

Questionnaire 2022 of the 1st Study Commission IAJ-UIM

“Disciplinary proceedings and judicial independence”

Questions:

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?

Answer: The Code of Judicial Ethics, which was adopted at the VII Congress of Judges of the Republic of Kazakhstan regulates the basic norms and standards of conduct of a Kazakhstani judge during the administration of justice and outside of working hours. When adopting the Code of Judicial Ethics, international norms and standards of the rules of conduct of judges, including the European Charter on the Law on the Status of Judges and Bangalore Principles of Judicial Conduct were taken as the basis. The behavior of a judge outside the court as well as during the performance of professional duties should contribute to maintaining public confidence in the independence of the court. As for disciplinary proceedings regarding a judge, it can be initiated on a number of offenses provided for by the Constitutional Law of the Republic of Kazakhstan "On the Judicial system and the status of judges". A judge may be brought to disciplinary responsibility on two grounds: for gross violation of the law when considering court cases; for committing a defamatory offense contrary to judicial ethics. It follows from the above that the behavior of a judge in the workplace or in his personal life, as well as the content of decisions taken by judges can lead to disciplinary proceedings only in the case of gross unethical or unprofessional behavior that may jeopardize the reputation of the judiciary or harm the participants in the process. For example, by the decision of the Judicial Jury of February 10, 2022, judge of Aktobe oblast A.A. brought to disciplinary responsibility for gross violation of the rule of law during the consideration of court cases, with the application of a penalty to the judge in the form of a remark. The reason for bringing Judge A.A. to disciplinary responsibility was a gross violation of the norms of criminal procedure legislation, expressed in the failure to provide the defendant with the last word, which entailed a significant violation of the rights of the defendant.

Judges may be held criminally liable for the content of their court decisions only in the case of the issuance of a deliberately illegal judicial act established in accordance with the procedure provided for by law. Judges may not be held criminally or disciplinarily liable for interpreting the law, evaluating facts or evidence when considering a case, except in cases of criminal intent or gross negligence.

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).

Answer: In Kazakhstan, the issues of disciplinary proceedings regarding judges are carried out by an independent collegial body with a balanced composition - the Judicial Jury at the Supreme Judicial Council.

The Judicial Jury is a body considering disciplinary cases against judges, consisting of six judges, two representatives of the public and one member of the Supreme Judicial Council from among the judges who have the right of advisory vote.

An expanded plenary session of the Supreme Court recommends judges to the Judicial Jury, and representatives of the public are recommended by the Supreme Judicial Council.

The Judicial Jury consists of judges at all levels of the judicial system, and in order to avoid the risk of corporatism, the Judicial Jury consists of representatives of the public.

Judges with high professional qualities, impeccable reputation, who has the respect of the judicial community and have at least 10 years of experience as a judge are elected to the Judicial Jury.

The grounds for consideration by the Judicial Jury of materials in relation to the judge are: 1) representation of the Chairman of the Supreme Court; 2) decisions of plenary sessions of regional courts and the Supreme Court; 3) information and facts contained in mass media publications, appeals of individuals and legal entities, confirmed by the results of inspections; 4) decisions of commissions on judicial ethics.

In addition, there are Commissions on Judicial Ethics at the regional level at the regional branch of the Union of Judges.

The subject of the Commission's activity is the consideration of materials on appeals of individuals, legal entities and the public, representations of public officials, as well as information contained in publications of mass media and other official sources of information on actions (inaction) expressed in the commission of a defamatory offense contrary to judicial ethics in the behavior of a judge, chairman, chairman of the judicial board, as a result of which the provisions of the Code of Judicial Ethics were violated, which led to the diminution of the judiciary authority and damage to the reputation of the judge. The Commission may apply public censure regarding a judge in case of confirmation of the fact of committing a misdemeanor contrary to judicial ethics.

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?

Answer: Types of disciplinary penalties that may be imposed on judges:

- remark;
- reprimand;
- dismissal of the chairman of the court or the chairman of the judicial board for improper performance of official duties;
- dismissal of a judge on the grounds provided for by the Constitutional Law "On the Judicial System and the Status of Judges".

For each violation, only one disciplinary penalty is imposed, taking into account the nature of the disciplinary offense, data on the identity of the judge and the degree of his guilt.

We believe that the legislation should provide for a wider range of penalties, starting with a warning for minor offenses, and ending with such types of penalties as removal from office, transfer or dismissal of a judge for more serious offenses that entailed negative consequences.

Judicial conviction of a judge for a corruption or other crime may lead to punishment in the form of dismissal from office, since criminal prosecution and the position of a judge are incompatible. Judges may not be persons who have previously been convicted, as well as those released from criminal liability on non-rehabilitating grounds.

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?

Answer: In the Republic of Kazakhstan, a fair and objective public hearing is ensured during disciplinary proceedings against judges. The bodies of disciplinary proceedings are guided by the principles of openness and freedom of expression, guarantees of respect for the rights, freedoms and legitimate interests of individuals and legal entities, equality of the parties, respect for the independence of judges. The judge gets informed that an official investigation has been started against him on the received complaint, presentation or information in the media, the judge is given the opportunity to give explanations, present his objections and evidence to refute the facts. The sessions of the Judicial Jury are held openly, except in cases where it is necessary to preserve state secrets and other secrets protected by law in order to protect the rights and interests of citizens protected by law. The judge in respect of whom the issue of consideration of the disciplinary case is being decided is necessarily invited to the meeting of the Judicial Jury. The decision of the Judicial Jury may be appealed by the judge against whom it was made to the Supreme Judicial Council of the Republic of Kazakhstan, no later than ten working

days from the date of receipt of a copy of the decision. During the disciplinary proceedings, the judge cannot be removed from office and continues to receive a salary. The dismissal of a judge from office is carried out in accordance with the procedure provided for by the Constitutional Law.

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.

Answer: On December 20, 2021, amendments and additions were made to the Constitutional Law of the Republic of Kazakhstan "On the Judicial system and the Status of Judges of the Republic of Kazakhstan", providing for an increase in the terms of bringing judges to disciplinary responsibility. According to the amendments, disciplinary proceedings against a judge may be initiated no later than one year from the date of discovery of the offense and no later than two years from the date of the offense. Such long terms limit the rights of judges to a certain extent

Proposal for topic 2023

Please submit your proposals for possible topics to be treated in 2023 together with the answers to the questionnaire.

Answer: Proposed topic: “International standards for the implementation of disciplinary proceedings regarding judges”.