

**General Report of the First Study Commission  
of the International Association of Judges (“IAJ”) – 2022  
“DISCIPLINARY PROCEEDINGS AND JUDICIAL INDEPENDENCE”**

By September 2022, when this report was written, responses to the Questionnaire had been received<sup>1</sup> from the following countries:

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|----------------|------------------------------|
| 1. Argentina   | 23. Latvia                   |
| 2. Australia   | 24. Liberia                  |
| 3. Austria     | 25. Liechtenstein            |
| 4. Brazil      | 26. Mexico                   |
| 5. Canada      | 27. Morocco                  |
| 6. Chile       | 28. New Zealand              |
| 7. Croatia     | 29. Norway                   |
| 8. Cyprus      | 30. Paraguay                 |
| 9. Denmark     | 31. Poland                   |
| 10. Ecuador    | 32. Portugal                 |
| 11. Estonia    | 33. Romania                  |
| 12. Finland    | 34. Serbia                   |
| 13. France     | 35. Slovenia                 |
| 14. Georgia    | 36. South Africa             |
| 15. Germany    | 37. Spain                    |
| 16. Greece     | 38. Sweden                   |
| 17. Guinea     | 39. Switzerland              |
| 18. Iceland    | 40. Taiwan                   |
| 19. Ireland    | 41. United Kingdom           |
| 20. Israel     | 42. United States of America |
| 21. Japan      | 43. Uruguay                  |
| 22. Kazakhstan |                              |

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<sup>1</sup> The deadline to send in the responses was July 31, 2022.

Judicial independence is a fundamental pillar of law and governance, and it is important to ensuring that the rule of law is respected. Judicial independence is the ability of judges to make decisions fairly and impartially without fear of punishment and without control or influence by other branches of government or private actors.

But the legitimacy of the judiciary and its independence depends upon public confidence. The judiciary cannot exist without the trust and confidence of the people. Thus, a system for judicial discipline is needed to ensure that judges maintain the high standards of conduct expected of them, thereby maintaining public confidence in the judiciary. As such, many countries have rules, regulations, codes, standards, and/or principles governing judicial ethics and judicial conduct. Violations of these rules, regulations, codes, standards, or principles can lead to disciplinary action. Nevertheless, any judicial disciplinary regime should provide the necessary guarantees to judges to prevent any risk of the disciplinary regime being used as a system of political control on the content of judicial decisions.

In 2022, the First Study Commission of the International Association of Judges sent out a questionnaire on the topic of “Disciplinary Proceedings and Judicial Independence.” We received responses from 43 countries. The following is a general report derived from those responses.

**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?**

Disciplinary proceedings against judges generally involve allegations of official misconduct or breaches of duty. Examples of misconduct that can lead to discipline include: commission of a crime; soliciting or accepting bribes; exploitation of judicial office to obtain personal benefits; indecent or offensive behavior; violation of ethical rules for judges; violation of the principle of impartiality; disclosure of confidential information; making inappropriate comments to the media; ex parte communication; inappropriate second employment; harassment; discrimination; indecent or offensive behavior; bias; ignoring conflicts of interest; non-observance of the random assignment of cases; unjustified delay in processing and resolving cases; unjustified absences; and frequent tardiness.

Some more unusual examples, each mentioned only once, are: judicial activism (Australia); involvement in an organization which has unknown goals and which imposes secrecy on its members (Greece); frequent unexcused absences (Guinea); interference in the work of another judge (Romania); processing cases contrary to the order of reception

and unjustified non-attendance of mandatory training programs (Serbia); breach of safety at work regulations and breach of the court rules on the use of judicial robe (Slovenia); involvement in partisan political activities (Taiwan).

Judicial misconduct can include conduct in a judge's personal life outside of the performance of official duties. Many countries, such as Canada, Estonia, and Kazakhstan, explain that this is because the behavior of a judge outside of the court as well as during the performance of official duties contributes to maintaining public confidence in the courts. The United Kingdom explains that judges are expected to behave in a manner that upholds the reputation of the judiciary in all areas of their lives.

Some recent examples of judicial misconduct are as follows. In the United States, a federal judge on the Court of Appeals resigned after the judiciary announced an investigation into claims that he committed sexual harassment. In Israel, a judge was removed from office after a conviction for misconduct finding that she had recorded false court minutes and physically destroyed court documents in order to prevent their proper filing. In Poland, judges have been removed from office following criminal convictions for driving under the influence. In Brazil, judges have been disciplined for posting controversial and false messages about political issues on their Facebook and Twitter accounts. Uruguay mentioned that private publications of judges on social media gave rise to some disciplinary proceedings.

Generally, the content of the decisions taken by judges are excluded from the disciplinary process, and judges cannot be charged criminally for the content of their judicial decisions. The proper avenue for challenging the content of a judge's decision is an appeal to a higher court, not through the disciplinary process. Further, many countries, such as the United States, Australia, Canada, Israel, Liberia, New Zealand, South Africa, Finland, Greece, and the United Kingdom, grant their judges immunity for acts done in the course of their judicial work, including the content of their decisions, as a reflection of the importance of judicial independence.

Nevertheless, some countries allow judges to be punished for the content of their decisions either through disciplinary proceedings or criminal proceedings, such as Sweden, although there it is very rare. But in most cases, it is due to extraordinary circumstances. In Austria, Croatia, Estonia, Germany, Iceland, Kazakhstan, Latvia, Serbia, Slovenia, and Spain, the deliberate misapplication of the law by a judge in conducting or deciding a case in favor of or to the detriment of a party constitutes a crime or criminal offense. In France, a judge may be subject to disciplinary action if it is proven that the judge has committed a severe and intentional breach of a procedural rule; a similar possibility exists in Liberia. In Paraguay, prevarication constitutes a criminal offense. Moreover, in Paraguay and Germany, "persecution of innocents" constitutes a crime that could be committed by judges in their judicial office. South Africa allows judges to be charged criminally for the content

of their decisions if it can be proven that there was malafides (i.e., bad faith) when the decision was taken. For example, where a judge imposes an inappropriately lenient sentence due to a corrupt relationship with the accused.

In Mexico, judges can be subjected to disciplinary sanctions for lots of possible mistakes that involve the way they make decisions, such as for issuing unnecessary rulings that only delay the proceedings; for not receiving the evidence offered by the parties in accordance with the law; for not keeping order of the hearings which a judges presides; or for failure to sign the resolutions in which she or he has participated, to name only a few of the examples provided in the Mexican report.

In Poland, there actually is a current general practice that judges are subjected to disciplinary proceedings for the contents of their 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 of the Judiciary Branch? Kindly describe the composition of that body (those bodies).**

The various countries surveyed utilize a wide variety of bodies for conducting their disciplinary proceedings against judges. In most countries, the body that carries out the disciplinary procedure is not the same as the body that imposes the disciplinary penalty. But in some countries, it is the same body.

In most countries, the composition of the body responsible for disciplinary proceedings consists entirely of judges. But a fair amount of countries utilize bodies with a mixed composition of both judges and non-judges. The non-judges in these bodies can include well-experienced lawyers, law professors, other legal experts, members of parliament, or common citizens. In Guinea, the President of the Republic of Guinea is a member of the mixed-composition disciplinary body. In Ecuador, the disciplinary body is composed of all non-judge delegates. In Sweden, the chairman and the co-chairman of the competent board must have experience as a judge, but not necessarily have to be a judge while serving on the board.

In some countries, the body responsible for some of the disciplinary proceedings is a legislative body, such as Congress or Parliament. It is primarily because those countries, such as the United States, New Zealand, and Liberia, only permit judges to be removed from office via impeachment proceedings conducted by the legislature.

Many countries, such as Austria, Brazil, Denmark, Finland, Germany, Japan, Liechtenstein, and Taiwan do not create specific boards for conducting disciplinary proceedings, but foresee a court procedure either within the regular courts and instances, or involving disciplinary chambers. In several countries, specific tribunals involving high-ranking judges are set up for this task, such as in Estonia, Israel, Slovenia, and Uruguay.

In Poland, both the Disciplinary Prosecutor for judges and his deputies, and judges for the disciplinary chambers are nominated by the Minister of Justice, who in the current government also is acting as Prosecutor General. Therefore, the Polish Minister of Justice has significant influence on individual disciplinary proceedings.

**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 countries surveyed listed a variety of penalties that can be imposed on a judge. These penalties include: education; counseling; formal advice; warning; reprimand or private censure; public censure; fines; partial withholding of salary; reduction in salary; demotion in professional rank; loss of right to promotion; disciplinary transfer to another office; suspension; non-reelection; compulsory retirement; removal from office; reduction in pension and retirement benefits; loss of pension; and disqualification from holding future office. All countries surveyed include removal from office as one of the disciplinary penalties available although, as mentioned earlier, removal from office might require special impeachment proceedings. It is notable that there are some countries, such as Canada, Australia, Liechtenstein, and Ireland, where no judge has ever been formally removed from office, but some judges resigned to avoid removal.

Judicial conviction for a crime generally can lead to removal from office depending on the nature and severity of the crime. Indeed, in some countries, removal from office can be automatic depending on the crime and the level of the penalty. For example, in Germany and Austria, if a judge is convicted of a crime and sentenced to a term of imprisonment of one year or longer, the relevant laws require that the judge be removed from office. But in most countries, removal is not automatic; judicial conviction for a crime merely provides a basis for removal.

**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?**

In most countries, a fair trial is granted to a judge accused of misconduct. For example, in Iceland, Japan, and Romania, the trial is governed by the country's rules of

civil procedure. In Croatia, Slovenia, Poland, Serbia, and Spain, the trial is governed by the country's rules of criminal procedure.

In some countries, the disciplinary proceedings are more administrative in nature without meeting the country's full procedural requirements for civil or criminal trials. Nevertheless, these countries still provide some form of due process to an accused judge to ensure that the proceedings are fair, such as: notice; a right to respond; a right to involvement in the proceedings; a right to examine evidence; a right to present evidence; a right to counsel; a public hearing; and a presumption of innocence.

The majority of countries allow for an appeal from a decision imposing a disciplinary penalty on a judge. In some countries, the appeal is limited. And in a few countries, there is no appeal. But it should be noted that in countries where there is no appeal, it is generally because there is some other form of judicial review, or because, for example, in Liberia and Cyprus, the disciplinary penalty is imposed by the country's highest court, so there is no higher court in which to appeal the decision to.

Most countries allow for a judge to be suspended from office during disciplinary proceedings. But some countries, such as the United States, Ireland, New Zealand, and Kazakhstan, do not allow for suspension of the judge. And some countries only allow for suspension of the judge in specific circumstances. For example, Morocco allows for immediate suspension of a judge if the judge is criminally prosecuted or if the judge has committed a serious fault.

In those countries that permit suspension: Australia, Denmark, Iceland, Canada, Switzerland, Cyprus, Brazil, France, Sweden, Germany and the United Kingdom allow a suspended judge to continue to earn a normal salary; Uruguay, Liechtenstein, Latvia, Estonia, Serbia, Croatia, Austria, Mexico, Slovenia, and Israel reduce the judge's salary during the suspension; and Georgia, Ecuador, Finland, and Romania fully suspend the judge's pay during the suspension. In Germany, the judge's salary can be reduced during the suspension under certain conditions, but that is not automatic. In Guinea, the law referring to suspension with or without loss of salary is unclear on the specifics of the reduction of income.

**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.**

Most countries stated that there have been no recent changes regarding disciplinary proceedings that may be considered to infringe upon judicial independence in their country. While some countries reported recent changes, most of those countries noted that the changes were made to improve the rules of ethical conduct and improve judicial

independence in their country. For example, the United States and Liechtenstein recently made changes to their codes of conduct to expressly forbid sexual or other forms of harassment.

Some countries however noted recent events regarding disciplinary proceedings that could be seen as an infringement on judicial independence.

In Croatia, two new disciplinary offences have been introduced. The first one is that a judge may be disciplinarily responsible if she or he does not resolve a certain minimum number of cases per year as foreseen by the frame measures for the work as a judge which are prescribed by the Minister of Justice. The second new offence is the failure of a judge to give consent to a security check. The Constitutional Court initiated proceedings to establish the unconstitutionality of such an obligation for a judge.

France noted that over the last two years, it has seen a threefold increase in disciplinary proceedings against Magistrate Judges since the arrival of France's new Minister of Justice, a former lawyer. That Minister of Justice is currently under formal investigation over allegations that he abused his power as Minister of Justice to settle personal scores with judges that originate in his former work as a lawyer.

In Poland, in 2017, the Disciplinary Chamber of the Supreme Court was established. Critics of the Disciplinary Chamber saw it as a means to intimidate and subdue independent judges who refused to toe the government line. In 2019, the European Court of Justice (the "ECJ") ordered Poland to suspend the work of the Disciplinary Chamber, and the ECJ began to issue daily fines that eventually totaled over 250 million euros. In July 2021, the ECJ ruled that Poland's disciplinary regime for judges contravenes EU law and undermines judicial independence. On July 15, 2022, Poland closed the Disciplinary Chamber and announced that it would be replaced with a new "Chamber of Professional Responsibility."

Romania explained that in 2020, a law was introduced via an emergency ordinance that set forth new procedural rules for judges, primarily time limits, whose failure to comply with could result in disciplinary action. This caused judges in Romania to choose between being disciplinarily sanctioned and respecting the requirements for a fair trial. The Romanian judges viewed this law as a political tool and an encroachment on judicial independence. The Romanian judges challenged the law, and it was later declared unconstitutional.

**Judge Marilyn L. Huff**

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