

**RESPONSE OF THE ISRAELI DELEGATION
TO THE FIRST STUDY COMMISSION QUESTIONNAIRE 2022
DISCIPLINARY PROCEEDING AND JUDICIAL INDEPENDENCE**

64th Annual Meeting of IAJ – Tel Aviv (Israel)

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Introduction

Criticism of the conduct of judges is an issue that is on the public and the judicial agenda both in Israel and in various countries in the western world. The need to criticize the judges in the face of the principle of judicial independence has caused quite a bit of tension. The prevailing approach today is the one that allows for institutionalized criticism of the judges.

There are few provisions in Israeli law that deal with a judge's conduct. The first Israeli law that dealt with disciplinary judging of judges is the Judges Law, 5733-1953. This Law stipulates that a judge will face disciplinary action before a tribunal of Judges and if the tribunal finds that the Judge in question does not meet the standards expected from a judge then that judge will be brought in front of the President who will remove them from office. The Judiciary Law (Transitional Provisions), 1984, in which section 4 (5) added a list of disciplinary measures that can be imposed on judges. This list was copied to section 19 of the Courts Law [combined version] 1984 (hereinafter: "the Courts Law"), which will be detailed below.

In 2003, the Public Complaints Commission against Judges (hereinafter: "the Judicial Ombudsman Commission ") was established in Israel, whose role is to audit the conduct of judges in the performance of their duties, including the way they conduct justice, in accordance with the Public Complaints Judicial Ombudsman Commissioner Law, 2002 (hereinafter: "The Judicial Ombudsman Commissioner's Law "). The Commissioner's authority extends to judges, registrars and judges, in the courts and tribunals, all as defined in the Judicial Ombudsman Commissioner's Law. Anyone who considers himself or herself aggrieved by a specific judge's professional conduct may file a complaint with the Judicial Ombudsman. The Judicial Ombudsman has the authority to determine that a complaint filed against a judge is justified and can recommend

sanctions such as prosecuting a judge in the Disciplinary Tribunal for Judges or bringing him before the Judicial Appointments Committee for the termination of his term of office. The Minister of Justice also has the authority to recommend these two sanctions on his own initiative.

Prior to the establishment of the Judicial Ombudsman Commission, there was no external body in Israel that controlled and supervised the conduct of judges. There was a random check made by different bodies and by different means, some of them informal and within the legal system itself. In addition, individual complaints about the behavior or conduct of judges were submitted to a number of parties, including the President of the Supreme Court, the Director of the Administration of Courts, the Minister of Justice and more. There were no specific rules or regulations governing the conduct required of a Judge in the course of fulfillment of his duties nor in the management of his lifestyle.

In 2006, the above-mentioned Courts Law was amended, which authorized the President of the Supreme Court to establish rules of ethics for Judges, and then in 2007, the rules of ethics for judges were formulated for the first time, 2007 (hereinafter: "Rules of Ethics"). In order to give binding legal force to the rules of ethics to judges, an amendment was made to the Courts Law according to which a violation of the rules of ethics would be grounds for filing a disciplinary complaint by the Minister of Justice. This amendment effectively turned the rules of ethics for judges into binding legal rules.

The non-uniformity in the manner in which complaints were filed against judges and the manner in which a judge was dealt with were, among other things, factors that led to an examination of the change in the legislative situation in Israel, the establishment of the Judicial Ombudsman Commission and the wording of ethics rules for judges.

It should be noted that the information regarding the disciplinary measures taken against judges is limited because in accordance with Regulation 12 of the Courts (Judges) Regulations, 1973, the hearing in the disciplinary court takes place behind closed doors and the decisions of the disciplinary court are not published except in a few cases.

In Israel, it prefers to act against the judges on the internal ethical level through the Judicial Commission and not as a disciplinary complaint, so most criticism of the judges is conducted on this level without resorting to disciplinary proceedings.

1) What kind of allegation can justify disciplinary proceedings against judges in your country: an individual's behavior only in the workplace or also in his or her private life? Give some examples, please. Can the content of the decisions taken by judges also lead to disciplinary proceedings? Can judges be charged criminally for the content of their judicial decisions under any circumstances?

Disciplinary proceedings against a judge in Israel can be initiated both due to misconduct outside the walls of the Court as well as due to improper conduct in the performance of the judicial role within the walls of the Court.

Section 13 of the Basic Law: The Judiciary provides that a judge be subject to the jurisdiction of a disciplinary tribunal composed of judges appointed by the President of the Supreme Court. The disciplinary tribunal acts when the Minister of Justice files a disciplinary complaint against a judge based on one of the following five grounds :

- (1) The judge acted improperly in the performance of his duties;
- (2) The judge behaved in a manner that was inappropriate for the status of a judge in Israel;
- (3) The judge has been convicted of an offense which in the circumstances of the case is due to infamy / disgrace;
- (4) The Committee found that the judge obtained his appointment unlawfully;
- (5) The judge violated a rule of ethics for judges determined under section 16A of the Judicial Ombudsman Commission Law.

The wording of the causes is wide so that large varieties of cases fall within its scope. In addition, in accordance with the above provisions, a judge may also be subject to disciplinary action for violating the rules of ethics for judges, which are rules that contain norms of various kinds: basic norms arising from a judge's status and expressing value perceptions; of a judge; and specific norms dealing with practical issues that arise in everyday life.

A judge will be deemed to have violated the rules of ethics for judges in a manner that will allow the filing of a complaint to the Disciplinary Tribunal for judges, if his or her conduct are in violation of the above-mentioned rules amounts to misconduct of a judge in performance of his / her duties misconduct or deemed misconduct in Israel.

In addition to the aforesaid, in accordance with section 14 of the Judicial Ombudsman Commission Law, any person who considers himself offended or negatively affected due to the conduct of a judge in the performance of his duties as a judge. This includes offenses in the mode of administering of the trial. The offended person may file a complaint to the Judicial Ombudsman. When the investigation of a complaint by the Judicial Ombudsman Commission raises a suspicion of a disciplinary offense, the Judicial Ombudsman may recommend to the Minister of Justice to file a complaint against the same judge.

An example of a case where the judge acted improperly in the performance of his duties:

A judge during her tenure wrote minutes of hearings allegedly held before her, while this had no basis in reality. The judge also tore up and threw in the trash requests to postpone a hearing filed by litigants and thus prevented the request documentation to be

filed in the court as required. The Judicial Disciplinary Tribunal convicted the judge, inter alia, of misconduct in the performance of her duties. The judge was given the following disciplinary sentences: transfer to another place of office and a severe reprimand. Upon completion of the disciplinary proceedings, the Judicial Selection Committee decided, at the suggestion of the Minister of Justice, to terminate her term of office as a judge. The Minister of Justice argued that the judge's behavior and actions show that she was unfit to serve as a judge as her actions harmed the judicial system and public trust in the system.

An example of a case where a judge behaved in a way that unbefitting the status of a judge in Israel, outside the courtroom: a traffic court judge received an invitation to basketball games by a lawyer who represented clients before him. The judge was convicted of misconduct in the performance of his duties as a judge and was removed from office.

As to the content of judicial decisions, it should be noted that judges enjoy judicial independence in their decisions; in content, in wording and language of the decision or judgment; in the way they justify the decision and in the style of writing. However, judges should refrain from making inappropriate or unnecessary statements. The judge must adhere to the etiquette of the hearing and avoid a manner that is disrespectful and irrelevant for a court decision .

In principle, it is possible to prosecute a judge for the content of his judicial decisions in serious and exceptional cases where the Minister of Justice is the legally authorized decisor. At the same time, the disciplinary law extends to the conduct and practice of judges reviewed within the framework of the appeal proceedings within the legal system and not within the framework of the disciplinary law. For example, the Minister of Justice decided not to prosecute a judge, even though in her ruling she ignored a judgment of the appellate court and spoke out against the rulings of the appellate court. A reprimand was recorded in the judge's personal file in light of a complaint filed against her by the Judicial Ombudsman Commission, but no other disciplinary proceedings were initiated against her.

A judge cannot be criminally charged due to the content of his judicial decisions. Section 34B of the Penal Code, 1977 (hereinafter: "the Penal Code") grants the judge immunity from criminal proceedings for an act he has performed as part of his judicial function. Immunity applies even if the act was done in violation of authority or negligence but not on an act done maliciously or with fraudulent intent. Therefore, if a judge received a bribe or committed a fraudulent act while fulfilling his judicial role, he will not be immune from criminal proceedings. It should be emphasized that immunity from

criminal proceedings is only in connection with actions to fulfill the judicial role and it does not apply to "private" actions that are not related to the role.

A complaint may be lodged with the Ombudsman when the judge includes in his decision contemptuous expressions and things that could unnecessarily harm any of the persons involved in the litigation. The Judicial Ombudsman Commission distinguishes between judicial independence, including the wording of decisions and judgments, and the limits of freedom of expression, and when the judge's statement is found to be both offensive and irrelevant to the decision, the complaint will be found to be justified.

(2 Which body is responsible for disciplinary proceedings against judges in your country? Is the body that carries out the disciplinary procedure the same one that imposes the penalties? What is the composition of the body responsible for disciplinary proceedings (as well as the one who must apply penalties to judges, when it is not the same)? Is it composed only by judges, does it have a mixed composition, or is it composed only by professionals outside of the Judiciary Branch? Kindly describe the composition of that body (those bodies).

The body responsible for adjudicating disciplinary proceedings against judges is the Disciplinary Tribunal for Judges. The members of the tribunal are appointed only for the purpose of hearing a particular complaint submitted by the Minister of Justice. The disciplinary tribunal which hears and decides admissibility against the judge is the one that also imposes the penalties.

The Disciplinary Tribunal consists only of judges appointed by the President of the Supreme Court - incumbent judges or retired judges.

When the President of the Supreme Court receives the complaint from the Minister of Justice he will convene within seven days all the judges of the Supreme Court so that they can appoint the members of the tribunal (hereinafter: "the Yeshiva"). If the complaint is filed against a Supreme Court judge, the same judge will not attend the meeting. The President shall read the complaint to the Judges at the sitting and announce the number of members of the Tribunal he has determined to be the Disciplinary Tribunal. It can either be five Judges of which three are Supreme Court Justices or three Judges including two Supreme Court Justices.

The order of appointment of the members of the tribunal is held during the sitting by secret ballot, a judge receiving the majority of the votes is appointed as the commissioner. The voting is repeated to the number of appointments determined .



3) Which disciplinary penalties can be imposed on judges in your country? Is the disciplinary penalty of removal from office among them? Can a judicial conviction for a crime lead to a penalty of removal from office?

The procedure in the disciplinary tribunal ends with the conviction or acquittal of the Judge and the tribunal is empowered to sentence a convicted judge under the disciplinary sanctions, including: remark, warning, reprimand, transfer to another place of office. The tribunal is also empowered to impose on the judge the most severe disciplinary sanction which is the removal of the judge from office, whether in the payment of an annuity or in its denial, in whole or in part.

At present, it is not possible to impose a sentence of temporary suspension on a judge but only a permanent transfer from office, but proceedings are underway to amend the legislation that will allow a judge to be suspended from office for an interim period and not only permanently, as detailed below in answer to question 4.

A criminal conviction of a judge does not lead to the automatic removal of the judge from office (unlike a Member of Knesset or a Prime Minister). In accordance with the provisions of section 18 (a) (3) of the Courts Law, insofar as a judge has been convicted of an offense 'with disgrace'; the Minister of Justice may then file a complaint against the judge to the disciplinary tribunal. After such a complaint is filed, the judge will not be automatically suspended or transferred and lesser sanctions may be taken.

4) In the disciplinary proceedings against judges in your country, is a fair trial granted? Is there an appeal against the decision imposing a disciplinary penalty on judges? During the disciplinary proceedings, can the judge be suspended from office? Does the judge who is suspended during disciplinary proceedings continue to earn a salary normally or does the judge suffer any reduction in income?

The disciplinary trial against the judge are conducted fairly.

It is not possible to appeal the ruling of the disciplinary tribunal that imposes disciplinary sentences on the judge, but a petition can be submitted to the High Court of Justice against the decision.

During the disciplinary proceedings a judge may be suspended from office. The power to suspend a judge is vested in the President of the Supreme Court when a complaint has been filed against a judge or a criminal investigation has been opened against him or an indictment has been filed against him. This is only an administrative and temporary suspension, while disciplinary proceedings are under way.

When the disciplinary tribunal convicts a judge, he may not be sentenced to suspension as a disciplinary measure in sentencing. The Disciplinary Tribunal for Judges is not empowered to impose disciplinary measures of the suspension type.

A suspended judge will be paid half his salary.

Recently, following the Pozanski case, in which it was determined that the court has no authority to impose a sentence of suspension, a bill was submitted which was intended to establish a disciplinary measure of suspension as a final disciplinary penalty for a period not exceeding one year. The explanatory memorandum to the bill states that currently in the existing level of punishment by law, there is a significant gap between the most severe means of punishment, i.e. permanent dismissal and the other disciplinary measures, and there is no disciplinary measure to serve as an intermediate level of existing punishments. It was also proposed in the bill that the tribunal will be given authority to prevent the promotion of a judge who has in his or her file a note, warning or reprimand by the disciplinary tribunal but this authority is limited for a period not exceeding 7 years. This authority naturally depends on the circumstances of the case and the seriousness of the offense. It was also proposed that a ruling of the disciplinary tribunal be given the right to appeal to the Supreme Court, since the ruling of the disciplinary tribunal cannot currently be appealed and the only option is to file a petition with the High Court. As of today, the bill has not yet been approved.

5) Were there any recent changes regarding disciplinary proceedings that maybe considered to infringe upon judicial independence in your country? If so, were those changes introduced by legislation, or were existing laws applied differently? Please specify.

Recently, there have been no changes in Israel regarding disciplinary proceedings that could impair the judicial independence of judges.

In Israel, there is a widespread attitude that criticism of judges is part of the legal system's constant pursuit of justice while preserving the rights of the individual and the interests of society as a whole. The existence of proper management requires the exercise of professional review and, like any governmental authority in the country, the judges are also subject to such review.

Criticism of judges could erode the principle of independence and non-dependence of judges. Nevertheless, since criticism of judges in Israel is both restrained and institutionalized and disciplinary proceedings are handled in a dignified and appropriate



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manner and with special care to improve the unique service given to judges to the judiciary, it is unlikely to harm the judicial independence of our judges.¹

¹ The answer to the questionnaire was based on various legal sources, as detailed in the full report in Hebrew.