**Mr. Justice Myron Michael Nicolatos, President of the Supreme Court**

**Questionnaire of the Special Rapporteur on the independence of judges and lawyers**

**Civil and criminal Liability**

**1. What are the types of misbehaviour that may give rise to disciplinary proceedings against judges? Are these violations codified in national legislation and/or professional codes of ethics?**

Judges have an important role in the Cyprus democratic system as the interpreters of the law and the keepers of Justice. Judicial ethics serve the twofold purpose of building trust in the administration of justice and guiding judges.

Under *section 6 of the Administration of Justice Act 0f 1964*, all Supreme Court Justices are permanent members of the Judiciary. Judges of the lower courts are also permanent members of the Judiciary. Under section 5 of the above law, a high moral standard is a necessary requirement for any lawyer to be qualified as a judge.

Under the *Procedural Rules on the Exercise of the Disciplinary Powers of the Supreme Council of Judicature of 2000*, any judge may be subjected to disciplinary proceedings where he/she may have become incapable, displayed inappropriate behaviour or committed a disciplinary offence.

The term “disciplinary offence” as defined in section 2 of the aforesaid Procedural Rules, includes the refusal, omission, or deviation in the performance of judicial duties and, in general, any unacceptable conduct. In particular, a severe breach of the provisions of the *Guide on Judicial Conduct* under the conditions laid down by paragraph 3 of the guide may constitute a disciplinary offence.

The Guide contains core guidelines and principles and particularly refers to the principles of independence, judicial immunity, impartiality, integrity and propriety, and aims to assist judges during the exercise of their duties and responsibilities.

Since the revision of May 2019 of the Procedural Rules, a serious breach of the *Guide to Judicial Conduct* may constitute a disciplinary offence, something which signifies the importance and value the Supreme Court (hereinafter referred to as the “Court”) attaches to this ethical guide and in general to the j conduct of all judges.

Additionally, whenever the Court finds it to be in the interest of justice, it may issue other guidelines as well, like the Judicial Practice issued on recusals which also provide a precious tool for all judges to use and lists the circumstances in which a judge must excuse himself/herself from deciding case.

Lastly, the *Procedural Rules on the Exercise of the Disciplinary Powers of the Supreme Council of Judicature of 2000* provide the circumstances under which a judge may be subjected to disciplinary proceedings.

**2. 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?**

The Constitution of Cyprus provides a strict separation of the executive, legislative and judicial branches. For this reason and pursuant to article 157§2 of the Constitution and section 10(2) of the Administration of Justice Act of 1964 (Law 33/64 as amended), the Supreme Council of Judicature (herein after referred to as the “Council”) has exclusive competence to appoint, promote, transfer, terminate appointments, dismiss and initiate disciplinary proceedings in relation to judges.

With the exception of their appointment to the Supreme Court, the Council has exclusive competence to determine matters relating to the retirement, dismissal or termination of the Supreme Court Justices. The Council is composed of the thirteen Justices of the Supreme Court of Cyprus [the President and twelve Justices as provided by section 10(1) of Law 33/64].

The disciplinary procedure is of a judicial nature and the judge or Justice concerned is entitled to be heard and present his or her case before the Council. The disciplinary proceedings are initiated by the Court which is the responsible body for receiving disciplinary complaints against judges and Justices. The disciplinary decisions of the Council are final and cannot be reviewed by the way of an administrative recourse according to the case law on the matter. The judge may however seek a reappraisal of his conviction or sentence by applying to the Council itself.

The Procedural Rules on the exercise of disciplinary powers of the Supreme Council of Judicature of 2000 (as amended) set out in detail the procedure followed by the Council in the exercise of its disciplinary competence. In particular, they provide the following:

When it comes to the notice of the Court, in the exercise of its competences or following a complaint in regard to a judicial officer that he or she may have become incapable, displayed inappropriate behaviour or committed a disciplinary offence, the Court notifies the judge (or Justice) on the matter or the complaint and sets a time-limit in order for the judge to submit his or her views.

Upon receipt of the judge’s views or on expiry of the specified time frame, in the event where the judge refuses or omits to submit his or her views, the Court proceeds to examine whether there are grounds which justify the conduct of a disciplinary investigation. If it considers that an investigation is justified, the Court orders such an investigation and appoints an investigating judge to whom it assigns the investigation of the matter. The investigating judge must be of an equal or higher rank than the judge under investigation. If the investigating judge is also a member of the Council, he/she recuses himself/herself from the composition of the Council at the disciplinary trial.

All the information in the Court’s possession, including the views of the judge who is under investigation, is put before the investigating judge who is assisted by at least one member of the registry of the courts. The investigating judge proceeds with the investigation as quickly as possible without delay.

The investigating judge takes statements and collects information from every individual who is in a position to provide information and facts in relation to the investigation. All statements and facts which have been collected are made available to the judge under investigation, and if he/she so wishes, he/she has the opportunity to make a supplementary statement within a specified deadline.

Within fifteen days after completion of the investigation, the investigating judge submits, to the Court, a report summarizing the evidence collected. The report is accompanied by the statements which were taken during the investigation and the supplementary statement of the judge under investigation, if one was submitted.

The Court decides, in the light of the statements, evidence and information before it, whether it is justified to refer the judge under investigation to the Council in order for the latter to decide on whether the aforementioned judge has become incapable, has displayed inappropriate behaviour or has committed a disciplinary offence.

Where the Court decides that reference to the Council is not justified, the decision is notified to the judge under investigation and the person who submitted the complaint.

In the event that the Court decides to refer the judge to the Council, due to his/her inappropriate behaviour or of having committed a disciplinary offence, a charge sheet is drawn up, on which the charges and their details are set out.

Where the Court decides to refer the judge to the Council, in order to decide on his/her incapability to perform his/her judicial duties, a report is drawn up, in which the offence and summary of the facts are stated.

The registrar of the court serves on the judge , the charge sheet or the report, together with the investigating judge’s report with all the data attached to it. Pending hearing, the Court after considering the nature of the accusations or of the incapability, may decide that the judge will refrain from the exercise of his/her judicial duties.

At the first appearance before the Council, the judge against whom proceedings are being taken is called upon to answer the charge or the report. If the answer is a denial of the charges, a date is fixed for hearing. If the judge accepts the charges, the Chief Registrar submits to the Council all statements, data and information and after hearing the judge, the Council issues its decision and passes sentence.

During the hearing, the Council summons, one by one, and hears the witnesses who have made statements and any other person who is in possession of facts or in a position to shed light on the matters in issue. The witnesses take oath as required by law or make an affirmation that they will tell the Court the truth and nothing but the truth. Their evidence is introduced by questions put by the President of the Council, supplemented by any further questions any of the Members deem appropriate to ask.

The Council can assign duties of a prosecutor to the investigating judge or, if this is not feasible, to a Justice of the Court or Judge, in which case the presentation of evidence shall be made by him/her.

After presentation of their evidence, witnesses are subject to cross-examination by the Judge against whom proceedings are being taken. After the cross-examination, the President and Members of the Council may put questions for clarification purposes, after which the judge against whom proceedings are being taken shall have the right to ask supplementary questions.

 At the conclusion of the evidence of all witnesses on which the charge is based, the Council decides if a prima facie case has been established against the judge under trial.

 If it is decided that a prima facie case has been established against the judge, he/she is given an opportunity to present his/her defense. The judge has a right to be represented by a lawyer, give evidence on oath or make an unsworn statement and call witnesses. The Judge against whom proceedings are being taken and who has given evidence on oath, and any other witness for the defense, are subject to examination by the President and Members of the Council, at the close of which the judge against whom proceedings are being taken is given an opportunity to make a supplementary clarifying statement, or, if it concerns a witness whom he/she has summoned, to ask clarifying or supplementary questions.

On completion of the defense, the judge against whom proceedings are being taken has the right to address the Court.

After the conclusion of the hearing, the Council decides, in the case of a prosecution, if it has been proved that the Judge is guilty of inappropriate behaviour (‘misconduct’) or of any disciplinary offence, as the case may be and whether the judge is incapable of exercising his/her judicial duties.

If the Council decides that the charges or the report against the judge have not been proved, the court shall acquit and exonerate him/her. A Judge who is found to be incapable or guilty of misconduct shall be heard before the Council proceeds further.

The disciplinary proceedings are concluded when the final decision of the Council on the appropriate penalty is handed down.

**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?**

According to the *Procedural Rules* *on the Exercise of the Disciplinary Powers of the Supreme Council of Judicature of 2000*, a judge or Justice who is found guilty of inappropriate behaviour (“misconduct’) is dismissed in accordance with the provisions of the Constitution itself. Similarly, a judge or Justice who is incapable of exercising his/her judicial duties for physical or mental reasons is also dismissed.

Additionally, under the same Rules, a judge or Justice who is found guilty of a disciplinary offence shall be given either a written reprimand or a reprimand published in the Official Gazette of the Republic.

**4. 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?**

Based on the available data kept at the Court’s Registry, since 2016 the Court received thirty-four written complaints against Judicial Officers and it initiated disciplinary proceedings under article 3 of the Procedural Rules, by notifying the interested judges or Justices of the complaint and set a time-limit in order for the judge to submit his/ her views.

In one circumstance it initiated the Section 3 of the Rules’ procedure on its own motion and requested the judge to submit his/her views.

In three cases, pursuant to section 5 of the Rules, an investigating Judge was appointed. In two of these cases the Council proceeded with the penalty of a reprimand against the judge who was under investigation.

Since 2010 no disciplinary procedure hearings have taken place, thus no judge or Justice was found guilty of disciplinary misconduct. Moreover, and consequently, since 2010 there were no removals from judicial office.

**5. 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 case? Who may lodge a complaint against the judge? And which authority is responsible for adjudicating these cases?**

Protecting judicial independence for the public interest, is of paramount importance in order to ensure the unobstructed and without fear execution of a Judge’s judicial duties. For this reason, Judges are given immunity from legal liability for any acts they carry out in the performance of their judicial function (**section 15 of the Criminal Code, Cap. 154**).

**Section 15 of Cap. 154** provides:

“Subject to any other provision of this Code, judicial officers are immune from criminal liability for anything done or omitted to be done by them in the performance of their judicial duties, even when their acts are done in excess of their judicial authority, or even when they are legally bound to do the act omitted to be done.”

They also benefit from immunity from being sued for any action taken or views expressed during the exercise of their judicial function (e.g. for defamation for the things they say about parties or witnesses in the course of hearing cases) (inter alia **Articles 133.10 and 153.10 of the Constitution[[1]](#footnote-1)**).

Judges do not qualify for any immunity from legal liabilities when they act in a purely private capacity. A judge is not entitled to any immunity from legal liability if he or she does something outside judicial authority. In this respect, Judges are subject to the law in the same way as any other citizen. For example, when a judge drives a motor vehicle home from a social gathering in a state of intoxication or publishes something which is considered defamatory he is liable as any other. Equally, when he or she solicits or accepts a bribe in relation to a case before him/her he is also subject to criminal sanctions in addition to any civil or disciplinary liability. While the judge in such a situation may be immune from liability in respect of the decision made in the case, he or she is not immune from prosecution for the criminal conduct involved in soliciting or accepting a bribe. On this latter point, the **Criminal Law Convention of the Council of Europe on Corruption (Ratification) Act of 2000, L. 23(ΙΙΙ)/2000** is of relevance. For the purposes of the Convention, the term « “public official” shall be understood by reference to the definition of "official", "public officer", "mayor", "minister" or "judge" in the national law of the State in which the person in question performs that function and as applied in its criminal law; » (**Andreas Kyprizoglou and others v. The Republic, Criminal Appeals 53/2017 and others, 15.12.2017**).

Bearing these in mind, if a member of the judiciary is being investigated for a criminal offence(s) (e.g. for soliciting or accepting a bribe in relation to a case before him/her), the criminal investigation shall be conducted by the Cyprus Police in order to establish whether a criminal offence has actually been committed. Police investigations commence once a complaint/report has been filed. All citizens of the Republic of Cyprus have the right to file a complaint or give information or report a crime to the Cyprus Police (Citizens’ Rights Charter). If there is sufficient incriminating evidence to proceed with the charges, the Attorney-General of the Republic (an independent Public Prosecutor and Legal Advisor of the State– **Articles 112.2 and 113.1 of the Constitution**), shall indict the judge in question and proceed with prosecution (**Article 113.2 of the Constitution**). **Article 113.2 of the Constitution** provides:

“The Attorney-General of the Republic shall have power, exercisable at his discretion in the public interest, to institute, conduct, take over and continue or discontinue (nolle prosequi) any proceedings for an offence against any person in the Republic. Such power may be exercised by him in person or by officers’ subordinate to him acting under and in accordance with his instructions.”

Once indicted, the case will be brought before the court. By virtue of **Article 152.1 of the Constitution** the judicial power is exercised by a High Court of Justice (today Supreme Court) and such inferior courts as may, subject to the provisions of this Constitution, be provided by a law made thereunder. By virtue of **section 3** of the **Courts of Justice Act of 1960, L. 14/60**, District and Assize Courts were established to exercise such jurisdictions as provided by the statute.

In the light of the above, the Court System of the Republic of Cyprus entails a two-tier structure. The Supreme Court and the lower, first instance courts. The **Supreme Court** is, inter alia, the Appellate Court of last instance, empowered to hear Civil and Criminal appeals. The Supreme Court may uphold, vary or set aside any first instance judgment or may even order retrial of the case. Civil and Criminal appeals are adjudicated by panels of three (3) Justices.

**District Courts**, have jurisdiction to hear at first instance:

* + Civil cases where the cause of action has arisen wholly or partly within the limits of the District where the Court is established, or where the Defendant resides or carries his business.
  + Criminal cases to be tried summarily, relating to offences punishable with a custodial sentence not exceeding five (5) years or with a pecuniary fine not exceeding the amount of €85.000 or both.

**Assize Courts**, have criminal jurisdiction, to hear any criminal offence punishable by the Criminal Code or any other law. They sit in panels of 3 Judges. One of the Judges must be a President of a District Court.

Furthermore, **Article 30 of the Constitution,** which is identical to **Article 6.1 of the ECHR**, enshrinesjudicial protection.It enshrines the right to a fair trial. **Article 30.2** provides that in the determination of one’s civil rights and obligations or against any criminal charge faced, a person has the right to a fair and public hearing within a reasonable time by an independent, impartial and competent court, established by law.

In addition, by virtue of the **Guide to Judicial Conduct,** issued by the Supreme Court of Cyprus, a Judge is under an obligation to inform the President of the Supreme Court for any charges brought against him or if he or she was cautioned to the law for any criminal offence other than parking offences or any other traffic offence which constitutes a misdemeanour and lacks aggravating circumstances. Similarly, a Judge ought to inform the President of the Court where he/she sits, for any involvement, in any civil proceeding, including family law proceedings. Lastly, 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.

**6. 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?**

In the light of the aforementioned legal provisions highlighted in the response given to Question 5, and more specifically due to the fact that Judges are granted immunity from legal liability for any acts they carry out in the performance of their judicial functions but primarily due to the high ethical standards expected to be demonstrated and complied with, at all times, by all members of the judiciary, no legal proceedings, alleging judicial errors, have been instituted against a Cypriot Judge.

However, in circumstances where a Judge has been found to have committed a criminal offence, the President of the Supreme Court may refer the judge to the Supreme Council of Judicature (SCJ) in order to establish whether it would be appropriate to remove him/her from office. Consideration of taking formal action (disciplinary procedure for dismissal) will be appropriate, where the Judge has been convicted for an offence which might reasonably be thought to throw serious doubt on the Judge’s character, integrity or continuing fitness to hold office or his/her conduct otherwise appears to be such as to cast serious doubt on his/her fitness to hold office. Such considerations are supported by the high ethical standards which guide judicial conduct and are expected to be followed by all members of the judiciary. In particular, under **section 6** of the **Courts of Justice Act of 1960, L.14/60,** for a person to be appointed as a Judge, he or she must be of a high moral standard. Furthermore, by virtue of the **Guide to Judicial Conduct** (the “Guide”) a member of the Court must demonstrate at all times, high ethical standards in the performance of his/her judicial functions. The Guide to Judicial Conduct places, inter alia, the principles of integrity, propriety, independence and impartiality, at the epicenter of a Judge’s conduct and overall behaviour and sets out the ethical standards expected from all members of the Courts. In addition, the guiding principles, envisaged in the Guide, are binding and constitute the quintessence of judicial conduct and any breach of them may result in disciplinary action being taken, in accordance with **Articles 133 and 153 of the Constitution** in as far as the President and the Justices of the Supreme Court are concerned and under **Article 157 of the Constitution** in as far as judicial office eholders of inferior courts are concerned The applicable procedure is laid down in the *Rules of Court of 2015 and 2000*, respectively.

By virtue of **Article 157 of the Constitution**, the Supreme Council of Judicature is exclusively competent for the dismissal and disciplinary matters of all judges of inferior courts (District Courts, Assizes and Courts of Specialized Jurisdiction such as Administrative Court, Family Courts, Industrial Disputes Court, Rent Control Court and Military Court). The Supreme Council of Judicature is composed of the Supreme Court’s Justices (the President and 12 Justices as provided by **section 3(2)** of the **Administration of Justice Law, L. 33/1964**). It is worth mentioning that the composition of the Supreme Council of Judicature is currently under reform. A Bill has been introduced and is currently pending before Parliament, for the enlargement of the SCJ, in order to ensure, inter alia, the participation of first instance Judges in the Council. The proposed enlarged SCJ shall consist of the President and Justices of the High Court, the President of the Appeal Court, the most senior President of the District Courts, the President of the Association of Judges, the Attorney-General, the President of the Cyprus Bar Association and one practicing advocate of no less than 25 years’ experience in the profession and who is not a member of the Cyprus Bar Association’s Board.

Under **Article 157.3 of the Constitution**, no judge is to be dismissed from his judicial duties except on similar grounds and in the same manner as a Justice of the Supreme Court. Supreme Court Justices may be dismissed for inappropriate behaviour (“misconduct”) under **Article 153.7(4) of the Constitution**and likewise these provisions apply to inferior court judges.

The procedure is judicial in nature and the judge under scrutiny has the right to be heard and adequately present his case before the SCJ (**Article 153.8(3) of the Constitution**). The *Exercise of Disciplinary Power of the Supreme Council of Judicature Procedure Rules of 2000* govern the procedure of disciplinary proceedings for inferior court judges and the *Supreme Council of Judicature (Review and Procedure) Procedure Rules of 2015* govern the procedure for Supreme Court Justices under investigation.

1. Articles 133.10 and 153.10 of the Constitution states that: “No action may be filed against the President or any other Justice of the Supreme Court for any act done or opinion expressed during the performance of his/her judicial duties.” [↑](#footnote-ref-1)