

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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**CONSULTATIVE COUNCIL OF EUROPEAN JUDGES
(CCJE)**

Opinion of the CCJE Bureau

**following a request by the Association of European Administrative
Judges (AEAJ) as regards the systemic deficiencies of the
disciplinary accountability of judges
of the Administrative Court of Vienna, Austria**

INTRODUCTION

1. The CCJE Bureau received, on 31 May 2025, a request from the Association of European Administrative Judges (AEAJ)¹, together with the two Austrian associations of administrative judges: the Verwaltungsrichter-Vereinigung (VRV)² and the Dachverband der Verwaltungsrichter und richterinnen (DVVR)³, concerning the systemic deficiencies of the disciplinary accountability of judges of the Administrative Court of Vienna. It should be noted that the organisation of administrative courts varies from one province to the other owing to the federal organisation of the state, and that this request focuses on the situation in the Province of Vienna.
2. The AEAJ had previously submitted a request in 2019 concerning the legal position of the president (vice-president) of the Administrative Court of Vienna. In this regard, on 29 March 2019, the CCJE Bureau adopted an Opinion⁴ in which it agreed with the AEAJ that the provisions of the legislation on the role, position, organisational setting and powers of the president (vice-president) of the Administrative Court of Vienna deviated in some regards from European standards, and that as a consequence, judicial independence may in some respects be undermined.
3. In light of these shortcomings, the CCJE Bureau accordingly recommended the following in 2019:
 - The selection and appointment procedure of the president and vice-president of the Administrative Court of Vienna, which remained within the full discretionary power of the executive branch, should be the same as for the other judges of this court;
 - As regards a Council for the Judiciary or an equivalent body, which provides for the consultation and participation of judges in selection and appointment procedures, the CCJE Bureau emphasised the importance of implementation of Recommendation CM/Rec(2010)12 of the Committee of Ministers on judges: independence, efficiency and responsibilities, in particular of its paragraphs 8 and 26-29;
 - The broad powers of the president of the Administrative Court of Vienna should be complemented by criteria for their application and exercised in transparency;
 - This was of particular importance as regards the role of the president in supervising administrative measures and in initiating disciplinary procedures;

¹ <https://www.aejaj.org>.

² www.verwaltungsrichter.at.

³ <https://dvvr.at>.

⁴ CCJE-BU(2019)3, see this Opinion at <https://rm.coe.int/opinion-29-march-2019-austria-2019-final/168093c034>.

- The situation as regards the possible subordination of the president (vice-president) of the Administrative Court of Vienna to the orders of the Government of the Province of Vienna in matters of judicial administration was unclear and should at least be clarified and, if it existed, be abolished through a change in legislation.
4. In their request submitted on 31 May 2025, the AEAJ, VRV and DVVR, while thanking the CCJE Bureau once again for its Opinion in 2019, highlight that in the intervening period, the Rule of Law Reports of the European Commission (2020 - 2024) consistently refer back to this Opinion and emphasised the ongoing structural weaknesses in the Administrative Court of Vienna. However, no legislative or practical changes have been implemented to date addressing these concerns.
 5. The AEAJ, VRV and DVVR also submitted to the CCJE Bureau additional information, on 11 July 2025, where they confirmed all of the above and also stressed that the president of the Administrative Court of Vienna was bound by instructions of the executive branch (i.e. the Government of the Province of Vienna) in matters of judicial administration, and this was particularly concerning in relation to disciplinary proceedings initiated against judges of that court where the power of initiation rests with the President.
 6. In additional information provided, the AEAJ, VRV and DVVR further underlined a number of problematic aspects regarding the disciplinary liability of judges of the Administrative Court of Vienna raised in their initial request of 31 May 2025, and requested the CCJE Bureau to examine them from the point of view of CCJE standards recently adopted in CCJE Opinion No. 27 (2024) on the disciplinary liability of judges.
 7. Having examined this request of the AEAJ, VRV and DVVR, the CCJE Bureau has adopted the below Opinion which provides a legal analysis of the concerns expressed by these associations, followed by corresponding conclusions and recommendations.
 8. At the outset, the CCJE Bureau wishes to highlight that its Opinion is based on the request made by the AEAJ, VRV and DVVR. Its purpose is to underscore relevant standards of the CCJE in the areas covered by the said request rather than examine the detail of the legislation and regulations mentioned in it or take a position as to whether the points raised are well-founded.

O P I N I O N

A. General observation regarding relations between the president of the Administrative Court of Vienna and the Government of the Province of Vienna

9. As emphasised by the AEAJ, VRV and DVVR, the president of the Administrative Court of Vienna is bound by instructions the Government of the Province of Vienna in matters of judicial administration which raises serious concerns due to the broad powers of the president, including his/her role in proceedings related to the disciplinary liability of judges.

10. It is further noted by the AEAJ, VRV and DVVR that the Administrative Court of Vienna exercises legal review of the decisions of the Government of the Province of Vienna. This dual function is of particular concern given that the latter can give instructions to the president of this court and is in control of all resources at the disposal of this court.
11. While such instructions must relate to matters of judicial administration and not interfere with the adjudication of cases by judges of this court, their exact scope remains unclear and non-transparent. Even in situations where such instructions remain within the framework of court administration, they may be perceived as having significant influence – whether directly indirectly - on the president of the court in all matters, including those beyond the remit of court administration.
12. The CCJE has dealt in depth with the role of court presidents in its Opinion No. 19 (2016). In its Opinion, the CCJE first emphasised that “the main duty of court presidents must remain to act at all times as guardians of the independence and impartiality of judges and of the court as a whole.”⁵
13. In relation to the administrative (managerial) role of court presidents, the CCJE has pointed out that “the relations of court presidents with other organs of the state should be based on the fundamental principle of equality and separation of state powers. In some countries, the executive power exerts, through Ministries of Justice, considerable influence on the administration of courts through directors of courts and judicial inspections. The CCJE has taken the position that the presence of officials of the executive within the organising bodies of courts and tribunals should be avoided. Such a presence can lead to interferences with the judicial function, thus endangering judicial independence. In any event, in such cases, court presidents have an important role to prevent possible interferences into the court activities by the executive.”⁶
14. Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe on judges: independence, efficiency, and responsibilities (CM/Rec(2010)12) also established that “the administration of courts should help improve efficiency and preserve the independence and impartiality of judges”.⁷
15. **Therefore, the provision of any mandatory instruction to the President of the Administrative Court of Vienna by any executive authority, including the Government of the Province of Vienna, is of considerable concern to the CCJE Bureau, particularly given the sensitivity of the issue of disciplinary proceedings, the importance of protecting the independence of the court president and the judiciary together with their duty to act impartially, and of preserving public trust and confidence in the judiciary.**
16. **The broad powers of the President of the Administrative Court of Vienna jeopardise the inherent rights of members of the judiciary to act independently**

⁵ CCJE Opinion No. 19 (2016) on the role of court presidents, para 7.

⁶ CCJE Opinion No. 19 (2016) on the role of court presidents, para 11.

⁷ Recommendation CM/Rec(2010)12, Explanatory Memorandum, para 46.

and impartially and risk actual or perceived influence and/or interference by the executive authorities. More specifically, in disciplinary proceedings brought against judges, where such powers could be directly or indirectly influenced - or perceived as influenced - by instructions emanating from the province executive, the issue is further problematic. Therefore, there must be no legislative provision or regulation binding the President of the Administrative Court of Vienna by the instruction of any executive authority, including the Government of the Province of Vienna.

B. The role of the president of the Administrative Court of Vienna in proceedings related to the disciplinary liability of judges

17. The AEAJ, VRV and DVVR report that the power to initiate disciplinary proceedings against judges remains under the sole control of the court president. This procedure effectively positions the court president as the gatekeeper of disciplinary actions.
18. Moreover, there are no precise provisions or procedures governing the initiation of disciplinary investigations. The president may in fact initiate proceedings on the basis of a complaint that can be made by anyone, including anonymous complaints. There is no transparency on criteria used in this context, and this may lead to potential inconsistencies in the handling of similar cases.
19. Another concern of the AEAJ, VRV and DVVR is the power of the court president to appoint a judge of his/her court as investigating commissioner once the president decides that there is a well-founded suspicion of a breach of duty by a judge against whom disciplinary proceedings are initiated.
20. Thus, the president has the power to both initiate disciplinary proceedings and to appoint an investigating commissioner, without any transparent selection criteria. Moreover, the latter is bound by the instructions of the court president in this role.
21. Another area of concern is the lack of guidance and/or codification of disciplinary violations leading to a lack of transparency between disciplinary proceedings and professional evaluations.
22. As the AEAJ, VRV and DVVR have emphasised, all the above-mentioned concerns are particularly grave because of the subordination of the court president to instructions of the provincial government.
23. The CCJE has recommended that member states have a specific investigatory body or person with the responsibility for receiving complaints, for obtaining the representations of the relevant judge and for considering in their light whether or not there is a sufficient case against the judge to call for the initiation of such proceedings. The investigatory body should be free from any political influence.⁸

⁸ CCJE Opinion No. 27 (2024) on the disciplinary liability of judges, para 19.

24. The CCJE has emphasised that the law should define expressly and as far as possible in specific terms, the grounds on which disciplinary proceedings against judges may be initiated. A judge's decision in proceedings including the interpretation of the law, assessment of facts, weighing of evidence and/or departing from established case law, must not give rise to disciplinary liability except in cases of malice, wilful default, or serious misconduct.⁹
25. The CCJE has further recommended that any abuse or perceived abuse of disciplinary proceedings be avoided and, for this purpose, that the initiation of disciplinary proceedings must rest on valid legal grounds. The grounds have to meet valid legal criteria, i.e. they must be clearly defined, precise and foreseeable in their application, so as to allow a judge to foresee to a reasonable degree the disciplinary consequences which a given action may entail. This legal certainty supports the independence of a judge.¹⁰
26. The CCJE has also stressed that all general procedural guarantees enshrined in Article 6 of the European Convention on Human Rights (ECHR) apply to disciplinary proceedings against judges, and that member states must prescribe clear procedural rules in law that apply to disciplinary proceedings against judges.¹¹
27. The CCJE has therefore underlined that judges must have the opportunity to effectively participate in disciplinary proceedings against them. Judges are entitled to be informed and to be heard, and to defend themselves, and the CCJE has called on member states to ensure that equality of arms is established in adversarial proceedings.¹²
28. **Taking into account the above-mentioned standards, the CCJE Bureau recommends that, first and foremost, the President of the Administrative Court of Vienna must not be bound by any instruction of any executive authority, including the Government of the Province of Vienna.**
29. **Furthermore, even if the president is free from such instruction, the CCJE Bureau recommends the following in order to preserve the internal (functional) independence of judges:**
 - **Any power of the president to initiate disciplinary investigations or any invitation of disciplinary proceedings must be based on a clearly defined, precise and consistent legal framework including both procedural and substantive aspects of the whole disciplinary process;**
 - **Any power of the president to appoint an investigating commissioner should not be accompanied by the power of the president to give instructions to this**

⁹ CCJE Opinion No. 27 (2024) on the disciplinary liability of judges, para 28; see also Recommendation CM/Rec(2010)12, para 66; CCJE Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, para 60.

¹⁰ CCJE Opinion No. 27 (2024) on the disciplinary liability of judges, para 33.

¹¹ CCJE Opinion No. 27 (2024) on the disciplinary liability of judges, para 34.

¹² CCJE Opinion No. 27 (2024) on the disciplinary liability of judges, para 35.

commissioner. The latter should be able to exercise his/her authority independently both from the judicial and executive, as well as from any other authorities;

- The judge against whom the disciplinary proceedings have been initiated should be able to participate in them at every stage, including the investigatory phase, and should be able to defend himself/herself within the framework of adversarial proceedings;
- The grounds on which disciplinary proceedings against judges may be initiated should be defined clearly by law. Such grounds must exclude the interpretation of the law by the judge, his/her assessment of facts or weighing of evidence and/or departing from established case law, save and except in cases of malice, wilful default or serious misconduct.

C. The role of the disciplinary prosecutor in proceedings related to the disciplinary liability of judges of the Administrative Court of Vienna

30. The AEAJ, VRV and DVVR also underline another concern regarding the role and functions of the disciplinary prosecutor, who is selected and appointed by the Government of the Province of Vienna from among legally qualified civil servants of the province.
31. As the AEAJ, VRV and DVVR have highlighted, despite the fact that such prosecutors are not formally bound by instructions of the Government of the Province of Vienna, the structural setting of this role and the perceived or potential influence of the government raise legitimate concerns.
32. Such concerns are further exacerbated by the fact that the disciplinary prosecutor gives instructions to the investigating commissioner and acts as a disciplinary body, determining whether to refer the case to the disciplinary court by filing a disciplinary action or to refrain from continuing disciplinary action under certain circumstances. The disciplinary prosecutor can stop investigations and terminate the disciplinary proceedings if he/she concludes that the alleged violation cannot be substantiated or is considered as a minor fault.
33. The CCJE has underlined that it may pose a real risk in this respect when disciplinary prosecutors are appointed by the government or authorities linked to the government. Moreover, the investigatory body should be free from any political influence¹³ which may not be the case in Vienna given the appointment procedure of the disciplinary prosecutor.
34. **Therefore, taking into account the above-mentioned standards, the CCJE Bureau recommends that the disciplinary prosecutor is not appointed by any executive authority, including the Government of the Province of Vienna.**

¹³ CCJE Opinion No. 27 (2024) on the disciplinary liability of judges, para 19.

- 35. Furthermore, any such appointment should in all cases be accompanied by the guarantee of independence in the manner in which the prosecutor carries out his/her functions, free of any conflict of interest and within a legal framework that is clearly defined and consistent. This is essential for the impartial and consistent consideration of all disciplinary cases, and for reinforcing public trust and confidence in such disciplinary proceedings.**