

Strasbourg, 20 January 2016

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

Questionnaire for the preparation of the CCJE Opinion No. 19 (2016):
“The role of court presidents”

Please in your answers do not send extracts of your legislation but describe the situation in brief and concise manner.

Comments on what is also happening in practice, and not only on point of law, will be much appreciated.

Introduction

The first three sections deal with presidents of first instance courts and presidents of courts of appeal. Please for each question, if and when applicable, make a distinction between the two positions.

The last section specifically deals with the president of the Supreme Court (e.g. Court of Cassation, Courts of last resort, but not with the Constitutional Courts or bodies with similar authority).

The Bureau and the Secretariat of the CCJE thank you very much for your cooperation and contributions.

1. Selection, removal, term of office, decision making process

1.1 How many presidents of first instance courts and how many presidents of the court of appeal there are in your country?

There is one president of first instance court and one of the court of appeal. Further there are one president of the Supreme Court, one of the Constitutional Court and one of the Administrative Court of Justice.

- 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 courts are appointed by parliament with the consent of the Prince of Liechtenstein. It is not possible that the presidents of the first instance court and the court of appeal are appointed from other legal professions.

- 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.

There is a Judge Selection Committee for the appointment procedure consisting of the prince, members from all parties of the parliament and the government and four external experts.

The vacant position is advertised internally (only for the judges of the courts) several months before. Judges who meet the requirements apply for the position.

After the evaluation the Committee proposes one candidate to the parliament. The proposed candidate has to be elected by a majority vote of the parliament. If this is not the case, a Committee of the parliament and the Judge Selection Committee have to find a compromise candidate.

If there is no consent between the Committee of the parliament and the Judge Selection Committee, parliament has to propose a candidate and in this case a plebiscite has to take place. In the end the prince appoints the elected candidate, if he approves the candidate.

- 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 special training to become a president.

- 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.

The presidents are selected among the judges of the same court.

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

No.

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

See answer before.

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)?

Term of office is five years.

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

There is no limitation for reappointment.

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

The new appointment of presidents requires the same procedure as first time. The president of the court has to apply and is subject to the same procedure and scrutiny as other candidates.

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

Resignation, age for retirement, physical and mental disability to exercise the judicial office, removal from office upon a decision in a disciplinary procedure

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

The president of the court of appeal is in charge of the removal procedure for the president of the first instance. The president of the Supreme Court of Justice is in charge of the removal procedure for the president of the court of appeal.

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

The decisions can be challenged before a panel of the Supreme Court.

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

No. There are some decisions that have to be shared/negotiated with the two deputy presidents (i.e. distribution of tasks among the judges).

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, see answer 1.4

- 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)?

Decisions concerning the distribution of the cases among the judges or decisions that affect the judicial independence can be challenged by the judges before the presidents of the higher court. Other decisions that do not affect the judicial independence are under the supervision of the government.

- 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. About 5 to 50 percent more than that of the other judges (depending on the duration in office).

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

The presidents are not part of the Judge Selection Committee and have no right to be heard either when a new judge is appointed at the court.

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?

The Presidents of the courts are adjudicating cases, but not as much as the other judges.

- 2.2 Are the presidents involved in the selection and recruitment of the judges? (Please make a distinction, if applicable, between full-time/permanent judges, temporary judges, lay judges if it applies in your respective jurisdiction).

The Presidents are not formally involved in the selection and recruitment of the judges. Only in the selection of candidates for trainees to become judges, the president of first instance holds hearings and will report to the judge selection committee.

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

The presidents hold hearings and report to the personnel department of the national administration responsible for appointing.

- 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).

The Presidents do not assess the work of the judges of the court.

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).

Yes. See answer 1.14.

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

No.

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?

At the end of the year the president together with the two deputy presidents decide on the distribution of the cases for the next year among the judges. All the cases from the courts are assigned to judges randomly by an automatic system. The presidents of the court appoint the responsible person competent for this procedure. If there are certain incompatibilities for a judge, he/she has to inform the President of the Court and he/she will make an Order finding and justifying the incompatibility reasons of that judge. The case is assigned to the next competent judge.

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

No. This is governed by the law.

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

In general, if a judge is no longer in the position to deal with a case. (i.e. transfer to other division, transfer to the ministry, sick leave, etc.)

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

Yes, together with the two deputy presidents.

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?

See answer 2.10.

2.13 Are presidents supported in their tasks and by whom?

By two deputy presidents and one court manager.

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?

Yes. They will talk to the other judges in the judge committee and make not binding recommendations.

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

No.

- 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?

Yes. See 2.5

- 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.)?

The working hours of judges and the court staff are set up by law. The presidents are authorised by law to establish the presence of the judges in the court.

They have to approve the absence for holidays. They can move the staff from one function to another. Extrajudicial activities also of judges have to be reported to the president who has the right to forbid them if such activities would jeopardize the image of the judiciary or the productivity of the work of judges. Such decisions could be appealed.

- 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.

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

They only make estimates of the expenses for the government for the next year.

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

Practically none. Nearly all expenses have to be approved by the Ministry of Justice. Exceptions are only minor representation expenses. (expenses for representation, repair works of the court building, purchase of computers, new books and writing material etc.)

2.23 Do presidents manage the court premises and layout?

Yes, but only the president of the first instance. There are no further premises of the court of appeal or the Supreme Court.

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

Yes. See answer above.

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

No. They can make recommendations to the ministry of Justice.

2.26 Are presidents really the managers of the court or they are supported in their functions by a board (please describe the composition) or by a court manager/administrative director?

The president of the first instance is assisted by an administrative director.

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 coordinates and verifies the activities of the secretariats of the court, organizes the work of the staff, approves, after coordination with the president the rules of organization and functioning of the secretariat of the court. He is responsible for computer science of the court and for procuring necessary material and also for accountancy of the court budget.

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 is recruited by the human resource department of the government/national administration. The president is consulted. The term is not limited. The president cannot remove the court manager.

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

Yes. The president might communicate with the mass media. However, in general one of the judges is in charge of securing the relationship with the media concerning cases of public concern. There is no special training to do so.

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 is the so-called conference of the presidents of the first instance and appeal and of the Supreme Court. The president of the first instance presides over this committee. The committee elaborates guidelines for administrative issues of the courts in particular rules of procedure for the court staff, guidelines for computer science and delegating judges to international bodies.

- 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.

The expenses for the salaries of the judges and the court staff are determined by the parliament. Thus, the parliament decides about the number of judges, independent of the work load.

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.)?

Accountability of presidents of courts is structured as accountability of judges.

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

No. The presidents have the responsibility for administrative tasks in addition to their responsibility as a judge. The presidents are obliged to report annually to the government and the parliament on the administration of justice. If the presidents do not comply with their obligations, the same disciplinary procedure is applied as regulated for judges. They have no disciplinary responsibility towards the government.

- 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 special evaluation procedure of presidents. At the end of their term of office (5 years) there is an informal evaluation if they apply for a further period in office.

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

See answer 3.4. If they are not reappointed, they have to continue their work as judges.

- 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 president of the Supreme Court is appointed by the parliament with the consent of the prince.

4.2 Please describe briefly the selection procedure.

See answer 1.2 and 1.4

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 are no special trainings to become president of the Supreme Court.

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)?

Five years.

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

Yes. The process is the same as at the appointment.

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).

Convening sessions and chairing. The president is also speaker for particular cases and has to make written reasoning. The Supreme Court has no special building. The sessions take place at the court of first instance and the judges as well as the president of the Supreme Court do not work full time. The upcoming cases are distributed among the judges of the Supreme Court. Some of the judges of the Supreme Court are lawyers from Austria and Switzerland or judges working at courts in Austria.

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