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CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)
CONSEIL CONSULTATIF DE JUGES EUROPÉENS (CCJE)

**Compilation of responses to the questionnaire
for the preparation of the CCJE Opinion No. 27 (2024)
on the disciplinary liability of judges**

***Compilation des réponses au questionnaire
en vue de la préparation de l'Avis No. 27 (2024) du CCJE
sur la responsabilité disciplinaire des juges***

Prepared by the CCJE Secretariat

Préparée par le Secrétariat du CCJE

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Albania / Albanie

I. Legislation

1. **At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?**

The disciplinary responsibility of judges is sanctioned by the Constitution of the Republic of Albania, which also specifies the cases of suspension and dismissal of judges, the competent body for their appointment, which is the High Judicial Council (hereinafter HJC), as well as the competent body for appealing against the decision of the HJC for determining the disciplinary measure, which is the Constitutional Court. Meanwhile, more detailed provisions regarding the civil and criminal disciplinary responsibility of judges, as well as the development of the disciplinary procedure against them, are defined in Law no. 96/2016 "On the status of judges and prosecutors in the Republic of Albania", as amended (Status Law).

2. **Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, High court or other high judicial body, council for the judiciary and/or other bodies)?**

In accordance with the Status Law, the HJC approved Regulation "On disciplinary procedures in the High Judicial Council"¹. This regulation provides more detailed rules for the development of disciplinary procedures within the HJC, concerning issues related to disciplinary procedures developed by the High Justice Inspector (HJI) towards judges of all levels. This regulation stipulates *inter alia* the organization and functioning of the Disciplinary Commission, which functions within the HJC and is composed of 3 permanent members and 2 deputy members. The Disciplinary Commission reviews disciplinary cases before they are assessed by the HJC in plenary meetings.

3. **Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?**

In the process of drafting the legal framework for judicial reform, including the Constitutional amendments and the Law no. 96/2016, representatives of the judiciary engaged in the public consultation process. Judges from courts of all levels participated in the role of high-level experts. Meanwhile, the Union of Judges, which is an independent legal entity, has participated in this process through the network of non-profit organizations.

¹ Decision no. 316, dated 14.09.2020 of the HJC.

II. Institutional framework for disciplinary proceedings against judges

4. **What bodies (i.e. council for the judiciary, High court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?**

Pursuant to the above legal framework, the competent body for verifying complaints, investigating disciplinary violations and initiating disciplinary proceedings against judges of all levels is the HJI, while the decision-making body for assigning a disciplinary measure is the HJC.

5. **Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.**

The time period, as defined by law, within which a complaint can be filed against judges at the HJI is 5 years from the time when the alleged violation occurred. Complaints submitted after the expiry of this deadline are not assessed by the HJI due to statutory limitation.

6. **Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.**

HJI examines complaints submitted by any individual or legal person, with the exception of anonymous complaints. However, substantial information obtained from the media or from anonymous complainants can serve as an indication to start an ex officio investigation, if the criteria for admissibility provided in the Status Law are met.

7. **Does the constitutional court have any role at any stage in disciplinary proceedings against judges?**

Actually, the Appeal Chamber at the Constitutional Court examines appeals against disciplinary measures against a judge imposed by the HJC². After the completion of the vetting process and the end of the competences of the Appeal Chamber, the Constitutional Court will review the decisions of the HJC on the disciplinary measures of judges.

8. **Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?**

In cases where there are reasonable doubts that a judge has committed a disciplinary violation, a complaint may be submitted to the HJI by the Minister of Justice, a single member of the HJC or by the president of court³.

9. **Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?**

² Article 5 of the Vetting Law.

³ Paragraph 2, Article 119 of the Status Law.

The HJI is the authority responsible for verifying complaints, investigating disciplinary violations and initiating disciplinary proceedings against judges. Meanwhile, the HJC is the collegial body that has decision-making attributes for disciplinary measures against judges.

10. **How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?**

The legal mechanisms for ensuring the independence and impartiality of the HJC member are the exemption and exclusion from a disciplinary proceeding. Thus, the member of the HJC is obliged to refrain from participating in committee meetings or the plenary meeting of the HJC for the consideration of disciplinary proceedings against a judge in the following cases:

- i) when he/ she, spouse/partner or children are debtors or creditors in relation to the subject being processed or have represented its interests in the past;
- ii) when the defender or representative of the subject of the administrative proceeding is he/ she or spouse's/ partner 's or any of relatives;
- iii) when there are disputes between he/ she, spouse/ partner or any of relatives with the subject being processed;
- iv) when he/ she or any of the relatives or spouse/ partner has been harmed by the actions or acts of the subject of the proceedings, which have initiated disciplinary proceedings;
- v) when a relative or spouse/ partner filed a complaint with the HJI, the investigation of which led to the initiation of disciplinary proceedings.

Also, the HJI initiates disciplinary proceedings guided by the principle of its independence as well as respecting the independence of the subject being processed. The HJI has the same independence in relation to the HJC, since it is the initiating body of the disciplinary proceedings, different from the decision-making body for assigning a disciplinary measure.

III. Grounds for initiation of disciplinary proceedings against judges

11. **What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?**

In cases where a judge⁴:

- i) commits actions or omissions which constitute a failure to fulfil the duty, behaves unprofessionally or unethically during or outside of the exercise of the function, which discredit the position and the figure of the magistrate or damage the public trust in the judicial or prosecution system;
- ii) while exercising the function disregards the law or facts manifestly caused intentionally or due to serious negligence or is blatantly professionally incompetent.

When determining if the action, omission or behaviour of the magistrate shall be considered as a disciplinary misconduct or is only related with the professional activity, the following shall be taken into consideration:

- i) the degree of negligence;
- ii) the frequency of the act or omission or behaviour;

⁴ Article 101 of the Status Law.

- iii) the experience and position of the magistrate in the system;
- iv) the damage or the possibility of causing damage or the degree of the consequences or damage that have come or may come from the action or omission; as well as
- v) any situation which is beyond the magistrate's control and which may be related with the non-functioning of the judicial or prosecutorial system.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

Actions or omissions that constitute disciplinary violations of a judge in relation to the exercise of the duty as well as outside the exercise of the duty are listed in detail in the provisions of the Status Law (from article 101). The conduct of the judge is examined case by case and in accordance with the factual circumstances.

13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

In accordance with the Status Law, complaints about the misconduct of a judge, shall be admissible if they are qualified as a disciplinary misconduct by the applicable law at the time the alleged misconduct occurred.

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

The HJI first examines whether the complaint is admissible. It must be in line with formal criteria such as: the prescribed form, refer to the facts that occurred within the time limitations for the disciplinary investigation; does not contain abusive elements, is not clearly unfounded or repeated by the same complainant, etc. After the initial review of the complaint, the HJI decides to archive the complaint, if it does not meet one or more formal criteria; verify the complaint or initiate an investigation.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

The formal step by which a disciplinary proceeding is initiated is via the submission of the request from the HJI for the initiation of the proceeding to the HJC, together with the investigation report and the investigation file.

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

A disciplinary proceeding goes through several procedural steps. Specifically, the HJI is the authority that initiates the investigation if there is reasonable suspicion that the violation may have been committed, based on the facts and evidence collected, that justify the initiation of the investigation. If there are reasonable doubts that the magistrate has committed a disciplinary violation, the HJI initiates disciplinary proceedings, presenting the investigation report together with the investigation file.

HJC appoints one of the members of the Disciplinary Committee as the rapporteur of the case, who, after verifying the formal criteria, can propose to the plenary meeting the conclusion of the disciplinary proceedings without a hearing, or the determination of a hearing. After consideration of the case in the Commission, the prepared report goes to the plenary meeting. If the case goes to a hearing, the rapporteur prepares a report which he reports to the plenary meeting of the HJC. Further, the plenary meeting decides to dismiss the request for disciplinary proceedings, because the alleged facts did not occur or they do not constitute a disciplinary violation or accepts the request and imposes one or more disciplinary measures.

17. **Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.**

During the disciplinary proceedings, the judge may be suspended from duty on his own initiative or at the request of the HJI. The suspension is imposed by the HJC in cases where it is assessed that the magistrate's continuation in office damages the result of the disciplinary proceedings, prevents its fair or orderly conclusion, or seriously discredits the figure and position of the magistrate. The suspension is in force until a final decision by HJC related to the request for disciplinary proceedings, is issued.

18. **What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?**

During the development of a disciplinary proceeding against him/ her, the judge has the right to participate personally in the hearing or through a representative. Also, the judge has the right to submit written submissions; to call witnesses; to present documents or to request to be acquainted with the documents of the file as well as to receive copies of them, (to the extent that the law allows the right of access to them); request the exclusion of the relator or one or several members of the HJC, from participating in the review of the disciplinary procedure only during the preliminary stage of the process, (when there are the causes provided by Law no. 115/2016⁵ and the member does not exempt his/her own consideration of the case); take other measures for the presentation of evidence in support of his defense; to be compensated for legal expenses in case no disciplinary measure is assigned to him.

19. **How is the principle of presumption of innocence applied in the course of disciplinary proceedings?**

The disciplinary procedure against a judge is supported and respects the principle of presumption of innocence, as one of the core elements of due process. This principle means that the prosecuted judge is considered not to have committed the disciplinary offense until the opposite is proven by the prosecuting body. He remains in office enjoying all his rights

⁵ Law no. 115/2016 "On the governing bodies of the justice system "

and fulfilling his obligations until a final decision, unless the judge is suspended. Disciplinary proceedings are also conducted in line with the principle of doubt in favour of the magistrate subject to disciplinary proceedings.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

The HJC, within 1 month from the day of receiving the file from the HJI, determines the date for the hearing. This term can be extended up to 2 months when there are important reasons that must be made public. As for the completion of the disciplinary proceedings, the legislation does not contain a formal deadline within which the proceedings must be completed. The duration of such a process depends on a number of circumstances, including cases of suspension of a disciplinary procedure. However, both the Status Law and the Regulation of the Council related to the development of disciplinary procedures have provided for the application of sanctions to the judge, his legal representative, the witness, the expert or the translator in cases where the latter perform actions aimed at delaying the procedure. Sanctions consist of the imposition of a fine or, in cases of repetition of these behaviors, a fine may be imposed again and, if deemed appropriate, the initiation of a disciplinary or criminal investigation.

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

The final decision on a disciplinary proceeding is taken in a plenary meeting by the HJC, after examining the facts and evidence. In any case, the necessary quorum for holding plenary meetings of the HJC is no less than 7 members. The HJC decides with the majority of the votes of the members present and the voting procedure is open. The member of the HJC, present at the meeting, cannot abstain from voting, except in cases where there are legal obstacles such as conflict of interest.

The chair is the last member to vote and when the votes are equally divided, the chairman's vote is decisive. Each member is responsible for the vote and has the right to make a brief oral or written statement of the reasons for the vote. The decision is given with reasons in writing at least within two weeks from the end of the session.

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

Disciplinary proceedings are interdependent by other court proceedings. Thus, the HJC suspends disciplinary proceedings when there is an ongoing criminal investigation or a criminal, administrative or civil judicial process in which one of the parties is the judge in the proceeding and the suspected violation is related to the same facts. The disciplinary procedure is suspended until a final decision from the competent court.

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

The judge has the right to appeal the decision of the HJC on the assignment of the disciplinary measure to the Constitutional Court. These cases are currently being reviewed

by the Appeal Chamber, which functions alongside this Court, until the end of its mandate. The appeal does not suspend the effects of the decision on the assignment of the disciplinary measure.

24. Can a judge participate in the disciplinary hearings at the appeal stage?

During the review of the appeal before the Appeal Chamber at the Constitutional Court, the judge can participate in all stages of the process.

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

Judicial review is conducted in public hearings. The presence of the representatives of the media in the courtroom, is allowed, as long as it does not hinder the normal development of the court session. The Appeal Chamber bases its decision only on documents from known sources, on reliable evidence, or in consistency with other evidence. They have the right to evaluate, according to their inner conviction, every indication related to the circumstances of the case. Also, the Appeal Chamber may decide about further matters that are not the subject of the request, in case they are related to the case under trial.

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

The Appeal Chamber, as the body that reviews appeals against the decisions of the HJC for the assignment of disciplinary measures, has the authority to amend the Council's decision. The Appeal Chamber may also rule on the annulment of the decision, and the obligation of the competent body to issue a new act or not to act at all.

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

The appeal against the decision on the assignment of the disciplinary measure is examined by the Appeal Chamber at the Constitutional Court (referred to in question 23). The decision of the Constitutional Court is final and binding.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

The HIJ, as the competent body for conducting investigations and submitting requests for disciplinary measures, has the right to appeal any decision of the HJC on disciplinary matters to the competent authority.

V. Disciplinary sanctions against judges

29. **As regards the disciplinary sanctions against judges, please briefly describe the following:**

- **is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;**
- **is it clearly defined in such a legal text which disciplinary sanction applies in which case;**
- **or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.**

Disciplinary measures that can be assigned by the HJC are specified in Article 140 of the Status Law which foresees specific provisions for each disciplinary measure and the degree of seriousness of the offense to which they may be applied. However, the determination of the disciplinary measure is evaluated on a case-by-case basis by the HJC, which takes into account a number of criteria to determine the degree of importance of the violation, criteria that are defined in the law or other criteria that the HJC itself can assess as important for the case .

30. **In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?**

In determining the disciplinary measure, the HJC takes into consideration a number of criteria defined in the Status Law, on the basis of which it assigns a disciplinary measure. The disciplinary measure is assessed on a case by case basis and is proportional to the offense committed by the judge, as well as the aggravating and mitigating circumstances.

31. **In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?**

As we mentioned above (question 29), the provisions that contain provisions on the type of disciplinary measures have also determined whether they are applied to light, serious, very serious violations, etc. So the measures are determined in proportion to the nature of the violation and the assessment of specific criteria.

“Dismissal of the judge” is ruled in cases where the offense committed is very serious and the circumstances of its commission make the magistrate unfit to exercise his duty.

Specifically, the measure of dismissal from office is given due to a conviction for committing a crime, due to serious and obvious incapacity, or due to a behavior that is carried out at least with gross negligence. Also, the law contains a specific provision that pertains to judges of Special Courts for Corruption and Organized Crime. The latter are dismissed from their duties if they spread sensitive information intentionally or through gross negligence, or when they commit other serious violations.

32. **Is it specifically ruled out that if a judge’s verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?**

The judge takes the decision on the basis of the evidence and facts presented during the judicial process and on the basis of his inner conviction. Consequently, he is not liable for cases he/ she adjudicates, or the decisions rendered.

If the decision of a judge of a lower level is overturned/changed by a higher court, the judge does not bear disciplinary responsibility.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

With the approval of the constitutional and legal changes brought by the Justice Reform in our country, the vetting process began, which consists of conducting detailed verifications related to wealth, image and professional skills for all magistrates.

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

The vetting process of re-evaluation subjects is carried out by the Independent Qualification Commission, the Appeal Chamber, public commissioners, in cooperation with international observers, specifically the International Monitoring Operation (IMO). This process is carried out on the basis of three criteria: a) property assessment; b) image control; and c) assessment of professional skills.

The analysis of the judicial system, before the parliament in Albania approved the transitional reassessment (vetting) law, showed that the public's trust in justice had completely faded and that the disciplinary procedure had not worked, because, the involvement of the Minister of Justice as the authority that proposed the initiation of the disciplinary procedure and the disciplinary measure, politicized the process. On the other hand, the High Council of Justice had rejected requests for disciplinary measures in most cases with very controversial decision-making. In such a situation, the vetting law was adopted, where all judges were subjected to the process of reevaluation of wealth, figure (ethics and integrity) and professionalism. The vetting process represents extraordinary measures in the framework of strengthening the rule of law and security of the delivery of justice by independent and impartial courts.

35. What is your own general opinion on vetting (advantages and disadvantages)?

The vetting process is considered as a necessary and important step for Albanian justice system within the framework of the justice reform. Despite the vacancies created in the judicial system by this process, the effects are positive in terms of increasing public trust in justice institutions. The HJC always takes into consideration the standards and principles of the vetting process during the verifications it carries out for candidates for judges, before the beginning of the initial program at the School of Magistrates, and at its conclusion, as well as in the promotion procedures.

36. **In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is not about ordinary civil, administrative or criminal liability.**

HJC with decision no. 171, dated 22.04.2021, approved the Code of Judicial Ethics, which provides for general rules of conduct for all judges. The committed violations are evaluated case by case depending on their importance and also, when it does not constitute a cause for disciplinary responsibility, it is taken into consideration within the ethical and professional evaluation.

37. **In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?**

The vetting process of magistrates is carried out by two special institutions, with a limited mandate, which are different from those that carry out the disciplinary proceedings. Specifically, in the first instance by the Independent Qualification Commission and in the second instance by the Appeal Chamber. After the end of the mandate of these bodies, the functions of the Independent Qualification Commission related to the verification of judges will be exercised by the HJC, while the functions of the Appeal Chamber will be exercised by the Constitutional Court.

38. **What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?**

The Independent Qualification Commission consists of 12 members and is organized into 4 judging panels consisting of 3 members, who are appointed by lot. The Appeal Chamber consists of 7 judges and adjudicates in panels of 5 judges, who are assigned by lot for each case. The members of the Commission and the College are elected by the Assembly of Albania with the votes of 3/5 of its members.

39. **What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?**

The transitory reassessment (vetting) procedure is carried out based on criteria such as: professional skills, verification of assets and image control. The members of the Commission, the judges of the Appeal Chamber investigate and assess all the facts and circumstances necessary for the reassessment procedure. These bodies exercise their duty in cooperation with international observers, specifically the International Monitoring Operation. For this purpose, they collect and request information from natural and legal persons, local or foreign, to verify the authenticity and accuracy of the statements made by the subjects of the reevaluation. They administer the documents that prove actions, facts, qualities or a subjective situation necessary for the realization of the investigation. The Commission and the Appeal Chamber base their decision only on documents from known sources, on reliable evidence, or that are in apparent agreement with other evidence. They have the right to evaluate, according to their inner conviction, every indication as a whole related to the circumstances of the case.

40. **Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?**

The Independent Qualification Commission, at the end of the process, can decide: a) confirmation in office; b) suspension from duty for a period of 1 year and the obligation to follow the training program, according to the curricula approved by the School of Magistrates; c) dismissal from office;

Throughout their activity, the Independent Qualification Commission and the Appeal Chamber are guided by the principles of objectivity and proportionality.

41. Can a judge appeal against an unfavourable decision of such a body?

Judges may appeal the decision of the Independent Qualification Commission to the Appeal Chamber within 15 days from the date of notification of the Commission's decision.

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

In our assessment, the legal and sub-legal provisions related to the disciplinary procedure against judges are quite consolidated and guarantee all the procedural rights of the subject of the proceedings, the guarantee of a regular legal process, or the possibilities of appeal. The law also provides for the imposition of measures that initiate from the lightest to the most severe and are imposed always keeping in mind the principle of proportionality. However, there is still a legal gap regarding cases where a judge and a prosecutor are involved in a joint offense.

According to Albanian legislation, one of the disciplinary offenses, consists of:

- a) serious or repeated non-compliance with procedural and substantive legislation or incorrect application of procedural and substantive legislation, when ascertained by a higher court;

This provision seems to expand the cases of disciplinary violations and can potentially lead to disciplinary proceedings any judge whose decision is amended/overturned by a higher court, which violates the independence of the judge in resolving the case, even more in cases where the decisions are changed by a higher court for a different evaluation of the evidences.

43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

Currently, the HJC in cooperation with the High Prosecutorial Council (HPC) and international partners are drafting the joint regulation for the unification of disciplinary proceedings for violations involving a judge and a prosecutor.

Andorra / Andorre

I. La législation

1. A quel niveau législatif (constitution, loi, code, etc.) la responsabilité disciplinaire des juges est-elle réglementée dans votre pays ?

Par « Llei qualificada », c'est à dire, par une loi renforcé qui ne peut être approuvé que par majorité absolue de tous les membres du parlement.

2. Existe-t-il, en vertu des lois pertinentes, des décrets, des règlements et/ou des règles concernant la responsabilité disciplinaire des juges (par exemple, des actes normatifs ou réglementaires du gouvernement, de la cour suprême ou d'un autre organe judiciaire supérieur, du conseil de la justice et/ou d'autres organes) ?

La Loi qualifié de la justice compte avec un chapitre 6^{ème}, intitulé Régime disciplinaire et qui prévoit la procédure et les sanctions disciplinaires pour les membres du corps judiciaire.

3. Le pouvoir judiciaire de l'Etat, les associations de juges et/ou les juges individuels ont-ils participé de manière significative au processus de préparation des lois, décrets, règlements et/ou règles susmentionnés ? Si oui, dans quelle mesure ?

Ils n'ont pas participé au processus de création de la loi, mais ont participé aux diverses modifications de la loi. A travers le CSJ ils ont connu la loi avant son entrée en procédure parlementaire et ont pu proposer des amendements ou des textes alternatifs, qui ont été soumis au Ministère compétent. Certains ont été retenus, mais cela reste une faculté du parlement de les accepter ou pas.

II. Cadre institutionnel des procédures disciplinaires à l'encontre des juges

4. Quels sont les organes (conseil de la justice, cour suprême ou autre organe judiciaire suprême, autres institutions) ou les fonctionnaires/personnes chargés de recevoir les plaintes en vue d'engager des procédures disciplinaires à l'encontre des juges ?

Consell Superior de la Justícia.

5. Existe-t-il des délais dans lesquels une plainte doit être déposée en vue de l'ouverture d'une procédure disciplinaire ? Dans l'affirmative, veuillez fournir des détails.

Oui, il y a un délai de prescription pour les fautes disciplinaires : pour les fautes moins graves, 6 mois, pour les fautes graves 2 ans, et pour les fautes très graves, 4 ans.

6. Existe-t-il des restrictions concernant les catégories de personnes ou d'organismes habilités à déposer une plainte en vue de l'ouverture d'une procédure disciplinaire ? Dans l'affirmative, veuillez fournir des détails.

La loi prévoit que tout citoyen qui a eu connaissance de la situation peut demander au CSJ l'ouverture d'une procédure disciplinaire.

7. La Cour constitutionnelle a-t-elle un rôle à jouer à un stade quelconque des procédures disciplinaires engagées contre des juges ?

Non. Un recours est possible en cas de violation des droits, comme dans toute autre procédure.

8. Outre les personnes habilitées à engager une procédure disciplinaire, existe-t-il des organes ou des fonctionnaires/personnes qui peuvent demander l'ouverture d'une procédure disciplinaire, et quel est le suivi de ces demandes ?

Toute personne peut demander au CSJ l'ouverture d'un disciplinaire. Dans le cas que la procédure a été entamé à l'initiative d'un particulier, le CSJ l'informe de la résolution de la procédure.

9. Existe-t-il différents organes participant aux procédures disciplinaires à l'encontre des juges (c'est-à-dire un organe ayant des fonctions d'enquête et un organe ayant des pouvoirs de décision concernant la constatation d'une faute disciplinaire et la détermination d'une sanction disciplinaire) ?

L'instruction est attribuée à un des membres du CSJ est la décision revient au plein du CSJ avec exception du membre instructeur.

10. Comment l'indépendance et l'impartialité de tous les organes ou fonctionnaires/personnes susmentionnés sont-elles garanties afin d'éviter toute attitude politique, personnelle ou autrement partielle (par exemple, garanties lors de leur élection/nomination, possibilités de récusation, etc.) ?

Il existe une obligation d'abstention en cas d'incompatibilité (les incompatibilités sont prévues dans la loi générale - Code de l'administration) et la possibilité de récusation en cas de non-abstention.

III. Motifs d'ouverture des procédures disciplinaires à l'encontre des juges

11. Quels sont les motifs formels, établis par la loi, les décrets, les règlements et/ou les règles, pour engager des procédures disciplinaires à l'encontre des juges dans votre pays (par exemple, négligence grave, conduite malveillante et autres actes répréhensibles) ?

La loi prévoit un catalogue de fautes professionnelles, pas graves, graves et très graves, par exemple : l'infraction des normes d'incompatibilité (très grave), la non-assistance réitéré et non justifié aux audiences prévues (grave) où le manque de respect au citoyens (moins grave)

12. Ces motifs formels sont-ils clairement définis et exhaustifs ou peuvent-ils faire l'objet d'une interprétation et/ou d'une application plus large ?

Non, ils doivent être interprétés de façon stricte et l'analogie n'est pas admissible.

13. Existe-t-il ou pourrait-il exister d'autres motifs (c'est-à-dire des motifs *ad hoc*) pour engager des procédures disciplinaires à l'encontre des juges ? Le principe *nulla poena sine lege praevia* est-il appliqué (interdiction des lois *ex post facto* et de l'application rétroactive de la loi) ?

Oui, les principes du droit pénal sont applicables au disciplinaire. La responsabilité disciplinaire n'est exigible que dans les cas prévus dans la loi. C'est une liste de *numerus clausus*.

14. Une plainte fait-elle l'objet d'un examen initial par une personne/un organe pour en vérifier le bien-fondé avant d'être soumise à l'examen d'un organe disciplinaire ? Existe-t-il des conditions/circonstances formellement établies qui excluent toute procédure disciplinaire à l'encontre d'un juge ? Est-il possible de mettre fin à une telle procédure à un stade précoce ? Si oui, dans quelles conditions/circonstances ?

Quand une plainte est déposée le CSJ décide s'il est convenient ou pas d'ouvrir une procédure disciplinaire. Il n'y a pas de circonstances qui excluent l'ouverture d'une procédure disciplinaire à l'encontre d'un juge, mais dans le cas que les faits ne se considèrent pas constitutifs de faute disciplinaire, le CSJ peut à tout moment cloître la procédure.

Si le juge ou magistrat ne conteste pas sa responsabilité et accepte la sanction, la phase d'instruction s'achève et la sanction est immédiatement imposée.

IV. La procédure disciplinaire à l'encontre des juges

15. Quelle est la procédure formelle d'ouverture d'une procédure disciplinaire à l'encontre d'un juge et comment la procédure se déroule-t-elle ensuite ?

Le CSJ décide l'ouverture d'une procédure disciplinaire et nomme un instructeur. Cette résolution doit être notifiée au juge ou magistrat, qui peut désigner un avocat et avoir accès à la procédure, et au parquet. L'instructeur a 30 jours pour établir les charges et le juge et le procureur disposent de 10 jours pour présenter allégations et proposer de preuves. L'instructeur a un nouveau délai de 30 jours pour pratiquer ou refuser les preuves et là il donne copie du dossier au juge et au procureur, qui ont 10 jours pour présenter ses conclusions.

Une fois l'instruction finie, le dossier passe devant le CSJ qui décide d'imposer ou non une sanction en réunion plénière, sauf le membre du CSJ qui a été instructeur de la procédure.

16. Existe-t-il différentes phases dans les procédures disciplinaires à l'encontre des juges et quels organes ou fonctionnaires/personnes dirigent chaque phase (c'est-à-dire la phase d'enquête, la phase d'examen, la phase de prise de décision) ?

Phase d'instruction (un membre du CSJ), phase de décision (Plein du CSJ, sauf instructeur) et phase d'appellation devant le Tribunal Supérieur de Justice.

17. Des mesures sont-elles appliquées aux juges une fois que la procédure disciplinaire est engagée et existe-t-il des circonstances dans lesquelles un juge peut être suspendu en

attendant la résolution de la procédure disciplinaire ? Dans l'affirmative, veuillez fournir des détails.

Dans les cas d'ouverture de procédure disciplinaire pour faute très grave, le CSJ en plénière, peut accorder une suspension de fonctions. Avant la décision le CSJ doit auditionner le juge ou magistrat et le représentant du parquet. La suspension ne peut pas être de plus de 6 mois. Contre cette décision de suspension provisoire le juge peut interposer un recours en appel devant le Tribunal Supérieur de Justice.

18. Quelles sont les possibilités pour un juge de prendre part aux différentes phases de la procédure disciplinaire à son encontre et quel type d'actions ou de mesures formelles peut-il demander ?

Il doit être notifié dès l'ouverture, peut se faire représenter par un avocat, présenter des allégations et solliciter la pratique des diligences de preuve (documents, témoignages, expertises...).

19. Comment le principe de la présomption d'innocence est-il appliqué dans le cadre des procédures disciplinaires ?

Le droit à la présomption d'innocence et à ne pas déclarer contre lui-même sont expressément reconnus dans la loi.

20. Existe-t-il des délais formels pour entamer et conclure une procédure disciplinaire à l'encontre d'un juge ? Dans l'affirmative, quels sont les délais appliqués dans votre système ?

Pour entamer une procédure, pour les fautes moins graves, 6 mois, pour les fautes graves 2 ans, et pour les fautes très graves, 4 ans.

Une fois entamé, en instruction, 30 jours pour notifier les charges, 10 jours pour allégations, 30 jours pour pratiquer les preuves et cloître le dossier, 10 jours pour conclusions des parts, 5 jours pour renvoyer le dossier au CSJ.

Le CSJ doit prendre une décision dans le délai de 15 jours pour les fautes moins graves, 30 jours, pour les fautes graves et 45 jours pour les fautes très graves.

21. Comment la décision finale sur la responsabilité disciplinaire d'un juge est-elle prise (par quel organe ou fonctionnaire/personne ; suivant quelle procédure, telle que le vote, etc.)

Le CSJ auditionne à nouveau le juge et le représentant du parquet (sauf si le juge renonce à son audition). La CSJ décide par votation. La décision est prise par majorité simple des votes.

22. Les procédures disciplinaires à l'encontre d'un juge sont-elles affectées d'une manière ou d'une autre par d'autres procédures judiciaires (pénales, civiles, administratives) pour le même délit commis par le juge concerné ? Dans l'affirmative, veuillez préciser.

Si une procédure judiciaire est entamée, le CSJ doit accorder la suspension de la procédure disciplinaire. Les délais sont aussi suspendus. En cas de décision judiciaire, les faits déclarés prouvés sont contraignants pour la procédure disciplinaire.

23. Quelles sont les possibilités pour un juge de faire appel d'une décision relative à sa responsabilité disciplinaire ? Un appel a-t-il un effet suspensif sur les conséquences d'une telle décision ?

Le juge dispose d'un mois pour faire appel devant le Tribunal Supérieur de Justice, et peut demander une suspension provisoire que reste une décision du Tribunal.

24. Un juge peut-il participer aux audiences disciplinaires au stade de l'appel ?

Le juge doit participer et peut demander d'être auditionné ou autre au stade de l'appel.

25. Quelle est l'étendue du contrôle juridictionnel (par exemple, existence d'une audience publique à un moment donné de la procédure d'appel, possibilité pour les instances d'appel d'évaluer les preuves factuelles, autres aspects pertinents) ?

Dans la procédure d'appel il y a une audience publique et le juge et le procureur peuvent demander une nouvelle évaluation des preuves et une nouvelle audition du juge ou des témoins.

26. La phase d'appel concerne-t-elle non seulement la décision sur la responsabilité disciplinaire du juge, mais aussi la sanction spécifique imposée, et cette sanction peut-elle être remplacée par une autre (par exemple, confirmation de la responsabilité disciplinaire mais remplacement de la sanction) ?

L'appel n'est pas limité, et le Tribunal est limité simplement par l'étendu de la demande d'appel.

27. Après un recours en première instance, un juge peut-il porter son affaire devant des instances judiciaires supérieures et jusqu'à quel niveau ?

No, après la résolution par le Tribunal Supérieur en appel, il ne peut que accéder au Tribunal Constitutionnel, si il considère qu'il y a eu une violation de ses droits fondamentaux, mais pas un nouveau appel.

28. L'organe qui a engagé la procédure en responsabilité (voir section II, question 4) peut-il introduire un recours contre une décision qu'il n'estime pas satisfaisante (par exemple, acquittement du juge concerné ou sanction jugée trop clémente) ?

Seulement le procureur, mais pas les particuliers, qui ne sont pas parts a la procédure, au-delà de la dénonciation.

V. Sanctions disciplinaires à l'encontre des juges

29. En ce qui concerne les sanctions disciplinaires à l'encontre des juges, veuillez décrire brièvement ce qui suit :

- s'il existe une liste facilement accessible et exhaustive de ces sanctions clairement définies dans un texte juridique ;

Oui, la loi prévoit toutes les sanctions de façon exhaustive.

- un tel texte juridique définit-il clairement quelle sanction disciplinaire s'applique dans quel cas ;

Oui, les sanctions sont établies pour chaque groupe de fautes, très graves, graves, et pas graves.

- ou est-il laissé à la discrétion de l'organe décisionnel, avec une marge d'interprétation et/ou d'application de sanctions.

L'organe décisionnel peut appliquer une ou autres des sanctions prévues dans la loi pour chaque type de faute, mais doit motiver en tous les cas la sanction appliquée, qui peut être révisée en appel.

30. Dans tous les cas, existe-t-il des exigences liées à la décision sur la sanction applicable (par exemple, la proportionnalité de la sanction par rapport à la faute commise, ou d'autres exigences) ?

Oui, le CSJ doit motiver la sanction en fonction de la gravité des faits et des circonstances, la proportionnalité et la récidive.

31. En particulier, comment le principe de proportionnalité est-il sauvegardé et existe-t-il des critères concrets et/ou des liens (contraignants) entre certaines violations et certaines sanctions ? Si la révocation est une sanction possible, des circonstances particulières sont-elles prévues ?

Il y a des liens contraignants étant donné que certaines sanctions ne peuvent s'appliquer que pour des fautes très graves, ou graves. La sanction peut être révoquée en appel si elle paraît disproportionnée aux faits ou pas suffisamment motivé.

32. Est-il expressément exclu que si le verdict d'un juge dans une affaire judiciaire est renversé en appel, sa responsabilité disciplinaire ne soit pas invoquée ?

Ceci ne serait pas une faute en vue de la liste prévu dans la loi, exception faite qu'il y est une méconnaissance notoire des lois et des procédures.

VI. Vérification des antécédents (le vetting) et autres formes de responsabilité et de sanctions/mesures à l'encontre des juges

33. Le vetting existe-t-il dans votre pays et dans quelles conditions (quelle est sa définition), ou son introduction est-elle envisagée et dans quelles conditions ?

Il n'existe pas et n'est pas envisagé.

34. Il est assez fréquent que, lorsque le vetting est introduit, l'initiateur de cette procédure extraordinaire fasse valoir que les moyens ordinaires, y compris les procédures disciplinaires, ne fonctionnent pas. Par conséquent, les membres du CCJE des pays où le vetting a été introduit dans le passé ou où il peut ou doit être introduit, peuvent-ils fournir des informations sur les raisons identifiées dans leur pays pour justifier que les procédures disciplinaires ne sont pas suffisantes ?

La question ne se pose pas en Andorre.

35. Quelle est votre avis général sur le vetting (avantages et inconvénients) ?

Je pense que c'est un système qui laisse des lacunes importantes pour préserver l'Indépendance judiciaire.

36. En plus du vetting, existe-t-il dans votre pays une possibilité d'invoquer d'autres formes de responsabilité à l'encontre des juges en dehors du cadre des procédures disciplinaires et/ou d'appliquer des sanctions/mesures dans diverses situations (par exemple, la suspension de la fonction, des mesures éthiques ou d'autres mesures) ? Veuillez préciser. Veuillez noter que cette question **ne concerne pas** la responsabilité civile, administrative ou pénale ordinaire.

Non. On dispose d'un Code éthique, mais le manquement n'entraîne pas de responsabilité.

37. Dans le cas du vetting ou d'autres formes de responsabilité telles que mentionnées ci-dessus, quel est l'organe responsable ? S'agit-il du même organe que pour les procédures disciplinaires ou d'un organe différent ?

38. Quelle est la composition de cet organe et comment est-il constitué (élu ou nommé, par qui, etc.) ?

39. Quelle est la procédure suivie par cet organe pour le vetting des juges ou pour leur imposer d'autres formes de responsabilité, comme indiqué ci-dessus ?

40. Quelles sont les sanctions/mesures qui peuvent être imposées aux juges par un tel organe et le principe de proportionnalité est-il appliqué ?

41. Un juge peut-il faire appel d'une décision défavorable d'un tel organe ?

VII. Problèmes et défis

42. Existe-t-il, à votre avis, des problèmes ou des défis dans votre pays concernant la responsabilité disciplinaire des juges (par exemple, les motifs de cette responsabilité, les

procédures disciplinaires ou les organes responsables, les sanctions appliquées, les possibilités d'appel, etc.).

Jusque a présent les procédures disciplinaires a l'encontre des juges n'ont pas entraines des problèmes quelconques.

43. Dans l'affirmative, quel type de solutions pouvez-vous proposer pour surmonter ces problèmes ou défis ?

Austria / Autriche

Preamble:

Due to the organisational between the administrative and ordinary judiciary there might be differences. If this is the case, we will outline the differences between the administrative and the ordinary judiciary in the answers.

The administrative judiciary is separated from the ordinary one and with courts of the federal state and the provinces (*Länder*); all the bodies have organisational power over 'their' courts.

Austria is one of those states without any kind of high or supreme council for the judiciary. The administration of most (admin.) courts and of the ordinary judiciary is exercised under the responsibility and direction of the executive branch (minister or the regional government), so not in judicial independence!

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

The Austrian constitution (Art. 88 of the Federal Constitution) refers for questions of dismissal, removal and retirement to (simple) statute law (laws on the organisation of courts and on the service of judges)

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, Supreme Court or other high judicial body, council for the judiciary and/or other bodies)?

The (federal) Ministry of Justice issued - against objections of judges-associations - a Compliance-Guideline for all employees in the judiciary (judicial and non-judicial staff including the prosecution service, but also parts of the admin. judiciary); its nature might be a decree.

In addition, there are other decrees whose violation may result in disciplinary consequences. These include for example the decree of the Federal Ministry of Justice of 23 May 2016 on cooperation with the media (media decree)

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

There is no central judicial power of state in Austria (see preamble). Supreme Court, Supreme Administrative Court and other courts can be consulted and comment on draft laws, in which a panel or the general assembly of the court may adopt an opinion.

In the case of amendments to organisational laws or laws on the judicial service, judges associations are commonly invited to give an opinion to the draft.

Before the establishment of the new administrative judiciary (2014) the judges associations issued a lot of statements, remarks and opinions, which were mostly ignored.

The Austrian Judges Association issued an ethic-code as a recommendation for judges, the elaboration of which was broadly debated and agreed upon among the judges community..

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

Administrative judiciary:

Most complaints are addressed to the presidents (heads of courts) as they are competent to supervise the functioning of courts. Under the Austrian legal system, nearly all heads of administrative courts exercise their office under the control of ministers or governments of the regions.

Ordinary judiciary:

Only the service authority (i.e. the presidents of the 4 higher regional courts) can refer cases to the disciplinary court, not private interveners. Complaints of everybody can be received by all court presidents (head of courts) who must/can forward the complaints to the competent higher regional court.

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

There is no dead line for complaints, but periods of prescription (*Verjährung*) for the prosecution of judicial misconduct (depending on the specific law on service and the seriousness of the offense).

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

No.

Ordinary judiciary:

As mentioned above, only the presidents of the competent higher regional court are entitled to refer a case to the disciplinary court. But anyone can address the higher regional court and the minister of judges can give an order to the competent president to forward a claim to the disciplinary.

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

In the administrative judiciary decisions/rulings of disciplinary courts can be challenged before the (Supreme) Administrative Court and before the Constitutional Court (as courts of second tier); the CC reviews rulings on their constitutionality.

In the ordinary judiciary: no.

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

Aside the fact, that everybody can give notice to the authorities responsible (heads of courts), there are no bodies or officials who can request the opening of a proceeding; if a proceeding is opened, the disciplinary prosecutor can complain against the stop (close) of a case.

Ordinary judiciary:

see answers to questions 4. and 6.

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

In the adversarial proceeding there are

1. disciplinary-prosecutors (*Disziplinaranwälte*), mostly exercising their office under the control/direction of the minister or the regional government and representing the public interest,
2. the court competent for the disciplinary proceeding and
3. the judge in question (and optional a lawyer/defence attorney)

Ordinary judiciary:

1. disciplinary prosecutors
2. investigating judge
3. the disciplinary court
4. the judge in question

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

Only the independence of the disciplinary court and its members is guaranteed: they are selected by the plenary assemblies of judges or by bodies of elected judges and exercise their office in independence. The members of the disciplinary court/board can be challenged / recused.

Most disciplinary prosecutors in the administrative judiciary, even if they are judges (appointed by the presidents of the courts as prosecutors), are obliged to report to and bound to orders from the minister or government competent: this could be an entrance for political influence.

Ordinary judiciary:

The disciplinary prosecutor unilaterally represents the interests of the employer (service authority = higher regional court). He is bound by the instructions of the service authority (competent higher regional court). He must obtain these before submitting applications, etc. The disciplinary prosecutor is not authorised to intervene independently (§ 118 Judges and Public Prosecutors Service Act [RStDG¹]).

This is in contrast to the public prosecutor in criminal proceedings, who is obliged to be impartial (§ 3 Criminal procedure code).

The independence of the disciplinary court and its members, however, is guaranteed.

¹ Fellner, Nograthig, RStDG, GOG und StAG ¹⁵ [2021] § 118 Rz 2

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

Formal grounds are established by statute law, defining specific and general duties of judges exercising their office, but also out of office; any (culpable) violation of these duties can be prosecuted.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

There are quite a lot of specific duties defined; the general duty (*allgemeine Dienstpflicht*) offers a wide margin for interpretation (e.g. for federal judges, similar for judges of the *Länder*):

- Judges (and public prosecutors) are obliged to be loyal to the Republic of Austria and must observe the legal system applicable in the Republic of Austria without fail. They shall devote all their energy and diligence to their service, undergo further training, fulfil the duties of their office conscientiously, impartially and disinterestedly and complete the official duties assigned to them as quickly as possible.
- If judges are not in the exercise of their judicial office or if judges (and public prosecutors) are not otherwise exempt from instructions in the performance of the official duties entrusted to them, they shall comply with the official orders of their superiors and in doing so shall safeguard the interests of the service entrusted to them to the best of their knowledge and ability.
- Judges (and public prosecutors) shall conduct themselves on and off duty in such a way that confidence in the administration of justice and the reputation of their profession are not jeopardised.
- Even in retirement, judges (and public prosecutors) are obliged to uphold the reputation of their profession in an appropriate manner.

Ordinary judiciary:

The subject of disciplinary offences are breaches of duty, namely:

- violation of official duties: Duties which the judge must fulfil in the exercise of his or her profession. These are laid down in the Judges and Public Prosecutors Act (§ 57 ff RStDG)
- violation of professional duties: Duties to uphold the reputation of the profession of judge and to refrain from doing anything that diminishes respect for the profession.

13. Are there, or could there be, any other grounds (i.e. ad hoc grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting ex post facto laws and the retroactive application of law)?

The disciplinary courts are bound to the laws (on the service of judges) in force.

The principle of *nulla poena sine lege praevia* (as well as the principle of presumption of innocence - *in dubio pro reo*) is not explicitly provided for disciplinary proceedings; the ECtHR itself reviews disciplinary proceedings under the civil head or Art. 6!

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

Yes, there is a procedure provided by law: at first hand the disciplinary prosecutor decides whether the charge is brought before the court (or not); if it is brought before the court, the court reviews the material and can order further investigations or close the file (stop the proceeding formally) or hold an oral hearing.

Ordinary judiciary:

The procedure begins with the notification by the service authority (=higher regional court). Therefore it is up to them to see if a complaint has any merit.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

It are mostly observations of the administration of courts about the performance of judicial work (or behaviour), but also complaints, which are notified to the disciplinary prosecutor and who brings the charge before the disciplinary court; the disciplinary court either decides to investigate the case, to initiate (open) a formal proceeding or to close the case.

Ordinary judiciary:

The disciplinary lawyer is not authorised to withdraw a disciplinary complaint. If he does not consider it necessary to refer the matter to the disciplinary tribunal, he must contact the disciplinary authority, which may issue appropriate instructions.

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

An investigative phase is possible and dependent from the suspicion and evidence, followed by an oral hearing and the decision.

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

The disciplinary court may order the suspension of the judge accused from service without an oral hearing, if this is in the interests of the service or appears necessary to safeguard professional ethics, taking into account the nature or seriousness of the breach of duty with which the accused is charged.

In urgent cases, the head of the court may authorise the temporary suspension of the judge.

However, there is the obligation to refer the matter simultaneously and directly to the competent disciplinary court, which shall immediately decide on the suspension of the judge.

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

He/she has the right to be heard, to file a complaint against the opening of a case and against a disciplinary ruling (in the administrative judiciary to the Supreme Administrative Court and/or to the Constitutional Court).

Ordinary judiciary:

The judge can appeal the decision by a complaint to the Supreme Court.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

See above answer to P. 13!

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

Aside the limitation period/period of prescription (*Verjährungsfrist*) there are no deadlines (e.g. the provision for federal - ordinary and administrative - judges):

The limitation period for official offences is five years in general. The running of the limitation period is interrupted if the judge within the limitation period has committed a new breach of duty punishable as an official offence. The limitation period begins to run anew at the time when the new breach of duty ends.

By limitation period the prosecution of a judge for breach of professional or official duties shall be barred if proceedings are brought against him within the limitation period disciplinary proceedings have not been instituted against him or disciplinary proceedings which have been finally terminated have not been resumed to his detriment.

Breaches of duty that are also punishable by law as criminal offences intentionally committed and punishable by more than one year's imprisonment, are not time-barred.

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

The final decision is taken by a board (panel) of judges by majority: either the (preliminary) order to dismiss the case, after a hearing a 'verdict' or an acquittal.

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

A violation of professional duties can also fulfil a criminal offence, an administrative offence or give reason for civil claims against the body responsible; a double penalization is possible, if there is a disciplinary 'excess' (which is mostly assumed).

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

A decision/ruling of an administrative disciplinary court can be challenged by the judge, but also by the disciplinary prosecutor (different to the ordinary judiciary) before the Supreme Administrative Court (on the ground of fundamental legal questions) and/or before the Constitutional Court (on the constitutionality). A suspensive effect can be granted.

Ordinary judiciary:

A decision/ruling can be challenged either by the judge or the disciplinary prosecutor before the Supreme Court (*Oberster Gerichtshof*).

24. Can a judge participate in the disciplinary hearings at the appeal stage?

If there is an oral hearing before the SAC or the CC, yes.

The same applies for the ordinary judiciary and the disciplinary hearings before the Supreme Court.

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

The judicial review by the Supreme Administrative Court is focused on fundamental legal questions, albeit of procedural or material nature: the violation of the procedural or substantive law must be serious. The Constitutional Court reviews on the constitutionality of the ruling (and the provisions applied), including the general principle of equality which can offer a wide range of review of the proceeding.

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

Yes.

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

The administrative judiciary offers only two tiers of courts: admin. courts of first instance (as disciplinary courts), the SAC plus CC as courts of second tier.

The same applies with the ordinary judiciary. The courts of the first instance are the higher regional courts, court of appeal the Supreme Court.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

The disciplinary prosecutor is entitled to lodge a complaint/appeal to the court of second tier; they exercise their office under the control of the executive power, except they are explicitly not bound to orders (see above).

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:

- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text:

e.g. for federal (ordinary and administrative) judges the law provides the following disciplinary sanctions/penalties:

- a) reprimand,
- b) a fine of up to five months' pay,
- c) transfer to another judicial post without entitlement to relocation fees, and
- d) dismissal from service under the loss of all rights and claims arising from the employment.

• is it clearly defined in such a legal text which disciplinary sanction applies in which case; or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions:

it's a matter of discretion in the margin given by law and case law (which hardly exists for administrative judges)

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

It is case law that sanctions have to be proportionate.

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

Proportionality is safeguarded by (the independence of) the disciplinary courts and by the review of their decisions; if there is a catalogue of sanctions (as given above), the steps express the seriousness of sanctions (so the disciplinary transfer to another post has to be more onerous than a five months' pay fine). If the court imposes dismissal, it has to give good reasons why this sanction was necessary/in public interest and why the public interest is not met by a transfer or a fine.

32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

No, on the contrary it is case law that a violation of the (substantive or procedural) law, that is only due to excusable negligence or a mere case-by-case ignorance of a legal provision, does not give rise to disciplinary liability, but a deliberate or repeated grossly negligent violation of the law does! Errors in the application of the law are also subject to disciplinary sanctions if they are so serious that trust in the law-abiding nature of the judiciary is called into question and if the judge is also seriously culpable.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

Fortunately not; only before the first appointment on the post of a trainee judge in the ordinary judiciary, the reliability of the applicant and a possible criminal record is reviewed as the laws exclude persons convicted of criminal offences of some degree or who are under suspicion of a serious crime. The administrative judiciary doesn't know a trainee phase.

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or

where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

35. What is your own general opinion on vetting (advantages and disadvantages)?

The Austrian judges association agrees with the opinion of CCJE and EAJ that vetting should be avoided, it might only make sense if there is a change from a autocratic system (communism) to a democratic system. If necessary existing disciplinary systems etc. should be adopted which are effective and could solve the problem. The Austrian judges associations also endorse the recent opinion of the EAJ regarding the situation in Moldova, where it stated that if there is vetting at all the following points should be applied.

- The tribunal or body with power to decide must be independent.
- The appointment of its members must follow a transparent procedure in accordance with pre-established selection criteria.
- There must be clear and transparent criteria for determining the result, which cannot be changed during the process and those criteria should laid be down in advance on a legal basis.
- The judge or other person subject to the proceedings should have all guarantees of a fair procedure (with proper opportunities to access the files, to put forward testimonies, to comment on or challenge evidence).
- A remedy should be available.
- The consequences of the result should be proportionate

36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is not about ordinary civil, administrative or criminal liability.

37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?

38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?

39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?

40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?

41. Can a judge appeal against an unfavourable decision of such a body?

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

The source of concerns is the delicate task of the admin. judiciary to control the executive power and the possible influence of the executive power on the admin. judiciary and thus on the control: it starts with the administration of courts which in Austria is exercised under the control of the executive (see the preamble) and which can gather most relevant information on judges and control the information; although the disciplinary prosecutors at the federal admin. courts are judges, they are appointed by the presidents of these courts and exercise their office under the control of the president (and thus under the control of the executive power).

43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

Give judiciary full independence from executive power (as it is given in most other countries in Europe).

Azerbaijan / Azerbaïdjan

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

All issues concerning disciplinary liabilities of judges are regulated by two Laws, namely “On Courts and Judges” and “On Judicial-Legal Council”.

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?

As noted above, entire procedure for disciplinary proceedings of judges is defined by the primary legislation without any further clarification through normative or regulatory acts of the various bodies.

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

Following recent changes introduced to the Law “On Judicial-Legal Council” aimed on strengthening the independence of the judicial system, the Judicial-Legal Council (hereinafter – “the Council”) presently comprised of three judges from each court instance, who, in turn, approve candidates (one per each) nominated by the non-judicial bodies such as the Constitutional Court, Parliament, *relevant executive body* (being the Ministry of Justice, as defined by the President’s Decree), Bar Association and the National Academy of Sciences. Judges may participate in drafting of the entire legislation concerning their activities, including those that are intended to regulate their disciplinary procedure, via respective representatives within the Council which, in turn, can act through their members from the Supreme Court and the Parliament, both organisations being vested with the right of legislative initiative under the Article 96 of Constitution.

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

Articles 111 to 112-1 of the Law “On Courts and Judges” and Articles 19-24 of the Law “On the Judicial-Legal Council” listing grounds and reasons for invoking judges’ disciplinary liability provide that the respective proceedings may be initiated only by the Council.

Presidents of the Supreme Court, appellate courts, officers from the *relevant executive body* may lodge an application with the Council requesting initiation of disciplinary proceedings against judges should they become aware of the reasons for disciplinary liability as specified by legislation.

Legislation also provides opportunity for the individuals and legal entities to apply to the Council with an aim of initiating disciplinary proceedings against judges if they have information about corruption offenses committed by the latter.

Recently, the Supreme Court submitted new amendments to the Law “On Courts and Judges” proposing removal of the *relevant executive body* from the list of bodies entitled to initiate disciplinary proceedings against judges.

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

The Law “On Courts and Judges” provides that disciplinary proceedings against judges can be initiated within a one-year period starting at the date when the disciplinary violation had been discovered or within three years from the date when it was committed.

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

See the reply under the Question 4 above.

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

In general, Constitutional Court does not have a specific role in the disciplinary proceedings against judges. However, being presented at the Council, it may influence the outcome through its representative member of the latter.

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

See the reply under the question 4 above.

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

Legislation provides that once a decision on initiation of disciplinary proceedings against a judge had been taken, the Council appoints one of its professional judge members as a rapporteur who examines the respective case file as prepared by the officers of the Council and submits their final report for the consideration of the Council’s professional judge members.

According to the Article 17.4 of the Law “On Judicial-Legal Council”, judge-rapporteur is not entitled to participate in deliberations followed their report, therefore, the legislation separates disciplinary investigation of allegations against judges from the examination and delivery of the final decision in such cases.

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

As stated above under Question 3, presently the Council mostly consists of professional judges who, in turn, approve appointment of non-judge members.

Additional safeguard for ensuring independence and impartiality of the Council is provided by the legislation according to which its professional judge members are not appointed but shall be elected by the General Conference of Judges comprised of 5 judges from the Supreme Court, 3 judges from each appellate court, 1 judge from each specialized first instance court and 1 judge from every district (or city) court.

On the procedural side, only professional judge members of the Council have a right to participate in deliberations following judge-rapporteur's presentation. Furthermore, a judge subjected to disciplinary proceedings may lodge objection against any member of the Council sitting in a disciplinary panel on their case.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

Grounds for initiating disciplinary proceedings are listed in Article 111-1 of the Law "On Courts and Judges", namely, serious or multiple infringement of the legislative requirements during case consideration; breach of the judge ethics; gross violation of legislation concerning labor discipline or productivity; failure to comply with the financial restrictions as stipulated in anti-corruption law; violation of anti-corruption law; commission of acts listed in Article 9 of the Law "On Prevention of Corruption"; commission of act undermining judicial dignity and honor.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

The grounds listed under Question 11 above are clearly defined both by the respective legislation and the relevant practice concerning their application, therefore, exclude their wider interpretation and/or application.

13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

The list of grounds for initiating disciplinary proceedings against judges is restrictive and no other ground can serve as a basis for their disciplinary liability.

The principle of *nulla poena sine lege praevia* is well-respected domestically in relation to any kind of liability.

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

All requests for initiating disciplinary proceedings against judges are subject for initial examination by the staff members of the Council within a three month time limit following which the request is either rejected as groundless or found well-based and the respective case file is passed for consideration of the judge-rapporteur.

Regulations do not provide for any formally established conditions/circumstances which rule out disciplinary proceedings against a judge and every request is handled by the staff members individually and on case by case basis.

Once the disciplinary proceeding is initiated, entire procedure for formal examination shall follow and continue until a final decision will be delivered by the Council.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

Disciplinary proceedings against judges may be initiated exclusively by the respective decision of the Council. Once it is taken, staff members pass the respective case file to the assigned judge-rapporteur who then proceeds with examination of the materials and preparation of the final report to be submitted for the deliberation by the professional judge members of the Council.

Judge subjected to the disciplinary proceedings has a right to participate in examination of the case material both at the preliminary examination phase by the judge-rapporteur and during the deliberations before the Council. He or she has a right to defend themselves personally or with assistance of a lawyer or fellow judge of their own choice. They may also recuse a member of the Council whom they consider biased.

Decisions delivered by the Council in cases concerning disciplinary proceedings against judges are not final and may be appealed against before the Plenary of the Supreme Court.

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

Summing up the stated above, disciplinary proceedings against judges may be phased as follows:

- investigative phase when a staff member of Council makes an initial review of a complaint by a person/body to see if it has any reasonable merit;
- consideration phase when a judge-rapporteur examines the case file prepared by the staff member of the Council and drafts decision in respect of the subject request;
- decision-making phase when judge members of the Council deliberate on draft prepared by the judge-rapporteur and deliver their final decision.

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

Domestic legislation does not provide for suspension of judges' functions when they are subjected to the disciplinary proceedings.

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

As stated above under Question 15, judge subjected to the disciplinary proceedings has a right to participate in examination of the case material both at the preliminary examination phase by the judge-rapporteur and during the deliberations before the Council.

They may defend themselves personally or with assistance of a lawyer or fellow judge of his or her own choice, as well as to recuse a member of the Council whom they consider biased.

They are also entitled to lodge an appeal against the respective decisions of the Council before the Plenary of the Supreme Court.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

Principle of presumption of innocence is respected on highest possible level in the course of disciplinary proceedings against judges as they neither suspended in performing their professional duties throughout the course of proceedings nor any public statement or disclosure concerning development of the proceedings is made until the final decision delivered.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

Law "On Judicial-Legal Council" provides that examination and delivery of the respective final decision shall be delivered within three months after initiation of disciplinary proceedings. This time-limit may be extended if valid reasons prevent the judge from participating in proceedings in respect of them or circumstances require additional examination.

In practice, most disciplinary cases are decided within three months.

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

Decision on the disciplinary liability of a judge is delivered by simple majority votes of the professional judge members of the Council who deliberate on report prepared by judge-rapporteur.

Judge-rapporteur cannot participate in voting.

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

Court proceedings of any nature does not have influence on disciplinary proceedings against a judge as those conducted independently.

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

Decision of the Council in disciplinary proceedings may be appealed against with the Plenum of the Supreme Court within 20 days.

Such appeal has a suspensive effect.

24. Can a judge participate in the disciplinary hearings at the appeal stage?

Legislation does not provide express restriction for a judge to be present at the Plenary of the Supreme Court examining their appeal against the decision of the Council in disciplinary proceedings.

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

Having deliberated on appeal against the decision of the Council in disciplinary proceedings, Plenary of the Supreme Court may uphold, amend or quash it.

Judges of the Supreme Court, who as members of the Council previously participated in disciplinary proceedings, are not allowed to sit at the Plenary.

Decisions of the Plenum of the Supreme Court in such proceedings shall be delivered within 3 months period after the appeal had been lodged, they are final and binding.

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

General procedural legislation restricts jurisdiction of the Plenary of the Supreme Court to deciding on legal issues only regardless of the nature of proceedings, therefore, it is not entitled to modify the imposed sanction.

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

As it is described above, Plenary of the Supreme Court acts as a single and last instance appellate court in respect of decisions delivered by the Council in disciplinary proceedings.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

Under the relevant legislation only a judge in respect of whom disciplinary proceedings had been initiated and finalised with a sanction may appeal against the respective decision of the Council.

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:

- **is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;**
- **is it clearly defined in such a legal text which disciplinary sanction applies in which case;**

- **or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.**

Article 112 of the Law “On Courts and Judges” provides for an exhaustive list of sanctions against judges, also defining particular violations against which a specific sanction applies.

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

As noted above under Question 29, domestic legislation is definitive on application of the particular type of sanction for commitment of the correspondent violation.

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

Law “On Courts and Judges” provides that the Council shall consider thoroughly all facts and important circumstances of the individual case before it, as well as the nature, severity and outcome of the acts committed by a judge while deciding on their liability.

As for the dismissal from the office, the law sets out only two reasons for such decision, namely, commission of numerous violations of the legislative requirements while performing professional duties and being subject to two consecutive disciplinary sanctions within a one year period.

32. Is it specifically ruled out that if a judge’s verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

Legislation does not specifically provide for possibility of invoking a judge’s disciplinary liability should their decision be reversed. However, if the higher instance court finds that the reversal was caused by gross violations of the respective procedural codes, it may apply to the Council with request to initiate a disciplinary proceedings in respect of the sitting judge/chamber.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

No vetting procedure is applied in the context of disciplinary proceedings, neither it is being considered for introduction in foreseeable time.

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

In absence of domestic vetting procedure, no information may be submitted under this question.

35. What is your own general opinion on vetting (advantages and disadvantages)?

As the issue has been never considered, no opinion may be submitted under this question.

36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is not about ordinary civil, administrative or criminal liability.

Under the terms of the relevant domestic legislation a judge cannot be brought under any kind of liability for the outcome of performing their professional duties except those which are defined by the law and decided upon or sanctioned by the Council.

37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?

In absence of domestic vetting procedure, no information may be submitted under this question.

38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?

In absence of domestic vetting procedure or other forms of liability as mentioned under Question 36, no information may be submitted under this question.

39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?

In absence of domestic vetting procedure or other forms of liability as mentioned under Question 36, no information may be submitted under this question.

40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?

In absence of domestic vetting procedure or other forms of liability as mentioned under Question 36, no information may be submitted under this question.

41. Can a judge appeal against an unfavourable decision of such a body?

In absence of domestic vetting procedure or other forms of liability as mentioned under Question 36, no information may be submitted under this question.

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

Disciplinary proceedings against judges in Azerbaijan have a solid foundation based on well-developed legislation and established practice, and have been efficiently administered so far.

While overall disciplinary procedures for judges may be considered as robust, continuous work is being done on further improvement. As an example stated above, a draft law abolishing

participation of the Council's member from the Ministry of Justice in disciplinary matters concerning judges has been recently introduced to the Parliament.

Moreover, the Council constantly overlooks the relevant best international practices and committed to bringing them into the domestic system.

43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

While each jurisdiction has its own particularities, intensified collaborative efforts and unified approach in this field would best assist in overcoming the existing and future challenges.

Belgium / Belgique

I. La législation

1. A quel niveau législatif (constitution, loi, code, etc.) la responsabilité disciplinaire des juges est-elle réglementée dans votre pays ?

La responsabilité disciplinaire est réglée par la loi, plus précisément par le Code judiciaire (deuxième partie, livre II, titre V).

2. Existe-t-il, en vertu des lois pertinentes, des décrets, des règlements et/ou des règles concernant la responsabilité disciplinaire des juges (par exemple, des actes normatifs ou réglementaires du gouvernement, de la cour suprême ou d'un autre organe judiciaire supérieur, du conseil de la justice et/ou d'autres organes) ?

En vertu d'une loi entrée en vigueur en 2020, les devoirs, la dignité et les tâches de la charge de magistrat doivent être interprétés notamment à la lumière des principes généraux relatifs à la déontologie. La loi dispose que ces principes généraux doivent être établis par le Conseil supérieur de la Justice, après avis du Conseil consultatif de la magistrature.

A ce jour, lesdits « principes généraux » sont en cours d'élaboration.

Il convient d'observer que, avant le vote de la loi précitée, le Conseil supérieur de la Justice et le Conseil consultatif de la magistrature avaient déjà rédigé et officiellement approuvé ensemble, en 2012, le « Guide pour les magistrats – Principes, Valeurs et Qualités ». Le « Guide » est actuellement toujours en vigueur, a été envoyé à tous les magistrats et est disponible sur le site internet du Conseil supérieur de la Justice : <https://csj.be/fr/publications/2012/guide-pour-les-magistrats>.

Le « Guide » est considéré, dans les travaux préparatoires de loi précitée, comme étant le précurseur des « principes généraux relatif à la déontologie », actuellement en cours d'élaboration.

3. Le pouvoir judiciaire de l'Etat, les associations de juges et/ou les juges individuels ont-ils participé de manière significative au processus de préparation des lois, décrets, règlements et/ou règles susmentionnés ? Si oui, dans quelle mesure ?

Oui :

- 1) *le « Guide pour les magistrats – Principes, Valeurs et Qualités » a été élaboré par le Conseil supérieur de la Justice (composé pour moitié de magistrats professionnels) et le Conseil consultatif de la magistrature (composé exclusivement de magistrats professionnels) ;*
- 2) *les futurs « principes généraux relatifs à la déontologie » seront édictés par le Conseil supérieur de la Justice, après avis du Conseil consultatif de la magistrature.*

II. Cadre institutionnel des procédures disciplinaires à l'encontre des juges

4. Quels sont les organes (conseil de la justice, cour suprême ou autre organe judiciaire suprême, autres institutions) ou les fonctionnaires/personnes chargés de recevoir les plaintes en vue d'engager des procédures disciplinaires à l'encontre des juges ?

- *Président de la juridiction concernée ;*
- *Ministère public (parquet) ;*
- *Conseil supérieur de la Justice (le Conseil n'engage pas de poursuites disciplinaires, mais transmet la plainte au président de la juridiction concernée) ;*

5. Existe-t-il des délais dans lesquels une plainte doit être déposée en vue de l'ouverture d'une procédure disciplinaire ? Dans l'affirmative, veuillez fournir des détails.

Non.

Mais si la plainte relève de la compétence du « tribunal disciplinaire » (= faits passibles d'une peine disciplinaire majeure), l'autorité qui l'a reçue doit la transmettre au tribunal dans les six mois à compter de la connaissance des faits par cette autorité.

6. Existe-t-il des restrictions concernant les catégories de personnes ou d'organismes habilités à déposer une plainte en vue de l'ouverture d'une procédure disciplinaire ? Dans l'affirmative, veuillez fournir des détails.

Non.

7. La Cour constitutionnelle a-t-elle un rôle à jouer à un stade quelconque des procédures disciplinaires engagées contre des juges ?

Non.

8. Outre les personnes habilitées à engager une procédure disciplinaire, existe-t-il des organes ou des fonctionnaires/personnes qui peuvent demander l'ouverture d'une procédure disciplinaire, et quel est le suivi de ces demandes ?

Les particuliers et le Conseil supérieur de la Justice peuvent transmettre une plainte à caractère disciplinaire à l'autorité compétente. Celle-ci doit les informer, dans un délai de trois mois, de la suite réservée à leur plainte.

9. Existe-t-il différents organes participant aux procédures disciplinaires à l'encontre des juges (c'est-à-dire un organe ayant des fonctions d'enquête et un organe ayant des pouvoirs de décision concernant la constatation d'une faute disciplinaire et la détermination d'une sanction disciplinaire) ?

Oui.

Lorsqu'une plainte est déposée ou que le président du tribunal concerné prend connaissance des faits, une enquête préliminaire est effectuée par un magistrat désigné par le président.

Si le président du tribunal concerné considère, après cette enquête, que les faits doivent seulement être punis d'une peine disciplinaire mineure, il prononce cette peine lui-même.

Si, après cette enquête préliminaire, le président du tribunal concerné considère qu'il y a lieu d'appliquer une peine disciplinaire majeure, il saisit le tribunal disciplinaire. Le tribunal disciplinaire décide alors s'il y a lieu, ou non, d'ouvrir une instruction, qui est alors effectuée par un magistrat instructeur désigné par le tribunal disciplinaire. Ensuite, lorsque cette éventuelle instruction est terminée, le tribunal disciplinaire, après une procédure contradictoire en audience publique (sauf dérogation), rend sa décision (acquiescement ou infliction d'une sanction disciplinaire).

10. Comment l'indépendance et l'impartialité de tous les organes ou fonctionnaires/personnes susmentionnés sont-elles garanties afin d'éviter toute attitude politique, personnelle ou autrement partielle (par exemple, garanties lors de leur élection/nomination, possibilités de récusation, etc.) ?

L'indépendance et l'impartialité de ces organes et personnes sont garanties, selon le cas, par le fait qu'ils ont la qualité de magistrat (juge ou procureur) ou constituent un tribunal impartial et indépendant, prévu et organisé par la loi (tribunal disciplinaire).

III. Motifs d'ouverture des procédures disciplinaires à l'encontre des juges

11. Quels sont les motifs formels, établis par la loi, les décrets, les règlements et/ou les règles, pour engager des procédures disciplinaires à l'encontre des juges dans votre pays (par exemple, négligence grave, conduite malveillante et autres actes répréhensibles) ?

- *Manquer aux devoirs de la charge ;*
- *Porter atteinte, par sa conduite, à la dignité du caractère de la charge ;*
- *Négliger les tâches de sa charge et ainsi porter atteinte au bon fonctionnement de la justice ou à la confiance dans l'institution ;*

Ces trois motifs formels sont interprétés, notamment, à la lumière des principes généraux relatifs à la déontologie.

12. Ces motifs formels sont-ils clairement définis et exhaustifs ou peuvent-ils faire l'objet d'une interprétation et/ou d'une application plus large ?

Ces motifs sont volontairement d'ordre général et peuvent faire l'objet d'une interprétation, eu égard à la nature des faits et aux particularités de la cause.

13. Existe-t-il ou pourrait-il exister d'autres motifs (c'est-à-dire des motifs *ad hoc*) pour engager des procédures disciplinaires à l'encontre des juges ? Le principe *nulla poena sine lege praevia* est-il appliqué (interdiction des lois *ex post facto* et de l'application rétroactive de la loi) ?

Il n'existe pas de « Code disciplinaire » au sens d'un « Code pénal », dans lequel chaque comportement répréhensible serait défini de manière précise à l'image d'une incrimination pénale.

Cela ne serait d'ailleurs pas souhaitable (voire praticable), eu égard à la particularité de la matière de la discipline.

14. Une plainte fait-elle l'objet d'un examen initial par une personne/un organe pour en vérifier le bien-fondé avant d'être soumise à l'examen d'un organe disciplinaire ?

Voy. la réponse à la question n° 9.

Existe-t-il des conditions/circonstances formellement établies qui excluent toute procédure disciplinaire à l'encontre d'un juge ?

En vertu de la Constitution, les juges sont indépendants dans l'exercice de leurs compétences juridictionnelles.

Une procédure disciplinaire ne peut dès lors en aucun cas être initiée en vue de contrôler ou de sanctionner le contenu des décisions judiciaires.

Est-il possible de mettre fin à une telle procédure à un stade précoce ? Si oui, dans quelles conditions/circonstances ?

Non.

IV. La procédure disciplinaire à l'encontre des juges

15. Quelle est la procédure formelle d'ouverture d'une procédure disciplinaire à l'encontre d'un juge et comment la procédure se déroule-t-elle ensuite ?

Voy. la réponse à la question n° 9.

16. Existe-t-il différentes phases dans les procédures disciplinaires à l'encontre des juges et quels organes ou fonctionnaires/personnes dirigent chaque phase (c'est-à-dire la phase d'enquête, la phase d'examen, la phase de prise de décision) ?

Oui : d'abord une phase d'enquête préliminaire, et, ensuite, une phase qui comporte l'examen du résultat de cette enquête et la prise de décision.

Si le président du tribunal concerné estime que les faits doivent être punis d'une peine disciplinaire majeure, il y a en outre une phase supplémentaire devant le tribunal disciplinaire. Le cas échéant, ce tribunal peut estimer qu'il y a lieu de désigner un magistrat instructeur pour procéder à une instruction. Après cette instruction, le juge est convoqué à l'audience et le tribunal disciplinaire rend un jugement (cfr. la réponse à la question n° 9).

17. Des mesures sont-elles appliquées aux juges une fois que la procédure disciplinaire est engagée et existe-t-il des circonstances dans lesquelles un juge peut être suspendu en attendant la résolution de la procédure disciplinaire ? Dans l'affirmative, veuillez fournir des détails.

Si l'intérêt du service le requiert, le juge poursuivi disciplinairement ou le juge poursuivi pour un crime ou un délit, peut être suspendu de ses fonctions par mesure d'ordre pendant la durée des poursuites disciplinaires et jusqu'à la décision finale. Le juge doit avoir été entendu préalablement. La suspension peut être assortie d'une retenue de traitement de 20 %.

La suspension est prononcée pour trois mois maximum mais peut, après avis du tribunal disciplinaire, être prolongée par périodes de trois mois jusqu'à la décision définitive.

18. Quelles sont les possibilités pour un juge de prendre part aux différentes phases de la procédure disciplinaire à son encontre et quel type d'actions ou de mesures formelles peut-il demander ?

- *Au cours de l'enquête effectuée par le magistrat désigné par le président du tribunal concerné, le juge qui fait l'objet de la procédure disciplinaire peut être entendu et peut se faire assister d'une personne de son choix.*
- *Au cours de l'instruction menée par un magistrat instructeur désigné par le tribunal disciplinaire, le juge doit être entendu et peut se faire assister ou représenter par une personne de son choix ; le juge peut demander formellement l'accès au dossier disciplinaire et peut solliciter formellement l'accomplissement d'actes d'instruction complémentaires ; le magistrat instructeur doit statuer dans les quinze jours ; le juge peut exercer un recours devant le tribunal disciplinaire contre la décision du magistrat instructeur ou en cas d'absence de décision de ce dernier ; avant la comparution devant le tribunal disciplinaire, le juge concerné a accès au dossier, y-compris au rapport d'instruction. A l'audience, le juge comparaît personnellement, assisté de la personne de son choix, en principe en audience publique.*

19. Comment le principe de la présomption d'innocence est-il appliqué dans le cadre des procédures disciplinaires ?

Ce principe est pleinement appliqué, notamment au travers de la règle du secret de l'instruction.

20. Existe-t-il des délais formels pour entamer et conclure une procédure disciplinaire à l'encontre d'un juge ? Dans l'affirmative, quels sont les délais appliqués dans votre système ?

- *l'enquête effectuée par le magistrat désigné par le président du tribunal concerné dure maximum 3 mois ; la décision doit être prise dans ce délai également ;*
- *l'instruction effectuée par le magistrat instructeur désigné par le tribunal disciplinaire est d'une durée maximale de 4 mois et le magistrat instructeur doit transmettre son rapport d'instruction au tribunal disciplinaire dans ce délai ; l'audience a lieu dans les deux mois suivant la transmission du rapport d'instruction ;*
- *si le tribunal disciplinaire n'a pas désigné de magistrat instructeur, l'audience a lieu dans les trois mois suivant la saisine de ce tribunal ;*
- *en cas de poursuite pénale, le tribunal disciplinaire peut surseoir à statuer jusqu'à la décision judiciaire pénale définitive, mais ce n'est pas obligatoire.*

21. Comment la décision finale sur la responsabilité disciplinaire d'un juge est-elle prise (par quel organe ou fonctionnaire/personne ; suivant quelle procédure, telle que le vote, etc.)

- *par le président du tribunal concerné en cas de peine disciplinaire mineure ;*
- *par le tribunal disciplinaire en cas de peine disciplinaire majeure.*

22. Les procédures disciplinaires à l'encontre d'un juge sont-elles affectées d'une manière ou d'une autre par d'autres procédures judiciaires (pénales, civiles, administratives) pour le même délit commis par le juge concerné ? Dans l'affirmative, veuillez préciser.
- *ainsi qu'il est indiqué au point 20, en cas de poursuite pénale, le tribunal disciplinaire peut, mais ne doit pas, surseoir à statuer jusqu'à la décision judiciaire pénale définitive ;*
 - *si la procédure disciplinaire est suspendue en attendant la décision pénale, le tribunal disciplinaire est lié par ce que le juge pénal a certainement et nécessairement décidé.*

23. Quelles sont les possibilités pour un juge de faire appel d'une décision relative à sa responsabilité disciplinaire ? Un appel a-t-il un effet suspensif sur les conséquences d'une telle décision ?

Le juge peut interjeter appel de la peine mineure. L'appel est examiné par le tribunal disciplinaire. Ce recours n'a pas d'effet suspensif.

Le juge peut interjeter appel de la peine majeure. L'appel est examiné par le tribunal disciplinaire d'appel, dans le cadre d'une procédure contradictoire. Le recours a, en règle, un effet suspensif. Mais il n'y a pas d'effet suspensif si le recours est exercé contre une mesure d'ordre.

24. Un juge peut-il participer aux audiences disciplinaires au stade de l'appel ?

Oui.

25. Quelle est l'étendue du contrôle juridictionnel (par exemple, existence d'une audience publique à un moment donné de la procédure d'appel, possibilité pour les instances d'appel d'évaluer les preuves factuelles, autres aspects pertinents) ?

Il s'agit d'un contrôle de pleine juridiction.

26. La phase d'appel concerne-t-elle non seulement la décision sur la responsabilité disciplinaire du juge, mais aussi la sanction spécifique imposée, et cette sanction peut-elle être remplacée par une autre (par exemple, confirmation de la responsabilité disciplinaire mais remplacement de la sanction) ?

Réponse aux deux questions : oui.

27. Après un recours en première instance, un juge peut-il porter son affaire devant des instances judiciaires supérieures et jusqu'à quel niveau ?

Le juge peut se pourvoir en cassation contre la décision du tribunal disciplinaire d'appel, devant la Cour de cassation.

Le juge sanctionné disciplinairement peut introduire une procédure en révision, en cas d'élément nouveau.

28. L'organe qui a engagé la procédure en responsabilité (voir section II, question 4) peut-il introduire un recours contre une décision qu'il n'estime pas satisfaisante (par exemple, acquittement du juge concerné ou sanction jugée trop clémente) ?

Oui.

V. Sanctions disciplinaires à l'encontre des juges

29. En ce qui concerne les sanctions disciplinaires à l'encontre des juges, veuillez décrire brièvement ce qui suit :

- s'il existe une liste facilement accessible et exhaustive de ces sanctions clairement définies dans un texte juridique ;

Oui.

- un tel texte juridique définit-il clairement quelle sanction disciplinaire s'applique dans quel cas ;

Non.

- ou est-il laissé à la discrétion de l'organe décisionnel, avec une marge d'interprétation et/ou d'application de sanctions.

Oui.

30. Dans tous les cas, existe-t-il des exigences liées à la décision sur la sanction applicable (par exemple, la proportionnalité de la sanction par rapport à la faute commise, ou d'autres exigences) ?

La Convention de sauvegarde des droits de l'homme et des libertés fondamentales est applicable aux procédures disciplinaires.

Les autorités disciplinaires et les tribunaux disciplinaires doivent régulièrement motiver et légalement justifier leur décision. Une peine qui ne serait pas régulièrement motivée et légalement justifiée en termes de proportionnalité sera annulée par l'instance d'appel.

31. En particulier, comment le principe de proportionnalité est-il sauvegardé et existe-t-il des critères concrets et/ou des liens (contraignants) entre certaines violations et certaines sanctions ? Si la révocation est une sanction possible, des circonstances particulières sont-elles prévues ?

Il n'existe pas de critères concrets ni de liens contraignants entre certaines infractions disciplinaires et certaines sanctions.

Mais la liste des sanctions disciplinaires énonce les sanctions en ordre croissant de sévérité : les faits les moins graves sont sanctionnables de la peine la moins grave et les faits les plus graves sont punis des sanctions les plus lourdes. Les sanctions les plus faibles sont le rappel à l'ordre et le blâme (peines mineures). Ensuite, la retenue de traitement, la suspension disciplinaire, la régression barémique ou la perte du dernier supplément de traitement, la rétrogradation ou le retrait de mandat, la démission d'office, la destitution (peines majeures).

32. Est-il expressément exclu que si le verdict d'un juge dans une affaire judiciaire est renversé en appel, sa responsabilité disciplinaire ne soit pas invoquée ?

Non, pas expressément. Mais cela va de soi : la décision d'acquittement du tribunal disciplinaire d'appel passe en force de chose jugée si le pourvoi en cassation est rejeté ou si aucun pourvoi en cassation n'est formé avant l'expiration du délai de pourvoi.

La procédure en révision, en cas d'élément nouveau, est seulement ouverte à la personne qui a été sanctionnée ; cette procédure n'est pas ouverte à l'autorité poursuivante.

VI. Vérification des antécédents (le vetting) et autres formes de responsabilité et de sanctions/mesures à l'encontre des juges

33. Le vetting existe-t-il dans votre pays et dans quelles conditions (quelle est sa définition), ou son introduction est-elle envisagée et dans quelles conditions ?

Non.

34. Il est assez fréquent que, lorsque le vetting est introduit, l'initiateur de cette procédure extraordinaire fasse valoir que les moyens ordinaires, y compris les procédures disciplinaires, ne fonctionnent pas. Par conséquent, les membres du CCJE des pays où le vetting a été introduit dans le passé ou où il peut ou doit être introduit, peuvent-ils fournir des informations sur les raisons identifiées dans leur pays pour justifier que les procédures disciplinaires ne sont pas suffisantes ?

NA.

35. Quelle est votre avis général sur le vetting (avantages et inconvénients) ?

J'approuve les écrits de la Commission de Venise à ce propos et me permets de m'y référer.

36. En plus du vetting, existe-t-il dans votre pays une possibilité d'invoquer d'autres formes de responsabilité à l'encontre des juges en dehors du cadre des procédures disciplinaires et/ou d'appliquer des sanctions/mesures dans diverses situations (par exemple, la suspension de la fonction, des mesures éthiques ou d'autres mesures) ? Veuillez préciser. Veuillez noter que cette question **ne concerne pas** la responsabilité civile, administrative ou pénale ordinaire.

Non.

37. Dans le cas du vetting ou d'autres formes de responsabilité telles que mentionnées ci-dessus, quel est l'organe responsable ? S'agit-il du même organe que pour les procédures disciplinaires ou d'un organe différent ?

NA.

38. Quelle est la composition de cet organe et comment est-il constitué (élu ou nommé, par qui, etc.) ?

NA.

39. Quelle est la procédure suivie par cet organe pour le vetting des juges ou pour leur imposer d'autres formes de responsabilité, comme indiqué ci-dessus ?

NA.

40. Quelles sont les sanctions/mesures qui peuvent être imposées aux juges par un tel organe et le principe de proportionnalité est-il appliqué ?

NA.

41. Un juge peut-il faire appel d'une décision défavorable d'un tel organe ?

NA.

VII. Problèmes et défis

42. Existe-t-il, à votre avis, des problèmes ou des défis dans votre pays concernant la responsabilité disciplinaire des juges (par exemple, les motifs de cette responsabilité, les procédures disciplinaires ou les organes responsables, les sanctions appliquées, les possibilités d'appel, etc.)

Depuis l'instauration, en 2014, des tribunaux disciplinaires et des tribunaux disciplinaires d'appel, la Belgique dispose, à mon avis, des procédures adéquates pour assurer avec efficacité la discipline des juges.

Il va de soi que l'existence de ces procédures ne constitue pas un garantie contre des manquements disciplinaires qui, s'ils sont avérés au terme d'une procédure équitable, doivent être adéquatement sanctionnés.

Même si nous avons déjà le « Guide pour les magistrats – Principes, Valeurs et Qualités », adopté en 2012, le Conseil supérieur de la Justice et le Conseil consultatif de la magistrature devraient, sans plus tarder, adopter les « principes généraux relatifs à la déontologie » prévus par la loi.

43. Dans l'affirmative, quel type de solutions pouvez-vous proposer pour surmonter ces problèmes ou défis ?

Cfr. la réponse à la question n° 42.

Bosnia and Herzegovina / Bosnie et Herzégovine

I. Legislation

1. **At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?**

The Disciplinary liability of judges in Bosnia and Herzegovina is regulated by the Law on the High Judicial and Prosecutorial Council (HJPC) of Bosnia and Herzegovina that is further elaborated (regarding procedures) in the Rules of Procedure of the HJPC.

2. **Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?**

The entire chapter of the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina regulates the Disciplinary liability of judges and prosecutors.

It is further elaborated in the Rules of Procedure of the HJPC.

There are also Guidelines for determining disciplinary measures in disciplinary proceedings and Code of Judicial ethics, both adopted by the HJPC.

3. **Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?**

The High Judicial and Prosecutorial Council of B&H have been consulted in the process of drafting the law. Last Amendments of the Law, adopted in February of 2024, were initiated by the HJPC, including transitional provisions regarding changed disciplinary offences in 2023.

The Rules of Procedure of the HJPC, Guidelines for determining disciplinary measures in disciplinary proceedings and Code of Judicial ethics are all adopted by the HJPC.

II. Institutional framework for disciplinary proceedings against judges

4. **What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?**

The Office of the Disciplinary Counsel, an office within the HJPC, perform prosecutorial functions concerning allegations of misconduct against judges and prosecutors in accordance with the Law and the Rules of Procedure of the HJPC.

The Office of the Disciplinary Counsel act upon a complaint or upon its own initiative and is responsible for evaluating complaints for legal sufficiency, investigating allegations of misconduct against judges and prosecutors, and initiating and presenting cases of disciplinary violations before the disciplinary panels of the HJPC.

5. **Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.**

Disciplinary proceedings against a judge may not be initiated:

- a) upon the expiry of two years from the date of filing the complaint, or from the date the Office of the Disciplinary Counsel learnt of the offence;
- b) upon the expiry of five years from the date of commission of the alleged offence, or in case of a criminal procedure, upon the expiry of one year following the finality of the decision in those proceedings, whichever of the two deadlines occurs later.

Statute of limitations for initiating disciplinary proceedings for disciplinary offences of a lasting nature shall commence at the time when the unlawful state ends.

6. **Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.**

A complaint can be submitted by any individual or legal entity, including anonymous complaints.

7. **Does the constitutional court have any role at any stage in disciplinary proceedings against judges?**

In cases when all domestic legal remedies have been exhausted, an appeal can be submitted to the Constitutional Court, regarding breach of fundamental human rights and basic freedoms, as guaranteed by European Convention, in disciplinary proceedings.

8. **Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?**

No. As stated in question 6 response, anyone can file the complaint, but only Office of the Disciplinary Counsel can initiate disciplinary proceedings.

9. **Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?**

The HJPC exercise its disciplinary powers through its disciplinary bodies.

The prosecutorial functions concerning allegations of misconduct against judges and prosecutors in accordance with the Law and the Rules of Procedure of the Council are performed by the Office of the Disciplinary Counsel.

The Disciplinary proceedings itself are conducted by:

- (a) the First Instance Disciplinary Panel and
- (b) the Second Instance Disciplinary Panel.

An appeal to the whole HJPC is possible against a disciplinary measure determined by the Second Instance Disciplinary Panel.

A judge or prosecutor who has been removed by decision of the HJPC may appeal to the Court of Bosnia and Herzegovina on one or both of following grounds only:

- (a) that the Council, during the disciplinary proceedings which led to the decision to impose the measure of removal, materially violated the procedures set out in the Law;
- (b) that the Council, during the disciplinary proceedings which led to the decision to impose the measure of removal, erroneously applied the law.

10. **How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?**

The Office of the Disciplinary Counsel is autonomous and independent in processing disciplinary cases. Civil servants and employees of the Office of the Disciplinary Counsel are appointed and removed by a committee comprised of a HJPC member as selected by the HJPC, the Chief Disciplinary Counsel and the Director of the Secretariat in accordance with the provisions of the Law on Civil Service in Institutions of Bosnia and Herzegovina and the Law on Employment in Institutions of Bosnia and Herzegovina.

Members of the First and Second Instance Disciplinary Panels are appointed by the President of the HJPC for a term of two (2) years and they are eligible for reappointment.

The First and Second Instance Disciplinary Panels are independent and have full authority to adjudicate disciplinary matters. Any panel member who participate in a matter before the First Instance Panel shall not participate in the same matter before the Second Instance Disciplinary Panel.

In disciplinary proceedings against judges, a majority of members of the Panel, at both First and Second Instance, are judges. In disciplinary proceedings against prosecutors, a majority of members of the Panel, at both First and Second Instance, are prosecutors.

III. Grounds for initiation of disciplinary proceedings against judges

11. **What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?**

Disciplinary Offences of Judges shall be:

- a) disclosure of confidential information resulting from the exercise of judicial office
- b) use of judicial office to obtain a benefit for oneself or others;
- c) not disqualifying himself or herself from a case when a conflict of interest exists;
- d) an undue delay in writing of a decision or in taking a procedural action;
- e) failure to comply with a decision made in the procedure for protection of a right to a trial within reasonable time;
- f) enabling the performance of a judicial function to a person not authorised by law to do so;

- g) interfering with the work of a judge or prosecutor, contrary to the rules, with the intention to obstruct or prevent their activities or to influence their work;
- h) making any comments about a court or prosecutorial decision, proceedings or case while the case is ongoing before the court, which can reasonably be expected to interfere with or prejudice a fair process or trial;
- i) failure to comply with a book of rules, a decision, an order or another act of the Council for unjustified reasons;
- j) providing to or presenting the Council with false, misleading or insufficient information;
- k) failure to provide to the Council any information he or she is required to provide under this Law;
- l) violating provisions of this Law on submitting declaration of assets and interests;
- m) violating the provisions of this Law on monitoring the declarant's obligations set out in this Law;
- n) failure to fulfil any mandatory training obligation;
- o) engaging in activities that are incompatible with judicial office;
- p) exceeding any limitations related to income generated from fees for additional activities;
- q) the performance of official duties with bias and prejudice based on race, colour, sex, religion, ethnic origin, nationality, sexual orientation or social and economic status of the party;
- r) violating the principles of the Code of Ethics for Judges, in a way that compromises the reputation and integrity of the judiciary, and not prescribed by this Article as a separate offence;
- s) accepting a gift or reward whose purpose is to inappropriately influence the judge's decisions or actions, including cases where the gift or reward only give an impression of inappropriate influence.

In addition to the offences referred above, court president shall also be held liable for the following disciplinary offences:

- a) violating regulations governing the management of the court and court administration;
- b) violating a regulation or decision on the assignment of cases, directly or by failing to carry out supervision;
- c) failure to file a disciplinary complaint against a judge of the same court despite having information on the judge's misconduct;
- d) failure to provide to the Council any information he or she is required to provide as court president under this Law.

It should be noted that disciplinary offences were amended in September of 2023. Notable deleted offences include "neglect or careless exercise of official duties" and "issuing decisions in patent violation of the law or persistent and unjustified violation of procedural rules".

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

Formal grounds are clearly defined, but also there is a provision "*violating the principles of the Code of Ethics for Judges, in a way that compromises the reputation and integrity of the judiciary*", that may leave room for broader interpretation and application.

13. **Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?**

No.

14. **Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?**

The Office of the Disciplinary Counsel shall conduct a preliminary check of the allegations of a complaint and may dismiss a complaint without conducting a preliminary check or subsequent to a preliminary check in the event that the following is established:

- a) That the complaint falls outside of Council competences;
- b) That the complaint does not refer to conduct or behavior that represents a disciplinary violation;
- c) That the alleged violation of office of judge or prosecutor is insignificant;
- d) That statute of limitations have come into effect regarding the initiation or conduct of disciplinary proceedings;
- e) That the complaint has been filed as an attempt to inappropriately influence a procedure that is underway before a court or prosecutors office;
- f) That the complaint is illegible;
- g) That a decision has been previously passed on the same matter.

In the event that a complaint is dismissed without conducting a preliminary check or subsequent to a preliminary check, the Office of the Disciplinary Counsel shall deliver written notice of the reasons for the dismissal of the complaint to the complainant.

If it is found that there is a reasonable basis for believing that the judge/prosecutor committed a disciplinary offense, the Office of the Disciplinary Counsel will initiate investigation. Within the investigation, a disciplinary counsel may:

- a) Seek from any physical or legal person or institution or organization any documents or other information he or she deems necessary in order to properly render a decision;
- b) Question the person who filed a complaint, the judge or prosecutor against whom an investigation is held and or any other person who may provide beneficial information. The Office of the Disciplinary Counsel shall ensure that a judge or prosecutor is familiar with the nature of the allegations against him or her, while during questioning a judge or prosecutor may have a legal proxy;
- c) Undertake any other action her or she deems necessary for rendering a final decision.

After the conclusion of an investigation, the Office of the Disciplinary Counsel shall determine whether there is sufficient evidence on the perpetration of a disciplinary violation.

The Office of the Disciplinary Counsel shall dismiss a complaint if subsequent to an investigation it determines there is insufficient evidence on the disciplinary violation that was committed. The Office of the Disciplinary Counsel shall inform the HJPC of a decision, as well as the complainant and the judge or prosecutor if either were questioned or if they

were otherwise informed of the allegations of the complaint by the Office of the Disciplinary Counsel.

When informing the complainant, the Office of the Disciplinary Counsel shall elaborate the reasons for rendering a decision to dismiss the complaint.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

Disciplinary proceedings is initiated by the Office of the Disciplinary Counsel by filing a disciplinary action with the first instance disciplinary panel.

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

There are different phases in disciplinary proceedings.

The first phase is an investigation, as explained above.

The second phase is a filing a disciplinary complaint with the first instance disciplinary panel. In that case, the Council shall deliver a disciplinary complaint to the judge or the prosecutor against whom disciplinary proceedings are being held before a first instance disciplinary panel, together with all accompanying attachments personally in accordance with the provisions on delivery of the Civil Procedure Code. A judge or a prosecutor against whom disciplinary proceedings are held or his or her legal proxy may respond in writing to the Council regarding the allegations of a disciplinary complaint or provide an oral statement on record within 15 days of the delivery of the disciplinary complaint. The first instance disciplinary panel shall deliver a copy of the written response and/or the oral statement as recorded in writing together with all accompanying attachments to the Office of the Disciplinary Counsel within three days of receipt of the response.

After the expiry of the deadline for response, the chairperson of the panel shall set a preliminary hearing within a period of 15 days. At the preliminary hearing the Panel shall decide on what shall be deliberated at the main hearing and the date of the main hearing. A main hearing shall, generally, be held at latest within 15 days of the holding of the preliminary hearing.

The third phase is the decision making phase. Decisions of the first instance disciplinary panel are rendered by a majority vote of panel members and must be made in writing within 15 days of the conclusion of the main hearing. A decision shall determine whether a judge or prosecutor is accountable for a disciplinary violation and if so, the sanction rendered. Such decision shall include:

- a) A description of the case and the names of the parties;
- b) The list of established and dismissed disciplinary violations;
- c) An overview of evidence presented, facts established and legal conclusions;
- d) Elaboration of the measures pronounced.

17. **Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.**

There are mandatory and discretionary circumstances in which judge can be suspended.

Mandatory Suspension - A judge or prosecutor who is being held in pre-trial confinement shall be suspended from duty. Such suspension shall last for the same length of time as the person's pre-trial confinement. The suspension may be extended even if the judge or prosecutor is released from pre-trial confinement.

Discretionary Suspension - A judge or prosecutor may be suspended from duty:

- a) if a criminal investigation is initiated against the judge or prosecutor;
- b) if an indictment for a criminal act is brought by a competent prosecutor;
- c) if a procedure for his or her dismissal has been initiated;
- d) if a disciplinary proceeding has been initiated for a disciplinary violation, and the Council determines that disciplinary liability cannot be properly adjudicated without suspension of the judge or prosecutor during the proceedings;
- e) or if the performance of official functions is impaired because of his or her mental, emotional, or physical condition.

The First Instance Disciplinary Panel of the HJPC may suspend a judge or a prosecutor upon its own initiative, upon the request of the Office of Disciplinary Counsel, or upon the request of the Court President or the Chief Prosecutor who has authority over the judge or prosecutor in question.

All appeals on decisions relating to suspensions shall be made to the Second Instance Disciplinary Panel of the HJPC and the decision of the Second Instance Disciplinary Panel may be contested by filing a complaint with the Court of Bosnia and Herzegovina.

The suspension of a judge or prosecutor may be ordered for any period not to exceed the date of the finalisation of the disciplinary proceedings which form the basis of the suspension.

The First Instance Disciplinary Panel may, at its discretion, review a suspension of a judge or prosecutor, and may after such review amend, annul or affirm such suspension.

18. **What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?**

Disciplinary procedures shall be governed by fairness and transparency. During the course of disciplinary proceedings, the judge or prosecutor concerned shall have the following rights that must be guaranteed in the Rules of Procedure for disciplinary proceedings adopted by the HJPC:

- (a) the right to be duly notified of the allegations of the violation and the supporting evidence, along with the right to respond in writing or to have a verbal statement recorded in writing;
- (b) the right to a fair and public hearing within a reasonable time by an independent and impartial panel established by law. The press and public may be excluded from all or part of the hearing in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life

- of the parties so require, or to the extent strictly necessary in the opinion of the panel in special circumstances where publicity would prejudice the interests of justice;
- (c) the right to assert the privilege against self-incrimination and to appear at any hearing and defend against the allegations with legal counsel of choice;
- (d) the right that judgments shall be pronounced publicly and/or made public in some manner; and
- (e) the right to appeal adverse decisions.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

The principle of presumption of innocence applies to all judges until proven guilty. The burden of proof lies with the Office of the Disciplinary Counsel.

For a disciplinary offense and lead to a complaint for violation of provisions of the Law in regard to submitting declaration of assets and interests, notwithstanding the rules of disciplinary procedure prescribed by the Law, it shall be up to the judge subject to the disciplinary procedure to prove or explain the contrary. This burden of proof shall apply exclusively to disciplinary proceedings resulting from the declaration verification process and may not be used in any other proceedings, especially not in criminal proceedings.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

Time limits to start proceedings

Disciplinary proceedings against a judge, a prosecutor or a Council Member may not be initiated:

- a) upon the expiry of two years from the date of filing the complaint, or from the date the Office of the Disciplinary Counsel learnt of the offence;
- b) upon the expiry of five years from the date of commission of the alleged offence, or in case of a criminal procedure, upon the expiry of one year following the finality of the decision in those proceedings, whichever of the two deadlines occurs later.

Statute of limitations for initiating disciplinary proceedings for disciplinary offences of a lasting nature shall commence at the time when the unlawful state ends.

Time limits to conclude proceedings

As Law prescribes - Proceedings for determining disciplinary liability must be completed within one year from the date of the filing of a formal complaint before a disciplinary panel, unless upon a showing of cause that an extension is justified.

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

There are different phases and possibilities to appeal.

Appeals from the decisions of the First Instance Disciplinary Panel are decided by the Second Instance Disciplinary Panel, which is composed of three (3) members of the Council. The Second Instance Disciplinary Panel may confirm, reject or alter the decision of or disciplinary measures imposed by the First Instance Disciplinary Panel.

An appeal to the whole HJPC is possible against a disciplinary measure determined by the Second Instance Disciplinary Panel. A decision of the second instance disciplinary panel may only be contested regarding the disciplinary measure pronounced. If the Council does not confirm the measure of removal, the Council may impose any other measure provided for by the Law. The Council decides on an appeal at its session and the decision of the Council is final.

A judge or prosecutor who has been removed by decision of the Council may appeal to the Court of Bosnia and Herzegovina on one or both of following grounds only:

- (c) that the Council, during the disciplinary proceedings which led to the decision to impose the measure of removal, materially violated the procedures set out in the Law;
- (d) that the Council, during the disciplinary proceedings which led to the decision to impose the measure of removal, erroneously applied the law.

Any appeal must be received by the Court of Bosnia and Herzegovina within three (3) weeks of the date of the receipt by the judge or prosecutor of the decision of the Council. Appeals made after that date shall be rejected by the Court of Bosnia and Herzegovina in a summary procedure.

22. **Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.**

Criminal liability and liability for a misdemeanour do not exclude the disciplinary liability of the part of the judge.

23. **What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?**

There are different phases and possibilities to appeal, as it is explained above.

Appeals from the decisions of the First Instance Disciplinary Panel are decided by the Second Instance Disciplinary Panel that may confirm, reject or alter the decision of or disciplinary measures imposed by the First Instance Disciplinary Panel.

An appeal to the whole HJPC is possible against a disciplinary measure determined by the Second Instance Disciplinary Panel. A decision may only be contested regarding the disciplinary measure pronounced. If the Council does not confirm the measure of removal, the Council may impose any other measure provided for by the Law. The Council decides on an appeal at its session and the decision of the Council is final.

A judge or prosecutor who has been removed by decision of the Council may appeal to the Court of Bosnia and Herzegovina on one or both of following grounds only:

- (a) that the Council, during the disciplinary proceedings which led to the decision to impose the measure of removal, materially violated the procedures set out in the Law;
- (b) that the Council, during the disciplinary proceedings which led to the decision to impose the measure of removal, erroneously applied the law.

Any appeal must be received by the Court of Bosnia and Herzegovina within three (3) weeks of the date of the receipt by the judge or prosecutor of the decision of the Council. Appeals made after that date shall be rejected by the Court of Bosnia and Herzegovina in a summary procedure.

24. Can a judge participate in the disciplinary hearings at the appeal stage?

Judge can participate at any stage of the procedure.

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

A decision of the First Instance Disciplinary Panel may be contested:

- a) due to violation of the rules of procedures that may have had an influence on the rendering of a legal and correct decision;
- b) due to incorrectly or incompletely determined state of facts;
- c) due to the incorrect application of substantive law;
- d) against a decision on the disciplinary measure that was rendered.

The second instance disciplinary panel accordingly applies the rules and procedures as determined with the Rules of Procedure for first instance disciplinary proceedings and it renders its decisions at sessions or on the basis of hearings held in accordance with the Civil Procedure Code.

An appeal to the HJPC (third instance) is possible only against a disciplinary measure determined by the Second Instance Disciplinary Panel.

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

In the appeal phase, all the grounds on which the appeal can be filed are reviewed, as explained in response to the previous question.

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

A Judge may appeal to the whole HJPC against a decision of a second instance disciplinary panel but only regarding the disciplinary measure pronounced.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

Yes.

V. Disciplinary sanctions against judges

29. **As regards the disciplinary sanctions against judges, please briefly describe the following:**

- **is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;**

Yes and they are as follow:

- (a) A written warning which shall not be made public;
- (b) Public reprimand;
- (c) Reduction in salary up to a maximum of 50% (fifty per cent) for a period of up to one (1) year;
- (d) Temporary or permanent reassignment to another court or prosecutor's office;
- (e) Demotion of a Court President to an ordinary judge or the Chief Prosecutor or Deputy Chief Prosecutor to an ordinary prosecutor;
- (f) Removal from office.

As a separate measure, instead of or in addition to any of the disciplinary measures set out above, the Council may, if appropriate, order that a judge or prosecutor participate in rehabilitation programmes, counselling, or professional training.

- **is it clearly defined in such a legal text which disciplinary sanction applies in which case;**

Not by cases.

- **or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.**

There is an article of the Law that considers *Principles for Determining Measures*, dealing with mitigating and aggravating circumstances.

30. **In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?**

The principle of proportionality should be applied to all imposed disciplinary measures.

31. **In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?**

Disciplinary measures imposed should be governed by the principle of proportionality. Before pronouncing the measures for a disciplinary offence, the following aspects shall be taken into consideration by the Disciplinary Panels:

- (a) the number and severity of the disciplinary offence committed and its consequences;
- (b) the degree of responsibility;
- (c) the circumstances under which the disciplinary offence was committed;

- (d) the previous work and behaviour of the offender; and
- (e) any other circumstances that may affect the decision on the severity and type of disciplinary measure, including the degree of remorse and/or cooperation shown by the judge or prosecutor during the disciplinary proceedings.

The disciplinary measure of dismissal shall only be used in cases where a serious disciplinary offence is found and the severity of the offence makes it clear that the offender is unfit or unworthy to continue to hold his or her office.

The Council may take into account any prior suspension, imposed in the course of the proceedings in question, and may reduce the disciplinary measure accordingly, or may, at its discretion, determine that the prior suspension is itself a sufficient measure for the disciplinary violation or violations found.

32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

Not per se. But provisions of the Law proscribes that "*a judge or prosecutor shall not be prosecuted, arrested, or detained, nor be subject to civil liability for opinions expressed or decisions taken within the scope of official duties*" should be taken in account when considering disciplinary liability.

As mentioned above, previous disciplinary offence "*issuing decisions in patent violation of the law or persistent and unjustified violation of procedural rules*" was erased by last year's amendments of the Law.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

Not at the moment.

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

N/A

35. What is your own general opinion on vetting (advantages and disadvantages)?

If it is necessary, I have nothing against it.

36. **In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is not about ordinary civil, administrative or criminal liability.**

No.

37. **In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?**

N/A

38. **What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?**

N/A

39. **What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?**

N/A

40. **Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?**

N/A

41. **Can a judge appeal against an unfavourable decision of such a body?**

N/A

VII. Problems and challenges

42. **Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?**

Uneven practices of disciplinary bodies.

43. **If so, what kind of solutions can you suggest for overcoming these problems or challenges?**

Consistent application of Law, Rulebook and guidelines.

Bulgaria / Bulgarie

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

Constitution, Law (Judiciary System Act), Code (Code of Ethics for Behaviour of Bulgarian Judges), Internal Rules for Disciplinary Activity of the Judges College of the Supreme Judicial Council (SJC)

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?

Yes - Internal Rules for Disciplinary Activity of the Judges College of the Supreme Judicial Council (adopted by 30.03.21 Decision of the Judges College of the SJC); Code of Ethics for Behaviour of Bulgarian Judges (adopted pursuant to Art.30 (2) p.23 of Judiciary System Act by 24.10.23 decision of the Judges College of the SJC, approved by 30.10.23 decision of the SJC)

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

Yes. As a rule the SJC gives opinions to the government and the parliament on drafts concerning the judiciary; so does the Plenary of the Supreme Court of Cassation, the Supreme Administrative Court; judges participate in different working groups in the framework of discussions on drafts. The Internal Rules for Disciplinary Activity of the Judges College of the Supreme Judicial Council are adopted by the Judges College of the SJC; The Code of Ethics for Behaviour of Bulgarian Judges is adopted by the Judges College of the SJC and approved by the SJC.

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

Judges College of the SJC is the body to be addressed with proposal for initiation of disciplinary proceedings against a judge, administrative head of a court and deputy administrative head by those entitled to bring a proposal for the purpose of initiating disciplinary proceedings. This body is the competent authority to impose sanctions „reduction of the basic labour remuneration by 10 to 20 per cent for a period of six months to one year“, „demotion in rank for a period of six months to one year“, „demotion in position for a period of six months to one year“, „release from office as an administrative head or deputy administrative head“, „release from office on disciplinary grounds“. Another competent to impose disciplinary sanctions authority is the administrative head of the court – who can impose disciplinary sanction „reprimand“.

However, in principle, proposals and signals can be submitted to the SJC, the Inspectorate to the SJC, the administrative heads of the courts, the professional ethics commissions in the courts, the Minister of justice. There are special provisions regulating the procedure for their processing and further examination – including in cases where there is information about private interest of a judge in the performance of their specific official functions or about actions that contradict the principles of integrity, damage the prestige of the judiciary or are related to a violation of the independence of judges (Internal regulations for the organization of the work with proposals and signals lodged with the SJC; Internal regulations to perform integrity and conflict of interest checks and to establish actions damaging the prestige of the judiciary, and checks related to violations of the independence of judges, prosecutors and investigators by teams of the Inspectorate at the SJC; Rules for the organization and activity of the professional ethics commissions in the courts; Judiciary System Act (Art.175I)). A publication in the mass media is also accepted as a signal, if it meets certain requirements for content. If as a result of processing such complaints it turns out that there are grounds for disciplinary liability of a judge, the relevant authority shall undertake the necessary steps to refer the information to a competent to initiate disciplinary proceedings authority or, if it is such, to initiate them.

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details

Disciplinary proceedings shall be instituted by an order or, respectively, by a decision of the sanctioning authority within six months from the discovery, but not later than three years from the commission of the breach; the six-month period starts from the knowledge of the violation by one of the bodies and persons who are entitled to lodge a proposal for initiation of disciplinary proceedings, is not interrupted and does not flow separately for each of them.

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

Yes. A proposal for the imposition of a disciplinary sanction on a judge, administrative head or a deputy of an administrative head can be brought to the Judges College of the SJC by the respective administrative head, any higher-standing administrative head, the Inspectorate at the Supreme Judicial Council, no less than one-fifth of the Supreme Judicial Council members, the Minister of Justice.

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

No

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

No. The Judges College of the SJC checks the prerequisites for the admissibility of the proposal to initiate disciplinary proceedings, including the competence of the body that made the proposal; disciplinary proceedings are not initiated if the proposal is made by a person or body that is not authorized by Judiciary System Act with such authority. However, complaints can be lodged with those authorized (ex. administrative heads of courts, Inspectorate to SJC, etc.) who can thereafter initiate disciplinary proceedings in case they

consider that there are grounds for engaging judges' disciplinary liability (see answer to question N.4). The administrative head of the court can impose sanction „reprimand“ by a motivated order; if in the course of the disciplinary proceedings it is established that there are grounds for the imposition of other sanctions, the administrative head shall make a motivated proposal for the imposition of the sanction to the Judges College of the SJC.

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

Disciplinary sanctions can be imposed by the administrative head of the respective court – with regard to sanction „reprimand“, and by the Judges College of the SJC – with regard to the other sanctions. The Judges College functions in different formations that perform different functions: disciplinary panel of the Judges College of SJC – body with investigative functions; Judges College of SJC – body with decision-making powers.

After the initiation of the disciplinary proceedings a disciplinary panel is determined - Judges College of SJC, based on the principle of random selection for the allocation of cases, appoints a three-member disciplinary panel from among its members and a chairman of the panel, who is also a reporter. The panel shall clarify the facts and circumstances of the disciplinary case; it may collect evidence (oral, written, physical) - at the request of the parties and/or ex officio, as well as hear experts. All evidence collected is checked and assessed by the disciplinary panel. It holds an open hearing, Once the facts and circumstances relevant to the case have been clarified, the disciplinary panel issues a reasoned decision expressing an opinion on the factual circumstances and their legal qualification, making one of the following proposals: to impose disciplinary sanction (including the type and, accordingly, the amount of the sanction); not to impose disciplinary sanction; to terminate the proceedings (in cases prescribed by law).

The decision to impose or not to impose disciplinary sanction and its determination (type/amount) is taken by the Judges College of the SJC.

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

The disciplinary panel is determined by Judges College decision, based on the principle of random selection for the allocation of cases, and consists of 3 members.

The person subject to disciplinary action may request the removal of a member of the disciplinary panel, giving rise to reasonable doubts about their impartiality and personal disinterest; upon the request for removal, the relevant member of the disciplinary panel shall issue a written act, which shall be submitted to a meeting of the Judges College for review; when the request for recusal is granted or a member of the disciplinary panel recuses himself/herself, the judicial panel of the SJC elects a new member of the disciplinary panel, The Judges College decision on the imposition/non imposition of disciplinary sanction can be appealed against before a court.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

The disciplinary breach is defined as a culpable failure to discharge official duties, as well as damaging the prestige of the Judiciary. The disciplinary breaches are set in the Judiciary System Act as follows:

1. any systematic failure to keep the deadlines provided for in the procedural laws;
2. any act or omission that unjustifiably delays the proceedings;
3. any act or omission, including a breach of the Code of Ethical Behaviour of Bulgarian Magistrates, which damages the prestige of the Judiciary;
4. any failure to discharge other official duties.

The Internal Rules for Disciplinary Activity of the Judges College of the SJC give instructions about the interpretation of the abovementioned formal grounds for initiation of disciplinary proceedings and the assessment of the circumstances related to the severity of the disciplinary breaches.

The Code of Ethics for Behaviour of Bulgarian Judges contains detailed rules of ethical behaviour arising from the principles (independence, impartiality, justice, honesty, decency, competence and qualification, confidentiality), establishing the standards and outlining the framework regulating judges' conduct in and out of office.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

Yes, they are clearly defined (see answer to question №.11)

13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

No, there aren't any other grounds. Yes, the principle of *nulla poena sine lege praevia* applies.

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

The importers of proposals to the Judges College of the SJC assess whether there is any merit in a complaint submitted to them and if the answer is positive, lodge the proposals to the Judges College of the SJC.

The proposal to initiate disciplinary proceeding shall have certain content (names, position and signature of the importer; names and position of the person concerned; statement of the factual circumstances, which are claimed to constitute culpable failure to discharge official duties; indication of the alleged disciplinary breach, as well as legal qualification; a request to impose a disciplinary sanction) and applications. If it doesn't meet the requirements established, the Judges College of the SJC informs the importers to correct the irregularities. If they fail to do so, the proposal shall be rejected.

The Judges College of the SJC also checks the prerequisites for the admissibility of the proposal: competence of the body that made the proposal; if there is no effective administrative act for the dismissal of the person whose disciplinary sanction is sought; if there is no valid disciplinary act for this breach; absence of another disciplinary proceedings with the same subject matter, before the same authority and between the same parties (regardless of whether they are in the phase of adoption of a decision by the Judges College

or a challenge before the court); compliance with the deadlines for the institution of disciplinary proceedings. Disciplinary proceedings are not instituted when: the proposal is made by a person or body that is not authorized by law with such authority; one of the deadlines has expired; a disciplinary sanction has already been imposed on the same judge, administrative head of a court or deputy administrative head for the same breach; there are other disciplinary proceedings with the same subject, before the same authority and between the same parties (regardless of whether they are in the phase of adoption of a decision by the Judges College or a challenge before the court); the person to whom the proposal refers was dismissed from office before the institution of the disciplinary proceedings or died. When a circumstance of the abovementioned is established in the course of the disciplinary proceedings, they are terminated.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

Submission of a proposal to the Judges College of the SJC by respective administrative head, any higher-standing administrative head, the Inspectorate at the SJC, no less than one-fifth of the SJC members, the Minister of Justice.

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

Yes: investigative phase - disciplinary panel of the Judges College of the SJC (collects evidence and clarifies facts); consideration phase – disciplinary panel of the Judges College of the SJC (assesses evidence, issues a reasoned decision expressing an opinion on the factual circumstances and their legal qualification, proposes result – imposition of sanction and its type/amount, non-imposition, termination of the proceedings); decision-making phase - Judges College of the SJC (collects evidence if requested, assesses the evidence, adopts a decision to impose a disciplinary sanction); judicial phase – Supreme Administrative Court (decides upon appeal against Judges College decision - a three-member panel of the Supreme Administrative Court issues a judgment, which could be appealed against before a five-member panel of the Supreme Administrative Court, whose judgment is final).

As far as disciplinary sanction „reprimand“ is concerned, the administrative head shall notify the Judges College of the SJC of the sanction imposed, transmitting thereto the case file and the order for the imposition immediately after the said order has been served on the person held liable for a breach of discipline. Within one month from the receipt of the order the Judges College of the SJC may confirm or revoke the sanction imposed. When it considers that there is a reason to replace the sanction with a more severe one, the proceedings continue as such instituted upon administrative head’s proposal and the decision of Judicial College of the SJC (as well as the decision confirming the administrative head’s order for imposition of the sanction „reprimand“) can be appealed against before the Supreme Administrative Court as already indicated above.

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details

No.

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

The judge subject to disciplinary proceedings: may request the removal of a member of the disciplinary panel (in the presence of grounds for recusal prescribed by law); shall be notified for all actions undertaken not during the hearings of the disciplinary panel; has the right to be represented and assisted by a lawyer or another judge designated by him/her; is provided with the opportunity to review the documents in the case file, to make notes, extracts or copies at any time during the disciplinary proceedings, to express their opinion on the evidence collected and the requests, to make written requests and objections, and to point evidence; shall be notified no later than 7 days before the date of the disciplinary panel hearing; shall be summoned with a copy of the disciplinary panel decision and the written evidence enclosed and be notified about the Judicial College hearing at which the decision will be examined; has the right, within 7 days period, to submit written observation and to point evidence, which could be collected by the Judges College; has the right to be heard in person or through a representative by the Judicial College or to give written explanations before the adoption of its decision; shall be served with a transcript-excerpt from the full minutes of the hearing in the relevant part if the examination of the disciplinary case has not been completed in one hearing; shall be immediately informed about Judges College decision and is entitled to appeal against it before the Supreme Administrative Court (the case is examined by a three-member panel, whose judgment can be appealed against before a five-member panel). If the judge held liable for a breach of discipline has not been heard or the written explanations thereof have not been requested, the court shall revoke the disciplinary sanction imposed without examining the case on the merits, unless the judge has refused to give explanations or to be heard.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

The presumption of innocence is applicable on a general basis in the course of the disciplinary proceedings - the alleged violations must be established and proven; until the entry into force of the decision for the imposition of the disciplinary sanction, the judges subject to the proceedings are considered innocent of committing the disciplinary breach.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

No, but there is an obligation of the disciplinary panel to take the necessary measures to examine the case within a reasonable time. In addition there are fixed time limits within which the different bodies engaged in the procedure and the judge shall act on certain stages of the proceedings (the president of the disciplinary panel shall schedule the first hearing within 7-days period from the institution of the disciplinary proceedings, the judge shall submit observations and point evidence within 7 days from the notification; the disciplinary panel shall adopt a decision establishing the facts to be proven, expressing an opinion regarding the circumstances and the legal basis for imposing a disciplinary sanction and proposing the type and amount of the sanction within 14 days from the last hearing; the decision abovementioned shall be communicated to the President of the Judges College of the SJC within 3 days and the college shall examine it within 30 days). The appeal to the

three-member panel of the Supreme Administrative Court shall be examined within two months of its receipt in court; the judgment of the three-member panel is subject to a cassation appeal before a five-member panel of the Supreme Administrative Court within 14 days of the notification and the five-member panel shall examine the case within two months from the receipt of the cassation appeal (Art 323 JSA).

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

The final decision is taken by the Judges College of the SJC. The decision to impose a disciplinary sanction shall be adopted by a majority of not less than eight votes (out of 14). In case the necessary majority is lacking, it is considered that there is a decision to reject the proposal. That decision, as well as the decision to impose a penalty, can be reviewed by the Supreme Administrative Court upon appeal.

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

Yes, the disciplinary proceedings shall be suspended if: during the proceedings criminal circumstances are revealed, the establishment of which is important for the issuance of the act; the Constitutional Court has allowed consideration of the merits of a request challenging the constitutionality of an applicable law; there are administrative or judicial proceedings pending, when the decision cannot be issued before their completion.

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

The judge can appeal against the decision before a three-member panel of the Supreme Administrative Court; the judgment of the latter can be appealed against before a five-member panel of the same court. The appeal does not suspend the execution unless the Supreme Administrative Court decides otherwise.

24. Can a judge participate in the disciplinary hearings at the appeal stage?

Yes.

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

The Supreme Administrative Court holds a public hearing and assesses the facts and the law.

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

Yes – the appeal phase concerns the decision on judge's disciplinary liability and the specific sanction imposed, but the latter cannot be replaced by the court.

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

Yes, the judge can appeal against the judgment of the three-member panel of the Supreme Administrative Court before a five-member panel of the same court – lodging a cassation appeal.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

Yes.

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:

- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text

Yes – Art.308 para 1 of the Judiciary System Act provides that the disciplinary sanctions are: „reprimand“; „reduction of the basic labour remuneration by 10 to 20 per cent for a period of six months to one year“; „demotion in rank for a period of six months to one year“; „demotion in position for a period of six months to one year“; „release from office as an administrative head or deputy administrative head“; „release from office on disciplinary grounds“.

- is it clearly defined in such a legal text which disciplinary sanction applies in which case

Article 308 para 3 of the Judiciary System Act provides that the disciplinary sanction „release from office on disciplinary grounds“ shall be imposed in two cases - for a systematic failure to discharge, or another serious breach of, the official duties and for actions damaging the prestige of the Judiciary (only one disciplinary sanction shall be imposed for one and the same breach of discipline - Art.308 para 4 Judiciary System Act).

- or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions

The decision-making body may choose and impose sanction according to the circumstances of the case, observing the abovementioned requirements when imposing sanction „release from office on disciplinary grounds“.

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

Yes. When determining the disciplinary sanction, the gravity of the breach, the form of guilt, the circumstances in which the breach was committed, and the behaviour of the offender shall be taken into consideration. When determining the type and amount of disciplinary sanction for disciplinary breaches „systematic failure to keep the deadlines provided for in the procedural laws“ and „act or omission that unjustifiably delays the proceedings“, the

individual workload of the judge brought to disciplinary liability, as well as the workload of the judicial authority in which the breach was committed, are also taken into account.

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

Article 308 para 3 of the Judiciary System Act provides that the disciplinary sanction „release from office on disciplinary grounds“ shall be imposed in two cases - for a systematic failure to discharge, or another serious breach of, the official duties and for actions damaging the prestige of the Judiciary. Besides only one disciplinary sanction shall be imposed for one and the same breach of discipline (Art.308 para 4 Judiciary System Act). The decision-making body may choose and impose sanction observing the abovementioned requirements when imposing sanction „release from office on disciplinary grounds“, The proportionality of the sanction to the gravity of the breach is taken into consideration in each case according to the circumstances of the case - all facts and circumstances must be considered, including the individual position of the judge and his/her duties in the judiciary.

32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

According to Art.132 of the Constitution when exercising the judicial function, the judges, prosecutors and investigating magistrates shall bear no civil or criminal liability for their official actions or for the acts rendered by them, except where the act performed constitutes an indictable intentional offence. As regards disciplinary liability, the grounds for imposing disciplinary sanctions are set forth in law and the reversal of an act does not fall within them.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

No

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

See answer to question №.33.

35. What is your own general opinion on vetting (advantages and disadvantages)?

See answer to question №.33.

36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability.

No.

37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?

See answer to questions №.33 and №.36.

38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?

See answer to questions №.33 and №.36.

39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?

See answer to questions №.33 and №.36.

40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?

See answer to questions №.33 and №.36.

41. Can a judge appeal against an unfavourable decision of such a body?

See answer to questions №.33 and №.36.

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

The grounds for liability, the disciplinary proceedings and the sanctions applied have detailed regulation; access to court is also provided. As a principle in all cases when disciplinary liability of judges is engaged, the competent authorities shall carefully assess the gravity of the breach and the corresponding adverse consequences on the one hand and the severity of the sanction on the other. The imposition of a proportionate sanction and equal resolution of similar cases is important both for respect for judges' rights and for the prestige of the judiciary in view of its role in the democratic society.

43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?
- see answer to question №.42.

Croatia / Croatie

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

Both, principles are in the Constitution and procedures, offences, measures and penalties and remedies are in the Law on State Judicial Council (LSJC)

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?

No

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

Yes. In the process of preparation of the law it is obligatory to send the law to the General Assembly of the Supreme Court which gives opinion on the law and its amendments but such opinion is not binding. Also even not in the law Ministry of Justice traditionally includes representatives of the Association of Judges and representatives of judiciary in the process of drafting Law.

Also it is obligatory to facilitate on line public debate on any new law so citizens but judges as well and NGO-s can give their remarks and suggestions in regard to proposed new law.

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

Presidents of Courts, Council of Judges and Ministry of Justice because only they are allowed to initiate disciplinary proceedings (president of court where judge serves, president of higher court, president of Supreme Court and Minister of Justice)

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

Complaint as such is not bound with any time limits, but LSJC prescribes statute of limitations in a way that disciplinary procedure cannot be initiated after one year after a person knows that offence is committed (subjective period) and three years after offence has been committed (objective period)

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

Complaint is not formally an act needed to initiate disciplinary proceeding but can and usually is source of information for those who are entitled to initiate proceedings. (see answer 4.) Usually persons who have legitimate interest in particular proceedings are entitled to lodge complaint but others are not excluded if circumstances are such (i.e. judge behaves improperly in public)

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

Yes. It hears appeals on decisions of HSJC.

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

Those who can lodge the complaint can also ask for disciplinary proceedings to be initiated, but such request is not obligatory and does not need to be formally answered.

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

No.

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

As proceedings can be initiated only by presidents of courts, Council of judges, who are appointed also by HSJC, and only members of HSJC decide on disciplinary issues independence is guaranteed.

Only problematic could be right of the Minister of Justice to initiate disciplinary proceedings, but so far in last 33 years it happened only once that Minister took this right.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

- 1. improper performance of judicial duties,**
- 2. failure to act on the decision made in the procedure for the protection of the right to a trial within a reasonable time,**
- 3. holding office, jobs or activities incompatible with judicial duties,**
- 4. causing disturbances in the work of the court that significantly affect the operation of the judicial authority,**

- 5. violation of official secrecy in connection with the exercise of judicial duties,
- 6. causing damage to the reputation of the court or the duties of a judge in another way,
- 7. failure to submit a property card or untruthful presentation of data in the property card.
- 8. failure to submit to judgments of physical and mental characteristics in order to assess the ability to perform the duties of a judge,
- 10. violation of regulations on personal data protection.

(3) Disciplinary proceedings for the disciplinary offense referred to in paragraph 2, point 1 of this article shall be initiated in particular:

- 1. if the judge does not prepare and send court decisions without a valid reason,
- 2. if the panel of judges assessed the work of the judge as unsatisfactorily performing his duties,
- 3. if, without justifiable reason, the number of decisions made by a judge in a one-year period is less than the number determined by the Framework Standards for the Work of Judges,
- 4. if the judge, in resolving cases, deviates from the order in which they are received in the court without justifiable reason, i.e. does not take into account their urgency,
- 5. if without justifiable reason due to failure to take procedural actions in the court case the statute of limitations occurs.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

As it can be seen from answer above some of them are precise enough, some are not and it is left to case law to establish firm criteria.

13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

NO. Nulum crimen sine lege principle applies as well.

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

For disciplinary procedures, the Council can appoint a special disciplinary council (three members of the HSJC) that will conduct the procedure, determine the facts and explain the established facts before the Council if full sitting- 11 members, 7 judges, 2 professors of law, 2 members of the parliament, one always from opposition. . Two members of the Disciplinary Council must be judges, and the President of the Disciplinary Council must be at least a judge of the same level as the judge against whom disciplinary proceedings are being conducted.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

President of court initiates it with request formally similar to criminal procedures, because those principles apply in disciplinary proceedings as well. See answer under 14.

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

For disciplinary proceedings, the Council can, appoint an investigative commission from among the judges of regular or specialized courts, which will establish the facts and explain them during the proceedings before the Council.

If there is a well-founded suspicion that a judge has committed a disciplinary offense, the president of the court is obliged to initiate disciplinary proceedings against that judge.

The disciplinary procedure may also be initiated by the minister responsible for judicial affairs, the president of the immediately higher court, the president of the Supreme Court of the Republic of Croatia and the Council of Judges (special body elected only by judges, at level of courts of appeal which evaluates judges and decide on breaches of code of ethic- similar ot personal senat in Austria).

The authorized prosecutor (presidents of courts, Minister, president of Council of Judges, is a party to the proceedings, and may be represented by a person authorized by him for that purpose.

Immediately after receiving the request, the Council can appoint an investigative commission from among the judges of regular or specialized courts in order to determine the facts necessary for making a decision to initiate disciplinary proceedings.

At the beginning of each calendar year, the Council determines the list of judges of regular and specialized courts who will carry out the those actions

The request for conducting disciplinary proceedings is submitted in writing and contains personal information about the judge whose disciplinary responsibility is sought, a factual and legal description of the disciplinary offense, a proposal for imposing a certain disciplinary penalty, and an explanation from which the grounds for suspicion arise.

If the council has appointed an investigative commission , it will report to the council in writing about the facts and conducted investigations on which the reasonable suspicion is based that the judge or the president of the court has committed a disciplinary offense, and if necessary also orally explain at the discussion.

Disciplinary Council will schedule a hearing within 15 days of receiving the request at the latest. The authorized applicant, the judge and his defense attorney and the president of the competent judicial council, if the judicial council is not the applicant, will be invited to the hearing.

Upon receipt of the request for initiation of disciplinary proceedings, the notified judge will be given the opportunity to present his defense, in person, in writing or through a defense attorney of his choice. If the registered judge does not present his defense, the hearing is conducted in his absence.

The decision determining that the judge is disciplinary liable and imposing a disciplinary penalty may only refer to the disciplinary offense and the person that the applicant indicated in his request.

The decision must be drawn up and sent to the parties within 30 days after its adoption.

The judge has the right to appeal against the decision on dismissal, i.e. disciplinary responsibility, which postpones the execution of the decision.

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

(A)The judge will be removed from duty:

- if criminal proceedings have been initiated against him for a criminal offense punishable by a prison sentence of five years or a heavier sentence, or while he is in custody or pre-trial detention,
- because of a conviction for a criminal offense that makes him unworthy to perform the duties of a judge or
- due to the serious disciplinary offense committed.

(B)A judge may be removed from office:

- if criminal proceedings have been initiated against him for a criminal offense punishable by up to five years in prison,
- if he performs a service, job or activity that is incompatible with the performance of judicial duties,
- if the authorized proposer proposed imposing a disciplinary penalty of dismissal in the request for initiation of disciplinary proceedings.

The request for removal from office shall be submitted to the Council by the president of the court in which the judge holds judicial office, the president of the immediately higher court, the competent judicial council or the president of the Supreme Court of the Republic of Croatia.

The decision on temporary removal must be in writing and with an explanation.

The judge does not have the right to appeal against the decision on temporary removal, but he has the right to initiate an administrative dispute.

When removal from office is not compulsory (under B) decision is brought by HSJC, and if it is compulsory (under A) decision is delivered by President of Court.

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

As mentioned judge has full right to defence, full right to be represented, and right to appeal on all grounds.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

As in criminal proceedings. “Everybody is innocent until proven in the contrary”

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

Yes. Please see answer 5. (one year and 3 years)

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

Final decision is taken by the council in full sitting by voting. Majority is needed (6 votes from 11 members) . Decision is final if there is appeal after decision of Constitutional Court.

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

Disciplinary proceedings do not exclude possible criminal or civil proceedings against judge,

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

Judge has full right to appeal on all grounds, factual, procedural and points of law .Constitutional Court acts as appellate court in this matters.

24. Can a judge participate in the disciplinary hearings at the appeal stage?

Appellate proceedings are heard in camera, parties do not participate.

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

See answer under 23.

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

Constitutional Court cannot amend the decision but on all grounds it can squash the decision and ask for new proceedings and new decision, but standings and findings of CC are binding for the Council

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

Appeal is possible to Constitutional Court.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

Yes.

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:

- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;
- is it clearly defined in such a legal text which disciplinary sanction applies in which case;
- or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.

Disciplinary sanctions are:

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

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

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

The Council will revoke the suspended sentence and determine the execution of the imposed sentence if the disciplinary judge commits one or more disciplinary offenses during the period of review.

A suspended sentence cannot be revoked after one year has passed since the expiration of the probationary period.

When imposing a penalty for a disciplinary offence, the following are taken into account in particular: the severity of the violation and the resulting consequences, the degree of responsibility, the circumstances under which the disciplinary offense was committed, the previous work and behaviour of the judge and other circumstances that affect the imposition of the penalty, and this rule applies to all offences.

When deciding on responsibility and punishment for a disciplinary offense, the provisions of the Criminal Code shall be applied in an appropriate manner.

The State Judicial Council informs the competent judicial council, the president of the court where the judge holds judicial office and the ministry responsible for judicial affairs, which keeps records of the sentences imposed, of the final decision by which the judge is sentenced.

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

Yes. See previous answer (When imposing a penalty for a disciplinary offence, the following are taken into account in particular: the severity of the violation and the resulting consequences, the degree of responsibility, the circumstances under which the disciplinary offense was committed, the previous work and behaviour of the judge and other circumstances that affect the imposition of the penalty, and this rule applies to all offences. When deciding on responsibility and punishment for a disciplinary offense, the provisions of the Criminal Code shall be applied in an appropriate manner.)

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

See previous answers.29 and 30.

32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

Do not apply.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

Fortunately NO.

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

35. What is your own general opinion on vetting (advantages and disadvantages)?

In my opinion vetting after judges have been appointed in accordance to new democratic constitutions is unacceptable because there are no such extraordinary circumstances which justify such measure. If this is a case it shows that no state organ or organization is able, or is incompetent to fight against corruption, and this is unacceptable especially if such measure is taken only against judges, as some quasi discipline proceedings .

36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability.

Yes.

There is proceedings for breach of ethical code which is divided from disciplinary proceedings and responsibility. Principles on which this accountability is formed are:

- code of ethic is delivered by judges,**
- any person can initiate proceedings,**
- about possible breach council of judges decides**
- council of judges is self-government body formed at level of appeal or high courts, consist of 15 members elected by judges,**
- decision on possible ethical accountability can be appealed to ethical panel formed of three judges of Supreme Court.**

37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?

See answer under 36.

38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?

See answer under 36.

39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?

Council of judges, examines the complaint, ask a judge in question to answer it, brings decision after consideration declaring is particular behaviour breach of the Code of ethic, and there is right of a judge or party which asked for decision to appeal.

40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?

No sanctions, just declaration that code has been breached.

41. Can a judge appeal against an unfavourable decision of such a body?

YES, to appeal panel consisted of three judges of Supreme Court, elected by all judges of Supreme Court.

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

Duro Sessa
CCJE Member to Croatia

Cyprus / Chypre

I. Legislation

1. **At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?**

The disciplinary liability of judges in Cyprus is governed by a robust legal framework operating at both the constitutional and statutory levels, ensuring accountability and protection for judges in their official capacities.

The Supreme Council of Judicature (SCJ)¹, comprising all Judges of the Supreme Court (SC), oversees the disciplinary process of judicial officers in the Court of Appeal and the first instance Courts. Article 157 of the Constitution and section 10 of the Administration of Justice Laws (Miscellaneous Provisions) of 1964-2023 delineate the SCJ's responsibilities, which include overseeing the appointment, promotion, transfer, and discipline of judges in both the Court of Appeal and the first instance Courts. Additionally, under Article 157(3), no judicial officer shall be retired or dismissed except on the same grounds and in the same manner as a judge of the Supreme Court. Supreme Court Justices may be dismissed for inappropriate behavior ('misconduct') under Article 153.7(4) of the Constitution and likewise these provisions apply to lower court judges. This constitutional principle ensures consistency and fairness in the treatment of judicial officers within the legal system.

During any session of the SCJ related to the appointment and promotion of a Judge of the Court of Appeal or a Court of first instance, non-voting participants include the Attorney General of the Republic, the President of the Cyprus Bar Association, along with two (2) lawyers of recognized standing and highest professional level. However, in cases related to the transfer or exercise of disciplinary authority over a judge of the Court of Appeal or a court of first instance, the aforementioned non-voting members will not be present.

Furthermore, it is important to note that, effective July 1, 2023, the Supreme Council, composed of the President and Judges of the Supreme Court, exercises its competencies and powers under Article 133.8 of the Constitution. Similarly, the Supreme Council, composed of the President and Judges of the Supreme Constitutional Court, is empowered under Article 153.8 of the Constitution. These Councils function as supervisory bodies, upholding judicial ethics and conduct principles within the Supreme Courts. They are tasked with adjudicating cases of misconduct involving the President and members of the Supreme Courts' judiciary.

¹ Commencing from the 1st of July, 2023, an Appeal Court was established, expanding its jurisdiction to a second tier. Simultaneously, the Supreme Court was split to the new Supreme Court (SC) and the Supreme Constitutional Court (SCC), both serving as the highest courts of third –instance jurisdiction.

2. **Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, Supreme Court or other high judicial body, council for the judiciary and/or other bodies)?**

On the basis of the relevant constitutional provisions as well as the provisions of the Administration of Justice Laws (Miscellaneous Provisions) of 1964 -2023, the Supreme Court issued the Procedural Rules (Regulations) on the Exercise of the Disciplinary Powers of the Supreme Council of Judicature of 2023, which provide the circumstances under which a judge may be subjected to disciplinary proceedings.

The 2023 Procedural Rules outline a detailed procedure to be followed by the Council in exercising its disciplinary powers.

Under Rule 3 of the aforesaid Procedural Rules, whenever the Supreme Court becomes aware, in the exercise of its jurisdiction and powers, or following a complaint, that a Judicial Officer may:

- (a) Be incapacitated,
- (b) Have exhibited inappropriate behavior;
- (c) Have committed a disciplinary offense;

It shall bring to the attention of this Judicial Officer the evidence or allegations in the hands of the Supreme Court and shall seek his/her views within a specified time limit

Furthermore under Rule 2, the term “disciplinary offence” includes refusal, omission, or deviation from judicial duties, as well as severe breaches of the provisions outlined in the Guide on Judicial Conduct.

3. **Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?**

No. See our Answer above.

II. Institutional framework for disciplinary proceedings against judges

4. **What bodies (i.e. council for the judiciary, Supreme Court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?**

As mentioned previously, the Supreme Council of Judicature (the 'SCJ'), which is composed of all the Judges of the Supreme Court among its other responsibilities is specifically entrusted with the discipline of judges of the lower Courts. The relevant disciplinary procedural framework is outlined in the 2023 Procedural Rules, which delineate the procedure followed by the SCJ in exercising its disciplinary powers.

The Council, consisting of the President and Judges of the Supreme Constitutional Court, is responsible for trying cases of misconduct against the President and Members of the Supreme Court exercising competence and powers under Article 153.8 of the Constitution and similarly, the Council constituted under Article 133.8 of the Constitution consisting of the President and Judges of the Supreme Court, is responsible for trying cases of misconduct against the President and Members of the Supreme Constitutional Court. Both councils are responsible for trying cases of misconduct against the President and Members of the Supreme Courts' Judges, respectively, ensuring adherence to judicial ethics and conduct principles within the Supreme Courts.

The disciplinary proceedings conducted by these Councils are of a judicial nature, and the Judge concerned is entitled to be heard and present their case before the Council.

The decision of the Councils taken by a majority shall be binding upon the President of the Republic.

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

There are no specific time limits stipulated within which a complaint must be made for the purpose of initiating disciplinary proceedings against judges. The absence of such time limits implies that complaints can be lodged at any time, provided there are valid grounds and evidence to support the allegations of misconduct. Consequently, the initiation of disciplinary proceedings may vary depending on the nature and complexity of the complaint, as well as the availability of evidence to substantiate the claims. While there may be procedural guidelines for filing complaints, there are no strict deadlines mandated by law for lodging such complaints against judges in Cyprus.

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

Generally, complaints can be filed by individuals who have direct knowledge or evidence of misconduct by a judge. This may include parties involved in legal proceedings before the judge, legal professionals, court staff, or members of the public who witness or are affected by the judge's actions.

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

Only the Supreme Constitutional Court as the affected Judicial Officer has the right to file an Objection against the Council's decision before the Second Instance Council of Judicature, which consists of all the Judges of the Supreme Constitutional Court. (Section 9(2) (d) of Law 33/64 as amended).

This ensures transparency and enables judicial review, by the SCC which acts as a second instance judicial Council, with powers to set aside judgements of the Supreme Council of Judicature.

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

There may be bodies or officials/persons who can request initiating disciplinary proceedings against judges. These entities might include bar associations or concerned individuals who have evidence or knowledge of misconduct by a judge.

Furthermore by virtue of the Guide to Judicial Conduct, issued by the Supreme Court of Cyprus, Judges have an obligation to notify the President of their Court if they are aware of any matters relating to conduct which may affect their position or may reflect on the standing and reputation of the judiciary at large. Moreover, in cases where judges encounter difficulties or uncertainties, they are encouraged to seek advice from the President of their Court.

Once a request to initiate disciplinary proceedings is made, the follow-up typically involves an assessment of the request. This assessment may involve reviewing the evidence presented, conducting preliminary investigations if necessary, and determining whether there are sufficient grounds to proceed with formal disciplinary proceedings.

9. **Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?**

Yes, disciplinary proceedings involve two distinct bodies: an investigative judge responsible for gathering evidence and conducting inquiries into alleged misconduct, and a decision-making body tasked with adjudicating the disciplinary matter and determining appropriate sanctions.

The investigative judge conducts thorough investigations, while the decision-making body reviews findings and evidence to make informed judgments. This division of responsibilities ensures transparency, impartiality, and accountability throughout the disciplinary process.

10. **How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?**

The exclusive competence of SCJ to regulate the judicial profession and determine matters related to the retirement or dismissal of Court Justices aligns with the principle of the independence of the judiciary from the executive or legislative branches.

The independence and impartiality of bodies or individuals involved in disciplinary proceedings against judges are ensured through transparent appointment procedures, clear legal frameworks, and adherence to codes of conduct, mechanisms for recusal in cases of bias, and oversight mechanisms. These safeguards collectively promote fairness, accountability, and public trust in the integrity of the disciplinary process.

III. Grounds for initiation of disciplinary proceedings against judges

11. **What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?**

The formal grounds for initiating disciplinary proceedings against judges are outlined under Rule 3 of the Procedural Rules, which include:

- Inappropriate behavior (Misconduct)
- Commission of a disciplinary offense

Furthermore, under Rule 2, a "disciplinary offense" includes refusal, omission, or deviation from judicial duties, as well as severe breaches of the provisions outlined in the Guide on Judicial Conduct.

The Guide on Judicial Conduct², which was adopted by the Supreme Court of Cyprus in January 2019 and has since been amended five times (with the 5th revision being in June 2022), serves as a cornerstone for defining appropriate conduct for judges.

This guide outlines core guiding principles on judicial conduct, such as independence, impartiality, integrity, propriety, competence, diligence, and equality. It also provides guidance on specific issues including personal relationships and perceived bias, conduct with the legal profession, gifts and hospitality, political sensitivity, public debate and the media, social networking, reporting personal involvement in court proceedings and criminal charges, and use of equipment.

Generally the Guide contains a set of core principles which will help judges reach their own decisions as to whether a particular activity or conduct is appropriate or not. These principles entail that judges are accountable for their course of conduct, which may, depending on the severity of the misconduct, result to disciplinary action.

In cases of difficulty or uncertainty, judges should always seek advice from the President of their Court.³

This Guide is also intended to assist the members of the executive and legislative power, lawyers as well as society in general in order to acquire a better understanding and to support the judicial system.

Additionally, there is a common Asset Declaration Regulation issued by the Supreme Constitutional Court and the Supreme Court, which addresses matters pertaining to the disclosure of assets for all judges. These regulations and guidelines are designed to uphold judicial integrity

² *The Guide to Judicial Conduct is issued within the spirit of the Commentary on the Bangalore Principles of Judicial Conduct, UNODC, September 2007 (comments in relation to paragraph 19), of MAGNA CARTA OF JUDGES (Fundamental Principle) issued by the Consultative Council of European Judges, CCJE (2010) 3 Final, Strasbourg, 17 November 2010 (paragraph 18) and of the Opinion No.3 of CCJE (Paragraphs 48[i]) and of the Guide to Judicial Conduct of England and Wales (Part 1: Introduction, Opening Remarks).*

³ *Judges have an obligation to notify the President of their Court if they are aware of any matters relating to conduct which may affect their position or may reflect on the standing and reputation of the judiciary at large. Without prejudice to the generality of the above, they must also notify the President of the Supreme Court if they are cautioned for, or charged with, any criminal offence other than a parking or minor traffic offence without aggravating circumstances. Judges have an obligation to report to the President of their Court their involvement in any civil proceeding including family proceedings.*

and ensure the proper functioning of the judiciary in our country.

It should be noted however that the principles on judicial deontology and conduct were long settled in our case law. They were also axiomatic as a matter of long established practice and tradition.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

The formal grounds for initiating disciplinary proceedings against judges, as outlined in the Disciplinary Rules 2023, primarily focus on two key elements: exhibition of inappropriate behavior and commission of disciplinary offence. However, the term "disciplinary offence» encompasses a broad range of actions, including denial, omission, negligence, or deviation from judicial duties, as well as any conduct deemed unacceptable for a judicial officer.

Although the Disciplinary Rules provide a framework, the principles of judicial conduct detailed in the Guide further define expected behavior. Any violation of these principles can result in disciplinary action. Notably, what constitutes inappropriate behavior is not exhaustively defined, leaving room for interpretation based on the specific circumstances of each case.

Inappropriate behavior can manifest both within and outside the execution of judicial duties. Therefore, its determination often hinges on the particular context and nuances of the situation at hand. This necessitates a case-by-case assessment to discern whether the conduct in question undermines the objectivity, honesty, and independence of the judiciary, thereby eroding trust in the judicial system.

Given the evolving nature of jurisprudence and ethical standards, new considerations or interpretations may emerge over time, influencing the application of disciplinary measures. Despite efforts to ensure consistency and fairness in disciplinary proceedings, the application of formal grounds may vary depending on individual cases and evolving legal landscapes. Striking a balance between accountability and judicial independence while upholding due process remains paramount in the disciplinary process.

13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

Yes, there could be circumstances where *ad hoc* grounds might warrant initiating disciplinary proceedings against judges, especially if new ethical or procedural considerations emerge that are not explicitly addressed in existing rules or guidelines.

Non-conformity with the provisions of the Guide does not necessarily constitute a disciplinary offense, but it would depend on factors such as the severity of non-compliance, its consequences to third parties or to the judicial system as a whole, and whether there is a consistent pattern of impropriety or misconduct.

Nevertheless, these guiding principles are binding and constitute the quintessence of judicial conduct. Any breach of them may result in disciplinary action, in accordance with Articles 133 and 153 of the Constitution concerning the President and the Justices of the Supreme Courts, respectively, and Article 157 of the Constitution concerning judicial officeholders of lower courts.

Regarding the principle of *nulla poena sine lege praevia*, which prohibits the retroactive application of laws or the imposition of penalties for actions not prohibited by law at the time they were committed, it is indeed upheld within the legal system of Cyprus. This principle ensures that judges are subject to disciplinary proceedings based on laws and regulations that were in force at the time of the alleged misconduct. Retroactive application of disciplinary measures is generally avoided to uphold the principles of legal certainty and fairness. Therefore, any disciplinary action taken against judges is typically based on established legal norms and standards existing at the time of the alleged misconduct.

14. **Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?**

Yes, there is an initial review of complaints against judges conducted by a designated judge to assess their merit before formal review by the disciplinary body. This preliminary review aims to determine if the complaint warrants further investigation. If the complaint lacks evidence, doesn't violate ethical standards, or is frivolous, proceedings may not proceed. Additionally, disciplinary proceedings could be terminated if the complaint falls outside the body's jurisdiction.

IV. The process of disciplinary proceedings against judges

15. **What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?**

Under the Disciplinary Proceedings Rules 2023 (Rules 3-18), when information or complaints suggest misconduct by a Judicial Officer, the Supreme Court initiates proceedings by notifying the individual concerned, who is then given a specific timeframe to respond. Based on this response, or lack thereof, the Court determines whether an investigation is necessary. If deemed unnecessary, both the Judicial Officer and the complainant are informed. However, if an investigation is warranted, an investigating judge, chosen according to the rank of the officer under scrutiny, is appointed. This judge, with assistance from Registry Secretariat members, collects evidence and statements, including those from the Judicial Officer, if provided, albeit with caution regarding potential use in disciplinary proceedings.

Upon concluding the investigation, a detailed report is submitted to the Supreme Court. If the investigation finds no grounds for trial, this decision is communicated to both the scrutinized officer and any complainants, ensuring a thorough and fair examination of the alleged misconduct.

However, if disciplinary proceedings are deemed necessary, or a report needs to be filed, the investigating judge must draft the indictment or report within 15 days and submit it to the for registration. This document outlines the charges or allegations of incompetence along with relevant facts. Subsequently, the Judicial Officer in question receives the indictment or report, along with all pertinent statements and information gathered during the investigation.

16. **Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?**

Disciplinary proceedings against judges in Cyprus follow a structured process outlined in the 2023 Procedural Rules, comprising three main phases.

Firstly, the Preliminary Examination (Rules 3-5) is conducted by the Supreme Court to assess the complaint's merit and decide if further investigation is needed.

Secondly, the Conducting an Investigation phase (Rules 6-13) involves gathering evidence and assessing allegations, typically led by a designated investigative judge appointed by the Supreme Court. If the Investigating Judge considers it justified, a charge sheet or a report is drawn up (depending on the circumstance) and the Judicial Officer under investigation is referred to the Council to decide on the matter.

Lastly, the Trial before the Supreme Council of Judicature (Rules 14-27) proceeds after the investigation, where evidence is presented, testimonies heard, and the SCJ deliberates to decide on disciplinary action.

The trial process is of a judicial nature and is carried out as a criminal trial, *mutatis mutandis*. The Attorney General of the Republic presents the case before the SCJ against the Judicial Officer under trial.

After the conclusion of the hearing the Council issues its decision, and in the event of a finding of guilt or incapability of the Judicial Officer, appropriate disciplinary penalties are imposed accordingly.

This structured approach ensures a fair and systematic process for handling complaints against judges in Cyprus.

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

Once disciplinary proceedings against a judge commence, measures can be applied, including suspension from judicial duties pending resolution of the process. The Supreme Court has discretionary authority to suspend the accused or the concerned judicial officer, considering the gravity of the charges or their incapacitation.

Throughout the trial, the accused judicial officer is entitled to all the rights outlined in Article 12.5 of the Constitution, afforded to individuals accused of committing an offense.

The presentation of the case against the prosecuted or reported Judicial Officer is conducted by the Attorney General of the Republic or his appointed representative. At the initial appearance before the Supreme Council of the Judiciary, the prosecuted or reported Judicial Officer responds to the charges or petition. If the response is negative, a date for adjudication is scheduled. Conversely, if the response is affirmative, the Attorney General or his representative submits all statements, data, and information gathered. Subsequent to deliberation by the Supreme Council of the Judiciary, a decision is rendered.

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

Throughout different phases of the disciplinary process, judges have various opportunities for participation. Initially, they receive formal notification or service of documents outlining the allegations against them. Subsequently, judges may provide a written response or defense, presenting evidence or arguments in their favor. During disciplinary proceedings, judges are entitled to all rights enshrined in Article 12.5 of the Constitution, afforded to individuals accused of committing an offense.⁴

Judges have the right to attend hearings or meetings related to the disciplinary proceedings, where they can respond to questions, present evidence, or make oral arguments. Additionally, judges may be represented by legal counsel or advisors to navigate the proceedings and safeguard their interests.

Throughout the process, judges may object to procedural irregularities or biases, request recusal or disqualification of individuals involved in the proceedings due to conflicts of interest, and seek confidentiality or privacy protections for certain aspects of the proceedings. Furthermore, judges found guilty of misconduct have the right to be heard before the imposition of a sentence.

These possibilities for participation and formal actions are essential to ensure fairness, transparency, and due process in the adjudication of allegations of misconduct or breaches of judicial deontology.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

In the course of disciplinary proceedings, the principle of presumption of innocence is rigorously applied to ensure fair treatment of the accused individual, including judges. The proceedings are of a judicial nature and are conducted *mutatis mutandis* to a criminal trial.

Each party has the right to introduce evidence, examine witnesses, and cross-examine the witnesses of the other party as provided for in the law. Witnesses shall take an oath or affirmation.

Throughout the proceedings, the accused judge is granted ample opportunity to defend themselves, present evidence, and rebut the allegations brought against them. The disciplinary body responsible for adjudicating the case must meticulously consider all evidence presented and ensure that the accused judge's rights are fully upheld, including the right to a fair hearing and the right to be presumed innocent unless proven otherwise.

The principle of presumption of innocence serves as a crucial safeguard to prevent unjust or arbitrary punishment and to maintain the integrity of the disciplinary process. It underscores the imperative of establishing misconduct based on solid evidence and due process, rather than mere allegations or suspicions.

Furthermore, judges are held to particularly high standards of conduct, expected to maintain public confidence in the integrity, validity, and independence of the judicial system. Misconduct that undermines this trust carries the significant consequence of disqualification from judicial duties, and disciplinary procedures are designed to protect the public interest rather than to punish the individual.

⁴ Look at Disciplinary Rules of 2023 in particular R. 17, 18, 19, 20 and 24.

In essence, disciplinary proceedings are aimed at upholding public trust in the judiciary and ensuring that the conduct of judges remains in accordance with the highest standards of integrity, validity, and independence.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

There are no specific formal time limits established for the initiation and conclusion of disciplinary proceedings against judges. This means that there are no strict deadlines within which complaints must be filed, investigations must commence, or hearings must be completed. As a result, the duration of disciplinary proceedings can vary depending on various factors, including the complexity of the case, the availability of evidence and witnesses, the workload of the disciplinary body, and any procedural or legal challenges that may arise during the process.

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

The final decision on a judge's disciplinary liability is typically made by the SCJ. The process involves presenting evidence and arguments, followed by deliberation and voting by the members of the disciplinary body. Once a decision is reached, a formal judgment is issued outlining the findings and any imposed sanctions, which is then communicated to the judge and possibly made public.

After the conclusion of the hearing the Council issues its decision, and appropriate disciplinary penalties are imposed accordingly.

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, and administrative) for the same offence committed by the judge concerned? If so, please specify.

No

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

The affected Judicial Officer has the right to file an Objection against the Council's decision before the *Second Instance Council* which consists of all the Judges of the Supreme Constitutional Court. (*Section 9(2) (d) of Law 33/64 as amended*).

This ensures transparency and enables judicial review, by the SCC which acts as a second instance Judicial Council, with powers to set aside judgements of the Supreme Council of Judicature.

24. Can a judge participate in the disciplinary hearings at the appeal stage?

Yes

25. **What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?**

The extent of judicial review involves critical elements such as the standard of review and the role of written submissions. Appellate bodies generally defer to lower courts' factual findings but retain authority to review them. Written submissions are crucial, allowing parties to present arguments comprehensively. Overall, judicial review aims to ensure fairness, transparency, and effective administration of justice.

26. **Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?**

No. the appeal phase is limited to addressing the decision concerning the judge's disciplinary liability. The specific sanction imposed cannot be replaced by another one during the appeal process. The focus of the appeal would be solely on the determination of whether the judge is held liable for disciplinary actions, rather than reconsidering or altering the sanction itself.

27. **After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?**

No

28. **Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?**

No

V. Disciplinary sanctions against judges

29. **As regards the disciplinary sanctions against judges, please briefly describe the following:**

- **is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;**
- **is it clearly defined in such a legal text which disciplinary sanction applies in which case;**
- **or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions**

Yes, disciplinary sanctions against judges in Cyprus are readily accessible through the disciplinary procedural Rules mentioned above. These Rules provide a clear framework for addressing misconduct or disciplinary offences by judicial officers. For instance, Rule 25 mandates dismissal for judicial officers found guilty of misconduct, as prescribed in the Constitution. Additionally, Rule 27 stipulates that a judicial officer found guilty of a disciplinary offense will receive a reprimand, which may be private or published in the Official Gazette.

However, the exact application of sanctions may necessitate interpretation and consideration of individual circumstances, reflecting the discretion of the decision-making body in upholding integrity and maintaining public confidence in the judiciary. The principle of proportionality is expected to guide the determination of appropriate sanctions for specific behaviors or actions by judges. While guiding principles, such as those outlined in the Guide to Judicial Conduct, are established, the Constitution or other laws do not specify what constitutes misconduct for the dismissal of Judges of the Supreme Court, the General and the Deputy Attorney General, and other state officials.

The Supreme Council, as established by the Constitution (Article 153.8), while examining Reference 1/2016, clarified the meaning of "improper behavior" or "misconduct" under Article 153.7 (4) of the Constitution. They emphasized that the determination of this term should consider its impact on the individual's ability to continue holding office. This assessment evaluates whether the conduct directly impairs their duties or influences perceptions of the office, potentially bringing the office into disrepute.

In this context and in light of relevant jurisprudence, the Council in the said Reference assessed the conduct of the respondent Deputy Attorney General. They concluded that publicly manifested unfounded and serious allegations against the Attorney General led to the Deputy Attorney General's dismissal, as it constituted misconduct under Article 153.7.

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

Yes, in Cyprus, the decision-making process regarding the sanction of dismissal on grounds of misconduct involves a comprehensive examination of the facts and circumstances surrounding the violation. This examination includes due consideration of the principle of proportionality, ensuring that the severity of the sanction aligns appropriately with the nature and gravity of the act. Additionally, other relevant requirements are taken into account to ensure fair and just outcomes in disciplinary proceedings against judges.

Senior officials of the State, such as Supreme Court Judges, the Attorney General, and the Deputy Attorney General, are held to high standards of behavior in both the performance of their duties and their general conduct.

In Reference 1/2016, the Council concluded that the behavior of the Deputy Attorney General fell significantly below the expected standard for such an official. This conduct rendered him incapable of effectively fulfilling his high duties and raised reasonable doubts about his suitability for continued service in his position. Such behavior posed serious risks to the integrity and reputation of the office and institutions involved.

It is crucial to note that the disciplinary process, including dismissal on grounds of misconduct, aims not to punish the judge or official, but rather to protect the public interest by upholding strict standards of judicial conduct. This serves to maintain confidence in the integrity, reputation, and independence of the judiciary.

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

In Cyprus, the principle of proportionality in judicial disciplinary proceedings is maintained by carefully weighing factors such as the severity of the violation, its impact on judicial integrity, and any mitigating or aggravating circumstances. Concrete criteria and links between violations and sanctions may be established for transparency.

When dismissal from office is a potential sanction, extra considerations are taken into account, including the nature of the violation, past conduct, and its impact on judicial credibility. The goal is to ensure that any decision regarding dismissal is justified, proportional, and preserves the integrity of the judiciary.

32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

While it is not specifically ruled out, the reversal of a judge's verdict on appeal does not impact their disciplinary liability as the outcome of a court case and disciplinary proceedings are separate matters.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

In Cyprus, the judiciary upholds high standards of integrity and professionalism. While explicit mention of vetting processes may not be present, the judicial system likely employs rigorous procedures to ensure the suitability of individuals appointed to judicial positions. These procedures may involve comprehensive assessments of qualifications and experience, and evaluations of ethical standards and character. While not explicitly termed as "vetting," such processes serve a similar function in safeguarding the integrity and credibility of the judiciary.

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

Non-Applicable

35. What is your own general opinion on vetting (advantages and disadvantages)?

It is widely accepted that Vetting plays a crucial role in upholding integrity and trust across various sectors. Vetting processes serve to ensure the suitability of individuals for sensitive positions, thereby enhancing national and organizational security, mitigating corruption risks, and bolstering public confidence. These processes contribute to maintaining high ethical standards and integrity, which are essential for the effective functioning of institutions.

However, along with these advantages, vetting processes also entail certain disadvantages. These include privacy concerns arising from the intrusive nature of background checks, potential biases that may influence decision-making, the significant resources required for comprehensive vetting procedures, and the risk of creating a false sense of security.

Therefore, while vetting is indispensable for maintaining high ethical and security standards, it is essential to approach it with care and balance. This involves respecting individual privacy rights, ensuring fairness in the vetting process, and implementing continuous oversight mechanisms to adapt to evolving risks and individual changes over time.

In the context of Cyprus, the country's legal and judicial system is widely recognized for its high standards, and the judiciary maintains the necessary guarantees of independence and integrity to fulfill its duties effectively. The impartiality of judges in Cyprus is upheld through their decisions and the tradition of independence observed by the judiciary. Recent assessments by bodies like the Venice Commission have affirmed the integrity and independence of the Cypriot judiciary, indicating that any challenges faced by the system do not stem from a lack of integrity or independence among judges.

36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is not about ordinary civil, administrative or criminal liability.

No, in Cyprus, there are no specific forms of liability or sanctions against judges outside the scope of disciplinary proceedings. However, in cases of suspected criminal offenses, such as soliciting or accepting bribes related to their judicial duties, the Criminal Law Convention of the Council of Europe on Corruption (Ratification) Act of 2000, L. 23(III)/2000, comes into play.

Under this legal framework, if a member of the judiciary is under investigation for such criminal offenses, the Cyprus Police conducts the necessary investigations upon receiving complaints or reports. Citizens of Cyprus have the right to file complaints or report crimes to the Cyprus Police, as outlined in the Citizens' Rights Charter.

If sufficient incriminating evidence is found, the Attorney-General of the Republic, acting as an independent Public Prosecutor and Legal Advisor of the State, proceeds to indict the judge for prosecution under Article 113.2 of the Constitution. The case is then brought before the court, typically the Supreme Court or other inferior courts established by law, such as District and Assize Courts, in accordance with the Courts of Justice Act of 1960, L. 14/60.

37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?

The body overseeing disciplinary actions and other forms of liability for judges in the Court of Appeal and the courts of first instance, as previously mentioned, is the SCJ (Supreme Court of Justice). The SCJ holds exclusive responsibility for appointment, promotion, transfer, termination, dismissal, and disciplinary proceedings concerning judges in these judicial bodies.

As for the review of decisions made by the SCJ, the Supreme Constitutional Court serves as an appellate body for judiciary matters upon receiving complaints from affected parties. It's worth

noting that until the Supreme Constitutional Court issues a decision, the rulings of the SCJ are suspended.

Additionally, the procedural aspects of judicial appointments by the SCJ are regulated by the Supreme Court through the Procedural Regulation issued on November 15, 2023.

38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?

The SCJ is led by the President of the Supreme Court, with other Supreme Court Judges as members. During sessions on judicial appointments, the Attorney General, President of the Cyprus Bar Association, and two appointed lawyers may participate without voting rights. It is important to note that, in cases related to the transfer or exercise of disciplinary authority over a judge of the Court of Appeal or a court of first instance, neither the Attorney General of the Republic, nor the President of the Cyprus Bar Association, nor the appointed lawyers shall be present. If any affected person lodges a complaint, the decision of the Supreme Council of the Judiciary is subject to review by the Supreme Constitutional Court. In such cases, the Supreme Constitutional Court acts as an appeal council for the judiciary, conducting a comprehensive review of the decisions made by the SCJ.

The appointment of Supreme Court Judges in Cyprus is vested in the President of the Republic, with recent legislative reforms codifying the tradition of consulting with Supreme Courts' Judges before appointments through the establishment of the Advisory Judicial Council (AJC), positively acknowledged by the Venice Commission. The AJC comprises the President of the Supreme Constitutional Court or the Supreme Court, along with Judges from the respective Courts, serving as Members. Additionally, the Attorney General, the President of the CBA, and two qualified lawyers (without voting rights) are part of the AJC, enhancing its democratic legitimacy. The introduction of this new system has enhanced the appointment process, further contributing to the depoliticisation and effectiveness of the Judiciary in Cyprus. By formalizing the consultation process and involving a diverse group of stakeholders, the Advisory Judicial Council reinforces transparency, accountability, and the merit-based approach to appointing Supreme Court Judges

39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?

NON APPLICABLE

40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?

- **Disqualification:** This involves the removal of the judge from office.
- **Reprimand:** This can be done privately or with publication in the Official Gazette of the Republic.

The principle of proportionality is expected to guide the determination of appropriate sanctions for the actions committed by the judge. However, the application of this principle may vary depending on factors such as the severity of the act and other relevant considerations during the disciplinary process. Proportionality ensures that the severity of the sanction aligns with the gravity of the act, thus promoting fairness and justice in disciplinary proceedings.

41. **Can a judge appeal against an unfavourable decision of such a body?**

Yes. The affected Judicial Officer has the right to file an Objection against the SCJ's decision before the *Second Instance Council of Judicature*, which consists of all the Judges of the Supreme Constitutional Court.

This change ensures transparency and enables judicial review, by the SCC which acts as a second instance judicial Council, with powers to set aside judgements of the Supreme Council of Judicature

VII. Problems and challenges

42. **Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?**

In evaluating the disciplinary liability of judges in Cyprus, the grounds for such liability appear to be well-established. Constitutional and procedural safeguards are in place to ensure fairness and due process in disciplinary proceedings against judges. Cyprus indeed maintains a longstanding tradition of integrity and independence within its justice system. Over the years, there have been no documented cases of corruption within the judiciary, indicating a strong commitment to upholding ethical standards and the rule of law.

Despite the absence of corruption cases, challenges may still arise within the judicial system. However, Cyprus seems well-prepared to tackle such challenges with effective mechanisms in place. These mechanisms likely include robust disciplinary procedures, transparent oversight, and ongoing efforts to enhance judicial integrity.

These safeguards include clear grounds for disciplinary action, ensuring that any allegations of misconduct are thoroughly investigated and adjudicated upon. Additionally, disciplinary proceedings are overseen by appropriate bodies, further enhancing transparency and accountability in the process.

Moreover, the sanctions applied in cases of judicial misconduct, such as disqualification or reprimand, are designed to uphold the integrity of the judiciary and maintain public trust in the legal system. The possibility of appeals provides an avenue for judges to seek recourse if they believe disciplinary actions were unjustly imposed.

Overall, while challenges may arise in the disciplinary liability of judges as in any legal system, Cyprus appears to have established mechanisms aimed at addressing such challenges and ensuring the integrity of its judiciary remains paramount.

43. **If so, what kind of solutions can you suggest for overcoming these problems or challenges?**

Please See our Answer above.

Denmark / Danemark

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country? *It is regulated by law.*
2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)? *No.*
3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent? *Yes, by consultation of the court presidents and the Danish Association of Judges.*

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges? *In milder cases complaints are received by the relevant court president. In more serious cases complaints are received by the chairman of the Special Court of Indictment and Revision.*
5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details. *Yes. Generally a complaint must be filed within 4 weeks following the time when the complainant becomes aware of the circumstances.*
6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details. *No.*
7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges? *Judgements of the Special Court of Indictment and Revision may be appealed to the Supreme Court.*
8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests? *No. Please see answer to question 6.*
9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)? *No.*
10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

The Special Court of Indictment and Revision is composed of five members: a Supreme Court judge appointed by the Supreme Court, a Court of Appeals judge appointed by the Courts of Appeals, a judge from a first instance court appointed by the Danish Association of Judges, a lawyer proposed by the Danish Bar and Law Society and finally a professor of law. The members of the Special Court of Indictment and Revision may only be recused by court decision.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)? *In case of negligence: the relevant court president. In case of malicious conduct or wrongdoings: The Special Court of Indictment and Revision.*
12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application? *As always there is room for interpretation.*
13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)? *No.*
14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? *Yes, the court secretariat.* Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? *Yes.* Is it possible to terminate such proceedings at early stages? *Yes.* If so, in what conditions/circumstances? *In case the complaint is received too late, or the issues raised do not fall under the competences of the Special Court of Indictment and Revision.*

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward? *The complainant may contact the relevant court president or the Special Court of Indictment and Revision.*
16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)? *No.*
17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details. *Generally, no initial measures are applied, however in rare cases immediate suspension may be decided by the Special Court of Indictment and Revision.*
18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request? *The judge is entitled to be heard and to submit a response. The judge may also request to be represented by a lawyer.*

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings? *By virtue of following the law.*
20. Are there formal time limits to start and conclude disciplinary proceedings against judges? *No, but a case in the Special Court of Indictment and Revision is generally completed within 6 months.* If so, what are the limits applied in your system?
21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)? *Please see answer to question 7.*
22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify. *Yes, there are rare cases on record in which the complaint was raised by the Director of Public Prosecutions because of aggravating conditions.*
23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? *Please see answer to question 7.*
Does an appeal have suspensive effect on the consequences of such a decision? *No.*
24. Can a judge participate in the disciplinary hearings at the appeal stage? *Yes.*
25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)? *The general rules of procedure of the Supreme Court apply.*
26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)? *Yes.*
27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level? *No.*
28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)? *Not relevant.*

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:
 - is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text; *A list of the type of sanctions is given in the law, yet it does not define the sanction in complete detail.*
 - is it clearly defined in such a legal text which disciplinary sanction applies in which case; *No.*
 - or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions. *Yes.*

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)? *This depends on the interpretation and decision of the Special Court of Indictment and Revision.*
31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it? *This is safeguarded by the integrity of the relevant court president, the Special Court of Indictment and Revision and the Supreme Court.*
32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked? *No.*

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms? *No.*
34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient? *Not relevant.*
35. What is your own general opinion on vetting (advantages and disadvantages)? *N/A.*
36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability. *Ethical guidelines issued by the Danish Association of Judges apply.*
37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body? *Not relevant.*
38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)? *Not relevant.*
39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above? *Not relevant.*
40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied? *Not relevant.*
41. Can a judge appeal against an unfavourable decision of such a body? *Not relevant.*

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)? *No.*
43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?
N/A.

Estonia / Estonie

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

*Law.*¹

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?

No.

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

Yes. Courts and Association of Judges have been asked to form an opinion about the draft law. Currently, court presidents are discussing problems of the disciplinary proceeding (see answer 42).

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

Court presidents (against their court judges and lower lever judges), Chancellor of Justice² and Supreme Court en banc³ (against the Chief Justice).

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

Statute of limitation applies: two years from the commission of the disciplinary offence or six months from the discovery.

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

Statute of limitation applies.

¹ Courts Act, Chapter 11. Available (in English): <https://www.riigiteataja.ee/en/eli/517032023014/consolide>

² Chancellor of Justice is an independent official who reviews the acts of general application of the legislature and the executive power and of municipalities for conformity with the Constitution and the laws of the Republic of Estonia.

³ Full panel of all judges of the Supreme Court.

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

Yes. 1. Chief Justice may initiate a disciplinary action against any judge. 2. The Supreme Court en banc may initiate a disciplinary action against the Chief Justice. 3. The Disciplinary Chamber is set up at the Supreme Court. 4. The Supreme Court reviews the appeals against the disciplinary decisions.

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

Anyone can file a complaint against judges. In practice, there has been no particular body active in this regard. Vast majority of the complaints come from private entities (that includes the cases initiated by Chancellor of Justice who also receives such complaints).

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

There two main bodies taking part in disciplinary proceedings: 1) initiator (see answer 4) 2) Disciplinary Chamber. Latter is comprised of five justices of the Supreme Court, five Circuit Court judges and five judges of courts of first instance. The Supreme Court judges and the Chair of the Disciplinary Chamber is appointed by the Supreme Court en banc and others general Court en banc⁴ for three years. A five-member panel of the Disciplinary Chamber hears a disciplinary case at a hearing composed by the Chair.

Appeals (see answer 23).

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

Elimination of political influence can be guaranteed by fair general appointment of judges and Supreme Court justices, s.o judges stay out of any influence of interests. Elimination of personal and other biased attitudes can be eliminated by fair procedural rules (including withdrawal of the member of the Disciplinary Chamber⁵, rules of evaluating evidence and reason decision).

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

Wrongful act, which in the failure to perform or inappropriate performance of official duties. An indecent act (with no definition)⁶.

⁴ Court en banc consists of all Estonian Judges (total 244 at the moment).

⁵ Note, Estonia is a small country where many judges know each other.

⁶ In practice, driving under influence is considered to be indecent act, sufficient for dismissal from office.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

These grounds are not clearly defined and could be open for interpretation.

13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

No.

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

Initiation of a disciplinary proceeding is a discretion of an initiator. Most complaints do not cause a disciplinary action.

There are formatting rules concerning disciplinary charge⁷. In practice, there is a discussion amongst court presidents about the substantive requirements of the charge. It has been found that disciplinary charge should not reflect the requirements of the charge stated in the criminal procedural code but consists of the description of the wrongful act, evidence and proposal for a punishment.

There is no possibility to terminate disciplinary proceedings at early stages other than withdrawal of the charge.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

Disciplinary procedure is initiated by submitting a charge to the Disciplinary Chamber and notifying the relevant judge. In practice, judges are asked an explanation/opinion about the complaint beforehand.

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

Yes. Investigative and consideration phase is conducted by the initiator of the proceedings, decision-making phase by the Disciplinary Chamber.

⁷ Estonian Courts Act art 92 (1): disciplinary charges means a written document which sets out:

- 1) the name and position of the accused;
- 2) the description and time of commission of the offence;
- 3) the evidence proving commission of the offence;
- 4) the name of the person instituting the disciplinary proceedings, and the date and place of the preparation of the charges.

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

Yes. The Disciplinary Chamber may remove a judge from service for the duration of hearing of a disciplinary case. Upon deciding the removal from service, the Chamber considers the nature and gravity of the disciplinary offence of which a judge is accused, specially where circumstances significantly harm the reputation of the court.

The Disciplinary Chamber may decide on the removal of a judge from service without holding a hearing. Where the Disciplinary Chamber removes a judge from service for the duration of hearing of a disciplinary case, the Chamber may reduce the judge's salary for the same period but no more than a half. The chief judge of a court may assign duties other than the administration of justice to a judge who is temporarily removed from service. A judge may file an appeal to the Supreme Court en banc against an order by which the judge is temporarily removed from service or their salary is reduced within 10 days after the judge becomes aware of the order.

In practice, most cases go without such measures. However, cases related to corruption and relevant criminal procedure always induce temporarily suspension of the judge.

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

A judge can give a written opinion about the disciplinary charge and participate at the hearing of his/her case. In practice, judge usually has an opportunity to give an opinion about the complaint before the proceeding is initiated.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

Presumption of innocence applies. Proceeding is not open to the public. Decision entered into force will be published at the Supreme Court website.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

Statute of limitation applies to the start of the proceedings (see answer 5), there is no time limit for conclusion of the proceedings. In practice, the Disciplinary Chamber works in a timely manner.

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

The final decision is taken by the Disciplinary Chamber or the Supreme Court en banc by voting after hearing. The decision is in written form and reasoned. Reasoned decision is published.

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

No. However, a criminal sanction or a sanction for a misdemeanour imposed for the same act does not preclude the imposition of a disciplinary sanction.

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

Judge may file an appeal to the Supreme Court. In such case, the Supreme Court can not impose more severe sanctions against the judge.⁸

24. Can a judge participate in the disciplinary hearings at the appeal stage?

Yes.

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

Law does not state clear requirements for the procedure. In practice, it has been closed hearing, evidence is re-examined. It is considered to be procedure de novo, the only exception is that the outcome can not be more severe for the judge (see footnote 7).

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

See previous answer.

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

No. The Supreme Court is the first and the last instance of appeal.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

No. Only judge concerned may appeal.

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:

⁸ Estonian Courts Act art 97 (3'): The Supreme Court en banc may perform the following with regard to a decision of the Disciplinary Chamber: 1) refuse amendment; 2) amend and convict the judge of the commission of a less serious disciplinary offence and mitigate the disciplinary sanction imposed; 3) refuse to make substantive amendments and mitigate the disciplinary sanction imposed; 4) annul the decision and acquit the judge.

- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;
- Yes⁹.

- is it clearly defined in such a legal text which disciplinary sanction applies in which case;
- or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.

It is left to the discretion of the decision-making body.

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

Law stated general guidelines: upon imposition of a disciplinary sanction, the nature, gravity and consequences of the disciplinary offence, also the personal characteristics of the judge and other circumstances related to the offence must be considered. In practice, sanctions can vary a lot from year to year.

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

There are no certain criteria which links violation and sanction. The principle of proportionality is left uphold by the Disciplinary Chamber itself (and the Supreme Court in case of an appeal).

32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

No. In case of temporarily removal from office with the reduction of salary the reduced salary is compensated subsequent to the acquittal.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

There is general supervision of judges conducted by mostly court presidents. There is no vetting as such. There is a plan to introduce such procedure. It is founded by general terms like improving the court system, unifying practice etc. However, there is no particular reason or problem to introduce vetting.

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past

⁹ Estonian Courts Act art 88 (1): The following are disciplinary penalties: 1) a reprimand; 2) a fine in an amount of up to one month's salary; 3) a reduction in salary; 4) removal from office. (2): Where a retired judge does not comply with the duty of confidentiality or the duty of confidentiality of deliberations, their judge's pension may be reduced by up to 25% as a disciplinary sanction. The pension may not be reduced for longer than one year.

or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

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35. What is your own general opinion on vetting (advantages and disadvantages)?

I am sceptical concerning vetting. There has to be a clear reason for introducing such a procedure. I haven't seen that in my country yet. General slogans doesn't cut it. Vetting can not replace judicial training or disciplinary proceeding. For me, it creates more problems than it solves. It is arbitrary, subjective and can cause infringement to judge's independence. It is important that judge remains independent not only externally but internally (independent from other judges, specially court presidents) as well. Vetting is a vessel for undue influence over judges which can be easily manipulated and exploited by different interest groups. Without clear reasons, goals and means I will remain sceptical.

36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability.

No.

37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?

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38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?

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39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?

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40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?

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41. Can a judge appeal against an unfavourable decision of such a body?

-

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

At recent round table court presidents pointed out some problems concerning disciplinary proceedings which can be boiled down to ambiguity of the disciplinary offence and its procedure, also boundaries of the supervision of a judge. Questions raised were: how much should court president supervise a judge and what can be done before the disciplinary action is taken; how to

help young judges considering current generation shift, what are the requirements for the charge, what are the data protection rules in the disciplinary procedure, how should the decisions be made public etc.

43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

Grounds of disciplinary proceedings should be made more specific. At the moment it is too vague and there is a tendency to link ethical breaches to the disciplinary case (especially in cases of public speech).

Procedural guarantees should be made more specific. It includes detailed regulation of disciplinary hearing (including recusals, examination of evidence, reasoning the decision) or linking the hearing rules to the rules of some other court procedure. There has been criticism that judges have been under pressure in disciplinary hearing not to talk too much, decision is not well reasoned or not addressed all defence arguments or evidence is not sufficiently examined. Procedural guarantees and formalities are specially important in a small country where bias is easier to rise.

It would be better if the violation and subsequent sanction is linked for consistency.

However, despite of these problems, disciplinary system overall works well.

Finland / Finlande

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

Law.

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?

No.

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

The Ministry of Justice has prepared all relevant laws in the field in question. The Finnish Association of Judges (Union of Judges) and the courts (all court levels and all kinds of courts, general, administrative and special courts) had representatives in various working groups and the leading group of the project which led to enacting Courts Act of 2016 which include the now applicable provisions regarding (ordinary) disciplinary proceedings concerning judges. However, these provisions were transferred from previous legislation enacted in 2009 practically as they were. That legislation was based on the work of a small working group of five members of which two were judges (of which one was at that point working at the Ministry of Justice). The Law Committee of the Parliament heard as experts several judges representing district courts, courts of appeal and administrative courts, and also representatives of the Finnish Association of Judges and the Association of Members of the Supreme Courts. In addition, the Law Committee received several written statements, inter alia from both the Supreme Court and the Supreme Administrative Court. Having heard experts and received the above-mentioned statements the Law Committee suggested several changes in the legislative proposal, for example one concerning appellate proceedings. These changes were duly adopted by the Parliament.

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

In Finland the judges' disciplinary liability is arranged on the one hand through ordinary disciplinary proceedings within the judiciary and on the other hand through the supervision of legality carried out by the Parliamentary Ombudsman and the Chancellor of Justice.

There is no regulation concerning this as far as the ordinary disciplinary proceedings (within the judiciary) are concerned. The disciplinary proceedings can – in theory at least – be

initiated without any formal complaint. Essential in this sense is that the organ responsible for the disciplinary proceedings (a chief judge of a court) is made aware of such an act or a neglect which can constitute grounds for disciplinary proceedings. For example, a chief judge of a district court may be contacted by a party to a case with a complaint. A chief judge may also through observations of one's own or other judges or through the supervisory activities of a court of appeal (of which there is a provision in chapter 3 section 2 of Courts Act) become aware of the existence of grounds for disciplinary proceedings. The chief judge of the court has the right give a judge a written admonition (warning) referred to in section 24 of Act on Public Officials in Central Government.

The Parliamentary Ombudsman and the Chancellor of Justice have competence to investigate complaints made against judges. These procedures are separate from the ordinary disciplinary proceedings within the judiciary. Complaints made to the Parliamentary Ombudsman may lead to such disciplinary proceedings (section 10 subsection 1 of Parliamentary Ombudsman Act). The decisions by the Ombudsman and the Chancellor of Justice may include a reprimand or an opinion e.g. concerning what constitutes proper observance of law. Both the Parliamentary Ombudsman and the Chancellor of Justice may also on own initiative take up a matter under consideration (section 4 of Parliamentary Ombudsman Act and section 3 subsection 1 of Chancellor of Justice Act). This happens normally on the basis of observations made in their inspection activities.

In serious cases the Parliamentary Ombudsman and the Chancellor of Justice have the right to order a pre-trial investigation to be carried out. They also have the right to bring charges against a judge for unlawful conduct in office (according to section 110 subsection 1 of the Constitution of Finland they have – as the only prosecutors – right to bring such charges).

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

There are no set time-limits in law for initiating disciplinary proceedings. However, it must be regarded as self-evident that disciplinary proceedings cannot be initiated against a judge if a period of limitation to bring charges against the judge for the same action has expired.

The Parliamentary Ombudsman and the Chancellor of Justice do not investigate a complaint relating to a matter more than two years old, unless there is a special reason for doing so (section 3 subsection 3 of Parliamentary Ombudsman Act and section 4 subsection 3 of Chancellor of Justice Act).

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

No.

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

There is no constitutional court in Finland.

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

The Parliamentary Ombudsman can request disciplinary proceedings to be initiated (see especially answers 4 and 15). Regarding the follow-up procedure see answer 15.

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

The Parliamentary Ombudsman may order that a preliminary investigation, as referred to in the Preliminary Investigations Act, be carried out in order to clarify a matter under investigation by the Ombudsman (section 8 of Parliamentary Ombudsman Act). The Chancellor of Justice has a similar power to order a preliminary investigation to be carried out (section 5 a of Chancellor of Justice Act). Besides the police, who carries out such preliminary investigations, there are no separate bodies with investigative functions as regards finding a disciplinary violation.

Regarding decision-making in disciplinary matters see answers 4 and 21. There are no separate bodies with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction.

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

The general rules of recusal apply to police officers taking part in the preliminary investigation (if such an investigation has been ordered to be carried out) and to the judges deciding on the disciplinary matter (a chief judge deciding the matter and judges on appellate level, if an appeal is lodged against an adverse decision). These provisions are included in chapter 2 sections 7 and 8 of Preliminary Investigations Act and in chapter 13 of Code of Judicial Procedure. As noted in answer 9, there are no separate bodies with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

According to section 24 of Act on Public Officials in Central Government a written admonition (ie. a warning; which is the only formal sanction in the ordinary disciplinary proceedings) may be issued if a judge acts against his/her duties in office or neglects them. The Parliamentary Ombudsman has in a decision given on 27 April 2023 considered that issuing a more lenient written sanction (a reminder) is also an available option despite of the fact that there no more is an explicit provision in Act on Public Officials in Central Government concerning such a sanction.

The Parliamentary Ombudsman may issue a reprimand to a judge if the Ombudsman concludes that the judge has acted unlawfully or neglected a duty but considers that a

criminal charge or disciplinary proceedings are nonetheless unwarranted in this case (section 10 subsection 1 of Parliamentary Ombudsman Act).

The Chancellor of Justice may issue a reprimand to a judge on the same grounds as the Parliamentary Ombudsman (section 6 of the Chancellor of Justice Act). Alternatively, the Chancellor of Justice may order the judge to be prosecuted. Unlike the Parliamentary Ombudsman, the Chancellor of Justice cannot initiate disciplinary proceedings.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

There are no other formal grounds than mentioned in answer 11, which means that the grounds are fairly vaguely defined.

13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

There is, of course, room for interpretation regarding what constitutes acting against one's duties in office or neglecting those duties. The principle of *nulla poena sine lege praevia* is naturally applied. A judge cannot breach one's duties or neglect them regarding tasks which have not belonged to the judge's duties (at the time in question).

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

Both the Parliamentary Ombudsman and the Chancellor of Justice make an initial assessment on whether there could be reason to believe that there are any merits behind the complaint. Only if they find this to be the case, they will continue to the next phase i.e. reserving the judge against whom the complaint is made an opportunity to be heard (section 3 subsection 1 and section 9 of Parliamentary Ombudsman Act and section 4 subsection 1 and section 5 of Chancellor of Justice Act).

A similar initial assessment is bound to be made also in the ordinary disciplinary proceedings by the chief judge in question although there are no explicit provisions concerning the procedure in the disciplinary proceedings. The complaints clearly without merit do not call for further action.

Disciplinary proceedings are not available if the judge is prosecuted for the same act or neglect. Otherwise, there are no circumstances which could completely rule out disciplinary proceedings, if a judge still holds an office of a judge.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

The ordinary disciplinary proceedings are initiated by the chief judge of the court in question either because of a complaint made against a judge or on own initiative. Regarding this option see answer 4.

The proceedings could also be initiated by the Parliamentary Ombudsman. I presume that in practice the Parliamentary Ombudsman would make a formal decision which includes a statement that the judge in question has acted unlawfully in office or neglected one's duties in office and a description of the details of the judge's actions in question and send it to the chief judge of the court in question with a request to commence disciplinary proceedings against the judge. I am not sure if this route has ever been taken; in practice the normal options are a (written) reprimand or (in more severe cases) a prosecution order issued by the Parliamentary Ombudsman.

In both of the alternatives the next step would be to make the judge in question aware of the complaints against him/her and to reserve him/her an opportunity to be heard either through a written reply or orally (or both).

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

As is clear from what is said above (answer 9), a police investigation could precede disciplinary proceedings. In practice this should be extremely rare, as normally the police investigations are only commenced in cases serious enough to lead to prosecution.

Regarding investigating the complaints in other cases and the consideration and decision-making phases of the disciplinary proceedings see especially answers 4, 14, 15 and 21.

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

A judge may be suspended from office pursuant to chapter 15 section 2 of Courts Act and section 40 subsection 2 of Act on Public Officials in Central Government which the first-mentioned provision refers to. Suspension is only possible

- 1) for the duration of criminal trial against a judge and investigations preceding such a trial, if these can affect the judge's ability to attend to the functions of one's office;
- 2) if the judge refuses to give information about one's health or refuses from examinations of health, which are necessary for determining whether the judge is capable of attending to the functions of one's office; or
- 3) the judge has an illness which fundamentally impairs attending to the functions of one's office.

As can be seen, a suspension from office due to pending disciplinary proceedings is not possible. In theory at least, a suspension could be used during pre-trial investigation preceding disciplinary proceedings, but suspension is no more possible once the disciplinary proceedings are commenced.

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

A judge against whom disciplinary proceedings have been commenced has a right to take part in every phase of the proceedings. There are no procedural provisions concerning the ordinary disciplinary proceedings. The right to be heard is, however, a self-evident fundamental principle in these proceedings. The judge may also lodge an appeal against an adverse decision, as described in answer 23.

The Parliamentary Ombudsman shall reserve the judge an opportunity to be heard in the matter before it is decided if there is reason to believe that the matter may give rise to criticism as to the conduct of the subject, ie. the judge in question (section 9 of Parliamentary Ombudsman Act). The decision by the Parliamentary Ombudsman may be brought to be heard by a court in cases described in answer 23.

Chancellor of Justice Act contains a similar provision as Parliamentary Ombudsman Act about hearing the judge in the matter before the Chancellor of Justice (section 5). The decision by the Chancellor of Justice may be brought to be heard by a court in cases described in answer 23.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

In principle, there is nothing extraordinary in observing the presumption of innocence in the course of the disciplinary proceedings.

However, it must be said that the Chancellor of Justice in certain types of matters, especially such matters that stem from the inspection activities of the Chancellor (e.g. routinely checking legality of certain aspects of court decisions), often expresses a preliminary (but in practice rather steadfast) opinion on errors in the court decision already when reserving the judge a possibility to be heard, which is not unproblematic from the point of view of the presumption of innocence.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

See answer 5.

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

According to chapter 15 section 1 of Courts Act a written admonition/warning referred to in section 24 of Act on Public Officials in Central Government may be issued to a judge by the head of the court in which the judge serves. However, a written warning to the chief judge of a district court is issued by the president of the court of appeal, to the president of a court of appeal and to the president of the Labour Court by the president of the Supreme Court, and to the chief judge of an administrative court, the Market Court and the Insurance Court by the president of the Supreme Administrative Court. Thus, there is no possible situation of voting as the decision is made by one person.

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

A judge cannot be subjected to both disciplinary proceedings and criminal prosecution for the same offence. The proceedings that are initiated first preclude the other alternative. Disciplinary proceedings are not affected by possible civil lawsuits.

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

According to chapter 23 section 2 subsection 1 of Courts Act a decision to issue a written admonition/warning is subject to ordinary appeal. Likewise, a decision on suspension from office (which is not a proper disciplinary measure but rather a preventive measure to be used e.g. during a pending criminal investigation or trial, see answer 36) is subject to ordinary appeal according to section 3 subsection 1 of the same chapter. According to chapter 23 section 2 subsection 4 the decision (of issuing a written admonition/warning) shall be complied with regardless of appeal unless the appellate court decides otherwise.

If a decision made by the Parliamentary Ombudsman or the Chancellor of Justice contains an imputation of criminal guilt, the party having been issued with a reprimand has the right to have the decision concerning criminal guilt heard by a court of law (section 10 subsection 3 of Parliamentary Ombudsman Act and section 6 subsection 4 of Chancellor of Justice Act).

24. Can a judge participate in the disciplinary hearings at the appeal stage?

Yes, if there is a hearing (and the matter is not decided on documents only).

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

The oral hearings in the appellate proceedings, if there is an oral hearing, are in principle open to public.

The appellate court may rule on both questions of fact and questions of law. The appellate court decides the case on the evidence presented in the appellate proceedings.

When reprimands issued by the Parliamentary Ombudsman and the Chancellor of Justice are taken to be heard by a court of law (see answer 23), the principle of openness to public is also applied. Regarding these hearings there is no explicit provision of which court has the jurisdiction. Because the prerequisite for a such a hearing is a decision containing an imputation of criminal guilt the competent court should in principle be the same in which the judge in question would be prosecuted for an offence in public office, i.e. a court of appeal regarding judges of district courts and administrative courts, Helsinki Court of Appeal regarding judges of the Market Court, the Insurance Court and the Labour Court and the Supreme Court regarding judges of courts of appeal (chapter 22 section 1 of Courts Act).

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

In the ordinary disciplinary proceedings a written admonition/warning is the only formal sanction. It is somewhat unclear whether it can be replaced by a more lenient sanction or not. The decision of the Parliamentary Ombudsman mentioned in answer 11 is not necessarily applicable in appellate proceedings. My own understanding is that it is not possible to replace a written admonition/warning with a more lenient sanction.

In appellate proceedings against the decisions of the Parliamentary Ombudsman or the Chancellor of Justice, when their decisions can be taken to be heard by a court of law, the hearing only deals with the question of guilt.

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

In most cases the judge may first appeal to the administrative court. An appeal against the decision of the administrative court may then be made to the Supreme Administrative Court if the Supreme Administrative Court grants leave to appeal.

However, if the decision on judge's disciplinary liability is made by the president of the Supreme Court or the president of the Supreme Administrative Court (see answer 21 for details) the appeal may be made to the court in question, where it shall be considered in a plenary session. After that, the judge has no further right of appeal.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

Such an appeal is not possible. According to chapter 23 section 2 subsection 1 of Courts Act a decision to issue a written admonition/warning is subject to ordinary appeal. Thus, an appeal is not allowed against a decision not to issue it.

The complainant cannot appeal against unfavorable decisions of the Parliamentary Ombudsman and the Chancellor of Justice, either.

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:
- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;
 - is it clearly defined in such a legal text which disciplinary sanction applies in which case;
 - or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.

Yes, there is an easily accessible and exhaustive list of such sanctions clearly defined in a legal text.

No, it is not clearly defined which disciplinary sanction applies in which case. There is considerable room left for decision-making regarding a proper sanction in each individual case. And in practice with "a proper sanction" is here meant whether a written admonition/warning is warranted or not because there are no other formal sanctions available in the ordinary disciplinary proceedings. When a written admonition/warning is unwarranted, but a judge has acted in a not hoped-for manner, the chief judge may in practice issue a more lenient written sanction (see answer 11) or deal with the problem by taking it up orally with the judge in question.

Regarding the sanctions by the Parliamentary Ombudsman and the Chancellor of Justice it must also be noted that a reprimand is the only actual sanction. Alternatively, they may express to a judge subjected to the investigation their opinion concerning what constitutes proper observance of the law. According to my opinion that is not a proper sanction but rather an advice on how the law should be interpreted by the said judge in his/her future activities. There is considerable room for discretion as regards using these alternative measures.

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

The principle of proportionality naturally applies to all such decisions.

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

There are no explicit safeguards, nor are there concrete criteria between certain violations and sanctions. However, the need for explicit detailed safeguards or criteria is not so great as the sanctions available are so lenient.

A judge cannot be dismissed from office through disciplinary proceedings.

32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

There is no connection whatsoever between a judge's decisions being reversed on appeal and the judge's disciplinary liability. A requirement for disciplinary liability is always acting against one's duties in office or neglecting them. This cannot be fulfilled simply through a decision made by a judge being overturned.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

Vetting does not exist in Finland. It is not considered, either.

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

See answer 33.

35. What is your own general opinion on vetting (advantages and disadvantages)?

Personally, I dislike the idea of vetting. I can well understand that in certain societies there may be good grounds to suspect the integrity of judges appointed by previous, possibly very corrupt governments. Despite of that, according to my opinion, the liability of those judges should be fulfilled without measures such as vetting.

36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability.

There are no alternative measures to invoke liability against judges outside the scope of the ordinary disciplinary proceedings, the above-mentioned procedures resulting from complaints made to the Parliamentary Ombudsman and the Chancellor of Justice and the civil or criminal liability relating to holding an office as a judge.

A judge may be suspended from office pursuant to chapter 15 section 2 of Courts Act and section 40 subsection 2 of the Act on Public Officials in Central Government which the first-mentioned provision refers to. Suspension is only possible

- 1) for the duration of criminal trial against a judge and investigations preceding such a trial, if these can affect the judge's ability to attend to the functions of one's office;
- 2) if the judge refuses to give information about one's health or refuses from examinations of health, which are necessary for determining whether the judge is capable of attending to the functions of one's office; or
- 3) the judge has an illness which fundamentally impairs attending to the functions of one's office.

The decision to suspend a judge from office is made by the court in which the judge serves. However, the decision to suspend chief judges of district courts from office is made by courts of appeal, the decision to suspend presidents of courts of appeal and the Labour Court is made by the Supreme Court and the decision to suspend chief judges of administrative courts, the Market Court and the Insurance Court is made by the Supreme Administrative Court.

As can be seen from above, a suspension has always to do either with criminal proceedings against a judge or questions relating to a judge's ability to continue attending to the functions of one's office for health reasons. Of course, a criminal investigation may lead to disciplinary proceedings instead of a criminal trial but in that case the suspension must be ended once the choice of using the disciplinary proceedings is made.

37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?

See answer 37. Therefore, no answer needs to be given to this question.

38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?

See answer 37. Therefore, no answer needs to be given to this question.

39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?

See answer to 37. Therefore, no answer needs to be given to this question.

40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?

See answer 37. Therefore, no answer needs to be given to this question.

41. Can a judge appeal against an unfavourable decision of such a body?

See answer 37. Therefore, no answer needs to be given to this question.

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

Actually, the system in use in Finland works fairly well, according to my opinion. The grounds for the disciplinary liability are rather vague (which is principally problematic) but on the other hand there are several balancing factors. One of them is the leniency of the available sanctions (a written admonition/warning by a chief judge and a reprimand by the Parliamentary Ombudsman or the Chancellor of Justice). Another one is that in practice the ordinary disciplinary proceedings have not been misused ie. chief judges have not been excessively eager towards disciplinary proceedings and have been inclined to use softer methods if issuing a written admonition/warning has not been necessary.

As is apparent from what is said above, the Parliamentary Ombudsman and the Chancellor of Justice have a major role in the implementation of the disciplinary liability of judges. The number of complaints addressed to them is overwhelming compared to complaints addressed to the chief judges of our courts. The complaints system is also very well-known among the clientele of the courts. Therefore, it is widely used by those who feel having been ill-treated in the courts. The supervisory activities and functions of the Parliamentary Ombudsman and the Chancellor of Justice are based on the Constitution of Finland (sections 108 and 109). Thus, it is practically certain that they will continue these supervisory activities also in the years to come. I see certain points in their decision-making in which there would be room for improvement, but I am not going to take up my criticism here more than I already have done in answering question 19.

During the last approximately 30 years there have been several attempts to create a separate disciplinary system for judges which would include establishing an independent body to take care of the disciplinary proceedings. At the moment this is again on the agenda, this time of a five-year working group that was appointed in February 2023 to assess the guarantees and promotion of rule of law and needs to develop the judicial system.

43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

Regarding the structure of the system, I would not make any changes for reasons mentioned in the previous answer. What could be called for, is enacting explicit procedural rules for the ordinary disciplinary proceedings within the judiciary.

NOTE

The personal views expressed in these answers are those of Mr. Vanne. They are, however, not contradictory to the views of Mr. Antila.

The 26th of March 2024

Kimmo Vanne
Judge In Court of Appeal

Tuomo Antila
Justice of the Supreme Court

France

I. La législation

1. A quel niveau législatif (constitution, loi, code, etc.) la responsabilité disciplinaire des juges est-elle réglementée dans votre pays ?

Elle est règlementée par deux lois organiques (loi soumises au contrôle du Conseil constitutionnel). Il s'agit de la loi organique portant statut de la magistrature (Ordonnance n° 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature), et de la loi organique sur le CSM (Loi organique n° 94-100 du 5 février 1994 sur le Conseil supérieur de la magistrature).

2. Existe-t-il, en vertu des lois pertinentes, des décrets, des règlements et/ou des règles concernant la responsabilité disciplinaire des juges (par exemple, des actes normatifs ou réglementaires du gouvernement, de la cour suprême ou d'un autre organe judiciaire supérieur, du conseil de la justice et/ou d'autres organes) ?

Les règles essentielles concernant la responsabilité disciplinaire des juges sont contenues dans la loi organique portant statut de la magistrature, chapitre VII, articles 43 à 66, et dans la loi organique sur le CSM.

La jurisprudence du Conseil d'Etat, qui est le juge de cassation des décisions disciplinaires du CSM, est également pertinente.

3. Le pouvoir judiciaire de l'Etat, les associations de juges et/ou les juges individuels ont-ils participé de manière significative au processus de préparation des lois, décrets, règlements et/ou règles susmentionnés ? Si oui, dans quelle mesure ?

Les syndicats de magistrats ont été consultés par le ministère de la justice et par le parlement.

II. Cadre institutionnel des procédures disciplinaires à l'encontre des juges

4. Quels sont les organes (conseil de la justice, cour suprême ou autre organe judiciaire suprême, autres institutions) ou les fonctionnaires/personnes chargés de recevoir les plaintes en vue d'engager des procédures disciplinaires à l'encontre des juges ?

Le Conseil supérieur de la magistrature (CSM), seul compétent pour prononcer une sanction disciplinaire, peut être saisi :

- Par le ministre de la justice
- Par le premier président, chef de la cour d'appel dans le ressort duquel exerce le magistrat concerné
- Directement par un citoyen ou un avocat qui adresse sa plainte à la « commission d'admission des requêtes » constituée au sein du CSM. Après examen de la plainte, et

instruction de l'affaire, la commission d'examen des requêtes, si elle estime que la plainte est recevable, saisit le CSM statuant en formation disciplinaire.

5. Existe-t-il des délais dans lesquels une plainte doit être déposée en vue de l'ouverture d'une procédure disciplinaire ? Dans l'affirmative, veuillez fournir des détails.

Le délai pour saisir le CSM est de trois ans.

Le point de départ du délai de trois ans est fixé :

- à compter du jour où le ministre de la justice ou le premier président ont eu une connaissance effective de la réalité, de la nature et de l'ampleur des faits. En cas de poursuites pénales exercées à l'encontre du magistrat, ce délai est interrompu jusqu'à la décision définitive de classement sans suite, de non-lieu, d'acquittement, de relaxe ou de condamnation (article 47 de la loi organique statutaire)

- si la plainte émane d'un citoyen ou de son avocat, à compter du dessaisissement du magistrat contre lequel la plainte est dirigée ou après l'expiration d'un délai d'un an suivant une décision irrévocable mettant fin à la procédure (art 50-3 de la loi organique statutaire).

6. Existe-t-il des restrictions concernant les catégories de personnes ou d'organismes habilités à déposer une plainte en vue de l'ouverture d'une procédure disciplinaire ? Dans l'affirmative, veuillez fournir des détails.

Seuls le ministre de la justice, le premier président de la cour d'appel, ou des citoyens et avocats s'adressant à la « commission d'admission des requêtes » peuvent saisir le CSM d'une plainte disciplinaire.

7. La Cour constitutionnelle a-t-elle un rôle à jouer à un stade quelconque des procédures disciplinaires engagées contre des juges ?

Non.

8. Outre les personnes habilitées à engager une procédure disciplinaire, existe-t-il des organes ou des fonctionnaires/personnes qui peuvent demander l'ouverture d'une procédure disciplinaire, et quel est le suivi de ces demandes ?

Non.

9. Existe-t-il différents organes participant aux procédures disciplinaires à l'encontre des juges (c'est-à-dire un organe ayant des fonctions d'enquête et un organe ayant des pouvoirs de décision concernant la constatation d'une faute disciplinaire et la détermination d'une sanction disciplinaire) ?

Oui.

Ces différents organes sont l'inspection générale de la justice, le rapporteur, et lorsque la plainte émane d'un citoyen-justiciable, la « commission d'examen des requêtes ».

L'inspection générale de la justice est généralement saisie par le ministre de la justice, avant que celui-ci engage une action disciplinaire devant le CSM, sur la base du rapport d'enquête de l'inspection. **Un premier président** ne peut pas saisir l'inspection générale de la justice.

Le CSM désigne alors parmi ses membres un rapporteur, qui entend le magistrat concerné ainsi que les témoins des faits, et établit un rapport écrit, communiqué au magistrat.

Le rapporteur doit être d'un rang hiérarchique au moins égal à celui du magistrat.

Il ne peut pas participer au jugement de l'affaire.

Lorsque la plainte émane d'un citoyen-justiciable, c'est la « commission d'examen des requêtes » qui se prononce sur l'admissibilité, puis sur l'admission de celle-ci (c'est-à-dire que la commission saisit le CSM disciplinaire) dans les conditions prévues par l'article 50-3 de la loi organique statutaire.

Elle peut demander au ministre de la justice de demander à l'inspection générale de la justice d'effectuer une enquête.

10. Comment l'indépendance et l'impartialité de tous les organes ou fonctionnaires/personnes susmentionnés sont-elles garanties afin d'éviter toute attitude politique, personnelle ou autrement partielle (par exemple, garanties lors de leur élection/nomination, possibilités de récusation, etc.) ?

Il n'y a pas de garanties particulières concernant les personnes qui peuvent déclencher l'action disciplinaire, ni l'inspection générale de la justice.

S'agissant des membres du CSM (commission d'admission des requêtes, rapporteur, membres de la formation disciplinaire), ces garanties sont celles apportées par la procédure de leur nomination (audition par le Parlement) ou d'élection des différents membres.

Le rapporteur ne participe pas au jugement.

Les membres de la formation de jugement peuvent faire l'objet d'une demande de récusation, s'il existe des raisons sérieuses de douter de leur impartialité.

L'audience disciplinaire est publique.

III. Motifs d'ouverture des procédures disciplinaires à l'encontre des juges

11. Quels sont les motifs formels, établis par la loi, les décrets, les règlements et/ou les règles, pour engager des procédures disciplinaires à l'encontre des juges dans votre pays (par exemple, négligence grave, conduite malveillante et autres actes répréhensibles).

La définition de la faute disciplinaire est fournie par l'article 43 de la loi organique statutaire :

« Tout manquement par un magistrat à l'indépendance, à l'impartialité, à l'intégrité, à la probité, à la loyauté, à la conscience professionnelle, à l'honneur, à la dignité, à la délicatesse, à la réserve et à la discrétion ou aux devoirs de son état constitue une faute disciplinaire.

Constitue un des manquements aux devoirs de son état la violation grave et délibérée par un magistrat d'une règle de procédure constituant une garantie essentielle des droits des parties, constatée par une décision de justice devenue définitive. »

12. Ces motifs formels sont-ils clairement définis et exhaustifs ou peuvent-ils faire l'objet d'une interprétation et/ou d'une application plus large ?

Les termes employés par la définition de la faute disciplinaire sont assez larges, en particulier les « devoirs de son état », et peuvent faire l'objet d'une interprétation.

13. Existe-t-il ou pourrait-il exister d'autres motifs (c'est-à-dire des motifs *ad hoc*) pour engager des procédures disciplinaires à l'encontre des juges ? Le principe *nulla poena sine lege praevia* est-il appliqué (interdiction des lois *ex post facto* et de l'application rétroactive de la loi) ?

Il n'y a pas d'autres motifs que ceux énoncés par l'article 43 de la loi organique statutaire.

Oui, les principes *nulla poena sine lege* et l'interdiction de l'application rétroactive de la loi sont en vigueur.

14. Une plainte fait-elle l'objet d'un examen initial par une personne/un organe pour en vérifier le bien-fondé avant d'être soumise à l'examen d'un organe disciplinaire ? Existe-t-il des conditions/circonstances formellement établies qui excluent toute procédure disciplinaire à l'encontre d'un juge ? Est-il possible de mettre fin à une telle procédure à un stade précoce ? Si oui, dans quelles conditions/circonstances ?

La plainte est examinée par l'inspection générale de la justice, puis par le ministre de la justice, lorsque c'est lui qui saisit le CSM.

Elle est examinée par le premier président lorsque le CSM est saisi par lui.

Dans ces deux cas, il n'existe pas de circonstances excluant, a priori, la procédure disciplinaire à l'égard d'un juge.

Si la plainte est adressée directement au CSM par un citoyen-justiciable ou un avocat, elle est examinée par la commission d'admission des requêtes. A peine d'irrecevabilité, la plainte adressée directement au CSM par un citoyen :

- ne peut être présentée après l'expiration d'un délai de trois ans à compter du dessaisissement du magistrat contre lequel la plainte est dirigée ni, en tout état de cause, après l'expiration d'un délai d'un an suivant une décision irrévocable mettant fin à la procédure ;
- doit contenir l'indication détaillée des faits allégués ;
- doit être signée par le justiciable et indiquer son identité, son adresse ainsi que les éléments permettant d'identifier la procédure en cause.

Le président de la commission d'admission des requêtes peut rejeter les plaintes manifestement irrecevables. Lorsque la commission d'admission des requêtes du Conseil supérieur déclare la plainte recevable, elle en informe le magistrat mis en cause.

IV. La procédure disciplinaire à l'encontre des juges

15. Quelle est la procédure formelle d'ouverture d'une procédure disciplinaire à l'encontre d'un juge et comment la procédure se déroule-t-elle ensuite ?

Voir réponses aux questions précédentes.

16. Existe-t-il différentes phases dans les procédures disciplinaires à l'encontre des juges et quels organes ou fonctionnaires/personnes dirigent chaque phase (c'est-à-dire la phase d'enquête, la phase d'examen, la phase de prise de décision) ?

Si la saisine émane du ministre de la justice

- Phase d'enquête administrative par l'inspection générale de la justice
- Phase d'examen et d'instruction par un rapporteur membre du CSM
- Phase de décision (audience publique devant le CSM en formation disciplinaire

Si la plainte émane d'un citoyen-justiciable ou d'un avocat, voir réponse à la question 9 : c'est la « commission d'examen des requêtes » qui se prononce sur l'admissibilité, puis sur l'admission de celle-ci (c'est-à-dire que la commission saisit le CSM disciplinaire) dans les conditions prévues par l'article 50-3 de la loi organique statutaire.

Elle peut demander au ministre de la justice une enquête de l'inspection générale de la justice avant de décider si elle saisit le CSM disciplinaire.

17. Des mesures sont-elles appliquées aux juges une fois que la procédure disciplinaire est engagée et existe-t-il des circonstances dans lesquelles un juge peut être suspendu en attendant la résolution de la procédure disciplinaire ? Dans l'affirmative, veuillez fournir des détails.

Il existe une possibilité d'interdiction temporaire (suspension) du juge, prononcée par le CSM disciplinaire.

Article 50 de la loi organique statutaire :

« Le garde des sceaux, ministre de la justice, saisi d'une plainte ou informé de faits paraissant de nature à entraîner des poursuites disciplinaires, peut, s'il y a urgence et après consultation des chefs hiérarchiques, proposer au Conseil supérieur de la magistrature d'interdire au magistrat du siège faisant l'objet d'une enquête administrative ou pénale l'exercice de ses fonctions jusqu'à décision définitive sur les poursuites disciplinaires. Les premiers présidents de cour d'appel et les présidents de tribunal supérieur d'appel, informés de faits paraissant de nature à entraîner des poursuites disciplinaires contre un magistrat du siège, peuvent également, s'il y a urgence, saisir le Conseil supérieur aux mêmes fins. Ce dernier statue dans un délai d'un mois à compter de sa saisine.

La décision d'interdiction temporaire, prise dans l'intérêt du service, ne peut être rendue publique ; elle ne comporte pas privation du droit au traitement.

Si, à l'expiration d'un délai de deux mois suivant la notification de l'interdiction temporaire prononcée par le conseil de discipline, le Conseil supérieur de la magistrature n'a pas été saisi (...) l'interdiction temporaire cesse de plein droit de produire ses effets. »

18. Quelles sont les possibilités pour un juge de prendre part aux différentes phases de la procédure disciplinaire à son encontre et quel type d'actions ou de mesures formelles peut-il demander ?

Le juge concerné est entendu par l'inspection générale de la justice lors de l'enquête, puis par le rapporteur, puis par le CSM lors de l'audience publique.

Il a droit à l'assistance d'un avocat, ou d'un ou plusieurs autres juges.

19. Comment le principe de la présomption d'innocence est-il appliqué dans le cadre des procédures disciplinaires ?

Ce principe est en vigueur dans les procédures disciplinaires. C'est un principe général du droit pénal et disciplinaire.

20. Existe-t-il des délais formels pour entamer et conclure une procédure disciplinaire à l'encontre d'un juge ? Dans l'affirmative, quels sont les délais appliqués dans votre système ?

Pour entamer : voir réponse à la question 5 (trois mois)

Pour conclure

- Cas général : Le Conseil supérieur de la magistrature se prononce dans un délai de **douze mois** à compter du jour où il a été saisi, sauf prorogation pour une durée de six mois renouvelable par décision motivée.
- En cas de suspension (interdiction temporaire d'exercice) : Le Conseil supérieur de la magistrature se prononce sur la situation du magistrat ayant fait l'objet d'une interdiction temporaire d'exercice dans un délai de **huit mois** à compter du jour où il a été saisi en application des articles 50-1 à 50-3. Il peut, par décision motivée, proroger ce délai pour une durée de quatre mois. Si, à l'expiration de ce délai, aucune décision n'a été prise, l'intéressé est rétabli dans ses fonctions. Si l'intéressé fait l'objet de poursuites pénales, le conseil peut décider de maintenir l'interdiction temporaire d'exercice jusqu'à la décision définitive sur les poursuites disciplinaires.

21. Comment la décision finale sur la responsabilité disciplinaire d'un juge est-elle prise (par quel organe ou fonctionnaire/personne ; suivant quelle procédure, telle que le vote, etc.)

Par le CSM statuant en formation disciplinaire, après l'audience publique, et à l'issue d'un vote.

Lorsqu'elle se prononce sur l'existence d'une faute disciplinaire, la formation compétente du Conseil supérieur renvoie, en cas de partage égal des voix, le magistrat concerné des fins de la poursuite (il est alors décidé qu'il n'y a pas de faute).

Lorsque la formation compétente a constaté l'existence d'une faute disciplinaire, la sanction prononcée à l'égard du magistrat du siège est prise à la majorité des voix. En cas de partage égal des voix sur le choix de la sanction, la voix du président de la formation est prépondérante.

22. Les procédures disciplinaires à l'encontre d'un juge sont-elles affectées d'une manière ou d'une autre par d'autres procédures judiciaires (pénales, civiles, administratives) pour le même délit commis par le juge concerné ? Dans l'affirmative, veuillez préciser.

En cas de poursuites pénales exercées à l'encontre du magistrat, le délai de trois ans pour engager des poursuites est interrompu jusqu'à la décision définitive de classement sans suite, de non-lieu, d'acquittement, de relaxe ou de condamnation. Passé ce délai et hormis le cas où une autre procédure disciplinaire a été engagée à l'encontre du magistrat avant l'expiration de ce délai, les faits en cause ne peuvent plus être invoqués dans le cadre d'une procédure disciplinaire.

23. Quelles sont les possibilités pour un juge de faire appel d'une décision relative à sa responsabilité disciplinaire ? Un appel a-t-il un effet suspensif sur les conséquences d'une telle décision ?

Il n'y a pas d'appel, mais la décision disciplinaire prise par la formation du Conseil supérieur de la magistrature peut faire l'objet d'un recours en cassation devant le Conseil d'Etat (juridiction administrative).

24. Un juge peut-il participer aux audiences disciplinaires au stade de l'appel ?

Il n'y a pas d'appel des décisions disciplinaires du CSM, mais seulement un pourvoi en cassation devant le Conseil d'Etat.

25. Quelle est l'étendue du contrôle juridictionnel (par exemple, existence d'une audience publique à un moment donné de la procédure d'appel, possibilité pour les instances d'appel d'évaluer les preuves factuelles, autres aspects pertinents) ?

Le contrôle exercé par le Conseil d'Etat, juge de cassation, porte sur la qualification juridique des faits (sont-ils fautifs ?) et la proportionnalité de la sanction.

26. La phase d'appel concerne-t-elle non seulement la décision sur la responsabilité disciplinaire du juge, mais aussi la sanction spécifique imposée, et cette sanction peut-elle être remplacée par une autre (par exemple, confirmation de la responsabilité disciplinaire mais remplacement de la sanction) ?

Le Conseil d'Etat, en cassation, contrôle la proportionnalité de la sanction. Si il estime qu'elle est disproportionnée, il ne peut pas remplacer la sanction par une autre, mais il cassera la décision du CSM, qui devra rejurer l'affaire.

27. Après un recours en première instance, un juge peut-il porter son affaire devant des instances judiciaires supérieures et jusqu'à quel niveau ?

Après la décision du CSM disciplinaire, et le recours en cassation devant le Conseil d'Etat, il reste la possibilité de saisir la Cour européenne des droits de l'homme.

28. L'organe qui a engagé la procédure en responsabilité (voir section II, question 4) peut-il introduire un recours contre une décision qu'il n'estime pas satisfaisante (par exemple, acquittement du juge concerné ou sanction jugée trop clémente) ?

A ma connaissance, **non**. Je n'ai pas d'exemple de recours en cassation du ministre de la justice contre une décision disant qu'il n'y a pas eu de faute disciplinaire, ou prononçant une sanction trop clémente.

V. Sanctions disciplinaires à l'encontre des juges

29. En ce qui concerne les sanctions disciplinaires à l'encontre des juges, veuillez décrire brièvement ce qui suit :

- s'il existe une liste facilement accessible et exhaustive de ces sanctions clairement définies dans un texte juridique ;

Oui.

C'est l'article 45 de la loi organique statutaire : Les sanctions disciplinaires applicables aux magistrats sont :

- 1° Le blâme avec inscription au dossier ;
- 2° Le déplacement d'office ;
- 3° Le retrait de certaines fonctions, dans lesquelles le magistrat ne peut être nommé pour une durée maximale de cinq ans ;
- 3° bis L'interdiction d'être nommé ou désigné dans des fonctions de juge unique pendant une durée maximale de dix ans ;
- 4° L'abaissement d'un ou de plusieurs échelons ;
- 4° bis L'exclusion temporaire de fonctions pour une durée maximale de deux ans, avec privation totale ou partielle du traitement ;
- 5° La rétrogradation ;
- 6° La mise à la retraite d'office ou l'admission à cesser ses fonctions lorsque le magistrat n'a pas le droit à une pension de retraite ;
- 7° La révocation.

- un tel texte juridique définit-il clairement quelle sanction disciplinaire s'applique dans quel cas ;

Non.

- ou est-il laissé à la discrétion de l'organe décisionnel, avec une marge d'interprétation et/ou d'application de sanctions.

Oui.

30. Dans tous les cas, existe-t-il des exigences liées à la décision sur la sanction applicable (par exemple, la proportionnalité de la sanction par rapport à la faute commise, ou d'autres exigences) ?

L'exigence de proportionnalité de la sanction est implicite, et résulte du contrôle de cassation opéré par le Conseil d'Etat.

31. En particulier, comment le principe de proportionnalité est-il sauvegardé et existe-t-il des critères concrets et/ou des liens (contraignants) entre certaines violations et certaines sanctions ? Si la révocation est une sanction possible, des circonstances particulières sont-elles prévues ?

Il n'y a pas de critères énoncés dans la loi. En pratique, selon la jurisprudence du CSM et du Conseil d'Etat, la révocation est, bien sûr, réservée aux cas les plus graves

32. Est-il expressément exclu que si le verdict d'un juge dans une affaire judiciaire est renversé en appel, sa responsabilité disciplinaire ne soit pas invoquée ?

Il n'est pas formellement et explicitement exclu que la responsabilité du juge soit invoquée si sa décision est réformée en appel.

Cette responsabilité peut être engagée en cas de « violation grave et délibérée par un magistrat d'une règle de procédure constituant une garantie essentielle des droits des parties, constatée par une décision de justice devenue définitive ».

Constitue un des manquements aux devoirs de son état (et donc une faute disciplinaire) la violation grave et délibérée par un magistrat d'une règle de procédure constituant une garantie essentielle des droits des parties, constatée par une décision de justice devenue définitive (article 43 de la loi organique statutaire).

VI. Vérification des antécédents (le vetting) et autres formes de responsabilité et de sanctions/mesures à l'encontre des juges

33. Le vetting existe-t-il dans votre pays et dans quelles conditions (quelle est sa définition), ou son introduction est-elle envisagée et dans quelles conditions ?

Non. Le vetting n'existe pas en France. Toutefois, la moralité et l'absence de condamnation pénale des candidats aux fonctions de juge sont appréciées lors de la procédure de première nomination en qualité de juge (ou d'élève à l'école nationale de la magistrature).

34. Il est assez fréquent que, lorsque le vetting est introduit, l'initiateur de cette procédure extraordinaire fasse valoir que les moyens ordinaires, y compris les procédures disciplinaires, ne fonctionnent pas. Par conséquent, les membres du CCJE des pays où le vetting a été introduit dans le passé ou où il peut ou doit être introduit, peuvent-ils fournir des informations sur les raisons identifiées dans leur pays pour justifier que les procédures disciplinaires ne sont pas suffisantes ?

Sans objet.

35. Quelle est votre avis général sur le vetting (avantages et inconvénients) ?
36. En plus du vetting, existe-t-il dans votre pays une possibilité d'invoquer d'autres formes de responsabilité à l'encontre des juges en dehors du cadre des procédures disciplinaires et/ou d'appliquer des sanctions/mesures dans diverses situations (par exemple, la suspension de la fonction, des mesures éthiques ou d'autres mesures) ? Veuillez préciser. Veuillez noter que cette question **ne concerne pas** la responsabilité civile, administrative ou pénale ordinaire.
37. Dans le cas du vetting ou d'autres formes de responsabilité telles que mentionnées ci-dessus, quel est l'organe responsable ? S'agit-il du même organe que pour les procédures disciplinaires ou d'un organe différent ?
38. Quelle est la composition de cet organe et comment est-il constitué (élu ou nommé, par qui, etc.) ?

39. Quelle est la procédure suivie par cet organe pour le vetting des juges ou pour leur imposer d'autres formes de responsabilité, comme indiqué ci-dessus ?
40. Quelles sont les sanctions/mesures qui peuvent être imposées aux juges par un tel organe et le principe de proportionnalité est-il appliqué ?
41. Un juge peut-il faire appel d'une décision défavorable d'un tel organe ?

VII. Problèmes et défis

42. Existe-t-il, à votre avis, des problèmes ou des défis dans votre pays concernant la responsabilité disciplinaire des juges (par exemple, les motifs de cette responsabilité, les procédures disciplinaires ou les organes responsables, les sanctions appliquées, les possibilités d'appel, etc.)

Oui. La responsabilité disciplinaire des juges est de plus en plus souvent engagée par le ministre de la justice.

Le CSM disciplinaire a été saisi de 14 poursuites contre des juges en 2021, contre 4 en 2020, 3 en 2019, et 1 en 2018.

La loi organique du 20 novembre 2023 est venue durcir sensiblement le régime disciplinaire des juges, notamment par :

- l'allongement du délai de conservation au dossier des juges des avertissements donnés par le premier président, qui est passé de 3 à 5 ans ;
- l'extension du champ de la saisine du CSM disciplinaire par les citoyens-justiciables, qui n'auront plus à exposer des griefs, mais seulement « des faits » ;
- la transmission obligatoire des décisions de la commission d'admission des requêtes, y compris des décisions d'irrecevabilité, au garde des Sceaux et au chef de cour du magistrat visé par la plainte ;

43. Dans l'affirmative, quel type de solutions pouvez-vous proposer pour surmonter ces problèmes ou défis ?

Les membres du pouvoir exécutif et du pouvoir législatif semblent avoir une défiance grandissante à l'égard des juges. La situation est analogue dans d'autres Etats européens.

Georgia / Géorgie

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

Disciplinary liability of Judges is regulated by Organic law on „Common Courts of Georgia”.

The legislative amendments adopted within the framework of the so-called “Third and Fourth Waves” of the judiciary reforms have introduced a number of novelties guaranteeing the accountability of the judiciary and the due and independent disciplinary proceedings against judges.

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?

Disciplinary Liability of Judges is regulated only by Organic law on „Common Courts of Georgia”. All stages of the disciplinary proceedings are set forth in details in this law.

In addition it should be noted, that Conference of Georgian Judges has adopted „Ethic Rules of Judges” according The Bangalore Principles. The breach of the rules of Judicial Ethics as a basis for imposing a disciplinary liability has been excluded from the law as well (since January 2020). Noteworthy, the Organic Law has specified concrete grounds for disciplinary liability.

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

Representatives/members of High Council of Justice of Georgia and representatives of Association of Judges are involved in the process of preparation of the above-mentioned laws, as a members of concrete working groups. If they are not involved in the process, they have possibility to provide opinions/Comments on the draft law.

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

As a result of the reform, a position of an Independent Inspector was introduced in 2017, who operates independently from the HCJ (High Council of Justice of Georgia) and ensures an objective and unbiased examination of alleged disciplinary misconducts of judges.

Pursuant to the current legislation, only the Independent Inspector is entitled to receive complaints and initiate the disciplinary proceedings and conduct the preliminary examination and investigation of an alleged disciplinary misconduct.

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

Disciplinary liability shall not be imposed on a judge if 3 years have passed from the day when disciplinary misconduct was committed until the initiation of disciplinary proceedings for misconduct.

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

There is no limitation on the categories of persons or bodies, who are entitled to bring a complaint to the Independent Inspector.

A ground for initiating disciplinary proceedings against a judge may be the following:

- a) a complaint or application of any person, except for an anonymous complaint or application;**
- b) an explanatory note of another judge, a member of court or the High Council of Justice of Georgia or an officer of the administration of court or the High Council of Justice of Georgia with regard to the commission of a disciplinary misconduct by a judge;**
- c) a notification by an investigative body;**
- d) information disseminated through mass media, and information in the report and/or proposal of the Public Defender of Georgia with respect to an act committed by a judge that may be considered as a disciplinary misconduct.**

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

N/A

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

Grounds for initiating of Disciplinary proceedings are mentioned in the answers of question 6 (please see our answer). Disciplinary proceedings against a judge shall be initiated, and the preliminary examination and investigation of a disciplinary case shall be conducted by the Independent Inspector. The Independent Inspector shall submit his/her reasoned conclusions and opinions to the High Council of Justice of Georgia.

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

Four different institutes are involved in disciplinary proceedings against judges of the common courts: the Independent Inspector, the HCJ (High Council of Justice of Georgia), the Disciplinary Panel of Judges of the Common Courts, and the Disciplinary Chamber of the Supreme Court.

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

The separation of powers between the different institutes involved in the disciplinary proceedings and the composition of these bodies ensure the exclusion of any possibilities of undue influence or interference in the process of disciplinary liability of judges.

As a result of the reform, a position of an Independent Inspector was introduced in 2017, who operates independently from the HCJ and ensures an objective and unbiased examination of alleged disciplinary misconducts of judges.

The Independent Inspector is elected on the basis of a competition, for a term of five years by a majority of the full composition of the HCJ. The Independent Inspector has his/her own office. The structure, staff list and salaries of the office are approved exclusively by the Independent Inspector within the limits of the allocations to the Office of the Independent Inspector. To guarantee the financial independence of the Office of the Independent Inspector, the Organic Law prescribes that current year's expenses of the Office of the Independent Inspector cannot be reduced compared to the budgetary resources of the previous year without consent of the Independent Inspector.

The High Council of Justice of Georgia shall consist of 15 members. Eight members of the High Council of Justice of Georgia shall be elected by a self-governing body of judges of the general courts of Georgia according to the procedure determined by this Law; five members shall be elected by the Parliament of Georgia and one member shall be appointed by the President of Georgia. The chairperson of the Supreme Court shall, by virtue of his/her position, be a member of the High Council of Justice of Georgia.

It should be highlighted that the legislative amendments of 31 December 2021 abolished the requirement of a two-thirds majority for the decisions of the HCJ on disciplinary matters. In line with the recommendations of the GRECO made within the framework of the Fourth Evaluation Round dealing with "Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors", the new requirement set forth that "the decision of the HCJ on disciplinary matters shall be deemed to be adopted if it is supported by secret ballot by a majority of the full composition of the HCJ."

The Disciplinary Panel is composed of 5 (3 judge and 2 non-judge) members. The judge members are elected by the Conference of Judges with two-third majority of members present, while the non-judge members are elected by the Parliament of Georgia with a majority of full composition of its members. The Panel elects its chairperson from among its members. The non-judicial members of the panel are elected from among the professors, academic researchers employed in the higher

education institutions of Georgia, members of the Georgian Bar Association and/or persons nominated by non-entrepreneurial (non-commercial) legal entities of Georgia.

The Disciplinary Panel is authorized if at least majority of its members (that is, at least 3 members) are present at the meeting, while the decisions are made by the majority of its members present. The session of the disciplinary panel is closed unless the judge requires the publicity of the sessions.

A decision of the Disciplinary Panel may be appealed to the Disciplinary Chamber of the Supreme Court. The Disciplinary Chamber of the Supreme Court, composed of 3 members, shall be elected by the Plenum of the Supreme Court for a three-year term with two-third majority of its members present at the meeting. In order to elect members of the Disciplinary Chamber of the Supreme Court, candidates for the membership, including a candidate for the chairperson of the Disciplinary Chamber, shall be nominated to the Plenum of the Supreme Court, from among the Supreme Court members, by a member of the Plenum. The decision of the Disciplinary Chamber is made by a majority of votes, it shall be final and shall not be subject to appeal.

Judge against whom the disciplinary proceedings is initiated may ask for recusal against all institutions (Independent Inspector, Members of High Council of Justice of Georgia; Members of Disciplinary panel; Members of Disciplinary chamber) if there are grounds for recusal.

A motion of the judge must be granted if the suspicion of impartiality of the Independent Inspector/member in a given case is grounded. If the same ground exists, the Independent Inspector/member shall recuse himself/herself.

The issue of challenging the Independent Inspector shall be reviewed by a three-member Panel of the High Council of Justice of Georgia to be selected by casting lots. If the motion of the judge is granted, the disciplinary case shall be investigated by a member of the High Council of Justice of Georgia to be identified under the procedure established by the Regulations of the High Council of Justice of Georgia. The issue of challenging this member of the High Council of Justice of Georgia shall be resolved under this paragraph. A member of the High Council of Justice of Georgia, who is to exercise the powers conferred on the Independent Inspector by this Law, shall not be involved in making the decision to impose disciplinary liability on the judge with regard to the given case. The period spent during the decision-making process with regard to challenging the Independent Inspector shall not be included in the disciplinary case investigation period.

The issue of recusal of the member of High Council of Justice of Georgia is decided by HCJ (majority), recusal of member of Disciplinary Panel by the Disciplinary panel and recusal of members of Disciplinary Chamber by Disciplinary chamber.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

An incorrect interpretation of a law, which is based on judge's inner conviction, shall not constitute disciplinary misconduct, and disciplinary liability shall not be imposed on a judge for such conduct.

The following shall constitute disciplinary misconduct:

a) Conduct that violates the principle of independence, in particular:

a.a) Political or social influence or influence of personal interests when a judge exercises judiciary powers;

a.b) Judge's interference in other judge's activities for the purpose of influencing the outcome;

b) Conduct that violates the principle of impartiality, in particular:

b.a) Public expression of an opinion by a judge on a case currently under the court's consideration. Judge's comments on organizational and technical matters pertaining to the case currently handled by court for the purpose of informing the public shall not constitute disciplinary misconduct;

b.b) Disclosure of the outcome of a case to be heard by a judge in advance, except in the circumstances specified by the Georgian procedural law;

b.c) Violation of Clause 1, Article 72¹ or Clause 1, Article 72² by a judge;

b.d) Judge's refusal to recuse oneself or satisfy a request for recusal when clear legal grounds for recusal exist;

b.e) Accession to membership in a political association, engagement in political activities, public support for a political entity running in an election, or public expression of a political opinion by a judge;

b.f) Illegal interference by a judge in the process of distribution of cases in a court;

b.g) Public expression by a judge in breach of the principle of political neutrality; A judge's scientific or analytical reasoning regarding judicial reform and/or legal changes related to justice is not considered a violation of the principle of political neutrality;

c) Conduct that violates the principle of integrity, in particular:

c.a) Corruption-related offenses, i.e. perpetration by a judge of offenses under articles 5, 5², 7, 8, 10, 11, 13, 13⁴, 13⁵, 20⁴ of the Law of Georgia "On Combating Corruption";

c.b) Hindering disciplinary proceedings by a judge;

d) Conduct that violates the principle of propriety, in particular:

d.a) Establishment of personal and intense (friendly, familial) relations with a participant in a process to be held for a case to be handled by him or her personally, which results in the judge's bias and/or placement of a participant in a process in a favorable position, if the judge had an information about the side;

d.b) Sexual harassment by a judge;

d.c) Disclosure of confidentiality of a judicial deliberation by a judge;

e) Conduct that violates the principle of equality, in particular:

e.a) Discriminatory verbal or other action by a judge towards any person on any grounds, performed when performing judiciary duties;

e.b) Judge's failure to react if he or she witnesses a discriminatory verbal or other action towards a participant in a process by a court staff or a participant in a process;

f) Conduct that violates the principle of competence and diligence, in particular:

- f.a) Material violation by a judge of a time limit specified by the Georgian procedural law without good reason. The reason for such a material violation shall be considered without good reason unless the judge failed to observe the time limit because of objective circumstances related directly to administering justice (heavy case load, complexity of a case, etc.);**
- f.b) Expression of undisguised disrespect by a judge towards another judge, a court staff, or a participant in a court process;**
- f.c) Judge's failure to react if he or she witnesses a legal violation or disciplinary misconduct described in this clause by a different judge, a court staffer, or a participant in a court process;**
- f.d) Judge's failure to fulfil or improper fulfilment of relevant administrative duties, in particular, duties of a head of a court, a judiciary panel, or chairperson of a chamber;**
- g) Any conduct incompatible with the exalted status of a judge (action (conduct) not in line with the exalted status of a judge, perpetrated in or outside a court, which clearly disturbs public order or universally recognized moral standards and thereby damages the standing of, or undermines trust in, the court)**

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

The Organic Law of Georgia “on Common Courts” now sets forth the precise grounds for disciplinary liability, which conform to the international standards and distinguish the standards of professional conduct from the disciplinary rules. Pursuant to the new regulations, only intentional or negligent behaviours of a judge that are listed in the law may constitute a disciplinary misconduct.

According to the amendments, disciplinary liability for the misconduct of minor significance can no more be imposed. The breach of the rules of Judicial Ethics as a basis for imposing a disciplinary liability has been excluded from the law as well.

13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

N/A

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

1. The Independent inspector shall make a substantiated decision to dismiss or terminate disciplinary proceedings against a judge if:

- a) the time limit for imposing disciplinary liability, or imposing disciplinary liability and penalty on a judge has expired;**
- b) there is a decision made by the body conducting disciplinary proceedings against the same judge and on the same grounds;**
- c) judicial powers of a judge have been terminated;**
- d) the complaint concerns the legality of the act passed by a judge.**

2. The High Council of Justice adopts reasoned decision on termination of disciplinary proceedings against a judge if as a result of investigation of the disciplinary case, the fact

of committing a disciplinary misconduct under this Law, or its culpable commission by a judge is not proved.

3. The decisions of the Independent Inspector and High Council of Justice of Georgia on termination of the disciplinary proceedings against a judge shall be communicated to the respective judge and shall be published on the webpage of the High Council of Justice of Georgia without identifying information of the judge and other persons – parties to the disciplinary proceedings. If the judge has requested that the disciplinary proceedings be public under Article 75⁴ of this Law, the decision of the High Council of Justice of Georgia to terminate disciplinary proceedings against the judge shall be published with identifying information of the judge.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

There is no separate formal step for initiating disciplinary proceedings. Receiving complaint/information/proposal/notification is automatic ground for starting the disciplinary proceedings.

The Independent Inspector shall immediately notify the relevant judge of receiving a complaint, application or any other information on committing disciplinary misconduct by a judge.

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

The Independent Inspector shall, within 1 month after receiving a complaint, application or other information on a judge committing a disciplinary misconduct, preliminarily examine its validity. When performing these procedures, the Independent Inspector shall apply the the standard of reasonable suspicion. The period of the preliminary examination may be extended by 2 weeks, or suspended if the examination cannot be conducted.

The Independent Inspector shall be authorized, when verifying the validity of a complaint, application, or other information on committing disciplinary misconduct by a judge, to directly access the electronic database of the Public Service Development Agency, legal entity under public law, the electronic database of the National Agency of Public Registry, legal entity under public law, the electronic database of the Notary Chamber of Georgia, legal entity under public law, the electronic database of the National Bureau of Enforcement, legal entity under public law, and the electronic database of the Revenue Service, legal entity under public law. In the process of verification, the Independent Inspector shall also be authorized, within 10 days from receiving an application, to request information about administrative penalties imposed and criminal record using an interactive electronic system, and information about crossings of the national border, motor vehicle, and registration of firearms directly from the automated search resource of the Ministry of Internal Affairs of Georgia. The Independent Inspector shall be furthermore authorized to send a substantiated letter to the Ministry of Internal Affairs of Georgia with request to supply more information, which the Internal Affairs Ministry of Georgia can decide to release in compliance with the Georgian legislation.

If the Independent Inspector discovers evidence of a criminal offense during the preliminary examination and investigation of a disciplinary case, he or she shall apply to

the High Council of Justice of Georgia with a substantiated recommendation to make a decision on transfer of the materials of the case to the Prosecutor's Office of Georgia. Circumstances not specified in the complaint, application or other information on committing disciplinary misconduct by a judge but were identified during the preliminary examination may serve as a basis for imposing disciplinary liability on the judge. The disciplinary proceedings may not be re-initiated against the same judge on the same grounds that were used in the disciplinary proceedings. After preliminary examination and investigation, Independent Inspector shall submit his/her reasoned conclusions and opinions to the High Council of Justice of Georgia.

The LCC (Organic Law on Common Courts) separates the initiation of disciplinary proceedings and initiation of disciplinary prosecution from each other: the Independent Inspector is able to initiate disciplinary proceedings against a judge, whereas the HCJ has an authority to initiate the disciplinary prosecution. More precisely, as a result of the examination of the opinion submitted by the Independent Inspector, made after the preliminary examination of an alleged disciplinary misconduct of a judge, the HCJ shall adopt a reasoned decision to terminate the disciplinary proceedings or to initiate disciplinary prosecution against the judge and to take explanations from the judge concerned. Whereas, following the initiation of disciplinary prosecution against the judge and having taken an explanation from the judge concerned, the HCJ shall adopt a reasoned decision to terminate disciplinary proceedings or to impose disciplinary liability on a judge.

It should be highlighted that the legislative amendments of 31 December 2021 abolished the requirement of a two-thirds majority for the decisions of the HCJ on disciplinary matters. In line with the recommendations of the GRECO made within the framework of the Fourth Evaluation Round dealing with "Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors", the new requirement set forth that "the decision of the HCJ on disciplinary matters shall be deemed to be adopted if it is supported by secret ballot by a majority of the full composition of the HCJ."

In case the HCJ adopts a decision on imposing a disciplinary liability on a judge, the disciplinary case shall be forwarded to the Disciplinary Panel of Judges of the Common Courts of Georgia. The Disciplinary Panel is authorized to consider a disciplinary case and adopt a decision on acquittal or impose a disciplinary penalty/a disciplinary measure against a judge. A disciplinary penalty and a disciplinary measure are imposed by preserving the principle of independence and non-interference in the activities of a judge. When selecting a disciplinary penalty and a disciplinary measure for a judge, the Disciplinary Panel shall consider the nature and gravity of a disciplinary misconduct, consequences it entailed or may have entailed, and the degree of the guilt.

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

The High Council of Justice is authorized, on the basis of a substantiated motion submitted by the Independent Inspector, if supported by the majority of the full composition of the Council, to apply to the Disciplinary Panel of the Judges of Common Courts of Georgia to decide on withdrawing a judge of district (city) court or court of appeals from hearing cases if any of the following grounds are present:

- a) criminal proceedings have been brought against a judge;

b) disciplinary proceedings have been commenced against the judge of a district (city) court or a court of appeals in accordance with paragraph 1 of Article 75⁸ of this Law and there is a reasonable suspicion suggesting that if the judge continues to exercise judicial powers he/she will interfere with the disciplinary proceedings and/or with the reimbursement of damages caused by the disciplinary misconduct and/or will continue with the breach of the work discipline.

The Disciplinary Panel of the Judges of Common Courts of Georgia reviews the Submission of the High Council of Justice within 5 working days, in accordance with the general rule provided in this law. Non-appearance of the parties to the disciplinary proceedings related to the review of the Submission of the High Council of Justice, shall not prevent its review and delivery of a decision.

If the Disciplinary Panel of the Judges of Common Courts of Georgia agrees to the conclusions provided for in the Submission of the High Council of Justice regarding the existence of one of the grounds enshrined in paragraph 1 of this article, the Panel will render a decision on withdrawing the judge from hearing cases until the final conclusion of the relevant proceedings. Otherwise, the Disciplinary Panel of the Judges of Common Courts of Georgia will render a decision refusing to grant the submission.

The decision of the Disciplinary Panel of the Judges of Common Courts of Georgia regarding the Submission of the High Council of Justice may be appealed by the parties to the disciplinary proceedings, within 3 working days after having been served with the decision, before the Disciplinary Chamber of the Supreme Court.

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

Judge is informed immediately as soon as complaint' or proposal against him/her is presented.

Judge has the right to have representative/lawyer during all phases. Judge can receive all relevant document and information. She/he has right to provide explanation or provide additional evidences to the Independent Inspector or HCOJ, as well as to Disciplinary panel or Disciplinary Chamber.

Judge is informed about Disciplinary hearings (Hearing on imposing a disciplinary liability against Judge at HCoJ) and has right to attend hearing and provide additional explanation and information to the members of HCOJ.

Disciplinary case at Disciplinary panel and Disciplinary chamber is decided by active participation and involvement of Judge.

Disciplinary proceedings are confidential, but Judge can make disciplinary proceedings public.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

According article 75¹ of Organic Law on Common Courts –

1. Disciplinary liability shall be imposed on a judge only if the fact of perpetration of a disciplinary misconduct by the judge is established as a result of conducting disciplinary proceedings laid down in this Chapter.
2. Disciplinary liability shall be imposed on a judge only for culpable conduct, i.e. only if he or she could objectively avert disciplinary misconduct by resorting to an appropriate action, but has not done so.
3. Only an action committed by a judge intentionally or due to negligence and referenced in this law shall constitute disciplinary misconduct.
4. A conduct which a judge realized could cause harm at a time when he or she was perpetrating it, shall be considered intentional disciplinary misconduct.
5. A conduct which a judge did not realize could cause harm at a time when he or she was perpetrating it, although he or she was expected to, and could reasonably realize it, shall be considered disciplinary misconduct by negligence.

According article 75¹⁴ of Organic Law on Common Courts -

The reasoned decision on imposing disciplinary liability on a judge must contain the contents of a disciplinary accusation filed against him/her. While making this decision, the council shall apply the high level of probability standard.

According article 75⁴⁶ of Organic Law on Common Courts -

The Disciplinary panel shall make a decision on finding a judge liable for committing a disciplinary misconduct and imposing disciplinary liability and penalty on him/her, if culpable commission by the judge of one or several disciplinary misconducts under this Law has been proved, by inter-compatible and irrefutable evidence collectively, as a result of a hearing of a disciplinary case by the Disciplinary Panel and the Disciplinary Panel deems it appropriate to impose disciplinary liability on the judge in accordance with the rule enshrined in paragraph 2 of Article 75⁴⁷ of this Law.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

Disciplinary liability shall not be imposed on a judge if 3 years have passed from the day when disciplinary misconduct was committed until the initiation of disciplinary proceedings for misconduct, and 1 year has passed from the day when the decision was made to impose disciplinary liability.

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

Decision is made by Disciplinary Panel by majority (voting) (please see our answers on questions 10 and 16)

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

No

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

Judge can appeal decision of Disciplinary Panel at Disciplinary Chamber of Supreme Court of Georgia. Yes, appeal has suspensive effect.

24. Can a judge participate in the disciplinary hearings at the appeal stage?

Yes, Judge can participate in the disciplinary hearings not only at appeal stage, but at Disciplinary Panel too.

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

During appeal proceedings, factual evidences as well as legal arguments should be assessed.

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

Yes, sanction can be replaced by Disciplinary Chamber.

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

Decision of Disciplinary panel can be appealed at Disciplinary chamber of Supreme court of Georgia. Decision of Supreme Court of Georgia is final and can't be appealed.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

Yes, High Council of Justice of Georgia can appeal decision of Disciplinary Panel at Disciplinary chamber of Supreme Court of Georgia.

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:

- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;
- is it clearly defined in such a legal text which disciplinary sanction applies in which case;
- or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.

According article 75.⁴⁷¹ of LCC (Law on Commonc Courts of Georgia) - A disciplinary penalty and a disciplinary measure shall be imposed by following the principle of independence of a judge and non-interference in the activities of a judge. When selecting a disciplinary penalty and a disciplinary measure for a judge, the Disciplinary panel shall consider the nature and gravity of a disciplinary misconduct, consequences it entailed or may have entailed, and degree of the guilt.

75⁴⁷.2 - The Disciplinary panel may, in principle, apply only one type of a disciplinary penalty, the basic penalty. In specific circumstances, when the application of solely the basic penalty does not suffice to achieve the goal of disciplinary penalty, the disciplinary Penalty is authorized to apply additionally a supplementary disciplinary penalty provided in Article 75³ paragraph 1² of this law. A disciplinary measure shall only be applied in combination.

75⁴⁷.3 If a penalty imposed for a previously committed disciplinary misconduct has not been expunged, a more severe disciplinary penalty shall usually be imposed on a judge.

75⁴⁷.4 If, within 6 months of applying to a judge with a private recommendation letter, the judge commits the similar disciplinary misconduct for which the above disciplinary measure was imposed on him/her, the Disciplinary panel shall consider imposing a disciplinary penalty on him/her.

According article 75.⁴⁸ of LCC - For disciplinary misconduct as specified in this law, disciplinary penalties described in Clause 1, Article 75³ of this law shall be ordinarily imposed in the listed order, with the exception of the cases when the type of disciplinary misconduct warrants a stricter penalty.

The following shall be disciplinary penalties:

- a) Reproval;
- b) Reprimand;
- c) Severe reprimand;
- d) Withholding 5% to 20% of salary for no longer than 6 months' period;
- e) Dismissal of the chairperson, the first deputy or a deputy chairperson of a court, the chairperson of a judicial panel or chamber from position;
- e¹) Enrollment of a judge in a relevant qualification programme;
- f) Dismissal of a judge.

Reproval, reprimand, severe reprimand, dismissal of a judge shall only be employed as a basic disciplinary penalty.

Dismissal of the chairperson, the first deputy or a deputy chairperson of a court, the chairperson of a judicial panel or a chamber from position, withholding 5% to 20% of salary for no longer than 6 months' period, may be employed as a basic or as a supplementary disciplinary penalty.

A Disciplinary Measure constitutes giving a private recommendation letter to a judge.

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

According article 75.⁴⁸ of LCC - For disciplinary misconduct as specified in this law, disciplinary penalties described in Clause 1, Article 75³ of this law shall be ordinarily imposed in the listed order, with the exception of the cases when the type of disciplinary misconduct warrants a stricter penalty.

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

According article 75.⁵⁰ of LCC - The Disciplinary panel shall take into account that dismissal of a judge from the post is a measure of last resort, and this measure shall be applied in a special situation. The Disciplinary panel shall make a decision on dismissing a judge from the post if, based on the gravity and number of a specific disciplinary misconduct, and considering a previously committed disciplinary misconduct, it deems it inappropriate that this judge continue to exercise his/her judicial powers.

If a disciplinary penalty – a severe reprimand – was imposed on a judge, individually or in combination with a statutory disciplinary measure, for a previously committed disciplinary misconduct and this penalty is not expunged, the Disciplinary panel shall consider the dismissal of this judge from the post when selecting a disciplinary penalty for a new disciplinary misconduct.

From the moment of making the decision to dismiss a judge from the post by the Disciplinary panel, the judge must be withdrawn from hearing a case and exercising other official powers under the procedure established by law.

32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

YES, in article Article 75^{1.6} of Organic law on Common Courts of Georgia, is underlined, that An incorrect interpretation of a law, which is based on judge's inner conviction, shall not constitute disciplinary misconduct, and disciplinary liability shall not be imposed on a judge for such conduct.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

NAP

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

35. What is your own general opinion on vetting (advantages and disadvantages)?

In my opinion vetting can have only disadvantages. This procedure breaches not only independence of individual Judges, but Institutional Independence of whole Judicial System. This is possibility for other state authorities or state holders receive sole and strong power and make strong influence on Judges and Judicial System, thus this procedure can't have any advantages in democratic society.

36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply

sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability.

NAP

37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?

NAP

38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)

NAP

39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?

NAP

40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?

NAP

41. Can a judge appeal against an unfavourable decision of such a body?

NAP

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

The legislative amendments adopted within the framework of the so-called “Third and Fourth Waves” of the judiciary reforms have introduced a number of novelties guaranteeing the accountability of the judiciary and the due and independent disciplinary proceedings against judges. As a result of these enhancements, Georgia has got the system of judicial accountability that meets the international standards and recommendations of GRECO.

43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

Germany / Allemagne

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

The disciplinary responsibility of judges is regulated by law (federal or state law, depending on the judge's position in the judiciary).

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?

No.

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

In the legislative process, the draft law is regularly forwarded to the professional associations concerned and they are asked for their views. Judges' and lawyers' associations were therefore involved in the legislative process of the disciplinary law for judges.

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

In the event of disciplinary offenses, the disciplinary supervisor/superior shall initiate preliminary investigations. The disciplinary supervisor/superior is the person who is responsible for decisions under the Judges Disciplinary Act. That position is determined partly by law, partly by regulations and partly by the internal organisation of the court.

The supreme disciplinary authority may submit an application for the initiation of formal disciplinary proceedings, which must be decided by the disciplinary court for judges.

There are disciplinary courts on the state level ("Bundesländer") and on the federal level ("Bundesgericht").

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

The law does not regulate complaints to the supervisory disciplinary authority. Complaints are not subject to any time limits or formal requirements.

However, the disciplinary supervisor/superior is obliged to initiate the complaint immediately as soon as he or she becomes aware of sufficient factual indications that justify the suspicion of a disciplinary offense.

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

No.

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

This is only the case if a disciplinary proceeding is directed against a judge of the Constitutional Court itself.

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

All or natural or legal persons may request initiating disciplinary proceedings. These requests are examined by the disciplinary supervisor/superior for judges.

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

No. The highest disciplinary authority for judges can submit an application to the disciplinary court to initiate formal disciplinary proceedings (judicial disciplinary proceedings). E.g.: In North Rhine Westphalia the Ministry of Justice is entitled to start that procedure (disciplinary action to the disciplinary court).

The disciplinary court collects the necessary evidence and takes any possible disciplinary measures in its own right.

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

The disciplinary court itself takes the disciplinary measures and enjoys judicial independence. The disciplinary court can also review disciplinary measures taken by the disciplinary supervisor/superior at the request of the judge concerned.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

A civil servant commits an official offense if he culpably violates the duties incumbent upon him. Special duties of judges are regulated in a separate law that applies to civil servants and, accordingly, to judges.

There are also special duties of judges that apply to judges of all federal states (“Bundesländer”). Corresponding regulations apply to federal judges, i.e. judges at the highest courts in the country (e.g. Supreme Court, Federal Constitutional Court).

Judges must observe judicial independence both within and outside of their office and must conduct themselves in such a way that confidence in their independence is not jeopardized. This also applies to political activities. Judges may neither provide legal opinions outside of their office nor provide legal information in return for remuneration (corruption). They are subject to a duty of confidentiality with regard to the consultation and coordination of all court proceedings. This also applies after the end of their time in office.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

There is room for wider interpretation and/or application.

13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

No, there are no ad hoc grounds for initiating disciplinary proceedings against judges. All disciplinary proceedings are based on law. The principle of “nulla poena sine lege” applies in disciplinary proceedings as well.

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

According to the Federal Disciplinary Act, the disciplinary supervisor/superior has a duty to initiate disciplinary proceedings if there is sufficient factual evidence to justify the suspicion of misconduct. However, if it is to be expected that disciplinary action will not be considered due to the passage of time or following criminal proceedings, disciplinary proceedings will not be initiated.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

The initiation of official disciplinary proceedings must be recorded. The disciplinary supervisor/superior must initiate an investigation to clarify the facts of the case. Once the matter has been clarified, the proceedings can either be discontinued or the judge can be reprimanded (kind of disciplinary measure) or it can be decided to file a disciplinary action.

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

The official proceedings (initiation, investigation, final ruling) are conducted by the disciplinary supervisor/superior.

The judge is involved in the proceedings as legally affected party and may participate in the clarification of the facts. The higher disciplinary supervisor/superior shall ensure that participation as part of their supervision.

This administrative disciplinary proceeding may be followed by judicial disciplinary proceeding. The disciplinary court collects the necessary evidence and takes any disciplinary measures itself.

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

At the request of the highest disciplinary authority, the disciplinary court shall decide on the provisional suspension/dismissal from service and the withholding of remuneration as well as on the revocation of these measures. This is permissible if the judge is likely to be removed from his or her position as a judge or to be deprived of his or her pension.

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

The judge must be informed immediately of the initiation of disciplinary proceedings as soon as this is possible without jeopardizing the clarification of the facts of the case. The judge shall be informed of the disciplinary offense/misconduct with which he or she is charged. At the same time, he or she must be informed that he or she is free to make a statement orally or in writing or not to testify and that he or she may be represented by counsel at any time. It is the judge's discretion to give oral or written evidence or not to testify on the merits or to be represented by counsel at any time.

The judge shall be given one month to submit a written statement and two weeks to submit an oral statement. If the judge has declared timely that he wishes to make an oral statement, the hearing must be held within three weeks of receipt of the declaration. The judge also has the right to submit motions for evidence. Once the investigations have been completed, the judge has the right to make a final statement. In disciplinary proceedings, a full procedure with all the rights of the parties involved takes place in accordance with the provisions for procedure in Administrative Courts.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

The presumption of innocence also applies in disciplinary proceedings. This means that every judge has to be treated as innocent until the proceedings have been concluded in accordance with the general rules of procedure.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

The disciplinary supervisor/superior is obliged to initiate disciplinary proceedings as soon as he or she first becomes aware of sufficient factual indications that justify the suspicion of disciplinary offense. Disciplinary proceedings are governed by the acceleration principle of disciplinary proceedings.

If official disciplinary proceedings have not been concluded within six months of their initiation by discontinuation, by the issuance of a disciplinary order or by the filing of an disciplinary action, or if official disciplinary proceedings have not been concluded within six months of their initiation by establishment of facts, by the issuance of a disciplinary order or by the filing of an disciplinary action, the judge may apply to the court to set a deadline for the conclusion of the disciplinary proceedings.

The filing of a disciplinary action has not specific deadline, although the acceleration principle of disciplinary proceedings must be observed. An unreasonably long duration of proceedings in determining the disciplinary measure may be taken into account as a relevant factor in deciding of a proportional disciplinary measure.

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

In official disciplinary proceedings, the disciplinary supervisor/superior decides. The disciplinary action (judicial disciplinary proceedings) is decided by the competent disciplinary court.

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

If a breach of official duty also constitutes a criminal offense, it is not permissible to impose sanctions under disciplinary law in the form of a reprimand, fine or reduction of pension in addition to criminal sanctions. In addition, disciplinary law is bound to a certain extent by the judgment in the criminal proceedings, which takes precedence.

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

A judge may appeal against any decision of the disciplinary court. In principle, the appeal has a suspensive effect.

24. Can a judge participate in the disciplinary hearings at the appeal stage?

Yes.

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

Disciplinary measures are subject to a complete factual and legal review by the disciplinary court.

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

Yes, the disciplinary measure imposed can also be reviewed and, if necessary, exchanged for another one.

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

Yes. He or she can appeal to a higher disciplinary court. In most cases, judges are additionally also entitled to appeal to the Federal Disciplinary Court.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned, or sanction considered too lenient)?

Yes.

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:
- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;
 - is it clearly defined in such a legal text which disciplinary sanction applies in which case;
 - or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.

The types of disciplinary measures are strictly and final enumerated by law.

In addition, the decision on the disciplinary measure is based on dutiful discretion.

The personality of the judge must be taken into account appropriately. Furthermore, the extent to which the judge has impaired the trust of the institution, or the public has to be considered.

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

See answer 29.

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

The discretion of the authority or court is limited in accordance with the requirements set out in question 29. In addition, the disciplinary measure must be based on the culpability and the principle of proportionality. The most severe disciplinary measure, such as removal from office, may therefore only be imposed for particularly serious disciplinary offenses. This is the case if the judge has not acted in accordance with the principle of judicial independence (e.g. acceptance of bribes/corruption or taking positions publicly against the fundamental principles of the German constitution).

32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

No, there is no specific legislation accordingly. But it is part of the general principle of the independence of judges that there will be no disciplinary liability if a judges' verdict is reversed on appeal.

Due to the constitutionally protected independence of judges, it is impossible for the core area of judicial activity to give rise to disciplinary proceedings.

Any judicial decision is part of that core area.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

There are no integrity checking and vetting procedures in Germany as described and discussed in the Compilation of Venice Commission opinions and reports concerning vetting of judges and prosecutors (CDL-PI (2022) 051) of 19.12.2022. According to VC the concept of vetting involves the implementation of a process of accountability mechanisms to ensure the highest professional standards of conduct and integrity in public office. The VC refers to the UN Secretary General stating that vetting usually entails a formal process for the identification and removal of individuals responsible for abuses, especially from police, prison serves, army and the judiciary.

According to this "definition" there is no vetting or other forms of liability and sanctions/measures against judges.

In the process of recruitment of judge's candidates there are some integrity checks exercised through the evaluation of asset declarations. This kind of integrity checking is part of the assessment of profession capacities of judges.

As well, every judge is assessed at regular intervals by the court administration. This involves assessing their professional skills with a view to applying for higher offices in the judiciary.

The court administration also examines courts to ensure that court proceedings are concluded within a reasonable period of time. It is not each individual judge that is reviewed, but the panels of judges. The internal audit of the courts cannot lead to individual measures against judges.

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

See answer 33.

35. What is your own general opinion on vetting (advantages and disadvantages)?

The examination of judges for their integrity risks violating the principle of judicial independence. Nevertheless, vetting or other forms of liability and sanctions might be discussed or even necessary to guarantee the independence of the judiciary especially when judicial institutions or judges are known to be exposed to accusations of corruption. In that case the procedure and the body in charge of vetting or other forms of liability are subject to rule of law.

36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability.

See answer 33.

37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?

See answer 33.

38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?

See answer 33.

39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?

See answer 33.

40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?

See answer 33.

41. Can a judge appeal against an unfavourable decision of such a body?

See answer 33.

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

No, there are no general problems or challenges concerning liability of judges. The number of disciplinary offenses/actions of judges is very low. German judges, in general, follow the principle of judicial independence and political restraint exemplary.

43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

Italy / Italie

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

Within the constitutional provision (Article 105) stating that the Superior Council of the Judiciary is responsible for disciplinary measures concerning magistrates, the disciplinary liability of judges, in Italy, is regulated by laws, specifically by Legislative Decree No. 109 of 2006. This legislative decree, often referred to as 'Disciplinary Code', introduced significant changes to the disciplinary system for judges in Italy.

It established the framework for disciplinary proceedings.

The mentioned decree introduced, in Article 1, a general provision that enumerates the duties of the magistrate in the exercise of his functions, identifying them in impartiality, correctness, diligence, discretion, balance, and respect for the dignity of the person.

While the legislative decree provides the foundation, additional regulations and rules exist at the institutional level to further detail the disciplinary process.

The Superior Council of the Judiciary (Consiglio Superiore della Magistratura) plays a crucial role in overseeing and implementing disciplinary measures.

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?

As mentioned above, in Italy, the primary legal framework governing the disciplinary liability of judges is provided by Legislative Decree No. 109 of 2006.

This legislative decree establishes the foundational rules and procedures for disciplinary proceedings against judges.

Additionally, there are further regulations and rules at the institutional level, particularly those issued by the Superior Council of the Judiciary (Consiglio Superiore della Magistratura or CSM).

The SJC is a key body in the Italian judiciary responsible for overseeing the disciplinary process and ensuring the proper functioning of the judiciary.

These additional regulations and rules may detail specific aspects of disciplinary proceedings, the composition of disciplinary bodies, and other procedural aspects.

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

In Italy, the process of preparing laws, decrees, regulations, and rules, including those related to the disciplinary liability of judges, often involves the participation of various stakeholders, including the judicial power of the state, associations of judges, and individual judges.

The Superior Council of the Judiciary (Consiglio Superiore della Magistratura or CSM) is a key institution overseeing the judiciary in Italy.

The SJC plays a significant role in proposing and influencing legal reforms related to the judiciary, including matters of disciplinary liability.

Its members, who include judges and other legal professionals, contribute to discussions and decision-making processes that may shape the legal framework.

Associations representing judges, such as the National Association of Magistrates (Associazione Nazionale Magistrati or ANM), may actively participate in the legislative process.

These associations often advocate for the interests and perspectives of judges, providing input, suggestions, and feedback during the preparation of laws, decrees, and regulations. They may engage in consultations, hearings, and other forms of dialogue with While individual judges may not have a direct role in the legislative process, their perspectives can be represented and advocated for through associations and representative bodies.

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

Anyone has the faculty to report to the Prosecutor General of the Court of Cassation and to the Minister of Justice, facts of disciplinary relevance.

The Prosecutor General at the Court of Cassation is indeed entrusted with the authority of disciplinary action, independently of the authority entrusted to the Minister of Justice, concerning all ordinary magistrates, whether judges or public prosecutors. While the Minister of Justice has the power to initiate disciplinary action by requesting investigations from the Prosecutor General and simultaneously informing the Superior Council of the Judiciary - providing a brief indication of the facts for which proceedings are initiated- the Prosecutor General is obligated to exercise disciplinary action and communicate it to the Minister of Justice and the Superior Council of the Judiciary.

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

See below at chapter no. 20.

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

The right to bring a complaint for the purpose of initiating disciplinary proceedings against judges is not limited to specific categories of persons or bodies. Generally, individuals, institutions, or even other judges may have the right to file complaints.

Some bodies (Superior Council of the Judiciary, judicial councils, and Head of judicial offices) have a real obligation to communicate any relevant fact from a disciplinary perspective to the Prosecutor General of the Court of Cassation. Other bodies (Presidents of Division, Panel Presidents, Deputy prosecutors) are obligated to communicate the same facts to the Heads of Judicial Offices. The Prosecutor General can also become aware of facts susceptible to disciplinary action on its own, for example, by noting them from measures examined in the exercise of functions or even from press reviews or the mass media.

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

The Constitutional Court (Corte Costituzionale) does not typically have a direct role in disciplinary proceedings against judges. The disciplinary process for judges is initiated by the Prosecutor General of the Court of cassation or by the Minister of Justice and is primarily overseen by the Superior Council of the Judiciary (Consiglio Superiore della Magistratura). The Constitutional Court generally focuses on constitutional matters and the interpretation of the constitution and other laws and its jurisdiction is distinct from the disciplinary proceedings handled by the Superior Council of the Judiciary.

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

Besides those with the explicit power to initiate disciplinary proceedings, there may be bodies or officials/persons who can request the initiation of disciplinary proceedings against judges. Such requests might come from various sources, including legal professionals, individuals, or even within the judiciary itself. When a request is received, the Prosecutor General of the Court of cassation, as well as the Minister of Justice can exercise disciplinary action into one year and this term starts only when the information about the misconduct is detailed, containing all the constituent elements of the disciplinary misconduct. In any case, disciplinary action cannot be initiated if ten years have passed since the incident. When the information is not detailed, the Prosecutor General conducts preliminary investigations that do not fall within the scope of jurisdictional activities but have a purely administrative character

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

Yes, in Italy, disciplinary proceedings against judges involve different bodies with distinct functions.

The disciplinary action represents the expression of the intention to proceed against a magistrate and materializes in the act by which the Minister of Justice exercises this authority through a request for investigations to the Prosecutor General at the Court of Cassation. The Minister communicates the initiative to the Superior Council of the Judiciary, providing a brief indication of the facts for which proceedings are initiated.

The Prosecutor General, another holder of disciplinary action, initiates the relevant action by sending a communication to the Superior Council of the Judiciary and to the Minister.

The Prosecutor General, when exercising disciplinary action, formulates the charge, which can be modified, even at the instigation of the Minister of Justice, until the conclusion of the investigations. At the generally public hearing, the functions of the public prosecutor are typically exercised by a substitute Prosecutor General. At the conclusion of the hearing, the Disciplinary Section will impose the sanction if it deems the charges to be substantiated or, in case of insufficient evidence, will consider them excluded.

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

The independence and impartiality of the bodies and officials involved in disciplinary proceedings against judges in Italy are typically safeguarded through various mechanisms. The authority for disciplinary proceedings is jointly entrusted to the Minister of Justice and the Prosecutor General at the Court of Cassation.

The action is exercised by the Prosecutor General of the Court of Cassation, ensuring the utmost transparency and impartiality.

The Members of the Superior Council of the Judiciary, which plays a central role in the process, are often appointed through a process designed to ensure their independence from political influence.

The Disciplinary Section of the Superior Council of the Judiciary - which is a judicial body in every respect - is the unique expression of the disciplinary authority recognized to the Council by the Constitution and is elected by the Council after its installation. It judges with a President (usually the Vice President of the Superior Council) and five ad hoc judges (one lay member and four robed judges). There is the possibility to challenge a member of the section who is considered incompatible, although the possibility of abstention and challenge is excluded for those who have expressed their opinion in the exercise of the administrative activities of the CSM, considering the judicial nature, not administrative, of the disciplinary section.

These safeguards aim to uphold the integrity of the disciplinary process, minimize external influence, and maintain public confidence in the judiciary.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

The system of disciplinary liability of judges is equipped with the so-called "safeguard clause," ensuring that the responsibility of the magistrate cannot concern the interpretation of legal norms or the assessment of facts.

The formal grounds for initiating disciplinary proceedings against judges in Italy are typically outlined in the law, decrees, regulations, and rules governing the judiciary.

The most relevant source is represented by the Disciplinary Code of 2006.

The grounds include a range of misconduct or violations of ethical standards, such as serious negligence, malicious conduct, or other wrongdoings that undermine the integrity of the judiciary.

In particular, disciplinary offenses are distinguished between those committed in the exercise of functions and those committed outside the exercise of functions. They include, among others, in the first group: the serious violation of the law determined by ignorance or inexcusable negligence (closing rule), the adoption of restrictive measures on personal freedom outside the cases provided by the law; the adoption of measures not provided by law that have infringed personal rights; the distortion of facts resulting from inexcusable negligence.

On the other hand, among the violations committed outside the exercise of functions, the following offenses are included: the use of the quality of magistrate to obtain unjust advantages; obtaining loans and benefits from parties involved in proceedings; unauthorized socializing and business relationships; participation in secret societies or political parties; undertaking extrajudicial appointments without the prescribed authorization from the Superior Council of the Judiciary.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

The formal grounds for initiating disciplinary proceedings against judges in Italy are exclusively defined in legal instruments but may also allow for some degree of interpretation. While there are clear and specific grounds outlined in laws, decrees, regulations, and rules, the application of these grounds can sometimes involve interpretation based on the circumstances of each case.

The role of the CSM is especially relevant in establishing the boundaries and content of individual disciplinary violations where legislative provisions are particularly broad.

The aim is to provide a certain level of flexibility to address a variety of situations, ensuring that the disciplinary process can adapt to different contexts. However, the interpretation and application of the formal grounds are expected to adhere to legal principles and standards, maintaining a balance between clarity and flexibility to address the complexities of judicial conduct.

In particular, the regulation of the disciplinary liability of magistrates, as also resulting from the additions made by law no. 71 of 17 June 2022 (so-called Cartabia law).

In particular, the following are disciplinary offenses in the exercise of functions:

- a) behaviours that cause unjust harm or undue advantage to one of the parties;
- b) the omission of communication to the High Council of the Judiciary of the existence of situations of incompatibility;
- c) knowingly disregarding the obligation to abstain in cases provided for by law;
- d) habitually or seriously improper behaviour towards the parties, their defenders, witnesses, or anyone who has dealings with the magistrate within the scope of judicial office, or towards other magistrates or collaborators;
- e) unjustified interference in the judicial activity of another magistrate;
- f) failure to communicate to the head of the office, by the receiving magistrate, of the interference that has occurred;
- g) serious violation of the law due to inexcusable ignorance or negligence;
- h) distortion of facts due to inexcusable negligence;
- i) issuance of decisions lacking motivation, or whose motivation consists solely of the assertion of the existence of legal prerequisites without indication of the factual elements from which such existence results, when motivation is required by law;
- j) adoption of measures in cases not permitted by law, due to serious and inexcusable negligence, which have violated personal rights or, significantly, property rights;
- k) repeated or serious non-compliance with regulatory norms, directives, or provisions on judicial service or organizational and IT services adopted by competent bodies;
- l) undue delegation of activities falling within one's duties to others;
- m) failure to reside in the municipality where the office is located without the authorization provided for by current regulations, if concrete prejudice to the fulfilment of duties of diligence and industriousness has resulted;
- n) repeated, serious, and unjustified delay in performing acts related to the exercise of functions; delay not exceeding three times the terms provided by law for the performance of the act is presumed not serious, unless otherwise demonstrated;
- o) failure to cooperate by the magistrate in the implementation of measures under Article 37, paragraph 5-bis, of the decree-law of July 6, 2011, no. 98, converted, with amendments, by Law July 15, 2011, no. 111, as well as the repetition, following the adoption of such measures, of the behaviours imposed by them, if attributable to the magistrate;
- p) habitual and unjustified avoidance of service activities;

- q) for the head of the office or the president of a section or the president of a panel, failing to assign matters and draft the related measures;
- r) failure to be available for office needs when required by law or legitimate provision of the competent body;
- s) disclosure, even due to negligence, of proceedings covered by secrecy or subject to publication prohibition, as well as violation of the duty of confidentiality regarding matters under consideration or finalized, when likely to unduly harm others' rights;
- t) public statements or interviews concerning parties involved in matters under consideration, or treated but not definitively settled by non-appealable measure, when aimed at unduly harming others' rights;
- u) soliciting publicity for news related to one's office activities or establishing and using reserved or privileged information;
- v) intentional adoption of measures affected by blatant inconsistency between the operative part and the reasoning, manifesting a preconceived and unequivocal contradiction on a logical, substantive, or argumentative level;
- w) failure, by the head of the office or the president of a section or panel, to communicate to the competent authorities facts known to him that may constitute disciplinary offenses committed by magistrates of the office, section, or panel;
- x) failure, by the head of the office or by the magistrate responsible for supervision, to communicate to the High Council of the Judiciary the existence of situations of incompatibility;
- y) adoption of measures not provided for by current regulations or based on a blatant error or serious and inexcusable negligence;
- z) issuance of a measure restricting personal liberty in the absence of prerequisites provided by law, due to serious and inexcusable negligence (including the issuance of a measure restricting personal liberty in the absence of prerequisites provided by law, by failing to transmit relevant elements to the judge, due to serious and inexcusable negligence).

Constitute disciplinary offenses outside the exercise of functions:

- a) the use of the magistrate's status to obtain unjust advantages for oneself or others;
- b) associating with individuals undergoing criminal or preventive proceedings handled by the magistrate, or individuals known to have been declared habitual, professional, or tendency offenders, or convicted of non-negligent crimes with a sentence of imprisonment exceeding three years, or subject to preventive measures, unless rehabilitation has occurred, or knowingly engaging in business relationships with such individuals;
- c) assuming extrajudicial assignments without the prescribed authorization from the High Council of the Judiciary;
- d) engaging in activities incompatible with the judicial function;
- e) obtaining, directly or indirectly, loans or benefits from individuals known by the magistrate to be parties or suspects in pending criminal or civil proceedings at the judicial office of affiliation or at another office within the Court of Appeal district where judicial functions are exercised, or from their defenders, as well as obtaining, directly or indirectly, loans or benefits, under exceptionally favorable conditions, from injured parties or witnesses or individuals involved in the judgements;
- f) participation in secret associations or associations whose bonds are objectively incompatible with the exercise of judicial functions;
- g) systematic and continuous membership or participation in political parties or involvement in the activities of entities operating in the economic or financial sector that may influence the exercise of functions or otherwise compromise the magistrate's image;

- h) instrumental use of the status that, due to the magistrate's position or the manner of implementation, is aimed at influencing the exercise of constitutionally prescribed functions;
 - i) endeavouring to unduly influence the exercise of functions of the High Council of the Judiciary, in order to obtain unjust advantage for oneself or others or to cause unjust harm to others;
 - j) omission, by a member of the High Council of the Judiciary, of communication to competent authorities of facts known to them that may constitute disciplinary offenses.
13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of "*nulla poena sine lege praevia*" applied (prohibiting *ex post facto* laws and the retroactive application of law)?

The grounds for initiating disciplinary proceedings against judges are established by existing laws, decrees, regulations, and rules in Italy. *Ad hoc* grounds, not explicitly outlined in these legal instruments, are not allowed as they could conflict with the principle of legal certainty.

The principle of "*nulla poena sine lege praevia*" is a fundamental legal principle prohibiting *ex post facto* laws and retroactive application. This principle generally ensures that individuals are not penalized for conduct that was not considered a violation at the time it occurred.

While the legal system aims to be comprehensive, changes to legislation could potentially introduce new grounds for disciplinary proceedings, but they would typically apply prospectively rather than retroactively. The legal framework strives to balance the need for legal certainty with the necessity of adapting to evolving circumstances, excluding the possibility of applying disciplinary provisions retroactively.

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

Yes, in the disciplinary process against judges, there is often an initial review of a complaint to assess its merit before it proceeds to a full review by the disciplinary body. This initial review is conducted by the Prosecutor General who also proceeds, as mentioned above, to the investigations.

Formally established conditions or circumstances that may rule out disciplinary proceedings against a judge can vary and are typically outlined in the laws, regulations, and rules governing judicial discipline. Grounds for termination at early stages could include lack of evidence, procedural irregularities, or a determination that the alleged conduct does not meet the criteria for disciplinary action.

The decision to terminate proceedings at an early stage would generally be based on a careful evaluation of the specific circumstances of the case and adherence to legal standards.

At the end of the investigations, which must be completed within two years, the Prosecutor General can alternatively request a declaration of no further action or formulate the final charge and request the President of the disciplinary section of the Superior Council of the Judiciary to set the date for the oral discussion hearing. On the request for no further action, the disciplinary section decides in a closed session with a non-appealable order. If it accepts the request, it decides with an order of no further action. If it rejects the request, the

Prosecutor General formulates the final charge and asks the President of the Disciplinary Section of the CSM to set the date for the oral discussion hearing.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

First, it should be recalled that in Italy ordinary judges and public prosecutors are subject to the same disciplinary system, as they all belong to a single judicial order according to the Constitution. The Minister of Justice, through the General Inspectorate of the Ministry, and the Prosecutor General of the Court of Cassation may carry out summary preliminary investigations prior to the commencement of disciplinary proceedings in order to verify the existence of the necessary conditions. These investigations are normally limited to obtaining documents or information from the head of the magistrate's judicial office. Such investigations may be ordered *ex officio*, even on the basis of simple journalistic information, or on the basis of a report, complaint or denunciation by any person or subject who brings to light facts that may be of disciplinary relevance, including the Inspectorate General itself or the heads of judicial offices or other magistrates. However, the opening of such predisciplinary proceedings requires a reasoned report containing all the elements of a disciplinary case (Article 15 of Legislative Decree 109/2006). At the end of this first phase, marked by summary preliminary investigative activities, the Prosecutor General may file the case or take disciplinary action. The Minister of Justice may also take disciplinary action by requesting the Prosecutor General's Office to carry out subsequent - and completely independent - investigative activities. The exercise of disciplinary action and the related charge are notified to the person concerned and to the SCM. At this stage, the records of the proceedings are not accessible to the accused person. The actual disciplinary procedure consists in carrying out the necessary investigations. At the end of these investigations the procedure may culminate in a request for dismissal to the SCM or in a request for a hearing before the disciplinary section of the SCM, which is the disciplinary court for judges and public prosecutors. These requests entitle the accused to receive a full copy of the disciplinary file, which is also forwarded to the SCM. While disciplinary action is mandatory for the Supreme Court Prosecutor General's Office, it is only optional for the Ministry of Justice. Motions not to proceed or to set a public hearing are considered by the Disciplinary Section of the SCM in an *in camera* session, at the end of which the Disciplinary Section may issue an order rejecting the motion not to proceed and requesting the Supreme Court Prosecutor General's Office to take disciplinary action.

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

As briefly explained above, there are several stages in the disciplinary process. There is an initial pre-disciplinary stage, of which the magistrate is unaware, which may end in the inertia of the Minister of Justice (for whom disciplinary measures are optional; he is not obliged to inform anyone, not even the Public Prosecutor's Office) or in the filing by the Public Prosecutor's Office of the Court of Cassation, if the latter finds nothing of disciplinary relevance at the end of the preliminary investigation. No one (neither the complainant, nor the magistrate concerned, nor the CSM) has access to this file, except the Minister of Justice. He is the only one who, if he does not agree with the decision, can take disciplinary

action on his own. At the end of the disciplinary phase, during which the investigation is conducted and the accused is usually heard and thus has the opportunity to defend himself, the Public Prosecutor's Office may ask the Disciplinary Chamber of the Supreme Judicial Council either to dismiss the case if it considers that there are no grounds for a trial, or to set a date for a hearing before the Disciplinary Chamber. Even in the case of a request for dismissal by the prosecution, the Disciplinary Chamber of the SJM, which does not agree with the conclusions of the prosecution, could set the hearing. If the proceedings do not result in a decision not to prosecute, a public hearing will be held before the Disciplinary Chamber of the SJM.

The judgement of the Disciplinary Chamber of the SJM may be appealed against before the United Civil Sections of the Court of Cassation by either the Prosecutor General of the Court of Cassation, the Minister of Justice or the defendant.

17. **Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.**

Prior to the conclusion of the disciplinary proceedings, the magistrate may be suspended from his duties and salary as a precautionary measure. Precautionary suspension is mandatory (art. 21 of Legislative Decree no. 109 of 2006) if the magistrate is subject to criminal proceedings and personal precautionary measures has been taken. On the other hand, if the magistrate is being prosecuted for a non-culpable offence sanctioned by imprisonment or if he is accused of facts which, because of their seriousness, make him incompatible with the performance of his duties, precautionary suspension is optional (art. 22 of Legislative Decree no. 109 of 2006). In less serious cases, a transfer to a neighbouring district may be requested instead of a precautionary suspension of duties and salary. The two types of suspension, compulsory and optional, are adopted by the disciplinary section of the SJC at the request of one or both of the holders of disciplinary action.

18. **What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?**

At the pre-disciplinary stage, the accused magistrate does not take part in the proceedings and is not informed of them. From the moment the disciplinary action is taken, the magistrate is informed of the charges against him and may appoint a defence counsel (who may be either a magistrate or a lawyer), ask to be heard by the Public Prosecutor's Office of the Supreme Court and file pleadings and documents. The accused magistrate cannot yet have access to the case file. He will only be able to see these documents when the Public Prosecutor's Office submits to the Disciplinary Chamber of the SJC its requests for dismissal or for the setting of a hearing for trial.

19. **How is the principle of presumption of innocence applied in the course of disciplinary proceedings?**

Pre-disciplinary and disciplinary proceedings are subject to the rules of the Code of Criminal Procedure, insofar as they are compatible. The principle of the presumption of innocence is therefore fully applicable. In particular, the standard of proof required for the adoption of precautionary measures or for a conviction is the same as in criminal proceedings.

20. **Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?**

When the holder of disciplinary power receives a substantiated report of a disciplinary infringement, the period of one year begins within which the pre-disciplinary procedure must end with a dismissal or with the exercise of disciplinary action. From the moment the disciplinary action is taken, a further two years elapse in which the Minister of Justice and/or the General Prosecutor's office must submit a request to the Disciplinary Chamber of the SJC for dismissal or for a hearing. Within two years from the request, the Disciplinary Chamber of the SJC must issue a decision. The Court of Cassation decides within six months from the date of the appeal against the decision of the Disciplinary Chamber of the SJC. No disciplinary measure may be taken after ten years from the date of the facts.

21. **How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?**

The disciplinary judge is the disciplinary chamber of the SJC (pursuant to Article 105 of the Constitution), which is considered a judicial body in all respects. It consists of six members of the magistrates' governing body. The composition of the Disciplinary Chamber is decided by drawing lots by the SJC at the beginning of its four-year term of office. The composition of the disciplinary chamber is as follows: the vice-president of the SCM, who generally presides over the chamber, five members elected by the SJC from among its members (one elected by Parliament, one justice of the Court of cassation and three other magistrates). The plenary assembly also appoints 14 substitute members from among its members. The panels of six judges are then formed. The disciplinary chamber of the SJC and the Court of cassation apply the rules of the Code of Criminal Procedure, insofar as they are compatible with the disciplinary proceedings. The decisions are taken according to the above-mentioned rules.

22. **Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.**

Any proceedings (criminal, civil or administrative) may be reported in disciplinary proceedings by any person.

If there is a complete coincidence between the facts that are the subject of criminal proceedings and those that are the subject of disciplinary proceedings, the disciplinary proceedings shall be suspended until the criminal proceedings have been concluded (Article 15/8 of Legislative Decree no. 109 of 2006).

Criminal judgments of conviction, plea bargain or acquittal have the force of *res judicata* in disciplinary proceedings as regards the establishment of the facts, their criminal unlawfulness, and the affirmation that they were committed by the accused (Article 20 of Legislative Decree no. 109 of 2006).

23. **What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?**

The conviction of the disciplinary Chamber of the SJC can only be appealed before the United Civil Sections of the Court of Cassation. The appeal lodged against the judgement of the SJC has suspensive effect and prevents the decision from becoming final. Any

disciplinary precautionary measure can always be subject to a magistrate's request for revocation or replacement by the Disciplinary Section of the CSM.

24. Can a judge participate in the disciplinary hearings at the appeal stage?

The appeal before the United Civil Sections of the Court of Cassation against the sentences of the disciplinary chamber is permitted only due to legal defects. Therefore, no presence or declaration is expected from the accused, who however can participate, silently, in the disciplinary hearings at the appeal stage.

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

The hearing before the disciplinary section of the SJC is public (art. 18/2 of Legislative Decree no. 109 of 2006). The United Civil Sections of the Court of Cassation can review the factual evidence or other pertinent aspects only to assess whether the first judgement is affected by a significant violation of the law or by a manifest logical flaw in the reasoning.

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

The Court of cassation cannot apply a different sanction but can annul with postponement the first decision for a new judgment on the sentencing by the disciplinary section. However, the Court of Cassation has, in some cases, ordered the acquittal of the accused, deeming the disciplinary offense of little relevance pursuant to art. 3 bis of Legislative Decree no. 109/2006.

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

As mentioned, there is a single level of judgment on the merits in the Italian legal system, which can only be followed by an appeal lodged before the Court of Cassation.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

The General Prosecutor's Office of the Court of Cassation and the Minister of Justice can also appeal the sentence of the disciplinary section of the SJC. To do so they must have a concrete interest and will be able to appeal only within the limits of the legitimacy judgment before the Court of Cassation.

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:

- **is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text.**

Yes, the list of sanctions is well defined within section II of the Legislative Decree. n. 109 of 2006, entitled "disciplinary sanctions".

- **is it clearly defined in such a legal text which disciplinary sanction applies in which case.**

Art. 12 of Legislative Decree no. 109 of 2006 defines the type of sanctions applicable for each disciplinary offence.

- **or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.**

The disciplinary section of the CSM is therefor left with a certain discretion in determining the sanction actually applicable in reference to the specific case.

30. **In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?**

When imposing a specific sanction, the disciplinary judge considers the conduct of the accused and its actual severity. The disciplinary offence cannot be considered when the fact is judged to exist but of little importance (art. 3 bis of Legislative Decree no. 109/2006).

31. **In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?**

The article 12 bis of Legislative Decree no. 109/2006 provides that for certain offences the sanction may not be lower than certain limits. Even the most severe sanction of removal from office is always possible for extremely serious offences and is even mandatory where the judge has received loans or benefits from persons whom he knows to be parties to or under investigation in civil or criminal proceedings pending in the judicial office to which he belongs or in another office in the same district of the court of appeal, or from their lawyers, or their counsel, or if the judge has been disqualified from holding public office for an indefinite period as a result of a criminal conviction or has been sentenced in criminal proceedings to a penalty of imprisonment for an intentional offence for a minimum of at least one year, the execution of which has not been suspended or for which the suspension has been lifted. A disciplinary decision may be reviewed if it is established in a criminal trial that the facts are irreconcilable with those established in an irrevocable criminal judgment, or if evidence has emerged or is discovered after the decision which, on its own or in conjunction with the evidence already examined in the disciplinary proceedings, proves that the disciplinary offence was not committed. The sanctions of a warning or censure shall cease to have effect three or five years respectively after the disciplinary decision has become irrevocable, provided that the magistrate subsequently obtains a positive professional evaluation. For magistrates who have already received the seventh (and last) professional evaluation, rehabilitation is subject, in addition to the expiry of the aforementioned three-year and five-year periods, to the positive evaluation of their subsequent professional career, in the form and manner determined by the SJC.

32. **Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?**

It is expressly excluded that the activity of interpreting the law and that of evaluating the facts and evidence gives rise to disciplinary responsibility. Furthermore, the following constitute a disciplinary offence:

- the serious violation of the law caused by ignorance or inexcusable negligence;
- the misrepresentation of facts caused by inexcusable negligence;
- the issuing of provisions without motivation, or whose motivation consists solely in the affirmation of the existence of the legal ground without indication of the factual elements from which such existence results, when the motivation is required by law;
- the adoption of measures adopted in cases not permitted by law, due to serious and inexcusable negligence, which have damaged personal rights and freedoms or, significantly, property rights;
- the repeated or serious failure to comply with the regulatory provisions on the judicial and IT services adopted by the competent bodies;
- the undue entrusting of activities falling within one's duties to others;
- the adoption of measures not foreseen by current regulations or on the basis of a macroscopic error or serious and inexcusable negligence;
- the issuing of a measure restricting personal freedom outside of the cases permitted by law, determined by serious and inexcusable negligence.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

As mentioned above, Italy's system focuses on a strong disciplinary process for judges rather than on formal vetting procedures. Italy hasn't implemented formal vetting likely due to two specific aspects: the disciplinary process for judges is considered robust; vetting might raise concerns about separation of powers and judicial independence.

The judges career progression is based on positive evaluations, seniority and eligibility for higher functions, which need a specific scrutiny.

Competent Bodies are Judicial Council, which issues an opinion on the magistrate's professional competence and SJC, which evaluates the magistrate and decides on their career.

There is a professional assessment of magistrates for career progression which involves:

- Periodic Evaluations: Magistrates undergo professional evaluations every 4 years for the first 28 years of their career.
- Opinion of the Judicial Council: the Judicial Council of the district where the magistrate works provides a reasoned opinion.
- SJC Evaluation: The SJC evaluates the magistrate on the base of the opinion of the Judicial Council and other factors.

As for the periodic evaluations, they are based on a complete and complex documentary compendium, including, among other things, sentences drawn from a sample, but also

sentences and provisions filed by the judge, in addition to the opinions of the heads of offices, statistical surveys and self-reports relating to all relevant aspects.

With regard to these methods, therefore, we cannot speak of actual vetting, but rather of a complete and guaranteed evaluation procedure.

The system objectives are addressed to guarantee the professionalism and independence of magistrates, promote meritocracy and efficiency in the judicial system and protect the image and credibility of the judiciary.

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

See above, chapter no. 33

35. What is your own general opinion on vetting (advantages and disadvantages)?

See above, chapter no. 33

36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability.

See above, chapter no. 33

37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?

See above, chapter no. 33

38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?

See above, chapter no. 33

39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?

See above, chapter no. 33

40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?

See above, chapter no. 33

41. Can a judge appeal against an unfavourable decision of such a body?

See above, chapter no. 33

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?
43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

Legislative Decree No. 109 of 2006 typified disciplinary offenses by providing an exhaustive catalogue of possible violations. Thus the previous legal framework was modified (Royal Decree 31 May 1946 n. 511, so-called law on guarantees of the judiciary) which included a more generic closing rule (art. 18) the text of which was as follows: "The magistrate who fails to fulfill his duties, or engages in conduct in office or outside which makes him undeserving of the trust and consideration which he must enjoy, or which compromises the prestige of the judiciary, is subject to disciplinary sanctions in accordance with the provisions of the following articles".

The lack of a closing rule can sometimes lead to a gap between ethical rules and disciplinary offences. Many behaviors carried out by magistrates in violation of clear ethical rules cannot be prosecuted because they escape classification into typical disciplinary cases.

Recent changes to the legislative decree No. 109 of 2006, which provided for new disciplinary offences, did not definitively resolve this issue.

However, it should not be forgotten that the principle of specificity of disciplinary offences is the unavoidable cornerstone of a fair and effective disciplinary system.

Ireland / Irlande

Introduction to response from Ireland

Before proceeding to answer the below questions, the following introduction provides context for the Irish legal situation as pertaining to liability and disciplinary proceedings in accordance with CM/Rec(2010)12.

In Ireland, on appointment to judicial office, as per Art 34.6.1 of the Irish Constitution, every judge makes a declaration to "solemnly and sincerely promise and declare" to "duly and faithfully and to the best of [...] knowledge and power execute [the] office without fear or favour, affection or ill-will towards any man" and that the Constitution and the laws will be upheld. Article 35.2 of the Irish Constitution reiterates the responsibilities of the judge, stating that all judges shall be independent in the exercise of their judicial functions and subject only to the Constitution and the law.

As a result of this independence, members of the Irish judiciary are excluded from interference by legislators, executives, administrative bodies and members of the public, and are accordingly immune from liability. Therefore Irish judges cannot be subject to disciplinary proceedings as defined in CM/Rec(2010)12 as a result of their "interpretation of the law, assessment of facts or weighing of evidence".

As a common law system, Irish judges have complete immunity from suit. Although the constitution does not expressly guarantee judicial immunity from suit, in *Kemmy v Ireland* [2009] IEHC 178, the High Court held that immunity from suit for the judiciary was a necessary corollary of the independence of the judiciary. The lifting of the immunity, as per the Supreme Court in *Beatty v The Rent Tribunal* [2005] IESC 66, is subject only to the judge knowingly acting in a criminal or malicious manner. This is a high threshold for a claimant to overcome since the test demands that the judge in question *knowingly* acted in a malicious manner. As a result, the judicial immunity from suit is near absolute. However, whilst judges are immune from disciplinary proceedings, their conduct may be subject to review, and the judge may be reprimanded, if a complaint of judicial misconduct is made to the Judicial Conduct Committee (JCC).

In June 2023, the Judicial Council launched its Report for 2022, which indicated that from the commencement of the legislation on 3 October to 31 December 2022, 34 complaints were received. Of these, 17 were deemed as not coming within the scope of the Judicial Council Act 2019. Of the remaining 17 complaints:

- 10 were determined to be inadmissible by the committee's registrar;
- One complaint was withdrawn;
- Six complaints, received in December 2022, remained for consideration at the end of the year;
- Two requests for reviews of the registrar's determination were received and referred to the Complaints Review Committee.

On appointment, judges are asked to abide by the Guidelines for the Judiciary on Conduct and Ethics, a set of principles designed to enable judges to come to their own decisions on the ethical and conduct issues which they face and to help the public understand the role of the judiciary and their professional standards. In addition to their function in promoting the highest standards of judicial behaviour, and in assisting judges to make their own decisions on matters of ethics and conduct, the guidelines also provide a framework for the conduct review function of the Judicial Council. The JCC will have regard to these guidelines when determining whether complaints before it amount to judicial misconduct.

In that regard, judicial misconduct means conduct (whether an act or omission) by a judge, whether in the execution of his or her office or otherwise, and whether generally or on a particular occasion, that constitutes a departure from acknowledged standards of judicial conduct (as set out in the guidelines) and brings the administration of justice into disrepute. The guidelines are not a code. They seek to promote high standards of behaviour.

Accordingly, references to disciplinary proceedings in the answers below are to be interpreted as the review of a complaint made against a judge by the JCC, and not proceedings by a court or tribunal determining whether a judge had acted with malice or gross negligence in giving a judgment in a case, to which they are immune.

Questionnaire for the CCJE Opinion No. 27 (2024)

on the disciplinary liability of judges

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

Constitution - As noted in the introductory text, judges are immune from liability. This is inferred from Article 35.2 of the Irish Constitution. According to Article 35.4.1 of the Irish Constitution, a judge of any of the Superior Courts – that is a judge of either the Supreme Court, the Court of Appeal or the High Court – shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by both Houses of Parliament. By law, the same mechanism applies to judges of the lower courts – the Circuit Court and the District Court. No judge, since the foundation of the State, has been removed from office under this mechanism. There have been only two occasions where, faced with the commencement or threat of impeachment process, two judges decided to resign voluntarily.

Legislation – Pursuant to the Judicial Council Act 2019, the Judicial Council was established on 17 December 2019. It is an independent body composed of all judges in Ireland. The functions of the Judicial Council are set out at section 7 of the 2019 Act. The four main pillars of the Judicial Council's remit are to achieve:

- excellence in the performance of judicial functions,
- high standards of conduct among Judges,
- an independent Judiciary, and
- public confidence in the judiciary and in the administration of justice.

In February 2022, the Judicial Council adopted Guidelines for the Judiciary on Conduct and Ethics. Under the complaint's regime, a panel of inquiry made up of two judges and a lay person can be appointed to investigate allegations of misconduct. In cases where serious misconduct is found, the Judicial Conduct Committee can make a referral to Justice Minister. This would be for the purpose of asking the Government to consider exercising its powers to have the judge removed under Article 35.4 of the Irish Constitution.

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?

On 3 October 2022, the remaining provisions of the Judicial Council Act 2019 entered into force (the Justice Minister signed a commencement order under the Judicial Council Act 2019). Accordingly, complaints relating to alleged misconduct can now be made to the Registrar to the Judicial Conduct Committee, which determines whether the complaint is admissible.

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

Owing to the separation of powers in Ireland, legislations are proposed and passed through parliament without interference from the executive and the judiciary. Nevertheless, it is common procedure that the public and relevant bodies are consulted in the creation of any new legislation. Consultations with members of the judiciary in relation to proposed reforms which affect the judiciary generally occur on an informal basis. The Minister would write to the Chief Justice seeking the views of the judiciary in relevant areas, and the Chief Justice may then, where necessary, consult with judicial colleagues. There is also consultation between the Department of Justice and the Courts Service regarding proposed legislative reforms affecting the courts more generally.

The Judicial Council Act 2019 was a significant piece of legislation that established the Judicial Council, a body responsible for promoting and maintaining high standards of conduct among judges. The Act was prepared by the Law Reform Commission in accordance with its function under the Law Reform Commission Act 1975 to keep the law under review and to undertake revision and consolidation of statute law. The Judicial Council Act includes provisions for the Judicial Conduct Committee to consider complaints and refer them for resolution by informal means or undertake investigations into the conduct of individual judges. This suggests that the experiences and conduct of individual judges were considered in the preparation of the Act.

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

Complaints relating to alleged misconduct can be made to the Registrar of the Judicial Conduct Committee of the Judicial Council, which determines whether the complaint is admissible.

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

As per section 51 of the Judicial Council Act, a complaint can be made about a judge within three months of the alleged misconduct. This time limit may be extended if, and only if, the Judicial Conduct Committee determines that it is just and equitable to do so having regard to the nature of the complaint and any other relevant circumstances. A determination as to

whether to extend time for the making of a complaint, the reasons therefor, and whether the complaint is thereby admissible, will be notified by the Registrar to the complainant and the judge.

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

According to section 50 of the Judicial Council Act, a complaint may be made by any person who is directly affected by, or who witnessed, conduct that could, if substantiated, constitute judicial misconduct. A complaint may be made on behalf of a child by their parent or guardian, and on behalf of an incapacitated person by a person duly authorised by law to act on their behalf. A complaint may be made on behalf of a solicitor who is a member of the Law Society of Ireland or a barrister who is a member of the General Council of the Bar of Ireland by an authorised officer of their respective representative body.

A complaint will be inadmissible if the complaint is frivolous or vexatious. It will also be inadmissible if it relates solely to conduct by the judge concerned in proceedings before them in respect of which a remedy is provided, or may be provided, if pursued by the complainant either within the proceedings, on any appeal, by judicial review, or in any other proceedings or, the merits of a decision in proceedings before the judge.

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

No, the constitutional court, the Supreme Court of Ireland, does not have any role at any stage in disciplinary proceedings against judges. This falls within the remit of the Judicial Conduct Committee which has the Chief Justice, President of the Supreme Court, as a member.

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

No, only the Judicial Conduct Committee can initiate disciplinary proceedings upon receipt of a complaint by any such persons as described in the answer to question 6.

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

Yes, a panel of inquiry is convened by the Judicial Conduct Committee to carry out an investigation into a complaint about the conduct of a judge that is not suitable to be resolved informally. A panel of inquiry consists of three members: a judge from the same court as the judge concerned, a judge from a different jurisdiction, and a lay member appointed by the Government. A panel of inquiry has the power to examine witnesses, documents, and other evidence relevant to the complaint. It also has the power to make findings of fact and report them to the Judicial Conduct Committee, who then determines the finding of a disciplinary violation (misconduct or health) and determining a disciplinary sanction (reprimand).

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

The Judicial Council, of which the Judicial Conduct Committee is a part, is an independent body whose members are all of the judges in Ireland. This independence helps to ensure that the Committee's investigations are free from political or personal bias. The Panel of Inquiry conduct its investigation in private and respect the confidentiality of the parties and the evidence. It also ensures that the principles of natural justice and fair procedures are observed.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

According to the Judicial Council Act 2019, the formal grounds for initiating disciplinary proceedings against judges in Ireland are as follows:

- **Judicial misconduct:** This is defined as conduct (whether an act or omission) by a judge, whether in the exercise of his or her office or otherwise, that constitutes a departure from acknowledged standards of judicial conduct and brings the administration of justice into disrepute. The standards of judicial conduct have regard to the principles of judicial conduct requiring judges to uphold and exemplify judicial independence, impartiality, integrity, propriety, competence, diligence and equality of treatment.
- **Health of judge:** This is a matter relating to the health of a judge that may affect his or her ability to perform the functions of his or her office or may impair public confidence in the administration of justice. The Judicial Conduct Committee may investigate such a matter in the absence of, or after the withdrawal of, a complaint, if it considers it appropriate to do so.

Please note that a judge's decision in proceedings before the judge is not admissible as a complaint.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

Yes, these are formal grounds defined in the Judicial Council Act 2019, and in the Judicial Council's Guidelines for the Judiciary on Conduct and Ethics. Whilst the standards of judicial conduct may be subject to wider interpretation by the courts, case law precedents have settled and defined much of the principles.

13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

No, the only grounds for initiating disciplinary proceedings against a judge is judicial misconduct and health.

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

Yes, an initial review of a complaint is made by the Registrar of the Judicial Conduct Committee to determine its admissibility. After receipt of a complaint, the Registrar will notify the judge concerned of the complaint, the particulars thereof, and the name of the complainant. The Registrar may request the complainant or the person acting on their behalf, or the judge concerned, to provide any additional information concerning the complaint which the Registrar may reasonably request for the purpose of their determination on the admissibility of the complaint. A judge's decision in proceedings before the judge is not admissible as a complaint.

It is possible to terminate proceedings early, either through informal acceptance of a reprimand by the judge concerned, or through withdrawal of the complaint by the complainant.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

A complaint may be made, in the prescribed form, preferably through the website of the Judicial Council, or by post, by any person who is directly affected by, or who witnessed, conduct that could, if substantiated, constitute judicial misconduct.

After receipt of a complaint, the Registrar will notify the judge concerned of the complaint, the particulars thereof, and the name of the complainant.

On determining that some or all of the complaint is admissible and will be referred to the Judicial Conduct Committee, the Registrar will notify the complainant and the judge accordingly.

On determining that some or all of the complaint is inadmissible, the Registrar must notify the complainant and the judge of (a) the determination, (b) the reasons for the determination, and (c) the complainant's entitlement to seek a review of the determination.

Whenever a complaint is determined to be admissible, the Judicial Conduct Committee must either refer the complaint for resolution by informal means if it is satisfied that it is appropriate to do so, or refer the complaint to a Panel of Inquiry for investigation.

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

Yes, whilst not described as phases, the disciplinary process can be categorised into the following phases:

Admissibility phase – The Registrar conducts an initial review of the complaint to determine admissibility and notify parties of decisions made.

Informal resolution phase - To resolve a complaint by informal means without the consent of the complainant and with or without the judge concerned.

Investigation phase - The Panel of Inquiry must investigate complaints referred to it by the Judicial Conduct Committee and may seek such information or documents relating to the complaint as it considers appropriate. The Panel of Inquiry may conduct a hearing in connection with its investigation of a complaint.

Report phase - On completing an investigation, the Panel of Inquiry must submit a written report to the Judicial Conduct Committee. The report must specify the particulars of the complaint, the evidence (if any) presented to the Panel of Inquiry, and the Panel of Inquiry's findings and recommendation in relation to the complaint.

Determination phase - As soon as practicable after the expiration of the period specified in a notification, the Judicial Conduct Committee will consider the report received from the Panel of Inquiry, and any submissions made by the complainant or the judge and make such determination of the complaint as it considers appropriate, including whether it has been substantiated.

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

No, there are no measures applied to judges once the disciplinary proceedings start and there are no circumstances in which a judge can be suspended pending resolution of the disciplinary process.

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

The judge does not have a direct role in the different phases of the disciplinary proceedings as it is primarily conducted by the Registrar, the Panel of Inquiry, and the Judicial Conduct Committee. However, the judge will be notified of any decisions made. The judge may request clarification or further information about the decision. The judge may consent to a reprimand before a complaint is investigated. The judge may also consent to resolve the complaint informally. The judge has the right to be informed of the nature of the complaint and to respond to the allegations. The judge may also request legal representation, as well as request that the hearing be conducted in private or in public.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

Not applicable as the disciplinary proceedings follow civil procedures as judicial misconduct is not a criminal offence. Where the Judicial Conduct Committee decides to refer the matter for investigation, the Registrar must notify the complainant and the judge of that decision. The Registrar must also provide the judge with written particulars of the alleged judicial misconduct.

A complainant or judge who believes that the Panel of Inquiry has not observed fair procedures in relation to them may, within the specified time limit, submit to the registrar to the Panel of Inquiry a statement in writing setting out the reasons for their belief and a request to the Panel of Inquiry to review the draft report having regard to the statement.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

There are no formal time limits to start and conclude disciplinary proceedings against judges, but a complaint must be made within three months of the date of the occurrence giving rise to the complaint.

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

The final decision on the disciplinary liability of a judge is taken through a multi-step process:

Investigation: The Judicial Conduct Committee investigates the complaint about the judge's conduct.

Panel of Inquiry: If the complaint is not suitable to be resolved informally, the Judicial Conduct Committee convenes a Panel of Inquiry.

Fact-finding: The Panel of Inquiry examines witnesses, documents, and other evidence relevant to the complaint. It makes findings of fact and reports them to the Judicial Conduct Committee.

Decision by the Judicial Conduct Committee: Based on the report of the Panel of Inquiry, the Judicial Conduct Committee makes a decision on the disciplinary liability of the judge.

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

No, the disciplinary proceedings against a judge is not in any way affected by court proceedings as judicial misconduct is not an offence recognised in the ordinary legal system.

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

There are no possibilities for a judge to appeal a decision on his/her disciplinary liability. However, according to Section 78 of the Judicial Council Act, the judge concerned who receives a draft report from the registrar to a panel of inquiry and who believes that the panel of inquiry has not observed fair procedures in relation to him or her may, within the period specified in a notice under that section, submit to the registrar to the panel of inquiry a statement in writing setting out the reasons for his or her belief and a request to the panel of inquiry to review the draft report having regard to the statement.

There are no suspensive effect on the consequences of such a decision.

24. Can a judge participate in the disciplinary hearings at the appeal stage?

Not applicable

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

Not applicable

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

Not applicable

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

Whilst the Judicial Council Act does not provide a right of appeal against a decision of the Judicial Conduct Committee on recommendation from the Panel of Inquiry, a judge may apply for conventional judicial review to the High Court to review the decision-making process of the decision. The outcome of the judicial review can be appealed to the Court of Appeal on a point of law and general public importance, and furthermore to the Supreme Court in the interest of justice.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

No, the body which initiated liability proceedings, the Judicial Conduct Committee, cannot lodge an appeal against its own decisions.

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:
- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;

Yes, the sanction for a finding of judicial misconduct against a concerned judge by the Judicial Conduct Committee is a reprimand. According to Section 58 of the Judicial Council Act, the judge concerned may, at any time after a complaint in respect of him or her is determined to be admissible or before a panel of inquiry is appointed to investigate the complaint, inform the Judicial Conduct Committee in writing that he or she consents to the issuing of a reprimand to him or her in relation to the complaint. Likewise, Section 73 also allows for the judge concerned to consent to a reprimand by the Judicial Conduct Committee before the conclusion of investigation.

A concerned judge who fails or refuses to cooperate with the Panel of Inquiry may also be issued a reprimand.

- is it clearly defined in such a legal text which disciplinary sanction applies in which case;

No, the Act permits the Judicial Conduct Committee to reprimand a judge concerned on a finding of judicial misconduct but leaves discretion to the Committee the content of such reprimand.

- or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.

Yes, Section 76 demands that a Panel of Inquiry upon it completing an investigation of a complaint prepare, and submit to the Judicial Conduct Committee, a report in writing of the investigation.

The report must include “recommendations as the panel of inquiry *considers appropriate* for reprimanding the judge concerned [*emphasis added*]”. The reprimand must however include:

“any one or more of the following:

- (a) the issuing of advice to the judge concerned;
- (b) the making of a recommendation that the judge concerned pursue a specified course of action, including attending a course or training of a specified type;
- (c) the issuing of an admonishment to the judge concerned.”

Furthermore, the recommendation may also be made to:

(i) the Chief Justice, where the judge concerned is an ordinary judge of the Supreme Court, the President of the Court of Appeal, the President of the High Court, the President of the Circuit Court or the President of the District Court,

(ii) the President of the Court of Appeal, the President of the High Court, the President of the Circuit Court and the President of the District Court, where the judge concerned is the Chief Justice, or

(iii) the President of the court of which the judge concerned is a judge, in the case of a judge other than a judge to whom subparagraph (i) or (ii) applies,

or

(b) may recommend that changes be made to court procedures, practice directions, distribution of work or may also concern related matters,

or both.

Ultimately, the Committee may take such further action as it considers appropriate in all the circumstances, including the referral by the Judicial Conduct Committee to the Minister for Justice relating to the conduct or capacity of the judge concerned for Article 35.4 purposes.

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

No, in considering the report of a panel of inquiry and issuing a determination under subsection, the Judicial Conduct Committee may accept, with or without modification, or reject any recommendation contained in the report submitted by the panel of inquiry to the Judicial Conduct Committee. In making a determination, the Judicial Conduct Committee may make a determination “as it considers appropriate”.

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

There are no set sanctions nor violations to which certain links can be established. Accordingly, as complaints are decided on a case-by-case basis, the principle of proportionality is observed through the process established for determining a complaint as per the Judicial Council Act.

Dismissal from office as per Article 35.4 of the Constitution, which has never happened in the State, is a ministerial power, and as such, the Judicial Conduct Committee can only make a referral to the Minister for Justice to consider dismissal. The Judicial Conduct Committee, in accordance with the Act, applies a proportionality test in deciding the reprimand to be taken against a judge concerned. This includes, for example, as noted in the answer to question 29, the making of a recommendation that the judge concerned pursue a specified course of action, including attending a course or training of a specified type; or may recommend that changes be made to court procedures, practice directions, or distribution of work of the judge concerned.

32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

No, the disciplinary proceedings or a determination of the Judicial Conduct Committee against a judge concerned does not affect the judgments produced by the judge concerned, whether reversed on appeal or not.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

In Ireland, police vetting is conducted in respect of any person who is carrying out work or activity, a necessary and regular part of which consists mainly of the person having access to, or contact with, children or vulnerable persons.

As of 2023, the vetting of judges will exist in Ireland. Prior to this, a person who wishes to be considered for appointment to judicial office must submit an application form and the information within provides the Judicial Appointments Advisory Board, the body responsible for the recommendation of persons to judicial office, such information as it may require to enable it to consider the suitability of that person for judicial office, including information relating to education, professional qualifications, experience and character.

The Judicial Appointments Commission Act 2023 repeals the previous process of judicial appointments. The Act establishes the Judicial Appointments Commission as a body responsible for recommending appointments, nominations, or elections to judicial office. It replaces the previous Judicial Appointments Advisory Board (JAAB). The Act provides for the vetting of applicants for judicial office. Under section 44(1)(b), when requested to do so by the Commission, the applicant must provide it with a declaration of consent (within the meaning of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012) and any other information which is required by the Commission to enable it to obtain a vetting disclosure in respect of the person.

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

Members of the Superior Courts are immune from disciplinary proceedings by virtue of Article 35.4 of the Irish Constitution. Although Article 35.4 refers specifically only to judges of the Supreme Court, Court of Appeal and High Court, the same procedure would have to be followed

in order to remove a judge of the Circuit Court or the District Court as these judges are declared to hold office by the same tenure as the judges of the Supreme Court and the High Court by, respectively, section 39 of the Courts of Justice Act 1924, and section 20 of the Courts of Justice (District Court) Act 1946.

35. What is your own general opinion on vetting (advantages and disadvantages)?

I appreciate the advantages of vetting in circumstances where judges may have to deal with vulnerable litigants/children. However, other than that I see no other advantages for its use in our judicial system.

Experience in other jurisdictions suggest that vetting can lead to insecurity of tenure for judges who fear a change of government may result in the loss of their positions.

36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability.

No there is no possibility to invoke other forms of liability against judges outside the scope of disciplinary proceedings.

37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?

Currently, the JAAB is responsible for the vetting of applicants to judicial office. This will soon be replaced by JAC. This is a separate body that deals with judicial appointments, whilst the Judicial Conduct Committee deals with disciplinary proceedings.

38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?

The Judicial Appointments Commission (JAC), as per the Judicial Appointments Commission Act 2023, is composed of the following members:

1. Chief Justice: The Chief Justice serves as the Chair of the Commission.
2. Two Nominees of the Judicial Council:
 - One nominee must have been a practicing solicitor.
 - The other nominee must have been a practicing barrister.
3. One Court President:
 - The Court President is the president of the court for which the Commission recommends persons for appointment.
4. Four Lay Members:
 - Three of these lay members are selected through an open competition conducted by the Public Appointments Service (PAS).
 - The fourth lay member is nominated by the Irish Human Rights and Equality Commission.
5. Attorney General (*Ex-officio*, non-voting capacity).

This composition replaces the previous Judicial Appointments Advisory Board (JAAB), which had 11 members, including judicial members, legal representatives, and lay persons.

39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?

The vetting of applicants for a judicial office is done by the National Vetting Bureau, with consent from such applicant as part of the application process, as per section 44 of the Judicial Appointments Commission Act 2023. The National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016 provide a statutory basis for the vetting of persons carrying out relevant work with children or vulnerable persons. The Act also creates offences and penalties for persons who fail to comply with its provisions.

The Act stipulates that a relevant organisation shall not permit any person to undertake relevant work or activities on behalf of the organisation, unless the organisation receives a vetting disclosure from the National Vetting Bureau in respect of that person.

Members of the judiciary are immune from liability, when acting in their official capacity and can only be disciplined upon a determination by the Judicial Conduct Committee upon a recommendation from the Panel of Inquiry, as noted in the previous answers.

40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?

According to section 44 of the Judicial Appointments Commission Act 2023, a person who refuses to comply with the request to a vetting process shall not be considered for recommendation for appointment or nomination for appointment or election, as the case may be, to the judicial office to which his or her application relates.

41. Can a judge appeal against an unfavourable decision of such a body?

There is no right of appeal against an unfavourable decision.

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

We are at the very early stages of implementing our procedures under the new legislation but to date have had no problems or unforeseen challenges.

43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?
N/a

Lithuania / Lituanie

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

The disciplinary liability of judges in Lithuania is regulated by:

- *The Constitution of the Republic of Lithuania;*
 - *The Law on Courts of the Republic of Lithuania;*
2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?
 - *The Code of Ethics for Judges (adopted by the General meeting of judges);*
 - *The Regulations of the Judicial Ethics and Disciplinary Commission (adopted by the Judicial Council).*
 - *The Regulations of the Court of Honour of Judges (adopted by the Judicial Council).*
 3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?
 - *The Code of Ethics for Judges was adopted at the general meeting of judges, so its preparation and adoption were in the hands of the community of judges itself. The Code of Ethics for Judges establishes the basic principles of conduct of judges of the Republic of Lithuania. The Code regulates the conduct of judges during the performance of direct duties and conduct not related to the performance of direct duties.*
 - *The adoption of the Regulations of the Ethics and Disciplinary Commission of judges and the Regulations of the Court of Honour of Judges belongs to the exclusive competence of the Judicial Council.*
 - *The regulations of the Ethics and Disciplinary Commission of judges establish the working procedure of the Judicial Ethics and Disciplinary Commission, the procedure for convening and holding its meetings, making decisions, the procedure for bringing disciplinary cases to judges, the rights and duties of the judge whose disciplinary case is being considered, the rights and duties of the members of the Judicial Ethics and Disciplinary Commission in the performance of their assigned functions and developing judges' ethical awareness.*
 - *The regulations of the Court of Honour (hereinafter - the regulations) establish the objectives, tasks and principles of the Court of Honour (hereinafter - the Court of Honour), the procedure for convening and conducting its hearings, decision-making, rights and obligations in the performance of the functions assigned to them.*

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?
 - *The Judicial Ethics and Disciplinary Commission.*
 - *The Judicial Ethics and Discipline Commission is an institution of judicial self-governance deciding the issues of instituting disciplinary proceedings against judges and ensuring the promotion of judicial ethics.*
 - *The Commission shall be formed of seven members. Two members of the Commission shall be appointed by the President of the Republic, one – by the Speaker of the Seimas (Parliament), and four – by the Judicial Council. The Judicial Council shall appoint judges as members of the Commission for the term of office of the Judicial Council. The President of the Republic and the Speaker of the Seimas shall appoint representatives of the public as members of the Commission for their term of office or for another term. On expiry of the term of office, the members and the Chairperson of the Commission shall temporarily perform their duties until new members are appointed by the President of the Republic, the Speaker of the Seimas and the Judicial Council.*
5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.
 - *Yes, a disciplinary case cannot be brought before a judge if more than three years have passed since the possible violation.*
6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings?
 - *No. The right to propose to the Commission initiate a disciplinary case by submitting a reasoned submission have: Council of Judges; Ethics and Discipline Commission of Judges, the chairman of the court where the judge works; the presiding judge of any superior court; another person who became aware of the offense.*
7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?
 - *Yes. If the judge is subject to the most severe disciplinary penalty - dismissal from office, judges of district, district and administrative courts are dismissed by Presidential decree, judges of the Court of Appeal - by Presidential decree, after obtaining the approval of the Seimas (Parliament), judges of the Supreme Court - by a decision of the Seimas. A dismissed judge can challenge the dismissal in the Vilnius District Court; if the court has doubts about the compliance of the Presidential decree or Seimas resolution with the Constitution, the court may apply to the Constitutional Court, whose competence is the assessment of the constitutionality of these legal acts. If the Constitutional Court recognizes that the President's decree or Seimas resolution contradicts the Constitution, the judge shall be reinstated.*

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?
- *The President of the Republic of Lithuania has the right to apply to the Judicial Council for the dismissal of a judge when he demeans the name of a judge by his act. If the Council of Judges gives consent (advises) to dismiss a judge on this basis, the judge may be dismissed by Presidential decree or Seimas resolution. General disciplinary liability procedures do not apply in such a case*
9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?
- *Yes. The Ethics and Discipline Commission of Judges examines submissions regarding the initiation of disciplinary cases to judges and when there is a basis for initiating a disciplinary case, initiates disciplinary cases against judges; (see answer No 4).*
 - *The Court of Honour of Judges considers disciplinary cases of judges, decides whether a violation has been committed and imposes penalties.*
 - *The Court of Honour - a judicial self-government institution. The Court of Honour is composed of ten members for the term of office of the Judicial Council. Two candidates for the Court of Honour are appointed by the President of the Republic of Lithuania, two candidates by the Speaker of the Seimas of the Republic of Lithuania, and six candidates by the Judicial Council. The President of the Republic of Lithuania and the Speaker of the Seimas of the Republic of Lithuania appoint representatives of the public as members of the Court of Honour. One member is selected from each of the following institutions: the Supreme Court of Lithuania, the Court of Appeal of Lithuania and the Supreme Administrative Court of Lithuania. Three members from among judges of all regional courts, regional administrative courts and district courts shall be elected and removed by the Judicial Council by secret ballot.*
10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?
- *The Ethics and Discipline Commission of Judges consists of seven members. The President of the Republic appoints two candidates for the members of this Commission, one candidate - the Speaker of the Seimas, four candidates - the Council of Judges. The President of the Republic and the Speaker of the Seimas appoint representatives of the public as members of this Commission. A person of impeccable reputation, as defined in the Civil Service Law, is appointed as a commissioner for the duration of the authority of the entity appointing him. The same person may not be appointed as a member of the Commission for more than two consecutive terms. A member of the Council of Judges, an official with the right to initiate a disciplinary case, a member of the Court of Honour of Judges, as well as a judge who has been subject to disciplinary sanctions cannot be a member of the Commission.*

- *The chairman or members of the Commission must recuse themselves in cases where their participation in the examination of the submission may raise reasonable doubts about the impartiality and objectivity of the Commission's decision. The judge whose disciplinary case is under consideration also has the right to impeach the chairman of the Commission or its member.*
- *The Court of Honour of Judges is composed of ten members for the duration of the powers of the Council of Judges. The President of the Republic appoints two candidates for the members of the Court of Honour of Judges, two candidates - the Speaker of the Seimas, six candidates - the Council of Judges. The President of the Republic and the Speaker of the Seimas appoint representatives of the public as members of the Honorary Court of Judges. One member each from the Supreme Court, the Court of Appeal and the Supreme Administrative Court, three members from the Administrative Court of Regions, all district courts and district court judges are elected to the Court of Honour of Judges by the Council of Judges. The chairman of the Court of Honour of Judges is elected by the Council of Judges from among the judges who are members of the Court of Honour of Judges. Persons of impeccable reputation, as defined in the Civil Service Law, may be appointed as members of the Honorary Court of Judges for no more than two terms in a row. The procedure for nominating candidates to the Court of Honour of Judges and electing members of the Court of Honour of Judges is determined by the Council of Judges. A member of the Council of Judges, an entity with the right to initiate a disciplinary case, a member of the Judicial Ethics and Discipline Commission, as well as a judge who has been subject to disciplinary sanctions cannot be elected as a member of the Judicial Honour Court.*
- *A member of the Court of Honour must recuse himself from consideration of a disciplinary case or a request for the protection of a judge's honour if there are circumstances that raise doubts about the impartiality of a member of the Court of Honour. The participants in the process participating in the examination of a disciplinary case or a request for the protection of the judge's honour have the right to request the removal of a member of the Court of Honour before the substantive examination of the matter begins.*

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?
 - *The grounds for the institution of disciplinary proceedings shall be the indications of the elements of offences provided for in Article 83(2) of the Law on Courts in the actions of a judge. Grounds for disciplinary liability include:*
 - *an act discrediting the name of the judge;*
 - *an act not compatible with the judge's honour which contradicts the requirements of the Judicial Code of Ethics, discredits the name of the judge and is detrimental to the authority of the court;*
 - *any official misconduct, i. e. an obviously negligent performance of a specific duty of the judge, or failure to perform the duty without a valid reason;*
 - *violation of other provisions of the Judicial Code of Ethics;*
 - *failure to comply with the statutory restrictions imposed on work or political*

activities of judges.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?
- *The grounds for the institution of disciplinary proceedings shall be the indications of the elements of offences provided for in Article 83(2) of the Law on Courts in the actions of a judge. This list is exhaustive.*
13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?
- *No, the list of grounds for disciplinary liability of judges is exhaustive;*
 - *Yes, the principle of nulla poena sine lege praevia applies.*
14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?
- *These matters are governed by regulations of the Judicial Ethics and Disciplinary Commission and of the Court of Honour,*
 - *A motion for the institution of disciplinary proceedings shall be: written in the official language or accompanied by a translation into the official language, the authenticity whereof shall be certified under the procedure set out by legal acts of the Republic of Lithuania; written legibly and signed. If a motion is submitted by e-mail, it shall be signed by a qualified electronic signature or formed by electronic means, which allow ensuring the integrity and non-repudiation of the text; the motion shall indicate the judge who has potentially committed a violation and the arguments in support of this violation.*
 - *The Commission shall refuse to consider the motion if:*
 - *the motion does not meet the formal requirements set out in regulations, lacks reasoning, is unspecific, declarative, of incomprehensible or offensive content;*
 - *an investigation of the circumstances specified in the motion and related to procedural or other activities of the court would clearly infringe the principle of independence of courts and judges under the Constitution of the Republic of Lithuania and the Law on Courts;*
 - *the motion has been submitted repeatedly and does not contain any new circumstances that would potentially constitute the basis to institute disciplinary proceedings;*
 - *more than three years have elapsed from the day of commission of the potential violation.*

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

- *After hearing the motion on the institution of disciplinary proceedings, the Judicial Ethics and Disciplinary Commission could adopt a decision to institute disciplinary proceedings against a judge and refer the case for hearing to the Judicial Court of Honour.*
16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?
- Yes.
- *The Judicial Ethics and Discipline Commission investigates motions on the institution of disciplinary proceedings and decides the issues of instituting disciplinary actions against judges;*
 - *The instituted disciplinary action shall be transferred to the Judicial Court of Honour. The Court of Honour hears disciplinary cases of judges and makes decisions concerning disciplinary liability.*
17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.
- *Yes. After instituting disciplinary proceedings, the President of the Republic on the recommendation of the Judicial Council, or the Seimas, when a disciplinary case has been instituted against a judge of the Supreme Court or the Court of Appeal, and between the sessions of the Seimas – the President of the Republic may suspend the powers of a judge, until the decision of the Judicial Court of Honour enters into force, and if the Judicial Court of Honour proposes to the President of the Republic or the Seimas to dismiss a judge in accordance with the procedure established by this Law or to the President of the Republic to apply to the Seimas for impeachment of a judge – until the decision on the dismissal or impeachment of a judge enters into force. In cases where the Judicial Court of Honour does not establish the basis for disciplinary liability, the President of the Republic, or the Seimas, when a disciplinary case has been instituted against a judge of the Supreme Court or the Court of Appeal, and between the sessions of the Seimas – the President of the Republic, shall immediately renew the powers of the judge and pay the judge the salary for the period of suspension.*
18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?
- *A judge subject to disciplinary proceedings has the right:*
 - *to get acquainted with the material of the disciplinary proceedings;*
 - *to attend the hearings of the Commission and the Court of Honour, where the disciplinary proceedings take place;*
 - *to request a dismissal of a member of the Commission or the Court of Honour;*
 - *to have an authorized representative of his or her choice and / or to apply to professional organizations representing judges for the appointment of a representative;*

- to give explanations in writing and orally, to submit requests, evidence confirming significant circumstances;
- be informed of the decision made by the Court of Honour, the separate opinion of the member of the Court of Honour, if there are any, and receive copies thereof;
- within ten days from the decision of the Court of Honour to appeal to the Supreme Court of Lithuania.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

- *The general principle of presumption of innocence applies - a judge is not considered to have committed a disciplinary violation until the decision of the Court of Honour establishing this becomes effective.*
- *The Regulations of the Court of Honour establish that the Court is guided by these basic principles in the exercise of its powers:*
 - *independence of courts and judges;*
 - *the rule of law;*
 - *impartiality;*
 - *the presumption of innocence of the judge against whom disciplinary proceedings have been instituted;*
 - *the rights of defence of the judge against whom the disciplinary proceedings have been instituted;*
 - *equality of arms.*

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

- *The motion for the institution of disciplinary proceedings shall be disposed of not later than within three months as of the day when the Commission became aware of the grounds to institute the disciplinary proceedings. This term shall not include the period when the judge did not work due to sickness or leave.*
- *a disciplinary case cannot be brought before a judge if more than three years have passed since the possible violation.*

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

- *The final decision is taken by the Court of Honour after examining the disciplinary case. The Court of Honour is composed of ten members for the term of office of the Judicial Council. Two candidates for the Court of Honour are appointed by the President of the Republic of Lithuania, two candidates by the Speaker of the Seimas of the Republic of Lithuania, and six candidates by the Judicial Council. The President of the Republic of Lithuania and the Speaker of the Seimas of the Republic of Lithuania appoint representatives of the public as members of the Court of Honour.*
- *A hearing of the Court of Honour is valid if it is attended by at least six members of the Court of Honour, the majority of whom are judges, and at least one member is a public representative.*

- *Decisions of the Court of Honour are made by a simple majority of the members of the Court of Honour present at the hearing.*
22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.
- *The judge shall be dismissed when a judgement of his conviction (for a crime) becomes active. It's an independent ground for dismissing a judge established in the Law on Courts.*
 - *Administrative or civil liability does not negate the possibility of applying disciplinary liability for the same offence committed by the judge concerned.*
23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?
- *A decision of the Court of Honour, which resolves a disciplinary case, may be appealed to the Supreme Court of Lithuania within ten days from its adoption in accordance with the procedure established by the Law on Courts.*
 - *If the decision of the Court of Honour is appealed, the disciplinary sanction shall take effect from the date of the decision of the Supreme Court of Lithuania and shall be valid for one year.*
24. Can a judge participate in the disciplinary hearings at the appeal stage?
- *Yes, if a public hearing takes place. But the Supreme Court may decide to examine the case by written procedure.*
25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?
- *The Supreme Court does not investigate the facts, but from the aspect of application of law checks whether the decision of the Court of Honour is justified.*
26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?
- *Yes, a sanction may be replaced by the Supreme Court.*
27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?
- *No, the Supreme Court is the only and last instance.*
28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

- *Yes. A decision of the Judicial Court of Honour may, within ten days after its adoption, be appealed to the Supreme Court. An appeal may be filed by the judge and the party which instituted the disciplinary action, Judicial Ethics and Discipline Commission, entities performing internal court administration and supervision of court administrative activities.*

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:

- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;

Yes, the Law on courts establish that the Judicial Court of Honour may impose one of the following disciplinary sanctions:

- 1) *censure;*
- 2) *reprimand;*
- 3) *severe reprimand.*

The Judicial Court of Honour may, by its judgement:

- 1) *suggest the President of the Republic or the Seimas to dismiss the judge from office according to the procedure established by law;*
- 2) *suggest to the President of the Republic to apply to the Seimas to institute impeachment proceedings against the judge.*

- is it clearly defined in such a legal text which disciplinary sanction applies in which case;

No

- or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.

Yes

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

- *The general principles of legal liability apply.*
- *The Court of Honor of Judges, when deciding on the issue of selecting measures for the disciplinary liability of judges, takes into account the number of offenses committed, their severity and the circumstances of their commission, the consequences occurred, circumstances characterizing the judge and other significant circumstances.*

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

- *No, there is no formally established links between certain violations and sanctions.*
- *Dismissal from office is possible sanction, criterions for its application are elaborated in case law of the Court of Honour and the Supreme Court.*

32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?
- *Yes. The Law on courts establish that no person shall have the right to demand that a judge gives an account for a decision rendered in a specific case.*

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?
- **NO**, *vetting does not exist in Lithuania*
34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?
35. What is your own general opinion on vetting (advantages and disadvantages)?
36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability.
37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?
38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?
39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?
40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?
41. Can a judge appeal against an unfavourable decision of such a body?

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

No

43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

Luxembourg

I. La législation

1. A quel niveau législatif (constitution, loi, code, etc.) la responsabilité disciplinaire des juges est-elle réglementée dans votre pays ?

La loi

2. Existe-t-il, en vertu des lois pertinentes, des décrets, des règlements et/ou des règles concernant la responsabilité disciplinaire des juges (par exemple, des actes normatifs ou réglementaires du gouvernement, de la cour suprême ou d'un autre organe judiciaire supérieur, du conseil de la justice et/ou d'autres organes) ?

Actuellement non.

Prochainement un règlement grand-ducal devrait voir le jour auquel renvoie la loi (articles 17 et 21 de la loi du 23.01.2023 sur le statut des magistrats) .

3. Le pouvoir judiciaire de l'Etat, les associations de juges et/ou les juges individuels ont-ils participé de manière significative au processus de préparation des lois, décrets, règlements et/ou règles susmentionnés ? Si oui, dans quelle mesure ?

Le syndicat des magistrats (Groupement des Magistrats Luxembourgeois - <https://www.gml.lu/>) a été consulté lors de l'élaboration des normes en question

II. Cadre institutionnel des procédures disciplinaires à l'encontre des juges

4. Quels sont les organes (conseil de la justice, cour suprême ou autre organe judiciaire suprême, autres institutions) ou les fonctionnaires/personnes chargés de recevoir les plaintes en vue d'engager des procédures disciplinaires à l'encontre des juges ?

Le Conseil National de la Justice (CNJ)

5. Existe-t-il des délais dans lesquels une plainte doit être déposée en vue de l'ouverture d'une procédure disciplinaire ? Dans l'affirmative, veuillez fournir des détails.

Oui, l'article 19 de la loi du 23.01.2023 portant organisation du CNJ dispose que « sous peine d'irrecevabilité, la plainte disciplinaire (...) ne peut être présentée après expiration d'un délai d'une année suivant la décision irrévocable mettant fin à la procédure ».

6. Existe-t-il des restrictions concernant les catégories de personnes ou d'organismes habilités à déposer une plainte en vue de l'ouverture d'une procédure disciplinaire ? Dans l'affirmative, veuillez fournir des détails.

Non, tout justiciable prétendant avoir constaté une faute disciplinaire d'un magistrat « à l'occasion d'une procédure juridictionnelle le concernant » est autorisé à déposer une plainte auprès du CNJ.

7. La Cour constitutionnelle a-t-elle un rôle à jouer à un stade quelconque des procédures disciplinaires engagées contre des juges ?

Non – son rôle n'est pas spécifiquement prévu dans le cadre des normes régissant la procédure disciplinaire

8. Outre les personnes habilitées à engager une procédure disciplinaire, existe-t-il des organes ou des fonctionnaires/personnes qui peuvent demander l'ouverture d'une procédure disciplinaire, et quel est le suivi de ces demandes ?

Oui, les collègues de travail magistrats et les chefs de corps peuvent saisir le CNJ lorsqu'ils constatent des manquements

9. Existe-t-il différents organes participant aux procédures disciplinaires à l'encontre des juges (c'est-à-dire un organe ayant des fonctions d'enquête et un organe ayant des pouvoirs de décision concernant la constatation d'une faute disciplinaire et la détermination d'une sanction disciplinaire) ?

Oui, la fonction d'enquête incombe au CNJ tandis que le pouvoir de décision incombe aux juridictions disciplinaires

10. Comment l'indépendance et l'impartialité de tous les organes ou fonctionnaires/personnes susmentionnés sont-elles garanties afin d'éviter toute attitude politique, personnelle ou autrement partielle (par exemple, garanties lors de leur élection/nomination, possibilités de récusation, etc.) ?

Il n'existe aucune norme spécifique en la matière

III. Motifs d'ouverture des procédures disciplinaires à l'encontre des juges

11. Quels sont les motifs formels, établis par la loi, les décrets, les règlements et/ou les règles, pour engager des procédures disciplinaires à l'encontre des juges dans votre pays (par exemple, négligence grave, conduite malveillante et autres actes répréhensibles) ?

Il y a des notions très générales édictées par la loi qui renvoie à des règles déontologiques à adopter dans le cadre d'un règlement grand-ducal.

12. Ces motifs formels sont-ils clairement définis et exhaustifs ou peuvent-ils faire l'objet d'une interprétation et/ou d'une application plus large ?

Non, les motifs sont extrêmement vagues et aucunement restrictifs ou précisément définis

13. Existe-t-il ou pourrait-il exister d'autres motifs (c'est-à-dire des motifs *ad hoc*) pour engager des procédures disciplinaires à l'encontre des juges ? Le principe *nulla poena sine lege praevia* est-il appliqué (interdiction des lois *ex post facto* et de l'application rétroactive de la loi) ?

Il n'y a pas de disposition spécifique

14. Une plainte fait-elle l'objet d'un examen initial par une personne/un organe pour en vérifier le bien-fondé avant d'être soumise à l'examen d'un organe disciplinaire ? Existe-t-il des conditions/circonstances formellement établies qui excluent toute procédure disciplinaire à l'encontre d'un juge ? Est-il possible de mettre fin à une telle procédure à un stade précoce ? Si oui, dans quelles conditions/circonstances ?

Non, il n'existe pas d'organe de filtrage proprement dit

IV. La procédure disciplinaire à l'encontre des juges

15. Quelle est la procédure formelle d'ouverture d'une procédure disciplinaire à l'encontre d'un juge et comment la procédure se déroule-t-elle ensuite ?

Le CNJ instruit la plainte et décide s'il y a lieu de saisir ou non le Tribunal disciplinaire

16. Existe-t-il différentes phases dans les procédures disciplinaires à l'encontre des juges et quels organes ou fonctionnaires/personnes dirigent chaque phase (c'est-à-dire la phase d'enquête, la phase d'examen, la phase de prise de décision) ?

Voir réponses aux questions 9 et 15

17. Des mesures sont-elles appliquées aux juges une fois que la procédure disciplinaire est engagée et existe-t-il des circonstances dans lesquelles un juge peut être suspendu en attendant la résolution de la procédure disciplinaire ? Dans l'affirmative, veuillez fournir des détails.

Oui, le chef de corps ou le CNJ (pour les postes les plus élevés) peut décider de suspendre le juge concerné pendant la durée de la procédure disciplinaire

18. Quelles sont les possibilités pour un juge de prendre part aux différentes phases de la procédure disciplinaire à son encontre et quel type d'actions ou de mesures formelles peut-il demander ?

Dès le stade de l'instruction (à partir de son audition) et pour les actes subséquents de l'instruction, le magistrat peut se faire assister par un avocat).

19. Comment le principe de la présomption d'innocence est-il appliqué dans le cadre des procédures disciplinaires ?

Pas de disposition spécifique

20. Existe-t-il des délais formels pour entamer et conclure une procédure disciplinaire à l'encontre d'un juge ? Dans l'affirmative, quels sont les délais appliqués dans votre système ?

Non, il n'y a pas de délai

21. Comment la décision finale sur la responsabilité disciplinaire d'un juge est-elle prise (par quel organe ou fonctionnaire/personne ; suivant quelle procédure, telle que le vote, etc.)

La décision finale est prise soit au stade de l'instruction par le CNJ, soit par les juridictions disciplinaires

22. Les procédures disciplinaires à l'encontre d'un juge sont-elles affectées d'une manière ou d'une autre par d'autres procédures judiciaires (pénales, civiles, administratives) pour le même délit commis par le juge concerné ? Dans l'affirmative, veuillez préciser.

Non

23. Quelles sont les possibilités pour un juge de faire appel d'une décision relative à sa responsabilité disciplinaire ? Un appel a-t-il un effet suspensif sur les conséquences d'une telle décision ?

Oui, le juge peut relever appel contre la décision du Tribunal disciplinaire.

24. Un juge peut-il participer aux audiences disciplinaires au stade de l'appel ?

Oui

25. Quelle est l'étendue du contrôle juridictionnel (par exemple, existence d'une audience publique à un moment donné de la procédure d'appel, possibilité pour les instances d'appel d'évaluer les preuves factuelles, autres aspects pertinents) ?

Pas de restriction particulière

26. La phase d'appel concerne-t-elle non seulement la décision sur la responsabilité disciplinaire du juge, mais aussi la sanction spécifique imposée, et cette sanction peut-elle être remplacée par une autre (par exemple, confirmation de la responsabilité disciplinaire mais remplacement de la sanction) ?

Oui

27. Après un recours en première instance, un juge peut-il porter son affaire devant des instances judiciaires supérieures et jusqu'à quel niveau ?

L'appel est porté devant la Cour disciplinaire

28. L'organe qui a engagé la procédure en responsabilité (voir section II, question 4) peut-il introduire un recours contre une décision qu'il n'estime pas satisfaisante (par exemple, acquittement du juge concerné ou sanction jugée trop clémente) ?

Le CNJ peut également interjeter appel contre la décision

V. Sanctions disciplinaires à l'encontre des juges

29. En ce qui concerne les sanctions disciplinaires à l'encontre des juges, veuillez décrire brièvement ce qui suit :

- s'il existe une liste facilement accessible et exhaustive de ces sanctions clairement définies dans un texte juridique ;

Oui

- un tel texte juridique définit-il clairement quelle sanction disciplinaire s'applique dans quel cas ;

Non, aucunement

- ou est-il laissé à la discrétion de l'organe décisionnel, avec une marge d'interprétation et/ou d'application de sanctions.

Oui

30. Dans tous les cas, existe-t-il des exigences liées à la décision sur la sanction applicable (par exemple, la proportionnalité de la sanction par rapport à la faute commise, ou d'autres exigences) ?

Non

31. En particulier, comment le principe de proportionnalité est-il sauvegardé et existe-t-il des critères concrets et/ou des liens (contraignants) entre certaines violations et certaines sanctions ? Si la révocation est une sanction possible, des circonstances particulières sont-elles prévues ?

Aucune garantie ni disposition spécifique à ce sujet

32. Est-il expressément exclu que si le verdict d'un juge dans une affaire judiciaire est renversé en appel, sa responsabilité disciplinaire ne soit pas invoquée ?

Non

VI. Vérification des antécédents (le vetting) et autres formes de responsabilité et de sanctions/mesures à l'encontre des juges

33. Le vetting existe-t-il dans votre pays et dans quelles conditions (quelle est sa définition), ou son introduction est-elle envisagée et dans quelles conditions ?

En dehors de la vérification du casier judiciaire, il n'existe pas de procédure de vérification des antécédents

34. Il est assez fréquent que, lorsque le vetting est introduit, l'initiateur de cette procédure extraordinaire fasse valoir que les moyens ordinaires, y compris les procédures disciplinaires, ne fonctionnent pas. Par conséquent, les membres du CCJE des pays où le vetting a été introduit dans le passé ou où il peut ou doit être introduit, peuvent-ils fournir des informations sur les raisons identifiées dans leur pays pour justifier que les procédures disciplinaires ne sont pas suffisantes ?

Voir réponse précédente

35. Quelle est votre avis général sur le vetting (avantages et inconvénients) ?

Il paraît extrêmement difficile d'encadrer une telle procédure, de telle sorte que celle-ci soit véritablement utile et en même temps, suffisamment respectueuse des droits de la défense du magistrat

36. En plus du vetting, existe-t-il dans votre pays une possibilité d'invoquer d'autres formes de responsabilité à l'encontre des juges en dehors du cadre des procédures disciplinaires et/ou d'appliquer des sanctions/mesures dans diverses situations (par exemple, la suspension de la fonction, des mesures éthiques ou d'autres mesures) ? Veuillez préciser. Veuillez noter que cette question **ne concerne pas** la responsabilité civile, administrative ou pénale ordinaire.

Non

37. Dans le cas du vetting ou d'autres formes de responsabilité telles que mentionnées ci-dessus, quel est l'organe responsable ? S'agit-il du même organe que pour les procédures disciplinaires ou d'un organe différent ?

Voir réponse 33

38. Quelle est la composition de cet organe et comment est-il constitué (élu ou nommé, par qui, etc.) ?

Voir réponse 33

39. Quelle est la procédure suivie par cet organe pour le vetting des juges ou pour leur imposer d'autres formes de responsabilité, comme indiqué ci-dessus ?

Voir réponse 33

40. Quelles sont les sanctions/mesures qui peuvent être imposées aux juges par un tel organe et le principe de proportionnalité est-il appliqué ?

Voir réponse 33

41. Un juge peut-il faire appel d'une décision défavorable d'un tel organe ?

Voir réponse 33

VII. Problèmes et défis

42. Existe-t-il, à votre avis, des problèmes ou des défis dans votre pays concernant la responsabilité disciplinaire des juges (par exemple, les motifs de cette responsabilité, les procédures disciplinaires ou les organes responsables, les sanctions appliquées, les possibilités d'appel, etc.)

Notre droit disciplinaire soulève deux problèmes principaux :
- les normes disciplinaires sont excessivement vagues

- les juridictions disciplinaires ont toute latitude pour appliquer l'une des sanctions prévues par la loi, quelle que soit la nature et la gravité de la faute disciplinaire constatée.

43. Dans l'affirmative, quel type de solutions pouvez-vous proposer pour surmonter ces problèmes ou défis ?

Il conviendrait d'édicter des normes précises et de déterminer quelle sanction est applicable à quel manquement dans le respect du principe de proportionnalité.

Malta / Malte

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

The matter is regulated in artt. 101A, 101B and 101C of the Constitution. The procedure to be followed is further regulated by the Commission for the Administration of Justice Act (Chapter 369 of the Laws of Malta).

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, High court or other high judicial body, council for the judiciary and/or other bodies)?

The discipline of judges and magistrates is regulated by art. 101B of the Constitution of Malta. The Committee for Judges and Magistrates exercises discipline on judges and magistrates in the manner prescribed in art. 101B of the Constitution and art. 9 of the Commission for the Administration of Justice Act. There is a right of appeal before the Constitutional Court in terms of art. 101C of the Constitution

The Code of Ethics for Members of the Judiciary was drawn up by the Commission for the Administration of Justice in terms of paragraph (d) of sub-article (11) of art. 101A of the Constitution of Malta. As stated in the preamble: "The aim of this codification is for members of the Judiciary to have a Code of Ethics regulating their conduct and providing them with guidelines that expressly confirm the values they have always adhered to. These values are being brought to the notice of the public so as to strengthen trust in the administration of Justice. "This trust cannot be maintained and reinforced if members of the Judiciary do not conform to this Code and if they fail to observe the highest standards of correct ethical behaviour, and if the State does not ensure that the Judiciary has at its disposal all the necessary means and resources to enable it to carry out its duties efficiently and within a reasonable time."

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

A working group expanded to include outside persons is responsible for the Charter of ethics which can be found in the Commission for the Administration of Justice Act as amended by Legal Notice 425 of 2007 and by Acts XLV of 2020 and XIX of 2021. The Commission is composed of nine members: the President of Malta, as Chairman; the Chief Justice, as Deputy Chairman; two members elected from among the Judges of the Superior Courts; two members elected from among the Magistrates of the Inferior Courts; one member appointed by the Prime Minister and one member appointed by the Leader of the Opposition; and the President of the Chamber of Advocates.

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, High court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

According to art. 101B(5) of the Constitution complaints are to be received by the Chief Justice or by the Minister responsible for Justice, who can then refer the matter to the Committee for Judges and Magistrates, which is a subcommittee of the Commission for the Administration of Justice set up under art. 101B(1)

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

No time limits.

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

Only the Chief Justice or the Minister responsible for Justice, acting on their own motion or after receiving a complaint, may initiate disciplinary proceedings.

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

Yes, art. 101C (1) of the Constitution stipulates: "There shall be a right of appeal to the Constitutional Court from a decision of the Commission for the Administration of Justice's finding for the removal of a judge or magistrate and from the decision of the Commission for the Administration of Justice delivered in accordance with article 101B(12)."

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

Refer to answer in question 4.

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

No, but the Committee for Judges and Magistrates may appoint an advocate to act as *ad hoc* prosecutor so that its impartiality as adjudicator in the matter will not be prejudiced by assuming also the role of investigator.

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

art. 101B provides as follows

“(2) The Chairman of the Committee shall be elected by the members of the Committee from amongst themselves.

“(3) Any member of the Committee may be challenged and shall abstain in the same circumstances as a judge of the Superior Courts may be challenged or may abstain. Where a member has been challenged or has abstained, the Commission for the Administration of Justice shall appoint a substitute member.

“(15) In the exercise of their functions the members of the Committee shall act on their own individual judgment and shall not be subject to the direction or control of any other person or authority.”

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

art. 101B (5) of the Constitution provides that proceedings may be commenced “for breach of the provisions of the Code of Ethics for Members of the Judiciary or of a code or disciplinary rules for members of the judiciary promulgated according to the same procedure according to which the said Code of Ethics is promulgated which are from time to time applicable to the members of the judiciary.”

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

They are formal grounds, which allow for clarification through guidelines:

Clause 29 of the Code of Ethics for Members of the Judiciary provides as follows:

“The Chief Justice shall recommend for the approval of the Commission for the Administration of Justice guidelines for members of the Judiciary for the purpose of clarifying how the rules in this Code, or some of them, may apply to concrete cases, and to ensure, as far as possible, uniformity in the implementation of the said rules.”

13. Are there, or could there be, any other grounds (i.e. ad hoc grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting ex post facto laws and the retroactive application of law)?

There have been no such cases. The *nulla poena* ... principle is a constitutional principle which applies also in this matter

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions /circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

In the first phase it is up to the Chief Justice or the Minister responsible for justice to determine whether to forward the complaint to the Committee for Judges and Magistrates

If the complaint is forwarded to the Committee, and the Committee following *prima facie* consideration of the complaint considers that there are not sufficient grounds to commence disciplinary proceedings, the Committee refrains from further consideration of the case (art. 101B (5) of the Constitution). If, on the other hand, following the consideration of the complaint, the Committee considers that there are sufficient grounds to continue disciplinary proceedings the Committee shall appoint a date for the hearing of the proceedings (art. 101B (8) of the Constitution). If the Committee finds that the judge or magistrate has breached the Code of Ethics for Members of the Judiciary, it can impose any one of the sanctions provided in art. 101B (10) of the Constitution.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

Art. 101B(5) of the Constitution provided that “Disciplinary proceedings against a judge or a magistrate shall be commenced upon a complaint in writing and containing definite charges made to the Committee by the Chief Justice or by the Minister responsible for justice.”

Refer to the answer to question 14

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

Refer to answers 14 and 15.

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

Art. 101C (3) provides that “The filing of an appeal in terms of sub-article (1) shall suspend the execution of the decision of the Commission for the Administration of Justice.”

The matter of suspension by the Committee or the Commission is regulated under art. 101B, which provides as follows:

“(10) If the Committee finds that the judge or magistrate has breached the Code of Ethics for Members of the Judiciary it shall:

“(a) it considers that the breach is of a minor nature, either issue a warning or impose a pecuniary penalty recoverable as a civil debt payable to the Secretary of the Commission for the Administration of Justice, not exceeding ten per centum of the annual salary of the judge or magistrate as at the time established according to law;

“(b) if it considers that the breach is of a serious nature it may suspend the judge or magistrate from the exercise of his duties for a period of not more than six months on half of his salary and allowances as recoverable at the time;

“(c) if it considers that the breach is of such a serious nature as to merit the removal of the judge or magistrate from office, or is based on the grounds of incapacity to perform the functions of his office (both whether for bodily or mental illness or for any other reason), it shall report its findings to the Commission or the Administration of Justice which shall consider whether the evidence proves the case *prima facie* and, if it considers that there

is such degree of proof, the Commission shall suspend the judge or magistrate concerned and shall proceed with the hearing of the case. During the period during which a judge or magistrate is suspended in accordance with the provisions of this paragraph, which shall not exceed six (6) months, the judge or magistrate shall be entitled to half the salary and allowances relative to the office and after the expiry of such a period of six (6) months he shall resume receiving his salary and all allowances for his post irrespective of whether or not the case referred has been concluded. In the event that the Commission for the Administration of Justice considers that the breach under investigation merits the removal of the judge or magistrate from office, it shall proceed to advise the President to remove the judge or magistrate from office for proven misconduct or proven incapacity to perform the functions of his office:

“Provided that in the event that the proceedings before the Commission for the Administration of Justice do not result in the removal of the member of the judiciary, then the member of the judiciary shall be paid the salary and allowances which have been held throughout the period of suspension.

“(11) The Committee may also upon the request of the Chief Justice order that a judge or a magistrate be suspended from the performance of his duties on serious medical grounds for a definite period during which the said judge or magistrate shall continue to receive his full salary and allowances”.

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

Art. 101B (9) provides that “Proceedings before the Committee shall be held *in camera* unless the judge or magistrate against whom the proceedings are taken requests otherwise. The complainant or his representative and the judge or magistrate against whom the proceedings are taken shall have a right to be present during the whole of the proceedings, to produce witnesses in support or in defence of the charges set in the complaint, and to be assisted by an advocate or a legal procurator. The Commission for the Administration of Justice may also appoint an advocate to act as a special independent prosecutor in the disciplinary proceedings”.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

Refer to answer in 18; according to article 101B (6) The Committee shall, upon receipt of a complaint under sub-article (5), notify the said complaint to the judge or magistrate against whom it is made granting him or her a reasonable time to reply.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

Yes. In terms of art. 101B (13) “Proceedings before the Committee shall be concluded within a period of one year and appeal proceedings before the Commission for the Administration of Justice shall be concluded within a further period of six months.”

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

Refer to 14 and 15.

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

If criminal proceedings have been commenced the judge or magistrate may invoke his right against self-incrimination in proceedings before the Committee or the Commission. The *ne bis in idem* rule may also be applicable in appropriate circumstances, although a criminal penalty obviously does not preclude removal and *vice versa*.

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

There is an appeal to the Commission from a decision of the Committee (art. 101B (12)), and an appeal to the Constitutional Court from a decision of the Commission (art. 101C(1)). Filing an appeal suspends the execution of the decision (art. 101C (3) – see answer to 17, above).

24. Can a judge participate in the disciplinary hearings at the appeal stage?

Yes

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

The proceedings before the Constitutional Court are public, and the court has full power to review the decision on the facts and on the law.

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

Yes, provided that the sanction is one allowed by the law.

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

Yes, from the Committee to the Commission for the Administration of Justice (first Instance) to the Constitutional Court, which is the highest court.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned, or sanction considered too lenient)?

Art 101C does not state that only the judge or magistrate concerned may appeal; it provides as follows:

“101C (1) There shall be a right of appeal to the Constitutional Court from a decision of the Commission for the Administration of Justice's finding for the removal of a judge or magistrate and from the decision of the Commission for the Administration of Justice delivered in accordance with article 101B(12).”

Obviously only the judge or magistrate concerned will have an interest in appealing a decision of removal. However there is no provision precluding appeal from a decision of acquittal.

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:

- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;
- is it clearly defined in such a legal text which disciplinary sanction applies in which case;
- or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.

Yes, see art. 101B (10) reproduced in the answer to 17, above.

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

Yes, the distinguishes between minor nature and serious nature of the offence. See answer 29.

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

Yes, there are concrete criteria established under article 101B(10) and there are extra circumstances contemplated for the dismissal from office under article 101B(11).

32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

Reversal of a judgment on appeal is not a ground for invoking disciplinary liability.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

The functions of the Commission, in terms of art. 101A (11) (a) and (f), include *inter alia* the following:

“(a) to supervise the workings of all the superior and inferior courts and to make such recommendations to the Minister responsible for justice as to the remedies which appear to it conducive to a more efficient functioning of such courts;

“(f) to draw the attention of any judge or magistrate on any matter, in any court in which he sits, which may not be conducive to an efficient and proper functioning of such court;”

The obligation of a judge of magistrate – in terms of art. 11 of the Commission for the Administration of Justice Act – to submit a yearly report to the Commission “giving a list of all cases pending before the court over which he presides and which have been so pending for a period of five years or more, indicating in the report the reasons why each case is still pending

and the time within which the judge or magistrate, as the case may be, expects the case to be disposed of by the said court” may also be considered a form of vetting.

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

Rather than as complementary to disciplinary oversight, this provision is considered more as a tool to identify causes of delay.

35. What is your own general opinion on vetting (advantages and disadvantages)?

Insofar as it identifies matters which require attention so that they may be addressed before they create a crisis, this form of vetting may be a positive matter, so long as it does not cross the line of compromising judicial independence.

36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is not about ordinary civil, administrative or criminal liability.

The formal procedures referred to above are sufficient and safeguard judicial independence.

37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?

n/a

38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?

n/a

39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?

n/a

40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?

n/a

41. Can a judge appeal against an unfavourable decision of such a body?

n/a

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

The present system seems to have worked in practice. More intrusive measures may compromise the independence of the judiciary. "Solutions" which may lead to results analogous to those of "defensive medicine" – where concerns about possible liability take precedence over effectiveness and efficiency – are to be avoided.

43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

Netherlands / Pays-Bas

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?
Act of Parliament: Judicial Officers (Legal Status) Act (*Wet rechtspositie rechterlijke ambtenaren*)
2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?
A few specific obligations are imposed on judges by act of parliament such as the obligation to maintain confidentiality, report ancillary activities, etc. No corresponding disciplinary measures are specified, however.
3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?
The Minister of Justice submits legal provisions applicable to judges for consultation to the Netherlands Association for the Judiciary (the judicial officers union and advocacy organisation).

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?
The management board of the court that employs the judicial officer or the Procurator General, in the case of the Supreme Court.
5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.
No
6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.
No
7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?
Disciplinary measures are imposed by the Supreme Court. A written reprimand may also be imposed by the president of the court in which the judge in question sits.
8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?
No

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?
The Supreme Court decides on the imposition of disciplinary measures further to an application by the Procurator General at the Supreme Court.
10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?
Both the Supreme Court and the president of the court are judicial officers subject to all the guarantees of independence prescribed by Dutch law.

III. Grounds for initiation of disciplinary proceedings against judges

What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

A disciplinary measure may be imposed on a judicial officer

- a. who is negligent of the dignity of the office, the activities entailed by the office or the duties of the office;
 - b. who violates the provisions that prohibit the practice of a profession; that designate a permanent and continuous place of residence; that prohibit consorting with the parties or their attorneys or representatives in interviews or conversations or that prohibit accepting specific information or written documents from them; that impose a duty of confidentiality or a duty to inform one's superior of positions held outside the scope of the office; or
 - c. whose acts or omissions seriously prejudice the proper administration of justice or confidence in the administration of justice.
11. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?
See the previous question/answer
12. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?
No
13. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?
This is assessed by the president of the court or by the Procurator General, in the case of the Supreme Court.

IV. The process of disciplinary proceedings against judges

14. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?
see questions 7 and 8.

15. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

This is regulated in Articles 46o and 46p of the Judicial Officers (Legal Status) Act
Article 46o Judicial Officers (Legal Status) Act

- The Supreme Court takes the decisions referred to in this chapter further to an application by the Procurator General at the Supreme Court. The Supreme Court decides on the lifting of a suspension further to an application by the Procurator General or at the request of the judicial officer in question.
- The application by the Procurator General referred to in the first paragraph may be submitted ex officio or in response to a reasoned request by the affected judicial officer's superior. If the judicial officer in question sits on a court of appeal or a district court, but not as the president, the superior referred to in the first sentence is the judicial officer who is the president of that court of appeal or district court. If the judicial officer in question is the president of a court of appeal, the superior referred to in the first sentence is the president of the Supreme Court. If the judicial officer in question is the president of a district court, the superior referred to in the first sentence is the judicial officer who is the president of the court of appeal within whose jurisdiction the district court is situated.
- The Procurator General may not file an application until the judicial officer has been allowed to make a written or oral statement. Oral statements are documented in an official record, which is then signed by the judicial officer concerned and the Prosecutor General. If the judicial officer refuses to sign the official record, this will be noted in the official record, if possible stating the reasons for refusal. The judicial officer is given a copy of the official record.
- The Procurator General must submit the application in writing, stating the reasons on which it is based. The application must in any case be accompanied by the official record referred to in the third paragraph.
 - The Supreme Court takes the decisions referred to in this chapter further to an application by the Procurator General at the Supreme Court. The Supreme Court decides on lifting a suspension further to an application by the Procurator General or at the request of the judicial officer in question.
 - The application by the Procurator General referred to in the first paragraph may be submitted ex officio or in response to a reasoned request by the affected judicial officer's superior. If the judicial officer in question sits on a court of appeal or a district court, but is not it president, the superior referred to in the first sentence is the judicial officer who is the president of that court of appeal or district court. If the judicial officer in question is the president of a court of appeal, the superior referred to in the first sentence is the president of the Supreme Court. If the judicial officer in question is the president of a district court, the superior referred to in the first sentence is the judicial officer is the president of the court of appeal within whose jurisdiction the district court is situated.

- The Procurator General may not file an application until the judicial officer has been allowed to make a written or oral statement. Oral statements are documented in an official record, which is then signed by the judicial officer concerned and the Prosecutor General. If the judicial officer refuses to sign the official record, the official record will reflect this, if possible stating the reasons for the refusal. The judicial officer is given a copy of the official record.
 - The Procurator General must submit the application in writing, stating the reasons on which it is based. The application must in any case be accompanied by the official record referred to in the third paragraph.
16. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.
The Supreme Court may impose a suspension if there is a strong suspicion that there are other facts or circumstances that could lead to dismissal.
17. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?
The judge must be allowed to express an opinion in advance to the management board of the court or the Prosecutor General at the Supreme Court, and may attend the hearing of the Supreme Court chamber for disciplinary and challenge-related matters .
18. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?
Investigation will determine whether situation a, b or c applies (see above). Only then can a measure be imposed.
19. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?
No
20. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?
See above regarding Articles 46o and 46p of the Judicial Officers (Legal Status) Act
21. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.
No
22. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?
A written reprimand is open to objection and subsequent appeal to the Central Appeals Tribunal. The Supreme Court's decision is not open to appeal, as it the highest court in the Netherlands.
23. Can a judge participate in the disciplinary hearings at the appeal stage?

If the judge lodges an objection and/or appeal against the written reprimand issued by the president, the judge is entitled to attend the hearing of the objection by the complaints committee and the hearing of the appeal by the Central Appeals Tribunal.

24. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?
See question 15.
25. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?
Yes, in the event of an appeal against a written reprimand issued by the president.
Measures imposed by the Supreme Court are not open to appeal, as it the highest court.
26. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?
No, an appeal against a written reprimand issued by the president goes straight to the appeals tribunal (Central Appeals Council). See 25.
27. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?
No

V. Disciplinary sanctions against judges

28. As regards the disciplinary sanctions against judges, please briefly describe the following:
- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;
Yes Article 46ca Judicial Officers (Legal Status) Act
 - a. written reprimand;
 - b. withholding of up to half a month's salary;
 - c. up to three month's suspension; or
 - d. dismissal
 - is it clearly defined in such a legal text which disciplinary sanction applies in which case;
No
 - or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.
Yes
29. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?
No

30. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?
That decision is up to the Supreme Court, which issues a reasoned judgment.
31. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?
Measures may be imposed only in the situations specified by the Act (a, b and c). Moreover, the Judiciary (Organisation) Act provides that the court management board will not become involved in the procedural aspects or substantive assessment of or the decision in a specific case.

VI. Vetting and other forms of liability and sanctions/measures against judges

32. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?
Vetting takes place only in the run-up to an appointment. The judicial and criminal records of each candidate are checked by the National Selection Committee for the Judiciary. Before being appointed, the judge must also submit a Certificate of Conduct. A Certificate of Conduct is a document issued by Justis, the Dutch screening authority, certifying that one's previous (judicial) conduct is not an obstacle to carrying out a specific societal task or function. Justis checks whether the person in question has a criminal record that could pose a risk to the position or purpose for which the person is applying when assessing a Certificate of Conduct application.
33. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient? N/A
34. What is your own general opinion on vetting (advantages and disadvantages)?
Before a person joins the judiciary, the candidate is asked to submit a VOG, an extract from the Judicial Documentation Register. This is a mandatory procedure. A background check is not conducted by the national security services, this is not possible by law (art. 11 van de Wet veiligheidsonderzoeken). However, the LSR (National Selection Committee for Judges) does its own background check based on an extract from the Judicial Documentation Register. When the judge is officially appointed, the applicable integrity codes apply.
In the Netherlands, we have no experience of vetting by an externally appointed committee, either from the national government or internationally. The Judiciary points out that if there is corruption or a link to organised crime, it should primarily go through criminal law. We agree with the position of the CCJE (see e.g. in their Opinion No 21 Prevention of Corruption among Judges at 26-28) and of the Venice Commission itself, which is cautious about vetting: Vetting may be justified, but only in the case of exceptional circumstances.
35. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability.

The Dutch Criminal Code lists several serious offences involving abuse of office. This includes, for example, accepting gifts where the intention is to exert influence.

36. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?
Serious offences involving abuse of office are investigated and prosecuted by the Public Prosecution Service.
37. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?
N/A
38. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?
N/A
39. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?
N/A
40. Can a judge appeal against an unfavourable decision of such a body?
N/A
Please note that the refusal of a Certificate of Conduct is open to objection and appeal to the district courts pursuant to the General Administrative Law Act.

VII. Problems and challenges

41. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?
The disciplinary liability of judges is well- defined, but due to the rare application of disciplinary rules for judges perhaps not highly developed. The president of the court has oversight and can issue a warning and reprimand. A judge who has been disciplined may refer it to the Attorney General to the Supreme Court (PG HR). The president must first give notice of the intention to impose disciplinary action. The discussion of that intention often takes place in the presence of a lawyer on behalf of the judge. The judge's legal protection is thus well guaranteed. The Attorney General to the Supreme Court (PG HR) has general supervision over members of the judiciary and can make a recommendation to the Supreme Court for the imposition of a disciplinary measure, such as reprimand, transfer, withholding of part of salary and dismissal. Because of the authority of the position, an informal discussion with the Attorney General to the Supreme Court (PG HR) may lead to a necessary change in behaviour. The actual imposition of a disciplinary measure by the Supreme Court is rare. Please find the numbers published in the annual review.
42. If so, what kind of solutions can you suggest for overcoming these problems or challenges?
Informal discussions with the Attorney General to the Supreme Court (PG HR) may imply that disciplinary action and measures are not transparent to both the judiciary and the public. This does not seem to cause any problems at present. There seems to be more awareness and openness about disciplinary action and measures. This is a positive development as standards and enforcement are well established.

North Macedonia / Macédoine du Nord

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

The disciplinary suitability of judges in the Republic of Northern Macedonia is regulated in accordance with the Law on Courts and the Law on the Judicial Council of North Macedonia and international agreements

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?

Yes by the Law on the Judicial Council of the Republic of Northern Macedonia

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

Yes, judges through the Association of Judges of the Republic of North Macedonia in working groups to draft laws to the stage of proposals, amendments and lowering laws.

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

In the Republic of Northern Macedonia, the person responsible for receiving representations is the Judicial Council of the Republic of Northern Macedonia

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

Disciplinary proceedings at Republic of Northern Macedonia are conducted within six months of the day of the injury, but no later than three years after the day of the injury

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

No restrictions, a representation to the Judicial Council can be submitted by any natural and legal person.

Judicial Council does not act on representations if they have orderable content

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

The Constitutional Court has no role in any of the stages of disciplinary proceedings

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

Yes, president of the court

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

A three-member commission formed by a draw.

At the request of the judge or the president of the court, a representative from the Association of Judges may also attend the session

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

The Judicial Council of the Republic of Northern Macedonia is an independent body that operates according to the law

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

Due to a serious disciplinary injury that makes him unworthy of the performance of the judicial function prescribed by law and unprofessional and unconscionable exercise of judicial function under conditions laid down by law

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

The basics are clearly defined, without space for wider interpretation and/or application

13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

There are no formal grounds

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

After receiving the request for the liability of a judge or president of the court, the Council of Members with the right to vote by draw shall form a Commission of Notifies composed of three members, two of whom are of the order of the members elected by the judges, and one of the members elected by the Assembly of the Republic of Northern Macedonia. The President of the Commission shall be elected by a draw of the members of the Commission.

The Commission will reject the request to determine the responsibility of the judge or the president of the court if the request is: - untimely, - incomplete or - apparently unfounded, i.e. refers to facts that were already subject to review by a higher court in legal proceedings or could be subject to review by a higher court, but were not initiated by legal remedy

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

The formal step for bringing disciplinary proceedings against judges is by requesting the opening of proceedings for determining the responsibility of a judge or president of the court shall be submitted to the Council and shall contain: the name and surname of the judge or president of the court, address and place of residence, in which the court performs the function, description of the injury, legal name of the injury by specifying provisions of the Law on the Courts and proposing evidence to be carried out at the hearing. The request also provides the evidence on which the request is based

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

That there are different stages and that submission of a request, the review of the Commission of Rapporteurs, the collection of data and evidence, the delivery, the hearing on the request, the Commission report, the Council hearing and the procedure for deciding

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

The judge may be suspended until the disciplinary process is resolved by deciding to dismiss, the judge or president of the court is temporarily moving away from the performance of the judicial post, i.e. the president of the court to the legal termination of the proceedings

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

First, the request and evidence are submitted in person to the judge against whom disciplinary proceedings are conducted, who can give a written answer to all the allegations highlighted in the request for determination of disciplinary responsibility, the judge who is entitled to a defender is invited to the hearing, the decision taken is delivered to the judge and against the decision of the Judicial Council, the judge has the right to appeal to the Decision-Making Council following the appeals of the Judicial Council, formed before the Supreme Court of the Republic of Macedonia, within eight days of the adoption of the decision. The Board of Appeal is composed of nine

members, three of whom are judges of the Supreme Court of the Republic of Macedonia, four appeals court judges and two judges from the court from which the judge against whom the proceedings are brought.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

The principle of presumption of innocence during the proceedings is applied in a way that the judge is innocent until a legal decision is made and throughout the proceedings he has the right to propose written and oral evidence in person or through his defender.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

There are no formal time limits but the procedure is urgent and of a confidential character

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

The decision to dismiss the Council shall take a two-thirds majority vote of the total number of members of the Council with the right to vote, to dismiss the judge and the President of the Court

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

No other court proceedings can be conducted.

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

The judge is entitled to appeal to the Decision-Making Council on appeal to the Supreme Court of the Republic of Northern Macedonia. The appeal has a suspensive effect, but when the Council decides by which the judge is dismissed by the same decision, it may temporarily distance the judge from the exercise of his judicial post to the legal completion of the proceedings for his dismissal or disciplinary proceedings.

24. Can a judge participate in the disciplinary hearings at the appeal stage?

To be able to participate at his request, personally with his defender.

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

The Appeal Council decides on the appeal within 30 days of its formation at the latest, appreciating the legality of the procedure.

Public hearing in an appeal procedure is possible whenever the judge requests a public hearing with the appeal. The Council appreciates only the legality of the proceedings in the appeal proceedings, whether international standards are maintained in relation to the right of defence of the judge and to take into account the proper application of material law.

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

The Appeal Council may confirm or abolish the Council's decision in case of gross violation of the provisions on the procedure for the liability of a judge or president of a court and cannot in appeal proceedings to replace the sanction

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

Yes, to the European Court of Human Rights

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

Don't! The right to appeal to the Council for decision on appeal before the Supreme Court of the Republic of Northern Macedonia against the Council's decision is only held by the judge, i.e. the president of the court for whom the procedure for determining liability has been brought

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:

- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;

To have an easily accessible and exhaustive list

- is it clearly defined in such a legal text which disciplinary sanction applies in which case;

Yes

- or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.

Don't

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

Don't

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

Don't

32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

The Council of Appeal may confirm or abolish the decision, not amend it, but may instruct the Judicial Council to repeat the proceedings.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

There is no vetting

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

Disciplinary proceedings are satisfied

35. What is your own general opinion on vetting (advantages and disadvantages)?
36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability.

Judges have the right to apply for an opinion to the ethics advisory body of judges who do not have a suspensive action

37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?
38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?
39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?
40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?
41. Can a judge appeal against an unfavourable decision of such a body?

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

Yes, there is

43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

The Working Group on the Preparation of a Draft Law amending and supplementing the Law on the Judicial Council of the Republic of Northern Macedonia has been formed to overcome these problems and challenges. The Working Group will take into account the recommendations of the evaluation mission

Shpend Devaja
Judge of Supreme Court of
Republic of North Macedonia

Norway / Norvège

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

In Norway the disciplinary liability of judges is regulated in law. The statutory framework: The provisions applying to the Supervisory Committee are found in the Courts of Law Act, Chapter 12, "On the complaints and disciplinary authority for judges". The Public Administration Act applies to the actual complaints procedure, however with certain exceptions. The Freedom of Information Act also applies.

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?

No regulations have yet been laid down. A part of the framework is the ethical principles for Norwegian judges, adopted by the Norwegian Courts Administration and the Norwegian Association of Judges. (Available at the homepage of CCJE).

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

Yes, there had been a public hearing in accordance with the regular law-making procedure in Norway

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

The Supervisory Committee for Judges (Hereinafter referred to as the Committee) is appointed by the King in Council and handles complaints against judges regarding misconduct. In addition to hearing complaints submitted, the Supervisory Committee may take up misconduct at their own initiative. The Committee may also make general statements on what is comprised by the concept "appropriate judicial conduct". It has thereby also the character of an ethics council.

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

The time-limit is as a broad rule three months running from the alleged misconduct took place or from the complainant became aware or should have become aware of it. There is an absolute one-year time-limit running from the alleged misconduct occurred.

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

Parties, lawyers or for example witnesses are entitled to submit a complaint if they in a lawsuit has been directly affected by the judge's conduct. The same applies to others who are directly affected, such as lay judges or experts. A complaint may also be allowed if the complainant can establish that he or she have a particular interest in obtaining an assessment of the judge's conduct. The Ministry of Justice, the National Courts Administration, the court president of the relevant court and the Norwegian Bar Association always have a right to file a complaint. If a complaint concerns conduct outside of office, only the Ministry of Justice, the National Courts Administration or the court president in question are entitled to file a complaint. The Committee may, nevertheless, decide to allow a complaint at the request of others, If it considers this to be justifiable.

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

There is no constitutional court in Norway.

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

See answer under 6.

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

No

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

Members of The Committee are appointed for a period of four years and can be reappointed for maximum a second term. Retraction of an appointment can take place if the appointed member proves to be unable or unwilling to carry out his or her work appropriately. The Committee cannot be instructed. Its decisions cannot be appealed but can be reviewed by ordinary action before the ordinary courts. A member can recuse him or herself if there are grounds for incapacity.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

You may complain if you consider that a judge has acted in breach of appropriate judicial conduct or has otherwise acted in contravention of the obligations of his or her position. As a rule, you may only complain against misconduct in the judge's performance of his or her office. You may not file a complaint because you are dissatisfied or disagree with a judicial decision. Such decisions may be brought before a superior court by interlocutory appeal or appeal, and the Committee is not entitled to hear such complaints. Complaints concerning dissatisfaction with judicial decisions will therefore be dismissed.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

They are relatively clearly defined and the room for wider interpretation is narrow.

13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? No Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)? Yes
14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Yes, by the secretariate. Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Yes Is it possible to terminate such proceedings at early stages? Yes If so, in what conditions/circumstances? See note under 11. In addition, if the complaint is submitted too late it will be dismissed.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward? By written and signed complaint. The secretariate then submits the complaint before the accused judge for him or her to give a response. The secretariate can also ask the view of the court president of the relevant court and others who may have relevant evidence in the matter. Relevant documents are often required. It is mandatory that the accused is given full insight and is given the opportunity to contradict.
16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)? Two phases: Case preparation handled by the secretariat. And the hearing itself handled by The Committee.
17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? No If so, please furnish details.
18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request? See under 15
19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings? The Committee will take all available evidence into consideration and base its decision on preponderance of probability.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? No If so, what are the limits applied in your system? The Committee aims at concluding the case within 3 months, which actually often is the case.
21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)? In a Committee meeting by voting
22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify. Yes, The Committee can not handle a complaint regarding something the judge already have been criminally convicted for.
23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? The Committee's decisions may not be appealed. If the judge should wish it to be reviewed, however, he/she must start an ordinary action before the district court. The time-limit for such action is two months. Does an appeal have suspensive effect on the consequences of such a decision? No
24. Can a judge participate in the disciplinary hearings at the appeal stage? Yes, but as a party to a subsequent court hearing, see under 23.
25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)? The courts competence is limited only to test the legality of the decision, whether the decision is legal in substance, whether it was made by a legal authority and to review it for procedural errors.
26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)? No
27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level? The district court judgement may be appealed to the court of appeals.
28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)? Yes, The Committee has competence to appeal the court decision.

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:
 - is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text; Yes
 - is it clearly defined in such a legal text which disciplinary sanction applies in which case; No

- or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions. Yes:

If the Committee should find that the judge has acted in breach of appropriate judicial conduct, it may adopt disciplinary measures in the form of criticism or a warning. A warning is the strictest form of reaction.

In some cases, even though no disciplinary measures are taken, the Committee may make a statement in connection with the complaint on what it deems to be appropriate judicial conduct.

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)? Yes, proportionality is a relevant factor. Also, previous cases of misconduct are taken under consideration.
31. In particular how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? The principle of proportionality follows indirectly from the law by stipulating two alternative measures – criticism or warning. The latter measure is the more severe and presupposes a more severe misconduct. If dismissal from office is a possible sanction, are extra circumstances foreseen for it? Not possible
32. Is it specifically ruled out that if a judge’s verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked? The law expressly states that one cannot file a complaint because of dissatisfaction or disagreement with a judicial decision. Such decisions may be brought before a superior court by interlocutory appeal or appeal, and the Committee is not entitled to hear such complaints. Complaints concerning dissatisfaction with judicial decisions will therefore be dismissed.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?
Not available.
34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?
35. What is your own general opinion on vetting (advantages and disadvantages)?

Vetting may be a useful tool in circumstances where an independent judiciary cannot be (re)established by other means. However, an independent evaluation of the situation is required, and a clear mandate for the review is needed. One obvious disadvantage is that vetting will extract substantial resources from the judiciary, and may be followed by backlog problems for the judiciary.

36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability.
37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?
38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?
39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?
40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?
41. Can a judge appeal against an unfavourable decision of such a body?

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?
It is a challenge that administrative appeal against decisions from the Supervisory Committee is not available.
43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

Poland / Pologne

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

The rules of disciplinary liability are set out at the statutory [law] level (appropriate for each type of court, i.e. the Law on the Organisation of the Common Courts, the Law on the Organisation of Military Courts, the Act on the Supreme Court and the Law on the Organisation of Administrative Courts). The following answers will focus primarily on common courts (district, circuit and appellate courts), with the most significant differences being indicated, if any, if they occur in the case of other courts.

This results from the provisions of the Constitution of the Republic of Poland, which provides as follows on the general principles of incurring liability by judges, including criminal liability: " 1. *Judges are irremovable. 2. A judge may be removed from office, suspended from office, transferred to another location or to another position against his or her will only by a court decision and only in cases specified by law.*

*A judge may not, without the prior consent of the court specified in the law, be held criminally liable or deprived of his liberty. A judge may not be detained or arrested, except when caught in the act of committing a crime, if his or her arrest is necessary to ensure the proper course of the proceedings. The president of the court with territorial jurisdiction shall be immediately notified of the detention, and may order the immediate release of the detainee."*¹

Disciplinary liability may also result from a violation of the code of judicial ethics – the Collection of Principles of Judges' Professional Ethics. It was adopted by the National Council of the Judiciary by way of a resolution adopted on the basis of a statutory authorisation. The Council shall, if necessary, supplement the Collection of Principles and, in case of doubt, provide an interpretation thereof.

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?

The Collection of Principles of Judges' Professional Ethics was adopted by the National Council of the Judiciary in 2003 (and was supplemented in subsequent years) by way of a resolution adopted on the basis of statutory authorisation. The Council shall, if necessary, supplement the ethical code and, in case of doubt, provide an interpretation.

Certain technical issues are sometimes also identified at regulation level. For example, according to Article 110c of the Law on the Organisation of the Ordinary Courts, "*the Minister of Justice shall determine, by way of regulation, the number of judges in disciplinary courts at courts of appeal, guided by organisational considerations and the need to ensure efficient proceedings in disciplinary cases.*"

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

¹ Act - Law on the common courts organisation, Articles 180-181

The Code of Professional Ethics for Judges was adopted and supplemented by the National Council of the Judiciary [NCJ], in which 17 out of 25 members are representatives of the judiciary. The NCJ also gives its opinion on draft legal acts concerning the judiciary, judges and trainee judges, and requesting an opinion from the NCJ in these matters is mandatory (as provided for in the Act on the NCJ). Judges' associations may also take part in consultations on given bills in parliament if they so wish.

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

Pursuant to Article 112(1)-(2a) and Article 114 of the Act of 27 July 2001 – The Law on the Organisation of Common Courts, it is the disciplinary representative who is competent to initiate disciplinary proceedings against a judge, as well as to perform prosecutorial functions before the disciplinary court.

Both the Disciplinary Representative for Common Court Judges and his Deputies may take and conduct actions in any case concerning a judge. The disciplinary representative undertakes explanatory activities at the request of the Minister of Justice, the president of the court of appeal or the president of a regional court, a board of an appeal court or a board of a regional court, the National Council of the Judiciary, as well as on his or her own initiative, after a preliminary determination of the circumstances necessary to determine the elements of a disciplinary offence. The investigation should be carried out within thirty days from the date of the first action taken by the disciplinary representative .

Cases concerning the initiation of disciplinary proceedings shall have territorial jurisdiction over the disciplinary court in the district in which the judge concerned is serving. However, if the case concerns a judge of an appeal court or a judge of a regional court, another disciplinary court shall have jurisdiction appointed, at the request of the disciplinary representative , by the Supreme Court – Chamber of Professional Responsibility, from among the disciplinary courts with jurisdiction over the areas of appeal adjacent to the area of appeal in which the court in which the judge concerned serves.

The National Council of the Judiciary has relatively limited competences in this area. It may request disciplinary action, appeal against decisions of disciplinary courts and disciplinary representatives, and demand the resumption of disciplinary proceedings;

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

According to the law², disciplinary proceedings cannot be initiated after five years from the date of the offence. If disciplinary proceedings are initiated before the expiry of the above-mentioned period, the disciplinary statute of limitations expires after eight years from the date of committing the act. However, if the disciplinary offence contains elements of a crime, the disciplinary statute of limitations may not occur earlier than the statute of limitations provided for in the provisions of the Penal Code. The disciplinary statute of limitations does not run during the disciplinary proceedings, starting from the date of filing the application to the disciplinary court until the date of the final conclusion of the disciplinary proceedings. This does not apply to the case where the subject of the application is to hold a judge disciplinary liable for a misdemeanor or fiscal offence.

² Article 108 of the Law on the Organisation of the Ordinary Courts.

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

The disciplinary representative undertakes explanatory activities at the request of the Minister of Justice, the president of the court of appeal or the president of a regional court, a board of an appeal court or a board of a regional court, the National Council of the Judiciary, as well as on his or her own initiative, after a preliminary determination of the circumstances necessary to determine the elements of a disciplinary offence. The investigation should be carried out within thirty days from the date of the first action taken by the disciplinary representative.

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

No. The Constitutional Tribunal deals only with disciplinary cases of judges of the Tribunal itself. On the other hand, the constitutional right to lodge a constitutional complaint, in accordance with Article 79(1) of the Constitution of the Republic of Poland, is vested in everyone whose constitutional freedoms or rights have been violated, including judges (for example, in the course of disciplinary proceedings). A constitutional complaint on behalf of the complainant may be prepared and filed only by a qualified legal representative (advocate or legal advisor). However, a judge may independently prepare and file a constitutional complaint in his or her own case (similarly to a prosecutor, advocate, legal advisor, notary and professor or habilitated doctor of law). Nevertheless, this is not part of the disciplinary proceedings or an appeal as such.

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

As indicated in the answer to question no. 6, these are: the Minister of Justice, the president of the court of appeal or the president of the regional court, the board of the court of appeal or the board of the regional court and the National Council of the Judiciary.

Follow-up: As part of the investigation, the disciplinary representative may request the judge to submit a written statement on the subject matter of these actions, within fourteen days from the date of receipt of the summons. The disciplinary representative may also receive an oral statement from the judge. Failure to submit a statement by a judge does not suspend the further course of the proceedings. If, after the investigation, there are grounds for initiating disciplinary proceedings, the disciplinary representative initiates disciplinary proceedings and prepares disciplinary charges in writing. Immediately after the disciplinary charges are drafted, the disciplinary representative serves them on the accused. When serving the charges, the disciplinary representative calls on the accused to present explanations and all evidence in writing within fourteen days from the date of service of the disciplinary charges. In the event of failure to comply with this obligation, the disciplinary representative may not consider motions for evidence submitted by the defendant after the expiry of this period, unless the defendant proves that the evidence was not known to him or her beforehand. The disciplinary representative may also receive explanations from the accused, and at the defendant's request, by way of questioning. Failure to submit explanations on time or to appear on the date set by the disciplinary representative of the hearing does not suspend further actions. At the same time as the charges are served, the disciplinary representative asks the Supreme Court – Chamber of Professional Responsibility to designate a disciplinary court to hear the case in the first instance. The Supreme Court – Chamber of Professional Responsibility designates

this court within seven days from the date of receipt of the application. After the deadline has expired and, if necessary, after further evidence has been taken, the disciplinary agent submits a request for consideration of the disciplinary case to the designated disciplinary court. The application should contain a precise description of the act that is the subject of the proceedings, a list of evidence justifying the application and a justification. If the disciplinary representative finds no grounds for initiating disciplinary proceedings, at the request of the competent authority, he or she issues a decision refusing to initiate them. A copy of the decision shall be served on the authority which filed the application for initiation of proceedings, the board of the regional or appellate court, respectively, and the accused. A copy of the decision shall also be served on the Minister of Justice, who may file an objection within thirty days. Filing an objection is tantamount to the obligation to initiate disciplinary proceedings, and the indications of the Minister of Justice as to the further course of the proceedings are binding on the disciplinary representative. If the disciplinary proceedings have not provided grounds for filing a motion with the disciplinary court to consider the disciplinary case, the disciplinary representative issues a decision to discontinue the disciplinary proceedings. Within seven days from the date of service of the decision, the defendant, the authority that filed the application for the initiation of disciplinary proceedings and the competent board may lodge a complaint with the disciplinary court. At the request of the authority entitled to lodge a complaint or objection, the disciplinary representative shall immediately send or otherwise make available materials collected in the course of explanatory activities or disciplinary proceedings. The complaint should be considered within fourteen days from the date of filing the complaint with the court.

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

The body appointed to perform investigative functions, with decision-making powers in this respect, is the Disciplinary Representative, who initiates disciplinary proceedings and prepares disciplinary charges in writing or issues a decision on refusal to initiate disciplinary proceedings. The Ombudsman may also issue a decision to discontinue the disciplinary proceedings – if the disciplinary proceedings did not provide grounds for filing a motion to the disciplinary court to consider the disciplinary case. Disciplinary cases are heard by the disciplinary court designated to hear the case at first instance by the Supreme Court – Chamber of Professional Responsibility.

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

The term of office of a judge of the disciplinary court at the court of appeal is six years and the appointing authority cannot remove him or her from this position.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

A judge is liable for disciplinary offences including:

- 1) obvious and gross violation of the law;
- 2) the refusal to administer justice; acts or omissions which may prevent or significantly impede the functioning of the judicial body;
- 3) actions

questioning the existence of an employment relationship of a judge, the effectiveness of the appointment of a judge, or the legitimacy of a constitutional body of the Republic of Poland; public activity incompatible with the principles of judicial independence and judicial independence; violation of the dignity of the office.

A judge is also liable for disciplinary action for his or her conduct before taking up his or her post, if by doing so he or she has failed to fulfil the duty of the state office held at that time or has proved unworthy of the office of judge.

The examples mentioned in the question may be and often are grounds for initiating disciplinary proceedings.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

The formal catalogue of grounds (cited in the answer to question 11) is exhaustive, but at the same time it is presented in a rather general and thus relatively broad manner.

13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

No. Retroactive application of the law, including in the case of disciplinary proceedings, is prohibited.

14. A) Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? B) Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? C) Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

A) Yes, the initial review is carried out by the disciplinary representative before the case is dealt with by the disciplinary court.

B) After five years from the date of the offence, disciplinary proceedings may not be initiated. If disciplinary proceedings are initiated before the deadline, the disciplinary statute of limitations expires eight years after the act was committed. However, if the disciplinary offence contains the elements of a crime, the disciplinary statute of limitations may not occur earlier than the statute of limitations provided for in the provisions of the Polish Penal Code. The disciplinary statute of limitations does not run during the disciplinary proceedings, starting from the date of filing the application to the disciplinary court until the date of the final conclusion of the disciplinary proceedings. This does not apply to the case where the subject of the application is to hold a judge disciplinary liable for a misdemeanor or fiscal offence.

C) If the disciplinary representative does not find grounds to initiate disciplinary proceedings, at the request of the competent body, he or she issues a decision on refusal to initiate them. A copy of the decision shall be served on the authority which filed the application for initiation of proceedings, the board of the regional or appellate court, respectively, and the accused. A copy of the decision shall also be served on the Minister of Justice, who may file an objection within thirty days. Filing an objection is tantamount to the obligation to initiate disciplinary proceedings, and the indications of the Minister of Justice as to the further course of the

proceedings are binding on the disciplinary representative. If the disciplinary proceedings have not provided grounds for filing a motion with the disciplinary court to consider the disciplinary case, the disciplinary representative issues a decision to discontinue the disciplinary proceedings. Within seven days from the date of service of the decision, the defendant, the authority that filed the application for the initiation of disciplinary proceedings and the competent board may lodge a complaint with the disciplinary court.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

Disciplinary proceedings against a judge are initiated at the request of the disciplinary representative. The disciplinary court proceeds in the form of a hearing or a sitting. As a rule, the court hears the case at a hearing, unless it is sufficient to schedule a hearing. In any case, the case should be considered within 30 days of receipt of the disciplinary representative's request.

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

Disciplinary proceedings consist of three stages – explanatory activities, proceedings before the disciplinary representative and court proceedings. As far as the course of disciplinary proceedings is concerned, they are preceded by explanatory activities by the disciplinary representative (the equivalent of preparatory proceedings). The Ombudsman may conduct them at the request of, m.in the Minister of Justice or the president of the court, as well as on his own initiative. These activities should be carried out within thirty days from the date of the first one. During them, the disciplinary representative may summon the judge to submit a written statement concerning the subject matter of these activities or collect an oral statement from the judge. Failure to submit a statement by a judge does not suspend the further course of the proceedings. If, after the investigation, there are grounds for initiating disciplinary proceedings, the disciplinary agent formally initiates disciplinary proceedings and draws up disciplinary charges in writing, which are immediately served on the accused. Upon serving the charges, the disciplinary representative calls on the accused to provide written explanations and all evidence within 14 days, and at the same time asks the Chamber of Professional Responsibility (formerly the Disciplinary Chamber) to designate a disciplinary court to hear the case at first instance. After the 14-day deadline for presenting evidence and providing explanations, the disciplinary representative submits a request for consideration of the disciplinary case to the designated disciplinary court. This application serves as an indictment, known from criminal proceedings. Failure to provide explanations by the defendant within this period does not suspend the further course of the proceedings.

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

The disciplinary court may suspend from office a judge against whom disciplinary or incapacitation proceedings have been initiated, as well as if it issues a resolution authorising the prosecution of a judge to be held criminally liable.

If the disciplinary court issues a resolution authorising the prosecution of a judge for an intentional offence prosecuted by public prosecution, it shall suspend the judge ex officio from his or her

duties. In addition, when a judge is suspended, his or her salary is reduced by between 25% and 50% for the duration of the suspension.

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

During the disciplinary proceedings, the judge may act alone or appoint an attorney. According to the provisions of the Law on the Organisation of the Ordinary Courts, another judge, prosecutor, advocate or legal advisor may be appointed as a defence counsel of choice. If the accused is unable to participate in the proceedings due to illness, the disciplinary court may, at the request of the accused (and in special cases without a request), appoint a defence counsel for him ex officio from among advocates or legal advisers.

The judge may submit written or oral explanations and statements as to the subject matter of the activities carried out and submit motions for evidence (conclusions from documents, witness testimony, expert opinions).

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

The principle of the presumption of innocence is of equal importance in criminal and disciplinary proceedings. The accused is presumed innocent until proven guilty and established by a final judgment.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

According to the law³, disciplinary proceedings cannot be initiated after lapse of five years from the date of the offence. If disciplinary proceedings are initiated before the expiry of the above-mentioned period, the disciplinary statute of limitations expires after eight years from the date of committing the act. However, if the disciplinary offence contains elements of a crime, the disciplinary statute of limitations may not occur earlier than the statute of limitations provided for in the provisions of the Penal Code. The disciplinary statute of limitations does not run during the disciplinary proceedings, starting from the date of filing the application to the disciplinary court until the date of the final conclusion of the disciplinary proceedings. This does not apply to the case where the subject of the application is to hold a judge disciplinary liable for a misdemeanor or fiscal offence.

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

The main form of ending disciplinary proceedings in the first instance is a verdict by which the court convicts or acquits the accused. Such a judgment is made public.

Judgments in disciplinary cases shall be issued by:

- in the first instance: a) disciplinary courts at the courts of appeal composed of three judges, b) the Supreme Court composed of two judges adjudicating in the Chamber of Professional Responsibility and one lay judge of the Supreme Court in cases of disciplinary offences exhausting the features of intentional offences prosecuted by public indictment or intentional fiscal

³ Article 108 of the Law on the Organisation of the Ordinary Courts.

offences, or cases in which the Supreme Court has requested that a disciplinary case be considered with a statement of infringements, and cases referred to in Article 107 § 1 item 3;
- in the second instance – the Supreme Court, composed of two judges adjudicating in the Chamber of Professional Responsibility and one lay judge of the Supreme Court.

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

Yes, with criminal proceedings. Once the criminal proceedings against the judge have been finalised, the criminal court sends the file to the competent disciplinary court of first instance. If disciplinary proceedings have not been initiated, the disciplinary court will decide whether they should be initiated, even if the criminal court acquits. If a judge has been sentenced to a final criminal sentence which entails the loss of his or her position under the law, the disciplinary court shall notify the Minister of Justice, who shall order the dismissal of the convicted person from service, even if a disciplinary sentence sentencing the judge to a more lenient penalty than expulsion has already been executed.

Moreover, it is the disciplinary court that issues a resolution allowing a judge to be held criminally liable if there is a sufficiently justified suspicion that he or she has committed a crime. The resolution contains a decision on the permission to hold a judge criminally liable, together with a justification.

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

The judgment and other decisions of the court of first instance closing the way to the issuance of a judgment may be appealed. It may be submitted within 30 days of service of the decision by the defendant himself, as well as by the disciplinary representative, the National Council of the Judiciary and the Minister of Justice. The appeal should be considered within two months.

24. Can a judge participate in the disciplinary hearings at the appeal stage?

Yes, he/she can.

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

A very important feature of proceedings before disciplinary courts since the beginning of the Law on the Organisation of the Ordinary Courts is their openness, understood as the possibility of the public participating in them (including, for example, observers on behalf of non-governmental organisations). The disciplinary court may exclude the public proceedings only on the basis of circumstances enumerated in the Law on the Organisation of the Ordinary Courts, m.in. morality, state security or protection of life

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

Article 454 of the Code of Criminal Procedure does not apply in appeal proceedings (the court of appeal may not convict a defendant who was acquitted in the first instance or in respect of whom the proceedings were discontinued or conditionally discontinued in the first instance). The appellate court examines the case within the limits of the appeal, and if the appeal indicates the allegations against the decision, also within the limits of the allegations raised, and in a broader scope, in the cases indicated in Article 435, Article 439 § 1 and Article 455, first sentence, of the Code of Criminal Procedure, or if it finds that the ruling is manifestly unfair.

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

The judge may bring the case before the court of second instance. There is no cassation appeal against the decisions of the disciplinary court of second instance. An exception is the judgment of the court of appeal, by virtue of which a disciplinary penalty was imposed despite a judgment previously issued by the court of first instance acquitting or discontinuing the proceedings. In such a case, an appeal may be lodged with a different composition of the court of second instance, i.e. with a different composition of the Chamber of Professional Responsibility of the Supreme Court.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

Yes, it can. The defendant, the disciplinary representative, the National Council of the Judiciary and the Minister of Justice may appeal against the judgment issued in the first instance and the decision and order closing the way to the issuance of a judgment. The time limit for lodging an appeal is thirty days and runs for each entitled person from the date of service of the ruling or order.

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:

- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text?;

Yes, disciplinary sanctions are listed in Article 109 of the Act on the Functioning of the Armed Forces.

Disciplinary penalties are: 1) admonition; 2) reprimand; 2a) a reduction in the basic salary by 5%-50% for a period of six months to two years; 2b) a fine in the amount of one month's basic salary payable for the month preceding the issuance of a final and binding conviction increased by the judge's long-term service allowance, function-related allowance and special allowance; 3) removal from the position held; 4) transfer to another place of service; 5) removal of a judge from office

- is it clearly defined in such a legal text which disciplinary sanction applies in which case?;

Regulations in this regard can be found in Article 109 of the said Act.

- or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions?

Regulations in this regard can be found in Article 109 of the Act on the Functioning of the Ordinary Courts (see question 29)

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

Yes, they are specified in Article 109 of the Act on the Functioning of the Ordinary Courts (see question 29)

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

Again, regulations in this respect can be found in Article 109 of the Act on the Functioning of the Ordinary Courts (see question 29)

32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

Law on the common courts organisation states (in the Article 107 § 3) that the following circumstances do not constitute a disciplinary offence:

- (1) the fact that a judicial decision issued with the participation of a judge is vitiated by an error in the interpretation and application of provisions of national or EU law or in the determination of the facts or the assessment of evidence;
- (2) submitting a request to the Court of Justice of the European Union for consideration of a question referred to in Article 267 of the Treaty on the Functioning of the European Union (Journal of Laws of 2004, item 864, as amended);
- (3) examination of compliance with the requirements of independence and impartiality in the case referred to in Article 42a § 3 or Article 23a § 4 of the Act of 21 August 1997 – Law on the Organisation of Military Courts (Journal of Laws of 2022, item 2250), or Article 5a § 1 of the Act of 25 July 2002 – Law on the System of Administrative Courts (Journal of Laws of 2022, item 2492 and of 2023, item 1615), or examination of compliance with the requirements of independence or impartiality in the case referred to in Article 26(2) of the Act of 8 December 2017 on the Supreme Court, or examination of compliance with the requirements of independence and impartiality in the case referred to in Article 29(5) of that law.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

It does exist (called "*lustration*"). This vetting exists because of the history of Polish and the period in which it was ruled by the communist authorities, and the highest state positions were held by party members. This verification should be understood as a process of verifying the integrity of an individual in terms of the performance of its public function, also taking into account the needs in terms of the individual and organizational potential of the staff, resulting from the mandate of a given institution.

The *lustration court* examines the veracity of the statement about work or service in the state security organs or cooperation with these organs in the period from 22 July 1944 to 31 July 1990.

It is subject to vetting of persons (including judges) holding or applying for public office born before 1 August 1972.

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

In a report for the Parliamentary Assembly of the Council of Europe, Adrian Severin defines decommunization as "the process of overcoming the legacy of totalitarian communist systems", consisting in "the liquidation of totalitarian legislation, institutions, methods and strategies of governance, old mentality and personal structures (nomenklatura)". Adam Czarnota distinguishes between a broader and narrower meaning of the term. Decommunization *in the broad sense* means "all political and legal strategies aimed at eradicating the legacy of communism from the political and social system. In this sense, decommunization would mean both the process of transition from communism and actions aimed at this process. It is pointed out that decommunization most often means "the removal of former members of the Communist Party (above a certain level) from prominent positions in the new democratic system", so it is an expression of the collective removal of certain categories of people from public institutions. Adam Czarnota also sees decommunization in a narrower sense "a procedure enabling the elimination from public life for a certain period of time of a group of people who in the past held certain positions in the state and/or the communist party".

35. What is your own general opinion on vetting (advantages and disadvantages)?

By definition, vetting must refer to activities involving the verification of persons, while disclosure of the contents of files is a vetting activity, as the disclosed documents are generally unverified. For this reason, institutionalized activities, consisting in the verification of these documents, will be important for the value of settlements with the past. Such actions will have specific legal consequences for the persons subject to scrutiny, directly affecting their legal situation.

36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is not about ordinary civil, administrative or criminal liability.

Such an institution can be a judicial reproach. The court of appeal or the regional court as the court of appeal, in the event of finding an obvious violation of the law during the examination of the case, regardless of other powers, points out the failure of the competent court. Before pointing out a misconduct, the judge or assistant judge of the court adjudicating in the first instance is instructed about the possibility of submitting written explanations within seven days. Finding and pointing out the infringement does not affect the resolution of the case. The court of appeal or the regional court referred to in § 1 shall notify the president of the competent court of the infringement and, in the case of more serious infringements, also the Minister of Justice. A copy of the final decision pointing out the infringement shall be attached to the personal file of the judge or assistant judge. The personal file is also accompanied by explanations submitted by the judge or court assessor and an appeal.

37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?

There are discrepancies in interpretation in this respect, but the Supreme Court shared the opinions expressed in the resolution of 23 March 2011 (ref. no. I KZP 31/10). It reads as follows: The term "criminal liability" contained in Article 54(1) of the Act of 20 June 1985 on the Public Prosecutor's Office means only liability for a crime or fiscal offence. Therefore, in the case in question, the provisions of the Act of 18 October 2006 on Disclosure of Information on Documents of State Security Organs from 1944-1990 and the Content of These Documents should be applied first. The mistake of the two panels adjudicating in Wrocław was that they first wanted to waive the prosecutor's immunity, and only then try a person accused of collaborating with the secret services of the People's Republic of Poland. "The courts were guided by the resolution of the Constitutional Tribunal adopted in July last year by the General Assembly of Judges, but the Tribunal is not a common court or the Supreme Court," added Judge Sobczak. Article 6 of the Convention on Human Rights provides procedural guarantees to an individual subjected to criminal repression, stating that everyone has the right to a fair trial of his or her case before an independent court. There is no criminal liability during vetting, there is, however, a big ailment. Since there is no liability, then the immunity that protects the accused MP, senator, judge or prosecutor does not apply either.

On the other hand, the Constitutional Tribunal has a different opinion, stating that taking into account the repressive nature of vetting proceedings, which makes the responsibility for making a false *lustration statement* very similar to narrowly understood criminal liability, and taking into account the fundamental role of the judiciary for the legal order and, therefore, the need to guarantee its independence and its guardians independence in adjudication, the Constitutional Tribunal stated that in vetting proceedings, a judge is entitled, among other constitutional guarantees, also to a guarantee in the form of immunity referred to in Article 181 of the Constitution. This does not prejudice that a similar conclusion would be justified in the case of any liability of a judge other than criminal liability in the strict sense. In order to draw such a conclusion, it would be necessary to demonstrate that there are constitutional values justifying the immunity guarantee of a judge in a given proceeding.

Therefore, on general principles, the district court competent for the place of residence of the person submitting the *lustration declaration* adjudicates on the truthfulness of *lustration declarations*, in a panel of 3 judges.

However, taking into account the opinion of the Constitutional Tribunal, the immunity of a judge should first be waived in order to hold him criminally liable – this procedure has already been described in previous answers.

38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?

Regardless of the interpretation adopted, the ruling is issued by a court composed of judges appointed by the President of the Republic on a proposal from the National Council of the Judiciary.

39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?

This is a court proceeding.

40. What sanctions/measures can be imposed on judges by such a body and is the principle of proportionality applied?

Depending on the case, these may be criminal and/or disciplinary sanctions. When issuing a ruling stating the fact of making a false *illustration declaration*, the court imposes a ban on performing a public function for a period of 3 to 10 years.

41. Can a judge appeal against an unfavourable decision of such a body?

Yes, he can appeal to the second instance.

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

No. Disciplinary proceedings are quasi-criminal proceedings in which you can defend your rights. These proceedings are two-instance, so they ensure that a party can appeal to the second instance if the decision of the court of first instance is not satisfactory. The appeal is lodged with the higher authority in terms of hierarchy.

43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

n/a

Portugal

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

The disciplinary responsibility of judges in Portugal is legally provided by the Portuguese Constitution, but essentially regulated by a law of the Portuguese Parliament (Law No. 21/85, of July 30) that approved the Statute of Judges

The Constitution of the Portuguese Republic (CRP), in force since 1976, refers to the disciplinary responsibility of judges, by proclaiming that *"(...) the appointment, placement, transfer and promotion of judges of the judicial courts and the exercise of disciplinary action are the responsibility of the High Judicial Council, under the terms of the law"* (article 217, no. 1 of the CRP), and by stipulating that it is up to the law to define the rules and determine the competence *"for the placement, transfer and promotion, as well as for the exercise of disciplinary action in relation to the judges of the remaining courts, with the safeguard of the guarantees provided for in the Constitution"* (article 217, no. 3 of the CRP).

In turn, judges are subject to disciplinary responsibility in the cases provided for and with the guarantees established in the Statute of Judicial Magistrates (SJM), approved by a law of the Parliament (Law No. 21/85, of July 30). This law lays down the applicable disciplinary regime in its articles 81 to 135.

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?

No, only what is mentioned in the previous point. In everything that is not explicitly provided for in the Statute of Judicial Magistrates in disciplinary matters, the Code of Administrative Procedure, the Criminal Code, the Code of Criminal Procedure and, failing that, the general principles of punitive law shall apply, with the necessary adaptations.

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

Whenever the legislator presents a legislative proposal dealing with rules governing judicial organisation, statutory matters and, in general, matters relating to the administration of justice, the High Judicial Council must be called upon to issue an opinion, in accordance with Article 149(1)(i) of the SJM.

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

It is the responsibility of the High Judicial Council to receive all complaints, reports or information concerning the violation by a judge of a professional duty, as well as an act or omission in his or her public life that is incompatible with the indispensable dignity of his or her duties.

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

The right to initiate disciplinary proceedings expires one year after the date on which the offence was committed. It also lapses if the offence is known to the plenary or permanent council of the High Judicial Council through its disciplinary section and the competent disciplinary procedure is not initiated within 60 days. (Article 83b, paragraphs 1 and 2 of the SJM)

When the fact qualified as a disciplinary offence is also considered a criminal offence, the right to initiate disciplinary proceedings has the time limit and the statute of limitations established in criminal law [Article 83(b)(3) of the SJM].

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

There are no such limitations.

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

If a decision of any court is unfavourable to a judge, it is possible to appeal to the Constitutional Court, limited to questions of unconstitutionality or illegality. This only happens when the decision appealed against no longer allows ordinary appeal to other higher courts.

Appeals to the Constitutional Court must be well-founded and fall within the situations provided for by in the applicable procedural legislation and in the case law of the Constitutional Court. and are not intended as a means of challenging factual aspects or the merits of decisions taken within the framework of the disciplinary procedure.

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

As a result of investigations, enquiries and other procedures designed to ascertain the situation in the services, the Judicial Inspectors of the Inspection Services may propose the initiation of disciplinary proceedings.

The Council may order an investigation into a complaint, report, or information in order to ascertain its veracity and whether the conduct complained of is likely to constitute a disciplinary offence (article 123-A, paragraph 1 of the SJM).

The Council appoints an instructor who, within 30 days, collects all the relevant information and proposes that the case be closed, that disciplinary proceedings be initiated or that a warning not subject to registration be imposed, provided that the judge is heard and can defend himself (article 123-B of the SJM).

The opening of an enquiry may also be ordered when specific facts are involved, for example, those that have been gathered during an evaluative inspection, or when there is news of facts

that require a general enquiry into the functioning of the services (article 123-C of the SJM). If it finds that an offence has been committed, the High Judicial Council may decide that the investigation or enquiry process, in which the judge was heard, should form the investigative part of the disciplinary process. The notification to the judge regarding the decision of the High Judicial Council establishes the start of the disciplinary procedure (article 126 of the SJM).

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

The High Judicial Council has an inspection service, which performs auxiliary functions in analysing and monitoring the management of the courts, as well as assessing the merit and disciplining judges.

In terms of disciplinary matters, the Council's Inspection Services are responsible for:

- Direct and instruct disciplinary procedures, as well as enquiries, enquiries and other procedures aimed at ascertaining the situation of the services.
- Propose the application of preventive suspension, formulate charges in disciplinary proceedings and propose the initiation of proceedings in other procedural forms [article 161 c) and d) of the SJM].

For its part, the inspection and disciplinary affairs section of the permanent council of the High Judicial Council is responsible for:

- Monitoring and evaluate the merit and discipline of judges.
- Ordering the initiation of disciplinary proceedings or the opening of an enquiry and appoint the respective investigator.
- Ordering enquiries and proposing to the plenary that enquiries be carried out.
- Decide on the conversion of an enquiry into a disciplinary procedure and order disciplinary procedures resulting from enquiry or investigation procedures.
- Ordering preventive suspension in the disciplinary sphere.
- Passing a decision imposing a penalty of less than compulsory retirement, compulsory retirement, or dismissal (the application of these penalties being the responsibility of the plenary council).

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

The Statute of Judicial Magistrates establishes a set of relevant norms to safeguard the principles of independence and impartiality at the level of the disciplinary proceedings before the High Judicial Council.

From the moment the accusation is formulated, the procedure before the High Judicial Council follows the principle of adversarial proceedings.

The judge in question has the right to testify; they may be represented by a lawyer and can analyse the accusation and present arguments in response to it. They also have the right to participate in the process by contesting the accusations, filing motions, producing evidence, and invoking nullities. The judge may request a public hearing to present their defence. Additionally, the final decision must be reasoned. The instructor conducting the investigation does not

participate in the decision-making process of the High Judicial Council. Furthermore, decisions of the High Judicial Council are subject to appeal to the Supreme Court of Justice.

The Inspection Service (responsible for directing and instructing disciplinary proceedings) consists of judicial inspectors who are appointed for a three-year term by the Plenary of the Judicial Council, through a prior selection process.

Only Judges from appellate courts and judges with over 15 years of experience and a rating of "Very Good," who possess recognized qualities for the position, including impartiality, common sense, intellectual training, technical preparation, and interpersonal skills, motivation, innovation, and results orientation, are eligible for candidacy.

When an inquiry or disciplinary process must be carried out against judges serving in appellate courts or the Supreme Court of Justice, an extraordinary judicial inspector is appointed from among the judges of the Supreme Court of Justice, with the possibility of selecting a retired judge.

The Judicial Council is composed of 17 members, namely:

- the President, who is, by virtue of office, the one from the Supreme Court of Justice.
- two members appointed by the President of the Republic.
- seven members elected by the Parliament.
- seven members elected by the judges of all instances (including one Judge from the Supreme Court of Justice, who serves as Vice-President, two Judges from the Courts of Appeal, and four Judges of Law, one proposed by each Judicial District).

Currently, of the 17 members of the High Judicial Council, 9 are career judges (3 judges from the Supreme Court of Justice, 2 judges from the Courts of Appeal, and 4 judges from the Courts of First Instance), and 8 are not judicial magistrates. The same duties, rights, and guarantees as those provided in the Statute of Judicial Magistrates apply to non-judges' members, with necessary adaptations.

The High Judicial Council is a collegiate body that operates in Plenary and Permanent Council sessions, with decisions made by majority vote, and the President holds the casting vote.

For the validity of Plenary decisions, the presence of at least 12 of the 17 members of the Judicial Council is required.

The section responsible for inspection and disciplinary matters of the permanent council is composed of:

- a) the President of the High Judicial Council, who presides.
- b) the Vice-President of the High Judicial Council, who presides in the absence of the president.
- c) one appeal court judge member.
- d) two judges of law members.
- e) one member appointed by the President of the Republic.
- f) three members among those designated by the Parliament.
- g) the reporting member (if not ordinarily part of the inspection and disciplinary matters section, this member only participates in the discussion and voting of the case they reported on).

For the validity of permanent council decisions, the presence of at least five members is required.

Decisions of the permanent council can be appealed hierarchically to the plenary council. Decisions of the plenary council can be appealed, at a judicial level, to the contentious section of the Supreme Court of Justice.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

Disciplinary offences shall include acts, even if merely culpable, committed by judicial magistrates in breach of the principles and duties enshrined in this Statute and other acts committed by them which, by their nature and repercussions, are incompatible with the requirements of independence, impartiality and dignity that are indispensable to the performance of their duties (article 82 of the SJM).

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

Disciplinary offences committed by judicial magistrates are clearly and exhaustively provided for in the Statute of Judicial Magistrates, and take the category of very serious, serious, and minor, depending on the circumstances of each case.

Very serious offences are acts committed with intent or gross negligence which, due to the repetition or seriousness of the violation of the duties and incompatibilities provided for in this Statute, are disreputable for the administration of justice and the exercise of the judiciary, namely:

- a) Refusing to administer justice, even on the grounds of the absence, obscurity or ambiguity of the law or insurmountable doubt about the case in dispute, provided that it must be legally regulated.
- b) Interfering, by means of orders or pressure of any kind or nature, in the functions of another magistrate, with the aim of achieving, by means of a favourable decision, illegitimate advantages for oneself or for others.
- c) The exercise of any activity incompatible with the office, even if the judicial magistrate is retired.
- d) Failure to comply with the duty to declare oneself impeded or to activate the impediment mechanisms legally provided for, with the aim of harming, favouring, or providing procedural or economic advantages or benefits to any of the parties.
- e) Illegitimate disclosure of facts or data known in the course of their duties, which cause harm to the processing of a case, to any person or to the image or prestige of the justice system.
- f) Illegitimate and continuous absence for more than 10 consecutive working days or 20 interpolated working days in a year from the judicial district where the judicial magistrate is posted, or when the judicial magistrate fails to report for duty with an express intention to abandon the post, abandonment being presumed in the case of unjustified absence for 30 consecutive working days.
- g) Falsifying or materially omitting to provide data and elements contained in requests or applications for licences, declarations of compatibility, remuneration, economic aid, or any other documents that may serve to assess a claim or fulfil a legal duty of the applicant.
- h) Abusing the status of judicial magistrate to obtain personal advantages for oneself or a third party from authorities, officials, or professionals of other categories.
- i) The practice of political party activity of a public nature.
- j) Repeated failure to fulfil the legal duty to submit a declaration of income and assets.

Serious offences include acts committed with intent or gross negligence that show a serious lack of interest in the fulfilment of functional duties, namely:

- a) Failure to comply with decisions handed down by higher courts on appeal.
- b) Excess or abuse of authority, or serious lack of consideration and respect owed to citizens and all those with whom they deal in the exercise of their duties.
- c) The public and unlawful disclosure, outside the established channels or means of judicial information, of facts or data known in the exercise of their function or because of it.
- d) Unlawful and continuous absence for more than 5 working days and less than 11 working days from the judicial district in which the judicial magistrate is assigned.
- e) Unjustified non-compliance, whether repeated or revealing a serious lack of professional zeal, with the timetables established for public acts, as well as the deadlines established for the performance of the judge's own act, namely when six months have elapsed since the deadline for the performance of the act (the assessment of unjustified non-compliance requires a concrete consideration of the volume and characteristics of the service under the judge's responsibility, including the number of cases completed, the circumstances of the performance of duties, the percentage of cases in which decisions were handed down late, as well as a specific assessment of whether, in view of these circumstances and personal conditions, it would have been reasonable to require different behaviour from the magistrate)..
- f) Unjustified non-compliance with requests for information, deliberations, or functional provisions of the High Judicial Council and of the presidents of the courts, given within the scope of their organisational attributions and in the legal form.
- g) Carrying out an activity compatible with the performance of the duties of a judicial magistrate with authorisation obtained by providing false information.
- h) Providing false information relating to one's professional career or the performance of one's duties.
- i) Unjustifiably delaying the writing down and depositing of judgements, as well as the return to the respective registry of judicial proceedings retained by the judicial magistrate when he no longer has jurisdiction over them.
- j) Illegitimate interference in the judicial activity of another magistrate.
- k) Access to personal databases made available for the performance of their duties, which are not freely accessible to the public, for purposes unrelated to their duties.
- l) Using the contents of the personal databases referred to in the previous paragraph for purposes unrelated to the office.
- m) Any of the behaviours listed in the previous article that does not fulfil all the conditions set out in the respective preamble and is therefore not considered to be very serious misconduct.

It is also a serious offence for a judge to make requests for information, instructions, decisions, or orders outside the scope of their organisational duties.

Minor offences are infractions committed with slight fault that reflect a deficient understanding of functional duties, namely:

- a) Illegitimate and continuous absence for more than three working days and less than seven working days from the judicial district in which he/she is assigned.
- b) Undertaking an activity compatible with the performance of the duties of a judicial magistrate without obtaining the relevant authorisation, where required.
- c) Unjustified, repeated or revealing lack of professional zeal failure to comply with the timetables established for public acts, as well as the deadlines established for the performance of the judge's own act, namely when three months have elapsed since the deadline for the performance of the act.

13. Are there, or could there be, any other grounds (i.e. ad hoc grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting ex post facto laws and the retroactive application of law)?

As mentioned in the previous point, judicial magistrates are subject to disciplinary liability in the cases expressly provided for in the Statute of Judicial Magistrates.

In Portugal, the principle of "*nulla poena sine lege praevia*" is enshrined in Article 29(1) of the Constitution of the Portuguese Republic, which stipulates that no one may be sentenced to a criminal sentence except by virtue of a previous law which declares the action or omission to be punishable, nor may they be subject to a detention order whose conditions are not laid down in a previous law.

This does not prevent punishment, within the limits of national law, for an action or omission which, at the time it was committed, was considered criminal, according to the commonly recognised general principles of international law - Article 29(2).

No one may suffer a penalty or security measure that is more serious than that provided for at the time of the corresponding conduct or the verification of the respective conditions, and criminal laws that are more favourable to the accused shall apply retroactively - Article 29(4).

In the context of disciplinary proceedings against judicial magistrates, this principle also applies. This means that a judicial magistrate cannot be subjected to a disciplinary sanction based on behaviour that, at the time of its occurrence, was not defined as a disciplinary offence, nor can a more severe sanction be applied than that which was envisaged at the time of the facts.

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

Once a complaint has been received, it will be analysed by a member of the HJC, who will check whether the scope of the complaint falls within the competences of the HJC and then investigate the facts reported, as a rule hearing the judge concerned.

The High Judicial Council may not, in any case, interfere with the independence of judges, namely by pronouncing on the substantial merits of judicial decisions. These can only be scrutinised by appeal to a higher court.

The Statute, in turn, contemplates specific situations in which disciplinary responsibility is extinguished by:

- a) Lapse and prescription of the disciplinary procedure.
- b) Prescription of the sanction.
- c) Fulfilment of the sanction.
- d) Death of the accused.
- e) Amnesty or generic pardon.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

Disciplinary proceedings begin with a formal act of initiation, which can be triggered by a complaint, a denunciation or on the initiative of the High Judicial Council.

The inspection and disciplinary affairs section of the permanent council has the power to decide to open disciplinary proceedings.

An instructor, usually an inspector from the Inspection Service, is responsible for investigating the disciplinary procedure.

The investigating officer must inform the High Judicial Council and the defendant of the date on which he will begin the investigation of the case, within a maximum of 5 days from the date on which he was notified of the order initiating the procedure.

The disciplinary procedure is always in writing, guaranteeing a hearing with the possibility of the defendant's defence, and strictly confidential until the final decision.

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

The disciplinary procedure can be divided into four phases: investigation, defence, report and public hearing, and decision.

Investigation:

- the investigation of the disciplinary procedure must be completed within 60 days.
- the investigating officer must hear the defendant, at his request or when he deems it appropriate, until the investigation is finalised.
- the defendant may ask the investigating officer to carry out any evidentiary measures he considers essential to ascertaining the truth, which may be rejected by reasoned order if the investigating officer considers the evidence produced to be sufficient.
- if the investigating officer considers that there are insufficient indications of facts constituting the disciplinary offence or of the defendant's responsibility, or that the disciplinary procedure has been extinguished, he or she shall make a proposal to close the case within 10 days. The High Judicial Council deliberates on the proposal to close the case and notifies the defendant.
- if the case is not dismissed, the investigating officer shall bring charges within 10 days, detailing the facts constituting the disciplinary offence, the circumstances of the time, manner and place of its commission and the facts that constitute aggravating or mitigating circumstances, indicating the legal provisions and applicable sanctions.
- the decision to close the case or bring charges is delivered personally to the accused or sent by post with acknowledgement of receipt.

Defense:

- the defendant has 20 days to present his defence, which can be extended to 30 days, either ex officio or at the defendant's request.
- with the defence, the defendant may name up to 20 witnesses, attach documents or request other evidence.

- the defendant is notified of the date set for the examination of witnesses, so that he can attend if he wishes.
- the order rejecting the request for any evidentiary measures may be challenged administratively by the inspection and disciplinary affairs section of the High Judicial Council within 10 days.
- an insurmountable nullity is the failure to hear the defendant's defence and the omission of steps essential to discovering the truth that could still usefully be carried out or that should have been carried out..

Report and Public Hearing:

- once the evidence has been taken, the investigating officer shall draw up a report within 15 days, which shall include the facts he considers to be proven, their classification and the specific penalty applicable, which shall constitute the proposal for a decision to be taken by the High Judicial Council, which may be made by reference.
- the accused may request a public hearing to present his defence. The public hearing is chaired by the president of the High Judicial Council, or by the vice-president as delegated by him. The members of the disciplinary chamber take part and the instructor, the defendant and his defence counsel or representative are present. When the hearing is opened, the investigating officer reads the final report, after which the defendant or his defence counsel or representative is given the floor for oral arguments, after which the hearing is closed.

Decision:

- when analysing and approving the evidence in the disciplinary proceedings, the HJC decides on the facts established, the charge and the penalty to be applied.
- under the terms of the Statute of Judicial Magistrates, the following penalties may be imposed, depending on the seriousness of the violation and the circumstances, in a judgement equivalent to a criminal offence:
 - o Warning.
 - o Fine.
 - o Transfer.
 - o Suspension from office.
 - o Retirement or compulsory retirement.
 - o Dismissal.
- the sanctions applied are always recorded, apart from the warning, which may not be recorded.
- the inspection and disciplinary affairs section of the Permanent Council of the HJC is responsible for issuing a decision imposing a penalty of less than compulsory retirement, compulsory retirement, or dismissal.
- it is the responsibility of the Plenary of the High Judicial Council to issue a decision imposing a penalty of dismissal or the imposition of a penalty in respect of Counsellor Judges of the Supreme Court of Justice and Judges of the Courts of Appeal.
- the final decision, accompanied by a copy of the report, shall be notified to the accused in person or sent by registered post with acknowledgement of receipt.
- the decision to impose a disciplinary sanction does not need to be published, and the sanction takes effect on the day after the defendant is notified, or 15 days after the notice is posted if the defendant's whereabouts are unknown.

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

A judge who is the subject of disciplinary proceedings may be preventively suspended from office, on the proposal of the investigating magistrate, if there are strong indications that the conduct under investigation constitutes an offence for which at least the penalty of transfer is applicable, and that continued service would be detrimental to the prestige and dignity of the office, the service, or the investigation of the proceedings.

Preventive suspension is carried out in such a way as to ensure that the magistrate's personal and professional dignity is safeguarded. It may not exceed 180 days, exceptionally extendable for a further 60 days, and does not have the effects of suspension from office, namely the loss of the time corresponding to its duration for the purposes of remuneration, seniority, and retirement.

If criminal proceedings exist in relation to the same facts, the maximum period of preventive suspension of the accused referred to in the previous paragraph is extended to the maximum period provided for in criminal procedural law for the coercive measure of suspension from duty (article 104 of the SJM).

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

The defendant, the appointed defence counsel or the appointed representative may, at any time and at their request, examine the file and obtain copies or certificates, unless the investigating officer, by reasoned order, considers that access to the file may hinder the discovery of the truth (article 111, no. 2 of the SJM).

The investigating officer must hear the defendant, at his request or when he deems it appropriate, until the investigation is finalised. The defendant may ask the examining magistrate to carry out any evidentiary measures he considers essential to ascertaining the truth, which may be rejected by reasoned order when the investigating officer considers the evidence produced to be sufficient (Article 116(1) of the SJM).

With the defence, the defendant judge may appoint up to 20 witnesses, attach documents or request other evidence. The defendant is notified of the date set for the examination of witnesses so that he can attend if he wishes (article 119, paragraphs 1 and 4 of the SJM).

The defendant judge may request a public hearing to present his defence. When the hearing is opened, the instructor reads the final report, after which the defendant or his or his defender or representative is given the floor for oral arguments, after which the hearing is closed (article 120-A, paragraphs 1 and 4 of the SJM).

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

The principle of the presumption of innocence is a cornerstone of the justice system, as established in Article 32(2) of the Constitution of the Portuguese Republic.

The disciplinary procedure is of a confidential nature until the final decision is taken and is filed with the High Judicial Council.

From the start of the disciplinary procedure until the final decision, the magistrate in question is treated as innocent.

The responsibility for proving the alleged disciplinary offence lies with the High Judicial Council. The judge does not have the burden of proving his or her innocence; it is up to the prosecution to demonstrate guilt based on clear and convincing evidence.

The magistrate is entitled to a set of procedural guarantees that reflect the principle of the presumption of innocence, including the right to be informed of the charges brought against him, the right to access the file, the right to present a defence and to request a public hearing to do so, the right to request the hearing of witnesses and the right to be assisted by a lawyer.

If the judge is found responsible for a disciplinary offence and is subject to a sanction, he or she has the right to appeal the decision to a higher court, namely the Supreme Court of Justice or, in certain circumstances mentioned above, the Constitutional Court.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

Yes. The right to initiate disciplinary proceedings expires one year after the date on which the offence was committed. The statute of limitations for disciplinary proceedings is suspended during the time that, due to a court decision or judicial review of any matter, the corresponding proceedings cannot begin or continue.

Disciplinary proceedings are statute-barred after 18 months from the date on which they were initiated, except for the period of suspension when the person concerned has not been notified of the final decision within that period.

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

In a final decision, the High Judicial Council decides on the facts established, the charge and the penalty to be applied.

The sanctions applied are always recorded, except for warnings, which may not be recorded.

The final decision, accompanied by a copy of the report, shall be notified to the accused in person or sent by registered post with acknowledgement of receipt.

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

In Portugal, disciplinary proceedings can consider or take account of ongoing criminal, civil or administrative proceedings.

Despite the interaction between proceedings, it is important to emphasise the principle of autonomy of disciplinary proceedings. This means that disciplinary proceedings are independent and can result in specific sanctions within the framework of the magistrate's public service, regardless of the outcome of criminal, civil or administrative proceedings.

Disciplinary proceedings are autonomous from criminal and administrative offence proceedings initiated for the same facts. When the disciplinary procedure establishes the existence of a criminal offence, the inspector immediately informs the High Judicial Council and the Public Prosecutor's Office.

Disciplinary proceedings may be suspended if criminal proceedings are underway in relation to the same offence.

Judicial magistrates suspend their functions on the day they are notified of the indictment or the order designating a day for trial for an intentional crime committed in the exercise of their functions or punishable by a prison sentence of more than three years. Outside of these cases, suspension for committing a criminal offence by virtue of the appointment of a day for trial is dependent on a decision by the High Judicial Council (Article 71 of the SJM).

A final criminal conviction can be considered in disciplinary proceedings.

Decisions in civil or administrative proceedings can also be relevant to the disciplinary process, especially if they reveal behaviour that goes against the ethical and professional duties of magistrates.

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

The judge can challenge the decision administratively or jurisdictionally.

Judges have the right to administratively challenge acts carried out by the permanent council before the plenary council of the High Judicial Council. Administrative challenges suspend the effects of the contested acts.

The decisions of the High Judicial Council may also be challenged in court.

The means of judicial review of administrative acts of the High Judicial Council, or of judicial reaction against their illegal omission, follow the form of the administrative action provided for in the Code of Procedure in the Administrative Courts. The litigation section of the Supreme Court of Justice has jurisdiction over these actions.

The filing of an administrative action does not suspend the effectiveness of the contested act, unless a precautionary measure suspending the effectiveness of the act is requested and ordered.

24. Can a judge participate in the disciplinary hearings at the appeal stage?

Judges have the right to be heard, to present their defence and to produce evidence. This right extends to all stages of the disciplinary procedure, including the appeal stage.

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

The action to challenge the final decision of the disciplinary procedure may concern the matter of fact and law on which the decision was based, with the production of the evidence requested and the number of witnesses limited to 10 - Article 121(a) of the EMJ.

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

In the context of an administrative challenge to acts carried out by the permanent council before the plenary council of the HJC, the appeal is distributed by lot to a member of the plenary, who will be the rapporteur of the proposed decision.

If the majority of the members of the plenary do not agree with the wording of the resolution (in particular, with the proposed penalty), a new member is drawn by lot to draft a new resolution.

In the event of a judicial challenge to the decisions of the HJC's plenary council before the Supreme Court of Justice, in the context of disciplinary proceedings, the court cannot, as a rule, review the measure of the penalty, except in cases of gross error or a clear violation of the principle of proportionality.

Judicial enquiries into the exercise of the administration's disciplinary powers can only take place when the grading criteria used or the result reached have been grossly or blatantly inadmissible or when constitutional principles relating to the exercise of administrative activity have been violated, in particular those of proportionality and justice.

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

The decision handed down by the full bench of the contentious section of the Supreme Court of Justice does not allow for further judicial appeal. There can, however, be an appeal to the Constitutional Court in the situations mentioned above.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

No.

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:

- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;

Judicial magistrates are subject to the following sanctions:

a) Warning

It consists of a reparation for the irregularity committed or a reprimand intended to warn the judicial magistrate that the action or omission is likely to cause disruption in the performance of his/her duties or to have repercussions in a manner incompatible with the dignity required of him/her.

b) Fine

The fine is set at a fixed amount and has a minimum limit of one daily basic salary and a maximum limit of six daily basic salaries. In the event of an accumulation of fines, the applicable fine may not exceed 90 daily basic remunerations.

c) Transfer

It consists of the judicial magistrate being assigned to a post of the same category outside the area of jurisdiction of the court or department where he or she previously held office.

d) Suspension from office

It consists of complete absence from work for the duration of the sanction. Suspension can be from 20 to 240 days.

e) Retirement or compulsory retirement

It consists of the imposition of retirement.

f) Dismissal

It consists of the definitive removal of the judicial magistrate, with the end of the link to the function.

The sanctions applied are always recorded, apart from the warning, where recording may be waived.

- **is it clearly defined in such a legal text which disciplinary sanction applies in which case;**

Yes.

g) Warning

It applies to minor offences.

h) Fine

The fine is applicable to serious offences in which it is not necessary or appropriate, given the circumstances of the case, to apply another more serious disciplinary sanction.

i) Transfer

It is applicable to serious or very serious offences that affect the prestige required of a judicial magistrate and jeopardise his or her standing in the social environment in which he or she holds office or in the court or tribunal where he or she holds office..

j) Suspension from office

It is applicable to serious or very serious offences that reveal a lack of interest in the performance of their duties and manifest discredit to the judicial function, or when the judicial magistrate has been sentenced to imprisonment.

k) Retirement or compulsory retirement and dismissal

Retirement or compulsory retirement and dismissal are applicable to very serious offences when any of the following circumstances apply:

- i. Definite or manifest and repeated inability to adapt to the demands of the job.
- ii. Conduct that is dishonourable or manifestly violates the integrity, impartiality, prudence and personal correctness required of them.
- iii. Conviction of a criminal offence committed with evident and serious abuse of office or with manifest and serious violation of the duties inherent to it.

Abandonment of post is always sanctioned by dismissal.

- or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.

It is clearly defined by the Law.

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

Yes, there are.

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

Disciplinary offences committed by judges are clearly and exhaustively provided for in the Statute of Judicial Magistrates, and fall into the category of very serious, serious, and light, depending on the circumstances of each case.

In choosing and measuring the disciplinary sanction to be applied, the decision-making body considers all the circumstances that, although not contemplated in the type of offence committed, speak in favour of or against the defendant, namely:

- a) the degree of unlawfulness of the facts, the way they were carried out, the seriousness of their consequences and the degree of violation of the duties imposed.
- b) the intensity and degree of guilt and the purposes for which the offence was committed.
- c) the defendant's personal circumstances, economic situation and conduct before and after the offence was committed.

They exclude the unlawfulness of the behaviour or the guilt of the judicial magistrate, thus removing their disciplinary responsibility:

- a) coercion;
- b) accidental and involuntary deprivation of the exercise of intellectual faculties at the time of the offence.
- c) self-defence or the defence of others.
- d) the non-requirement of different behaviour.
- e) the exercise of a right or the fulfilment of a duty.

The disciplinary sanction may be especially attenuated, applying the sanction of a lower step, when there are circumstances before or after the offence, or contemporary with it, which markedly reduce the seriousness of the fact or the guilt of the accused, namely:

- a) holding office for more than 10 years without having committed any other serious or very serious offence.
- b) spontaneous and relevant confession of the offence.
- c) unjust provocation, acting under serious threat or the commission of the offence having been determined by an honourable motive.
- d) the verification of acts demonstrating active repentance.

The following are aggravating circumstances of the disciplinary offence:

- a) The determined will to produce harmful results for the justice system.
- b) recidivism.

32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

According to Article 203 of the Constitution of the Portuguese Republic, the courts, which are sovereign bodies with the power to administer justice on behalf of the people, are independent and subject only to the law.

The independence of the courts also means the independence of the judges as members of these bodies. The independence of judicial magistrates is manifested in the function of judging, in directing the course of proceedings and in the management of cases assigned to them at random. Judges judge only according to the Constitution and the law and are not subject to orders or instructions, except for the duty of lower courts to comply with decisions handed down by higher courts on appeal.

To guarantee the independence of judges, article 216, paragraph 2 of the Constitution of the Portuguese Republic enshrines the irresponsibility of judges, establishing that they cannot be held responsible for their decisions. This irresponsibility means that the only way to challenge a judicial decision is through an appeal to a higher court, and not by any other means, namely disciplinary.

The principle of irresponsibility underlies the idea that a judge cannot be constrained in his or her function by fear of punishment or hope of reward. Sovereignty in the interpretation of the law and in the legal assessment of facts and evidence are essential manifestations of the principle of the independence of judges. Therefore, regarding these acts, which constitute the core of the judicial function, the hypothesis of the judge's disciplinary responsibility is excluded.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

The process of selecting, training and appointing judges in Portugal incorporates several rigorous elements of evaluation and assessment of candidates for the judiciary, to ensure that only candidates with the highest levels of integrity, impartiality and competence are appointed to the judiciary.

Judges are recruited through an open competition during which candidates are subject to written and oral tests and a psychological assessment. Their criminal record is also checked. Successful candidates enter the profession after successfully completing a preparatory course of approximately two years at the Centre for Judicial Studies and after completing an entry traineeship of around 18 months.

Judges are independent, but their activity is supervised through the High Judicial Council, ensuring that judges fulfil the ethical and professional standards expected of them.

The High Judicial Council (HJC) is the body responsible for evaluating the judges. The evaluation process is conducted by judicial inspectors who, after a detailed examination of the magistrate's performance, draw up an evaluation report.

The inspection focuses on their human capacity to perform their duties, their adaptation to the service and their technical preparation. The criteria that must be considered when evaluating judges are defined in detail in their Statute and in the Regulations on Inspections.

Throughout their careers, judges are promoted through competitions that formally combine seniority and professional merit, with the latter taking precedence.

Judges are legally obliged to submit a declaration of income and assets every five years (Article 4(1) of Regulation (extract) No. 346/2022 of the High Judicial Council).

A new, up-to-date declaration must be submitted whenever the magistrate ceases or suspends duties in the post or position that led to the submission of the previous declaration and returns to their place of origin in the following cases:

- of service commissions of a judicial nature, or that follow their regime.
- on promotion to the Court of Appeal or the Supreme Court of Justice.
- in which the exercise of judicial functions or in the judicial courts is interrupted by leave of absence or definitive ceases.

A new declaration must also be submitted [Article 4(4) and (5) of Regulation (extract) No. 346/2022 of the High Judicial Council]:

- when a judge is appointed to a position that requires the submission of a single declaration under the terms of the Law approving the regime for the exercise of functions by holders of political office and high public office (Law no. 52/2019, of 31 July), as well as when they cease to hold the same position.
- whenever there is an actual change in assets that modifies the previously declared value by more than 50 minimum monthly salaries.

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

It is not a practice adopted in Portugal.

35. What is your own general opinion on vetting (advantages and disadvantages)?

Strengthening the verification and security controls of judges should be carefully considered to ensure the security and integrity of the system without jeopardising judicial independence.

Analysing the potential benefits, in countries where Rule of Law was clearly put in peril, improved vetting and security checks for judicial candidates and serving judges could contribute to better detection of potential threats by identifying those who are likely to be manipulated or coerced, thus preventing attempts at corruption or infiltration.

However, some challenges need to be addressed, such as the potential erosion of judicial independence. Excessive vetting could be perceived as an intrusion, creating a chilling effect, and dissuading qualified individuals from pursuing a judicial career. Privacy concerns are also paramount, requiring a delicate balance between security needs and the right to privacy, ensuring the secure and confidential treatment of verification data. Robust safeguards would be needed to prevent potential bias and discrimination, ensuring that the vetting process is not exploited for political purposes or personal agendas.

Finding the ideal solution requires a comprehensive strategy that considers both the benefits and the risks that such a process entails. This includes ongoing dialogue and cooperation between judges, policymakers, and civil society to ensure that such measures are effective, transparent and respect judicial independence.

The vetting procedures must be conducted by the judiciary and must not serve political purposes. Ideally one can even argue that vetting should not exist.

The best option would be always to use the disciplinary procedures and all other instruments already existing within the national judicial system.

Being tendentially disruptive the vetting creates structural risks to the functioning of the judiciary that should be preferably avoided.

However, if vetting is finally adopted, the guarantees for those judges who are submitted to this procedure must be the same granted for a well-balanced disciplinary procedure system including an effective right to a judicial review.

36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is not about ordinary civil, administrative or criminal liability.

No, there isn't.

37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?

There is no such body.

38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?

There is no such body.

39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?

There is no such body.

40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?

There is no such body.

41. Can a judge appeal against an unfavourable decision of such a body?

There is no such body.

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

No, there aren't.

The system is well-balanced and shows no major problems besides the eventual disagreements about the decisions on concrete cases which are always inevitable.

43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

See question 42.

Romania / Roumanie

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

The disciplinary liability of judges in Romania is regulated by organic law, namely Law no. 303/2022 on the status of judges and prosecutors, Chapter II, "Disciplinary liability", Articles 270-281. It is also regulated at the level of regulation, namely the Decision for the approval of the Regulation on the rules for carrying out inspection work of 16 November 2023, published in the Official Journal of Romania, Part I, No 1070 of 23 November 2023.

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?

See the answer to Question no. 1 on the Decision for the approval of the Regulation on the rules for carrying out inspection work no 164 of 15 November 2023.

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

Yes, the judges' associations were consulted, making written proposals, which were submitted to the SCM, but their representatives also actively participated in the meetings of the legal committees of the Romanian Parliament, when Law 303/2022 on the status of judges and prosecutors was debated.

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

Article 266 of Law no 303/2022 provides that any person may refer to the Superior Council of Magistracy or to the Judicial Inspection, directly or through the heads of courts or public prosecutor's offices, the improper activity or conduct of judges or prosecutors, the violation of professional obligations or the commission of disciplinary offences by them.

Also, Article 6 paragraph (1) of the Decision for the approval of the Regulation on the rules for carrying out inspection work no 164 of 15 November 2023 stipulates that the Judicial Inspection may be notified ex officio or may be notified in writing and giving reasons by any interested person, including the Superior Council of Magistracy, regarding disciplinary offences committed by judges and prosecutors. The complaint shall be made on paper or on electronic document form and shall be signed by its author or by his legal or contractual representatives. Proof of representative status shall be attached to the complaint. The complaint made on paper shall be lodged in person or by a representative or shall be sent by post, courier, fax or electronic mail in scanned form. The complaint in electronic form will

be taken into account only if it is signed electronically, in accordance with the law. Complaints written in abusive or insulting language shall be filed by order of the Chief Inspector. Complaints which are not signed in holographic or electronic form, which do not have proof of representative status attached, which do not contain the identifying data of the author of the complaint or which do not contain concrete indications as to the factual situation which gave rise to the complaint shall be filed by resolution by the Chief Inspector or, where appropriate, by the inspector to whom the work has been assigned, with a reply to that effect. In the above-mentioned situations, if it is considered that there are indications of disciplinary misconduct, the chief inspector may order, by means of a report, that the matter be referred ex officio to the Judicial Inspectorate. A referral which does not fall within the jurisdiction of the Judicial Inspection shall be forwarded to the competent institution and the complainant shall be notified of the measure.

Specifically designated persons from the General Secretariat Directorate shall register the complaints that comply with the law.

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

No

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

No

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

No

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

No

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

The Judicial Inspectorate, an independent body, which operates as a structure with legal personality within the Supreme Council of Magistracy and acts on the basis of the principle of operational independence conferred by law in relation to the SCM, the courts and the prosecutor's offices, as well as in relation to other public authorities, with powers of analysis, verification and control in specific areas of activity, under the law, being the only body empowered to handle disciplinary complaints against judges in the Romanian judicial system.

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

Regulation on the organisation and functioning of the Judicial Inspection of 24 August 2023, published in OJR 777 of 29 August 2023.

Judicial Inspectors are appointed by the Chief Inspector for a 6-year term of office, following a competitive examination organised in accordance with the law.

The competition for the post of judicial inspector in the Judicial Inspectorate consists of an interview and a written test.

Applications for the post of judicial inspector shall be accompanied by a project relating to the exercise of the specific duties of judicial inspector, which shall be submitted in 3 copies. In the organisation of the competition, the Chief Inspector shall order the following competition committees to be set up and composed:

- The Organising Committee
- The Interview Committee
- The Committee for the elaboration of subjects and for correction
- The Appeals Committee.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

Article 271 of Law no 303/2022 expressly provides the disciplinary offences, as it follows:

- a) violation of legal provisions on incompatibilities and interdictions;
- (b) unworthy behaviour in the course of duty towards colleagues, other staff of the court or public prosecutor's office in which they work, judicial inspectors, lawyers, experts, witnesses, litigants or representatives of other institutions;
- (c) engaging in activities of a political nature or expressing political beliefs in public or on duty;
- (d) unjustified refusal to receive on file applications, pleadings, briefs or documents submitted by the parties to the proceedings;
- (e) unjustified refusal to perform a duty;
- f) failure by the prosecutor to comply with the order of the prosecutor's immediate superior, given in writing and in accordance with the law;
- g) repeated failure to comply with the legal provisions concerning the speedy settlement of cases or repeated delay in carrying out the work for attributable reasons;
- h) failure to comply with the duty to abstain when the judge or prosecutor knows that one of the grounds for abstention provided for by law exists, as well as making repeated and unjustified requests for withdrawal;
- (i) failure to respect the secrecy of deliberations or the confidentiality of work of this nature, and other information of the same nature which has come to his knowledge in the performance of his duties, except for information of public interest, in accordance with the law;
- (j) repeated unjustified absences from work or absences directly affecting the work of the court or the public prosecutor's office;
- k) interference in the work of another judge or prosecutor;
- l) unjustified failure to comply with administrative provisions or decisions ordered in accordance with the law by the head of the court or public prosecutor's office or other administrative obligations laid down by law or regulations;
- m) using the position held to obtain favourable treatment from the authorities or intervening in the settlement of requests, claiming or accepting the settlement of personal interests or

those of family members or other persons, other than within the legal framework regulated for all citizens;

n) failure to comply with the provisions on the random distribution of cases;

o) obstructing the work of judicial inspectors by any means;

p) participation directly or through intermediaries in pyramid games, gambling or investment schemes for which the transparency of funds is not ensured;

q) failure to draft or sign court decisions or judicial acts of the public prosecutor, for attributable reasons, within the time limits prescribed by law;

r) the use of inappropriate expressions in the content of the judgments or judicial acts of the prosecutor, the total lack of grounds or giving grounds which are manifestly contrary to legal judgement, such as to affect the prestige of justice or the dignity of the office of judge or prosecutor;

(s) acting in bad faith or with gross negligence.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

These formal grounds are clearly defined by law and they cannot be subject to broader interpretation or application.

13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

There are not any *ad hoc* grounds besides those provided by the law. The *nulla poena sine lege praevia* principle is applied

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

See the answer to Question 4.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

Disciplinary complaints against judges are randomly assigned by the Judicial Inspection to inspectors in a computerised system. The application may be redistributed under the conditions laid down in the Regulation.

The inspector designated to deal with a complaint shall proceed as follows:

(a) if the referral has been assigned to a directorate which does not have jurisdiction, he/she shall propose that his/her own proceedings be closed and that the referral be assigned to the other directorate if he/she considers that it has legal jurisdiction;

(b) if the referral has been assigned to both directorates, although only one is competent, he/she shall propose that his/her own proceedings be closed if he/she considers that the directorate in which he/she is acting is not competent to deal with it;

(c) if the referral concerning judges and prosecutors has been assigned only to the directorate in which he/she is acting, he/she shall propose that it be assigned to the other directorate; in that case, a copy of the referral shall be forwarded to the other directorate;

(d) if the complaint is not signed in manuscript or electronically, does not have proof of representative status attached, does not contain the identifying data of the author of the complaint or any specific indications as to the factual situation giving rise to it, or if it relates to the situation referred to in Article 6(6). (2), he/she proposes to close the case and close the complaint under Article 6(2). (5);

e) if he/she finds that there is a subsequent referral concerning the same fact and the same person, he/she shall propose that the referral be connected to the first case registered with the Judicial Inspection and, if it has already been dealt with, that it be attached to the first case registered.

The time limit for dealing with the case shall start to run from the date of receipt of the referral to the Judicial Inspection, or, where appropriate, from the date of drawing up the ex officio referral record.

Preliminary enquiries shall be carried out within a maximum of 45 days from the date of referral to the Judicial Inspection. The Chief Inspector may order an extension of the time limit for carrying out the preliminary investigation by a maximum of 45 days, if there are good reasons justifying this measure.

During the preliminary checks, the judicial inspectors shall as a priority verify the incidence of the statute of limitations and the identity and the status of the person concerned by the referral as a magistrate.

If the referral concerns acts allegedly committed more than 2 years before the date of the referral to the Judicial Inspection, and when the persons concerned are no longer magistrates, the referral shall be closed by a resolution subject to the opinion of the director of the directorate and confirmation by the chief inspector.

The preliminary checks shall determine whether there are indications of disciplinary misconduct, the inspectors may consult databases, information and documents from the records of the Judicial Inspection or other authorities and may request, under the law, including from the heads of courts or prosecutor's offices, any information, data and documents and may make any checks they deem necessary for the resolution of the case, while respecting the principle of confidentiality.

The documents, data and information obtained shall be attached to the file on optical media whenever possible.

Judicial inspectors may propose, by means of a reasoned report, to visit the courts or public prosecutor's offices, and direct checks shall be carried out with the prior notification of the head of the court or public prosecutor's office, except in cases where the latter is the magistrate concerned by the referral.

If, after the preliminary checks have been carried out, it is found that there are no indications of disciplinary misconduct, the complaint shall be closed by means of a reasoned resolution subject to the opinion of the director of the directorate and confirmation by the Chief inspector.

The resolution shall be communicated to the magistrate concerned.

An appeal may be lodged with the Chief Inspector against the resolution to close the case within 15 days of its communication.

The appeal shall be settled within a maximum of 20 days from the date of registration with the Judicial Inspectorate.

The remedies that the Chief Inspector may order are:

- (a) reject the appeal and uphold the contested resolution;
- b) admit the appeal and complete the checks.

The resolution of the Chief Inspector rejecting the appeal and the resolution to close the case may be challenged by the person who lodged the complaint with the Administrative and Tax Litigation Chamber of the Bucharest Court of Appeal, within 15 days of its communication..

If, as a result of the preliminary checks, there are indications that disciplinary offences have been committed, the inspectors shall, by means of a reasoned resolution, initiate a preliminary disciplinary investigation.

The Judicial Inspectorate shall immediately inform the Superior Council of Magistracy of the initiation of the preliminary disciplinary investigation or, where appropriate, the final rejection of the complaint concerning the disciplinary investigation of a judge or prosecutor.

Disciplinary action may be taken only after the preliminary disciplinary investigation has been carried out by the Judicial Inspection, through judicial inspectors.

The preliminary disciplinary investigation is a non-administrative, non-public and non-adversarial procedure, which is carried out in compliance with the procedural and procedural guarantees laid down by law.

The preliminary disciplinary investigation shall be carried out within 60 days from the date of the order, except in the case of suspension, and may be extended by a maximum of 30 days if there are good reasons justifying this measure.

During the disciplinary procedure, the judicial inspector may propose the suspension of the magistrate from office until the final resolution of the disciplinary action,

The inspector conducting the preliminary disciplinary investigation shall communicate the resolution to initiate the investigation to the magistrate concerned, together with an electronic copy of the inspection file, stored on a suitable medium.

Upon receipt of the resolution, the magistrate under investigation may communicate defences and propose evidence in his/her defence.

The inspector may order the hearing of persons, including the magistrate concerned, and in the event of refusal to be heard or to attend the investigation, these matters shall be recorded in a report and shall not prevent the conclusion of the investigation.

Within 30 days from the date of completion of the preliminary disciplinary investigation, but no later than 2 years from the date on which the offence was committed, the judicial inspector may order, by means of a written and reasoned resolution:

(a) admit the complaint, through disciplinary action, and refer the matter to the appropriate section of the Superior Council of Magistrates;

b) reject the complaint, if he/she finds, following the preliminary disciplinary investigation, that the conditions for bringing the action have not been met.

The resolution of the judicial inspector shall be subject to confirmation by the chief inspector.

The resolution to take disciplinary action shall be drawn up in an original copy and shall be forwarded, together with the editable electronic format, to the competent section of the Supreme Judicial Council.

The disciplinary action is upheld before the chambers by the judicial inspector who exercised it.

The judicial inspector is obliged to inform the management of the Judicial Inspection of all aspects of the proceedings before the Superior Council of Magistracy or the courts.

The inspector who has supported the action shall draw up a report proposing to the management of the Judicial Inspectorate that it consider whether it is appropriate to exercise the appeal.

Before the High Court of Cassation and Justice, the Judicial Inspection is represented by specific inspectors appointed by the Chief Inspector on the proposal of the directors of the directorates.

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

See the answer to point 15.

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

See the answer to point 15.

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

The judge may participate in all stages of disciplinary proceedings and may submit evidence and requests in defence.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

During preliminary proceedings and disciplinary proceedings, the measures ordered by the judicial inspector shall be communicated to the judge against whom the preliminary proceedings or disciplinary proceedings were ordered.

The magistrate under investigation shall be heard, the statement shall be recorded in the presence of the chosen counsel, and shall be signed by the magistrate under investigation and the counsel.

The magistrate shall have the right to know all the acts of the investigation and shall be given copies of the investigation acts.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

See the answer to point 15

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

See to point the answer 15

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

The preliminary disciplinary investigation shall be suspended if the magistrate concerned has been prosecuted for the same offence.

On the basis of the act by which the criminal proceedings were initiated, communicated by the criminal prosecution body, the judicial inspector shall, by resolution, order the suspension of the preliminary disciplinary investigation until the date on which the decision handed down in the case which led to the suspension becomes final. The prosecuting

authorities shall immediately notify the Judicial Inspection of the final decision in the case which led to the suspension.

Once the criminal prosecution authority has communicated the final decision in the case which led to the suspension, the inspector shall issue a resolution ordering the resumption of the preliminary disciplinary investigation. In this case, the investigation shall continue from the last action taken in the case.

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

An appeal against the decision of the SCM, Judges' Section, on the sanction imposed on the judge may be lodged with the High Court of Cassation and Justice, Panel of 5 Judges panel in other matters. The appeal does not have suspensive effect.

24. Can a judge participate in the disciplinary hearings at the appeal stage?

Yes.

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

In judicial review, hearings are public, with the court evaluating the evidence.

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

Yes, the sanction can be replaced in the appeal phase.

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level

No.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

Yes, the Judicial Inspection can appeal against the Superior Council of Magistrature's decision.

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:
- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;
Yes, Article 273 of Law no. 303/2022 provides the following disciplinary sanctions:
(1) The disciplinary actions that may be taken against judges and prosecutors, proportionate to the seriousness of the misconduct, are:

- a) warning;
- b) reduction of the gross monthly employment allowance by up to 25% for a period of up to one year;
- c) disciplinary transfer for an effective period of between one and three years to another court or to another prosecutor's office, even of the next lower grade;
- d) downgrading in professional grade;
- e) suspension from office for a period of up to 6 months;
- f) exclusion from the magistracy.

- is it clearly defined in such a legal text which disciplinary sanction applies in which case

Yes

- or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.

The court may assess the severity of the sanction in the light of the evidence on file and the criteria for assessing the sanction.

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

Yes. The criteria for deciding on the sanction applied, depending on the facts, the person of the judge, and all these judgements based on the evidence in the file.

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

The principle of proportionality is respected according to concrete criteria, related to the seriousness of the misconduct in relation to the concrete violation, the time interval, the consequences produced as a result of committing the act, criteria related to the person of the magistrate, whether he/she has been sanctioned before, for what misconduct and what sanction has been applied previously.

Exclusion from the judiciary is a possible sanction, being the most severe sanction, imposed for repeated misconduct of the judge. It can be applied for any misconduct, but is judged in relation to the seriousness and repetitiveness of the judge's behaviour. It is a graduated sanction, the harshest and last alternative, and is applied if previous milder sanctions have not served their purpose.

32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

The disciplinary liability of the magistrate is not attracted for a solution that is subject to judicial review.

Article 538 of the Code of Criminal Procedure provides for the right to compensation for damages in case of miscarriage of justice.

A person who has been finally sentenced, irrespective of whether or not the penalty imposed or the educational measure of deprivation of liberty has been enforced, has the right to compensation by the State for the damage suffered if, following retrial of the case, after the

judgment of conviction has been quashed or set aside for a new or newly discovered fact which proves that a miscarriage of justice has occurred, a final judgment of acquittal has been handed down.

These provisions shall also apply to the re-opening of criminal proceedings in respect of a person convicted in absentia, if a final acquittal has been obtained after retrial.

The person against whom, in the course of criminal proceedings, a preventive measure involving deprivation of liberty has been ordered shall also be entitled to compensation if the measure has been found to be unlawful and, for the offence on the basis of which the measure was ordered, the case has been dismissed or acquitted pursuant to Article 16(1)(a-d), unless the decision has been taken following the decriminalisation of the offence committed.

Law No 303/2022 also provides for a procedure of recourse against the judge in the event of a miscarriage of justice under Article 269, as follows:

In order to recover damages, the injured party may bring an action for damages only against the State, represented by the Ministry of Finance. In the course of the proceedings, the judge or prosecutor concerned may apply to intervene.

Payment by the State of the amounts due by way of compensation shall be made within a maximum period of 6 months from the date of communication of the final judgment.

After the official notification of the final judgment in the proceedings, the Ministry of Finance shall refer the matter to the appropriate section of the Superior Council of Magistracy in order to ascertain whether the miscarriage of justice is the result of the judge or prosecutor having exercised his or her duties in bad faith or gross negligence.

At the request of the appropriate section of the Superior Council of Magistracy, the Judicial Inspection shall carry out checks in order to assess whether the miscarriage of justice is the result of the judge or prosecutor having exercised his or her duties in bad faith or gross negligence.

The checks shall be completed within 30 days of the referral. The Chief Inspector may order an extension of the time limit by a maximum of 30 days if there are reasonable grounds for doing so.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?
No.
34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?
No.
35. What is your own general opinion on vetting (advantages and disadvantages)?
I have no opinion.
36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability.

- This is not the case.
37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?
This is not the case.
38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?
This is not the case.
39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?
This is not the case.
40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?
This is not the case.
41. Can a judge appeal against an unfavourable decision of such a body?
This is not the case.

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?
This is not the case.
43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?
This is not the case

Judge Ph.in law. Rodica Aida Popa
High Court of Cassation and Justice - Romania

12 march 2024

San Marino / Saint-Marin

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?
The disciplinary liability of Judges is regulated at the constitutional level by Constitutional Law no. 1 of 7 December 2021.
2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?
Disciplinary liability is only established by constitutional law according to predetermined and objective criteria and prerequisites. The Judicial Council has also adopted a Code of Ethics drawn up directly by San Marino judges, which contains autonomous guidelines aimed at raising standards of conduct. The violations of such guidelines do not automatically entail disciplinary sanctions, since the seriousness of the conduct, the psychological element and the effects shall always be taken into account, nor do they per se constitute the basis for the Judge's civil or criminal liability.
3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?
Yes, the judges were directly involved. Constitutional Law no. 1/2021 was drawn up by a technical group composed of judges, academics, lawyers and public officials, who unanimously proposed the text to the Parliament. Subsequently, the Parliament approved it.
The Code of Ethics was drawn up by San Marino judges and adopted by the Judicial Council, of which San Marino judges are members.

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?
The power of initiating disciplinary proceedings is assigned to the Head of the Court, as well as to 1/3 of the Parliamentary Commission for Justice, ex officio or on the basis of non-anonymous reports by third parties. Once proceedings have been initiated, the request is forwarded to the Judicial Council, which is the only body competent to impose disciplinary sanctions. Once the request has been received, the Judicial Council assigns it to an Investigating Judge outside the Judicial Council for verification of the merits of the disciplinary charge. The Investigating Judge, in cross-examination with the defendant and after an investigation, may then decide to discontinue the proceedings or take disciplinary action. If the Judge decides to take disciplinary action, the Judicial Council will receive the acts of the proceedings and will initiate the process of verification of the charge, in cross-examination with the defendant, until the final decision has been taken. This decision can be challenged

in proceedings on the merits and in a judgement of legitimacy, before an impartial and independent Superior Court.

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.
Constitutional Law no. 1/2021 expressly establishes that the disciplinary offence shall be time-barred once three years have elapsed since the relevant conduct was committed, and therefore the disciplinary proceedings shall comply with this time limit.
6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.
Any interested party, in a non-anonymous form, may report to the Head of the Court or to the Parliamentary Commission for Justice any conduct of the Judges that is relevant from a disciplinary point of view. The Head of the Court and the Parliamentary Commission for Justice , after verifying the merits, may decide to file a disciplinary report with the Judicial Council, the only body competent to impose disciplinary sanctions.
7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?
Yes. Constitutional Law no. 1/2021 entrusts a specific body, called the Guarantors' Panel on the Constitutionality of Rules, with the assessment of legitimacy and of the merits, with regard to the disciplinary sanction imposed by the Judicial Council.
8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?
See the answer to question 6.
9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?
The only body that by law is competent to impose disciplinary sanctions on judges is the Judicial Council. An investigating judge from outside the Judicial Council, appointed annually by the Judicial Council participates in the procedure of issuance of the sanction.
When the Judicial Council receives a disciplinary report, it transmits it to the Investigating Judge for the appropriate preliminary investigation. The Investigating Judge, in cross-examination with the defendant, carries out the preliminary investigation, and finally decides whether to dismiss the report or to take disciplinary action. If the Judge decides to take disciplinary action, he/she transmits the acts to the Judicial Council, in cross-examination with the accused Judge, and will then carry out the preliminary investigation and issue the final decision.
10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?
Constitutional Law no. 1/2021 provides strong guarantees for the independence of the members of the Judicial Council and the Investigating Judge.

The Judicial Council is composed of four Judge members elected from among their peers, and four members who are not Judges elected by the Parliament by qualified majority. The Investigating Judge in disciplinary proceedings is elected by the Judicial Council, and holds office for only one year.

Both the members of the Judicial Council and the Investigating Judge may be objected to if they are suspected of partiality by the accused Judge.

The Judicial Council is completely independent of political dynamics. The Minister of Justice cannot participate in disciplinary sittings, there are no active politicians among the members of the Judicial Council, and such Council is completely unaffected by a change of government, since its composition and duration remain completely unchanged.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

Pursuant to Article 12 of Constitutional Law no. 1/2021 the Judge's disciplinary liability shall arise if he violates his duties through wilful intent or gross negligence, or if he engages in conduct, either in office or out of office, which, by its objective seriousness, renders him undeserving of the trust and consideration that he should enjoy, or which damages the prestige of the judicial order.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

Disciplinary offences are expressly provided for by constitutional law, which then establishes that the envisaged sanctions must be applied in compliance with the principle of progression and proportionality.

13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

Pursuant to Article 12 of Constitutional Law no. 1/2021 no Judge shall be subject to a disciplinary sanction for the violation of a duty not envisaged at the time when the alleged fact occurred.

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

Yes. Any interested party, in a non-anonymous form, may submit complaints both to the Head of the Court and to the Parliamentary Commission for Justice with regard to any conduct of the Judges.

The Head of the Court and the Parliamentary Commission for Justice carry out an initial assessment and if they consider the complaint to be manifestly unfounded, they directly dismiss the report. However, if they consider the report to have any merit, they may file a disciplinary complaint with the Judicial Council. The Judicial Council, upon receiving the request, assigns it to the Investigating Judge for preliminary investigations who, in cross-examination with the defendant, verifies the

charge. Once the preliminary investigation has been concluded, the Investigating Judge may discontinue the case if he/she finds no disciplinary liability, or he/she may take disciplinary action by formalising the complaint against the defendant and forwarding the acts to the Judicial Council for the continuation of the proceedings. An appeal against the decision to discontinue the case by the Investigating Judge may be brought before the Judge of Appeal designated from year to year by the Judicial Council, who may confirm the decision to discontinue the case or annul it.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

Disciplinary complaints may be brought either before the Head of the Court or by one third of the Parliamentary Commission for Justice, also on the basis of reports and complaints by third parties, which have been received in non-anonymous form.

The Head of the Court and the Parliamentary Commission for Justice carry out an initial assessment and if they consider the complaint to be manifestly unfounded, they directly dismiss the report. However, if they consider the report to have any merit, they may file a disciplinary complaint with the Judicial Council.

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

Yes. If the Head of the Court or a third party of the Parliamentary Commission for Justice considers that the conduct of the Judge entails disciplinary liability, they shall bring a disciplinary complaint before the Judicial Council.

The Judicial Council, upon receiving the request, assigns it to the Investigating Judge for preliminary investigations who, in cross-examination with the defendant, verifies the charge. Once the preliminary investigation has been concluded, the Investigating Judge may discontinue the case if he/she finds no disciplinary liability, or he/she may take disciplinary action by formalising the complaint against the defendant and forwarding the acts to the Judicial Council for the continuation of the proceedings.

The Judicial Council then verifies the charge by means of cross-examination with the accused Judge and decides whether or not to impose a disciplinary sanction.

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

Yes. Pursuant to Article 16 of Constitutional Law no. 1/2021, pending disciplinary proceedings, the precautionary suspension of the Judge may be ordered. The request for suspension may be submitted either in the initial request or by the Investigating Judge appointed by the Judicial Council to carry out preliminary verifications and investigations. Such a request for suspension is assessed and decided by the Judicial Council, which may approve it if the disciplinary charge concerns facts that, pending the disciplinary proceedings, do not allow the Judge to remain in office.

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

At each stage of the disciplinary proceedings, and therefore both in the preliminary stage, and in the preliminary investigation stage before the Investigating Judge, and in the stage before the Judicial Council, all the steps of the proceedings are carried out in cross-examination with the accused Judge, who may formalise investigation requests and submit arguments in his/her defence. The law also provides for the possibility of appearance in person by the accused Judge, who can then directly submit arguments in his/her defence.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?
The disciplinary proceedings provided for in Constitutional Law no. 1/2021 recognise the principle of presumption of innocence of the accused Judge, who, except for serious charges requiring precautionary suspension, regularly continues to exercise his judicial functions and may propose any investigation request in the proceedings, in full cross-examination.
20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?
Yes. Pursuant to Article 33 of the Rules of Procedure of the Judicial Council, provided for in the Constitutional Law, disciplinary proceedings must be concluded within one year of their initiation, and may be extended by six months.
21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?
Pursuant to Article 16 of Constitutional Law no. 1/2021, the Judicial Council decides on disciplinary action by means of a reasoned order excluding the charge or applying a disciplinary sanction. The final decision comes in the form of a judgement adopted by the Judicial Council through the vote of its Judge members and members who are not Judges.
22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.
Disciplinary proceedings are generally not affected from other proceedings, except where the investigating judge responsible for the investigations in the disciplinary proceedings finds that the other judicial proceedings are preliminary to disciplinary proceedings (such as, for example, criminal proceedings relating to the conduct of the Judge subject to disciplinary proceedings). In this case, the Investigating Judge in disciplinary proceedings may suspend the disciplinary proceedings pending the outcome of the judicial proceedings.
23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?
**Yes, Constitutional Law no. 1/2021 expressly provides for the possibility of an appeal against the disciplinary judgement of the Judicial Council. The appeal is brought before the Guarantor's Panel, which is a constitutional body, and provides for a judgement of legitimacy and of the merits of the disciplinary proceedings, to be carried out in full cross-examination with the Judge.
Moreover, any appeal suspends the effects of the judgement of the Judicial Council.**
24. Can a judge participate in the disciplinary hearings at the appeal stage?

Yes, the proceedings are held in cross-examination with the interested party who may participate in the hearings.

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

The appeal is both on legitimacy and on the merits, and therefore considers each aspect, always within the limits of the grounds of appeal raised by the defendant.

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

As expressly provided for in the constitutional law (Art. 16, paragraph 10 of Constitutional Law no. 1/2021), the appeal concerns every aspect, both of legitimacy and of the merits.

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

No. There are no further instances other than the appeal. This is also due to the fact that the appeal is brought before the Guarantors' Panel on the Constitutionality of Rules, which is the highest court of the legal system.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

The law provides for the possibility of appealing the judgement of the Judicial Council by both the accused Judge and the Parliamentary Commission for Justice.

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:

- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;

Yes, Constitutional Law no. 1/2021 includes a clear list of both the specific violations of the Judge and the corresponding disciplinary sanctions.

- is it clearly defined in such a legal text which disciplinary sanction applies in which case;

Yes, there are analytical lists of applicable sanctions with respect to corresponding violations by the Judge

- or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

The constitutional law expressly establishes both the violations committed by the Judge and the corresponding applicable sanctions. Article 12 of the Constitutional Law then expressly establishes that these disciplinary sanctions shall be applied in compliance with the principles of progression and proportionality.

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?
Disciplinary sanctions are listed in increasing order of severity and correspond to specific violations of duties in increasing order of seriousness.
32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?
As expressly provided for in the Constitutional Law no Judge shall be subject to a disciplinary sanction for the violation of a duty not envisaged at the time when the alleged fact occurred. The possible reversal of his/her judgement on appeal is not, in itself, considered as a punishable violation.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?
The vetting of Judges, as an express instrument against them as a source of liability, is not an instrument envisaged by the law on the Legal System.
34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?
Not applicable.
35. What is your own general opinion on vetting (advantages and disadvantages)?
From my point of view, "vetting" in the sense of a background check of individual Judges entails potential risks, as it could be an instrument to undermine their independence and eliminate undesirable Judges.
36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability.
The Judicial Council adopted a Code of Ethics for San Marino Judges, proposed by the the latter. This Code does not constitute an autonomous source of disciplinary liability. However, it can also be a valid interpretative instrument to define the right ethical and conduct rules for Judges.
37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?
Not applicable.
38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?
Not applicable.

39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?
Not applicable.
40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?
Not applicable.
41. Can a judge appeal against an unfavourable decision of such a body?
Not applicable.

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?
The disciplinary system of Judges has recently been reformed by Constitutional Law no. 1 of 7 December 2021. This Law has completely and radically reformed the legal system, and has been recognised in an unprecedented way by international bodies (both GRECO and PACE) for its compliance with the best European standards. Since Constitutional Law no. 1/2021 has only recently been adopted, what is needed, in my opinion, is to verify its correct and effective application in practice, proposing timely amendments if necessary. There is a constant commitment to verifying its effectiveness.
To date, disciplinary cases have also been reduced. Since the entry into force of the new constitutional law, very few disciplinary proceedings have been initiated (a total of 4 proceedings to date). This reduced number of cases does not provide any consolidated and relevant results today, which will have to be verified over time.
43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?
In my opinion, disciplinary proceedings, like all matters concerning the employment relationship of judges, require the utmost and constant attention since they directly affect judicial independence.
Today, judicial independence constitutes one of the most verifiable elements for the maintenance of the rule of law in a country, and is fundamental for the full protection of fundamental rights in a democratic society, so the utmost attention must be ensured.
San Marino has started a very important period of judicial reforms, which have been approved by international bodies (GRECO and PACE) in an unprecedented way and which have also affected the disciplinary proceedings against Judges, resulting today in a modern regulation in line with international best practices.

Slovenia / Slovénie

I. Legislation

1. **At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?**

Disciplinary liability is regulated by law.

*Disciplinary liability and sanctions for judges are governed by the **Judicial Service Act** (Zakon o sodniški službi – ZSS). Additionally, the **Judicial Council Act** (Zakon o sodnem svetu – ZSSve) defines the disciplinary bodies and procedures for disciplinary actions against judges.*

2. **Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?**

No, there are not.

3. **Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules?**

Yes. The expert discussion on the proposal for the Judicial Council Act unfolded from the beginning of July to the middle of October 2016. Responses were received from various entities, including the Supreme Court, several other courts, the Judicial Council, the Slovenian Association of Judges, and individual judges.

The legislative input from the Judicial Council and the High Court in Koper was thoroughly incorporated into the Act. Additionally, the remarks from the Administrative Court of the Republic of Slovenia were almost entirely taken into account, along with feedback from the Supreme Court, the District Court in Kranj, and the Slovenian Association of Judges. The primary point of contention revolved around the relocation of jurisdiction in disciplinary proceedings against judges from the Supreme Court to the Judicial Council.

The Judicial Council Act was adopted by the Parliament on 25 April 2017 and entered in force on 20 May 2017.

II. Institutional framework for disciplinary proceedings against judges

4. **What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?**

*In Slovenia, the competent bodies in disciplinary proceedings are the **disciplinary prosecutor (and his deputy) and the disciplinary court**. Since 2017, disciplinary bodies are attached to the Judicial Council, which provides financial resources, professional and administrative assistance and other conditions for their work.*

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

5. **Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.**

The statute of limitations for initiating disciplinary proceedings is set at two years from the day of the disciplinary offence. However, disciplinary proceedings may be initiated against a judge who has been finally convicted no later than three months from the date of the finality of the criminal conviction decision. In any event, the statute of limitations is four years from the day the disciplinary violation was committed.

The statute of limitations shall be interrupted by any procedural action taken by the competent authority to prosecute a judge for a committed disciplinary violation. Additionally, the statute of limitations is interrupted if the judge commits a new disciplinary violation during the limitation period.

6. **Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.**

It is crucial to distinguish between the right to request the initiation of disciplinary proceedings and the responsibility of commencing investigations into a judge. The authority to request the initiation of disciplinary proceedings is vested in the President of the court where the judge serves, the President of the directly superior court, the President of the Supreme Court, the Judicial Council, and the Minister of Justice. However, the actual initiation of disciplinary proceedings occurs upon the disciplinary proposal submitted by the disciplinary prosecutor.

7. **Does the constitutional court have any role at any stage in disciplinary proceedings against judges?**

No, except in the case where a constitutional appeal is lodged against the decision of the Supreme Court in disciplinary proceedings.

8. **Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?**

The disciplinary procedure unfolds in several stages:

Initiation Stage:

The first stage involves filing an initiative to commence a disciplinary procedure against a specific judge. This initiative is directed to the disciplinary prosecutor and can only be initiated by specific individuals as specified in the law: President of the court where the judge performs judicial service; President of the court of higher instance; President of the Supreme Court; Judicial Council; and Minister of Justice.

Decision by Disciplinary Prosecutor:

In the second stage, the disciplinary prosecutor evaluates the initiative and can proceed in one of three ways: Submits a reasoned proposal for imposing a disciplinary sanction against the judge; proposes to the disciplinary court the performance of individual investigative actions; decides not to initiate disciplinary proceedings against the judge and dismisses the initiative, informing the initiator accordingly.

Optional Investigative Stage:

In the third stage (which is not obligatory), a disciplinary court judge conducts investigative acts as requested by the disciplinary prosecutor. After completing the investigation, the judge reports the findings to the disciplinary prosecutor (per Article 46 of the Judicial Council Act). The appointment of the disciplinary court judge to conduct investigative measures is made by the disciplinary court president. Following the report, the disciplinary prosecutor will either: file a reasoned proposal for imposing a disciplinary sanction against the judge or decide not to initiate disciplinary proceedings against the judge and dismiss the initiative, notifying the initiator accordingly.

Hearing and decision-making stage:

In this final stage, the disciplinary court, consisting of a senate of three members, holds hearings and makes decisions based on the proposal of the disciplinary prosecutor. If the court determines the judge's responsibility, it renders a decision imposing a disciplinary sanction upon the judge.

9. **Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?**

As described above, different bodies take part in disciplinary proceedings against judges. The Disciplinary Court decides on the disciplinary proposal of the disciplinary prosecutor in all cases.

10. **How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?**

The Judicial Council of the Republic of Slovenia is an **autonomous and independent state authority** which performs tasks as determined by law, protects the independence of the judiciary, and ensures the quality of work of courts and judges and the public reputation of the judiciary (paragraph one of Article 2 of the Judicial Council Act). In terms of the organisation of state authority, the Judicial Council is a **state authority sui generis**, which

cannot be classified into any of the three branches of government. Within its powers, the Judicial Council **decides autonomously in an authoritative and professional manner**, and thus independently of the three constitutionally defined branches of government, thereby decisively contributing to ensuring the independence of the judiciary and judges and ensuring the exercise of judicial power at a high level of quality.

It follows from the constitutional provisions on the judiciary that only judges who are independent (125), have a permanent mandate (129), and are elected by the National Assembly on the proposal of the Judicial Council may hold judicial office (130).

The Constitutional Court has addressed the issue of impartiality in the case of public authorities other than courts (such as disciplinary court) in a constitutional decision U-I-445/18-13 from 14 October 2021. It took the view that an integral part of fair proceedings is the requirement that the fundamental procedural guarantee of impartial decision-making must be respected in the proceedings. The Constitutional Court highlighted a significant concern regarding the dual role of Judicial Council members, serving both as members of the body proposing disciplinary proceedings and as presidents/vice-presidents of the disciplinary tribunal. This dual responsibility has raised doubts about the independence and impartiality of such a tribunal. The Court concluded that the pertinent legislation, specifically allowing members of the Disciplinary Court, who concurrently hold positions within the Judicial Council, to participate in disciplinary proceedings initiated by the Judicial Council, fails to meet the standard of objective impartiality.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

Formal grounds for initiation of disciplinary proceedings against judges are defined in the Judicial Service Act (Art. 81/2). According to Article 81 (first paragraph) of the Judicial Service Act a disciplinary sanction may be imposed on a judge who **intentionally or by negligence violated the judicial duties, prescribed by law and the Court Rules, or irregularly performed judicial service.**

In second paragraph of Article 81 of the Judicial Service Act **27 different disciplinary violations (an exhaustive list)** are listed:

- an act that entails the legal elements of a criminal offence committed while performing judicial office;
- failure to perform or to unjustifiably refuse to perform judicial duties;
- unconscientious, late, inappropriate or negligent performance of judicial service;
- illegal or inexpedient use of resources;
- disclosure or official or others secrets defined by an Act of the Rules of Court;
- abuse of the right to absence from work;
- abuse or status of exceeding official authorisation;
- failure to achieve the expected work results for more than three consecutive months due to unjustifiable reasons;

- a violation of the order of examination of cases or the priority handling cases defined by the Acts of the Rules of Court;
- the performance of an office, work or activities that are incompatible with judicial office pursuant to the Constitution and an Act;
- failure to notify the president of the court of the acceptance of work deemed to be incompatible with judicial office;
- failure to report existing legal grounds for the exclusion of a judge or continuing to work on a case in which there are grounds for exclusion;
- publicly expressing an opinion on a judicial case in which a final decision has not been issued, or in a case in which an extraordinary legal remedy has been lodged;
- action or conduct of a judge that is in conflict with the judge's impartiality or is damaging to the reputation of the judicial profession;
- inappropriate, undignified or insulting behaviour or language directed towards individuals, state authorities and legal persons relating to the performance of judicial service or external as such;
- obstruction of the functioning of the court for the purpose of exercising the judge's own rights;
- acceptance of gifts;
- failure to submit or the late submission of information on a financial situation;
- the breach of mentoring duties;
- failure to comply with decisions issued regarding a judge's transfer or posting;
- denying or obstructing implementation of the provisions of the Act regulating official supervision of their work;
- dealing with parties;
- disregard of measures for ensuring the regular and effective administration of judicial power;
- a breach of measures pursuant to the programme for resolving backlog;
- non-compliance with professional education duties;
- a breach of employment protection regulations;
- a breach of the provisions of the Rules of Court on the use of official attire.

Moreover, among the offences listed above, the Judicial Service Act specifically defines those that result in serious consequences for judicial independence and the reputation of the judiciary (serious disciplinary violations).

12. **Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?**

While the formal grounds are generally clearly defined, it's worth noting that certain definitions of disciplinary offences, such as "inappropriate behaviour," can be unavoidably vague.

13. **Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges?**

No.

Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

Yes.

14. **Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body?**

A disciplinary proceeding is formally initiated when the disciplinary prosecutor files a motion for the implementation of investigations acts or files a reasoned proposal for a disciplinary sanction to the disciplinary court. The motion or proposal is filed by the disciplinary prosecutor, who can decide not to act upon the proposal. [See the answer to question no. 8].

Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge?

No. Individuals alleging to have suffered due to a judge's professional misconduct are able to submit a complaint, which can (based on a decision of the entitled initiator; see supra) then lead to the initiation of disciplinary proceedings. However, they do not have a right themselves to initiate or insist upon disciplinary action.

Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

If a disciplinary prosecutor decides not to institute proceedings, he is obliged to inform the initiator on the reasons therefor. If the latter insists on the initiative, the disciplinary court passes the final decision on the institution of the proceedings.

IV. The process of disciplinary proceedings against judges

15. **What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?**

See the answer to the question no. 8.

16. **Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?**

See the answer to the question no. 8.

17. **Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.**

Given the nature and severity of the alleged disciplinary violation, the President of the Supreme Court can temporarily suspend a judge from the judicial service, but the suspension can only last until the adoption of the final disciplinary decision (45/5 of the Judicial Council Act).

18. **What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?**

The right to be heard and the right of self-defence are fully observed in disciplinary proceedings, grounded in the fundamental principles of our legal system.

The accused judge has the option to appoint a lawyer or a colleague as their representative and can also designate an expert if necessary. The right to be informed of the initiation of disciplinary proceedings within 30 days is granted, and the failure to notify renders all previously adopted investigative measures null. The judge also holds the right to review the disciplinary case file, make copies, and is afforded the same rights as the accused person in criminal proceedings, with the provisions of the Criminal Procedure Act applying mutatis mutandis.

19. **How is the principle of presumption of innocence applied in the course of disciplinary proceedings?**

Once the disciplinary procedure officially starts, the rules of Criminal Procedure Act for expedited criminal procedure apply for procedural issues that are not regulated in the Judicial Council Act – these rules apply mutatis mutandis until the disciplinary court's decision is issued. The investigative measures are the same as in criminal procedure, thus ensuring the same procedural rights and guarantees in disciplinary proceedings, including the principle of presumption of innocence, as those of the suspected/accused person in criminal procedure. The case must be proved by the initiator of the proceedings, and it is not up to the defendant to prove their innocence.

20. **Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?**

The reasonable time principle is very much respected since there are very strict time limits for the initiation and termination of the disciplinary proceedings (statute of limitations). The duty of the disciplinary authorities to act efficiently and quickly is specified in the Judicial Council Act (37/3) and in the Criminal Procedure Act (Art. 15; mutatis mutandis application) which provides that the court must strive to conduct the procedure without delay and to prevent any abuse of the rights of the participants in the proceedings.

There are some initiatives among former members of the disciplinary bodies to prolong the statute of limitations for disciplinary proceedings.

21. **How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?**

According to Article 40 of the Judicial Council Act, the disciplinary court is tasked with deciding on cases in a panel of three members, with a minimum of two being judges. The president of the panel is either the disciplinary court president or their deputy, and at least one of the remaining two members must hold the same position as the judge against whom the disciplinary proceedings have been initiated. The composition of the panel is determined by the disciplinary court president. In case of their absence, the Judicial Council establishes the order in which the disciplinary court president is substituted by two deputies. Decisions are reached through voting, with the outcome determined by majority vote.

22. **Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.**

There is no obligation for national disciplinary authorities and national courts hearing disciplinary matters to await the outcome of ongoing criminal proceedings before giving a ruling. In Slovenian law, because the two kinds of proceedings are distinct and governed by different principles, both disciplinary authorities and courts hearing disciplinary matters are permitted to give a ruling before the completion of criminal proceedings concerning the same conduct.

23. **What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?**

The judge can file a lawsuit in administrative dispute against the decision of the Disciplinary court directly to the Supreme Court of the Republic of Slovenia (Article 36/1, 2 of The Judicial Council Act). The lawsuit does not have suspensive effect.

24. **Can a judge participate in the disciplinary hearings at the appeal stage?**

Yes.

25. **What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?**

In the appeal phase, the Administrative Dispute Act shall be applied.

When hearing actions for annulment, the Supreme Court cannot rule ultra petita, which means that it may rule only on that which is specifically requested.

On September 26, 2020, the Supreme Court issued Decision No. X Ips 22/2020, declaring that a main hearing, with some exceptions, is mandatory in administrative disputes (mutatis mutandis also in second instance disciplinary proceedings). This decision aligned with rulings from the Constitutional Court of the Republic of Slovenia and the European Court for Human Rights, emphasizing the mandatory nature of a main hearing in administrative disputes. Even before the Supreme Court's decision, the Administrative Court, according to the provisions of the Administrative Dispute Act (ZUS-1), should have adjudicated after a main hearing, although such hearings were infrequently conducted in practice.

If the Supreme Court determines that it cannot resolve the dispute based on the factual situation established in the disciplinary court procedure due to wrongly assessed evidence, contradictions between established facts and file data, incomplete establishment of facts, or a wrong conclusion drawn from established facts, it may annul the decision of the Disciplinary Court of the Judicial Council.

The Supreme Court can decide on the matter with a judgment, particularly if the nature of the matter allows it and if the proceedings' data provide a reliable basis. The Supreme Court may also establish the facts of the case during the main hearing, especially if annulling the

challenged disciplinary decision and initiating new proceedings with the competent authority would cause irreparable harm to the plaintiff.

26. **Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?**

If substantive law is not applied or is not applied correctly, the Supreme Court may either annul the decision of the disciplinary court and refer case back to it or annul the decision of the disciplinary court and decide on the matter with its own judgment. Therefore, the Supreme Court may decide only on a sanction.

27. **After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?**

Against the ruling of the Supreme Court no (further) appeal is allowed.

28. **Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?**

According to the Judicial Council Act 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. This has been confirmed by the Supreme Court decision No. U 4/2019-23 from 10 September 2019.

V. Disciplinary sanctions against judges

29. **As regards the disciplinary sanctions against judges, please briefly describe the following:**

- **is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;**
- **is it clearly defined in such a legal text which disciplinary sanction applies in which case;**
- **or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.**

*The exhaustive list of disciplinary sanctions, which are clearly defined in the **Judicial Service Act** (Article 82), are:*

- 1. A written warning;*
- 2. A suspension of promotion;*
- 3. A salary reduction;*
- 4. A transfer to another court;*
- 5. A termination of judicial office.*

Ad 1: A written warning entails a formal rebuke to the judge for a breach of discipline that is deemed to be a minor breach by the disciplinary court and may be pronounced if no disciplinary sanction has yet been pronounced upon the judge.

Ad 2: Suspension of promotion is pronounced for a period no longer than three years.

Ad 3: Salary reduction is pronounced in the amount of up to 20 % for a period of up to one year.

Ad 4: Transfer to another court one level inferior in rank or to a court of the same rank in another area is pronounced for a period of six months to three years. It is not possible to pronounce this sanction against a judge of the Supreme Court.

Ad 5: Termination of judicial office is declared for a judge who, due to a serious breach of discipline, is deemed unsuitable for holding judicial office.

The disciplinary court issues this decision following an individualized evaluation, guided by the principles of law.

30. **In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?**

Not explicitly, but the constitutional principle of proportionality shall be respected and applied when sanctions are pronounced.

31. **In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?**

Please see the answer to questions No. 29 and No. 30. The law explicitly determines which disciplinary violations constitute a serious disciplinary violation/breach.

32. **Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?**

Yes, it is. A judge may not be brought before a disciplinary court for opinions he/she expressed when deciding in judicial capacity (Article 134/1 of the Constitution and Article 6 of the Judicial Service Act).

VI. Vetting and other forms of liability and sanctions/measures against judges

33. **Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?**

In 1994, following the declaration of independence, Slovenia carried out a procedure with some elements of lustration, based on Article 8/3 of the then applicable Judicial Service Act stipulating that "the judges who have administered justice or made decisions in pre-trial investigations and court proceedings in which with the ruling fundamental human rights and

freedoms have been infringed shall, upon the termination of their office, not fulfil the conditions for appointment to judicial office."

This procedure was adjusted to specific nature of the passage of judges from limited term of office to new, permanent office and provided for the preparation of an opinion concerning the work of a judge. The Constitutional Court (U-I-83/94 from 14 July 1994) held that this negative condition was one of the general conditions which must be fulfilled for the election of a judge and should be verified and evaluated in the same way and in accordance with the same procedure as all other conditions. This is why the legislator has been justified, from the point of view of the state governed by the rule of law, in transitional period to have also set this condition for the performance of judicial functions, provided, however, that it can only be applied in accordance with the constitutionally admissible interpretation arising from the principle of the state governed by the rule of law, that is: the negative condition shall not apply to judicial error; it is possible and necessary to establish the relation of cause and effect between the proceedings and the ruling with which human rights are claimed to have been violated; the candidate for the office of a judge shall be given a chance of providing counter-evidence and opinion with a view to disputing the assessment having been made in connection with his performance of judicial functions; special attention shall be paid to judicial proceedings during the former non-democratic system, involving the prosecution and sentencing of persons in violation of the principles of the state governed by the rule of law for political and ideological reasons.

34. **It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?**

N/A.

35. **What is your own general opinion on vetting (advantages and disadvantages)?**

Vetting is highly problematic because it can be instrumentalised and misused to eliminate politically "undesirable" judges. There may be circumstances, albeit exceptional, where vetting is deemed acceptable—such as during the transition from a non-democratic to a democratic system.

36. **In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is not about ordinary civil, administrative or criminal liability.**

No.

The Code of Judicial Ethics (Kodeks sodniške etike) establishes rules for the professional and personal conduct of judges with a view to protecting their independence, impartiality and honesty and the good reputation of the judicial service. Judges are obliged to comply with the Code of judicial ethics both in the performance of judicial office and outside of it.

Although judges are bound by the principles of the Code in performing judicial duties, the purpose of these principles is not to establish a judge's disciplinary, criminal or civil accountability. Non-compliance with or a violation of one of the principles of the Code does not automatically imply a disciplinary offence, civil offence or criminal offence. Furthermore, the principles of the Code cannot be a means of establishing judges' responsibility for decisions taken in judicial proceedings. In view of the constitutional right to an independent and impartial trial, the material aspects of a trial (i.e. findings regarding the merits of the case under judicial consideration) are beyond the system of judicial discipline and fall within the scope of proceedings concerning ordinary and extraordinary legal remedies.

37. **In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?**

N/A.

38. **What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?**

N/A.

39. **What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?**

N/A.

40. **Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?**

N/A.

41. **Can a judge appeal against an unfavourable decision of such a body?**

N/A.

VII. Problems and challenges

42. **Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?**

See the answer to question no. 43.

43. **If so, what kind of solutions can you suggest for overcoming these problems or challenges?**

Until the end of 2017, jurisdiction over disciplinary proceedings in Slovenia rested with the Supreme Court, specifically its disciplinary tribunals of first and second instance. Initiated by a Supreme Court judge serving as a disciplinary prosecutor, the disciplinary tribunal of first instance adjudicated cases in three-judge panels. These panels, presided over by a Supreme Court judge, comprised two additional judges, with at least one holding the same

rank as the accused judge. Appeals against decisions of the first-instance tribunal were heard by a three-judge panel of Supreme Court judges.

With the enactment of the Judicial Council Act at the end of 2017, jurisdiction in disciplinary proceedings shifted to the Judicial Council. Consequently, the Judicial Council now encompasses the disciplinary tribunal, along with the disciplinary prosecutor and deputy, both serving as Supreme Court judges. The disciplinary tribunal consists of three members from the Judicial Council and six judges. Of the six judges, two are Supreme Court judges, two are higher court judges, and two are judges from first-instance courts. Appointed by the Judicial Council, the disciplinary prosecutor and judges hold their positions for four years based on the proposal of a plenary session of the Supreme Court. Similar to the previous regulation, the disciplinary tribunal rules in three-judge panels, presided over by a disciplinary judge who is a member of the Judicial Council. Consistent with the previous system, at least one of the disciplinary judges must be of the same rank as the judge against whom disciplinary proceedings are instituted.

Recently, the Judicial Council has raised questions regarding disciplinary procedures for judges and proposed several changes to the legislation governing disciplinary procedures and rules for judges. These proposals include reducing the number of disciplinary offences and deleting records of disciplinary sanctions after a specified period.

Ljubljana, 14 March 2024

Spain / Espagne

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

The disciplinary liability of judges, in Spain, is regulated by Constitution and law.

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?

In Spain, the disciplinary liability of judges is regulated only by Constitution and law.

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

Bills and regulations that affect the disciplinary liability of judges must be reported by the General Council of the Judiciary Power (CGPJ). Associations must also be heard.

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

The General Council for the Judiciary Power (CGPJ) and the Presidents of the Courts are responsible for receiving that kind of complaints.

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

Liability can be extinguished by the lapse of a certain time: six months for minor offences; one year for serious offences and two years for very serious offences.

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

No. There are no limitations on the categories of persons or bodies.

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

No.

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

Any citizen or organization can complain about a judge. The Public Prosecutor's Office can also complain about a judge. There is no special tracking system for these complaints. The citizen, organization or Public Prosecutor's Office have the right to be informed about their complaint.

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

The investigative function and the decision function are separated.

However, in cases of warning sanctions -minor offences-, the Court President these functions aren't separate.

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

In Spain, the members of de CGPJ are appointed by Parliament (12 judges and 8 jurists).

The CGPJ Disciplinary Commission has 7 members (4 of them must come from a judicial background and 3 of them must be jurists). The Promoter of Disciplinary Action is appointed by the CGPJ Plenary. Government Chambers have members elected by the CGPJ (the majority) and some members are directly elected by judges. Presidents of the Supreme Court, National Court and Superior Courts of Justice are elected by the CGPJ Plenary.

These members and presidents are immovable during their term of office.

Recusal is possible. Abstention is possible, too.

As the members of CGPJ are elected by the Parliament, there is a risk of politicization.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

The law describes 16 "very serious offenses", 18 "serious offenses" and 5 "minor offenses".

A.- Very serious breaches of conduct

Judges incur in very serious misconduct in the following cases:

- 1.- Breach of the duty of fidelity to the Constitution, declared by legal decision.**
 - 2.- Affiliation to political parties or unions, or doing work for them.**
 - 3.- Repeated provocation of serious clashes with the authorities of the district in which the judge performs his duties, by reasons not related to the jurisdictional function.**
 - 4.- Orders or pressures on another judge.**
 - 5.- Actions or omissions leading to civil liability (legally declared).**
 - 6.- Exercise of incompatible activities.**
 - 7.- Propitiating an undue appointment in case of incompatibility.**
 - 8.- To remain on duty in situations of incompatibility or prohibition**
 - 9. Unjustified delay in the initiation or in the processing of legal procedures.**
 - 10.- Being out of office, for more than a week, without official leave of absence or permission.**
 - 11. Being untruthful when requesting permissions, authorisations, compatibility statements, diets, and economic aids.**
 - 12.- Revealing facts or data in the exercise of the jurisdictional function.**
 - 13.- Abuse of the condition of Judge to obtain favourable and illicit deals from authorities, officials, or professionals.**
 - 14.- Unjustified ignorance in the fulfilment of the judicial duties.**
 - 15.- Lack of legal reasoning (opinion of facts) in sentences and rulings requiring it.**
 - 16.- Incurring three times any misconduct previously sanctioned—or not cancelled from the records—as “serious”**
- B.- Serious breaches of conduct**
- 1.- Lack of respect to the superiors in the hierarchical order, either before them, in writings addressed to them, or publicly.**
 - 2.- Recommendations addressed to another Judge.**
 - 3.- Congratulations or criticisms addressed to authorities, public officials or members of corporations, with abuse of the condition of judge.**
 - 4.- Correcting the application or interpretation of legislation done by the lower courts, unless exercising the jurisdiction.**

5.- Excess or abuse of authority, or serious lack of consideration regarding citizens, prosecutors, judicial secretaries, forensic doctors, administrative personnel of courts, lawyers, legal professional, and officials of the judicial police.

6.- Using inappropriate, disrespectful, or offensive linguistic expressions in judicial decisions.

7.- Not promoting the disciplinary responsibility of judicial secretaries and subordinate personnel when learning about serious breaches of conduct.

8.- Revealing facts or data in the exercise of the jurisdictional function when do not incur in a very serious breach of conduct.

9.- Being out of office, for three to seven days, without official leave of absence or permission.

10.- Unjustified breach of the public schedule of audience and procedural acts, when do not constitute a very serious breach of conduct.

11.- Unjustified delay in the initiation or in the processing of legal procedures, if does not constitute a very serious breach of conduct.

12.- Repeated inattention to requests from the General Council, the President of the Supreme Court, the National Audience and the Superior Courts of Justice, or blocking of their inspecting functions.

13. Not fulfilling the obligation to keep records of pending cases.

14.- Exercise of any incompatible activity.

15.- Illicit abstention, when thus declared by the governing room of the court.

16.- Making decisions only aimed at inflating statistics on judicial caseload.

17.- Preventing or impeding inspection of judicial units by the organs of the CGPJ.

18.- Incurring three times any misconduct previously sanctioned—or not cancelled from the records—as “minor” (

C.- Minor breaches of conduct.

1.- Lack of respect to hierarchical superiors in circumstances which would otherwise qualify as a serious breach.

2.- Inattention or lack of respect towards equals or colleagues lower in the hierarchical order; towards citizens, prosecutors, forensic doctors, lawyers and paralegal professionals, members of the judicial police, etc.

3.- Breach of legally established deadlines to dictate resolution of any class.

4.- Being out of office, for one to four days, without official leave of absence or permission.

5.- Inattention to requests from the General Council, the President of the Supreme Court, the National Audience and of the Superior Courts of Justice.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

In my opinion, the formal grounds are clearly defined, but the use of some open concepts is inevitable. Vgr. “manifestly offensive expressions”.

13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

No, there aren't other grounds.

The principle of *nulla poena sine lege praevia* is always applied.

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

Complaints of citizen are reported by the Head of CGPJ Inspection Service, who may propose filing them. The Promoter of Disciplinary Action can also decide not to initiate a disciplinary procedure. That happens when it is appreciated that the judge's conduct is clearly not punishable.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

The decision to initiate a disciplinary procedure must be adopted by judicial government bodies. It is necessary to motivate that decision.

Presidents of The Supreme Court, National Court, Superior Courts of Justice, the governing boards of the courts, the Disciplinary Commission of the CGPJ or its Plenary Session may all initiate disciplinary proceedings against a member of the judiciary.

The Inspection Service of the CGPJ is responsible for processing any incoming formal complain and producing a report, in which it may propose to the governing organ of the court (or the Disciplinary Commission) to close the file, carry out preliminary investigations, or open a disciplinary proceeding.

Preliminary investigations simply consist of obtaining information about the facts, while disciplinary proceedings are open only in presence of circumstantial evidences.

If preliminary investigations and disciplinary investigations are to be open, the governing organ of the court will designate an “instructor” (a judge or magistrate of equal category), and (if required) a secretary to assist him. This function can be performed by the Promoter of Disciplinary Action.

The instructor is responsible for gathering any evidence needed to determine and qualify the facts.

A lawyer may assist the defendant at any time.

If the instructor finds evidence of improper conduct, he may formulate charges against the defendant judge, who has eight days to present further counterevidences.

Having heard the opinion of the public prosecutor, the instructor will eventually propose a decision to the judicial organ that initiated the proceedings.

This organ may execute the decision, transfer the case to a higher organ (depending on the seriousness of the sanction), or ask the instructor to add more evidences, complete the investigation, or formulate additional charges against the defendant.

This process should not exceed a six-month period, but if it does the instructor will have to report the details of the investigation to the judicial organ every ten days.

The final decision will be communicated to both the prosecutor and the defendant judge, who may file either an administrative or a jurisdictional appeal (or both). Citizens having reported the facts may only appeal the decision before the courts.

The sanctions which may be imposed on Judges and Magistrates for infractions in the exercise of their judicial duties are set out herebelow: a) Warning. b) Fine of up to 6,000 euro. c) Mandatory transfer to another Court or Tribunal at least one hundred kilometres away from the one in which he had served office. d) Suspension of up to three years. e) Removal.

Although professional associations representing judges and magistrates do not participate in disciplinary proceedings, they may appeal before the courts on behalf of their members

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

There is a separation between the instruction phase and the decision phase.

For the instruction phase, must be designed an instructor in order to prepare the final decision. In serious or very serious offenses the instruction must be carry out by the Promoter of Disciplinary Action.

The final decision must be adopted by the CCJE Plenary, the CGPJ Disciplinary Commission or the Government Chambers. Or by the Court President in cases of warning sanctions -minor offences-.

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

The CGPJ Disciplinary Commission, after listening to the instructor and previous audience of the judge, in disciplinary proceedings for very serious offenses, can suspend the judge for a maximum of six months. This decision can be appealed to the Plenary CGPJ.

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

Judges must be listened during the disciplinary process, specially, before the final decision. Judges can propose evidences and make allegations.

Judges can appeal the final decision.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

The principle or presumption of innocence is applied. It is necessary to prove the culpability of the judge.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

The disciplinary proceedings can't last more than six months. In exceptional circumstances, the deadline may be extended.

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

Depending on the severity of the sanction, the final decision can be adopted by the CGPJ Plenary, the CGPJ Disciplinary Commission, the Government Chambers or Presidents of the Supreme Court, the National Court or the Superior Courts of Justice.

The decision must be adopted by the majority of its members.

The decision must be motivated.

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

The opening of criminal proceedings for the same facts suspends the disciplinary procedure. If the criminal process concludes without a conviction, then, it is possible to impose a disciplinary sanction -non bis in idem-.

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

Judges have the right to appeal the decision. The appeal has suspensive effects, automatically in administrative appeal . If the judge appeals to the Supreme Court in jurisdictional appeal, must asked about the suspensive effect.

24. Can a judge participate in the disciplinary hearings at the appeal stage?

Judges must be listened at the appeal stage.

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

The judicial review is complete and doesn't have any limits.

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

The only limit is the principle of *reformation in peius*. The sanction can be replaced by another less serious, after the judge has been listened.

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

Final administrative decisions can be appealed to the Supreme Court.

Contestar a las decisiones judiciales de primera instancia

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

29. **No.**

V. Disciplinary sanctions against judges

30. As regards the disciplinary sanctions against judges, please briefly describe the following:
- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text; **Yes**
 - is it clearly defined in such a legal text which disciplinary sanction applies in which case; **Yes**

- or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions. **No.**

31. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

Sanctions must be proportional to the offense committed.

32. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

The law mentions the principle of proportionality. The sanctions have a maximum that cannot be exceeded. The specific sanction must be motivated.

33. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

If a court case is reversed on appeal, the judge will never be punished.

However, a judge can be punished when the court appreciates an absolute and manifest lack of motivation in his/her decision.

VI. Vetting and other forms of liability and sanctions/measures against judges

34. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

No, it doesn't exist in Spain.

35. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

Vetting doesn't exist in Spain.

36. What is your own general opinion on vetting (advantages and disadvantages)?

In my opinion, only the violations clearly established by law may be sanctioned. Any other form of responsibility can affect judicial independence.

In some cases vetting maybe justified, but a radical solution, as vetting, creates a risk of the capture of the judiciary by the political force which controls the process of vetting. There is a high risk of misuse of vetting. For this reason I think it should not be used under normal circumstances or in consolidated democracies such as Spain.

37. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply

sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability.

No, there is no possibility.

38. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?
39. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?
40. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?
41. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?
42. Can a judge appeal against an unfavourable decision of such a body?

VII. Problems and challenges

43. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

In my opinion, the Spanish system is reasonable and guarantees the judicial independence. In fact, judges who consider themselves unfairly punished by the CGPJ can appeal to the Supreme Court or Constitutional Court.

However, as the members of CGPJ are elected by the Parliament, there is always a risk of politicization in their decisions.

44. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

Sweden / Suède

1. The disciplinary liability of judges is regulated in law, The Public Employment Act (1994:260). A non-official translation can be found [here](#). The law does not cover the liability of justices. Liability for justices is regulated in the Employment under a power of Attorney Act (1994:261).
2. A non-binding guide to best practice regarding judicial conduct is produced by the *Judicial Training Academy (Domstolsakademin)*, the *Swedish Association of Judges (Sveriges domareförbund)* and the union for judges and other legal professionals working in the courts (SACO-S *Domstol*). Domstolsakademin is the body within the Swedish courts responsible for professional development and training for judges and other legal professionals working in the courts.
3. The Swedish Parliament decide the laws of Sweden. Before a law is adopted the Council on Legislation (consisting of justices) is usually asked for its opinion. A former justice and chancellor of justice prepared and presented the non-binding guide to best practice regarding judicial conduct.
4. The conduct of Swedish judges can be subjected to scrutiny by the Parliamentary Ombudsmen, the Office of the Chancellor of Justice, and the Government Disciplinary Board for Higher Officials.
5. The accused of a wrongdoing needs to be formally notified about the accusations within two years from the wrongdoing (17 § The Public Employment act).
6. Only the court where the judge works, the Parliamentary Ombudsmen or the Office of the Chancellor of Justice can bring a complaint to the Government Disciplinary Board for Higher Officials. There are no limitations to who can bring a complaint regarding a judge to the Parliamentary Ombudsmen. The rulings of the Government Disciplinary Board for Higher Officials cannot be appealed.
7. There is no constitutional court in Sweden.
8. Anyone can initiate a claim with the Parliamentary Ombudsmen regarding a judge. The Parliamentary Ombudsmen decide if there are grounds to the claim and decide if it needs further investigation or not.
9. The different bodies specified above have both investigative functions and decision-making powers.
10. The Swedish Instrument of Government, one of the four fundamental laws that make up the Swedish constitution, provides for example that judges, as with all persons performing public administration functions, shall pay regard in their work to the equality of all before the law and shall observe objectivity and impartiality. The Instrument of Government also contains provisions regulating judicial independence. Furthermore, there are other statutes providing safeguards.
11. The formal grounds for disciplinary actions are set out in the Public Employment Act. If the wrongdoing is carried out with intent or by negligence the accused can be held accountable. If

the wrongdoing is found to be minor, the accused cannot be held accountable. There are no grounds for disciplinary actions set out in the Employment under a power of Attorney Act.

12. The formal grounds are defined in general but there is room for interpretation regarding what actions that can constitute a disciplinary action.

13. The principle of *nulla poena sine lege praevia* is applied.

14. There is no formal initial review before the body trying the claim review the claim, more than stated above (8).

15. Disciplinary proceedings against judges can be made to several bodies as above stated (6), but the main one is the Government Disciplinary Board for Higher Officials.

16. There are different phases, see above (6).

17. According to the Employment under a power of Attorney Act a judge can be suspended if the judge is facing dismissal from the employment. A court can inhibit or put a stay on the suspension. A judge can also be suspended temporarily based on the so-called employers right of management (*arbetsgivarens arbetsledningsrätt*). The scope of applicability is narrow.

18. The judge take part in the different phases by responding to the claims being made against him or her.

19. The principle of presumption of innocence is the basis for the disciplinary proceeding.

20. A disciplinary sanction can only be decided if the judge has been informed in writing about the action (that is the basis for the sanction) within two years from the action, see above (5).

21. The final decision on the disciplinary liability of a judge is taken by the Government Disciplinary Board for Higher Officials. The board decide matters with five members of the board. The chairman and vice chairmen of the board needs to have experience as judges. The board can decide matters after a meeting or by *capsulam*.

22. If the action constituting the disciplinary proceeding has been tried in criminal court, a disciplinary proceeding can only be initiated if the action has been decided to not constitute a crime.

23. A decision on disciplinary liability made by the Government Disciplinary Board for Higher Officials cannot be appealed.

24. There is no appeal stage when the Government Disciplinary Board for Higher Officials has issued a ruling.

25. Normally there is no public hearing. The bodies assess the case from the written statements in the case. If a case is tried as a labour law case, there is generally a public hearing held.

26. N/A

27. N/A

28. The body which initiated liability proceedings cannot lodge an appeal against a decision which it does not consider satisfactory.

29. There is not an exhaustive list of disciplinary sanctions against judges defined in a legal text. The decision of which sanction to impose is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.

30. The principle of proportionality is applied.

31. There are no concrete criteria or (binding) links between certain violations and sanctions. The assessment of ruling on disciplinary sanctions is made in casu.

32. The rulings of the Government Disciplinary Board for Higher Officials cannot be appealed.

33. Vetting does not exist in Sweden.

34. N/A

35. What is your own general opinion on vetting (advantages and disadvantages)?
In the case of active judges a vetting process is problematic from several aspects. However, it's understandable that such a process is being considered in new democracies where a major change is required within the judiciary, e.g. to address widespread corruption.

36. The Parliamentary Ombudsmen can direct criticism against a judge.

37. N/A

38. N/A

39. N/A

40. See above (36).

41. Decisions made by the Parliamentary Ombudsmen are not legally binding and cannot be appealed.

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?
There are only a handful cases every year and the current system appears to be working satisfactorily.

43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?
N/A

Switzerland / Suisse

Ad 1

Pour ce qui est des juges de la Confédération, au niveau de la Constitution, de la Loi sur le Parlement ainsi que par le biais des Principes d'action de la Commission judiciaire du Parlement fédéral.

Ad 2

Oui, sur la base de la Loi sur le Parlement il y a les Principes d'action de la Commission judiciaire du Parlement. Pour les juges des tribunaux de première instance de la Confédération la révocation et la non-réélection sont possibles. Pour ceux du Tribunal fédéral (cour suprême) seulement la non-réélection est possible.

Ad 3

Une participation est prévue dans le cadre de la procédure de consultation au sein du processus législatif.

Ad 4

La Commission administrative du Tribunal fédéral et les Commissions judiciaire et de la gestion du Parlement.

Ad 5

Non.

Ad 6

Non. Le Tribunal fédéral peut, par le biais de sa Commission administrative, conduire une enquête préalable.

Ad 7

En Suisse, le contrôle (limité) de constitutionnalité est assuré par le Tribunal fédéral.

Ad 8

Oui, notamment les Commissions de gestion du Parlement (qui exercent la haute-surveillance sur les tribunaux de la Confédération). Le Tribunal fédéral aussi peut saisir la Commission judiciaire du Parlement. Le suivi est le même que pour les autres demandes.

Ad 9

Non.

Ad 10

Tous les principes d'une procédure équitable et conforme aux principes d'un État de droit s'appliquent par devant la Commission judiciaire du Parlement.

Ad 11

Le soupçon fondé qu'un juge a violé gravement ses devoirs de manière intentionnelle ou par négligence grave ou le fait qu'il a durablement perdu la capacité d'exercer sa fonction peuvent conduire à la révocation.

Ad 12

Au vu de leur formulation (cf. ad 11), ils peuvent faire l'objet d'une interprétation.

Ad 13

Il n'y a pas d'autres motifs pour engager cette procédure. Le principe *nulla poena sine lege* s'applique.

Ad 14

La Commission administrative du Tribunal fédéral peut mener une enquête préalable si une procédure de révocation d'un juge d'un tribunal de première instance de la Confédération entre en ligne de compte. La Commission judiciaire du Parlement est l'organe disciplinaire. Il n'y a pas de conditions formellement établies qui excluent dite procédure. Dans toute circonstance, il est possible de mettre fin à dite procédure à un stade précoce par décision de la Commission judiciaire du Parlement.

Ad 15

Si la Commission judiciaire du Parlement a connaissance de faits qui mettent sérieusement en cause l'aptitude professionnelle ou personnelle d'un juge d'un tribunaux de première instance de la Confédération, elle décide d'office et dans les meilleurs délais d'ouvrir ou non une procédure de révocation. Elle entend la personne concernée avant de décider d'ouvrir ou non une procédure de révocation et l'informe par écrit de l'ouverture ainsi que des faits qui lui sont reprochés. La Commission judiciaire du Parlement n'ouvre pas de procédure lorsque le soupçon est infondé.

Ad 16

La Commission judiciaire du Parlement est l'organe compétent. Une décision de révocation est du ressort de l'Assemblée fédérale (Chambres réunies du Parlement). Il y a différentes phases de la procédure.

Ad 17

Non.

Ad 18

Le juge concerné a le droit d'assister à l'audition des personnes interrogées et de leur demander des précisions; de même, il a accès aux documents, aux expertises et aux procès-verbaux d'audition. Il a le droit d'être assisté par un avocat. Le juge concerné a le droit de refuser de témoigner. Il a le droit de prendre position sur le résultat de l'enquête. Les droits fondamentaux s'appliquent, en particulier le droit à voir sa cause traitée équitablement et jugée dans un délai raisonnable, d'être entendu, de ne pas faire l'objet d'un traitement arbitraire ainsi que le droit à la protection de la sphère privée.

Ad 19

Cf. les réponses ad 10 et 18.

Ad 20

Non.

Ad 21

La Commission judiciaire du Parlement peut classer la procédure si elle constate que les conditions autorisant la révocation ne sont pas remplies. Si elle constate que ces conditions sont remplies, elle soumet par écrit à l'Assemblée fédérale une proposition motivée de révocation. L'Assemblée fédérale décide – par le biais du vote – conformément à la Loi sur le Parlement.

Ad 22

La Commission judiciaire du Parlement établit d'office les faits et verse notamment au dossier toutes les pièces relatives aux événements significatifs, parmi lesquels il pourrait y avoir de pièces d'autres dossiers et procédures.

Ad 23

La décision de révocation adoptée par l'Assemblée fédérale est finale.

Ad 24 - 28

Cf. ad 23.

Ad 29

Les sanctions disciplinaires sont définies dans un texte juridique qui définit également quelle sanction s'applique dans quel cas (cf. ad 2 et 11). Une marge d'interprétation et/ou d'application des sanctions est laissée au Parlement (Commission judiciaire et Assemblée fédérale).

Ad 30

Le principe constitutionnel de proportionnalité est pleinement applicable.

Ad 31

La Commission judiciaire du Parlement ne propose la sanction de la révocation que si les conditions l'autorisant sont remplies (cf. ad 11).

Ad 32

Non, un motif de récusation ou de non-réélection n'étant pas pour cela envisageable.

Ad 33-35

La surveillance de la part de la Commission administrative du Tribunal fédéral sur les tribunaux de première instance de la Confédération porte sur l'institution et sur son fonctionnement, non pas directement sur les juges qui y sont actifs. De même la haute-surveillance sur le Tribunal fédéral de la part des Commissions de gestion du Parlement. En tant que tel, le *vetting* n'existe pas.

Ad 36

Non.

Ad 37

Cf. ad 33-36.

Ad 38-41

Cf. 33-37.

Ad 42

L'absence de voie de droit interne contre les décisions de révocation des juges des tribunaux de première instance de la Confédération peut constituer un problème.

Ad 43

Le législateur fédéral devrait se saisir de la question.

Türkiye

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

The disciplinary liability of judges is regulated by the Constitution of the Republic of Türkiye, No. 2709, The Law on Judges and Prosecutors, No 2802 and The Law On The Council of Judges and Prosecutors, No 6087.

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?

Disciplinary liability of judges is regulated in detail in the Law No. 2802 on Judges and Prosecutors.

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

While representatives from the Supreme Courts and the Council of Judges and Prosecutors may be invited during the preparation process of legal regulatory acts regarding the disciplinary responsibility of judges, when the relevant draft text is developed, it is sent to the aforementioned institutions for their opinions.

In addition, the Council of Judges and Prosecutors participates at the level of judges to express their opinions when the draft texts are discussed in the Committees of the Grand National Assembly of Türkiye.

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

Complaints intended to initiate disciplinary proceedings against judges are lodged with the Council of Judges and Prosecutors.

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

Complaints against judges can be made at any time.

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

There is no categorical restriction as to the persons or institutions entitled to file a complaint for the initiation of a disciplinary investigation. The Council of Judges and Prosecutors is also authorised to take ex officio action upon media reports in the event of acts that may be subject to disciplinary proceedings.

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

The Constitutional Court has no role at any stage of disciplinary proceedings against judges.

However, the Constitutional Court may, within the sphere of its competence, lodge complaints against judges with the Council of Judges and Prosecutors. Moreover, there is no obstacle for persons concerned to submit an individual application to the Constitutional Court once all other domestic remedies have been exhausted.

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

The Council of Judges and Prosecutors is fully authorised to initiate disciplinary proceedings against judges.

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

The Plenary, composed of the First and Second Chambers of the CJP and the Presidents and Members of these Chambers, has the competence to initiate and decide on disciplinary proceedings.

The First Chamber of the CJP may launch disciplinary investigations against judges on the basis of notices and complaints or ex officio. The investigation may be conducted by the inspectors of the Inspection Board Presidency within the CJP or by the judge or prosecutor designated by the 1st Chamber who is more senior than the person under investigation.

The Second Chamber is also authorised to impose disciplinary sanctions in accordance with the report drawn up by the inspector as a result of the disciplinary investigation. The Plenary has the power to consider and rule on objections to the decisions of the First and Second Chambers.

On the other hand, according to Law No. 6087, the President of the Council (Minister of Justice) is not allowed to take part in the plenary sessions and in the works of the Chambers dealing with disciplinary proceedings, and the relevant Deputy Minister of Justice sits as a member of the First Chamber ("the Chamber not dealing with disciplinary matters")

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

The Council of Judges and Prosecutors is a constitutional institution with its structure and duties defined in the Constitution of the Republic of Türkiye.

Article 159 of the Constitution states that the The Council of Judges and Prosecutors (CJP) shall be established and function in accordance with the principles of the independence of courts and security of tenure of judges. The Law establishing the Council of Judges and Prosecutors stipulates that the Council shall be independent in the performance of its duties and in the exercise of its powers. No organ, authority, office or individual may give orders or instructions to the Council.

In the case of the members of the Council of Judges and Prosecutors, Articles 40 and 41 of the Law No. 6087 regulate in detail the cases of "inability to try the case" and "withdrawal and rejection". Therefore, it is also possible for the members of the First and Second Chambers to be rejected by those concerned.

It is also possible for those conducting disciplinary investigations to be complained by those concerned.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

Those concerned have the right to file complaints against judges for any behaviour that does not befit the title of judge or undermines the confidence in judges. However, the First Chamber of the Council of Judges and Prosecutors is authorised to decide whether or not to process these complaints within the framework of the legislation.

Disciplinary penalties and the actions giving rise to them are regulated in the Law No. 2802 on Judges and Prosecutors.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application?

The formal grounds are clearly defined and set out exhaustively in the Law on Judges and Prosecutors and the Declaration on the Ethics of the Judiciary.

On the other hand, as stated above, the First Chamber of the Council of Judges and Prosecutors has the competence to make a final assessment on the basis of complaints as to whether judges have performed their duties in accordance with the law and other legislation and to initiate disciplinary proceedings, although persons have the right to lodge complaints against judges for any conduct that is incompatible with the title of judgeship or undermines confidence in judges, as well as for matters within their jurisdiction.

While It is possible to apply for an ethics violation with the claim that the Declaration of Ethics for Turkish Judiciary has been violated, an *ex officio* investigation may also be initiated. The Plenary of the CJP is authorized and mandated to decide on these matters. There is no deadline or condition set for application.

13. Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

The disciplinary law also follows the principle of applying the law to events after its entry into force. A provision regulating disciplinary offences and penalties can only be applied to acts after its entry into force. Therefore, it is not possible to impose disciplinary penalties retroactively.

14. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

The Law No. 2802 also specifies which complaints will not be processed. To give a few examples, if the complaints are,

- not covering a specific topic or not based on concrete evidence,
- involving matters which may be raised as grounds for legal remedies or which fall within the jurisdiction and discretion of the judges
- raised by people who have been placed under guardianship because of mental illness, and those who have not been placed under guardianship but have been diagnosed with the illness by a medical board report.

The First Chamber of the CJP terminates the process without disciplinary proceedings.

IV. The process of disciplinary proceedings against judges

15. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

As stated above, disciplinary proceedings against judges can only be initiated for the reasons listed in the law upon the decision of the First Chamber of the CJP. The First Chamber has the authority to initiate a disciplinary investigation ex officio or upon a complaint. The inspectors at the Inspection Board Presidency within the CJP or judges/prosecutors who are appointed by the First Chamber of the Council among those with higher rank than the person under investigation are authorised to conduct disciplinary investigations. The Second Chamber of the CJP has discretionary authority to decide whether or not to impose a disciplinary penalty based on the investigation report prepared at the end of the disciplinary investigation.

16. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

The answer is within the context of previous question.

17. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

The First Chamber of the CJP is authorised to examine allegations and complaints against judges before any disciplinary investigation is initiated. Depending on the seriousness of the allegations and complaints, the First Chamber may initially authorise an investigation

and, after a general examination of the allegation in question, authorise an investigation for a more detailed assessment. At this stage, the Second Chamber of the CJP has the competence to suspend the judge in question if the persons conducting the investigation propose that it would be appropriate to suspend the judge in question for the proper conduct of the investigation.

18. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

In accordance with the relevant articles of Law No. 2802 on Judges and Prosecutors and Law No. 6087 on the Council of Judges and Prosecutors, during the investigation process, the judge in charge may request the investigators to collect statements from witnesses or other evidence that may be in his/her favour. Also, in the framework of the right to defence, the judge in charge may request that the information and documents collected during the investigation and disciplinary proceedings be presented to him/her as a basis for his/her defence. He/she may also exercise these rights before the CJP who orders the disciplinary sanction.

19. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

The confidentiality of the disciplinary investigation is essential. Therefore, the investigators observe the confidentiality in the conduct of the proceedings. Until the conclusion of the disciplinary investigation and the imposition of a disciplinary penalty, with the exception of suspension from office, judges enjoy all their personal rights in full. Furthermore, in the context of the right not to be labelled as criminal vis-à-vis third parties, the absolute confidentiality of the information and documents gathered in the course of the disciplinary investigation is essential.

During the disciplinary investigation process, the judge can request the court to block access to the news published in the press and social media, or to issue a retraction.

20. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

Disciplinary proceedings against judges must be concluded as efficiently and as promptly as possible.

However, according to the relevant article of Law No. 2802, the opening of a criminal investigation or prosecution against judges does not presuppose a disciplinary investigation for the same incident, nor does the fact that the person concerned has or has not been convicted constitute an obstacle to the imposition of a disciplinary sanction.

Except for acts requiring dismissal from the profession and relocation, no disciplinary investigation may be opened if three years have elapsed since the acts requiring disciplinary investigation were committed. Similarly, disciplinary punishment cannot be imposed if the act requiring punishment occurred more than five years ago.

If the act that warrants disciplinary punishment also constitutes a crime, and if the law provides for a longer statute of limitations for this crime, and if a criminal investigation or

prosecution has been initiated, these periods shall be applied instead of the above-mentioned period. For individuals who are ordered by the Council of Judges and Prosecutors to await the outcome of the prosecution, the authority to impose penalties will expire two years after the court decision is finalized.

21. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

The rapporteur judges working under the General Secretariat examine the disciplinary files of judges and place them on the agenda of the 2nd Chamber.

The 2nd Chamber, which consists of a president and five members, convenes with the absolute majority of its members and makes decisions with the same majority, as stipulated by Law No. 6087.

22. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

Yes. If the act subject to disciplinary action also constitutes an offence under criminal law, the disciplinary investigation may await the outcome of the criminal proceedings. However, for the Chamber it is an optional, i.e. discretionary, to make it an pending issue.

23. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

According to Law No. 6087, the person concerned may, within ten days from the date of notification, apply for a review of the decisions of the Chamber that issued the decision. If the Chamber denies the application, the person concerned may, within ten days from the date of notification, lodge an appeal with the Plenary. Decisions made upon appeal are final.

The complainant also has the right to review and appeal disciplinary decisions.

Final decisions on dismissal from the profession may be brought before the judicial authorities; other decisions are not subject to judicial review. Actions for annulment against decisions on dismissal from the profession may be brought before the Council of State as the court of first instance and these cases are deemed to be urgent.

24. Can a judge participate in the disciplinary hearings at the appeal stage?

There is a right to an oral hearing during the examination of the internal appeal to the Plenary of the Council of Judges and Prosecutors against the disciplinary sanction of dismissal from the profession. Additionally, in cases brought before the Council of State against the disciplinary sanction of dismissal from the profession, a hearing may be held at the request of one of the parties or at the court's own initiative.

25. What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

During the examination of an internal appeal against a disciplinary sanction of dismissal before the Plenary Assembly of the Council of Judges and Prosecutors, the deliberations are closed to the public. However, if a case is filed with the Council of State against a disciplinary penalty of dismissal from the profession, and the court decides to examine the case with a hearing upon request or ex officio, these hearings are open to the public. In matters requiring expertise or technical knowledge, relevant expert opinions may also be heard.

26. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

Disciplinary penalties become effective upon finalisation. For first-time disciplinary offenders, except in cases requiring dismissal from the profession under certain conditions, the penalty may be reduced by one degree.

27. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

Judges can appeal the decision made in a case filed with the Council of State against a disciplinary penalty of dismissal from their profession to the Plenary of the Chambers of Administrative Cases of the Council of State.

28. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

The Council of Judges and Prosecutors also has the right to appeal before the Plenary of Chambers of Administrative Cases of the Council of State against a decision rendered in a case filed with the Council of State regarding a disciplinary penalty of dismissal from the profession.

V. Disciplinary sanctions against judges

29. As regards the disciplinary sanctions against judges, please briefly describe the following:
- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;

Yes.

- is it clearly defined in such a legal text which disciplinary sanction applies in which case;

Only the last paragraph of the article, which provides for dismissal from the profession, grants the authority to interpret to the decision-making body, and there is already a judicial remedy against this decision. Besides this exception, the law clearly and precisely defines the sanctions to be applied in each case.

- or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.

In the last paragraph of the article, which only provides for dismissal from the profession, the decision-making body is given the authority to interpret and the decision can be appealed. Apart from this exception, the law clearly and precisely defines the sanction to be applied in each case.

30. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

Yes.

31. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

The law provides a clear and precise definition of the sanctions to be applied in each case. The decision-making body is granted the power of interpretation in the last paragraph of the article that provides for the penalty of dismissal from the profession. This power is exercised by taking into account the criteria specified in previous decisions of the Council of Judges and Prosecutors in similar cases, as well as judicial decisions in cases filed against these decisions.

In addition, in order to set a precedent, decisions of the Council of Judges and Prosecutors on disciplinary matters are published in anonymised form on its website.

32. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

The disciplinary sanction of dismissal from the profession can only be appealed against in the courts and, if the Council of State does not approve the sanction, the Council of Judges and Prosecutors must comply with this decision and reinstate the person concerned.

VI. Vetting and other forms of liability and sanctions/measures against judges

33. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

The vetting process is conducted for those who are to be appointed as assistant judges, those who are to be admitted to the profession at the end of the assistant judgeship, or those who resign and then wish to return to the profession.

34. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

There is no vetting process for judges in service.

35. What is your own general opinion on vetting (advantages and disadvantages)?

It is considered that, given the importance and nature of the judicial profession, a vetting procedure must be carried out at the time of recruitment or admission to the profession.

36. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability.

There is no vetting procedure for judges. The Council of Judges and Prosecutors may decide to suspend a judge under disciplinary investigation as a temporary measure or to transfer him/her to another jurisdiction with temporary authorisation until the investigation is completed.

If the act does not require disciplinary action, but is contrary to the ethical principles stated in the Declaration of Ethics for Turkish Judiciary, the decision on the ethical violation shall be taken into account in the promotion and appointment of the judge.

37. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?

Vetting process is executed by the Presidency of the National Intelligence Organisation, the General Directorate of Security and local administrative authorities. The information received is evaluated by the commission established in the Ministry of Justice or in the Council of Judges and Prosecutors, as relevant, and submitted to the authority authorised for appointment or admission to the profession.

38. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?

The commissions for the evaluation of the information received as part of the security investigation shall be formed in an odd number with at least five members, including the chairman, under the chairmanship of a deputy minister of the Ministry of Justice and a senior administrator to be appointed by the chief administrative officer of the Council of Judges and Prosecutors, with the participation of members each from the units of inspection/supervision, personnel and legal affairs and other units deemed appropriate.

39. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?

The information provided by the evaluation commission is evaluated together with other criteria by the interview committee for assistant judges and by the 2nd Chamber of the Council of Judges and Prosecutors for those to be admitted to the profession, and then a final decision is made.

40. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?

If the vetting is concluded negatively or if the other criteria are not met, the persons concerned will not be appointed as assistant judges or admitted to the profession.

41. Can a judge appeal against an unfavourable decision of such a body?

Those who do not pass the interview and are not appointed as assistant judges by the Ministry of Justice can appeal against this decision.

Those who are not admitted to the profession by the Council of Judges and Prosecutors may appeal against this decision, but may not file a lawsuit against the final decision made as a result of the appeal.

VII. Problems and challenges

42. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

Although there are no problems or difficulties regarding the disciplinary liability of judges in Türkiye, the lack of a judicial remedy against disciplinary sanctions other than dismissal from the profession is sometimes criticised against our country in this regard.

43. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

A constitutional amendment is required to pave the way for a judicial remedy against disciplinary penalties other than dismissal from the profession.

Ukraine

I. Legislation

1. At what legislative level (constitution, law, code, etc.) is the disciplinary liability of judges regulated in your country?

Disciplinary liability of judges in Ukraine is regulated by the Constitution of Ukraine, the Laws of Ukraine "On the Judiciary and the Status of Judges", "On the High Council of Justice".

2. Pursuant to the relevant laws, are there any decrees, regulations and/or rules concerning the disciplinary liability of judges (e.g. normative or regulatory acts of the government, supreme court or other high judicial body, council for the judiciary and/or other bodies)?

Issues related to the disciplinary liability of judges in Ukraine are fully covered in the Laws of Ukraine "On the Judiciary and the Status of Judges" and "On the High Council of Justice".

3. Did the judicial power of state, associations of judges and/or individual judges take part in any meaningful form in the process of preparation of the above-mentioned laws, decrees, regulations and/or rules? If so, to what extent?

Yes. In the event that the legislative body of Ukraine is considering any draft law that relates to the judicial system and the status of judges, the independence of judges, judges and other judicial bodies always discuss these draft law and provide their proposals for their improvement.

II. Institutional framework for disciplinary proceedings against judges

4. What bodies (i.e. council for the judiciary, supreme court or other highest judicial body, other institutions) or officials/persons are responsible for receiving complaints for the purpose of initiating disciplinary proceedings against judges?

Disciplinary proceedings against judges are carried out by the High Council of Justice and its bodies.

5. Are there time limits within which a complaint must be made for the purpose of initiating disciplinary proceedings? If so, please furnish details.

The legislation of Ukraine does not clearly define the terms of filing a complaint against a judge with a disciplinary body.

6. Are there limitations on the categories of person/s and or bodies who are entitled to bring a complaint for the purpose of initiating disciplinary proceedings? If so, please furnish details.

Any person has the right to file a disciplinary complaint. Complaints can be made in person or through a lawyer, legal entities apply through an attorney, and state authorities and local self-government bodies apply through their managers or representatives.

7. Does the constitutional court have any role at any stage in disciplinary proceedings against judges?

No. According to Ukrainian legislation, the Constitutional Court of Ukraine is separate from the judicial system of Ukraine and does not interfere in the activities of courts and judges. At the same time, any person can appeal to the Constitutional Court of Ukraine with a complaint regarding the verification of the conformity of the laws of Ukraine with the Constitution of Ukraine (constitutionality) provided that this person considers the law of Ukraine applied in the final court decision in his or her case to be contrary to the Constitution of Ukraine. A constitutional complaint may be filed after all other domestic remedies have been exhausted.

8. Distinct from those who have the power to initiate disciplinary proceedings, are there bodies or officials/persons who can request initiating disciplinary proceedings, and what is the follow-up to such requests?

As mentioned above, in addition to any citizen, state authorities and local self-government bodies through their managers or representatives can also file a complaint against a judge with a disciplinary body. Consideration of these complaints takes place in the general procedure defined by the legislation of Ukraine.

9. Are there different bodies taking part in disciplinary proceedings against judges (i.e. body with investigative functions and body with decision-making powers as regards finding a disciplinary violation and determining a disciplinary sanction)?

At the end of 2021, changes were made to the legislation on disciplinary proceedings against judges in Ukraine, and a service of disciplinary inspectors was established under the High Council of Justice, which should exercise the powers of the High Council of Justice to conduct disciplinary proceedings against judges and act according to the principle of functional independence from the High Council of Justice (that is, it should be a separate independent unit). This service of disciplinary inspectors examines complaints filed against judges and draws up relevant conclusions, which it submits to the High Council of Justice. In turn, the High Council of Justice makes a decision on bringing judges to disciplinary responsibility. Currently, a service of disciplinary inspectors has not yet been fully formed.

10. How are the independence and impartiality of all above-mentioned bodies or officials/persons guaranteed in order to avoid any political, personal or otherwise biased attitudes (i.e. safeguards during their election/appointment, possibilities of recusal, etc.)?

The independence and impartiality of the service of disciplinary inspectors of the High Council of Justice is guaranteed in the following manner:

- a special order and term of appointment to the position of disciplinary inspector and the absence of the right to re-election;
- a ban on membership in political parties, trade unions, participation in political activities, performance of other paid or public works, except scientific, teaching and creative work;
- a special procedure for prosecution, detention, arrest, search (not possible without the consent of the High Council of Justice);
- the impossibility of dismissal from the office at the initiative of the High Council of Justice, except for cases provided for by law;

- granting the right to freely receive from any bodies and organisations, citizens and their associations, the information necessary for carrying out disciplinary proceedings;
 - independence from any bodies or officials, except for the High Council of Justice.
- Thus, the service of disciplinary inspectors of the High Council of Justice has a sufficient level of independence and impartiality to avoid any political, personal or other biased attitude towards judges who are the subject of disciplinary proceedings.

III. Grounds for initiation of disciplinary proceedings against judges

11. What are the formal grounds, established by law, decrees, regulations and/or rules, for initiating disciplinary proceedings against judges in your country (e.g. serious negligence, malicious conduct and other wrongdoings)?

The Law of Ukraine "On the Judiciary and the Status of Judges" defines 25 grounds for bringing a judge to disciplinary responsibility, which include, in particular, illegitimate denial of access to justice or violation of procedural law; unreasonable delay or failure to ensure consideration of the case, failure to produce or failure to provide a court decision; misconduct, violation of judicial ethics or showing disrespect to others; gross violation of human rights or other legislation, which leads to negative consequences; disclosure of a secret protected by law or information from a closed court session; failure to provide a notification of interference with his or her activities in relation to the administration of justice.

12. Are these formal grounds clearly defined and exhaustive or is there any room for wider interpretation and/or application? Are there, or could there be, any other grounds (i.e. *ad hoc* grounds) for initiating disciplinary proceedings against judges? Is the principle of *nulla poena sine lege praevia* applied (prohibiting *ex post facto* laws and the retroactive application of law)?

The grounds for disciplinary action against a judge are clearly defined in the Law of Ukraine "On the Judiciary and the Status of Judges" and are exhaustive. There is no possibility of their broader interpretation or application. As a general rule, the principle of retroactive effect of the law in time is not applied, as it contradicts the Constitution of Ukraine, which enshrines the principle of irreversibility in time of laws and other legal acts.

13. Is there an initial review of a complaint by a person/body to see if it has any merit before it goes for a review by disciplinary body? Are there any formally established conditions/circumstances which rule out disciplinary proceedings against a judge? Is it possible to terminate such proceedings at early stages? If so, in what conditions/circumstances?

Yes, the Law of Ukraine "On the High Council of Justice" stipulates that a preliminary check of a disciplinary complaint against a judge for compliance with the requirements of the law is carried out by a disciplinary inspector of the High Council of Justice, which (which or who - якщо інспектор визначається автоматично, то who) is determined by an automated case distribution system.

The same law defines the grounds for returning a disciplinary complaint, as well as for refusing to initiate a disciplinary case.

At the stage of examination of the complaint, the disciplinary inspector can make a decision to leave the complaint unexamined or return it to the complainant, and if there are grounds for initiating (or in other cases) - to transfer the case materials together with the conclusion to the Disciplinary Chamber of the High Council of Justice.

A decision to refuse to initiate a disciplinary case is made in case: the complaint against the judge's actions is unfounded or does not contain signs of disciplinary misconduct; the complaint was submitted after the expiration of the statute of limitations; the complaint was submitted in violation of the requirements for form and content; the complaint against the judge's actions was filed again on the same grounds on which the decision to terminate the disciplinary proceedings or to refuse to initiate it was made earlier.

IV. The process of disciplinary proceedings against judges

14. What is the formal step for initiating disciplinary proceedings against judges, and how is it then taken forward?

Disciplinary proceedings are initiated after the High Council of Justice receives a complaint about a judge's disciplinary misconduct, with a notification of a judge's disciplinary misconduct (disciplinary complaint) or at the initiative of the Disciplinary Chamber of the High Council of Justice or at the request of the High Qualification Commission of Judges of Ukraine.

Further, the disciplinary complaint is submitted to disciplinary inspectors for preliminary verification of its compliance with the requirements of the law, study of materials for preparation of a conclusion within 30 days from the date of receipt of the complaint. Further, the materials on the disciplinary complaint, together with the conclusion of the disciplinary inspector, are submitted to the Disciplinary Chamber of the High Council of Justice for adoption of a conclusion on the opening of proceedings, review of the complaint and decision-making within 90 days.

15. Are there different phases in disciplinary proceedings against judges and which bodies or officials/persons lead each phase (i.e. investigative phase, consideration phase, decision-making phase)?

Disciplinary proceedings against judges in Ukraine can be divided into the following stages:

- preliminary review of the disciplinary complaint by the disciplinary inspector of the High Council of Justice and resolution of the issue of compliance of the complaint with the requirements of the law;
- preparation of a disciplinary case for consideration: requisitioning materials from bodies and organizations for the purpose of studying and drawing up a conclusion;
- consideration of the case by the Disciplinary Chamber of the High Council of Justice and adoption of a decision on the complaint.

16. Are there any measures applied to judges once the disciplinary proceedings start and are there any circumstances in which a judge can be suspended pending resolution of the disciplinary process? If so, please furnish details.

The legislation of Ukraine provides that a judge may be temporarily removed from the administration of justice by a decision of the High Council of Justice: 1) in connection with criminal prosecution; 2) when conducting a qualification assessment; 3) in order to apply disciplinary sanctions. Temporary removal of a judge from administration of justice for other reasons is not allowed.

Therefore, suspension from duties cannot be applied to a judge until the disciplinary process is completed.

17. What are the possibilities for a judge to take part in the different phases of disciplinary proceedings against him/her and what kind of formal actions or measures can he/she request?

During the disciplinary proceedings, the judge:

- can take part in the consideration of the case independently and/or through his or her representative;
- has the right to get acquainted with the draft conclusion drafted by the disciplinary inspector of the High Council of Justice - the speaker and the materials of the disciplinary case;
- must be informed about the meeting of the Disciplinary Chamber no later than 10 days before the day of its holding, in particular, by placing relevant information on the official website of the High Council of Justice;
- has the right to provide written explanations on the substance of the complaint;
- the judge, as well as all participants in the proceedings, has the right to submit evidence, provide explanations, request to call witnesses, ask questions to the participants in the disciplinary case, express objections, make other requests or objections, get acquainted with the case materials;
- has the right to appeal against the decision of the Disciplinary Chamber in a disciplinary case to the High Council of Justice within 10 days;
- has the right to appeal to the court the decision of the High Council of Justice, adopted as a result of the review of the appeal against the decision of the Disciplinary Chamber of the High Council of Justice.

18. How is the principle of presumption of innocence applied in the course of disciplinary proceedings?

In its decisions, the Supreme Court noted that "the principle of presumption of innocence cannot be extended to disciplinary and other proceedings, which are covered by the concept of a dispute regarding rights and obligations of a civil nature."

19. Are there formal time limits to start and conclude disciplinary proceedings against judges? If so, what are the limits applied in your system?

The legislation of Ukraine provides that the day of initiation of disciplinary proceedings is the day the High Council of Justice receives the corresponding disciplinary complaint or the day the Disciplinary Chamber of the High Council of Justice adopts a decision to initiate a corresponding disciplinary case on its own initiative or the day the High Council of Justice receives the corresponding appeal of the High Qualification Commission of Judges of Ukraine.

The Disciplinary Chamber of the High Council of Justice considers a disciplinary case within 90 days from the day of its opening. This period may be extended by the Disciplinary Chamber of the High Council of Justice for no more than 30 days in exceptional cases, in the event of the need for additional verification of the circumstances and/or materials of the disciplinary case.

The total duration of disciplinary proceedings may not exceed 18 months from the day the High Council of Justice receives the corresponding disciplinary complaint till the day the Disciplinary Chamber adopts a decision to bring a judge to disciplinary liability or to refuse to bring a judge to disciplinary liability, without taking into account the time when the disciplinary case was suspended. In case of violation of the specified term, the disciplinary

proceedings shall be terminated by a decision of the Disciplinary Chamber of the High Council of Justice.

20. How is the final decision on the disciplinary liability of a judge taken (by which body or official/person; following which procedure, such as voting, etc.)?

Based on the results of consideration of the disciplinary case, the Disciplinary Chamber of the High Council of Justice makes a decision to bring the judge to disciplinary liability or to refuse to bring the judge to disciplinary liability. This decision is adopted by open roll-call voting by a simple majority of votes.

21. Are disciplinary proceedings against a judge affected in any way by other court proceedings (i.e. criminal, civil, administrative) for the same offence committed by the judge concerned? If so, please specify.

The legislation of Ukraine does not provide for the direct influence of other court proceedings, whether criminal, civil or administrative, on the disciplinary proceedings against a judge. However, if another court proceedings concern the same facts that may bring a judge to disciplinary liability, the results of such proceedings may be taken into account when considering a disciplinary case. For example, if a judge is convicted of a corruption crime, this may be grounds for his or her dismissal from office.

22. What are the possibilities for a judge to appeal a decision on his/her disciplinary liability? Does an appeal have suspensive effect on the consequences of such a decision?

According to the legislation of Ukraine, a judge against whom a decision of the Disciplinary Chamber of the High Council of Justice was passed has the right to appeal this decision exclusively to the High Council of Justice within 10 days. The complainant also has the right to appeal the decision, but with the permission of the Disciplinary Chamber of the High Council of Justice.

From the date of adoption by the Disciplinary Chamber of the High Council of Justice of a decision to apply a disciplinary penalty in the form of a motion to dismiss a judge from the office, the judge is automatically suspended from administering justice until the High Council of Justice adopts a decision on his or her dismissal from office or annulment of the decision of the Disciplinary Chamber of the High Council of Justice.

The decision of the High Council of Justice, adopted as a result of the review of the appeal against the decision of the Disciplinary Chamber of the High Council of Justice, may be appealed to the court both by the judge in respect of whom the decision of the Disciplinary Chamber was adopted, and by the complainant.

23. Can a judge participate in the disciplinary hearings at the appeal stage? What is the extent of the judicial review (e.g. existence of a public hearing at some moment of the appeal proceedings, possibilities for the appeal bodies to assess the factual evidence, other pertinent aspects)?

The review by the High Council of Justice of the decision of the Disciplinary Chamber takes place according to the same principle as the consideration of the complaint itself on the merits, namely: the review of the decision is carried out by the High Council of Justice in an open meeting, in which the disciplinary inspector of the High Council of Justice participates – the rapporteur, judge, complainant, their representatives. Depending on the arguments of the complaint, factual evidence in the disciplinary case may be evaluated.

The non-appearance of the complainant does not prevent consideration of the disciplinary case. The judge has the right to provide written explanations on the merits of the complaint.

24. Does the appeal phase concern not only the decision on judge's disciplinary liability, but also the specific sanction imposed, and can this sanction be replaced by another one (e.g. confirming the disciplinary liability but replacing the sanction)?

Yes. As a result of considering the appeal against the decision of the Disciplinary Chamber, the High Council of Justice may, in particular, change the decision of the Disciplinary Chamber by applying a different type of disciplinary penalty.

25. After a first instance appeal, can a judge take his/her case for further appeal to higher judicial bodies and up to which level?

Yes. The decision of the High Council of Justice, adopted as a result of the review of the appeal against the decision of the Disciplinary Chamber, may be appealed to the Cassation Administrative Court within the Supreme Court. This court decision is reviewed by the Grand Chamber of the Supreme Court within the scope of the appeal.

26. Can the body which initiated liability proceedings (see section II, question 4) lodge an appeal against a decision which it does not consider satisfactory (e.g. acquittal of the judge concerned or sanction considered too lenient)?

If the decision of the High Council of Justice was appealed by a party in disciplinary proceedings to the Cassation Administrative Court within the Supreme Court and it made a decision to annul the decision of the High Council of Justice, the latter has the right to appeal to the Grand Chamber of the Supreme Court with an appeal against the decision of the Cassation Administrative Court.

V. Disciplinary sanctions against judges

27. As regards the disciplinary sanctions against judges, please briefly describe the following:
- is there an easily accessible and exhaustive list of such sanctions clearly defined in a legal text;

Yes. The Law of Ukraine "On the Judiciary and the Status of Judges" defines a comprehensive list of types of disciplinary action that can be applied to a judge.

- is it clearly defined in such a legal text which disciplinary sanction applies in which case;
- or it is left to the discretion of the decision-making body, with room left for interpretation and/or application of sanctions.

Yes. The same norm of the Law of Ukraine "On the Judiciary and the Status of Judges" defines cases in which certain types of disciplinary sanctions may be applied to judges.

28. In any case, are there requirements related to deciding which sanction applies (e.g. the proportionality of the sanction to the violation committed, or other requirements)?

Yes. The Law of Ukraine "On the Judiciary and the Status of Judges" provides that when selecting the type of disciplinary sanction against a judge a nature of a disciplinary offence, its implications, judicial personality, the extent of his or her guilt, availability of other disciplinary sanctions, other circumstances which influence the possibility of disciplining a judge shall be taken into account. A disciplinary sanction shall be imposed taking into account the principles of proportionality.

29. In particular, how is the principle of proportionality safeguarded and are there concrete criteria and/or (binding) links between certain violations and sanctions? If dismissal from office is a possible sanction, are extra circumstances foreseen for it?

Disciplinary bodies of the High Council of Justice must justify their decisions on bringing judges to disciplinary liability taking into account the principle of proportionality, which is an element of the general legal principle of the rule of law and a method of proper legal argumentation.

Taking into account the requirements of the legislation of Ukraine, there are certain criteria and connections between the violation and the sanctions that are imposed on the judge as a disciplinary sanction, but they depend on the circumstances of each specific case.

Dismissal is the most severe form of disciplinary action that can be applied to a judge for disciplinary misconduct. This penalty can be applied only in the presence of additional circumstances, which are enshrined in the Law of Ukraine "On the Judiciary and the Status of Judges".

30. Is it specifically ruled out that if a judge's verdict in any court case is reversed on appeal, his/her disciplinary liability will not be invoked?

The Law of Ukraine "On the Judiciary and the Status of Judges" provides that the annulment or change of a court decision does not result in disciplinary liability of the judge who took part in its adoption, except for cases when the annulled or changed decision was adopted as a result of a deliberate violation of the law or improper treatment of official duties.

VI. Vetting and other forms of liability and sanctions/measures against judges

31. Does vetting exist in your country and in what terms (what is its definition), or is it being considered for introduction and in what terms?

In 2014, in Ukraine, after the "Revolution of Dignity", the Parliament (Verkhovna Rada) of Ukraine adopted 2 lustration laws - "On the restoration of trust in the judiciary in Ukraine" and "On government cleansing". The first law applied only to judges, while the second law applied to all public officials, including judges. The main task of the law was to increase the authority of the judicial system by dismissing judges who were involved in issuing court decisions that violated the constitutional rights and freedoms of citizens in the period from November 30, 2013 to February 23, 2014.

In a general sense, lustration in Ukraine is a process that limits access to public service and work in local self-government bodies for persons who held leadership positions under previous political regimes, employees of the special services of the former USSR, as well as for persons suspected of involvement in corruption.

32. It is quite common that when vetting is introduced, the initiator of this extraordinary procedure argues that the ordinary means, including disciplinary proceedings, do not work. Therefore, can the CCJE members from countries where vetting was introduced in the past

or where it can or is to be introduced, provide information on the reasons that are identified in their country justifying that disciplinary proceedings are not sufficient?

As mentioned above, lustration in Ukraine, particularly regarding judges, was one of the demands of the "Revolution of Dignity", which took place at the end of 2013 and the beginning of 2014. This process was intended to remove from office the persons who violated the rights and freedoms of citizens, cooperated with the regime of the then President Yanukovich or with foreign special services, participated in falsifying elections or denounced political connections.

33. What is your own general opinion on vetting (advantages and disadvantages)?

The advantages of lustration conducted in Ukraine include the following:

- partial restoration of trust in the judiciary in Ukraine, which was discredited during the Yanukovich regime;
- removal from office of persons who violated the rights and freedoms of citizens, cooperated with the regime of the then President Yanukovich or with foreign special services;
- creation of conditions for a professional and independent judiciary, which must meet international standards and ensure the protection of the rights and legitimate interests of citizens.

Along with the advantages, it is possible to highlight certain disadvantages, namely:

- insufficient resources for conducting lustration, lawsuits following the consequences of its conduct, public criticism;
- the possibility of violation of the principle of independence of judges, if lustration is carried out without objective criteria, guarantees of a fair trial and the right to appeal;
- the risk of a shortage of personnel in the judicial system, if lustration affects a significant part of judges, and new personnel will not be able to pass the appropriate examination and training.

34. In addition to vetting, is there a possibility in your country to invoke other forms of liability against judges outside the scope of disciplinary proceedings and/or apply sanctions/measures in various situations (e.g. suspension from office, ethical or other measures)? Please specify. Please note that this question is **not** about ordinary civil, administrative or criminal liability.

In Ukraine, there is a possibility of applying such a measure as a temporary suspension of a judge from the administration of justice outside of disciplinary proceedings - in the event of a criminal case against the judge, as well as during a qualification assessment.

35. In the case of vetting or other forms of liability as mentioned above, which body is in charge? Is it the same body as for disciplinary proceedings or a different body?

According to the Law of Ukraine "On government cleansing", the organisation of the inspection of judges is entrusted to the head of the court in which the judge works. According to the Law of Ukraine "On the restoration of trust in the judiciary in Ukraine", the examination of judges is carried out by the Temporary Special Commission for the Examination of Judges of Courts of General Jurisdiction, which is formed under the High Council of Justice, within 1 year from the date of formation of this commission.

36. What is the composition of such a body and how is it constituted (elected or appointed, by whom, etc.)?

The Temporary Special Commission for the review of judges is formed in the composition of 15 members, of which 5 members are elected by the Plenum of the Supreme Court of Ukraine from among retired judges who, during the last 5 years of their tenure as judges, did not hold administrative positions in courts, and are not members of any political party, as well as 5 members each appointed by the Government Commissioner for Anti-corruption Policy and the Parliament of Ukraine. People's deputies of Ukraine, elected to the Parliament of Ukraine of the 7th convocation, civil servants, acting judges, persons who have worked in positions in law enforcement bodies for the past 10 years, have been held administratively liable by the court for corruption offences or for criminal liability.

37. What is the procedure carried out by such a body for vetting or imposing other forms of liability on judges as mentioned above?

A meeting of the Temporary Special Commission is authoritative if the majority of its total members are present. This commission makes decisions by majority vote of those present at the meeting.

The temporary special commission may request from the relevant court or law enforcement body copies of the materials of completed court cases, review pending court cases, make copies of them, receive explanations from the judges who made the decision that is subject to review, and from the judges, who held administrative positions in the court where the judge worked at the time of the adoption of the decision, which is the subject of consideration by the Temporary Special Commission, to make appropriate requests, study the personal files of the judges, in respect of whom the inspection is being carried out.

Based on the results of the examination of judges, the Temporary Special Commission adopts a conclusion, which must be substantiated and which is published on the official website of the High Council of Justice. This conclusion, together with the inspection materials, is sent to the High Council of Justice for review and decision-making by it.

38. Which sanctions/measures can be imposed against judges by such a body and is the principle of proportionality applied?

If the Temporary Special Commission establishes circumstances that indicate a violation of the judge's oath by the judge, the materials are sent to the High Council of Justice to take appropriate measures (dismissal of the judge).

In the event that, based on the results of the inspection, the Temporary Special Commission has not established facts that indicate a violation of the judge's oath by the judge, and found grounds for bringing the judge to disciplinary liability, the inspection materials are sent to the High Council of Justice or the High Qualification Commission of Judges of Ukraine. And in the event that the Temporary Special Commission establishes the presence of signs of a criminal offence in the judge's actions, the materials are sent to the General Prosecutor's Office of Ukraine for verification of the judge's actions for the presence of signs of a criminal offence in his actions.

39. Can a judge appeal against an unfavourable decision of such a body?

A judge has the right to appeal in court only the decision of the High Council of Justice, which was adopted as a result of consideration of the conclusion of the Temporary Special Commission.

VII. Problems and challenges

40. Are there, in your opinion, any problems or challenges in your country concerning the disciplinary liability of judges (e.g. grounds for such liability; disciplinary proceedings or the bodies in charge; the sanctions applied; the possibility of appeals, etc.)?

Based on the analysis of the legislation of Ukraine regarding the disciplinary liability of judges, it is possible to conclude that there are some problems (challenges) related to the disciplinary liability of judges, namely:

- lack of correlation between the disciplinary liability of judges and the administrative liability of other civil servants;
- insufficient justification and proportionality of disciplinary sanctions applied to judges;
- the impossibility of appealing to the court the decisions of the disciplinary chambers of the High Council of Justice.
- the actual application of other institutions for the examination of judges (lustration, qualification evaluation), which is essentially a disciplinary penalty.

41. If so, what kind of solutions can you suggest for overcoming these problems or challenges?

To overcome these problems (challenges), it is necessary to continue to improve the legislation on the disciplinary liability of judges, namely:

- legally define the disciplinary liability of judges as a type of administrative liability, which involves the application of general principles of administrative law;
- to develop and implement a single methodological approach to checking the integrity of judges, which would take into account international standards and recommendations on these issues, as well as a single methodological approach to the application of disciplinary sanctions;
- to expand the possibilities of appealing the decisions of the disciplinary chambers of the High Council of Justice, in particular, providing for a possibility of appeal to the Supreme Court.

