

ANSWERS

Switzerland

Questionnaire “The role of Court Presidents”

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?

There are 26 Cantons (member states of the Swiss Federation), each with their own justice system – e.i. courts of first instance for civil, criminal and administrative law disputes. Each Canton has at least one court of appeal, some have two separate ones (for civil and criminal matters on one hand, for administrative ones on the other). Every court has its president.

On federal level there are three Courts of first instance (for administrative, criminal and patent law). Each has its President. On federal level the "court of appeal" is the Swiss Federal Supreme Court, with its 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).

Judges of cantonal first instance courts are in general elected by popular vote or by the cantonal parliament or appointed by the cantonal court of appeal. Their Presidents are either chosen by separate vote among the judges or the court constitutes itself, so that the President is nominated by his colleagues. As a general rule there is a rotation among the judges and Presidents are appointed for a short period of time (often 2 years).

The Presidents of the federal courts of first instance and the President of the Federal Supreme Court are elected by the federal Parliament on proposition of the judges of the respective court for a period of 2 years (with possible re-election for another 2-years-period only).

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

The presidents of the Federal Courts are nominated for parliamentary election by their colleagues. The presidents of cantonal courts – if not appointed by their colleagues – are in many cases proposed by the majority of the judges of the court. In general there is a custom of seniority.

1.4 Please describe briefly the selection procedure for Presidents of the courts.

In general the rules of procedure for election by parliament or popular vote are also applicable to judges and president of courts. The procedure of nomination or appointment by the court consists as a general rule of a majority vote among the colleagues.

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).

In general none different from the ordinary judge.

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 Presidents.

They are selected among the judges of the court.

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

No formal procedure provided for in statutory law.

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

Unknown of.

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

No.

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

Federal level: 2 years; cantons mostly 2-4 years.

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

**Federal level: one re-election (only) possible.
In the cantons different. There may be rotation (no re-election, but after the presidency of colleagues a new mandate possible), several re-elections possible, nomination by colleagues until retirement and so on.**

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

New appointment requires same procedure as first time.

1.13 Under which circumstance can Presidents be removed from their office before the expiration of their term?

Circumstances are the same as for judges.

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

As a rule non-re-election after term or disciplinary procedure.

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

No known cases.

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

Their function is in general restricted enough, so that decisions should not require any negotiation, but individual style.

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)

The federal courts are organised by constitutional and statutory law, framed by Parliament and concretized by rules decreed by the judges of the court (majority vote).

In the cantons as a rule similar.

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?

Yes.. Extra pay meant mainly for expenses.

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 fixed by the law, or by practice, of their caseload?

Presidents of the courts are as a rule adjudicating cases, but in a reduced measure, fixed in general 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).

No.

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 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).

In general no.

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

Judges no, court employees in general yes, but as a rule not alone.

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

Different systems. As a rule statutory law and within this frame decrees regulate the assignment of cases to Courts, their sections and to judges. There is in general a place for discretion.

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

No.

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

If the judge is – at least for a long period (sickness) - not in position to deal with the case anymore (retirement).

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

In general these decisions are made by all the judges (majority vote).

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

See 2.10

2.12 Can Presidents delegate their functions to other judges?

No.

2.13 Are Presidents supported in their tasks and by whom?

In general a presidential secretary.

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?

In general there are rules of coordination regarding the decision-making in view of uniform application of the law within larger courts. Presidents have as a rule administrative tasks.

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

No. But if the infrastructure is not sufficient to cope with the workload, the president has to take measures.

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

In general not.

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

In general only informal means.

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, authorize holidays, moving staff from one function to another, allow extra-judicial activities etc.)?

No management of judges, concerning court staff in general not alone and according special procedures.

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?

See 2.19

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

In general none.

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

In general minor tasks and some discretion.

2.23 Do Presidents manage the court premises and layout?

In general no.

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

In general not (not alone).

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

In general no (not alone).

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?

In general they are supported in their functions.

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

In general the secretariat of the president is formally under control of the president and the directing board.

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.

Selection process is different. Court managers are in general functionaries.

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

In general yes, training depends.

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 formal ones.

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...)?

In general they report to the Parliament about the workload and the management (financial etc.) of the court in 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?

Same as for judges in general.

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

No special evaluation.

3.5 Which are the consequences of such evaluation (e.g. ranking, promotion, admonition, removal, salary increase, any 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 supreme court).

4.1 Who appoints (e.g. Judicial council, Ministry of justice, Parliament, etc.) the President of Supreme Court?

See 1.2 (Federal Parliament on proposition of the Supreme Court).

4.2 Please describe briefly the selection procedure.

- **Nomination by the Supreme Court:**
The Court in its entirety (all the ordinary judges) nominates the candidate by confidential vote. If there are more candidates than one, the procedure as prescribed for elections by Federal Parliament in art. 131 of the statute for the federal Parliament applies (art. 5 of the decree for the Supreme Court, promulgated by the Supreme Court on 20th november 2006);
- **Election by the Federal Parliament:**
The procedure of elections by parliament is regulated in art. 130 to art. 140 of the statute for the federal Parliament, for judges in art. 135 to 138. According to art. 138 the president and the vice-president are simultaneously elected on 2 separate paper ballots.

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).

Chosen among the Judges of the Supreme Court, no special qualifications.

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

See 4.1 und 1.2

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

See 1.2: 2-years-period, one re-election at most.

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

See 1.2, 4.5

4.7 What are the tasks and functions of the President of 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).

Art. 14 of the statute for the Federal Supreme Court states, that the President chairs the meeting of the entirety of the judges and of its board and represents the Court to the exterior. He especially deals with the Parliament (art. 162 of the statute for the federal Parliament).

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

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