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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. How many presidents of first instance courts and how many presidents of the court of appeal there are in your country?**
6 presidents of first instance courts (4 county courts and 2 administrative courts) and 2 presidents of court of appeal.
- 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 chairman of a county, administrative and appeal court is appointed from among the judges of that court for five years. The chairman of a court is appointed by the Minister of Justice after having considered the opinion of the full court and the approval of the Judicial Council. The opinion of the full court is not binding, the approval is binding to the Minister of Justice. Majority of the Judicial Council consists of judges.

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

See previous answer.

4. Please describe briefly the selection procedure for presidents of the courts.

Minister of Justice presents its candidate for the position to the full court, later to the Judicial Council then decides appointment.

However, de facto, starting this year a public competition has been announced, candidates had to take the TRIPOD test (leadership test) and psychological test. Also, a special committee had been formed consisting of equal number of judges and Ministry officials in order to choose the best candidate and present it to the Ministry of Justice. In order to do that, the committee evaluates the test results, also conducts interviews with the candidate. Despite of the good idea behind it, this practice is not considered as successful: in case of lack of candidates it is too formal; in case of many good candidates the committee has shown indecisiveness.

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).

The position is open to all judges, so specific qualifications is needed.

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.

Among the same court judges. However, there is a bill of law which will open the position to all judges of that instance and, for the position of the first degree court president, to all appellate court judges as well.

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

There are no such provisions in the law but in theory it could be challengeable before the administrative court.

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

Have not happened so far.

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

No.

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

For five years.

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

There are no limits. It used to be 2 terms in a row but not anymore.

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

See previous answers.

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

The minister responsible for the area may release the chairman of a court prematurely:

- 1) at the request of the chairman of the court;
- 2) if the chairman of the court has failed to perform his or her duties wrongfully to a material extent;
- 3) upon his or her election or appointment as a judge of European Court of Human Rights, European Court of Justice or other international court institution.

If the chairman of a court is released from the office of judge, he or she shall also be released from the duties of the chairman of a court.

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

Minister of Justice.

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

There are no such provisions in the law but in theory it could be challengeable before the administrative court.

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

Yes, full court opinion is needed (not binding).

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?

Yes, in a way. The Bar Association has 1 member at the Judicial Council which approves the candidate.

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 minister responsible for the area shall exercise supervisory control over the performance of the duties by the chairmen of courts of first instance and chairmen of courts of appeal. The minister responsible for the area may demand explanations from the chairman of a court concerning the administration of justice in a court pursuant to the requirements.

Courts of the first instance and courts of appeal shall submit a statistical report on cases to the minister responsible for the area. The minister responsible for the area shall approve the standard format for reporting and the term for submission thereof.

The Judicial Council also acts as supervisory body.

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?

A chairman of the court of the first instance or court of appeal shall receive additional remuneration for the performance of the duties of chairman of the court:

- 1) in the amount of 15 per cent of his or her salary if the number of judges in the court is fourteen;
- 2) in the amount of 25 per cent of his or her salary if the number of judges in the court is at least fifteen;
- 3) in the amount of 35 per cent of his or her salary if the number of judges in the court is at least thirty;
- 4) in the amount of 45 per cent of his or her salary if the number of judges in the court is at least forty-five.

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

2. Tasks, functions, relations

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?

A chairman of a court may, by a directive, reduce his or her work load in administration of justice to the extent necessary for performing the duties of the chairman.

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, unless they are elected to the Judges Examination Committee by the *court en banc* (a body consists of all Estonian judges).

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

Yes in most cases (clerks, secretaries etc). Some court officers are recruited by the director of the court.

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).

Supervisory control over the administration of justice pursuant to the requirements, over the performance of duties by judges and over the forwarding of the data of the courts information system pursuant to the established procedure shall be exercised by the chairman of the court. The chairman of a court has the right to demand explanations from judges, inspect

compliance with the operations procedure and collect other necessary information. The manager of courthouse may, on the order of the chairman of a court of first instance or on his or her own initiative, demand explanations from judges of a courthouse and collect other necessary information to ensure the administration of justice in the court pursuant to the requirements. Chairmen of circuit courts shall also exercise supervisory control over judges of the courts of the first instance.

Once a year, chairmen of courts shall submit their opinion concerning judges of less than three years length of service employed in the corresponding courts to the judge's examination committee. The standard format for submission of opinion shall be established by the judge's examination committee.

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).

Disciplinary proceedings shall be commenced if elements of a disciplinary offence become evident. Disciplinary proceedings are commenced by preparation of disciplinary charges.

The following have the right to commence disciplinary proceedings:

- 1) the Chief Justice of the Supreme Court, against all judges;
- 2) the Chancellor of Justice, against all judges;
- 3) the chairman of a circuit court, against judges of courts of first instance in his territorial jurisdiction.
- 4) the chairman of a court, against the judges of the same court;
- 5) the Supreme Court *en banc* against the Chief Justice of the Supreme Court.

A person who commences a disciplinary proceeding may gather evidence and demand explanations which are necessary to adjudicate the disciplinary matter.

For the adjudication of disciplinary matters of judges, the Supreme Court shall comprise the Disciplinary Chamber which is comprised of five justices of the Supreme Court, five circuit court judges and five judges of courts of the first instance. The Disciplinary Chamber makes the final decision.

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

The president of the court can not fire a judge. The president can fire employees.

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?

Tasks shall be divided between judges on the basis of the following principles:

- 1) each matter received by the court for hearing shall be divided between judges according to the division of tasks plan;
- 2) matters shall be divided between judges at random and on bases determined in the division of tasks plan;
- 3) in the distribution of matters, as many matters as possible shall be distributed between the judges serving in the courthouse where the matter will be heard.
- 4) the distribution of the matters shall ensure equal work load of judges within a court;
- 5) the distribution of the matters to a chairman of a court shall take into account the reduced work load in administration of justice;
- 6) The Judicial Council may adopt additional principles for the preparing of the division of

tasks plan of judges. When approving the division of tasks plan, courts shall be guided by the principles adopted by the Judicial Council.

The division of tasks plan shall prescribe the procedure for formation of court panels and for the substitution of judges. The division of tasks plan shall be approved for one calendar year. During a working year, the full court may amend the division of tasks plan only with good reason. Everyone can access the division of tasks plan in the court office.

The president of the court has no possibility to assign cases to judges.

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

No.

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

If a judge without a good reason fails to perform a necessary procedural act, inter alia fails to appoint a session in due time to ensure the conducting of court proceedings within a reasonable period of time, or if it is evident that the time planned by the judge for performing the procedural act or other organisation of proceedings does not ensure the conducting of proceedings within a reasonable period of time, a chairman of a court shall decide on the implementation of such measure organising the administration of justice, which presumably provides the opportunity to finalise the proceedings within a reasonable period of time. The chairman of the court may, inter alia redistribute the court cases among the judges taking account of the division of tasks plan or, in exceptional case, also deviate from the division of tasks plan in the distribution of work, primarily taking into account the peculiarities of the court case, the specialisation of the judge and different work load of the judges.

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

Within the same settlement, a chairman of a court in the interests of the organisation of administration of justice may appoint a judge to permanent office without his or her consent to another courthouse of the same court. The chairman of the court shall first consider the opinion of the full court. One court has usually many courthouses in different cities or in different location within one city.

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

The chairman of a county court shall appoint a manager of the courthouse from among the judges serving in each courthouse for a term of five years after having considered the opinion of the judges serving in the courthouse. In the courthouse where the permanent place of service of the chairman of the court is located a manager of the courthouse is not appointed.

12. Can presidents delegate their functions to other judges?

Some. In the absence of the chairman of a court, a judge designated by the chairman shall substitute for him or her. If the chairman of a court has not designated an acting chairman, a judge who is senior in office shall substitute for him or her, and where there is equal seniority in office, a judge who is senior in age shall substitute for him or her.

13. Are presidents supported in their tasks and by whom?

Yes by president's aid(s).

14. Have presidents any supervision on the judgments delivered by other judges of the court?

No.

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.

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

Initiative for productivity comes from the Ministry of Justice. President, consulting with the full court, may set such targets. In practice, some additional funding from the Ministry may be involved in such cases (for example, to hire additional staff, pay extra salary etc).

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

No.

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

As part of general supervisory control (see previous answers).

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.)?

The usual management tasks in co-operation with the director of the court. (All above.)

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?

Some discretion concerning court staff. Judges remuneration is set by the law.

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

The Minister responsible for the area shall approve the budgets of courts of the first instance or courts of appeal within two months after the state budget is passed as an Act, considering the opinion formulated by the Judicial Council.

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

The chairmen of county court organises activities in the area of administration of justice and approves the draft budget of the court prepared by the director of court;

23. Do presidents manage the court premises and layout?

Yes, in co-operation with the director of the court.

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

No. The technology is provided by the Ministry of Justice.

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

Presidents opinions are usually asked.

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?

There is no board, just director of the court.

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

The minister responsible for the area may give directives to organise issues within the area of activity of directors of court.

A director of court must have completed higher education. Directors of courts of the first instance and courts of appeal shall be appointed to office for five years by the minister responsible for the area. A director of court shall be appointed to office on the basis of a public competition.

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 previous answer.

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

Yes. However, there are also dedicated staff members dealing with the press.

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)?

No special supervisory relations.

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

No.

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

3. Accountability and discipline

- 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.)?**
See previous answers.

- 2. Do presidents have a different disciplinary responsibility in comparison to the judges?**

No.

- 3. Is there any special immunity for presidents?**

No.

- 4. Which criteria are used for the evaluation of presidents, how often, and by whom?** No special evaluation.

- 5. Which are the consequences of such evaluation (e.g. ranking, promotion, admonition, removal, salary increase, any other consequence, etc.)?** No special evaluation.

- 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).

- 1. Who appoints (e.g. Judicial Council, Ministry of Justice, Parliament, etc.) the president of the Supreme Court?**

The Chief Justice of the Supreme Court is appointed by the Parliament on the proposal of the President of the Republic for nine years.

- 2. Please describe briefly the selection procedure.**

The candidate is selected among the Supreme Court justices.

- 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)** No special qualifications.

- 4. 'Does the president get a "confidence vote" (after or before their appointment) from other judges of the Supreme Court? Yes.**

- 5. How long is term of office of the president of the Supreme Court (please explain if there are limitations)?** 9 years, 2 terms possible.

- 6. Can their mandate be renewed, and what is the process (e.g. evaluation of the first term served and then renewal)?** The same selection procedure all over.

- 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 Chief Justice of the Supreme Court:

- 1) directs and represent the Supreme Court;
- 2) makes a proposal to the Riigikogu to appoint the justices of the Supreme Court to office;
- 3) exercises supervisory control prescribed by law;
- 4) performs other duties arising from law and the internal rules of the court;
- 5) once a year, at the spring session of the Parliament presents a review to the Riigikogu concerning courts administration, administration of justice and the uniform application of law.

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