

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 are 15 presidents of basic courts, 2 presidents of High courts, 1 president of Administrative court, 1 president of Commercial court, 1 president of Appeal court.

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 judges and presidents of the courts of all instances (included and president of Supreme court) shall be elected by the Judicial Council of the Montenegro under the conditions and in the procedure defined by law.(Law on Judicial council) The president of the court shall be elected for a period of five years, with the option to be re-elected to the same office for another five years. Presidents can be appointed from the judges of the court where president has to be appointed, or from the other court of same rank or from the immediately higher rank.

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

Yes ,each court as and higher court has session of judges for “ confidence of vote “before their appointmen ,but this evaluation is not binding for the Judicial council.

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

All candidate for position of the president court shall submit application with the following documents: Evidence of the work experience; Personal and working CV; Grade of the work; A statement whether and which disciplinary sanction was imposed and Program of the work of court for period of five years. The program of work should include: Description and analysis of the situation in the court where the president applied as a candidate (the number of pending cases, the duration of the court proceedings, the number of revoked decisions, number of judges and other employees, working conditions); A proposal for the organization and allocation of tasks in order to improve the work of the court with time frames and indicators.

At the request of candidates who applied for the position of president of the court, Secretariat of the Judicial Council is obliged to provide him with the requested information necessary to prepare the work program. Council for judiciary conducts an interview with the candidates. After evolution of the interview and all other collected data candidate is appointed by decision of the Council of Judiciary by majority vote.

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).

Formally none different from the ordinary judge only it is necessary managerial experience but not obligatory.

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.

See answer under 1.2

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

Yes to the Administrative court of Montenegro

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

There were no such examples.

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)?

The President of the court shall be elected for the period of five years.

The President of the court shall not be a member of the Judicial Council and it can be renewed.

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

Two times

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

New appointment requires same procedure as first time. President of the court has to apply and to be a subject of same procedure as other candidates.

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

Circumstances are the same as for judges:

- **Resignation**
- **Age for retirement,**
- **Removal from office upon the decision of Council of Judiciary in disciplinary procedure**

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

Judicial Council

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

Yes to the Administrative court of the Montenegro

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

No it is not obligatory but it is possible.

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, It is not possibly.

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)?

Presidents of Courts are managing the courts and it is possibly appeal to president of higher court and he can over decide the decision. But it is not happened.

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 it is same remuneration as judge of higher court, (salary of the president basic court is same as salary judge of high court) this is approximately 10%.

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?

Depending of the size court and number of judges in the court, this things regulated by Law on the courts. If in the court there are more than 20 judges ,president of the court may to adjudicate cases but it is not obligate .

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, and lay judges if it applies in your respective jurisdiction).

No

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

YES

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).

Yes, he initiates and starts procedure before Council of Judiciary, he represent act (indictment) before the Council, this procedure is same as procedure CPC.

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?

We have electronic system (PRIS) and cases assigned to judges by automatic system but sometimes its possibly that the president on the court decide to stop assignation of cases to particular time(if judge has a few several and complicated cases, sick- leave..) and his decision is by order/ruling.

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

No, this situation is regulated by law, but sometimes on the panel of judges in the court president can suggest to judges who have old cases to resolve in reasonable time

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

Sometimes if judge is not in position to deal with the cases anymore/in situation as long period sick-leave, transfer to the other department.

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

Yes

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

Yes

2.12 Can presidents delegate their functions to other judges?

No

2.13 Are presidents supported in their tasks and by whom?

Yes by deputy of the president, heads of department and of course by the secretary of the court

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?

It is not under president of the court, in each higher court there are specialized department for uniformity of application of the law which task is to check all court decision and on that way provide uniformity of the law. First step is decision of panel(three judges) if decision is not in agreement with other same case law, president of the department(civil or crime) schedules session of all judges in particular division of the court to resolve this different decision. This decision is obligatory for all judges of the court until there will be new decision on the same issue. Also in Supreme court of Montenegro there are department for uniformity of application of the law.

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

No it is not allowed.

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

Not, this is set up by Minister of justice which proposal document criteria.

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. It is one of his duties and he can set up priorities for some types of cases.

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.)?

President of the court has an authority to authorize absence for holidays and extrajudicial activities have to be reported to the president who has right to forbid it if such activity is not allowed by the letter of the law or it would bring to jeopardy image of the judiciary. Such decision could be appealed to the president of the immediately higher court. As regards working hours of the courts he has not authority.

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?

He has not tasks on that field. Financial plan is upon Council of judiciary

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

No, only for daily allowance

2.23 Do presidents manage the court premises and layout?

Yes

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

The staff in charge of information and communication technology are under the authority of the secretary of council of judiciary.

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

No because we have unified system.

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?

He is manager and he has support by secretary of court and in our system there are not court-manager.

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

%

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.

%

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

Yes when he has meeting with the president of higher and Supreme court ,it organise conference for media but for other things in the court there are spokesperson.

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)?

President of higher court is higher body of court justice system and president of Supreme court is highest body of courts governance system.

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.)?

On the same way as accountability of judges. Judicial council will decide about disciplinary responsibility.

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

No, procedure is the same.

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?

Presidents are not evaluated. Their previous work will be evaluated only if they apply for next five years term of office. In such case they will be evaluated by Council for Judiciary.

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

See in 3.4. only consequence can be no appointment for next term of office.

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?

Parliament, only president of Supreme court appoints by Judicial council.

4.2 Please describe briefly the selection procedure.

The President of the Supreme Court shall be elected and released from duty by two-third majority of the Judicial Council, at proposal of the Supreme Court . The President of the Supreme Court shall be elected for the period of five years. The same person may be elected the president of the Supreme Court no more than two times and composition of The Judicial Council is following-president and nine members.

The members of the Judicial Council shall be: president of the Supreme Court; four judges to be elected and released from duty by the Conference of Judges, taking into account equal representation of courts and judges; four reputable lawyers that are elected and released from duty by the

Parliament at proposal of the competent working body of the Parliament upon announced public invitation; Minister in charge of judicial affairs.

The President of the Judicial Council shall be elected by the Judicial Council from among its members who do not perform judicial functions, by two-third majority vote of the members of the Judicial Council.

The Minister in charge of judicial affairs may not be elected the president of the Judicial Council.

The vote of the President of the Judicial Council shall be decisive in case of equal number of votes.

The composition of the Judicial Council shall be proclaimed by the President of Montenegro.

- 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).

Same as to be judge of Supreme Court and if the candidate who is not judge of Supreme court, he elected first for judge of Supreme court as in the same time .

- 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)?

Same as for other presidents of courts.(five years and one more re-elected)

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

Yes on the same way as first time.

- 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).

President of Supreme Court is highest body of court governance, he/she represents judiciary, he/she presides to the General Assembly of Judges, Gives Annual Report about situation in Judiciary to the Parliament and has all other duties as any other president of court regarding management and governance of the Supreme Court.

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