

## **Questionnaire 2022 of the First Study Commission IAJ-UIM**

### **“Disciplinary Proceedings and Judicial Independence”.**

#### **Answers from the Danish Association of Judges.**

The Danish court system is made up of 24 district courts (254 judges), two high courts (100 judges) and The Supreme Court (19 judges).

#### **1. Allegations of misconduct**

*(a) What kind of allegation can justify disciplinary proceedings against judges in your country? Give some examples.*

The kinds of allegations are defined in article 48 and 49 in the code of judicial procedure, that states, that it can lead to disciplinary proceedings, if a judge has shown neglect or carelessness while acting as a judge, or if the judge has acted improperly or indecent in general.

Examples:

Neglect or carelessness: Denial of procedural fairness, abuse of judicial power, inappropriate conduct, judicial or personal bias, private communication with parties; and failure to deliver judgments in a reasonable timeframe.

Improperly or indecent behavior: Improper use of the position as a judge in irrelevant connections.

*(b) Can the content of the decisions taken by judges also lead to disciplinary proceedings?*

Typically, the content of judicial decisions is capable of being reviewed on appeal to a higher court. There is otherwise no prescribed procedure of disciplining a judge for the content of his decisions.

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

Danish judges do not enjoy judicial immunity for acts done in the course of their judicial work, so in theory a judge can be charged and punished, if his decision contains a criminal behavior.

#### **2. Body responsible for disciplinary proceedings**

*(a) Which body is responsible for disciplinary proceedings against judges in your country?*

According to art. 64 in the Danish Constitution judges can only be dismissed by a court decision.

The Special Court of Indictment and Revision (Den Særlige Klageret) handles such cases along with other disciplinary cases relating to judges.

According to article 49 in the code of judicial procedure anyone who is offended by improperly or indecent behavior from a judge connected to his function can make a complaint to the above-mentioned court.

The president of each court can also according to art. 48 in the code of judicial procedure give a judge a warning, if the judge has shown neglect or carelessness while acting as a judge, or if the judge has acted improperly or indecent in general. Such a warning can be appealed to The Special Court of Indictment and Revision by the judge.

*(b) Is the body that carries out the disciplinary procedure the same one that imposes the penalties?*

Yes.

*(c) 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 Special Court of Indictment and Revision has five members: A Supreme Court judge (chairman), a judge from one of the high courts and a district court judge. The judges are elected by The Supreme Court, the high courts and The Association of judges (the district court judge).

The two other members are a lawyer appointed by The Bar Association and a professor appointed by the law-faculties of the universities.

### **3. Disciplinary penalties**

*(a) Which disciplinary penalties can be imposed on judges in your country? Is the disciplinary penalty the removal from office among them?*

The Special Court of Indictment and Revision can express its disapproval of the behavior or impose a fine.

In more severe cases the court can remove the judge from office.

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

No - but if a judge is convicted for a crime the Minister of Justice can ask The Special Court of Indictment and Revision to consider the question of removal from office.

### **4. Procedural fairness and suspension from office**

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

Yes. The judge has the right to make a statement in a hearing and will upon request be appointed a defense-attorney.

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

The decision made by The Special Court of Indictment and Revision can be appealed to The Supreme Court.

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

The Special Court of Indictment and Revision can decide that the judge should be suspended from office if he is charged for a criminal offence, if there is reason to believe, that he has shown neglect or carelessness or has acted improperly or indecent in general or if he due to sickness is incapable to run his office as a judge.

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

A judge who is suspended will get his normal salary.

## **5. Recent changes to disciplinary proceedings**

*(a) Were there any recent changes regarding disciplinary proceedings that may be considered to infringe upon judicial independence in your country?*

No – on the contrary the legislation was changed a couple of years ago to provide a judge with the possibility to appeal a warning from the President of the court to The Special Court of Indictment and Revision.