Sweden’s answers to the questionnaire on the disciplinary, civil and criminal liability of judges

The Swedish Government appreciates the opportunity to contribute to the upcoming thematic report by the Special Rapporteur on the independence of judges and lawyers, Mr. Diego García-Sayán and thanks the Special Rapporteur for the important work he performs under the mandate.

Disciplinary liability

Question 1

There is no list of specifically described acts. Judges, as well as other state employees, can be subject to disciplinary sanctions according to the Public Employment Act (Section 14). A disciplinary sanction for neglect of duty may be imposed upon a judge who intentionally or by carelessness neglects his or her duties in the employment. If the neglect, having regard to all the circumstances, is minor, a sanction may not be issued. Justices, however, are exempt from the disciplinary sanctions in the Public Employment Act (Section 3).

A judge can be removed from office only if he or she through a criminal act or through gross or repeated neglect of his or her official duties has shown himself or herself to be manifestly unfit to hold the office (the Instrument of Government, Chapter 11, Section 7).

Question 2

Matters on disciplinary sanctions, report for prosecution, suspension and removal from office are decided by an independent State authority called the National Disciplinary Offence Board, which is competent for higher public officials, including judges but not Justices (the Public Employment Act, Section 34, and the Act Respecting the Employment of Public Servants in Positions of Authority, Section 15). The National Disciplinary Offence Board is composed of five members who are appointed by the Government for a fixed period of time. The chairman and the vice chairman must be lawyers with experience as judges.

Only the Parliamentary Ombudsmen, the Chancellor of Justice and the court where the judge is employed may initiate procedures before the National Disciplinary Offence Board. If an issue of disciplinary liability, report for prosecution, suspension or removal from office of a judge arises, the court where the judge is employed is obligated to immediately report the matter to the Board (the Employment Ordinance, Section 15). A report of disciplinary liability may also be made by the Parliamentary Ombudsmen and the Chancellor of Justice (the Act with Instructions for the Parliamentary Ombudsmen, Section 6, and the Act on the supervision of the Chancellor of Justice, Section 5). The Parliamentary Ombudsmen, on behalf of the Swedish parliament (Riksdagen), and the Chancellor of Justice, on behalf of the Government, supervise public authorities and their employees, including courts and judges, in order to ensure that they comply with laws and statutes and fulfil their obligations in all other respects. The Ombudsmen and the Chancellor of Justice also may give non-binding recommendations and critical advisory comments, for example regarding the obligation to handle cases without undue delay. They respond to complaints from the public but can also initiate their own investigations.

The decisions of the National Disciplinary Offence Board are public. It is not possible to appeal the decisions. The decisions can, however, be the subject of a labour dispute under the Labour Disputes Act (the Public Employment Act, Section 37, and the Act Respecting the Employment of Public Servants in Positions of Authority, Section 17). The Labour Court is the highest court in such cases. That a judge shall have the right to have a decision on disciplinary sanctions, suspension and removal from office tried by a court is also stipulated in the Instrument of Government (Chapter 11, Section 9).

Matters of suspension or removal from office concerning Justices are tried by The Supreme Court and the Supreme Administrative Court (the Instrument of Government, Chapter 11, Section 8). The Supreme Court tries matters concerning Justices of the Supreme Administrative Court, and vice versa. Such proceedings may only be initiated by the Parliamentary Ombudsmen or the Chancellor of Justice.

Question 3

The Public Employment Act contains two types of disciplinary sanctions, a warning and deduction from wages (Section 15). Several disciplinary measures may not be imposed simultaneously. Deduction from wages may at most cover thirty days and the daily deduction is at maximum 25 per cent of the wage.

Removal from office is possible only if the judge through a criminal act or gross or repeated neglect of his or her official duties has shown himself or herself to be manifestly unfit to hold the office (the Instrument of Government, Chapter 11, Section 7).

A judge can be suspended pending a procedure for removal from office or actions to initiate criminal proceedings for an act that is likely to lead to removal from office (the Act respecting the employment of public servants in positions of authority, Section 10).

Question 4

There are no such data available.

Civil and criminal liability

Question 5

*Criminal liability*

Judges do not enjoy any immunity. In general, criminal allegations against judges are dealt with through the ordinary criminal justice system (the crime is reported to the police, prosecuted by a public prosecutor and tried by the general courts, i.e. the District Courts, the Courts of Appeal and the Supreme Court).

Concerning criminal offences committed by a judge in his or her employment, some special rules apply.

The Courts of Appeal function as court of first instance in cases concerning liability or civil claims based on criminal offences committed in the exercise of official authority by a judge of a District Court (the Code of Judicial Procedure, Chapter 2, Section 2). The Supreme Court functions as court of first instance in such cases concerning a judge of a Court of Appeal or a Justice (the Code of Judicial Procedure, Chapter 3, Section 3). That legal proceedings concerning a criminal act committed in exercise of the office of Justice of the Supreme Court or the Supreme Administrative Court are to be instituted in the Supreme Court are also stipulated in the Instrument of Government (Chapter 11, Section 8).

If a question of reporting a judge for prosecution arises, the court where the judge is employed is obligated to immediately report the matter to the National Disciplinary Offence Board (the Employment Ordinance, Section 15). The National Disciplinary Offence Board shall report a judge for prosecution if he or she is reasonably suspected of having committed in the employment

1. one of the following offences under the Penal Code: taking of a bribe or gross taking of a bribe, misconduct in the employment or gross misconduct in the employment, breach of professional confidentiality, or
2. another offence, if it can be assumed that it will result in a sanction other than a fine.

(the Public Employment Act, Sections 22 and 34)

The Parliamentary Ombudsmen and the Chancellor of Justice may, as a special prosecutor, bring charges against state employees, including judges, who have committed a criminal act by neglecting his or her duties in the employment (the Act with Instructions for the Parliamentary Ombudsmen, Section 5, and the Act on the supervision of the Chancellor of Justice, Section 5). Only the Parliamentary Ombudsmen and the Chancellor of Justice may bring criminal charges against Justices for offences committed in the employment (the Instrument of Government, Chapter 11, Section 8).

*Civil liability*

Concerning civil liability, no special rules exist for judges. Consequently, a judge may, in principle, be sued for civil liability for actions taken in the employment. Such cases are handled by the general courts, i.e. the District Courts, the Courts of Appeal and the Supreme Court, through the ordinary civil justice system.

In reality, the liability of judges, as well as other employees, are limited by the general rules in the Tort Liability Act. For damage caused by an employee through failure or neglect in the employment, he or she is liable only to the extent that there are exceptional reasons with regard to the nature of the action, the employee’s position, the injured party’s interest and other circumstances (Chapter 4, Section 1). The main rule the Tort Liability Act is that the employer is liable for damage caused by an employee in his or her employment (Chapter 3, Section 1). The Tort Liability Act also contain special rules on the liability of the State for damage caused in the exercise of public authority (Chapter 3, Sections 2–4).

Question 6

There are no such data available.