

General Report of the Fourth Study Commission of the International Association of Judges – 2023

The Judicial Workplace and the Intersection with Judicial Independence

In 2023, the Fourth Study Commission of the International Association of Judges sent out a questionnaire on the topic of “The Judicial Workplace and the Intersection with Judicial Independence.” The questionnaire asked each country about the appointment process for its judges, the promotion process (if any) within the judiciary, the workload of the judiciary, and the procedure for removal of judges from judicial office. We received responses from 41 countries by September 8, 2023: Angola, Armenia, Australia, Austria, Benin, Brazil, Bulgaria, Canada, Chile, Cyprus, Estonia, Finland, France, Georgia, Germany, Greece, Iceland, Ireland, Israel, Italy, Kazakhstan, Liberia, Lithuania, Moldova, Mali, Mexico, Mongolia, Morocco, Paraguay, the Philippines, Poland, Portugal, Romania, Serbia, Slovenia, Spain, Sweden, Taiwan, the United Kingdom, the United States, and Uruguay. The following is a general report summarizing those responses.

I. Appointment to Judicial Office

Judges in most countries are appointed by an elected official, such as the President or Prime Minister, after a thorough selection process. The procedure for assessing judicial candidates varies widely across the globe. Candidates for judgeships are often evaluated during a hearing or interview by a non-executive branch body, such as the Advisory Judicial Council in Cyprus, the Senate in the United States, or the High Council of Justice in Georgia. Some countries, such as Australia, Israel, and Mongolia, require judges to have a specific number of years of legal experience before ascending to the bench. Other countries, like Moldova, require a certain number of years of judicial experience before elevation to an appellate court. In Armenia, Brazil, Benin, Kazakhstan, and Uruguay, among other countries, judicial candidates must pass an exam. Prospective judges in several

countries undergo training or apprentice programs—which can be several years long—before they are appointed.

A common practice internationally is to have a different nomination or appointment process for lower court judges than for judges at the nation’s highest court. For example, in Liberia, judges and magistrates of courts “not of record,” the lowest and first-instance courts, are appointed solely by the President, whereas judges of higher courts are appointed by the President with the advice and consent of the Senate. Likewise, Iceland’s president appoints high court judges after receiving a proposal from the Minister of Justice, but lower court judges are appointed solely by the Minister of Justice.

The scope of judicial independence from other branches of government varies as well. A minority of countries have no elected official involved in judicial appointments. In Greece, for example, law graduates must successfully complete a competition conducted by the National School of Judges and spend a year as a probationer before becoming a judge, although the vice presidents and president of the High Court are appointed directly from the government. Judicial appointments in the Philippines are preceded by a lengthy process of applications, investigations, tests, and interviews designed to encourage independence from the government. Many countries, like the United States and Paraguay, say that the judiciary is theoretically independent from the rest of the government, but that political influences play a factor in judicial selection when elected officials are involved in the appointment process. In Germany, the selection procedure for federal judges by the Federal Minister of Justice and the German parliament has been criticized for having too much political involvement.

Although many countries base judicial appointments solely on merit, several have an express commitment to appointing diverse candidates to the judiciary. For example, the Canadian government has stated its desire that the makeup of the judiciary reflect the diversity of the population. France focuses specifically on social diversity; its National School for the Judiciary runs a preparatory program for prospective judges from disadvantaged social backgrounds. In Romania, for courts where a national minority group constitutes at least 50% of the constituent

population, priority for judicial appointments is given to candidates who speak the minority language.

Several countries report that anti-discrimination laws apply to the judicial appointment process. Other countries report a custom of striving to appoint diverse judges even in the absence of an enumerated law or policy regarding diversity. Gender diversity is a particular factor in judicial appointments in multiple countries. In Mali, there is no written rule for diversity generally, but at least 30% of judges must be a particular sex to ensure women are not significantly under-represented. Mexico also has a rule requiring gender parity in its judiciary. In Bulgaria and Greece, although there are no formal gender quotas, women make up 70% and 80% of judges, respectively.

II. Promotion within the Judiciary

The countries surveyed take a variety of approaches to judicial promotion. In almost every country, a sitting judge is eligible to be considered for appointment to a higher court or position, but the criteria for promoting a judge differs widely.

In several countries such as Austria, Australia, Canada, Iceland, and Sweden, a current judge seeking appointment to a higher court applies to the open position just as any other applicant would. In those countries, judges are evaluated the same way as outside applicants, and promotion procedures generally mirror ordinary judicial appointment procedures. Brazil has a hybrid system of promotion. 80% of judges on the Courts of Appeal, the intermediate courts, are promoted from current judges of the lower courts while 20% of judicial seats on the Courts of Appeal are reserved for public prosecutors and lawyers. In other countries, such as Bulgaria and Portugal, only current members of the judiciary are eligible for promotion to higher courts and/or positions. Promotion to a higher court in these countries may be the product of a selection process that considers a judge's merit and performance as demonstrated during his or her judicial tenure. On the other hand, Greece promotes judges in order of seniority. A few countries, such as the Philippines, Israel, and the United Kingdom, indicated a preference for promoting existing judges to higher positions to encourage careerism in the judiciary and career progression among

judges, whereas Estonia indicated that outside candidates are generally preferred over the promotion of existing judges (which has disappointed some judges).

Regarding the role of politics, many countries reported that political affiliation has no relevance in judicial promotion. Other countries such as Angola, Bulgaria, Greece, Liberia, and the United States acknowledged that while politics are not expressly relevant to judicial promotion, political affiliation sometimes plays a role in practice given the composition of the bodies responsible for making judicial promotion decisions. In the United States, the President makes the nominations, which must be confirmed by the Senate. In Liberia, though judges are statutorily and canonically barred from engaging in partisan politics, there are isolated cases where a judge or magistrate may have been promoted because of prior party affiliation. Meanwhile, some countries expressly acknowledged that politics can be a deciding factor in judicial promotion. Armenia, for example, stated that it was evident that the political agreement of a judge is a significant factor for the President of the Supreme Judicial Council (the body exclusively responsible for promoting judges), who is a member of the ruling party. And in Poland, many judges who have been appointed to higher judicial positions are loyal to the ruling party.

Finally, countries vary in the amount of public transparency inherent in the judicial promotion process. Armenia, Estonia, and Ireland indicated that there is almost no public transparency. Other countries such as Bulgaria, Israel, Kazakhstan, the Philippines, and Lithuania make transparent certain parts of the process (for instance, the criteria for promotion and/or the names and rankings of candidates may be made publicly available), whereas other aspects of the process (for instance, the reasoning for the ultimate selection of a candidate) remain opaque. In countries such as Cyprus, Portugal, Romania, and Sweden, on the other hand, nearly all aspects of the promotion process are made public, including the rationale behind the selecting body's decision.

III. Workload Within the Judiciary

More than half of the countries surveyed reported no objective requirements for judges. In these systems, cases are generally divided evenly among the jurists. Several of these countries regulate judicial workload by imposing deadlines for

decisions. Finland requires lower courts to issue decisions within 14 to 30 days. Benin and Bulgaria stipulate deadlines specific to case type. In Moldova, an automated program assigns cases to judges and creates electronic reports on various judicial performance metrics, which are publicly available online. By contrast, approximately one third of respondents stated that each jurisdiction within their court system sets its own sitting requirements. In Canada, for example, courts set case minimums, while in Poland, courts stipulate the minimum number of sittings. Liberia and Morocco, instead, stipulate the number of days judges must sit annually. A distinct system appears to be Austria, which has a fixed case allocation per judge.

The responding countries use a variety of tactics to manage judicial workloads. While nearly half of the countries surveyed sometimes reallocate cases, the reasons for doing so vary. Approximately one quarter of respondents empower the head of the jurisdiction to reassign cases when a judge is struggling with the workload. Half of these jurisdictions do so only with the consent of the assignee. A more systematic example, however, is Cyprus, which annually reviews case status and reassigns old cases. France, Ireland, Liberia, and Spain instead appoint or reassign new judges to temporarily alleviate the backlog. The remaining quarter of countries reallocate cases only in exceptional circumstances. For example, Serbia, Greece, Iceland, and Lithuania reassign a judge's cases only if that judge is taking a long absence from the court or has been disciplined. Taiwan similarly allows reallocation only if a judge has been relocated or promoted, or has resigned, retired, or taken parental leave. Nearly half of the responding countries use other recovery assistance mechanisms instead, allowing extensions on mandatory decision deadlines or temporarily exempting an overburdened judge from new case assignments. One quarter of countries surveyed employ these mechanisms in addition to reallocation.

Nearly a quarter of countries, however, provide no options for altering a judge's workload. While Angola, Bulgaria, and Morocco report that judges may—and often do—voluntarily assist their colleagues, Chile and Slovenia state that even voluntary assistance is not part of the judicial culture.

IV. Removal from Judicial Office

All the countries surveyed described some regime of removing judges from office, though many emphasized the intentional difficulty of that process and others hesitated to refer to their country's approach as removal. Iceland, Austria, and Australia, among others, emphasized the importance of judicial independence and the high bar required for removing a judicial officer. Germany echoed this point, adding that impeachment of judges does not curb judicial independence as guaranteed independence comes with the obligation to comply with the law. Kazakhstan noted that its Constitutional Law on the Judiciary and the Status of Judges does not provide for removal, though it does recognize the concepts of suspension of powers and termination of powers for disciplinary offenses. Finland does not have disciplinary proceedings against judges, but judges may be removed if they commit a serious crime or are found to be manifestly unfit to hold office. The United States permits removal only through the impeachment process via the Congress. Such a process is rare, though judges may be disciplined for ethics infractions that fall short of "high crimes and misdemeanors."

When it comes to initiating a removal, different countries empower different actors. Many countries relegate the job to a judicial body, such as Greece's Superior Disciplinary Council composed only of judges. Others have created a more mixed decision-making group. In Morocco, for example, the Superior Council of the Judiciary is chaired by the King of Morocco and includes members of the judiciary, the legal bar, and civil society representatives. A few countries, like Romania and Lithuania, give the executive branch the power to propose dismissal or make the final decision. Poland describes the downsides of a model that empowers a political ruling party, as politicians have sought to exert control over the body authorized to remove judges and the ruling coalition has stymied recent efforts to transfer disciplinary cases to the Supreme Administrative Court.

Fortunately, most countries described an open, transparent removal procedure. Many countries provide judges with counsel and the right to a hearing, and Mali emphasized that the judge is also assured a speedy process that may not last beyond six months. In Brazil, disciplinary actions against judges are generally public and the accused judge is entitled to formal adversary proceedings and a full

defense. Israel provides for an appeal, noting that there is precedent where the committee decided to remove a judge, the judge appealed, and the Supreme Court reinstated her. Paraguay does not provide for appeals, but judges subject to discipline have other recourse, such as seeking clarification of a disciplinary decision. Most countries that conduct hearings that are closed to the public still include some form of accountability, such as in the United Kingdom where the disciplinary statements used in hearings are then published on a government website. Mongolia was a rare example of a country conducting an *in camera* proceeding where the claimant may not participate in the hearing.

When asked to describe the financial, employment, social, and disciplinary consequences that flow from a removal, most countries said the consequences vary by the individual circumstances of the case. As Mexico succinctly put it, “*Todas las anteriores*”—all the above. Though many countries said the consequences were fact-specific, the Philippines has clear repercussions: a judge removed from service loses their pension, the chance to hold government office, and the ability to practice law. In Liberia, a former judge may not use the title of “Judge Emeritus” or “Retired Judge” but will not lose civil decorations. Bulgaria shields a removed judge from civil suits, making the state responsible for the judge’s wrongful conduct against litigants. Finally, countries also differed on the permanence of removal. Spain allows a sanctioned judge to return, while Slovenia and Italy do not.

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