

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?

In Sweden there are 60 presidents of first instance courts and 10 presidents of the courts of appeals.

- 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 the Government. The procedure is the same in both first instance and the courts of appeals. Further information on the procedure is provided in the answer to question 1.4.

- 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.

The appointment of judges is always based on the submission of written applications by those interested in a particular vacancy. Appointments are made after an open competition which is based on objective factors such as merit and competence. An independent state authority called the Judges Proposals Board administers all matters regarding appointment of permanent judges and court presidents. Provisions concerning the grounds for the procedure for appointing permanent judges and court presidents are laid down in law. The majority of members of the Judges Proposals Board are judges. The Judges Proposals Board submits proposals to the Government on which of the applicants who are best suited for the post. The proposal is motivated and the protocol is sent to the applicants. The Government then makes the decision of whom to appoint as court president. If the Government intends to appoint a person not suggested by the Judges Proposals Board it is obliged to refer the matter back to the Board. The procedure is the same in both first instance and the courts of appeals.

- 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 are no formal requirements as to managerial experience, previous specific judicial position, seniority etc. required to become president of a court. The only formal requirements are that the person in question has to be a Swedish citizen and hold a law degree (which law degrees are required is stated in a Government ordinance). The appointments, however, are made after an open competition which is based on objective factors such as merit and competence and pursuant to a procedure prescribed by law. In the evaluation of competence for positions as court presidents, the Judges Proposals Board places great emphasis on managerial qualifications.

- 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.

It is open for anyone who meets the requirements (see answer to question 1.5), irrespective of in what court the judge in question previously has held office, to apply for a post as president of a court.

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

It is not possible to appeal the Judges Proposals Board's proposals or the Government's decisions.

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

Not applicable.

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

There are no formal requirements for a court president to undergo any specific training in management or other subjects. However, such training is offered by the Swedish National Courts Administration. Court presidents, as well as permanent judges, are offered a wide variety of courses in different fields of law, leadership and management.

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

Presidents are appointed without any limitations as regards the term of office.

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

Please see the answer to question 1.10.

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

Not applicable.

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

The circumstances under which a president of a court can be removed from his or her office are regulated in the Swedish Constitution. A permanent judge (the same is applicable to a president of a court) can only be removed from office when one of two criterions, as set forth in chapter 11 article 7, are fulfilled. The first criterion is that the judge by criminal or gross/repeated neglect is manifestly unfit to hold office, the second is if he or she reached the applicable retirement age or is otherwise obliged by law to resign on grounds of protracted loss of working capacity.

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

The National Disciplinary Offence Board is in charge of the removal procedure. The National Disciplinary Offence Board is, apart from discharge matters concerning judges and court presidents, also responsible for discipline and discharge matters concerning *inter alia* Director-Generals of public authorities, prosecutors and university professors. The purpose and rationale for having a separate body in charge of adjudicating these matters is to achieve an independent adjudication. A matter can be brought to the National

Disciplinary Offence Board's attention either by a report from the employer in question, the Chancellor of Justice or the Parliamentary Ombudsmen.

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

The decisions by the National Disciplinary Offence Board can be subject to adjudication in the Labour Court.

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

The president may refer an administrative issue to a plenary within the court or to a collegial board elected by the plenary. The president must consult the plenary or the collegial board before deciding issues regarding important questions of the court's organisation, operational procedures or the court's internal rules.

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?

Before taking decisions regarding the internal rules of a district court, the court shall consult with the affected Local Prosecution Office/Offices. Any court or president is of course free to consult with *inter alia* a local lawyers association before taking decisions on important questions regarding the operational procedures of the court.

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)?

No, it is up to the president to decide on the organisation of the 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?

Salaries are set on an individual basis where the number of employees is the most important factor. The level of the court within the judiciary is also taken into account as well as personal factors regarding experience. The salaries are set after a negotiation between the president and the Swedish National Courts Administration. Nevertheless, the salary of a court president is higher than that of an ordinary judge at the court in question.

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?

By practice, presidents of the courts usually have a reduction of their caseload. This is normally regulated in the internal rules of the court.

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).

When an office as a permanent judge is vacant the Judges Proposals Board will hand the applications for a specific office to the president in charge of that court and ask for a statement containing a ranking of the candidates. Before doing so, the president shall interview the candidates, or at least some of them.

However, deviating from this procedure, the court may on its own employ a temporary judge for a term not exceeding one year.

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

Yes. The president may however delegate this task to for example a head of division.

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).

Sweden has no formal mechanism in the legal system for the evaluation of the professional judicial performance of permanent judges or court presidents.

However, salaries are reviewed annually and the salary is set individually. That process includes a form of evaluation. Responsible for the review of the salaries is, if the task has not been delegated to a Head of division or a Head of section, the president of the court. Of great importance is that neither the handling of a certain case nor the application of law in a case may have any impact on the salary.

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, the president may address the National Disciplinary Offence Board, please see the answers to questions 1.14.

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

The president cannot fire a judge. As regards the procedure to be followed to remove a judge from office, see then answer to question 1.14.

As regards other court employees, dismissals are handled by the president of the court in question and the Swedish National Courts Administration.

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 fundamental rules on allocation of cases are established by law or regulation. More detailed provisions are to be found in internal rules of each court.

These regulations state that random allocation of cases is to be used but that exemption from this may be made for cases or matters of particular kind, for cases or matters from a particular part of the district, for cases or matters which are so linked they should be handled in the same department, and to achieve an allocation of cases and matters between the courts judges that meet certain specific requirements and otherwise appears reasonable.

It should also be noted that according to a specific provision of the Constitution, no public authority may give a directive to a judge in an individual case or determine how judicial responsibilities shall be distributed among individual judges.

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

Yes, to a certain extent (cf. the answer to question 2.16). Norms on which type of cases should be handled with priority should however be set in the internal rules of the court.

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

With reference to the answer of question 2.7, reasons for allocation of cases which is not random may be i.a. heavy workload, a judge's special experience or cases that should be handled together because of their close connection. A case may also be reallocated if a judge is challengeable, for example if judge has a relation to one of the parties.

The president has the ultimate responsibility for the reallocation of cases. This responsibility can be delegated to a senior judge

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

The president decides the composition of court's sections or divisions.

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

As regards those courts who are divided in sections/divisions, it is the Government that appoints a judge as head of section. The Government also appoints judges as senior judges at the courts of appeal.

2.11 Can presidents delegate their functions to other judges?

Yes, as regards certain administrative issues.

2.12 Are presidents supported in their tasks and by whom?

Presidents are normally supported in their tasks by an administrative director, chief administrator or equivalent. Furthermore, the courts usually have a management team, often consisting of the president, the administrative director (or equivalent) and the court's heads of divisions (where applicable). Also, courts and their presidents are supported by the Swedish National Courts Administration. The fundamental task of the Swedish National Courts Administration is to provide service to the courts. This may involve issues

concerning personnel development, education and information, preparation of regulations, advice and instructions and responsibility for the operation being conducted in an efficient and easily accessible way for the citizens. (Cf. answers to questions 2.20-2.26.)

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

If the president is not part of the panel of judges deciding a case, the president may not influence the judgment. (Cf. the note on constitutional provisions in the answer to question 2.7.)

2.14 Are presidents in charge of the uniform application of the law within the court, and in which way they carry out this function?

No. The application of the law in cases is the responsibility of the individual judge deciding the matter.

Nevertheless, a president may initiate internal discussions among his or her colleagues on general questions concerning the application of the law.

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

Yes, they may do. Timeframe targets are also set in the Government's appropriation directions for the Courts of Sweden. For example, the Government has set the aim that a majority (75%) of the criminal cases (excluding priority cases) should take no longer than six months to determine at a district court or court of appeal.

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

There are no formal obstacles against setting productivity or timeframe targets for individual judges or court staff. However, as regards judges, this would be rather complicated in practice, due to for example the varied complexity of cases, and the fact that cases are normally assigned randomly. Also, productivity targets/timeframes on an individual level could be seen as interfering with the judge's independence.

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

The president is responsible for the effectiveness of the court's work and that the work should be carried out in accordance with the law. For various categories of cases, the law states that they should be dealt with speedily.

When exercising this responsibility, the president shall conduct a follow-up procedure on cases which are not decided within a reasonable time frame.

According to the internal rules of the courts there is a possibility to reallocate cases if one department has a particularly high backlog, temporary lack of staff or for any other similar reason. There is also a possibility to reallocate particularly complex cases to judges with special experience. It is ultimately the president's responsibility to make these decisions. Objectivity and impartiality is to be exercised. The president may sometimes delegate these tasks to a senior judge.

If a party considers that the court does not deal with a case or matter within a reasonable time, the party may request a so-called declaration of precedence. The president may then declare that the case should be prioritized. The circumstances under which a case may be prioritized are regulated by law.

2.18 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 president conducts salary dialogues with judges and other staff, except judges under training and law clerks whose salaries are set in tariffs.

Agreements can be reached with the local trade unions on working hours, but not for judges.

Holidays are authorised by presidents. They can also decide to move staff and judges from one function in a court to another and they decide on additional functions.

As regards extra-judicial activities, the Swedish Public Employment Act provides provisions restricting judges from holding certain posts/functions and engaging in certain activities. Judges shall report their extra-judicial activities to the president, who then decides whether the activity is permitted or not.

2.19 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?

Salaries are to be set according to principles laid down in collective agreements reached by the Swedish National Courts Administration and the trade unions and in a salary policy decided by the Swedish National Courts Administration. Other benefits are decided by the Swedish National Courts Administration.

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

The appropriation of the budget for the Courts of Sweden is done by the Swedish National Courts Administration. The appropriation is based on statistical analysis of the foreseen influx of cases and with regard to various factors such as risk assessment, staffing etc. The courts provide input to the Swedish National Courts Administration in the budgetary process.

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

The president has the ultimate responsibility for managing the court budget within the court.

2.22 Do presidents manage the court premises and layout?

No. The owner of the building in question has the overall responsibility for the management of the actual building. The premise/the building is then (in most cases) rented

by the Swedish National Courts Administration. The Swedish National Courts Administration is responsible for the planning and layout of the building. However, presidents are ~~normally~~ consulted during the planning processes.

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

Normally, this is managed by the Swedish National Courts Administration. However, a president may acquire software and/or other technical equipment which is to be used separately from the technology/equipment provided to the courts by the Swedish National Courts Administration.

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

When it comes to using technology within proceedings, for example when recording witness statements, this is regulated by law. The actual equipment used in proceedings is provided by the Swedish National Courts Administration.

2.25 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 is ultimately responsible for all administrative issues. However, the president may refer an issue to a plenary or to a board elected by the plenary. The president must consult the plenary before deciding issues regarding important questions of the court's organisation, operational procedures or the court's internal rules (cf. the answer to question 1.16).

Presidents are normally supported in their functions by an administrative director, chief administrator or equivalent. Furthermore, the courts usually have management teams, often consisting of the president, the administrative director (or equivalent) and the court's heads of divisions (where applicable) (cf. the answer to question 2.13).

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

This varies between the courts. As regards the functions of the court manager, this is regulated by the individual courts' internal rules.

2.27 Please describe briefly the court manager selection process, if they serve for a limited term, and if the president can remove the court manager.

Those interested in an open position as a court manager/administrative director apply to the court for the position. The selection follows the same procedure applicable to the recruitment of state officials who are not judges. Normally, the position is a permanent one. Court managers/administrative directors enjoy the same employee rights as other state officials.

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

Presidents are responsible for answering media questions regarding the court in general.

Judges are actively encouraged to communicate their own judgments/decisions to the media.

A judge decides himself/herself if and how to communicate with the press. Media training support is available for those judges who so wish. Of crucial importance is that a court president may never infringe or in any way impede the right to the freedom to communicate information as granted by the Constitution.

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 are no formal organisational or work related relations between the presidents of the courts of first instance and the courts of appeal and the presidents of the Supreme Courts.

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

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

A critical issue is the re-assigning of a particular case against the will of the judge to whom the case initially has been assigned. It is probably fair to say that the common position in Sweden is that a president may re-assign a case in the event of clear maladministration, primarily when a judge fails to take any steps towards an adjudication of the case.

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 the courts, as well as judges and other civil servants are subject to the scrutiny of The Parliamentary Ombudsmen as well as the Chancellor of Justice.

The Parliamentary Ombudsmen form one pillar of parliamentary control in Sweden. The task of the Ombudsmen is to review the implementation of laws and other regulations in the public sector on behalf of the Swedish Parliament (Riksdag) and independent of the executive power. This review includes courts of law and ~~other~~ public authorities as well as their employees. The basis for the work of the Ombudsmen is the individual's interest in being treated lawfully and correctly by the authorities. The Ombudsmen may act upon complaints by individuals but can also act on their own accord. The Parliamentary Ombudsmen have the authority to issue statements if the measures taken by a public authority or a public official are in conflict with an existing law or other statute or are incorrect or inappropriate in some other way. The ombudsmen have the right to issue advisory opinions intended to promote uniform and appropriate application of the law. In the role of extra-ordinary prosecutor, the ombudsmen may initiate legal proceedings against an official who, disregarding the obligations of his office or his mandate, has committed a criminal offence. The Ombudsmen may also initiate a discipline or discharge matter to the National Disciplinary Offence Board.

The Chancellor of Justice is free to raise issues on the supervision of authorities of his or her own motion. The majority of cases are however initiated by private parties by means of submitting a written complaint, thus drawing the Chancellor's attention to malpractice or abuse of powers within the public administration. It falls within the competence of The Chancellor of Justice to reach out of court settlements on behalf of the State in actions for damages ("voluntary settlement of claim"). Individuals may therefore turn directly to the Chancellor of Justice with a written application for compensation. If the application is rejected by the Chancellor the right to initiate court proceedings remains. So for example if the Chancellor of Justice finds the state responsible for an infringement of a person's right to a fair trial within a reasonable time he or she can grant that individual pay for damages, the same goes for when a decision delivered by a Government Agency is wrong and that decision has caused an individual damages. The Chancellor of Justice may also initiate a discipline or discharge matter to the National Disciplinary Offence Board.

The Swedish National Courts Administration has a separate and independent body, placed directly under the Director General, responsible for the internal audit. The audit conducted aims at ensuring that the process of internal control in place in each court meets the demands, as laid down in a Government ordinance, that they should conduct their work in an efficient and economical fashion and in accordance with the laws and regulation of Sweden.

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?

There are no formal mechanisms for the evaluation of presidents. However, the process for the revision of salaries for presidents may be said to include a form of evaluation (cf. the answer to question 1.19).

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

Please see the answers to question 1.19 and 3.4.

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 presidents of the Supreme Court and the Supreme Administrative court are appointed by the Government.

4.2 Please describe briefly the selection procedure.

The presidents of the Supreme Court and the Supreme Administrative court are, after an application process in which the post is advertised, proposed by the Judges Proposal Board to the Government. The Judges Proposals Board submits its proposals to the Government on which of the applicants who are best suited for the post. The proposal is motivated and the protocol is sent to the applicants. The Government are then responsible for the decision of whom to appoint as president. The provisions concerning the grounds for this procedure are laid down in law.

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).

To become a president of the Supreme Court or the Supreme Administrative Court you have to have served as a permanent judge. To serve as a permanent judge you have to be a Swedish citizen and hold a law degree (cf. the answer to question 1.5). There are no other formal requirements to become a Justice of the Supreme Court or the Supreme Administrative Court. However, appointments are made after an open competition which is based on objective factors such as merit and competence.

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)?

There are no limitations as to how long the term of office is for a president of the Supreme Courts.

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

Not applicable.

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 tasks and functions of the Presidents of the Supreme Court and the Supreme Administrative Court are similar to that of the presidents of the other courts. The role as president has no specific or formal connection to the Ministry of Justice or Parliament.

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