

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”

NORWAY

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?

Each court in Norway has one president. There are 101 first instance courts; 66 ordinary district courts, which are courts with general jurisdiction, 34 land consolidation courts, which are special courts, and the Finnmark Land Tribunal, which also is a special court.

The ordinary courts undertake constitutional review as well as judicial review of administrative actions. There is no separate jurisdiction for administrative courts. There are six courts of appeal in Norway.

- 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 presidents of the courts are appointed by the King in Council. Other legal professionals than those who are already judges can be appointed.

- 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.

Court presidents are appointed as senior state officials by the government, i.e. the King in Council, after formal recommendations from the Judicial Appointments Board and the Ministry of Justice.

After the public announcement of a vacant position, the applicants' qualifications are assessed by the Judicial Appointments Board. The Board is composed of three judges, two non-lawyers appointed as public representatives, one advocate and one lawyer employed in the public sector, which establishes a majority of non-judges, all appointed by the government. The Board recommends and ranks three applicants. The government is not obliged to abide by the Board's ranking. The government may even choose an applicant who has not received the recommendation of the Board, but only if it has asked the Board to make a special assessment of the applicant in question. In recent years, however, the government has followed in practice the Board's recommendations.

- 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 specific formal qualifications additional to the qualifications required to be appointed a judge. There is a statutory age requirement of 30 years of age for the presidents of the Courts of Appeal, and for presidents of first instance courts of 25 years of age.

The Judicial Appointments Board has published written guidelines on the appointments procedure and the criteria for selection of applicants and appointment of judges and court presidents. According to these guidelines, a court president should meet the following requirements:

- The court president must satisfy high professional standards

- The court president must be able to organize the work of the court in such a way that the caseload is dealt with efficiently.
- The court president must be able to facilitate a good working environment for the judges and members of the staff.
- The court president must pay interest to the needs of the court users.
- The court president must be able to see the needs for developments and improvements of the functioning of the court.

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, but by an open competition. Neither judges nor court presidents are recruited exclusively from one particular occupational category.

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

In principle, and depending on the circumstances, such a decision can be challenged before a court, but not by a specific provision related to the appointments procedure for judges and court presidents. The court can not however, if such a decision is challenged, set aside the challenged decision or declare it void, but the applicant can claim compensation, and depending on the circumstances of the lawsuit, the court can be competent to decide the case.

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

It has never happened.

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

There is no requirement for additional training in management or other subjects, but the Norwegian Courts Administration offers various forms of support to court presidents in order to improve their leadership and management of the courts.

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

A court president is appointed for an unlimited period, i.e. till retirement age.

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

Not applicable, see answer to question 1.10.

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

There is no such process.

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

According to Article 22 of the Norwegian Constitution, judges, including court presidents, can only be dismissed by a court judgment. In principle, the removal must be due to gross misconduct.

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

The removal procedure is the same for court presidents as for other judges. In 2013, for the first time in decades, a Norwegian judge was dismissed, and this was done by a court judgment. The case was not initiated by the Supervisory Committee for Judges, which is the independent disciplinary body for judges. It was the National Courts Administration as the employer of the judge in question that initiated the dismissal process, and the Ministry of Justice represented the state at the court proceedings. This was an extraordinary case, not reflecting the common disciplinary procedure.

The courts' decision is subject to appeal.

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

See answer to question 1.14.

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

Not by provision, but court presidents normally and regularly consult both judges and court staff formally and in informal ways prior to decisions of importance are taken.

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, but some court presidents arrange meetings with the local or regional Bar Association and representatives for the public prosecution on practical arrangements concerning court proceedings in general.

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)?

Decisions which substantially affect the court's finances are supervised by the National Courts Administration. Decisions may also be scrutinized by the Supervisory Committee for Judges in case of alleged misconduct.

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?

Depending on the size of the court and its position in the court hierarchy, the court president's remuneration is between 10 and 20 % more compared to the remuneration of the judges at the same court.

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

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?

Court presidents normally adjudicate cases. Their caseload depends to some extent on the size of the court. Presidents of small first instance courts with two or three judges normally have a heavier caseload than presidents of bigger courts, who spend more of their time on court management.

- 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).

As regards permanent appointment of judges, the Judicial Appointments Board carries out a full assessment of the applicants' qualifications, obtains references and conducts interviews, before the matter is put before the Ministry of Justice. The president of the court in question has the opportunity to deliver an opinion to the Judicial Appointments Board.

The Norwegian courts system is quite heavily influenced by the use of temporary judges. Deputy judges, often recent graduates of law schools, are appointed by the presidents of the District Courts for a period of up to two years, with the option of a further one-year extension. Deputy judges are present in all first instance courts of general jurisdiction, and they account for nearly a third of the adjudicating machinery in these courts.

Both in courts of first instance and in the appellate courts lawyers outside the courts system to some extent sometimes are temporarily appointed as judges for a limited period with a maximum term of two years. In all appellate courts there are extraordinarily appointed Court of Appeal judges who are appointed from among retired judges for one or two years at a time. The Judicial Appointments Board is competent to appoint judges for such limited periods. The president of the court in question has the opportunity to deliver an opinion in this respect.

A court president can appoint a judge for a maximum term of three months.

In addition, due to the fact that Norwegian Courts of Appeal are understaffed with judges, quite frequently judges from the first instance courts are called by the president of the appellate court to serve for a week or so at the Court of Appeal.

The court presidents are not involved in the recruitment of lay judges, which is a task for the local governments.

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

Yes.

- 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).

No.

- 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).

The court president can initiate proceedings against a judge at his or her court before the Supervisory Committee for Judges in case of alleged misconduct by filing a complaint to the Supervisory Committee. Such proceedings can also be initiated by the parties to a case or the parties' counsels, by witnesses and others like the Norwegian Courts Administration, the Ministry of Justice and the Norwegian Bar Association.

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

A court president can never fire or remove a judge at his or her court. A judge can only be dismissed by a court judgment of another court than the court in question.

Members of the court staff do not have the same protection.

- 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?

Cases are assigned to judges randomly. In some courts some of the judges are specialized, e.g. in family cases, and these judges will normally deal with all family cases. The way of organizing a court in this way is not regulated by law, and falls within the discretionary competences of the court's president.

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

Yes.

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

According to the Civil Procedure Act, the court president shall ensure that the judges take an active part in the administration of the case, and shall make such orders as are required for the rectification of deficiencies in terms of neglected or delayed administration of the case. A party may demand that the court president intervenes when the administration and preparation of a case is neglected or delayed. If the management of a case is grossly neglected by a judge, the court president shall reassign the case to another judge. The decision of the court president is subject to appeal. The appellate court has the same competences as the president of the court in this respect, and may also refer the case to another court.

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

Yes.

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

No.

- 2.12 Can presidents delegate their functions to other judges?

Yes. Administrative functions can be delegated to other judges and members of court staff.

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

The court president is supported by the staff. Some courts have a vice-president supporting the president, or presidents of divisions of the court. The management of the bigger courts are supported by court managers (head of management division).

- 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?

Timeframe targets are set by the Parliament. The court president is responsible for organizing the work of the court in such a way that the caseload is dealt with efficiently.

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

No.

- 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, the case-management system facilitates such monitoring.

- 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 do not fix judges' working hours, but can decide on judges' vacations in order to secure that a sufficient number of judges are present at court at any time. The National Courts Administration decides on requests for extra-judicial activities, except for the minor ones, which are decided by the president of the court. The president can make decisions on the functioning and the work of the members of the staff.

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 president of each court will provide the National Courts Administration with a reasoned proposal for the court budget. The final decision on the budget is taken by the Courts Administration.

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

Within the overall budget frame the court president has some discretion, restricted by the fixed costs components as salaries etc.

2.23 Do presidents manage the court premises and layout?

The president of the court will have a say in this respect. The furnishing of courtrooms etc. is pretty much subject to informal national standards, but decorations in courtrooms and other parts of court premises would be influenced by decisions of the president of the court.

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

The president has the overall responsibility for information and communication, but do not necessarily manage the technology implemented.

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

Decisions on technological issues are normally taken and implemented by the National Courts Administration or after consultations with 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 president is the manager of the court, but often supported by a court manager (director of administrative division).

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 court manager deals with the court's daily financial matters, accounting etc. and is the daily manager of the staff.

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.

Court managers are civil servants, recruited by open competitions. Their term of office is unlimited.

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

Normally the president of the court makes statements concerning the court's administration. There is no specific training neither for judges nor the presidents on media relations. Judges are allowed – but by tradition reserved – to make statements to the press. As a general rule, because of the risk that comments may be interpreted as additional arguments for the ruling, judges do not comment on their own decisions.

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)?

There are no formal relations between the court presidents of lower and higher instances.

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

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

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 accountability mechanisms are in principle the same for the presidents of courts as for judges. Any person who claims to have been subjected to the misconduct of a judge or a court president in the performance of his or her office may address a complaint against the judge or the president to the disciplinary body. If the disciplinary body concludes that a judge or a court president is guilty of either negligent or wilful misconduct, the judge or president can be issued with either a 'criticism' or a 'warning', where a criticism is a milder form of reaction than a warning. The Supervisory Committee's decisions are not subject to appeal, but the parties may challenge the Committee's decision in court by bringing a civil action for review on the legality of the Committee's decision, which does not entail a review of the facts of the case.

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?

The court presidents are not subject to formal evaluation.

- 3.5 Which are the consequences of such evaluation (e.g. ranking, promotion, admonition, removal, salary increase, any other consequence, etc.)?
- 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 appointment is made by the government (the King in Council).

- 4.2 Please describe briefly the selection procedure.

The Judicial Appointments Board has no tasks to fulfil when it comes to the appointment of the President of the Norwegian Supreme Court. There are in fact no regulations in the law regarding the procedure for appointment of the president of the Supreme Court. A selection procedure was introduced by the government, not by law but by practice, in late 2015 for the appointment of a new president of the Supreme Court. The government announced the position vacant for an open competition, and appointed an advisory committee who interviewed the applicants. The advisory committee made its assessments, but did not, and should not, rank the applicants. The assessment is not made public. The government will make the appointment, but the deliberations prior to the appointment and the reasons for the government's choice will not be made public.

- 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).

There are no specific formal qualifications additional to the qualifications required to be appointed a judge. There is a statutory age requirement of 30 years of age for the president of the Supreme Court. It is expected that the president of the Supreme Court satisfies the highest professional standards.

- 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)?

The appointment is not limited in time, which in practice entails appointment till retirement age.

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

See answer to question 4.5.

- 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).

Norway do not have a particular constitutional court, but the Supreme Court have functions denoting that it in some respects should be considered as a Supreme Court with certain functions similar to those of constitutional courts. According to the Norwegian constitution the Norwegian Supreme Court has specific constitutional functions, which in many ways makes the Supreme Court different from the lower courts. Therefore, the role of the president of the Supreme Court is different from the presidents of the lower courts.

The president of the Supreme Court is not an *ex officio* member of the board of the Norwegian Courts Administration, and is neither *de facto* a member of the board.

The president of the Supreme Court has no role to play in the process of fixing the lower court's budgets or the overall funding of the courts. This is a task for the Norwegian Courts Administration. But, of course, the president of the Supreme Court is involved in the process of fixing the budgets for the Supreme Court.

While the Norwegian Courts Administration decides on application for extra-judicial activities from judges of lower courts, the president of the Supreme Court decides these matters for the Supreme Court Judges.

The president of the Supreme Court submits to the Ministry of Justice his or her assessments regarding appointments of judges to the Supreme Court, while presidents of courts of first and second instance submit their assessments regarding appointments of judges to their court to the Judicial Appointments Board.

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