

Ukraine, 11 February 2016

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

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

“The role of court presidents”

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?

	<i>in civil and criminal cases</i>	<i>in administrative cases</i>	<i>in commercial cases</i>	<i>Total</i>
<i>courts of first instance</i>	665	27	27	719
<i>appeal courts</i>	27	9	8	44

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?)

Presidents of the courts of first instance and of the courts of appeal are elected from among judges of this court by secret ballot by a majority vote at the meeting of judges of the court.

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

Please see 1.2

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

Nominee for chairmanship of the court can be a person who is named by judges of the given court verbal at the meeting or in writing before the meeting. Also it can be self-nominated candidate. The number of candidates is not limited. Judge can be a candidate only in willing way. President is elected by secret ballot by a majority vote at the meeting of judges of the court.

- 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).

Every judge of the given court can be a nominee for chairmanship. No obligatory requirements are necessary. But, in practice, a person who has authority with judges and stuff and has the best management skills can be elected president. Getting special education is absolutely free-will. Also, results of the regular rating can be taking into account.

- 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 of the courts of first instance and of the courts of appeal are elected from among judges of this court.

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

It is not provided by the law.

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

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

It is not provided by the law.

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

Presidents of the courts of first instance and of the courts of appeal are elected for two years, but not longer than for the term of tenure.

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

Judge, who is elected president can't hold an appointment more than two 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)?

For second tenure president has to be elected in the way, described in p. 1.4.

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

Presidents of the courts of first instance and of the courts of appeal can be relieved of his/her duties ahead of schedule. It can be initiated by no less than one third of the total number of judges of the court.

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

It can be as a result of the secret ballot by votes of the two-thirds of all judges of the court.

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

It is not provided by the law.

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

Presidents of the courts of first instance put before the meeting of the judges of the court question about the number and nominees for the duty position of investigating judges.

- 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)?

Organizational decisions taken by the presidents are overseen by the Council of Judges of Ukraine and by meeting of judges of the court.

- 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?

President's increment in the amount of 10 percent of salary of the judge of the 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?

It is possible to reduce the caseload for president by the decision of the meeting of judges of the court. But at the most for sixty percent relatively judge's 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).

Presidents issue an order, that is based on act of judge appointment or dismissal.

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

President of the court of first instance offers to the Head of the Territorial directorate of the State Judicial Administration of Ukraine candidature of court staff manager and deputy court staff manager.

President of the court of appeal offers to the Head of the State Judicial Administration of Ukraine candidature of court staff manager and deputy court staff manager.

- 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).

President of the court manages court statistics for the improving the quality of the judiciary. But he/she doesn't assess judge's work, and it has no consequence.

At the same time judges are exposed regular to an assessment which is carried out:

- 1) teachers (trainers) of National school of judges of Ukraine by results of preparation by filling of the questionnaire;***
- 2) other judges of the relevant court by questioning;***
- 3) the judge by filling of the questionnaire of a self-assessment;***
- 4) public associations by independent estimation of work of the judge in court sessions.***

And qualification to an assessment which is carried out by the High Qualification Commission of judges of Ukraine and consists in determination of professional level of the judge.

The bases for appointment qualification estimates of the judge are:

- 1) the statement of the judge for carrying out qualification estimation for confirmation of its ability to carry out justice in court of an appropriate level;***
- 2) the statement for carrying out qualification the candidate's estimates for election to a position of the judge is termless;***
- 3) the decision of the High Qualification Commission of judges of Ukraine on appointment qualification the judge's estimates in connection with imposing of disciplinary punishment in the order provided by the present Law.***

- 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).

Each person, that has viable arguments can asking for starting a disciplinary procedure against a judge.

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

President of the court of first instance offers to the Head of the Territorial directorate of the State Judicial Administration of Ukraine to dismiss the court staff manager and deputy court staff manager.

President of the court of appeal offers to the Head of the State Judicial Administration of Ukraine to dismiss the court staff manager and deputy court staff manager.

The judge is dismissed by body that appointed them - the President of Ukraine or Parliament (the Verkhovna Rada of Ukraine).

- 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 assigning to judges by the automation system of document flow at the moment of registration the case files at random and in chronological order.

- 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?

Unresolved case may be transferred from one judge to another only by a reasoned order of the court staff manager that is attached to the case, and after re-automated assignment. It occurs only in case when the certain judge can't continue the proceedings.

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

It is provided in Ukraine for the formation of the judicial panels in the courts of appeal, unlike the courts of first instance. In the court of appeal decision on the formation of the judicial panel and its members accepted by the meeting of judges at the suggestion of president.

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

In Ukraine, the panels in the courts of appeal are headed by a Secretary. The decision on the election of the secretary of the panel adopted by meeting of judges at the suggestion of chairman.

2.12 Can presidents delegate their functions to other judges?

In case of absence of the president his administrative powers are carried out by one of deputy president of court by definition of the president, in the absence of such definition - the deputy president, who has more experience as a judge, and in the absence of the deputy president of the court - the judge of this court that has more experience as a judge.

2.13 Are presidents supported in their tasks and by whom?

Yes. It is the deputy president and the court staff manager.

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. But it can be the subject of discussion at the meeting of judges of the court. The issue of the practice of law, developing appropriate proposals for improving the practice and legislation. Judges at the meeting of the court of first instance or of the court of appeal may make appropriate proposals for consideration by the High Specialized Court of Ukraine and the Supreme Court of Ukraine.

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

The president oversees the execution of court staff's duties. So he/she has the right to set conditions for the performance of certain tasks. As for the judges, the timing of the case is governed by the procedural law and it can't be changed by the president.

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

Please see 2.16

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

Please see 2.16

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.)?

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?

- 2.21 Which tasks presidents have in the appropriation of the court budget among the different courts?
- 2.22 Which tasks and how much discretion presidents have in the management of the court budget within the court?
- 2.23 Do presidents manage the court premises and layout?
- 2.24 Do presidents manage information and communication technology implemented in 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?
- 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?

Yes. It's deputy presidents and secretary of panel in the courts of appeal.

- 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 staff manager bears personal responsibility for appropriate organizational support of court, judges and trial, functioning of the automated system of document flow, informs meeting of judges on the activity.

The court staff manager appoints to a position and dismisses workers of the office of court, applies to them encouragement and imposes disciplinary punishments. Selection of workers of the office of court is carried out on a competitive basis.

- 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.

Please see 2.3 and 2.6

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

President representing the court as a public authority in relations with other public authorities, local governments, individuals and legal entities including with the media.

However presidents of the courts don't pass compulsory education concerning contact 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)?

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

President of the courts of appeal are carrying out the duties of investigating judges.

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

In Ukraine there was a situation where the authority of the presidents of all courts prematurely and at once stopped because of adoption of the law. This is the Law of Ukraine “On the restoration of trust in the judiciary of Ukraine”. The law violated the principle of judicial independence. Including it has changed the Law of Ukraine “On Judicial System and Status of Judges” and changed the procedure of appointment and dismissal of presidents of courts.

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.)?
- 3.2 Do presidents have a different disciplinary responsibility in comparison to the judges?
- 3.3 Is there any special immunity for presidents?
- 3.4 Which criteria are used for the evaluation of presidents, how often, and by whom?
- 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?

President of the High Specialized Court of Ukraine is elected from among judges of this court at the meeting of judges of the court.

President of the Supreme Court of Ukraine is appointed by Plenary Assembly of the Supreme Court of Ukraine.

- 4.2 Please describe briefly the selection procedure.

President of the High Specialized Court of Ukraine is elected from among judges of this court by secret ballot by a majority vote at the meeting of judges of the court. See 1.14.

President of the Supreme Court of Ukraine is elected for five years by Plenary Assembly of the Supreme Court of Ukraine by majority vote of the total membership of the Plenary Assembly by secret ballot.

The election is carried out from among the judges of the Supreme Court of Ukraine on the proposal (oral or written) of any of them made at the meeting of the Plenary Assembly.

Judge of the Supreme Court of Ukraine can be elected as President of the Supreme Court of Ukraine for more than one term.

Plenary Assembly of the Supreme Court of Ukraine on the election of the President of the Supreme Court of Ukraine shall be convened no later than one month before the date of termination of powers of the previous President of the Supreme Court of Ukraine.

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).

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

Please see 4.2

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

President of the High Specialized Court of Ukraine is elected for two years, but not longer than for the term of tenure.

President of the Supreme Court of Ukraine is elected for five years.

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

President of the High Specialized Court of Ukraine can't hold an appointment more than two terms in a row.

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).

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