

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 are there in your country?

There are 49 district courts of general jurisdiction and 5 regional administrative courts, acting as first instance courts exclusively in respective competence and also there are 5 regional courts of general competence, which act both as courts of first instance for civil and criminal cases, expressly assigned by law, and courts of appeal instance for

decisions/verdicts of district courts. Thus there are 54 presidents of courts of the first instance solely and 5 presidents of courts having double competence.

- 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?)

The president of the Court of Appeal is appointed by the President of the Republic of Lithuania upon the assent of the Seimas. All the other presidents of the courts are appointed by the President of the Republic of Lithuania. The Judicial Council (a special institution of a judges) shall advise the President of the Republic of Lithuania on the appointment of the presidents of the courts. Only the judge working in the court can be appointed as the president of the court.

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

No

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

The selection of the candidates is announced by the Presidential Office. All the candidates who wish to participate in the procedure can apply. The candidates to the office of the presidents of the courts are elected and presented to the President of the Republic of Lithuania by the Selection Commission. However, the President of the Republic of Lithuania is not bound by the recommendations presented by the Selection Commission and can choose any candidate so that the Judicial Council could provide its advice due to the chosen candidate. The Judicial Council has a right not to provide its advice only in very exceptional circumstances. When the candidate is approved by the Judicial Council, the above mentioned candidate is then appointed as the president of the court by the President of the Republic of Lithuania.

The President of the Court of Appeal is appointed by the President of the Republic of Lithuania subject to the approval of the Judicial Council as well as concurrence of the Seimas.

- 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).

There are no special requirements due to qualifications for the candidates who apply for the position of the presidents of the courts.

- 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.

The only possible procedure for the appointment of the presidents of the courts has already been listed in the point 1.4. Only the judge working in the court can be appointed as the president of the court.

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

No

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

There have never been such cases in our country yet.

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

There are no special trainings provided for the newly appointed presidents of the courts. The newly appointed presidents of the courts take part in general training devoted for the presidents of the courts.

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

A term of 5 years. There are no exceptions.

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

No more than 2 terms in a row.

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

The procedure regarding the appointment of the president of the court for the second term is absolutely equivalent to the procedure for the first term.

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

If there were any infringements listed due to his/her improper fulfilment of the administrative functions while evaluating his/her activities.

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

If the President of the Republic of Lithuania thinks that the president of the court performs his/her duties improperly and wants him/her to be removed from office, the President of the Republic has to apply to the Judicial Council for its approval. If the Judicial Council agrees, then the President of the Republic issues a decree and removes the president from his/her office. If the Judicial Council does not approve, the president (as well as the judge) cannot be removed from office.

When the President of the Republic of Lithuania is provided with the approval of the Judicial Council due to the removal of the President of the Court of Appeal from office, the President of the Republic then applies to the Seimas. If the Seimas agrees with the removal, the President of the Republic issues a decree and removes the president from his/her office.

1.15 Can the president remove or challenge the decision before a tribunal/court?

Pursuant to the Constitution of the Republic of Lithuania any person can safeguard his/her rights in the court. No appeal procedures regarding special legal removal of the judge or president are provided in the existing laws.

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

No

- 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)?

Usually not. However, it has been established that the Judicial Council examines the complaints related to checking of the judges as well as orders made by the presidents. The Judicial Council avails itself of a possibility to carry out the inspection once again.

- 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 salary of the presidents of the courts is higher by 15-20 per cent than the salary of the judges.

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

*The President, choosing a candidate, is bounded only by the formal criteria: that the candidate should be a judge. The judges of the court, where the president is appointed, have no influence on this process. The right of the judges to advise or not to advise on appointing the president of the court is quite formal. Over the past 20 years there has not been a single case when the Judicial Council would not advise to appoint the court president candidate, proposed by the President of the Republic. GRECO commission paid attention to the lack of role of the Judicial Council considering personal issues: **"In light of the foregoing, GRECO recommends(i) that the method for appointing the members of the Selection Commission of Candidates to Judicial Offices be reviewed in order to strengthen their independence and that the procedure for appealing against the Commission's decisions be consolidated, and(ii) that the Judicial Council be given a more important role in the procedure for selecting judges"**.*

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?

According to the decision reached by the Judicial Council the caseload of the presidents of the courts is recommended to be reduced by 50 per cent.

- 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).

No

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

The presidents of the courts conclude the contracts with all court's employees (except judges) and deal with any issues related to their work (transfer to another job, dismissal, disciplinary sanctions appointment, etc.).

- 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).

Formally - not. However, the work of the judges in Lithuania is valued periodically (every 5 years) by the Judicial Performance Review Commission. The president of the court provides this Commission with information about the work of the judge, as well as the data how he/she assesses his/her work.

- 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).

Officially, only the Judicial Ethics and Discipline Commission may take the legal disciplinary proceedings against the judge. The Judicial Council, the Judicial Ethics and Discipline Commission have the rights to offer to initiate disciplinary proceedings, as well as the president of the court, where the judge works, or the president of any higher-level court or other person who became aware of misconduct. The entity, who has the right to propose to initiate disciplinary proceedings, shall provide the Judicial Ethics and Discipline Commission with reasoned proposal for bringing the disciplinary proceedings against the judge.

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

The president of the court has no such rights in respect of the judges. The president of the court may dismiss employees under general Labour statutory grounds, for example, for violation of Labour discipline.

- 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?

The special computer system distributes all the cases for the judges and forms Judicial Board by random selection of the judges. In exceptional cases, the president of the court may determine that the appointed judge cannot investigate the case assigned to him/her (as the judge investigates other very complex cases, which will last a long time). In this case, the proceedings are appointed to another judge by the same computer system. It is regulated by the cases distribution procedure confirmed by the Judicial Council.

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

Directly - not, but the case allocation rules, approved by the president of the court, shall ascertain the separate groups of cases that are devoted to consider under the urgency procedure (as specialized cases). In addition, the president of the court must comply with statutory exceptions, as the Code of Civil Procedure provides that the procurement cases, disputes on a bankruptcy case for the approval of the creditors` claims must be investigated within shorter deadlines than other cases. In such cases, these files are investigated quickly, but not under the decree of the president, but according to specific Judicial Council or statutory procedures for dealing with such cases.

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

If the law provides that the judge, to whom the case is assigned, cannot investigate it, as the judge withdrew from the case hearing, left employment and so on, the president of the court cannot at its discretion to reallocate the case to another judge.

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

The president of the court shall fix the number of the judges in the court divisions (of civil and criminal cases), if they are established, and appoint the judges to a particular division. However, the chambers for hearing the cases consist of a special computer system of random selection of the judges.

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

The president of the court can only appoint the chairperson of the chamber according to particular rules which have already been confirmed in advance.

- 2.12 Can presidents delegate their functions to other judges?

Article 105 of the Law on Courts provides the information due to acting in place of the heads of the court and temporary tenure

1. If the Chairperson of a regional court, the Court of Appeal or the Supreme Court is unavailable, the Chairperson of a division with a longer period of judicial service shall act in his place. If the Chairpersons of divisions in this paragraph mentioned court is unavailable, the judge with a longer period of judicial service shall act in place of the Chairperson of the aforesaid court.

2. If the Chairperson of a division of a regional court, the Court of Appeal or the Supreme Court is unavailable, a judge of this division with the longest period of judicial service in this court shall act in his place.

3. If the Chairperson of a regional administrative court or the Supreme Administrative Court is unavailable, the Deputy Chairperson of the relevant court shall act in place of the Chairperson or the Deputy Chairperson with a longer period of judicial service in this court shall act in his place. If the Chairperson of a court mentioned in this paragraph where there is no position of a Deputy Chairperson is unavailable, the judge with a longer period of judicial service shall act in place of the Chairperson of the aforesaid court.

4. *If the Deputy Chairperson of a regional administrative court or the Supreme Administrative Court is unavailable, but position of a Deputy Chairperson is available, the judge with a longer period of judicial service shall act in place of the Deputy Chairperson of the aforesaid court.*

5. *If the Chairperson of a district court is unavailable the Deputy Chairperson of the court or the Deputy Chairperson with a longer period of judicial service shall act in place of the Chairperson. If the Chairperson of a district court where there is no position of a Deputy Chairperson is unavailable, the judge with a longer period of judicial service shall act in place of the Chairperson of the aforesaid court.*

6. *If the Deputy Chairperson of a district court is unavailable, but position of a Deputy Chairperson is available, the judge with a longer period of judicial service shall act in place of the Deputy Chairperson of the aforesaid court.*

7. *In cases specified in this Article, then the longest period of judicial service of judges in relevant court are calculating and then its found that several judges hold office for the same period, the oldest judge runs the relevant office.*

8. *This Article shall also apply in cases, where the Chairperson of the court, the Deputy Chairperson of the court, the Chairperson of the division, in cases specified in this Article are removed from office and there is not appointed the new Chairperson of the court, the Deputy Chairperson of the court or the Chairperson of the division. In cases specified in this Article, the other judge of the relevant court shall temporary act in place of the Chairperson of the court, the Deputy Chairperson of the court, the Chairperson of the division of the aforesaid court, except situations, when other judge of this court is temporary appointed for a term not longer than 1 year without applying the selection procedure, described in Article 551 of this Law. The right to propose a candidate for a temporal appointment for a position in the district court, regional court, regional administrative court or Court of Appeal has the chairman of the chairman of the court of higher jurisdiction after consideration the opinion of the respective court collective. In appointing the judge to a position in the Supreme Court and Supreme Administrative Court the opinion of the respective court collective is heard.*

2.13 Are presidents supported in their tasks and by whom?

The presidents of the courts have advisors and assistants who perform technical assignments. The higher courts have the Chancellor's Court. It performs the responsibilities set out by the president of the court and associated with the court economic service and organization of the work of the court employees.

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

No

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?

No

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

No

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

For the judges – no. For the court staff – yes.

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

Very limited. As in the case of the lengthy proceedings, the president of the court may use administrative measures, i.e. to reduce workload of the judge, hearing the case, and appoint an extra assistant.

- 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.)

The president of the court authorises holidays for the judges. As much as it concerns the court staff the president of the court sets the working hours, manages the holidays, determines the operating functions, etc.

- 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?

For the judges – no. The court staff can be provided with bonuses, a higher qualification class (which means a higher salary) by the president of the court.

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

The presidents do not have the above mentioned functions. The president of the court submits the draft of the budget of the court for the National Courts Administration.

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

The president of the court manages the budget assigned for the court and does not have any other functions.

- 2.23 Do presidents manage the court premises and layout?

Yes

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

A duty of the president of the court is to ensure the computer systems work in court by organizing work of the information scientists. The Court Public Relations Support Office is responsible to the president of the court.

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

No. This is implemented by the National Courts 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?

The courts do not have the special Court Management Service. The larger courts have the Chancery.

- 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 Chancellor's Court performs functions assigned by the president of the court, including related to the judicial management. As hires court staff, determines their vacation time and so on. In the lower courts such functions are performed by the president, as the court does not have the Chancellor's Court.

- 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.

The Chancellor's Court is recruited by the president of the court by tender for an indefinite period of time. The Chancellor is discharged from employment by the president of the court on general grounds, as for the poor performance of the duties, at own request and so on.

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

The presidents of the courts communicate with mass media. The trainings for the presidents of the courts is also related to communication with mass media. The biggest courts have the public relations service which helps the presidents of the courts to communicate with mass media.

- 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 higher courts carry out the administrative and operational control of lower courts. The presidents of higher courts periodically check the work of the lower courts (excluding procedural and operational control).

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

No

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

No

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.)?

There are no such mechanisms. The work of the president of the court is controlled by the president of higher court, carrying out administrative and operational control.

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

No

3.3 Is there any special immunity for presidents?

No

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

There are no special criteria for the evaluation of the president of the court. The president of the court is evaluated as a judge by the permanent judicial commission responsible for the evaluation of the judicial activity.

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

In case the evaluation is negative, the president of the court can be removed from office.

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

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 Who appoints (e.g. Judicial Council, Ministry of Justice, Parliament, etc.) the president of the Supreme Court?

The Seimas appoints the president of the Supreme Court upon submission by the President of the Republic of Lithuania.

4.2 Please describe briefly the selection procedure.

Such a procedure does not exist. The President of the Republic of Lithuania selects the candidate on his/her own.

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).

The president of the Lithuanian Supreme Court can only be assigned by the judge of the Supreme Court. Any judge of the Supreme Court can aspire to the position. There is no normal procedure of running for office.

The judge can be appointed to the position of the president of the court for no more than two consecutive terms. After two consecutive terms the judge may be appointed

to the position of the president of the court, if after his/her second term of tenure at least five years have passed. There is no special training or preparation of the president of the court.

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

No

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

A term of 5 years. He can be appointed for the second term of 5 years.

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

The process is the same.

- 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).

The president of the Supreme Court is also the member of the Judicial Council. The president of the Supreme Court has a right to suggest one candidate as a judge of the Constitutional Court to the Seimas. There are no other special duties in comparison with the other presidents of the courts.

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

There is no fixed procedure of aspiring for the position of the president of the Supreme Court. There is no formal procedure of the candidate selection for the president of the Supreme Court.