

**2023 Questionnaire of the 4th Study Commission IAJ-UIM**  
**“The Judicial Workplace and the intersection with judicial independence”**

**Answers from Slovenia**

**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.

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.

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.

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

The conditions for election to judicial office, appointment to a judicial position and the procedure are determined in the Republic of Slovenia by the Judicial Service Act. The Supreme Court of the Republic of Slovenia advertises vacant judicial positions for individual courts, the advertisement is published in the Official Gazette of the Republic of Slovenia and the deadline for applications may not be shorter than 15 days.

Those who meet the general election requirements (citizenship of the Republic of Slovenia, active command of the Slovenian language, general health qualification, age of 30 years, acquisition of a professional title in the Republic of Slovenia - university degree in law or master's degree in law - or completion of comparable education in the field of law abroad may be elected as a judge, together with a decision on recognition of education or nostrification, that he has passed the state law examination, that he has not been convicted of an intentional criminal offence, that no final charge has been brought against him or that a main hearing has been scheduled for an intentional criminal offence on the basis of a charge prosecuted ex officio). If the candidate is running for the vacant position of district court (i.e. lower first level), he or she must, in addition to the general conditions, have at least three years of legal professional experience after passing the state examination. A judge can be elected to the district court if he or she has successfully performed the judicial function at the district court for at least three years or has at least 6 years of professional experience in legal fields after passing the state examination. A person who has successfully served as a judge for at least 6 years or has at least 9 years of professional experience in legal fields after passing the state law examination may be appointed as a Supreme Court judge, but a university teacher of law who has been elected at least to the rank of assistant professor may also be elected as a Supreme Court judge if he or she fulfils the general conditions. A judge can apply for the post of Supreme Court judge if he or she has successfully served as a judge for at least 15 years or has at least 20 years of legal experience after the state examination. Likewise, a university professor of law who fulfils the requirements, i.e. the general conditions, and is awarded at least the title of associate professor can be elected as a supreme court judge.

The existence of the prerequisites for appointment as a judge is examined by the Judicial Council, which, in addition to the fulfilment of the prerequisites and the documentation, also conducts a personal interview with the candidates for the advertised judgeship. After reviewing the applications, the Judicial Council selects a candidate and proposes him or her to the National Assembly for

election when he or she first applies for the vacant judgeship. The National Assembly does not discuss the fulfilment of the conditions, but may elect a candidate or reject his candidacy. The Judicial Council may insist on the nomination, resubmit it or withdraw it. After being elected to the National Assembly, the judge must take an oath before the President of the National Assembly and, on the day of the oath, assume judicial office in the court for which he or she was elected. The Republic of Slovenia is the only country in Europe where judges are still elected by the Parliament as a political body. Recently, it has happened several times that the National Assembly did not follow the proposal of the Judicial Council and did not elect a judge to a judicial office. The Slovenian Association of Judges has been campaigning intensively for many years for an amendment to the Constitution of the Republic of Slovenia, which would provide that judges running for the office of judge for the first time would be elected by the National Assembly, and proposes that judges be appointed by the President of the Republic on the proposal of the Judicial Council. Ethnic or gender diversity is not important for appointment as a judge. However, the position of a judge is not attractive to young ambitious lawyers due to the poor salaries, which is why at least in the courts of first instance more than 90% of the judges are women, even in the higher courts well over half of the judges are women, only in the Supreme Court are there still predominantly male judges. The government or the Ministry of Justice plays no role in the appointment of a judge in the Republic of Slovenia. The entire process of checking whether the requirements for holding the office of judge are met is carried out by the Judicial Council as a sui generis constitutional body, which consists of 11 members. 6 of them are elected by the judges from among themselves, 5 are non-judicial members appointed by the National Assembly on the proposal of the President of the Republic from among prominent jurists (university professors, lawyers, notaries, etc.).

## **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.

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

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

The moment a judge takes the oath and thus enters into an employment relationship with the Republic of Slovenia, he also acquires the right to promotion. The conditions for promotion are also determined by the Judicial Service Act. Judges in the Republic of Slovenia are evaluated every three years, and every year for the first three years of their service. On the basis of an evaluation by the personnel council of the immediately superior court, a judge may be promoted regularly or more quickly or exceptionally, or the judicial service evaluation determines that the judge does not meet the conditions for promotion or that he or she is not suitable for judicial service at all. If, on the basis of the evaluation of the judicial service, it is established that the judge meets the requirements for regular promotion, the judge may be promoted to a higher salary grade within his/her group. If the judicial service evaluation determines that he or she meets the requirements for a faster promotion, he or she moves up two salary steps and may be promoted to the position of a judicial councillor. However, if it is determined during the evaluation that he meets the conditions for an extraordinary promotion to a higher judicial title, he may be promoted to a higher judicial position in the same court. The president of the court decides on the regular promotion of a judge, and the judicial council decides on expedited or extraordinary promotion.

Political affiliation has nothing to do with promotion. In the Republic of Slovenia, judges may be members of political parties, but they may not belong to the party leadership, and judges are advised to refrain from any political activity. There is no automatic promotion. The basis for promotion is a positive evaluation by the staff council.

However, for the final appointment (or promotion) to the highest post - for the supreme court judge - the proposal of the Judicial Council must find the majority of the parliament. We have

seen some politically influenced rejections of candidates for the supreme court in recent years, mostly for deciding cases involving prominent politicians. This highly criticised rule is currently in the process of being abandoned.

We would like to see more transparency in the work of the personnel councils, especially how the directly superior court arrives at the assessment of the judged judge of a lower level. Too often, this assessment is made mainly or even exclusively on the basis of statistical results and the ratio between confirmed and annulled court cases or a conversation about the candidate himself, without objectively comparable criteria. Moreover, voting in the Judicial Council is anonymous and it would certainly contribute to the transparency and confidence of judges in the decisions of the Judicial Council if it abandoned this practise.

### **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?

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;

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

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

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.

Since 2017, there are no so-called judicial norms for judges in the Republic of Slovenia, which means that previously we judges were obliged to solve a certain number of specific cases every month and every year. However, judges were never prescribed how many days a year they had to hear cases. Now the so-called Time standards in force, which otherwise apply to the court and are not directly applicable to the judge, but also have a significant weight on the judges' work and their evaluation. Indeed, the judge's assessment naturally takes into account the disposal of cases in sequence, the disposal of older cases, the disposal of cases returned for reconsideration and the time limits for the completion of individual procedural acts.

If a judge is overloaded with work, in accordance with court rules, the judge's seizure can be stopped, and during the time that the seizure is stopped, new cases are assigned to other judges in the same department, or to the court. The willingness to provide the kind of collegial help that was practically the norm ten or fifteen years ago is no longer there, and there is raw competition, especially among younger colleagues. Possibilities such as those known in some countries, that they can take a longer leave after a certain period of time, e.g. 7 months or even 1 year (Israel), do not exist in the Republic of Slovenia. A judge has 40 working days of leave per year, which serves to gather new strength for further work.

### **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;

(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;

- (iii) what are the grounds for seeking the removal of a sitting judge;
- (iv) what is the relationship between violation of the ethics code/principles and removal; and
- (v) describe the transparency in the process.

B. If removed from office, describe the adverse consequences that may affect the removed judge:

- (a) financial (especially pension) consequences;
- (b) future employment consequences following removal;
- (c) societal consequences including loss of title or civic decorations; and
- (d) disciplinary steps that may be taken against the removed judge.

Yes, in the Republic of Slovenia a judge can be dismissed under the conditions set out in the Judicial Service Act. A judge may be dismissed if he or she commits an intentional criminal offence by abusing his or her judicial function and is convicted by a final judgement. On the basis of such a final judgement, the Judicial Council proposes to the National Assembly that the judge be dismissed. Similarly, a judge may be dismissed if he or she has been convicted of an intentional offence and sentenced to more than 6 months' imprisonment, in which case the Judicial Council also proposes to the National Assembly that the judge be dismissed. The judicial office of a judge is also terminated if the evaluation of his/her judicial activity shows that he/she is no longer suitable for judicial service or if a disciplinary penalty is imposed on him/her to terminate the judicial office. In this case, the termination shall be decided by the Judicial Council. In cases where the Judicial Council decides on the termination of judicial office, legal protection is also guaranteed, the judge has the right to file an administrative appeal against the decision of the Judicial Council. The judge has the right to be present during the examination of such a request (e.g. in disciplinary proceedings, for which a special procedure is provided). A violation of the ethical rules does not lead to the removal or dismissal of the judge, but the violation of the Code of Ethics is only taken into account in the evaluation of the judicial service.

Termination of judicial service as a result of the imposed disciplinary sanction of termination of judicial service is possible only after the completion of disciplinary proceedings conducted by the Judicial Council, more precisely by the Disciplinary Commission within the Judicial Council, in accordance with the rules of the Code of Criminal Procedure and on the basis of a charge brought by a disciplinary prosecutor, and only for acts defined in the Judicial Service Act as violations of judicial duties for which a disciplinary sanction may be imposed. If the judge is found responsible for dismissal from judicial service, disciplinary sanctions may be imposed, which are also defined in the Judicial Service Act and may be as follows:

1. written warning,
2. suspension of promotion,
3. reduction of salary,
4. transfer to another court,
5. termination of judicial functions.

If a judge is sentenced to a disciplinary penalty with a reduction in salary, this has a financial impact, namely directly on salary and consequently on a lower pension. If a judge's judicial function has been terminated due to a negative evaluation of judicial service or as a result of a disciplinary sanction, he or she cannot run again for the judicial function. Any such dismissal of a judge also has social consequences, furthermore the loss of reputation, the possibility of another appointment, but there is no loss of other titles, honors or awards.