

## **Questionnaire 2022 of the 1st Study Commission IAJ-IUM “Disciplinary proceedings and the judicial independence” (response by the Liechtenstein Association of Judges [VLR])**

- 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?**

In Liechtenstein the disciplinary proceedings are regulated in art. 39 et sequ. of the Judges Services Act (“Richterdienstgesetz” [RDG]). The allegations that justify disciplinary proceedings against a judge can be a judicial misconduct either in the office (for example violation of the secrecy of office [art. 20 RDG] or accepting bribes or gifts [art. 22 RDG]) or in the private life if the latter is impairing the public confidence in the courts (art. 19 para. 4 RDG).

As Liechtenstein is a microstate with less than 40’000 inhabitants and only 20 full time judges in the ordinary judiciary (15 at the Princely Court of Justice [“Fürstliches Landgericht”] and 5 at the Court of Appeal [“Fürstliches Obergericht”]), only few disciplinary proceedings took place in the past, whereby only 4 convictions occurred since 2015. One of them ended with a reprimand, because the concerned judge not only had large backlogs but also tried to conceal these towards the President of the Court. The same judge was sanctioned again a couple of years later, but this time only by a warning due to minor backlogs. Another judge in the first instance lost his nerves vis à vis a challenging litigant, which for his salary was reduced for a month by the competent President of the Court of Appeal. However, this judgement was overruled by the Supreme Court and the imposed penalty converted into a reprimand.

The content of the decisions taken by judges cannot lead to disciplinary proceedings, as long as a judge doesn’t bend the law intentionally or by gross negligence. Indeed the misuse of office (§ 302 of the Liechtenstein Penal Code [StGB]) and the negligent violation of the freedom of a person (§ 303 StGB) by a judge could be criminally charged. Nevertheless, in Liechtenstein no judge has ever been criminally charged for miscarriage of justice, as far as known.

- 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 of the Judiciary Branch? Kindly describe the composition of the body (those bodies).**

According to art. 43 RDG for the judges of the first instance of the ordinary judiciary including the President of the Princely Court of Justice the President of the Court of Appeal as a single judge is the competent disciplinary court. As far as the judges of the Court of Appeal and of the Supreme Court (“Fürstlicher Oberster Gerichtshof”) are concerned, the President of the latter Court is responsible for disciplinary proceedings as a single judge. If the latter himself would be concerned, a body composed by 3 judges of the Supreme Court would be the competent disciplinary court.

The competent disciplinary court not only carries out the procedure but also imposes the penalties in case of a conviction. But it has to be added, that the competent disciplinary court can – if the facts are not clear enough and further evidence is required – suggest to engage an investigating judge on an ad hoc basis, who will be appointed by the Judges Selection Committee (“Richterauswahlgremium”; art. 44 RDG).

**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?**

If it's a minor neglect of judicial duty only a warning (art. 41 RDG) is issued against the concerned judge. If the judicial misconduct is seen as disciplinary offence the penalty for a fulltime judge can consist of a reprimand, a reduction of salary or – as “ultima ratio” - a dismissal (art. 42 RDG). However, a removal from office would require a very serious breach of duty, e.g. a conviction of the concerned judge for a crime. As already mentioned, in Liechtenstein this has never been the case up to now.

**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?**

In Liechtenstein a fair trial is granted, as the case studies have shown. A conviction of a disciplinary offence and the imposing of a disciplinary sanction can be appealed by the

concerned judge at the disciplinary chamber of the Supreme Court. If the President of the latter Court himself was sentenced due to a disciplinary offence and would appeal against his conviction or the penalty imposed on him, a special body would be appointed by the Judges Selection Committee for this purpose (art. 55 RDG).

During the disciplinary proceedings a judge can be suspended from office, if he is accused of a serious breach of duty and the credibility of the judiciary is at stake (art. 61 RDG). In this case, his salary can be reduced up to 30%

**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.**

In Liechtenstein upon a recommendation of GRECO several Codes of Conduct for the different branches of the judiciary (for the ordinary courts, the Administration Court ["Verwaltungsgerichtshof"], the Constitutional Court ["Staatsgerichtshof"] and also for the public prosecutors ["Staatsanwaltschaft"]) have been introduced. However, this doesn't infringe the judicial independence. On the contrary, especially the so-called Compliance guidelines for the ordinary judiciary facilitate it for judges to recognize what their duties according art 19 RDG are in detail. So for example, it's not necessary to emphasize that sexual harassment is an absolute no go within and outside the judicial office.

Vaduz, Juni 28 2022

Jürgen Nagel

Liechtenstein Association of Judges (VLR)