**Disciplinary, civil and criminal liability of judges in Hungary**

**Preliminary remark**: The Hungarian legal system ensures the highest possible level of judicial independence also as regards disciplinary proceedings and civil law/criminal liability of judges. As required by the principle of rule of law, the framework of disciplinary proceedings is prescribed by an Act of Parliament. The ethical standards are defined – besides the relevant Act – by the National Judicial Council (hereinafter: NJC) as the highest judicial body comprising 14 judges elected by their peers and the President of the Curia. The system of court of judges (disciplinary court, service tribunal) is also connected to the judicial self-administration. In case of disciplinary proceedings, the President of the National Office for the Judiciary (hereinafter: NOJ) has marginal role and the Minister of Justice does not have any influence. As only judges have an influence on these procedures, judicial independence is fully safeguarded.

**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?**

According to the Act CLXII of 2011 on the Legal Status and Remuneration of Judges (hereinafter: Legal Status of Judges Act) professional misconduct shall mean when a judge violates the obligations stemming from his service relationship, or the judge’s lifestyle and/or behaviour are likely to harm or jeopardize the prestige of the judiciary [Section 105 of Legal Status of Judges Act]. On the basis of Section 103 Paragraph (1) Point e) of Act CLXI of 2011 on the Organisation and Administration of Courts, the NJC adopted the Code of Judicial Conduct [[1]](#footnote-1) at its meeting of 10 November 2014. The Code of Judicial Conduct is an internal regulatory framework drafted relying upon the Bangalore Principles of Judicial Conduct,[[2]](#footnote-2) thus its elaboration falls outside the competences of the Ministry of Justice.

**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?**

Disciplinary cases of judges shall be heard in the first instance by the disciplinary court (i.e. court of judges) located in the territory of Budapest, and by the disciplinary court (i.e. court of judges) attached to the Curia in the second instance. Members of the court of judges shall be nominated by the plenary meeting of the Curia, the plenary session of judges of the courts of appeal and general courts. The president and members of the disciplinary court (i.e. court of judges) shall be appointed by the NJC.

The rules of procedure of the disciplinary court (i.e. court of judges) shall comprise the composition of the competent chambers and the rules of case allocation. The rules of procedure adopted by the disciplinary court (i.e. court of judges) shall be approved by the NJC and the NJC shall publish the rules of procedure of the court of judges on the central website. [Sections 101, 102, 104/A of the Legal Status of Judges Act]

According to the Legal Status of Judges Act, the court leader or the appointing person respectively have the right to initiate the opening of a disciplinary procedure. If the suspicion of a disciplinary breach emerges in respect of a judge, disciplinary proceedings shall be initiated *a)* by the president of the Curia in the case of the judges of the Curia, *b)* by the president of the regional court of appeal in the case of regional court of appeal judges, *c)* by the president of the regional court in the case of regional and district court judges. The President of the NOJ shall have authority to initiate the opening of a disciplinary proceeding only against court executives he/she has appointed and against judges assigned to the NOJ [Section 106 of the Legal Status of Judges Act]. It shall be mentioned that an elected judge member of the NJC may be subjected to disciplinary proceeding solely upon the consent of NJC. If the suspicion of a disciplinary breach emerges in respect of a court executive, the person exercising the right of appointment shall initiate disciplinary proceeding.

The designated disciplinary board of the disciplinary court (i.e. court of judges) shall decide whether to initiate disciplinary proceedings, refuse to hold disciplinary proceedings, or order a preliminary hearing. The investigation during the disciplinary procedure is carried out by a disciplinary commissioner. The disciplinary commissioner is a member of the court of judges. The disciplinary commissioner has to carry out the investigation within 30 days and present a written report to the court of judges. After receiving the report, the court of judges decides within 15 days upon the initiation, refusal or suspension of the disciplinary procedure against the judge. The chamber of the court of judges shall adopt a decision in conclusion of the disciplinary proceedings. If the court of judges finds the judge guilty, it imposes a disciplinary penalty.

The decision of the first instance court of judges may be appealed by the judge and the initiator of the disciplinary proceedings within fifteen days from the day on which it is served. The court of judges of the second instance shall sustain or overrule the disciplinary decision of the first instance (including any compensation, legal effects on any violation of rights relating to personality, and the bearing of costs, where applicable), dismiss the case, or annul the decision in the event of any severe procedural violation that cannot be remedied in the appellate proceedings (and it shall order the court of judges of the first instance to reopen the case and to adopt a new ruling).

**3. Please provide information on the disciplinary penalties that may be imposed on the judge if found guilty of professional misconduct. Are these penalties codified in national legislation and/or professional codes of ethics?**

The disciplinary sanctions are enlisted by the Legal Status of Judges Act in an exhaustive manner. The following disciplinary measures may be imposed against a judge for professional misconduct: a) reprimand; b) censure; c) downgrading by one pay grade; d) downgrading by two pay grades; e) discharge from executive office; f) motion for dismissal from judge’s office [Section 124 (1) of Legal Status of Judges Act].

Having regard to the gravity and consequences of the misconduct and to the degree of culpability, the chamber of the court of judges may rule to exclude the possibility of exoneration from the legal consequences of the disciplinary measure under Subsection (1) of Section 127. Pursuant to Section 108 (1)-(2) of the Legal Status of Judges Act, if the judge’s culpability is minor and the breach did not involve consequences or only involved minor consequences, the institution of disciplinary proceedings may be dispensed with; in that case the person authorised to initiate disciplinary proceedings shall warn the judge. In all other cases, the appointed disciplinary chamber of the service court shall decide on the institution of disciplinary proceedings, the refusal of disciplinary proceedings or the institution of a preliminary investigation, subject to the simultaneous notification of the judge concerned as set out in Section 111 of the Legal Status of Judges Act.

**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?**

The answer sheet in relation to disciplinary proceedings is attached under Appendix 1. The given data are based on information provided by the NOJ.

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

The legal opinion of the judge expressed in relation to the adjudication of single cases does not give reason for criminal responsibility or civil liability.

According to Sections 131-134/A of the Legal Status of Judges Act, judges shall be subject to financial liability for any damages caused to the employer by their intentional or grossly negligent conduct (breach of the obligations stemming from their service relationship), and shall be subject to liability for the payment of restitution for any violation of rights relating to personality when so demanded by the employer. The burden of proof concerning the liability of a judge and the occurrence and extent of damage, and the violation of rights relating to personality shall lie with the employer.

A judge shall be liable, and/or may be ordered to pay restitution for up to three months’ salary if the damage or the violation of rights relating to personality results from his/her grossly negligent conduct. In case of intentional negligence or violation of rights relating to personality the judge shall be subject to full liability for the payment of compensation or restitution, irrespective of his/her salary. A judge shall be subject to full liability, irrespective of accountability, concerning the loss of objects that are received with a list or receipt attached under the obligation to be returned or accounted for and are permanently safeguarded and exclusively used or handled by the judge. Liability for damages and claims arising in connection with any violation of rights relating to personality resulting from the professional misconduct of a judge shall be adjudged in a disciplinary proceeding.

The judge’s liability for damages, or for the payment of any restitution resulting from reasons other than professional misconduct shall be determined - by means of a reasoned decision - by the person exercising employer’s rights within sixty days of the day on which it learns of the damage. The provisions governing disciplinary proceedings shall also apply to procedures concerning liability for damages or for payment of restitutions. The judge may challenge the employer’s decision by lodging an appeal in court within fifteen days.

Otherwise, judges shall be granted the same privilege of immunity as Members of Parliament [Section 2 Legal Status of Judges Act]. The suspension of immunity of a judge requires the decision of the President of the Republic on a recommendation by the President of NOJ.

The President of the Republic shall have powers to take the measures necessary in connection with any violation of the right of immunity on a recommendation by the President of NOJ.

From the point of view of criminal liability, the immunity of judges is an obstacle to criminal prosecution. This solution protects judges and the judiciary from harassment through unfounded accusations, including from persons initiating private prosecutions against judges for alleged minor offences.

Public interest report and complaint concerning the activity (omission) of the court, and the complaint against the conduct of the judge shall be examined and handled in accordance with the Act CLXV of 2013 on Complaints and Public Interest Reports. Under the law, everyone has the right, alone or together with others, to address a written request, complaint or suggestion to any court and the NOJ. In the case of Regional Courts of Appeal, Regional Courts, District Courts and the NOJ the abovementioned complaints and public interest reports shall be examined and handled in accordance with the 7/2018 (VII. 11.) NOJ instruction on the procedure for public interest notices and complaints - with the procedure and deadlines prescribed therein.

These complaints shall be examined by the president of the court concerned or another court chief appointed for this purpose. If the applicant does not consider the action of the District Court to be satisfactory, the public interest application and complaint shall be handled by the president of the Regional Court within the framework of its review. Complaints against the President of the Court and the Regional Courts of Appeal, or concerning the activities (omissions) of the NOJ shall be examined and handled by the President of the NOJ [Section 11 of the NOJ Instruction 7/2018. (VII. 11.)]

If the complaint or public interest report proves to be well-founded, it shall be ensured (a) to restore the lawful or public interest situation or to take any other measures which are otherwise necessary; b) to eliminate the causes of the detected errors, c) to remedy the grievance caused; and d) where appropriate, to initiate prosecution (Section 3 of Act CLXV of 2013).

**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?**

It shall be stressed that “judicial errors” as referred in the question, do not belong to the field of civil/criminal liability, but are evaluated in the regular evaluations or can give rise to disciplinary proceedings as described above. Thus, the independence of the adjudicating judge is fully safeguarded.

On the basis of the information of the NOJ, no data are available on civil liability proceedings in the last ten years in connection with the work of judges.

The answer sheet in relation to criminal liability is attached under Appendix 2. The given data are based on information provided by the NOJ.

1. <https://birosag.hu/sites/default/files/3_etikai_kodex.pdf> [↑](#footnote-ref-1)
2. The Bangalore Principles were established with the intention of setting standards of judicial conduct, providing guidance to judges and providing a framework for the judicial organization to regulate judicial conduct. [↑](#footnote-ref-2)