

IAJ
Fourth Study Commission Questionnaire 2023
The Judicial Workplace and the Intersection with Judicial Independence

Answers on behalf of Taiwan

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I. APPOINTMENT TO JUDICIAL OFFICE

Question A

Please describe the process by which a person is appointed to judicial office in lower courts, intermediate courts and superior courts pointing out any relevant differences between appointment in criminal, civil or appellate courts.

(A) Ways to become a judge in Taiwan

In Taiwan, there are several ways in which judges acquire their qualifications. The procedure of judge appointment depends on how the judge is selected.

1. Passing the judges/prosecutors qualification examination

Most of the judges in Taiwan acquire their qualifications by passing the judges/prosecutors qualification examination. The passing rate of the past decade's judges/prosecutors qualification exam is only about 1% to 2%. By comparison, the passing rate of the bar exam in Taiwan has been about 10% each year. A person who passes the judges/prosecutors qualification exam will receive solid training in the Academy for the Judiciary for two years, learning relevant judicial practices. The lecturers for the training are judges and prosecutors from different district courts, High Courts, the Supreme Court, and the District Prosecutors' Offices.

Moreover, the moral characters and behaviors of the judicial apprentices are rigorously evaluated in the two-year training. Judicial apprentices who have misconduct in violation of the ethics of rules or have illegal acts might face annulment of qualification and be eliminated from the training. The judicial apprentices' behaviors are under strict evaluation since they are future judges/ prosecutors who hold great power to rule on people's rights and properties. It is crucial to eliminate incompetent judicial apprentices before they are appointed to judicial offices.

If the judicial apprentice passes all the examinations and successfully finishes the training, they can choose from a list of vacancies in different district courts /district prosecutors' offices according to their grades.

2. Transferring from prosecutors to judges

In Taiwan, prosecutors can transfer to judges, and these kinds of transfers are not rare. From 2017 to 2023, fifteen to twenty-five prosecutors applied to transfer to judges each year. In contrast, in the past five years, only one judge applied to transfer to the prosecutor in 2021. There are several practical reasons that prosecutors in Taiwan may tend to transfer to judges: (1) Judges are placed directly under the Judicial Yuan,

which holds more budget and resources from the government. In contrast, prosecutors are placed under the Legal Department of the Executive Yuan, who must share budget and resources with other departments. Therefore, the overall working environment, administrative support, and welfare of judges are generally better than that of prosecutors. (2) While judges try independently and hardly bear any pressure from the upper courts, prosecutors may face stress from the chief or head prosecutors in specific cases. (3) The job content of judges is generally considered more stable as they do not need to carry out autopsies or command the police officers to conduct criminal investigations as prosecutors do.

Transfer applications of the prosecutors will be reviewed by the Judicial Selection Committee. The Judicial Selection Committee consists of seven judge representatives, one prosecutor representative, three attorney representatives, six scholars and independent community representatives, one representative from the Examination Yuan, and the president of the Judicial Yuan¹. The Judicial Selection Committee reviews the candidate's integrity, ability, physical and mental condition, work ethic, specialty, aspiration, and takes into consideration the seniority and past case-handling achievements of the candidate².

If a candidate prosecutor is selected by the Judicial Selection Committee to transfer to judges, they will not need to undergo any further training before appointment since they have already received the same training as judges did in the Academy for the Judiciary.

3. Transferring from attorneys to judges

In Taiwan, people who are eligible under Art.5 (1) of the Judges Act (such as experienced lawyers, professors, or public defenders)³ can apply to become a judge,

¹ The Judges Act, Article 7(3).

² Regulations on Judicial Selection, Article 4(2).

³ The Judges Act, Article 5 stipulates that judges of courts at all levels that sit below the High Court shall possess one of the following qualifications to be appointed:

1. Having passed the judges or prosecutors qualification examination, or having actually practiced as attorneys for three or more years and possessed the qualifications for the designated position, provided that such appointment is limited to judges of district courts.
2. Having served as tenured judges.
3. Having served as tenured prosecutors.
4. Having served as public defenders for six or more years.
5. Having actually practiced as attorneys for six or more years, as well as possessed the qualifications for the designated position.
6. Having graduated from the department of law of public or duly recognized private universities or independent colleges or post-graduate law programs thereof, served as full-time professors, associate professors, or assistant professors at universities or independent colleges accredited by the Ministry of Education for a total of six or more years, and lectured on primary legal subjects for two or more years with specialized publications in the legal profession, as well as

and their applications will be reviewed by the Judicial Selection Committee mentioned above. Attorneys account for the majority of this kind of application. Attorneys who have actually practiced for over six years can apply to transfer to judges. The candidates must turn in their past pleadings to the Judicial Selection Committee and undergo a moral investigation, followed by an oral interview. Attorneys who have actually practiced for over three years but less than six years can also file an application. Yet, they will have to pass an extra written qualification exam before they hand in their pleadings and undertake the moral investigation by the Judicial Selection Committee.

Candidates selected by the Judicial Selection Committee will receive training for 75 weeks (17.5 months) in the Academy for the Judiciary, learning relevant judicial practices. If they pass all the examinations in the training sessions, they can successfully transfer to judges and will be appointed by choosing from a list of vacancies in different district courts according to their grades.

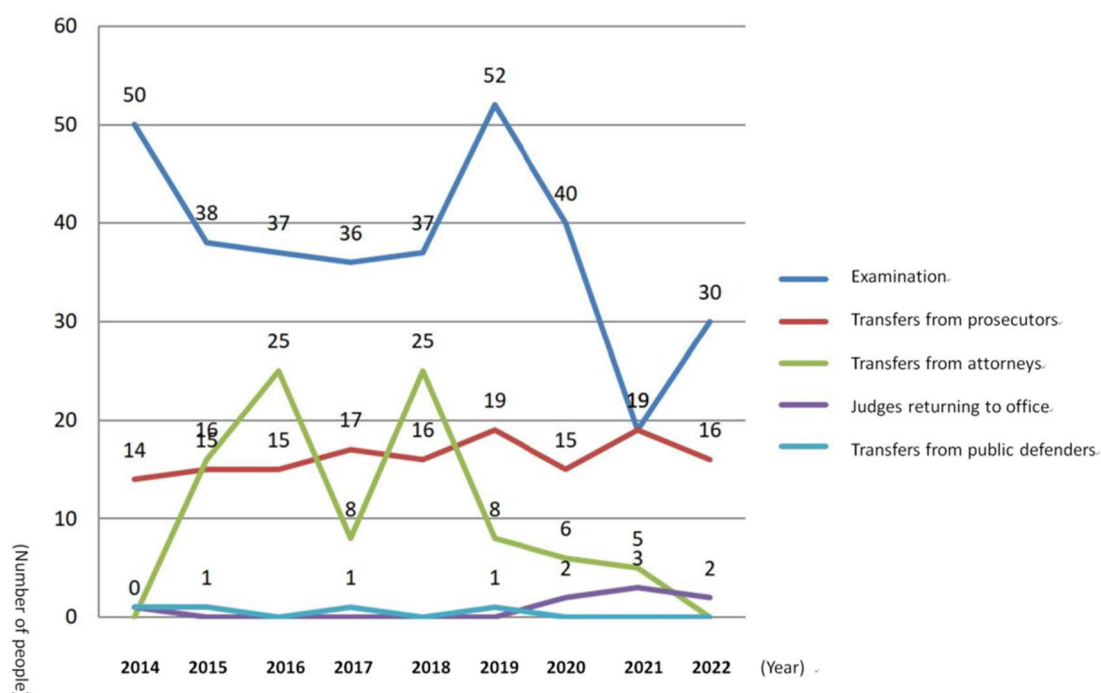
4. The enhancement of judge recruitment diversity

One of the primary focuses of the judicial reform in Taiwan in recent years is to enhance the diversity of judge recruitment. In the past, the vast majority of judges in Taiwan are those that passed the judges/prosecutors qualification exam and underwent the two-year training in the Academy for the Judiciary. However, judges who acquired their qualifications by passing the difficult qualification exam are often considered “lacking social and working experiences” and “cannot meet the expectation of society” by the government, as many of them are young students graduated from law departments. In response, the Judicial Yuan vows to reduce the number of judges selected by the judges/prosecutors qualification exam and enhance the number of judges selected from transferred prosecutors or attorneys. The following Graph 1 shows the number of judges selected in different ways in the past nine years. A gradual decrease in the number of judges selected via judges/prosecutors qualification exam can be found in the chart.

possessed the qualifications for the designated position.

7. Having graduated from the department of law of public or duly recognized private universities or independent colleges or post-graduate law programs thereof, and served as full-time research fellows, associate research fellows, or assistant research fellows at Academia Sinica for a total of six or more years with specialized publications in primary legal subjects, as well as possessed the qualifications for the designated position.

Graph 1: Number of judges selected in different ways from 2014-2022⁴



Though enhancement of multiple ways of judge selection is viewed as a major focus of the judicial reform, the effect of this policy remains in question.

First, while the passing rate of the judges/prosecutors qualification exam in the past decade is only about 1% to 2%, the passing rate of the bar exam in Taiwan has been about 10% each year since a reform in 2011. The high number of attorneys makes the market more crowded and competitive—some young attorneys even find it very difficult to find an internship opportunity, and the starting rate of less experienced attorneys may be only about 30,000-40,000 NTD per month, while the starting salary of a judge is about 2.5 to 3 times of that amount. However, though the starting salary of a judge is generally higher than that of an attorney, it increases slowly as the seniority of a judge accrues and will reach the utmost after a judge serves for about 20 years—a famous, experienced attorney can easily earn times of this amount of money in a much shorter period of time. Compared with attorneys, judges hold greater power yet at the same time bear much more responsibility and supervision from society. As a result, there is very little incentive for experienced or successful attorneys to transfer to judges as they can easily earn more money and bear less responsibility. In this

⁴ Modified from the chart provided by the Academy of Judiciary, see: <https://www.tpi.moj.gov.tw/290990/291006/291008/291012/589014/post>.

scenario, whether the judicial department can attract those experienced attorneys they originally targeted at to transfer to judges remains in doubt.

Secondly, there is minimal incentive for scholars to transfer to judges either. Judges in Taiwan bear heavy workloads and are subject to great societal supervision, while their salary seems disproportionate. Scholars may not have the power that judges hold, yet they enjoy more freedom. Since the government implemented the policy of enhancing judge recruitment diversity in 2012, only two scholars applied to transfer to judges in 2022, and only one of them was selected by the Judicial Selection Committee⁵– this is the first case of a scholar transferring to a judge in the past decade.

Prosecutors transferring to judges may be a preferable source of judges for the government as they have passed the judges/prosecutor qualification exam and received the same training as judges did in the Academy for the Judiciary. They surely have actual practicing experience in the judicial departments. However, a severe talent loss may happen to the prosecutorial system if too many prosecutors are allowed to transfer to judges.

The main problem still lies in the working conditions and treatment of judges. The workloads for judges are too heavy (as elaborated further in part III below), and the social expectation and supervision press tremendous pressure on judges. The government wishes to encourage experienced professionals to transfer to judges and eliminate the number of judges selected through qualification exams. Yet, the working environment and treatment of judges cannot effectively attract the professionals to transfer to judges or even make experienced judges stay. It is common for experienced judges or prosecutors to resign from their positions and practice as attorneys. Therefore, compared with enhancing diversity in judge recruitment, improving the working conditions and reducing the heavy workloads of judges may be a more intrinsic issue to attract qualified people and fundamentally solve the problem.

(B) Judge appointment to different levels of courts

1. Judge appointment to the District Courts

In Taiwan, the annual allocation of judges is at the end of August each year. A list of vacancies in different district courts (including Juvenile and Family Courts) will be released after the regional transfer of current judges is done. Judges who acquired their qualifications by passing the judges/prosecutors qualification exam and

⁵ See the announcement on the website of the Judicial Yuan:
<https://www.judicial.gov.tw/tw/cp-113-20-c4f58-1.html>.

successfully finished the training in the Academy of Judiciary can choose from the vacancies in different district courts/district prosecutors' offices according to their grades. Judges transferred from prosecutors will also select from the list of vacancies according to their will.

Judges transferred from attorneys will also be appointed after completing their 75 weeks-training. They will choose from a list of vacancies in different district courts according to their grades. This event is usually held in January each year.

Whether a judge will be placed in a district court's criminal or civil division is decided by their will and specialty. Judges can attend training and acquire professional licenses in particular fields, such as licenses in administrative laws, youth and juvenile laws, intellectual and property laws, or labor laws. For instance, a judge with a professional license in youth and juvenile laws will be preferentially placed in the criminal court to deal with youth and juvenile cases following their will. If too many judges wish to be placed in a certain division of the court, years of service would be the factor that decides whether or not the judge can go to their preferable division.

2. Judge appointment to the High Court and its branches

In Taiwan, judges appointed to the High Court and its branches must meet the requirements regulated in Judges Act Art.5 (1) (for instance, having served as tenured judges). Judges who wish to go to the High Court or its branches can apply to the Judicial Yuan, and the Judicial Personnel Review Committee will select from them the qualified ones. According to Article 4 (1) of the Judges Act, the Judicial Personnel Review Committee is in charge of reviewing the appointment and removal, office transfer, dismissal from office, transfer, evaluation, reward and discipline, certification or tenure of qualifications for the professional judgeship, extension of services of judges. The Committee consists of the President of the Judicial Yuan, eleven members designated by the President of the Judicial Yuan, twelve judge representatives elected by judges among themselves at all levels of courts, and three academic experts⁶.

In the selection, the Judicial Personnel Review Committee values the candidates' years of service and performances (for example, the maintenance rate of the candidate's judgments). If a judge is selected by the Judicial Personnel Review Committee to go to the High Court or its branches, whether they will be placed in the criminal or civil division is decided in accordance with the judge's will and

⁶ The Judges Act, Article 4 (2).

professional specialty.

3. Judge appointment to the Supreme Court

In Taiwan, judges appointed to the Supreme Court must meet the requirements regulated in Judges Act Art.5 (3) (for instance, having served as tenured judges for twelve or more years). Judges who wish to go to the Supreme Court can apply, and the Judicial Personnel Review Committee will select the qualified ones and appoint them to Supreme Court. Whether they will be placed in the criminal or civil division is decided following the judge's will and professional specialty.

Question B

If applicable, please identify whether political influences of any description bear upon in any way the appointment of a particular person to judicial office.

Since the processes of appointing a particular person to judicial office are regulated explicitly in the Judges Act and rely heavily on impartial examinations, there is hardly any political influence on judge appointments in Taiwan. As mentioned above, most judges acquire their qualification by passing the impartial judges/prosecutors exam and are later appointed to judicial offices according to their scores in the Academy for the Judiciary. Judges transferred from attorneys or other positions regulated under Act.5 (1) of the Judges Act are appointed according to their scores in the Academy for the Judiciary. Thus, there is no room for political influence in these judge appointment procedures as impartial examination results serve as a decisive factor.

Moreover, the Judicial Selection Committee that reviews the applications of attorneys or prosecutors to transfer to judges is formed by representatives from independent organizations. What the Committee needs to consider when deciding in the review is also explicitly stipulated in the Judges Act Article 8(1). As a result, there is hardly any room for political influence in the selection.

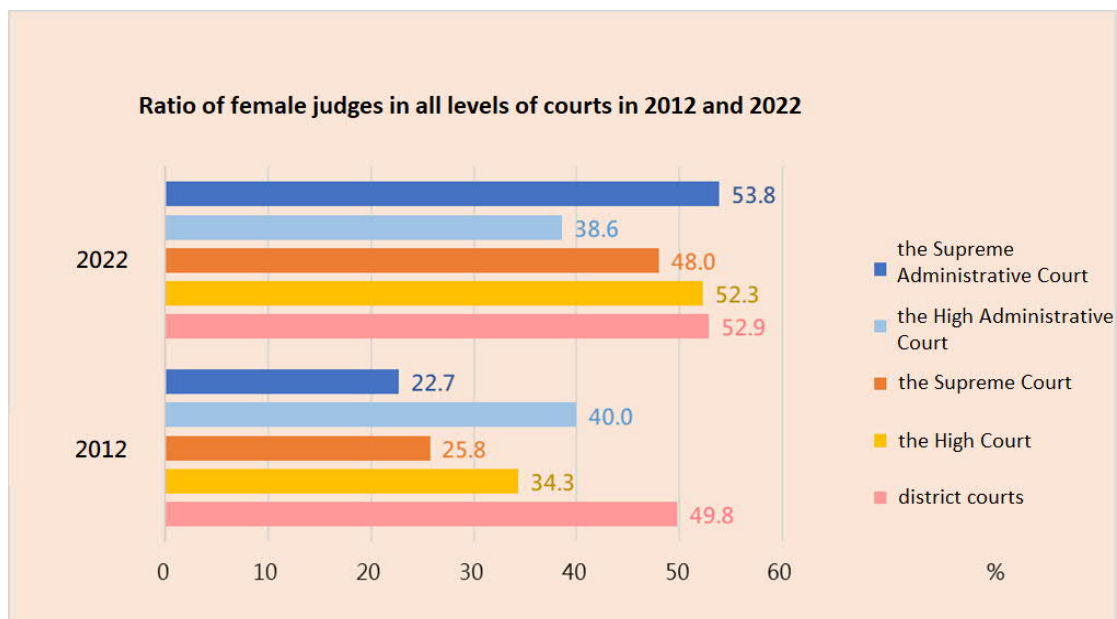
As for judge appointments to the High Court (and its branches) and the Supreme Court, the Judicial Personnel Review Committee plays a vital role in the appointment procedure. The Judicial Personnel Review Committee is formed by representatives from independent organizations and evaluates objective factors such as the years of service and performances of the candidates. Therefore, there is hardly any political influence in the procedure of judicial appointment to the High Court (and its branches) or the Supreme Court.

Question C

Is ethnic or gender diversity in any way relevant to appointment to judicial office, and if so, please describe why and in what respect each may be relevant.

In Taiwan, ethnic or gender diversity hardly has any relevance to the appointment of judges. This is because the appointment processes are regulated explicitly in law and rely heavily on impartial examinations or objective factors (such as service years and the judges' performances), as mentioned above. However, it is worth noting that though gender diversity is not relevant in the appointment of judges to judicial offices, the rights of female judges are valued more these years as more and more women get the chance to receive high education and devote themselves to judicial departments. Graph 2 shows the ratio of female judges in all levels of courts in Taiwan in 2012 and 2022. A slight increase in the number of female judges in courts can be found in the chart.

Graph 2: Ratio of female judges in all levels of courts in 2012 and 2022⁷



Question D

Describe whether and if so in what way the process of appointment to judicial office is independent of government.

⁷ Modified from the chart on the website of the Judicial Yuan, see <https://www.judicial.gov.tw/tw/cp-2270-840141-f85e3-1.html>.

The appointment process to the judicial office in Taiwan is independent of the government. This is because the appointment process is explicitly regulated in the Judges Act and relies heavily on impartial examinations as elaborated in part B. There is hardly any chance that the government can intervene with judicial appointments.

Another reason that judge appointment procedures in Taiwan can be independent of the government is that judges are placed under the Judicial Yuan, which is an independent department. In Taiwan, there are five branches in the central government: the Executive Yuan, Legislative Yuan, Judicial Yuan, Examination Yuan, and Control Yuan. The Judicial Yuan supervises the judicial administration of each court in Taiwan, interprets the Constitution, adjudicates trials, and is vested with disciplinary power. The power of the Judicial Yuan⁸ and the judicial independence of judges are explicitly stipulated in the Constitution of the R.O.C. (Taiwan)⁹. Moreover, according to Article 5 (6) of the Additional Articles of the Constitution of the R.O.C., the proposed budget submitted annually by the Judicial Yuan may not be eliminated or reduced by the Executive Yuan. The Executive Yuan can only indicate its opinions on the budget and include it in the central government's proposed budgetary bill for submission to the Legislative Yuan for deliberation. The judicial power and assurance of budget explicitly regulated in the Constitution protect the independence of the Judicial Yuan and the judicial appointment processes in Taiwan.

⁸ The Constitution of the R.O.C., Article 77.

⁹ Article 80 of the Constitution of the R.O.C. stipulates that: Judges shall be above partisanship and shall, in accordance with law, hold trials independently, free from any interference.

Article 81 of the Constitution of the R.O.C. stipulates that: Judges shall hold office for life. No judge shall be removed from office unless he has been found guilty of a criminal offense or subjected to disciplinary measure, or declared to be under interdiction. No judge shall, except in accordance with law, be suspended or transferred or have his salary reduced.

II. PROMOTION WITHIN THE JUDICIARY

Question A

Does scope exist for promotion within the judiciary and if so, please describe how and in what circumstances a magistrate or judge may be promoted.

Typically, most people consider going to the upper courts a “promotion” for a judge. This is because the appointment of judges to the High Court and the Supreme Court is reviewed by the Judicial Personnel Review Committee, and the performance of the candidate is highly valued by the Committee when making the decision. Therefore, if a judge is appointed to the High Court or the Supreme Court usually means that his or her ability is recognized by the Judicial Personnel Review Committee.

Moreover, experienced judges may be selected to be presiding judges to preside on trials or to handle administrative affairs in the court. Judges in a specific court would vote on a list of qualified candidates for presiding judges initiated by the Judicial Yuan, and the Judicial Personnel Review Committee would review the elected presiding judges. A judge's performance and seniority are highly valued in the selection of presiding judges. Being selected as a presiding judge is also considered a promotion for a judge.

Question B

To what extent is political affiliation of political partisanship relevant to promotion within the judiciary?

In Taiwan, judges are expected and required to be above political partisanship and judge independently. Article 80 of the Constitution of the R.O.C. explicitly states that judges shall be above partisanship and shall, in accordance with law, hold trials independently, free from any interference. Article 13 of the Judges Act requires that a judge shall conduct unbiased, independent, and fair trials in accordance with the Constitution and the laws, based on conscience, and not subject to any intervention. Moreover, Article 15 (1) of the Judges Act stipulates that a judge shall not participate in any political party, political organization, or their activities during the term of services and shall withdraw therefrom if already joined before being appointed. In order to maintain and protect judicial independence, Article 81 of the Constitution of the R.O.C. mandates that judges shall hold office for life, and that no judge shall be removed from office unless he has been found guilty of a criminal offense or subjected to disciplinary measure, or declared to be under interdiction, or except in accordance with law, be suspended or transferred or have his salary reduced.

Further, the promotion of judges is decided by the Judicial Personnel Review Committee, which consists of the President of the Judicial Yuan, eleven members designated by the President of the Judicial Yuan, twelve judge representatives elected by judges among themselves at all levels of courts, and three academic experts¹⁰. There is no representative from the government in the Judicial Personnel Review Committee to have a say on the promotion of judges.

With these regulations, political affiliation hardly has any relevance to the promotion of a judge within the judiciary. Oppositely, a particular inclination to political activities may block a judge's way to promotion as this undermines their judicial reputation.

Question C

Describe the transparency involved in the process of promotion within the judiciary.

As for judges who wish to promote to the upper courts, their application is reviewed by the Judicial Personnel Review Committee. In selecting judges to go to the upper courts, the Judicial Personnel Review Committee values the years of service and performances of the candidates. Since the years of service is an objective factor, and a judge's performance is openly reviewed by all the other judges, the candidates that can promote to the upper courts can usually be easily predicted by all judges.

Further, presiding judges are elected by other judges in the court and reviewed by the Judicial Personnel Review Committee. When selecting presiding judges, the seniority and performance of a judge are also the main deciding factors. As a result, the promotions of judges to go to the upper courts or be selected as presiding judges are relatively transparent.

¹⁰ The Judges Act, Article 4 (1).

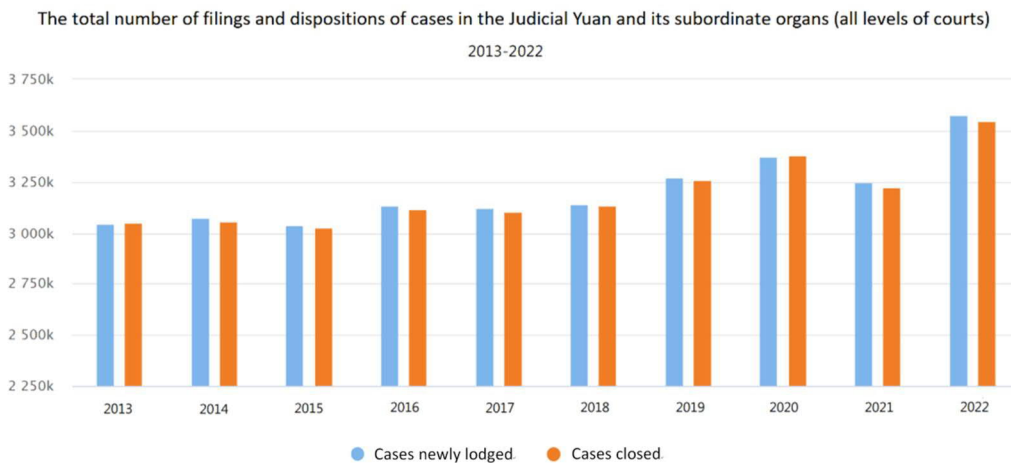
III. WORKLOAD WITHIN THE JUDICIARY

Question A

In broad terms, what are the requirements for magistrates and judges in relation to the number of sitting days per year or other measurement of judicial workload requirements?

According to statistics from the Judicial Yuan, the number of cases filed into all levels of courts in Taiwan is above 3,500,000 per year. While the total number of judges in Taiwan is about 2127 people each year, every judge must handle over 1,600 cases a year¹¹. Judges in the lower courts apparently handle more cases than this average number as they are the ones confronting the influx of cases in the front. Graph 3 shows the total number of filings and dispositions of cases in the Judicial Yuan and its subordinate organs (all levels of courts) from 2013 to 2022, while Graph 4 shows the total number of judges in the Judicial Yuan and its subordinate organs. The heavy workload of judges in Taiwan is evident by viewing these two charts together—the number of cases that a judge needs to handle per year is about 1500 to 1600 or more, and the total number of filings and dispositions of cases is still soaring yearly.

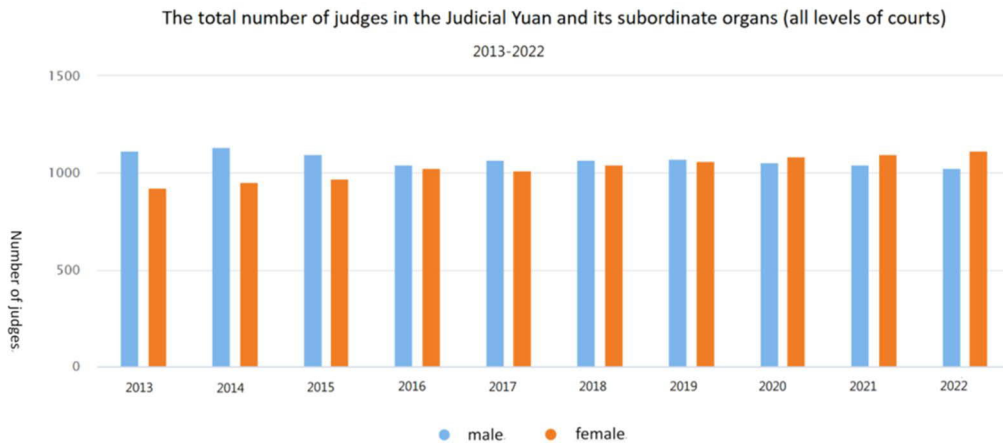
Graph 3: the total number of filings and dispositions of cases in the Judicial Yuan and its subordinate organs (all levels of courts) from year 2013 to 2022¹²



¹¹ The heavy workloads of judges are reported in the news, see <https://www.nownews.com/news/5822903>.

¹² Modified by the chart provided on the website of the Judicial Yuan, <https://www.judicial.gov.tw/tw/cp-1789-90906-ae4c1-1.html>.

Graph 4: the total number of judges (including Justices of the Judicial Yuan and Judges of the Disciplinary Court) in the Judicial Yuan and its subordinate organs (all levels of courts) from year 2013 to 2022¹³



The working hours of judges, according to the statistics released by the Judicial Yuan, are about 60 hours per week¹⁴. The analysis of this interview shows that nearly seventy percent of judges work 7 to 11 hours per day on working days and about 2 to 8 hours per day on weekends or on leave. Almost eighty percent of the judges work over 8 hours daily on working days. The statistics of the interview show that working overtime is almost regular for judges in Taiwan, which is caused by the unreasonable workload brought on by the massive amount of cases.

According to the survey, on average, judges spend about 38.2% of their working hours writing judgments, about 19.8% of their working time reviewing the materials of cases, and about 15.4 % of their working time trying cases in court¹⁵. Judges' primary sources of pressure at work are the case handling time limit and evaluation from the upper courts. With so many cases to deal with simultaneously, judges must keep reviewing case materials, trying in courts, and writing judgments non-stop to meet the case handling time limit.

Question B

If a judge is encountering trouble keeping up with the workload, describe the regime that applies by which –

(i) that judge's workload is allocated to other judges;

¹³ Modified by the chart provided on the website of the Judicial Yuan, <https://www.judicial.gov.tw/tw/cp-1789-90910-3bc7d-1.html>.

¹⁴ <https://www.judicial.gov.tw/tw/cp-1429-73715-7829c-1.html>.

¹⁵ *Id.*

(ii) the overloaded judge can recover from workload arrears and from any other disabling factor that led to overload.

(iii) there are other mechanisms to address judicial delinquency.

(A) The principle of a lawful designation of judges

In Taiwan, the principle of a lawful designation of judges is followed by the judicial offices. This principle entails that cases shall be assigned to judges by pre-defined abstract and general guidelines and are not subject to any particular judge's arbitrary control to interfere with the adjudication. The principle of a lawful designation of judges is crucial to realizing judicial fairness and trial independence. Though it is unavoidable that cases assigned to a judge may be later reassigned to or be integrated with another case and thus transferred to a different judge due to relocation, promotion, resignation, retirement, or other causes of the initially designated judge, the procedure of reassignment must be stipulated clearly in regulations or the supplemental rules of courts beforehand.

Adhering to the principle of a lawful designation of judges, in Taiwan, a judge's workload—their cases—cannot be arbitrarily transferred or allocated to other judges simply because the judge has trouble keeping up with the workload. Cases can only be reallocated to other judges when the conditions of exceptions regulated in law are met.

(B) Reassignment of cases regulated in the Judges Act

The situation regulated in Article 21 (2) of the Judges Act is an exception to the principle of a lawful designation of judges. Article 21 (2) of the Judges Act stipulates that: “for the protection of people's rights to litigate and to serve in a public office, the president of a court or branch court at all levels may submit a delayed and undecided case to the Council of Judges and reassign the case to other judges at the same court, or to take other appropriate disposition”. In this situation, the Council of Judges in a court may reallocate a delayed and undecided case to another judge in order to protect people's rights.

(C) Alternation to assignment allocations regulated in the Court Organization Act

Article 81 of the Court Organization Act is another exception to the principle of a lawful designation of judges. Article 81 of the Court Organization Act regulates the procedure to alter judges' assignment allocations, and stipulates that: “If alterations are required to change the pre-determined assignment allocations, rotation orders, and

judges' sitting sequences in collegial trials, due to increase or decrease of caseload, or the number of judges, or other events, the president may consult with relevant division chief judges and judges to determine such alterations.”

The mechanism regulated in Article 81 of the Court Organization Act is an important method to adjust and balance judges' workload allocations. For instance, a decrease of the number of judges might happen if some of the judges in a court request parental leave or a leave of absence without pay in order to study abroad after the original assignment allocations are determined. In this situation, the president of the court may make necessary alternations to the pre-determined assignment allocations after consulting relevant division chief judges to maintain the operation of the court.

(D) Other mechanisms or assistance

The assistance offered to the overloaded judge and the mechanism to address judicial delinquency depends on the reasons that caused the workload arrears of the judge. The following are the mechanisms applied to help the overloaded judge recover from workload arrears and the disabling factor that led to their overload in different situations.

1. A judge may encounter trouble with the workload due to pregnancy or illness. In this situation, most courts offer reductions on the number of cases assigned to the judges in pregnancy or with severe disease in the courts' case assignment directions. This is with an aim to reduce the workload of a pregnant or severely ill judge until they give birth to babies or regain health. Since once a case is assigned to a judge, it cannot be transferred to other judges under the principle of a lawful designation of judges, the best way to help a judge in need is to reduce the number of cases assigned to them beforehand.
2. Assistance such as additional law clerks may be provided to the judge in need to help them with the cases. For instance, if a judge receives a very complicated or high-profile case, additional law clerks may be provided to the judge to help him deal with the heavy workloads.

Question C

Are judges expected or required to assist other judges who may be adversely affected from overload so as to ensure that the business of the court is discharged in a timely manner.

Judges in Taiwan are not required to assist other judges under the principle of a lawful designation of judges. However, judges may be expected to volunteer to assist with other judges when there is a delayed and undecided case that triggers the application of Article 21 (2) of the Judges Act.

IV. REMOVAL FROM JUDICIAL OFFICE

Question A

Does a regime currently exist in your country pursuant to which a sitting judge may be removed from office. If so, please describe any such regime, giving all relevant details including-

(i) who decides that the judge is to be removed from office;

(ii) does the judge have a right of audience on any such motion or otherwise possess a right to be heard against the removal and is there an appeal process if removed;

(iii) what are the grounds for seeking the removal of a sitting judge;

(iv) what is the relationship between violation of the ethics code/principles and removal; and

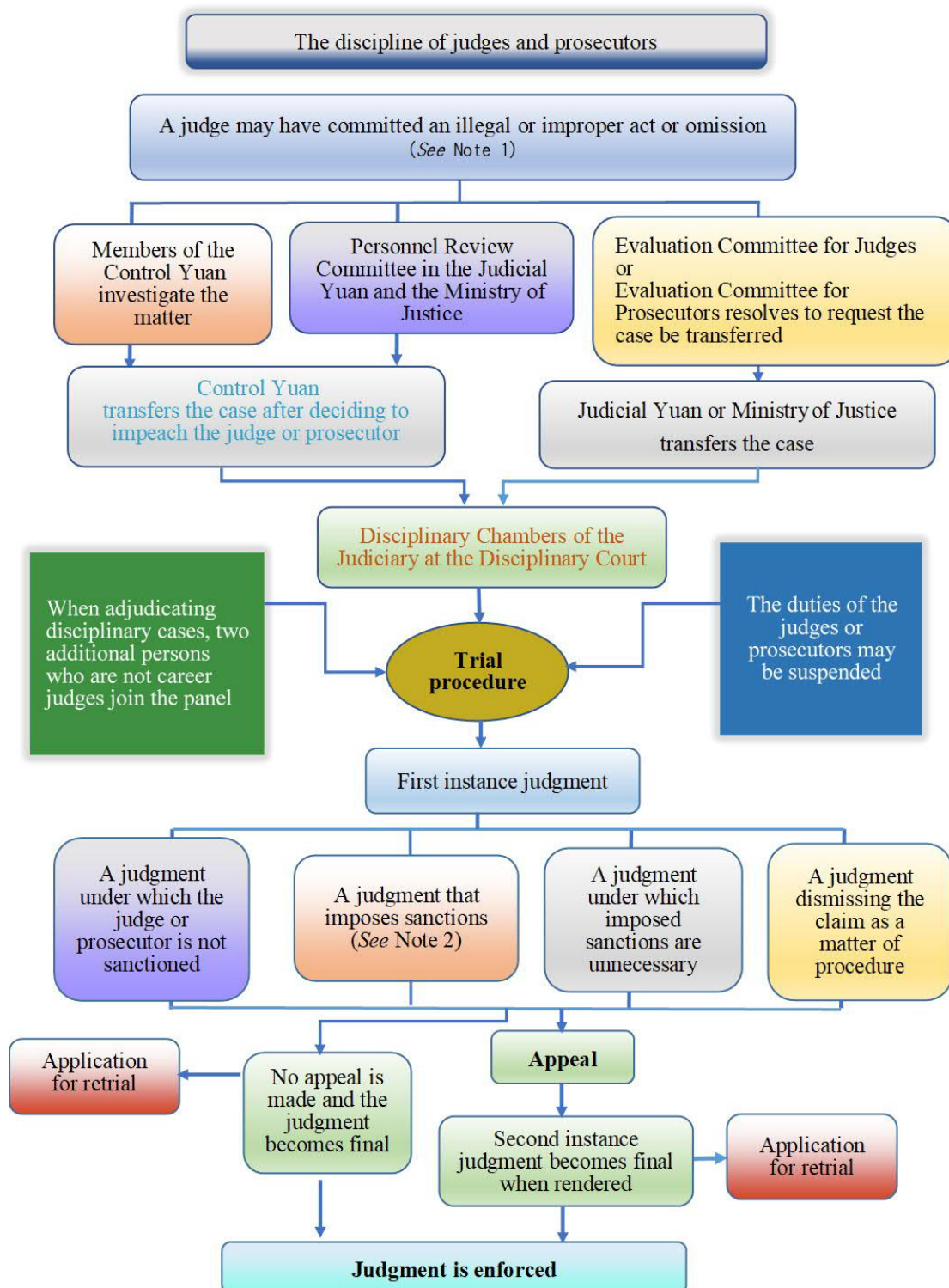
(v) describe the transparency in the process.

(A) Introduction on the Disciplinary Chamber of the Judiciary

In Taiwan, the Disciplinary Court established under the Judicial Yuan is the institute that exclusively adjudicates disciplinary cases involving civil servants, judges and prosecutors. The Disciplinary Judicial Panels and the Disciplinary Chamber of the Judiciary are established separately in the Disciplinary Court—the former rules on disciplinary cases of civil servants, and the latter adjudicate disciplinary cases of judges and prosecutors. The reason why the adjudication of disciplinary cases involving judges and prosecutors is separated from other civil servants is that judges and prosecutors hold the judicial power to judge and bear great responsibility, and judicial independence is crucial. Thus, the discipline procedures and appealing procedures for judges and prosecutors differ from those applied on other civil servants.

The Disciplinary Chamber of the Judiciary is the organization in charge of disciplinary actions against judges. The Disciplinary Chamber of the Judiciary adopts the one-level-two-instances system, affording the protection of the second instance to the judges allegedly subject to disciplinary sanctions. Before a disciplinary case goes to the Disciplinary Chamber of the Judiciary for trial, certain preliminary procedures must be met. Graph 5 shows the adjudication procedure on judge disciplinary cases in the Disciplinary Chamber of the Judiciary.

Graph 5: Flow Chart of Adjudication on Judge Disciplinary Cases in the Disciplinary Chamber of the Judiciary¹⁶.



¹⁶ Chart provided on the website of the Judicial Yuan, see: <https://tpp.judicial.gov.tw/en/cp-10720-2091005-3b014-032.html>

(B) Preliminary procedures

1. The individual case evaluation on judges

If a judge has any of the circumstances stipulated in Article 30 (2) of the Judges Act, they shall go under an individual case evaluation conducted by the Judicial Evaluation Committee established under the Judicial Yuan¹⁷. The circumstances stipulated in Article 30 (2) of the Judges Act include:

- (1) For cases with final adjudications or cases that have been pending without final adjudications for more than six years since the date of the filing of action of the first instance, there are sufficient facts to conclude the existence of obvious errors, committed intentionally or with gross negligence, which causes a serious infringement on the rights and interests of the people (severe errors conducted intentionally or with gross negligence in cases).
- (2) Severe violations of Subparagraph 2, Paragraph 1 of Article 21 (violation of the duties of a judge, tardiness in carrying out duties, or misconduct).
- (3) Violations of Paragraphs 2¹⁸ and 3 of Article 15¹⁹ (violations of the rules prohibiting judges from seeking election for any kind of public office).
- (4) Severe violations of Paragraph 1 of Article 15²⁰, Article 16²¹, or Article 18²²(violations of the rules prohibiting judges from participating political parties or concurrently serving other positions such that might impact on the independence of justice, or conducting actions detrimental to the dignity of the position or credibility, or violating the duty of confidentiality).
- (5) Severe violations of rules for case management procedures or rules for duties.

¹⁷ The Judges Act, Article 30(1), (2).

¹⁸ The Judges Act, Article 15 (2) stipulates that: Any judge who seeks election for any kind of public office shall resign from the judgeship position or retire or take severance in accordance with the law before the anniversary of serving term in the respective public office. Any judge who participates in a re-election, special election, or the legislature election following the dissolution of the Legislative Yuan by the President shall do the same before submitting the registration for that election.

¹⁹ The Judges Act, Article 15 (3) stipulates that: No judge may be registered as a candidate for the election of public office for violation of the preceding paragraph provision.

²⁰ The Judges Act, Article 15 (1) stipulates that: A judge shall not participate in any political party, political organization, or their activities during the term of services, and shall withdraw therefrom if already joined before being appointed.

²¹ The Judges Act, Article 16 stipulates that: No judge may concurrently serve the following positions or perform duties for the following businesses:

1. Legislative representative at central or all local levels.
2. Positions not to be served concurrently under the Civil Servants Service Act.
3. Commissioner of the legal or administrative appeals commission for agencies other than the judiciary, or commissioner of the Civil Servants Protection and Training Commission.
4. Director, supervisor, or other executive position at all levels of private schools.
5. Other position or duty that may be sufficient to impact on the independence of justice or incompatible with the professional ethics or occupational dignity for a judge.

²² The Judges Act, Article 18 stipulates that:

A judge may not engage in any act detrimental to the dignity of the position or credibility, and must strictly adhere to the duty of confidentiality.

The duty of confidentiality referred to in the preceding paragraph must continuously be adhered to even after leaving the position.

- (6) Undue delay of the case process without proper justification which severely affects the rights and interests of the parties.
- (7) Severe violations of ethical rules for judges.

It is noteworthy that Article 30 (3) of the Judges Act explicitly stipulates that legal opinions on the application of law shall not be the reason that triggers an individual case evaluation on a judge. This regulation is aimed at protecting judicial independence.

The Judicial Evaluation Committee that is in charge of the individual case evaluation comprises three judges, one prosecutor, three attorneys, and six scholars and social representatives²³. The resolution of the Judicial Evaluation Committee shall be adopted by the attendance of one-half or more of the total committee members and with the consent of more than half of the committee members in attendance²⁴.

If the Judicial Evaluation Committee deems that the judge indeed has any of the various circumstances in Article 30 (2) of the Judges Act and considers disciplinary measures necessary, the case shall be forwarded by the Judicial Yuan and submitted to the Disciplinary Chamber of the Judiciary for review (as shown in the right side of Graph 5). According to Article 39 (3) of the Judges Act, the judge to be evaluated shall be afforded an opportunity to express his or her opinions in the judicial evaluation process before the Judicial Evaluation Committee makes a resolution. .

2. Impeachment by the Control Yuan

According to Article 51 of the Judges Act, the disciplinary action against judges shall, except for the circumstance that a judge has been sent to individual case evaluation, be initiated in the form of an impeachment by the Control Yuan and forwarded to the Disciplinary Chamber of the Judiciary for review²⁵.

There are two situations in which judges may be forwarded to the Disciplinary Chamber of the Judiciary for disciplinary dispositions under an evaluation of impeachment by the Control Yuan. First, members of the Control Yuan may actively investigate the possible illegal or inappropriate actions or omissions of a judge and impeach the judge, then submit the case to the Disciplinary Chamber of the Judiciary

²³ The Judges Act, Article 33(1). And Article 34 of the Judges Act regulates the means of selection of the committee member—for instance, the judge representatives shall be voted by all judges.

²⁴ The Judges Act, Article 41(1).

²⁵ The Judges Act, Article 51(1).

for review if necessary (as shown in the left side route of Graph 5)²⁶. Second, according to Article 51 (2) of the Judges Act, the Judicial Yuan may forward *sua sponte* a disciplinable matter directly to the Control Yuan for review, in addition to being subject to the regulations concerning the evaluation of judges (as shown in the middle route of Graph 5). In this situation, the Judicial Yuan must obtain a resolution from the Judicial Personnel Review Committee before forwarding a judge disciplinary case to the Control Yuan for impeachment investigation²⁷. Moreover, the right to statement of opinion of the judge under investigation is protected in Article 51 (3) of the Judges Act.

(C) In the trial of judge disciplinary cases

1. Formation of the Panels for the trial

After a judge's disciplinary case is transferred to the Disciplinary Chamber of the Judiciary, a panel of five members would be in charge of the first-instance adjudication of the case. The five members include a Justice of the Disciplinary Court, two judges from other courts, and two Expert Lay Judges who are not judges but are appointed to participate in the trial and deliberation of the cases disciplining judges.

The appeals are adjudicated by a panel of five members as well. The Chief Justice of the Disciplinary Court presides over the trial and deliberation. The other four members of the panel include two Justices of the Supreme Court, one Justice of the Supreme Administrative Court, and a Justice of the Disciplinary Court.

2. Public trial and the transparency in the adjudication process

According to Article 57 of the Judges Act, the proceedings of the Disciplinary Chamber of the Judiciary shall be conducted in public court unless there exists one of the following conditions:

- (1) There are concerns of vice or violations of moral code if public trial procedures are applied.
- (2) The case involved requires non-public proceedings.
- (3) The case is concerning matters that shall be kept secret under laws.
- (4) The disciplined judge or the petitioner requests that the trial be non-public.

A disciplinary case can only be tried in camera if one of the above-mentioned conditions exists and the Disciplinary Chamber of the Judiciary grants approval after hearing the opinions of the petitioner or the disciplined or complaining judge, the

²⁶ Impeachment of the personnel of the Judicial Yuan by the Control Yuan members is regulated in Article 99, 95, 97, 98 of the Constitution of the R.O.C.

²⁷ The Judges Act, Article 51(3).

attorneys, or agents' assistants²⁸.

Moreover, Article 58 (1) and Article 59-5 of the Judges Act stipulate that unless otherwise provided by law, reviews on cases of the first and second instance conducted by the Disciplinary Chamber of the Judiciary shall include oral arguments. Thus, the disciplined judge has a right of audience in the adjudication process, and the process is transparent to the public.

In the past, the trials of judges' disciplinary cases in the Disciplinary Chamber of the Judiciary were non-public, unless the Disciplinary Chamber of the Judiciary deemed it necessary to open the trial to the public or the disciplined judge requested otherwise. However, this regulation was revised recently in June 2022 to enhance the transparency in the trials of judges' disciplinary cases. Now, the trial proceedings of judges' disciplinary cases shall be conducted in public court in principle, while non-public trials are exceptions.

3. Grounds for disciplinary measures against a judge

According to Article 49 (1) of the Judges Act, a judge shall be subject to disciplinary action when they are in any of the circumstances stipulated in various subparagraphs of Article 30 (2) and when such action is deemed necessary by the Disciplinary Chamber of the Judiciary²⁹. Situations that would trigger disciplinary measures on judges stipulated in Article 30 (2) of the Judges Act were introduced previously in part (B).

(D) Adjudications of the Disciplinary Chamber of the Judiciary

There are four kinds of judgments that the Disciplinary Chamber of the Judiciary might make:

1. A judgment dismissing the claim as a matter of procedure

The panel of the Disciplinary Chamber of the Judiciary may rule a dismissal judgment if the case has been transferred in violation of the rules of procedure, the disciplined judge passes away, or the case has been withdrawn and later transferred again to the Disciplinary Chamber of the Judiciary³⁰.

2. A judgment dismissing the claim as it should be exempted from review

According to Article 49 (6) of the Judges Act, disciplinary actions under any of the following circumstances shall be ruled to be dismissed: (1) the same conduct has already been subject to the final disciplinary judgment; (2) no discipline is

²⁸ The Judges Act, Article 57.

²⁹ The Judges Act, Article 4 (1).

³⁰ <https://www.judicial.gov.tw/tw/cp-240-57392-dc410-1.html>.

deemed to be necessary once a declaration to deprive citizens' rights is finalized; (3) the statute of limitations in accordance with Article 52³¹ on the enforcement of disciplinary action has elapsed; (4) being in the circumstances referred to in the proviso of the preceding paragraph³².

3. A judgment without disciplinary disposition

If the panel finds that the disciplined judge is not in violation of Article 30 (2) of the Judges Act or that it is not necessary to impose disciplinary measures on the disciplined judge, the panel may render an adjudication without disciplinary action.

4. A judgment with disciplinary disposition

If the panel finds that the disciplined judge is indeed in violation of Article 30 (2) of the Judges Act and that it is necessary to impose disciplinary measures on the judge, the panel may render a judgment with disciplinary dispositions regulated in Article 50 (1). The categories of disciplinary dispositions against judges stipulated in Article 50(1) include:

- (1) Removal from judgeship duties and prohibition of reappointment as civil servants.
- (2) Dismissal from office: in addition to dismissal from the incumbent office, all appointments shall be suspended for a period of no less than one year and no more than five years.
- (3) Removal from judgeship duties and transfer to positions other than the judgeship.
- (4) Deprivation of pensions and retirement benefits, or deprivation of retirement benefits.
- (5) Reduction of pensions and retirement benefits by 10% to 20%.
- (6) Fine: the amount shall be no less than one month but no more than one year of

³¹ The Judges Act, Article 52 regulates the period of statute of limitation on disciplinary actions on judges.

Article 52 (1) stipulates that: No judge may be disciplined by reducing his/her pensions and retirement benefits, imposing fines, or reprimand if more than five years has elapsed from the date the disciplinable conduct ends to the date the case is filed with the Disciplinary Chamber of the Judiciary; provided that under the circumstances stipulated in Subparagraph 1, Paragraph 2 of Article 30, the statute of limitation shall run from the date the individual case evaluation may be submitted in accordance with this Act.

Article 52 (2) stipulates that: The date that the conduct ends referred to in the preceding paragraph shall refer to the date the disciplinable act of the judge concludes. However, where the disciplinable act involves non-action, the period shall start on the date the agency with which the judge is affiliated becomes aware of such non-action.

³² This refers to the proviso of Article 49 (6) of the Judges Act. Article 49 (6) of the Judges Act stipulates that: The act of the judge that is subject to disciplinary action has already been punished with criminal or administrative penalties may also be subject to disciplinary action for the same act. The same provision shall apply to the same act of the judge that is not punished with criminal or administrative penalties. However, the disciplinary action shall not be necessary for circumstances of minor violations, which would appear evidently unfair if put under the disciplinary action.

the total current monthly salary or the latest monthly salary while in service.
(7) Reprimand.

According to Article 50 (2), if it is sufficient to determine based on concrete facts and circumstances which are disciplinable that the judge has no longer fit to serve the duty, the above-mentioned disposition category (1), (2) or (3) shall be rendered. In these situations, a judge will be removed from office.

(E) The relationship between violation of the ethics code/principles and removal
1. Cases rendering “removal from judgeship duties and prohibition of reappointment as civil servants” to judges

In the past decade, there has been only one case in which the Disciplinary Chamber of the Judiciary ruled the most severe kind of disciplinary disposition— “removal from judgeship duties and prohibition of reappointment as civil servants” to the disciplined judge. In this case, the judge had an extramarital affair with two women for nearly thirty years. The judge also took bribes from one of the parties in his assigned case and acted unfairly in the litigation process, and was sentenced by criminal courts for violating the Anti-Corruption Act. The Disciplinary Chamber of the Judiciary considered the acts of the judge severely harmed the image of judges and constituted a severe violation of Article 30 (2) paragraph 5 (severe violations of rules for case management procedures or rules for duties) and paragraph 7(severe violations of ethical rules for judges) of the Judges Act. Therefore, the most severe disciplinary disposition—removal from judgeship duties and prohibition of reappointment as civil servants— was rendered to the judge³³.

2. Cases rendering “dismissal from office”

In the past ten years, four cases were adjudicated by the Disciplinary Chamber of the Judiciary rendering “dismissal from office and spontaneous suspension of appointments for a period of time (no less than one year and no more than five years)” to the disciplined judges. Among these four cases, the Disciplinary Chamber of the Judiciary ruled in two of them to dismiss the disciplined judges from office because the judges had contacts with the litigants of the cases pending in the court, provided them suggestions on litigation strategies and received improper benefits from the litigants³⁴. The panel considered that the disciplined judges in these two cases

³³ Adjudication of the Disciplinary Chamber of the Judiciary, case number 4 in year 2014. (103 年度懲字第 4 號)

³⁴ Adjudication of the Disciplinary Chamber of the Judiciary, case number 3 in year 2018 (107 年度懲字第 3 號) ; Adjudication of the second instance in the Disciplinary Chamber of the Judiciary, case number 2 year 2022. (111 年度懲上字第 2 號) .

conducted actions detrimental to the dignity of the position and credibility of judges, caused severe harm to the judicial image, and violated the ethical rules that judges should follow.

One of the cases in which the Disciplinary Chamber of the Judiciary rendered dismissal of office to the disciplined judge is about offenses against privacy. In this case, the disciplined judge was sentenced to penalty by the District Court. Another case concerns the judge's business running during his tenure and illegally acting as the *agent ad litem* of his spouse in a lawsuit filed to the court. The Disciplinary Chamber of the Judiciary ruled that the actions of the disciplined judges constituted severe violations of the ethics code that a judge shall abide by and damaged the judicial image gravely. Therefore, disciplinary dispositions of dismissal from office were rendered to the disciplined judges in these cases³⁵.

3. Cases rendering “removal from judgeship duties and transfer to positions other than the judgeship”

In six cases, the Disciplinary Chamber of the Judiciary rendered “removal from judgeship duties and transfer to positions other than the judgeship” to the disciplined judges in the past ten years. Among these cases, three of them are mainly regarding the disciplined judges' sexual harassment to their subordinates³⁶, one is primarily about the disciplined judge's severe violations of rules for case management procedures or rules³⁷, one is about absence without leave for sex trade during working hours³⁸, and one is regarding the disciplined judges' violation of the duty of confidentiality and improper contact with one of the parties in the cases in court³⁹. The Disciplinary Chamber of the Judiciary rendered removal from judgeship duties and transfer to positions to these disciplined judge as their behaviors severely violated the ethics rules for judges and constituted violations of subparagraphs 2, 4, or 7 of Article 30 (2) of the Judges Act.

³⁵ Adjudication of the Disciplinary Chamber of the Judiciary, case number 3 in year 2021.(110 年度懲字第 3 號)

³⁶ Adjudication of the Disciplinary Chamber of the Judiciary, case number 1 in year 2019 (108 年度懲字第 1 號), case number 1 in year 2020 (109 年度懲字第 1 號), case number 2 in year 2015. (104 年度懲字第 2 號)

³⁷ Adjudication of the Disciplinary Chamber of the Judiciary, case number 5 in year 2018.(107 年度懲字第 5 號)

³⁸ Adjudication of the Disciplinary Chamber of the Judiciary, case number 3 in year 2018.(107 年度懲字第 3 號)

³⁹ Adjudication of the Disciplinary Chamber of the Judiciary, case number 12 in year 2022. (111 年度懲字第 12 號)

Examining the cases above, it can be found that the behaviors of judges shall abide by high moral standards and are under strict examination. Misconducts that would harm the impartial, virtuous image of judges would possibly lead the Disciplinary Chamber of the Judiciary to render removal from office to the disciplined judges when the harm caused by the misconduct is severe.

Question B

If removed from office, describe the adverse consequences that may affect the removed judge including -

(a) financial (especially pension) consequences;

(b) future employment consequences following removal;

(c) societal consequences including loss of title or civic decorations; and

(d) disciplinary steps that may be taken against the removed judge.

In Taiwan, there are three kinds of disciplinary dispositions that the Disciplinary Chamber of the Judiciary can render to remove a judge from office in accordance with Article 50 (1) of the Judges Act, as mentioned above: (1) removal from judgeship duties and prohibition of reappointment as civil servants; (2) dismissal from office: In addition to dismissal from the incumbent office, all appointments shall be suspended for a period of no less than one year and no more than five years; (3) removal from judgeship duties and transfer to positions other than the judgeship. The adverse consequences that may affect the removed judge are as follows.

(A) Financial (especially pension) consequences

To pose actual disciplinary effect on judges who have retired or resigned before the disciplinary actions are made (in some cases, a judge who has conducted illegal or improper conduct might resign in advance of the disciplinary investigations to avoid sanctions), the legislators amended the Judges Act in 2019 to add financial sanctions on retired or resigned judges under certain disciplinary actions. According to amended Article 50-1 (1) of the Judges Act, judges who are subject to disciplinary dispositions that became final and binding only after retirement or resignation for other reasons can still be deprived of or reduced their pensions and retirement benefits under certain circumstances. Judges who have already received such payments shall be recovered all or part of the funds subject to the deprivation or reduction accordingly.

According to Article 50-1 (1) of the Judges Act, judges rendered disciplinary dispositions of removal of office under Article 50 (1) would face the following financial consequences:

1. Judges who have been rendered the disposition of “removal from judgeship duties and prohibition of reappointment as civil servants” shall be deprived of their pensions and retirement benefits from the beginning.
2. Judges who have been rendered the disposition of “dismissal from office” shall be deprived of 60% of their pensions and retirement benefits from the beginning.
3. Judges who have been rendered the disposition of “removal from judgeship duties and transfer to positions other than the judgeship” shall be deprived of their retirement benefits from the beginning.

Moreover, Article 50-1 (3) of the Judges Act regulates that if the sanctioned judge is spontaneously subject to disposition imposing severer deprivation or reduction of pensions for the same case under other laws, the severer disposition shall apply.

Further, according to Article 50 (8) of the Judges Act, judges subject to the disciplinary disposition of removal from office may be spontaneously subject to another kind of financial sanctions: the fine regulated in Article 50 (3) of the Judges Act.

(B) Future employment consequences following removal

The future employment consequences on judges sanctioned to remove from office are stipulated in Article 50 (3), (4) and (5) of the Judges Act:

1. Judges who have been rendered the disposition of “removal from judgeship duties and prohibition of reappointment as civil servants” cannot serve as an attorney as regulated in Article 50 (3) of the Judges Act⁴⁰. If the judge has served as an attorney, his or her performance of the duty shall be terminated.
2. Judges who have been rendered the disposition of “dismissal from office” cannot serve as an attorney as regulated in Article 50 (3) of the Judges Act. If the judge has served as an attorney, his or her performance of the duty shall be terminated⁴¹. Moreover, judges subject to this category of disciplinary disposition may not be reinstated as a judge either⁴². If a judge under this disciplinary disposition is re-appointed as civil servant upon the expiration of the period of suspension of appointment, he or she shall not be upgraded, promoted, or transferred to supervisory positions within two years from the date of reappointment⁴³.
3. Judges who have been rendered the disposition of “removal from judgeship duties and transfer to positions other than the judgeship” may not be reinstated as a

⁴⁰ The Judges Act, Article 50(3).

⁴¹ *Id.*

⁴² *Id.*

⁴³ The Judges Act, Article 50(4).

judge⁴⁴.

Further, according to Article 50 (4) of the Judges Act, the Disciplinary Chamber of the Judiciary shall determine the duty being transferred after consulting the Judicial Yuan before rendering this kind of disciplinary disposition on a judge⁴⁵.

(C) Societal consequences including loss of title or civic decorations

Decorations or awards given to a judge can be retrieved by the Judicial Yuan if the judge has improper misconduct. In 2021, the Judicial Yuan retrieved the decorations and awards given to two judges because they were accused of improperly contacting parties in litigations and were forwarded to the Control Yuan for impeachment investigation⁴⁶. If a judge is ruled by the Disciplinary Chamber of the Judiciary to remove from office, it is of high possibility that the judge's decorations or awards would be retrieved by the Judicial Yuan.

(D) Disciplinary steps that may be taken against the removed judge

If a judge is disciplined to remove from office due to their violation of the criminal law (for instance, a judge may violate the Anti-corruption law by taking bribes from the parties in the litigation, and thus be rendered removal of office by the Disciplinary Chamber of the Judiciary), disciplinary dispositions such as the deprivation of citizen's rights may be sentenced to the judge as this is the aftermath of their criminal offense. If a judge is adjudicated removal from office due to improper misconduct that do not amount to criminal offenses, the judge would not be subject to disciplinary steps other than that made by the Disciplinary Chamber of the Judiciary in the adjudication.

⁴⁴ The Judges Act, Article 50(3).

⁴⁵ The Judges Act, Article 50(5).

⁴⁶ See the news report: <https://www.ctwant.com/article/99270>.