is kind and polite at a court sitting.	
4. Skills of communicating with colleagues	(1) He or she pays attention to the quality of relations with colleagues and judicial officers;	
	(2) He or she exchanges professional knowledge and experience;	
	(3) He or she demonstrates willingness with regard to assuming responsibilities.	
5. Professional involvement and development	(1) He or she proves to be active in respect of participation in the activities of judicial self-governing bodies, professional unions of judges;	
	(2) He or she takes part in the measures aimed at the development of law;	

	(3) He or she is interested in the development of his or her knowledge and skills and, for that purpose, participates in educational measures;	
	(4) computer skills and skills for availing of other technical means, necessary for the administration of justice.	
<p>6. Organisational skills (only in case of court chairpersons):</p>	(1) He or she is able to set targets and organise human and material resources for achieving them;	
	(2) He or she motivates his or her colleagues and members of staff.	

- Subjective evaluation implies involvement of specialist staff with appropriate knowledge and experience for the purpose of preparing questionnaires, conducting sampling in respect of the participants of the survey, and summarising the results thereof.

- In order to make the results of subjective evaluation maximum objective, it is necessary to differentiate the sources of receiving information. The following sources are used in international practice for the purpose of evaluation of the above mentioned criteria and indicators; it is recommended to use them in the Republic of Armenia as well:

1. **Peer evaluation by judges:** Randomly selected judges shall randomly attend court sittings of their fellow judges, hear the record of minutes of sittings and issue an opinion on his or her professional qualities. Another colleague will look through the acts rendered by the judge. The judges with low evaluation results or a disciplinary penalty imposed thereon, may be removed from the group of judges conducting the evaluation.

2. **Evaluation by outsiders keeping contact with a judge on a regular basis:** Prosecutors, advocates shall participate in the evaluation of judges by means of respective questionnaires by keeping confidentiality.

3. **Evaluation by judicial officers.** Judicial officers of a corresponding court shall participate in the evaluation of judges by means of corresponding questionnaires.

4. **Self-evaluation:** Each judge shall submit a report during the evaluation by indicating the works carried out and educational measures attended thereby within a respective period of time, as well as other information important for the evaluation.

- Identity of persons filling in the questionnaires must be kept confidential in all cases.
- In course of evaluating the activities of a judge the one carrying out evaluation shall provide a brief justification on the relevant grade.

2.6 Summarising the results of evaluation of activities of judges

- Based on results of the evaluation the Ethics and Disciplinary Commission of the Council of Judges shall prepare an individual report with regard to each judge, by indicating the final rating points.
- After the final reports are prepared, they shall be available to each judge so that he or she submits his or her considerations within a period of one week.
- Where a judge agrees with the results of the report, he or she shall sign it, whereafter the report will become final. Where a judge disagrees with any part of the report, he or she may appeal against it by submitting his or her considerations in writing.
- The Council of Judges may at its own initiative or at the request of a judge provide the latter with an opportunity to be heard orally, as a result of which the Council of Judges shall render a final decision on the results of evaluation.
- A respective list shall be drawn up as a result of evaluation of judges, wherein judges shall be classified according to the sequence of rating points got as a result of evaluation. The envisaged list is considered as a tool for internal use, which after being prepared shall be sent only to all judges, the Council of Justice, the Council of Judges and the Staff to the President of the Republic within a period of one month.
- Individual evaluation sheets regarding the results of evaluation of judges shall be kept in personal files of judges. Individual evaluation sheets regarding the results of evaluation based on qualitative criteria shall be provided only to the Council of Judges, the Council of Justice, the respective judge and the chairperson of the court where the judge works. Reports regarding the results of evaluation of judges shall be kept in personal files of judges.

2.7 Implications of evaluation of judges

- The Council of Judges may, based on the results of evaluation of the activities of judges, render a decision on sending a judge to an additional training, if the evaluation reveals the need for the improvement of his or her skills in respect of certain matters.

- If the results of activities of a judge are evaluated as low based on the evaluation of the activities of a judge, a judge shall not be paid the bonus envisaged for the term of service of the position of a judge for the respective year.
- Where the activities of a judge are evaluated as low for two consecutive times as a result of evaluation of the activities of a judge, the Ethics and Disciplinary Commission of the Council of Judges shall instigate disciplinary proceedings against the judge, as a result of which the penalty provided for in point 3 of part 1 of Article 157 of the Judicial Code shall be imposed on the judge, i.e. strict warning which shall be combined with withholding the salary of the judge by 25 per cent for a period of one year.
- Where the activities of a judge are evaluated as low for three consecutive times as a result of evaluation of the activities of the judge, the Ethics and Disciplinary Commission of the Council of Judges shall instigate disciplinary proceedings against the judge, as a result of which the penalty provided for in point 4 of part 1 of Article 157 of the Judicial Code shall be imposed on the judge, i.e. filing a motion with the President of the Republic on terminating the powers of a judge.
- A judge may not apply for being included in the official promotion lists or for a vacant position of a court chairperson until the summarisation of the results of the next respective evaluation, where he or she has demonstrated low or average results based on the evaluation.
- The judges whose activities have been evaluated as high for three consecutive times based on overall results of the evaluation, have a preferential right to be included in the official promotion list of judges when applying for being included in the list concerned, except for the cases when the Council of Justice justifies its decision on not including the judge in the official promotion list of judges by referring to strong arguments. Where the number of candidates with a preferential right, having applied for being included in the official promotion list, exceeds the number of candidates necessary for filling the respective section of the list, the Council of Justice conducts a voting with regard thereto as prescribed by Articles 137 and 138 of the Judicial Code.
- Judges, whose activities have been evaluated as at least good for three consecutive times based on overall results of evaluation, shall have a preferential right to be included in the official promotion list for judges when applying for being included in the list concerned, following the persons having demonstrated high results.

2.8 Impact of evaluation of judges on their promotion

- The report entitled "Independent judicial systems", published in Strasbourg in September 2011 (page 41 in English) states that it is preferable that the criteria for the promotion of judges be clearly enshrined by law.
- Criteria for the promotion of judges provided for by Article 135 of the Judicial Code of the Republic of Armenia do not contain any measurable and objective criteria and any methodology for the evaluation thereof is not available.
- The conditions for the promotion provided for by Article 135 will become measurable after the introduction of the system of evaluation and the results of evaluation must be taken as a basis for promotion.
- Meanwhile, the considerations of the Council of Justice not limited to the results of evaluation of the last one year only, must be guaranteed.
- In all cases the judges having demonstrated unsatisfactory or satisfactory results as of the results of the last evaluation must not have the right to apply for official promotion.

2.9 Introduction of the system of evaluation of judges

The system of evaluation of judges must be introduced gradually, by means of testing it prior to introduction.

The draft envisages that mandatory evaluation of the activities of all judges of courts of first instance and courts of appeals will be introduced starting from 1 January 2015. Until then, the development of methodology of procedures for and testing of the programme on the evaluation of the activities of judges must be carried out in courts of first instance and courts of appeals of the Republic of Armenia following the entry into force of this Law — from 1 March till 30 December 2014.

The first evaluation of the activities of judges based on quantitative criteria must be carried out from 1 January 2015, whereas that based on qualitative criteria — from 1 January 2016.

However, there are a number of factors interconnected with the introduction of the system of evaluation of judges in the Republic of Armenia. Guaranteeing those factors proves to be a necessary precondition for the operation of the system of evaluation of judges as it will directly impact the appropriate operation of the evaluation system, namely:

- the improvement of the system of keeping statistical records;

- the random distribution of cases, which will give an opportunity to guarantee that each judge of a court hears approximately the same quantity of cases annually by ensuring the objectivity of evaluation of the performance of the judge;
- the classification of cases as of complexity and establishment of guiding time limits for the examination thereof.
- the availability of supporting staff, equal accessibility of material resources (a hall, equipment...).

2.10 The draft provides for a number of essential regulations on subjecting judges to disciplinary liability, in particular:

- apparent and gross violations of substantive and procedural law have been revealed to a possible extent. In particular non-exhaustive lists of apparent and gross violations of the norms of substantive and procedural law have been presented. As those cases are actually numerous and varied as a result whereof the provision of an exhaustive list of those cases is practically impossible, thus only essential and important cases have been indicated in the draft. However, those cases may themselves have a guiding significance for other cases of violation not provided for by the draft when considering the issue of an apparent and gross violation;
- it has been established that the examination of cases on subjecting a judge to disciplinary liability shall be carried out at an open-door sitting of the Council of Justice. At the same time the possible cases have been prescribed where the issue may be considered at a sitting behind the closed doors;
- the violation of time limits of disciplinary proceedings has been included among the grounds for striking off the disciplinary proceedings, as a result whereof any violation — on the part of the entity having instigated the disciplinary proceedings — of time limits of the proceedings provided for by law shall serve as a ground for striking off the proceedings.
- A regulation has been established as of which a disciplinary proceedings on the ground of an apparent and gross violation of a substantive or a procedural norm may be instigated only after the entry into force of a judicial act.

3. Expected Outcome

3.1 After the introduction of procedures for the evaluation of judges, the judicial system will have an extensive and reliable database for referring to the activities and efficiency of the performance of judges as well as that for drawing up measures aimed at raising the level of efficiency of judiciary. Moreover, based on the data of evaluation of judges, the promotion opportunities for judges will be more predictable, objective and merit-based.

3.2 It is expected to have such a system with regard to subjecting judges to disciplinary liability, which will ensure the objectivity of examination of cases on subjecting judges to disciplinary liability, will rule out, to a possible extent, the subjective approaches and various interpretations of law during disciplinary proceedings thus ensuring legal protection and independence of judges.

STATEMENT OF INFORMATION

on the existence of the necessity to make amendments or supplements to other legal acts on the occasion of adopting of the Law of the Republic of Armenia “On making amendments and supplements to the Judicial Code of the Republic of Armenia”, or on the absence thereof

No amendments or supplements to other legal acts on the occasion of adopting the Law of the Republic of Armenia “On making amendments and supplements to the Judicial Code of the Republic of Armenia” are envisaged.

STATEMENT OF INFORMATION

on the essential increase or decrease in the expenditures and revenues in the budget of relevant State authority or local self-government body on the occasion of adopting the Law of the Republic of Armenia “On making amendments and supplements to the Judicial Code of the Republic of Armenia”

No essential increase or decrease in the expenditures and revenues in the 2013-2014 budget of relevant State authority or local self-government body is envisaged on the occasion of adopting the Law of the Republic of Armenia “On making amendments and supplements to the Judicial Code of the Republic of Armenia”.