THE JUDICIAL WORKPLACE AND THE INTERSECTION WITH JUDICIAL INDEPENDENCE

Fourth Study Commission Questionnaire—2023

REPLIES OF THE ASSOCIATION OF JUDGES OF THE REPUBLIC OF ARMENIA

For most, appointment to judicial office represents not only immense personal achievement but also public acknowledgment of professional eminence. In this Fourth Study Commission analysis, we will look at the judicial workplace and examine aspects of appointment to judicial office, promotion within the judiciary, equitable allocation and distribution of judicial workload and removal from judicial office. This review also endeavors to consider how the judicial workplace is or is not comparable to other workplaces.

Please answer the following in respect of your own country.

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.

In 2022 a member of the party in power was appointed RA Mnistry of Justice. Afterwards, in November of the same year the same person was appointed to the position of a member of the Supreme Judicial Council and later its President by the same political party of the National Assembly, i.e. by the majority of the parliament. Meanwhile, his close friend who was his deputy minister and a member of the same political team, was appointed as the Minister of Justice. Thus, through the collective efforts of the members of the same political team – the President of the Supreme Judicial Council and Minsiter of Justice, a number of legislative amendments have entered into force by the appoval of the National Assembly since January 2023. This has drastically changed the approaches determined by the current regulations and has created ample grounds for arbitrariness and abuse. Thus, for instace, double standards have been introduced and endorsed in the judical code namely with regard to examination prodecures for vacant positions of judges, demands set forth for controversial candidates, as well as unequal, ungrounded attitude towards judge candidates during the examination. Under the current regulations, a candidate is required to take complicated exams followed by a 6-8-month study period and additional exams, a series of ethical, psychological and other tests and finally an interview with the staff of the Supreme Judicial Council. However, none of the abovementioned is required under the second procedure. Any person aged 25 who has a higher education and three years of professional experience can become a judge based on interview results only.

The law determines a series of standards – age, experience, etc. necessary to appear on the promotion list of the Court of Cassation or Courts of Appeal. Having passed the threshold, the

authorized bodies carry out an all-out examination of the candidates personal file and arrive at a conclusion. Then, if the results are satisfactory, the person is included on the promotion list by 5 votes.
It is noteworthy, the all of the abovementioned regulations turn out to be pointless, since due to the artificially created legal gap a person may be left out of the promotion list with no reason whatseoever because of certain activities or inactivity on the part of the Supreme Judicial Council.

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.
As stated above, the current legislation has made it possible for the Supreme Judicial Council to appoint and fail to appoint people to the judicial position without any explanation or grounds. This may also happen out of political considerations.

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 case of ethnic and gender diversity impact on judical appointments has been acknowledged so far.

D. Describe whether and if so in what way the process of appointment to judicial office is independent of government.
Pursuant to the current legislation, the decisions of the Supreme Judicial Council, including those regarding the appointment of judicial candidates, their inclusion in promotion lists and the appointment of the enlisted people to the position of a judge are made by 5 votes. 5 out of 10 members of the Supreme Judicial Council are elected by the majority of the National Assembly who, currently, are members of the political party in power. As already stated above, the Minister of Justice was also appointed by the decision of the head of the ruling party. As to the President of the Supreme Judical Council, prior to his appointment to the post, he held the position of the Minister of Justice and was also a member of the ruling party.
All this comes to confirm the idea that the appointment of the judiciary in the Republic of Armenia is directly affected by the wish of the executive authorities. The RA Minister of Justice, a member of the established political party, is the close friend of the President of the Supreme Judicial Council and shares common economic interests with the family of the latter. This contains corruption risks and can directly affect the selection of the nominees and their appointment by the Supreme Judicial Council.
Besides, law states that only one of the three candidates introduced by the Supreme Judicial Council can be appointed to the position of a judge of the courts of appeal - the one that receives the 2/3 of the votes of the National Assembly, which representes the same political party as the government. Thus, the vast majority of the current Court of Appeal, has, de facto, been elected by the fellow party members holding offices in the executive branch - the government of the country, i.e. by the members of the ruling party that make up the majority of the National Assembly.

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.

To be included in the promotion list of the courts of appeal, a person needs to have a certain amount of experience - …. years of judicial experience for a judge. Scientists are also given an opportunity to be included in the prmotion list of judges, which, supposes more practical experience.

After meeting these requirements, the authorised bodies carry out a detailed examination of the personal file of the candidates and come up with a conclusion. Only after these procedures can a person be included in the promotion list at the courts of appeal.

It is noteworthy, that all the regulations mentioned above become void and meaningless since due to the artificially made legal gap, the Supreme Judicial Council can remove anyone from the promotion list without any explanation.

Hence, a scientist with no judicial experience, may be included in the promotion list of judges by the decision of the Supreme Judicial Council and be appointed to the position of a judge in a high judicial body, or vice versa, a candidae who has met all the legislative requirements can be removed from the list without any grounds or explanations whatsoever. Such cases were recorded with the promotion lists of judges under the sections of both criminal and civil specialisations, in April and May of the current year when a number of people were removed from the lists.

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

As already stated above, the promotion of judges in the Republic of Armenia takes place exclusively by the wish of the Supreme Judicil Council. If we consider the fact that the appointment of a judge through promotion is made possible by 5 votes of the Supreme Judicial Council, then it becomes evident that the political agreement is a significant factor for the President of the Supreme Judicial Council, a member of the ruling party. Thus, for instance, the powers of the judge who rejected the claim filed by the Prime Minister regarding the civil case of the RA Prime Minister's daughter have been terminated, whereas the judge, who partially satisfied the claim after the annulation of the court decision, was included in the promotion list of the judges at the Court of Cassation. Similar cases abound in number.

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

The level of transperency with regard to judicial promotion is close to zero. To begin with, information regarding the judge candidates, promotion lists, their elligibility determined by the law, the results of the examination of the personal files is unavailable and is not made public. The Supreme Judicial Council website only contains information about the final appointments of the judges.

No least importantly, in the course of 2023, a number of judges have been removed from the promotion lists without any explanation. The reasons for and grounds of these decisions have not been publicized. What is more, the judges themselves have not been provided with any expolanation, either. Some of them are currently disputing these decisions in the Administrative Court.

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?

It is worth noting that the number of sessions to be held within a year is not specified by the law or any other legal act. Milestone dates for civil cases were fixed by the Supreme Judicial Council. While the draft decision was being circulated, a number of acting judges presented well-grounded objections pointing to the increasing number of civil cases, offering other reasonable deadlines. Anyway, the decision was adopted. Still, it does not work de facto, since it is unrealistic and does not reflect the statistical data submitted in the annual report of the judical department.

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.

Currently, all judges with all specializations face the problem of overoload in the Republic of Armenia with no exception. The overload of the judges with criminal and civil specialization in Yerevan has reached its irreversible peak and demonstrates no tendency of decline.

The law does not suggest any procedure that would make it possible to redistribute the cases of more overloaded judges. This, however, would be inappropriate, as well, since, anyway, the overload of each judge does not allow examining the civil cases redistributed from another judicial composition in a shorter time than the previous judge could do. Hence, the redistribution of cases would prove ineffective.

No compensation is anticipated in such cases.

The law anticipates a temporary closed institute for the delegation of overloaded judges. This mechanism is practiced by the Supreme Judicial Council, though selectively. The council can, in an arbitrary fashion, decide to close the delegation of cases for a certain judge from one to two months and decline to do the same for another judge with the same amount of overload. This can be done without revealing the causes of the decision or providing any explanation. That is, the Supreme Judicial Council applies double standards at will.

Besides, there exists the problem of unequal distribution of cases among judges. The difference in the number of annually delegated cases to different judges can reach the triple. The issue has been voiced by the judges themselves. However, the problem has not been solved yet.

The distribution of the cases of the judges who have reached the retirement age or are on pre-natal/ post-natal leave, who have left the system due to the termination of powers is yet another challenge. These cases become an additional burden in addition to new and current cases that keep growing on daily basis.

It is noteworthy that judges appointed to Yerevan from regions are often sent back to their previous workplace to finish their cases. However, their position in Yerevan cannot be considered vacant any more. As a result, the whole number of existing cases is distributed only among the 2/3 of the judges included in the list of judges stipulated by the law. This, serves as an additional artificial factor contributing to the uninterrupted trend of the overload. Presently, we can record that the Civil Court of Yerevan is paralysed.

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. The judical system in the Republic of Armenia has never been in such a tragic state. This negatively affects not only the ones who turn to the judicial system, but also the judges, the staff of the judge, other judicial officials, their work, productivity, physical and psychological health, family members and causes a series of other problems. In this situation, judges can no longer help each other. The issue has become widely uncontrollable and calls for definite solutions, comprehensive acting mechanisms to help the judicial system overcome the crisis at least within the next three years. However, no initiative is undertaken by either Supreme Judicial Council, executive or legislative bodies.

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 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.

The terms/grounds of the termination of the powers of judges are defined by Article 159 of the RA Judicial Code. These are the violation of the incompatibility requirements, engagement in political activities, impossibility to carry out the official duties due to temporary incapacity for work, physical impairment or disease that can hinder the appointment to the position of a judge.

Currently, the most common and applicable ground on which the powers of judges are terminated and which comprises more risks of abuse is the imposed termination of powers on the ground of an essential disciplinary violation defined by Article 149 of the RA Judicial Code. Therefore, we should conentrate on it.

This is a disciplinary penalty applied by the Supreme Judicial Council as a result of consideration of the issue of imposing disciplinary action against a judge.

Generally, the rules of the conduct of judges are listed in Artcles 69 and 142 of the RA Judicial Code and violation of the rules of ethics may not serve as a ground for imposing disciplinary action against a judge (Article 68).

The types of essential disciplinary violations are listed in Clause 6 of Article 142 of the Judicial Code. Here, among others, it is necessary to distinguish the violation of provisions of substantive or procedural law while administering justice or exercising — as a court — other powers provided for by law, which resulted in the fundamental violation of human rights and/or freedoms stipulated by the Constitution or international treaties ratified by the Republic of Armenia, or dishonours the judiciary.

Gross violation is the violation of the rule of judicial conduct which dishonours the judiciary, affects the public trust in the impartiality and independence of the judiciary that is not compatible with the status of the judge with regard to the circumstances of the act and (or) the resulting consequences.

Although in accordance with Clause 9 of Article 142 of the Judicial Code, the interpretation of the law or assessment of facts and proofs while administering justice and exercising — as a court — other powers provided for by law may not itself result in disciplinary action, in practice, however, most of the judges are faced with proceedings on the grounds of the violation of substantive or procedural provisions or of the rule of judicial conduct, thereby threatening the independence of the judge. Otherwise stated, first, the body authorized to institute proceedings, i.e. the Minister of Justice, then the Supreme Judicial Council, actually, acquire access to the area of interpretation of the laws applied and that of assessment of facts - which, in fact, is a right that must be exclusively limited to the judge hearing the case.

Despite the existence of a commission established by the general meeting of the judges and made up mostly of judges, the Minister of Justice, a representative of the executive body, according to the current legislation, preserves the right to institute a disciplinary proceeding. The Minister of Justice is the only body entitled to institute a disciplinary proceeding based on violation cases with regard to Armenia recorded by the ECHR. The disciplinary proceeding is instituted based on the report compiled with the results of the examination of the corresponding verdict carried out by the relevant department and employees under the Minister.

Otherwise stated, since 2020 till now, no legislative amendment or supplement has been introduced to identify the objective criteria on which 15-year-old ECHR verdicts will be examined. This contains risks of targeting certain judges and demonstrating selective or discriminatory attitude toward judges.

This refers to Law N333 adopted by the National Assembly which entered into force on August 18, 2022. Pursuant to Article 3, the disciplinary the termination of the rights of a judge on the grounds of gross violation of disciplinary rules revealed as a result of the examination by the

ECHR before the legislation entered into force canbe applied only if it aims to ensure judical independence and impartiality, to preserve the reputation of the judiciary, to ensure the public trust in judical independence and impartiality and rule of law.

Though, in accordance with Recommendation 12 of R (94) by the Committee of Ministers "On Independence, efficiency and the role of judges", the disciplinary grounds must be defined in advance, each disciplinary proceeding must be based on clear-cut grounds when it is instituted or is carried out. However, it should be noted that all the rules mentioned above are widely violated at the domestic level since judges are held liable even in cases when the ECHR court decisions that recorded violations were made before the adoption of the law calling for disciplinary charge on the grounds of disciplinary violations by the legislative body(e.g. proceedings of Edward Nahapetyan, Surik Antonynan).

Moreover, pursuant to Article 42 of the RA Constitution, which was in effect at the moment of the disciplinary offense and Article 73 of the RA Constitution, which entered into force in 2015, Laws and other legal acts deteriorating the legal condition of a person shall not have retroactive effect. The current constitution acknowledges only one situation when the law can receive a retroactive effect Laws , i.e. if the new law and other legal acts improve the legal condition of a person.

By providing illegal retroactivity to the case under consideration, disregarding the existence such regulations, and by terminating the powers of judges, the right to judicial protection and to effective judicial protection of judges defined by Clause 1 of Article 73 of the RA Constitution and guaranteed by Articles 61 and 63 (corresponds the rights defined by Clause 1 of Article 6 of the ECHR Convention) have already been violated (the decision of the Supreme Judicial Council concerning the judge of the Court of Cassation Surik Antonyan) and will be violated (currently the Supreme Judicial Council is considering the case of the judges of the Court of Cassation Tigran Petrosyan and Artak Barseghyan, a judge at the Civil Court of Appeal A. Kharatyan and a judge at the Court of Bankruptcy S. Tadevosyan).

In compliance with the current legal regulations, the judicial decisions made by the Supreme Judical Council within the framework of the disciplinary proceedings, which have the capacity to terminate the powers of judges, are final and are not subject to appeal. Only 5 out of the 10 members of the Supreme Judicial Council are elected by the general meeting of the judges. The other 5 were also elected by the legislative body (political majority), however without the participation or presence of the parliamentary opposition.

Due to the amendments and supplements to the Judical Code, which were made in rather a short period of time, the legal regulations ensuring judicial independence and impartiality have suffered significantly. Particularly, if under the original regulations of the Judicial Code it was possible to terminate the powers of a given judge by 7 votes of the members of the Council, currently it can be done by 6 votes and in case any of the members of the Council is absent – even by 5. Thereby, the judge members of the Council have, as a matter of fact, become voiceless since in case any of the judge members is absent, the outcome of the vote of the rest of the judges cannot have any effect or be a deciding factor in case there is a joint will of the scientist-members elected by the political body to terminate the powers of a given judge.

Besides, the Supreme Judicial Council is taking active measures to restrict the right of judges to the freedom of expression concerning issues, consequences, law drafts or acting legal acts that might threaten judicial independence and impartiality. This is carried out through disciplinary proceedings instituted by the current Minister of Justice and carried out by the Supreme Judicial Council. To be reminded, the Council is led by a person who shares financial interests with the latter and who moved directly form a political body to the Supreme Judicial Council and immediately took the office of the President of the Council. All the actions aim at consistently discrediting the judiciary and decreasing the public trust in judical independence and impartiality, through sending proceedings to the Supreme Judicial Council and through the termination of the powers of judges, even if the body criticized is the Supreme Judicial Cuncil itself.

Thus, for instance, the powers of the judge of First Instance Zaruhi Nakhshqaryan were terminated in this way. The proceeding of Davit Harutyunyan, a judge at the same court, is under consideration. The latter was the first who publicly spoke about the common financial interest of the President of the Supreme Judicial Council and his legal successor - the Minister of Justice. He was the one who criticized the Supreme Judicial Council for failing to fulfil its constitutional mission of guaranteeing the independence of judges, for groundless termination of powers of judges.

Moreover, through the mediation of the Minister of Justice and the decision of the Supreme Judical Council and against the will of judge D. Harutyunyan, the proceedings are held in a closed court_with the pretext of guaranteeing the interests of justice. The sides had been warned about the impermissibility of publicizing the secrets that might be revealed at the session, while the given proceeding and the issues discussed at the session are of public interest and were to be held as openly and transperenly as possible.

Otherwise stated, while D. Harutyunyan had an initial aim to enhance the independence and reputation of the judiciary and increase the role of the Supreme Judicial Council in this mission with his statements, he is currently being subject to disciplinary liability with a predictable outcome.

The procedure of holding judge D. Harutyunyan and prior to him judge Z. Nakhshqaryan liable for these alleged offenses will significantly affect the right of judges to freedom of expression and thereby their opportunity to publicly express their opinion about any problem undermining the independence of the judiciary. That is, the examination of the given proceeding by the Supreme Judicial Council through non-transperent procedure aims to make a “preventive impact” on all judges.

The principle of irreplaceability of judges is violated through the termination of powers on the grounds illustrated above. They are deprived of their legitimate expectations of receiving a salary for their work until 65, their right of receiving a pension and other social rights. Their chances of finding employment in the public sector, especially in law enforcement bodies are significantly limited, if not excluded altogether.