**Independence of Judges and Lawyers**

**Disciplinary liability**

1. **What are the types of misbehavior that may give rise to disciplinary proceedings against judges? Are these violations codified in national legislation and/or professional codes of ethics?**
2. Section 78 (2) and Section 78 (3) of the Constitution provide for the removal of a Judge from office on grounds of misbehavior or inability to perform the functions of his office.

Section 78(2) and section 78 (3) of the Constitution read as follows:

*(2) A Judge of the Supreme Court may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehavior, and shall not be so, removed except in accordance with subsection (3).*

*(3) A Judge of the Supreme Court shall be removed from office by the President where the question of removing him from office has, pursuant to subsection (4), been referred to the Judicial Committee and the Judicial Committee has advised that the judge ought to be removed from office for inability or misbehavior.*

1. Moreover, the Mauritian Judiciary has established “Guidelines for Judicial Conduct” in 2002 which provide for standards of ethical conduct of judges. The ‘Judge’ includes a Magistrate or any person exercising judicial office however designated.

The main objectives of the Guidelines are to:

(a) ensure that Judges collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system; and

(b) to uphold public acceptance of, and confidence in, the moral authority and integrity of the judiciary.

1. The Guidelines are designed to provide guidance to judges and to afford a structure for regulating judicial conduct. They are to be applied in the light of all relevant circumstances and consistently with the requirements of judicial independence and the law. Moreover, they are intended to supplement, and not to derogate from, existing principles which bind the judge.

The values which these Guidelines uphold are:

1. propriety;
2. independence;
3. integrity;
4. impartiality;
5. equality; and
6. competence and diligence.
7. The Guidelines are based on the **Bangalore Principles of Judicial Conduct 2002** and any‘misbehavior’ under Bangalore Principles is applicable to Judges of Mauritius for the purpose of disciplinary liability.
8. **Please describe the procedure for bringing disciplinary complaints against judges. Who can initiate disciplinary proceedings against judges? Which body is responsible for receiving disciplinary complaints and conducting disciplinary investigations? Can decisions of the disciplinary body be appealed before a competent court?**
9. Section 78 (4) and Section 78 (5) of the Constitution provide for the disciplinary investigation process for removing a judge of the Supreme Court from office for inability or misbehavior.

The Sections read as follows:

***Section 78***

*(4) Where the Chief Justice or, in relation to the removal of the person holding the office of Chief Justice, the President considers that the question of removing a Judge of the Supreme Court from office for inability or misbehavior ought to be investigated—*

1. *the President shall appoint a tribunal, which shall consist of a Chairperson and not less than 2 other members, selected by the President from among persons who hold or have held office as a Judge of a Court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a Court having jurisdiction in appeals from any such Court;*

*(b) the tribunal shall enquire into the matter and report on the facts to the President and recommend to the President whether the question of removing the Judge from office should be referred to the Judicial Committee; and*

 *(c) where the tribunal so recommends, the President shall refer the question accordingly.*

*(5) Where the question of removing a Judge of the Supreme Court from office has been referred to a tribunal under subsection (4), the President may suspend the Judge from performing the functions of his office; and any such suspension may at any time be revoked by the President and shall in any case cease to have effect—*

 *(a) where the tribunal recommends to the President that he should not refer the question of removing the Judge from office to the Judicial Committee; or*

*(b) where the Judicial Committee advises that the Judge ought not to be removed from office.*

1. As regards Magistrates, **Section 86 of the Constitution** provides for the Judicial and Legal Services Commission to appoint persons as legal and judicial officers, to exercise disciplinary control over such persons and to remove such persons from office. Procedure to remove the judicial or legal officer is regulated under the **Judicial and Legal Service Commission Regulations (GN 90/67)**.
2. In practice, the decision of removal mentioned at paragraph IV may be appealed against by way of Judicial Review or by way of appeal, depending on the nature of case entered **(vide Panday v Judicial and Legal Service Commission 2008 UKPC 52, 1 December 2008).**
3. **Please provide information on the disciplinary penalties that may be imposed on the judge if found guilty of a professional misconduct. Are these penalties codified in national legislation and/or professional codes of ethics?**
4. If the judge is found guilty of a professional misconduct, he will be removed from office under Section 78 of the Constitution.
5. **Please provide detailed information, including disaggregated data, on the number of judges that have been subject to disciplinary proceedings in the last ten years. How many of them were found guilty of a disciplinary misconduct? How many of them were removed from office?**
6. No Judge has been subject to disciplinary proceedings in the last ten years.

**Civil and criminal liability**

1. **Can a judge be subject to civil liability and/or criminal responsibility as a result of the exercise of his or her functions? If so, in which cases? Who may lodge a complaint against the judge? And which authority is responsible for adjudicating these cases?**
2. Section 30A of the Constitution provides for the privileges and immunities afforded to the President of the Republic, namely that “…*no civil or criminal proceedings shall lie against the President or the Vice-President in respect of the performance by him of the functions of his office or in respect of any act done or purported to be done by him in the performance of those functions…”.* However,these provisions have not been extended by the Constitution to Judges of the Supreme Court.
3. The Courts have given a wide interpretation to Chapter VI (sections 76 to 84) of the Constitution relating to the Judicature and this is now settled law. Judges enjoy full civil and criminal immunity in respect of any acts done in the exercise of their judicial functions.
4. The Supreme Court of Mauritius in the case of **Hurnam D. v Yeung Sik Yuen Y K J 2010 SCJ 373** held that “… *judicial immunity is an important element of judicial independence which itself is integral to the Rule of Law which in turn is one of the pillars on which our Constitution has been founded. The provisions enshrined in Chapter VII of our Constitution relating to the manner of appointment of Judges, their tenure of office, their removal from office for misbehavior, and their bounden duty “to do right to all manner of people after the laws and usages of Mauritius without fear or favor, affection or ill will” carry with them an implied personal immunity for Judges from civil suits for conduct in the exercise of their judicial function. So that over and above what is to be found in the common law, our Constitution allows Judges to perform their functions without fear or favor and without having to look over their shoulder or be distracted, should they decide one way or the other, safe in the knowledge that if they go wrong there will be an appellate court to set them right. And that is why the law has provided a remedy for any party who feels aggrieved by a judgment or order made by a Judge to appeal against that judgment or order. This immunity of Judges from process in respect of their judicial functions is indeed the very essence of the provisions contained in Chapter VII of our Constitution and prevents indirect pressure on, and indirect challenges, other than by way of appeal, to judicial decision-making.”*
5. It further endorsed the following Obiter Dicta from Lord Denning, MR, in Sirros v Moore [1974] 3 ALL ER 776 - “Ever since the year 1613, if not before, it has been accepted in our law that no action is maintainable against a judge for anything said or done by him in the exercise of a jurisdiction which belongs to him. The words which he speaks are protected by an absolute privilege. The orders which he gives, and the sentences which he imposes, cannot be made the subject of civil proceedings against him. No matter that the judge was under some gross error or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness, he is not liable to an action. The remedy of the party aggrieved is to appeal to a court of appeal or to apply for habeas corpus, or a writ of error or certiorari, or take some such step to reverse his ruling. Of course, if the judge has accepted bribes or been in the least degree corrupt, or has perverted the course of justice, he can be punished in the criminal courts. That apart, however, a judge is not liable for an action for damages. The reason is not because the judge has any privilege to make mistakes or to do wrong. It is so that he should be able to do his duty with complete independence and free from fear. It was well stated by Lord Tenterden, CJ in Garnett v Ferrand: This freedom from action and question at the suit of an individual is given by the law to the Judges, not so much for their own sake as for the sake of the public, and for the advancement of justice, that being free from actions, they may be free in thought and independent in judgment, as all who are to administer justice ought to be.”
6. **Immunity of Magistrates**

The Public Officers’ Protection Act provides for the immunity of magistrates, as public officers, for acts and omissions done by them in the exercise of his duties. However, there may be civil liability against a Magistrate for any act done in the execution of his/her office in very exceptional cases where the magistrate has exceeded his jurisdiction or where he acted maliciously and without any reasonable or probable cause. The relevant Sections of the Act have been reproduced at ***Annex I***.

1. **Please provide detailed information, including disaggregated data, on the number of judges that have been subject to civil/criminal liability proceedings in the last ten years. How many of them were found liable for judicial errors? What was the outcome of these proceedings?**
2. In ***Hurnam D v Yeung Sik Yuen [2010 SCJ 373],*** the Court of Appeal set aside the application of the applicant against the respondent (the then Chief Justice Yeung Sik Yuen) for an order committing the respondent for contempt in his capacity as Chief Justice.

*06/07/2020*

***Annex I***

***4.Limitations of actions***

*(1) Every civil or criminal action, suit, or proceeding, by a person, other than the State, for any fact, act or omission, against a—*

*(a)public officer in the execution of his duty;*

*(b)person engaged or employed in the performance of any public duty; or*

*(c)person acting in aid or assistance of the public officer or person mentioned in paragraphs(a) and (b), shall, under pain of nullity, be instituted within 2 years from the date of the fact, act, or omission which has given rise to the action, suit, or other proceeding.*

*(2)(a) No civil action, suit or proceeding shall be instituted, unless one month’s previous written notice of the action, suit, proceeding and of the subject matter of the complaint, has been given to the defendant.*

 *(b)No evidence shall be produced at the trial except of the cause of action as specified in the notice.*

1. *In default of proof at the trial that the notice under paragraph(a) has been duly given, the defendant shall be entitled to judgment with costs.*

*(3) Where—*

*(a) before the institution of any civil action, suit or proceeding, the defendant has offered to the complainant an indemnity which is determined to be sufficient by the Court before which the case is brought; or*

*(b)after any civil action, suit or proceeding has been commenced, the defendant has paid into Court a sum of money which the Court determines to be sufficient as damages or indemnity to the complainant,*

*the case shall be dismissed, subject to such order as to costs as the Court thinks just.*

*(4) Where, in any civil action, suit or proceeding, the Court certifies on the record that the defendant acted upon reasonable or probable cause, the plaintiff shall not be entitled to more than nominal damages, or to any costs.*

***5.Nominal penalty***

*(1) Where—*

1. *an information is filed against a public officer on account of a seizure; and*
2. *judgment is given against the defendant,*

*only a nominal penalty shall be imposed and the claimant shall not be entitled to any costs if the Court certifies on the record that there was reasonable or probable cause of seizure.*

*(2) In a civil action, suit or proceeding brought against the public officer in respect of the seizure, the plaintiff shall only be entitled to judgment for the things seized or their value, and not to damages or costs.*

***6.Action against Magistrate***

*(1)(a) Sections 4 and 5 shall apply to a civil or criminal action, suit or proceeding, brought against a Magistrate, or a clerk or officer of any district or other Court, for any act done by him, or for any omission, in the execution of his office.*

 *(b)Subject to sub section (2), the plaintiff shall also expressly allege that the act was done, or omission made, maliciously and without reasonable or probable cause.*

 *(c)Where the plaintiff fails to prove the allegation mentioned in paragraph(b), the defendant shall be entitled to judgment with treble costs.*

*(2) (a)Any person who has been injured by an act done—*

 *(i)by a Magistrate, clerk or officer in a matter in which he has no jurisdiction or in which he has exceeded his jurisdiction;*

*(ii)under any conviction made or warrant issued in a matter mentioned in subparagraph(i),*

*may maintain an action without averring and proving that it was done maliciously.*

 *(b)No action under paragraph(a) shall be brought for anything done under a conviction until the conviction has been quashed by a Court on appeal or otherwise.*

It was held in the case of Hurnam D v State of Mauritius and Anor 2011SCJ 317 that “… the issue as to whether a Judge enjoys immunity in the performance of his judicial function has already been the subject of a decision by the Supreme Court composed of two judges in D. Hurnam v The State of Mauritius [2003SCJ 54]. The Court pointed out that indeed in Mauritius, statutory immunity has only been expressly provided for to Magistrates by virtue of section 6 of the Public Officers’ Protection Act and no such provision exists regarding Judges. They, however, refer to Lord Denning’s dictum in Sirros v Moore [1974] 3 AER 776 about the importance of granting immunity to Judges when discharging their judicial function so that they may act with “complete independence and free from fear” whilst preserving the litigant’s right for remedy if called for by taking the appropriate and necessary action. The Court concluded that “It is because judicial officers enjoy such immunity that the State in turn cannot be held liable vicariously for the acts of a servant who is himself immune from legal proceedings”.

In this connection, the immunity to the State is confirmed by statutory provision as contained in section 2(5) of the State Proceedings Act (SPA) which reads as follows:

“No proceedings shall lie against the State by virtue of this section in respect of anything done, or omitted to be done, by a person while discharging or purporting to discharge responsibilities of a judicial nature vested in him, or responsibilities which he has in connection with the execution of judicial process”.

It was further held in this 2011 case that “The State (Defendant no.1) therefore cannot be held vicariously liable for any alleged fault committed by Defendant no.2 as a judicial officer.”

The following articles of the Code de Procédure Civile further provide for cases where an action may be brought against a Judge or Magistrate:

***TITRE TROISIEME***

***DE LA PRISE À PARTIE***

***505.*** *Les juges peuvent être pris à partie dans les cas suivants-*

*1° s'il y a dol, fraude ou concussion, qu'on prétendrait avoir été commis, soit dans le cours de l'instruction, soit lors des jugements;*

*2° si la prise à partie estexpressément prononcée par la loi;*

*3° si la loi déclare les juges responsables, à peine de dommages et intérêts;*

*4° s'il y a déni de justice.*

***506.*** *Il y a déni de justice, lorsque les juges refusent de répondre les requêtes, ou négligent de juger les affaires en état et en tour d'être jugées.*

***507.*** *Le déni de justice sera constaté par deux réquisitions faites aux juges, en la personne des greffiers, et signifié de trois en trois jours au moins pour les “District Magistrates” et de commerce, et de huit en huit jours au moins pour les autres juges: tout huissier requis sera tenu de faire ces réquisitions, à peine d'interdiction.*

***508.****Après les deux réquisitions, le juge pourra être pris à partie.*

***509.****La prise à partie contre les “District Magistrates”, contre les tribunaux de commerce ou de première instance, ou contre quelqu'un de leurs membres, et la prise à partie contre un juge d'appel ou contre un juge de la cour criminelle seront portées à la cour d'appel du ressort.*

*La prise à partie contre lescours criminelles, contre les cours d'appel ou l’une de leurs sections, sera portée à la haute-cour impériale, conformément à l'article101 de l'Acte des Constitutions de l'Empire, du 28 floréal an 13.*

***510.****Néanmoins aucun juge ne pourra être pris à partie, sans permission préalable du tribunal devant lequel la prise à partie sera portée.*

***511.****Il sera présenté, à cet effet, une requête signée de la partie, ou de son fondé de procuration authentique et spéciale, laquelle procuration sera annexée à la requête, ainsi que les pièces justificatives, s'il y en a, à peine de nullité.*

***512.****Il ne pourra être employé aucun terme injurieux contre les juges, à peine, contre la partie, de telle amende, et contre son avoué, de telle injonction ou suspension qu'il appartiendra.*

***513.****Si la requête est rejetée, la partie sera condamnée à une amende qui ne pourra être moindre de trois cents francs, sans préjudice des dommages et intérêts envers les parties, s'il y a lieu.*

***514.****Si la requête est admise, elle sera signifiée dans trois jours au juge pris à partie, qui sera tenu de fournir ses défenses dans les huit jours.*

*Il s'abstiendra de la connaissance du différend; il s'abstiendra même, jusqu'au jugement définitif de la prise à partie, de toutes les causes que la partie, ou ses parents en ligne directe, ou son conjoint, pourront avoir dans son tribunal, à peine de nullité des jugements.*

***515.****La prise à partie sera portée à l'audience sur un simple acte, et sera jugée par une autre section que celle qui l’aura admise: si la cour d'appel n'est composée que d'une section, le jugement de la prise à partie sera renvoyé à la cour d'appel la plus voisine par la cour de cassation.*

***516.****Si le demandeur est débouté, il sera condamné à une amende qui ne pourra être moindre de trois cents francs, sans préjudice des dommages-intérêts envers les parties, s'il y a lieu.*