

To IAJ 1. Study Commission

### **Answers from Association of Croatian Judges**

**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:

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. The only exceptions to that rule are 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 but in recent past we experienced some with different final outcome.

Grounds for establishing disciplinary accountability for judges are: (Article 62 of Law on State Judicial Council):

1. improper performance of judicial duties,
2. failure to act on the decision made in the procedure for the protection of the right to a trial within a reasonable time,
3. holding office, jobs or activities incompatible with judicial duties,
4. causing disturbances in the work of the court that significantly affect the operation of the judicial authority,
5. violation of official secrecy in connection with the exercise of judicial duties,
6. causing damage to the reputation of the court or the duties of a judge in another way,
7. failure to submit a declaration of assets or untruthful presentation of data in it,
8. failure to submit to judgments of physical and mental characteristics in order to assess the ability to perform the duties of a judge,
9. failure to give consent to conduct a security check,
10. violation of regulations on personal data protection.

**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)?**

Body responsible for proceedings and imposing sanctions and measures is State Judicial Council.

It is composed of 11 members 7 judges elected by their peers, two professors of law elected by their peers and two members of the Parliament elected by majority vote in the Parliament , always one from majority and one from the opposition.

Proceedings have two phases.

In first phase board of three members, always two judges and one lay member are conducting hearings, taking statements and evidences and in second phase at the plenary all members of the council decide on the accountability and penalty by majority of votes.

**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 are:

1. reprimand,
2. a fine of up to one third of the salary earned in the previous month in a period of one to three months,
3. a fine of up to one third of the salary earned in the previous month in a period of four to six months,
4. a fine of up to one third of the salary earned in the previous month in a period of seven to twelve months,
5. dismissal from duty.

If the disciplinary penalty imposed on the judge is dismissal from duty, the Council may decide to postpone the execution of that disciplinary penalty for a period that cannot be shorter than six months or longer than two years.

The Council may apply a conditional sentence of dismissal from duty if it assesses that even without the execution of that disciplinary punishment, the purpose of the punishment can be expected to be achieved, i.e. that the judge will, in the further exercise of judicial duties, stop the behaviour for which he was sentenced to a disciplinary punishment and dismissal from duty .

Besides dismissal from office as a disciplinary sanction judge shall be removed from duty:

- if criminal proceedings have been initiated against him for a criminal offense punishable by a prison sentence of five years or a heavier sentence, or while he is in custody or pre-trial detention,

– because of a conviction for a criminal offense that makes him unworthy to perform the duties of a judge or

- due to the serious disciplinary offense committed.

A judge may be removed from office:

- if criminal proceedings have been initiated against him for a criminal offense punishable by up to five years in prison,

- if he performs a service, job or activity that is incompatible with the performance of judicial duties,

- if the authorized proposer proposed imposing a disciplinary penalty of dismissal in the request for initiation of disciplinary proceedings.

**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, disciplinary proceedings are lead applying rules of Criminal Proceedings Act.

Appeal is regulated in the Law and Constitutional Court acts as Court of Appeal in this cases.

Yes, judge can be suspended and during this period he/she receives 1/2 of his/her normal salary.

**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:

Yes, recently Law on State Judicial Council has been changed and two new disciplinary offences have been introduced.

First, judge may be disciplinary responsible if he/she does not resolve 100% of cases he/she is supposed to resolve in one year according to Frame Measures for Work of a Judge which are prescribed by Minister of Justice.

Second offence is failure to give consent to conduct a security check, even though Constitutional Court initiated proceedings to establish unconstitutionality of such obligation for a judge .

Statute of limitation has been extended to period of six years from the moment of committing disciplinary offence.

Proposal for topic 2023:

Role, obligations and authority of Presidents of Supreme Courts in the national judiciary.

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Association of Croatian Judges

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