

ANSWERS FROM BRAZIL (AMB)

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

QUESTIONS ANSWERED BY BRAZIL:

- 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: Judges must act accordingly to the importance of the function they exercise, as Brazilian Ethics Code of Magistrature orders in its article 16 – *in verbis*, “The judge must behave in private life in order to dignify the function, aware that the exercise of judicial activity imposes restrictions and personal requirements different from those affected to citizens in general”. Additionally, Brazilian Statute of Magistrature determines that one of the judge’s duties is to keep irreprehensible behavior in his/her public and private life (article 35, VIII). Thus, taking these normative precepts, it is correct to state that judges can also face disciplinary proceedings because of alleged misconduct in their private life. Examples include disciplinary proceedings against judges who use their Facebook and Twitter accounts to post tendentious and lying texts about political issues.

Due to the fact that the Brazilian Ethics Code of Magistrature embraces the principle of judicial independence (article four), the jurisprudence of the Supreme Court and of the High Council of Justice recognizes that judges may not face disciplinary proceedings or criminal charges because of the content of their judicial decisions. In terms of criminal liability, Article 1st of Federal Law number 13869 of 2019 (“New Law on Abuse of Authority”) states that “divergence in the interpretation of the law or in the assessment of facts and evidence do not constitute abuse of authority”, so that Brazil doesn’t punish the so-called “crime of interpretation” (also known as “crime of hermeneutics”).

- 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: Article 12 of Resolution number 135 of 2011, passed by Brazilian National Council of Justice (CNJ, in its Portuguese-language acronym), states that, “for disciplinary administrative proceedings and for the application of any penalties provided for by law, the Court to which the judge belongs or is subordinate is competent, without prejudice to the performance of the National Council of Justice”, so that the body which is responsible for the disciplinary proceedings against judges in Brazil is the Court where he/she works or the CNJ. The penalties are imposed by the same body that carries out the disciplinary proceeding.

If the disciplinary proceeding is carried out by the Court to which the judge belongs, the body that will decide the disciplinary proceedings is composed only by the Justices of the Court. On the other hand, if the disciplinary proceeding is led by the High Council of Justice (CNJ), its 15 members are those ones who the Constitution defines (article 103-B): there are 09 judges, 02 criminal prosecutors, 02 lawyers and 02 common citizens of notorious knowledge in Law and judicial issues, what means that there are a majority of members of the 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?

Answer: Disciplinary penalties which can be imposed on judges in Brazil are listed down in article 3rd of Resolution number 135 of 2011, passed by CNJ, and in article 42 of Brazilian Statute of Magistrature. They are the following: warning; censorship; compulsory transfer; suspension for until 02 years and compulsory retirement. The penalty of dismissal is in general not applicable. It can be imposed exclusively to judges who still do not have life tenure or because of some criminal convictions (as for corruption, for instance). Judges gets the right to life tenure after the first 02 years of office, if during this period of experience they don't get punished.

A judicial conviction for a crime does not lead automatically to a penalty of removal from office, as administrative and criminal proceedings are independent one to another. This is still clearer in article 22 of the mentioned CNJ's Resolution n. 135 of 2011, which determines that the President of the Court where the disciplinary proceeding occurs must send copies of the disciplinary proceeding to criminal prosecutors, when the charges are related to crimes, so that criminal and administrative penalties do not interfere with each other.

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: Every Brazilian or foreign citizen is granted a fair trial, in respect to the principle of due process of law, predicted by 1988 Constitution in its article 5th, item LIV. There is no distinction between judicial lawsuits or administrative proceedings in this sense.

To standardize and uniformize the rite of disciplinary proceedings against judges in Brazil, CNJ approved the Resolution n. 135 of 2011, which does not predict any kind of appeal to revert a disciplinary penalty on judges. However, the Constitution of Brazil states that, among CNJ's duties and scope, there is the so-called "disciplinary review proceeding". It means that the High Council can review ex officio or at the request of any interested party a punishment imposed to a judge by his/her Court. Having said that, it is paramount to observe that, according to CNJ's own jurisprudence, it is not appropriate a disciplinary review proceeding against a decision taken by the CNJ itself, as it seems like an appeal. A disciplinary penalty imposed by the CNJ can only be reviewed by the Supreme Court.

Finally, judges can be suspended from office during the disciplinary proceeding. Article 15 of CNJ's Resolution n. 135 of 2011 states that the Court, by the absolute majority of its members, will decide about that suspension. It is even possible to impose the suspension for a shorter period of time, if it is considered convenient. The judge who is suspended during the disciplinary proceeding continues to earn his/her salary with no reduction.

5) Were there any recent changes regarding disciplinary proceedings that maybe 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: No, there were not.

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