

ANGOLA

**THE JUDICIAL WORKPLACE AND THE INTERSECTION
WITH JUDICIAL INDEPENDENCE**

Study Commission's Fourth Questionnaire – 2023

For most, appointment to judicial office represents not only an immense personal achievement, but also public recognition of professional eminence. In this review of the Fourth Study Committee, we will examine 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 relation to your own country.

1. APPOINTMENT FOR JUDICIAL OFFICE

A. Describe the process by which a person is appointed to a judicial office in lower courts, intermediate courts and higher courts pointing relevant differences between appointment in criminal, civil or appellate courts.

In Angola, the Judiciary consists of three categories of Judges:

- a) **Counsellor Judge of the Supreme Court;**
- b) **Judge of the Court of Appeal;**
- c) **District Court Judge.**

Access to the category of Judge of Law occurs through a universal public tender, in which national citizens trained in law can participate. The contest essentially observes 3 phases: 1- Oral and Written Test; 2- Use in the training course for Magistrates; 3- Professional internship and 4- Appointment by the Superior Council of the Judiciary.

The choice of jurisdiction to work on (crime, civil, labour and family) has obeyed the discretionary criteria of the Presidents of the District Courts, which in many cases are driven by the needs of each jurisdiction.

Only Law Judges with more than 10 years of career can compete for the category of Superior Judge. Its provision is made by promotion, through a curricular contest followed by a training cycle, with prevalence of the criterion of the result of the final classification and merit among Judges of Law of the District Court, under the terms established in the Organic Law of the Courts of Appeal.

Admission to the Supreme Court follows a curricular competition promoted by the Superior Council of the Judiciary, in which the following may participate: Judges with at least 5 years of exercise of functions and with an evaluation of Good or Very Good; Magistrates of the Public Ministry and jurists of merit (Lawyers with at least 15 years of practice in the profession and Full Professors.

- B. If applicable, identify whether political influences of any kind influence in some way in the appointment of a particular person to a judicial office.

Article 180 of the Constitution states that the President has the power to appoint or appoint 1. Four of the eleven judges that make up the Constitutional Court, including the President of the Court, article 181 appoint the judges of the Supreme Court, including its president and deputy -president under the proposal of the Superior Council of the Judiciary and after a curriculum competition, 3 in the terms of article 182 n. 2 the president, the vice-president and other judges of the Court of Auditors, 4 the presiding judge and other judges of the Supreme Military Court and three jurists who are part of the Superior Council for the Judiciary.

It therefore follows from the foregoing and expressly that the Chief Justice of the Supreme Court is appointed by the President of the Republic and that he appoints the Vice-President of the Supreme Court and/or appoints three persons who make up the Superior Council of the Judiciary (hereinafter designated CSMJ) – Now, and regarding our topic, it is easily concluded that such powers of exclusive appointment by the President of the Republic generate a situation of dependency.

- C. Is ethnic or gender diversity in any way relevant to appointment to judicial office, and if so, describe why and in what sense each might be relevant.

There are no elements that can indicate the opposite direction.

- D. Describe whether and how the process of appointment to judicial office is independent of the government.

The President, when appointing the judges of the Superior Courts under the terms of article 119 of the CRA, within his competences as Head of State, ends up interfering in the judicial function and, concomitantly, this same norm is out of line with the norm of article 105 of the CRA, which delimits the sovereign bodies and establishes the principle of separation and interdependence of functions. This competence, Power, must be reduced in the person of the President of the Republic and made available to the judicial population.

2. PROMOTION IN THE JUDICIARY

- A. Is there room for promotion within the judiciary and, if so, describe how and under what circumstances a magistrate or judge can be promoted?

There is room for career advancement and the exercise of leadership roles within the administrative apparatus of the courts. As for the promotion results from article 184 n. 1 al. a) that it is incumbent upon the Superior Council for the Judiciary to transfer and promote Magistrates based on the merit of professional performance Career progression follows the procedures described above and, therefore, considering the interference of the CSMJ, there are questions about the fairness of the contests and political interference in this process. As for the case of promotion in function, there are two paths: the presidency of the District Courts and of the Chambers and Sections. Currently, the Presiding Judges of the District Courts are

appointed by the CSMJ, and the Presidents of the Chambers and Sections are appointed by the Presidents of the Districts. In this regard, much has been discussed about the discretionary power of the President of the CSMJ to appoint the Presidents of the Districts. As I understand it, the current law on the organization and functioning of the courts establishes a new criterion, which seems more appealing in that it establishes a mandate of 3 and 2 years respectively,

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

Expressly, it has no relevance. However, considering the level of interference by political power, particularly in the CSMJ, what exists is a gap for party colour to play a role in these processes, with emphasis on the higher courts.

C. Describe the transparency involved in the promotion process in the judiciary. **The criteria that would serve to assess transparency should be exclusively professional merit, gauged from elements such as: seniority in the categories/career, productivity, and positive performance evaluation. Superior Courts have been involved in controversy and debate since candidates who are not qualified always complain about the lack of transparency and favouring some over others. And the same can be seen in relation to the composition of the competition jury, which is sometimes made up of judges who are defendants in ongoing cases.**

3. WORKLOAD IN THE JUDICIARY

A. In general terms, what are the requirements for magistrates and judges in relation to the number of days sitting per year or another measure of judicial workload requirements?

B.

In Angola, there are no maximum requirements for the workload of a judge, as he has an exemption from hours, precisely to be able to work after hours.

What exists is that, due to the half-yearly evaluation, the judge is obliged to present a minimum number of sentences, depending on the jurisdiction to which he belongs. If this results in insufficient assessment, you may be subject to disciplinary proceedings.

In relation to the maximum number of cases, it does not exist, and a judge may have distributed to him more than a thousand cases, his work team being composed of only one employee.

C. If a judge has trouble keeping up with the workload, please describe the applicable regime by which—

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

There is no rule in relation to this issue, but the practice is that in case the Judge is overcrowded with work, due to external circumstances, the other Judges of that jurisdiction can proceed with a redistribution of cases, to equalize the workload. However, this is done by the will of the magistrates and not by a legal or moral imposition...

- (ii) the overworked judge may recover from workload delays and any other disabling factor that led to the overwork.

What can be verified is the Redistribution of processes when necessary to increase the speed and productivity of the Court.

- (iii) other mechanisms exist to deal with judicial delinquency.

Juvenile jurisdiction is specialized: educational actions, inclusion in foster families (specific cases) or shelter institutions (linked to churches and NGOs);

D. Judges are expected or required to help other judges who may be impaired by overload, so as to ensure that the business of the court are completed in a timely manner.

That would be ideal, but criteria need to be defined to avoid confusion or interference in the jurisdiction of colleagues.

4. REMOVAL OF THE JUDICIAL OFFICE

A. Does your country currently have a regime under which an acting judge can be removed from office? If yes, please describe such scheme, providing all relevant details, including-

- (i) who decides to dismiss the judge;
Superior Council of the Judiciary, because of a Disciplinary Proceeding.
- (ii) the judge has the right of hearing on such a motion or has the right to be heard against removal and there is a process of appeal if removed;
In theory, it is the CSMJ Plenary that considers the Judge's appeal, which includes entities that participated in the previous decision, which in theory reduces the guarantees of the Judge. The other route is administrative litigation.

- (iii) what are the grounds for requesting the removal of an acting judge;
Judicial Magistrates are subject to the disciplinary regime established in their Statute and the removal of the capacity of Magistrate can occur when there is a serious violation of the duties provided for in this diploma or others provided for by law.

(iv) what is the relationship between violation of the code/principles of ethics and remoteness: It is there is currently no code of judicial ethics in Angola, so it relies on the general principles governing the profession, such as the principles of Bangalore.

- (v) describe the transparency in the process.

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

- (a) financial consequences (especially social security);
- (b) future consequences of employment following removal;
- (c) social consequences, including loss of title or civic decorations; It is
- (d) disciplinary measures that may be taken against the removed judge.

On disciplinary matters, the civil service regime is applied, as well as the provisions of the codes of civil procedure and criminal procedure.

Are infractions of judicial magistrates in the times of the provisions of article 71.º of Law n.º 7/94 of April 29, Statute of Judicial Magistrates and Public Prosecutor's Office, all behaviours of the magistrate even if merely culpable that by omission violates the duties professionals, or which, due to their social repercussions, are incompatible with the dignity essential to the exercise of functions, it is important to say that disciplinary proceedings do not nullify possible criminal proceedings.

The sanctions are those provided for in Article 73 and are, private warning that his conduct is not consistent with what is required of a magistrate, registered warning, fine with a minimum limit of 1/10 of the salary and a maximum of 1/3 between 6 to 12 months, loss of the right to be appointed in a higher category for three years, transfer to an area outside its jurisdiction, and with the loss of 30 days of seniority, suspension between the period of 60 to 180 days with loss of remuneration and the right to seniority, compulsory retirement, coercive retirement with the loss of rights and privileges and dismissal which translates into the total removal of magistrates, with the corresponding loss of status and rights without prejudice to other legal consequences.

In applying these rules, the provisions of article 80 of the Statute are considered, where the seriousness of the fact, the fault of the agent, his personality and the witnesses who testify in his favour or against him and the degree of responsibility that his action or omission deserves respecting the dignity of the function he performs. in the articles that follow, it talks about recidivism and the concurrence of infractions and provides for the disciplinary bodies that are the Plenary of the Superior Council of the Judiciary and the Permanent Commission of the CSMJ.

Regarding the disciplinary process, its processing is dealt with in articles 90.º to 103.º, in short, the process is written and secret until the notification of the accusation of the accused, the instruction must be completed within 90 days, which may be extended for another 30 days depending on the complexity of the case or if another situation justifies it. The disciplinary procedure expires within 60 days from the date on which the disciplinary body becomes aware of the infraction.

The magistrate on whom a disciplinary proceeding falls may be suspended preventively for a period of 90 days, extendable for another 30 days if the situation so requires.

The magistrate may, if the situation understands it, be heard in declaration records, reserving his right to say nothing if he understands and considering the record closed in the case.

At the end of the instruction, the instructor has a period of ten days to formulate the accusation, which must contain the facts on which he is accused that have been proven, describe the circumstances, time, place, time, manner and place of his practice as well as indicate the rules that were violated.

The magistrate is notified of the accusation for up to 15 days to deduce an opposition or defense, and during this period he can examine the case in the presence of the investigator, or another person indicated, list witnesses, gather and request other means of proof.

Once the production of evidence is complete, the instructor prepares, within ten days, a report that will be sent to the permanent commission of the CSMJ, where he will indicate the faults that he considers to be evidence, their severity, consequences and causes that determine the degree of guilt of the agent, his previous behaviours and in this case, it also proposes a disciplinary measure or if it is understood that the production of evidence does not result in the archiving of the records.

Once the report has been received, the committee has a period of 15 days after approval by the president who summons it for a decision.

The decision may be appealed to the plenary of the Superior Council of the Judiciary and in this case the execution of the sanction is not suspended, except for retirement and dismissal.

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