

ANSWERS

MOLDOVA

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 4 Courts of Appeal (in Chişinău, Bălţi, Cahul, Comrat) and 4 Presidents of the Court of Appeal. There are 44 first instance courts (one of those is Military Instance Court and one is Commercial District Court), therefore there are 44 Presidents of first instance courts.

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).

All the presidents of the courts (with exception of the president of Supreme Court of Justice) are appointed by the President of the Republic of Moldova by a decree published on Official Gazette of the Republic of Moldova. The Superior Council of Magistracy make proposals to the President of the Republic of Moldova for selection of candidates appointed as judges, president or deputy president of the court, based on the decision of the Board for selection and career of judges. There is no any distinction between appointment the presidents of the courts of first instance and the courts of appeal. It is not possible that presidents of the courts to be appointed from other legal professions.

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

The Presidents do not get a “confidence vote” (after or before their appointment) from the other judges of the court.

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

- **The vacancy for Presidents of the courts is going with a competition.**
- **The competition is publicly announced 3 months before the vacancy.**

- The Superior Council of Magistracy is making a public announcement on Official Gazette of the Republic of Moldova, on mass-media and on the website (www.csm.md) about the vacancy and sets the limit term for selection of candidates.
- After that, it is going with evaluation procedure and selection procedure of the candidates at same procedure as judges are evaluated when they apply for the promotion and in addition Council evaluates candidate's suitability for the new position as a President.
- The board for evaluation judges's performances reflects the professional activity of judges for 3 years ago as a judge or President of a court.
- The board for selection and career of judges reflects profesional experience and the main purpose of candidates for the vacancy as President of the court.
- After the evaluation and all the other colected dates, candidate is appointed by decision of the Superior Council of Magistracy by majority vote. At lest have to be 7 votes in favor from total of 12 votes.

1.5 What kind 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 is no any difference between qualifications for judges and the President.

1.6 Are the 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.

The presidents can be selected from the judges of the same court and also they may be selected from a different court of same rank or from the higher rank.

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

The candidates who applied for the position and did not get it, can challenge the decision of the Superior Council of Magistracy at the Superior Court of Justice based their arguments only on the procedure.

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

It does not happen too often. Last year were not such examples.

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

There is no necessary some additional trainings in management, or in other subjects, required after the judge has been selected as court President.

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

Term of office for the President of court is 4 years and it can be renewed once in the row. Therefore, judge can act as a president only two terms consecutive (8 years) and then he cannot be appointed as a president.

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

Same person can be appointed as a president only twice in the row. However, does not formally forbids them to apply again after four years.

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

New appointment of Presidents requires the same procedure as first time. President of the court has to apply and to be a subject of the same procedure and scrutiny as other candidates for judges.

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:

- **filing the request for resignation;**
- **finding an obvious unsuitability to the position held as a result of performance evaluation;**
- **transfer to another position in the law;**
- **committing a disciplinary offense specified in the Law no. 178 of July 25 2014 on Judges' Disciplinary Liability;**
- **delivery of the final judgment of his/her conviction;**
- **loss of Moldovan citizenship;**
- **finding of incapacity to work, as evidenced by a medical certificate;**
- **expiration powers due to non-appointment of judge until age-limit, as well as for the reason of his/her attaining the age-limit;**
- **finding, by final court decision, the restricted capacity to act or incapacity to act.**

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

The Superior Council of Magistracy is in charge of the removal procedure. But this is not the final decision, because it can be challenged at the Superior Court of Justice.

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

The President removed can challenge the decision of the Superior Council of Magistracy at the Superior Court of Justice in 15 days from the moment they know the result of the decision.

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

Basically, the decisions by the Presidents are not shared or negotiated with the other judges or "boards" within the courts. However, there are some orders that have to be discussed with all judges before issuing them, but the opinion of the assembly is not binding (e.g. deciding on the need to collegially examine some cases on certain subjects or categories of persons or controlling the drafting and display, within the time limit set by the procedural norms, the information on cases scheduled for trial, including their subject).

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?

The local lawyers association or any other authority do not play a role in the decision by the court of President.

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 organizational decisions taken by the Presidents are not supervised by any other authority, because there is an independent judiciary power. All the organizational decisions taken by the Presidents are consulted with the Superior Council of Magistracy, about some important issues like, the number of the state stuff, assigning some money for reparation or technical equipment.

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?

For exercising the functions of president of a court of law, a judge may benefit from an increment calculated in percentage ratio to the base salary in the amount of:

- **20% – for exercising the functions of president of the Supreme Court of Justice;**
- **15% – for exercising the functions of president of the Court of Appeals;**
- **10% – for exercising the functions of president in a first instance Court;**

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

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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?

The Presidents of the courts are adjudicating cases, but not as much as the other judges. So that, all the cases in Courts are assigned to judges randomly by an automatical system. According to the decision of the Superior Council of

Magistracy, was settled the percentage for assignation_cases for presidents of Courts in the following way:

- **the President of first instance courts from Chisinau and Balti adjudicates 50% from the total number of cases and the President of first instance courts (from districts) adjudicates 75% from the total number of cases;**
- **the President of Court of Appeal from Chisinau and Balti adjudicates 25% from the total number of cases and the President of Court of Appeal from Cahul and Comrat adjudicates 75% from the total number of cases;**
- **the President of the Supreme Court of Justice adjudicates 10% from the total number of cases.**

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).

The Presidents are not involved in the selection and recruitment of the judges.

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

The Presidents are involved in the selection and recruitment of the court staff.

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).

The Presidents do not assess the work of the judges of the court.

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).

If the President, consider that in the judges' actions there are some misbehaviors, then he can make a notification to the Judicial Inspection within Superior Council of Magistracy. After that, the Judicial Inspection draw up a statement that is send to the Board of admisibility to be examined within the Disciplinary Board.

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

The Presidents of a Court can not fire a judge, but he can fire a court employee. The circumstances when he can fire a court employee are:

- **the civil servant gets the not satisfactory qualification;**
- **the civil servant has a bad physical or mental health that don't allow him to work anymore;**

- **an unauthorized absence from work for 4 consecutive hours during a working day;**
- **as a disciplinary sanction imposed for committing a disciplinary offense, and so on.**

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.

All the cases from the courts are assigned to judges randomly by an automatic system (called PIGD). The president of the court appoint the responsible person who have an account and a secured password for this program to can make this procedure. If there are some incompatibilities for judge, the responsible person have to inform the President of the Court and he will make an Order where he stipulates and describe the incompatibility reasons of that judge. The case is assigned randomly by an automatic system and it goes for another judge.

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

The Presidents can not set the priorities in the handling of the cases. This is about the judge's ability to manage the cases in reasonable terms. If this term is infringed, then the judge who adjudicates this kind of cases can be punished at the disciplinary board within Superior Council of Magistracy.

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

The Presidents of the Court may allow to retrieve cases from judges if the judge is not in position to deal with the cases anymore. (e.g. transfer to other division, resignation or death). The re-assignment procedure of cases is not the ability of the President of the court. The case is assigned randomly by an automatic system it goes for another judge.

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

Presidents decide over the composition of court's sections/division and over the composition of judges' panel.

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

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

2.12 Can Presidents delegate their functions to other judges?

Presidents can't delegate their functions to other judges.

2.13 Are Presidents supported in their tasks and by whom?

The Presidents of Courts are supported in their tasks by the head of secretary, vice-presidents and heads of the divisions.

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

Presidents have not supervision on the judgments delivered by other judges of the court.

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?

The uniform application of the law is having been practised only at the second instance courts (Appeal Courts) and at the Supreme Court of Justice. So that, in each of these courts there are special directions that are responsible with tasks to check out the decision's court uniform. The department of generalizing judicial practice is responsible for working generalizations, to submit reports with kind of special necessary thematics and to make explicative decisions about the application of legislation. And only after that, they can sent the materials to all the justice courts like a recommendation.

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

Presidents do not set productivity and/or timeframes targets for their court.

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

Presidents do not set productivity or timeframes targets for the judges. All the cases are assigned to judges randomly by an automatic system (called PIGD) according to the Superior Council of Magistracy's Order concerning to revealing the unique complexity of national court civil, criminal and administrative cases. The court staff (court clerks) they are in the judge's jurisdiction and work as a team.

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

The Presidents are monitoring the length of judicial proceedings. See point 2.5 from the Questionnaire.

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.)?

The Presidents of the Courts as the manager of judges and court staff is concerned about:

- **approving the Boards and coorodating their activities;**
- **coorodating the work of judges to ensure trial within a reasonable time;**
- **defining the duties of the Vice-Presidents;**
- **providing specialized and professional development of judges of the court;**
- **deciding on the need to collegially examine some cases on certain subjects or categories of persons;**
- **form panels of judges and decide on change of members;**
- **verifying the random distribution of cases received by the court for examination;**
- **controlling the drafting and display, within the time limit set by the procedural norms, the information on cases scheduled for trial, including their subject;**
- **managing the generalizing of the judicial practice and analyzing judicial statistics and shall submit information on such activities to the Superior Council of Magistracy and, to the Department for Judicial Administration information concerning the analysis of judicial statistics;**
- **examining petitions, under the law, except those related to the actions of judges in the administration of justice and their conduct;**
- **representing the court in relations with public authorities and the media;**
- **appointing civil servants, amend, suspend and terminate, under the law, their employment relationships, employ, amend suspend and terminate employment relationships of contractual staff of the Secretariat of the court;**
- **applying disciplinary sanctions and incentives for the Secretariat's staff of the court.**

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?

The president of the courts can issue Dispositions according to the allocation of prizes for judges and court staff on some special occasions, like Official National Holidays or Birthdays. But, for judges it cannot be more than a monthly salary per year.

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

The Superior Council of Magistracy involves every year the methodology of the budget for each courts. The President and the chief Secretary presents to The

Superior Council of Magistracy the annual project of budget of the court. This project is examined at the plenary session of the Superior Council of Magistracy, where is going to be approved by the decision of the Council and only after these steps is going to the Financial Ministry and Government to be proposal to the Parliament for adopting it.

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

Presidents have the discretion in management of the court budget, but when he wants to change the destination of the investment or changing the purpose, he is coordinating with the Superior Council of Magistracy. So, he have to consigne a claim to the Superior Council of Magistracy, that is going to be examined in the plenary session and after that, they decide to allow to make the change or not.

2.23 Do Presidents manage the court premises and layout?

Presidents do not manage the court premises and layout by themselves.

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

Presidents manage information and communication technology implemented in the court with the staff in charge.

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

Presidents have some autonomy about what kind of information and communication technology tools/application should be implemented in their court, except for those which are already established by the law (e.g.: the unique and automatical program for all courts regarding the random distribution; portal of judicial courts).

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 activity of the court in the administration of justice shall be headed by the President of the court. The organizational and administrative activity of the court shall be ensured by the Secretariat of the court, headed by a chief appointed by the president of the court.

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 head of the Secretariat of the court have the following duties:

- to organize the work of the staff related to the drafting and display ,within the time limits set by the procedural rules, the information on cases scheduled for trial, including their subject;
- to organize the work of staff responsible for ensuring random distribution of cases received by the court;
- to manage the funds allocated to the court;
- to coordinate and verify the activities of the of the Secretariat's subdivisions of the court, ensure the management and optimum utilization of financial, material, intellectual and informational resources in the implementation of strategic business plans of the court;
- to develop and submit for approval to the court's President strategic plans of the court's activities;
- to organize and coordinates the development and implementation of strategic plans of the court's activities;
- to approve, after coordination with the President of the court, the rules of organization and functioning of the Secretariat of the court;
- to perform other functions assigned by law or delegated by the President of the 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.

Court manager is selected as any other clerk in the court after public announcement for vacant position.

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

Presidents are the "interface" with the media, but in practice the president of the court do not involve in media communications. Each court has spokesperson and they are trained for such duties. There are also some presidents of courts that would like to relate some important events to make it clearly.

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)?

Between Presidents of the courts (first instance and appeal) and the President of the Supreme Court (court of last resort) there are only relations based on productivity work. Sometimes, the President of the Supreme Court of Justice convoke the presidents of the courts where they discuss the judicial problems.

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.

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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.)?

Accountability mechanisms for presidents of courts is structured the same as accountability for judges. If there are some obvious misbehaviors of the Presidents, the subjects (any interested person; members of the Superior Council of Magistracy; the Board for the performance assessment or the Judicial inspection on its own initiative) can report at the Disciplinary Board the case.

The disciplinary offense are considered the following ones:

a) failure to observe the duty to abstain when the judge knows or should know about existence of one of the circumstances provided by law for abstention, as well as making repeated and unjustified statements of abstention in the same case, which has the effect of delaying the consideration of the case;

b) intentional application, or application with bad faith, or repeated negligence of legislation contrary to uniform judicial practice;

c) judge's actions during the judicial procedure that prove to be of serious and obvious professional incompetence;

d) interference in the judicial activity of another judge;

e) illegal interventions or use of judge's position in relation with other authorities, institutions or officials to resolve some requests, demanding or accepting personal or others' interests, or to obtain unfair advantages;

f) breach of the secrecy of deliberation or confidentiality of proceedings with such nature, as well as other confidential information of which s/he got acquainted while fulfilling the duties, under the law;

g) breach, due to reasons obviously attributable to the judge, of the timelines for fulfilling the procedural actions, of the deadlines for drafting judgments and of delivering their copies to the trial participants;

h) ungrounded absences from office, being late, or leaving the office without objective reasons if this affected the work of the court;

i) breach of legislative imperative norms in the process of justice administration;

j) non-fulfilment or delayed fulfilment, attributable to the judge, of a duty;

k) undignified attitude in justice administration process towards colleagues, lawyers, experts, witnesses or other persons;

l) violation of the provisions related to service incompatibilities and prohibitions concerning judges;

m) committing an act with elements of a crime or offense, that was detrimental to the prestige of justice;

n) obstruction, by whatever means, of the work carried out by inspector-judges;

o) use of inappropriate expressions in the judgments or in reasoning of judgments obviously contrary to legal rational, that may affect the prestige of justice or dignity of the position of judge;

p) other actions affecting the honour or professional integrity or reputation of justice, committed in or outside of performance of duties.

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

Moreover, a disciplinary offence will be committed if Presidents of courts will fail to fulfil or will delay the fulfilment, or will improperly fulfil the main tasks attributed to them.

3.3 Is there any special immunity for Presidents?

There are not any special immunity for Presidents.

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

The evaluation of Presidents are being at the same time with regular evaluation of work as a judge. The criteria for evaluating Presidents are the following ones:

- **Leadership ability;**
- **Fair distribution of tasks court staff;**
- **Efficiently planning the court budget and efficiently managing the financial resources of courts;**
- **Providing professional trainings for judges and court staff;**
- **The ability to control how operates the chancellery and the court administrator;**
- **Checking the random assignment process for new cases;**
- **To verify the audio recording process, electronic management of the files and the publication of decisions;**
- **To verify the process of displaying information about the causes set for examination;**
- **To send immediately the complaints of judges' behaviour to the Superior Council of Magistracy;**
- **Contribution to unify the judicial practice;**
- **Fair and effective communication with judges and court staff, external communication (outside the justice process) and the ability to resolve conflict situations;**
- **Ability to motivate staff;**
- **Transparency in the work of the court.**

The Presidents are evaluated once in 3 years, the same as judges by the Evaluation Board within the Superior Council of Magistracy.

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

Depending on the number of points accumulated the President will get the following qualifiers:

- **insufficient;**
- **sufficient;**
- **good;**
- **very good;**
- **excellent.**

If the president get the "insufficient" qualification, this is a reason for the Superior Council of Magistracy to initiate a dismissal procedure.

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

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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?

The President of Supreme Court is appointed by the Parliament.

4.2 Please describe briefly the selection procedure.

The selection procedure of the President of Supreme Court is the same as to the other Presidents of courts, except for the fact that the decision of the Superior Council of Magistracy is sent to the Parliament where has to be examined the candidate at the legal committee "Appointments and immunities" within Parliament that decide if he is accepted or not. So, if they accept the candidate, then they have to include this subject at the agenda of the parliament session.

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 qualifications to become President of the Supreme Court are the same as to the judge of Supreme Court. Can apply to the President of the Supreme Court function, only the judges that work at the Supreme Court of Justice.

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

The President do not get a “confidence vote” (after or before their appointment) from the other judges of the Supreme Court.

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

The term of office of the president of Supreme Court is 4 years and is entitled with respective function for 2 consecutive mandates 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)?

The mandate can be renewed once with 4 more years. The process is the same as at the appointment the President of the Supreme Court of Justice.

- 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).

The President of the Supreme Court of Justice shall have the following duties:

- a) **convening and chairing the sessions of the Court’s Plenum, ensuring the execution of adopted judgments;**
 - b) **proposing job-related obligations of the deputy presidents of the Court – presidents of the boards and deputy presidents of the boards, to the Plenum’s approval;**
 - c) **appointing members of the Court responsible for developing reports on the cases of special complexity that are to be examined in the boards;**
 - d) **coordinating work of generalizing judicial practice and providing the Plenum with proposals on the explanatory decisions to be passed;**
 - e) **organizing other activities that fall under the competence of the Court;**
 - f) **representing the Supreme Court of Justice in relations with other authorities and public institutions both national and international;**
 - g) **appointing and removing both public employees and the Court’s personnel from position;**
 - h) **applying disciplinary sanctions and enforces encouraging measures to the Court’s personnel;**
 - i) **performing other duties provided for by law.**
- 4.8 Please add any critical issue or further information that you consider relevant for this section.

The appointment of the President of the Supreme Court of Justice by the Parliament, I consider that is a political involvement in judicial system. This fact was mentioned in the Opinion of the Consultative Council of European Judges no. 10 (2007, point.31).