

Questionnaire 2022 of the 1st Study Commission IAJ-UIM

“Disciplinary proceedings and judicial independence”

submitted by AUSTRIA

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:

The subject matter of disciplinary law is breaches of duty (see art 57 et seq Judges and Prosecutors Service Act = RStDG). However, not every breach of duty is the subject of disciplinary law and thus a disciplinary offence, but only such a breach which, in view of the nature and gravity of the misconduct, the repetition or other aggravating circumstances, requires disciplinary punishment for general and special preventive reasons.

§ 57 para 3 RstDG requires a judge to conduct himself or herself in and out of office in such a way that public confidence in the judiciary and the respect for the judiciary is not jeopardized. That means that both on-duty and off-duty conduct can constitute an official misconduct.

Typical examples for official misconduct in office are backlogs in the processing of cases.

As far as I can see, the vast majority of disciplinary convictions concerned judge's behaviour at the workplace. However, also the behaviour of a judge in her or his private life can constitute an official misconduct if, according to the circumstances of the individual case, that behaviour is particularly likely to affect public confidence in a way that is significant for the judge's office.

In the decision DS 37/12, a judge was fined who caused a traffic accident while considerably

intoxicated, then committed a hit-and-run and then tried to conceal the facts.

In another decision, a judge was disciplined because he, as a private individual, made derogatory comments on his social media account about the character and political work of a former minister who was under criminal investigation at the time. The judge was fined one month's salary.

The Supreme Court held that: *„The public expects a judge to adhere to the requirement of objectivity (which is incumbent on him professionally) in public statements, even without connection to his professional activity. This is because trust in the impartiality of the administration of justice requires that a judge in no way calls into question his or her external and internal independence, his or her neutrality and recognisable distance, which must also remain perceptible in current political disputes (although factual participation in a [party] political discourse is not inadmissible). In this sense, judges, due to their special function in the rule of law, have to accept further restrictions in their expressions of opinion“* (2 Ds 4/19i).

In another decision the disciplinary court stated:
Off-duty advice or expert opinions in matters that fall within the jurisdiction of the court where the judge is employed are subject to a disciplinary prohibition. This is because trust in judicial official acts may be impaired if persons interested in the outcome of the proceedings could "buy" the judicial knowledge and experience of a judge working at the competent court in order to support the conduct of the proceedings (Ds 2/05).

Basically the content of a judicial decision cannot lead to disciplinary proceedings, or be charged criminally in Austria. Exceptions are if the judge commits abuse of office in the decision (art 302 penal code). "Abuse of office" is the deliberate misapplication of the law by judges in conducting or deciding a case to the detriment of a party. A judge consciously misapplies the law in order to render a decision to the detriment of the party.

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 JudiciaryBranch? Kindly describe the composition of that body (those bodies).

Answer:

The responsible body ist the disciplinary court which shall hear and decide (also on the

penalty) in a panel of three judges (and judges only), one of whom shall preside. The preliminary enquiries and the disciplinary investigation must be conducted by a member of the Disciplinary Court as investigating commissioner.

The investigating commissioner may not be a member of the disciplinary panel in the same case (§ 112 RStDG).

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?

Disciplinary sanctions are:

- a) the reprimand,
- b) a fine of up to five months' remuneration,
- c) transfer to another place of employment without entitlement to transfer fees; and
- d) removal from office.

A judicial conviction for a crime can lead to a penalty of removal from office (not just of a judge but of any Austrian civil servant) under following circumstances (art 27 penal code):

The conviction by an Austrian court of one or more criminal offences committed with intent to a custodial sentence shall entail the loss of office in the case of a civil servant if

- the prison sentence imposed exceeds one year,
- the prison sentence not conditionally suspended exceeds six months, or
- the conviction was also or exclusively for the offence of abuse of authority (art 212 Austrian Penal Code).

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?

Yes, basically a fair trial is granted.

There is the possibility of appeal against the decision of the disciplinary court of first instance to the Supreme Court (as disciplinary court).

A judge can be temporarily suspended from office at the initiation or in the course of the disciplinary proceedings if this is in the interest of the service, taking into account the nature or seriousness of the breach of duty with which he is charged, or if it appears necessary to safeguard the reputation of the judiciary (art 146 RStDG).

Any suspension results in the reduction of the monthly salary of the accused to two-thirds for the duration of the suspension (art 150 RStDG).

The disciplinary court may reduce or cancel the reduction at the request of the accused or ex officio if the judge has duties of care.

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.

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