

Liability of judges

General report

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Judges from 12 countries¹ responded to a questionnaire IAJ on Liability of judges. This general report gives an overview of all contributors and therefore represents a fairly comprehensive assessment of regulatory framework regarding liability of judges. For the details the reader should refer to the country reports as this general report is focused on generally mentioned points as well as some examples. In reporting the general structure of the questionnaire is followed:

1) Do you have regulations stipulating liability of the State for the actions of a judge?

1.1) If yes, what are the conditions for such a liability?

Some countries have legal provisions that stipulate liability of State for acts performed by public officials in general, which are also applicable regarding actions of a judge (NO, SI, PT and CH). Most countries on the other hand have special provisions concerning only actions of judges (HR, AZ, HU, IL, FR, IT² and DE). In all of the above mentioned countries only State can be held liable for an action of a judge in a way that it is compulsory to initiate a procedure against State and not directly against judge.

1.2) If so, do you have regulations stipulating the possibility for the State to take recourse against the judge? What are the conditions and procedure?

If the State has been found responsible for the action of a judge and damages have been caused intentionally or in gross negligence then recourse procedure against the judge is possible (DE, SI, HR, PT and HU). In some other countries (AZ, FR, CH and IT³) recourse procedure against judge is also possible. In Israel there is no specific law or regulation concerning recourse, nevertheless State has never initiated such procedure. There are no reports about any recourse procedures initiated against judges also in other countries, only in Norway recourse procedure against a judge is excluded.

1 France (FR), Israel (IL), Slovenia (SI), Croatia (HR), Hungary (HU), Georgia (GE), Azerbaijan (AZ), Portugal (PT), Switzerland (CH), Norway (NO), Italy (IT) and Germany (DE)

2 Italian Parliament is debating a bill to amend the law on civil liability of the judges. There is also an amendment regarding direct liability of a judge (magistrate).

3 In Italy State can use recourse action within a year. The compensation should not exceed one third of annual salary of a judge. Such limitation is excluded when fraud is carried out by a judge.

2) Do you have any regulations stipulating a personal liability of judges for their actions?

2.1) If so, is it regulated in

a) civil law

As it was already mentioned under 1) and 1.1) in civil law judges are not directly liable for any damage caused. In Israel the judges are protected by immunity for actions within their professional duties

b) criminal law

In Israel the judges are protected by immunity for actions within their professional duties (as in civil law). Also in Slovenia and Croatia the judges are protected by professional immunity but if a judge commits a crime performing his professional duties the criminal responsibility can be imposed in criminal procedures if immunity for the judge is lifted⁴.

On the other hand in several countries judges do not enjoy any privileges in criminal procedures for violating professional duties (FR, PT and CH). Judges may be held responsible for intentional violation of professional duties according to their Criminal codes also in some other countries (DE, AZ and GE).

c) rules regulating disciplinary liability?

Most countries also have regulations stipulating disciplinary liability of judges (PT, SI, HR, DE, GE, IL, CH, IT and FR⁵). Sanctions that can be imposed on a judge vary from notice or reprimand (DE, HR, SI, GE), regulatory fine (DE, AZ, HR, SI) and even removal from office (DE, SI, HR, CH, GE, IT⁶).

In Italy only disciplinary sanctions can be imposed on a judge for their actions. Disciplinary proceedings⁷ are assigned to the Magistrates' Governing Council (CSM) and the magistrate can appeal to the Supreme Court (The Court of Cassation).

A disciplinary action on a judge in Israel has to be approved by the President of the Supreme Court and the Minister of Justice.

In Norway for example if a higher court finds out that the lower court has made an evident mistake in its decision, it may order the judge that is responsible for the decision to pay the additional costs.

4 In Slovenia immunity is lifted by the National assembly, in Croatia by the Judicial council.

5 In France disciplinary cases on judges are examined by *Conseil Supérieur de la Magistrature*. Disciplinary cases strictly regard professional behavior and manners of a judge, not his decisions. Since 2011 there were three cases examined, in none of these cases judge was held disciplinary liable.

6 In Italy also cut of length of service, temporary prohibition to exercise management function and disciplinary lay off (three months to two years).

7 Criminal procedure rules and guarantees are used in the disciplinary proceedings.

3) Did you already have cases where a judge was personally liable for an action when acting in his/hers official capacity (as a Judge)? Please describe the particularities of the case and the decision which was reached.

In some countries there were no such cases (CH and HU). In Norway there are no such cases since 1930's. In Israel such cases are not possible because of the immunity that protects judges.

Overview for other countries is listed below:

- ⤴ In Germany there was only one case in which judge forgot to attend the hearing and did not appear by court. Judge and the parties agreed that the judge should cover the costs of travel for the parties, so there was no formal proceeding.
- ⤴ In France there were only few criminal proceedings against judges because of actions with elements of corruption or bribery.
- ⤴ In Croatia there are also no cases concerning liability of judges in civil law, in the field of criminal law there were three such cases - one for bribery, one for forging judgements and one regarding a decision of a judge in a land registry case⁸.
- ⤴ In Portugal and Slovenia there were some cases against the State for civil liability of judges. In Slovenia there were at least six direct actions against the judge - three of them were dismissed, three of them were refused.⁹ There is only one criminal case against a judge in Slovenia. National assembly namely lifted the immunity for the judge in a case, in which the judge demanded a fixed amount of money in return for cancelled detention. The verdict against a judge was delivered in December 2013 - he was found guilty and charged to five years in prison, the decision became final in October 2014.
- ⤴ In Italy only disciplinary sanctions for judges are possible - for offences executing professional duties, for offences outside the scope of the function and for offences resulting from a crime.

⁸ The case is still before Constitutional Court. The case is interesting as the judge was liable for his actions because of the approach and the meaning of the applied law which changed after the judge delivered his decision.

⁹ In a case II Ips 111/2009 Slovenian Supreme Court stated that the liability of the state prosecutor/judge for damage is not assessed pursuant to the provisions for the employer regarding the damage caused by his employee or public servant, but pursuant to the provisions regarding the liability of the legal person for damage caused by its body.

4) Do you already have some form - kind of insurance for judges covering the risk of malpractice or their personal liability for action they take in their official capacity? If yes, please describe the insurance system.

a) Who is the policyholder (Judge-s, Association or Trade Union)?

b) Are premiums paid by the judges themselves, by the state or perhaps by the Association of Judges or Trade Union?

c) How many percent of the salary of a judge is at (imagine) a premium?

d) For what period is insurance taken?

e) Which incidents are covered by the insurance?

f) Did you already have insurance cases and if so did the insurance company pay damages, or did it file a recourse claim against the judge? Do you have examples of such cases and of decisions that have been taken?

Majority of the countries have no insurance for judges (HU, NO, HR and SI¹⁰, CH). In countries with immunity of the judges there is no need for such insurance (IL).

Only four countries (DE, FR, IT and PT) offer insurance for the judges that is organized by judges associations. Insurance for judges in these countries is on a voluntary basis:

- ⤴ In Germany *Der Deutsche Richterbund* offers reduced prices and partly free insurance for its members. For instance insurance for the damages up to 150.000,00 EUR costs 110,00 EUR on a yearly basis.
- ⤴ In France *Union syndicale des magistrats* (USM) offers insurance for a yearly fee of 110,00 EUR¹¹. Insurance covers all actions since beginning of insurance as well as anterior actions of a judge if the procedure was initiated after the beginning of insurance.
- ⤴ The policyholder in Italy is Judges and Public Prosecutor National Association (ANM). The premiums in the amount of 185,00 EUR are paid individually by judges and vary from 2 to 4 % of their salary. Insurance is concluded for 10 years and covers anterior events up to eight years provided the events are not known to the judge and are discovered after signing the contract. In recourse procedures damages up to 900.000,00 EUR are covered. Liability for unreasonable delays in handling procedures damages up to 250.000,00 EUR is covered. Insurance excludes intentional actions of judges.
- ⤴ In Portugal Portuguese Association of Judges (AJLP) the premium is 117,72 EUR annually and covers damages up to 500.000,00 EUR in recourse procedures vs. State¹². For an average yearly income of a judge in the sum of 30.000,00 EUR a premium presents about 0,4 % of the salary of a judge.

10 The Slovenian Association of Judges tried two times to find insurance company that would offer to cover liability of the judges in recourse procedures vs. State but got negative responses. Ratio of rejection was in liability of the judges which are responsible only for the damages if caused intentionally or in gross negligence. According to insurance companies' policies such risks are too high. Situation is the same in Croatia.

11 For the judges with less than two years judging experience yearly fee is reduced to 55,00 EUR. Until now there were four cases in which insurance was used - one in criminal procedure and three in disciplinary procedures.

12 Currently 331 judges are insured, until now there were no cases in which the insurance would be used.