

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

1 April 2020

Dear Sir/Madam,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 35/11.

I would like to transmit the attached questionnaire on “disguised” disciplinary actions or procedures against judges. A questionnaire focusing on ordinary disciplinary proceedings against judges has been sent to States and is available on the OHCHR webpage: <https://www.ohchr.org/EN/Issues/Judiciary/Pages/IDPIndex.aspx> The information gathered through this questionnaire will inform my thematic report to the General Assembly, to be presented in October 2020.

In this regard, I would be grateful if your organisation could submit the responses electronically to Mr. Stefano Sensi (email: ssensi@ohchr.org), copy to SRindependenceJL@ohchr.org, possibly by **4 May 2020**, using the email title: “*Name of your organisation* -Submission to the report on the disciplinary, civil and criminal liability of judges”. Kindly limit your responses to 5,000 words and attach annexes where necessary.

I wish to thank you in advance for your cooperation and hope to continue a constructive dialogue with your organisation on issues related to my mandate.

Please accept, Sir/Madam, the assurances of my highest consideration.



Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

QUESTIONNAIRE

submitted by the

AUSTRIAN ASSOCIATION OF JUDGES

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 Association of Austrian Judges has no knowledge of whether and against whom disciplinary proceedings are being conducted. We have therefore requested the Federal Ministry of Justice to provide us with the relevant data. According to this, records have only been kept since 2013. Since 2016, the number of disciplinary complaints has decreased significantly, which is due to a decision of the Supreme Court. According to this decision, "disciplinary complaints" made by private individuals are not to be dealt with by the disciplinary court, because disciplinary proceedings are made exclusively in the public interest.

Judges can be removed from office as a disciplinary sanction. Article 27 of the Austrian Criminal Code provides that an Austrian civil servant loses his or her office if he or she is sentenced (inter alia) to a term of imprisonment of more than one year for a criminal offence committed intentionally. In these cases there is no longer a disciplinary penalty.

- **Since 2013 225 disciplinary proceedings have been initiated against judges, of which 222 have now been completed. 38 times judges have been found guilty of a disciplinary misconduct. 2 judges were removed from office as a direct result of a criminal conviction (the disciplinary proceedings have been closed).**
- **Since 2016 106 disciplinary proceedings have been initiated against judges of which 103 have now been completed. 20 times judges have been found guilty of a disciplinary conduct. No judge, however, has been removed from office since 2016.**

It should be stressed that the significant decrease in disciplinary proceedings between 2013 and 2016 is due to the change in jurisdiction described above.

2. Has any judge belonging to your association been subjected to any form of sanctions that were not previously established by law or that were imposed through a procedure that did not meet the procedural requirements established by the law? If yes, please provide information on the case(s).

No.

3. Apart from disciplinary proceedings, are there any other measures that may be used to interfere with the capacity of a judge to adjudicate cases before him or her in full independence? Are you aware of any case in which a judge has been promoted, transferred to another court, forced to take a training course, a vacation or medical leave, or coerced or pressured in similar ways in order to abandon a case pending before him or her? If yes, please provide information on the case(s).

- **The Judges' and Public Prosecutors' Service Act (Richter- und Staatsanwältedienstgesetz) sets out the provisions on disciplinary proceedings. Promotions or transfers to another court are possible as a disciplinary sanction.**
- **A judge may be transferred without his / her agreement to another court under certain very strict conditions, but only after a decision by a specially appointed court (Dienstgericht).**
 - **Such a transfer may be permitted if circumstances beyond the Judge's control and beyond the scope of his / her duties permanently and seriously affect his / her reputation and his /her duties in his /her post to such an extent that the judge's remaining in his / her post would be detrimental to the administration of justice.**
 - **Judges who are close relatives may not be appointed to the same district court. If judges appointed to the same district court become close relatives, a transfer (if necessary without the agreement of the judge) to another court is permitted.**
- **A judge may be (compulsorily) retired if he / she is no longer able to perform his / her duties. This is only possible in two cases (provided by law): 1) if the judge has been absent from duty for more than one year due to illness; or 2) if the judge no longer meets the requirements for appointment as a judge.**
- **Training courses, however, cannot be coerced.**

4. What measures have been put in place in your country to enable judges to decide matters before them impartially and without any pressure or interference?

The independence of judges is guaranteed by constitutional law: freedom from instructions, the irremovability and irreplaceability of judges are enshrined in the Austrian Federal Constitution. Judges are appointed without any time limitation. They enjoy tenure until compulsory retirement age (in Austria: 65 years).

An essential part of the training is also an appropriate awareness raising and sensitization of the future judges.

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