

AZERBAIJAN



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CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

**Questionnaire for the preparation of the CCJE Opinion No. 19 (2016):
“The role of court presidents”**

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?

There are 5 courts of appeal, Supreme Court of the Nakhchivan Autonomous Republic with appeal court jurisdiction and 103 courts of first instance (86 district and city courts, 6 Administrative-Economic Courts, 5 Grave Crime Courts, 6 Military 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 presidents of the courts are appointed by the President of the Republic of Azerbaijan from among judges of those courts.

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.

The Presidents of the Supreme Court AR and Supreme Court Nakhchivan Autonomous Republic shall be appointed according to the procedure provided for in the paragraph 32 of Section 109 of the Constitution of the Republic of Azerbaijan by the President of the Republic of Azerbaijan. Presidents of other courts of the Republic of Azerbaijan shall be appointed, subject to the proposal of the Judicial-Legal Council, according to paragraph 32 of Section 109 of the Constitution of the Republic of Azerbaijan by the President of the Republic of Azerbaijan.

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 special requirements for the appointment as the court president. In most cases managerial experience, personal skills and qualification of the candidates are taken 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.

According to the Article 94 of the Law on Courts and Judges, presidents of the courts of the Republic of Azerbaijan shall be elected from among the judges of relevant courts and be appointed for five years term.

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

No. There are no such provisions in our legislative.

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

Please see the answer 1.7

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)?

Term of office is five years.

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

There are no restrictions provided by law.

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

The process of assessment of the presidents and ordinary judges is the same. The Judicial-Legal Council evaluates the work of the judges at least every five years. Activities of judges are evaluated on the basis of opinion concerning the way they perform their duties respectively by the President of the Supreme Court of the Republic of Azerbaijan, presidents of the courts of appeal, the NAR Supreme Court and the presidents of the courts in the jurisdiction of which these judges are appointed. Also information collected by the relevant executive body (Ministry of Justice) in the course of implementation of its functions provided by the legislation and information submitted to the Judicial-Legal Council is used during evaluation. The information at the disposal of the members of the Judicial-Legal Council also contributes to the setting up of the said evaluation.

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

According to the Part I Article 127 Constitution of Azerbaijan, term of office of the judges shall not be altered. The grounds for terminating pre-term describing in Article 113 of the Law on Judges and Courts AR and follows :

- 1. written application of resignation;**
- 2. dismissal from the office of a judge;**
- 3. upon court ruling declaring him physically handicapped and/or otherwise afflicted;**
- 4. in case of death;**
- 5. upon court ruling declaring him dead or missing;**
- 6. upon revealing failure to meet requirements defined hereof to candidates to a judicial post;**
- 7. dealing with activity not compatible with his position;**
- 8. on quitting a citizenship of the Republic of Azerbaijan, and adopting a citizenship of another country or taking obligations to a different country;**
- 9. for a continuous period of more than six months in case of inability to perform duties in connection with the complete disablement;**
- 10. if the disciplinary liability has been exerted on a judge twice in a calendar year on the grounds mentioned in Article 111-1.11. in case if s/he has committed multiple gross violation of the legislation in the course of consideration of the case.**

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

If there are reasons specified in paragraph 6-11 Article 113 of this Act, the President of the Supreme Court or relevant executive body (Ministry of Justice), in order to secure early termination of the authorities of judges, shall submit motion to the Judicial-Legal Council to institute disciplinary proceedings.

If the Judicial-Legal Council passes decision on early termination of authorities of a judge, it shall propose the relevant executive body of the Republic of Azerbaijan (head of state) to this effect. In the event of existence of basis stipulated under items 1 and 6-11 of Article 113 of this Law, authorities of judges can be seized by appointing authority. In the event of existence of basis stipulated in items 1 and 3-5 of Article 113 of this Law, authorities of judges can be seized before expiry of their term by the Judicial-Legal Council.

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

According to the Article 18 Act on Judicial-Legal Council, Plenary Board of the Supreme Court shall consider the appeal against decisions of the Judicial-

Legal Council within three months, issue a decision to the effect of either letting stand, or abrogating or amending, and presents its decision to the President of the Judicial-legal Council. Decisions of the Plenary Board of the Supreme Court on the appeal against decisions of the Judicial-Legal Council shall be final in their effect.

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

No in general.

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 President of Supreme Court of AR manages the organization of the Supreme Court and operation of the Court Staff. The other courts are also managed by their presidents, however logistical issues and salaries of judges and court staff are provided by the Ministry of Justice, except Supreme 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?

Yes. Approximately 10% -20% more than regular judges.

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?

Presidents of courts may adjudicate cases as other judges in order to reduce the caseload of judges.

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. However, the presidents as the other judges may be elected as members of the Commission for the Selection of Judges

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

Yes. After passing public service exams provided by law court staff is recruited by the order of president of relevant court.

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).

YES. President of court may initiate procedure before Judicial-Legal Council.

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

He cannot fire judges but can fire court employee.

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 by automatic IT system. President of the court can only decide to stop assignation of cases to a particular judge if there are justified reasons for such decision (i.e. sickness, judge is dealing with huge and complex cases etc.)

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?

In general if judge is not in position to deal with the cases anymore. (i.e. transfer to other division, transfer to the ministry, sick leave, etc.)

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

YES. This authority comes from the law.

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

2.13 Are presidents supported in their tasks and by whom?

YES by secretary of the court, deputy president and heads of the divisions.

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?

They are not in charge of it, but they carry this function in order not to have many reversed judgments.

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

They may do it.

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

They may do it.

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. Different actions, depending on reason.

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.)?

Authority of the presidents are limited. Office hours of the court are not applied to the presence of the judges in the court with exception to the hearings which have to be scheduled within boundaries of office hours. They can also move staff from one function to another. However, presidents of the courts are responsible for discipline of judges and 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?

Yes, but only for court staff (i.e. premiums etc.)

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

Presidents may give suggestions to the relevant body.

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

Presidents have certain discretion in the management of court finances within the budget allocated to them.

2.23 Do presidents manage the court premises and layout?

Yes.

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

Yes.

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

Yes, but in newly established e-courts they don't have this autonomy, because all the new court building are equipped with the same facilities and software and will be connected to one integrated system.

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, they are really managers of the courts.

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

Court manager/chief of staff (this position exists only in the Supreme Court and appeal courts) helps president of the court in managerial duties but all actions of the court manager have to be approved 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 (chief of staff) is selected as any other clerk in the court after public announcement for vacant position. There are no limits for their term. The chief of staff is recruited and removed by the courts presidents.

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

Yes. But they are not specially trained for that. There are specially designated speaker-judges in the Supreme Court: one on civil and one on criminal matters, as well as a spokesperson.

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)?

All presidents of courts are designated by head of state and are independent. There are no hierarchical relations between presidents of the first instance and appeal courts and the Supreme Court.

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

No.

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.)?

There are no accountability mechanisms. According to Constitution judges (presidents of the courts) are independent; they are subordinate only to Constitution and laws of the Republic of Azerbaijan

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

No

3.3 Is there any special immunity for presidents?

Diplomatic passports for the presidents of appeal Courts and for the President of Supreme Court

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

Activities of presidents (except the President of Supreme Court) are evaluated by Judicial – Legal Council every 5 years at the end of their term on the basis of opinion concerning the way they perform their duties.

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

No appointment for next term of office, change of district or instance.

- 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?

Head of State

- 4.2 Please describe briefly the selection procedure.

President of the SC is appointed by the Head of State among judges of the Supreme Court

- 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).

Same as to become judge of the Supreme Court.

- 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)?

5 years. There are no limitations for reappointment.

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 Supreme Court can be reappointed by the President of the Republic of Azerbaijan

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).

President of SC is highest body of court governance.

- He/she represents judiciary;

- He is also the member of the Judicial – Legal Council

- Proposes the Judicial-Legal Council to reward judges of the Republic of Azerbaijan,

- Apply to the Judicial-Legal Council for institution of disciplinary proceedings and termination of the office of judges of the courts of the Republic of Azerbaijan in cases provided by the legislation,

- Has right of legislative initiative.

- Has all other duties as any other president of court regarding management and governance of the SC.

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