**QUESTIONNAIRE**

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

**Disciplinary responsibility**

**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?**

The types of misbehaviours/offences committed by judges that may give rise to disciplinary proceedings are divided in three groups, regarding the individual circumstances of the violation: minor offences, serious offences and very serious offences.

These violations are codified in a specific piece of legislation dedicated to judges (which stipulate their rights, duties and the general rules applicable to the professional career), which is the Statute of Judicial Magistrates (SJM), established by Law no. 21/85, of 30 July, last amended by Law no. 2/2020, of 31 March.

There is no code of ethics for judges, since the ethical principles/values that may guide the actions of judges are stipulated in the SJM. For instance, judges are bound by their duty of professional secrecy, due diligence and politeness – articles 7-B, 7-C and 7-D of the SJM, respectively. However, the High Council for Judicial Magistrates (HCJM) recently announced that a draft code of ethics for judges is being drawn up, following recommendations made under the IV mutual evaluation of Portugal by GRECO (Group of States against Corruption, Council of Europe).

Regarding disciplinary responsibility, Article 82 of the SJM stipulates that any acts committed by a judge (with intent, recklessly or by serious negligence) in violation of the principles and duties set on the Statute constitute a disciplinary infraction/misbehaviour. In addition, any acts which, by their nature or repercussions, may be deemed as incompatible with the requirements of independence, impartiality and dignity (essential to the exercise of the profession) also constitute a disciplinary infraction/misbehaviour.

Article 83-G of the SJM sets the definition of very serious offence, which is “*any act committed by a judge with intent or gross negligence that, by its repetition or seriousness of the violation, is deemed improper for a good administration of justice or for the exercise of the profession*”. This article provides for a non-exhaustive list of examples of conducts that may constitute a very serious offence, namely:

- the refusal to administer justice, with no valid reason;

- the abuse of the powers granted to a judge, in order to obtain personal advantages from public authorities, public officials or other professionals;

- the unjustified disclosure of facts or data acquired during the exercise of the profession (in violation of the duty of professional secrecy).

Article 83-H of the SJM sets the notion of serious offence, which is “*any act committed by a judge with intent or gross negligence, which unveil a lack of interest in complying with the professional duties*”, such as the disregard for the sentences/judgements rendered by superior courts or the unjustified interference in the professional activities of another judge.

Article 83-I of the SJM sets the definition of minor offence, which is “*any act recklessly committed by a judge, which unveil a poor/inadequate understanding of the professional duties*”, such as the exercise of another professional activity – compatible with the profession of judge – without the required prior authorization.

**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 conduct disciplinary investigations? Can decisions of the disciplinary body be appealed before a competent court?**

Any person, individually or collectively, can file a complaint with the HCJM against a judge, in order to defend his/her rights or a public interest (in accordance with the Constitution of the Portuguese Republic (Article 52) and Law no. 43/90, of August 10, which regulates the right to petition.

Hence, the body responsible for receiving disciplinary complaints and conduct disciplinary proceedings/investigations is the HJCM (Articles 110 and 136 of the SJM).

When a disciplinary proceeding is initiated, the HJCM appoints an Inspector (who is a judge) to conduct the investigation, in accordance with Article 109 *et seq* of the SJM.

During the proceedings, the judge against whom the complaint was lodged is notified and informed about the substance of the complaint. He/she has the right to be heard and to present evidence, as well as the right to be assisted by a lawyer.

Following the investigation phase, the Inspector may:

1. suggest/propose the dismissal of the case, if he/she believes that not sufficient evidence of guilt/responsibility of the accused judge was found. In this case, the HJCM makes the final decision to dismiss the case;
2. bring charges against the accused judge, comprehensively outlining and describing the conduct that constitutes a disciplinary infraction, the time and place of the violation, any aggravating or attenuating circumstances and all relevant facts, as well as the applicable legal framework and sanctions to the case. In this case, and only with the accused judge agreement, the Inspector may suggest/propose the immediate application of the penalty of admonishment, which may be imposed by the HJCM without further ado.

If charges are brought, the accused judge may submit his/her defence within 20 days. He/she can present witnesses and/or documents and/or request other measures of inquiry to establish his/her innocence.

After all evidence is presented and examined, the Inspector submits, within 15 days, a final report, which (if the accused judged is considered guilty) must contain all facts considered proven, their qualification/legal assessment and the concrete disciplinary sanction applicable to the accused judge. This report is the basis for the final decision, which is made by the HCJM.

All disciplinary decisions rendered by the HCJM can be appealed before the Supreme Court of Justice.

**3. Please provide detailed information on the disciplinary penalties that may be imposed on a 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 can be imposed on a judge (established under Articles 91 to 102 of the SJM) are the following:

1. Admonishment (written warning), applicable to minor offences;
2. Fine, applicable to serious offences;
3. Transfer to another jurisdiction/court, applicable to serious or very serious offences;
4. Suspension from duties, applicable to serious or very serious offences;
5. Compulsory retirement, applicable to very serious offences;
6. Removal from post, applicable to very serious offences.

**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?**

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| **YEAR** | **2010** | **2011** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** |
| Disciplinary proceedings initiated | **44** | **43** | **40** | **19** | **22** | **45** | **29** | **32** | **16** | **24** |
|  |  |  |  |  |  |  |  |  |  |  |
| Penalty: admonishment | 6 | 8 | 3 | 1 | 2 | 7 | 7 | 6 | 4 | 5 |
| Penalty: fine | 15 | 15 | 16 | 22 | 10 | 19 | 13 | 17 | 11 | 6 |
| Penalty: transfer | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0 |
| Penalty: suspension | 2 | 6 | 4 | 2 | 2 | 8 | 5 | 1 | 3 | 1 |
| Penalty: compulsory retirement | 0 | 3 | 3 | 1 | 2 | 1 | 5 | 3 | 0 | 3 |
| Penalty: removal from post | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |

Source: HCJM

Please bear in mind that not all disciplinary proceedings are initiated and concluded in the same civil year.

Moreover, the result of a disciplinary proceeding may also be a dismissal or an acquittal.

**Civil and criminal liability**

**5. Can a judge be subject to civil and/or criminal liability as a result of the exercise of his or her function? If so on which cases? Who may lodge a complaint against the judge? And which authority in responsible for adjudicating these cases?**

The independence of judges is a guaranteed by their irresponsibility and irremovability, along with other rights/guarantees, which are enshrined in the SJM. According to Article 5 of the SJM, judges may not be held liable for their judgments and decisions, except in the circumstances provided for by law.

When, in an ongoing disciplinary proceeding, criminal liability of a judge is determined, the Inspector in charge shall immediately inform the SCM and the Public Prosecution Service of this matter. Regarding criminal liability, criminal provisions/legal framework are applicable. Nevertheless, the disciplinary proceedings are autonomous from criminal or civil proceedings.

When the violation is not a criminal conduct, a judge can only be subject to civil liability by means of an action under a right of recourse from the Portuguese State against the judge, and only in cases of intentional fault or serious misconduct.

Regarding criminal liability, the authority responsible for trying thesecases is the court of the next higher grade, in other words, a judge performing his/her duties in a court of first instance shall be tried by a Court of Appeal; a judge performing his/her duties in a Court of Appeal or in the Supreme Court of Justice shall be tried by the Supreme Court of Justice.

**6. Please provide detailed information, including disaggregated data, on the number of judges that have been subject to civil/criminal proceedings in the last ten years. How many of them were found liable for judicial errors? What was the outcome of these proceedings?**

Data not available in the HCJM.