

Questionnaire 2022 of the First Study Commission IAJ-UIM “Disciplinary Proceedings and Judicial Independence”.

Introduction:

Before answering the questions, it is important to set out the system in this jurisdiction for disciplinary proceedings against judges.

Prior to the passing of the Judicial Council Act 2019 (“the Act of 2019”) the only provision in our law for addressing conduct of judges was that provided for in Article 35.4 1° of the 1937 Constitution, which states: -

“A judge of the Supreme Court, the Court of Appeal, or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his removal.”

Over the years this Constitutional provision has been invoked but never to a conclusion. It was recognised that, though there may be issues of judicial misconduct, this Constitutional provision could only be relied upon in cases where such misconduct required removal from office of the Judge involved.

In order to address situations where judicial misconduct may have taken place but fell short of what was provided for in the Constitution the Act of 2019 sets out a definition of “judicial misconduct”, procedures to address such misconduct, and a range of sanctions available.

The Judicial Council, established by the Act of 2019, has passed “Guidelines for the Judiciary on Conduct and Ethics” and procedures to be followed in determining complaints.

At the time of writing the relevant provisions of the Act of 2019 have not been commenced but are due to be commenced by order of the Minister on some date post 1 June 2022.

The Act of 2019 defines “judicial misconduct” as follows: -

“—means conduct (whether an act or omission) by a judge, whether in the execution of his or her office or otherwise, and whether generally or on a particular occasion, that –

(a) constitutes a departure from acknowledged standards of judicial conduct, such standards to have regard to the principles of judicial conduct referred to in sections 7 (1)(b) and 43 (2), and

(b) brings the administration of justice into disrepute.”

Section 7 (1) (b) provides: -

“(b) high standards of conduct among judges, having regard to the principles of judicial conduct requiring judges to uphold and exemplify judicial independence, impartiality, integrity, propriety (including the appearance of propriety), competence and diligence and to ensure equality of treatment to all persons before the courts.”

Section 43 (2), essentially, repeats the aforesaid.

Questions:

1. As the relevant sections of the Act of 2019 have yet to be commenced it is not possible to state what kind of allegation could justify disciplinary proceedings. Though it has not been determined, it is arguable that a judge’s extrajudicial activities could be the subject of a complaint.

The content of decisions taken by judges are excluded from the disciplinary process. Judges cannot be charged criminally for the content of their judicial decisions.

2. Under the Act of 2019 the Judicial Conduct Committee, and the relevant statutory provisions that relate to it, are responsible for disciplinary proceedings against Judges. In the case of an action against a Judge under Article 35.4 of the Constitution both the upper house and lower house of Parliament would be responsible (Dáil and Senate). The penalties provided for under the Act of 2019 would be imposed by the Judicial Conduct Committee. The Judicial

Conduct Committee consists of the Presidents of the various courts, three elected members and 5 lay members.

3. Judges can be advised, reprimanded or admonished under the Act of 2019. As referred to above, a judge can be removed from office under Article 35.4 of the Constitution. Where a conviction for a crime comes within the definition of “judicial misconduct” and/or within the provisions of Article 35.4 of the Constitution the judge involved could be sanctioned or removed from office.

4. The procedures adopted for the hearing of complaints of judicial misconduct incorporates rules for fair procedures. There are internal provisions for the review of penalties under the Act of 2019. In the case of an action taken against a judge under Article 35.4 of the Constitution there is no provision for an appeal.

There is no provision for the suspension from office of a judge facing a complaint of “judicial misconduct” or a complaint under Article 35.4 of the Constitution. Thus any issue concerning payment of salary does not arise.

5. As the provisions concerning disciplinary proceedings provided for in the Act of 2019 have yet to commence there has been no suggestion that such would interfere with judicial independence as provided for in the 1937 Constitution.