

First Study Commission Questionnaire 2022, Israel

DISCIPLINARY PROCEEDINGS AND JUDICIAL INDEPENDENCE

**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.**

Article 90 of the Law on Judges prescribes 19 types of disciplinary offences, as grounds to potential disciplinary proceedings:

- a violation of the principle of impartiality;
- failure of a judge to request his/her recusal in cases where there are reasons for recusal or exclusion foreseen by law;
- unjustifiable delays in the drafting of decisions;
- processing of cases in an order contrary to the order of reception;
- unjustifiable failure to schedule a hearing;
- frequent tardiness for hearings;
- unjustifiable prolonging of proceedings;
- unjustifiable failure to notify the president of the court about cases with prolonged proceedings;
- obviously unfair treatment of participants in proceedings and the court staff;
- incompliance with the working hours;
- acceptance of gifts contrary to the regulations on the conflict of interest;
- engaging in inappropriate relations with parties in proceedings and their legal representatives;
- comments about court decisions, activities, or cases, made to the media in a manner contrary to law and the Court Rules of Procedure;
- engaging in activities that are incompatible with a judge's function pursuant to the law;
- unjustified non-attendance of mandatory training programs;
- provision of incomplete or incorrect information relevant for the work and decision-making of the High Judicial Council;
- unjustifiable change in the court's annual schedule of judges' activities, and the violation of the principle of random judge, contrary to the law;
- serious violation of provisions of the Code of Ethics.

A severe disciplinary offence exists if the commission of a disciplinary offence referred to in paragraph 1 of said Article caused a serious disruption in the exercise of judicial power or regular duties at the court or a severe damage to the dignity of the court or public trust in the judiciary, and in particular if it results in the statute of limitations causing serious damages to the property of the party in proceedings, as well as in the case of repeated disciplinary offence.

A repeated disciplinary offence referred to in paragraph 2 of said Article exists if disciplinary responsibility of a judge has been finally established on three occasions.

Disciplinary proceedings against judges, therefore, can be conducted on the grounds of both workplace behaviour and actions undertaken privately, which are covered by the serious violation of provisions of the Code of Ethics ground.

Code of Ethics, adopted in 2010, laid down ethical principles and rules of conduct that all judges must respect both at their workplaces and in private lives, and featured the principle of dignity, stipulating that a judge is obliged to develop standards of conduct in the performance of judicial office and in proceedings outside the court (i.e. in private life) that contribute to preserving the reputation and dignity of the court and judges. A judge must refrain from improper conduct, as well as from conduct that may undermine public confidence in the court. The judge is obliged to dress appropriately in a way that preserves the reputation of the court and personal dignity.

### **Can the content of the decisions taken by judges also lead to disciplinary proceedings?**

There is no such a possibility.

### **Can judges be charged criminally for the content of their judicial decisions under any circumstances?**

Such charges can be brought up, but only under the condition they refer to the criminal offence Violation of Law by a Judge, Public Prosecutor or his Deputy, stipulated by Article 360 of the Criminal Code, and can only be done by a judge or lay judge, public prosecutor or his deputy, that has, in a court proceeding, with intent to acquire a benefit or to cause damage to another person, issues an unlawful act or otherwise violates the law.

## **2. Which body is responsible for disciplinary proceedings against judges in your country?**

In the Republic of Serbia, disciplinary bodies are: the Disciplinary Prosecutor, along with their deputies, and the Disciplinary Commission, which is established by the High Judicial Council. In the second instance, the High Judicial Council shall decide following complaints against decisions of the Commission.

### **Is the body that carries out the disciplinary procedure the same one that imposes the penalties?**

These bodies are different. The disciplinary procedure is initiated by the Disciplinary Prosecutor, and the Disciplinary Commission is in charge of conducting it.

**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)?**

The Disciplinary Prosecutor and their deputies are appointed by the High Judicial Council from the rank of judges. The Disciplinary Commission, composed of three members, who are also judges, is established by the High Judicial Council, as well.

**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).**

The Disciplinary Prosecutor and their deputies, and members of the Disciplinary Commission, can only be judges.

The High Judicial Council, which is a second instance and decides following appeals against decisions of the Disciplinary Commission, is currently composed of 11 members: the president of the Supreme Court of Cassation, the minister in charge of the judiciary, and the president of the competent committee of the National Assembly (as members by virtue of office), and eight Elected Members, elected by the National Assembly: six judges with permanent tenure of office, of whom minimum one judge comes from the territory of autonomous provinces, and two credible and prominent jurists with minimum 15 years of professional experience, one of whom is an attorney, and the other a Faculty of Law professor.

Following the 2022 Constitutional Amendments, the Council shall be composed of 11 members: six judges elected by judges, four prominent lawyers elected by the National Assembly, and the President of the Supreme Court.

### **3. Which disciplinary penalties can be imposed on judges in your country?**

Article 91 of the Law on Judges prescribes the following disciplinary penalties: public reprimand, salary reduction of up to 50 % for a period not exceeding one year, prohibition of advancement for a period of up to three years. If the Disciplinary Commission establishes the responsibility of a judge for a serious disciplinary offence, it shall institute dismissal proceedings.

**Is the disciplinary penalty of removal from office among them?**

Yes. If a judge commits a serious disciplinary offence, dismissal (removal) from the office is a possibility.

**Can a judicial conviction for a crime lead to a penalty of removal from office?**

Yes. Article 62 of the Law on Judges stipulates that a judge is dismissed if convicted for an offence carrying unconditional imprisonment sentence of at least six months or for a punishable act that demonstrates that he/she is unfit for the judicial function

**4. In the disciplinary proceedings against judges in your country, is a fair trial granted?**

A fair trial is guaranteed. The Regulation on Procedure for Determination of Disciplinary Liability of Judges and Court Presidents stipulates, in Article 3, that provisions of the Criminal Procedure Code shall accordingly be applied to all matters not regulated by the Law on Judges and the said Regulation.

**Is there an appeal against the decision imposing a disciplinary penalty on judges?**

Decisions imposing disciplinary penalties can be appealed against. The High Judicial Council shall decide following such appeals. The decision adopted by the High Judicial Council is final, and the penalized judge is allowed can lodge an administrative lawsuit.

**During the disciplinary proceedings, can the judge be suspended from office?**

According to Article 14 Paragraph 2 of the Law on Judges, a judge may be suspended from office when proceedings for his/her dismissal have been instituted. These proceedings are initiated by the Disciplinary Commission, after verifying that a judge had committed a serious disciplinary offence.

**Does the judge who is suspended during disciplinary proceedings continue to earn a salary normally or does the judge suffer any reduction in income?**

Article 168 of the Employment Act of Serbia is applicable in this situation. The judge would be entitled to the compensation of salary in the amount of one quarter, and where he is a family supporter, in the amount of one third of the base salary, in case of suspension.

**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.**

No changes were recently adopted.