

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 general preliminary remark is necessary: the answers to the questionnaire are referred to the ordinary judiciary (“ordre judiciaire”) of Italy, i.e. the judiciary – including public prosecutors – having general jurisdiction in civil (including some administrative) and criminal matters, both professional and non professional, having at its top the Supreme Court of

Cassation. The answers do not refer to some special judiciaries (administrative judges, courts of auditors, military courts, and tax courts), nor to the Constitutional Court.

In Italy there are 136 first instance courts (Tribunale) and 26 courts of appeal (Corte d'appello); 3 courts of appeal have each an extra antenna operating in a different town. To the figure first instance courts one should add specialized courts such as 29 juvenile courts (Tribunali per i minorenni) and 29 criminal enforcement supervision courts (Tribunali di sorveglianza), each in towns where a court of appeal or an antenna is based. A further addition should concern the 178 Justice of the Peace courts (Uffici del giudice di pace), the latter composed of non professional judges. Each of these courts has a presiding judge. One should also include in the calculation of presidents the chief prosecutors, who are the heads of Prosecution Offices set up in Italy at each Tribunale, Tribunale per i minorenni and Corte d'appello (see above for figures).

- 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 appointment procedure, in conformity with the Italian Constitution, is entirely entrusted to the Council for the Judiciary (Consiglio Superiore della Magistratura – CSM). A public call to fill vacancies is published, applicants file their requests to be appointed, and a Committee of CSM considers their dossiers and if necessary has hearings. Then a proposal is made, in writing and with a reasoning, comparing the candidates. Majority and minority proposals are possible. At this stage the files are transferred to the Minister of Justice, who has to grant his or her consent to the appointment for the candidate or the several candidates. Finally in a public seating the Plenary of the CSM discusses the appointment and takes a vote on the proposal or proposals which have met the Minister's agreement. If any of the candidates does not receive agreement from the Minister, the matter is referred back to the Committee, which may make other proposals which, again, must be submitted to the Minister. Presidents cannot be drawn from other professions outside of the judiciary (which in Italy includes prosecutors; i.e. prosecutors can be appointed presidents of a court).

- 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.

Please see above.

- 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).

The main qualification required is a certain seniority, different for courts of first instance and courts of appeals (and prosecution offices attached thereto), also depending on the size of the court. Also, there is a "negative" seniority requirement, i.e. the candidate has to have a sufficient number of years to serve before retirement.

A new prerequisite for appointment, based on a law which has started to be applied in 2015, is the attendance of a mandatory course at the Italian School for the Judiciary (Scuola superiore della magistratura) on management of organizations. The School provides CSM with information as to the successful participation in the course of each candidate.

- 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.

Judges of the same court or other courts are equally eligible.

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

They can challenge the decision before an administrative court.

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

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

Please see above.

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

The term of office is four years, renewable for another four year term upon an assessment by the Council for the Judiciary. After the four or eight-year period the judge has to apply for another post, or otherwise will resume service as a judge in the court he or she previously presided.

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

See above.

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

See above.

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

Upon a disciplinary proceeding.

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

Based on lack of competence or misbehaviour, upon charges brought by the Prosecutor General (on own motion or request of the Minister of Justice), the Council for the Judiciary decides with full guarantees of defense. The decision may be challenged before the Joint Chambers of the Supreme Court.

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

See above.

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

Some decisions (e.g. on the creation of chambers or on calendars) – based on resolutions of the Council for the Judiciary – are based on the consultation (not binding) of the court judges assembly.

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?

Some decisions (e.g. on the creation of chambers or on calendars) – based on resolutions of the Council for the Judiciary – are submitted to the Bar Association, who may challenge it before a local judicial council (see below).

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)?

All decisions are submitted to a local judicial council, which – on own motion or based on the involved judges' or the Bar association's challenge - may issue a negative opinion, which will then be reconsidered by the Council for the Judiciary, which may make the decision null and void. If the CSM upholds the decision, interested parties – if the decision affects their individual position – may challenge the CSM's approval before an administrative court.

1.19 Is there any extra remuneration for presidents, and how much is it in percentage of the regular judge's salary in the same court?

There is no special remuneration.

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

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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?

They have a reduction of caseload or no caseload at all, depending on the size of the Court, based on resolutions by the CSM.

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).

They have no role in the recruitment of professional judges. They issue a recommendation on the renewal of non professional, temporary judges.

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

No.

- 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).

Assessments as such are made every four years by the CSM. However, court presidents have a role, since they issue a report on each judge, which is submitted to a local council, which in turn, based on the involved judges' or the Bar association's additional information – issues an opinion, which is then considered by the Council for the Judiciary. A negative assessment stops increase of remuneration and, if continuing, may lead to termination of the office of the judge. Challenge before the administrative tribunal is possible.

- 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).

Starting a disciplinary procedure is in the competence of the Prosecutor General at the Supreme Court or the Minister of Justice. However, a court president may (or, in some cases, must) report to the Prosecutor General.

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

No. They can just report.

- 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?

The assignment of cases must be objectively regulated by the court president according to pre-established rules which are previously submitted to the judges and lawyers, and approved by the CSM based on the opinion of local councils. Once such regulations ("tabelle") are in force, no space is left to discretion of the president. The regulations also provide for substitution of judges who are absent or abstaining or disqualified from dealing with an individual case.

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

Yes. Priorities are included in the programme to reduce backlogs, periodically prepared by the president.

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

No single retrieval of a case is possible, except in the case of disqualification. If a president wants to reduce the workload of a judge (retrieval of groups of cases), the objective criteria laid down in the "tabelle" must be followed.

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

No. The "tabelle", approved as above mentioned, provide for such measures.

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

No. Appointments are made by CSM through a procedure which is similar (but simpler: e.g. there is no intervention of the Ministry) to the one described above to appoint court presidents.

2.12 Can presidents delegate their functions to other judges?

Yes. They have to appoint – through a reasoned resolution – a substitute president, among presidents of chambers, who will serve as temporary president in case of absence of the president. They also may delegate single functions (i.e. supervision of justices of the peace; negotiations with trade unions; etc.) to individually appointed presidents of chambers. All such measures are inserted in the public “tabelle” mentioned above.

2.13 Are presidents supported in their tasks and by whom?

They usually have a secretarial office supporting them, composed of administrative staff members. Since recruitment of staff in Italy has been blocked for many years, and vacancies are relevant, these offices as many offices in courts are in a delicate situation.

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

No. However, they are in charge to report any disciplinary offense that may arise from any behaviour of judges (thus, also if arising from a decision).

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?

Presidents of chambers (not of courts) are charged by the law of the task to periodically call meetings to discuss differing applications of issues of law in the same chambers. Therefore, the presidents of courts are implicitly responsible to ensure that such meetings take place.

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

Yes. They prepare a productivity target which is also linked to reducing backlogs for cases started before a reasonable timeframe. This target and the programme to obtain it is sent to the CSM; its implementation influences assessment of the court leader.

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?

They do monitor the length of proceedings. They have the power to increase the number of judges in each chamber, to reduce assignment of new cases to judges that have to decide larger numbers of cases, to report to the Prosecutor General possible abuses to have a

disciplinary proceeding started, to report to the Council for the Judiciary in order to have positive or negative assessments of judges and to the Minister of Justice for staff.

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.)?

For staff: the court president can ask the staff to serve extra hours (with an increase of pay), with the agreement of the court top managing officer; the latter authorises holidays and can move personnel among offices.

For judges: the court president authorizes holidays and issues a recommendation on extrajudicial activities, which are authorized by CSM. Moving judges between chambers in order to increase the number of judges in one and reducing it in another is upon the initiative of presidents, but then a complex procedure takes place as a safeguard of irremovability, ending with a decision of CSM. Judges have no working hours limitations.

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?

There are no incentives for judges. For staff, individual projects in some courts (e.g. implementing IT technologies) may be connected to incentives. The presidents are not involved in the process.

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

No power.

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

A very limited discretion. In Italy, funds directly appropriated to the courts are very limited (consumable goods and minor purchases, to be realized within centralised procedures), as most of the needs are directly managed by the Ministry.

2.23 Do presidents manage the court premises and layout?

Not directly (see above).

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

Not directly (see above). However, they can promote local financing or donations of funds to realize IT projects.

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

No.

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?

There is no board.

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.

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

Yes, they are. In court management courses the topic of media relationships is covered.

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)?

No relations.

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.

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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.)?

Presidents of Courts serve for a tenure of 4 years and are renewable only once for another 4 years period. After that, they have to apply for a different post. Upon application for renewal, the CSM makes an assessment based on results obtained, based also on a recommendation of the local Judicial Council. Whereas the Minister is involved in the appointment, no involvement exists in renewals.

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?

See above.

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

In Italy judicial compensation is not linked to the functions performed by the judge.

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

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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 CSM according to the mechanism described above.

4.2 Please describe briefly the selection procedure.

Please see above.

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).

There is no specific training requirement. A newly introduced requirement concerns previous service in the Supreme Court.

A resolution of CSM provides specific "indicators".

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 4 year term, renewable once, as described above for court presidents

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

See above.

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 (as well as the Chief Prosecutor General at the same Court, to whom the same rules as explained above apply) is an “ex officio” member of CSM, as well as of the special managing Council of the Supreme Court.

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

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