

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?

- A. In Ireland we have five Presidents – the President of the District Court, the President of the Circuit Court, the President of the High Court, the President of the Court of Appeal and the Chief Justice who is also the President of the Supreme Court. The District, Circuit and High Court are courts of first instance, though the Circuit Court and High Court both have certain appellate functions.

- 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?)
- A. Judges, including Presidents of Courts are appointed by the President of Ireland acting on the advice of the Government. In practice then the Presidents of courts are nominated by the Government of the day. Theoretically appointments could come from legal professionals other than those who are already judges. This would be regarded as unusual. There was an attempt to make such an appointment in 1994, but it gave rise to controversy, and has not been repeated since and is unlikely to be repeated in the future.
- 1.3 Do the presidents get a “confidence vote” (after or before their appointment) from the other judges of the court?
- A. There is no provision for a confidence vote.
- 1.4 Please describe briefly the selection procedure for presidents of the courts.
- A. When a vacancy is expected to arise judges who would be interested in the appointment will inform the executive, through the Attorney General of their interest. Alternatively, it is possible that the Government might approach an individual who had not previously expressed an interest and invite him/her to accept appointment. This has happened on a number of occasions.
- 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).
- A. There are no specific qualifications over and above the qualifications required to be appointed a judge of the Court.
- 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.
- A. A President of a court is usually chosen from among the judges of that court. However, that is not the inevitable practice. So for example the President of the High Court ranks ahead of the ordinary judges of the Court of Appeal and of the Supreme Court in terms of precedence. Accordingly, if a vacancy arose for the position of President of the High Court it would not be regarded as unusual for judges of the Court of Appeal or of the Supreme Court to express an interest.
- 1.7 Can the candidates, who applied for the position but did not get it, challenge the decision before a court/tribunal?
- A. There is no provision for challenging a decision and it unlikely that anyone would wish to mount a challenge.
- 1.8 How often does it happen? (Please give a percentage based on data available or on your personal knowledge).

- A. This has never happened and could never happen.
- 1.9 Is additional training in management, or in other subjects, required after the judge has been selected as court president?
- A. There is no requirement for additional training as such but individuals appointed may decide to improve their skills in particular areas and indeed that would be the norm.
- 1.10 What is term of office for the president of court (please explain if there are limitations)?
- A. The term of office of a court President is seven years. Having served a term a President of a court an individual can revert to being an ordinary member of the judiciary.
- 1.11 How many times the same position of court president can be hold by the same person?
- A. The position is non renewable.
- 1.12 Which is the process to confirm presidents in their position (e.g. assessment of the first term served and then renewal)?
- A. The question of confirmation does not arise. The government nominates a candidate for appointment and the person concerned takes up the position.
- 1.13 Under which circumstances can presidents be removed from their office before the expiration of their term?
- A. There is no provision for removing a President from that office. Court Presidents like all other members of the judiciary are subject to the provisions in the Constitution of Ireland which permit the removal of a judge following a vote in Parliament, but only in the case of gross misconduct. There has been no such vote in the history of the State, though there was an occasion when it was indicated that a motion was likely to be tabled and this resulted in two judges tendering their resignation.
- 1.14 Who is in charge of the removal procedure, and how it works?
- A. As stated there is no specific removal procedure.
- 1.15 Can the president removed challenge the decision before a tribunal/court?
- A. This does not arise.
- 1.16 Are the decisions by the presidents shared/negotiated with the other judges or "boards" within the courts?
- A. There is no provision for shared or negotiated decision making. In practice Presidents are likely to consult with colleagues and involve them in the decision making process.
- 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?

- A. Again, there is no formal role for such an association. However, if a President is going to take a decision which will impact significantly on the legal system in a particular region of the country, he would inevitably inform local lawyers as to what he is planning and invite their views and comments.
- 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)?
- A. There is no provision for such supervision.
- 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?
- A. There is provision for some modest additional remuneration. The amount varies from court to court and the situation is complicated by the fact that judges can be on different salary scales depending on when they were first appointed to office. A 10% differentiation would be a good guide.
- 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?
- A. Presidents of courts do hear cases in the ordinary way. Some Presidents take on particularly heavy workloads assigning all the most difficult cases to themselves. Other Presidents will seek to reduce their ordinary case load to free themselves up for their role as President. Really this is a matter for the judgment of the individual court President.
- 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).
- A. Presidents do not have a formal role as such. However, before the Government comes to consider the appointment of new judges, those seeking appointment have to go before a body known as the Judicial Appointments Advisory Board. All of the Presidents are members of this Board and it is understood that their views carry considerable weight there. In practice the views of Presidents in relation to appointment or non appointment of individuals are likely to be very influential.
- 2.3 Are the presidents involved in the selection and recruitment of the court staff?
- A. In general the answer is no. The provision may be somewhat different in the case of the assignment of court staff to work closely alongside a court President. Where the ability to get along together would clearly be a relevant consideration.

- 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).
- A. There is no system for formal assessment as such. However, in practice a court President will be constantly assessing the performance of his/her colleagues and he/she would leave them in no doubt about the views that were being formed.
- 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).
- A. At present, apart from the procedure for removing a judge from office by Parliament, there is no formal disciplinary code, though this is expected to change in the very near future.
- 2.6 Can, and under which circumstances, the presidents fire a judge or a court employee?
- A. There is no provision for this.
- 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?
- A. Cases are assigned to judges by the President of the court, indeed this is one of the most important tasks that he or she performs.
- 2.8 Can presidents set priorities in the handling of the cases (e.g. family cases must be dealt with before contracts)?
- A. Presidents can and do constantly set priorities in the way described.
- 2.9 Which are the circumstances that may allow presidents to retrieve cases from judges and re-assign them?
- A. Because of the emphasis on oral hearings this rarely if ever arises in practice. Once a hearing has commenced it will be difficult, if not impossible for the case to be removed from the judge to whom it had been assigned unless the judge requested this for some reason.
- 2.10 Do presidents decide over the composition of court's sections/division and over the composition of judges' panel?
- A. Presidents constantly make decisions in this regard.
- 2.11 Do presidents select and appoint judges who may coordinate/head a section/division of the court?
- A. Presidents constantly make decisions in this regard.
- 2.12 Can presidents delegate their functions to other judges?
- A. Presidents can and do delegate functions.

- 2.13 Are presidents supported in their tasks and by whom?
- A. Presidents have some administrative support. The extent of that support varies from court to court.
- 2.14 Have presidents any supervision on the judgments delivered by other judges of the court?
- A. Presidents do not exercise any supervision whatever on the judgments delivered by other judges.
- 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?
- A. Each and every judge is independent in the exercise of his or her function. The President will obviously be anxious to see a consistency of approach on the part of the judges of his/her court, but the scope for action is limited. Presidents do set time frame targets within which particular types of cases can be disposed of.
- 2.16 Do presidents set productivity and/or timeframes targets for their court?
- A. Presidents do not formally set time frames for individual judges but discussions between President and a judge on a one to one basis can happen and do happen.
- 2.17 Do presidents set productivity or timeframes targets for each judge or court staff?
- A. Question repeated.
- 2.18 Do presidents monitor the length of judicial proceedings and what kind of actions they can undertake to improve the pace of litigation?
- A. Presidents can and indeed are expected to monitor the length of judicial proceedings. If it is seen that difficulties are emerging, then the President will discuss this with the judge having charge of that particular division, if there is one and with the judges hearing those types of cases. In addition there may be a necessity to reallocate resources.
- 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.)?
- A. So far as judges are concerned, Presidents would have a role in setting working hours, authorising the taking of holidays, making sure there is adequate cover at all times including out of hours and so on. Presidents do not perform the same function in relation to court staff which is the concern of the Court Services Board.
- 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. Presidents have no such role.

- 2.21 Which tasks presidents have in the appropriation of the court budget among the different courts?
- A. The budget for the courts is allocated between courts by the Board of the Courts Service. All Presidents of the courts are members of this Board and in addition the judges of each court choose one of their number to serve on the Board by election.
- 2.22 Which tasks and how much discretion presidents have in the management of the court budget within the court?
- A. The Presidents of courts do not have a formal role in this area but in practice it is likely that issues will be discussed by Presidents with the Chief Executive Officer of the Courts Service Board and indeed by the full Board itself.
- 2.23 Do presidents manage the court premises and layout?
- A. No. While this is a matter for the Board of the Courts Service it will be very cognisant of the views in that regard of the Presidents.
- 2.24 Do presidents manage information and communication technology implemented in the court?
- A. To describe President's as managing information and communication technology would be to overstate the position. However, Presidents do have a role in this regard and some Presidents are particularly active.
- 2.25 Do presidents have some autonomy about what kind of information and communication technology tools/application should be implemented in their court?
- A. See the answer to the previous question.
- 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?
- A. Presidents are largely concerned with interacting with their fellow judges. Other issues, eg. allocation of resources, staffing and so on, are the concern of the Board of the Courts Service and of the Chief Executive Officer who is assisted by a number of deputies each of whom takes responsibility for one 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.
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- 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.
- A. The court manger, the Chief Executive Officer of the "Courts Service" is a public servant, who has applied for that position following an open competition. Appointments are for a period stated in a contract, which can vary and which can be renewed.

- 2.29 Are presidents the "interface" with the media, and are they trained to do it?
- A. Traditionally the judiciary in Ireland has been very reluctant to interact with the media. Court Presidents do not have a formal role in this regard, though some may engage in the exercise from time to time. There is no formal structure in place for training. However, as stated in response to an earlier query when someone is appointed President, if they wanted to enhance their skills in a particular area, they would normally be facilitated in that regard and that would include training in media relations.
- 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)?
- A. The Chief Justice, the President of the Supreme Court is the head of the judiciary. She will meet with the other Presidents as a group on a regular basis and will also meet with individual Presidents as required.
- 2.31 Are there other tasks of presidents of the courts in your country, which were not mentioned before?
- A. No, however I would just point out that the judiciary in Ireland is a very small one. By head of population we have one of the smallest number of judges in the Council of Europe, if not indeed the smallest. This places a particular emphasis on assigning cases to individual judges and arranging for judges often at very short notice to cover for each other if cases take longer than had been expected or indeed if a case finishes quicker than expected.
- 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.)?
- A. There are no official mechanisms
- 3.2 Do presidents have a different disciplinary responsibility in comparison to the judges?
- A. No.
- 3.3 Is there any special immunity for presidents?
- A. No.
- 3.4 Which criteria are used for the evaluation of presidents, how often, and by whom?
- A. Once appointed Presidents of courts are not the subject of formal evaluation.

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

A. This does not arise.

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?

A. As in the case of other judicial appointments the Chief Justice is appointed formally by the President of Ireland, but the President of Ireland acts on the advice of the Government.

4.2 Please describe briefly the selection procedure.

A. When a vacancy is expected to arise, the situation will be discussed at Government level and a decision taken. Individual judges may have expressed an interest in being considered. As indicated in the case of other appointments there is no specific requirement for training or indeed specific provision for training. However if a Chief Justice or indeed any other person appointed to a court Presidency feels that it is necessary to up skill then that can and would be arranged.

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).

A. There is no formal qualification over and above those required to be a judge of the court. It is to be expected that Government in deciding who to nominate for appointment will have regard to the skill levels of the individuals under consideration and the extent to which individuals who are in the process of upgrading their skill set.

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

A. There is no provision for a confidence vote.

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

A. The term of office of the Chief Justice/President of the Supreme Court is seven years.

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

A There is no provision for renewal of the mandate.

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).

A. The Chief Justice is the spokesman for the judiciary and acts on behalf of the judiciary when it comes to any interaction with the Department of Justice, the Department of An Taoiseach (the Department of the Prime Minister) or the Department of Finance. This is a very significant part of the role of the Chief Justice.

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

A. I would be very happy to provide further information if required. I would just observe that some of the questions are more relevant to countries where judges have a lifelong career than countries where judges are appointed from amongst the ranks of practicing lawyers.