REPORT

On Certain Aspects on the Role of the Councils of the Judiciary in Disciplinary Proceedings Against Judges and Compliance with Fair Trial Rights

October 2022

The study was prepared within the framework of the project "Ensuring the effective implementation of the right to a fair trial (Article 6 of the ECHR) in Ukraine" which is implemented by the Council of Europe's Division of Co-operation Programmes

TABLE OF CONTENTS

Executive Summary 3

List of Abbreviations 6

I. Introduction 7

II. CoE standards on the disciplinary body and the disciplinary proceedings against judges 8

III. Independent and impartial tribunal 9

A. The disciplinary body 10

B. The court reviewing the decision of the judicial disciplinary body 11

IV. Disciplinary proceedings 14

A. Judicial remedy against the decisions of the disciplinary body 15

B. ECJ case law 17

V. Portugal 18

A. Disciplinary Liability and disciplinary proceedings 18

B. Stages of the common disciplinary proceedings 20

C. Special Disciplinary Proceedings 21

D. Rights and obligations of a state official in charge of conducting a preliminary disciplinary inquiry into the alleged misconduct of a judge: professional requirements 21

E. The possibility to challenge the decisions imposing disciplinary sanctions 23

VI. Spain 25

A. The General Council for the Judiciary 25

B. The Judicial Inspection Service 26

C. Disciplinary proceedings 27

D. Stages of the disciplinary proceedings 27

E. Simplified proceedings for imposing disciplinary warnings 30

F. The possibility to challenge the decisions imposing disciplinary sanctions 30

VII. Italy 32

A. The Superior Council of the Judiciary (Consiglio Superiore della Magistratura, HCJ) 32

B. Disciplinary proceedings 32

C. The stages of the disciplinary proceedings 33

D. Judicial remedies 37

E. Review 37

VIII. Slovenia 39

A. The Judicial Council 39

B. Disciplinary proceedings 40

C. The main stages of the disciplinary proceedings against a judge 40

D. The possibility to challenge the decision of the councils on disciplinary liability of the judiciary by a judge or other persons concerned before the court. 42

Executive Summary

1. This study has been prepared upon the request of the CoE and is developed under the project “Ensuring the effective implementation of the right to a fair trial (Article 6 of the ECHR) in Ukraine” by Prof. Dr. Lorena Bachmaier Winter.[1]

2. Ukraine undertook in the last years an important reform of the Law on Judiciary and Status of Judges, as well as on the High Council of Justice, with the aim of strengthening the judicial independence and thus align with European rule of law standards on separation of powers. In this context, one of the areas that was specifically addressed was the organization of the self-governing body of the judiciary, to ensure that its members could really grant protection to the judicial independence, by ensuring a selection and promotion process based exclusively on objective merits. However, since the entry into force of the reform of the Law on the High Council in 2017, there here have been several problems with regard to the appointment of the members of the High Judicial Council, leading at the end to this body to be prevented to function.

3. One of the relevant aspects in the legitimacy of the judicial power is grounded on the adequate balance between judicial independence and accountability. Only when the functional legitimacy of the judiciary is ensured, there will be trust in the judiciary, which is a crucial factor for the rule of law. In Ukraine several legal reforms addressed the rules on disciplinary proceedings, to grant fair trial rights, while complying with the requirements set out by the European Court of Human Rights on the right to an independent and impartial tribunal. At present, In Ukraine the rules on disciplinary offences, disciplinary proceedings and disciplinary sanctions are set out in the Law on Judiciary and Status of Judges of 6 December 2019, last amended on 31 October 2019, Section VII “Disciplinary Liability of a Judge (Articles 106-111). According to its Article 108, the competent body to conduct disciplinary proceedings against a judge should be the disciplinary chambers of the High Council of Justice within the procedure established by the Law of Ukraine On the High Council of Justice of 3 October 2017, last amended on 31 October 2019 (Articles 42-58).

4. The aim of the present study is to provide an overview of the practice in other member States of the Council of Europe regarding certain aspects of the role of the councils of justice in the disciplinary proceedings against judges and also the disciplinary proceedings. The aim of this comparative analysis of the legal framework as well as of its practical implementation in other member States of the Council of Europe shall help in identifying eventual shortcomings in the Ukrainian disciplinary liability system of judges, to take stock of its functioning and reflect on possible ways for improvement. The study does not address every single aspect on this topic but puts the focus on certain issues that have been controversial or led to problems in the implementation in the Ukrainian context. In particular, this study address specifically following issues: 1) the rights, obligations and guarantees of functioning of the members of councils for the judiciary; 2) the main stages of the disciplinary proceedings against a judge; 3) the remedies against the sanctions imposed by the councils of the judiciary against judges and the scope of such judicial remedies; 4) and finally what are the professional requirements for becoming member of the judicial council and of the disciplinary body.

5. The study begins reflecting the main case law of the European Court on Human Rights on disciplinary proceedings against judges and the requirements of such proceedings

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under Article 6 ECHR. The way the Court proceeds in these cases is to examine first whether the requirements of an "independent and impartial tribunal" are complied with by the disciplinary body, usually the council of the judiciary, in those countries were such self-governing body exists. Secondly, if those requirements were not satisfied at that stage, the Court will determine whether the review of the case by a judicial court was "sufficient" to remedy the shortcomings identified. And finally, it must be established whether such court itself complied with the requirements of independence and impartiality.

6. There is a vast case law dealing with the conditions that are to be met for a disciplinary body to be considered as an independent and impartial tribunal. Problems that have arisen in this area are manifold, but to the aim of this study, the judgments addressing the question of the type of judicial remedy that has to be in place and what shall be its scope, are of particular interest. Since decisions of judicial councils fall within the administrative law, the challenge before administrative courts in many countries traditionally did not allow to review the facts of the case, but only a *revisio prior instantiae*, a control on the legality of the administrative decision. This topic is addressed here to clarify what shall be the structure and composition of a disciplinary body to meet the requirement of "independent and impartial tribunal" or, alternatively what shall be the scope of the judicial review to be considered "sufficient" to comply with the need for a judicial review.

7. The study seeks to present different models, solutions and legal frameworks regarding the disciplinary liability of judges and the role of the councils of the judiciary in that regard. The four countries that have been selected are: Portugal, Spain, Italy and Slovenia. The selection is justified on several reasons. First, it was considered useful to present the example of countries where there is a judicial council and such a body has an already proven experience, as is the case of Italy, Spain and Portugal. It was also considered important to show that, despite the shortcomings in the functioning of the self-governing bodies, the disciplinary liability system and thus the level of judicial independence, are considered as working fairly well (although perceptions of politization might be in place). Slovenia was chosen as an example of a more recent democracy which has implemented quite well the system of judicial accountability. Second, the selection of the four countries also responds to the possibility of obtaining complete and reliable information, both on the legal framework and as to the practical implementation.

8. Since the disciplinary proceedings are entrusted to the self-governing bodies of the judiciary in those countries where a judicial council has been established, the study will start presenting the main features of these councils in the four selected countries and the requirements to become member of such bodies. In each country, after the short introduction on the rules on the judicial council and its composition, the different stages of the disciplinary proceedings are described and analysed. Finally, the features of the disciplinary proceedings' promoter (the body that takes the decision to open/close disciplinary proceedings and carries out the preliminary investigation), is addressed. In each chapter the final point is dedicated to the rules on the appeals against the decisions by the disciplinary body imposing a sanction to a judge.

9. A comparative analysis shows that the rules adopted, while generally complying with the Council of Europe standards on judicial independence and disciplinary liability, differ greatly. For example, in Spain and Portugal, the judge competent to carry out the preliminary investigation and to decide on the initiation or closing of the disciplinary proceedings shall be a judge appointed by the judicial council (Portugal requires 15 years of service, Spain requires 25 years of service or to be a Supreme Court Judge). However, Italy follows another path, as it is the Chief Public Prosecutor of the

Cassation Court who will carry out the preliminary stage of disciplinary proceedings against a judge. Only this body and the Ministry of Justice can trigger a disciplinary procedure against a judge.

10. When it comes to remedies, it is interesting that some countries provide for the possibility of holding a hearing, while others determine that the whole procedure will be in writing. As to the applicable rules, there are also differences: in most countries the judicial appeal shall be governed by the rules on administrative court proceedings, while Italy is here also the outlier, providing for an appeal regulated by the Code of Criminal Procedure.

List of Abbreviations

CoE	Council of Europe
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR//the Court	European Court of Human Rights
GC	Grand Chamber
HCJ	Abbreviation used for any Judicial Council
HAC	High Administrative Court
LAJ	Law on Administrative Jurisdiction
LJ	Law on the Judiciary
LJC	Law on Judicial Council
LGCJ	Law on General Council Judiciary
MoJ	Ministry of Justice
para.	paragraph
PPO	Public Prosecutor's Office

I. Introduction

11. This study has been prepared upon the request of the CoE and is developed under the project "Ensuring the effective implementation of the right to a fair trial (Article 6 of the ECHR) in Ukraine" by Prof. Dr. Lorena Bachmaier Winter.[2]

12. The concept of judicial independence is strictly linked to the concept of accountability. The broad independence of the judicial power, which is based upon the constitutional legitimacy and the principles of Rule of Law –in Europe usually not on democratic legitimacy–, can only be accepted if there is in place a strong system of accountability for the whole judiciary and, in particular, for every single judge. Such a system is channelled mainly through the rules on disciplinary liability and disciplinary proceedings. Therefore, the way the system of disciplinary liability works is crucial, both for ensuring independence and accountability. There is a need for an adequate legal and institutional framework and a sound and consistent implementation of the whole judicial disciplinary system for keeping trust in the judiciary while ensuring the independence of each individual judge.

13. Ukraine undertook an important reform of the Law on Judiciary and Status of Judges, as well as on the High Council of Justice. At present, the rules on disciplinary offences, disciplinary proceedings and disciplinary sanctions are set out in the Ukrainian Law on Judiciary and Status of Judges of 6 December 2019, last amended on 31 October 2019, Section VII "Disciplinary Liability of a Judge (Articles 106-111). According to its Article 108, the competent body to conduct disciplinary proceedings against a judge should be disciplinary chambers of the High Council of Justice within the procedure established by the Law of Ukraine On the High Council of Justice of 3 October 2017, last amended on 31 October 2019 (Articles 42-58).

14. The aim of the present report is to provide an overview of the practice in other member States of the Council of Europe (CoE) regarding certain aspects of the role of the councils of justice in the disciplinary proceedings against judges and the disciplinary proceedings, with a focus on the possibility to appeal the decisions taken by the disciplinary body before a court. A comparative analysis of the legal framework as well as of its practical implementation in other member States of the CoE may help in identifying eventual shortcomings in the Ukrainian disciplinary liability system of judges, to take stock of its functioning and reflect on possible ways for improvement.

15. This study will address specifically the following issues:

- The rights, obligations and guarantees of functioning of the members of councils for the judiciary.

- The main stages of the disciplinary proceedings against a judge, including the possibility to challenge the decision of the councils of the judiciary by a judge or other persons concerned before the court. Particular attention will be paid to the scope of these review proceedings against the decision taken by the council as part of the disciplinary proceedings (as to the merits as well as to procedural aspects).

- The scope of rights and obligations of a state official in charge of conducting a preliminary disciplinary inquiry into the alleged misconduct of a judge. The

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study will also describe what are the professional requirements which should be met in order to be eligible to occupy such a position in other member states of the CoE.

16. The study is mainly based on desk research, analysing first the applicable legal framework of the countries studied: the Constitution, laws and rulebooks on the disciplinary proceedings against judges and the relevant body in charge of carrying them out, identifying, if possible, the relevant case law, and scientific literature on the topic. A short compilation and description of the relevant CoE standards and the case law of the European Court of Human Rights (ECtHR or "the Court") on the issue of disciplinary proceedings, will also be included as a preliminary introduction to the rules and practice of the selected CoE countries.

17. The countries chosen for this study are Italy, Spain, Portugal and Slovenia. All these four countries have a High Council of the Judiciary (HCJ) as the self-governing body of the judiciary, and this body is also competent for carrying out disciplinary proceedings against judges.

II. CoE standards on the disciplinary body and the disciplinary proceedings against judges

18. The ECHR does not contain any explicit requirement regarding the setting up of judicial councils. While there exists a widespread practice, endorsed by the CoE, to put in place a judicial council as a self-governing body for the judiciary responsible for selecting judges and for evaluation and disciplinary issues, member States can choose the model they prefer, as long as they abide by the obligation to secure judicial independence.

19. The Court has recognized the particular importance of the self-governing bodies of the judiciary in a key area from the perspective of the rule of law and the separation of powers. When this body is specifically set up to interpret and apply the rules governing the disciplinary conduct of judges, the judicial councils have the task of contributing to the smooth operation of the justice system. Consequently, where a judicial council is established, the Court considers that the State's authorities should be under an obligation to ensure its independence from the executive and legislative powers in order to, *inter alia*, safeguard the integrity of the judicial appointment process, but also to ensure the independence of each individual judge.[3] This requires, *inter alia*, that not less than half of its members are judges appointed by their peers.[4]

20. Traditionally the Court has put more emphasis on the procedures to be followed on the appointment of the members of the judicial councils, rather than its members being judges, as long as half of them are judges. This is because the Court does not require the members of a court to be professional judges; they can be lay persons, civil servants and even members of the armed forces as long as they comply with the requirements of independence and impartiality under Article 6(1) ECHR.[5]

21. In this study the main focus will lie on the role of councils of the judiciary as disciplinary bodies and the structure of the disciplinary proceedings within such bodies, as well as the possibilities to appeal their decisions.

[3] *Grzęda v. Poland,* Appl. no. 43572/18, 15 March 2022.

[4] See CoE Rec (2010)12, paras. 26 to 29.

[5] See, e.g., *Langborger v. Sweden*, Appl. no. 11179/84, 22 June 1989; *Ettl and Others v. Austria*, Appl. no. 9273/81, 23 April 1987.

22. With regard to disciplinary liability, the CoE Recommendation 94 (12) on the independence, efficiency and role of the judges,[6] contains already principles on the accountability of judges, which were updated in the CoE Rec 2010 (12) on the independence, efficiency and role of judges.[7] Regarding disciplinary liability it provides that a disciplinary proceeding against a judge may be conducted in case of any failure to perform his/her duties in an efficient and proper manner (point 69), but the application of the law, assessment of facts and weighing the evidence conducted by judges in deciding the case cannot serve as the grounds for any disciplinary action, except in the case of malice or gross negligence (point 66).

23. For this study point 69 of **Rec 2010(12)** is relevant, which requires that the disciplinary proceedings are to be conducted by **independent bodies or the courts**, ensuring full observance of the **guarantees of a fair trial**. In addition, judges must be granted **the right to appeal the decision of the disciplinary body** (point 69).

24. In case of violation by the judges of their duties, the **European Charter on the Statute for Judges** [8] provides for the possibility of disciplinary proceedings before the competent authority and imposing a disciplinary sanction against a judge "following the proposal, the recommendation, or with the agreement of a **tribunal or authority composed at least as to one half of elected judges,** within the framework **of proceedings of a character involving the full hearing of the parties**, in which the judge proceeded against must be entitled to representation." (para.5.1). During the course of these proceedings, the right to a fair trial shall be fully respected.

III. Independent and impartial tribunal

25. The case law of the ECtHR has been very attentive to the safeguards of the judicial independence and the need to protect individual judges against actions that might interfere into the judicial independence. The Court does not require that the disciplinary liability against judges is decided by a court. In this sense the ECtHR has steadily recognized that conferring competence to a professional disciplinary body – and not a court – to decide on disciplinary offences and eventually impose the corresponding sanction is not in itself, inconsistent with the requirements of Article 6.1 ECHR.

26. But in those cases where the Member states opt for this approach, the disciplinary body must either comply with the requirements of Article 6.1, having the attributions of an "independent and impartial tribunal established by the law" itself or its decisions must be subject to subsequent review by a judicial body complying with those requirements.[9] In other words, when the judicial disciplinary body is not a court, its decisions need to be subject to judicial review, but the right to access to a court will not be regarded as having been excluded where there is no appeal to a court against the ruling of a disciplinary body if that body itself fulfils the requirements of Article 6.1 ECHR.[10] Further, if those requirements are complied with, the Court then examines whether the judicial remedy was "sufficient".

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[6] Council of Europe Committee of Ministers, Recommendation No. R (2010) 12 of the Committee of Ministers on the Independence, Efficiency and Role of Judges, CM / Rec (2010) 12 (17 November 2010).

[7] Council of Europe Committee of Ministers, Recommendation No. R (94) 12 of the Committee of Ministers on the Independence, Efficiency and the Role of Judges, CM / Rec (1994) 12 (13 October 1994).

[8] Done in Strasbourg, 8-10 July 1998.

[9] See, e.g., *Tsfayo v. the United Kingdom*, Appl.no. 60860/00, 14 November 2006 (para. 42); *Denisov v. Ukraine,* Appl. no. 76639/11, 25 September 2018 (para. 65).

[10] *Kamenos v. Cyprus*, Appl. no. 147/07, 31 October 2017, paras. 82-88.

27. Thus, the Court examines first whether the requirements of an "independent and impartial tribunal" are complied with by the disciplinary body, usually the council of the judiciary, in those countries were such self-governing body exists. Secondly, if those requirements were not satisfied at that stage, it will determine whether the review of the case by a judicial court was "sufficient" to remedy the shortcomings identified. And finally, it must be established whether such court itself complied with the requirements of independence and impartiality.[11]

28. The issue of the independence and impartiality of the disciplinary body and the court competent for the subsequent judicial review and the scope of such review has been analysed in several judgments by the ECtHR. Those standards and the main case law are described briefly without being exhaustive. First, the standards set out for the disciplinary body are presented, and later the standards of the judicial chamber competent to decide on disciplinary liability (either at first and last instance, or on appeal). Finally, the general principles applicable to the disciplinary proceedings of judges, will be recalled, paying particular attention to the requirement of the sufficiency of the judicial remedy against the decision of the disciplinary body by way of judicial appeal.

A. The disciplinary body

29. Regarding the consideration of the impartiality and independence of the disciplinary body (an administrative body), the case law of the ECtHR first has a look at the overall safeguards of independence of the Judicial Council and then to the composition of the relevant disciplinary body.

30. In the *Volkov* case the Court states that the Ukrainian HCJ is made of 20 members, appointed by different bodies: "three members are directly appointed by the President of Ukraine, another three members are appointed by the Parliament of Ukraine, and another two members are appointed by the All-Ukrainian Conference of Prosecutors. The Minister of Justice and the Prosecutor General are ex officio members of the HCJ". It follows that the effect of the principles governing the composition of the HCJ, as laid down in the Constitution and developed in the HCJ Act 1998, was that non-judicial staff appointed directly by the executive and the legislative authorities comprised the vast majority of the HCJ's members (para. 110).

31. With respect to the composition of the body deciding on the disciplinary liability against judges, there is the need for a substantial representation of judges on the relevant disciplinary body, as has been recognized in the European Charter on the statute for judges.

32. The elements that the ECtHR has taken into account when examining whether the disciplinary body of a judicial council complied with the requirements of independence and impartiality are listed in the benchmark case of *Olexander Volkov v. Ukraine:* 1) if there is a substantial representation of judges within such a body –at least half of the membership of a tribunal was composed of judges–, this would be a strong indicator of impartiality;[12] 2) the manner in which judges were appointed to that body and the role of the judicial community in that process;[13] 3) whether the members of the

[11] *Denisov v. Ukraine* [GC], para. 67.
[12] In the case of *Olexander Volkov v. Ukraine*, Appl. no. 21722/11, 9 January 2013. para.109, he Court held that "where at least half of the membership of a tribunal is composed of judges, including the chairman with a casting vote, this will be a strong indicator of impartiality". See also *Le Compte, Van Leuven and De Meyere v. Belgium*, Appl. no. 6878/75; 7238/75, 23 June1981, para.109.
[13] *Ibidem*, para. 112.

disciplinary body worked on a full-time basis or continued to work and receive a salary outside;[14] 4) whether representatives of the prosecution authorities formed part of the disciplinary body for judges;[15] and 5) whether the members of the disciplinary body played a role in the preliminary inquiry in a disciplinary case and subsequently participated in the determination of the same case by the disciplinary body.[16]

33. At the end, in the *Volkov* case, the decision was taken by 16 members of the HCJ who attended the hearing, only three of whom were judges (para. 111). This led to find that the requirement as to the decision on disciplinary liability against judges is made by a majority of members belonging to the judiciary, was not complied with.

34. Following the same approach, the Court in the judgment *Denisov v. Ukraine* also raised doubts as to the independence of the disciplinary body, since the case was heard by the HCJ of Ukraine with the same composition as in the *Volkov* case, and was determined by 18 members of the HCJ, of whom only eight were judges. The non-judicial members therefore constituted a majority capable of determining the outcome of the proceedings. In addition, in this case the Court also found that one of the members that had taken part in the preliminary inquiry against the sanctioned judge, formed part later of the deciding body of the HCJ.

35. In view of these considerations the Court concluded that the proceedings before the HCJ lacked the guarantees of independence and impartiality in view of the structural deficiencies and the appearance of personal bias (para.72).

36. In the judgment *Ramos Nunes de Carvalho E Sá v. Portugal*,[17] –a disciplinary procedure against a judge mainly for calling on the phone another judge "liar"–, the Court stated that the independence and impartiality of the High Council of the Judiciary of Portugal could be open to doubt where, even though judges had formed a majority of the members of the formation having examined the cases, judges had been in the minority during the deliberations that led to the relevant determinations. Although this aspect is not relevant for the final decision, it underlines the importance of the composition of the disciplinary body.

B. The court reviewing the decision of the judicial disciplinary body

37. Where there is no professional disciplinary body or such body does not fulfil the requirements of an "independent and impartial tribunal", its decisions must be subject to review by a court. There have been also several cases where it is questioned whether the judicial body deciding on disciplinary proceedings against judges complies with Article 6.1 ECHR, as to its independence and impartiality.

38. The general principles on the concept of tribunal and its institutional safeguards are applicable here. As steadily affirmed in the ECtHR case law, a court or tribunal is characterized in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner. Inherent to the concept of "tribunal" under the Convention is its power of decision and the binding character of its decisions. A "tribunal" must also satisfy a series of further requirements – independence, in particular, of the executive, and impartiality.

[14] *Ibid*. para. 113.
[15] *Ibid.* para. 114.
[16] *Ibid*. para. 115.
[17] Ramos *Nunes de Carvalho E Sá v. Portugal*, Appl. no. 55391/13, 21 June 2016.

39. Indeed, both independence and impartiality are key components of the concept of a "tribunal. Generally, the criteria to be considered when assessing the independence of a tribunal are: 1) the manner of appointment of its members; 2) the duration of their term of office; 3) the existence of guarantees against outside pressures; and 4) whether the body presents an appearance of independence. These general principles apply also to the "tribunal" competent to deal with disciplinary proceedings against judges.

40. With regard to the court dealing with disciplinary proceedings against judges, the Court has examined, among others, the rules for appointment of such tribunal. Since in many countries such a court is a specialized chamber, whose role is to ensure, not only the adequate performance and accountability of judges, but first and foremost their independence, vis a vis the other powers of the State, there is always the risk of trying to interfere upon the judicial independence by way of conforming such a Chamber to satisfy the executive's interest.

41. In the judgment *Ramos Nunes de Carvalho E Sá v. Portugal*, the independence and impartiality of the Judicial Division of the Supreme Court of Portugal which is competent to review the decisions of the judicial council on disciplinary proceedings, was questioned by the applicant, among other, on following grounds: 1) that the president of the judicial council was at the same time president of the Supreme Court (para.151); 2) that the appointment of the members of this special Judicial Division of the Supreme Court competent to deal with disciplinary proceedings did not ensure their independence, because the appointment of this ad hoc chamber was made by the President of the Supreme Court (para.151); and 3) that the fact that the judges in such chamber were also subject to the disciplinary powers and the evaluation of the judicial council, affected their independence in view of those allegations.

42. The Court rejected all these three arguments by stating, that the rules on appointment of the judges to this chamber where strictly objective, and the role of the Supreme Court President was also formal. In fact, the composition of this Chamber is made of the most senior judge of every of the chambers that make the Supreme Court. On the possible lack of independence because these judges are also subject to the evaluation and disciplinary decisions of the judicial council, the Court considered that these judges are at the end of their careers, they are not seeking any promotion, and are not subject to any evaluation for promotion. The possible lack of independence of a court vis a vis the judicial council was also addressed in the in the cases of *Oleksandr Volkov v. Ukraine* (para.130), and *Denisov v. Ukraine* [GC] (para. 79).[18]

43. Finally, the Court has affirmed that the dual position of the President of the Supreme Court being also President of the judicial council, did not affect the impartiality and independence of the deciding chamber, since the president was not part of it. (paras. 153-164). The Court finally does not see any "evidence of a lack of independence and impartiality on the part of the Judicial Division of the Supreme Court, and therefore finds that there has been no violation of Article 6 ECHR (para. 165).

44. The notion of a tribunal established by the law, is well known, and it is not necessary to recall it here. Relevant is that when analysing the independence of a tribunal, also referring to the judicial disciplinary chambers, the Court refers to the three-step approach defined in the Grand Chamber judgment *Ástráðsson v. Iceland*[19], where it stated that, given the potential implications of finding a breach and the important interests at stake, the right to a "tribunal established by law" should not be construed

[18] *Denisov v. Ukraine* [GC], Appl. no. 76639/11, 25 September 2018.
[19] *Guðmundur Andri Ástráðsson v. Iceland*, Appl. no. 26374/18, 12 March 2019.

too broadly such that any irregularity in a judicial appointment procedure would risk compromising that right.

45. The ECtHR thus formulated a **three-step test** to determine whether irregularities in a judicial appointment procedure were of such gravity as to entail a violation of the right to a tribunal established by law: step 1, whether there has been a manifest breach of domestic law (paras. 244 and 245 of *Ástráðsson* judgment); step 2, whether breaches of domestic law pertained to any fundamental rule of the judicial appointment procedure (paras. 246 and 247); and step 3, whether the alleged violations of the right to a 'tribunal established by law' were effectively reviewed and remedied by the domestic courts (paras. 248 to 252). This three-step analysis has been carried out also in judicial disciplinary cases, namely in the judgments of *Reczkowicz v. Poland,*[20] and *Juszczyszyn v. Poland*.[21]

46. In the case of *Denisov v. Ukraine* of 25 September 2018, the applicant –a judge who had been dismissed from his position as president of the Kyiv High Administrative Court of Appeal– complained that the proceedings before the judicial council and the appeal before the High Administrative Court (HAC) concerning his removal had not been compatible with the requirements of independence and impartiality. He complained, in addition, that the HAC had not provided a sufficient review of his case, thereby impairing his right of access to a court.

47. Further in the judgment of *Donev v. Bulgaria*[22] the Court dealt with a case concerning disciplinary proceedings to dismiss Mr Donev, a judge and a court president. The applicant complained, among others that the Supreme Judicial Council (SJC) and the Bulgarian Supreme Administrative Court had not satisfied the requirements of independence and impartiality set out in Article 6(1) ECHR. In this case the Court finally did not find a violation of Article 6 ECHR, since the Supreme Administrative Court had held sufficient review or broad jurisdiction and the shortcomings in the proceedings before the SJC alleged by the applicant could have been corrected in the proceedings of the judicial review.

48. The Court noted that the judges of the Supreme Administrative Court enjoyed institutional guarantees ensuring their independence and impartiality. As regards the HCJ's disciplinary powers vis-à-vis those judges, it pointed out that such powers were insufficient on their own to cast doubt on their independence and impartiality. Furthermore, the Court observed that in this case the applicant had not pointed out any structural deficiencies in the composition of the SJC and had not signalled any personal bias of any individual member of the HCJ, which could call into question the independence and impartiality of the Supreme Administrative Court, which was responsible for reviewing that body's decisions.

49. In the same vein, the Court held, that neither the HCJ's powers in budgetary matters and in the sphere of judges' careers nor the disciplinary powers of the President of the Supreme Administrative Court were such as to suggest that the applicant's apprehensions had been objectively justified, in the absence of material evidence pointing to bias on the part of the judges of the Supreme Administrative Court. Consequently, the Court found no lack of independence and impartiality in the Supreme Administrative Court.

[20] *Reczkowicz v. Poland,* Appl. no. 43447/19, 22 July 2021.

[21] *Juszczyszyn v. Poland,* Appl. no. 35599/20, 6 October 2022.

[22] *Donev v. Bulgaria,* Appl.no. 72437/11, 26 October 2021.

50. The need for the members of a disciplinary tribunal to satisfy the requirement of independence will not, in the view of the Court, be fulfilled where they are subject to the possibility of removal during their mandate or to any form of hierarchical dependence. However, the Court will not regard independence as being in question simply because those serving on the disciplinary body are still members of the relevant profession.[23]

IV. Disciplinary proceedings

51. As to the requirements of the disciplinary proceedings against judges before the disciplinary body, they have to fulfil the fair trial safeguards as recognized under Article 6.1 ECHR.

52. The Court in a well-established case law has set out that the disciplinary proceedings in which the right to continue to exercise a profession is at stake give rise to "disputes" over civil rights within the meaning of Article 6.1 ECHR.[24] This principle has been applied with regard to proceedings conducted before various professional disciplinary bodies and in particular as regards judges in *Baka v. Hungary*.[25] Although this is the reiterated stance of the Court, there have been some separate opinion of a judge dissenting with the qualification of the disciplinary sanction system as falling within the civil limb, and arguing that such sanctioning system fulfil all the requirements set out in the Engel criteria, to be considered criminal in nature.[26]

53. In *Olujić v. Croatia*[27] the Court appreciated the violation of fair trial standards in the light of four criteria: the lack of impartiality of the tribunal, the violation of the principle of equality of arms, secrecy and excessive length of proceedings. In addition, the Court found a violation when the same disciplinary body brought charges, conducted proceedings and ultimately imposed disciplinary sanctions because the impartiality was not safeguarded. In other judgments the ECtHR has put emphasis in the fact that the judicial councils were not independent and impartial due to their composition and/or way its members were appointed.[28]

54. The relevant criteria for satisfying the requirements of Article 6(1) ECHR concern both the disciplinary proceedings at first instance and the judicial proceedings on appeal. As stated in *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018,[29] this implies that the proceedings before the disciplinary body should not only entail procedural

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[23] *Di Giovanni v. Italy*, Appl. no. 51160/06, 9 July 2013, which concerned judges serving on the Italian National Council of the Judiciary who had decided disciplinary proceedings in respect of the applicant judge.

[24] *Philis v. Greece (no. 2)*, 27 June 1997, § 45, *Reports of Judgments and Decisions* 1997-IV, and *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-II).

[25] *Baka v. Hungary* [GC], Appl. no. 20261/12, 23 June 2016, paras. 104-105; and for prosecutors in *Polyakh and Others v. Ukraine*, Appl. nos. 58812/15 et al., 17 October 2019, para. 160; and for practising lawyers in *Malek v. Austria*, Appl. no. 60553/00, 12 June 2003, para. 39; and *Helmut Blum v. Austria*, Appl.no. 33060/10, 5 April 2016, para. 60.

[26] See the concurring opinion of Judge Pinto de Albuquerque to the GC judgment *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], Appl. nos. 55391/13, 57728/13 and 74041/13, 6 November 2018. This is not the place to discuss these arguments and the scope of safeguards to be granted in professional disciplinary proceedings, since the position of the Court in this sense has been quite uniform.

[27] *Olujić v. Croatia*, Appl. no. 22330/05, 5 February 2009.

[28] *Oleksandr Volkov v. Ukraine*, Appl. no. 21722/11, 9 January 2013; ECtHR, *Kulykov and others v. Ukraine*, Appl. no. 5114/09, 19 January 2017. See also, *Broda and Bojara v. Poland*, Appl. nos. 26691/18 and 27367/18, 29 June 2021; and *Żurek v. Poland,* Appl. no. 39650/18, 16 June 2022.

[29] *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 6 November 2018.

safeguards (para. 197) but also, when the applicant was liable to incur very severe penalties, measures to establish the facts adequately (paras. 198 ff.).

55. In *Ramos Nunes de Carvahlo* particular attention was paid to the fact that the sanctioned judge had not had the chance to be heard neither before the disciplinary body of the judicial council of Portugal which took the decision to impose a sanction upon her, nor before the Judicial Division of the Supreme Court, competent for the review of the decision of the judicial council. In that case, not only taking into account the gravity of the sanction (she was sanctioned 120 days of suspension of judicial duty for calling another judge liar on the phone , acting as inspector in her evaluation procedure, although this was not the only sanction as two other subsequent disciplinary proceedings followed related to the witness evidence), but also the crucial factual element that led to the disciplinary sanction, together with the limited scope of the appeal, the Court found violation of Article 6 of the Convention.

A. Judicial remedy against the decisions of the disciplinary body

56. The ECtHR steadily has required that the judicial body reviewing the ruling of the disciplinary body shall have either full jurisdiction or the scope of the review shall be broad enough to revise the findings of the disciplinary body.

57. In the case of *Bilgen v. Turkey*,[30] dealing with a disciplinary procedure, the sanctioned judge sought to appeal the decision taken by the Turkish judicial council imposing the disciplinary sanction. However, Article 159 of the Turkish Constitution clearly stated that decisions by the High Council were not amenable to judicial review. The judges complained that this state of affairs violated the right of access to a court under Article 6.1 ECHR, and the Court held that there had been a violation of his rights under the Convention.

58. With reference to the extent of the judicial review, in the Grand Chamber judgment *Ramos Nunes de Carvalho e Sá v. Portugal* of 2018, the Court stated that the domestic courts must "adequately state the reasons on which their decisions are based" (para. 185). Without requiring a detailed answer to every argument put forward by a complainant, this obligation nevertheless presupposes that a party to judicial proceedings can expect a specific and express reply to those submissions which are decisive for the outcome of the proceedings in question.

59. About the scope of the review of disciplinary decision by a court, in the judgment *Ramos Nunes de Carvalho E Sá v. Portugal*, of 21 June 2016, the Court held:

> *"86. In the instant case the question that arises is whether the scope of the review conducted by the Supreme Court of Justice in respect of the HCJ's disciplinary powers was sufficient. The applicant disputed the facts as established by the HCJ. She contended that she had not called Judge H.G. a "liar" nor had she, in the course of her conversation with Judge F.M.J., asked him to discontinue the proceedings against the witness on her behalf. Both situations concerned questions of fact that were crucial to the outcome of the two sets of disciplinary proceedings against her. The applicant never had an opportunity to have the Supreme Court of Justice re-examine these decisive facts, the first of which was, moreover, disputed between the members of the HCJ. Hence, the Court notes that the Supreme Court of Justice confined itself to conducting a review of lawfulness with regard to the establishment of the facts. It is clear from the manner in which the Supreme Court of Justice arrived at its decision in the applicant's case, and from the subject-matter of the dispute,*

[30] *Bilgen v. Turkey,* Appl. no. 1571/07, 9 March 2021.

that it did not properly address important arguments advanced by the applicant (see, mutatis mutandis, Oleksandr Volkov, cited above, para. 127). 87. As regards the review of the legal issues, the Court notes that, in the view of the Supreme Court of Justice, the HCJ's powers did not come within the scope of the courts' review where the disciplinary body was ruling on conduct alleged to be incompatible with a judge's duty of diligence. Furthermore, with regard to the extent of the powers of the Judicial Division of the Supreme Court of Justice, the Government maintained that it was not for the highest court to encroach on the discretionary powers of the administrative authorities".

60. The Court noted that the appeal body reviewed, from the perspective of lawfulness in the broad sense, compliance with Article 266. 2 of the Constitution, which states that the administrative authorities must exercise their powers in accordance with, among other principles, the prohibition on acting in excess of those powers. The Court concluded from this that the Supreme Court of Justice adopted a restrictive approach to the scope of its own jurisdiction to review the disciplinary activities of the High Council of the Judiciary.

61. The issue of the scope and sufficiency of the judicial review in appeal was much debated in the judgment *Ramos Nunes de Carvalho E Sá v. Portugal*, because for the ECtHR, "the review of a decision imposing a disciplinary penalty differs from that of an administrative decision that does not entail such a punitive element (para. 196)." In that connection the Court stressed that, "even if they do not come within the scope of Article 6 of the Convention under its criminal head, disciplinary penalties may nevertheless entail serious consequences for the lives and careers of judges" (para. 196), and this needs to be taken into account when considering the sufficiency of the scope of the review on judicial appeal.

62. In assessing the sufficiency of the judicial review, the Court stated that it must take into account three elements:

    1. the issues covered by the review carried out by the competent domestic court;

    2. the method of review adopted by the domestic court in reviewing the decision adopted by the disciplinary body, while addressing the question of the right to a hearing; and

    3. the decision-making powers of the court in question for the purposes of concluding its review of the case before it, and to the reasoning of the decisions adopted. (para. 199).

63. And,

    88. "The judicial practice developed in this area is indicative in this regard (see paragraphs 33 and 40 above). Thus, the foregoing considerations indicate that the legal consequences arising from the Supreme Court of Justice's review of such matters are limited, and these considerations reinforce the Court's misgivings about that court's ability to handle the matter effectively and provide a sufficient review of the case (see, mutatis mutandis, Oleksandr Volkov, cited above, para. 126).

    89. The Court therefore considers that the review conducted by the Supreme Court of Justice in the applicant's case was insufficient".

64. In that case the Court concluded therefore that a judicial body cannot be said to have full jurisdiction unless it has the power to assess whether the penalty was proportionate to the misconduct (para. 202). However, this conclusion was subject to a separate opinion, which considered that the review carried out by the Supreme Court of Portugal satisfied the requirements of Article 6.1 ECHR. The judges filing the separate opinion were against the idea that the appeal against administrative decisions imposing disciplinary sanctions upon judges need to fulfil different function or have a broader scope. It is necessary to grant access to a court with full jurisdiction to be considered the review as sufficient, but not necessarily a re-examination of the case, especially on the facts and evidence relied on by the administrative authority. The separate opinion is in favour of keeping the distinction between "scrutiny and review" and "re-examination" and are against of creating a "lex specialis" on the scope of judicial review for judicial disciplinary proceedings" (paras. 21-28 of the separate opinion).

65. As can be seen from this judgment, the understanding of what should be the scope of the judicial review to be considered sufficient, has raised some controversy among the judges of the Court. Nevertheless, the main criteria to be followed here is the one that was adopted by the Court, and thus, where the case entails crucial factual issues, and the sanctioned judge had no opportunity to be heard on them at the disciplinary body, not granting such opportunity to discuss the facts and evidence at the appeal level, was considered as a sufficient review, finding a breach of Article 6.1 ECHR.

66. The Court in the judgment *Denisov v. Ukraine* reiterated the same approach as in the *Volkov* case since the same considerations were found pertinent in the disciplinary proceedings against Denisov (paras. 74 and 75).

B. ECJ case law

67. The case law of the European Court of Justice,[31] following the standards set out by the ECtHR defines the guarantees that disciplinary proceedings should include in order to respect the principle of independence: a procedure led before an independent body that respects the rights of the defence and the right of appeal, as well as the precise regulation of disciplinary offences and sanctions.[32]

[31] The Court of Justice of the European Union ensures that EU law is interpreted and applied the same in every EU country; it ensures that countries and EU institutions abide by EU law.

[32] Case C-216/18, *Minister for Justice and Equality* (EU:C:2018:586), para. 67.

V. Portugal

A. Disciplinary Liability and disciplinary proceedings

68. The main rules on disciplinary liability and the disciplinary proceedings against judges in Portugal are provided in the Law No 21/85 of 30 July (*Estatuto dos Magistrados Judiciais,* hereinafter Law on the Judiciary, LJ), last amended by Law No. 2/2020, of 31 March; [33] and Regulation No 852/2021 (New Regulation of Inspections of the High Council of the Judiciary).

69. Pursuant Article 82 LJ, acts, even if merely negligent, committed by judges in violation of the principles and duties enshrined in the law on the Judiciary shall constitute a disciplinary infringement. The same is applicable to any other acts committed by them which, due to their nature and repercussions, prove to be incompatible with the requirements of independence, impartiality and dignity indispensable for the exercise of their functions. Disciplinary responsibility is extinguished by: statute of limitations; fulfilment of the sanction; death of the defendant; and amnesty or general pardon

70. The disciplinary procedure shall be autonomous in relation to the criminal and misdemeanour proceedings instituted for the same facts. Whenever the existence of a criminal offence is verified in the disciplinary procedure, the inspector shall immediately inform the High Council of the Judiciary (HCJ) and the Public Prosecutor's Office (PPO) of such fact. Following an order validating the indictment of a judicial magistrate as defendant, the competent judicial authority shall immediately inform the Judicial High Council of that fact.

71. The right to initiate disciplinary proceedings shall expire one year after the date on which the offence was committed. Where the fact classified as a disciplinary offence is also considered a criminal offence, the above-mentioned right has the limitation period and regime laid down in criminal law.

72. It shall also be barred when, if the infringement is known to the Plenary or by the Permanent Council of the HCJ through its disciplinary section and the disciplinary proceedings are not initiated within 60 days.

73. Any person, individually or collectively, can file a complaint with the HJC against a judge, in order to defend his/her rights or a public interest (in accordance with the Constitution of the Portuguese Republic (Article 52 Law on the Judiciary) and Law no. 43/90, of August 10, which regulates the right to file a complaint on disciplinary infringements.

74. The body responsible for receiving disciplinary complaints and conduct disciplinary proceedings/investigations is the HJC (Articles 110 and 136 Law on the Judiciary).

75. When disciplinary proceedings are initiated, the HCJ will appoint an instructor (who is a judge) to conduct the investigation, in accordance with Article 109 *et seq* of the Law on the Judiciary.

[33] Accessible in Portuguese under https://www.pgdlisboa.pt/leis/lei_mostra_estrutura.php?tabela=leis&artigo_id=&nid=5&nversao=&tabela=leis&so_miolo=

76. The competence for the opening of disciplinary procedures lies with the HCJ, which acts through the Plenary or the Permanent Council, the latter made of following sections: Inspection and Disciplinary Proceedings, Monitoring and Liaison to the Districts Courts, and General Affairs. On the disciplinary level, the Section for Inspection and Disciplinary Proceedings have the following duties:

    - Monitor and evaluate the merits and discipline of judges;
    - Order the initiation of disciplinary proceedings or the opening of an inquiry and appoint the respective instructor;
    - Order verifications and propose to the plenary to carry out investigations;
    - Decide upon an inquiry or investigation to proceed with the disciplinary proceedings;
    - Order preventive suspension within the disciplinary framework.

77. The Inspection and Disciplinary Proceedings sections comprise following 10 members: The President of the HJC, who is the chair; the Vice-President of the HJC, who chairs in the absence of the President; 1 member who is judge of the Court of Appeals; 2 members judges of the First Instance Court; 1 of the members appointed by the President of the Republic; 3 members from among those appointed by the Parliament; the member rapporteur. For the validity of the deliberations of this body at least five of its members is required.

78. The disciplinary proceedings against Judges of the Supreme Court and Judges of the Courts of Appeals, fall within the competence of the Plenary of the HJC. The Plenary consists of the 17 members of the HJC, whose composition is provided under Article 137 Law Judiciary.[34]

79. The Inspection Service is competent to conduct disciplinary proceedings, as well as carry out inquiries, investigations and other proceedings to ascertain the situation of the courts and the judicial functions. They also have power to propose the application of the measure of preventive suspension, open the disciplinary proceedings and file the indictment.

80. The disciplinary proceedings are always written, ensuring a hearing for the defence of the defendant and right to access a lawyer. Disciplinary proceedings shall be confidential until the final decision is taken, without prejudice that the defendant may request a public hearing to present his or her defence.

81. The outcome of the disciplinary proceedings, even if accompanied by the anonymization of personal data, are made available through summaries of the deliberations of both the Plenary Council and the Permanent Council, where the disciplinary offence and the sanction applied are registered. Such a register can be consulted on the official website of the HCJ.

[34] 137. 1 - The HCJ is chaired by the President of the Supreme Court and is also composed of the following members:
a) Two appointed by the President of the Republic;
b) Seven elected by the Parliament of the Republic;
c) Seven elected from among and by judicial magistrates.
2 - The members of the HCJ cannot be subject to recusal by judges.

For the validity of the deliberations, at least 12 members are required. The President having a quality vote.

B. Stages of the common disciplinary proceedings

82. The common disciplinary proceedings can be divided into four phases: Instruction; Defence; Report and Public Hearing; and Decision

83. 1 — INSTRUCTION: The disciplinary procedure must be completed within 60 days. The instructor, within a maximum of 5 days from the date he/she was notified of the decision to initiate the proceedings, shall inform the HCJ and the defendant of the date of initiation. This deadline can be extended up to 30 days for reasonable reasons.

84. The instructor shall mandatorily hear the defendant, at his or her request or whenever it is deemed appropriate. The defendant may request the instructor to gather evidence, which may be refused, by reasoned order, when the instructor deems the evidence already produced to be sufficient. Once the investigative acts for the inquiry have been carried out the instructor shall make a proposal to terminate this stage proceedings, which is filed to the HJC, who will decide on closing or continuing the disciplinary proceedings. In the latter case, the instructor shall bring charges within 10 days, detailing the facts constituting the disciplinary infraction, the circumstances of time, manner and place of its perpetration and the facts that constitute aggravating or attenuating circumstances, indicating the applicable legal provisions and possible sanctions.

85. Upon the defendant's consent, the instructor may propose the immediate application of the warning sanction, which the HJC shall adopt without further formalities.

86. 2 — DEFENCE: The defendant has a period of 20 days to present the defence and the evidence, which may be extended up to 30 days, either of his own motion or at the defendant’s request. The instructor will decide on the proposed evidence, and reject those which are manifestly dilatory, impertinent or unnecessary. This decision of the instructor can be challenged to the Inspection and the Disciplinary Proceedings Section of the HCJ. The defendant shall be notified of the date for the examination of the witnesses (a maximum of 20). The failure to hear the defendant with the possibility of presenting his/her defence and the omission of measures essential to establish the facts will cause the nullity of the proceedings. Other irregularities have to be challenged by the defendant within 5 days, sin knowledge.

87. 3 — REPORT AND PUBLIC HEARING: Upon completion of the examination, the instructor shall draw up, within 15 days, a report containing the facts that are considered proven, its qualification and the concrete penalty applicable. This is the proposal for the resolution presented to the HCJ, which can be adopted by reference.

88. The defendant may request a public hearing to present his defence. The public hearing shall be presided over by the President of the HJC, or by the Vice-President. At the hearing the members of the Disciplinary Section, the instructor, the defendant and his defender or representative shall be present. Once the hearing is opened, the instructor shall read the final report and the defendant or his representative is given the floor to make oral submissions, after which the hearing is closed.

89. 4 — DECISION: The HCJ shall deliberate and take a decision, and if they found a disciplinary offence has been committed, it shall specify the sanction imposed. The sanction imposed shall always be recorded, except for the warning. The Plenary of the HCJ is competent to impose a sanction of dismissal, and to decide proceedings concerning Judges of the Supreme Court and of the Courts of Appeal. The final decision, together with a copy of the report, shall be notified to the defendant personally or sent by registered mail with acknowledgement of receipt.

C. Special Disciplinary Proceedings

90. The special proceedings may take one of these three forms:

91. VERIFICATION (*Averiguação*): The HJC may order to conduct a verification procedure on complaints, reports or information about facts that do not constitute a manifest breach of the duties of a judge, in order to assess whether the reported conduct is likely to constitute disciplinary infringement. The HCJ appoints an instructor who, within 30 days, collects all relevant elements, proposing the closing of the case, the initiation of disciplinary proceedings or the mere application of the warning sanction not subject to registration.

92. INQUIRY (*Inquérito*): The purpose of the inquiry is to find out the circumstances of certain facts (not mere evidence or suspicion) and the instructor needs to finalize it in 30 days. The difference from the previous one is that in this case there is already knowledge of certain facts that constitute a disciplinary infringement.

93. INVESTIGATION (*Sindicância*): It takes place upon a written complaint about facts relating to the functioning of the courts or judicial services. The HCJ appoints an investigator, which determines the initiation of the proceedings, which is announced on the website of the HCJ, and is communicated to the PPO, the Bar Association, the Order of Solicitors and Enforcement Agents and the Council of Judicial Officers. It shall inform which service or services are being subject to review and the possibility for any interested party who has grounds for complaint regarding the regular operation of the services being assessed to contact the investigator or send a written complaint to him/her within the period indicated. The written complaint must contain the full identification of the complainant. Within 48 hours of receipt of the complaint in writing, the investigator shall designate the day, time, and place for making statements by the complainant. The investigation shall be finished within 6 months. The investigator shall prepare a report, which shall be submitted to the HJC. If the existence of an infringement is established, the HCJ may decide that this investigation is considered as the instruction of the disciplinary proceedings. In such a case, the relevant judge shall be notified, and this marks the beginning of the disciplinary proceedings.

D. Rights and obligations of a state official in charge of conducting a preliminary disciplinary inquiry into the alleged misconduct of a judge: professional requirements

94. The general rule as to the rights and duties of any of the members of the HCJ is set out under Article 148 LJ, which provides that those members who are not judges, will be subject to same regime of duties, rights and guarantees as the judges, with the necessary adjustments.

95. As described above, the HCJ integrates an inspection service, which performs auxiliary functions in the analysis and monitoring of the courts' management, as well as in the evaluation and disciplining of judges (Articles 160-162 LJ). The Inspection shall contribute to the improvement of the quality of the justice system, with a particular focus on the areas of effectiveness, efficiency and rationalization of procedural and administrative management. The inspection is directed and coordinated by the President of the HCJ, with the power to delegate to the Vice-President. The Inspection shall consist of judicial inspectors and inspection secretaries in an adequate number to perform their duties. Its functions are:

- To Inspect the courts and the performance of judges;
- To provide the HJC with information on the needs and deficiencies of the courts, in order to enable it to take the relevant measures. The judicial inspector shall draw up a summary report and refer it to the HCJ, proposing such measures and, where appropriate, the initiation of proceedings for inquiries, investigations, claims, disciplinary proceedings or extraordinary inspections.
- To lead and instruct disciplinary proceedings, as well as inquiries, investigations and other procedures intended to ascertain the situation of the services.
- Propose the application of preventive suspension, formulate indictments in disciplinary proceedings
- Propose to the HCJ measures leading to an improvement of services, in particular as regards cutting bureaucracy, simplifying and speeding up procedures, use of information technology, transparency in the justice system and proximity to the citizen;
- To communicate to the HCJ all situations of inadequate performance of judges, namely when relevant procedural delays are involved;
- To provide judges with elements for the improvement and standardization of judicial services, making them aware of good practices of procedural management suitable to achieve a more efficient administration of justice.

96. The inspection service conforms to its activity, inter alia, by the following general principles: Principles of legality, equality, justice, reasonableness and impartiality;

97. The principle of independence, according to which the Inspectorate may not, in any event, interfere with the independence of judges, in particular by ruling on the substantive merits of judicial decisions;

98. In addition to the general principles, the functioning of the Inspection shall be ruled by:

- the principle of continuous evaluation, which requires constant monitoring of the courts and the service of judges, without prejudice to the powers of judges Presidents of District Courts;
- the principle of specialization, which determines that performance inspections shall be carried out preferably by an inspector who has effective experience in the type of cases and jurisdiction under evaluation; and
- the principle of Parity, which implies that judges with equal length of service and without prior classification lower than “Good” should preferably have the same number of classification inspections at each judicial movement.

99. The judicial inspectors are appointed, on a service committee, from among judges of the Courts of Appeal or judges of First Instance Courts with more than 15 years of service and rating of “Very Good”, who possess recognized qualities for the exercise of the position, inter alia, common sense, intellectual training, technical preparation and human relationship skills, motivation, innovation and target oriented attitude. They will be appointed by the Plenary of the HJC, by secret ballot and by a majority of the members present at the meeting.

100. The appointment procedure shall be preceded by the publication of the vacancies for 10 days on the website of the HJC. The interested parties must submit,

in addition to their curriculum, a written presentation on the capacities they affirm to meet for the exercise of the office and the manner in which they intend to carry out their duties, with a view, in particular, to the purposes of judicial inspections.

101. Before deciding on the appointment of judicial inspectors, the Plenary of the HCJ may call upon the candidate judges to provide clarifications in person at a Plenary session. Whenever justified, namely by the temporary incapacity of a judicial inspector, by an extraordinary increase of workload, or to cope with situations of relevant delay in the inspection service, the HCJ may appoint part-time judicial inspectors on a service committee for the performance of specific tasks for a specified period.

102. A judicial inspector, assisted by an inspection secretary, shall carry out inspection actions and performance checks. The inspection aimed at gathering information about the service and performance of judges may not be carried out by inspectors of lower rank or seniority than those being inspected. Where an inspection, inquiry or disciplinary proceeding must be carried out on judges practicing in the Courts of Appeal or in the Supreme Court, an extraordinary judicial inspector shall be appointed from among the Counsellor Judges of the Supreme Court, who may be a retired Counsellor Judge.

103. As to the guarantees of impartiality, in those cases where the inspection leads to the opening of a preliminary disciplinary inquiry or directly to disciplinary proceedings, a different judicial inspector from than the one who carried out the inspection will be assigned to follow the case. A judicial inspector who has carried out an investigation, inquiry or disciplinary procedure concerning a particular judge may not carry out a performance inspection at the service of such judge. Any judicial inspector may carry out an inspection of the same judge more than once, unless the judge has previously complained about the rating proposed by the judicial inspector, or the Council has amended the respective proposal. The refusal or excuse of a judicial inspector shall be raised in a reasoned application addressed to the Judicial High Council, the decision shall be given after hearing the persons concerned and the steps deemed appropriate have been taken.

E. The possibility to challenge the decisions imposing disciplinary sanctions

i. Administrative appeal and review

104. Interested parties are entitled to challenge by way of an administrative remedy to the HJC any decision, omission or act carried out within the scope of the administrative powers by the entities and bodies which are subject to the HJC. The prior administrative challenge will be mandatory if this is a requirement to file the judicial remedy and shall be filed within 30 working days. All decisions of the Permanent Council can be challenged before the Plenary of the HCJ, except for the decisions of the disciplinary section adopting the sanctions of warning and fine, which shall admit direct judicial challenge. Administrative challenges shall suspend the effects of the challenged acts. The HCJ shall decide within 90 working days (possible extension), however there are certain matters which should be decided urgently within a shorter timeframe.

105. Decisions imposing sanctions issued in disciplinary proceedings may be reviewed at any time in the light of circumstances or evidence capable of demonstrating the non-existence of the facts on which the sanction was based, and which could not be invoked during the proceedings by the defendant. This review cannot determine the aggravation of the sanction (*revisao,* Article 127-128 LJ). Application for review to set aside a decision imposing a disciplinary sanction must be

grounded and shall be accompanied by the documents that the interested party may have been able to obtain after the disciplinary proceedings had concluded. Should the HCJ decide for the review, a new instructor shall be appointed for the proceedings, following the terms corresponding to the defence phase and subsequent phases of the common disciplinary procedure described above (Articles 119 to 123 Law on the Judiciary). If the review is granted, the prior decision shall be set aside or amended, and the person concerned shall be reimbursed any remuneration which he or she may have lost because of the decision that has been set aside.

ii. Judicial remedy

106. The rules on the judicial remedy against the decision taken by the HCJ is contained in the Code of Procedure of Administrative Courts. The decision taken by the HCJ in disciplinary proceedings can be challenged upon issues of fact and of law and provides for the production of evidence (witnesses being limited up to 10). Competent for the judicial remedy is the Judicial Chamber of the Supreme Court (Article 169 LJ). The judicial remedy shall be filed within a normal timeframe of 30 days. Thus, the court has full jurisdiction to revise the factual as well as the legal determination done by the HCJ. In this sense it complies with the requirement of sufficient review, set out by the case law of the ECtHR, as described above.

107. As to statistical information, this is the information provided by the HCJ upon request by the UN HR Office of the High Commissioner, published in 2020 and covers disciplinary proceedings until 2019. The data on how many of these decisions were subject to judicial appeal has not been found.

YEAR	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
Disciplinary proceedings initiated	**44**	**43**	**40**	**19**	**22**	**45**	**29**	**32**	**16**	**24**
Penalty: admonishment	6	8	3	1	2	7	7	6	4	5
Penalty: fine	15	15	16	22	10	19	13	17	11	6
Penalty: transfer	0	1	0	0	0	1	0	0	1	0
Penalty: suspension	2	6	4	2	2	8	5	1	3	1
Penalty: compulsory retirement	0	3	3	1	2	1	5	3	0	3
Penalty: removal from post	0	0	0	0	0	0	1	0	0	0

Source: HCJM

Please bear in mind that not all disciplinary proceedings are initiated and concluded in the same civil year.

Moreover, the result of a disciplinary proceeding may also be a dismissal or an acquittal.

VI. Spain

A. The General Council for the Judiciary

108. In accordance with Article 560.7 of the Law on the General Council of the Judiciary (LGCJ). The proceedings on disciplinary liability of judges lies within the General Council of the Judiciary (HCJ).

109. Article 122 of the Constitution and Article 566 LGCJ provides for the establishment of the General Council of Justice, which shall consist of 20 members, and the president, which is also president of the Supreme Court. All the members are appointed by Parliament, 10 by the Senate and 10 by the Congress of Deputies, following the procedure set out in the respective Regulations.[35]

110. 12 of them shall be judges from all categories of courts, elected by judges, with at least 15 years of experience. The 12 judges are appointed out of a list of 36 candidates prepared by the different Judicial Associations. Any judge with the support of 25 other judges or with the support of any of the judicial associations, can present his/her candidature.[36] In practice, only those who have the support of the judicial associations are usually appointed by Parliament.

111. The other 8 members shall be appointed among lawyers and jurists of recognized experience who have at least 15 years professional experience (Article 567 LGCJ).

112. All members are appointed for a single mandate of 5 years, although the present Council has been acting already for almost 8 years for lack of agreement regarding its renovation. As the appointment of the members of the HCJ requires the vote of at least 3/5 of the members of Parliament, this requires reaching an agreement among the major political parties as to the candidates. While such a system aimed at preventing that members of the GCJ were appointed without political consensus, in practice it has caused that the major parties at the end decide the names by quotas.

113. As to the status and rights and obligations of the members of the HCJ, only those members who form the Permanent Commission will work on a full time basis (Article 579 LGCJ). The rest will remain in active service in their posts, as judges or civil servants, or lawyers, and will continue exercising their profession. The position of full-time Member cannot be made compatible with the simultaneous performance of other governmental responsibilities in the judicial field (Article 579.2 LGCJ). All members will have the obligation to attend, except for justified cause, all the sessions of the Plenary and of the Commission of which they are a part (Article 577.3 LGCJ). They cannot be removed during the five years of their mandate, except for grave breaches of their duties or criminal liability.

[35] See *Reglamento del Congreso de los Diputados*, Articles 204-206; and *Reglamento del Senado*, Article 184, as amended 27 July 2001.

[36] Articles 572-578 LGCJ.

114. Within the HCJ, the bodies which play a relevant role in the accountability of judges, are the Inspection Service and the Disciplinary Proceedings unit, under the direction of the Promoter of the Disciplinary Action.

B. The Judicial Inspection Service

115. The Judicial Inspection Service is a body within the structure of the HCJ, and acts under the powers of its Permanent Commission.[37] According to Article 560 of the Law on the Judiciary (LJ), the GCJ shall: "1.8. Exercise the high inspection of Courts, as well as the supervision and coordination of the ordinary inspection activity of the Presidents and Government Chambers of the Courts." This monitoring function shall be done by carrying out the actions and visits agreed by the HCJ, without prejudice to the competence of the governing bodies of the Courts and in coordination with them (Articles 560 and 615 LJ). Its functions are to supervise and control of the functioning of the services of the Administration of Justice. These functions are listed in detail under

116. The Head of the Judicial Inspection Service is appointed by the Plenary Session of the General Council of Justice and shall be either a Supreme Court Judge or another Judge with at least 25 years in the judicial career. While exercising the functions as head of the Inspection Service he/she shall have the category of Supreme Court Judge. His/her mandate will be the same as the Council that appointed him/her (5 years, but renewable for another 5 years).

117. Inspectors shall be of a higher category within the judicial career than the court inspected. This is the reasons why the Judicial Inspection Service covers the Inspection of all courts, except the Supreme Court. The Supreme Court has its own inspection service.

118. The judge serving in the inspected court shall cooperate with the Inspectors in carrying out their inspection duties. In practice it has never occurred that a judge has not cooperated actively with the Inspection Service. This may also be explained by the fact that "hindering the inspection activities" is defined as a serious disciplinary offence under Article 418.17 LJ.

119. As a result of a virtual or an on-site inspection, the inspectors can identify infringements that could eventually constitute a disciplinary offence. In such a case, they would inform the Disciplinary Commission. In practice, however, the problems detected very seldom are caused by a negligent conduct of the judge, or a misconduct on their side. Most common problems of deviations (not proper functioning of a court in quantitative terms) can be traced back to the insufficient staff, vacancies not covered, sick leave of the non-judge staff, or extraordinary circumstances that have led to an increase of number of cases (as was the case with the effects of the ECJ case law upon the lawfulness of certain general clauses included in the bank mortgages).

120. During inspections the inspectors may be also informed about unethical or inappropriate behaviour of judges, not related to the quantitative performance of the

[37] The Plenary Session of the General Council of Justice shall elect the members of the Permanent Commission annually. The Permanent Commission will be composed of the President of the Supreme Court and of the GCJ, which will preside over it, and seven of its members: four appointed among the judges members. (Articles 601 and 602 JL).

jurisdictional functions. In such cases, the inspection could report to the Disciplinary Commission.

C. Disciplinary proceedings

121. Disciplinary liability of judges is regulated in the Law on the Judiciary (Articles 414-427 LJ). The proceedings will have to respect the general principles applicable to the administrative sanctioning procedure. The Spanish Constitutional Court has recognized that the Out of the procedural safeguards and principles enshrined in Article 24 of the Spanish Constitution on due process are applicable to the administrative sanctioning procedure, namely: the right of defense, right to the presumption of innocence and right to effective judicial protection, as well as the prohibition of *reformatio in peius*.[38] It has also been declared that certain principles applicable to criminal law as of Article 25 of the Spanish Constitution, are also to be applied in the administrative sanctioning procedure: legality, culpability, proportionality, *non bis in idem* and non-retroactivity of unfavorable sanctioning rules.

122. Throughout the whole disciplinary proceedings, the defendant can be assisted by lawyer if he/she wants to. The public prosecutor will be party to these proceedings. Since 2018 (Organic Law 4/2018, 28 December) the disciplinary proceedings are subject to a maximum time limit of 1 year ((art. 425.6 LGCJ), after which the proceedings are time barred.

D. Stages of the disciplinary proceedings

123. The disciplinary proceedings can be divided under the following stages:

1) The receiving and screening of complaints
2) Preliminary inquiry
3) Allegations: indictment and defence
4) Decision making

124. The three fist stages lie within the Office of the Disciplinary Action.

125. Since 2013, the **Office of the Promoter of the Disciplinary Action** will receive the complaints filed against judges, decide on the initiation or discontinuation of the disciplinary proceedings, gather all the information and evidence on the disciplinary liability of the "accused judge" (Article 605 LGCJ). As to the Rights and obligations of the Promoter of the Disciplinary Action, who is the person in charge of conducting a preliminary disciplinary inquiry into the alleged misconduct of a judge, his/her status and professional requirements are set out in the LGCJ.

126. The Promoter is appointed by the Plenary of the HCJ by an absolute majority vote and his/her mandate will last the same time of the HCJ that appointed him/her. The appointment shall lie either on a Judge of the Supreme Court or any other judge with more than 25 years in the judiciary (as the Head of the Inspection Service). Once appointed the Promoter of the Disciplinary Action will perform exclusively these functions. While in this post, he/she will have the category of Honorary Judge of the Supreme Court. As a judge he/she is still bound by the principles governing the

[38] See for example, judgment 18/1981, of 8 June (FJ 2. ECLI:ES:TC:1981:18).

judiciary (independence, impartiality, etc.), and is subject to recusal by the parties to the disciplinary proceedings.

127. The Office of the Promoter of the Disciplinary Action is divided into three sections, whose functioning is ruled subsidiarily by the rules on administrative bodies. These sections correspond also to the stages of the disciplinary proceedings.--The service to support citizen's-The preliminary inquiry section--The section competent for handling the proceedings.

i. Receiving and screening complaints. The role of the service to support the citizens

128. Most of the complaints on the functioning of the courts are presented to the service to support the citizens. Its aim is to contribute in general to the improvement of the public service of the Administration of Justice. To that end, special attention has been given to make it very accessible to every citizen.[39]

129. Upon receipt of a complaint, the service shall acknowledge receipt within 48 hours (if the complainant is identified). Time to respond to the complaint is a maximum of two months. The main goal is to address problems detected by citizens and to work in creating trust in the judiciary. Complaints related to the content of the judicial decisions are rejected.

130. This body acts as the first entry point for the complaints, and classifies the complaints, sending those that relate to judges to the Disciplinary Commission of the GCJ, and the rest to the relevant inspection or administrative bodies. The service for the citizens' support is directed by a judge, who is appointed by the Plenary of the GCJ after open competition among judges. This unit is assisted by 3 other judges and around 10 administrative staff. This unit receives annually around 10.000 complaints (all of them enter into the electronic data base). Anonymous complaints if not manifestly ill-founded are also sent to the relevant body, to decide if further preliminary investigation should be carried out or not.

131. Thus, the information that reaches the Promoter of the Disciplinary Action regarding possible disciplinary offences of judges comes mainly though the complaints directly presented by the citizens (around 60 to 80%), by using the "post-box", the on-line access or sending it directly to the GCJ to the Unit for citizen's assistance. The rest of the disciplinary complaints comes either from the presidents of the courts, the chambers of management, or through the service of inspection of courts of the GCJ.

ii. *Preliminary inquiry*

132. The preliminary inquiries unit within the Office of the Promoter for Disciplinary Action carries out a preliminary investigation on the facts alleged in the complaints and makes a preliminary assessment on those facts and the possible disciplinary liability. The Promoter has the power to question the judge against whom a complaint has been filed. Every court and any judge has the obligation to cooperate with the investigation of the Promoter.[40] The law does not state which investigative actions can be carried

[39] Citizens can file complaints on-line, by registering a complaint at the GCJ or by introducing the complaint into a specific box that is provided in every court. There is a specific form, accessible on-line, but the use of such forms is not mandatory. In practice the most frequently used way is the on-line complaint.

[40] Article 607.4 LGCJ : "Judges and Magistrates are obliged to cooperate with the Promoter for Disciplinary Action. The Promoter has powers to request the presence of the Judge or Magistrate against whom the case has been brought."

out by the Promoter (it says “all necessary acts and evidence that are needed for the establishment of the facts”, Article 424 LGCJ). In general, these investigative actions consist in: interrogating the investigated judge and witnesses, requesting statistics and reports from the Inspection Service, request judicial decisions and information from other public or private authorities which might shed light upon the facts under investigation. If after carrying out this preliminary inquiry it is confirmed that the facts do not constitute a disciplinary offence, the Promoter will close the proceedings. This decision can be appealed to the Permanent Commission of the HCJ. If this body accepts the appeal, the Promoter shall continue the proceedings. Otherwise, the disciplinary proceedings would end here.

iii. *The allegations stage: indictment and written defence before the section for disciplinary proceedings*

133. Once the preliminary inquiry has gathered the relevant information and evidence, if there are indications of a disciplinary offence, the case will move forward to the section within the Office of the Promoter dealing with the proceedings. Only very few complaints proceed further with the disciplinary sanctioning proceedings.

134. This section will present the charges, which shall contain the factual elements and the possible infringement committed, as well as the sanctions that would correspond according to the law. This indictment will be notified to the relevant judge, and upon receiving it he/she can present written allegations within 8 days, written evidence and/or request evidence to be practiced (Article 425 LJ). After allegations by the public prosecutor, the Promoter of the Disciplinary proceedings will make a proposal on the applicable sanction to the Disciplinary Commission or the Plenary of the GCJ (depending on the gravity of the sanction). Within 8 days, the defendant can oppose to the proposed decision, making allegations. Finally, the whole file is sent to the deciding body.

iv. *The decision stage*

135. The disciplinary commission (or the plenary) will make the decision (Article 425.8 LJ). To that aim they are not bound by the facts and allegations considered by the promoter, but can take into account other facts and information, albeit only for applying a lesser sanction. The decision will be notified to the defendant and, eventually also to the person who presented the complaint.

136. Both can appeal this decision to the administrative courts through the ordinary judicial administrative proceedings. The sanctioning decision can be enforced once the administrative proceedings are ended, even if the judicial proceedings before the administrative jurisdiction are pending.

137. The disciplinary commission of the HCJ is the body competent to issue the decisions on serious disciplinary infringements and proposes to the Plenary the decisions on the very serious disciplinary infringements (Articles 603 and 604 LJ). The Plenary of the GJC appoints the members who will be in the disciplinary commission and also appoints the promoter of the disciplinary action, for a period of 5 years (the same time of the mandate of the HCJ). During this period, as a rule they cannot be removed.

138. The disciplinary commission is composed of 7 members of the HCJ, 4 shall belong to the ordinary judicial career, and 3 will be judges that entered the judiciary through the side entrance –appointed among lawyers with recognized competence–. The disciplinary commission has to act with the total number of its 7 members, and the chair will be held by the judge with higher ranking within the judiciary of the ordinary judicial career. The decisions of the disciplinary commission can be appealed to the Plenary of the HCJ.

139. The Plenary of the HCJ is the body competent for imposing sanctions on very serious disciplinary offences which might entail dismissal of the judge (Article 599.10 LGCJ). The Plenary is composed of all the member of the General Council of the Judiciary. Ordinary Plenary Sessions shall be held once per month and shall be convened by the President. Extraordinary Plenary Sessions may be held if the President considers it appropriate, or at the behest of five members, pursuant to exercising any of the competences specified in the article above.

E. Simplified proceedings for imposing disciplinary warnings

140. To impose a warning as a disciplinary sanction to a judge, the full fledge disciplinary proceedings do not need to be carried out. In these cases, the relevant Presidents of the Superior Courts (at national level and at regional level), has competence to impose a warning as a disciplinary sanction upon judges working in their courts (Article 421 LJ). After a short information of the institution of the proceedings by the president and the opportunity of the relevant judge to be heard, the president takes the decision, which is subject to appeal before the Disciplinary Commission of the Judicial Council (Article 604.3 LJ) and further to the administrative courts. The Administrative Management Chamber of Superior Courts have also competence to impose warnings and pecuniary fines for less serious infringements on the judges working in those courts. The proceedings are the same as described above.

F. The possibility to challenge the decisions imposing disciplinary sanctions

i. Administrative remedy

141. The decisions of the Disciplinary Commission imposing disciplinary sanctions can be challenged within 30 days, before the Plenary of the HCJ pursuant Article 604.2 LGCJ. In 2021 there were 14 appeals, 1 of them challenging only the application of the precautionary measure of suspension of judicial duties. The Plenary decided during 2021, eleven appeals against the decisions made in disciplinary proceedings, confirming the sanction in 10 cases, and admitting the grounds for appeals in one case.[41]

142. The disciplinary commission registered also the filing of a remedy against a sanctioning decision issued by the Plenary of the GCJ, to be solved by way of own review (*reposición*).

[41] Information accessible at: https://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Estructura-judicial-y-recursos-humanos--en-la-administracion-de-justicia/Actuaciones-disciplinarias/Actuaciones-disciplinarias-del-Consejo-General-del-Poder-Judicial/

ii. *Judicial remedy*

143. The judicial remedy against acts and decisions of the GCJ is provided specifically in the Law on the Administrative Jurisdiction (LAJ, Ley 29/1988, 13 July, *Jurisdicción contencioso-administrativa*). The remedy has to be filed within 2 months since the notification of the decision (Article 46 LAJ).

144. The competence to decide the appeals against the decisions taken by the bodies of the GCJ lies with the Administrative Chamber of the Supreme Court (*Sala Tercera del Tribunal* Supremo),, which will decide in first and final instance (Article 12.1.b LAJ). The scope of this remedy fulfills the requirement of "full jurisdiction or sufficiently broad scope.

145. Precisely, on the scope of this judicial remedy, Article 56.1 LAJ states that the pleadings of the parties shall include the facts, the legal grounds and any other argument in support of their allegations, "**whether or not they were prior raised before the administrative body."** And Article 60.1 LAJ provides for the possibility to introduce new factual allegations in the judicial remedy and evidence to proof those new facts.

146. With regard to the remedies filed against decisions of the HCJ issued in disciplinary proceedings against judges, Article 60.2 specifically states that there will be necessarily a hearing to produce evidence when there are disputed facts relevant for the decision.[42]

147. As to judicial remedies filed before the Administrative Chamber of the Supreme Court, in 2021 there were 8 appeals against decisions imposing disciplinary sanctions. In six occasions the applicant also requested the precautionary measure of suspending the execution of the sanction.

148. The Administrative Chamber of the Supreme Court handed down a total of nine judgments deciding on the judicial appeals against sanctions imposed by the HCJ in disciplinary proceedings. In 7 cases the Supreme Court held the sanction and in two others the appeal was admitted, and the sanction lowered or revoked. The Supreme Court also issued 3 decisions refusing to suspend the execution of the sanction as a precautionary measure, while in the rest, the enforcement was suspended.

[42] Article 60.3.LAJ: "There will be an evidentiary hearing when there is disagreement on the facts and these were of importance, in the opinion of the court, for the resolution of the lawsuit. If the object of the appeal were an administrative or disciplinary sanction, there will always be a hearing when the facts are disputed."

VII. Italy

A. The Superior Council of the Judiciary (*Consiglio Superiore della Magistratura, HCJ*)

Pursuant to Article 104 of the Italian Constitution.

> "The judiciary constitutes an autonomous order independent of any other power. The Superior Council of the Judiciary is chaired by the President of the Republic. The first president and the Public Prosecutor of the Court of Cassation are members by right. Two thirds of the members are elected by all ordinary magistrates from among the members of the various categories, and the rest of the one third members by Parliament in joint session among full professors of universities in legal matters and lawyers who have at least fifteen years of practice.
> The Council elects a Vice-President from among the members appointed by Parliament. The elected members of the Council remain in office for four years and cannot be immediately re-elected.
> They cannot, while in office, be registered in professional registers, nor be part of Parliament or a regional council."

And Article 105:

149. "The Superior Council of the Judiciary, according to the rules of the judicial system, is responsible for recruitment, assignments and transfers, promotions and disciplinary measures with regard to magistrates."

150. The Superior Council of the Judiciary is composed of 27 members:

- the President of the Republic, who is a member by right, by reason of the function performed, and presides over it
- the First President of the Court of Cassation, who is a member by right, by reason of the function performed
- the Attorney General at the Court of Cassation, who is a member by right, by reason of the function performed
- 16 magistrates, of which 2 who exercise functions of legitimacy, 10 who exercise judicial functions of merit, 4 who exercise functions requiring merit
- 8 full professors in legal matters or lawyers with at least 15 years of practice.

B. Disciplinary proceedings

151. In compliance with Article 105 of the Constitution, the disciplinary procedure against judges lies with the Superior Council of the Judiciary. The Law on the HCJ provides for the establishment of a disciplinary section, within the Council, which is made up of the members of the Council itself. However, the investigative stage and the filing of charges are not competence of the HCJ. The Italian system provides that disciplinary proceedings against ordinary judges are to be initiated by the Chief Public Prosecutor at the Court of Cassation (*Procuratore Generale della Corte di Cassazione*) or by the Minister of Justice (MoJ).

152. The workforce and organization of the Public Prosecution Office at the *Corte di Cassazione* is made up of the Attorney General, the Assistant Attorney General, six Advocates General and eighty-four Deputy Attorneys General.[43]

153. The main legal framework is the Legislative Decree 109 of 2006,[44] which contains the rules on disciplinary offences and sanctions as well as the procedure for ascertaining them and the applicable sanctions. For anything not provided for by the legislative decree, the criminal procedure code applies, where compatible.

C. The stages of the disciplinary proceedings

154. Similarly to other legal systems studied here, the disciplinary proceedings against judges in Italy as regulated in the Law 109 of 2006[45] can be divided in four stages:

1. The preliminary inquiry stage
2. The disciplinary investigation
3. The pleadings (indictment and defence) and the hearing
4. The remedies

i. The pre-disciplinary inquiry phase (La fase pre-disciplinare)

155. The pre-disciplinary phase is initiated when news of a fact of possible disciplinary significance is received by the Public Prosecution at the Cassation Court. Most of the possible disciplinary infringements incurred by judges, are made known through the complaints filed by private individuals which have markedly increased, especially in the last two years.

156. All complaints about possible disciplinary offences that reached the Public Prosecution at the Cassation Court, are entered in the register of the pre-disciplinary division of the Public Prosecution at the Cassation Court. The law provides that if the facts reported correspond to disciplinary conduct, the Public Prosecutor initiates disciplinary action within one year of registration. In 2019, the number of reports of disciplinary offenses received in the said office, was of 1.898, which is higher than the average number of claims or reports received in the five-year period 2014-2018, which was 1.393.[46] In the five-year period 2014-2018, on average 7.3% of the reports of offenses gave rise to a disciplinary action.

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[43] https://www.procuracassazione.it/procuragenerale-resources/resources/cms/documents/Criteri_organizzativi_2020__2022_-_PROSPETTI_A_E_B.pdf
Reference here is generally made to the Public Prosecutor of the Court of Cassation, although the law refers always to the Chief Prosecutor in that office.

[44] Decreto Legislativo 23 February 2006 n. 109 - Disciplina degli illeciti disciplinari dei magistrati, delle relative sanzioni e della procedura per la loro applicabilità, nonché modifica della disciplina in tema di incompatibilità, dispensa dal servizio e trasferimento di ufficio dei magistrati, a norma dell'art. 1, comma 1, lett. f), della l. 25 luglio 2005, n. 150.

[45] In the next paragraphs, the Articles cited refer to the Law 107 of 23.2.2006.

[46] The comprehensive statistics are accessible at: https://www.procuracassazione.it/procuragenerale-resources/resources/cms/documents/Estratto_disciplinare-statistiche.pdf

157. The lack of regulation of the procedures for presenting the complaint and the ease of transmission allowed by the diffusion of the information system have meant that the number of complaints has increased significantly; it also happens that the same subjects forward multiple identical complaints.

158. The power to bring disciplinary action lies by the Minister of Justice and the Public Prosecution at the Court of Cassation (Article 14.1). Within one year of having knowledge of the facts that might constitute a disciplinary offence by a judge, the Minister of Justice may request the Public Prosecutor at the Court of Cassation to carry out preliminary investigation on the possible disciplinary infringement. While for the MoJ the exercise of this action is not mandatory, the Public Prosecutor at the Court of Cassation has the obligation to exercise the disciplinary action (Article 14.3). The initiation of this preliminary or pre-disciplinary inquiry shall be communicated to the Superior Council of the Judiciary.

159. The Superior Council of the Judiciary, the Judicial Councils and the managers of the court offices are required to inform the Minister of Justice and the Public Prosecutor at the Court of Cassation of any relevant fact from a disciplinary point of view. The presidents of the chambers and the presidents of the courts as well as the deputy prosecutors must inform the managers of the offices of the facts concerning the activity of the judges within their courts that might he relevant from a disciplinary point of view (Article 14.4).

160. Pursuant to Article 15.3. the request for investigations addressed by the Minister of Justice to the Public Prosecutor or the communication given by the latter to the Superior Council of the Judiciary pursuant to Article 14.3, determine, to all effects, the start of the proceeding.

161. The accused must be notified within thirty days of the start of the proceedings, indicating the charges. The accused can be assisted by another judge, even retired, or by a lawyer, designated at any time after the communication of the charge, as well as, where appropriate, by a technical expert (Article 15.4).

162. The disciplinary proceedings are subject to detailed timeframes, which seem to be quite lengthy. Article 15.1 provides that within one year since the Public Prosecutor at the Court of Cassation becomes aware of the facts entailing disciplinary offence –following the completion of summary preliminary investigations or a detailed complaint or notification by the Minister of Justice–, disciplinary action needs to be promoted. In any case, disciplinary action cannot be promoted when ten years have elapsed from the fact. Further, Article 15.2 states that within two years from the beginning of the proceedings, the Public Prosecutor must formulate indictment or request not to proceed to the disciplinary division of the SCJ; and within two years since the indictment or request to drop the case, the disciplinary section of the HCJ shall make a decision.

ii. The disciplinary inquiry stage (La fase disciplinare)

Initiation of the disciplinary investigation

163. The disciplinary procedure stage begins with the decision to bring the action based on the notice of the offence (Article 16). As stated above, disciplinary action can

be brought by the Public Prosecution or the Minister of Justice and must be concluded within two years.

164. The public prosecutor proceeds with the investigative activity. The functions of public prosecutor are exercised by the Public Prosecutor at the Court of Cassation or by a member of the PP in his/her office (Article 16.1). In general, for the investigative activity, the rules of the code of criminal procedure are observed, insofar as they are compatible, with the exception of those which involve the exercise of coercive powers against the accused, the persons informed of the facts, the experts and of the interpreters (Article 16.2).

165. Investigative acts which are not communicated in advance to the accused or his/her lawyer, when this is legally foreseen, becomes null, but needs to be challenged within a certain timeframe (Article 15.5).

166. However, the Public Prosecutor at the Court of Cassation, if he deems it necessary for the purpose of determining the disciplinary action, can request documents covered by investigative secrecy without this secrecy being able to be opposed to him/her. Article 16.4 provides for a detailed regulation on the handling of the confidential documents (Article 16.4).[47]

167. The Public Prosecutor at the Court of Cassation shall dismiss the case if the facts do not constitute disciplinary conduct, or the complaint is unsubstantiated and also when the investigation proves that the fact never took place. The Ministry of Justice will be informed of the decision to dismiss the case and can within ten days of receipt of the communication, request the president of the disciplinary section to fix a date for the oral hearing, formulating the indictment. The closing of the inquiry and dropping of the case becomes effective only if the above term has fully elapsed without the Minister having advanced the request to set the oral discussion hearing before the disciplinary section. (Article 16.5-bis).

Closure of the investigation

168. Once the investigation has been completed, the Public Prosecutor shall present the indictment or the request “not to proceed” to the disciplinary section of the Superior Council of the Judiciary, sending the complete file to it (Article 17.1). This shall be notified to the judge charged and also to the MoJ. The file will be deposited in the secretariat of the disciplinary section at the disposal of the accused, who can view it and make a copy of the documents. If the disciplinary section accepts the request not to proceed, it issues an order in that sense. If it refuses it, the Public Prosecutor will be given time to file the indictment. Upon indictment, the president of the disciplinary section shall fix a date for the oral hearing, summoning the witnesses, by way of order. This order is communicated, at least ten days before the date fixed for the oral discussion, to the public prosecutor and to the accused judge as well as to the

[47] The question of the confidentiality of the disciplinary preliminary procedure has been controversial. It has been traditionally considered that the confidentiality of the documents (and of the results of the pre-disciplinary procedure) is a consequence of the purpose of the disciplinary responsibility, intended exclusively to protect the interest of the administration of justice, not of the representative, who, consequently, is not attributed powers of procedural impulse and/or participation in the proceeding, not even in the public phase.
Regardless of the significant consideration that the introduction of the documents of the disciplinary judgment in the civil one is limited to those of the "judgment" only, it is to be noted in fact that the party who considers himself harmed by a provision and/or by a conduct of the magistrate can exercise the civil liability action, without there being any decision-making constraint deriving from the outcome of the complaint in the disciplinary session.

defender of the latter, if already designated, and, in the cases in which he has promoted the disciplinary action to the Minister of Justice.

169. In 2019, the number of disciplinary actions exercised was 156, recording a significant increase compared to 2018 (+34.5%) and the average of the previous five-year period (equal to 149 actions per year). The number of defined proceedings increased, from 110 to 144 (+30.9%).

170. The total number of disciplinary actions proposed in 2019 was made up of 46.8% of requests from the Minister (73, up +21.7% compared to 2018) and 53.2% of requests from the Attorney General (83, + 48.2% compared to 2018).

171. 55% of the disciplinary proceedings handled during 2019 by the Public Prosecution at the Court of Cassation concluded with a request for an oral hearing at the SCJ (previous year 51.8%); and 40% with a request not to further proceed; and in the remaining 5% cases were referred to another proceeding.

iii. Pleadings and hearing in the disciplinary proceedings

172. The allegations of the parties will take place in an oral hearing before the disciplinary section. The Chief Public Prosecutor of the Court of Cassation will designate the public prosecutor who shall intervene at the hearing before the disciplinary section of the HCJ, after having heard the public prosecutor in charge of the service. As a rule, the same prosecutor who carried out the investigation phase, will be designated to present the case before the disciplinary section of the SCJ. The necessary measures will be taken in the calendar and work distribution within the prosecution service as far in advance as possible, in order to ensure that the same public prosecutor who carried out the investigation, can attend the oral hearing.

173. a member of the disciplinary section of the Superior Council of the Judiciary appointed by the president carries out the report. The delegate of the MoJ can present allegations, examine texts, consultants and experts and interrogate the accused (Article 18.1). The hearing is public. The disciplinary section, at the request of one of the parties, may order that the discussion take place behind closed doors if there are justified needs for protection of the parties or the rights of third parties.

174. As to the powers of the disciplinary section, Article 18.3 provides that it can:

a) practice, even *ex officio*, all the evidence it deems useful;
b) use and read out the reports from the General Inspectorate of the MoJ, judicial councils and court office managers, reading out documents from personal files as well as evidence acquired during investigations;
c) allow the exhibition of documents by the public prosecutor, the accused and the delegate of the Minister of Justice.
During this hearing the rules of the Criminal Procedure Code regulating the trial shall apply, insofar as they are compatible, with the exception of those involving the exercise of coercive powers against the accused, witnesses, experts and interpreters (Article 18.4).

175. In sum, this stage resembles much to a trial in a criminal case, with special features.

iv. Decision-making stage

176. The disciplinary section decides on the disciplinary proceedings against ordinary judges. The Disciplinary Section therefore exercises jurisdictional functions and issues decisions and orders, which can be challenged before the Joint Civil Sections (*Sezione uniti civile*) of the Court of Cassation

177. The disciplinary section within the Superior Council of the Judiciary is a collegiate body made up of six members: the Vice President of the Superior Council, who generally presides over it, and five members elected by the same *Consiglio Superiore della Magistratura* among its members, one of whom is elected by Parliament, another shall be a cassation judge and three other magistrates. The plenary also elects 14 substitute members from among its members.

178. The disciplinary section of the SCJ shall make a decision immediately after the taking of evidence and the conclusions of the public prosecutor and the defendant, who must be heard last. The public prosecutor does not attend the deliberation in closed session (Article 19.1). The decision on the disciplinary liability issued by the disciplinary section has to be motivated (Article 19.2) and shall be notified to the parties (and also the MoJ when it was the promoter), informing on the deadlines for lodging the appeal to the Joint Sections of the Court of Cassation.

179. Convictions were handed down in around 24% of the cases during the period 2015-2019: in 16.7% of cases the sanction was a warning; in 37.5% censorship; in 16.7% the loss of seniority payment, in 8.3% the suspension from functions and in 20.8% the removal.

D. Judicial remedies

180. The appeals against the decisions of the disciplinary section of the Superior Council of the Judiciary, are regulated in Article 24.1. The parties –the defendant the Public Prosecutor at the Court of Cassation– as well as the Minister of Justice may file appeal by cassation against the decisions of the disciplinary section of the Superior Council of the Judiciary, in the terms and with the forms established by the code of criminal procedure. The appeal does not have a suspensive effect on the enforcement of the decision.

181. The Court of Cassation shall decide in Joint Civil Sections, within six months from the date of filing the appeal (Article 24.2).

182. To determine whether this appeal in cassation complies with the requirements set out by the European Court of Human Rights (full jurisdiction or sufficiently broad scope), reference to Article 606 of the *Codice di Procedura Penale*, has to be made. The wide grounds for this remedy make it clear that facts and evidence can be re-examined and also lists the grounds that allow the appeal in cassation.

E. Review

183. The decision rendered by the disciplinary section of the HCJ imposing a disciplinary sanction, that has become irrevocable, is subject to extraordinary review at any time, where there are grounds that justify the setting aside of such a decision. These grounds, are set out in Article 25.1:

a) the facts underlying the decision are incompatible with those ascertained in an irrevocable criminal sentence or in a decision not to prosecute which is no longer subject to appeal;
b) after the decision, new elements of evidence have arisen or are discovered which, alone or combined with those already examined in the disciplinary proceedings, demonstrate the non-existence of the offence;
c) the assessment of liability and the application of the corresponding sanction were determined by falsehood or by another crime ascertained with an irrevocable sentence.

184. The review will only be admissible if enough reasons are given, that if ascertained, the charges should have been excluded or a lower sanction from that imposed should have been applied (article 25.2). The petition for review must be accompanied means of proof that justify it and must be presented, together with any deeds and documents to the disciplinary section of the SCJ. If the request for review is granted, the disciplinary section will revoke the previous decision, and the acquitted judge has the right to damages as well as the reinstatement of his/her position in the career and his/her reputation.

185. The decision of the SJC declaring the review request inadmissible, can be further appealed to the Joint Civil Sections of the Court of Cassation (Article 25.8).

186. If the decision of the disciplinary section of the Superior Council of the Judiciary is annulled in whole or in part following the appeal in cassation, the term for the ruling in the referral judgment is one year and starts from the date on which the documents are returned of the proceeding by the Court of Cassation (Art.15. 6). If this deadline is not observed, the disciplinary proceedings will be extinguished, provided that the accused agrees.

VIII. Slovenia

A. The Judicial Council

187. In respect of disciplinary liability of judges, the key institution in Slovenia currently is the Judicial Council. Until the entry into force of the Law on the Judicial Council on 20 November 2017 (LJC), the power to conduct disciplinary proceedings was conferred on the judiciary itself. The Law on the Judicial Council has given the leading role in conducting disciplinary proceedings to the Judicial Council as an independent and autonomous body, thus giving importance to ensuring the independence of disciplinary proceedings, and consequently to increasing or strengthening trust in the judiciary.

188. The main framework of the position and powers of the Judicial Council is set out in Articles 130, 131 and 132 of the Constitution of the Republic of Slovenia. The status, powers, organisation and composition, the procedure and conditions for the election of its members, the duration of members, terms of office and termination thereof, and other issues connected with the functioning of the Judicial Council are regulated by the Judicial Council Act of 25 April 2017 and the Judicial Council Rules of Procedure.

189. The Judicial Council of the Republic of Slovenia (HJC) has 11 members. The National Assembly elects five members on the proposal of the President of the Republic from among university professors of law, attorneys, and other lawyers, whereas judges holding permanent judicial office elect six members from among their own ranks: one member is elected by judges of the Supreme Court of the Republic of Slovenia, one member by judges of the Higher Courts, one member by judges of District Courts, one by judges of Local Courts and two members are elected by all judges.

190. The term of office of a member of the Judicial Council is six years. Every three years, two or three members of the Judicial Council are elected by the National Assembly and three members of the Judicial Council are elected by and from among the judges performing a permanent judicial function.

191. The president and vice-president are elected by the members from among themselves by secret ballot and by a two-thirds majority vote. The president represents the Judicial Council, manages its work and steers the cooperation of the Judicial Council with other bodies. The vice-president stands in for the president in their absence.

192. The position of a Judicial Council member is honorary and performed on a non-professional basis. Regarding the accountability of judges and disciplinary proceedings, the Council of the Judiciary, has following functions:

- to appoint disciplinary bodies;
- to submit initiatives to initiate disciplinary proceedings against a judge;
- to enforce disciplinary sanctions against a judge if, under the act governing the judicial service, a disciplinary sanction was imposed on them suspending their promotion, reducing their salary or transferring them to another court;
- to decide on the measure of temporary suspension from the judicial service of the Supreme Court president;
- to decide on complaints against the Supreme Court president's decision on temporary suspension of a judge from the judicial service;

193. The disciplinary bodies are made by the disciplinary court, the disciplinary prosecutor and their deputy (Article 38 LJC), and all of them have been working at the Judicial Council since 2017. Article 14 of the Judicial Council Rules of Procedure provides that the following disciplinary bodies shall act as a special working body of the Judicial Council: the disciplinary prosecutor and his deputy, and the disciplinary court, which are competent to conduct disciplinary proceedings against judges. The disciplinary bodies shall act in accordance with the procedure prescribed by law.

194. Disciplinary bodies are responsible for conducting disciplinary proceedings against judges and act in accordance with the procedure prescribed by law. They are independent in their work.

195. The members of disciplinary bodies are appointed by the Judicial Council by a 2/3 majority vote of all the members (Article 38), for a term of 4 years. Members of disciplinary bodies from among judges shall be proposed for nomination by the Supreme Court plenary session to the Judicial Council (Article 38.4 LCJ).

B. Disciplinary proceedings

196. The disciplinary responsibility and disciplinary sanctions for judges shall be determined by the Law Governing the Judicial Service (Zakon o sodniški službi. According to which disciplinary sanction may be imposed upon a judge who wilfully or by negligence breaches the judicial duties prescribed by law and the court rules, or irregularly performs judicial service

and the Law on General Administrative Procedure.

197. General principles that shall govern the disciplinary proceedings are set out in Article 37 LCJ. A disciplinary sanction may be imposed on a judge only in accordance with the procedure prescribed by the LJC. The provisions of the law governing criminal proceedings applicable to summary proceedings before the local court, –except for the provisions relating to the injured party–, shall apply, mutatis mutandis, to disciplinary proceedings pending the issue of a disciplinary court decision. The public shall be excluded unless the judge in the proceedings explicitly objects to this (Article 44 LJC).

198. The Disciplinary proceedings shall be fast and in the course of disciplinary proceedings, interference with the independence of a judge in the performance of judicial office shall not be permitted.

C. The main stages of the disciplinary proceedings against a judge

i. Initiation and preliminary inquiry

199. First stage of the procedure is filing an initiative to start a disciplinary procedure against a specific judge. The initiative is addressed to the disciplinary prosecutor and can be filed only by five persons that are specified in the law: 1. president of the court where the judge performs his judicial service; 2. president of the court of higher instance; 3. president of the Supreme Court; 4. Judicial Council and 5. Minister of Justice.

200. In the second phase the disciplinary prosecutor decides on the initiative in three possible ways: 1. submits a reasoned proposal for imposing a disciplinary sanction against the judge; 2. proposes to the disciplinary court the performance of individual investigative actions; 3. decides not to initiate disciplinary proceedings against the judge and dismiss the initiative, of which he is obliged to inform the promoter.

ii. *Investigative stage*

201. In the third stage (which is not obligatory) a disciplinary court judge carries out investigative acts that were requested by the disciplinary prosecutor and when finished, he/she reports to the disciplinary prosecutor about his findings (Article 46 LJC). The disciplinary court judge to carry out the investigative measures upon request shall be appointed by the disciplinary court president.

202. After receiving this report, the disciplinary prosecutor will: 1. file a reasoned proposal for imposing a disciplinary sanction against the judge; or 2. decide not to initiate disciplinary proceedings against the judge and dismiss the initiative, of which the initiator shall be informed.

iii. *Hearing and decision-making stage*

203. In this stage the disciplinary court in a senate of three members after the hearing(s) decides on the main proposal of the disciplinary prosecutor and if the court determines that the judge is responsible, the court will render a decision imposing a disciplinary sanction upon the judge.

204. The disciplinary court has nine members: three members are Judicial Council members, one of whom is the president and the other two their deputies; six members are judges proposed at a Supreme Court plenary session (two Supreme Court judges, two higher court judges and two first-instance-court judges). The two deputies of the president of the disciplinary court shall be appointed alternately to stand in for the president in his absence, taking into account the alphabetical order of the initials of their surnames.

205. According to Article 40 LCJ, the disciplinary court shall decide on cases with a panel of three members of which at least two shall be judges. The president of the panel shall be the disciplinary court president or their deputy, whereby at least one of the remaining two members must be a judge with the same position as the judge against whom the disciplinary proceedings have been instituted. The composition of the panel shall be determined by the disciplinary court president. The Judicial Council shall determine the order in which the disciplinary court president will be substituted by two deputies in their absence.

206. Regarding the right to be heard with respect to the adoption of the precautionary measure (suspension) adopted against a judge in disciplinary proceedings, it is interesting to mention the Supreme Court U3/2021-33 decision of 7 June 2021.[48] In this case, the court noted, among other things, that it is guaranteed in administrative proceedings, as Article 9 (1) of the General Administrative Procedure Law stipulates that before a decision is issued, the party shall be given the possibility to be heard on all facts and circumstances relevant for the decision.

207. The Supreme Court of Slovenia, however, also noted that this right is not absolute. The General Administrative Procedure Law, for example, provides for

[48] Abstract accessible at: https://fra.europa.eu/en/caselaw-reference/slovenia-supreme-court-u-32021-33

exemption from the principle of hearing a party in the case of summary fact-finding proceedings (Article 144).

208. In the case at hand, according to the court, it should be also taken into account that the suspension is a special measure of the judicial administration, whereby the hearing of a party is not envisaged in the Judicial Service Law or the Judicial Council Law. The condition for the imposition of suspension in the present case was the filing of a motion to initiate disciplinary proceedings, and such motions had been submitted. The motions state what the alleged infringements are, so, in order to guarantee their rights, it was not necessary to hear the plaintiff to establish facts, as they were not disputed between the parties.

209. Against a decision of the disciplinary court a judge is allowed to file appeal to the Supreme Court.

210. The last stage of the proceeding is execution of the disciplinary sanction. This final action is in the jurisdiction of the Judicial Council, who will enforce disciplinary sanctions against a judge if, under the Law governing the judicial service, a disciplinary sanction was imposed on the judge suspending his promotion, reducing his salary or transferring him to another court.

211. For the period from 1 January 2010 to 30 April 2020, the number of judges that have been subject to disciplinary proceedings is as follows:

- Number of submitted proposals for a disciplinary sanction against judges: 42 (of which 13 proposals were filed with the Disciplinary Court of the Judicial Council of the Republic of Slovenia and prior to the entry into force of the 2017 Law on the Judicial Council, 29 with the Disciplinary Court at the Supreme Court of the Republic of Slovenia);

- The number of cases in which disciplinary responsibility of judges was established with a final assessment: 17 (of which 3 cases were completed before the Disciplinary Court of the Judicial Council of the Republic of Slovenia, and the rest before the Disciplinary Court at the Supreme Court of the Republic of Slovenia);

- The number of terminations of judicial office as a type of disciplinary sanction according to Article 82 or Article 83 of the Judicial Service Act: 1 (whereby the said sanction was imposed in cases considered by a Disciplinary Court at the Supreme Court of the Republic of Slovenia).

212. This statistical information was provided by the Slovenian authorities upon request by the UN HR Office of the High Commissioner, published in 2020 and covers disciplinary proceedings until 2019.

D. The possibility to challenge the decision of the councils on disciplinary liability of the judiciary by a judge or other persons concerned before the court.

213. By the Law on the Judicial Council only the judge concerned is allowed to file an appeal to the Supreme Court against a decision of the disciplinary court by which he/she was disciplinary sanctioned. This means that the disciplinary prosecutor is not

allowed to challenge a decision of the disciplinary court by which the judge was acquitted.

214. Judicial protection against disciplinary court decisions is provided under Article 36 LJC which states:

> "(1) An administrative dispute shall be allowed against a decision by the Judicial Council.
> (2) In disputes referred to in the preceding paragraph, decisions shall be made by the Supreme Court, sitting in a panel of five judges.
> (3) The competent court shall decide on the Judicial Council decision within 30 days of receipt of the action against the decision.
> (4) No appeal shall be allowed against a ruling by the Supreme Court.
> (5) In the selection procedure of candidates for election to judicial office and in the process of appointing the presidents and vice-presidents of courts, administrative dispute shall only be possible with regard to assessment of the selection procedure legality and Judicial Council decisions on meeting the conditions for appointment or election to these posts."