

1st Study Commission IAJ - UIM of 2022

“Disciplinary proceedings and judicial independence”

Questions and Answers

Question 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: In Cyprus the standards of judicial behaviour reflect the concepts and principles of international and European codes on the matter. A comprehensive "Guide", issued by the Supreme Court of Cyprus, refers expressly to the Bangalore Principles of Judicial Conduct (UNODC, Sept. 2007); the Magna Carta of Judges (Fundamental Principle) of the Consultative Council of European Judges, CCJE (2010) 3 Final, Strasbourg 17 Nov. 2010; and the Guide to Judicial Conduct in England. The Supreme Court "Guide" sets out in considerable detail what is expected of a judge, across a wide range of a situations, whether in the workplace, i.e. relating to the judge's functions in the court, or in private life. Many situations involve questions of degree. Therefore, whether a failure on the part of a judge, in any particular instance, falls within what may justifiably be described as a disciplinary offence, must necessarily depend on a number of factors and, at the end of the day, can be a matter of value judgment.

An example of behaviour in the workplace, actually pertaining to the judicial function, is afforded by a case in which a judge was charged with repeatedly displaying, during the proceedings, oppressive, disparaging, scornful and, more generally, insulting behaviour towards lay members of the Court, lawyers, litigants and witnesses. Misconduct was proved and, as a result, the judge was dismissed. Subsequently, on a complaint by the judge to the

ECtHR, it was held that there had been an objective functional defect in the disciplinary proceeding, but no view was expressed on the merits. The defect in question has been remedied, in so far as the system is concerned, by a relevant amendment of the Rules. As a second example of behaviour connected with carrying out the judicial function, one can mention the case of a judge who consistently, and over a large period of time, failed to issue decisions and had thus rendered ineffective the due administration of justice. In disciplinary proceedings, the judge was reprimanded and it was ordered that the reprimand be published in the Official Gazette. After some time, disciplinary proceedings were again brought against the judge for similar reasons. In light of the second set of proceedings the judge resigned. As to disciplinary proceedings in the sphere of private life, we have not had in Cyprus any reported instance.

The content of the decisions taken by judges – in the sense of one disagreeing with the content – cannot, in any circumstances, lead to disciplinary proceedings. Nor can judges be criminally charged for the content, as such, of their decisions. Judges cannot incur civil liability either. There are express provisions in this regard.

Question 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).

Answer: The body responsible for disciplinary proceedings is the Supreme Council of Judicature. It has the task of both carrying out the procedure and imposing the penalty. It is composed only of judges who are, in fact, judges of the Supreme Court.

Question 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: It must be pointed out that disciplinary matters fall into two distinct categories. The one relates only to "misconduct". The Cyprus Constitution provides that a judge "*may be dismissed on the ground of misconduct*": see Article 133.7(4). Misconduct is not defined. It is understood, however, that it must be grave conduct, such as would be entirely inconsistent with holding judicial office. The other category is set out in relevant Rules and comprises of disciplinary offences, defined to include the refusal or failure to carry out judicial duties, or deviating from them and, generally, behaviour that is considered unacceptable for a judicial officer. The penalties are (a) reprimand; and (b) reprimand that is published in the Official Gazette of the Republic. It should also be noted that a judge may be retired on account of "*mental or physical incapacity or infirmity*" such as would render him incapable of discharging the duties of his office. A judicial conviction for a crime on the ground of misconduct may or may not lead to dismissal from office. It will all depend on the nature and gravity of the criminal offence.

Question 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 Cyprus, disciplinary proceedings are judicial and so there are safeguards in place which ensure that all the requirements of a fair trial are met. As stated in the context of the answer to question 1, when a judge complained to the Strasbourg Court, following dismissal for misconduct, the Court noted that there had been, in one aspect, a certain functional defect in

the Cyprus system which meant there had been a breach of Article 6 of the ECHR. The Supreme Court responded appropriately by amending the relevant Rules.

There is no appeal against a decision imposing a disciplinary penalty on a judge.

In disciplinary proceedings the Supreme Court may, regard being had to the nature of the charges, decide to suspend the judge from exercising judicial duties. During the suspension period the judge will continue to receive his salary normally.

Question 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.

Answer: There have been no changes that might infringe upon judicial independence. On the contrary, recent changes made by the Supreme Court highlight the importance of judicial independence, and make provision for additional safeguards.

Proposal for topic 2023:

It is suggested that judicial independence still remains the most important topic of interest. One has seen the rule of law "backsliding" within the EU, but it still remains to be seen whether measures taken to redress the situation will be effective. Political interference with judicial institutions has meant that real judicial independence has been, in certain places, replaced by only a semblance of it. A discussion on the matter will serve as a reminder of what is at stake and thus help to strengthen judicial independence in the European legal space.