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

## Maldives’ responses to the Questionnaire on the Disciplinary, Civil and Criminal Liabilities of Judges

**Disciplinary Liability**

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

Law Number 13/2010 (Judges Act) is the primary legislation that stipulates all matters relating to judges in the Maldives. Section 34 of the Act states the instances where judges could be made accountable and where disciplinary proceedings maybe initiated by the Judicial Service Commission in accordance with the power afforded in Section 35 of the Act. As such Section 34 (a) states that judges maybe held accountable where they have committed an act in clear contravention of the responsibilities of a judge or where they have committed an act that should not reasonably be attributed to a judge. Section 34 (b) and Section 34 (c) of the Act provides for situations where judges may be held accountable for committing acts that may reasonably be believed to compromise the honor of the position or the court. Code of ethics of judges is stipulated in Section 29 of the Act.

1. **Please describe the procedure for bringing disciplinary complaints against the judges. Who can initiate disciplinary proceedings against the 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?**

Article 157 of the Constitution of the Republic of Maldives establishes the Judicial Service Commission as an independent constitutional body responsible to oversee appointments and dismissals of judges, and ensure accountability of the judiciary. As per Article 159 of the Constitution, the Judicial Service Commission has the power to investigate complaints about the judiciary and take disciplinary actions against them including recommendations for dismissal. The powers and responsibilities of the Judicial Service Commission are further detailed in the Law number 10/2008 (Judicial Service Commission Act).

While complaints against judges may be submitted to the Judicial Service Commission by anyone, the Judicial Service Commission is the only body empowered to initiate disciplinary proceedings and conduct subsequent investigations against judges. Once a complaint is submitted through a designated form, particular issue is deliberated upon by the members in an official Commission sitting. Where the Commission decides on its admissibility and to proceed with the investigation, a subcommittee is selected among the Commission members who will then conduct a thorough investigation into the matter and formulate an investigation report. The report will then be presented to the Commission and the judge under investigation will be afforded the opportunity to respond to the report. During the investigation the Commission, by law, is expected to afford all the due process rights to the judge under investigation. Once the investigation is completed, the Commission will be convened to determine either to impose disciplinary measures on the judge or forward a recommendation of impeachment to the Parliament. This procedure has been codified through the second amendment brought to the Judicial Services Commission Act in 2019.

As per Section 33-2 (a) of the Judicial Service Commission Act, measures imposed by the Commission against judges, other than a decision to impeach, can be appealed to the Judge’s Appeal Council. The Judge’s Appeal Council comprises of three judges convened by the Chief Judicial Administrator on an annual basis. The judge under investigation may appeal the decision to this Council within a period of 10 (ten) days from the first determination by the Commission. The decision of the Judge’s Appeal Council is final and cannot be appealed in any manner to any court or institution.

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

Section 32-1 (a) of the Judicial Service Commission Act (as amended) provides the disciplinary measures that maybe imposed against judges. As such, the Judicial Service Commission may (1) issue a caution and order to complete a training program determined by the Commission, (2) demotion, (3) impose a suspension of a maximum of three months either with or without pay and benefits, or (4) forward a recommendation to the Parliament to remove the judge.

1. **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 table below shows the details of the disciplinary measures that were imposed on judges during the period 2009 – 2019.

|  |  |  |
| --- | --- | --- |
| Year | Disciplinary action | Removal from office (both professional misconduct and on criminal charges) |
| Caution issued  | Transferred between courts  |
| 2009 | - | - | - |
| 2010 | - | - | - |
| 2011 | 1 | 1 | - |
| 2012 | 2 | - | - |
| 2013 | 3 | - | - |
| 2014 | 2 | - | - |
| 2015 | 4 | - | - |
| 2016 | 4 | 1 | - |
| 2017 | 3 | 1 | - |
| 2018 | 2 | - | 2 |
| 2019 | 12 | 1 | 5 |

**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?**

As per Section 9 of the Judges Act, a judge in meeting his or her responsibilities, expressing an opinion or issuing an order or a judgment, may not be held accountable, except through the appeal process and disciplinary procedures provided for in the Constitution and relevant laws.

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 the proceedings?**

As stated in response for question no.5 above, under Maldivian law, a judge cannot be subjected to civil or criminal liability as a result of carrying out his or her responsibilities.

However, in February 2018, during the previous administration, certain events led to the arrest of and criminal charges being raised against two Supreme Court Justices.

On 1st February 2018, the Supreme Court of the Maldives issued a Court Order which quashed the verdict passed regarding defection of some Parliament members, declared that the Judicial Service Commission no longer had the power to exercise its jurisdiction over Supreme Court Justices and ordered the executive to immediately convene the Parliament and release 9 individuals in detention.

The previous administration perceived this order to be endangering to the safety, sovereignty and rule of law in the Maldives, which led to the then President declaring a State of Emergency.

Soon after, the then Chief Justice of the Maldives was arrested pursuant to charges of obstruction of justice, bribery, obstructing work of the Government, attempting to commit an act of terrorism and influencing official conduct. Another Supreme Court Justice at the time was also arrested on charges of obstruction of justice, bribery, corruption, attempting to commit an act of terrorism and influencing official conduct.

While all of these charges stemmed from the issuance of the 1st February 2018 Court Order, two of these charges, bribery and terrorism, were directly linked to the issuance of the Court Order.

Former Chief Justice was convicted of the offences of obstruction of justice and obstructing work of the Government. However, the Criminal Court did not accept the bribery case and the Prosecutor General’s Office later withdrew the charges of influencing official conduct and terrorism.

Similarly, former Supreme Court Justice was convicted of the offence of obstruction of justice, but the Criminal Court did not accept the bribery case and the Prosecutor General’s Office later withdrew the charges of influencing official conduct and terrorism.

Apart from these two instances of deviation from the law by the previous administration in 2018, no other judges have been subjected to civil / criminal liability proceedings in the last ten years.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

15th May 2020