

## THE NEW SHIFT OF JUDGES WHO WILL DECIDE OVER THE CITIZENS' CASES AGAINST THE GOVERNMENT

### SOME DOUBTS ABOUT THE COMPETITION FOR JUDGES IN THE ADMINISTRATIVE COURTS

Team of Bulgarian Institute for Legal Initiatives

October 12, 2021

In April, after a six-year pause, the Judges' College (JC) of the Supreme Judicial Council (SJC) announced two competitions for judges in the administrative courts in the country. The competitions – one for initial appointments (the so-called external competitions) and one for advancing in the system (internal competition), were officially published in SG; issue 32 - 16.04.2021. **A total of 54 free places for administrative judges had to be filled in.** The candidates in the two competitions are a formidable number – 182 magistrates applied for 23 court positions for the internal competition and 302 lawyers were running for 31 court positions available for external competition. Both competitions are in their final phases – results from the second (oral) exam are expected, however a few things in the procedure brought reasonable questions and doubts in magistrates' community and among external experts. What are they – we tell the details.

On April 12 this year the Commission on Appraisals and Competitions (CAC) to the JC hold a meeting to review a proposal of the President of the Supreme Administrative Court (SAC), Georgi Cholakov, for the free positions in the administrative courts and for announcing competitions to fill in the empty slots. It becomes clear from the estimates that in 19 administrative courts there are a total of 50 free full-time positions for judges. The remaining 4 positions are because in the period of 21 April – 5 January next year, 4 more positions would become vacant – in Administrative Court – Sofia City, Blagoevgrad, Pazardzhik and Pernik. This is why Cholakov proposed and CAC adopted his proposal for the 4 additional positions to be added to the competition.

CAC proposed to the JC to announce two competitions for the vacant positions – one for advancing in the system (internal competition) and one for initial appointment (a competition in which eligible to apply are external to the judicial system persons, who qualify under the requirements set in the law). The adopted proposal is 31 of the positions to be announced for external competition and 21 vacant positions for judges for the internal one (magistrates from lower level – judges and prosecutors in the regional courts/prosecutions can participate). The proposal is adopted almost unanimously with only 1 vote "against" as according to the protocol from the sitting it becomes clear that disagreement was expressed by Atanaska Disheva who has proposed another proportion – more positions to be released for internal (34) and less for the external competition (20).

CAC motivates its proposal to the JC with seeking to establish a parity between external and internal appointments in order to set a balance in designating the positions, to guarantee renewal of the magistrates' composition with external for the system lawyers and to deliver an opportunity for career development for acting magistrates.

It becomes evident further by the CAC's motives that in the future 8 more positions in administrative courts will become vacant so the total number of free positions equals to 62. **In practice, this means**

**that CAC promises these 8 positions to be filled in by those magistrates who remain below the line in the competition for promotion (Art. 193, para. 6 of the Judicial System Act).**

Basing exactly on this argument the Commission motivates the so-called parity between the positions for the internal and external competitions, which obviously are not equal. On the contrary, the vacant positions in the external competition are with 8 more. Furthermore, it is very obvious that the proclaimed parity between the two competitions does not apply for the vacant positions which were announced locally. For example, in six administrative courts more positions are announced for the external competition – Sofia City, Bourgas, Blagoevgrad, Pernik, Pazardzhik and Varna. Some of these courts are key one and other seem to be more palatable due to various reasons (for instance, because of their proximity to big regional cities). The CAC's explanation for this disproportion is that in every court where there are free full-time positions at this phase there must *"...[be] at least one mandatory position opened to be occupied by advancing in the system, so that the provisions of Art. 193, para. 6 of the JSA can be applied as they are applicable only for internal competitions"*. It turns out that the commission carries out the distribution basing on a future event – releasing 8 more positions and the possibility that they can be occupied by participating, but not classified for the time being judges. **Thus, in practice, in the courts where there are more announced positions (logically, these are the bigger courts with a higher number of judges' human resources), they are for the external competition.**

There are several problems in the adopted distribution – in bigger courts advantage is given to external for the system persons although the opportunities for career development of judges are but a few and the majority cannot be promoted at a higher position due to the scarce number of vacant positions announced through competitions. In key for the system courts such as the administrative courts in Sofia City, Bourgas and Varna where cases with huge material interests and cases with strategic meaning for the state are decided, again, more external appointments are allowed.

On the second place, this is the information available and important for each of the candidates. **There is unequal treatment between external candidates and magistrates. For the latter, the publicly available information surmounts several times, as according to the law they are obliged to declare their property and assets; the quality of their work can be analyzed through their decisions and also their performance evaluation from the attestations' forms. This is not valid for the majority of lawyers who are willing to enter the system of administration courts from the outside.** In this perspective, neither a future parity, pointed by the CAC, nor any other argument can explain why the SJC prefers to infuse fresh, but not so unknown "blood" in the key administrative courts and does not pledge on the career development of magistrates who have already proven their qualification and integrity within the system.

Beyond that, for the very first time since the amendments in the Judicial System Act which removed the requirement for a no more than 20% external appointments so many positions for external appointment from the total number of vacant full-time positions are released.

### **The Debate at the Judges' College of the Supreme Judicial Council**

**It is striking how quickly the procedure is developing.** The sitting of the CAC was hold on 12 April and on the next day (13 April) the proposal for announcing the two competitions is introduced as an extraordinary item on the agenda of the Judges' College. The official explanation for this emergency is the desire to avoid a time clash between the submission of applications does and the forthcoming

vacations (Easter on 1 May and 6 May). **However, another motive is possible – the instable political situation, the debate for reform of the SJC and early termination of the mandate of the current SJC.**

In substance, during the discussion, the president of SAC Georgi Cholakov repeats its proposal and gives his interpretation for the necessity of a parity between the numbers for the two competitions. In his words, the legal framework is imperfect and the external competition is much denser because the candidates hold a written exam, a test and an oral exam, whereas the judges who participate in the competition present to the exam commission their own decisions on which they have been evaluated. He adds: *“It should be clear to all that according to these acts it is only possible to evaluate the principal knowledge of the matter and handling of the process, but not for the administrative law.”*

Judge Kerelska and Judge Disheva are the only ones who have objections. Disheva delivers additional facts:

- A competition for administrative courts is hasn't been announced since 2015;
- The competition for judges at the Supreme Administrative Court lasted for 2 years and ended in October 2020;
- According to her, in December she tried to initiate a competition for administrative courts (*“At that moment, I must say, quite roughly, I was told that this is not my job that it's extremely early and that it can be then, when the judicial proceedings against the decision on Art. 193, para.3 of the SJC for appointment of judges at the SAC are over. Back then, there were even arguments, that the term according to Art. 193, para. 6 must conclude and so on, and so on”*).

Eventually, all alternative proposals – to postpone the item from the agenda, to define a percentage ration for the external competition and for a change of the number of positions announced for external competition at the Administrative Court Sofia City, were not adopted by the majority and the **competitions were announced with the distribution, proposed by the president of the SAC.**

### **The Competition Commission**

The two competition commissions comprised of four supreme justices from the SAC and one associated university lecturer on administrative law, are appointed by the Judge's College with a decision from 22 June. The supreme justices, who participate in the commission, are selected by a lot from the plenary of the judges from SAC, according to Art. 183, para. 2 of the JSA and the associated lecturers by the JC by a lot from a list provided by the universities in the country.

Thus, members of the commission that will examine the candidates in the external competition are judges Tanya Radkova, Vladimir Parvanov, Mario Dimitrov and Haiguhi Bodikyan and Assoc. Prof. Yurii Kuchev from Rousse University “Angel Kanchev”. In the second commission that will evaluate the candidate magistrates for advancing in the system members are judges Slavina Vladova, Marinika Cherneva, Sibila Simeonova, Stefka Kemalova and Prof. Ivan Todorov, PhD from the Plovdiv University.

According to unofficial information **all of the judges selected in the competition commissions are close to the president of SAC Georgi Cholakov.** Several examples: Judge Vladimir Parvanov steps in office as a judge in the SAC on 15 March 2021 after a competition for promotion that brings

suspicious<sup>1</sup>, which were even raised during a sitting of the JC. Since 30 March 2018 he is seconded with an order by Mr. Cholakov in SAC and prior to that he is judge and president of Administrative Court – Sliven. He is married to the sister of judge Yovka Drazheva (close to the court's management). The president of SAC is from Sliven as well where he has been president of the Regional Court, after that a lawyer and a judge in the administrative court before he is seconded to the Sofia Regional Administrative Court.

Mario Dimitrov is president of the Third Chamber of First College of SAC (it is a common knowledge that all presidents of chambers and colleges are loyal to the court's president). Haiguhi Bodikyan has become a judge at SAC just recently – she steps in office on 15 March 2021 (she works in a permanent trial chamber with the deputy president of SAC and president of Second College - Lubomir Gaydov) and prior to that was president of Administrative Court – Haskovo.

Judge Marinika Cherneva is president of First College at SAC. Judge Slavina Vladova is seconded to SAC with an order by Georgi Cholakov (26.01.2018). Prior to that she was judge in Administrative Court – Sofia City. She is appointed for a judge in SAC on 15 March 2021 after a competition for promotion. Judge Sibila Simeonova is seconded to SAC in January 2016 by the former president of the court Georgi Kolev and prior to that she worked as a judge in Administrative Court – Rousse. **Her name becomes popular around the case with alleged violations of the assignment of five-member trial panel on one of the cases of Petyo Petrov – the Euro at SAC.** At that time the trial panel is filled in by judge Simeonova, in violation of the principle for assigning panel's member by seniority<sup>2</sup>.

We have sent questions to the press office of SAC regarding when the lot for the two commissions has been carried out, by what software it has been delivered and if the software has ever undergone an independent, external audit to identify possible software manipulations. From SAC pointed out that the members of the commissions were selected randomly by lot during a plenary sitting of SAC on 28 May this year with all judges from SAC present with the exception of the president. ***“Lots were drawn through a specialized software programme of the SJC which is used for selecting participants in competition commissions on regional and district level as well as for rapporteurs on disciplinary cases. The programme is also used for allocating members of adjunct evaluation commissions in courts, as well as by the Committee on Appraisals and Competitions to the Judge's College of SJC”***, replied from SAC and added that they **do not have any information if an audit of the programme has been carried out as it is provided to the court by SJC**. This happens exactly 8 days after the Judge's College, at an extra-schedule sitting for election of members of a working group to analyze the activity of the specialized court, it was decided that the election will be done by paper ballots as there are suspicions that the system has been corrupted<sup>3</sup>.

## The Ranking

Out of 302 candidates in the external competition, 231 made it to the written exam and 99 who received an evaluation of no lower than Very Good /4,5/ of the case exam and the test, were allowed to the oral exam. We talked to lawyers and judges who explained that the case that candidates had to solve is controversial as it wouldn't have made any difficulties to law students.

---

<sup>1</sup> <https://news.lex.bg/след-два-отвода-и-упреци-за-фарс-съдийс/>

<sup>2</sup> <http://judicialreports.bg/2016/04/доказано-петчленните-състави-във-вас/>

<sup>3</sup> <http://www.vss.justice.bg/root/f/upload/31/pr-19-20-05-2021-sk.pdf/стр. 95 и стр. 119/>

Our check shows that among the candidates in the external competitions, there are 15 judicial clerks from SAC, judicial clerks of other judges and prosecutors, members of SJA's administration, attorneys, experts, directors of directorates, secretaries, etc. Among the names that stand out and have good chances to classify in the competition are Anastasiya Hitova – judicial clerk at SAC, works in Second Chamber, presided by the former president of SAC Georgi Kolev, daughter of Diana Hitova former judge at SCC and Peycho Hitov – former district prosecutor of Sliven; Desislava Tabakova – court clerk at SAC in Second Chamber; Maya Suknarova, court clerk at SAC, daughter of the former member of SJC, Bozhidar Suknarov; Maria Koleva – court clerk at SAC, daughter of former member of SJC Ivan Kolev; Maria Vladimirova – court clerk at SAC, Georgi Ivanov – court clerk at SAC, Genoveva Yoncheva – court clerk at SAC and lecturer at the National Institute of Justice; Maria Hubcheva – court clerk at SAC; Miglena Hristova – court clerk at SAC; Rosen Lumbarski – court clerk at SAC; Todor Ikononov – court clerk at SAC and son of Andrey Ikononov – former judge at SAC; Todor Todorov – court clerk at SAC; Spas Spasov – court clerk to the president of Fourth Chamber of SAC and the member of the competition commission judge Mario Dimitrov, Ana Metodieva Konyaly – court clerk at SAC.

Classified after the written exam is also Asen Mingov – son of the former member of the SJC Prof. Aneliya Mingova, PhD and Prof. Emil Mingov, PhD special procedural representative of SAC and court clerk at SAC. The deputy chairperson of the Association of judicial administration, chaired (according to the website of the organization) by Alexander Nikolov, member of parliament by GERB (prior to that former chief secretary of SAC, court clerk at Sac and court clerk in Sofia City Court during the times when Georgi Kolev was president of the court). Another curious fact is that in the management bodies of the organizations members are (or have been) other candidates who have classified in the competition after the written exam – Ana Metodieva Konyaly (member of the executive board) and Mladen Semov – secretary at SAC and brother of the constitutional judge Prof. Atanas Semov and former member of the executive board of the organization.

Admitted to the oral exams are also former members of the Central Electoral Commission; Dimitar Nenov – director of the legal directorate at the SJC's administration (appointed by a competition in 2020). Maria Christova – director of directorate “Magistrates’ competitions” at the SJC's administration.

On October 12, 2021 the oral hearings with candidates from the external competition conclude and subsequently, according to the law, the results must be announced within 7 days.

Since its establishment more than 10 years ago, the system of administrative courts became extremely important because of the matter of the cases and the enormous interests that it affects. That is why it is no less important what lawyers enter the system and how transparent the competitions are carried out. The facts depicted here raise doubts exactly about the transparency of the procedure and presence of nepotism in its implementation. The competitions for administrative courts are key because they will bring to the system the judges who will later on decide over the cases, initiated by citizens against the state power.