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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”**

**Answers from the Netherlands**

*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**

**General remark: In the Netherlands, the procedures for presidents of first instance courts and presidents of courts of appeal are the same. In the text, where ‘president’ is mentioned, the answer applies to both the presidents of first instance courts and the presidents of courts of appeal.**

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

11 district courts with 11 presidents  
4 courts of appeal with 4 presidents  
2 specialised appellate courts with 2 presidents.

- 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 Council for the Judiciary gives a recommendation for the appointment of the presidents of the courts to the Minister of Justice. The presidents of the courts are appointed by Royal Decree, upon recommendation of the Minister of Justice.

If someone is appointed as president, it automatically means that he or she is appointed as a judge. Most presidents are recruited from within the Judiciary, so they are already appointed as a judge. It is, however, possible that someone who is not currently functioning as a judge, but who has been a judge before, is appointed as president.

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

No, a confidence vote is not necessary. However, the advisory appointment committee of the court and the employees council can give a positive or negative advice. When both the advisory appointment committee and the employees council advise against a candidate, the candidate will not proceed to the next round.

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

The national selection committee is composed as follows: a chair (the chair of the Council for the Judiciary), a member of the Council for the Judiciary, and two members of the court board.

The selection procedure is as follows:

- Opening of the vacancy
- Selection written applications
- Interview with the local advisory committee and employees council (The local advisory committee represents all employees of the court)
- Final interview with national selection committee
- Recommendation by the Council for the Judiciary to the Minister of Justice

- 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).

Future presidents are required to have extensive experience as a judge and, experience in a managerial role. A president represents the court both internally and externally. Education or completed courses on management and leadership are recommended.

- 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 can be selected among judges from all courts.

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

A candidate who is not selected can only challenge the decision if the selection procedure was not followed correctly. The outcome of the selection itself cannot be challenged.

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

It has not occurred .

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

Additional training is not required, but it is encouraged.

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

The term of office is 6 years, with the possibility to renew for another 3 years.

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

Two times. (6+3 years).

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

A member of the court board (including the president) that would like to renew his or her position can send their motivation letter to the chair of the Council for the Judiciary. Depending on the advice of the other board members of the court, the results of broad feedback from colleagues and a renewal interview with the chair of the Council for the Judiciary, a president can be selected for a second term.

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

Every president also functions as a judge. Judges are appointed for life, presidents are appointed for a maximum of 6+3 years.

Removal from office is possible by Royal Decree once the maximum term has been served, or on the request of the president himself.

If a president is deemed to be 'unfit' for the role of president, he can be removed from the office by Royal Decree. The Council for the Judiciary advises the Minister of Justice in this regards . A president can also be suspended from office, if there are strong suspicions he or she is unfit for the role of president.

The decision about removal or suspension can be challenged at the Supreme Court.

Disciplinary dismissal as a judge, by the Supreme Court, is possible as a last resort if a judge displays highly inappropriate behavior (for example: criminal offence). The only other options for dismissal of a judge are by request of the judge himself, or once a judge has reached the age of 70 years.

A disciplinary dismissal can also be challenged at the Supreme Court.

Once a president has been dismissed as a judge as a disciplinary measure, it automatically means he or she is removed from office as president as well.

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

This depends on whether the president is removed from the office of president, or if a president is dismissed as a judge.

Removal from office: By Royal Decree. The Minister of Justice can start this procedure, on recommendation of the Council for the Judiciary. The decision can be challenged at the Supreme Court.

Dismissal as a judge: By decision of the Supreme Court. The court board can start this procedure. .

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

See 1.14.

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

The decisions are made by the 3 board members of the court, where appropriate after consultation of the judges and the staff.

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)?

In order to ensure that the various tasks within the courts are carried out properly, the Council consults regularly with court presidents, directors of operations, sector heads and the Board of representatives (an advisory board made up of judicial and non-judicial representatives of the courts). The relationship between the Council for the Judiciary and the court boards is embedded in a planning and reporting cycle with year plans, progress reports (every 4 months) and annual reports.

Although the Council has the power to issue binding general instructions with regard to operational policy, the relationship between the Council and the courts should not be seen as hierarchical, The Council sets itself the primary goal of supporting the courts in their tasks.

- 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?

Members of the court board, including the president, get a special board salary during their term. This salary is higher than a normal judges salary. .

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

In the Netherlands, there is recently much debate on the relation between the Council for the Judiciary and the boards of the courts on the one hand and the judges on the other hand. According to many judges, the gap between them and the Council for the Judiciary and the boards of the courts is too large. The dominant role of the Council for the Judiciary in the appointment-procedure of presidents and other members of the board of the courts is criticised, as well as the close link between the Council for the Judiciary and the presidents. Judges put forward that there is too much hierarchy, too much focus on "production" and not enough focus on quality in the judiciary. The intention is to bridge the gap.

## **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?

Presidents stay active as a judge, but with a reduced caseload.

- 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, the presidents are involved in the selection and recruitment of judges within the court.

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

Yes, the level of involvement differs per court and per function.

- 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).

The content of the work of judges will not be assessed by the president, but the working process can be assessed or optimized by the court management.

- 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).

A president can give an official warning to a judge.

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

A judge can only be fired by the Supreme Court (see 1.13).

- 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 way cases are allocated to judges is regulated by rules, that are published.

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

The court management makes sure that the correct priority is given to cases. Middle management makes sure that judges have the needed resources and time to complete their cases.

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

This is not the responsibility of the president of the court. The head of a section or the maker of the court schedule can re-assign cases, e.g. in case a judge is ill or no longer in function.

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

Decisions on the composition of the judges panel can be made by court management.

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

Yes.

- 2.12 Can presidents delegate their functions to other judges?

No, only to the two other members of the Court board.

- 2.13 Are presidents supported in their tasks and by whom?

Yes by the two other members of the Court board and the staff of the court. Presidents usually have a personal assistant

- 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?

There is a high standard of quality management within the courts, the court management makes sure these standards are followed.

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

Yes, in consultation with the Council for the Judiciary.

- 2.17 Do presidents set productivity or timeframes targets for each judge or court staff?  
This is a topic under debate. There are courts where individual targets are set.
- 2.18 Do presidents monitor the length of judicial proceedings and what kind of actions they can undertake to improve the pace of litigation?  
  
No, this is a responsibility of middle management.
- 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.)?  
  
No, this is a responsibility of middle management.
- 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.
- 2.21 Which tasks presidents have in the appropriation of the court budget among the different courts?  
  
The presidents do not have a task in the appropriation of the court budget among the different courts. These decisions are made by the Council for the Judiciary. The presidents are responsible for the local budget.
- 2.22 Which tasks and how much discretion presidents have in the management of the court budget within the court?  
  
The presidents are responsible for the court budget. Within their own budget they can make independent choices. The Dutch judiciary has an output based financing system. Budget court = number of decisions (q) x the price for that decision (p)
- 2.23 Do presidents manage the court premises and layout?  
  
Presidents are responsible for the management of the court premises.
- 2.24 Do presidents manage information and communication technology implemented in the court?  
  
IT is managed on a national level. The Dutch Judiciary has its own IT-organization that provides IT-services for all locations.
- 2.25 Do presidents have some autonomy about what kind of information and communication technology tools/application should be implemented in their court?  
  
IT-applications are developed to support the daily tasks of the local courts. When new information and communication technology is developed, the presidents are consulted and can have a role in the decision making process.
- 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 board consists of 3 persons including the president, one judicial and one non-judicial member and the management team. The supportive staff differs per location.

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

Not applicable. The management of the court is the responsibility of the board. In practice, the non-judicial member of the board is often primarily entrusted with this task.

- 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.

Not applicable.

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

Yes, this is possible, but in all courts there are specially trained press judges.

- 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)?

No special relations. There are regular joint meetings of the Council for the Judiciary and the presidents of the courts, in which sometimes the president of the supreme court participates.. There is no hierarchical relation.

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

No additional tasks.

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

A court is managed by three board members. Each board member has his own portfolio, the president is the chair of the board. All members have their own tasks, and together they manage the complete court.

### **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 court boards are accountable to the Council for the Judiciary, more in particular for the way in which the resources are spent.

The relationship between the Council for the Judiciary and the court boards is embedded in a planning and reporting cycle with year plans, progress reports (every 4 months) and annual reports.

- 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 is an annual interview with the president of the council for the judiciary. This is not a formal evaluation. The interview is based on feedback-information.

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

The annual conversations cannot be seen as a formal evaluation. However, if there are questions about the functioning of the president these issues can be discussed in the conversation. The outcome of the conversation might have further consequences.

- 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?

An internal committee discusses with all sitting members of the Supreme Court and gauges interest amongst the members to become president. The internal committee selects a candidate and makes a recommendation to the government. The government is not bound to follow the recommendation, but usually follows the recommendation. The new president is appointed by Royal Decree.

- 4.2 Please describe briefly the selection procedure.

See 4.1.

- 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).

Historically seniority played the biggest role in the selection of the new president. Recently this has changed into the described selection procedure in 4.1 with an internal committee that nominates the new president.

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

Indirectly by the internal committee.

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

6 years.

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

No. The maximum term of office is 6 years.

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 the highest judge in the Netherlands. The president is responsible for the daily management of the Court. The president also actively functions as a judge and decides cases together with other members of the Supreme Court.

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