

1st Study Commission – IAJ-UIM Meeting 2022 - Israel

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?

All voluntary behavior contrary to the duties set out in the professional statute or which is incompatible with the requirements of independence, impartiality and dignity essential to the exercise of judicial functions may be subject to investigation responsibility. This behavior can occur both in the workplace and in private life.

Some examples of private life behaviors that led to disciplinary punishment:

- The drunk judge who provoked a fight in traffic,
- The judge who had a romantic affair with a prostitute and because of that got into heated arguments with his wife, in public places in the small town where he worked,
- The judge who, abusing authority, used his professional judge ID card for private purposes,
- The judge convicted of domestic violence.

The merits of the judge's decision are not subject to disciplinary action. A wrong decision can only be overturned and amended on appeal. However, indirectly, there was a case where the judge was punished for what he wrote in a judgment, not exactly on the merits of his decision but for the type of language he used, which was deemed to violate the duty to respect the victim of the case.

The judge can only be subject to criminal liability for the content of his/her decision if it constitutes a crime, that is, if he/she has intentionally made a wrong decision to favor someone or to obtain an illegitimate benefit.

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).

The competence for disciplinary action against a judge belongs to the Superior Council of the Judiciary. This body is composed of the President of the Supreme Court of Justice, elected by his peers in the respective court, who inherently presides over the Council, by 7 judges elected by all the judges, by 2 members appointed by the President of the Republic and 7 elected by Parliament. Members appointed by the President of the Republic and elected by Parliament do not need to be judges. The tradition is that lawyers or law professors of recognized merit being appointed.

The decision to start a disciplinary investigation belongs to the Plenary of the Superior Council for the Judiciary. The investigation of the case is carried out by a Judicial Inspector, who is a judge appointed by the Council, of a higher rank than the judge in question. The Inspector reviews the evidence and makes an accusation (indictment). The Judge can defend himself/herself and present evidence and can also be heard in a public hearing in the Council. The Council then decides on an acquittal or on the imposing of a sanction. The

judge may appeal to the Supreme Court of Justice, to a Chamber with 7 members. The proceedings are all in written form and all the guarantees of the criminal procedure are applicable.

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 following penalties are admitted in the statute (indicated in ascending order of severity):

- Unregistered warning
- Registered warning
- Monetary fine
- Transfer to another court
- Suspension of functions without pay
- Compulsory retirement (the judge is removed from service and is entitled to a retirement pension according to the years of service, regardless of age)
- Dismissal (the judge is removed from the service and loses and will only be entitled to the retirement pension, depending on the number of years of service, when he turns 65 years old)

Conviction in criminal proceedings may give rise to a disciplinary penalty of expulsion. As a rule, this will be the case, unless the crime is of minor gravity.

Examples:

- A judge convicted of a crime of perjury was punished with compulsory retirement

- A judge convicted of domestic violence (less serious) was punished with 6 months suspension.

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 proceedings are in written form. The judge has the right to answer to the accusation, to be heard by the Inspector and by the Council and the right to give evidence (documents, witnesses, etc). In case of conviction, the judge may appeal to the Supreme Court of Justice. Disciplinary proceedings have the same guarantees as criminal proceedings.

During the disciplinary proceedings, at the proposal of the Inspector and at the decision of the Council, the judge may be preventively suspended from office for a period of up to 6 months, with the right to full payment of the salary.

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

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

There is a general trend in the courts, I think all over the world, allowed by information and communication technologies and aggravated in the two years of the pandemic, for the use of telework. There are fewer and fewer judges present in the courts and it is increasingly difficult to convince them to work in the courtroom. I think it will be useful to discuss the impact that this new trend of looking at judicial work will have on justice