

**Answers
Denmark**

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”**

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 in Denmark 24 district courts, 1 land registration court, 1 maritime and commercial court, 2 courts of appeal. Each of these 28 courts is headed by a court 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?)

The Minister of Justice appoints the 28 court presidents as mentioned under 1.1. The Judicial Appointments Council submits recommendations to the Minister of Justice for all appointments of judges including court presidents except the post of president of the Supreme Court. According to Danish law the Council must only recommend one applicant for an opening. Recommendations must be reasoned and include any differences of opinion. In practice, the Minister of Justice always follows the Council's recommendations. Should it happen that the Minister does not want to do this (which has not yet been the case), the Minister is obligated to inform the Committee for legal affairs in the Parliament. The Danish Judicial Appointments Council is an independent council. The council consist of six members: one Supreme Court judge, one judge from a court of appeal, one district court judge, one lawyer, two representatives from the public.

Yes, it is possible that a president is appointed from another legal profession. Please see answer to question 1.5.

- 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.

All vacant positions as president for a court must be advertised (except the post of president of the Supreme Court). The plenary of judges in the relevant court are asked for a reasoned recommendation among the applicants for the position of court president. The president of the court of appeal is also asked to give his recommendation for appointment of the president in a district court under his domain. The Judicial Appointments Council usually asks selected applicants to undergo a test on leadership skills. The tests are conducted by a management consultancy company. The Judicial Council usually has interviews with selected applicants to a vacant position as a court president.

- 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).

Danish law has no other requirements to court presidents than those which are applicable for other judges. This means that the applicant must have a law degree. The law also lays down that it is generally required that the applicant's suitability to become a judge has been evaluated in a court of appeal. This evaluation is usually going on for a period of 9 months, in which the person serves as a judge and is tested in 3 court sections. The law further says about appointments of

judges, that a judge (and thereby a president) should have a broad professional legal experience. And that when selecting a judge (and hence a president), it is desirable that the group of judges represents people of diverse previous professional legal backgrounds. Legal competence and personal qualifications are given decisive merit when appointing a judge.

The Judicial Appointment Council will as mentioned in answer to question 1.4 look into the applicants leadership skills. No specific training, or previous specific judicial position, or seniority or management experience is required. Judges are usually at the age of 40 or slightly older when appointed, and court presidents are not any younger than that.

- 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.

Court presidents might well be selected among the judges of the same court but this is not commonly seen. There are no requirements as to have served in any court prior to appointment, but as seen in answer 1.5 it is usually required that any judge (including court presidents) has previously successfully served in a court of appeal.

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

No.

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

See answer to question 1.7.

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

No additional training is mandatory but the Danish Court Administration offers on-going training to court presidents, and court presidents can choose on-going training from professional training organizers.

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

A court president has his tenure until he is 70 years old like all other judges.

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

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)?

See answer to question 1.10.

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

The Special Court of Indictment and Revision is empowered to remove a judge (and hence a court president) from his position. This court is by law located and administered at the Danish Supreme Court. The Special Court of Indictment and Revision consists of five members - a Supreme Court judge, a court of appeal judge, a district court judge, a law-professor and a lawyer. The members serve for a term of 10 years and cannot be reappointed.

The Special Court of Indictment and Revision processes complaints against judges (and hence court presidents) and can also act as a disciplinary court in cases of suspension or removal of a president or a judge from office. The Special Court of Indictment and Revision can state criticism or issue a fine, if it is found that the president or judge has behaved improper or unseemly in his acts in office. A judgment resulting in removal or other disciplinary sanctions including criticism can be appealed to the Supreme Court.

The Special Court of Indictment and Revision cannot review the judicial decisions of a president or a judge.

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

See answer to question 1.13.

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

See answer to question 1.13.

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

Decisions regarding allocation of cases between judges as well as the administrative handling of cases are made by the court president after negotiations with the other judges of the court.

It is generally not mandatory for a court president to hear the judges in other decisions.

- 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)?

No. The court president has decision power within his financial budget, which is laid out by the Court Administration (see answer to question 2.8).

- 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. In a district court the court president earns approximately 32 per cent more than an ordinary judge. In a court of appeal the court president earns

approximately 67 per cent more than the average of an appeal court judges. The president of the Supreme Court earns approximately 53 per cent more than an ordinary Supreme Court judge.

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

None.

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?

There is in Danish law no regulation for this matter. In bigger district courts and in the courts of appeal the presidents rarely or never hear any cases in court.

- 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 president of the relevant court is asked by the Judicial Appointment Council to give his or hers opinion of the candidates for a vacancy by the court, but the decision is at the Council.

The court presidents and the courts as such have no influence on who is appointed as lay judges.

- 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 in minor cases issue a warning to a judge for neglecting his duties or behaving improper or unseemly. In cases of grave neglect, criminal acts and the like the court president has to ask the Court Administration to start a disciplinary procedure by the Special Court of Indictment and Revision, see answer to question 1.13.

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

**A court president cannot dismiss a judge see answer to question 2.5.
A court president can dismiss court staff.**

- 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?

Please refer to the answer given to question 1.16.

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

Yes. But the court president is in these matters bound by decisions made by the The Danish Court Administration. This body establishes values and visions and ensures proper and adequate administration of the courts' funds, staff, buildings and IT.

The Danish Court Administration is headed by a board of governors and a director. The Danish Court Administration belongs under the Ministry of Justice, but the Minister of Justice has no instructive power and cannot change decisions made by the Danish Court Administration.

The composition of the Danish Court Administration's board of governors is provided by the Danish Court Administration Act. The board of governors has 11 members, 8 of whom are court representatives, 1 is a lawyer and 2 members have special management and social insight.

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

For example if the judge falls ill or has to preside in another case that is pending for a long time.

- 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?

Yes.

- 2.12 Can presidents delegate their functions to other judges?

A court president has an appointed proxy, selected among the judges of the court. Selection of the proxy president takes place following negotiations with the other judges of the court.

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

Yes. The court president has an administrative staff who supports him in administrative matters.

- 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 these matters are discussed on a regular basis in plenary meetings among the court presidents and the judges.

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

Yes, and in these matters the court president has to follow the values and visions set out by the board of the Danish Court Administration, please refer to answer to question 2.8.

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?

No.

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.)?

Setting working hours: Not for a judge, but to the full extent for court staff.

Authorising holidays: The general rules for holidays apply.

Moving staff from one function to another: Not for a judge, but to the full extent for court staff.

Allowing extra-judicial activities: A president has a supervisory role, but limited to checking that the amount of activities does not dominate over the position as judge.

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?

A court president can grant salary incentives to court staff in a very limited respect.

This arrangement is not available to judges.

Nor can a court president give a fringe benefit to a judge or court staff.

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

These matters are handed by the Court Administration, please refer to answer to question 2.8. The court president may issue recommendations and requests for budget allocation.

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

The court president has a limited possibility in the management of the court

budget, because he is bound by decisions made by the Court Administration, please refer to answer to question 2.8.

2.23 Do presidents manage the court premises and layout?

No.

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

In principle the answer is no. The Court Administration handles the overall IT policy, including tools and applications. Please refer to answer to question 2.8. A court president may procure hardware and other IT equipment within the agreed budget.

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

No. Please refer to answer to question 2.8.

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 court president presides over court administration. No board or court manager/administrative director oversees his administrative decisions.

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

See above

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.

See above

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

Each court has one judge who is selected to be responsible for public relations. In some courts the court president and the judges has decided that this task is handled by court president. Training is available.

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 Danish court presidents meet on a regular basis. In mild cases the Supreme Court president may issue an unofficial warning to a president of a court of appeal. Other than that the president of the Supreme Court has no management power over presidents of other courts.

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.

None.

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 same mechanisms apply towards court presidents as to ordinary judges. Please refer to answer to question 2.8.

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?

No evaluation. No criteria.

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

See above.

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

None.

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 president of the Supreme Court is formally appointed by the Minister of Justice but the decision is made by the judges in the Supreme Court picking from their midst.

4.2 Please describe briefly the selection procedure.

There are no formal rules. Normal practice for the time being is, that the college of supreme court judges appoints two judges, who themselves have no actual interest in being a president, to find out by way of confidential talks with the colleagues who have such an interest. When the candidates have been identified the college made the choice by a confidential ballot, in which the winner has to obtain more than 50 % of the votes.

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 President has to be a supreme court judge and has to obtain the support from the majority of his colleagues, see answer to question 4.2. No training is necessary.

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

See answer to question 4.2.

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

The president of the Supreme Court has his tenure until he is 70 years old like all other judges in the Danish courts.

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).

**The president of the Supreme Court has no specific tasks or functions in comparison to other Danish court presidents.
The Supreme Court president may issue an unofficial warning to a president of a court of appeal.**

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

None.

Lene Pagter Kristensen
Judge of Supreme Court of Denmark