

Questionnaire 2022 of the 1st Study Commission IAJ-UIM

“Disciplinary proceedings and judicial independence”

One important remark before answering the questions.

It should be noted, that on July 15, 2022 the regulations regarding the disciplinary proceedings against judges have changed. It is an effect of the pressure taken by European Commission, European Court of Justice and European Court of the Human Rights.

So, since July 15, 2020, According to Art 107 § 2 the Act on the System of the Common Courts

Contrary to the previous regulations – (it) does not constitute a disciplinary offense:

- 1) the circumstance that a judicial decision made with the participation of a judge in question is vitiated by an error in the interpretation and application of national or European Union law or in the establishment of facts or in the evaluation of evidence;
- 2) requesting the Court of Justice of the European Union to consider the preliminary question referred to in Article 267 of the Treaty on the Functioning of the European Union;
- 3) examination of compliance with the requirements of a judge`s independence and impartiality in the case, or an examination of the fulfillment of the requirements of independence in the case, or an examination of the fulfillment of the requirements of independence and impartiality in the case

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.

A judge is liable for disciplinary offenses, including:

- 1) clear and flagrant contempt of the law;
 - 1a) **refusal to perform justice;** - this can include refusal to adjudicate with persons who were improperly nominated for judicial positions;

- 2) **acts or omissions that may prevent or significantly impede the functioning of the judicial body** (this can be equally applied to the above situation);
- 3) **actions questioning the existence of the judge's official relationship, the effectiveness of the judge's appointment, or the legitimacy of the constitutional body of the Republic of Poland;**
- 4) public activities that are incompatible with the principles of judicial independence and independence of judges;
- 5) misconduct with the dignity of the office.

Many kinds of a judge`s behaviour can be a factual and legal base for the disciplinary action (as well as criminal charges after lifting the judge`s immunity):

- Driving under influence – there were some cases with judges committing this offence – in every known case the judicial immunity was waived, the judges were removed from the offices and then sentenced in the criminal trials;
- Thefts – there were 2 cases – 1. A retired judge with some mental problems was caught in the shopping mall while stealing flash memories. Another example was that a judge after a hard day was filling a car with petrol and while paying he took a banknote that was given to the other client. The disciplinary procedure was initiated, the judge explained that it was his mistake and was finally acquitted.
- Sexual harassment of another judge or a court clerk – there were two cases – one male judge allegedly harassed the female judge and in return 3rd judge – husband of the female punched the first one in the face. The case was a hit in the news but all was finished with the warning notes.
- Behaviour of a judge that happened before taking the office – a female judge – an excellent judge with good opinion was reported to be sending improper text messages to another woman in the context of the love triangle. In this case the judge was removed from the office.

Can the content of the decisions taken by judges also lead to disciplinary proceedings?

Judge Paweł Juszczyszyn from the court in Olsztyn, following the CJEU judgment of 19 November 2019, while examining a decision issued by a judge nominated by the neo-NCJ, decided to check the process of appointment of the National Council of Judiciary. He asked Marszałek Sejmu (the Speaker of the Lower Chamber of the Parliament) to provide him with the lists of support of candidates to the Council, but with no effect. The Speaker refused to reveal the lists, even when punished with a fine. The

disciplinary prosecutor pressed charges against judge Paweł Juszczyszyn for „exceeding his authority” by demanding those lists. Upon his motion, the Disciplinary Chamber suspended judge Paweł Juszczyszyn on 4 February 2020, for attempting to examine the legality of the neo-NCJ and the status of a judge appointed by it. The Chamber acknowledged that he had no right to do this.

The suspension was to remain in force until a final disciplinary ruling was issued in this case. At the same time, the Disciplinary Chamber reduced the judge’s salary by 40%.

On 8 April 2020 the Court of Justice of the European Union issued an interim measure by which it suspended the activity of the Disciplinary Chamber operating at the Supreme Court in disciplinary cases of judges pending a ruling ending the proceedings on the system of disciplinary liability of judges in Poland initiated by a complaint from the European Commission.

The disciplinary case has not ended recently and Paweł Juszczyszyn was allowed to return. But by decision of the President of his court he was transferred from Civil to another Department.

Four more judges (Krzysztof Chmielewski, Maciej Ferek, Piotr Gaćiarek, Maciej Rutkiewicz) got suspended by the Disciplinary Chamber of the Supreme Court for applying the judgements of the Court of Justice of the European Union by questioning the status of persons appointed to judicial positions by the National Judicial Council whose independence was questioned by the Court of Justice of the European Union and the European Court of Human Rights and that was elected contrary to the Constitution of Poland. They have not been reinstated yet. Their cases are to be considered by the new Chamber of Professional Responsibility within the Supreme Court in September this year.

The Chamber attempted to suspend more judges for such decisions, but they all acquired interim measures from the European Court of Human Rights.

Can judges be charged criminally for the content of their judicial decisions under any circumstances?

There was one example so far. The judge to fall victim of the revenge of the ruling party was judge Igor Tuleya from Warsaw Regional Court who publicly pointed out the wrongdoings of the ruling coalition in the parliament. On 18 November 2020 The Disciplinary Chamber lifted his immunity from criminal persecution, suspended him from his duties as a judge and reduced his salary by 25%. The Prosecutor’s Office wants to charge the judge for letting the media into the courtroom for the announcement of the ruling in

December 2017 in the case of PiS's voting on the budget in the Sejm's Column Hall in December 2016.

On the very day of his suspension, as his last act as a judge, Igor Tuleya submitted four questions to the CJEU for preliminary rulings. He wants the EU Court to assess whether the Disciplinary Chamber can lift the immunity of judges, suspend them and whether its decisions are valid.

Judge Igor Tuleya remains suspended.

On 5th August 2022 he received a phone call from the president's office of the Regional Court in Warsaw that he will be reinstated. On 8th August he obtained a formal decision by the president of the court. However, he was not allowed to return to work. The decision of the president was immediately overturned by the president of the Court of Appeal in Warsaw who is at the same time the Disciplinary Prosecutor for judges, nominated by the Minister of Justice Prosecutor General.

2) Which body is responsible for disciplinary proceedings against judges in your country?

According to Art. 110 the act on the system of the common courts.

§ 1. In disciplinary cases of judges adjudicate:

1) in the first instance:

(a) disciplinary courts at appellate courts composed of three judges – the disciplinary judges were nominated by the Minister of Justice from judges of different levels of courts, often without their consent or even knowledge,

(b) the Supreme Court in a panel of two judges of the Chamber of Professional Responsibility and one Supreme Court juror in cases of disciplinary offenses exhausting the elements of intentional crimes prosecuted by public indictment or intentional fiscal offenses, or cases in which the Supreme Court has requested that the disciplinary case be heard along with the pointing out of the misconduct, and cases referred to in Article 107 § 1 item 3;

2) in the second instance - the Supreme Court, composed of two judges of the Professional Responsibility Chamber and one Supreme Court juror.

§ 3. The disciplinary court in whose district the judge under investigation serves shall have local jurisdiction to hear the cases. However, if the case

involves a judge of an appellate court or a judge of a district court, another disciplinary court designated, at the request of the disciplinary prosecutor, by the Supreme Court - Professional Responsibility Chamber from among the disciplinary courts with jurisdiction over the appellate areas adjacent to the appellate area in which the court in which the judge under investigation serves is located, shall have jurisdiction.

Is the body that carries out the disciplinary procedure the same one that imposes the penalties?

The investigation is carried by the disciplinary commissioners (prosecutors) and the he/she sends some kind of indictment to the disciplinary court that can impose the penalties.

It should be noted that the Disciplinary Prosecutor for Judges and his deputies are nominated by the Minister of Justice – Prosecutor General, member of the ruling coalition.

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)?

It's composed mainly of the judges, however, in the Supreme Court there are also lay judges (jurors) to assist the panels of professional judges in disciplinary cases.

Is it composed only by judges, does it have a mixed composition, or is it composed only by professionals outside the of the Judiciary Branch? Kindly describe the composition of that body (those bodies).

2) Which disciplinary penalties can be imposed on judges in your country?

Disciplinary penalties are:

1) admonition;

2) reprimand;

2a) reduction in base salary by 5%-50% for a period of six months up to two years;

2b) a fine in the amount of one month's base salary payable for the month preceding the issuance of a final judgment of conviction, plus the judge's long service allowance, function allowance and special allowance;

3) removal from the function (Chairperson of a court or of a department);

- 4) transfer to another court;
- 5) dismissal of the judge from office.

Is the disciplinary penalty of removal from office among them?

Yes.

Can a judicial conviction for a crime lead to a penalty of removal from office?

Yes

In the disciplinary proceedings against judges in your country, is a fair trial granted?

As a rule the disciplinary proceedings are held according to the Criminal Procedure Code regulations. There were some examples that the late Disciplinary Chamber of the Supreme Court acted in contradiction to the Code – they were having trials without the parties being informed or the judges` defenders (lawyers or other judges) were not allowed to be present during the hearings.

Is there an appeal against the decision imposing a disciplinary penalty on judges?

Yes. The judge is allowed to challenge the verdict of the disciplinary court of the 1st instance to the Supreme Court`s Disciplinary Chamber (until July 15, 2022) or the Professional Responsibility Chamber (after July 15, 2022)

During the disciplinary proceedings, can the judge be suspended from office?

Yes. It can be done by a decision of the Disciplinary Court, President of the Court or Minister of Justice.

Does the judge who is suspended during disciplinary proceedings continue to earn a salary normally or does the judge suffer any reduction in income?

It`s up to the decision of the body mentioned above.

5) Were there any recent changes regarding disciplinary proceedings that may be 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.

An amendment to the Law on the Supreme Court was published in the Official Journal on June 14, which provides for the abolition of the Disciplinary Chamber and the establishment of a Professional Responsibility Chamber in its place. The amendments came into effect on July 15.

The Sejm passed the amendment proposed by the president on May 26, which, among other things, abolished the Disciplinary Chamber. The Senate, meanwhile, on June 2, introduced 29 amendments to the bill, worked out at a meeting of Senate committees. The entire amendment was supported by all 97 senators participating in the vote. On Thursday, June 9, the Sejm rejected 23 of the 29 Senate amendments to the amendment to the Supreme Court law. All of the key amendments concerning, among other things, the nullification of the rulings of the Disciplinary Chamber, or those preventing current judges of that chamber from ruling in the future Chamber of Professional Responsibility, did not gain support. It is possible that the persons who were in the Disciplinary Chamber will be chosen to work in the new Chamber.

- The amendments to the Law on the Supreme Court are not sufficient in the light of ensuring the judges' right to disciplinary proceedings in front of an independent court provided by law. The improperly appointed judges remain in the Supreme Court despite the rulings of the CJEU and the ECHR in the Resolution of the Joint Chambers of the Supreme Court of 23 January 2020, in which the Supreme Court expressly stated that due to the improper appointment of the new judges of the Supreme Court all their future (and past as far as it concerns the Disciplinary Chamber) decisions should be declared void.

The amendments contained in the law provide for the abolition of the Disciplinary Chamber, and the newly created Supreme Court Professional Responsibility Chamber will consist of 11 judges of the Chamber, appointed by the President of the Republic of Poland from among the judges of the Supreme Court sitting in the other chambers of the Supreme Court, drawn in advance at a meeting of the Supreme Court Collegium in a number three times the number of judges sitting in the Chamber. Excluded from the draw will be judges holding administrative positions related to the exercise of functions in the Supreme Court, such as the First President of the Supreme Court, the President of the Supreme Court, the Disciplinary Commissioner of the Supreme Court or the Press Spokesperson, as well as judges of the Supreme Court who, in the five years preceding the draw, have been punished with a disciplinary penalty, except for a warning.

The law specifies in detail the term of office of judges who sit in the Professional Responsibility Chamber (as a rule, it is five years) and how the

start and end dates of their terms are to be determined. If the term expires, a supplementary draw will be held.

There was a change in the Supreme Court – since July 15, 2022 the infamous Disciplinary Chamber was closed. The persons adjudicating in the chamber were given a choice – they could retire with 100% of salary until reaching the retirement age (quite often very young people around 40) or they could be transferred to other Supreme Court Chambers. So far half of them decided to retire.

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

Respecting the rule of law in all the countries together with threats to Judicial independence.

The role of the judiciary in a modern state. Should we be confined in the courtrooms or play a greater role in society. The checks and balances principle in practice.