

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?

In England and Wales civil justice is dealt with at first instance by the High Court and the county court. Family justice is dealt with by the family court. Criminal justice is dealt with by the magistrates court and the Crown court.

The High Court has three divisions: the Queen's Bench Division, the Family Division and the Chancery Division. Each of these divisions has a President. An appeal from

these courts, and an appeal from the county court or the family court lies to the Court of Appeal (Civil Division). The Court of Appeal (Civil Division) has its own president, called the Master of the Rolls. An appeal from the Crown Court lies to the Court of Appeal (Criminal Division). The Lord Chief Justice is the head of all the judiciary in England and Wales, and is also the president of the Crown Court.

An appeal from the Court of Appeal lies to the Supreme Court, which has its own president.

In addition to these courts, England and Wales also has a system of specialist tribunals, principally consisting of the First Tier Tribunal and the Upper Tribunal. The First Tier Tribunals are divided into six Chambers, each with its own president, and the Upper Tribunal is divided into four chambers, each with its own president. There is also a series of employment tribunals which also has its own president. There is in addition a senior President of Tribunals.

- 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 Presidents of the Divisions, the Master of the Rolls, the Lord Chief Justice and the President of the Supreme Court are all appointed by the Minister of Justice acting on the recommendation of an independent body called the Judicial Appointments Commission (JAC). These presidents are all appointed from among serving judges.

The presidents of tribunal chambers are also appointed by the Minister of Justice on the recommendation of the JAC. They are usually (but not always) appointed from among serving judges, but some of these appointments are only part time and are combined with other judicial duties.

The President of the Supreme Court is appointed by the Queen on the advice of the Prime Minister, after an ad hoc selection panel has made a recommendation.

- 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 role of the JAC in senior appointments is to convene a selection panel, which becomes a committee of the Commission. Senior appointments panels determine their own selection processes. This includes selections for the Lord Chief Justice, other Heads of Division, and the Senior President of Tribunals. The outgoing president may not be a member of the selection panel, but will be consulted.

- 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 is no specific training or a specific judicial position required; but seniority plays a large part in practice.

- 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.

Either.

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

There is a Judicial Appointments and Conduct Ombudsman who will investigate complaints, but the Ombudsman is not a court or tribunal.

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

I have no personal knowledge. Data does not differentiate between general complaints and complaints by candidates for the presidency of a court.

- 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)?

Presidents of the higher courts (President of the Supreme Court, Lord Chief Justice, master of the Rolls and presidents of the Queen's Bench, Family and Chancery Divisions of the High Court) do not have a term of office. Once appointed they can continue to hold office until retirement. For all judges appointed to office after 1985 there is a mandatory retirement age of 70.

Presidents of the Upper Tribunal chambers and the Employment Appeal Tribunal generally hold office for three years, before returning to their ordinary judicial duties.

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

There is no formal rule. But for those presidents of Upper Tribunal Chambers the normal practice is for the president to hold office for one term only.

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

There is no formal process.

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

See answer to question 1.15

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

See answer to question 1.15

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

The Lord Chief Justice and the Lord Chancellor are jointly responsible for considering and determining complaints about the personal conduct of all judges in England and Wales (and some judges who sit in Tribunals in Scotland and Northern Ireland). The Office for Judicial Complaints (OJC) – now the Judicial Complaints Investigations Office – was set up on the 3rd April 2006, to handle these complaints and provide advice and assistance to the Lord Chief Justice and Lord Chancellor in their performance of this joint responsibility.

The Lord Chief Justice and the Lord Chancellor take complaints about the judiciary very seriously, and consider it important to maintain public confidence by ensuring such complaints are dealt with by an independent body. For 2012-13 the number of complaints dealt with, and upheld, was very low; across all levels of the judiciary, just 55 cases required any disciplinary action. Further information is available in the JCIO's Annual Report.

The Lord Chief Justice has the right to give a judge formal advice, a formal warning or a reprimand, or to suspend them from office in certain circumstances. The vital principle is, however, that none of these actions can be taken unless the Lord Chancellor and the Lord Chief Justice agree on it. For a government minister to be involved in this way in judicial discipline may appear to strain the principle of judicial independence. However, the procedure helps to dispel any suspicion that judges would not wish to take action against a fellow judge, and also provides a safeguard. Equally, making the responsibility for discipline a joint responsibility of the Lord Chief Justice and the Lord Chancellor ensures that the suspicion cannot arise that judges can be disciplined on political grounds: a further safeguard of judicial independence and the rule of law. The fact that both have a role ensures that the independence of an individual judge is not improperly infringed, either by the executive, or internally by another more senior member of the judiciary.

All complaints are made, or referred, to the Judicial Complaints Investigations Office, which then assesses whether the complaint falls within the system. More than half do not because they are complaints about judicial decisions rather than judicial conduct.

Complaints about judicial conduct are considered by a nominated judge, who will either make a recommendation straight away to the Lord Chief Justice and the Lord Chancellor, or refer the case to an investigating judge. Ultimately a recommendation will be made to the Lord Chief Justice and Lord Chancellor, who will have to decide what action, if any, to take. The judge who is the subject of the complaint has a right to make submissions at every stage and, if he or she is not content with the decision, can refer the case to a Review Body.

I am not aware of this process ever having been used in the case of a president of a court.

In the case of judges of the senior courts they may only be removed following a resolution by both Houses of Parliament, except in cases of incapacity for medical reasons. No such resolutions have been passed by the Houses of Parliament for over 200 years.

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

No

- 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, although some courts have a “users’ committee” consisting of lawyers who use that particular court and they and the court president will discuss matters of common interest. But the committee will have no decision making power.

- 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 Judicial Executive Board has overall supervision of all organisational activities of judges. The majority of the members of the Board are full time judges. The Lord Chief Justice is the president of all courts in England and Wales. His duties include:

(a) representing the views of the judiciary of England and Wales to Parliament, to the Lord Chancellor and to Ministers of the Crown generally;

(b) the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary of England and Wales within the resources made available by the Lord Chancellor;

(c) the maintenance of appropriate arrangements for the deployment of the judiciary of England and Wales and the allocation of work within courts.

However, the administrative aspects of courts and tribunals is the responsibility of the Ministry of Justice (headed by the Lord Chancellor). Court buildings, IT equipment, the allocation of budgets, the appointment, remuneration and removal of administrative staff, and other such matters are the responsibility of the Ministry.

- 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 5 per cent.

- 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?

Most presidents adjudicate cases in the same quantities as other judges. For the Lord Chief Justice, the Master of the Rolls, the President of the Queen’s Bench Division, the President of the Family Division and the Chancellor of the High Court the case load is reduced to some extent to take account of their administrative and policy making duties.

- 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 will be consulted on the selection and recruitment of the judges. In some cases (e.g. appointment of judges of the Court of Appeal) the president will also be a member of the selection panel.

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

They will be consulted, but the court staff are employed by the government as civil servants.

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).

No, although they may refer a case to the Judicial Complaints Investigations Office (see answer to question 1.15).

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

They cannot. In the case of judges of the High Court or the Court of Appeal, only Parliament can fire a senior judge (and it has not been done for over 200 years). In the case of more junior judges they can only be fired by the Lord Chief Justice and the Minister of Justice, acting jointly. Court employees are employed by the civil service and can only be fired by the Ministry of Justice.

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?

There no formal procedure.

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

In general this is not done. There are categories of case which are dealt with urgently, but they are very specific. Otherwise whether a case needs to be dealt with urgently is considered on a case by case basis.

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

This is not done.

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

Not in general.

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?

The Lord Chief Justice has formal power to delegate functions to other judges. There is no other formal power of delegation. But a judge may be informally asked to undertake a particular task on behalf of a president.

2.13 Are presidents supported in their tasks and by whom?

The senior presidents (i.e. the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court and the Senior President of Tribunals) all have a small administrative staff to support them. Other presidents can call on part time administrative support from employees of the Courts and Tribunal Service who are civil servants.

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?

Judges are collectively responsible for the uniform application of the law. The English legal system places importance on the precedent set by previous cases, and thus the uniform application of the law is built into the system. The president has no special function in this respect.

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

Not in general.

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

Not in general.

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

Not in general, but if there is a systemic problem a president can review procedures with a view to the central authorities making changes in procedural rules.

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.)?

Judges on the one hand and court staff on the other are separately regulated. Court staff are civil servants, and their terms and conditions are set by the Ministry of Justice. Judges' terms and conditions are set when they are appointed. The Lord Chief Justice has power to allocate judges to particular courts, but otherwise does not have day to day control. Those terms and conditions include entitlement to holidays, and permitted extra-judicial activities, but presidents can be consulted in cases of doubt.

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?

No. Judicial salaries are fixed by the government. The government is advised by an independent body called the Senior Salaries Review Board but it need not follow their recommendation (and has not done so for many years because of the need to control public finances).

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

The judicial executive board has power over the allocation of budgets. Individual presidents do not.

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

See answer to question 2.21.

- 2.23 Do presidents manage the court premises and layout?

No.

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

No.

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

No, IT is procured centrally.

- 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?

Court presidents are not the administrative managers of their courts. Administration is carried on by civil servants. The Judicial Executive Board exercises some supervision; and the Courts and Tribunal Service (which is a government agency) also has a board composed partly of judges and partly of lay persons.

- 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 manager is responsible for the administration of the courts, but not for the judiciary.

- 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.

The court manager will be selected from applicants for an advertised post. The applicants will usually (but not always) be persons who are already working either within the Courts and Tribunal Service or the civil service generally. They will be appointed for an indefinite term and cannot be removed except in accordance with civil service procedures. The president has no independent power to remove a court manager.

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

The Lord Chief Justice has an annual press conference. Otherwise court presidents are not the interface with the media. Some judges (not necessarily court presidents) have had media training, but there are very few of them.

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)?

There are no formal relations between presidents of courts and the President of the Supreme Court. The presidents of the higher courts (particularly the Lord Chief Justice and the Master of the Rolls) will of course be personally known by the President of the Supreme Court and there will be informal contact between them to discuss questions of common interest.

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

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

3. Accountability and discipline

3.1 What kind of accountability mechanisms (e.g. reporting, auditing, etc.) are in place for the presidents, and before which authority (e.g. Judicial Council, Ministry of justice, Supreme Court, internal board etc.)?

The Lord Chief Justice submits an annual report to Parliament on the administration of justice. However, the judiciary is independent and is not otherwise accountable.

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

The Lord Chief Justice has disciplinary authority over judges (shared with the Minister of Justice). The Senior President of Tribunals has disciplinary authority over Tribunal judges (shared with the Minister of Justice). Presidents do not, per se, have disciplinary authority over judges in their courts.

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?

There is no formal or systematic system of evaluation. If there is a complaint about a president it would be referred to the Judicial Complaints Investigations Office and that Office would decide whether it merits investigation.

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

See answer to question 1.15.

- 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?

The formal appointment is made by the Queen on the recommendation of the Prime Minister. But the Prime Minister will be given a recommendation by a selection panel. The selections panel will be composed of judges and lay people. The panel may not include the outgoing President of the Supreme Court, and it must be chaired by a lay person.

- 4.2 Please describe briefly the selection procedure.

The selection panel devises its own procedure. None is laid down by rules. But on the last occasion that the President of the Supreme Court was selected it was selection by application form, interview and a presentation, as well as consideration of the candidates' track records as judges.

- 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 of the Supreme Court does not have any specific training in management. He or she is expected to be selected from among the most senior judges (either past or present members of the Supreme Court or members of the Court of Appeal).

- 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)?

The President of the Supreme Court does not have a fixed term of office. He or she will serve until he or she retires (although for all judges appointed to office after 1985 there is a mandatory retirement age of 70).

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

Because there is no fixed term there is no need for renewal.

- 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 the right to present a report to Parliament on matters of importance to that court. He delegates non-judicial functions to a Chief Executive, whom he appoints.

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