**QUESTIONNAIRE**

**REPLY OF THE REPUBLIC OF SLOVENIA**

*Disciplinary 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 are accountable since they face either impeachment or disciplinary procedures.

Disciplinary responsibility and disciplinary sanctions for judges are determined by the **Judicial Service Act** (Zakon o sodniški službi)[[1]](#footnote-1). Criminal liability and liability for a misdemeanour shall not exclude a disciplinary liability on the part of the judge.[[2]](#footnote-2)

According to the Judicial Service Act a disciplinary sanction may be pronounced upon a judge who wilfully or by negligence breaches the judicial duties prescribed by law and the Court Rules, or irregularly performs judicial service.

The principal acts that entail a breach of judicial duties or irregular performance of judicial service are:

1. commission of an act that has the statutory definition of a criminal offence while holding judicial office;

2. failure to carry out judicial duties or unjustifiable refusal thereof;

3. unconscientious, late, inappropriate or negligent performance of judicial service;

4. illegal or inappropriate disposal of resources;

5. disclosure of official secrets and other confidential information defined by law or the Court Rules;

6. abuse of status or transgression of official authorisations;

7. abuse of the right to absence from work;

8. failure to achieve the expected work results for more than three months consecutively without justifiable grounds;

9. breach of the case roster or priority handling of cases defined by law or the Court Rules;

10. performance of functions, work or activities incompatible with judicial office pursuant to the Constitution and law;

11. failure to notify the president of the court regarding the acceptance of work assessed as incompatible with judicial office;

12. failure to report existing legal grounds for the exclusion of the judge or continuation of work on a case in which there are grounds for exclusion;

13. advance public expression in a judicial case that is sub judice or in a case in which extraordinary legal remedies have been lodged;

14. action or behaviour on the part of the judge that conflicts with the judge’s impartiality or that damages the reputation of the judicial profession;

15. inappropriate, undignified or insulting behaviour or language towards individuals, state bodies and legal persons in relation to the performance of judicial service or outside it;

16. obstruction of the functioning of the court in order for the judge’s own rights to be exercised;

17. acceptance of gifts or other benefits related to judicial service;

18. failure to submit information on financial status or late submission thereof;

19. breach or omission of mentoring duties;

20. failure to observe decisions issued on the judge’s transfer or assignment;

21. prevention of obstruction of the implementation of the provisions of the act governing official supervision of judges’ work and supervisory appeals;

22. dealings with parties, their representatives and other persons that are in conflict with the provisions of the Court Rules;

23. failure to observe measures for the regular and effective execution of judicial power;

24. breach or omission of measures pursuant to the programme for resolving the backlog at the court;

25. failure to fulfil the duties of professional education;

26. breach of safety at work regulations;

27. breach of the provisions of the Court Rules on the use of official robe.

The acts pursuant to points 1, 2, 3, 5, 6, 8, 10, 12, 13, 17, 18, 20, 21, 23 and 24 shall entail a serious breach of discipline and the act according to point 14 only if it has serious consequences for the judge’s impartiality or that damages the reputation of the judicial profession. According to the Judicial Service Act a serious breach of discipline caused a termination of judicial office as a judge is no longer suited to holding judicial office.

**The Code of Judicial Ethics** (Kodeks sodniške etike)[[3]](#footnote-3) 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.

1. *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?*

A disciplinary sanction is imposed on a judge only in accordance with the procedure prescribed by the **Judicial Council Act** (Zakon o sodnem svetu).[[4]](#footnote-4)

Disciplinary authorities are the disciplinary prosecutor and his deputy and the disciplinary court. Disciplinary authorities are appointed or relieved from office by the Judicial Council by a two-thirds majority vote of all members.

The initiative to introduce disciplinary proceedings is put forward by the president of the court where the judge performs judicial service, the president of the immediately superior court, the Judicial Council or the Minister of justice. However, a motion, the formal proposal for disciplinary sanctioning is lodged and represented by a disciplinary prosecutor, in whose absence the deputy thereto shall deputise for. They are both judges of the Supreme Court. The disciplinary court has nine members (three Judicial Council members, six judges).

Judicial protection against disciplinary court decisions is permitted under Article 36 of the Judicial Council Act which states:

“Article 36 (Administrative dispute)

(1) An administrative dispute shall be allowed against a decision by the Judicial Council.

(2) In disputes referred to in the preceding paragraph, decisions shall be made by the Supreme Court, sitting in a panel of five judges.

(3) The competent court shall decide on the Judicial Council decision within 30 days of receipt of the action against the decision.

(4) No appeal shall be allowed against a ruling by the Supreme Court.

(5) In the selection procedure of candidates for election to judicial office and in the process of appointing the presidents and vice-presidents of courts, administrative dispute shall only be possible with regard to assessment of the selection procedure legality and Judicial Council decisions on meeting the conditions for appointment or election to these posts.”

Disciplinary proceedings are instituted by filing a motion for the implementation of investigation acts or by directly filing a reasoned proposal for a disciplinary sanction. The motion for the institution of disciplinary proceedings is submitted by the president of the court where the judge performs his judicial service, the president of the immediately superior court, the president of the Supreme Court, the Judicial Council or the minister.

Acts of investigation are prescribed in the Article 46 of the Judicial Council Act which states that if a motion for the implementation of individual investigative acts has been submitted, they are carried out by a disciplinary court judge appointed by the disciplinary court president.

The Judicial Council enforces disciplinary sanctions against a judge if, under the act governing the judicial service, a disciplinary sanction was imposed on him suspending his promotion, reducing his salary or transferring him to another court.

1. *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?*

The disciplinary penalties that are imposed on the judge if found guilty of a professional misconduct are regulated by the Judicial Service Act.

Disciplinary sanctions pursuant to the **Judicial Service Act** are:

1. written warning;

2. suspension of promotion;

3. wage reduction;

4. transfer to another court;

5. termination of judicial office.

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.

Suspension of promotion is pronounced for a period no longer than three years.

Wage reduction is pronounced in the amount of up to 20 % for a period of up to one year.

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 on a judge of the Supreme Court of the Republic of Slovenia.

Termination of judicial office is pronounced on a judge that owing to a serious breach of discipline is no longer suited to holding judicial office.

1. *Please provide detailed information 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?*

There are only few disciplinary proceedings initiated each year and also within this number some of the proceedings end by judge leaving the post before the final decision is reached.

**Since 20 November 2017 the Judicial Council of the Republic of Slovenia is responsible for conducting disciplinary proceedings against judges** (in accordance with the Article 61 of the Judicial Council Act disciplinary proceedings instituted prior to the entry into force of this Act shall be continued and concluded under the provisions of the Judicial Service Act[[5]](#footnote-5)). Prior to that, disciplinary proceedings were conducted under the jurisdiction of disciplinary bodies at the Supreme Court of the Republic of Slovenia.

For the period from 1 January 2010 to 30 April 2020, the number of judges that have been subject to disciplinary proceedings is as follows:

- Number of submitted proposals for a disciplinary sanction against judges: 42 (of which 13 proposals were filed with the Disciplinary Court of the Judicial Council of the Republic of Slovenia and 29 with the Disciplinary Court at the Supreme Court of the Republic of Slovenia);

- Number of cases in which disciplinary responsibility of judges was established with a final assessment: 17 (of which 3 cases were completed before the Disciplinary Court of the Judicial Council of the Republic of Slovenia, and the rest before the Disciplinary Court at the Supreme Court of the Republic of Slovenia);

- The number of terminations of judicial office as a type of disciplinary sanction according to Article 82 or Article 83 of the Judicial Service Act: 1 (whereby the said sanction was imposed in cases considered by a Disciplinary Court at the Supreme Court of the Republic of Slovenia).

*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?*

Pursuant to the Constitution of the Republic of Slovenia[[6]](#footnote-6) no one who participates in making judicial decisions may be held accountable for an opinion expressed during decision-making in court (Constitution, Art. 134, para. 1).

If a judge is suspected of a criminal offence in the performance of judicial office, he may not be detained nor may criminal proceedings be initiated against him without the consent of the National Assembly (Constitution, Art. 134, para. 2).

Civil liability of judges

With regard to civil liability or the right to compensation for damages, Article 26 of the Constitution of the Republic of Slovenia stipulates that everyone has the right to compensation for damage caused through unlawful actions in connection with the performance of any function or other activity by a person or authority performing such function or activity within a state or local community authority or as a bearer of public authority. Any person suffering damage has the right to claim, in accordance with the law, compensation also directly from the person or authority that has caused such damage.

The **State Attorneys Office Act** (Zakon o državnem odvetništvu)[[7]](#footnote-7) deals with compensation cases caused through unlawful actions of state bodies. According to the provisions of the Article 26 of the Constitution and the **Obligations Code** (Obligacijski zakonik)[[8]](#footnote-8), the State is responsible for the unlawful conduct of its employees and is responsible for the responsibility for another. The payer of compensation (Republic of Slovenia or the insurance company) may file a claim against the claimant if the damage was caused deliberately or by gross negligence.

Criminal liability of judges

In connection with the criminal liability of judges of the Constitution, Article 132 provides that the National Assembly may dismiss a judge if a judge is found by a final judgement to have deliberately committed a criminal offence through the abuse of the judicial office.

Chapter 28 of the **Criminal Code** (Kazenski zakonik, KZ-1)[[9]](#footnote-9), in Article 288, also refers to the criminal offense of unlawful, partial and unfair trial, among the criminal offenses against administration of justice. That article provides that a judge who, in conducting judicial proceedings or handing down a court decision knowingly violates or distorts the law with the intention of causing damage to the party in proceedings or prioritise him unlawfully, shall be sentenced to imprisonment for not more than three years.

The same shall be punished by a judge who, for the same purpose, bases a judgment on facts which he knows do not exist or are misrepresented by false or inadmissible.

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?*

The Judicial Council of the Republic of Slovenia and the Supreme Court of the Republic of Slovenia, within their competences, do not keep records or collect data on the number of judges that have been subject to civil/criminal liability proceedings in connection with the performance of their judicial service.

However, in the accordance with the data provided by the Supreme Court only one judge was convicted of a criminal offense under Article 288 of the Criminal Code (Unlawful, Partial and Unfair Trial) in the period 2006-2018 (Data for 2019 not yet available).

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1. Judicial Service Act, Official Gazette of the Republic of Slovenia, Nos. 94/07 – official consolidated text, 91/09, 33/11, 46/13, 63/13 in 69/13 – corrigendum, 95/14 – ZUPPJS15, 17/15, 23/17 – ZSSve and 36/19 – ZDT-1C)); http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO334 (Slovenian version) [↑](#footnote-ref-1)
2. See the Judicial Service Act, Chapter VII – Disciplinary Proceedings and Suspensions from Judicial Service. [↑](#footnote-ref-2)
3. The Code of Judicial Ethics with commentary available at: <http://www.sodni-svet.si/images/stories/Kodeks_sodniske_etike_komentar_ang_sept_2017.pdf> (English version) [↑](#footnote-ref-3)
4. Judicial Council Act, Official Gazette of the Republic of Slovenia, Nos. 23/17; http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7156 (Slovenian version) [↑](#footnote-ref-4)
5. Judicial Service Act, Official Gazette of the Republic of Slovenia, Nos 94/07 – official consolidated text, 91/09, 33/11, 46/13, 63/13, 69/13 – as amended, 95/14 – ZUPPJS15 and 17/15 [↑](#footnote-ref-5)
6. https://www.us-rs.si/en/about-the-court/legal-basis/constitution/ (English version) [↑](#footnote-ref-6)
7. State Attorneys Office Act, Official Gazette of the Republic of Slovenia, Nos. 23/17; http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6923 (Slovenian version) [↑](#footnote-ref-7)
8. Obligations Code, Official Gazette of the Republic of Slovenia, Nos. 97/07 – official consolidated text, 64/16 – odl. US and 20/18 – OROZ631); http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1263 (Slovenian version) [↑](#footnote-ref-8)
9. Criminal Code, Official Gazette of the Republic of Slovenia, Nos. 50/12 – official consolidated text, 6/16 – popr., 54/15, 38/16, 27/17 and 23/20); http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050 (Slovenian version) [↑](#footnote-ref-9)