

Strasbourg, 20 January 2016

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

Questionnaire for the preparation of the CCJE Opinion No. 19 (2016):

“The role of court presidents”

Please in your answers do not send extracts of your legislation but describe the situation in brief and concise manner.

Comments on what is also happening in practice, and not only on point of law, will be much appreciated.

Introduction

The first three sections deal with presidents of first instance courts and presidents of courts of appeal. Please for each question, if and when applicable, make a distinction between the two positions.

The last section specifically deals with the president of the Supreme Court (e.g. Court of Cassation, Courts of last resort, but not with the Constitutional Courts or bodies with similar authority).

The Bureau and the Secretariat of the CCJE thank you very much for your cooperation and contributions.

1. Selection, removal, term of office, decision making process

1.1 How many presidents of first instance courts and how many presidents of the court of appeal there are in your country?

The Finnish court system includes two different lines: general courts in civil and criminal matters and administrative courts. As to the general courts, there are (for the time being) 27 district courts and 5 courts of appeal. On the administrative side there are 6 administrative courts. In addition, there are some special courts, like the Labor court.

All these courts are headed by a leading judge. The position of a leading judge is more or less the same as far as his/her power and duties are concerned. However, only the leading judges of the courts of appeal (and the Supreme courts) have the title of President.

- 1.2 Who appoints (e.g. Judicial Council, Ministry of Justice, Higher court, Parliament, Agency etc.) the presidents of the courts? (Please remember, if applicable, to make a distinction between the presidents of the courts of first instance and of the courts of appeal. Is it possible that presidents of the courts are appointed from other legal professionals than those who are already judges?)

All the judges, including the presidents, are appointed by the President of the Republic on recommendation from the Minister of Justice, as advised by a Judicial Appointments Board. An independent Judicial Appointments Board shall make preparations for the filling of positions in the judiciary and a reasoned proposal on an appointment to a position in the judiciary. As to qualifications, see below under 1.5.

- 1.3 Do the presidents get a “confidence vote” (after or before their appointment) from the other judges of the court?

This kind of a “confidence vote” is not known in Finland. However, the representatives of the court staff have often been interviewed before the appointment.

- 1.4 Please describe briefly the selection procedure for presidents of the courts.

See above under 1.2. A reasoned opinion given by the Supreme Court of the applicants’ merits is given to the Judicial Appointments Board. The applicants also take an aptitude test made by a psychologist.

- 1.5 What kinds of qualifications (e.g. specific training, previous specific judicial position, seniority, managerial experience etc.) are required to become president? (Please explain, for example, if training is mandatory or on a voluntary basis, is there training at all, and how much it affects the choice of the president).

The Act on Judicial Appointments (2000) includes the following section:

Section 11 — Required qualifications and grounds for appointment

(1) The following qualifications shall be required for appointment to a position in the judiciary: The applicant must be a righteous Finnish citizen who has earned a Master’s degree in law and who by his or her previous activity in a court of law or elsewhere has demonstrated the professional competence and the personal characteristics necessary for successful performance of the duties inherent in the position. Separate provisions may be enacted on the required qualifications for positions where special expertise is necessary.

(2) The following qualifications shall be required for appointment as the President or a Justice of the Supreme Court or the President or a Justice of the Supreme Administrative Court: The applicant must easily meet the qualifications referred to in paragraph (1) and be an eminent legal expert. In addition, the Presidents of

the Supreme Court and the Supreme Administrative Court must have leadership skills.

(3) In addition to the qualifications referred to in paragraph (1), the President of a Court of Appeal, the Chief Judge of a District Court, the Chief Judge of an Administrative Court, the Chief Judge of the Insurance Court, the President of the Labour Court and the Chief Judge of the Market Court must have leadership skills.

- 1.6 Are presidents selected among the judges of the same court, or they may or must have served in a different court before taking the position as court president.

Presidents are not selected among the judges of the same court. Usually they have a long experience in the judiciary although nowadays a many-sided career is appreciated more than before.

- 1.7 Can the candidates, who applied for the position but did not get it, challenge the decision before a court/tribunal?

No, they cannot. However, the Judicial Appointments Boards gives the candidates left on second place a possibility to express their opinion before the final appointment..

- 1.8 How often does it happen? (Please give a percentage based on data available or on your personal knowledge).

No challenges can be made.

- 1.9 Is additional training in management, or in other subjects, required after the judge has been selected as court president?

No such training is required.

- 1.10 What is term of office for the president of court (please explain if there are limitations)?

For the time being, all the presidents hold a tenure position and are not appointed for a fixed term. However there are plans to change this system so that the presidents, with the exception of the presidents of the Supreme courts shall be appointed for a fixed term which is renewable.

- 1.11 How many times the same position of court president can be hold by the same person?

Not relevant in the present situation. See, however, what has been said above.

- 1.12 Which is the process to confirm presidents in their position (e.g. assessment of the first term served and then renewal)?

Not relevant in the present situation.

- 1.13 Under which circumstances can presidents be removed from their office before the expiration of their term?

In general it can be said that any judge has to resign when he or she turns 68 (retirement age) or when he or she loses working capacity. If a judge is found guilty of a serious crime he or she can be removed from office by a court decision.

- 1.14 Who is in charge of the removal procedure, and how it works?

This question is a hypothetical one, as it has never happened that a court president has been removed from his office against his or her will. However, if it is probable that a court president has lost working capacity, then a higher court, that is a court of appeal or the Supreme court can order him or her to a medical examination and remove him or her from the office, if necessary.

- 1.15 Can the president removed challenge the decision before a tribunal/court?

Yes, he can. A district court president removed by a court of appeal can appeal to the Supreme court. The situation concerning a court of appeal president removed by the Supreme court is a bit unclear, but it is believed that the removal can be appealed to the Supreme administrative court.

- 1.16 Are the decisions by the presidents shared/negotiated with the other judges or "boards" within the courts?

In district courts and in courts of appeal there are "management teams" to assist the president in the preparation of his or her decisions. Members of the "management team" are judges that are in charge of the different sections or divisions of the respective court. In addition, the Act on co-operation in state organisations makes it necessary to negotiate with the representatives of the personnel in questions affecting conditions of work and division of labour etc,

- 1.17 Do the local lawyers association or any other authority play a role in the decision making process carried out by the court's president?

No.

- 1.18 Are the organizational decisions taken by the presidents supervised by any other authority (e.g. Ministry of Justice, Judicial Council, Supreme Court, other)?

No, there is no such supervision.

- 1.19 Is there any extra remuneration for presidents, and how much is it in percentage of the regular judge's salary in the same court?

The judges' remuneration system is generally based on collective agreements, except for the judges and presidents of the Supreme courts where the system is based on a special law. The salary of a president is clearly higher than the one of an ordinary judge.

- 1.20 Please add any critical issue or further information that you consider relevant for this section.

No critical issues or further information.

2. Tasks, functions, relations

- 2.1 Are the presidents of the courts adjudicating cases as the other judges or they have a reduction of their caseload fixed by the law or by practice?

The presidents take part in adjudicating cases, but the caseload is reduced by practice.

- 2.2 Are the presidents involved in the selection and recruitment of the judges? (Please make a distinction, if applicable, between full-time/permanent judges, temporary judges, lay judges if it applies in your respective jurisdiction).

Yes, they are. Together with the members of the "management team" they interview the applicants and draw an opinion on their merits for the Judicial Appointments Board..

As far as fixed term appointments (maximum 1 one year) are concerned, the president makes the appointment after the interviews and discussion in the "management team".

- 2.3 Are the presidents involved in the selection and recruitment of the court staff?

Yes, the president makes the appointments which are prepared by the court's administration.

- 2.4 Do the presidents assess the work of the judges of the court? (If this is the case, please describe how often does it happen, what kind of procedure is followed, what are the consequences of this assessment, and if the assessment can be challenged by the judges before a tribunal/court).

In Finland, the assessment of judges is of an unformal nature and based on so called development discussions or conversations. The president is the discussion partner of the judges acting as leaders of the different sections or divisions of the court. The purpose of the discussions is to improve the judge's possibilities to make progress in his or her career. The president makes a report on the discussion but it is not handed out of the court and cannot be challenged.

- 2.5 Are the presidents in charge of starting a disciplinary procedure against a judge? (If this is the case, please describe briefly the procedure and who is going to make the final decision about the charge).

Yes, the president reports the case to a higher court which takes the necessary measures.

2.6 Can, and under which circumstances, the presidents fire a judge or a court employee?

A judge, no, but a court employee, yes. The grounds can be found in the State civil servants Act.

2.7 Which is the procedure of assigning cases to judges? Is there place for discretion of president of the court in this procedure? If yes, is it regulated by law or other kind of regulation?

There are no uniform rules of law concerning this question. The main rule is that cases are assigned at random. However, the work load and special expertise of an individual judge can be taken into consideration. The president does not take part in assigning cases to judges but he can confirm principles to be followed in this work.

2.8 Can presidents set priorities in the handling of the cases (e.g. family cases must be dealt with before contracts)?

This kind of priorities are set in legislation or in the working orders of individual courts.

2.9 Which are the circumstances that may allow presidents to retrieve cases from judges and re-assign them?

Although these cases are very rare, the president may retrieve a case from a judge who is badly delayed in his work. There is no written law on this question.

2.10 Do presidents decide over the composition of court's sections/division and over the composition of judges' panel?

The composition of sections/divisions (if any) is decided by the president but the composition of panels is based on lottery.

2.11 Do presidents select and appoint judges who may coordinate/head a section/division of the court?

Yes they do.

2.12 Can presidents delegate their functions to other judges?

Yes, as far as administrative questions are concerned, they can be delegated within certain limits to the permanent secretary of the court or to some other person belonging to the court's administration. Adjudication of cases can never be delegated.

2.13 Are presidents supported in their tasks and by whom?

Yes, as far as administration is concerned by the permanent secretary and other members of the court's administration.

2.14 Have presidents any supervision on the judgments delivered by other judges of the court?

The president may read the judgments before they are issued but he has no real power of supervision. On the other hand, it is the duty of the president to see that the practice of his court is uniform in all the sections or divisions and compared to other courts. Discussions between the judges are often organized for this purpose.

- 2.15 Are presidents in charge of the uniform application of the law within the court, and in which way they carry out this function?

See above under 2.14.

- 2.16 Do presidents set productivity and/or timeframes targets for their court?

Yes, they do, based on the budget negotiations with the ministry and after discussions with the leaders of the sections or divisions.

- 2.17 Do presidents set productivity or timeframes targets for each judge or court staff?

This is possible but not very common.

- 2.18 Do presidents monitor the length of judicial proceedings and what kind of actions they can undertake to improve the pace of litigation?

Yes, they do monitor. Better practises to improve the pace can be discussed between the president and the leaders of the sections or divisions.

- 2.19 What are the functions of presidents as far as the management of judges and court staff is concerned (i.e. setting working hours, authorising holidays, moving staff from one function to another, allowing extra-judicial activities etc.)?

Working hours are set by legislation and collective agreements, holiday lists are prepared by the court's administration and signed either by the permanent secretary or the president, moving staff from one function to another is within the powers of the president (negotiations needed before the decision) and so is allowing extra-judicial activities.

- 2.20 Have presidents any discretion in setting the remuneration (i.e. financial incentives) or other fringe benefits (please explain which one) of judges or court staff?

No, this is not possible.

- 2.21 Which tasks presidents have in the appropriation of the court budget among the different courts?

None. Every president takes only care of his own court.

- 2.22 Which tasks and how much discretion presidents have in the management of the court budget within the court?

Budget allocations for staff salaries and for costs of the court premises (together about 70 % of the budget) cannot be deviated from but otherwise the president has discretionary power which he uses after having consulted the court's finance manager (if any, otherwise the permanent secretary).

2.23 Do presidents manage the court premises and layout?

No, they do not. Real estate and premises belonging to the state are usually managed and taken care of by the state owned "Senaatti Real Estates".

2.24 Do presidents manage information and communication technology implemented in the court?

No. See below under 2.25.

2.25 Do presidents have some autonomy about what kind of information and communication technology tools/application should be implemented in their court?

No, they do not have. The procurement, management and service of the ICT needed in courts as well as ICT planning have been centralized in special administrative units in the state administration.

2.26 Are presidents really the managers of the court or they are supported in their functions by a board (please describe the composition) or by a court manager/administrative director?

Presidents are really the managers of the court but they are assisted by the "management team" (composed of the leaders of the sections or divisions plus the permanent secretary) and the permanent secretary. However, as far as the president of the Supreme court and the Supreme administrative court are concerned, see below under 4.7.

2.27 If applicable, please briefly describe the functions and the background of the court manager in comparison to the president of the court.

The permanent secretary, together with the court administrative staff takes care of the daily business of the court. This includes scheduling sessions, collecting data for statistics of the court's activities, everyday procurements, payments and different personnel services like holiday planning and travel service.

2.28 Please describe briefly the court manager selection process, if they serve for a limited term, and if the president can remove the court manager.

After the post of the permanent secretary has been declared vacant it can be applied for both by the court's own candidates and candidates from outside. The appointment is made by the president after interviews together with the "management team". The appointment is not for a fixed term but with tenure.

2.29 Are presidents the "interface" with the media, and are they trained to do it?

Yes, they often are. It depends on the individual what kind and how much training he or she will take.

2.30 Would you please briefly describe what kind of relations there are between presidents of the courts (first instance and appeal) and the president of the Supreme Court (court of last resort)?

The presidents of the district courts and the presidents of the courts of appeal meet each other regularly to discuss questions of common interest and so do the presidents of the courts of appeal and the presidents of the Supreme court.

2.31 Are there other tasks of presidents of the courts in your country, which were not mentioned before?

No, I cannot think of anything not covered by these questions.

2.32 Please add any critical issue or further information that you consider relevant for this section.

There remains nothing to be added.

3. Accountability and discipline

3.1 What kind of accountability mechanisms (e.g. reporting, auditing, etc.) are in place for the presidents, and before which authority (e.g. Judicial Council, Ministry of justice, Supreme Court, internal board etc.)?

The main mechanism of accountability is the yearly budget negotiation with the representatives of the ministry of justice. For example, numbers of incoming cases and issued judgements are then reported and calculations on effectivity and economic efficiency presented. It is also usual that annual reports are published by the courts and handed out for those interested in them.

3.2 Do presidents have a different disciplinary responsibility in comparison to the judges?

No, they do not have.

3.3 Is there any special immunity for presidents?

No, there is not.

3.4 Which criteria are used for the evaluation of presidents, how often, and by whom?

There is no evaluation after the appointment.

3.5 Which are the consequences of such evaluation (e.g. ranking, promotion, admonition, removal, salary increase, any other consequence, etc.)?

The question is not relevant, see above.

3.6 Please add any critical issue or further information that you consider relevant for this section.

There remained nothing to be added.

4. Appointment, tasks, functions, relations of the president of the Supreme Court (Chief Justice of the court of last resort e.g. court of cassation; please note that you do not have to describe the position of president of the Constitutional Court / here and after referred as president of the Supreme Court).

4.1 and 4.2 Who appoints the president of Supreme court and what is the selection procedure like

The Judicial Appointments Board has no jurisdiction regarding the appointment of judges and presidents to the Supreme court and the Supreme administrative court (compare to 1.2 above)

Supreme court and Supreme administrative court discuss the merits of the candidates with the minister of justice and the Council of state makes the appointment proposal to the President of the Republic, who is the final decision-maker also in these matters.

4.3 What kind of qualifications (e.g. specific training in management, previous specific judicial position, seniority, etc.) are required to become president of the Supreme Court? (Please also explain if training is mandatory or on a voluntary basis, if any training is necessary at all, and how much it affects the choice of the president).

See Section 11 of The Act on Judicial Appointments (2000) cited above under 1.5. The qualifications have been defined in general terms, only. No specific training or previous specific judicial position is necessary, nor is seniority decisive.

4.4 Does the president get a “confidence vote” (after or before their appointment) from other judges of the Supreme Court?

A “confidence vote” like this is unknown in Finland. See also what has been said above under 4.1 and 4.2.

4.5 How long is term of office of the president of the Supreme Court (please explain if there are limitations)?

The presidents of the Supreme court and the Supreme administrative court have a permanent tenure.

4.6 Can their mandate be renewed, and what is the process (e.g. evaluation of the first term served and then renewal)

This question is not relevant in our system.

4.7 What are the tasks and functions of the president of the Supreme Court in comparison to the other courts' presidents? (in particular, please explain the role of the president, if any, in relation to: Judicial Council, Ministry of Justice, legislative power, budget of the judiciary).

There is an important difference between the position of the Supreme court president and the Supreme administrative court president on the one hand and the presidents of the lower courts on the other hand regarding their position in the court's administration. The presidents of district courts and the presidents of courts of appeal can make administrative decisions alone, perhaps after having consulted the "management team". All the necessary power has been conferred on the president by legislation entered into force in 2011. On the other hand, the administration of the Supreme court and the Supreme administrative court is collegiate: every member of the court (that is, every judge) has a say in the matter and the plenary session has the final word. However, many issues have been delegated by the plenary to the president in the court's working order.

The president is *primus inter pares* and the chairman of the plenary. Of course, in real life the role of the president of the Supreme court and the Supreme administrative court is often more significant than that.

The president of the Supreme court and the president of the Supreme administrative court often speak in public on behalf of the whole judiciary. As far as budget negotiations are concerned, the presidents of the supreme courts are the first ones to express their opinion, but later on every president speaks and negotiates for his or her own court.

- 4.8 Please add any critical issue or further information that you consider relevant for this section.

There is nothing to be added here.

Prepared by Timo Esko, February 12, 2016