

MONGOLIAN RESPONSE TO FOURTH STUDY COMMISSION QUESTIONNAIRE-2023

1. APPOINTMENT TO JUDICIAL OFFICE

- A.** Please describe the process by which 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.

Article 31 of the Court Law of Mongolia sets forth the conditions and requirements to be appointed as the judges of the Supreme Court, appellate courts and first instance courts. In addition, judicial candidates must fulfill the general conditions specified in paragraph 3 of Article 51 of the Constitution of Mongolia.

A Mongolian citizen who has reached thirty-five years of age with higher education in law and a professional career of not less than 10 years may be appointed as a judge of the Supreme Court. A Mongolian citizen who has reached twenty-five years of age with higher education in law and a professional career of not less than 3 years may be appointed as a judge of the other courts./Article 31 of the Court law of Mongolia/

Requirements specified in paragraph 3 of Article 51 of the Constitution of Mongolia, are as below;

- ✓ have no criminal record;
- ✓ not drawn as accused at the time of nomination for the judge;
- ✓ to have the opinion of a qualified medical doctor who has determined that he/she does not have any diseases or mental disorders that are incompatible with working as a judge;
- ✓ to have a permit to carry out lawyer's professional activities
- ✓ to have the knowledge, ability and ethics to work as a judge.

As per stated in article 31.1 of the Court Law, the judge of the appellate instance court shall have worked as a judge in first instance court at least six years.

As per stated in article 31.1 of the Court Law, a judge of the Supreme Court shall meet the following requirements:

- ✓ served as a judge for at least 10 years;
- ✓ worked exclusively as a prosecutor or attorney for at least 10 years;
- ✓ at least 10 years of teaching experience at an accredited law school.
- ✓ It shall be prohibited to appoint a person who has held a political or political party leadership position in the last six years as a judge.

The Chief Judge of the Supreme Court must have served as a judge for at least 10 years.

- 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?

There must not be any political influence to judicial selection and appointment. Only in the selection of the judges of the Supreme Court, judicial candidates are introduced to the parliament hearing to present her/his work experience and educational background. However, this procedure has no legal consequence on his/her further appointment procedure.

- 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?

There is no ethnic or gender diversity to appointment to judicial office.

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

In Mongolia, appointment to judicial office is independent of government, which defined by article 49 of the Constitution of Mongolia as below;

- ✓ Judges shall be impartial and subject only to law
- ✓ The President, the Prime Minister, members of the State Great Khural (Parliament) and the Government, or officials of the State, political parties or other mass organizations, citizens or anyone else, shall not interfere with the exercise of judicial duties by the judges
- ✓ The Judicial General Council shall function for the purpose of ensuring the impartiality of the judges and independence of the judiciary
- ✓ The Council, without interfering in the judicial proceedings of courts and judges, shall deal exclusively with the selection of judges from among lawyers, protection of their rights, and other matters pertaining to the ensuring of conditions for guaranteeing the independence of the judiciary.
- ✓ Five members of the Council shall be selected from among the judges, and the other five members shall be nominated and appointed openly. They shall work once for four years, and Chairman of the Council shall be elected from among the members. Report on the Council activities in connection with ensuring the impartiality of judges shall be presented to the Supreme Court. Organization of the Council, operational regulation, the requirement for its members, and the procedure of appointment shall be determined by law.

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?

As stated in the law, if a judge wishes to be promoted to a higher level court, she or he must fulfill requirements stated by the law and lodge his/her request to the Judicial General Council to take part in an open selection.

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

According to the law, Mongolian judges are prohibited to become a member of any political party and engage in any political activity.

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

As described above, the Judicial General Council of Mongolia, without interfering in the judicial proceedings of courts and judges, deals exclusively with the selection of judges from among lawyers, protection of their rights, and other matters pertaining to the ensuring of conditions for guaranteeing the independence of the judiciary. Promotion to judiciary is freely open and it is regulated by the Judicial General Council of Mongolia.

3. WORKLOAD WITHIN THE JUDICIARY

- A. In board terms, what are requirements for magistrates and judges in relation to the number of sitting days per year or other measurement of judicial workload requirements?

In last several years, the Judicial General Council of Mongolia has been working on judicial workload by carrying out various analysis. However, there is not any specific procedure or regulation on measuring judicial work that is excessively high now. By the Parliament regulation, there must be around more than 700 judges but now more than 500 judges working in country.

This condition, simultaneously increases the judicial workload. With regard to the Labor law, an employee can work for 40 hours per week. However, the excessive workload imposes Mongolian judges to work much more than this.

- B. If a judge is encountering trouble keeping up with the workload, describe the regime that applies by which-?
- (i) That judges 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

Overloaded judge must keep working forward, regimes applied here not match either to our current condition.

- C. Are judges expected or required to assist other judges who may be adversary affected from overload so as to ensure that the business of the court is discharged in a timely manner.

No.

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;

Article 49.6 of the Constitution of Mongolia states that “the Disciplinary Committee of the Court shall work with function to suspend from the position of judge, dismiss a judge, and impose other disciplinary actions under the procedure and the grounds specified in the law, and its power, organization, operational procedure, the requirements for its members, and the procedure of appointment shall be determined by law” and as regulated article 56.8 to 56.9 of the Court Law of Mongolia,

- ✓ If judge has committed misconducts more than 10 times punishable under sub-paragraphs 56.1.1 /closed warning/ and 56.1.2 /open warning/ of this Law, or committed more than five times violations punishable under sub-paragraphs 56.1.3 / to reduce the salary by up to 20 percent for up to six months;/ and 56.1.4 /to suspend the judge for up to three months and instruct to attend training/ of this Law and received disciplinary punishment;
- ✓ the decision of the court on finding guilty and imposing criminal liability has entered into force

And as per stated article 56.9 of the Court Law, the Disciplinary Committee presents to the President of Mongolia if the judge has been dismissed /removed from office/ as stated article 35.1 of the Court Law. The Judicial General Council of Mongolia within five working days after public notification shall submit to the President the proposal to appoint a candidate for the judge of the first instance and the appellate court.

- (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;

Yes, judges have a right to express its own opinion in audience, but it is up to her/his will. Also, there is an appeal process. If the Disciplinary Committee decided to remove the judge, according to Article 114.1 of the Court Law, judge then may file an objection to the Supreme Court against the resolution of Disciplinary Committee. However, the scope of this appeal is limited to mostly procedural matters.

- (iii) What are the grounds for seeking the removal of a sitting judge?

The article 56.8 to 56.9 of the Court Law of Mongolia regulates that

- ✓ If judge committed misconducts more than 10 times punishable under sub-paragraphs 56.1.1 /closed warning/ and 56.1.2 /open warning/ of this Law, or committed more than five times violations punishable under sub-paragraphs 56.1.3 / to reduce the salary by up to 20 percent for up to six months;/ and 56.1.4 /to suspend the powers of a judge for up to three months and instruct to attend training/ of this Law and received disciplinary punishment;
- ✓ the decision of the court on finding guilty and imposing criminal liability has entered into force will be grounds of removal of a sitting judge.

- (iv) What is the relationship between violation of the ethics code/ principles and removal?

In Mongolia we do not have official ethics code however we judges are knowledges Bangalore ethics code. Article 50 of the Court Law regulates about prohibitions of judges. There is 40 prohibited subject matter for us. In my opinion, violation of ethics and removal subjected to each other in some case.

(v) Describe the transparency in the process.

This process is held in camera. The judge, not the complainant, can participate in the hearings. Information that can be disclosed to the general public is the decision.

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

Can be (b) future employment consequences following removal (c) social consequences including loss or title or civic decorations

Prepared by Judge Erdenechimeg Tseven

28th June, 2023