

ANSWERS TO THE QUESTIONNAIRE

In accordance with the notice no. CCJE BU (2016)1 of the Consultative Council of the Judges in Europe (CCJE) dated 20 January 2016, the answers to the questions on the questionnaire that aims to set the basis for the preparation of CCJE's opinion no 19 of 2016 are as follows:

Since the "divisional courts of appeal" are not active in Turkey yet, the answers to the questions on the 1st, 2nd and 3rd sections encompass the Court of Cassation and the Council of State as the courts of appeal¹ and the courts of last resort in Turkey (Information on the divisional courts of appeal, which are to inaugurate on 20.07.2016, may also be provided upon request). The 4th section has thus become repetitive.

1. Selection, Removal, Term of Office, Decision Making Process

1.1. In our country there are 599 court presidents in total, 393 being the total number of the presidents of judicial justice courts of first instance, and 206 being the total number of the presidents of administrative courts of first instance. As for courts of appeal in Turkey, the Court of Cassation is composed of forty-six chambers, and each chamber has a chamber president. In addition, the Court of Cassation has its own president and two Deputy Presidents. The Council of State is composed of seventeen chambers, and each chamber has a president. In addition, the Council of State has its own president and two Deputy Presidents.

1.2. The first Chamber of The High Council of Judges and Prosecutors appoints the presidents of the courts of first instance. One cannot be appointed as a court president if he/she is not a judge, even though their profession may be related to law. As for the courts of appeal, however, the general assembly of each court of appeal selects its own president. Since the general assemblies of courts of appeal are composed of the members of each court of appeal, the court president will naturally be one of the members of the court.

1.3. The presidents of the courts of first instance do not ask for the confidence vote of the other judges in the court before or after the appointment. The presidents of the courts of appeal do not ask for the confidence vote after being selected by their general assembly, either.

1.4. The presidents of courts of first instance are appointed ex officio by the first Chamber of the High Council of Judges and Prosecutors either on demand or in need, and the candidate's seniority, promotions, records, performance and merit, as well as the reports of the inspector judges on the candidate are taken into account during the appointment process. The legislation provides, however, that the presidents of the courts of appeal are selected among those who are willing to be president by the general assembly of each court of appeal, and the candidate's duration of office in a court of appeal, as well as their merit are taken into account.

1.5. As for the appointment of the presidents of the courts of first instance, the candidate's professional seniority as well as his/her experience, promotions and records, for instance, whether he/she has ever been given a disciplinary penalty, are the factors that are mainly taken into account. The training that the candidate has received is also taken into

¹ The "courts of appeal" stated in the text refers to the Court of Cassation and the Council of State, which are the Supreme Courts in Turkey.

account, but is not compulsory. The legislation provides, however, that the presidents of the courts of appeal are selected among those who are willing to become president by the general assembly of each court of appeal, and the candidate's duration of office in a court of appeal, as well as his/her merit are taken into account.

1.6. It is not compulsory to be serving in the same court of first instance in order to be appointed as the president of it, and same is the case for the courts of appeal.

1.7. The applicants who have failed to be appointed as the president of a court of first instance can appeal to the first Chamber of the High Council of Judges and Prosecutors for the reconsideration of the decision. If their appeal has been rejected, they can also appeal to the General Council of the High Council of Judges and Prosecutors. The decisions of the General Council, though, are final decisions, and cannot be appealed. As for the courts of appeal, however, no specific mechanism of administrative objection has been arranged. However, a case can always be launched to appeal the decision of the general assembly.

1.8. Only few applicants who have failed to be appointed as the president of a court of first instance have appealed against the decision taken about them. Statistically speaking, the rate of those who have appealed so far is not even 1%.

1.9. Those who have been appointed as the president of a court of first instance do not have to receive training on management or any other field. However, the Justice Academy of Turkey does arrange training activities on various fields. No training activities have been arranged or foreseen for the presidents of the courts of appeal.

1.10. The term of office for the presidents serving in the courts of first instance on the third region is three years, and for those who serve in the courts of first instance in the second region is five years. The presidents of the courts of first instance on the third and second regions can be reappointed. There is no limit about the term of office for the presidents of the courts of first instance on the first region in practice. The term of office for all presidents who serve in the courts of appeal is 4 years.

1.11. The presidents of the courts of first instance can be reappointed without any limitations, and same is the case for the presidents of the courts of appeal.

1.12. There is no approval process for those who have been appointed as the presidents of the courts of first instance. However, a performance evaluation and improvement form is regularly arranged for them in respect of their judicial works by the inspectors or chief inspectors at the High Council of Judges and Prosecutors, and a status report is regularly arranged for them in respect of their administrative works by the inspectors or chief inspectors at the Ministry of Justice. During the preparation process of these reports, the number of case files heard, the number of files approved by the Court of Cassation, etc. are taken into account. There is no such a procedure for the presidents of the courts of appeal.

1.13. The presidents of the courts of first instance who fail to prove successful in their position can be removed, their place of service can be changed as a result of investigations carried out by inspectors, or they can be reappointed elsewhere for precautionary reasons. The presidents of the courts of appeal can be removed either as a result of disciplinary or criminal prosecutions, or for health reasons by their own general assembly.

1.14. The presidents of the courts of first instance are removed from their position, reappointed to the same place of service, or appointed elsewhere by the First Chamber of the High Council of Judges and Prosecutors.

Within this context, the legislation provides that the removal or reappointment processes must be based on the reasons such as the term of office in a specific region, the president's request, and the convenience and/or the benefits of serving in a specific place of service.

Within the context of the disciplinary procedure, the presidents can be removed from their position for precautionary reasons, or temporarily appointed elsewhere again for precautionary reasons by the second Chamber of the High Council of Judges and Prosecutors. Within this context, if the continuation of a judge or a prosecutor in his/her service is considered to negatively affect the investigation, or to undermine the authority and prestige of the Judiciary, he or she can be removed from his/her position, or can be appointed elsewhere with a temporary function by the High Council of Judges and Prosecutors.

The presidents of the courts of appeal can be invited to leave their position by the decision of the disciplinary board composed of the members of the court of appeal.

1.15. The presidents of the courts of first instance can send a request to the relevant Chamber of the high Council of Judges and Prosecutors for the reconsideration of any decision taken against them. Those whose reconsideration requests have been rejected can appeal to the General Council of the High Council of Judges and Prosecutors. The legislation provides that the decisions of the General Council of the High Council of Judges and Prosecutors are final decisions, and there is no appeal mechanism to these decisions in the judicial system.

As for the courts of appeal, however, proceedings may be initiated against the decisions of the High Disciplinary Board at the Council of State, and the decisions of the Board of Presidents at the Court of Cassation are only open to administrative objection.

1.16. As for the courts working in boards within our judicial system, some types of cases are heard in boards, and some others are heard by a single judge. The law requires that the decisions taken by the president of a court as a single judge are not subject to negotiation, yet is open to the access of the other members of the court.

Presidents can take administrative decisions regarding the management of the court they serve, on the other hand, either on their own or by negotiating with the other members of the court.

1.17. During the decision making process carried out by the presidents of the courts of first instance, the Union of Lawyers or other authorities within the region can play no role. Since the legislation on the procedure so provides, however, lawyers follow the procedures related to a case and present any required information or evidence.

In the courts of appeal, on the other hand, lawyers have no other role than being party to cases that are being heard.

1.18. The constitution requires that the administrative decisions taken by the presidents of the courts of first instance are subject to the inspection of the inspection board within the Ministry of Justice, and they can be sued.

The decisions taken by the presidents of the courts of appeal, on the other hand, are not subject to inspection by any other authority.

1.19. No additional progress payment is given to the presidents of the courts of first instance.

The legislation provides, however, that the members of the courts of appeal receive the 83% of the financial benefits granted to the highest ranking civil servant. The deputy Presidents of the courts of appeal as well as the Chamber Presidents receive 86%, and the first presidents of the courts of appeal receive the 100% of the financial benefits granted to a highest ranking civil servant.

1.20.

2. Tasks, functions, relations

2.1. The presidents of the first instance courts have the authority due to the procedure to handle the cases carried out by a single judge, and there are no limitations to the number of cases for them to handle.

In the courts of appeal, since the trial is made as a committee, the presidents of the courts of appeal do not have the authorization to make a judicial decision by themselves.

2.2. The presidents of the first instance courts are not involved with the selection and recruitment of judges.

The presidents of the courts of appeal do not have a role in this matter.

2.3. The presidents of the first instance courts are not involved with the selection of the court workers (clerk, bailiff, etc.). However, the presidents of the courts may be involved in that process provided that they are assigned in commissions functioning under the court and have administrative authority.

Among the courts of appeal, the President of the Court of Cassation is in the process of the selection of the court workers under the administrative board; whereas the President of the Council of State has the authority to appoint such personnel upon the proposal of the Secretary General of the Council of State.

2.4. The presidents of the first instance courts do not have the authority to evaluate the judicial decisions of the other judges in their court; however, since they are in charge of the continuation of these judges' duties, their regular working and the productive carrying out of the court's work, they refer the deficiencies they identify to the relevant units.

The presidents of the courts of appeal do not have the authority to monitor the work of the members of the courts of appeal; however, they do have the authority and the duty to evaluate the works of the rapporteur judges in the courts of appeal, as their enrolment supervisor.

2.5. The presidents of the first instance courts do not have the authority to initiate disciplinary action against the judges in their court, but they do have the responsibility to report the deficiencies they identify to the relevant units.

The presidents of the courts of appeal do not have the authority to initiate disciplinary action against the members of the courts of appeal or heads or deputy heads of chambers, but the referral of such issue to the High Disciplinary Board is within the authorization of the Board of Presidents of the court of appeal, which consists of a certain number of presidents and members.

2.6. The presidents of the first instance courts do not have the authority to remove judges or any other court workers from duty.

The presidents of the courts of appeal do not have the authority to remove judges from duty, but it is possible for other court workers to be appointed to a provincial post under the Ministry of Justice upon the request of the Presidency of the Court.

2.7. The presidents of the first instance courts refer case files to the judges according to the order of priority determined by the legislation, and to the principle of equality. During this process, the presidents take into consideration the seniority and experience of the judges working in their court, according to the subject matters and the severity of the case files.

The presidents of the courts of appeal refer case files themselves or through an official they determine, according to the merits stated above. All these matters are regulated by law and other sub-legislations.

2.8. The presidents (first instance and appeal) have to put the cases in order of priority in the way that is stated in the law.

2.9. The presidents (first instance and appeal) refer the cases to other judges only when there is an acceptable excuse (health, leave, etc.).

2.10. The presidents (first instance and appeal) determine the formation of the court committee pursuant to objective criteria at certain periods of time (monthly, weekly).

2.11. No

2.12. The presidents may transfer some of their authorization to their deputies.

2.13. Administrative personnel support presidents in carrying out their duties.

2.14. They do not have such authority.

2.15. They are responsible. They do this by following the relevant case-law and sharing it with the committee at the decision-making stage.

2.16. The presidents of first instance and appeal courts carry out their duties for their courts in a planned and organized manner.

2.17. The presidents of first instance and appeal courts have the authority to set productivity or time limitation goals for the judges or personnel in order to ensure timely completion of work.

2.18. The presidents monitor the length of the judicial procedures. At the end of this monitoring, they identify deficiencies and report them to the relevant units.

2.19. The presidents have the authority emerging from the law to supervise and monitor the judges and the personnel in order for the court to carry out its duties properly.

2.20. Only has the authority emerging from the law to approve some financial incentives of the court personnel.

2.21. In the courts of appeal, the first presidents are in charge of the budget management. The presidents of the first instance courts do not have such responsibility.

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2.23. Yes.

2.24. Yes.

2.25. Authorized in the identification of deficiencies in the regular use and practice of the information and communication network created for all the courts by the Information Technologies Department of the Ministry of Justice.

2.26. The presidents are supported by commissions on certain matters set in the legislation. These commissions are comprised of the other members of the judiciary working in the court.

In the courts of appeal, presidents are supported by the boards, also on certain matters set in the legislation. These boards are comprised of the members of the judiciary working in the courts of appeal.

2.27. Neither the first instance nor the appeal courts have another court administrator.

2.28. -

2.29. The presidents have authority related to the media regarding the courts. These trainings are provided regularly by the Justice Academy of Turkey. The judiciary has a project on this matter titled "Communication with the Mass Media".

2.30. First instance courts and appeal courts do not have any relations other than judicial review.

2.31. Has special powers set forth in other laws, e.g. the Electoral Law.

2.32. -

3. Accountability and discipline

3.1. In the first instance courts, the Inspection Board at the High Council of Judges and Prosecutors and the Inspection Board at the Ministry of Justice are in charge of the accountability of the court presidents.

In the courts of appeal, the ones who are in charge of the budget are accountable to the Court of Auditors.

3.2. No.

3.3. No.

3.4. The presidents of the first instance courts are evaluated according to the performance evaluation criteria stated in the Bylaw of Inspection of the Inspection Board at the High Council of Judges and Prosecutors. This evaluation takes place every two years.

All the presidents at the appeal courts are under the surveillance of the boards of presidency established under their own authority in terms of discipline. In case of an incident requiring disciplinary punishment, the boards of presidency refer the matter to the high board of discipline.

3.5. Provided that the results of the evaluation of performances is good and it is considered appropriate to the requirements of their duties, the presidents of the first instance courts may be appraised in higher-level locations and their requests for appointment in their reassignments are given priority. Those who fail or are unable to exercise their duties may be reassigned to other posts as judges, also according to their acquirements. They may also be given disciplinary punishment pursuant to the legislation.

In the courts of appeal, the presidents are subject to a warning or a sanction of resignation.

3.6. -

4. Appointment, tasks, functions and relations of the presidents of the Supreme Court

(This section is responded to in detail above, and the answers below are in nature of repetition)

4.1. In courts of appeal, the presidents are elected by their own general assembly. General assemblies are comprised of the members of the courts of appeal.

4.2. According to the legislation, the presidents of the courts of appeal are elected from among the volunteers on the grounds of competence and the time they spent as a member of the court of appeal. This election is made with the absolute majority of the number of members and by secret ballot.

4.3. Special training is not envisaged for the selection of presidents in the courts of appeal. However, it may be considered a reason for preference. As for seniority, there are specific requirements of seniority for the first presidents and members of the courts of appeal.

4.4. The presidents of the courts of appeals are not subject to any votes of confidence once they are elected with the votes of the general assemblies.

4.5. All the presidents of the courts of appeal are elected for 4 years of duty.

4.6. All the presidents of the courts of appeal may be re-elected. The procedure of the election is applied.

4.7. None.

4.8. -