

## International Association of Judges (IAJ/UIM)

### 1st Study Commission – 2022

#### “Disciplinary proceedings and judicial independence”

##### Answers Slovenia

- 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?

According to Article 81 of the Judicial Service Act a disciplinary sanction may be pronounced upon a judge who wilfully or by negligence breaches the judicial duties prescribed by law and the Court Rules, or irregularly performs judicial service.

The principal acts that entail a breach of judicial duties or irregular performance of judicial service are:

1. commission of an act that has the statutory definition of a criminal offence while holding judicial office;
2. failure to carry out judicial duties or unjustifiable refusal thereof;
3. unconscientious, late, inappropriate or negligent performance of judicial service;
4. illegal or inappropriate disposal of resources;
5. disclosure of official secrets and other confidential information defined by law or the Court Rules;
6. abuse of status or transgression of official authorisations;
7. abuse of the right to absence from work;
8. failure to achieve the expected work results for more than three months consecutively without justifiable grounds;
9. breach of the case roster or priority handling of cases defined by law or the Court Rules;
10. performance of functions, work or activities incompatible with judicial office pursuant to the Constitution and law;
11. failure to notify the president of the court regarding the acceptance of work assessed as incompatible with judicial office;
12. failure to report existing legal grounds for the exclusion of the judge or continuation of work on a case in which there are grounds for exclusion;
13. advance public expression in a judicial case that is *sub judice* or in a case in which extraordinary legal remedies have been lodged;
14. action or behaviour on the part of the judge that conflicts with the judge's impartiality or that damages the reputation of the judicial profession;
15. inappropriate, undignified or insulting behaviour or language towards individuals, state bodies and legal persons in relation to the performance of judicial service or outside it;
16. obstruction of the functioning of the court in order for the judge's own rights to be exercised;
17. acceptance of gifts or other benefits related to judicial service;
18. failure to submit information on financial status or late submission thereof;
19. breach or omission of mentoring duties;
20. failure to observe decisions issued on the judge's transfer or assignment;
21. prevention of obstruction of the implementation of the provisions of the act governing official supervision of judges' work and supervisory appeals;
22. dealings with parties, their representatives and other persons that are in conflict with the provisions of the Court Rules;
23. failure to observe measures for the regular and effective execution of judicial power;
24. breach or omission of measures pursuant to the programme for resolving the backlog at the court;
25. failure to fulfil the duties of professional education;
26. breach of safety at work regulations;
27. breach of the provisions of the Court Rules on the use of official robe.

Disciplinary proceedings against judges, therefore, can be conducted on the grounds of both workplace behaviour and actions undertaken privately.

No, the content of the decisions taken by judges can not lead to disciplinary proceedings.

No, wrongful application of the law alone does not constitute the criminal offence; the offence is only fulfilled if a judge deliberately misapplies the law in order to render a decision in favour of or to the detriment of the party (Article 288 of the Criminal Code).

- 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 the of the Judiciary Branch? Kindly describe the composition of that body (those bodies).

According to Articles 38 and 39 of the Judicial Council Act disciplinary bodies shall be the disciplinary prosecutor and their deputy and the disciplinary court.

Disciplinary bodies shall be appointed for a four-year term, with the possibility of re-appointment. Disciplinary bodies shall be appointed or dismissed from office by the Judicial Council by a two-thirds majority vote of all members. Members of disciplinary bodies from among judges shall be proposed for nomination by the Supreme Court plenary session to the Judicial Council.

A motion for disciplinary sanction shall be lodged and represented by a disciplinary prosecutor, who shall be substituted by their deputy in the event of their absence. The disciplinary prosecutor or their deputy shall be Supreme Court judges.

The disciplinary court shall have nine members: - three Judicial Council members, one of whom shall be the president and the other two their deputies (The Judicial Council consists of 11 members, of whom 6 are judges and 5 are legal experts - law faculty professors, lawyers, notaries and other legal experts – non judges members); - six judges, of which two shall be Supreme Court judges, two higher court judges and two first instance court judges. The disciplinary court shall decide on cases with a panel of three members of which at least two shall be judges. The president of the panel shall be the disciplinary court president or their deputy, whereby at least one of the remaining two members must be a judge with the same position as the judge against whom the disciplinary proceedings have been instituted. The composition of the panel shall be determined by the disciplinary court president. The Judicial Council shall determine the order in which the disciplinary court president will be substituted by two deputies in their absence.

- 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?

Disciplinary sanctions pursuant to Article 81 of The Judicial Service Act are:

1. written warning;
2. suspension of promotion;
3. wage reduction;
4. transfer to another court;
5. termination (dismissal) of judicial office.

Besides dismissal from office as a disciplinary sanction judge shall be removed from office:

- if a judge is convicted of a wilful criminal offence through the abuse of judicial office,
- if a judge is convicted of a wilful criminal offence and is given a custodial sentence of more than six months.

- 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?

Yes, disciplinary proceedings are lead applying rules of Criminal Proceedings Act.

An administrative dispute shall be allowed against disciplinary court decisions.

Yes, judge can be suspended and during this period he/she receives 1/2 of his/her normal salary. The president of the Supreme Court may, depending on the nature and severity of the alleged disciplinary violation, impose on the judge a temporary dismissal (suspensus) from the judicial service.

- 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.

No changes were recently adopted.

**Proposal for topic 2023:**

The role of the presidents of the courts - only the manager of court cases and/or the defender of independence - the role of the presidents of the supreme courts.

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