

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.

Following the adoption of Amendments to the Constitution of the Republic of Serbia in its part relating to the judiciary, in January 2022, the work began on harmonizing the judicial laws with the applicable regulations of the Constitution of the Republic of Serbia. New constitutional and legal solutions have improved the position of the judicial power. On 9 February 2023, the National Assembly of the Republic of Serbia, among other things, adopted the new Law on Judges, Law on the Organization of Courts, and the Law on the High Judicial Council (*Official Gazette of the Republic of Serbia* No. 10/23)

The new legislation prescribes that election of all judges and court presidents is in the competence of the High Judicial Council (hereinafter referred to as HJC), an independent state authority comprised of 11 members: six judges elected by judges, four prominent lawyers elected by the National Assembly, and the president of the Supreme Court (Art. 150 and 151 of the Constitution).

In Article 145, the Constitution stipulates that the conditions for the election of judges and conditions for the election and term of office of lay judges shall be regulated by a law. Article 48 of the Law on Judges stipulates that a citizen of the Republic of Serbia who meets the general requirements for work in state bodies, who has graduated from law school, passed the bar exam, who is professional and worthy of exercising the judicial function can be elected as a judge. Additional conditions are imposed by Article 49 of the same Law, stating that the required professional experience in the legal profession following the bar exam is: 1) two years for a judge of a misdemeanour court; 2) three years for a judge of a basic court; 3) six years for a judge of a higher court, a commercial court, and the Misdemeanour Appellate Court; 4) ten years for a judge of the Appellate Court, the Commercial Appellate Court and the Administrative Court; 5) twelve years for a judge of the Supreme Court.

According to Article 53 of the Law on Judges, the HJC shall announce a public competition for the election of a judge. The public competition for the election of a judge is published no later than six months before the termination of the judicial office due to the completion of the working life, that is, no later than 15 days after the termination of the judicial office if it was terminated for another reason prescribed by law. The public competition is published in the *Official Gazette of the Republic of Serbia*, other media with national coverage in the Republic of Serbia and at the website of the HJC.

According to Article 54 of the said law, applications are submitted to the HJC within 15 days of the public announcement in the *Official Gazette of the Republic of Serbia*. The application is

submitted along with evidence of eligibility (diploma or evidence of graduation from law school, proof of passing the bar exam, proof of work experience in legal profession). By decision, the HJC establishes a three-member commission that determines the timeliness, admissibility and completeness of submitted applications. Untimely, unauthorized and incomplete applications are rejected by the commission. An objection against this decision may be submitted to the HJC within three days from the date of delivery of the decision.

When it comes to other requirements for the appointment of judges, Article 50 Paragraph 6 of the Law on Judges stipulates that the indicators for the assessment of expertise, qualification and worthiness are set by the HJC, in accordance with the law. These indicators are contained in bylaws adopted by the HJC – Rules on criteria and standards for evaluation of expertise, qualification and worthiness for election of judges holding permanent office to another court or a higher court and on criteria for nominating candidates for court presidents (*Official Gazette 94/2016, 48/2023*), which was harmonized with the new judicial legislation by adoption of amendments and supplements of the Rules, as well as Rules on criteria and standards for evaluation of expertise, qualification and worthiness of candidates being elected for the first time (*Official Gazette 94/2016*).

The election procedure differs depending on whether the candidate is being elected to a higher court or to a court of another kind (meaning, the candidate was already a judge), or, if being elected to their first term. In the election process, the HJC shall obtain data and opinions on the expertise, qualification and worthiness of candidates. Data and opinions are obtained from the authorities and organizations where the candidate worked in the legal profession, while for the candidate who worked in court (as a judge or assistant to the judge), data is obtained from the personal list of the candidate, while the opinion of the session of all judges of a court at which the candidate had worked is always acquired.

Aside from this, for a candidate from the ranks of judges, the opinion of the session of all judges of the directly higher court is also obtained. Also, for these candidates, when deciding on the election of a judge, the HJC shall take into account the grade obtained in the process of evaluating the work of judicial candidates, and other activities important for the performance of the judicial function may also be taken into account. The work of judges (and court presidents) is evaluated based on the criteria and standards prescribed by a special bylaw - the Rules on criteria, standards, procedures and authorities for evaluating the work of judges and court presidents, and the evaluation process is carried out by a special Commission, as a permanent working body of the HJC. The Commission's work is also regulated by special Rules.

For a candidate who has previously not worked as a judge, the HJC shall especially evaluate the type of work they performed after passing the bar exam, while for a candidate who works as assistant to a judge, a work evaluation must be obtained. Namely, in the judicial system of the Republic of Serbia, the status of assistants to judges is equal to those of civil servants, and their work is also evaluated - periodically, in accordance with a special bylaw - the Rules on criteria, standards and procedure for evaluation of work of assistants to judges.

Before the election, a candidate has the right to review all documentation and opinions that are the basis for the decision on candidate selection. The new Law on Judges prescribes that

the HJC must conduct interviews with all the candidates (meaning, it also applies to judges who are candidates for promotion), while the previous Law only stipulated this provision concerning the candidates who were being elected to a judge's term of office for the first time. Before making a decision on the appointment, the HJC conducts interviews with the registered candidates aiming to determine the candidate's communication skills, readiness to perform the judicial function and the professional integrity of the candidate (Article 56 of the Law on Judges). The interview is conducted and evaluated in accordance with a special bylaw adopted by the HJC for the first time following the new judicial laws' entry into force – Rules on conducting and evaluation of interviews with candidates for judges (adopted on the HJC's seating on 8 June 2023).

Candidates who are being elected as judges for the first time must fulfil a special condition in the form of passing a special examination. According to Article 51 of the Law on Judges, the expertise and qualifications of a candidate for a judge who is elected for the first time is verified at the examination organised by the HJC. The HJC prescribes the programme and method of taking the exam, and success in the exam is expressed in grades from 1 to 5.

As an exception, a candidate for a judge who is elected for the first time to a position in the **basic or misdemeanour court** and who has completed initial training at the Judicial Academy is not required to take an exam organised by the HJC, but the final grade on initial training at the Judicial Academy is used as a measure of expertise and competence. However, should a candidate who has completed initial training at the Judicial Academy apply to another court, a court whose rank is higher than that of basic or misdemeanour courts (higher, commercial, appellate court, to name a few), the candidate is obliged to take the same exam.

Following the conduction of the competition, the HJC shall adopt a decision on election to the position of judge, which must be reasoned and (along with the reasoning) published in the *Official Gazette of the Republic of Serbia* and the HJC's website.

Against the decision on election to a judge's position, the candidate can lodge an appeal to the Constitutional Court, which excludes the possibility of filing a constitutional complaint, within 15 days of the public announcement of the decision in the *Official Gazette*. The Constitutional Court must adopt a decision following such an appeal within 30 days of the final day of the deadline for its filing. The Constitutional Court can reject the appeal for being unfounded and confirm the decision on the election to judicial function, or accept the appeal and annul the decision on the election. The decision of the Constitutional Court, along with its reasoning, shall be published in the *Official Gazette*.

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.

Depoliticization of the judiciary, meaning, the reduction of possible political influences - of the executive and legislative powers on the judiciary as a separate branch of power, was the essential goal of the implementation of constitutional amendments in the Republic of Serbia in 2022. In accordance with this goal, the Amendments to the Constitution of the Republic of Serbia prescribed a different composition of the HJC (see 1.A), so that the minister in charge

of the judiciary, as a representative of the executive power, and the president of the parliamentary committee for the judiciary, as a representative of the legislative power, who were both previously members of the HJC by virtue of office, are no longer a part of it. Also, the election of judges and court presidents, including the President of the Supreme Court, is no longer within the competence of the National Assembly, unlike before, when it was prescribed that all judges who are elected for the first time, as well as all court presidents, were elected by the National Assembly of the Republic of Serbia.

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.

According to Article 52 of the Law on Judges, and in accordance with the general constitutional principle of prohibition of discrimination, during the nomination of candidates for a judge, discrimination on any basis is prohibited. However, Paragraph 2 of the same Article stipulates that, when nominating judges and selecting judges, account is taken of the national composition of the population, the appropriate representation of members of national minorities and knowledge of professional legal terminology in the language of the national minority that is in official use in the court.

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

The HJC elects judges and court presidents and decides on the termination of their terms of office, in accordance with the Constitution and the law. In order to depoliticize this authority, as it was already stated, after following the amendments to the Constitution, both the Constitution and law have prescribed a new composition of the HJC. This authority is now comprised of seven judges, including the President of the Supreme Court, as well as four prominent lawyers. Members of the HJC from the ranks of judges, as well as all other judges, are prohibited by the Constitution from political activity. The Constitution also stipulates that the members of the HJC from the ranks of prominent lawyers may not be members of political parties, while the Law on the HJC (which prescribes in detail the conditions for election of members of the HJC from the ranks of prominent lawyers) provides that members of the Council from the ranks of prominent lawyers may not hold positions in authorities of the Republic of Serbia, autonomous province, a local self-government unit, a city municipality or a public service, be a member of a political party, nor act politically in any other way, engage in public or private paid work, with the exception of teaching at the Faculty of Law, nor provide legal services or provide legal advice for a fee. Prescribing these conditions for election as a member of the council (primarily when it comes to members of the Council from the ranks of prominent lawyers, given that all judges are subject to a general prohibition on political activity) had the aim of neutralizing the influence of executive and legislative powers on the work of the HJC, as an authority which, among other things, decides on the election of judges and on the termination of judicial office.

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.

A detailed description of the procedure for judges' promotion to a court of higher instance or another kind is included in the answer to question 1.A. Election to a judge of a court of a higher instance is conducted following a public competition announced by the HJC, while the election procedure, whose important aspect includes the evaluation of the candidate for a judge up to that point, is regulated in detail by the laws and bylaws (rules) adopted by the HJC.

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

As it was already mentioned, judges are prohibited from any form of political activities, meaning that they may not be members of political parties.

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

According to Article 57 of the Law on Judges, the publicity of work during the judge appointment procedure is regulated in more detail by an act adopted by the HJC. Also, the HJC's legal obligation of publishing the decision on judges' election alongside its reasoning, candidates' right to file an appeal to the Constitutional Court, and the Constitutional Court's obligation of publicly disclosing the decision adopted in the appeal procedure, were all prescribed in order to ensure greater transparency of election and promotion in the judiciary. Bearing in mind that new legislation had only recently entered into force, it remains to be seen in what way and to what extent the proclaimed principle of transparency shall be put into practice.

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?

The matter of trial days is regulated by the Court Rules of Procedure. According to Article 179, hearings shall be scheduled for at least three days of the week, with the largest possible number of cases during one trial day and on non-trial days the presiding judge or single judge shall write the adopted decisions, study documents and make all necessary preparations for next hearings. Courts that have the case management software shall register all scheduled hearings, trials and summoned persons. The same article stipulates that priority in scheduling shall be given to hearings in cases that are very urgent or urgent by their nature or under the law, cases from the Old Case Resolution Program and cases that have lasted long.

Regarding the number of cases that a judge should solve, it is important to note that the work of a judge is evaluated both qualitatively and quantitatively (according to the number

of solved cases during a certain period). As already mentioned, the criteria and standards for evaluating the work of judges are prescribed by the Rules on criteria, standards, procedure and authorities for evaluation of work of judges and court presidents. The criterion for evaluating the quantity of judges' work is the monthly norm (the number of cases that a judge in a court of a certain type and rank should solve during the month), and for judges who do not have a sufficient number of cases in their work, the criterion for evaluating the quantity is the number of cases solved in total in relation to the total number of subjects in the work.

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.**

The Law on Judges determines that all judges within one court, acting in the same matter, are being distributed with cases equally, in order for them all to be equally encumbered. Article 24 explicitly stipulates that cases are allocated to a judge according to a schedule that is independent of the personality of parties and circumstances of the legal matter. Cases are allocated to a judge on the basis of the annual court schedule of tasks, taking into account the complexity of the case, pursuant to the Court Rules of Procedure. In the Republic of Serbia, allocation of cases is, as a rule, performed by using a special program – mathematical algorithm, a business software which ensures that, at the end of a cycle of allocation, all judges have an equal number of cases in work, and that they are all equally encumbered.

The Law on Judges also explicitly regulates situations in which it is allowed to derogate the schedule of allocation of cases, meaning, to allocate a case that was allocated to one judge to another. Article 25 stipulates that derogation from the order of receiving cases is only possible in cases stipulated by the law, as well as in case of overburdening or justified preclusion of a judge, pursuant to the Court Rules of Procedure. In accordance with the Court Rules of Procedure, a case may be taken from a judge: when due to his/her prolonged absence it is necessary to deliberate on cases that are urgent under the law or its essence, if efficient work of the court is jeopardised, if the judge was issued a final disciplinary measure due to a disciplinary offence for unjustified procrastination, as well as in other cases stipulated by the law. A case taken away from the judge shall be allocated to another judge in accordance with the Court Rules of Procedure. According to Article 26, a judge is entitled to raise objections to the derogation from the order of receiving cases or taking away cases, with the president of the directly superior court, within three days from the day of becoming aware thereof. Except for the judge, a party to the procedure is also entitled to raise objections, within three days of becoming aware thereof.

Aside from the explicit possibility prescribed by law for the case to be taken away from the judge due to workload, in the courts of the Republic of Serbia, in order to solve the problem of exceptional workload of individual courts, the possibility of delegation of cases to another court was used on several occasions. The institution of delegation is regulated by the Law on

Civil Procedure, which stipulates, in Article 62, that the competent court of the first instance may, on its own or at the proposal of a party, submit a request to the highest court of a certain type to determine whether another court of subject matter jurisdiction shall act in a particular case, if it is obvious that it would be easier to carry out the procedure in that way, or if there are other justified reasons for this. A panel of the highest court of a certain type decides on the request of the competent court of first instance from Paragraph 1 of said article. The request, that is, the proposal for the delegation of jurisdiction can be submitted in the second instance procedure under the conditions from Paragraph 1 of said article.

However, it is important to point out that this mechanism was not applied in practice to relieve an individual judge, but entire courts, i.e. court departments that were extremely burdened by the number of cases at a given moment, with a continuous large influx of cases. Namely, the problem of uneven workload, with at the same time exceptional workload of certain courts in the Serbian judiciary, has existed for more than a decade. Courts in the area of the City of Belgrade, as well as those in the seats of appellate courts - Novi Sad, Kragujevac and Niš, are particularly burdened. For example, while some courts in the Republic of Serbia at the end of 2020 had 60 (Basic Court in Valjevo) or 74 cases per judge in civil matters, such as the Basic Court in Majdanpek, at the same time, at the First Basic Court in Belgrade, 1,092 cases per judge and as many as 2,294 cases per judge in the Third Basic Court in Belgrade, remained unresolved. Therefore, during 2021, the Supreme Court of Cassation delegated about 80,000 civil cases from the First and Third Basic Courts in Belgrade, and these cases were distributed to courts throughout Serbia. Also, in practice, this mechanism was used to relieve the Second Instance Civil Department of the Higher Court in Belgrade, as the court which was the most burdened with the number of cases, and appeal cases were delegated to higher courts throughout the Republic of Serbia.

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.

Although the Law explicitly provides that case redistribution can be carried out due to the workload of an individual judge, i.e. due to problems with overcoming the influx of a certain judge, this is not a popular measure and is not a frequent case in practice (except in case of illness or prolonged absence of a judge). However, the way in which the issue of the workload of an individual judge will be resolved in a certain court is individual, and each collective (court) shall, according to the circumstances of the specific case and taking into account the specifics of the matter in which that judge acts, take measures to reduce the number of cases in work (e.g. additional hiring of judicial trainees and assistants to judges who will help a specific judge in his work, etc.)

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.

Article 146 of the Constitution of the Republic of Serbia stipulates that the term of office of a judge is permanent. The term of office of a judge lasts from election as judge until the end of their career (reaching the age of 65). Before the end of career, a judge's term of office may be terminated due to the following reasons: by their own request, due to a permanent loss of working ability for judicial function, if their citizenship of the Republic of Serbia is cancelled, or if they are dismissed.

The decision on the termination of a judge's office is made by the HJC.

A judge has the right to lodge an appeal against the decision of the HJC on the termination of judicial function with the Constitutional Court within 30 days from the day of receipt of the decision, which excludes the right to submit a constitutional complaint.

According to Article 67, The office of the judge terminates when, based on the opinion of the expert committee of the competent body, it is established that the judge is permanently incapable of performing the function due to his/her health condition. The HJC, acting *ex officio* or following the proposal of the president of the court, the president of the immediately superior court or the judge in question, shall issue a decision on referring the judge to a mandatory medical examination for the evaluation of the work ability of the judge. The opinion of the expert committee of the competent body referred to in paragraph 1 of this Article shall be submitted to the HJC.

Pursuant to Article 68, a judge is dismissed if convicted for an offence carrying imprisonment sentence of at least six months or if a disciplinary proceeding shows that the judge has committed a severe disciplinary violation which, in the opinion of the HJC, seriously damages the reputation of the judicial function or the public's trust in courts.

The HJC initiates and conducts *ex officio* the procedure to determine the reasons for the dismissal of a judge due to a final conviction for a criminal offence of imprisonment of at least six months. The procedure may be also initiated at the proposal of the president of the court in which the judge performs the judicial function. The court of first instance before which the criminal proceeding against the judge was held is under the obligation to promptly provide the HJC and the president of the court where the judge performs the judicial function with a final conviction.

When it comes to severe disciplinary violation as basis for dismissal of a judge, Article 70 of the Law on Judges prescribes that The HJC determines the facts on whether a serious disciplinary offence of a judge, determined by a final decision, is such that it seriously damages the reputation of the judicial office or the public trust in the courts. The procedure referred to in paragraph 1 of this Article is initiated by the HJC *ex officio* or at the proposal of

the Disciplinary Commission. The HJC is obliged to conduct the procedure and make a decision within 90 days from the date of initiation of the procedure for establishing the reasons for the dismissal of a judge, and such a decision must be reasoned.

According to Article 71, the judge has the right to be informed immediately about the reasons for initiating the procedure, to become familiar with the case, the accompanying documentation and the course of the procedure, and to provide explanations and evidence for their allegations either directly or through an attorney. A judge has the right to present his/her allegations in person before the HJC. The procedure is urgent and closed to the public, carried out by applying all guarantees of fair hearing, unless the judge against whom the proceeding is instigated requests that the proceeding is open to the public.

The decision on the termination of a judge's office is made by the HJC, after the procedure in which it determines the reasons for the termination of judicial office. The decision on the termination of judicial function must be reasoned and it is published in the *Official Gazette of the Republic of Serbia* and at the website of the HJC. (Article 72)

Pursuant to Article 73, a judge has the right to lodge an appeal against the decision of the HJC on the termination of judicial function with the Constitutional Court within 30 days from the day of receipt of the decision, which excludes the right to submit a constitutional complaint. By its decision, the Constitutional Court can reject the appeal or accept the appeal and cancel the decision on the termination of judicial function. The decision of the Constitutional Court is final and is published in the *Official Gazette of the Republic of Serbia*.

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

- (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.**

When it comes to the consequences of the termination of the judgeship before the end of career, the Constitution of the Republic of Serbia and judicial laws do not contain special provisions on the matter. After termination of office, dismissed judges, as well as judges whose office was terminated at personal request or due to loss of working capacity, exercise their rights to pension, health and social insurance in accordance with the general regulations on pension, health and social insurance, just like everyone else, and the seniority spent by the judge in the performance of the judicial function is taken into account in the pension basis when exercising the right to a pension.