

International Association of Judges (IAJ/UIM)

1st Study Commission – 2022

Topic: Disciplinary Proceedings and Judicial Independence

Germany

Note: Germany is a federal state. The disciplinary laws and laws on judges therefore differ slightly between the federal and the state level on the one hand, and between the different states on the other hand. The following answers purport to give a general overview of the system of disciplinary proceedings against judges, but may be different in some of the details in several parts of Germany.

- 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:

In Germany, disciplinary proceedings can be opened against a judge only in case of official misconduct. Judges commit an official misconduct if they culpably violate the duties incumbent upon them. Most of these duties regard the 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.

An example for the latter is the commitment of crimes or criminal offences in a judge's private life, but also public expressions of judges in their private lives – such as on social media – may be classified as official misconduct if they violate the judge's duty of loyalty, of good conduct, or the requirement of moderation.

As a rule, the content of a judicial decision cannot lead to disciplinary proceedings, or be charged criminally in Germany. The only exceptions to that rule are the crime of "Judicial perversion of justice" (Rechtsbeugung, section 339 of the German Criminal Code) and the criminal offence of "Prosecution of innocent persons" (Verfolgung Unschuldiger, section 344 of the German Criminal Code).

"Judicial perversion of justice" is the deliberate misapplication of the law by judges in conducting or deciding a case in favour of or to the detriment of a party. Wrongful application of the law alone does not constitute that criminal offence; that offence is only fulfilled if a judge deliberately misapplies the law in order to render a decision in favour of or to the detriment of the party. Such cases are extremely rare in Germany. The offence of "prosecution of innocent persons" is even rarer. Despite the term "prosecution", a judge can commit that

offence if she or he deliberately works towards the criminal prosecution of a person if the legal requirements for prosecution are not fulfilled.

- 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:

Disciplinary proceedings against a judge can be opened by the president of the court, but the power of court presidents for imposing disciplinary sanctions is limited to issuing a reprimand ("Verweis"). Any other disciplinary sanction can only be issued by an official court upon filing of an indictment against a judge. The body competent for filing such an indictment is the chief supervisory authority, i. e. the respective ministry, usually the Ministry of Justice, which sometimes delegates this competence to the Prosecutor General.

The models of participation of other bodies differ slightly from state to state. In Bavaria, for example, it is foreseen by statute law as follows: If a court president intends to issue a reprimand, the concerned judge may ask to participate the court's Judges' Council (Richterrat) – a body composed of judges of the same court which are elected by their peers – in the process. If a ministry intends to file an indictment against a judge, the concerned judge may ask to participate the Presidency Council (Präsidialrat) – a body consisting of the president of a court and a certain number of judges which are elected by their peers – in the process.

The composition of the first instance official court for judges in the German "states" (Länder) differs slightly from state to state. Usually, the panel is a chamber at a Regional Court and consists of three judges. In Bavaria, for example, the first instance panel is a chamber at a certain Regional Court that consists of a presiding judge of the Regional Court, a second judge from a different judicial branch as a permanent member, and a third judge from the judicial branch of the judge whose case is dealt with (ordinary, administrative, labour, social, finance or patent judiciary) as a non-permanent member. In some states, such as in Baden-Württemberg, however, one of the permanent members of that chamber is a lawyer. The second instance panel usually consists of five judges, usually from different judicial branches; in some states, one lawyer is part of that panel.

On the federal level, a special senate is constituted at the Federal Supreme Court (Bundesgerichtshof) in accordance with the German Judges Act (Deutsches Richtergesetz, sections 61, 62). That senate ("Federal Official Court", Dienstgericht des Bundes) is composed of five judges: one presiding judge, two permanent judges and two non-permanent judges. The presiding judge and the two permanent judges are appointed for five years by the "Presidium" of the Federal Supreme Court; the Presidium consists of the President of the Federal Supreme Court and ten judges of the Federal Supreme Court elected by their peers at the Supreme Court. The two non-permanent judges belong to the judicial branch of the judge whose case is dealt with (ordinary, administrative, labour, social, finance or patent judiciary). They are appointed in accordance with proposal lists set up by the Presidium of the Supreme Court of each judicial branch.

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: Possible disciplinary penalties in Germany are reprimand, fine, reduction of remuneration, downgrading and removal from office. These are the same penalties that can be imposed on any person in public service in Germany. Removal from office by law also includes the loss of all sort of remuneration, including the pension of a judge.

A judicial conviction for a crime or a criminal offence can lead to the judge's removal from office. If a judge is sentenced to imprisonment of one year or longer for having committed a crime or a criminal offence, the disciplinary laws foresee the judge's removal from office. The same applies if judges are sentenced to imprisonment of sechs monts or longer for certain severe offences including corruption. In all other cases, the conviction for a crime or criminal offence may lead to the judge's removal of office, but lower penalties remain possible; the decision must then be made by the official court on the state or federal level.

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:

Yes, a fair trial is generally guaranteed in Germany.

Within the states, the decisions of the official courts of first instance can be appealed against, there is an official court of second instance in every state (see above question 2). In some of the German states, the decision of the second instance court can be subjected to revision (third instance) by the Federal Official Court. On the federal level, decisions of the Federal Official Court cannot be appealed against. In this case, only violations of constitutional laws could be complained about.

A judge can be temporarily suspended from office at the initiation or in the course of the disciplinary proceedings either if the judge's removal from office is likely, or if it would severely interfere with the operation of court service or the investigations themselves if the judge remained in office during the disciplinary proceedings, provided that the preliminary suspension of the judge is not disproportionate to the importance of the matter and the anticipated disciplinary measure.

The preliminary suspension during the course of the disciplinary proceedings does not automatically lead to a reduction of income during the time of suspension. However, under certain conditions the disciplinary authority can cut the remuneration already during the disciplinary proceedings.

- 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.**

Answer: No.

Proposal for topic 2023: