

Switzerland_Questionnaire 2022 of the 1st Study Commission IAJ-UIM “Disciplinary proceedings and judicial independence”

Responses to the 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?

In Switzerland, the court organization, including disciplinary law, is the responsibility of the cantons and the Confederation (dual system: cantonal court systems and federal court system). Therefore, there is no unified system of disciplinary law for judges, neither in formal nor in substantive law. The cantons retain a large degree of autonomy in the choice of their judicial organization, as well as in the definition of the procedures applicable in matters of public law. It is indeed difficult to find complete and reliable data on disciplinary proceedings

The solutions found in the various cantonal systems that have a system of disciplinary responsibility for judges - and even more so the scattered solutions relating to federal judges - are sometimes the result of a process that has not yet been completed and is therefore of limited overall interest. Moreover, there is considerable diversity between the various systems of disciplinary supervision of sitting magistrates.¹

In most cases an individual's behavior in the workplace is cause for a disciplinary procedure. However, ethical misconduct in private life may also be a reason.²

The content of the decisions taken by judges cannot lead to any disciplinary proceedings, neither can judges be charged criminally for the content of their judicial decisions.

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).

Federal courts of first instance / Supreme Federal Court

The Federal Criminal Court, Federal Administrative Court and Federal Patent Court are subject to **administrative supervision** by the Federal Supreme Court. This supervision is carried out by the Administrative Commission of the **Federal Supreme Court**.

The exercise of **supreme supervision** is reserved to the **Federal Assembly (Parliament)**. The Judicial Committee of the Federal Assembly is responsible for preparing **the election - or non-re-election** - and dismissal of federal judges. The **Judicial Committee of the Federal Assembly** submits to the Federal Assembly its proposals concerning the (non-)re-election or dismissal of federal judges. Art. 5 para. 3 of

¹ C.f Nicolas Pellaton: Le droit disciplinaire des magistrats du siège- Un essai dans une perspective de droit suisse.2016, p. 493.

² In Switzerland the total known number of **disciplinary proceedings** against judges is **5** in the year 2018. Of these, **1** was due to ethical misconduct, **3** due to professional misconduct and 1 due to supervisory appeal (cf. Conseil de l'Europe- The European Commission for Efficiency of Justice, Evaluation des systèmes judiciaires (2018-2020), Suisse: <https://www.coe.int/fr/web/cepej/country-profiles/switzerlandssse> (coe.int))

the "Principles of Action" states that the Commission shall initiate proceedings if there is a well-founded suspicion that the person concerned has seriously violated his or her duties intentionally or through gross negligence, or has permanently lost the ability to perform his or her function.

Judges of the federal courts of first instance are subject to a form of **disciplinary supervision**, even if it is not expressly designated as such. Indeed, the grounds for dismissal provided for in art. 26 let. a LOAP (serious violation of the duties of office, either intentionally or through gross negligence) clearly constitute grounds of a disciplinary nature. **The Federal Assembly**, which may intervene through the Judicial Commission, therefore **functions as a disciplinary authority in such situations**.

The judges of the Federal Supreme Court are not expressly subject to disciplinary supervision. According to art. 188 para. 3 Federal Constitution, the Federal Supreme Court **administers itself**. The Federal Supreme Court shall regulate its own organization and administration. Art. 15 para. 1 let. a FSCA (Federal Court Law) gives the plenary court of the Federal Supreme Court, composed of the ordinary judges, the power to issue regulations concerning, among other things, the organization and administration of the court **and the resolution of conflicts between judges**. According to this provision conflicts are to be resolved primarily **internally** through dialogue between judges. In the event of failure, the President of the Federal Supreme Court shall appeal to the Administrative Commission of the Federal Supreme Court, which shall then take the appropriate measures. The Administrative Commission of the Federal Supreme Court shall inform the **Federal Assembly** if the case is an important matter that may be subject to **high-level supervision**.

The **Judicial Committee of the Federal Assembly**, which is responsible, among other things, for preparing the **election and dismissal of judges** of the **Federal Supreme Court** will take up the matter if necessary. This committee could also take up the matter itself. It submits its proposals to the Federal Assembly concerning the (non-)re-election or dismissal.

Therefore, Judges of the Federal Supreme Court are subject to a form of disciplinary supervision, even if it is not expressly designated as such. Unlike to the federal judges of first instance **the law does not specify the grounds on which judges of the Federal Court may be dismissed** by the Federal Assembly. However, such a dismissal can obviously be based on disciplinary grounds. Indeed, the "conflicts" referred to above clearly concern situations that fall under disciplinary law. Here, with the Federal Supreme Court no appeal is expressly provided for concerning decisions to dismiss judges of the Federal Court pronounced by the Federal Assembly - by hypothesis - on disciplinary grounds. However, **such a remedy should be provided** since the Federal Assembly clearly does not constitute a judicial authority within the meaning of **Article 6(1) ECHR**.

Cantonal Courts (Geneva)

Of the 26 Cantons of Switzerland 7 have introduced a **Supreme Judicial Council** (all the courts of the three jurisdictions (civil, penal, administrative) of first and second instance are governed by a **cantonal** court organization.

The first Supreme Judicial Council in Swiss cantons exists in Geneva. In terms of **disciplinary supervision**, the **Supreme Judicial Council** has the power **to initiate and investigate all disciplinary proceedings** against members of the judiciary and to **impose the sanctions** and/or **measures** referred to in **Articles 20 and 21 of the Court Organization Act** (*Loi sur l'organisation judiciaire*, LOJ).³

³ **Art. 20 Sanctions** disciplinaires 1 Le magistrat qui, intentionnellement ou par négligence, viole les devoirs de sa charge, adopte un comportement portant atteinte à la dignité de la magistrature ou ne respecte pas les décisions du conseil est passible des sanctions disciplinaires suivantes : a) l'avertissement; b) le blâme; c) l'amende jusqu'à 40 000 francs; d) la destitution. 2 Ces sanctions peuvent être combinées. 3 La poursuite et la sanction disciplinaires se prescrivent par 7 ans. 4 Le conseil prononce les sanctions précitées et pourvoit à leur exécution.

Article 19 of this law regulates the procedure applicable to disciplinary matters before the Supreme Judicial Council. The law provides that the members of the Council shall exercise their functions in complete independence.

The **Court of Appeal of the Judiciary** hears, in the last instance, appeals against decisions of the High Council of the Judiciary. The said Court is **not subject to the supervision of the Supreme Judicial Council** (art. 137 let. a LOJ/GE). It is composed of three judges and an equal number of deputies, whose condition of eligibility is to have exercised a professional activity for at least ten years after obtaining a lawyer's license or to have obtained for at least five years the title of professor at the law faculty of the University of Geneva (art. 136 para. 1 LOJ/GE).

The other six cantons with a Supreme Judicial Council follow the model described above. The other cantons have a similar system like the Federal judiciary.

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 Law provides that when the dismissal of a **federal judge of first instance** is at issue, the Administrative Commission of the Federal Supreme Court may order a preliminary investigation. If, on the basis of the conclusions of a preliminary investigation within the meaning of article 8 para. 1 RSTF or as a result of findings resulting from supervisory activity, the initiation of **removal proceedings** appears appropriate, the **Administrative Commission of the Federal Supreme Court** shall refer the matter to the competent **parliamentary committee**. If the **Judicial Committee of the Federal Assembly** becomes aware of facts that seriously call into question the professional or personal suitability of a federal judge, it shall decide ex officio and as soon as possible whether or not to initiate removal proceedings, after having first heard the person concerned. **The Federal Assembly may dismiss a federal judge of first instance before the end of his or her term of office** in the event of a serious violation - whether intentional or due to gross negligence - of his or her duties.

As to the disciplinary penalties at the cantonal courts the following sanctions are possible (Art. 20 of the Geneva Court Organization): 1 Any member of the judiciary who intentionally or negligently violates the duties of his or her office, behaves in a manner that is detrimental to the dignity of the judiciary or fails to comply with the decisions of the Council shall be liable to the following **disciplinary sanctions and measures**:

a) a warning; b) a reprimand; c) a fine of up to 40,000 Swiss francs; d) dismissal, relieve from office. These sanctions may be combined. The statute of limitations for disciplinary proceedings and sanctions shall be seven years. The Council shall impose the above sanctions and shall ensure their enforcement.

And Art. 21 **Measures**, says: 1 The Council shall relieve from office any member of the judiciary who: a) does not meet or no longer meets the conditions of eligibility; b) is affected by a reason of incompatibility; c) is unable to exercise his or her office, in particular due to his or her state of health. 2 The Council may order a member of the judiciary to complete his or her professional training

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

Art. 21 Mesures 1 Le conseil relève de sa charge tout magistrat qui : a) ne remplit pas ou ne remplit plus les conditions d'éligibilité; b) est frappé par un motif d'incompatibilité; c) est incapable de l'exercer, notamment en raison de son état de santé. 2 Le conseil peut enjoindre un magistrat de compléter sa formation professionnelle.

disciplinary proceedings continue to earn a salary normally or does the judge suffer any reduction in income?

There is **no provision for an appeal against decisions by the Federal Assembly** to dismiss federal judges of first instance on disciplinary grounds. However, such a remedy should be provided since the Federal Assembly clearly does not constitute a judicial authority within the meaning of Article 6(1) ECHR.1268

The actual regulations of the federal Courts would probably not meet the formal requirements that should be recognized in disciplinary law. Indeed, the establishment of a "procedural" framework, however clear and detailed it may be, cannot in any case compensate for the lack of an authority with a structure and competences adapted to the conduct of disciplinary proceedings.

In cantonal disciplinary law there is an appeal against the decision imposing a disciplinary penalty on judges. However, there is no appeal when a judge isn't re-elected (which is very rare, but possible).

A judge may be suspended from office, but his or her salary does not suffer any reduction.

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, there aren't any changes.

Binningen /Basel, 29.06.2022

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