

Fourth Study Commission:

1) APPOINTMENT TO JUDICIAL OFFICE

a. Please describe the process by which a person is appointed to judicial office in lower courts, intermediate courts and superior courts pointing out any relevant differences between appointment in criminal civil or appellate courts.

There are two ways of becoming a career judge in Bulgaria:

1. Through appointment as a so-called “junior judge” – qualified lawyers, who can prove moral and professional values through recommendation can take part in an early competition consisting of a written and an oral exam. After the competition the Supreme Judicial Council selects the appointees, confirming or amending the decisions of the ad hoc examination panels. The appointees must complete a 9-month introductory course in the National Institute of Justice, upon the successful completion of which they are appointed to a district court (the second of the four-tier judicial system of the “common” courts, not hearing administrative cases) to serve for two years as junior judge in a panel of three. After a final assessment (no formal exam) they are appointed to single-judge panels in the lowest tier regional courts as either civil or criminal judges (depending on the vacancies and their preferences) –the choice is made by the assembly of all judges in the regional court.

2. Lawyers with certain level of experience in any legal profession can directly apply to become judges in the regional, district or first-instance administrative courts. They take part in a competition similar to that of junior judges, but get appointed by the Supreme Judicial Council directly to their position afterwards. Their training happens in the first 9 months of their career as part-time educational sessions.

b. If applicable, please identify whether political influences of any description bear upon in any way the appointment of a particular person to judicial office.

The Supreme Judicial Council, when acting as appointing body for judges, consists of 14 members – the Presidents of the two Supreme Courts, 6 judges appointed by judges and 6 lawyer appointed by the Parliament. The latter can be politically influenced and have often served as an example of controversial decisions.

Also, the last election of the judicial members, appointed by judges, was rigged. An independent analysis of the voting software revealed significant irregularities in the 2022 elections, including missing log files and 200 people voting from the same IP address in the Supreme Administrative Court (the latter has less than 100 or so judges, about 70 of which have voted electronically). Against this background a special court panel for judicial review declined to declare the elections void. It is suspected that the elected members may have been subject to scrutiny by the political parties.

c. Is ethnic or gender diversity in any way relevant to appointment to judicial office, and if so, please describe why and in what respect each may be relevant.

No quotas exist, in theory the results of the competition shall be decided on the professional performance. About 70 % of the judges are women.

d. Describe whether and if so in what way the process of appointment to judicial office is independent of government.

As described in point “b” above, the appointments to the judiciary are entrusted upon a special body – the Supreme Council of Judiciary, which has a substantial quota of members elected by the judiciary. However, the large pool of different tasks falling within its competence often serves as a distraction of its members, which has made the procedures quite lengthy and ineffective.

2. PROMOTION WITHIN THE JUDICIARY

a. Does scope exist for promotion within the judiciary and if so, please describe how and in what circumstances a magistrate or judge may be promoted.

According to the Bulgarian Judiciary Act of 2006 promotion shall be the result of competitive procedures within the judiciary. Currently, this is the only way for a judge to be appointed in the two higher tiers of the system – the appellate and supreme courts.

The decisions of the competition (largely formal and consists of assessment of the candidates’ performance at work) are affirmed or amended by the Supreme Judicial Council in the same way as by initial appointment.

b. To what extent is political affiliation of political partisanship relevant to promotion within the judiciary?

In theory the process shall be independent of political influence, but in practice several members of the Supreme Judicial Council have been suspected of close ties with politicians, which are hard to prove.

c. Describe the transparency involved in the process of promotion within the judiciary.

The competition part is transparent to a great extent – the ad hoc competition bodies are appointed by lot and can motivate their decisions. However, under certain case law set by the Supreme Administrative Court, the commissions’ decisions are not binding on the Supreme Judicial Council. Their decisions although subject to judicial review are sometimes based on conflicting or inappropriate reasoning.

3. WORKLOAD WITHIN THE JUDICIARY

a. In broad terms, what are the requirements for magistrates and judges in relation to the number of sitting days per year or other measurement of judicial workload requirements?

There is no former requirement for the number of sitting days. Workload is measured by number of cases dealt with according to certain complexity coefficient of different types of cases and by the duration of the proceedings from the time of filing of the initial motion to the final decision of the same instance.

Procedural deadlines are quite inflexible – a judgement with its reasoning shall be delivered in writing one month after the final open hearing, and only in complex criminal cases this deadline can be extended to two months. For really complex or voluminous matters –such as economic crimes, seizure of illegally obtained assets or some property cases these deadlines are rarely followed, although there is a tendency for their enforceability through disciplinary action. The latter process has been widely criticized for subjectivity – see the ECtHR’s case *Miroslava Todorova v Bulgaria*, application no. 40072/13 for details.

Workloads are highly different between courts – military criminal courts and courts in most small towns see less than four times the workload of a judge in the three biggest cities of Sofia, Plovdiv and Varna, although some local anomalies exist.

b. If a judge is encountering trouble keeping up with the workload, describe the regime that applies by which

(i) that judge's workload is allocated to other judges

There is no central rule on how this is done, the matter is left to the general assembly of the respective court, but generally they favour colleagues in need and re-allocate part of their cases or stop the allocation of new cases to judges in trouble.

(ii) the overloaded judge can recover from workload arrears and from any other disabling factor that led to overload.

In theory, a plan shall be drafted with the president of the court on how to overcome issues of overloading. Although the statute specifically mentions this possibility, I have never seen it in practice. "Tacit" re-allocation of cases between colleagues willing to help is more widely practiced.

(iii) there are other mechanisms to address judicial delinquency.

Sadly, more effort is taken to "prosecute" delays than to help colleagues in need.

c. Are judges expected or required to assist other judges who may be adversely affected from overload so as to ensure that the business of the court is discharged in a timely manner.

No such legal obligation exists. It is for the courts' presidents to seek consent for such measures in specific courts. Usually, help comes through volunteering than through obligatory effort. Also, when an overburdened judge leaves a court (or is dismissed), his or her cases will be automatically re-allocated to remaining judges, which is a factor encouraging self-help.

4. REMOVAL FROM JUDICIAL OFFICE

a. Does a regime currently exist in your country pursuant to which a sitting judge may be removed from office. If so, please describe any such regime, giving all relevant details including

(i) who decides that the judge is to be removed from office:

the same body that appoints the judges – the Supreme Judicial Council, in the same composition.

(ii) does the judge have a right of audience on any such motion or otherwise possess a right to be heard against the removal and is there an appeal process if removed;

Yes, the right to hearing is an absolute procedural requirement. Their decision for removal is subject to judicial review by the Supreme Administrative Court.

(iii) what are the grounds for seeking the removal of a sitting judge;

They are four: incompatibility (e.g. exercising of commercial activity); "heavy" breach of professional duties; systematic breach of professional duties; committing an intentional felony and "defacing the prestige of the judiciary" – the latter seems to be problematic, since it is not necessarily connected with any professional conduct.

(iv) what is the relationship between violation of the ethics code/principles and removal;

As the Ethics code is part of the body of rules that govern professional conduct, heavy breaches may result in disciplinary actions.

(v) describe the transparency in the process.

The disciplinary procedure has a public result, the reasoning of the decision of the Supreme Judicial Council and the forth following judicial acts have to be reasoned.

b. If removed from office, describe the adverse consequences that may affect the removed judge including -

(a) financial (especially pension) consequences;

There is no loss of pension. However, judges who are discharged on other grounds (not disciplinary dismissal) have the right of a special gratitude benefit at the end of their duty period, which may be as high as 20 monthly salaries, which is not granted after disciplinary dismissal.

(b) future employment consequences following removal;

If the removal is on "ethical" grounds – e.g. not because of disciplinary breaches concerning overburdening or slow work, the dismissed judge cannot exercise almost any other judicial profession besides an in-house lawyer for a company.

(c) societal consequences including loss of title or civic decorations

This is only applicable when there is a criminal conviction.

and

(d) disciplinary steps that may be taken against the removed judge.

No further disciplinary action may be taken against a dismissed judge, unless it is a case of criminal conviction. Judges also enjoy civil immunity for their professional actions or omissions, so aggravated parties (e.g. by lengthy proceedings) do not have any recourse against the dismissed judge in person. The State bares the civil responsibility for any illegal act or omission of an acting judge unless a crime has been committed.