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for the Judiciary (ENCJ)

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de la Justice (RECJ)

Minimum Judicial Standards V

Disciplinary proceedings and
liability of judges

ENCJ Report
2014-2015



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I. Executive Summary

The Project Team on the “Development of Minimum Judicial Standards V” was established by the European Network of Councils for the Judiciary (ENCJ) in September 2014 as a result of the ENJC work plan 2014-2015 approved by the General Assembly held in Rome on 11-13 June 2014. The Project Team was established as a continuation of the work carried out by five former ENCJ Working Groups/Project Teams on “Development of Minimum Judicial Standards” and “Mutual Confidence”. The success of these projects has confirmed that the adoption of minimum standards improves the understanding among judicial authorities and different legal systems. It is the ENCJ’s view that the identification of minimum judicial standards and relevant indicators in particular fields of the justice sector provides a tool for self-evaluation for judicial systems and will further the approximation and ultimately the improvement of the judicial systems in Europe. This will also support the development of independent Councils for the Judiciary and contribute to the attainment of a European judicial culture.

The main objectives of the Project Team were:

- 1) To develop a set of minimum standards and relevant indicators in the field of disciplinary liability of judges and disciplinary procedures against members of the Judiciary, in order to assure the efficiency and accountability of courts and judges, as well as public confidence in the judiciary and the judicial system as a whole.
- 2) To provide a tool which can be used by national judicial authorities, Councils for the Judiciary and other State powers when assessing their existing system of disciplinary liability or planning any reforms in relation thereto.

This Report defines minimum standards and indicators pertaining to the specific topics considered by the Project Team during the working meetings held in Madrid, Dublin and Brussels. The minimum standards and indicators have been encompassed under five main areas: judicial discipline and its balance with judicial independence; links between discipline and a judicial code of conduct/ethics; Judge’s behaviour that may lead to disciplinary procedures; the handling of disciplinary procedures (including bodies responsible for dealing with disciplinary complaints against judges); and the judge’s guarantees and rights in the context of disciplinary procedures.

In order to develop the standards and indicators the Project Team has analysed and discussed the answers provided by ENCJ members and observers to a questionnaire on

national systems in the field of judicial discipline. In addition, the Project Team has researched, summarised and considered the relevant information in existing reports or opinions on judicial discipline issued by relevant stakeholders (such as EU Institutions/Council of Europe CCJE/Venice Commission) and other international documents on this subject. Finally, the Project Team has tried to ensure that the minimum standards and indicators are fully consistent with other ENCJ documents and reports which have some connection with the issues of judicial independence and liability, such as:

1. ENCJ Report 2013-2014 Independence and Accountability of the Judiciary
2. ENCJ Report 2012-2013 Distillation of ENCJ Guidelines, Recommendations and Principles
3. ENCJ Report 2010-2011 Councils for the Judiciary
4. ENCJ Report 2012-2013 Minimum Judicial Standards III (evaluation and irremovability of judges)
5. ENCJ Budapest Declaration on Self Governance for the Judiciary: Balancing Independence and Accountability (2008)
6. ENCJ London Declaration on Judicial Ethics (2010) and ENCJ Report 2009-2010 Judicial Ethics, as approved by the ENCJ in the London Declaration.

Consistently with those ENCJ documents, the Project Team is fully aware that there is a direct connection between judicial independence, accountability and judicial liability. Irremovability and security of tenure are key elements of judicial independence, which prevent a judge being removed from judicial office without his/her consent. However, the importance of the powers vested in the judge and the confidence of the public in the Judiciary demand mechanisms to hold members of the Judiciary responsible. This includes removal from office, in any case where misconduct rendering the judge unfit to continue in office is proved. There is also an obvious need for caution in the recognition of disciplinary liability of judges, which is based in the requirement to maintain judicial independence and freedom from any undue pressure exercised by other state branches of power, other members of the Judiciary, the media, society and even litigants. Accordingly, a permanent judicial appointment should only be terminated in cases of serious breaches of discipline or criminal law. The transfer of a judge to a different office or functions without his/her consent should only be by way of a disciplinary sanction (or exceptionally in the course of reform of the organisation of the judicial system). Another consequence of the principle of judicial independence is that judges should not be subjected to civil or disciplinary liability in respect of their interpretation of the law, their assessment of facts or their weighing of evidence in the adjudication of a case, save for

cases of malice or gross negligence, since the correction of judicial errors in the interpretation of law and the determination of facts should lie in an appropriate system of appeals.

II. Introduction: Goal and Methodology of the Project.-

The Project Team on the “Development of Minimum Judicial Standards V (Disciplinary Procedures)” was established by the European Network of Councils for the Judiciary (ENCJ) in September 2014 as a result of the ENJC work plan 2014-2015 approved by the General Assembly held in Rome on 11-13 June 2014. The Project Team comprised representatives of 18 member countries (Belgium, Bulgaria, Denmark, England and Wales, France, Ireland, Italy -CSM and CPGA-, Lithuania, Malta, the Netherlands, Northern Ireland, Poland, Portugal, Romania, Scotland, Slovenia, Slovakia and Spain), as well as representatives from 6 observer countries (Albania, Austria, Czech Republic, Hungary, Norway and Turkey). The Project Team was co-chaired and coordinated by Mr. John Hedigan, member of the Courts Service of Ireland, and Mr. Fernando Grande-Marlaska Gómez, member of the General Council for the Judiciary of Spain. The full list of participants in the Project Team is included in Appendix A to this report.

The Project Team was established as a continuation of the work carried out by five former ENCJ Working Groups/Project Teams on “Development of Minimum Judicial Standards” and “Mutual Confidence”. The primary initiative to create a forum for the European Judiciaries in order to develop a set of representative standards has evolved into the multi-annual ENCJ project which develops a set of minimum standards and indicators for the relevant Justice sector each year. Consequently, minimum standards (and relevant indicators) have been developed for the recruitment, selection, appointment and (where relevant) evaluation and promotion of members of the Judiciary (2011-2012), for the evaluation and irremovability of judges (2012-2013), and for the allocation of cases and guarantees in place (2013-2014) by the subsequent ENCJ Project Teams.

The success of these projects has confirmed that the adoption of common, minimum standards improves the understanding among judicial authorities and different legal systems and, therefore, contributes to the reinforcement of mutual confidence and judicial cooperation whilst facilitating the attainment of a common European judicial culture. In the same vein, the ENCJ draft Work plan 2014-2018 discussed at the General Assembly held in Rome on 11-13 June 2014 states that “the ENCJ believes that the identification of minimum judicial standards and the relevant indicators in these particular fields provides a tool for self-evaluation for judicial systems and will further the approximation and ultimately the improvement of the judicial systems in Europe. This will support the development of

independent Councils for the Judiciary and contribute to the attainment of a European judicial culture. A comprehensive framework of minimum standards for the justice sector will be developed”.

For the purpose of drawing up the current report and its appendices the Project Team held a kick-off meeting in Madrid on 18th & 19th September, 2014 (together with the other Project Team established by the ENCJ following the implementation of the Work plan for the period 2014-2015) and three additional meetings: in Dublin on 8th & 9th December, 2014, in Madrid on 26th & 27th February, 2015 and in Brussels on 17th April, 2015. Moreover, the sub-committee formed within the Project Team in order to produce a draft report met in Amsterdam on 24th March, 2015

During the kick-off meeting, the members of the Project Team discussed the results of the Project and the methodology to be followed. The members of the Project Team agreed that the main result of the project would be “a report containing a set of minimum standards and relevant indicators in the field of disciplinary liability of judges and disciplinary procedures against members of the Judiciary, in order to assure the efficiency and accountability of courts and judges, as well as public confidence in the Judiciary and the judicial system as a whole”. It was also stated that the “standards are particularly important, since the results of the Project can be used by national judicial authorities, Councils for the Judiciary and other State powers when assessing their existing system of disciplinary liability or planning any reforms in relation thereto. In addition to this, the report will contribute to raising awareness and improving understanding of different legal systems and their functioning as well as common values in justice systems in Europe”.

Regarding the methodology and activities to be undertaken by the Project Team, it was decided to structure these activities in the following way:

A) Collection of the relevant information on national systems of disciplinary liability of judges by means of a questionnaire addressed to the ENCJ members and observers represented in the Project Team and to other ENCJ members and observers:

— The Project Team discussed and defined the main relevant issues for the development of common standards on disciplinary liability of judges (as well as relevant indicators). A questionnaire was drafted for the collection of such information. Since the main findings of the Project Team are partially based on the analysis of the answers to the questionnaire, specific attention was paid to the formulation of the questions, which should be answerable, definite and comparable in order to create an effective comparative tool.

— The questionnaire was circulated among ENCJ members and observers and a reasonable period for providing the answers was set.

The completed questionnaires and the additional documents provided by some ENCJ members and observers are annexed to this Report as Appendix C and Appendix D.

B) **Research, compilation and analysis of existing reports or opinions issued by relevant stakeholders in the field of disciplinary liability of judges** (e.g. EU Institutions/Council of Europe CCJE/Venice Commission, UN). The Project Team has attempted to identify all relevant opinions and reports in this field and to analyse those materials summarising European and International standards for disciplinary liability of judges. Appendix B contains a summary of the international sources relating to judicial disciplinary procedures prepared for the consideration of the Project Team. This document refers to 14 main principles and guidelines and summarises the listed international sources.

C) **Discussions about the information collected in connection with each of the main areas of the subject of disciplinary liability of judges** (both on national systems and international sources) by the members of the Project Team during the several working meetings. As the outcome of the discussions minimum standards and indicators were defined by the Project Team.

D) **Drafting and approval of the Final Report of the Project Team** defining the standards and indicators in the field of disciplinary liability of judges.

E) **Presentation of the Final Report developing the standards and indicators at the ENCJ General Assembly** for final approval.

II.1. The Report

The aim of the Final Report of the Project Team is to define the minimum standards and indicators regarding each of the main areas of disciplinary liability of judges. Each area is dealt with in a separate chapter of the Final Report.

The work of the Project Team has centred on the proposition that there is a need to have relevant standards and indicators in the field of disciplinary liability of judges, since appropriate conduct by judges in their professional activities (or even in some aspects of their personal life) can be seen by the public as essential to the credibility of the courts and can have an impact on public confidence in the Judiciary and the judicial system as a whole. As a corollary of the powers and the trust conferred by society upon members of the Judiciary, there should be some means of holding judges responsible in serious cases of misconduct. However, there is also a need for caution in the recognition of any disciplinary liability of judges. It is essential to protect judicial independence. An improper system of disciplinary

liability of judges may threaten judicial independence. The threat may come from undue pressure exercised by other state branches of power, other members of the Judiciary, the media, society and even litigants. Taking into account the great variety of systems for determining disciplinary liability of judges across Europe, the Project Team has endeavoured to identify the relevant minimum standards in this field, while, at the same time, it has tried to determine the correct balance between the values at stake (i.e. judicial accountability and judicial independence). In this respect, the Project Team has identified a triple Project goal: a) To increase mutual confidence among judges from different jurisdictions within the EU. b) To strengthen public confidence in the independence and impartiality of the judicial systems of the members of the EU. c) To assure the efficiency and accountability of courts and judges, without harming their independence and impartiality.

Finally, it has to be underlined that the report of the Project Team has taken into account the contents of several international documents that deal with the issue of judicial accountability and judicial independence, including:

- Universal Declaration on the Independence of Justice (The Singhvi Declaration), approved by the UN in 1985.
- UN Basic Principles on the Independence of the Judiciary (endorsed by the UN General Assembly in November/December 1985).
- European Charter on the Statute for Judges, adopted by the Council of Europe in July 1998.
- Universal Charter of the Judge, approved by the International Association of Judges in November 1999.
- Opinion No. 1 of the Consultative Council of European Judges (CCJE) for the Attention of the Committee of Ministers of the Council of Europe on the Standards Concerning the Independence of the Judiciary and the Irremovability of Judges (adopted in November 2001).
- Opinion No. 3 of the Consultative Council of European Judges (CCJE) to the Attention of the Committee of Ministers of the Council of Europe on the Principles Governing Judges' Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality (adopted in November 2002).
- Opinion No. 10 of the Consultative Council of European Judges (CCJE) to the Attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the Service of Society (adopted in November 2007).

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- Mt. Scopus Approved Revised International Standards of Judicial Independence, approved by the International Association of Judicial Independence and World Peace in March 2008.
 - Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct, adopted by the Judicial Integrity Group in January 2010.
 - Venice Commission Report on the Independence of the Judicial System Part I: The Independence of Judges (adopted in March 2010).
 - Recommendation CM/Rec (2010) 12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities (adopted in November 2010).
 - Magna Carta of Judges (Fundamental Principles) of the Consultative Council of European Judges (CCJE), adopted in November 2010.

II.2 The Questionnaire

In order to discuss and develop minimum standards and indicators the Project Team decided to collect information on relevant national standards in the field of disciplinary procedures concerning the Judiciary, including recommendations of best practices in several aspects of disciplinary procedures relating to the Judiciary. The information was collected through a questionnaire on a series of specific topics linked to disciplinary procedures, which was answered by the members of the Project Team and other ENCJ members and observers. The responses to the questionnaire and the additional documentation provided have been collected and included as Appendix C and Appendix D to this Report, respectively.

The responses to the questionnaire provide detailed information on national systems of disciplinary liability of judges concerning the specific areas subject to analysis by the Project Team. The information is contained in the responses to 13 questions and numerous sub-questions dealing with issues such as the links between discipline and the judicial guidelines or code of conduct/ethics; the sources of the provisions on judicial discipline; the definition of judicial misconduct, including aspects of the judge's private life; the available sanctions; the bodies and persons involved in disciplinary procedures (including the administration and investigation of disciplinary complaints and the decision-making in the field of judicial discipline); the procedural aspects of judicial discipline (for instance, the timescale within which disciplinary proceedings should be initiated and adjudicated upon; measures or restrictions, including suspension, which could be applied during the course of the investigation; legal representation and other rights of the judge in the context of disciplinary proceedings; whether disciplinary proceedings are conducted on paper or at an oral hearing, in

private or in public; whether there is a right of appeal/review against the decision imposing a disciplinary sanction; publication of the proceedings, including the identity of the concerned judge).

The questionnaire required a description of the current status in each country and -in some cases- of the relevant initiatives already undertaken or to be undertaken in the fields subject to analysis, thus providing an overview of the situation in the countries concerned, and also recommendations of best practices in several aspects of disciplinary procedures relating to the Judiciary. Nevertheless, the aim of the questionnaire was mainly as a guide -an easy reference- for seeking further information and not as a thorough comparison of the position in each jurisdiction on each topic. Some responses contained very detailed information on specific topics, whereas others did not. As a consequence, the responses on each issue in the questionnaire were various in style, length and number. When reading the questionnaire the reader should keep this in mind, since the fact that some members left out information on an issue in the questionnaire does not imply that the country in question does not have a regulation or a policy similar to that described in the answers from other countries. Further, more detailed information regarding the topics subject to analysis by the Project Team could be provided through the relevant national institution (whether the Council for the Judiciary, Court Administration or Ministry of Justice). On the other hand, keeping in mind that the aim of the ENCJ is to share experiences between members and observers, the Project Team suggests that the questionnaire could be completed with information from members and observers of the ENCJ who have not yet responded and also updated by the responding countries on a regular basis.

III. Indicators in the field of disciplinary liability of judges and disciplinary procedures against members of the Judiciary.-

This report can be used by national judicial authorities, Councils for the Judiciary and other State powers in assessing their systems of judicial discipline and disciplinary liability, and planning reforms thereof. The report should also assist in ensuring the efficiency and accountability of judges, and increase public confidence in the Judiciary and the judicial system as a whole. The report should also raise awareness and improve understanding of the different legal systems, and the common values of those systems.

It is therefore important to establish the indicators in the field of judicial discipline and judicial disciplinary procedures in order to inform the standards that need to be set.

In the ENCJ Councils for the Judiciary Report 2010-2011 it was stated that the judicial disciplinary system, as a fundamental, must guarantee respect for the principles of the independence of the judicial order and transparency to maintain public confidence, that the disciplinary role must be assigned to a body that is entirely free from political interference or influence, and that it is preferable that disciplinary proceedings are conducted within the judicial system rather than by *ad hoc* bodies. The Report 2012-2013 of the ENCJ Project Team Minimum Judicial Standards III underlined that the procedures for judicial discipline and the power to impose disciplinary sanctions that may lead to the removal from a judicial office ought to be placed in the hands of a body or bodies independent of government in which a relevant number of members of the Judiciary are directly involved, specifying that this independent body in charge of judicial discipline could be the appropriate national Council for the Judiciary (or a specific disciplinary committee or department within the Council for the Judiciary), independent national or regional disciplinary boards or committees, the heads of the appropriate courts or even the Head of the Judiciary. In the ENCJ Report 2013-2014 Independence and Accountability of the Judiciary the Project Team sought to develop a set of indicators for the evaluation of the independence and accountability of the Judiciary and a State's judicial system. There is an inevitable overlap between Independence and Accountability, and Discipline, and many of the indicators for Independence and Accountability can be used to inform the disciplinary liability of judges.

There are two types of indicators. Subjective indicators require the existence of opinion surveys among relevant groups within society.

Objective indicators must be considered at both the structural level and individual level of the judge. It is not sufficient to have a disciplinary process for the Judiciary as a whole; there must also be procedures relating to individual judges. The responsibility has to be both collective and individual; it is the collective responsibility of the Judiciary to ensure that appropriate levels of conduct are set, but the individual responsibility of the judge to comply with those levels.

The Venice Commission Report on the Independence of the Judicial System Part I: The Independence of Judges considered disciplinary proceedings in light of the principle of irremovability. The Venice Commission accepted the European Charter on the Statute of the Judges where the issue of irremovability is addressed. The European Charter (at § 3.4) states that a judge holding office at a court may not be appointed to another judicial office or assigned elsewhere without having consented thereto, with one of the limited exceptions to this rule being where “transfer is provided for and has been provided by way of a disciplinary sanction”. The Venice Commission favours granting the power to carry out disciplinary

proceedings to judicial councils or disciplinary courts and in addition there should be the possibility of an appeal against the decisions of disciplinary bodies.

The Recommendation CM/Rec (2010) 12 of the Committee of Ministers to member States on Judges: Independence Efficiency and Responsibilities emphasises the security of tenure and irremovability of judges as key elements of the independence of judges (at §§ 50, 52, 66, 67 and 68). Only in cases of disciplinary sanctions or reform of the organisation of the judicial system should a judge receive a new appointment or be moved to another judicial office without consenting to it. A permanent appointment should only be terminated in cases where there have been serious breaches of disciplinary or criminal provisions as established by law. The document makes several recommendations regarding liability and disciplinary proceedings to be applied in the legislation, policies and practices of member states. The Committee of Ministers recommended that the interpretation of law, assessment of facts or the weighing of evidence that a judge is required to undertake in determining a case should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence. In the event that the state has had to award compensation, only it may seek to establish the liability of a judge through court action.

The Universal Declaration on the Independence of Justice (The Singhvi Declaration, at paras. 26-31) declares that a complaint against a judge should be dealt with expeditiously and fairly under an appropriate procedure. The judge should also have the opportunity to comment on the complaint at the initial stage. Judicial discipline or removal proceedings should be held before a Court or a Board composed predominantly of members of the Judiciary. The power of removal may be vested in the Legislature by impeachment or joint address. Disciplinary action shall be based upon established standards of judicial conduct. The Singhvi Declaration also emphasises that the disciplinary proceedings must ensure fairness to the judge and the opportunity for a full hearing. Judgments of disciplinary proceedings shall be published.

The following is a list of **objective indicators in the field of disciplinary liability of the Judiciary:**

1.- That there are guidelines and/or a code of judicial ethics and/or conduct.

Such ethical principles lay down the standards of conduct which society can expect from their judges and for which judges may be held accountable. Guidelines and/or a code of judicial ethics can strengthen public confidence and promote a better understanding of the role of a judge both in his public and private life. The guidelines and/or code must be available to the public.

2.- That there is a complaints procedure.

In relation to this indicator, the following sub-indicators can be identified:

2.1.- Availability of the procedure

This sub-indicator describes whether or not the Judiciary has a complaints procedure and a method of lodging a complaint.

2.2.- Scope of the procedure

This describes the scope of the procedure by enumerating the admissible grounds for the complaint such as the behaviour of the judge, timeliness and administrative mistakes.

2.3.- External participation in the complaints procedure

This sub-indicator relates to procedures that allow for participation by independent representatives to ensure the Judiciary is accountable.

2.4.- Responsibility for the procedure

This relates to the persons or bodies who are to implement the procedure.

2.5.- An appeal against a decision on a complaint

This sub-indicator describes whether a decision on a complaint can be appealed.

2.6.- The number of the complaints

This sub-indicator points out the number of complaints against the Judiciary which can be used to identify the confidence of society in the Judiciary.

2.7.- The number of complaints which result in investigation and/or sanction

2.8.- The timeliness of the procedure

This deals with the timescale for the initiation of the proceedings and the adjudication thereon.

3.- That the guidelines and/or code of ethics and/or conduct and the complaints procedure, including the procedure for administration, investigation and decision making are open and transparent.

As regards **objective indicators in disciplinary procedures against individual members of the Judiciary**, the values expected of a judge are set out and explained in the ENCJ Report on Judicial Ethics 2009-2010. All the qualities therein are adopted here. The qualities which would result in disciplinary action are a matter for national authorities, but all should be recognised.

1.- That the judge must comply with the guidelines and/or code of ethics/conduct. The details of such guidelines and/or code are a matter for the national authorities.

This indicator addresses the need for guidelines and/or a code of ethics or conduct which should set out the standards expected of the Judiciary, and the matters which, if the judge is in breach of them, might lead to disciplinary action. It is intrinsic within such standards or code that expectations of conduct may differ depending upon the nature and extent of the jurisdiction exercised, whilst there will be overall standards that apply to all the Judiciary. It is a matter for the national authorities to set out what standards of conduct apply, to whom they apply, and what breaches may result in disciplinary action.

2.- That the judge must at all times apply the principles of independence, impartiality and fairness.

It is an intrinsic quality required of all judges that they should exercise their jurisdiction in a fair and impartial manner, and that they will apply the law without fear or favour, affection or ill will. Such qualities are essential to preserve the confidence of the public and the integrity of the Judiciary as a whole.

3.- That the judge must at all times behave with integrity in his professional and personal life.

The judge's personal integrity is an essential ingredient of the integrity of the Judiciary as a whole.

4.- That a judge should endeavour to ensure that decisions are made and cases concluded within a reasonable timescale.

According to the ENCJ Judicial Ethics Report 2009-2010 a judge should be diligent in handling cases, which means that they are dealt with and judged within a reasonable period appropriate to the subject matter, while ensuring the quality of the decision. The ENCJ Timeliness Report 2010-2011 stresses (Recommendations 7.1 and 7.2) that “in striving for timeliness it must be remembered that the drive for expedition should be balanced with other quality aspects” and “the independence of the judiciary must never be put in peril”.

5 That a judge is entitled to a private life, but his/her conduct should not be such as to bring the Judiciary in to disrepute.

A judge is entitled to a private life and disciplinary action should only be taken in relation to matters occurring when the judge is carrying out his/her professional duties and responsibilities. However, in order to maintain the confidence of the public it is important that a judge behaves at all times in such a manner as will not bring the Judiciary into disrepute.

Such conduct should, if necessary, be capable of investigation and proportionate disciplinary action.

IV. Judicial discipline and its balance with judicial independence.-

This report is a follow on from the ENCJ report entitled Independence and Accountability of the Judiciary 2013-2014. The independence of the Judiciary as a whole and that of individual judges lie at the heart of the rule of law. Without it the Judiciary cannot fulfil its functions. But independence does not stand on its own. It must be recognised that independence is directly linked to accountability. A Judiciary that claims independence but which refuses to be accountable to society will not enjoy the trust of society and will not achieve the independence for which it strives.

Independence of the Judiciary is fundamental and must be defended by the Judiciary in the public interest. The Judiciary achieves legitimacy and the respect of its citizens by excellent performance, resulting in impartial, well-reasoned, decisions. The best safeguard of independence is excellent and transparent performance. In that way the Judiciary fulfils its mandate and demonstrates that it does so. Whilst mistakes will always occur and draw criticism, an independent and accountable Judiciary is open to justified criticism and learns from its mistakes. **Judges should be guided by ethical principles of professional conduct, which include duties and responsibilities breach of which may be sanctioned by disciplinary measures.**

The judiciary's independence exists to serve society and the citizen, not the interests of the judge. Thus appropriate and workable judicial disciplinary mechanisms are required in order to achieve accountability. However, disciplinary processes are an area of vulnerability for the independence of the Judiciary. An ill disposed authority may search in judicial disciplinary procedures for a way to intimidate judges in the exercise of their functions. This may be done through inappropriate levels of liability which might give rise to disciplinary action. Civil liability for their analysis of the law or their assessment of the facts is an example. It might also arise in the context of bogus, frivolous or vexatious complaints made against a judge. **Any disciplinary measures and procedures should be regulated by law** and there must be carefully designed procedures to protect judges against such or any abuse of the judicial disciplinary process. **Disciplinary procedures established to provide for the accountability of the Judiciary must not be allowed to become a means of intimidating judges.**

In seeking such disciplinary structures, the ENCJ, whilst recognising the rich diversity of legal culture in Europe, considers that judicial disciplinary procedures should be organised within the framework of an independent judicial, constitutionally established council or some similar independent institution¹. Matters of discipline, judicial ethics and the processing of complaints should fall under the authority of a Council for the Judiciary or other independent or autonomous body². Alternatively such matters may be dealt with entirely within the relevant judicial system³. Such bodies should be composed of a substantial representation of judges elected by their peers⁴. They should avoid self-interest and self-protection. The complaints process should incorporate a filtering mechanism so as to ensure that manifestly unfounded, frivolous or vexatious complaints are dismissed at the earliest opportunity.

A complaint or charge against a judge should be dealt with in an expeditious and fair manner under an appropriate procedure. The judge has a right to a fair hearing and the initial stage of the investigation should be kept confidential unless otherwise requested by the judge. A judge should only be suspended or removed from judicial office for reasons of conduct that renders s/he unfit to discharge his/her duties. Disciplinary action should be determined under established standards of judicial conduct. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review (judicial review or cassation) although this may not apply to decisions of the highest court or those of a legislature in impeachment or similar proceedings.

V. Links between judicial discipline and guidelines and/or a judicial code of conduct/ethics.-

1. The need for guidelines and/or a code of ethics/conduct and the role of judges and/or a Council for the Judiciary in drafting this, is a logical consequence of the Budapest Resolution of 2008. In this resolution the ENCJ identified the need to balance judicial independence and accountability. The danger is that disciplinary procedures may be used as a tool to intimidate the Judiciary. Thus this resolution provides that matters of discipline and ethics should fall under the authority of a Council for the Judiciary or other independent and autonomous body. The ENCJ Judicial Ethics Report 2009-2010 provides that the affirmation of principles of professional conduct for judges strengthens public confidence and allows a better understanding of the role of the judge in society. According to the report, there is a need for

¹ ENCJ report – independence and accountability 11.1b.

² Budapest resolution on self governance for the judiciary 2008.

³ ENCJ Report – Councils for the Judiciary 2010-2011 paragraphs 3.10 – 3.13.

⁴ See CJE Opinion number 10 paragraph 64 2007, The Singhvi Declaration 1989 and the Universal Charter of the Judge 1999, articles 8 and 11.

“striking a balance between the independence of justice to which everyone is entitled, the transparency of institutions, the freedom of the press and the public’s right to information.” The importance of preserving judicial independence, free from any pressure or manipulation, is also emphasised so that a judge can maintain the impartiality and efficiency expected by the public. Judicial ethics were addressed in this report in a positive manner to emphasise the common, founding values of the judges’ work, preventive principles and personal qualities, in response to the public’s expectations.

2. Moreover in its recommendations to member states at paras. 72–74, the Committee of Ministers (CM – REC (2010) dealing with the ethics of judges, stated as follows:

“72. Judges should be guided in their activities by ethical principles of professional conduct. These principles not only include duties that may be sanctioned by disciplinary measures, but offer guidance to judges on how to conduct themselves.

73. These principles should be laid down in codes of judicial ethics which should inspire public confidence in judges and the judiciary. Judges should play a leading role in the development of such codes.

74. Judges should be able to seek advice on ethics from a body within the judiciary.”

3. In 2010, the Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct (The Implementation Measures) were adopted by the Judicial Integrity Group. Part One describes the measures that are required to be adopted by the judiciary which include the following:

“1.1 Formulation of a Statement of Principles of Judicial Conduct

1.1 The judiciary should adopt a statement of principles of judicial conduct taking into consideration the Bangalore principles of judicial conduct.”

And further;

2. Application and Enforcement of Principles of Judicial Conduct

2.1 The judiciary should consider establishing a judicial ethics advisory committee of sitting and/or retired judges to advise its members on the propriety of their contemplated or proposed future conduct.

2.2 The judiciary should consider establishing a credible, independent judicial ethics review committee to receive, inquire into, resolve and determine complaints of unethical conduct of members of the judiciary, where no provision exists for the reference of such complaints to a court. The committee may consist of a majority of judges, but should preferably include sufficient lay representation to attract the confidence of the community.”

4. Conduct giving rise to disciplinary sanctions must be distinguished from a failure to observe professional standards. Professional standards represent best practice, which

judges should aim to develop and towards which all judges should aspire. They should not be equated with conduct justifying disciplinary proceedings. However the breach of professional standards may be of relevance, where such breach is alleged to constitute conduct sufficient to justify and require disciplinary sanction.

5. In its Opinion number 3 of 2002 on judges' professional conduct, the CCJE stated as follows;

"46. Codes of professional conduct also create a number of problems. For example, they can give the impression that they contain all the rules and that anything not prohibited must be admissible. They tend to oversimplify situations and, finally, they create the impression that standards of conduct are fixed for a certain period of time, whereas in fact they are constantly evolving. The CCJE suggests that it is desirable to prepare and speak of a 'statement of standards of professional conduct', rather than a code."

Later on the CCJE Opinion also stated as follows:

'...in order to provide the necessary protection of judges' independence, any statement of standards of professional conduct should be based on two fundamental principles:

i) firstly, it should address basic principles of professional conduct. It should recognise the general impossibility of compiling complete lists of pre-determined activities which judges are forbidden from pursuing; the principles set out should serve as self-regulatory instruments for judges, i.e. general rules that guide their activities. Further, although there is both an overlap and an interplay, principles of conduct should remain independent of the disciplinary rules applicable to judges in the sense that failure to observe one of such principles should not of itself constitute a disciplinary infringement or a civil or criminal offence;

ii) secondly, principles of professional conduct should be drawn up by the judges themselves. They should be self-regulatory instruments generated by the judiciary itself, enabling the judicial authority to acquire legitimacy by operating within a framework of generally accepted ethical standards. Broad consultation should be organised, possibly under the aegis of a person or body as stated in paragraph 29, which could also be responsible for explaining and interpreting the statement of standards of professional conduct."

6. Later in Opinion number 10 (2007) the CCJE recommended that the Council for the Judiciary be entrusted with ethical issues. At paragraph 60 it stated that given the distinction between professional ethics and discipline drawn up by the CCJE, the drafting of this collection of principles should be done by a body other than the one responsible for judge's discipline. Later at paragraph 61, the CCJE considered that associating persons external to the Judiciary (lawyers, academics, representatives of society, other governmental authorities) in the process of development of ethical principles is justified in order to prevent

possible perception of self-interest and self-protection, while making sure that judges are not deprived of the power to determine their own professional ethics. Later at paragraph 64 the CCJE also considered that the Council for the Judiciary is entrusted with ethical issues; it may furthermore address court users' complaints. In order to avoid conflicts of interest, disciplinary procedures in first instance, when not addressed within the jurisdiction of a disciplinary court, should preferably be dealt with by a disciplinary commission composed of a substantial representation of judges elected by their peers, different from the members of the Council for the Judiciary, with provision of an appeal before a superior court. Later in its Magna Carta of Judges (Fundamental Principles) (2010), the CCJE also provided principles 18 and 19 as follows:

“18. Deontological (ethical) principles, distinguished from disciplinary rules, shall guide the actions of judges. They shall be drafted by the judges themselves and be included in their training.

19. In each State, the statute or the fundamental charter applicable to judges shall define the misconduct which may lead to disciplinary sanctions as well as the disciplinary procedure.”

7. At its meeting in Dublin at the 8th and the 9th of December 2014 the Project Team considered the questionnaire which had been drafted at the first meeting in Madrid. In dealing with this, the group considered the link between ethical and disciplinary matters to be a distinction of some significance. It was noted that the line can be difficult to draw between guidelines and/or a code of ethics and guidelines and/or a code of conduct, as breaches of which may both lead to disciplinary action. The Project Team agreed that guidelines and/or a code of ethics should be drawn up by judges or a judicial council. It was agreed that non judicial members could be asked to provide guidance in the drafting of guidelines and/or a code of ethics⁵. The Project Team discussed the difference between ethics and conduct. Judges must follow the principles of ethics which sometimes overlap with conduct. It was noted that some countries separate the code of ethics and the code of conduct with disciplinary proceedings possible if the code of conduct is breached (for instance, Belgium, Croatia, Italy - CSM-, Romania, Slovenia, Spain and Sweden). It was noted that a code of ethics does not include criminal offences. Guidelines and/or a judicial code of ethics should be complied with but it does not follow that a breach of ethics should lead to disciplinary proceedings. There may be disciplinary proceedings if there is a persistent breach of ethics. Thus a breach of the code of ethics ought not *ipso facto* lead to disciplinary proceedings. It was agreed that, in

⁵ See CCJE Opinion No. 3 to the Attention of the Committee of Ministers of the Council of Europe on the Principles Governing Judges' Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality 2002 and ENCJ London Declaration on Judicial Ethics.

general terms, unacceptable conduct would be that which brings the Judiciary into disrepute. The Project Team agreed that as a matter of principle a judge is entitled to a private life. A judge should act however with the highest degree of integrity in both public and private life. If a judge engages in conduct in his private life that brings the Judiciary into disrepute, he or she should be capable of being subject to disciplinary action. The Project Team agreed that guidelines and/or a code of ethics should be a mandatory requirement. The guidelines and/or code of ethics should be binding on all judges.

8. As a summary of the discussions, the Project Team agreed on the following conclusions:

1. **Guidelines and/or a code of conduct/ethics should be drawn up by judges or a Council for the Judiciary. Lay members may be asked to contribute by advising or guiding on the content of such a code or guidelines.**

2. The Judiciary should consider establishing a judicial ethics advisory committee of sitting and/or retired judges to advise judges.

3. A distinction must be made between conduct giving rise to disciplinary sanctions and that of a failure to observe professional standards.

4. It may be desirable to describe as a “statement of standards of professional conduct” rather than a code. This suggests a more flexible, evolving set of standards. Given the distinction between professional ethics and discipline, such a statement should be drawn up by the judges themselves. Nevertheless, the involvement of interested externals is justified. Failure to observe any provisions thereof are not *ipso facto* a disciplinary matter. Although there is an overlap and interplay, principles of conduct should remain independent of the disciplinary rules applicable to judges.

VI. Judge’s behaviour that may lead to disciplinary procedures.-

The international sources which relate to the type of conduct which may lead to disciplinary procedures have a consistency which can be summarised as follows:

1. Judges should not be liable to civil or disciplinary liability in respect of their interpretation of the law, their assessment of facts or their weighing of evidence in determining a case, although some liability may arise in cases where there has been malice or gross negligence.

2. Judges should be guided by principles of ethical conduct, and disciplinary procedures should be based upon established standards of ethical conduct.

3. When a judge is not exercising his or her judicial functions s/he is as liable as any other person.

4. Judges should be guided by ethical principles of professional conduct, including duties that may be sanctioned by disciplinary measures. Disciplinary procedures should be based upon established standards of judicial conduct.

5. Conduct that may lead to disciplinary proceedings resulting in a change of status or removal should be clearly established. This should be done at national rather than European level.

These can be expanded upon by looking at the previous works. In Recommendation CM/Rec (2010) 12 of the Committee of Ministers to member States on Judges: Independence Efficiency and Responsibilities⁶ the Ministers recommended that the interpretation of law, assessment of facts or weighing if evidence that a judge is required to undertake should not result in civil or disciplinary liability, except in cases of malice or gross negligence. Disciplinary proceedings may be instigated when judges fail to carry out their duties, but judges should not be personally accountable for their decisions overruled or modified on appeal. Judges should be guided by principles of ethical conduct, and they are liable in the same way as any other citizen when not exercising their judicial function.

The Singhvi Declaration⁷ recognised that disciplinary action should be based on established standards of judicial conduct, and the UN Basic Principles on the Independence of the Judiciary⁸ states that a Judge can only be suspended or removed from office for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

The Consultative Council of European Judges Opinion No 1⁹ considered that it would be useful to prepare standards relating to conduct that may lead to removal from office and disciplinary action. In Opinion No 3¹⁰ it was concluded that this aim cannot be pursued at European level, and that each State should specify and define in statute or by charter the matters that may give rise to judicial disciplinary action. The principles previously mentioned are repeated.

These principles are echoed in other International sources. No Judge should be subject to civil liability in respect of the performance of professional duties (The Judges Charter from the European Association of Judges); professional misconduct that is gross or inexcusable or

⁶ At §§66 to 71.

⁷ The Universal Declaration on the Independence of Justice (The Singhvi Declaration), at § 27.

⁸ The UN Basic Principles on the Independence of the Judiciary, principle 18.

⁹ CCJE Opinion No. 1 for the Attention of the Committee of Ministers of the Council of Europe on the Standards Concerning the Independence of the Judiciary and the Irremovability of Judges, at para. 60.

¹⁰ CCJE Opinion No. 3 to the Attention of the Committee of Ministers of the Council of Europe on the Principles Governing Judges' Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, specially at para. 64.

brings the profession into disrepute can be subject to discipline, but not the content of judicial rulings, mistakes or criticism of the courts (Kyiv Recommendations; IAJ Conclusions (1980)); there should be law or established rules setting standards of judicial conduct (Siracusa Principles 1981); disciplinary action should be based on established standards of judicial conduct (Montreal Declaration 1983); the grounds for discipline should be fixed by law and clearly defined, a judge should not be subject to removal save for conduct showing he is manifestly unfit to hold the position of a judge.

The Project Team agreed that as a matter of principle a judge is entitled to a private life, but a judge's conduct in his private life may impact upon his judicial image and that as a result a judge should act with the highest integrity in both his public and private life. When a judge is acting in his/her private capacity a judge should be free to act according to his or her own mores, however conduct which is capable of bring the Judiciary into disrepute, in either a judge's public or private life should be capable of discipline.

The Project Team recognised however that whilst many principles of behaviour are cross jurisdictional, and pan European, there will be national differences that mean pan European standards cannot be set. The Project Team therefore agreed the following standards:

There should be a list or description of types of judicial conduct/ethics the breach of which would be unacceptable in any particular country. Such list or description should be provided at national level and not at a European level.

A judge has a right to a private life but should act with the highest degree of integrity in both his/her professional and private life. Conduct which is capable of bringing the Judiciary into disrepute should be capable of disciplinary action.

VII. The handling of disciplinary procedures.-

The issue of who may make complaints against members of the Judiciary and in what circumstances they may make them is addressed to a limited extent by some of the international sources analysed by the Project Team. For example, in some countries it is possible for private individuals to institute criminal proceedings or investigations. The Consultative Council of European Judges (CCJE) in its Opinion No 3¹¹ dealt with the question where there was a threat of imprisonment or financial penalty that may subconsciously affect the judgment of a judge. It was recommended that "in countries where it is possible for a

¹¹ CCJE Opinion No. 3 to the Attention of the Committee of Ministers of the Council of Europe on the Principles Governing Judges' Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, at para. 54.

private individual to institute criminal proceedings or investigations, (...) there should be a mechanism for stopping such proceedings or investigation where there is no proper case for suggesting the judge is criminally liable.”

The responses to the questionnaire and the discussions during the working meetings of the Project Team revealed a wide variety of national practices in relation to who could make a complaint and whether a complaint could be made anonymously. In most of the countries it was not possible for an anonymous complaint to be made at all (for instance, Albania, Belgium, Bulgaria, Denmark, France, Ireland, Italy, Lithuania, Poland, Romania, Scotland, Serbia, Slovakia, Sweden or Spain). In some countries the complaints procedure required to be a written complaint, which identified the complainant (Belgium, France, Lithuania and Scotland). Some countries had a procedure for accepting anonymous complaints (for instance, Austria, Croatia, Germany or Hungary). In other countries, if an anonymous complaint were made, although there was no procedure for there being anonymous complaints, the matter could then be investigated by way, for example, of an *ex officio* investigation (for instance, the Czech Republic, England and Wales, the Netherlands, Northern Ireland, Norway, Portugal, Slovenia or Turkey). In some of these countries there could be investigation of a judge with no formal complaint having been made.

In the project discussions, serious concern was expressed about someone with no interest in the proceedings being able to initiate a disciplinary procedure. However, the Project Team agreed that the minimum standard should not take away the existing rights from individuals in relation to initiating disciplinary procedure. In regards to anonymous complaints, the Project Team generally agreed that these are undesirable but that the minimum standard should be formulated to reflect that the practice is allowed in some countries, particularly if the matter arising from an anonymous complaint could then be investigated by way of an *ex officio* investigation. Accordingly, the minimum standard states that, except where there is established and proven tradition, **a complainant should normally be identified**. Moreover, it is recommended that, **whether or not a complainant is identified, if a complaint can be made by anyone, there needs to be a mechanism or summary procedure by which the complaint can be dismissed or a decision can be taken that the complaint should not be progressed. The procedure should be in the control of a Judge, or a body of Judges, or a person directly answerable to the Judiciary**. The purpose of this mechanism or summary procedure in the control of a person or body directly answerable to the Judiciary is to ensure that vexatious

claims or claims with no substance can be dismissed expeditiously, consistently with some of the international sources analysed by the Project Team¹².

The issue of the body responsible for the administration of judicial disciplinary proceedings, including receiving complaints against judges and investigating those complaints, is also addressed by some of the international sources, both at global and European levels, analysed by the Project Team. Thus, the Universal Charter of the Judge, for instance, provides that “the administration of the judiciary and disciplinary action towards judges must be organized in such a way, that it does not compromise the judges genuine independence” (...), and that “judicial administration and disciplinary action should be carried out by independent bodies that include substantial judicial representation” (article 11). The Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct (the Implementation Measures) (2010), pay detailed attention to the issue of the body in charge of receiving and administering complaints against judges. According to this international document, “a specific body or person should be established by law with responsibility for receiving complaints, for obtaining the response of the judge and for considering in the light of such response whether or not there is a sufficient case against the judge to call for the initiation of disciplinary action”, and “in the event of such a conclusion, the body or person should refer the matter to the disciplinary authority” (at para. 15.3). This provision is complemented by the entitlement of any person victim of alleged judicial misconduct to resort to that specific body: “a person who alleges that he or she has suffered a wrong by reason of a judge’s serious misconduct should have the right to complain to the person or body responsible for initiating disciplinary action” (at 15.2).

At a European level the European Charter on the Statute for Judges provides (at para 5.3) that “each individual must have the possibility of submitting without specific formality a complaint relating to the miscarriage of justice in a given case to an independent body. This body has the power, if a careful and close examination makes a dereliction on the part of a judge indisputably appear, such as envisaged at paragraph 5.1 hereof, to refer the matter to the disciplinary authority, or at the very least to recommend such referral to an authority normally competent in accordance with the statute, to make such a reference”. The Consultative Council of European Judges, for its part, has analysed the matter in depth in its

¹² See CCJE Opinion No.3 Paras. 51-57; UN Basic Principles on the Independence of the Judiciary, Principles 17-20, The Universal Declaration on the Independence of Justice (The Singhvi Declaration) Paras. 26-31, The Universal Charter of the Judge Arts. 8 & 11; CCJE Magna Carta of Judges (Fundamental Principles) Principles 19-22.

Opinion number 3¹³, where the right to bring a complaint by persons alleging that they have suffered by reason of a judge's professional error is expressly recognised. Such complaint could be brought before the person or body responsible for initiating disciplinary action, but complainants should not have a right themselves to initiate or insist upon disciplinary action. In any case, there should be a filter, or judges could often find themselves facing disciplinary proceedings, brought at the instance of disappointed litigants. For this reason the CCJE “considers that the procedures leading to the initiation of disciplinary action need greater formalisation” and “proposes that countries should envisage introducing a specific body or person in each country with responsibility for receiving complaints, for obtaining the representations of the judge concerned upon them and for deciding in their light whether or not there is a sufficient case against the judge to call for the initiation of disciplinary action, in which case it would pass the matter to the disciplinary authority”.

The responses to the questionnaire and the discussions during the working meetings of the Project Team have revealed a great variety of national practices as regards the administration of judicial disciplinary proceedings (including the responsibility of receiving complaints against judges and investigating those complaints). In some of the jurisdictions the institution of disciplinary proceedings is decided by the President or Head of the relevant court (Belgium, Croatia, Czech Republic, the Netherlands), while in others the Minister of Justice (and other bodies, such as the Director of Public Prosecutors) may play a role in this respect. Many countries have established independent bodies in charge of receiving and administering complaints against judges, and some countries also have the power to summarily dismiss vexatious claims or claims which appear to be insubstantial (for instance, England and Wales, Northern Ireland, Norway, Scotland, Sweden, Italy, or Ireland, where there is a proposal for the establishment of a Judicial Conduct Committee). In other jurisdictions, the Disciplinary Committee of the Council for the Judiciary (Italy, Croatia, Bulgaria, France, Slovakia and Turkey) or the Judicial Inspection under the Council for the Judiciary (Albania, Portugal or Romania, for instance) are vested with the power to administer disciplinary procedures against judges. Finally, there are countries where a disciplinary commissioner or a similar body (sometimes with connections to the relevant Council for the Judiciary) is charged with the administration of the disciplinary action, investigates the facts and can decide whether there is a case against the judge (Poland and Spain). As regards the investigation of the complaints, it can also be conducted by a the public prosecutor or a specific disciplinary prosecutor (Austria,

¹³ CCJE Opinion No. 3 to the Attention of the Committee of Ministers of the Council of Europe on the Principles Governing Judges' Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, specially at paras. 67 and 68.

Italy, Hungary, the Netherlands, Slovenia and Serbia), by the Judicial Inspection (Albania, France, Portugal, Romania or Turkey) or by a specific panel, investigator or committee of inquiry appointed by the body responsible for the administration of the disciplinary procedure (as in Belgium, Bulgaria, England and Wales, Italy -CPGA-, Lithuania, Northern Ireland, Scotland and Ireland, where the current proposal envisages the establishment of such panels).

During the discussions, the Project Team agreed that the body responsible for judicial disciplinary proceedings should be a separate independent body, answerable to the Judiciary and specially designated. The Project Team also agreed that, in principle, there should be separate bodies: (i) to investigate and decide whether there is a prima facie case and (ii) to adjudicate on the disciplinary proceedings, although established national traditions should also be taken account of. In any case, the minimum standards in this area should be realistic in order to ensure that smaller countries have the capacity to comply with those standards. Since it was agreed that the Ministry of Justice should not have an influential role in judicial disciplinary proceedings, the defined minimum standard states that **there should be a separate body responsible for receiving complaints and the administration of them, independent of the Ministry of Justice and answerable only to the Judiciary**. The wording “separate body” was chosen to reflect the differing composition of bodies dealing with complaints in the various countries and jurisdictions represented in the Project Team. Furthermore, this body or person should be independent and could consist of a judge, a body or panel of judges, or a person directly answerable to the judiciary or the relevant Council for the Judiciary.

On the other hand and in order to fully guarantee the adequate protection of judicial independence against disturbing or frivolous complaints, it was agreed that, where any individual can make a complaint about a judge, there should be a summary dismissal body to ensure that vexatious claims or claims with no substance can be dismissed expeditiously. There was also agreement that there should be a distinction between the bodies responsible for investigating complaints and determining the disciplinary proceedings and that the investigation conducted should fully comply with the principles of the due process, including the possibility to receive evidence at the request of the judge subject to investigation. Accordingly, the adopted minimum standard states that **there should be a person or body responsible to the Judiciary who has power to investigate the complaint** and that **the investigation should include the possibility of receiving written and/or oral evidence**.

Most of the countries have some time limit for the bringing of a complaint. The questionnaire responses were eloquent of there being time limits (for instance, in Albania, Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, England and Wales, France,

Hungary, Italy -CSM-, Lithuania, Northern Ireland, Norway, Poland, Portugal, Romania, Scotland, Serbia, Slovakia, Slovenia, Spain and Turkey). In the discussions of the Project Team it was generally agreed that should be time limits for the bringing of a complaint and for dealing with such complaint.

In relation to bringing a complaint it would be unfair to a judge for there to be a lack of expediency. Time limits should be set to ensure legal certainty. In some countries, such as Denmark, England and Wales, Northern Ireland and Ireland (in the proposed structure currently subject to discussion), there is a limited power to extend the time limit in exceptional circumstances. There was a divergence of views in the discussion as to whether there should be a right to extend time limits. It was agreed that any extension of time ought to be allowed only in exceptional circumstances. There is support within the international sources for expediency in complaints procedures. In the Universal Declaration on the Independence of Justice (The Singhvi Declaration) it was recommended that a complaint against a judge should be dealt with expeditiously and fairly under appropriate procedure¹⁴. In the UN Basic Principles on the Independence of the Judiciary¹⁵ it is recommended that a complaint or charge against a judge should be dealt with in an expeditious and fair manner under an appropriate procedure and that the judge had a right to a fair hearing. It is recommended **that there should be a time limit for the bringing of a complaint, which should only be extended in exceptional circumstances.**

The Project Team also considered the issue of time limits for dealing with a complaint, and came to the conclusion that these should be short. As was observed in the questionnaire, most of the countries had time limits for dealing with complaints, which in some cases were short and strict (for instance in Albania, Poland, Romania, Slovakia and Spain). Legal certainty and fairness applies to the dealing with complaints as it does to the bringing of complaints discussed above. If a sanction is to be imposed it should be imposed without delay. It is therefore recommended that **there should be a time limit for the concluding of the investigation, the making of a decision, and the imposition of any sanction. The imposition of any sanction should be immediately after the decision on the merits of the case, and in any event without undue delay. The limits should be capable of being extended only in exceptional circumstances, such as the complexity of the investigation, illness of the judge or a criminal investigation.**

¹⁴ The Singhvi Declaration, at paras. 26-31.

¹⁵ UN Basic Principles on the Independence of the Judiciary, Principles 17-20 (supra).

VIII. The judge's guarantees and rights in the context of disciplinary procedures.-

1. The ENCJ has already addressed the issue of the body responsible for judicial discipline in two previous reports of its Project Teams. In its Report 2010-2012 the Project Team on Councils for the Judiciary stated that there are essentially two solutions which can be advanced in relation to the disciplinary process: a) a process entirely within the relevant judicial system; or b) the Council for the Judiciary or one or more independent and autonomous bodies, with a majority judicial representation, to include lay representation (at 3.13). This Report underlines the role of Councils for the Judiciary in maintaining “public confidence by sanctioning serious violations of the professional duties in an independent manner, without any motivation of self-interest, self-protection of self referencing” (at 3.10) adding that “in order to maintain public confidence in the Council for the Judiciary, which is charged with the administration of the disciplinary procedure relating to judges, it is vital that the procedure in place not only works but is perceived by the citizen as an effective method of disciplining members of the judiciary who fail to adhere to the principles as promulgated with respect of the judiciary” (at 3.11). The report makes a strong recommendation that the role [of judicial discipline] “must be assigned to a body that is entirely free from political interference or influence” (at 3.11).

The Report 2012-2013 of the ENCJ Project Team Minimum Judicial Standards III addressed this very issue in the context of the protection of judicial irremovability, which was considered in connection with the principle of judicial independence and as an ingredient of the latter. The Report accepted that there exist exceptions to judicial irremovability, particularly those deriving from disciplinary sanctions, but stressed (at page 20) that “the procedures for judicial discipline and the power to impose disciplinary sanctions that may lead to the removal from a judicial office ought to be placed in the hands of a body or bodies independent of government in which a relevant number of members of the judiciary are directly involved”, specifying that “this independent body in charge of judicial discipline could be the appropriate national Council for the Judiciary (or a specific disciplinary committee or department within the Council for the Judiciary), independent national or regional disciplinary boards or committees, the heads of the appropriate courts or even the head of the judiciary”.

The Reports of the former ENCJ Project Teams are fully consistent with the international sources that have been compiled and analysed by the current Project Team. International documents on judicial independence with a global scope, such as the Universal Charter of the Judge and the Universal Declaration on the Independence of Justice (the Singhvi Declaration), deal with the issue of the body in charge of judicial discipline. The former

provides that (judicial) “disciplinary action should be carried out by independent bodies that include substantial judicial representation” (article 11), whilst the latter (at para. 26a) emphasises that “the proceedings for judicial removal or discipline when such are initiated shall be held before a Court or a Board predominantly composed of members of the judiciary”, accepting that “the power of removal may, however, be vested in the Legislature by impeachment or joint address, preferably upon a recommendation of such a Court or Board”. In the same vein, the Universal Declaration on Judicial Independence (Montreal Declaration) of 1983 asserts that “the power to discipline or remove a judge must be vested in an institution which is independent of the Executive” (article 2.7), since “the Executive may only participate in the discipline of judges by referring complaints against judges, or by the initiation of disciplinary proceedings, but not by the adjudication of such matters” (article 2.6). This international document also adds that “the power of removal of a judge shall preferably be vested in a judicial tribunal” (article 2.8), specifying that “in systems where the power to discipline and remove judges is vested in an institution other than the Legislature, the tribunal for discipline and removal of judges shall be permanent, and be composed predominantly of members of the Judiciary” (article 5.6).

The requirement for an independent body with responsibility in the field of judicial discipline has also been stated in international sources originating in the framework of the Council of Europe. According to the Consultative Council of European Judges (hereinafter, CCJE) “States should consider setting up, by law, a special competent body which has as its task to apply any disciplinary sanctions and measures, where they are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organ, or which is a superior judicial organ itself”¹⁶. This idea has been further developed by other CCJE opinions dealing with the topics of disciplinary liability of judges and Councils for the Judiciary at the Service of Society: the CCJE has expressed the views that “disciplinary proceedings against any judge should only be determined by an independent authority (or “tribunal”) operating procedures which guarantee full rights of defence” (...), that “the body responsible for appointing such a tribunal can and should be the independent body (with substantial judicial representation chosen democratically by other judges)”, which “in no way excludes the inclusion in the membership of a disciplinary tribunal of persons other than judges (thus averting the risk of corporatism), always provided that such other persons are not members of

¹⁶ CCJE Opinion No. 1 for the Attention of the Committee of Ministers of the Council of Europe on the Standards Concerning the Independence of the Judiciary and the Irremovability of Judges, at para. 59.

the legislature, government or administration”¹⁷. Moreover, in the view of the CCJE “it is important that judges enjoy the protection of a disciplinary proceeding guaranteeing the respect of the principle of independence of the judiciary and carried out before a body free from any political influence, on the basis of clearly defined disciplinary faults: a Head of State, Minister of Justice or any other representative of political authorities cannot take part in the disciplinary body”. The CCJE has particularised that “in order to avoid conflicts of interest, disciplinary procedures in first instance, when not addressed within the jurisdiction of a disciplinary court, should preferably be dealt with by a disciplinary commission composed of a substantial representation of judges elected by their peers, different from the members of the Council for the Judiciary, with provision of an appeal before a superior court”¹⁸. The CCJE’s approach to the issue of the body responsible for judicial discipline is also mirrored in the Recommendation CM/Rec (2010) 12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities, according to which “(disciplinary) proceedings should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction” (at para. 69). This approach is also consistent with the opinions of the Venice Commission, which “favours the power of judicial councils or disciplinary courts to carry out disciplinary proceedings” and holds that “a judicial council should have a decisive influence on the appointment and promotion of judges and (maybe via a disciplinary board set up within the council) on disciplinary measures against them”¹⁹.

The responses to the questionnaire and the discussions during the working meetings of the Project Team showed the diversity of bodies charged with making the decision in disciplinary proceedings in the various jurisdictions in Europe. Broadly speaking three major systems have been identified by the Project Team in this respect: a) Those systems where the Council for the Judiciary (or a specific committee within the Council) is the sole body responsible for the adjudication of disciplinary proceedings against judges (Albania, Bulgaria, Croatia, France, Italy, Portugal, Romania, Spain or Turkey); b) The systems where the decision making body is the head of the Judiciary, an independent committee or panel outside the Council for the Judiciary, or even the Legislature by means of an impeachment process (in the case of disciplinary liability of holders of high judicial offices), such as in England and Wales,

¹⁷ CCJE Opinion No. 3 to the Attention of the Committee of Ministers of the Council of Europe on the Principles Governing Judges’ Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, at para 71.

¹⁸ CCJE Opinion No. 10 to the Attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the Service of Society, at paras. 63 and 64.

¹⁹ The Venice Commission Report on the Independence of the Judicial System Part I: The Independence of Judges, at para. 43, the Venice Commission Report on Judicial Appointments, at para. 25.

Germany, Ireland (according to the current proposals concerning the Judicial Conduct Committee), Northern Ireland, Norway, Scotland, Serbia, Slovakia or Sweden; c) Finally, the systems where the adjudication of disciplinary cases against judges is made by the courts of justice (including by specific disciplinary panels of such courts or specific disciplinary courts), the Supreme Court of the land, or even the President of the relevant court (Austria, Belgium, Czech Republic, Denmark, Hungary, Lithuania, the Netherlands, Poland and Slovenia).

Given the divergence in the range of bodies adjudicating disciplinary proceedings, the Project Team decided that the minimum standard on this point should be kept general rather than being prescriptive as to the type and composition of an adjudicating body. It was also agreed that the scope of the standards should be wide enough as to encompass and take account of the differing systems, since there is not a judicial council in every country or jurisdiction. However, there is full agreement in the standard deriving from the principle of judicial independence which requires that **the decision making person or body should be regulated by law**. Furthermore, this person or body should be fully independent from the other branches of State power (the Executive and the Legislature), and (if it is a collegiate body) **should include a majority of Judges, and a Judge expert in the jurisdiction and senior to the Judge being investigated**. In those jurisdictions where a Council for the Judiciary has been established **the body in charge of judicial discipline could be the appropriate national Council for the Judiciary (or a specific committee or department within the Council for the Judiciary)**, given the position of Councils for the Judiciary as independent institutions which provide protection for the Judiciary and play a major role in guaranteeing the independence of the Judiciary, assuming powers in the fields of judicial appointments, management of judicial career and judicial discipline. Alternatively to the Council for the Judiciary, the body in charge of the decision making powers pertaining to disciplinary procedures against judges could be **an independent national judicial discipline board or committee independent from the executive and legislature**.

2. Another issue dealt with by the Project Team in the context of the judge's guarantees and rights within disciplinary procedure is suspension, not as a disciplinary action, but as a precautionary and temporary measure for the duration of the investigation into the allegation against the judge. It should only be considered in the most exceptional and serious of circumstances, and only where if the judge were not suspended it is anticipated that the integrity and/or independence of the judge may be compromised. In such circumstances if a judge is suspended as a temporary measure, s/he should not be prejudiced by what may, upon investigation, transpire to be an ill founded complaint. Any suspension should therefore be on

full pay. However if the judge either unreasonably delays or does not cooperate with the investigation, suspension of pay may have to be considered.

The international sources analysed by the Project Team refer to a judge not being removed from office except on proven grounds of incapacity or misconduct rendering him/her unfit to continue in office²⁰, that a judge cannot be transferred, suspended or removed from judicial office unless provided for by law and by a decision on the proper disciplinary procedure, that the grounds for suspension shall be clearly defined and based upon established standards of judicial conduct and a judge may only be removed from judicial office for gross incompetence or conduct that is manifestly contrary to the independence impartiality and integrity of the judiciary²¹.

From this can be extrapolated that as a judge can only be suspended or removed following disciplinary process done in accordance with the law, and only for matters of gross misconduct, suspension during disciplinary process should also only arise in the very rare and exceptional cases. In fact, the responses to the questionnaire show that suspension as a precautionary and temporary measure during the investigation into the allegation against the judge can be adopted in most of the European jurisdictions (Albania, Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, England and Wales, France, Hungary, Italy, the Netherlands, Northern Ireland, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Turkey), although only in exceptional cases concerning the most serious disciplinary offences, when it is considered necessary to maintain the public's confidence in the Judiciary or in the judicial system, or when a criminal case or investigation against the judge has been instituted. In some European countries there are no specific provisions for the suspension of the judge during the investigation or the disciplinary procedure (Ireland, Serbia and Sweden), and in Lithuania the institution of disciplinary proceedings only leads to the disqualification of the judge to hear the specific case in the context of which the judicial misconduct is alleged. In some of the jurisdictions where suspension can be adopted the salary of the judge is normally reduced during the period of suspension (for instance, in Albania, Austria, Belgium, Hungary or Spain), but the judge is entitled to the full recovery of the unpaid salary if no disciplinary action is adopted as a result of the disciplinary process.

Accordingly, the Project Team concluded **that a judge should only be suspended in the most serious and exceptional cases, and where it is necessary for the administration of**

²⁰ The UN Basic Principles on the Independence of the Judiciary, principle 18; The Universal Declaration on the Independence of Justice (The Singhvi Declaration), at para. 30.

²¹ See, Mt. Scopus Approved and Revised International Standards of Judicial Independence (2008), article 5, and Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct (the Implementation Measures) (2010), article 16.

Justice. A judge if suspended should remain on full salary during the investigation, unless the Judge causes significant delay or does not co-operate with the investigation or in other exceptional circumstances. Any salary withheld during the investigation should be repaid if the Judge is not disciplined or later found not to have committed the acts alleged.

3. The Report 2012-2013 of the ENCJ Project Team Minimum Judicial Standards III incidentally dealt with the issue of the judge's guarantees and rights in disciplinary procedures in connection with the protection of judicial irremovability. In that report it was stated that "the principle of irremovability renders it imperative that the grounds for transfer of judges be clearly established and that a mandatory transfer be decided by means of transparent proceedings conducted by an independent body or authority without any external influences and whose decisions are subject to challenge or review" and that "there is a need for a definition of disciplinary offences for which a judge may be removed from office and for disciplinary procedures to comply with the due process requirements, including the possibility of challenge, appeal or judicial review against the decision issued by the competent body in the area of judicial discipline" (at page 20 and summary of proposals §§ 4.21 and 4.22).

The international sources which relate to the judge's rights and guarantees in the context of disciplinary procedures are consistent with that report and can be summarised as follows:

1. A complaint or charge against a judge should be dealt with in an expeditious and fair manner under an appropriate procedure with the guarantees of a fair trial. Disciplinary action must be in compliance with predetermined rules of procedure, ensuring fairness to the judge, the opportunity for a full hearing and a full right of defence. Judges should in connection with disciplinary procedures benefit, at the least, by protections equivalent to those afforded under Article 6.1 of the European Convention on Human Rights. Disciplinary procedures to be followed may be defined, as far as possible in specific terms, in the law applicable to judges²².
2. Disciplinary proceedings should involve the full hearing of the parties, in which the judge proceeded against must be entitled to representation. The judge should also have the opportunity to comment on the complaint at the initial stage. Procedures should guarantee a

²² UN Basic Principles on the Independence of the Judiciary, Principle 17. The Universal Charter of the Judge, art. 11. Recommendation CM/Rec (2010) 12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities, at § 69. CCJE Opinion No. 3 to the Attention of the Committee of Ministers of the Council of Europe on the Principles Governing Judges' Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, at para 69. Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct, art. 15.

full right of defence and be subject to a final and reasoned disposition by the disciplinary body or tribunal²³.

3. The examination of the complaint should be kept confidential at the initial stage, unless otherwise requested by the judge. Disciplinary and removal proceedings can be held *in camera*. However, the judge may request that the hearing be held in public. Judgments in disciplinary proceedings, whether held *in camera* or in public, may be published, particularly decisions in proceedings involving a sanction against the judge²⁴.

4. Disciplinary sanctions should be proportionate in principle and in application. The scale of sanctions which may be imposed is set out in the statute, and their imposition is subject to the principle of proportionality. Each jurisdiction should identify sanctions which should be proportionate, both in principle and application²⁵.

5. The judge should be provided with the right to challenge the decision and sanction. There should be a right of appeal to a court or a higher judicial authority. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review, although this may not apply to decisions of the highest court or those of the legislature in impeachment or similar proceedings²⁶.

Accordingly, the Project Team agreed that during disciplinary proceedings, rules shall establish adequate safeguards to protect the rights and interests of the judge concerned and to ensure appropriate confidentiality of the proceedings.

It was also agreed that, in order to properly exercise his/her rights in the context of disciplinary proceedings, the judge is entitled to be informed if a complaint is to be formally investigated, albeit not necessarily during the summary investigation of such complaint. A judge must have the right to be informed, to allow him/her to respond to any complaint on his/her conduct, however, judges need only be informed if a complaint has not been dismissed

²³ UN Basic Principles on the Independence of the Judiciary, Principle 17. Universal Declaration on the Independence of Justice (the Singhvi Declaration), at paras. 26a) and 28. Universal Declaration on Judicial Independence (Montreal Declaration), Article 2.32. European Charter on the Statute for Judges, Principle 5.1

²⁴ UN Basic Principles on the Independence of the Judiciary, Principle 17. Universal Declaration on the Independence of Justice (the Singhvi Declaration), at para. 29. Universal Declaration on Judicial Independence (Montreal Declaration), Article 2.32. Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct, art. 15.

²⁵ European Charter on the Statute for Judges, Principle 5.1. CCJE Opinion No. 3 to the Attention of the Committee of Ministers of the Council of Europe on the Principles Governing Judges' Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, at para 74. Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct, art. 15.

²⁶ UN Basic Principles on the Independence of the Judiciary, Principle 20. Universal Declaration on Judicial Independence (Montreal Declaration), Articles 2.32-2.37. European Charter on the Statute for Judges, Principle 5.1. CCJE Opinion No. 3 to the Attention of the Committee of Ministers of the Council of Europe on the Principles Governing Judges' Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, at para 77 v).

as ill-founded or manifestly inadmissible. At that stage, when further investigations are made, the judge should be informed. This is to protect the judge against the possibility of being unnecessarily troubled, or to avoid the impartiality and independence of the judge being compromised, or the public perception being that it may be compromised.

After some discussion about national practices in European jurisdictions, it was agreed that the initial stage at which the judge should be able to comment on the complaint according to the international sources analysed by the Project Team must be interpreted as the initial stage of investigations following a complaint.

The judge against whom disciplinary proceedings have been instituted should be represented and/or assisted by a person of his/her choice, who may be another judge or someone from a professional judges' association, or a lawyer. It was recognised that, according to the information compiled through the questionnaire, in all jurisdictions across Europe judges have access to legal representation or assistance whether by counsel or other legal expert or by a colleague of the judge's choice. It was therefore considered that representation/assistance in either any written or oral proceedings should be available to a judge in accordance with national rules. The Project Team agreed that a judge should be represented if necessary or if s/he so wishes, since it should be a matter for the judge to decide whether to have legal representation by counsel or to be assisted by someone of his/her own choosing. The right to effective representation is dependent upon the payment of the costs of representation/assistance. Given the practice in most European countries represented in the Project Team, it was agreed that the judge should pay his/her costs, subject to recouping costs from the State if there is a final decision to acquit. Accordingly the defined standard asserts that **a judge has the right to be legally represented or assisted by a person of his/her choosing if s/he so wishes. A judge acquitted of any allegations should be able to recover his/her legal costs reasonably incurred and where appropriate from the State.**

The Project Team also agreed that disciplinary procedures against judges should comply with all due process requirements under Article 6.1 of the European Convention on Human Rights, including the guarantees of a full right of defence, to appear before any hearing and to be heard, to call evidence either in writing or orally, to be given a timetable for the investigation of the complaint and the making of the decision, and to be provided with the reasons of the decision adopted by the relevant disciplinary body. The fairness of the decision is closely connected with the requirement to provide reasons as a way to avoid any hint of arbitrariness.

The following rights should be accorded to the judge subject to disciplinary procedure:

- 1 to be fully informed of the case against him/her
- 2 to representation
- 3 to costs upon acquittal
- 4 to appear before any hearing and be heard, and call evidence either in writing or orally.
- 5 to be informed promptly if a complaint is to be investigated.
- 6 to be given a timetable for the investigation of the complaint, and the making of the decision.
- 7 to be given reasons for any decision made.
- 8 to appeal.

Consistently with the international standards already mentioned it was agreed that each country should define sanctions under its disciplinary system that can be applied in a case of proven misconduct. The listing of sanctions to be imposed was deemed to be more appropriate at national level to take account of the different legal systems and exigencies. Thus, it is a task for each jurisdiction to identify the disciplinary sanctions applicable, which should be clearly defined, authorised by law and proportionate to the matter alleged. The proportionality of the sanctions was emphasised: proportionality should operate both at the level of the definition and at the level of imposition of the relevant sanctions. The defined standard specifies that **any sanction should be clearly defined, authorised by law and proportionate in principle and application to the matter alleged.**

Discussions during the working meetings on the issue of publication/publicity of the disciplinary proceedings and the final decision (including the name of the judge involved) revealed that there is considerable divergence in practice amongst the jurisdictions in Europe. Publication of disciplinary sanctions contributes to a better understanding of ethics even by judges. However, naming the judge may lead to undermine the judge's authority in future, particularly if no disciplinary measure has been adopted. Therefore, naming the judge should be in the careful and considered discretion of each country. The Project Team agreed that the standard should broadly indicate that the name of a judge should not be published but should not be prescriptive given that in some countries, the publishing of judges' names is allowed in certain circumstances. The defined standard states, therefore, that **it is undesirable to publish the name of the judge prior to any sanction being imposed. Where a sanction is imposed, the judgement may or may not be published (with or without naming the judge).**

The responses from ENCJ members and observers to the questionnaire have shown a very wide variety of appeal or challenge procedures against the decision made by the initial disciplinary body. Generally speaking an appeal or review of the final decision adopted by the disciplinary body is available all across Europe, except in those jurisdictions where the decision of the disciplinary procedure is made by the relevant Supreme Court (such as in the Czech Republic and the Netherlands). In common law jurisdictions where as a general rule an appeal is not directly available the possibility of judicial review remains open (for instance, in England and Wales, Northern Ireland, and Ireland, according to the Judicial Council Bill currently under discussion). Where available, appeal procedures are adjudicated by disciplinary appellate panels or courts (such as in Belgium, Hungary, Slovakia or Slovenia), by administrative courts, including the relevant supreme administrative court or the council of state (in Albania, Belgium, Bulgaria, France, Italy -CPGA-, Serbia, Spain and Turkey), or by the supreme or constitutional court of the country (for instance, in Austria, Croatia, Denmark, Italy -CSM-, Lithuania, Poland, Portugal and Romania).

The members of the Project Team were in agreement that there should be a right of appeal or independent review to a court or a higher judicial authority by way of judicial review or cassation appeal, since the disciplined judge should be provided with the right to challenge the decision and sanction. It seems appropriate, therefore, to underline that the judge against whom a disciplinary sanction has been imposed is able to challenge the decision from the initial disciplinary body, whether an authority, tribunal or court, to a court. However, the relevant standard should be defined in broad and flexible terms to take account of those disciplinary systems where there is no explicit right of appeal, since the disciplinary decision is made by the supreme or highest court of the country or where there is a proven tradition allowing the decision to be made by the legislature in impeachment or similar proceedings. The agreed standard specifies that **the judge has the right to appeal** and that **there should be a right of appeal by way of judicial review or cassation appeal, although this may not apply to decisions of the highest court or legislature.**

IX. Summary of Minimum Standards.-

The Project Team considered that Judges should be guided by ethical principles of professional conduct, which include duties and responsibilities breach of which may be sanctioned by disciplinary measures. Judges should not be liable to civil or disciplinary liability in respect of their interpretation of the law, their assessment of facts or their weighing of evidence in determining a case, save for cases of malice or gross negligence. Any

disciplinary measures and procedures should be regulated by law. Disciplinary procedures established to provide for the accountability of the Judiciary must not be allowed to become a means of intimidating judges.

The minimum standards that should apply in relation to those principles are:

1. Guidelines and/or a code of conduct/ethics should be drawn up by judges or a Council for the Judiciary. Lay members may be asked to contribute by advising or guiding on the content of such a code or guidelines.

2. There should be a list or description of types of judicial conduct/ethics the breach of which would be unacceptable in any particular country. Such list or description should be provided at national level and not at a European level.

3. A judge has a right to a private life but should act with the highest degree of integrity in both his/her professional and private life. Conduct which is capable of bringing the Judiciary into disrepute should be capable of disciplinary action.

4. There should be a separate body responsible for receiving complaints and the administration of them, independent of the Ministry of Justice and answerable only to the Judiciary.

5. A complainant should normally be identified, however if a complaint can be made by anyone, there needs to be a mechanism or a summary procedure by which the complaint can be dismissed or a decision can be taken that the complaint should not be progressed. The procedure should be in the control of a Judge, or a body of Judges, or a person directly answerable to the Judiciary.

6. There should be a person or body responsible to the Judiciary who has power to investigate the complaint. The investigation should include the possibility of receiving written and/or oral evidence.

7. The decision making person or body should be regulated by law. The body should include a majority of Judges, and a Judge expert in the jurisdiction and senior to the Judge being investigated. The body in charge of judicial discipline could be the appropriate national Council for the Judiciary (or a specific committee or department within the Council for the Judiciary) or an independent national judicial discipline board or committee independent from the executive and legislature.

8. There should be a time limit for the bringing of a complaint which should only be extended in exceptional circumstances.

9. There should be a time limit for the concluding of the investigation, the making of a decision, and the imposition of any sanction. The imposition of any sanction should be immediately after the decision on the merits of the case, and in any event without undue delay. These limits should be capable of being extended only in exceptional circumstances, such as the complexity of the investigation, illness of the judge or a criminal investigation.

10. It is undesirable to publish the name of the Judge prior to any sanction being imposed. Where a sanction is imposed, the judgment may or may not be published (with or without naming the judge).

11. A judge should only be suspended in the most serious and exceptional cases, and where it is necessary for the administration of Justice.

12. A judge if suspended should remain on full salary during the investigation, unless the Judge causes significant delay or does not co-operate with the investigation or in other exceptional circumstances. Any salary withheld during the investigation should be repaid if the Judge is not disciplined or later found not to have committed the acts alleged.

13. A judge has the right to be legally represented or assisted by a person of his/her choosing if s/he so wishes. A judge acquitted of any allegations should be able to recover his/her legal costs reasonably incurred and where appropriate from the State.

14. The following rights should be accorded to the judge subject to disciplinary procedure:

1. to be fully informed of the case against him/her;
2. to representation;
3. to costs upon acquittal to appear before any hearing and be heard, and call evidence either in writing or orally;
4. to be informed promptly if a complaint is to be investigated;
5. to be given a timetable for the investigation of the complaint, and the making of the decision;
6. to be given reasons for any decision made;
7. to appeal;

15. Any sanction should be clearly defined, authorised by law and proportionate in principle and application to the matter alleged.

16. There should be a right of appeal by way of judicial review or cassation appeal, although this may not apply to decisions of the highest court or legislature.

Appendix A- Participants List – 2014/2015

COUNTRY – MEMBERS	NAME
Belgium - CSJ/HRJ - Conseil supérieur de la Justice - Hoge Raad voor de Justitie	Kristine Hänsch
	Axel Kittel
Bulgaria - JC - Supreme Judicial Council	Galya Georgieva
	Svetla Petkova
	Vasil Petrov
	Alexandra Brazitsova
Denmark – Danish Court Administration	Louise Lee Leth
	Marianne Gram Nybroe
England & Wales – Judges’ Council For England And Wales	Sally Cahill
France – CSM - Conseil Supérieur de la Magistrature	Lisa Gamgani
	Soraya Amrani Mekki
	Jean-Pierre Machelon
	Catherine Vandier
	Alain Vogelweight
Ireland - The Courts Service/Coordinator of the Project	Rachel Hanly
	John Hedigan
Italy – CSM - Consiglio Superiore Della Magistratura	Giulio Adilardi
	Rosario Spina
Italy – CPGA - Consiglio di Presidenza della giustizia amministrativa	Maria Laura Maddalena
	Giovanni Tulumello
Lithuania - The Judicial Council of Lithuania	Laima Garneliene
	Diana Labokaite
Malta - Commission for the Administration of Justice	Joseph Azzopardi
The Netherlands - Rvdr - Raad Voor De Rechtspraak. Council For The Judiciary	Nathalie Kirkels-Vrijman
	Henk Naves
Northern Ireland – Judges’ Council	Isobel Brownlie
Poland - NCJ - National Council For Judiciary (Krajowa Rada Sadownictwa)	Katarzyna Gonera
	Irena Piotrowska
Portugal – Conselho Superior de Magistratura	Gonçalo Oliveria Magalhaes
Romania - CSM - Consiliului Superior al Magistraturii	Cristi Vasili Danilet
	Flavian Popa
	Alexandru Serban
Scotland - Judicial Council	Gordon Liddle

COUNTRY – MEMBERS	NAME
Slovakia – Súdna rada Slovenskej republiky	Jana Bajánková
	Barbora Dorickova
Slovenia - Súdna rada Slovenskej republiky	Marko Novak
Spain - CGPJ – Consejo General del Poder Judicial. Coordinator Project	Fernando Grande-Marlaska Gómez
	José Miguel García Moreno
COUNTRY - OBSERVERS	NAME
Austria – Ministry of Justice	Ruth Straganz-Schröfl
Czech Republic – Ministry of Justice	Ivana Borzova
Hungary – OBT - Országos Bírói Tanács - National Judicial Council Hungary	Peter Bozsó
	Levente Simon
Norway - Domstol - National Courts Administration Of Norway	Espen Solberg
Turkey - High Council for Judges and Prosecutors Turkey	Ozak Kostu
	Ibrahim Pektas
	Burak Turan Benli
COUNTRY – OTHER COUNCILS	NAME
Albania – High Judicial Council	Xhevdet Haxhiu
	Vojsava Osmanaj
	Marsida Xhaferllari

Appendix B- Summary of international sources

The following is a summary of the international sources relating to judicial disciplinary procedures prepared for the consideration of the project group at its meeting in Dublin on the 8th and 9th of December 2014.

The Venice Commission Report on the Independence of the Judicial System Part I: The Independence of Judges

Paras. 39-43

The Venice Commission *Report on the Independence of the Judicial System Part I: The Independence of Judges* considered disciplinary proceedings in light of the principle of irremovability. The Venice Commission accepted the European Charter on the Statute of the Judges where the issue of irremovability is addressed. The European Charter states that a judge holding office at a court may not be appointed to another judicial office or assigned elsewhere without having consented thereto, with one of the limited exceptions to this rule being where “transfer is provided for and has been provided by way of a disciplinary sanction.” The Venice Commission favours granting the power to carry out disciplinary proceedings to judicial councils or disciplinary courts and in addition there should be the possibility of an appeal against the decisions of disciplinary bodies.

Recommendation CM/Rec (2010) 12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities

Recommendations 66-71

The *Recommendation of the Committee of Ministers to member states on Judges: Independence, efficiency and responsibilities* emphasises the security of tenure and irremovability of judges as key elements of the independence of judges. Only in cases of disciplinary sanctions or reform of the organisation of the judicial system should a judge receive a new appointment or be moved to another judicial office without consenting to it. A permanent appointment should only be terminated in cases where there have been serious breaches of disciplinary or criminal provisions as established by law.

The Recommendation makes several recommendations regarding liability and disciplinary proceedings to be applied in the legislation, policies and practices of member states. The Committee of Ministers recommended that the interpretation of law, assessment of facts or the weighing of evidence that a judge is required to undertake in determining a case should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence. In the event that the state has had to award compensation, only it may seek to establish the liability of a judge through court action.

Only in cases of malice should a judge's interpretation of the law, assessment of facts or weighing of evidence give rise to criminal liability.

Disciplinary proceedings may be instigated where judges fail to carry out their duties in an efficient and proper manner. An independent authority or court should conduct the proceedings with the guarantees of a fair trial. The judge should be provided with the right to challenge the decision and sanction. Disciplinary sanctions should be proportionate.

Judges should not be held personally accountable for their decisions overruled or modified on appeal.

Judges are liable in the same way as any other citizen when not exercising their judicial functions.

Judges should be guided by ethical principles of professional conduct, which include duties that may be sanctioned by disciplinary measures.

The UN Basic Principles on the Independence of the Judiciary

Principles 17-20

The United Nations Basic Principles on the Independence of the Judiciary developed several principles on the discipline, suspension and removal of the judiciary as part of its overall recommendations to assist member states in promoting the independence of the judiciary.

A complaint or charge against a judge should be dealt with in an expeditious and fair manner under an appropriate procedure. The judge has a right to a fair hearing and the initial stage of the investigation should be kept confidential unless otherwise requested by the judge. A judge can only be suspended or removed from judicial office for reasons of incapacity or behaviour that renders them unfit to discharge their duties. Disciplinary action should be determined under established standards of judicial conduct. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review, although this may not apply to decisions of the highest court or those of the legislature in impeachment or similar proceedings.

The Universal Declaration on the Independence of Justice (The Singhvi Declaration)

Paras. 26-31

The Draft Universal Declaration on the Independence of Justice, also known as the "Singhvi Declaration", set out the following principles in relation to the discipline and removal of judges.

The Singhvi Declaration recommended that a complaint against a judge should be dealt with expeditiously and fairly under an appropriate procedure. The judge should also have the opportunity to comment on the complaint at the initial stage.

Judicial discipline or removal proceedings should be held before a Court or a Board composed predominantly of members of the judiciary. The power of removal may be vested in the Legislature by impeachment or joint address.

Disciplinary action shall be based upon established standards of judicial conduct.

The Singhvi Declaration emphasises that the disciplinary proceedings must ensure fairness to the judge and the opportunity for a full hearing.

Judgments of disciplinary proceedings shall be published.

A judge shall not be removed from judicial office except on proven grounds of incapacity or misbehaviour rendering him unfit to continue in office.

The Universal Charter of the Judge

Arts. 8 & 11

The Universal Charter of the Judge provides that a judge cannot transferred, suspended or removed from judicial office unless provided for by law and by decision in the proper disciplinary procedure.

The Universal Charter emphasises that the administration of judicial disciplinary action must not compromise the judges genuine independence and should only consider genuine and relevant considerations.

It is recommended that disciplinary proceedings are conducted by independent bodies, comprised of substantial judicial representation. However, alternative practices are accepted where there is established and proven tradition.

Disciplinary action must be provided for by pre-existing law and in compliance with predetermined rules of procedure.

Consultative Council of European Judges (CCJE) Opinion No. 1 for the Attention of the Committee of Ministers of the Council of Europe on the Standards Concerning the Independence of the Judiciary and the Irremovability of Judges

Paras. 57-60

The CCJE examined principal international sources on judicial independence, most particularly the UN Basic Principles on the Independence of the Judiciary and Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe to Member States on the Independence, Efficiency and Role of Judges. The CCJE considered that irremovability of judges should be expressly enshrined as an element of judicial independence. As regards

discipline, the CCJE emphasised the importance of the intervention of an independent body in matters of discipline, with procedures guaranteeing a full right of defence. The CCJE considered that it would be useful to prepare standards relating to conduct that may (1) lead to removal from office and (2) lead to disciplinary steps or change of status. In Opinion No. 3 of the CCJE, it was concluded that this aim cannot be pursued at a European level.

Consultative Council of European Judges (CCJE) Opinion No. 3 to the Attention of the Committee of Ministers of the Council of Europe on the Principles Governing Judges' Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality

Paras. 51-77

In its Opinion No. 3 on the Principles and Rules Governing Judges' Professional Conduct, In Particular Ethics, Incompatible Behaviour and Impartiality, the CCJE considered what criminal, civil and disciplinary liability should apply to judges. Each of the CCJE recommendations will be dealt with in turn.

Criminal Liability

Overall, the CCJE considers that judges should not be criminally liable for unintentional failings in the exercise of their judicial functions. However, judges should not be able to claim immunity from criminal liability for offences outside their judicial functions.

The potential threat of imprisonment or financial penalty may subconsciously affect the judgment of a judge. Thus, in countries where it is possible for a private individual to institute criminal proceedings or investigation, the CCJE recommended that there should be a mechanism for stopping such proceedings or investigation where there is no proper case for suggesting the judge is criminally liable.

Civil Liability

As a general principle, judges personally should have absolute freedom from liability in respect of claims relating to the exercise in good faith of their judicial functions. Judicial errors in the interpretation of law or evaluation of evidence should lie in an appropriate system of appeals. A remedy for other judicial failings lies only against the State. Certain European countries have a system that provides that a judge may incur civil liability for grossly wrong decisions or other gross failings. The CCJE also considers that it is not appropriate for a judge to be exposed to personal liability in respect of the purported exercise of judicial functions, except in the case of wilful default. The application of terms such as gross or inexcusable negligence was observed to often be difficult as, where there was potential for a recourse action by a State against a judge, the judge would be bound to become concerned closely to the action at the stage when the claim was made against the State.

Disciplinary Liability

1 What conduct is it that should render a judge liable to disciplinary proceedings?

Breaches of professional standards should not be correlated with misconduct potentially giving rise to disciplinary sanctions as it would discourage the development of such standards and misunderstand their purpose in equating them with misconduct justifying disciplinary action.

Each State should specify and define, as far as possible, in the statute or fundamental charter applicable to judges applicable to judges, the failings that may give rise to disciplinary proceedings as well as procedures to be followed.

The CCJE did not consider that it is necessary, or possible, to specify in detailed terms at European level the nature of conduct that may lead to disciplinary proceedings or sanctions. In coming to such a conclusion, the CCJE determined that paragraph 60(c) of Opinion No. 1, which suggested that it would be useful to prepare standards defining conduct at a European level that may lead to disciplinary action and removal from office, should not be pursued.

2 By whom and how should proceedings be initiated?

A specific body or person with responsibility for receiving complaints, for obtaining the representations of the judge concerned and determining if there is a sufficient case against the judge for the initiation of disciplinary action should be introduced.

3 By whom and how should they be determined?

Disciplinary proceedings initiated against a judge should be determined by an independent authority or tribunal, operating procedures that guarantee a full right of defence.

The tribunal should be appointed by an independent body, with substantial judicial representation chosen democratically by other judges, which should also be generally responsible for appointing judges.

Each State should have a process that allows for an appeal in disciplinary proceedings from the initial disciplinary body, whether an authority, tribunal or court, to a court.

4 What sanctions should be available for misconduct established in disciplinary proceedings?

The CCJE emphasises the need for each jurisdiction to define sanctions under its disciplinary system that can be applied in a case of proven misconduct. Sanctions should be proportionate in principle and application.

Consultative Council of European Judges (CCJE) Opinion No. 10 to the Attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the Service of Society

Paras. 39, 43, 57-96

Opinion No. 10 of the CCJE sought to identify the core elements in relation to the general mission, composition and functions of the Council for the Judiciary with the aim of strengthening democracy and protecting the independence of the judiciary. The Opinion did not seek to set down detailed description of functions for the Council for the Judiciary nor a single model for the Council for the Judiciary in Europe. The CCJE recommended that the discipline of judges would be one of the functions performed by the Council itself, or in cooperation with other bodies, in an independent manner.

Consultative Council of European Judges (CCJE) Magna Carta of Judges (Fundamental Principles)

Principles 19-22

The CCJE Magna Carta of Judges, which summarises and codifies the main conclusions of the Opinions adopted to 2010, provides that judicial independence shall be guaranteed in respect of judicial activities and in particular in respect of discipline of the judiciary.

In order to guarantee the independence of a judge during disciplinary proceedings, such proceedings shall take place before an independent body with the possibility of recourse before a court.

In each State, the statute or fundamental charter applicable to judges shall define the misconduct leading to disciplinary sanctions, as well as the disciplinary procedure.

The Magna Carta provides that judges shall not be criminally liable for unintentional failings in the exercise of their judicial functions. Judges should not be exposed to personal liability in the exercise of their judicial functions except in cases of wilful default.

Where there has been a judicial error, the remedy should lie in an appropriate system of appeals. In the event of other failings in the administration of justice, any remedy lies only against the state.

The Venice Commission Report on Judicial Appointments

The Venice Commission Report on Judicial Appointments concludes that an appropriate method for guaranteeing judicial independence is the establishment of a judicial council, endowed with constitutional guarantees for its composition, powers and autonomy. Such a Council should have a decisive influence on the appointment and promotion of judges, as well as disciplinary measures against them. The Commission recommends that there should be the possibility of an appeal to an independent court against the disciplinary decisions of the Council. In order to ensure effective accountability, democratic legitimacy and disciplinary procedures that are not “marred by undue restraint”, the Council should have a balanced

composition of members, both judicial (elected by the Judiciary) and other members with appropriate legal qualifications taking into account possible conflicts of interest (elected by Parliament). In its *Opinion on the Reform of the Judiciary in Bulgaria*,²⁷ the Venice Commission stated on the composition of a judicial council:

“[t]here is no standard model that a democratic country is bound to follow in setting up its Supreme Judicial Council so long as the function of such a Council fall within the aim to ensure the proper functioning of an independent Judiciary within a democratic State. Though models exist where the involvement of other branches of power (the legislative and the executive) is outwardly excluded or minimised, such involvement is in varying degrees recognised by most statutes and *is justified by the social content of the functions of the Supreme Judicial Council and the need to have the administrative activities of the Judiciary monitored by the other branches of power of the State. It is obvious that the Judiciary has to be answerable for its actions according to law provided that proper and fair procedures are provided for and that a removal from office can take place only for reasons that are substantiated.* Nevertheless, it is generally assumed that the main purpose of the very existence of a Supreme Council of the Judiciary is the protection of the independence of judges by insulating them from undue pressures from other powers of the State in matters such as the selection and appointment of judges and the exercise of disciplinary functions (emphasis added).”

European Charter on the Statute for Judges

Principles 3 & 5

The European Charter on the Statute of Judges provides an exception to the principle of irremovability in cases where the transfer is provided for and has been pronounced by way of a disciplinary sanction. This exception applies without prejudice to the provisions in the Charter, at paragraph 1.4, which provides that the statute “gives to every judge who considers that his or her rights under the statute, or more generally his or her independence, or that of the legal process, are threatened or ignored in any way whatsoever, the possibility of making a reference to such an independent authority, with effective means available to it of remedying or proposing a remedy.

A judge may be liable to sanction where, upon the decision or agreement of a tribunal or authority, it is established that there has been a dereliction of duty by the judge of one of the duties expressly defined by the statute.

²⁷ CDL-INF (1999) 005, para. 28.

The tribunal or authority should be independent of the executive and legislature, with at least half of the tribunal or authority to be composed of elected judges.

There should be a full hearing and the judge, who the proceedings are being taken against, is entitled to representation.

Sanctions should be set out the judges' statute of each state and the imposition of sanctions should be proportionate.

There is a right of appeal to a higher judicial authority of the sanctions imposed by an executive authority, tribunal or authority. There must be prior agreement with the independent tribunal or authority before initiating legal proceedings.

The State guarantees compensation for harm wrongfully suffered as a result of a decision or behaviour of a judge in the exercise of judicial duties. The State may apply for reimbursement, within a fixed limit, from a judge in the case of gross and inexcusable breach of rules governing judicial duties.

The statute provides that each individual must have the possibility of submitting a complaint regarding a miscarriage of justice in a particular case to an independent body. Upon examination of such a complaint, and if there has been a dereliction of duty by a judge, the independent body must refer the matter to the disciplinary authority or, at the very least, recommend such a referral to the disciplinary authority.

The Judges' Charter on the Statute for Judges from the European Association of Judges

Principles 9 & 10

In the Judges' Charter in Europe, the European Association of Judges set out fundamental principles which it vows to uphold. In regard to judicial disciplinary measures, the Charter provides that "disciplinary sanctions for judicial misconduct must be entrusted to a body made up of members of the judiciary in accordance with fixed procedural rules." The Charter also states that no judge shall be subject to civil liability in respect of the performance of professional duties.

OSCE Office for Democratic Institutions and Human Rights Kyiv Recommendations on Judicial Independence in eastern Europe, South Caucasus and Central Asia

Recommendations 5, 9, 14, 25 & 26

The Kyiv Recommendations provide that, in order to ensure a fair disciplinary procedure, Judicial Councils shall not be competent to simultaneously receive complaints and conduct disciplinary investigations while hearing a case and making a decision on disciplinary measures. Disciplinary decisions are subject to appeal to a competent court.

Bodies competent to hear and make a decision on disciplinary measures require members from outside the judicial profession. Judicial members of such bodies shall not be involved perform other functions relating to judges or the judicial community. The Kyiv Recommendations emphasise that the judicial disciplinary process must not be controlled by the executive nor should there be political influence pertaining to discipline.

A complaint may be made to the competent body to receive complaints and conduct disciplinary investigations by court chairpersons. Court chairpersons should not have the power to initiate or adopt a disciplinary measure.

Disciplinary proceedings can be carried out for alleged instances of professional misconduct that are gross and inexcusable and bring the profession into disrepute. Proceedings may not be initiated for the content of judicial rulings, judicial mistakes or criticism of the courts.

A special independent body shall adjudicate cases of judicial discipline. This body must ensure that the accused judge is provided with procedural safeguards.

Disciplinary hearings shall be open, unless otherwise requested by the accused judge. A court shall determine if this request is justified.

Reasons shall be provided for decisions on judicial discipline. The final decision shall be published.

International Association of Judges – Conclusions, The Liability of Judges (1980)

The International Association of Judges concluded that the liability of judges could be considered from two points of view: (i) as a criminal offence in the exercise of their functions or (ii) in relation to special rules concerning the administration of justice. The Conclusions on the Liability of Judges focussed on the civil liability of judges in negligence and the means by which judges could be held liable for negligence in the exercise of judicial functions.

Members were divided on the question of liability for negligence. Some considered that making a judge liable for negligence in the exercise of their functions would imperil their independence because judges should not be constantly exposed to the risk of civil proceedings. Further, in many instances civil proceedings against judges would involve, in effect, the retrial of the dispute between the parties.

For others, the professional nature of the functions exercised by a judge, which fall within the domain of the State (in the broadest sense) should give rise to a right to compensation in favour of the victim where there has been negligence by a judge. A judge should only be held liable in situations of gross negligence or grave misconduct, and should not be held liable for his decisions which result from a mistake of fact or law.

The International Association of Judges concluded that in principle, no such liability could be considered unless and until all means of redress have been exhausted.

The majority of members considered that claims should be taken against the State, which can then, in appropriate cases, have recourse against the Judge. Claims against the State should be brought before a body which exercises a judicial function.

Draft Principles on the Independence of the Judiciary (Siracusa Principles) (1981)

Articles 13-16

The Draft Principles on the Independence of the Judiciary, also known as the Siracusa Principles, provide that disciplinary proceedings concerning judges should be before a court or board composed of and selected by members of the judiciary. There is no provision for the inclusion of a minority of non-judicial members on the disciplinary board and it is noted that opinion was divided on this issue.

All disciplinary action should be based upon established standards of judicial conduct promulgated by law or in established rules of court.

Decisions of the disciplinary board should be subject to appeal to a court.

Article 16 provides that a judge should not be subject to removal from his office unless, *inter alia*, by reason of gross or repeated neglect, he has shown himself manifestly unfit to hold the position of judge.

Universal Declaration on Judicial Independence (Montreal Declaration) (1983)

Articles 2.32-2.37

The Universal Declaration on Judicial Independence, also known as the Montreal Declaration, set out the following principles in relation to the discipline and removal of judges.

The Montreal Declaration recommended that a complaint against a judge should be dealt with expeditiously and fairly under an appropriate procedure. The judge should also have the opportunity to comment on the complaint at the initial stage. The examination of the complaint should be kept confidential at the initial stage, unless otherwise requested by the judge.

Judicial discipline or removal proceedings should be held before a court or a board composed predominantly of members of and selected by the judiciary. The power of removal may be vested in the Legislature by impeachment or joint address.

Disciplinary action shall be based upon established standards of judicial conduct.

The Montreal Declaration emphasises that the disciplinary proceedings must ensure fairness to the judge and the opportunity for a full hearing.

Disciplinary and removal proceedings shall be held *in camera*. However, the judge may request that the hearing be held in public, subject to a final and reasoned disposition by the disciplinary tribunal.

Judgments in disciplinary proceedings, whether held *in camera* or in public, may be published. A decision of a disciplinary tribunal shall be subject to appeal to a court, except where proceedings are before the Legislature or are in connection with them. A judge shall not be removed from judicial office except on proven grounds of incapacity or misbehaviour rendering him unfit to continue in office.

Mt. Scopus Approved and Revised International Standards of Judicial Independence (2008)

Article 5

As regards judicial discipline and removal of national judges, the Standards provide that proceedings for discipline and removal of judges shall be dealt with in an expeditious and fair manner. The judge has a right to a fair hearing.

Disciplinary proceedings, with the exception of proceedings before the Legislature, should be held *in camera*. The judge may request that the hearing be held in public, subject to an expeditious, final and reasoned disposition by the disciplinary tribunal.

Judgments in disciplinary proceedings, whether held *in camera* or in public, may be published. The grounds for the discipline, suspension and removal of judges shall be entrenched constitutionally or fixed by law and shall be clearly defined. Disciplinary, suspension and removal actions shall be based upon established standards of judicial conduct.

A judge should not be subject to removal from his office unless, *inter alia*, by reason of gross or repeated neglect or serious infringement of disciplinary rules, he has shown himself manifestly unfit to hold the position of judge. The grounds for removal from judicial office shall be limited to reasons of medical incapacity or behaviour that renders the judge unfit to discharge their duties.

Where the power to discipline and remove judges is vested in an institution other than the Legislature, the tribunal for the discipline and removal of judges shall be permanent, and composed predominantly of members of the judiciary.

The head of the court may have supervisory powers to control judges on administrative matters.

Article 26

As regards the misconduct of international judges, the Standards provide that each court shall establish rules of procedure to address a specific complaint of misconduct or breach of duty on the part of a judge that may affect independence or impartiality.

A complaint may be dealt with on a summary basis if clearly unfounded. Where a detailed investigation is required, the rules shall establish adequate safeguards to protect the rights and interests of the judge concerned and to ensure appropriate confidentiality of the proceedings.

The governing instruments of the court shall provide for appropriate measures, including the removal of a judge from office.

A complainant shall be informed of the outcome of any complaint.

Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct (the Implementation Measures) (2010)

Article 15

Disciplinary proceedings against a judge may only commence for serious misconduct. The Implementation Measures distinguish conduct that gives rise to disciplinary sanctions from a failure to observe professional standards. Professional standards represent best practice to which judges should aspire and should not be equated with conduct justifying disciplinary proceedings. However, the breach of professional standards may be relevant where the breach is alleged to constitute conduct sufficient to justify and require judicial sanction.

Conduct giving rise to disciplinary sanctions, and procedures to be followed, may be defined, as far as possible in specific terms, in the law applicable to judges.

A person who alleges that he or she has suffered a wrong by reason of a judge's misconduct should have the right to complain to the authority responsible for initiating disciplinary action. The Implementation Measures state that a specific body or person should be established by law for dealing with complaints about judges. This body or person should be able to receive complaints, obtain the response of the judge and consider whether or not there is a sufficient case against the judge for the initiation of disciplinary action. If so, the matter should be referred to the disciplinary authority.

The disciplinary authority should be independent of the Legislature and Executive. The authority should be composed of serving or retired judges and may also include non-judicial members, provided that such persons are not members of the Legislature or Executive.

Disciplinary proceedings should be determined by established standards of judicial conduct. Procedures should guarantee a full right of defence.

There should be a right of appeal to a court.

The decision in proceedings against a judge involving a sanction against the judge should be published.

Each jurisdiction should identify sanctions which should be proportionate, both in principle and application.

Article 16

A judge may only be removed from office for, *inter alia*, gross incompetence, or conduct that is manifestly contrary to the independence, impartiality and integrity of the judiciary.

The legislature shall only exercise the power to remove a judge, where such power exists, after the recommendation of the independent authority vested with power to discipline judges.

The following principles may be drawn from the above international sources:

1. Irremovability and security of tenure are key elements of the independence of judges. Save where transfer is provided for and has been provided by way of a disciplinary sanction or in the course of reform of the organisation of the judicial system, no judge may be appointed to another judicial office or assigned without his or her consent. A permanent appointment should only be terminated in cases of serious breaches of discipline or criminal provisions.
2. Judges should not be liable to civil or disciplinary liability in respect of their interpretation of the law, their assessment of facts or their weighing of evidence in determining a case, save for cases of malice or gross negligence. Judicial errors in the interpretation of law should lie in an appropriate system of appeals. Where the State has had to award compensation in respect of a judge's default, only it may seek to establish the liability of a judge through Court action. Judges should not be held personally accountable for decisions overruled or modified on appeal.
3. Judges are liable as everyone else when not exercising their judicial functions.
4. Judges should be guided by ethical principles of professional conduct, including duties that may be sanctioned by disciplinary measures. Disciplinary procedures should be based upon established standards of judicial conduct.
5. There should be a specific body or person with responsibility for receiving complaints, obtaining the representations of the judge and determining if there is a sufficient case against the judge to initiate disciplinary procedures.
6. Disciplinary proceedings should be determined by an independent authority or Tribunal in a procedure guaranteeing full rights of defence. The Tribunal should be appointed by an independent body with substantial (a majority) judicial representation chosen by other judges. This body should also be generally responsible for appointing judges.

7. Disciplinary procedures against judges should be dealt with expeditiously and fairly in an appropriate procedure. Where it is possible for a private person to institute criminal proceedings or an investigation, there should be a mechanism for stopping such proceedings or investigation where there is no substantial case. A judge is entitled to representation.

8. Initial stages of a disciplinary investigation should be confidential, save where requested by the judge. Judges should have the opportunity to comment at an early stage.

9. Save for decisions of the highest Court or those of the Legislature in impeachment or similar proceedings, decisions in disciplinary proceedings should be held before a Court or Board predominantly composed of members of the judiciary. Decisions of such should be subject to an independent review. Alternative practices are acceptable where there is established and proven tradition.

10. Judgments of disciplinary proceedings shall be published.

11. A judge should not be removed from judicial office, save on proven grounds of incapacity or misbehaviour rendering him unfit to continue in office.

12. The administration of judicial disciplinary action must not compromise the judge's independence and should only consider genuine and relevant considerations.

13. Conduct that may lead to disciplinary proceedings resulting in a change of status or removal should be clearly established. This should be done at national rather than European level (see Opinion 3, CCJ, 19th November 2002).

14. There should be a process providing for an appropriate appeal.

Appendix B

Appendix C

ENCJ Project Team on Development of Minimum Judicial Standards V

Questionnaire for the collection of information on Minimum Judicial Standards
(Disciplinary procedures)

Appendix C: Questionnaire on standards: disciplinary procedures

Part I

1 *Is there a Judicial code of Conduct and/or ethics? Is this linked to discipline?*

1 Is there a Judicial code of Conduct and/or ethics? Is this linked to discipline?
<p>ALBANIA</p> <p>Code of Judicial Ethics (adopted by the Judicial Conference, which is a body composed by all the judges of the courts of first instance, courts of appeals and judges of the High Court of the Republic of Albania.). This code relates to the law no. 9877/2008 "On the organization of the judiciary", which contains a list of cases for which the judge of first instance or of appeal is held responsible.</p>
<p>AUSTRIA</p> <p>In 2003 the Association of Austrian Judges initiated in the city of Wels a discussion process that all Austrian judges could participate in. On November 8th, 2007 "The Wels Declaration of Ethics" was adopted.</p> <p>The Austrian Judges declare to be guided in their work by the following ethical principles: Fundamental Rights; Independence; Self-control and Organization, Education; Administration of Justice; Fairness, Decision making; Publicity and Comprehensibility; Private Behavior; Social Influences (see attachment ./A)</p>
<p>BELGIUM</p> <p>Preliminary remarks:</p> <ul style="list-style-type: none">- The legal provisions governing the disciplinary procedure for judges and prosecutors are a part of the Judicial Code. Therefore all references made to articles of law are references to the Judicial Code.- The concerned articles of the Judicial Code have recently been modified considerably by the law of July 15th 2013, essentially in order to create disciplinary courts and courts of appeal. As the law only entered into force on September 1st 2014, practical experience or jurisprudence are not yet available. The main source of our answer is therefore the law as it is and the comments given by Jean DE CODT, President of Section of the Belgian Supreme Court (Cour de Cassation), in an article published in the "Journal des Tribunaux" on February 15th 2014.- The disciplinary rules are almost the same for judges and members of prosecution. Except when explicitly mentioned otherwise, the answers given for judges do also apply for members of prosecution. <p>In 2012 the Belgian High Council of Justice published a booklet called "guide for magistrates, principles, values and qualities". This booklet is not a Code of judicial conduct or ethics. It has no force of law and contains only recommendations on the conduct desired by judges and prosecutors in their professional and private live.</p>

1 Is there a Judicial code of Conduct and/or ethics? Is this linked to discipline?
<p>BULGARIA</p> <p>A Code of Ethics for the Behaviour of Bulgarian Magistrates has been effective in the Republic of Bulgaria since 2009. It was adopted on the grounds of Article 30(1)(12) of the Judiciary System Act (JSA) by a decision of the Supreme Judicial Council (SJC) under Record No 21 of 20.05.2009, as amended by a decision under Record No 2 of 18.01.2011. The Code of Ethics applies to all judges, prosecutors and investigating magistrates, members of the Supreme Judicial Council, and inspectors at the Inspectorate of the SJC. The Code has been drawn up in compliance with the Constitution of the Republic of Bulgaria, the Judiciary System Act, the recommendations of the Committee of Ministers of the Council of Europe on the status of judges, prosecutors and investigating authorities, as well as with all other national and international acts which regulate the work of magistrates in the Republic of Bulgaria. The Code sets out the main principles which draw the framework for regulating the conduct of judges, prosecutors and investigating magistrates both at work and outside it: independence; impartiality; fairness and transparency; civility and tolerance; honesty and propriety; competence and qualification; confidentiality. Section II of the Code of Ethics regulates the rules of ethical conduct ensuing from the main principles. Failure to observe the Code of Ethics for the Behaviour of Bulgarian Magistrates constitutes a disciplinary offence by virtue of Article 307(4)(3) of the Judiciary System Act (JSA). Please find attached the Code of Ethics for the Behaviour of Bulgarian Magistrates</p>
<p>CROATIA</p> <p>The Code of Judicial Ethics represents a set of ethical principles essential for the successful performance of the judicial office. The Code of Judicial Ethics is brought by a Council composed of the presidents of all council of judges in the Republic of Croatia and the violation of the Code is decided by the competent council of judges. Behaviour contrary to the fundamental principles of the Code of Judicial Ethics was defined as a disciplinary offense, but is not any more.</p>
<p>CZECH REPUBLIC</p> <p>There is no special code of conduct or ethics.</p>
<p>DENMARK</p> <p>Yes.</p>
<p>ENGLAND AND WALES</p> <p>There is no Judicial Code of conduct but there is a Guide to Judicial Conduct which sets out the standards of behaviour that are expected of all judicial office holders. Breaches of the guidance can lead to disciplinary action.</p>
<p>FRANCE</p> <p>The French high Council has adopted in 2010 a guidelines of ethics obligations. In case of the non compliance with such obligations, judges' behaviours may lead to disciplinary proceedings.</p>
<p>GERMANY</p>

1 Is there a Judicial code of Conduct and/or ethics? Is this linked to discipline?

In Germany exists no conclusive enumeration of duties in a conclusive Judicial code of Conduct. The German Judiciary Act (Deutsches Richtergesetz – DRiG) provides the following sections on ethical duties for judges:

Section 38 Judicial oath

(1) A judge shall take the following oath at a public sitting of the court:

2 I swear to exercise judicial office in conformity with the Basic Law (Grundgesetz) of the Federal Republic of Germany and with the law, to adjudicate to the best of my knowledge and belief, without distinction of person, and to serve the cause of truth and justice alone – so help me God.”

(2) The oath can be taken without use the words “so help me God”.

(3) In respect to judges who are in service of a Land the oath can include a commitment to the land constitution concerned and can be taken publicly in a different manner instead of being taken before a court.

Section 39 Maintenance of independence

In and outside office a judge shall conduct himself, in relation also political activity, in such a manner that confidence in his independence will not be endangered.

Further obligations for federal judges are stated in section 77 (1) of the Act on Federal Civil Servants [Bundesbeamtengesetz – BBG] read in conjunction with section 46 German Judiciary Act [Deutsches Richtergesetz - DRiG]; the obligation for Land judges are stated in section 71 DRiG read in conjunction with section 47 (1), first sentence, of the Act on the Status of Civil Servants [Beamtenstatusgesetz – BeamStG].

The subject matter of a disciplinary proceeding is a disciplinary offence that is committed if a judge culpably violates the obligations incumbent upon him/her. A disciplinary offence/service violation is only described generally as the violation of official duties.

HUNGARY

The Association of Hungarian Judges (MABIE) adopted a Code of Ethics in 2005; the compliance with this code was supervised by the National Judicial Ethical Council established by MABIE. MABIE performed its activities in closed sessions with anonymous decisions which were published on the website of MABIE.

The National Judicial Council (hereinafter NJC) established the Coordination Body working on the Code of Judicial Conduct. 3 members were delegated by NJC, 3 by the National Office for the Judiciary (hereinafter NOJ), 3 by the Association of Hungarian Judges (hereinafter MABIE) and 2 by service courts in the body. The Code of Judicial Conduct was adopted at a session on 10 November 2014 by NJC.

The New Code of Judicial Conduct will connect to the disciplinary procedure (see reply to point 4), it is to come into effect on 1 January 2015.

IRELAND

There is currently no Judicial Code of Conduct and/or Ethics. In the General Scheme of the Judicial Council Bill, the Judicial Council is charged with adopting draft guidelines governing judicial conduct and ethics, which are to be prepared and submitted to the Board of the Council by the Judicial Conduct Committee (Head 5(2)(c) & Head 21(2)(b)).

ITALY

There is a code of ethics elaborated by the magistrate association; it is not linked to discipline;

1 Is there a Judicial code of Conduct and/or ethics? Is this linked to discipline?
<p>ITALY (Council of Presidency for administrative Justice)</p> <p>Yes, both the Associations of administrative of first instance (TAR) and of the Council of State adopted, in 1994, two ethic codes, both emended in 2007, which contain the guide lines of the behaviour of administrative judges. The infringement of these codes may eventually have disciplinary effects even thou it is not sure weather these codes have juridical effects or not.</p>
<p>LITHUANIA</p> <p>Yes, there is. The Code of ethics of the judges of the Republic of Lithuania was adopted by a General meeting of the Lithuanian judges on June 28, 2006. This Code determines the basic principles of conduct of judges of the Republic of Lithuania. The Code regulates the conduct of judges during the fulfilment of direct as well as indirect duties. Till that issues of judicial ethics were regulated by the “Rules of Judges’ Ethics” which were adopted in 1998.</p>
<p>THE NETHERLANDS</p> <p>Yes, several codes of conduct exist.</p> <p>One code of conduct was drafted by the Dutch Association for the Judiciary in 2011 (NVvR Guide to Judicial Conduct). This code derives from the one issued by the ENCJ but has been harmonised with Dutch traditions and culture. It stipulates that judges are responsible for and need to be aware of the impact of their actions, both in performing their duties and in their personal conduct. The code offers judges practical guidance regarding their actions and conduct and aims to explain to society how judges deal with integrity issues.</p> <p>Another code of conduct was drafted jointly by the presidents of the courts and the Council for the Judiciary in 2010 (Code of conduct for judicial personnel). This code applies to everyone working in the judiciary.</p> <p>In addition to these codes, we have Guidelines on Judicial Impartiality and Guidelines on Ancillary Positions.</p> <p>Dutch judges are of course bound by several international codes as well (e.g. the Bangalore Principles of Judicial Conduct).</p> <p>Violating a code of conduct may result in disciplinary measures (e.g. if such an act seriously compromises the proper administration of justice) or prosecution (if the act is punishable).</p>
<p>NORTHERN IRELAND</p> <p>Yes – Code of Practice on complaints about the conduct of Judicial Office Holders issued by the Lord Chief Justice on 3rd April 2006. This is linked to the Protocol on Judicial Discipline and A Statement of Ethics for the Judiciary in Northern Ireland both issued by the Lord Chief Justice on 28th February 2007. All three documents are reviewed on a regular basis with the up to date version published on the website of the Northern Ireland Courts and Tribunals Service www.courtsni.gov.uk.</p>
<p>NORWAY</p> <p>Yes.</p>
<p>POLAND</p>

1 Is there a Judicial code of Conduct and/or ethics? Is this linked to discipline?
<p>There is a code of ethics, it is called the Collection of principles of judges professional conduct.</p> <p>The code describes the principles of behaviour of a judge - in professional or private life. The breach of this principles states breach of the authority of the office of judge - disciplinary misconduct. A disciplinary misconduct leads to disciplinary responsibility.</p>
<p>PORTUGAL</p> <p>The special duties of judges are listed in articles 8-13 of the Statute of Judicial Magistrates (EMJ), approved by Law No. 21/85, of 30.07.</p> <p>The general duties common to all civil servants are listed in article 73 of the General Labour Act on Civil Servants, approved by Law No. 35/2014, of 20.06.</p> <p>There are no ethical codes, though such duties, including those listed in the Statute of Judicial Magistrates, are corollaries of the principles that should guide the conduct of judges.</p>
<p>ROMANIA</p> <p>Yes. There is a Code of deontology for judges and prosecutors that establishes their standards of conduct in accordance with the honor and the dignity of the profession. This code is distinct from the rules on the disciplinary responsibility that is provided in law.</p>
<p>SERBIA</p> <p>Yes. The Code of Ethics shall serve to determine ethical principles and rules of conduct of judges with which they must comply, with aim to maintain and improve the dignity and reputation of judges and the judiciary.</p> <p>Grave violation of provisions of the Code of Ethics shall represent a disciplinary offense.</p>
<p>SLOVAKIA</p> <p>Yes, however the Judicial Code is adopted only at the level of professional organization of the Judges Association. The Code has 3 parts: 1/duties of judge in private life, 2/duties of judge when exercising his judicial office, 3/duties within his profession</p>
<p>SLOVENIA</p> <p>There is a special Code of Judicial Ethics in Slovenia that has been adopted by the Association of Judges of the Republic of Slovenia, however, it is not linked to discipline since there are special provisions regulating judges' discipline in the Judicial Service Act.</p>
<p>SPAIN</p> <p>In Spain there is neither an officially approved code of ethics nor a set of rules or principles in the field of judicial ethics which could apply to members of the Spanish Judiciary. However, the Spanish Council for the Judiciary has indirectly backed up two international documents in the field of judicial ethics: a) The Latin American Model Code of Judicial Ethics, a document (set of rules in the field of judicial ethics) which was officially approved by the 13th Summit of Presidents of Supreme Courts of Latin American Countries (which</p>

1 Is there a Judicial code of Conduct and/or ethics? Is this linked to discipline?

gathers Presidents of Supreme Courts of all Central and South American countries where Spanish and Portuguese are spoken, including also Spain and Portugal) in Santo Domingo in 2006. b) The Report 2009-2010 of the ENCJ Working Group on Judicial Ethics, approved by the so-called "London Declaration on Judicial Ethics (2010)".

It has to be underlined, nevertheless, that the Spanish Council for the Judiciary has established a working group on judicial ethics (composed by members of the council, experts on judicial ethics, practising judges and representatives of judicial associations) which is currently drafting a document on judicial ethics that, in due course, will be submitted to the Plenary of the Council for approval.

In the Spanish legal system there is a very clear distinction between ethical rules or principles and disciplinary rules which apply to members of the Judiciary. Basic rules or principles in the field of judicial ethics do not envisage any kind of direct sanctions for the infringement of those rules or principles and are not, therefore, linked to judicial discipline. Disciplinary offences and applicable sanctions are defined according to the legality principle, and albeit most of the provisions concerning disciplinary offences protect ethical principles against breaches, the sole breach of an ethical rule or principle does not entail a disciplinary sanction if the judicial behaviour in breach of the ethical rule or principle cannot be referred to a disciplinary offence previously defined by the relevant disciplinary provision.

SWEDEN

Yes, there is a code of ethics in Sweden. This code is not linked to discipline.

TURKEY

Although no single specific text exists in national laws regarding judicial code of conduct and/or ethics for judges and prosecutors, there exist a number of codes of ethics scattered in the Constitution, certain laws, circulars and principle decisions. "The Bangalore Principles of Judicial Conduct" (2003/43), which was adopted by United Nations on 23 April 2003 in order to lay down the standards for Judicial code of Conduct for judges, were adopted by High Council of Judges and Prosecutors on 27.06.2006(315), and Directorate General of Ministry of Justice disseminated them to judgea and prosecutors on 14.11.2006 (100289).

2 *What provisions are there in your country in relation to Judicial Discipline? Are they in primary legislation, secondary legislation or by protocol or practice? Please provide a link to any regulations that exist.*

<p>2 What provisions are there in your country in relation to Judicial Discipline? Are they in primary legislation, secondary legislation or by protocol or practice? Please provide a link to any regulations that exist.</p>
<p>ALBANIA</p> <p>Disciplinary proceedings against judges of first instance and courts of appeal are outlined in the Constitution of the Republic of Albania (Article 147, paragraph 4) "High Council of Justice decides on the transfer of judges, as well as for their responsibility regarding the discipline under the law ". Also provided in the organic law No.9877, dated 18.02.2008, "On the Organization of the Judiciary in the Republic of Albania" (Article 31-36) The High Council of Justice, with decision Nr.137, dated 21.02.2013 "On the disciplinary proceedings of the Judges" provides a Regulations regarding disciplinary proceedings.</p>
<p>AUSTRIA</p> <p>Sections 101 to 166 of the Austrian Judges and Public Prosecutors Act [Austrian Federal Law Gazette 1961/305 in the version from Austrian Federal Law Gazette I 8/2014 = Richter- und Staatsanwaltschaftsdienstgesetz = RStDG; link: Legal Information System of the Republic of Austria (=Rechtsinformationssystem = RIS) = http://www.ris.bka.gv.at/Bundesrecht] rule disciplinary proceedings for judges and public prosecutors.</p>
<p>BELGIUM</p> <p>Attached you will find the provisions of the Belgian Judicial Code governing the discipline of the members (judges and prosecutors) of the Judiciary. As already indicated above, these provisions have recently been modified considerably by the law of July 15th 2013, essentially in order to create disciplinary courts and courts of appeal. The entire Belgian Judicial Code can be found, in French and Dutch, on the following page of the website of the Ministry of Justice: http://www.ejustice.just.fgov.be/cgi_loi/loi.pl</p>
<p>BULGARIA</p> <p>Article 129(3)(4) of the Constitution of the Republic of Bulgaria (CRB) of 1991 stipulates that judges, prosecutors and investigating magistrates who have attained the status of irremovability may be removed from office upon grave breach or systematic dereliction of the official duties, as well as for actions damaging the prestige of the judiciary. In compliance with the constitutional provision under Article 130(6)(2), the Supreme Judicial Council imposes the disciplinary sanctions of demotion and removal from office on judges, prosecutors, and investigating magistrates. The JUDICIARY SYSTEM ACT (JSA) adopted in 2007, Chapter XVI (Articles 307–328) regulates the disciplinary liability of judges, prosecutors and investigating magistrates. The application of the JSA is not coupled with any adopted secondary legislation provisions on magistrates' disciplinary liability. A Methodology of Disciplinary Activity of the Supreme</p>

<p>2 What provisions are there in your country in relation to Judicial Discipline? Are they in primary legislation, secondary legislation or by protocol or practice? Please provide a link to any regulations that exist.</p>
<p>Judicial Council has been drafted and is currently under discussion with magistrates and non-governmental organisations, its objective being to establish standards and to set out the legal framework for the legitimate and uniform disciplinary practice of the SJC within the exercise of its powers under the provisions of Chapter XVI of the JSA. The final draft of the Methodology is due to be adopted by a SJC decision by the end of 2014. Please find attached the Constitution of the Republic of Bulgaria, Judiciary system act and the draft SJC's Methodology of Disciplinary Activity.</p>
<p>CROATIA</p> <p>Disciplinary proceedings in Republic of Croatia are regulated by the Act on the State Judiciary Council (Article 62 – 72, Act on the State Judiciary Council). http://www.zakon.hr/z/127/Zakon-o-dr%C5%BEavnom-sudbenom-je%C4%87u</p>
<p>CZECH REPUBLIC</p> <p>The duties of judges are defined in the Act No. 6/2002 on Courts and Judges. The Act on Disciplinary Proceedings concerning judges and state prosecutors (Act No. 7/2002) provides for the disciplinary procedure against judges and state prosecutors.</p>
<p>DENMARK</p> <p>The regulation is found in §§ 48-55 of the Danish Administration of Justice Act, which is primary legislation. The Administration of Justice Act is not translated into English in full. The following links to the Danish version: https://www.retsinformation.dk/forms/r0710.aspx?id=157953</p>
<p>ENGLAND AND WALES</p> <p>The Lord Chancellor's (LC) and Lord Chief Justice's (LCJ) disciplinary powers are set out in primary legislation in Section 108 of the Constitutional Reform Act 2005 (http://www.legislation.gov.uk/ukpga/2005/4/contents). The procedure for investigating complaints that may result in disciplinary action are prescribed in secondary legislation in the Judicial Discipline (Prescribed Procedures) Regulations 2014 and the three sets of supporting rules: the Judicial Conduct (Judicial and other office holder) Rules 2014, the Judicial Conduct (Tribunals) Rules 2014, and, the Judicial Conduct (Magistrates) Rules 2014. http://judicialconduct.judiciary.gov.uk/</p>
<p>FRANCE</p> <p>Article 43 of the organic law on the status for the judiciary (ord. n°58-1270, December 22nd, 1958) provides that non-compliance with the judge's duties, such as a lack of honour, of dignity or delinquency, is a disciplinary infringement. http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000339259</p>
<p>GERMANY</p> <p>Section 26 (1) of the German Judiciary Act (Deutsches Richtergesetz – DRiG) provides (for federal judges and Land judges) that, in principle, judges are subject to service supervision</p>

2 What provisions are there in your country in relation to Judicial Discipline? Are they in primary legislation, secondary legislation or by protocol or practice? Please provide a link to any regulations that exist.

as long as there is no detraction from their independence (Article 97 Basic Law [Grundgesetz – GG]). Service supervision does not apply to judicial determination, which is a core part of judicial service, but instead covers only those activities of a judge which have to do with ancillary forms of attending to official duties (e.g. conducting meetings in court rooms, the use of uniform documents etc.). If a judge acts in breach of his duties, service supervision includes the power to impose the following two measures pursuant to section 26 (2) DRiG: The judge may be reprimanded for an improper mode of executing his official duties, and he may be urged to properly and promptly attend to official duties.

For judges in federal service, the applicable law pertaining to public officials is the Federal Disciplinary Act [Bundesdisziplinargesetz – BDG]; for judges in service at the Land level, the respective Land disciplinary laws apply according to the individual Land laws governing judges. Section 63 (1) DRiG read in conjunction with section 5 BDG enumerates disciplinary measures for federal judges. Similar regulations exist regarding the Land judges.

Administrative supervision is undertaken by the president of the courts; and by the competent ministries in the last instance – as a rule, these are the justice ministries. Further serious disciplinary measures may only be imposed in the course of a formal disciplinary proceeding conducted by the judicial service courts; this is intended to ensure the most extensive possible independence of judges from executive bodies.

Links:

- Basic Law (Grundgesetz):
http://www.gesetze-im-internet.de/englisch_gg/index.html
- German Judiciary Act (Deutsches Richtergesetz):
http://www.gesetze-im-internet.de/englisch_drig/index.html
- Act on Federal Civil Servants (Bundesbeamtengesetz); only available in German:
<http://www.gesetze-im-internet.de/bbg>
- Federal Disciplinary Act (Bundesdisziplinargesetz); only available in German:
<http://www.gesetze-im-internet.de/bdg/>
- Act on the Status of Civil Servants (Beamtenstatusgesetz); only available in German:
<http://www.gesetze-im-internet.de/beamstg/>

HUNGARY

The rules of disciplinary procedures are based on the primary legal norms (Act CLXII of 2011 on the legal status and remuneration of judges – hereinafter ALSRJ and Act CLXI of 2011 on the Organisation and Administration of Courts – hereinafter AOAC). Secondary norm is the rules of procedure of the service court which were adopted on 4 July 2014 on a joint meeting by the service court adjudicating on first instance with the regional court of appeal on the territory of Budapest, and the service court of second instance adjudicating with the Curia.

Norms regulating the primary disciplinary procedure:

- Act CLXII of 2011 on the legal status and remuneration of judges (hereinafter ALSRJ)

The act regulates in details the provisions regarding the disciplinary responsibility of a judge in a separate chapter.

- Act CLXI of 2011 on the Organisation and Administration of Courts (hereinafter AOAC)

The AOAC contains provisions regarding the disciplinary procedure stating that any person against whom disciplinary proceedings are pending, or who is subject to a disciplinary penalty shall not be appointed to certain posts (e.g. president of the National Office for the

2 What provisions are there in your country in relation to Judicial Discipline? Are they in primary legislation, secondary legislation or by protocol or practice? Please provide a link to any regulations that exist.

Judiciary – NOJ, member of the National Judicial Council – NJC, president of the Curia, member of the council of judges); and his or her elected membership of NJC shall be terminated. The act contains certain special cases of the initiation of a disciplinary procedure (in what circumstances may the president of NOJ initiate the disciplinary procedure, in case of procedure against leaders when it is necessary to initiate the disciplinary procedure.)

Secondary norms regulating the disciplinary procedure:

- rules of procedure of the service courts:

A service court shall prepare the rules of procedure pursuant to ALSRJ, which shall contain the composition of the acting councils and the rules of case allocation, as well as the rules regarding the scope of the service court, the exclusion of service judges and investigating commissioners, rules of case management, disciplinary procedures of first and second instance and the obligation to inform.

The rules of procedure were adopted by the judges appointed to the service court and was approved by the NJC.

The relevant sections and the details of the rules of procedure can be found in the appendix.

IRELAND

The main disciplinary mechanism in place for the judiciary is provided for under Article 35.4 of the Irish Constitution in respect of removal from office. Article 35.4 states:

“1° A judge of the Supreme Court, the Court of Appeal, or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann (both Houses of Parliament) calling for his removal.

2° The Taoiseach (Prime Minister) shall duly notify the President of any such resolutions passed by Dáil Éireann and by Seanad Éireann, and shall send him a copy of every such resolution certified by the Chairman of the House of the Oireachtas (Parliament) by which it shall have been passed.

3° Upon receipt of such notification and of copies of such resolutions, the President shall forthwith, by an order under his hand and Seal, remove from office the judge to whom they relate.”

A mechanism also exists to make enquiries into the conduct of District Court judges. Section 10(4) of the Courts (Supplemental Provisions) Act 1961, as amended by section 21(2) of the Courts Act 1991 provides that the Chief Justice may interview a judge of the District Court in certain circumstances as follows:

“...](w)here the Chief Justice is of the opinion that the conduct of the District Court has been such as to bring the administration of justice into disrepute, the Chief Justice may interview the judge privately and inform him of such opinion.”

Furthermore, section 36(2)(a) of the Courts (Supplemental Provisions) Act 1961, gives the President of the District Court the power to investigate a judge of that Court and to report the result to the Minister for Justice, Equality and Defence, where it appears that “the conduct of a justice of the District Court is prejudicial to the prompt and efficient discharge of the business of the Court”.

The General Scheme of the Judicial Council Bill sets out a means of investigating allegations of judicial misconduct and offers options for dealing with misconduct where

<p>2 What provisions are there in your country in relation to Judicial Discipline? Are they in primary legislation, secondary legislation or by protocol or practice? Please provide a link to any regulations that exist.</p>
<p>the nature of the misconduct warrants investigation and action but is not sufficiently serious to call for the removal of the judge from office. However, nothing in the General Scheme of the Judicial Council Bill shall affect the power of any member of the Oireachtas to table a motion calling for a resolution in accordance with Article 35 of the Constitution. http://www.justice.ie/en/JELR/General%20Scheme%20Judicial%20Bill.pdf/FilesGeneral%20Scheme%20Judicial%20Bill.pdf</p>
<p>ITALY</p> <p>The provisions in relation to judicial discipline are in primary legislation (legislative decree n. 109/2006) http://www.camera.it/parlam/leggi/deleghe/06109dl.htm</p>
<p>ITALY (Council of Presidency for administrative Justice)</p> <p>Law n. 186/1982 and Internal regulations 19.12.2003 and 15.1.2004 adopted by the Council on the judiciary (CPGA - Council of Presidency for administrative Justice). http://www.giustizia-amministrativa.it/iper/186-1982.htm</p>
<p>LITHUANIA</p> <p>Provisions setting grounds for the judicial discipline are in the Law on Courts of the Republic of Lithuania. Articles 43, 83-88 state out the duty of judge to obey the rules of judicial conduct, and the procedure of disciplinary liability of judges. The Law on Courts could be found here: http://www.teismai.lt/en/courts/legal-acts/ Provisions constitute the Rules of conduct for judges are stated in the Code of ethics of the judges of the Republic of Lithuania, adopted by the General meeting of judges of Lithuania. The procedure of the disciplinary investigation and posing sanctions is stated in the Rules of the Judicial Ethics and Discipline Commission: http://www.teismai.lt/en/the-judicial-ethics-and-discipline-commission/about-commision/ In case the disciplinary investigation leads to the Judicial Court of Honour, the Regulation of the judicial court of honour approved by the resolution of the Judicial Council shall apply: http://www.teismai.lt/en/the-judicial-court-of-honour/about-court/</p>
<p>THE NETHERLANDS</p> <p>Relevant provisions appear in various regulations. First, the Constitution provides as follows: Art. 116 (4): “Pursuant to the law, members of the judiciary responsible for dispensing justice are supervised in the performance of their duties by such members and by the persons mentioned in the preceding paragraph.” Art. 117 (3): “ In cases regulated by law, they may be suspended or dismissed by a court pertaining to the judiciary, as designated by the law.” Second, rules about disciplinary measures against judges appear in Chapter 6A of the Wet rechtspositie rechterlijke ambtenaren [Judicial Officers Legal Status Act] (Wrra). See</p>

2 What provisions are there in your country in relation to Judicial Discipline? Are they in primary legislation, secondary legislation or by protocol or practice? Please provide a link to any regulations that exist.

http://wetten.overheid.nl/BWBR0008365/geldigheidsdatum_09-10-2014#Hoofdstuk6A

A new bill is being prepared. See

<http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2014/02/03/wetsvoorstel-memorie-van-toelichting.html>

Third, we have a complaints procedure. In the Netherlands, the complaints procedure is not incorporated in the disciplinary procedure. They are two separate procedures and serve different purposes.

According to the complaints procedure, complaints about improper conduct on the part of judges in the course of their duties must first be submitted to the Board of the court to which the judge is assigned. Every court has a specific complaints procedure (the internal complaints regulation). In case of disagreement with the proceedings at this Board, an additional complaint may be filed with the Procurator General at the Supreme Court, as set forth in the external complaints regulation.

See <http://www.rechtspraak.nl/Organisatie/Hoge-Raad/OverDeHogeRaad/Bijzondere-taken-HR-en-PG/Klachtbehandeling-volgens-de-Wet-op-de-Rechterlijke-Organisatie/Pages/Wet-op-de-rechterlijke-organisatie.aspx>.

The Procurator General at the Supreme Court may request the Supreme Court to investigate an act by a judge in the course of his duties. The Supreme Court then decides whether the act was inappropriate. The complaints regulation does not provide for sanctions.

The procedure serves inter alia to determine standards of conduct. Violating a standard of conduct may, however, be cause for starting disciplinary proceedings against a judge.

Fourth, rules about objection and appeal proceedings to the Central Appeals Tribunal (Centrale Raad van Beroep) in case of a written warning issued by the President of the court appear in the General Administrative Law Act (Algemene wet bestuursrecht, art. 1:1, 1:3, 7:1). See: http://wetten.overheid.nl/BWBR0005537/geldigheidsdatum_04-11-2014 and annex 2 (Bevoegdheidsregeling bestuursrechtspraak) art. 3. See http://wetten.overheid.nl/BWBR0005537/Bijlage2/geldigheidsdatum_23-01-2013

Additionally, there is the possibility to challenge a judge. This is regulated in the Code of Procedure of each field of law separately.

All the above are primary legislation, except for the internal complaints regulations at the courts.

NORTHERN IRELAND

Code of Practice in relation to complaints about the conduct of Judicial Office Holders issued by the Lord Chief Justice under Section 16 of the Justice [Northern Ireland] Act 2002. The Code provides for a Complaints Tribunal to be convened by the Lord Chief Justice to consider serious complaints and provide advice on any disciplinary measures recommended. Sections 7 and 8 of the Act provide for the establishment of a Statutory Tribunal to consider the removal of a Judicial Office Holder.

NORWAY

We have rules in primary legislation in the Courts of Justice Act in § 55 and chapter 12:

<http://www.domstol.no/upload/DA/Internett/da.no/Internasjonalt/Courts%20of%20Justice%20Act%20English%20translation%20uten%20paragrafinnledning.pdf>

We also have Ethical principles for Norwegian judges. These rules are adopted by the

2 What provisions are there in your country in relation to Judicial Discipline? Are they in primary legislation, secondary legislation or by protocol or practice? Please provide a link to any regulations that exist.

Norwegian association of judges and the Norwegian Courts Administration. These principles are a standard for behaviour and practice:

<http://www.domstol.no/upload/DA/Internett/da.no/Publikasjoner/Ethical%20principles%20for%20the%20proper%20conduct%20of%20Norwegian%20judges.pdf>

Decisions from The Supervisory Committee for Judges are made public on a web-page. These are not translated:

<http://www.domstol.no/no/Enkelt-domstol/Tilsynsutvalget-for-dommere/Avgjorelser/>

POLAND

Primary legislation. Disciplinary responsibility of judges of the common courts is regulated in the Act law on common courts system. Several disciplinary regulations can be also found in the Act on Supreme Court, the Act law on administrative courts and the Act law on military courts. All those Acts are so called primary law. In matters not regulated in those Acts the code of criminal procedure is used. Disciplinary procedure is based on the rules of criminal procedure.

Secondary legislation. Besides this there is a code of ethics (the Collection of principles of judges professional conduct, mentioned above) which was introduced by the National Council for the Judiciary of Poland. This can be treated as a kind of secondary law, but in real this is only a collection of guidelines. The code of ethics is applied to every judge and every court (Supreme Court, common court, administrative court and military court).

Practice. Judgments of the Supreme Court (which is the disciplinary court of the second instance) play an important role in creating the standards concerning the judges professional conduct.

Further in the questionnaire we will focus on regulations relating to common court judges, but for all other judges the regulations are very similar.

PORTUGAL

The EMJ is a law approved by the Parliament (Assembleia da República).

To safeguard the external independence of the courts, only the parliament can legislate about the status of judges .

Link: https://www.csm.org.pt/ficheiros/legislacao/emj_2011.pdf

ROMANIA

The rules regarding judicial discipline, are provided in Law no. 303/2004 on the status of Judges and Prosecutors

<http://www.csm1909.ro/csm/index.php?cmd=0702&pg=1> (RO)

SERBIA

The provisions of the Law on Judges, Law on High Judicial Council, Rulebook on Disciplinary Proceedings and Disciplinary Responsibility of Judges and Code of Ethics (can be found on the web site of the High Judicial Council: www.vss.sud.rs)

SLOVAKIA

Act on Judges and Lay Judges – 3rd part: disciplinary liability Provisions on judicial discipline are enshrined in so called “status laws” – in Act on Judges and Lay Judges (§ 115-

<p>2 What provisions are there in your country in relation to Judicial Discipline? Are they in primary legislation, secondary legislation or by protocol or practice? Please provide a link to any regulations that exist.</p>
<p>138), Act on Courts (§45 and §60) and the Constitution of the Slovak Republic (Art. 136)</p>
<p>SLOVENIA</p> <p>The Judicial Service Act, which was enacted in 1994 and lastly amended in 2013, as an act of primary legislation provides special Chapter 7 on disciplinary proceedings against judges (Articles 80 – 94). (See a link to the Slovene text: http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO334).</p>
<p>SPAIN</p> <p>The provisions in relation to disciplinary liability of Spanish Judges are included in articles 414 to 427 of the Spanish Organic Law 6/1985, of 1 July, on the Judiciary (Ley Orgánica del Poder Judicial, hereinafter Law on the Judiciary), a piece of primary legislation adopted in 1985 which has been amended on several occasions since it came into force. Those provisions can only be applied “in the cases and with the guarantees established” (by the Law). There is no secondary legislation (regulation adopted by the Council for the Judiciary or the Ministry of Justice, for instance) complementing the provisions of the primary legislation on Judicial Discipline, but those provisions have been complemented and construed by the practice of the bodies with competence in the field of Judicial Discipline within the Council for the Judiciary (Disciplinary Committee and Plenary) and by the case law of the Administrative Division of the Supreme Court.</p> <p>There is an unofficial translation of the Spanish Law on the Judiciary into English, but this translation is not available online. The following is the link to the Spanish version of the Law on the Judiciary on the website of the Spanish Council for the Judiciary: http://www.poderjudicial.es/cgpj/es/Temas/Compendio-de-Derecho-Judicial/Leyes/Ley-Organica-6-1985--de-1-de-julio--del-Poder-Judicial</p>
<p>SWEDEN</p> <p>The provisions about disciplinary procedures are in primary legislation but are completed in secondary legislation mainly according to the procedures.</p> <p>Regeringsformen (1974:152) Lag (1994:260) om offentlig anställning (14-19 §§) Lag (1994:261) om fullmaktsanställning Anställningsförrordningen (1994:373)(15 §) Lag (1986:765) med instruktion för Riksdagens ombudsmän Lag (1975:1339) om justitiekanslerns tillsyn Förordning (1975:1345) med instruktion för Justitiekanslern Förordning (2007:831) med instruktion för Statens ansvarsnämnd - riksdagen.se Förordning (1996:378) med instruktion för Högsta förvaltningsdomstolen (31 §) Förordning (1996:380) med kammarrättsinstruktion (53 §) Förordning (1996:379) med hovrättsinstruktion (55 §) Förordning (1996:382) med förvaltningsrättsinstruktion (47 §) Förordning (1996:381) med tingsrättsinstruktion (57 §)</p>
<p>TURKEY</p> <p>Provisions and regulations regarding disciplinary proceedings are included in;</p>

Appendix C

2 What provisions are there in your country in relation to Judicial Discipline? Are they in primary legislation, secondary legislation or by protocol or practice? Please provide a link to any regulations that exist.

Turkish Constitution, Art. 159/9,
Law 6087 on High Council of Judges and Prosecutors, Art. 4/1-c, 6/2-ç & 9/3,
Working Principles & Procedures of Bureaus under Secretariat General and Inspection Board (of HCJP), Art. 22,
Regulation on Inspection Board under HCJP, Art. 37,
Certain part of these regulations are of primary source, and other secondary.
All laws and regulations can be found on <http://www.hsyk.gov.tr/>

3 Do the provisions apply uniformly to all Judges or are they different for different levels of the Judiciary?

3 Do the provisions apply uniformly to all Judges or are they different for different levels of the Judiciary?
<p>ALBANIA</p> <p>The High Council of Justice is the authority responsible for taking disciplinary measures against judges of first instance and of appeal, and the disciplinary proceedings for these two levels is the same. The removal from office of a judge of the Supreme Court is stated in the Constitution and has a different procedure, which is followed by Parliament.</p>
<p>AUSTRIA</p> <p>The provisions apply to all Judges and Public Prosecutors of all four levels of the Austrian Judiciary System (District Courts, Regional Courts, Courts of Appeal, Supreme Court). They also apply to the Judges of the Federal Administrative Court and to the Judges of the Austrian High Court of Administration.</p>
<p>BELGIUM</p> <p>The provisions apply uniformly to all judges and public prosecutors and also to the different lay judges in the commercial and labour courts. The provisions also apply to the administrative personal of the courts. The rules do not apply to the judges of the Council of State (Administrative court) and of the Constitutional Court.</p>
<p>BULGARIA</p> <p>The provisions on disciplinary liability are applied uniformly to all judges in the courts in the Republic of Bulgaria at all levels – district, regional, appellate, military, administrative, the Supreme Court of Cassation and the Supreme Administrative Court. It should be noted that the provisions on disciplinary liability are also applied uniformly to all prosecutors and investigating magistrates at the respective prosecution and investigation offices, as well as to the administrative heads of judicial authorities and the members of the Supreme Judicial Council (SJC).</p>
<p>CROATIA</p> <p>The provisions are applied uniformly to all judges.</p>
<p>CZECH REPUBLIC</p> <p>The above mentioned provisions apply to all judges and there are special provisions regarding presidents and vice-presidents of courts.</p>
<p>DENMARK</p> <p>The rules apply to all judges and deputy judges.</p>
<p>ENGLAND AND WALES</p> <p>The terms and conditions of appointment vary according to judicial appointment, for example</p>

3 Do the provisions apply uniformly to all Judges or are they different for different levels of the Judiciary?
the number of sitting days that a judge is expected to fulfil each year. There are also greater restrictions placed on salaried judges as opposed to those who are part-time fee paid judicial office holders. In general however all judicial office holders are expected to have regard to the Guide to Judicial Conduct.
FRANCE
These provisions do apply uniformly but experience and responsibility involved by specific functions are taken into account in the disciplinary sanction.
GERMANY
Please see answer to question 2.
The disciplinary measures that can be imposed on a judge can differ. Pursuant to section 63 (1) DRiG read in conjunction with section 5 BDG, there are disciplinary measures for federal judges that are, in principle, graduated according to the severity of the disciplinary offence committed (reprimand, regulatory fine, reduction in salary, transfer to a post of the same career structure with a lower final basic salary [demotion], removal from office). Pursuant to the special provision of section 64 (2) DRiG, the only disciplinary measures that can be imposed on a judge of one of the supreme courts are a reprimand, a regulatory fine or removal from office.
HUNGARY
Both the primary and the secondary norms pertain to all judges irrespective of the level of their judicial activity, the rules are uniform.
IRELAND
Yes, they will. Article 35.4 of the Irish Constitution specifically refers to judges of the Supreme Court, the Court of Appeal and the High Court. However, the same procedure would have to be followed in order to remove a judge of the lower jurisdictions (a judge of the Circuit or District Court). Judges of the Circuit and District Court are declared to hold office by the same tenure as judges of the Supreme and High Court under section 39 of the Courts of Justice Act 1924, and section 20 of the Courts of Justice (District Court) Act 1946, respectively. The provisions of the General Scheme of the Judicial Council Bill apply to all judges of the Supreme Court, High Court, Circuit Court and District Court. The Court of Appeal has been established since the publication of the General Scheme in 2010. It can be assumed that the same procedures would apply to investigations of alleged misconduct on the part of judges of the Court of Appeal and any sanctions following therewith.
ITALY
The provisions are applied uniformly to all judges
ITALY (Council of Presidency for administrative Justice)
There are two different laws applying one the ordinary judges (l. 109/2006) and another to administrative judges (186/1982)
LITHUANIA

3 Do the provisions apply uniformly to all Judges or are they different for different levels of the Judiciary?
<p>The provisions of the Code of ethics of the judges of the Republic of Lithuania apply to all judges equally. Provisions regulating the disciplinary procedures apply to all judges with the exception towards the members of the Judicial Council of Lithuania and to the members of the Judicial Court of Honour of Lithuania. According to the Law on Courts, article 84, a disciplinary action may be instituted against a member of the Judicial Council or the Judicial Court of Honour only with the consent of the Judicial Council.</p>
<p>THE NETHERLANDS</p> <p>They apply uniformly to all judges.</p>
<p>NORTHERN IRELAND</p> <p>Yes, save for the Lord Chief Justice for whom a separate protocol has been published.</p>
<p>NORWAY</p> <p>They apply uniformly.</p>
<p>POLAND</p> <p>The regulations are very similar although they are regulated in different acts. The provisions apply almost uniformly to all judges. Disciplinary procedure for common courts judges is regulated in the Act law on common courts system, for Supreme Court judges in the Act on Supreme Court etc. The only remarkable difference concerns the court which play the role of disciplinary court. For common court judges the courts of appels (appellate courts) are disciplinary courts of the first instance and the Supreme Court is a disciplinary court of the second instance. For judges of the Supreme Court only this Court is disciplinary court of the first and the second instance.</p>
<p>PORTUGAL</p> <p>The EMJ applies to all judges, regardless of their category (law judges, appeal court judges and Supreme Court judges). The EMJ applies secondarily to administrative and tax courts judges, who make up an autonomous body.</p>
<p>ROMANIA</p> <p>The provisions are applied uniformly to all Judges regardless of the levels of the Judiciary where the judges work.</p>
<p>SERBIA</p> <p>The provisions are applied uniformly to all judges.</p>
<p>SLOVAKIA</p> <p>The provisions are applied uniformly.</p>
<p>SLOVENIA</p>

3 Do the provisions apply uniformly to all Judges or are they different for different levels of the Judiciary?

The above-mentioned provisions apply uniformly to all judges irrespective of their different level of the judiciary.

SPAIN

The relevant provisions of the Law on the Judiciary in relation with Judicial Discipline apply uniformly to Judges of the different levels of the Spanish Judiciary, including Justices of the Peace (lay judges).

SWEDEN

When it comes to disciplinary procedures the provisions apply mostly uniformly to all Judges. There is another procedure for the Judges of the Supreme Courts. The regulations about how the proceedings are initiated are also different for different levels of the Judiciary.

TURKEY

The disciplinary provisions are applied equally against the activities of judges and prosecutors at the bench regardless of their professional seniority; however, members of high courts (Court of Cassation and Council of State) are subject to the provisions of internal laws of those high courts.

4

a) Is there a list of types of conduct, or definition of misconduct, which may lead to disciplinary proceedings, or if not, what type of conduct will be investigated?

b) Does it include conduct in the judge's private life?

c) Are complaints in relation to proceedings permitted while those proceedings are ongoing?

4 a) Is there a list of types of conduct, or definition of misconduct, which may lead to disciplinary proceedings, or if not, what type of conduct will be investigated? b) Does it include conduct in the judge's private life? c) Are complaints in relation to proceedings permitted while those proceedings are ongoing?

ALBANIA

a) Yes, The Organic Law No.9877, dated 18.02.2008, "On the Organization of the Judiciary in the Republic of Albania", Article 32 have predicted a list of behaviors to initiate Disciplinary proceeding.

Violations of the discipline by the judges are considered:

- too heavy;
- serious;
- light.

Also the law provides the type of conduct for each of the violations above.

b) Article 22 of the law 9877/2008, "On the organization of the judicial power" states that: A judge may not exercise any other political, public or private activities. Article 23 of the same law states that: 1. The judge is also prohibited: a) to belong to a political party or participate in activities of a political nature; b) participate in the management or direction of trade, in person or by means of representation; c) to be an expert or arbitrator in arbitration; d) make public statements about processes; e) to disclose the opinions expressed during the hearings, which have not yet taken the form of a decision; f) make public statements about anything else that threatens the impartiality of the process; g) to go to strike.

2. A judge should maintain his dignity by not allowing actions that compromise profession, the judiciary and its image in society.

c) Yes

AUSTRIA

a) According to sec 57 of the Austrian Judges and Public Prosecutors Act (RStDG), judges and public prosecutors have to devote all their powers, abilities and efforts to the interests of Public Service; they have to pursue continuous training; they have to fulfil their duties assiduously, impartially and unselfishly; and they have to carry out their duties as quickly as possible.

Offences against sec. 57 RStDG (professional and ethical duties; see above) and against sec 57a RStDG (ban of harassment), offences against the criminal law lead to disciplinary proceedings.

Judges who are found guilty of violating their professional and ethical duties have to face

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disciplinary and possibly also criminal law sanctions. Under civil law, judges are only liable to the State. Parties suffering damages on account of any unlawful and culpable conduct of a judge may only assert their claims against the State pursuant to the law on official liability.

b) Judges and public prosecutors have the same duties of integrity in both their public and their personal lives.

c) Yes

BELGIUM

a) There is no legal list of types of conduct which may lead to disciplinary procedures. Article 404 of the Judicial Code only defines a disciplinary fault in a very general manner: "those who do not fulfil the duties of their function or who, by their conduct, harm the dignity of their function can be subject to disciplinary measures. Disciplinary sanctions can also be inflicted on persons who neglect their tasks and thereby harm the good functioning of or the confidence in the judiciary". Thus, it is left to the jurisprudence to determine the exact content of those general terms. One example is a conduct that can be interpreted as a lack of independency of the magistrate in a certain case.

b) Yes, it does.

c) Yes, they are permitted.

- Whenever parties have reasons to believe that there's a lack of impartiality or independency ("legitimate suspicion"), parties can ask the magistrate to withdraw from a case. If he refuses they can submit a request to the directly higher court (art. 828 Judicial Code). The higher court can give the lower judge the order to withdraw. The case will then be treated by another judge from the same court. Parties can also ask the Supreme Court to withdraw the case from one court (as a whole) and send the case to another court (art. 648 Judicial Code);

- Parties can file a disciplinary complaint with the head of court who will start a disciplinary enquiry (art. 414 Judicial Code);

- Parties can, pending the case, also lodge a complaint with the High Council of Justice. The High Council will examine if the complaint is justified and will also inform the superior of the concerned judge (normally the head of court).

BULGARIA

a) A judge, prosecutor, investigating magistrate and administrative head shall be disciplined where they have committed a disciplinary offence. A disciplinary offence is the culpable failure to perform one's official duties. Article 307(4) JSA states the types of disciplinary offences as follows:

1. systematic failure to observe the deadlines set out in the procedural laws;
2. action or inaction which unreasonably delays the proceedings;
3. any breach of the Code of Ethics for the Behaviour of Bulgarian Magistrates;
4. action or inaction which undermines the prestige of the Judiciary;
5. failure to discharge any other official duties.

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The administrative heads of district, regional, military regional prosecution offices and of the specialised prosecution office, or deputy administrative heads authorised by them, bear disciplinary liability not only for the offences referred to in Article 307(4) JSA, but also for failure to exercise control over the compliance with investigation deadlines and with deadlines applied to measures for procedural coercion under the Criminal Procedure Code (Article 143(4) JSA).

Apart from the offences under Article 307(4) JSA, disciplinary liability shall be also borne by a military judge, military prosecutor and military investigating magistrate for breaches identified in special laws and statutes – Article 307(6)(2). Elected members of the Supreme Judicial Council shall be also disciplined where they have committed a severe offence or systematic failure to perform official duties, as well as in respect of actions which impair the prestige of the Judiciary (Article 307 (2)).

Disciplinary liability shall be incurred irrespective of civil, criminal or penal administrative liability, should any of the latter be envisaged.

b) The Code of Ethics for the Behaviour of Bulgarian Magistrates (CEBBM) regulates the rules of ethical conduct ensuing from the main principles of civility, tolerance, honesty and propriety. Their observance has been raised to the level of institutional obligation for magistrates both in their professional activity and private life. In its disciplinary practice, the Supreme Judicial Council assumes that judges, prosecutors and investigating magistrates should abstain in their statements and contacts from activities which may discredit them professionally and privately and generate negative attitude to the Judiciary as a whole or impair its prestige. In their private life, magistrates must have impeccable reputation and be role models to the highest standards of ethical conduct and integrity. Any conduct of a judge, prosecutor or investigating magistrate which is in breach of the moral and ethical standards set out in the Code constitutes grounds for incurring disciplinary liability.

c) Once disciplinary proceedings are instituted against a magistrate, no complaints are permitted until they are closed by a decision of the sanctions body. Disciplinary proceedings is a system of sequential actions set out by law involving the collection of evidence to establish a disciplinary offence committed by a magistrate subject to the proceedings, as well as a disciplinary sanction in case of proven misconduct. In determining the disciplinary penalty, what is taken into account is the gravity of the offence, the extent of culpability, the circumstances under which the offence has been committed, and the offender's conduct. A disciplinary offence shall be punished by only one disciplinary sanction. Where the same person is subject to disciplinary proceedings for different disciplinary offences, the Supreme Judicial Council decides on merging them in the same proceedings, if the complete and comprehensive clarification of the facts relevant to the disciplinary liability of the judge, prosecutor or investigating magistrate requires so.

CROATIA

a) A judge shall be liable for the commission of disciplinary offences. Disciplinary offences shall be the:

1. careless performance of judicial office (particular if the judge, without a justified reason, fails to draft and dispatch court decisions or the judge's performance has been negatively evaluated by the council of judges or without a justified reason, the number of decisions that

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the judge has rendered within a period of one year is significantly below the average in the Republic of Croatia).

2. don't subjected to the judgment of the physical and mental characteristics to assess the ability of the judicial office
3. failure to act pursuant to a decision rendered in proceedings rights protection to trial within a reasonable time
4. performance of any service, tasks or activities incongruent with judicial office;
5. causing of disruptions in the work of a court which have a significant impact on the
6. disclosure of an official secret concerning the performance of judicial office;
7. damaging of the reputation of the court or of judicial office in any other way;
8. exercise of judicial power; failure to submit a declaration of assets or the untruthful presentation of data in the declaration of assets.

b) Yes (damaging of the reputation of the court or of judicial office in any other way).

c) Yes.

CZECH REPUBLIC

a) The Act on Courts and Judges defines the disciplinary delict: it is a breach of duty caused by a judge, or conduct by which the judge affects the dignity or threatens the confidence in independent, impartial, skilled and rightful decision making of courts.

b) Yes, it could.

c) Yes

DENMARK

a) According to § 48 of the Administration of Justice Act § 48, the President of a court can issue a warning to a judge, who is guilty of negligence or improper or unseemly behaviour in his acts in office. These cases can be initiated by complaint or by the President of the court. Please note that the questionnaire is answered with a focus on the Special Court of Indictment and Revision, and the role of the President of each court will not be explained further.

According to § 49(1) of the Administration of Justice Act, anyone aggrieved by improper or unseemly behaviour from a judge in his acts in office can complain to the Special Court of Indictment and Revision.

The terms negligence and "improper or unseemly behaviour" are not fixed, but may vary over time. The terms are interpreted and further developed by case law.

If the Minister of Justice finds that a judge is presumably guilty of an offence, which would impair or render the judge unworthy of the esteem and trust the judicial office demands, the Minister of Justice will ask the Director of Public Prosecutions to bring the case before the Special Court of Indictment and Revision (§ 49(2) of the Administration of Justice Act).

None of the regulations include the judicial decisions made by a judge. Any judicial decision must be dealt with by appeal. The Special Court of Indictment and Revision does not have the power to exercise jurisdiction in such matters.

4 a) Is there a list of types of conduct, or definition of misconduct, which may lead to disciplinary proceedings, or if not, what type of conduct will be investigated? b) Does it include conduct in the judge's private life? c) Are complaints in relation to proceedings permitted while those proceedings are ongoing?

b) Only the behaviour described in § 49(2) of the Administration of Justice Act (an offence, which would impair or render the judge unworthy of the esteem and trust the judicial office demands) includes conduct in the judge's private life.

c) Yes. A complaint against a judge can be made during an ongoing case. The complaint has to be linked to the behaviour of the judge and not the rulings in the case (as described in question 4a).

ENGLAND AND WALES

a) There is no list of the types of conduct that would amount to misconduct. Each complaint is considered on a case by case basis. The Guide to Judicial Conduct sets out in broad terms the standards of behaviour that are expected of a judicial office holder.

The Judicial Conduct Investigations Office's (JCIO) website gives the following examples of the type of conduct that it may investigate:

- The use of racist, sexist or offensive language
- Falling asleep in court
- General rudeness
- Misusing judicial status for personal gain or advantage
- Failing to fulfil judicial obligations or duties
- Criminal convictions
- Failure to declare a potential conflict of interest

b) A judge may be subject to a disciplinary investigation if conduct in their private life calls into question his/her suitability to hold judicial office or undermines the confidence in the judiciary as a whole.

c) Most complaints are considered regardless of whether there are on going proceedings however an investigation may be deferred if it is considered necessary to do so whilst proceedings are ongoing.

FRANCE

a) There is no exhaustive list of types of conducts, only guidelines explained in the code of ethics and the case law of the High Council.

b) It may include such conducts, especially when the judge's behaviour is regarded as a criminal offence.

c) The complaint from a litigant may not be brought against a judge or a prosecutor who is still handling or in charge of the proceedings and may only be made after the expiry of a period of one year further to the irrevocable decision putting an end to such proceedings.

GERMANY

a) The subject matter of disciplinary proceeding is service violation. A service violation is

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described only generally as the violation of official duties.

A decision as to whether or not a disciplinary offence has been committed depends upon the circumstances of the individual case. Duties whose violation may result in the initiation of a disciplinary proceeding include the following:

- In and outside office, judges must conduct themselves, in relation also to political activity, in such a manner that confidence in their independence will not be endangered (section 39 DRiG). In addition, they are to fulfil their duties in a just and non-partisan manner and, in exercising their office, take account of the welfare of the general public.
- As far as political activity is concerned, they are to exercise – both in and outside office – the level of moderation and restraint required of them as a result of their position vis-à-vis the general public and considering the duties of their office.
- Pursuant to section 41 DRiG, judges must not draw up expert legal opinions, nor give legal advice for remuneration outside the course of their official duties.
- If a judge is asked to perform additional activities in the administration of justice or in court administration (e.g. training of trainee jurists) in accordance with section 42 DRiG, he/she must comply with this request.
- According to section 43 DRiG, judges must preserve secrecy regarding the course of deliberations and voting also after their service has ended.

By force of the reference in section 46 DRiG (or section 71 DRiG for judges in the service of a Land), the provisions of the BBG (or of the BeamtStG) on general duties are applicable mutatis mutandis, to the extent that the DRiG makes no other provision and that such application is compatible with the legal status of the judge. The following ensue from relevant application of the provisions of the law applicable to civil servants:

- the duty of loyalty to the constitution (section 60 (1), third sentence, BBG; section 33 (1), third sentence, BeamtStG),
- the duty to maintain confidentiality concerning official matters (section 67 BBG; section 37 BeamtStG),
- the duty to perform additional activities only in accordance with sections 97 et seqq. BBG,
- the prohibition of accepting rewards and gifts (section 71 BBG; section 42 BeamtStG)

b) Please see answers to questions 2 and 4a).

c) See answer to question 5a)

HUNGARY

a) ALSRJ defines the concept of disciplinary breach, according to which a judge commits a disciplinary breach if he culpably

a) violates his obligations related to his service relationship or

b) curtails or jeopardises the reputation of the judicial profession by virtue of his lifestyle or behaviour.

If criminal proceedings have been instituted against a judge, not including proceedings instituted on the basis of private actions, disciplinary proceedings shall be instituted.

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The so-called list of conduct will be included in the Code of Judicial Conduct which contains the expected and minimum rules of conduct in terms of official judicial and other activities.

b) A judge may commit a disciplinary breach with a behaviour connected to his or her private life if he or she curtails or jeopardises the reputation of the judicial profession by virtue of his lifestyle or behaviour.

c) The submission of a complaint and the initiation of a disciplinary procedure are different. The institution of a "complaint" is explained in details in the optional part of the questionnaire. Complaints may be addressed to the president of the adjudicating court or the president of NOJ. In case of a well-grounded complaint in certain cases an impeachment or disciplinary procedure may be initiated in a view to the principle of judicial independence laid down in the Fundamental Law.

Complaints are permitted while the proceedings are ongoing.

IRELAND

a) The definition of the term "stated misbehaviour or incapacity" is not explained within the Irish Constitution nor has it been examined by the Irish Courts. The leading Irish Constitutional textbook however observes that 'incapacity' would appear to suggest "physical unfitness for office", while 'stated misbehaviour' is more difficult to define as it may encompass misconduct or simply unseemly behaviour (Hogan and Whyte, (eds.) J.M. Kelly: The Irish Constitution, 4th ed., (Dublin, 2003) at para. 6.4.39).

According to Head 25(1) of the General Scheme of the Judicial Council Bill, the Judicial Conduct Committee may determine whether an investigation should be undertaken as to "whether there has been a breach of judicial conduct by a judge, whether in the execution of his or her office or otherwise, and whether generally or on a particular occasion." Breach of judicial conduct is defined as "misconduct by a judge whether in the execution of his or her office or otherwise, and whether generally or on a particular occasion, which constitutes a departure from acknowledged standards of judicial conduct and brings the administration of justice into disrepute and for this purpose "misconduct" includes any act or omission."

b) The General Scheme of the Judicial Council Bill does not explicitly include conduct in the judge's private life but the inclusion of conduct by a judge "otherwise" to the execution of his or her office would suggest that conduct in the judge's private life would be included where it would constitute a departure from acknowledged standards of judicial conduct and brings the administration of justice into disrepute.

c) Yes, but Head 25(11) of the General Scheme of the Judicial Council Bill provides that where there has been a complaint in relation to proceedings which have not been finally determined, the Judicial Conduct Committee has the discretion to adjourn the investigation pending the final determination of the proceedings.

ITALY

a) There is a list of type of conduct which may lead to disciplinary proceedings.

4 a) Is there a list of types of conduct, or definition of misconduct, which may lead to disciplinary proceedings, or if not, what type of conduct will be investigated? b) Does it include conduct in the judge's private life? c) Are complaints in relation to proceedings permitted while those proceedings are ongoing?

b) It includes conduct in the judge's private life.

c) complaints are permitted while proceedings are ongoing

ITALY (Council of Presidency for administrative Justice)

a) No, there is no a list of types of conduct which may lead to disciplinary procedure. In the l. 186/1982, there is a provision (art. 32) which makes a reference to the regulation on disciplinary matters for ordinary judges and prosecutor. Nevertheless, with the adoption of the l. 109/2006, which is applicable only to ordinary judges and prosecutors, a lack of regulation of disciplinary matters for administrative judges has been created.

It is generally thought, looking at the previous law, that there might be a disciplinary liability if: " a magistrate does not respect his or her duties or behaves in a way that makes him or her not worthy of the public trust and of the social consideration, or in a way that may damage the prestige of the judiciary."(art. 18, r.d.l.t. n. 511 del 1946)

The topic is now days deeply discussed.

b) Yes.

c) Yes.

LITHUANIA

a) The Code of ethics of the judges of the Republic of Lithuania describes the desirable conduct of judges. All breaches of the desirable conduct could lead to the disciplinary measures against the judge.

b) The rules on proper conduct of a judge cover the judge's private life as well.

c) Yes, complaints are permitted even while the proceedings are ongoing.

THE NETHERLANDS

a) According to the Wrra, the following conduct or actions may lead to disciplinary proceedings (and to imposing the disciplinary measure of a written warning or disciplinary dismissal):

1. Neglecting the duties or the dignity of the profession
2. Failing to comply with specific rules, such as those stipulating that proceedings in chambers are confidential, and that out-of-court contacts with parties are prohibited
3. Acts that seriously prejudice proper administration of justice or trust to be placed in the justice system
4. Repeating such incidents, after receiving a written warning

The following conduct or actions (may) lead to "ordinary" dismissal:

5. Conviction by final and conclusive judgement of a serious offence
6. A final and conclusive decision, by which the judge is declared bankrupt or is placed under the supervision of a guardian
7. Acceptance of a position that is by law incompatible with serving as a member of the

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judiciary
 8. Loss of Dutch nationality
 9. Incapacity for work for reasons other than illness
 10. Incapacity for work because of illness
 11. For a judge who is occupationally disabled (i.e. incapacity for work): refusing without good reason to accept occupational health guidance or refusing to perform appropriate work
 12. For a deputy judge: not being summoned to perform work for a period of two years.

b) Yes (see e.g. 1 and 3).

c) Yes.

NORTHERN IRELAND

a) Annex C of the code of Practice provides:-
 [i] That the following list provides examples of the type of complaint that might be considered to be within the serious category but is by no means exhaustive:-
 * Making exceptionally inappropriate remarks, such as comments on a person's religion or racial background.
 * Failure to disclose a serious or fundamental conflict of interest.
 [ii] That the following are examples of complaints likely to be categorised as 'less serious'
 * Rudeness to court users
 * Rudeness to a member of the public at an official function
 * Inappropriate remarks in court
 * Inappropriate remarks in a judicial speech
 * Insensitive behaviour, for example towards a vulnerable witness or a member of a minority community

b) The code is primarily concerned with complaints about the conduct of Judicial Office Holders acting in their official capacity. However it is recognised that the high standards expected of those holding judicial office must be observed in many aspects of their conduct outside their judicial role. Complaints about conduct that occurred when the Judicial Office Holder was not acting in an official capacity ['outside conduct'] might therefore be considered. The principal factor for outside conduct will be whether the conduct in question in some way relates to the judicial office; the conduct should fall within one of the following categories:
 * Conduct which is likely to bring the judiciary into disrepute.
 * Conduct which calls in to question the Judicial Office Holders ability to properly administer justice, whether by perception or otherwise.
 * Conduct involving an attempt to gain favour by trading on his or her position as a Judicial Office Holder.

c) No, as it is important that the steps taken to investigate a complaint do not compromise any official court or tribunal proceedings. Therefore the investigation of a complaint may be delayed where the conduct arose in legal proceedings which are on-going including where the proceedings are under appeal.

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If at any time, it appears that criminal conduct may be involved, the complaints officer will inform the police. In such circumstances, investigation of the complaint will be delayed pending the outcome of any criminal investigation and any subsequent proceedings.

NORWAY

a) There is a list of ethical principles for Norwegian Judges. In addition to this there are two articles/§ (236 and 55) in The Courts of Justice act. They are VERY vague. Judges shall be independent in his or her judicial activity. Judges shall perform their judicial duties impartially and in a manner which engenders general trust and respect. breaches the obligations that are incumbent on the position or otherwise acts in breach of proper conduct of judges.

b) Yes.

c) Yes.

POLAND

a) In Poland there is a legal definition of disciplinary misconduct. According to the Art. 107 of the Act law on common courts system: Art. 107. § 1. A judge takes disciplinary responsibility for misconduct in service including a gross violation of the provisions of law and for breach of the authority of the office of judge (disciplinary misconduct). § 2. A judge also takes disciplinary responsibility for his/her conduct before taking his/her post if he/she failed in the duty of a civil servant or appeared to be unworthy to hold a judicial post.

It means that there are two types of misconduct:

- 1) a gross and obvious violation of the provisions of law (what concerns particularly violation of the different court procedures)
- 2) a breach of the authority of the office of judge

b) Yes.

(The breach of the authority of the office of judge can concern judge's private life.)

c) No.

Complaints in relation to ongoing proceedings are permitted only inside this proceeding (e.g. as a charge of an appeal against a sentence).

PORTUGAL

a) The definition of misconduct in Portugal, as it is in the other countries of "Civil Law", is made by vague standards. According to the article 82 of the EMJ, "disciplinary offenses are facts, even if merely negligent, committed by judges in violation of professional duties and the acts or omissions of their public life or that will be reflected in it, incompatible with the

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essential dignity of their functions.”

It is the breached duty that individualizes the misconduct.

b) Yes, if those facts have effects on the image of the judge and bring into question his honesty or dignity.

c) Yes.

ROMANIA

a) The Law no. 303/2004 on the status of judges and prosecutors comprises a list of disciplinary offenses whose violation may lead to disciplinary proceedings. Thus, according to art 99 of the Law no. 303/2004 on the status of judges and prosecutors, the followings shall be disciplinary offences:

a) deeds affecting the honor, professional probity or the reputation of justice, committed during or outside the exercise of their office duties;

b) breach of the legal provisions on the interdictions of incompatibilities of judges;

c) un-dignifying attitudes towards colleagues, the other personnel of the court, judicial inspectors, lawyers, experts, witnesses, litigants or representatives of other institutions, while exercising the office duties;

d) carrying out public activities having a political nature or expressing their political opinions while exercising the office duties;

e) unjustified refusal to receive applications, conclusions, memorandums or documents submitted by the parties of a trial;

f) unjustified refusal to fulfill an office duty;

g) ...

h) repeated un-observance and from imputable reasons of the legal provisions on celerity in solving cases, or repeated delays in elaborating the works, from imputable reasons;

i) breaching the duty to abstain when the judge knows that there is one of the cases provided by the law for his abstaining, as well as making repeated and unjustified requests of abstention in the same case, which has the effect of delaying trial;

j) breaching the confidentiality of deliberations or of the works, as well as of other information of a similar nature that has knowledge of while exercising the office duties, except of those being of public interest, according to the law;

k) unjustified absence from work, repeated or which affects directly the activity of the court;

l) interfering within the activity of another judge;

m) unduly breach of the orders or of the administrative decisions ordered in accordance with the law by the head of the court or of other obligations having an administrative nature provided by the laws or Regulations;

n) use of the office in order to obtain favorable treatment from the authorities or interventions on solving some requests, demanding or accepting solving the personal interests or of those of the family members or other persons, other than within the limits of the legal framework regulated for all citizens;

o) serious or repeated breaches of the provisions on random case distribution;

p) obstruction of the inspection activity carried out by the judicial inspectors, by any means;

q) direct or through intermediaries participation in pyramid-type games, gambling or

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investments systems for which the transparency of funds is not ensured;

r) total lack of grounding the judgments, according to the law;

s) use of inappropriate expressions within the judgments or grounding manifestly contrary to the legal reasoning, able to affect the prestige of justice or the dignity of the office of magistrate;

ş) un-observance of the decisions of the Constitutional Court or of those rendered by the High Court of Cassation and Justice in the appeal in the interest of law;

t) exercising the office with bad faith or serious negligence.

b) Several misconducts provided in law are applicable also to the private life of a judge. See for example art. 99, letters a), d) – first hypothesis, n) or q).

As a general rule, a judge must comply with the condition of good reputation. When the good reputation is affected, the judge may be suspended or even dismissed from his/her office.

c) During the disciplinary proceedings, there are applicable all the provisions of the Civil procedural code. Consequently, the judge that is subject to disciplinary proceedings benefits from all the instruments that are available for the party during a civil suit.

Whenever, considering the quality of the investigated person, the impartial character of the disciplinary investigation could be affected, the chief inspector may order, under the law, redistribution of the case, ex officio or at the request of the judicial inspector who carries out the disciplinary investigation or the person investigated.

After the preliminary procedure comes to an end, within 30 days of completion of the disciplinary investigation, shall be ordered by the judicial inspector or the team of judicial inspectors, by resolution, one of the following solutions:

a) Admission of the notification by exercising disciplinary action and referral to the appropriate department of the Superior Council of Magistracy;

b) Reject the notification if it finds that the conditions for the exercise of disciplinary action are not met.

The rejection resolutions of the notification referred to may be appealed by the person who made the complaint, within 15 days of communication, without the requirement of prior proceedings, to the administrative department of the Court of Appeal.

SERBIA

a) The Law on Judges determines the disciplinary responsibility of judges.

A disciplinary offence is negligent performance of judge's office, or conduct that is inappropriate for a judge's function, which is provided by this Law.

The law stipulates 18 Disciplinary offences. A severe disciplinary offence exists if the commission of a disciplinary offence caused a serious disruption in the exercise of judicial power or regular duties at the court or a severe damage to the dignity of the court or public trust in the judiciary, and in particular if it results in the statute of limitations causing serious damages to the property of the party in proceedings, as well as in the case of repeated disciplinary offence.

A repeated disciplinary offence exists if disciplinary responsibility of a judge has been finally

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established on three occasions.

b) Yes.

c) Yes. A party or other participant in court proceedings have the right to complain against the work of the court when finding that the proceedings are dilatory, irregular or that there is any form of influence on the course and outcome.

SLOVAKIA

a) Judge is disciplinary liable for disciplinary misconduct and for actions having the signs of misdemeanor pursuant to special regulation (e.g. Act on Misdemeanor) or for actions, which may be sanctioned pursuant to special regulation (e.g. Act on Tax Administration). If actions of judge, which have the signs of misdemeanor under the special regulation were heard or are being heard by a body with jurisdiction for hearing misdemeanor under the special regulation, judge may no longer be disciplinary prosecuted for such actions.

Disciplinary offense under § 116 of Act on Judges:

§ 116

(1) Disciplinary misconduct shall be as follows:

a/ causing failure or breach of duties of a judge,

b/ conduct, which raises lawful doubts about the independence and impartiality of the judge in decision-making, about the judge's detachedness towards the parties and about the efforts to end the trial fairly and without undue delay

c/ failure to show expected work results based on the evaluation of judge with the verdict "unfit"

d/ failure to file the Declaration of Assets pursuant to § 32. 1 of the Act on Judges and Lay Judges within the set period or incapability of a judge to prove in a credible way a source of equity inflows, which obviously exceed the sum of his salaries and other quantified income

e/ breach of duties within discharging the state administration of court under a special regulation

f/ being under the influence of alcohol, narcotic or psychotropic substances, unless it is a disciplinary offense under paragraph 3. a) if the judge refuses upon the challenge of the court president or the president of the higher court to undergo the breath test to determine the volume of alcohol in blood or medical examination and collection of blood or other biological material, it has the same legal consequences as if he was intoxicated by alcohol or other drugs.

g/ failure to meet the obligation of lodging written statement under the §31 para 1 within the prescribed deadline or providing incomplete or false data in the statement.

(2) Serious disciplinary misconduct shall be as follows:

a/ wilful infringement of obligation of Judge to rule independently and without bias

b/ actions stipulated in Para 1 except actions stipulated in paras c) and d), if due to the nature of infringed obligation, manner of actions, degree of guilty, repeated infringement or other aggravating circumstances, the harmfulness of such actions is increased,

c/ repeated infringement of obligations in execution of Court Administration pursuant to special regulation, continued infringement of obligations of Court official, which is seriously

4 a) Is there a list of types of conduct, or definition of misconduct, which may lead to disciplinary proceedings, or if not, what type of conduct will be investigated? b) Does it include conduct in the judge's private life? c) Are complaints in relation to proceedings permitted while those proceedings are ongoing?

threatening the trustworthiness and operation of the judiciary,
d/ repeated infringement of obligation to lodge asset declaration pursuant to § 32 para 1 even within deadline laid down by §33, willful provision of incomplete data or false date in asset declaration or declaration on oath pursuant to §32, or repeated inability of judge to provide a trustworthy proof of property increase, which obviously exceeds the sum of his salaries and other quantified incomes,
e/ actions caused by judge having the consequence of delays in disciplinary proceedings,
f/ arbitrary decision of judge, which is in contradiction with law, if by such decision judge caused considerable damage or another especially serious consequence,
g/ actions caused by judge having the consequence of delays in court proceedings,
h/ repeated infringement of obligation to lodge written statement pursuant to § 31 para 1 within the prescribed deadline or providing incomplete data or false date in the statement
i/ repeated failure to show expected work results as a judge based on evaluation of judge with the verdict "unfit", if it concerns evaluation of a judge under § 27 para 1e).
j/ breach of a duty to meet the requirements of judicial competence within the entire term of judicial office.

(3) The following serious disciplinary misconduct is incompatible with the judicial office:
a/ execution of judicial office during mandated standby service and during working hours under the influence of alcohol, intoxicating or psychotropic substances,
b/ committing serious disciplinary offense despite the fact that the disciplinary measure was already imposed for the disciplinary offense,
c/ inability of judge to provide a trustworthy proof of source of substantial increase of assets, which obviously exceeds the sum of his salaries and other quantified incomes,
d/ actions stipulated in para 2a), c) and d) if due to the nature of infringed obligation, manner of actions, degree of guilt, repeated infringement, or other aggravating circumstances, they are incompatible with the office of judge,
e/ infringement of lawful conditions of random case assignment to panels, judges, court clerks and of random redistribution of cases already assigned,
f/ failure to show expected work results as a judge based on evaluation of a judge with the verdict "unfit", if two preceding evaluation of judge were concluded with the verdict "unfit".

b) Yes, it does.

c) Yes, it is permitted to raise objections of bias against the members of the disciplinary panel.

SLOVENIA

a) Article 81 of the Judicial Service Act explicitly determines a list of 27 types of judicial misconduct that may lead to disciplinary proceedings.

b) The mentioned 27 types of judicial misconduct also include such types of misconduct that can be committed in the judge's private life: e.g. Misconduct no. 15 deals with improper, indecent or insulting behaviour by a judge with respect to other individuals, state authorities, and legal entities during the performance of the judicial service or outside it, which may also refer to the judge's private life.

c) There is only a general provision that, in the framework of disciplinary proceedings, it is not

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allowed to interfere with the judge's independence in performing his or her judicial office. Otherwise no other special provision forbids such a complaint.

SPAIN

a) The relevant provisions of the Law on the Judiciary in relation with Judicial Discipline apply uniformly to Judges of the different levels of the Spanish Judiciary, including Justices of the Peace (lay judges).

b) No, except where this private conduct may have public repercussions, insofar as it could affect the exercise of the judicial function.

c) Yes, in matters affecting the professional duties of the Judge, in his or her dual functional and temporal role. Although complaints in relation to ongoing proceedings are permitted, there are some safeguards in place in order to guarantee the principle of judicial independence.

SWEDEN

a) There is no list of types of conduct or definition of misconduct. The type of conduct that will be investigated according to the legislation is when a judge willfully or negligently fail to perform his or her obligations in the employment. Then the judge can be notified a disciplinary measure. If the conduct with regard to all the circumstances is considered to be minor; no disciplinary action should be taken (Lag om offentlig anställning 14 §, LOA).

b) Well, normally it should not include conduct in the judge's private life.

c) Yes, since there is no rule to prevent it.

TURKEY

a) The types of misconduct are defined in detail in Article 62 & other articles of Law 2802 on Judges and Prosecutors.

b) Certain types of activities (misconduct) include rules regarding private lives:
 - Law 2802, art. 65/e stipulating "The penalty of reprimand shall be imposed when a judge or prosecutor... fails to inform the Ministry of Justice within fifteen days the income generating activities of spouse or dependent"
 - Law 2802, art. 66/b stipulating "The penalty of suspension of advancement shall be imposed when a judge or prosecutor... borrows much more than his/her capacity to repay and defaults or becomes the subject of a court case by deliberately failing to pay finalized debts"

c) There is no preventive legal provision regarding this issue.

5

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b) Can an anonymous complaint lead to disciplinary proceedings?

c) By whom and how are disciplinary complaints or proceedings managed and /or investigated?

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ALBANIA

a) The right to initiate disciplinary proceedings against a judge in the High Council of Justice is a competence of the Minister of Justice. The initiation of disciplinary proceedings can be done no later than one year from the date that the violation is found by the body that has the right to initiate a proceeding, but not later than 5 years from the date of the offense.

The disciplinary proceeding is initiated after an inspection is conducted by either the Inspectorate of High Council of Justice or the Inspectorate of the Minister of Justice. The rules provide the right to a fair process of the disciplined judge.

b) No, but a judge may be inspected without the written complaint, if the evidence against is him published in the media.

c) The mechanisms responsible for the verification of a complaint are the Inspectorate of the High Council of Justice and the Inspectorate of the Ministry of Justice.

The procedural rules of HCJ's Inspectorate are set in the organic law of HCJ and in the internal regulation of the Inspectorate, approved by the HCJ. The Inspectorate of HCJ verifies only those complaints that cannot be solved through a judicial appeal. The verification can be done no later than one year from the date that the violation is found by the body that has the right to initiate a proceeding, but not later than 5 years from the date of the offense.

The process of verification is composed of two phases. The first phase focuses on formal criteria of the complaint. If the complaint doesn't meet the formal criteria (statute of limitation, subject of complaint and facts under the jurisdiction of Inspectorate), it is archived and the citizen is notified about the archiving cause.

If the complaint meets the formal criteria, the inspectors go in the court and inspect the file and gather the proper documents. The citizen is notified this procedure has started. The first thing the inspectors do when they go to the court, they notify the judge about the scope of the verification. In the end, the Inspectorate drafts the report with the findings, conclusions and the recommendations. If legal reasons for a disciplinary proceeding are observed, the report and the respective documentation are sent immediately to the Minister of Justice, through the Vice Chairman of the High Council of Justice, suggesting a disciplinary proceeding. The Inspectorate of the Ministry of Justice to verify a complaint follow the rules of Administrative Procedural Code (general rules).

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AUSTRIA

a) Everybody can file a disciplinary complaint.

b) Yes.

c) Sec 111 RStDG determines the relevant authorities: each of the four Courts of Appeal (Vienna, Graz, Linz and Innsbruck) also functions as a Disciplinary Court for the judges and public prosecutors appointed within the realm of one of the other Courts of Appeal. The Supreme Court is in charge of its judges, the presidents and vice-presidents of the Courts of Appeal, the members of the Procurator General’s Office and the Senior Public Prosecutors of the four Public Prosecutor’s Offices (Vienna, Graz, Linz and Innsbruck).

BELGIUM

a) The authority entitled to start a disciplinary procedure (hereafter “the disciplinary authority”) is generally the head of the entity of which the concerned judge/prosecutor is a member (for example, the president of the court of first instance regarding the judges of this court) or, if it concerns the head of the entity himself, the head of the higher judicial entity (for example, the first president of the court of appeal regarding the president of the court of first instance) (art. 412 Judicial Code). The facts are either discovered by the authority itself or submitted to it by the public prosecutor at the court to which the concerned judge belongs, by a citizen (“plaintiff”) or by the High Council of Justice (art. 414).

b) In principle, it can’t. According to the law a complaint must be written, signed and dated and contain the full identity of the complainant. All existing pieces of evidence must also be joined (art. 414 Judicial Code).

c) The disciplinary authority (see question 5a) appoints a magistrate who, during a maximum of three months, investigates the disciplinary complaint.

BULGARIA

a) Incurring disciplinary liability on magistrates requires first and foremost a proposal to impose a disciplinary sanction.
 The bodies and individuals in whose competence it is to propose to the Supreme Judicial Council the imposition of a disciplinary sanction on a judge, prosecutor, investigating magistrate, administrative head or deputy administrative head are identified exhaustively in Article 312 of the Judiciary System Act, as follows:

1. the respective administrative head;
2. any higher-standing administrative head;
3. the Inspectorate of the Supreme Judicial Council;
4. no less than one-fifth of the Supreme Judicial Council members;
5. the Minister of Justice.

Disciplinary proceedings are instituted by a decision of the Supreme Judicial Council or by an order of the administrative head of the respective judicial authority where the magistrate is

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employed. The occasion to initiate disciplinary proceedings are inspections performed of the activity of the respective court, prosecution office, investigation authority or individual judges, prosecutors and investigating magistrates by the administrative head or by the SJC Inspectorate. In other cases, the disciplinary sanctions body considers the issue on its own initiative upon complaints of other institutions or when it becomes aware of particular acts of judges, prosecutors and investigating magistrates, which have had a negative response in the society, etc.

Once disciplinary proceedings are initiated, the filed proposal cannot be withdrawn by the entity which made it.

b) Disciplinary proceedings against a magistrate cannot not be instituted in response to anonymous complaints. Anonymous complaints are considered also those which indicate a fake or non-existent person or address.

c) Disciplinary proceedings are managed by the competent disciplinary sanctions bodies which, under Article 311 of JSA, are the following:

1. The administrative head of the respective judicial authority (court, prosecution office, investigation office), as regards the sanctions of 'reprimand' and 'censure' under Article 308(1)(1)-(2) JSA.

2. The Supreme Judicial Council, as regards the sanctions of 'reduction of the basic labour remuneration by 10 to 25 percent for a period of 6 months to two years', 'demotion in rank or position within the same judicial system body for a period of one to three years', 'removal from office as administrative head or deputy administrative head' and 'disciplinary removal from office' of a judge, prosecutor, investigating magistrate and SJC elected member under Article 308(1)(3)-(4)-(5)-(6) and (3) JSA.

Where a disciplinary sanction is imposed by an administrative head of judicial authority, disciplinary proceedings against the liable magistrate are instituted by an order of the administrative head. In the course of disciplinary proceedings, the administrative head clarifies the facts and circumstances surrounding the offence and collects evidence of relevance to the case. Prior to imposing a disciplinary sanction, the administrative head hears the person subject to disciplinary proceedings or takes his/her written explanations. The disciplinary sanction is imposed by a reasoned order of the administrative head, which is notified to the sanctioned magistrate and sent to the Supreme Judicial Council together with the disciplinary file. The Supreme Judicial Council verifies the order's lawfulness and the proportionality of the imposed disciplinary sanction, given the severity of the disciplinary offence, and adopts a decision which may uphold, repeal or modify the imposed sanction within a month of receiving the order.

The order of the administrative head for the imposition of a disciplinary sanction may not be separately appealed before the court. Subject to appeal before the court may be the Supreme Judicial Council's decision which upholds, repeals or modifies the disciplinary sanction imposed by the administrative head's order.

Where in the course of disciplinary proceedings it is established that there are grounds for imposition of a sanction under Article 308(1)(3)-(4)-(6) of JSA, the administrative head suspends the disciplinary proceedings, making a proposal to impose a sanction to the Supreme Judicial Council and sending the file to the latter.

Where the sanctioning body is the Supreme Judicial Council as regards the sanctions under

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Article 308(1)(3)-(4)-(5)-(6) and (3) of JSA, disciplinary proceedings are instituted by a SJC decision upon a proposal by the bodies and individuals referred to in Article 312 JSA, as mentioned in the answer to question 5.a) above.

When instituting disciplinary proceedings, the SJC designates by a draw of lots from among its members a three-member Disciplinary Panel (DP) which elucidates the facts and circumstances surrounding the offence, being allowed to gather verbal, written and material evidence. The disciplinary panel hears the entity having made the proposal or a representative thereby authorised, as well as the disciplinary liable person and his/her defence counsel.

After clarifying the circumstances of the disciplinary file, within 14 days of the last hearing the disciplinary panel adopts a decision, establishing the facts subject to substantiation, gives an opinion on the circumstances and the legal basis for the imposition of a disciplinary sanction and proposes the type and amount of such sanction. The decision of the disciplinary panel is adopted by a majority of more than half its members. Any DP member who disagrees with the decision of the majority may sign it with prejudice providing a reasoned statement. Within three days of adopting the decision, the disciplinary panel must transmit it to the SJC acting chairperson together with the case file, with the purpose of their immediate submission to the SJC.

The Supreme Judicial Council examines the proposal of the disciplinary panel to impose a disciplinary sanction within 14 days of its submission. The decision of the SJC is adopted by a majority of more than half its members, by secret ballot, and it must be reasoned. The reasoning for the decision of the DP, as well as any considerations shared verbally by SJC members, all count as reasoning for the decision. By its decision, the SJC may reject the proposal to impose a disciplinary sanction or may impose a disciplinary sanction, including the 'reprimand' and 'censure' sanctions.

The disciplinary sanctions authority conducts disciplinary proceedings within its powers, except for the power to determine the nature and scope of the disciplinary sanction, and it operates under discretion when exercising it.

The decision of the Supreme Judicial Council is notified promptly under the terms and conditions of the Administrative Procedure Code to the person subject to disciplinary proceedings and to the entity having made the proposal. A disciplinary sanction is deemed imposed on the day of notification to the person subject to disciplinary proceedings of the Supreme Judicial Council's decision.

CROATIA

a) If there are grounds for suspicion that a judge has committed a disciplinary offence, the president of the court, or the person authorized to perform court administration tasks at the court in which the judge performs his or her judicial office, shall instigate disciplinary proceedings against the judge in question.

The disciplinary proceedings can also be instigated by the minister responsible for justice, president of the immediately higher court, president of the Supreme Court of the Republic of Croatia, or the council of judges.

b) Yes.

c) The disciplinary proceedings shall be conducted by the State Judicial Council. A decision on

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disciplinary responsibility shall be adopted by a majority of votes of all members of the State Judicial Council.

The Council may, for certain disciplinary procedures, appoint special disciplinary council who will carry out the procedure, to determine the facts and explain the observation before the Council.

The Council may appoint an investigative committee for individual disciplinary proceedings, composed of judges of regular or specialized courts. The investigative committee shall establish the facts and present them during the proceedings before the Council.

CZECH REPUBLIC

- a)** President of the Republic and Minister of Justice against any judges.
 President of the Supreme Court and President of the Supreme Administration Court against judges of their court and against judges of lower courts in their jurisdiction.
 President of the High Court against judges of his court and judges of lower courts.
 President of Regional Court against judges in his court and judges of district courts.
 President of District Court against judges of his court.
 Ombudsman can initiate the disciplinary proceedings only against presidents and vice-presidents of the courts.

- b)** An anonymous complaint could lead to further investigation or inspection and this could be a basis for initiation of a disciplinary proceeding.

- c)** The disciplinary proceeding is led by a disciplinary panel of the Supreme Administration Court. This disciplinary panel is composed by the judge of the Supreme Administration Court (president), the judge of the Supreme Court, one judge of the high, regional or district court, one public prosecutor, one lawyer and one person from other legal profession.

DENMARK

- a)** According to § 49(1) of the Administration of Justice Act, anyone aggrieved by improper or unseemly behaviour from a judge in his acts in office can complain to the Special Court of Indictment and Revision.

Complaints are initiated by sending a written complaint to the Special Court of Indictment and Revision. If a complaint is not immediately dismissed, the Special Court of Indictment and Revision will ask the judge in question to make a written statement (§ 49(3)). Then the complainant will be given the opportunity to send in his additional comments.

If the Minister of Justice finds that a judge is presumably guilty of an offence, which would impair or render the judge unworthy of the esteem and trust the judicial office demands, the Minister of Justice will ask the Director of Public Prosecutions to bring the case before the Special Court of Indictment and Revision (§ 49(2) of the Administration of Justice Act).

- b)** No.

- c)** Complaints are managed by the Special Court of Indictment and Revision and in some cases by the President of the relevant court (§48 – see question 4a).
 In general it is up to the complainant to provide the Special Court of Indictment and Revision

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with information, and most cases are decided on the basis of the complaint and the statement from the judge.
 If the judge denies the complainants account of events, the Special Court of Indictment and Revision can ask the police to investigate the circumstances of the case. There are no known examples of this authority being taken into use.
 However there are examples of the Special Court of Indictment and Revision obtaining statements from lawyers and prosecutors who were present at the hearing in question. This option is used when it's the complainant's word against the judge's, and the complainant's version of events cannot be dismissed.

ENGLAND AND WALES

- a) Anyone can complain about any of the matters listed in 4(a) above.
- b) The Rules require the complainant to identify themselves for it to be a valid complaint. However, the Rules also provide for a matter to be investigated in the absence of a formal complaint if necessary.
- c) Complaints about Lord/Lady Justices of Appeal, High Court Judges, Circuit Judges, District Judges and Coroners are investigated by the JCIO. Complaints about tribunals judges and magistrates are investigated at a local level in the first instance. Where an investigation by the Advisory Committee or Tribunal President results in a recommendation for disciplinary sanction the matter is passed to the JCIO for onward transmission to the Lord Chief Justice and Lord Chancellor

FRANCE

- a) Disciplinary proceedings against a judge or a prosecutor are referred to the french High Council by the ministry of Justice or by courts of appeal's presidents or higher appeal courts (presidents, or by general prosecutors at courts of appeal or prosecutors at higher appeal courts, and by litigants.
- b) No, complaints from litigants must be signed with the name of the signatory
- c) Disciplinary complaints are managed by the French high Council. Disciplinary proceedings may be investigated either by the French high Council's members or by the general inspectorate for the Judiciary which is under the authority of ministry of Justice.

GERMANY

- a) Disciplinary powers are exercised by a judge's superior and the judicial service courts of the Federation and the Länder. If there is a suspicion that a disciplinary offence has been committed, the judge's superior arranges for preliminary investigations. When these preliminary investigations are concluded, the superior must decide on how to proceed. Disciplinary proceedings can be discontinued in accordance with section 32 BDG; in cases of minor breaches of duty, a reprimand can be issued by means of a disciplinary order (so-called administrative disciplinary proceedings: section 33 BDG read in conjunction with section 64 (1) DRiG) or disciplinary charges can be brought (so-called formal disciplinary proceedings:

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section 34 BDG read in conjunction with section 63 (1) DRiG).
If an order of discontinuance is issued (section 32 BDG), the respective disciplinary proceedings are terminated. However, an order of discontinuance does not mean that the disciplinary power is exhausted. The superior can re-institute disciplinary proceedings based on the same set of facts if new insights have come to light and the reasons underlying the order of discontinuance do not present an obstacle thereto. In particular, under section 35 (2) BDG, the superior's superior or the highest service authority can – regardless of a discontinuance of proceedings pursuant to section 32 (1) BDG, and within the scope of their responsibilities – issue a disciplinary order or bring disciplinary charges within three months of service of the order of discontinuance.

An objection can be lodged with the next highest superior against a disciplinary order issued by a superior (sections 41 et seqq. BDG). No objection can be lodged if the final order was issued by the highest service authority.

If further measures (demotion, removal from office or withdrawal of pension rights) need to be imposed on a judge, the highest service authority must file disciplinary charges with the responsible service court within the framework of judicial disciplinary proceedings in accordance with section 34 (2) BDG read in conjunction with section 63 (1) DRiG. Upon application being made by the highest service authority, the service court also gives rulings on a provisional discharge from office, on the withholding of remuneration for service or on the revocation of any of these measures (section 63 (2) DRiG). Responsibility for formal disciplinary proceedings lies with the Federal Service Court (section 62 DRiG) or the respective service courts of the Länder (section 78, no. 1, DRiG). The service courts were created especially to deal with disputes arising from the service relationship of judges that are closely related to the independence of the judiciary. The decisions of the Federal Service Court are incontestable (section 62 (1) DRiG). Section 79 DRiG provides that proceedings before the service courts of the Länder must consist of at least two instances. The judgments of the service courts of the Länder may be challenged by means of an appeal on points of fact and law, which must be lodged at the next instance, i.e. the Higher Service Court (Dienstgerichtshof).

Third parties whose rights (may) have been affected by a disciplinary offence of a civil servant cannot influence the disciplinary proceedings. In particular, they cannot lodge a claim against discontinuance of the disciplinary proceedings.

b) Yes, if there is a reasonable and strong suspicion that a disciplinary offence has been committed, the judge's superior arranges for preliminary investigations. For details see answer to question 5a).

c) See answer to question 5a)

HUNGARY

a) The submission of a complaint and the initiation of a disciplinary procedure are different: the procedure regarding complaints is regulated by the regulation of NOJ as secondary legal norm, while the initiation of disciplinary procedure is regulated by ALSRJ and AOAC. Everybody – including judges and judicial employees - may turn to the president of the adjudicating court or the president of NOJ with a complaint in person, in writing or electronically. If the complaint is well-grounded an impeachment process shall be initiated

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(disciplinary procedure, criminal procedure, etc.)
If the suspicion of a disciplinary breach emerges in respect of a senior court official, the person exercising the right of appointment shall initiate disciplinary proceedings before the chair of the service court of first instance. If the suspicion of a disciplinary breach emerges in respect of a judge not holding a senior appointment, disciplinary proceedings shall be initiated

- by the President of the Curia in the case of the judges of the Curia,
- by the chair of the regional court of appeal in the case of regional court of appeal judges,
- by the chair of the regional court in the case of regional, district court and administrative and labour court judges, before the chair of the service court of first instance.

The President of NOJ may only institute disciplinary proceedings against court leaders appointed by the President of NOJ and the judges posted at NOJ.
Relevant sections can be found in the appendix.

b) Examination may be initiated on the basis of anonymous public announcement or complaint. In case of a well-grounded complaint an impeachment or disciplinary procedure may be initiated if it is reasonable.

c) The complaint are investigated and managed by the president of the court in question or by another leader defined by the Organisational and Operational Rules (OOR); if the complaint is connected to the activities of NOJ, it is managed by the president of NOJ or another leader defined by the Organisational and Operational Rules (OOR).
A complaint against the behaviour of a judge shall be investigated by the president or the appointed leader of the court where he or she is in service; a complaint against the behaviour of a judicial employee is investigated by the leader exercising the employer’s rights.
A complaint against a local court or administrative and labour court is investigated and managed by the president of the regional court.
A complaint against the president of a regional court or regional court of appeal is investigated and managed by the president of NOJ.
Relevant sections can be found in the appendix.

IRELAND

a) A complaint may be made by a person to the Judicial Conduct Committee by writing to the Secretary in the manner prescribed by regulations under Part 4 of the Bill. Under Head 25(3), a complaint shall be admissible if:

- (a) it is made within six months of the existence of the circumstances or occurrence of conduct giving rise to the complaint;
- (b) the person making the complaint was (i) directly affected by or witnessed the alleged conduct giving rise to the complaint or (ii) is a duly authorised officer of the Incorporated Law Society of Ireland or the General Council of the Bar in Ireland carrying out representative functions on behalf of its members and such complaint, if true, affects a member of that body;
- (c) the complaint does not relate solely to (i) conduct by the judge concerned in proceedings before that judge in respect of which a remedy by way of appeal, judicial review, or other proceedings is or may have been provided for in, or in respect of, the proceedings concerned, or (ii) the merits of a judicial decision; and,

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(d) the complaint is not manifestly unfounded, frivolous or vexatious.

The disciplinary proceedings are initiated by the Judicial Conduct Committee whether on the foot of a complaint or of its own initiative, where notwithstanding that there has been no admissible complaint made, it appears that prima facie that there has been a breach of judicial conduct by the judge concerned and an investigation of the matter is necessary for the safeguarding of the administration of justice generally (Head 25(1) & (9)).

b) No. Head 25 of the General Scheme of the Judicial Council Bill provides that a complaint shall be admissible if the person making the complaint:

“(i) was directly affected by or witnessed the alleged conduct giving rise to the complaint, or
(ii) is a duly authorised officer of the Incorporated Law Society of Ireland or the General Council of the Bar in Ireland carrying out representative functions on behalf of its members and such complaint, if true, affects a member of that body.”

c) Complaints

The Secretary of the Judicial Conduct Committee will initially determine the admissibility of a complaint.

The complainant and the judge concerned will be notified in writing where the Secretary decides that a complaint is not admissible and shall be given the opportunity to seek a review of the decision by request in writing to the Secretary. The request shall be referred to designated members and the Secretary will inform the complainant and the judge concerned in writing of the determination (Head 25(4) & (5)).

The designated members are two judicial and one lay member of the Judicial Conduct Committee, who are invited by the Committee to undertake the functions of designated members (Head 23).

The complaint will be formally referred to the Judicial Conduct Committee where the Secretary considers a complaint to be admissible (Head 25(7)) or where the Secretary considers that the complaint is not admissible but prima facie there has been a breach of judicial conduct and in the circumstances an investigation is necessary to safeguard the administration of justice generally (Head 25(6)).

Investigations

Where the Judicial Conduct Committee determines that an investigation should be undertaken, a complaint will either be referred by the Committee for informal investigation or establish a Panel of Inquiry to conduct a formal investigation.

Informal Investigation (Head 26)

If the complaint or matter is of a minor nature and suitable for informal resolution, it shall be referred for informal investigation and resolution. Informal investigations may be undertaken by:

- (i) the Chief Justice or President of the court where the judge concerned is an ordinary member of the Supreme Court, High Court, Circuit Court or District Court;
- (ii) the Chief Justice where the judge concerned is the President of the High Court, the Circuit Court or the District Courts Service;
- (iii) the President of the High Court, the Circuit Court and the District Court where the judge concerned is the Chief Justice.

Upon completion of the investigation, the investigating judge(s) shall furnish to the Committee a report of the investigation containing the opinion of the investigating judge(s)

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on whether the complaint or matter has been informally resolved (Head 26(8)).

Formal Investigation (Heads 27-30)

If the Committee is not of the opinion that the complaint or matter may be dealt with informally, a Panel of Inquiry is formed by the Committee to investigate the matter. A Panel of Inquiry shall be comprised of two judges and one lay member. No member of the Judicial Conduct Committee may be a member of a Panel of Inquiry.

The Panel may initiate such inquiries into the subject matter of the investigation as it thinks appropriate, including the conduction of an oral hearing. It is charged with collection of evidence and for the purposes of an investigation or hearing, shall have the power to enforce the attendance of witnesses and their examination on oath or otherwise and compel the production of documents. On conclusion of the investigation, the Panel of Inquiry shall submit a report in writing to the Judicial Conduct Committee setting out its findings and may include recommendations as to the appropriate course of action.

ITALY

a) Disciplinary complaints or proceedings are initiated by the citizens, by the High Council for the Judiciary, by Councils of justice , by the Chief of the office, by the general prosecutor of Cassation, by the Ministry of Justice.

b) An anonymous complaint can not lead to disciplinary proceedings.

c) Disciplinary complaint or proceedings are managed and investigated by the general prosecutor of Cassation.

ITALY (Council of Presidency for administrative Justice)

a) The power to initiate a disciplinary proceeding belongs to the Prime Minister (who has never actually initiated it) and to the President of the Council of State.

b) No.

c) Complaints are preliminarily looked thorough by a permanent Commission of the CPGA (the second one) which deals with disciplinary matters.

The Commission can immediately propose to the CPGA in Plenary session to dismiss the complaint on summary basis because it is clearly not founded. If the Commission argues that the complaint might lead to a disciplinary proceeding, send it to the President of the Consiglio di Stato for the formal initiation of the procedure.

As soon a disciplinary proceeding is initiated, within 10 days, a Committee, made up of thee members appointed by the CPGA, is created. Members are generally chosen among the members of the Second Permanent Commission. The Committee has the assignment of the preliminary investigations on the case, within 30 days.

Then, the CPGA decides weather dismiss immediately the case or to prosecute formally the judges.

The judge is immediately informed of the decision taken by the Council.

The investigation must be closed within the following 90 days.

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Then, the President of the Consiglio di Stato establishes the date of the hearing before the CPGA. The judge has at least 40 days at his or her disposal to study the files and prepare his or her defences.

LITHUANIA

a) The Judicial Council, the Judicial Ethics and Discipline Commission and the Chairperson of the court where a judge is employed or the Chairperson of any court of a higher level or any person knowledgeable of the action provided for in paragraph 2 of Article 83 of law on Courts shall have the right to make a motion for instituting a disciplinary action.

The Chairman of the Supreme Administrative Court and regional administrative courts shall not have the right to make a motion for instituting a disciplinary case against the judge of the court of general jurisdiction and the chairman of the Supreme Court, the Court of Appeal of Lithuania, the regional courts and the district courts shall not have the right to make a motion for instituting a disciplinary case against judges of the administrative courts.

b) No. According to the Rules of the Judicial Ethics and Discipline Commission, paragraph 20, the motion for instituting a disciplinary case against a judge must be written in the national language and signed.

c) Upon receiving a complaint the Chairman of the Judicial Ethics and Discipline Commission takes a decision how the complaint will be investigated. The Commission can do it by self or Chairman of the Commission can present the motion to the Chairman of the court where a judge is employed or the Chairman of any court of a higher level, to perform the investigation and to present the investigation results to the Commission.

THE NETHERLANDS

a) The president of the court at which the judge serves or the Procurator General at the Supreme Court may launch an investigation ex officio. This might but need not necessarily arise following a complaint or report. The president may issue the judge a written warning. Other disciplinary measures may be imposed only by the Supreme Court, following an application to do so by the Procurator General at the Supreme Court.

b) Yes, such a complaint may be cause for the president of the court or the Procurator General at the Supreme Court to launch an investigation or disciplinary proceedings (ex officio).
 An anonymous complaint, however, is inadmissible in the complaints procedure.

c) This is the responsibility of the president of the court and/or the Procurator General at the Supreme Court. There is no dedicated inspection or investigation team. If the case is brought before the Supreme Court by the Procurator General, the Supreme Court may also conduct an investigation.

NORTHERN IRELAND

a) Complaints can be initiated by any party but children and young people should do so

- 5 a) By whom and how are disciplinary complaints or proceedings initiated?**
b) Can an anonymous complaint lead to disciplinary proceedings?
c) By whom and how are disciplinary complaints or proceedings managed and /or investigated?

through an appropriate adult if possible. Complaints should be submitted in writing to the complaints officer in the Lord Chief Justices Office or to the relevant Tribunal President's office. Complainants will be expected to submit full details of their complaint, together with a note of any supporting evidence. In the case of a complainant with a disability, or whose first language is not English, or who has poor literacy skills assistance will be provided.

b) Where a complainant wishes to remain anonymous it will not be possible to investigate the complaint however the Lord Chief Justice may initiate some form of investigation of any matters brought to his attention.

c) The Lord Chief Justice has sole statutory responsibility for determining complaints about the conduct of Judicial Office Holders. Complaints will be investigated by the 'Complaints Officer' in less serious complaints and by a Complaints Tribunal in more serious complaints.

NORWAY

a) By The Supervisory Committee for Judges. The following have the right to submit a complaint: parties, counsels, witnesses, experts, people directly affected by a misconduct, MOJ, The Norwegian Courts Administration, The Chief Judge of the Court, The Norwegian Bar association or others with a special interest in obtaining the Supervisory Committee for Judges' assessment of a judges conduct.

b) Not initially. An anonymous complaint can give The Supervisory Committee for Judges knowledge of a misconduct and they can considering a case ex. officio.

c) The Supervisory Committee for Judges has a secretariat. They prepares and investigates complaints. When the case is ready The Supervisory Committee for Judges makes their decision.

POLAND

a) According to the Art. 112 and Art. 114 of the Act law on common courts system:
 Art. 112. § 1. The disciplinary commissioner is the entitled prosecutor before a disciplinary court, in cases of court of appeal judges, as well as in cases of presidents and vice presidents of circuit courts; in all other cases - the entitled prosecutor is the deputy of the disciplinary commissioner.

§ 2. A disciplinary commissioner shall be elected, from among candidates put up by the general assembly of appeal judges, by the National Council of the Judiciary of Poland. A disciplinary commissioner shall act at the National Council of the Judiciary of Poland. A disciplinary commissioner's term of office shall last four years. (...)

§ 4. Boards of courts of appeal select deputies of a disciplinary commissioner for each appeal and boards of circuit courts select deputies from among judges of a given court for each circuit. The term of office of deputies of a disciplinary commissioner is two years.

§ 5. Within the scope of conducting explanatory proceedings the disciplinary commissioner and his/her deputies are bound by instructions of an authorised body. (...)

**5 a) By whom and how are disciplinary complaints or proceedings initiated?
 b) Can an anonymous complaint lead to disciplinary proceedings?
 c) By whom and how are disciplinary complaints or proceedings managed and /or investigated?**

Art. 114. § 1. The disciplinary commissioner acts in this capacity at a relevant request of the Minister of Justice, the president of the court of appeal or of the circuit court and the board of the court of appeal or circuit court, at the request of the National Council of the Judiciary or on his/her own initiative, upon preliminary clarification of the circumstances indispensable for establishing the attributes of misconduct, and after the judge has made explanations, unless making such explanations is impossible.

§ 2. Upon the proceedings referred to in § 1, there being grounds for instituting disciplinary proceedings, the disciplinary commissioner institutes disciplinary proceedings and provides the judge concerned with written charges. At the same time, with respect to cases referred to in Art. 110 § 3 second sentence, the disciplinary commissioner requests the First President of the Supreme Court for indication of competent disciplinary court to hear the case in the lower instance. The court should be indicated within seven days. (...)

(A disciplinary commissioner is always a judge and plays a role of a disciplinary prosecutor during the disciplinary procedure.)

b) No.

c) By the disciplinary commissioner before the case is lodged to court.

PORTUGAL

a) The disciplinary proceedings are initiated by resolution of the High Council of the Judiciary.

b) The High Council of the Judiciary has understood, as a rule, that anonymous complaints do not warrant the development of any activity aiming the performance of a judge, unless they are very accurate regarding the narrated facts and the circumstances surrounding them.

c) When approved the initiation of a disciplinary procedure, an instructor is assigned to develop all necessary steps for the collection of evidence. In the end, he presents a report proposing the filing or enforcement of a disciplinary sanction.

The instructor is chosen from the body of inspectors of the High Council of the Judiciary, composed by appeal court judges.

In case of a superior court judge (appeal court or Supreme Court) is targeted, a Supreme Court judge as to be designated as ad hoc instructor.

ROMANIA

a) The Judicial Inspection may act ex officio or may be notified by the Minister of Justice, the President of the High Court of Cassation and Justice, the Superior Council of Magistracy, and by any interested person in connection with disciplinary offenses committed by judges and assistant magistrates of the High Court of Cassation and Justice.

Judicial inspection may be notified directly through a petition made in writing or sent by mail or fax.

b) Complaints that are not signed by the petitioners, do not contain data identifying the author or clues to identify the facts which led to notification, after registration in the general register of works of Judicial Inspection, shall be disregarded by the Chief Inspector by final

**5 a) By whom and how are disciplinary complaints or proceedings initiated?
 b) Can an anonymous complaint lead to disciplinary proceedings?
 c) By whom and how are disciplinary complaints or proceedings managed and /or investigated?**

resolution.

c) The disciplinary complaints or proceedings are managed and investigated by the judicial inspectors. Preliminary checks are conducted by judicial inspectors of the Judicial Inspection within 45 days from the date requested by the holder to disciplinary action. For justified reasons, the Chief Inspector may order a 45 days extension of the deadline.

The disciplinary proceedings require at a first stage, the preliminary check, in which it is established if there are evidences of a disciplinary misconduct, and if there are found any evidences, the second stage is initiated the actual disciplinary proceeding, which has a 60 days deadline, which, for justified reasons, may be extended by 30 days by the order of the Chief Inspector.

In disciplinary matters, the issues raised are subject to a prior disciplinary research by Judicial Inspection, in which it is established if any disciplinary misconduct exists.

If, after performing the preliminary checks, there aren't found any clues of a disciplinary offense, preliminary verification results shall be transmitted by the judicial inspector within 10 days of the completion to the Minister of Justice and the President of the High Court of Cassation and Justice, if they notified the Judicial Inspection, with a proposal to close the case.

If the Judicial Inspection held the disciplinary action and, after the completion of the preliminary checks, there were found no clues of a disciplinary offense, the result is communicated directly to the person who filed the complaint and the person in case.

If there are discovered clues of a disciplinary offense, the judicial inspector convey to the author of the notification, within 7 days after completion of preliminary inquiry, the proposal to initiate the disciplinary research, in cases where the Judicial Inspection was notified by the Minister of Justice or President of the High Court of Cassation and Justice.

After the proposition for the initiation of preliminary investigation is received, the Minister of Justice or the President of the High Court of Cassation and Justice may order the commencement of disciplinary research.

If the disciplinary research was ordered by the Minister of Justice or by the President of the High Court of Cassation and Justice, the Judicial Inspection communicates its preliminary investigation results to the disciplinary action holder within 7 days of completion. If the holder of the disciplinary action believes that the research is incomplete, may request once the Judicial Inspection for completion. Completion is performed by the judicial inspector within no more than 30 days from the date it was requested and communicates the result to the holder of the disciplinary action within 7 days of completion. After receiving the result of the preliminary investigation, the Minister of Justice or the President of the High Court of Cassation and Justice may exercise disciplinary action by notifying the appropriate department of the Superior Council of Magistracy.

SERBIA

a) Anyone can submit a disciplinary complaint - report against a judge to the Disciplinary Prosecutor. A disciplinary report shall be submitted in the written form.

b) No. A disciplinary report must include a name and last name of the submitter of the report. Disciplinary Prosecutor shall dismiss the report if the report was filed anonymously.

c) The Law provides independent disciplinary bodies - Disciplinary Prosecutor and his deputies

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and Disciplinary Commission.

Disciplinary Prosecutor, based on disciplinary report, proposes conducting disciplinary proceedings.

Disciplinary prosecutor files a motion to initiate the disciplinary proceedings based on a disciplinary report, when he considers that there is a reasonable doubt of a disciplinary offence, which could be negligent performance of judge's office, or conduct that is inappropriate for a judge's function, that is provided by Law on Judges. Then Disciplinary Commission conducts the disciplinary proceedings following the proposal of Disciplinary Prosecutor.

SLOVAKIA

a) Disciplinary proceedings shall commence upon motion. The following persons are authorised to lodge motion to commence disciplinary proceedings:

a/ Minister

b/ President of the Judicial Council

c/ Ombudsman

d/ Regional Court President also against judge within his circuit

e/ Court President against judge of the respective court

f/ council of judges against judge of the respective court including the President of the Court

b) An anonymous complaint shall not be investigated.

c) The disciplinary proceedings are managed by the disciplinary panel, to which the matter was assigned in line with the work schedule.

The whole procedure on how the proceedings are managed and investigated is enshrined in § 122-129 of the Act on Judges.

In a nutshell, the judge, who is defendant in disciplinary proceeding, shall be notified of commencement of disciplinary proceeding against him by the Chairman of the disciplinary panel. At the same time, the judge shall be advised of his right to select legal counsel from amongst attorneys or judges, to respond to facts, which are laid to his charge and propose evidence for his defence. If necessary, the Chairman of the disciplinary panel or member authorised by him shall conduct a preliminary inquiry. The Chairman of the disciplinary panel shall then set a date of verbal hearing, shall notify of it the body, which had lodged the motion to commence disciplinary proceeding, judge, who is defendant in the proceeding, and if the judge has legal counsel, his counsel. In principle, verbal hearing shall be conducted in the presence of judge, who is defendant in the proceedings. Case may be heard during his absence only if he was duly notified of the date of verbal hearing and if he is refusing to appear before the disciplinary panel, or if he shall not appear without reasonable excuse, or if he shall expressly waive his right to appear at verbal hearing. Record is made of hearing before disciplinary panel and of deliberation of the panel. As a rule, disciplinary panel is obliged to decide on disciplinary offense or on misdemeanour or judge within 3 months from lodging motion to commence disciplinary proceedings.

SLOVENIA

a) Disciplinary proceedings are initiated by a proposal for taking investigative measures or by

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c) By whom and how are disciplinary complaints or proceedings managed and /or investigated?**

the direct filing of a reasoned proposal to pronounce a disciplinary sanction. Such disciplinary proceedings may be initiated by the president of the court where the judge performs his or her judicial office, the president of a directly higher court, the Council for the Judiciary, or the Minister of Justice.

Furthermore, according to the Human Rights Ombudsperson Act, such proceedings can be initiated also by the ombudsperson if he or she establishes that in court proceedings a judge has violated human rights.

These initiatives are sent to a disciplinary prosecutor who formally institutes disciplinary proceedings. If the prosecutor decides not to introduce them, he or she is bound to inform of such the initiator. If the initiator still insists on their introduction the disciplinary court of first instance should finally decide on the initiative.

b) An anonymous complaint to lead to disciplinary proceedings is not explicitly provided by the relevant provisions of the Judicial Service Act, nor is it explicitly forbidden. Although the formal initiators of such proceedings are listed there is always a possibility that they accept an anonymous complaint into consideration and make further investigations on the matter.

c) A proposal for disciplinary sanctions is made by a disciplinary prosecutor, who in absence is substituted by his or her substitute; both are to be Supreme Court judges. Disciplinary bodies are appointed and dismissed by a general session of the Supreme Court on the proposal of the Council for the Judiciary for a period of two years and may be re-appointed.

If a proposal has been made to carry out certain investigative activities, they are carried out by a judge of the disciplinary court, who is selected by the president of the disciplinary court.

SPAIN

a) Any person, natural or legal, public or private, may lodge a complaint against a Judge; including the State Prosecutor, the Ombudsman, Bar Associations, or any other entity or institution.

The Promoter of Disciplinary Action, dependent on the General Council for the Judiciary, is the competent body to initiate disciplinary proceedings against Judges, in accordance with Article 607.3 of Organic Law 4/2013, of 28 June, amending the Law on the Judiciary, which entered into force in December 2013.

b) In principle, a simple anonymous complaint cannot lead to the initiation of disciplinary proceedings.

c) The Promoter of Disciplinary Action is responsible for the management of disciplinary proceedings and the investigation of disciplinary complaints. In the Unit for Preliminary Actions, under the Promoter of Disciplinary Action, complaints and preliminary reports are processed, which may conclude with an order to dismiss the case, if it is clear that the reported events cannot be included in the list of types of conducts leading to disciplinary liability; or, on the contrary, with an order to initiate disciplinary proceedings.

In short, the stages of the disciplinary proceedings are as follows:

- Initiation of proceedings and appointment of the registrar for the case, who acts as a notary public.
- Hearing of the Judge subject to disciplinary proceedings, with the participation of the

<p>5 a) By whom and how are disciplinary complaints or proceedings initiated? b) Can an anonymous complaint lead to disciplinary proceedings? c) By whom and how are disciplinary complaints or proceedings managed and /or investigated?</p>
<p>State Prosecutor.</p> <ul style="list-style-type: none"> - Taking of evidence. - List of charges, as a written accusation. - Written representations by the Judge subject to disciplinary proceedings. - Written representations by the State Prosecutor. - The case is dismissed, if it is clear that the requirements to demand disciplinary liability do not concur. - Proposal by the Promoter of Disciplinary Action to the Disciplinary Committee of the General Council for the Judiciary in order to pass a ruling imposing a disciplinary penalty, if it is clear that the requirements to demand disciplinary liability concur.
<p>SWEDEN</p> <p>a) 1) The Court where the judge is an employee (the employer). 2) The Parliamentary Ombudsman (JO) 3) The Chancellor of justice (JK)</p> <p>b) No.</p> <p>c) The disciplinary complaints regarding Judges are to be managed by the Swedish National Disciplinary Offence Board. This board considers matters relating to disciplinary liability, prosecution, dismissal, suspension and medical examination regarding state employees in higher positions.</p>
<p>TURKEY</p> <p>a) Disciplinary proceedings are initiated by Secretariat General of HCJP via bureau of complaints against judges and prosecutors with registration under individual issue number.</p> <p>b) As a rule anonymous complaints are not processed, yet in line with the last paragraph of Article 97 of Law 2802 on Judges and Prosecutors, "...However, denunciations and complaints which lack the conditions specified in subparagraph (b) but which include substantiated evidence shall be inquired and examined." So, anonymous complaints lead to proceedings, if they poses certain characteristics.</p> <p>c) Complaints and proceedings are processed by Bureau of Complaints against Judges and Prosecutors (HCJP), and later submitted to Third Chamber (HCJP). Should Third Chamber grant permission for examination and investigation, the investigations against judges and prosecutors will be conducted by inspectors or an investigators to be appointed.</p>

- 6 Is there a set timescale within which disciplinary proceedings should be**
- a) initiated?**
 - b) communicated to the Judge about whom the complaint is made?**
 - c) adjudicated upon?, and if so, what is that time?**
 - d) outside any time limitation set for initiation of the complaint, is there any discretion to allow a complaint to be made, and if so who exercises that discretion?**
 - e) can the Judge be suspended during the investigation? If so in what circumstances?**
 - f) During the course of the investigation are there any other measures or restrictions which could be taken against the Judge, or is there any limitation on the career progression of the Judge?**

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ALBANIA

a) The initiation of disciplinary proceedings can be done no later than one year from the date that the violation is found by the body that has the right to initiate a proceeding, but not later than 5 years from the date of the offense.

b) One year from the date that the violation is found.

c) The recent amendments made to the law for the HCJ, states that the disciplinary proceedings must be reviewed by the Council within one month from the filing date of the request by the Minister of Justice for disciplinary proceedings.
Time: One month.

d) There is no discretion predicted for filing an appeal beyond the time limit specified in paragraph a.

e) In the Article 21, of the Law Nr. 101/2014 “On some amendments and supplements on the law no.8811, date 17.5.2001, on the organization and functioning of the High Council of Justice, amended”

a) Paragraph 1, is formulated as follows:

“1. In cases of arrest, deprivation of liberty in whatever form, or the exercise of personal

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control or of the apartment of the judge, the High Council of Justice is gathered within 24 hours to decide on the prosecutor's request".

b) Paragraph 1.1 is formulated as follows:
 "1.1 in cases where prosecution is registered against a judge, The High Council of Justice decides to suspend the judge from office until a court final verdict.

In cases where guilt is not proven by the court final verdict, the judge has the right to return to his previous work and receive full pay from the time of suspension.

f) The legislation does not predict any other measure, but during the time that he is investigated, he cannot be promoted until the investigation takes a final form.

AUSTRIA

a) Sec 102 provides for a set of time limitations for the initiation of disciplinary proceedings:
 Sec 102 para 2 RStDG: There is no time limitation for disciplinary proceedings if the infringement is also regarded a criminal offence committed intentionally, punishable under the criminal law by a penalty of imprisonment of a term of more than one year.
 Otherwise sec 102 para 3 RStDG provides for a limitation period of five years.

b) No

c) No

d) Although every citizen may file a disciplinary complaint, it is controversial whether disciplinary proceedings can be initiated against the will of the judicial administrative body.

e) Yes. According to sec 146 RStDG the Disciplinary Court can suspend the disciplinary defendant without any oral hearing if with regard to the nature or to the seriousness of the infringement this is in the interests of the Public Service or if it is deemed necessary to maintain the observance of professional reputation.

f) If the disciplinary defendant is suspended the monthly salary is reduced to 2/3 of the monthly salary for the period of suspension. Pending disciplinary proceedings de facto exclude the appointment to a higher court.

BELGIUM

Preliminary remarks on the disciplinary proceedings:
 After the investigation into the facts the disciplinary authority decides whether or not the facts justify a disciplinary sanction.

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on the career progression of the Judge?

- If the authority considers that a minor disciplinary sanction is justified, it will itself inflict this sanction; The concerned judge/prosecutor and the public prosecutor can appeal to the disciplinary court of appeal.

- If the authority considers that a major disciplinary sanction is justified, it seizes the disciplinary court. The decision to seize the disciplinary court is not susceptible to appeal.

- If the authority considers that a disciplinary sanction is not justified or if it doesn't take a decision within three months of the opening of the disciplinary investigation, the public prosecutor or the concerned judge (art. 413 Judicial Code) can seize directly the disciplinary court.

a) The disciplinary authority should open a disciplinary investigation as soon as possible after being informed of the facts. Not only is he supposed to take a decision within three months of the opening of the investigation, but he also has to seize the disciplinary court no later than six months after being informed of the facts if he considers that a major sanction should be imposed (art. 415 Judicial Code).

b) The concerned judge must be informed without delay of the opening of a disciplinary investigation (art. 413 Judicial Code).

c) If the disciplinary authority considers that a major disciplinary sanction is justified, he has to bring the case before the disciplinary court no later than 6 months after the moment on which he has been informed of the facts (art. 415 Judicial Code). Article 417 of the Judicial Code imposes several procedural steps which all should be accomplished within certain time limits. In principle, a case should therefore be terminated within 15 months from the moment on which the disciplinary authority was informed of the facts.

d) The disciplinary authority has a very important role in the procedure.

For instance: If the disciplinary authority considers that a disciplinary sanction is not justified or if it doesn't take a decision within three months of the opening of the disciplinary investigation, the public prosecutor or the concerned judge (art. 413 Judicial Code) can seize directly the disciplinary court. If the procedure is the result of a plaint, the disciplinary authority has to inform the plaintiff of the consequences given to it. If the plaint was filed by the High Council, this answer must be motivated. Neither the plaintiff nor the High Council have the possibility to seize directly the disciplinary court. If the disciplinary authority fails to notify a decision within three months of the filling of the plaint, the plaintiff or the High Council can only ask the prosecutor to seize the disciplinary court.

e) The judge can be suspended in the interest of the court during criminal or disciplinary proceedings until the final decision is taken. This suspension is not to be considered as a disciplinary sanction (art. 406 Judicial Code).

f) The suspension can be accompanied by a deduction of 20% of the gross wage of the

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concerned magistrate.

If there are pending criminal or disciplinary procedures against a magistrate who is candidate for a promotion, the High Council of Justice can take them into consideration and not put forward the concerned magistrate for promotion.

BULGARIA

a) The legal provision of Article 310(1) of JSA sets out the timescale of initiating disciplinary proceedings against a judge, prosecutor, investigating magistrate, administrative head or deputy administrative head: within six months of discovery, but not later than three years of committing the offence. Where such timescale has expired, no disciplinary proceedings are initiated, and the initiated ones are terminated. The deadlines are by their nature preclusive and when they elapse, so does the opportunity to hold the magistrate liable for a disciplinary offence. The brief 6-month period starts running when any of the entities referred to in Article 312 of JSA becomes aware of the offence. 'Become aware' means that the offence in its essential characteristics was brought to the knowledge of the persons authorised to make a proposal.

The deadlines under Article 310(1) cease to run during the time of the magistrate's legally established leave of absence.

Article 310(3) and (4) JSA provide for exceptions of the general rule set out in (1).

1. Where the offence represents inaction, the deadlines under paragraph 1 start running as from its establishment. Inaction as a form of disciplinary offence flows through time and the judge, prosecutor or investigating magistrate commit the respective disciplinary offence at any point of time until its termination.

2. Where the offence is under Article 307(4)(4) - action or inaction which adversely affects the reputation of the judiciary - the deadlines under Article 310(1) start running from the public disclosure of the actions adversely affecting the reputation of the Judiciary. The disciplinary practice of the Supreme Judicial Council and the case law both assume that the requirement of public disclosure is fulfilled when the act has become well known to a wide range of individuals.

3. Where a disciplinary offence is criminal offence established with an effective judgment or an effective ruling on termination of criminal proceedings under Article 24(1)(2)-(3)(3) of the Criminal Procedure Code (CPC), the deadlines under par. 1 start running from the entry into force of the judgement or ruling.

(Text of Article 24 (1), items 2 and 3 and (3) of the CPC:

(1) Criminal proceedings shall not be instituted and, if instituted, they shall be terminated, where:

2. the perpetrator is not criminally responsible due to amnesty;

3. criminal responsibility has been extinguished following expiry of a statutory limitation period;

(3) Proceedings in publicly actionable criminal cases shall also terminate, once the court has approved the plea bargain agreement reached on the disposal of the case.

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b) Pursuant to the requirement of Article 316(5) of JSA, copies of the proposal to impose a disciplinary sanction and of the written evidence attached thereto are sent to the person subject to disciplinary proceedings who, within 7 days of the notification, may file written objections and indicate evidence.

Disciplinary proceedings are instituted within 7 days of receipt of a proposal to this effect. The presiding member of the disciplinary panel schedules a hearing within 7 days of the institution of disciplinary proceedings.

The person subject to disciplinary proceedings and the entity having made the proposal are notified of the hearing of the disciplinary panel.

c) In compliance with Article 310(2) of JSA, disciplinary proceedings must end within three months from being instituted, expiry of the said term not constituting valid grounds for the liability ceasing to exist. The deadline is instructive and ensures that disciplinary proceedings are closed within a reasonable time.

d) As mentioned in the answer to question 6.a) above, the deadlines for initiating disciplinary proceedings set out in Article 310(1) of JSA are the following: within 6 months of the establishment but not later than three years of commitment of the offence. These deadlines are preclusive and when they elapse, the competent body no longer has the powers to impose a disciplinary sanction on the liable magistrate. The main goal of the deadlines under Article 310(1) of JSA is on the one hand to guarantee the legal certainty and the possibility of defense counsel for judges, prosecutors and investigating magistrates, and on the other hand to protect the public interest.

The competent sanctions body keeps track, ex officio, of whether the deadlines for instituting disciplinary proceedings upon a proposal made are observed and whenever it establishes that the deadlines have expired, no disciplinary proceedings are instituted. An objection against expired deadline may be filed by the magistrate or his/her legal representative, after the proposal to impose a disciplinary sanction has been received, and where disciplinary proceedings are initiated, they are terminated by a decision of the sanctioning body.

e) In presence of pending disciplinary proceedings entailing disciplinary relief from office of an elected member of the Supreme Judicial Council as a sanction, a judge, prosecutor, administrative head or deputy administrative head may be removed from office for a period of up to 6 months by the Supreme Judicial Council at the proposal of its disciplinary panel (Article 232 JSA).

The Supreme Judicial Council decides on removing from office a magistrate subject to disciplinary proceedings when it considers that the committed disciplinary offence is a severe one and incompatible with the magistrate's remaining in office as a judge, prosecutor or investigating magistrate, and also when a danger exists of impeding the investigation.

Where the disciplinary offence is also an intentional publicly actionable criminal offence and the magistrate has been constituted as accused party, the Supreme Judicial Council

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temporarily removes him/her from office until the completion of criminal proceedings. The request for temporary removal from office is made by the Prosecutor General or by no less than one-fifth of the total number of Supreme Judicial Council members. In cases where a judge, prosecutor or investigating magistrate has been remanded in custody, s/he is deemed to be temporarily removed from office as from the date of entry into force of the judicial act for the adoption of such a measure. Where criminal proceedings are terminated, except in the cases under Article 24(1)(2)-(3) and (3) of the Criminal Procedure Code, or an acquittal has been adopted, the judge, prosecutor or investigating magistrate temporarily removed from office is reinstated and paid the labour remuneration due for the period of removal. (The text of Article 24(1)(2)-(3) and (3) of the Criminal Procedure Code is given in the answer to question 6.a) above)

CROATIA

a) Disciplinary proceedings may not be instigated one year after the committed disciplinary offence and the perpetrator became known, or three years after the commission of the disciplinary offence.

If the disciplinary offence involves criminal liability, disciplinary proceedings may be instigated within the limitation period of criminal proceedings, provided that these proceedings have been instigated.

b) No.

c) There is no defined time scale in which disciplinary proceedings must be adjudicated upon but when the decision is brought it must be drawn up and delivered to the parties within 15 days of its rendering.

d) No.

e) A judge may be suspended from office if the authorised claimant in a motion to instigate disciplinary proceedings has proposed the disciplinary penalty of dismissal from office.

f) No, but a judge on whom the Council has imposed the disciplinary penalty shall not be appointed to another court for a certain period of time, counted from a final decision on disciplinary penalty, and the period depends on the type of the penalty imposed.

CZECH REPUBLIC

a) Yes, the disciplinary proceeding must be initiated within 6 months of knowledge of the offence by the petitioner, but at the latest within 3 years after the practice of the disciplinary offence.

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a) initiated? b) communicated to the Judge about whom the complaint is made?
c) adjudicated upon?, and if so, what is that time? d) outside any time limitation set for
initiation of the complaint, is there any discretion to allow a complaint to be made, and if
so who exercises that discretion? e) can the Judge be suspended during the investigation?
If so in what circumstances? f) During the course of the investigation are there any other
measures or restrictions which could be taken against the Judge, or is there any limitation
on the career progression of the Judge?

b) No.

c) No.

d) No.

e) Yes, the Minister of justice can decide of the suspension when the removal from the office of judge as a disciplinary measure is proposed.

f) No.

DENMARK

a) A complaint must be filed within 4 weeks after the incident has occurred or has been known to the complainant (§49(1) in the Administration of Justice Act).

b) No, but the judges must be heard if the complaint is not immediately dismissed.
 The Special Court of Indictment and Revision always sends a copy of the complaint to the judge regardless of whether or not the judge is asked to make a statement.
 If it is decided not to dismiss the case, the Special Court of Indictment and Revision will typically give the judge 2 weeks to submit his or her statement.

c) No. Typically the turnaround time is a few months, but it varies depending on the type and the size of the case. See a), b) and c).

d) Yes. Under special circumstances the Special Court of Indictment and Revision has the power to relieve the complainant from the effects of the expiration of the time for complaints (§ 49(1) in the Administration of Justice Act). Special circumstances can for instance be if the complainant due to illness has not been able to file his complaint within the stipulated timeframe.

e) Yes. According to § 50 in the Administration of Justice Act, a judge can be suspended, when criminal proceedings have been initiated against him, when he is presumed guilty of improper or unseemly behaviour, or when he is deemed untrustworthy.

f) No.

ENGLAND AND WALES

a) Proceedings must be initiated within three months of the matter complained of. However,

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this time limit may be extended if there are exceptional reasons for doing so.

b) No, the judge will only be informed when and if, there is a matter that requires further investigation. A judge may therefore not be informed of a complaint that has been received and dismissed without further investigation.

c) There is no specified time frame for concluding a complaint.

d) A complaint may be accepted outside the three month time limit in exceptional circumstances. The decision to accept such a complaint is made by the JCIO, Tribunal President or Magistrates' Advisory Committee as appropriate.

e) A judge may be suspended during an investigation if it is considered necessary to maintain the public's confidence in the judiciary. A decision to suspend is made by the Lord Chancellor and the Lord Chief Justice.

f) A judge who is suspended from office may not undertake any function related to his or her office, this would therefore include attendance at training events and meetings etc. If a disciplinary sanction is imposed upon the judge, this information is retained on the judge's file for future reference and will be taken into consideration in respect of any future appointment.

FRANCE

a) There is no timescale at that stage for disciplinary proceedings initiated by the ministry of Justice or first courts of appeal's presidents.

b) There is no theoretical timescale, but such a complaint may be communicated to the judge from the moment that investigations are made.

c) Currently, there is no timescale but the draft organic Justice law provides for a period of one year.

d) There is no discretion to allow a complaint directly brought by a litigant except if the High Council consider such a complaint as manifestly ill-founded or manifestly inadmissible. There is no discretion to allow complaints from the ministry of Justice or courts of appeal's presidents.

e) A judge may be suspended during the investigation in case of emergency. In such a case, often when a criminal proceeding is on-going against this judge, the ministry of Justice after consultation with the courts of appeal presidents, may refer to the Council suspension of a judge

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f) Except suspension, there is no other restriction which could be taken against the Judge. He/she may apply for a new function during the disciplinary proceeding.

GERMANY

a) There is no set timeframe. Section 4 BDG states that the disciplinary proceedings should be conducted expeditiously. Similar regulations exist regarding the Länder disciplinary proceedings.

b) See answer to question 6a)

c) See answer to question 6a)

d) See answer to question 5.

e) See answer to question 5a)

f) See answer to question 6a)

HUNGARY

a) The person authorised to institute the disciplinary proceedings may initiate it within 3 months of becoming aware of the relevant circumstances.

No disciplinary proceedings may be instituted if the person authorised to institute the proceedings did not initiate proceedings within 3 months of becoming aware of the relevant circumstances or a period of 3 years has elapsed since the termination of the practice constituting the disciplinary breach.

b) The judge about whom the complaint is made shall be notified without delay about the institution of disciplinary procedure by the person authorised to institute the proceedings. If the disciplinary proceedings are not instituted by the president of NOJ, he or she shall also be informed about the initiation.

c) There is no time limit for making a decision in a disciplinary procedure. The legal act defines deadlines for certain steps of the disciplinary procedure. For example, there is a time limit for the written report of the investigating commissioner (30 days), making a decision on the initiation of a disciplinary proceeding (15 days), etc. Relevant sections can be found in the appendix.

d) There is no time limit concerning the submission of a complaint. According to the regulation of NOJ, the investigation of a complaint may be omitted, if the complainer submits

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a complaint more than six months after becoming aware of the activity or failure complained about, that is, the complaint can be investigated according to the decision of the person with the right of investigation. Complaints submitted more than one year after the occurrence of the activity or failure complained about cannot be investigated even in their discretionary right, the deadline may not be extended neither considering equity nor any other reasons. According to the practice, if an individual complaint concerns a general, system failure or error, which requires action, the leader shall take the appropriate measures.

e) If criminal proceedings have been instituted against a judge, not including proceedings instituted on the basis of private actions and by substitute private prosecutors, disciplinary proceedings shall be instituted. The president initiating the disciplinary procedure may decide whether the judge concerned can handle cases if the judge is under a procedure for voluntary offence.

The law regulates suspense specifically regulating cases in which the service court is obliged to suspend the judge and listing the cases when a judge may be suspended.

The service court of first instance shall suspend a judge from his office if the judge

- was placed in custody or under house arrest
- is under the effect of a control order
- was ordered to undergo temporary forced medical treatment
- his presence at his service post were to hinder the establishment of the facts of the case.

A judge may be suspended

- if criminal proceedings have been instituted against a judge and his presence at his service post were to hinder the establishment of the facts of the case,
- if his absence from service is warranted by the nature and gravity of the failure subject to the disciplinary proceeding

The relevant sections can be found in the appendix.

f) The judge shall be entitled to his salary for the duration of suspension from his office, maximum 50 per cent of which may be retained for one month. The full salary shall be retained as of the adoption of the disciplinary decision pronouncing the judge's removal from his office until the decision becomes final and absolute.

Special provisions apply to the members of NJC, who cannot exercise their rights and obligations arising from their NJC membership.

The relevant sections can be found in the appendix.

IRELAND

a) A set timescale is not set out in the General Scheme of the Judicial Council Bill

b) A set timescale is not set out in the General Scheme of the Judicial Council Bill

c) Head 24 provides that the Judicial Conduct Committee shall make regulations in relation to

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the procedure for the making and investigation of complaints, and the making of determinations by the Judicial Conduct Committee. This may include setting time limits to apply for the taking of any step fixed by the Scheme.

d) In the event that a complaint is deemed inadmissible by the Secretary of the Judicial Conduct Committee under the categories of admissibility including the time limitation for the initiation of a complaint, the complainant shall be informed that he or she may seek a review of the decision by request in writing to the Secretary.

Where such a request is made by the complainant, the Secretary shall refer the complaint, the notice and the request to the designated members.

The designated members of the Judicial Conduct Committee shall consider whether notwithstanding that the complaint is not admissible, it would be just and reasonable in all the circumstances that the subject matter of the complaint be investigated (Head 25(5)(b)(ii)).

e) There is no provision for the suspension of a judge during an investigation.

f) Measures may be taken during the course of an investigation where it appears that the complaint or matter under investigation or part thereof may concern the health and/or capacity of the judge concerned.

During the course of an informal investigation, the investigating judge or judges shall, if they are of the opinion that such concerns regarding the health and/or capacity arise, recommend to the judge concerned that he or she receive medical assistance or take other steps as deemed appropriate by the investigating judge or judges. The investigating judge(s) shall report such opinion and recommendation to the Judicial Conduct Committee. In the event of non-compliance by the judge concerned, the investigating judge(s) shall report such non-compliance to the Judicial Conduct Committee in the report to be submitted to the Committee upon completion of the informal investigation (Head 26(6)-(8)).

Where, in the course of a formal investigation, the Panel of Inquiry forms the view that the matter under investigation or part thereof concerns or may concern the health and/or capacity of the judge concerned, the Panel of Inquiry may report that to the Judicial Conduct Committee (Head 29(8)).

The Judicial Conduct Committee, where it receives such a report, may refer the report to the Chief Justice, the President of the court to which the judge is a member or where the judge concerned is the Chief Justice to the Presidents of the High, District and Circuit Courts. On receipt of such a report, the Chief Justice, the President of the Court concerned or the presidents may recommend that the judge concerned receive medical or other assistance as deemed appropriate. Such recommendation may be reported to the Judicial Conduct Committee (Head 29(9) & (10)).

In the event of non-compliance by the judge concerned, the Chief Justice, the President of the court concerned or presidents shall report such non-compliance to the Judicial Conduct Committee (Head 29(10)).

The Judicial Conduct Committee, upon the receipt of a report regarding the health and/or

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capacity of a judge, may direct the Panel of Inquiry as to whether it should or should not continue with the investigation (Head 29(12)).

ITALY

a) Disciplinary proceedings should be initiated within one year after knowledge of the facts by the attorney general of the Supreme Court. It is not possible initiate the disciplinary proceedings ten years.

b) After the fact;the beginning of the proceedings must be notified within thirty days to the judge.

c) Within two years from the start of the proceedings, the Attorney General shall formulate its demands conclusive; within two years of the request the disciplinary committee must provide its decision.

d) There is not any discretion to allow a complaint.

e) During the investigation a judge can be suspended on the basis of a precautionary measure taken by the Disciplinary Committee at the request of the Attorney General at the Supreme Court or of ministry of Justice: the suspension should be adopted in relation to the criminal court subjected to a precautionary measure and can be taken against the judge prosecuted for intentional crimes punishable by imprisonment or where clear facts of disciplinary relevance of particular gravity, are incompatible with the exercise of the functions.

f) There are other mesaures: trasfer ex officio to another court. The existence of the disciplinary proceedings shall suspend the ability of the judge to pursue the career, to the definition.

ITALY (Council of Presidency for administrative Justice)

a) No.

b) After the preliminary investigation of the Committee, if the CPGA decides to go on in the procedure, the complaint has to be communicate to the judge.
 The judge is also informed of the following stages of the procedure (i.e. decision to go on in the investigation of the case; closure of the investigation; ect.)

c) No.

d) No.

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e) Yes.

f) No.

LITHUANIA

a) The Judicial Ethics and Discipline Commission refuses to institute a disciplinary case if more than three months passed after the day when the grounds for disciplinary liability came to the notice of the Commission. The time when the judge was absent from work due to illness or vacations shall be excluded from this time; or after a lapse of more than three years from the moment of the judge activities that constitute grounds for disciplinary liability.

b) The member of the Commission, who received the motion and materials from the Chairman of the Commission, to prepare them for the meeting of the Commission shall have a right to ask for the explanation from the judge against whom there is a proposal to institute a disciplinary case. The judge whose issue of instituting a disciplinary case is considered shall be informed about the meeting of the Commission and have the possibility to speak out at the meeting of the Commission.

c) If the disciplinary action against the judge is instigated and passed to the Judicial Court of Honour, there is no time limit for the Court of Honour to take a decision.
 Answered above.

d) The Judicial Ethics and Discipline Commission can decide whether to initiate disciplinary case against the judge or refuse to.

e) If a disciplinary case against the judge is instituted due to the concrete case, this judge shall be suspended from the hearing of the case. The issue of the suspension according to the procedure established by laws shall be considered by the Chairman of the court, informed about the institution of the disciplinary case to the judge. The Law on Courts says: Where a disciplinary action is instituted against a judge in respect of a concrete case he is hearing, he shall be disqualified from the hearing.

f) There are no any restrictions while the disciplinary case isn't resolved.
 There are no restrictions or barriers for the judge against whom the disciplinary case is ongoing to apply for the promotion. However the Commission on the selection of judges and the President of the Republic could take into account the fact that the disciplinary case is under investigation when deciding to promote judge.

THE NETHERLANDS

a) No.

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b) No.

c) No, there are no provisions about this in the disciplinary regulation.

The complaints regulation, however, stipulates that a complaint may be dismissed by the Procurator General at the Supreme Court, if the complaint has been submitted after an unreasonably long time.

d) See 2 for an explanation of the difference between the complaints procedure and the disciplinary procedure.

Disciplinary procedure: anyone may write to the president of the court or the Procurator General at the Supreme Court to report misconduct by a judge, requesting that an investigation or disciplinary proceedings be launched. No one can forbid this, and no legal requirements apply to such a letter or request.

Complaints procedure: according to the statutory complaints regulation, the Procurator General is not obliged to request the Supreme Court to launch an investigation, if

- the request does not meet the requirements set,
- the complainant did not previously submit the complaint to the Board of the court,
- the complaints procedure as set by the Board of the court has been completed, and the complainant cannot reasonably be deemed to have sufficient interest in an investigation by the Supreme Court,
- the complaint was submitted after an unreasonably long time,
- the same complainant already has a complaint pending about the same act (except in the event that new facts or circumstances manifest),
- the complainant can start a different kind of procedure,
- disciplinary proceedings concerning the same act are ongoing or will be started.

Each court has its own complaints procedure, which may include provisions differing from those above.

e) Yes, during the investigations in disciplinary proceedings, a judge will be suspended (remuneration may or may not be withheld) by the Supreme Court, if and provided that:

- he is remanded in custody
- he is convicted of a criminal offence, but the judgement is not yet final and conclusive
- he is declared bankrupt, placed under the supervision of a guardian, the statutory debt rescheduling rules are declared applicable, suspension of payment has been granted, or he is detained because of debts, but the judicial decision is not yet final and conclusive

A judge may be suspended by the Supreme Court, if:

- he is charged with a criminal offence
- there is a justified suspicion of other facts or circumstances that could lead to dismissal.

A suspension ends after three months, but the Supreme Court may extend the suspension by up to three months in each case.

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f) The present regulation provides only for suspension (remuneration may or may not be withheld); however, a bill of law is pending that would provide as follows:
 - if speed is of the essence, the judge may be relieved of his duties by a single-judge chamber of the Supreme Court, provided that a motion for suspension has been submitted
 - the judge may, as an order measure and for reasons concerning serious organisational interest, be transferred by the Supreme Court from the court where the judge is presently based to a different court.
 There are no provisions about this, but in practice advancement to a higher office can be postponed or cancelled.

NORTHERN IRELAND

a) Yes. Complaints should be made promptly and, save in exceptional circumstances, within three months of the conduct complained of. All complaints will be acknowledged within 5 working days.

b) As soon as all relevant information is received from the complainant, the Judge will be asked to respond within 20 working days.

c) ‘Less serious complaints’
 Upon receipt of all relevant information, the complaints officer will prepare a report within 10 working days for the Lord Chief Justice who may require further information before the complainant is notified of the decision and any action to be taken
 ‘Serious Complaints’
 If the Lord Chief justice considers that a complaint is within the serious category it will be referred to a complaints tribunal and the parties will be notified of the decision to do so within 5 working days.

d) Complaints should be made within 3 months save in exceptional circumstances. The Lord Chief Justice exercises the discretion.

e) A Judicial Office Holder may be suspended by the Lord Chief justice only where a Statutory Tribunal so recommends. In addition, where the Judge is under investigation for a serious offence or is subject to an investigation for conduct which, if proved, calls into question his or her ability to sit, the Judge may be instructed not to sit. The Lord Chief Justice will not use the option of instructing a Judge not to sit other than in extreme cases

f) See above at 6 [e]. There is no limitation on the career progression of the judge during an investigation.

NORWAY

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a) A complaint must as a general rule be submitted within three months, but The Supervisory Committee for Judges can by discretion decide to assess a complaint who is submitted within one year.

b) There is no set timescale. The Judge will be informed initially, and asked for comments to the complaint.

c) No.

d) No.

e) Yes. If the judge has behaved in a manner which makes it likely he will lose his job. This decision is not made by The Supervisory Committee for Judges but MOJ. It will be a decision made in a labour law case against the Judge.

f) The President of the Court where the Judge is employed can decide that the judge shall not deal with certain types of cases or be given other tasks. There are no formal limitations on a Judges career progression.

POLAND

a) Yes.

According to the Art. 108 § 1 and 2 of the Act law on common courts system:

Art. 108. § 1. Disciplinary proceedings may not be initiated upon the lapse of three years from the time of committing the act.

§ 2. Should disciplinary proceedings be initiated prior to the lapse of the term referred to in § 1, the period of disciplinary limitation lapses upon five years from the time of committing the act. However, should the case not be validly closed before the lapse of the term referred to in § 1, the disciplinary court adjudicates about the disciplinary misconduct and discontinues the proceeding with respect to imposing the disciplinary penalty.

b) Yes.

According to the Art. 114 § 3 of the Act law on common courts system:

Art. 114. § 3. After being presented with the charges, within fourteen days, the accused is entitled to make explanations and to apply for hearing the evidence.

c) Yes.

According to the Art. 115 § 1 and 2 of the Act law on common courts system:

Art. 115. § 1. Upon lodging the motion for hearing the disciplinary case, the president of the disciplinary court fixes the dates for the trial.

§ 2. The date of the trial shall not be later than a month from the date of lodging the motion.

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d) Time limitations and a discretion to allow the complaint is regulated in the Art. 114 § 1, 2, 5, 6 and 7 of the Act law on common courts system:

Art. 114. § 1. The disciplinary commissioner acts in this capacity at a relevant request of the Minister of Justice, the president of the court of appeal or of the circuit court and the board of the court of appeal or circuit court, at the request of the National Council of the Judiciary or on his/her own initiative, upon preliminary clarification of the circumstances indispensable for establishing the attributes of misconduct, and after the judge has made explanations, unless making such explanations is impossible.

§ 2. Upon the proceedings referred to in § 1, there being grounds for instituting disciplinary proceedings, the disciplinary commissioner institutes disciplinary proceedings and provides the judge concerned with written charges. At the same time, with respect to cases referred to in Art. 110 § 3 second sentence, the disciplinary commissioner requests the First President of the Supreme Court for indication of competent disciplinary court to hear the case in the lower instance. The court should be indicated within seven days. (...)

§ 5. Should the disciplinary commissioner not find sufficient grounds for instituting the disciplinary proceedings requested by an authorised body, he/she issues a ruling to refuse the institution thereof. The copy of the ruling is served on the body who lodged the motion for initiation of proceedings, on the board of the appropriate circuit court or court of appeal and on the accused.

§ 6. Within seven days following the service of the ruling referred to in § 5 or of the ruling to discontinue the disciplinary proceedings, the accused, the body which moved for initiation of disciplinary proceedings and the competent board are entitled to lodge a complaint with the disciplinary court.

§ 7. The complaint should be examined within fourteen days upon the date of lodging thereof.

There is not any discretion to allow a complaint to be made outside the time limitation set for initiation of the complaint.

e) Yes.

According to the Art. 129 § 1 and 3, Art. 131 § 4 and 5, Art. 132 of the Act law on common courts system:

Art. 129. § 1. A disciplinary court may suspend a judge from official duties, against whom disciplinary proceedings or proceedings concerning incapacitation have been instituted, and also if it passes a resolution allowing to call a judge to criminal account.

§ 3. A disciplinary court, by suspending a judge from official duties, shall reduce, between 25% and 50%, an amount of his remuneration for the duration of this suspension; this shall not apply to persons towards whom proceedings concerning incapacitation have been instituted.

Art. 131. § 4. A judge may lodge a complaint against the resolution concerning the suspension in the performance of service duties, and the disciplinary commissioner may lodge a complaint also against the resolution reversing the order concerning the break in the performance of the duties referred to in Art. 130 § 2; the complaint shall not adjourn the enforcement of the resolution.

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§ 5. The complaint is considered by the disciplinary court of the higher instance, and in cases referred to in § 3, by the same disciplinary court in a different bench of the same competence. Art. 132. The suspension in the performance of service duties ceases at the time of valid closing of the disciplinary proceedings, unless the disciplinary court had reversed it earlier.

f) Yes.

According to the Art. 130 of the Act law on common courts system:

Art. 130. § 1. If a judge is detained due to being caught red handed when committing an intentional offence or if due to the type of the act committed by the judge the authority of the court or significant interests of the service require an immediate withdrawal from the performance of service duties, the president of the court or the Minister of Justice may order an immediate break in service duties until the time of the issuance of resolution by the disciplinary court, however, not longer than a month.

§ 2. If the judge referred to in § 1 performs the function of the president of the court, the Minister of Justice orders the break in the performance of service duties.

§ 3. The president of the court or the Minister of Justice notify the disciplinary court about the issuance of the order referred to in § 1 within three days from the date of the issuance thereof, and the court immediately, not later than before the lapse of the term for which the break was ordered, issues a resolution on the suspension of the judge in the performance of service duties or reverses the order concerning the break in the performance of the duties. The disciplinary court, notifies the judge about the session if the court deems it reasonable.

PORTUGAL

a) According to article 178 of Law No. 35/2014 , the procedure must be initiated within one year after the practice of disciplinary offense.

The right to initiate the disciplinary procedure ends within 60 days of knowledge of the offense by the High Council of the Judiciary.

b) The judge must be informed of the decision to initiate disciplinary proceedings against him. During the instruction, he must be heard whenever he wants.

Presented to the indictment, the judge must be notified within 48 hours. After that, he can present his defence and indicate the evidence.

c) The disciplinary procedure should be completed within eighteen months of its inception. This period is suspended during the time that , by virtue of judicial consideration or decision of any question , the march of due process can not begin or continue to take place.

d) Any citizen can file a disciplinary complaint.

The complaint is received by the Vice-President of the High Council of the Judiciary or by a full-time member. If unfounded, it can be filed immediately. Otherwise, it should be sent for consideration at a meeting of members of the High Council of the Judiciary.

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e) According to article 116 of the EMJ, the magistrate accused in disciplinary proceedings may be preventively suspended from duties, upon proposal of the instructor. So it can happen when there is strong evidence that the offense will be punished with transfer or worse.

It is required that the continued performance of the service is detrimental to the process, or service, or to the prestige and dignity of the office.

Preventive suspension may not exceed 180 days, exceptionally extended for another 90 days.

f) According to article 108 of the EMJ, during the pendency of disciplinary proceedings the magistrate is ranked for promotion or advancement, but they are suspended with regard to him, reserving his seat until the final decision.

If the process is terminated, the conviction revoked or a penalty is applied that does not affect the promotion or access, the magistrate is promoted or appointed.

ROMANIA

a) The disciplinary action may be exercised within 30 days of the completion of the preliminary disciplinary investigation, but not later than 2 years after the date on which the act was committed.

b) For the purpose of disciplinary investigation, the judicial inspector communicates to the judge, to which was ordered the disciplinary investigation, the invitation to participate in the disciplinary investigation and a copy of the resolution starting the disciplinary investigation. If the communication procedure fails for objective reasons, this does not preclude disciplinary investigation and does not affect its validity.

c) Disciplinary investigation shall be carried out within 60 days from the date of its commencement, unless the suspension occurs. For valid reasons, the disciplinary investigation may be extended by 30 days.

d) No.

e) During the disciplinary investigation, if the judicial inspector or the team of judicial inspectors consider that the further exercise of the function of the judge investigated could affect the impartial conduct of disciplinary proceedings or that this procedure is likely to seriously affect the prestige of the judiciary, make a proposal to suspend the magistrate until the completion of the procedure.

f) No.

SERBIA

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a) Yes. Disciplinary proceedings are subject to the statute of limitation after two years from the day of the commission of an offence.

b) The Disciplinary Commission shall forward to the judge against whom the disciplinary proceedings are conducted the proposal for the initiation of disciplinary proceedings, within a period of eight days from the day of reception.

Having received a statement from the judge, or after the expiration of the set period, Chairman of the Disciplinary Commission shall schedule a disciplinary hearing.

Along with the summons, judge's statement shall be forwarded to the Disciplinary Prosecutor.

A minimum of eight days must pass between the delivery of summonses to parties and the day of the disciplinary hearing.

c) Yes.

After the hearing and the voting, the Disciplinary Commission shall make a decision in the form of Decree.

Within a period of eight days from the day of the announcement of the decision, the Disciplinary Commission shall create a written decision and forward it, without delay, to the Disciplinary Prosecutor, judge, and his/her representative.

d) No.

e) No.

f) No.

SLOVAKIA

a) Yes. Motion to commence disciplinary proceedings may be lodged at disciplinary panel within six months from the day when the body authorised to lodge such motion had learned of disciplinary offence, however no later than two years from the day the offence was committed and if it concerns a misdemeanour offense the judge had committed by fault resulting in delays in the judicial proceeding no later than four years from the day the misdemeanour was committed on.

If it concerns misdemeanour or conduct, which may be subject to sanctions under special regulation, otherwise authorised body may hand over or refer such case to body stipulated in this law (e.g. law enforcement body, court, ...) within one year from the day it was committed, otherwise the motion to commence disciplinary proceeding may not be lodged.

b) Yes, 10 days from the day the motion to commence disciplinary proceedings was lodged.

c) Yes, as a rule, disciplinary panel is obliged to decide on disciplinary offense or on

6 Is there a set timescale within which disciplinary proceedings should be
a) initiated? b) communicated to the Judge about whom the complaint is made?
c) adjudicated upon?, and if so, what is that time? d) outside any time limitation set for
initiation of the complaint, is there any discretion to allow a complaint to be made, and if
so who exercises that discretion? e) can the Judge be suspended during the investigation?
If so in what circumstances? f) During the course of the investigation are there any other
measures or restrictions which could be taken against the Judge, or is there any limitation
on the career progression of the Judge?

misdemeanour or judge within 3 months from lodging motion to commence disciplinary proceedings.

See a), b), c)

d) No.

e) Yes, under conditions of § 22 (2) of the Act on Judges, i.e.:

Temporary suspension from judicial office is decided by disciplinary panel upon the motion of:

- a) Minister, if the judge is facing criminal charges for intentional crime;
- b) the one, who lodged motion for initiating disciplinary proceedings against judge for actions, for which he may be removed from the judicial office,
- c) President of the Judicial Council, if the Judicial Council held that the judge does not meet the requirements of judicial competence

f) Yes. Judge, who was temporarily suspended from judicial office, shall be entitled to salary from the day of suspension in the amount of 30% of base salary. Thus provided salary shall be increased by 10% of base salary for each dependent child, however up to the maximum of 50% of base salary. During the temporary suspension from judicial office the judge may not stay at workplace with the exception of time necessary for claiming entitlements of judge relating to his personal office. As regards the restrictions in the career progression, e.g. the judge might not be allowed to apply in the selection procedure to the court of higher instance.

SLOVENIA

a) Disciplinary proceedings against a judge may no longer be initiated after the expiry of two years from the day of a violation. The statute of limitation begins to apply from the cessation of activity or the omission constituting a disciplinary violation.

b) No.

c) Yes. Disciplinary proceedings fall within the statute of limitation in four years from the committal of a disciplinary violation.

d) There is one exception in the event of a judge being convicted by a final judgement in the criminal procedure. In such a case the disciplinary prosecutor decides whether to introduce disciplinary proceedings in the time limit of three months from the finality of the criminal judgement of conviction.

e) After a proposal for the pronouncement of a disciplinary sanction has been made the president of the Supreme Court may, with respect to the character and severity of a disciplinary violation alleged, temporarily suspend the judge from performing his or her

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judicial office. If criminal proceedings have been instituted against the judge on suspicion that a criminal offense was committed by violating the judicial office, the president of the Supreme Court is obliged to do the above-mentioned.

f) No.

SPAIN

a) Yes. Generally speaking the applicable deadline is that of the statute of limitation that applies to the disciplinary offences, which, according to Article 416.2 of the Organic Law on the Judiciary, is two years for very serious disciplinary offences, one year for serious disciplinary offences, and six months for minor disciplinary offences.

b) Yes. In general terms, ten days from the moment in which the initiation of proceedings is formally ordered.

c) Yes. As a general rule, six months from the moment of initiation of disciplinary proceedings, in accordance with Article 425.6 of the Organic Law on the Judiciary.
and if so what is that time?
Please refer to the answers to the previous questions.

d) There is no discretion to allow a complaint to be made after the relevant period of limitation has expired. If a complaint is lodged when the relevant period of limitation has expired, the proceedings must be dismissed pursuant to Article 416.2 of the Organic Law on the Judiciary, and as a consequence of the principle of legal certainty, in accordance with Article 9.3 of the Spanish Constitution.

e) Yes. A Judge can be suspended during the investigation phase, up to a maximum of six months and provided that the disciplinary proceedings were initiated due to the commission of a very serious alleged disciplinary offence described in Article 417 of the Law on the Judiciary, in accordance with the stipulations of Article 424.1 of the same Law.

f) In principle, the simply initiation of disciplinary proceedings does not imply any limitation of the Judge's professional rights, except where the precautionary and provisional suspension of the Judge in the exercise of his or her duties has been specifically ordered under Article 424 of the Law on the Judiciary.

SWEDEN

a) The disciplinary proceedings should be initiated and applied by the employer immediately (15 § Anställningsförrordningen).

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on the career progression of the Judge?

b) Yes, according to the legislation (17 § Lag om offentlig anställning) the judge must be informed in writing of what is stated against him within two years of the offense.

c) No.

d) No.

e) No, not if the procedure only deals with disciplinary offenses.

f) There are no formal rules in this area.

TURKEY

a) In line with the paragraphs 2 & 3 of Article 72 of Law 2802 on Judges and Prosecutors, with the exception of acts requiring the penalties of dismissal and displacement, a disciplinary investigation may not be initiated 3 years after the commission of a disciplinary act which requires a disciplinary investigation per this Law.

b) Despite the provision regarding the notification of disciplinary proceedings to the judge about whom the complaint is issued, the time limitation is not specified.

c) Although there is no pre-determined time-limit or period regarding the adjudication of disciplinary proceedings, the paragraphs 2 & 3 of Article 72 of Law 2802 on Judges and Prosecutors stipulate that no disciplinary penalty may be imposed in case five years have lapsed after the acts calling for a disciplinary penalty. In case the act which requires a disciplinary penalty also constitutes an offense with a longer statute of limitations in the law and if a criminal investigation or prosecution is launched, such longer periods shall apply than those set out in the second paragraph.

d) Apart from the defined periods, no person or entity has the discretion to issue complaint.

e) The Article 77 (& others) of Law 2802 on Judges and Prosecutors stipulates that “If it is considered that the investigated judge or prosecutor should be suspended for the interest of the investigation or for the sake of protecting the reputation and respectability of the judiciary, the High Council of Judges and Prosecutors may apply the interim measure of suspension or transfer to another jurisdiction by granting temporary authorization until the conclusion of the investigation”.

f) In line with the provision in the Article 17/1-e of the HCJP Principle Decision regarding Principles of Promotion of Judges and Prosecutors (Official Gazette 28214 of 24.02.2012) stipulating “During the examination for (professional) progress... examination or investigation files (if any) shall be submitted to the Council”, suspension of progress may be applied by the

Appendix C

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a) initiated? b) communicated to the Judge about whom the complaint is made?
c) adjudicated upon?, and if so, what is that time? d) outside any time limitation set for
initiation of the complaint, is there any discretion to allow a complaint to be made, and if
so who exercises that discretion? e) can the Judge be suspended during the investigation?
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time file is finalized, depending on the seriousness of the allegations against the judge in investigation or prosecution files.

7

a) By whom and how are the disciplinary proceedings adjudicated?

b) What are the criteria for the appointment of the person or persons adjudicating on the disciplinary proceedings?

c) Is there any input by anyone from the Ministry of Justice or other Government representative, or is such adjudication within the Judiciary or Council for the Judiciary?

7 a) By whom and how are the disciplinary proceedings adjudicated? b) What are the criteria for the appointment of the person or persons adjudicating on the disciplinary proceedings? c) Is there any input by anyone from the Ministry of Justice or other Government representative, or is such adjudication within the Judiciary or Council for the Judiciary?

ALBANIA

a) The Disciplinary proceedings are reviewed at the plenary session of the HCJ. After the request for disciplinary proceedings is presented by the MD

b) The decision is taken by the members of the High Council of Justice The High Council of Justice consists of the President of the Republic, the President of the High Court, the Minister of Justice (ex officio members), three members elected by the Assembly of the Republic of Albania and nine judges of all levels elected by the National Judicial Conference. Members of the High Council of Justice who are elected by the National Judicial Conference are to have been judges for no less than ten years. Members of the High Council of Justice who are elected by the Assembly are to be jurists with no less than 15 years experience in the profession.

c) The Minister of Justice has the exclusive competence to initiate the disciplinary proceeding. He takes part in the discussion during the plenary session of HCJ, but he has no right to vote.

AUSTRIA

a) The Courts of Appeal acting as Disciplinary Courts (see above 5 c) adjudicate disciplinary proceedings.

b) Sec 36 RStDG provides for staff panels, inter alia also for a staff panel at the Courts of Appeal. Such a staff panel consists of five members (President and Vicepresident of the Court of Appeal and three judges of the Court of Appeal being elected to this panel).

This staff panel of the Court of Appeal has to compose the Disciplinary Panels for a period of five years, consisting of senior judges and judges of the Court of Appeal. Furthermore a disciplinary investigator has to be appointed among the judges of the Court of Appeal (sec 112 RStDG).

The Court of Appeal when sitting as Disciplinary Court sits in a disciplinary panel of three senior judges, one of which chairs the panel. The preliminary investigations must be led by

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the disciplinary investigator who is not part of the disciplinary panel.

c) During the disciplinary proceedings the Disciplinary Public Prosecutor upholds the interests of Public Service (sec 118 RStDG). The Disciplinary Public Prosecutor is obliged to report to the Ministry of Justice being the Supreme Administrative Body representing the interests of Public Service.

BELGIUM

a) - Minor disciplinary sanctions can be inflicted by the authority entitled to start a disciplinary procedure.

- Major disciplinary sanctions can only be imposed by a judgement of the disciplinary court. The law created a disciplinary court in NAMUR and GHENT, with a possibility of appeal at the disciplinary court of appeal in BRUSSELS.

(Note: Members of the public prosecution can only be “revoked” (discharged) by a Royal Decree. If the disciplinary court considers that a member of public prosecution should be “revoked”, they transmit a motivated proposal to the King. The King has the possibility to disagree and impose another sanction).

b) The judges of the disciplinary court are designated by the general assemblies of the court and courts of appeal out of judges with an experience of at least 10 years and may not have been subject themselves to a disciplinary sanction (art. 259sexies/1 Judicial Code).

The competent chamber of the disciplinary court is always composed of two judges of the disciplinary court and one assessor whose capacity varies according to the capacity of the magistrate who has to be judged (art.409 Judicial Code):

- If the case concerns a judge, the assessor is a judge of the same level as the pursued judge;

- If the case concerns a member of public prosecution, the assessor is a member of public prosecution of the same level as the pursued person

The assessors are selected by the general assemblies of the courts/the prosecutors’ offices and designated by the presidents of courts/the prosecutors (art. 411 Judicial Code).

A member of the Bar Council (lawyer) is always present with advisory vote (art. 409 Judicial Code).

c) The minister of Justice can give an injunction to the public prosecutor to seize the disciplinary authority with a request of suspension pending a criminal or disciplinary case (art. 406 Judicial Code).

Furthermore, the minister of Justice is the authority competent to start a disciplinary procedure against the highest member of the public prosecution, i.e. the prosecutor general at the Supreme Court (art. 414, 3°, Judicial Code).

Otherwise, there is no specific input by anyone from the Ministry of Justice or another representative. The Minister of Justice can, like the High Council of Justice, sent complaints that he receives form citizens the competent authority.

BULGARIA

7 a) By whom and how are the disciplinary proceedings adjudicated? b) What are the criteria for the appointment of the person or persons adjudicating on the disciplinary proceedings? c) Is there any input by anyone from the Ministry of Justice or other Government representative, or is such adjudication within the Judiciary or Council for the Judiciary?

a) Please refer to the answer to question 5.c) above

b) The adjudication on disciplinary proceedings for imposing a disciplinary sanction on a magistrate is done by the Supreme Judicial Council which is a permanent collective body representing the Judiciary and securing its independence. The SJC is composed of 25 members, out of whom three are elected ex officio (the Chairpersons of the Supreme Court of Cassation and of the Supreme Administrative Court, and the Prosecutor General), 11 are elected by the National Assembly, and 11 by the judicial system authorities, among them 6 judges, 4 prosecutors and 1 investigating magistrate. Lawyers of high professional and moral standing, having at least 15 years of legal length of service, are elected members of the SJC.

The SJC adjudicates on disciplinary proceedings against magistrates by a majority of more than half of the number of SJC members (13 members). No member of the Supreme Judicial Council is entitled to vote on a decision concerning him/her personally or his/her spouse, relative of direct lineage, of collateral lineage to the fourth degree and by marriage to the third degree, or if there are other circumstances arousing suspicions in his/her impartiality, in which case the member of the Supreme Judicial Council must withdraw of his/her own volition from the session.

The disciplinary practice of the Supreme Judicial Council and the Supreme Administrative Court assumes that where the proposal for a disciplinary sanction is made by five SJC members and three members are elected by a draw of lots to the disciplinary panel, there are no circumstances arousing suspicions in their impartiality and they can therefore take part in the vote for adjudicating on the disciplinary proceedings.

c) The Minister of Justice holds and chairs the sessions of the Supreme Judicial Council but has no right to vote in adjudication. The Minister may propose to impose a disciplinary sanction on a judge, prosecutor, investigating magistrate, administrative head or deputy administrative head, but cannot vote when the SJC adjudicates on imposing a disciplinary sanction.

The Minister of Justice is a disciplinary sanctioning body and may impose a disciplinary sanction on a state enforcement agent or a recordation judge (Article 311 JSA).

The Minister of Justice or other Government representative may not interfere in the SJC disciplinary activity and if their media statements happen to raise suggestions which adversely affect the independence of the Judiciary, the SJC responds promptly by releasing public statements and declarations.

CROATIA

a) A decision on disciplinary responsibility is brought by the State Judicial Council by a majority of votes of all members of the Council.

b) The disciplinary proceedings shall be conducted by the State Judiciary Council, and the members of the State Judiciary Council are elected to a term of four years. The Council may, for certain disciplinary procedures, appoint special disciplinary council who will carry out the procedure, to determine the facts and explain the observation before the Council. The Council may appoint an investigative committee for individual disciplinary proceedings,

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composed of judges of regular or specialized courts. The investigative committee shall establish the facts and present them during the proceedings before the Council.

c) The State Judiciary Council shall have eleven members, consisting of seven judges, two university professors of law, and two members of Parliament, one of whom shall be from the opposition. Council members from the ranks of judges shall consist of: two judges of the Supreme Court of the Republic of Croatia, two county court judges, two municipal court judges, one judge of the specialised courts.

CZECH REPUBLIC

a) By the disciplinary panel of the Supreme Administration Court.

b) There is a list of judges and other persons for the disciplinary proceedings (maximum of 5 judges from the high courts, 3 judges from regional courts and 1 judge from each district court).

c) The Minister of Justice can initiate the disciplinary proceedings.

DENMARK

a) Proceedings are adjudicated by the Special Court of Indictment and Revision and in some cases the President of the relevant court (§48 – see question 4a).

b) According to § 1a in the Administration of Justice Act, the Special Court of Indictment and Revision consists of 5 members. Members are appointed for a period of 10 years and can only be removed by judgement (see question # 9). All members are appointed by the Government upon recommendation from the Minister of Justice. The members must be:

- 1 Supreme Court Judge
- 1 High Court Judge
- 1 District Court Judge
- 1 Lawyer (suggested by the Danish Bar and Law Society)
- 1 University professor of jurisprudence or a jurist with special training in jurisprudence

c) All members are appointed by the Government upon recommendation from the Minister of Justice.

The Special Court of Indictment and Revision is independent from the Government in its daily work and rulings.

ENGLAND AND WALES

a) Complaints may be investigated and dismissed by: JCIO officials; Advisory Committees, in respect of magistrates; and, Tribunal Presidents, in respect of tribunals judges. A decision to discipline a judge may be taken only by Lord Chancellor and the Lord Chief Justice. (The Lord Chief Justice may delegate this responsibility if he so wishes).

<p>7 a) By whom and how are the disciplinary proceedings adjudicated? b) What are the criteria for the appointment of the person or persons adjudicating on the disciplinary proceedings? c) Is there any input by anyone from the Ministry of Justice or other Government representative, or is such adjudication within the Judiciary or Council for the Judiciary?</p>
<p>b) The Judicial Discipline (Prescribed Procedures) Regulations 2014 and the supporting rules specify who may adjudicate in respect of conduct complaints. A person will be nominated to investigate the complaint, and that person shall be at least of the same or a higher rank than the judge investigated.</p> <p>c) Conduct investigations are carried out by: the JCIO, Tribunal Presidents, or Magistrates' Advisory Committees, as appropriate, all of which are independent of Government and the Ministry of Justice. The final decision to issue a disciplinary sanction is taken jointly by the Lord Chief Justice and the Lord Chancellor.</p>
<p>FRANCE</p> <p>a) Disciplinary proceedings are adjudicated by the High Council's president, thus the president of the Court of cassation if a judge is concerned and the general prosecutor of the Court of cassation if a prosecutor is concerned.</p> <p>b) There is no criteria for the appointment of one or two members from the high Council.</p> <p>c) It is exclusively for the president to decide which member will handle a case.</p>
<p>GERMANY</p> <p>a) See answer to question 5a)</p> <p>b) See answer to question 5a).</p> <p>c) See answer to question 5a).</p>
<p>HUNGARY</p> <p>a) In disciplinary cases the service courts of first and second instance shall proceed as described by the law. In the disciplinary cases of judges and related compensation cases and further in legal disputes arising from the professional evaluation of the activities and of the leadership duties of judges, the service court of first instance attached to the court of appeal in the territory of Budapest and the service court of second instance attached to the Curia shall proceed. The relevant sections can be found in the appendix.</p> <p>b) The members of the service court shall be nominated by the plenary meeting of the Curia and the plenary conference of regional court of appeal and regional court judges. The chair and members of the service court shall be appointed by the NJC from among the judges of the Curia, the regional courts of appeal and regional courts. The vice-chair of the service court shall be appointed by the chair of the given service court. As defined by the ALSRJ, The service court of first instance shall be comprised of maximum 75 persons, while the service court of second instance shall consist of maximum 15 persons. The following judges may not be appointed as service court judges: members of the NJC, alternate members of the NJC, chair</p>

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or vice-chair entitled to initiate disciplinary proceedings. The rules of case allocation shall be defined by the rules of procedure of the service court. The service court shall proceed in a chamber of 3 members (hereinafter referred to as the “service court chamber”) which shall be established by the chair of the service court. Disciplinary proceedings shall be prepared and a preliminary investigation shall be conducted by an investigating commissioner. The judge of a court inferior to the level of the position of the judge concerned may not proceed as investigating commissioner.

The relevant sections can be found in the appendix.

c) The judiciary operates independently from governmental organisations.

The Ministry of Justice does not supervise the procedure. The appointed disciplinary chamber of the service court shall decide on the institution of disciplinary proceedings, the refusal of disciplinary proceedings or the institution of a preliminary investigation, subject to the simultaneous notification of the judge concerned.

The relevant sections can be found in the appendix.

IRELAND

a) The Judicial Conduct Committee makes a determination on any report submitted to it by the Panel of Inquiry. Such a determination shall be in writing and set out the reasons for its finding. A determination may include one or more of the measures set out below in question nine. The Secretary of the Judicial Conduct Committee shall notify in writing the judge concerned, and if the investigation was into a matter the subject matter of a complaint, the person who made the complaint. The Committee initiates the taking of action where it considers that a particular course of action should be taken. Where a complaint is made or the Committee of its own motion considers that the judge concerned has failed to comply with a determination, the Committee shall consider the most appropriate course of action to take in the circumstances (Head 31).

b) The Judicial Conduct Committee shall consist of eight judges and three lay members, comprising the following (Head 20(1)):

- (i) The Chief Justice or a judge of the Supreme Court nominated by the Chief Justice,
- (ii) A judge of the Supreme Court elected by the ordinary judges of that court,
- (iii) the President of the High Court or a judge of that court nominated by the President of the court,
- (iv) a judge of the High Court elected by the ordinary judges of that court,
- (v) the President of the Circuit Court or a judge of that court nominated by the president of the court,
- (vi) a judge of the Circuit Court elected by the ordinary judges of that court,
- (vii) the President of the District Court or a judge of that court nominated by the President of the court,
- (viii) a judge of the District Court elected by the ordinary judges of that court, and
- (ix) three persons of standing in the community (“lay members”) appointed by the

<p>7 a) By whom and how are the disciplinary proceedings adjudicated? b) What are the criteria for the appointment of the person or persons adjudicating on the disciplinary proceedings? c) Is there any input by anyone from the Ministry of Justice or other Government representative, or is such adjudication within the Judiciary or Council for the Judiciary?</p>
<p>Government.</p> <p>c) No, save that the Government appoints three lay members to the Judicial Conduct Committee.</p>
<p>ITALY</p> <p>a) Disciplinary procedures are judged by the disciplinary committee set up at the High Council and according to a procedure established by law.</p> <p>b) The six members of the Disciplinary Committee shall be elected by the Plenary Assembly of the High Council from among its members.</p> <p>c) No input by anyone from Ministry of Justice or other government representative.</p>
<p>ITALY (Council of Presidency for administrative Justice)</p> <p>a) The Council of Presidency for administrative Justice is the disciplinary tribunal for administrative judges.</p> <p>b) All the member of the CPGA adjudicate on disciplinary proceedings in plenary session. The three members of the Committee assigned for the preliminary investigations are appointed by the CPGA among its members.</p> <p>c) No, any</p>
<p>LITHUANIA</p> <p>a) The final decision is taken by the Judicial Court of Honour.</p> <p>b) The Judicial Court of Honour shall be formed for four years and shall consist of ten members. The President of the Republic and the of the Parliament each appoint two members (who should be representatives of the society, not judges) and the Judicial Council shall elect 6 members: 1 member from each the Supreme Court, the Court of Appeal and the Supreme Administrative Court and 3 members from all regional administrative courts, regional courts and district courts. The Judicial Council shall elect the Chairman of the Judicial Court of Honour from the elected members of the Judicial Court of Honour. As practice shows in order to be elected to the Judicial Court of Honour the judge should be respectable among their peers, have a good repute, good confidence, and be a good example of conduct for all judges. The President of the Republic and Speaker of the Parliament appoint respectable and trustworthy representatives of the society.</p> <p>c) The President of the Republic delegates 2 members to the Judicial Ethics and Discipline Commission and 2 members to the Judicial Court of Honour. The Speaker of the Parliament delegates 1 member to the Judicial Ethics and Discipline Commission and 2 members to the Judicial Court of Honour.</p>

7 a) By whom and how are the disciplinary proceedings adjudicated? b) What are the criteria for the appointment of the person or persons adjudicating on the disciplinary proceedings? c) Is there any input by anyone from the Ministry of Justice or other Government representative, or is such adjudication within the Judiciary or Council for the Judiciary?

THE NETHERLANDS

a) The president of the court determines whether to issue a written warning. Other disciplinary punishments and sentences may be imposed solely at the discretion of the Supreme Court.

b) They must be judges and need to have been appointed president of a court or to be members of the Supreme Court.

The Constitution stipulates that judges may be supervised only by members of the judiciary responsible for administering justice, and that judges may be suspended or dismissed by a court pertaining to the judiciary designated by the law only in the cases provided for by the law. The Supreme Court is this court of law.

c) Within the Judiciary.

NORTHERN IRELAND

a) For ‘less serious complaints’ by the Lord Chief Justice and for ‘serious complaints’ by a complaints tribunal which will prepare a report summarising its findings and make a recommendation to the Lord Chief Justice as to disposal.

b) The Complaints Tribunal consists of two Judicial Office Holders of at least the seniority set out in the Code of Practice and a lay member selected by the Lord Chief justice from a panel of persons appointed by him for that purpose in accordance with section 16 of the Act.

c) There is no input by anyone from the Ministry of Justice or other government representative. The Lord Chief justice has sole statutory responsibility for determining complaints about the conduct of Judicial Office Holders.

NORWAY

a) By The Supervisory Committee for Judges. The case is prepared/investigated by the secretariat of The Supervisory Committee for Judges.

b) The Supervisory Committee consist of two judges from the courts, one lawyer and two members as representatives of the public. When the Supervisory Committee considers cases which concern a land consolidation judge one judge from the land consolidation court shall participate instead of a judge. The King appoints the members of the Supervisory Committee and their personal substitute members, and determine which member should chair the Supervisory Committee.

c) The MOJ have the right to submit a complaint. There is no input from the MOJ or other Government representative in the adjudication. The secretariat of The Supervisory Committee for Judges is staffed by employees from The Norwegian Courts Administration. They are obviously able to give input.

7 a) By whom and how are the disciplinary proceedings adjudicated? b) What are the criteria for the appointment of the person or persons adjudicating on the disciplinary proceedings? c) Is there any input by anyone from the Ministry of Justice or other Government representative, or is such adjudication within the Judiciary or Council for the Judiciary?

POLAND

a) According to the Art. 110 § 1 of the Act law on common courts system:

Art. 110. § 1. The following disciplinary courts are set up to hear disciplinary cases against judges:

- 1) in the lower instance - courts of appeal,
- 2) in the higher instance - the Supreme Court.

The disciplinary cases of the Supreme Court Judges are adjudicated only by the Supreme Court.

b) All judges of the courts of appeal (excluding only the president of each court of appeal and the disciplinary commissioner of each court of appeal) as far as all judges of the Supreme Court (excluding the presidents of this court and the disciplinary commissioner) are disciplinary judges who adjudicate the disciplinary proceedings.

According to the Art. 111 of the Act law on common courts system:

Art. 111. The composition of the disciplinary court is decided by a draw from among the judges of a given court, provided, however, that at least one of the disciplinary court judges permanently adjudicates in criminal cases. The judge who permanently adjudicates in criminal cases and has been on service the longest is the presiding judge of the disciplinary court.

c) No.

Only the disciplinary commissioner and the accused judge take part in this proceedings in the front of the disciplinary court.

The disciplinary commissioner acts in this capacity at a relevant request of: (-) the Minister of Justice,

- (-) the president of the court of appeal or of the circuit court,
- (-) the board of the court of appeal or circuit court,
- (-) the National Council for the Judiciary

or on his/her own initiative.

The Minister of Justice or the Council for the Judiciary can appeal against the sentence of the disciplinary court of the lower instance to the Supreme Court.

Even when the Minister of Justice or the Council for the Judiciary have initiated the disciplinary procedure or have appealed against the sentence of the disciplinary court of the lower instance, they are not a parties of the disciplinary procedure.

In Poland the Council for the Judiciary is not a disciplinary body which adjudicate disciplinary cases itself.

PORTUGAL

a) By the High Council of the Judiciary. At a meeting, the members discuss the complaint and vote. Then they appoint the instructor.

b) As mentioned, the statement of the case is made by a judge who is part of the body of inspectors of High Council of the Judiciary.

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If the target is a judge of the court of appeal or the Supreme Court, a judge of the latter is appointed.

c) The Government does not intervene in the procedure.

ROMANIA

a) The disciplinary proceedings are adjudicated by the Section for judges of the Superior Council of Magistracy.

b) The Section for judges of the SCM ruling in disciplinary matters is made up by 9 judges, members of the SCM. They represent all the levels of jurisdiction (first instance, tribunals, courts of appeal and High Court of Cassation and Justice) and they are elected by their peers at each level within the general assemblies of the respective level of courts.

c) There is no input from anyone else but the judges. In disciplinary matters, the minister of justice or the President of the High Court do not attend the meetings.

SERBIA

a) The Disciplinary Commission conducts the disciplinary proceedings following the proposal of the Disciplinary Prosecutor.

The Disciplinary Prosecutor files a motion to initiate the disciplinary proceedings based on a disciplinary report.

b) The High Judicial Council appoints the members of disciplinary bodies from among rank of judges that hold permanent position.

Requirements for the appointment of members of disciplinary bodies are:

-A judge with a minimum of ten years of judicial office who has never been issued a disciplinary sanction may be appointed Disciplinary Prosecutor.

-A judge with a minimum of ten years of judicial office who has never been issued a disciplinary sanction may be appointed Deputy Disciplinary Prosecutor.

-A judge with a minimum of ten years of judicial office who has never been issued a disciplinary sanction may be appointed Chairman of the Disciplinary Commission, member, or Deputy.

c) No. Only independent disciplinary bodies established by the High Judicial Council .

SLOVAKIA

a) The disciplinary proceedings are adjudicated by the disciplinary panel, which is obliged to decide on disciplinary offense or on misdemeanour of Judge within three months from lodging motion to commence disciplinary proceedings. If the disciplinary panel arrives at the conclusion that the Judge had committed disciplinary offense or misdemeanour, it shall decide that he is guilty and shall impose disciplinary measure on him.

If the disciplinary panel arrives at the conclusion that the Judge had not committed

7 a) By whom and how are the disciplinary proceedings adjudicated? b) What are the criteria for the appointment of the person or persons adjudicating on the disciplinary proceedings? c) Is there any input by anyone from the Ministry of Justice or other Government representative, or is such adjudication within the Judiciary or Council for the Judiciary?

disciplinary offense or misdemeanour or that no disciplinary offense or misdemeanour may be proven to him, it shall acquit the Judge.

Disciplinary panel shall stop the disciplinary proceedings if some of the reasons to stop proceedings stipulated in the act shall emerge during verbal hearing.

Chairman of disciplinary panel shall announce the decision at the verbal hearing and always publicly. Decision shall be made out in writing within 30 days from the day of its announcement. In addition to the verdict, such decision shall include a brief reasoning thereof and instruction on appeal. If the decision of the disciplinary panel was not reached unanimously, the decision shall also include the minority position, which is different from that of the majority including brief reasoning thereof. Publication of the disciplinary panel decision shall be governed by special regulation.

b) Judicial Council shall elect for a period of three years 10 Chairmen of disciplinary panels and 30 members of disciplinary panels, who, for the purpose of creating disciplinary panels, are listed in three following databases:

- database of Chairmen of panels elected from candidates proposed by Boards of Judges
- database having 15 members of panels elected from candidates pro-posed by the Minister, of which eight are Judges meeting conditions stipulated by the Act
- database having 15 members of panels elected from candidates pro-posed by the National Council, of which eight are Judges meeting conditions stipulated by the Act

Boards of judges, Minister and the National Council shall propose to Judicial Council candidates upon request of the Judicial Council, in the request the Judicial Council shall specify:

- number of members of disciplinary panels or Chairmen of disciplinary panels, which shall be elected based on proposals of individual submit-ters,
- database, they are to be elected into,
- whether it is necessary to elect a Judge or other person than Judge, and
- deadline for submitting proposed candidates, which may not be shorter than 45 days from the day of delivery of the request.

Judicial Boards, Minister, and the National Council shall submit to the Judicial Council twice the number of candidates for members of disciplinary panels or candidates for Chairmen of disciplinary panels, which shall be elected by the Judicial Council

If sufficient number of Chairmen of disciplinary panels or members of disciplinary panels were not elected in individual databases, Judicial Council shall declare supplementary elections forthwith in the necessary scope.

President of the Judicial Council is obliged to arrange for publication of databases pursuant to Para 1 at the website of the Judicial Council and publication of all changes in those databases without delay.

c) The adjudication is within the judiciary.

SLOVENIA

a) Disciplinary proceedings are adjudicated by the disciplinary court of first instance and the disciplinary court of second instance. This first court is composed of eight judges: two

7 a) By whom and how are the disciplinary proceedings adjudicated? b) What are the criteria for the appointment of the person or persons adjudicating on the disciplinary proceedings? c) Is there any input by anyone from the Ministry of Justice or other Government representative, or is such adjudication within the Judiciary or Council for the Judiciary?

Supreme Court judges, two judges of appellate courts, two district court judges and two local court judges. One of the Supreme Court judges is the president of the disciplinary court of first instance, and the other his or her substitute in case of the president being absent.

The disciplinary court of first instance adjudicates an individual matter in a panel of three judges, in which at least one judge must be of the same level as the judge against whom the disciplinary proceedings were instituted. The composition of the panel is determined by the disciplinary court's president.

b) No such specific criteria are stipulated by the Judicial Service Act dealing with disciplinary provisions save the provision determining that the office of a disciplinary judge or a disciplinary prosecutor terminates if such a person has been pronounced a disciplinary sanction.

c) No input by the Ministry of Justice or other Government representative is permitted in these proceedings as that would be considered interfering with the independence of judges in performing their judicial office. The entire proceedings are more or less conducted by the judiciary with certain limited powers by the Council for the Judiciary concerning a proposal to initiate such proceedings, a proposal to the parliament to discharge the violating judge, and a proposal to appoint disciplinary authorities.

SPAIN

a) In principle, disciplinary proceedings are adjudicated by the Disciplinary Committee of the General Council for the Judiciary, which is composed by seven members of the Council.

In cases of imposition of the most serious sanction, that of removal from office, the Plenary Session of the Council, composed by the 21 members of the Council, is responsible for the adjudication of the disciplinary proceedings. The decisions of both the Plenary and the Disciplinary Committee of the Council are adopted by a majority of the members of each body.

b) The 20 members of the Plenary of the Council for the Judiciary are appointed by the Spanish Parliament among judges (12 members of judicial background) or prestigious lawyers (8 lay members). The members appoint a President, who is normally a prestigious judge (justice of the Supreme Court) or lawyer. The Plenary Session of the General Council for the Judiciary is responsible for the appointment of the seven members of the Disciplinary Committee among the members of the Council. The Disciplinary Committee is composed by four members of judicial background and five lay members. The appointment of members of the Council and members of the Disciplinary Committee is done in accordance with the criteria set out in Articles 567.3, 573.1, 578.3 and 603 of the Law on the Judiciary.

c) The decision is the sole responsibility of the General Council for the Judiciary, by virtue of its own competence and in accordance with Article 122.2 of the Spanish Constitution. There is no intervention by the Ministry of Justice or other Government representative, but the State Prosecutors does participate in the disciplinary proceedings defending the legality principle.

7 a) By whom and how are the disciplinary proceedings adjudicated? b) What are the criteria for the appointment of the person or persons adjudicating on the disciplinary proceedings? c) Is there any input by anyone from the Ministry of Justice or other Government representative, or is such adjudication within the Judiciary or Council for the Judiciary?

SWEDEN

a) The disciplinary proceedings are adjudicated by the Swedish National Disciplinary Offence Board.

b) The Board consist of five members. The chairman and the vice chairman must be lawyers and have experiences as Judges.

c) Yes, there is input from the Government. The members of the board are appointed by the Government for a fixed period.

TURKEY

a) Disciplinary proceedings are adjudicated by Second Chamber of HCJP following the discussion in its agenda.

b) In line with the article 8/1-b of law 6087 on HCJP, Second Chamber of HCJP in charge of adjudicating disciplinary proceedings consists of 1 member elected by and among the members of Court of Cassation, 1 elected by and among the members of Council of State, 2 elected by and among judges and prosecutors of civil and criminal courts, 1 elected by and among judges and prosecutors of administrative courts, and 2 selected by President of Republic.

c) In line with the article 8/1-b of law 6087 on HCJP, Second Chamber of HCJP in charge of adjudicating disciplinary proceedings consists of 1 member elected by and among the members of Court of Cassation, 1 elected by and among the members of Council of State, 2 elected by and among judges and prosecutors of civil and criminal courts, 1 elected by and among judges and prosecutors of administrative courts, and 2 selected by President of Republic.

8 In relation to disciplinary proceedings

a) Are they on paper or at an oral hearing?

b) Are they in private or in public?

c) Does the Judge against whom the complaint is made have a right to attend and/or be represented? If so at what stage can they be represented? By whom can they be represented?

d) Who pays for the representation?

8 In relation to disciplinary proceedings

a) Are they on paper or at an oral hearing? b) Are they in private or in public? c) Does the Judge against whom the complaint is made have a right to attend and/or be represented? If so at what stage can they be represented? By whom can they be represented? d) Who pays for the representation?

ALBANIA

a) It's an oral hearing.

b) Plenary meetings for consideration of disciplinary proceedings are conducted behind closed doors. While recent changes to the law for the HCJ, provides the publication of the minutes of the meeting at the official website of the HCJ.

c) Yes. He can be heard personally or, if he wishes to, through a lawyer.

d) The expenses for the representation are paid by the judge himself.

AUSTRIA

a) If the disciplinary panel - after preliminary investigations which might comprise a written submission of the judge or his being questioned by the disciplinary investigator - concludes that there are no grounds to pursue disciplinary proceedings (out of lack of a disciplinary breach) it may decide on the closure of the case without an oral hearing (sec.130 RStDG). This decision can be appealed to the Supreme Court by the Disciplinary Public Prosecutor (sec. 131 RStDG) as long as he has not applied for the closure of the proceedings himself or has agreed to the closure of the proceedings.

b) If the disciplinary panel finds grounds to pursue disciplinary proceedings a public hearing has to be scheduled. The public might be excluded by decision of the disciplinary panel only on restricted grounds: threat to the public order and security, before the hearing of the defendant to issues regarding his/her personal sphere, before the hearing of a witness with regard to the protection of the identity of a witness.

c) The disciplinary defendant and his defence counsel have to be summoned to the hearing. He has to be informed about the members of the disciplinary panel and its replacement

8 In relation to disciplinary proceedings

a) Are they on paper or at an oral hearing? b) Are they in private or in public? c) Does the Judge against whom the complaint is made have a right to attend and/or be represented? If so at what stage can they be represented? By whom can they be represented? d) Who pays for the representation?

members.

The disciplinary defendant may also be accompanied by three persons he trusts in and he can be defended by a judge, a public prosecutor or a lawyer of his choice.

d) The disciplinary defendant pays for the representation (sec 137 para 2).

BELGIUM

a) The procedure is mainly written. For instance: the law obliges to take down notes of every interrogation of the concerned person or witnesses and all decisions, reports, conclusions and judgements have to be written and communicated or notified to the actors in the procedure. There is however a hearing before the disciplinary to which the concerned magistrate has to attend.

b) In principle, the disciplinary court tries the case in public. The concerned judge can ask the court to treat the case behind closed doors. The court has to agree to this request, unless it esteems that the public interest requires a public hearing. The court can also decide itself to try a case, completely or partially, behind closed doors if it considers this to be necessary "to maintain public morality or order, to protect the interest of minors and the private life of the concerned judge or when a public trial could harm the interests of the administration of justice" (art. 416 Judicial Code).

c) - At the interrogation in the framework of the disciplinary examination in the preliminary phase, the concerned judge can be assisted but not represented by a person of his choice, usually a lawyer (art. 414);

- At the interrogation by the magistrate-examiner in the framework of the instruction by the disciplinary court, the concerned judge can be assisted or represented by a person of his choice (art. 417). The magistrate-examiner can however order the concerned judge to appear in person.

- The magistrate has to appear in person at the hearing by the disciplinary court. He cannot be represented, but he may be assisted by a person of his choice, usually a lawyer (art. 418, §2, Judicial Code).

d) The concerned judge.

BULGARIA

a) Disciplinary proceedings against magistrates are conducted according to a procedure set out by law which involves sequential actions for collection of evidence to establish a disciplinary offence committed by a magistrate subject to the proceedings, as well as a disciplinary sanction in case of proven misconduct. This procedure involves the conduct of hearings by a disciplinary panel in the course of disciplinary proceedings and by the Supreme Judicial Council upon adjudication to impose a disciplinary sanction. The disciplinary panel clarifies the facts and circumstances surrounding the committed offence, being allowed to gather verbal, written and material evidence, including through the services of a delegated

8 In relation to disciplinary proceedings

a) Are they on paper or at an oral hearing? b) Are they in private or in public? c) Does the Judge against whom the complaint is made have a right to attend and/or be represented? If so at what stage can they be represented? By whom can they be represented? d) Who pays for the representation?

member, as well as to hear expert witnesses in accordance with the Administrative Procedure Code. The entity having made the proposal or a representative thereby authorised, the person subject to disciplinary proceedings and his/her defence counsel are heard by the disciplinary panel in case they attend the hearing.

Complete verbatim records of the DP and SJC hearings are made where all proceedings are reflected, along with the statements expressed by the proposing entity and any objections by the person subject to disciplinary proceedings, respectively their legal representatives, during their involvement in the disciplinary proceedings.

The adjudication of the Supreme Judicial Council which rejects any proposal or imposes a disciplinary sanction on magistrates is drawn up in writing and contains the reasoning required under Article 59(1) and (2) of the Administrative Procedure Code (APC), and it must also meet the requirements for legality of individual administrative acts under Article 146 of the APC.

Please find attached the Administrative Procedure Code.

b) Hearings conducted by the disciplinary panel are held in camera – Article 318(1) of JSA. The hearings of the Supreme Judicial Council on disciplinary proceedings against magistrates in which adjudication is made are held in camera and not broadcast; media representatives are notified only of the final outcome without making public any facts and circumstances surrounding the disciplinary proceedings.

c) The person subject to disciplinary proceedings – a judge, prosecutor or investigating magistrate - is entitled to have defence provided by an attorney-at-law from the point of being notified of the proposal to impose a disciplinary sanction until the disciplinary proceedings are closed before the SJC, as well at the stage of judicial review of the legality of the decision of the Supreme Administrative Court. The person subject to disciplinary proceedings and his/her legal representative (attorney-at-law) may attend the hearings of the disciplinary panel, file objections, provide evidence and demand the collection of evidence of relevance to the case, and are entitled to be heard by the disciplinary panel.

The Supreme Judicial Council, after filing the proposal of the disciplinary panel, sends out to the person subject to disciplinary proceedings a copy of the decision of the disciplinary panel and notifies him/her of the hearing which will examine the decision and respectively of the opportunity to be heard prior to the SJC adjudication. Where the person subject to disciplinary proceedings has not been heard or his/her written explanation has not been considered, the court repeals the imposed disciplinary sanction without examining the case on its merits, unless the defendant has failed to provide explanations or has not been heard for reasons attributable to him/her.

d) Representation is a contractual relation and is negotiated between the person subject to disciplinary proceedings and his/her counsel. The amount of the remuneration for the legal services provided by the attorney is determined by free negotiation based on a written agreement with the client, but it may not be less than the amount determined by REGULATION No 1 of 9.07.2004 on the minimum amounts of attorney fees. The Regulation differentiates categories of attorney fees depending on the type of provided legal assistance – representation at proceedings, advice, written consultation, drafting of complaints, etc. In

8 In relation to disciplinary proceedings

a) Are they on paper or at an oral hearing? b) Are they in private or in public? c) Does the Judge against whom the complaint is made have a right to attend and/or be represented? If so at what stage can they be represented? By whom can they be represented? d) Who pays for the representation?

compliance with Article 38(1) of the Bulgarian Bar Act (BBA), attorneys-at-law or attorneys-at-law from the European Union may provide free legal assistance and cooperation to:

1. Individuals who are entitled to alimony;
2. Persons in financial difficulties;
3. Parents, friends or other lawyers.

CROATIA

a) Disciplinary proceedings shall be carried out at on an oral hearing. Written record is prepared on oral hearing.

b) Disciplinary proceedings are conducted in the premises of the State Judiciary Council. An oral hearing is non – public. At the request of the judge against whom disciplinary proceeding is conducting, hearing may be public.

c) The judge against whom the proceeding is conducted has the right to participate in the proceedings and has the right to legal defense (to hire a lawyer).

d) Each party bears its own costs of the representation.

CZECH REPUBLIC

a) Oral hearing.

b) Public.

c) Yes, the judge can be represented by a lawyer at any stage of the procedure.

d) The judge himself.

DENMARK

a) Generally cases are treated on paper, but it is possible for the Special Court of Indictment and Revision to hear the case if deemed necessary (§ 49(4) of the Administration of Justice Act). In recent years there have been no oral hearings.

b) The Special Court of Indictment and Revision can hear a case in private or in public. According to § 49(4) of the Administration of Justice Act, the Special Court of Indictment and Revision can decide on an oral procedure. If such a decision is made, the Special Court of Indictment and Revision must also simultaneously decide if the case should be heard in private.

The right to access the case's documents is limited. Only those with sufficient interest in the case can review the documents, and in these cases documents are in depersonalised form as the cases are seen as personnel-cases.

c) Yes. The Special Court of Indictment and Revision can assign counsel to both the judge and

8 In relation to disciplinary proceedings
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the complainant. Representation can be in all stages of the case.

d) That depends on the outcome of the case and is decided by the Special Court of Indictment and Revision.

ENGLAND AND WALES

a) The majority of proceedings are dealt with on paper, however, there is provision for oral hearing where it is considered necessary.

b) The disciplinary process is confidential.

c) Where there is a hearing the judge attends and may be supported by a legal advisor if they so wish.

d) Payment for legal advice is the responsibility of the judge concerned.

FRANCE

a) Oral hearing

b) Disciplinary hearings are public but access can be restricted to the hearing room can be restricted or forbidden to public for specific reasons such as protecting public order or privacy.

c) A judge is authorized to attend any hearing and to be represented from the beginning of disciplinary proceeding before the high Council. There is no representation during investigations led by the general inspectorate for the judiciary.

d) The judge against whom disciplinary proceeding is brought but in case of a complaint lodged by litigants representation is covered by the ministry of Justice until the case is referred to the high Council.

HUNGARY

a) Disciplinary proceedings shall be prepared and a preliminary investigation shall be conducted by an investigating commissioner. To this end, he or she shall hear the judge subjected to the proceedings, may hear witnesses, may use the services of experts and may conduct other evidence proceedings. The service court chamber may take evidence at the hearing. The hearing shall be recorded in writing.
 The relevant sections can be found in the appendix.

b) Disciplinary proceedings and the preliminary investigation shall be conducted with the exclusion of the public.
 (On the publicity of proceedings see question 13.a)

8 In relation to disciplinary proceedings

a) Are they on paper or at an oral hearing? b) Are they in private or in public? c) Does the Judge against whom the complaint is made have a right to attend and/or be represented? If so at what stage can they be represented? By whom can they be represented? d) Who pays for the representation?

c) The judge against whom the complaint is made has the right to attend at the disciplinary proceeding and has a right to be represented. The judge subjected to the proceedings may engage another judge or an attorney to represent him in the proceedings.

The relevant sections can be found in the appendix.

d) The costs related to the disciplinary proceedings shall be covered by the court. However, if the judge's disciplinary liability is established on a final and absolute basis, the judge shall reimburse the costs of any procedural acts he proposed as well as the costs of his legal counsel.

IRELAND

a) The Panel of Inquiry may initiate such inquiries into the subject matter of the investigation as it thinks appropriate (Head 29(1)). An oral hearing may be conducted in connection with an investigation, for the purposes of which the Panel of Inquiry may direct in writing any person to attend. (Head 29(3) and (4)(a)).

The Panel of Inquiry may also examine a person by use of a statutory declaration or written interrogatories (Head 29(4)(c)).

The evidence of a person so examined may be recorded in writing (Head 29(4)(f)).

Where the matter, or a part thereof, has been the subject of court proceedings, the Panel of Inquiry may take into account those proceedings and the outcome thereof (Head 29(5)).

b) Disciplinary proceedings shall be confidential and conducted in private (Head 53(1)).

Any court proceedings or other proceedings that may arise from or are or connected or related to a complaint, the admissibility of a complaint, an investigation under Part 2 of the General Scheme or the determination of the outcome of such an investigation shall be heard in camera (Head 35(2)).

c) The General Scheme of the Judicial Council Bill does not explicitly state if the judge concerned has a right of attendance or representation at an investigation hearing conducted by the Panel of Inquiry.

It has been established since the case of *In re: Haughey* [1971] I.R. 217 that persons appearing before a "quasi-judicial" body have an entitlement to legal representation. This has over the years become considered as a right in all cases of misconduct, and where one's right to one's good name was at issue. Recently, however, the Supreme Court held in *Burns & Anor v. The Governor of Castlerea Prison & Anor* [2009] IESC 33 that in general there is no right to legal representation at internal disciplinary hearings. The issue as to whether legal representation is required comes down to a consideration of whether legal representation is desirable in the interest of a fair hearing. The Supreme Court stated that in exceptional circumstances a legal representative is required to ensure a fair hearing in disciplinary proceedings and the following factors should be considered:

- (a) The seriousness of the charge and of the potential penalty;
- (b) Whether any points of law are likely to arise;
- (c) The capacity of a particular discipline to present his own case;
- (d) Procedural difficulties;

8 In relation to disciplinary proceedings
a) Are they on paper or at an oral hearing? b) Are they in private or in public? c) Does the Judge against whom the complaint is made have a right to attend and/or be represented? If so at what stage can they be represented? By whom can they be represented? d) Who pays for the representation?

(e) The need for reasonable speed in making the adjudication, that being an important consideration;

(f) The need for fairness as between the parties.

It would seem from the above that the judge would have a right to legal representation.

d) There is no provision but presumably the judge. This may give rise to difficulties where legal costs may be high.

ITALY

a) Disciplinary proceedings are at an oral hearing.

b) In public.

c) Judge has the right to be represented by the phase of the investigation until the conclusion of the trial. Can be represented by a colleague, as well as by a lawyer.

d) The judge pays for the representation.

ITALY (Council of Presidency for administrative Justice)

a) A oral hearing is foreseen, but the procedure is also written.

b) The hearing before the CPGA is in private and all the acts of the procedure are not public but can be known only by persons who show a personal interest.

c) Yes, the judge can attend the hearing and he or she can be represented by a lower or by a colleague.

d) The judge himself.

LITHUANIA

a) Meetings of the Judicial Ethics and Discipline Commission are always at oral hearing.

b) The Commission examines the motions publicly, except cases when it may infringe the State, official, commercial secret or the protection of individual's private life.

c) On request of the judge whose issue of instituting a disciplinary case is under consideration or by the decision of the Commission, the possibility for the judge to speak out at the meeting of the Commission shall be provided. The administration of the relevant court shall make the possibility for the aforementioned judge to attend the meeting of the Commission. The judge also has a right to be represented by an advocate or by the representative of the association of judges.

8 In relation to disciplinary proceedings

a) Are they on paper or at an oral hearing? b) Are they in private or in public? c) Does the Judge against whom the complaint is made have a right to attend and/or be represented? If so at what stage can they be represented? By whom can they be represented? d) Who pays for the representation?

d) If the judge is represented by the advocate he should pay himself.

THE NETHERLANDS

a) The Procurator General submits a motion in writing to the Supreme Court. Prior to the motion, the Procurator General allows the individual in question to share his view orally or in writing. A record is drafted, to be signed by the individual in question and the Procurator General.

The Supreme Court conducts the investigation in chambers. The judge in question is invited to attend the investigation and, if desired, to express his opinion. The Supreme Court issues its decision in a reasoned ruling.

If a written warning is issued, the person concerned is examined first by the president of the court. A record is drafted of this examination as well. The judge is entitled to lodge an objection and appeal against the decision by the president of the court to issue a written warning. In these procedures, the person concerned is examined both in writing and orally.

b) The Supreme Court conducts the investigation in chambers, but the decision is delivered in public.

If a written warning is issued by the President of the court: the examination by the president of the court is closed to the public. The appeal proceedings to the Central Appeals Tribunal (Centrale Raad van Beroep) are ordinarily open to the public. The Central Tribunal may in selected cases as described by law determine that the examination in court by the President of the court will be closed to the public entirely or in part.

c) Yes, the judge may express his opinion, when he is examined by the President of the court, the procurator general of the Supreme Court and in chambers at the Supreme Court. He may also be represented or assisted by legal counsel. This is not subject to any particular rules.

d) The judge in question, the trade union or the legal expenses insurance company.

NORTHERN IRELAND

a) 'Less Serious complaints' - determined on paper.

'Serious complaints' - all procedural matters and questions of evidence will be determined by the chairman of the Complaints Tribunal in accordance with the rules of natural justice. Ordinarily a hearing will be conducted but if it is considered unnecessary, before preparing its report the Tribunal shall ensure that the Judge is aware of all the evidence collected and that he or she has had an opportunity to provide a fully informed response.

If a hearing is conducted, the parties will be informed 10 working days prior to the hearing.

b) In private.

c) The Judge shall be entitled to attend and to make representations and to put relevant

8 In relation to disciplinary proceedings

a) Are they on paper or at an oral hearing? b) Are they in private or in public? c) Does the Judge against whom the complaint is made have a right to attend and/or be represented? If so at what stage can they be represented? By whom can they be represented? d) Who pays for the representation?

questions to the witnesses. He/she is also entitled to be represented by legal advisors throughout the hearing.

d) Representation is paid by the Judge as the tribunal has no authority to make payments or to direct that payments be made to cover the cost of representation.

NORWAY

a) The proceedings are oral. Cases dismissed on a summary basis can be on paper.

b) In private. The Supervisory Committee for Judges can decide to have public proceedings. It has never been done.

c) The Judge does not have a right to attend, but have a right to give an oral statement (and thereby partially attend). This do not apply if the Committee considers such testimony to be obviously unnecessary given the information available in the case. He can be represented by a legal representative of his own choice. The legal representative have no right to attend the proceedings.

d) The Judge himself.

POLAND

a) At an oral hearing.

b) In public.

According to the Art. 116 § 1 and 2 of the Act law on common courts system:

Art. 116. § 1. Disciplinary proceedings are open to the public.

§ 2. The disciplinary court may hear the case at a non-public session for reasons of morality, state security and public order as well as for the reason of the protection of private life of the parties or significant private interest.

c) The judge has a right to attend personally the disciplinary proceeding or to be represented on every stage of it by another judge or attorney at law.

According to the Art. 113 of the Act law on common courts system:

Art. 113. The accused judge may appoint a defence counsel from among judges or attorneys at law.

d) The accused judge pay him/herself for the representation of the attorney at law. In practice attorneys at law represent judges in the disciplinary procedures pro bono.

According to the Art. 133 of the Act law on common courts system:

Art. 133. Court costs of disciplinary proceedings are covered by the State Treasury.

That means in practice that the judge against whom the complaint is made is not obliged to pay the court costs.

Nevertheless the judge is obliged to pay for the representation – even on the occasion of a

8 In relation to disciplinary proceedings

a) Are they on paper or at an oral hearing? b) Are they in private or in public? c) Does the Judge against whom the complaint is made have a right to attend and/or be represented? If so at what stage can they be represented? By whom can they be represented? d) Who pays for the representation?

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PORTUGAL

a) Witnesses are heard by the instructor, who transcribes their testimonials.

There are people who can testify in writing, such as the President of the Republic, members of government and parliament and the judges of the superior courts.

b) Due to the confidential nature of the process (article 113/1 EMJ) , the acts are committed without any kind of publicity.

c) The judge has the right to watch the acts. He can still be represented by lawyer at any stage of the procedure.

d) The judge himself.

ROMANIA

a) For the purpose of disciplinary investigation, the judicial inspector communicates to the judge in case, the invitation to attend the disciplinary investigation and a copy of the resolution by which the disciplinary investigation began. After studying the evidences contained in the file, the judicial inspector or one of the members of the judicial inspector's team shall hear the investigated person and conclude in this respect a report, in which the data content of the declaration shall be recorded; The person placed under investigation may also make a written statement on the matters contained in the resolution of commencement of disciplinary investigation, statement attached to the disciplinary research file.

The Section for judges of the SCM holds oral hearings based on the written documents provided by the Judicial Inspection. The decisions taken are reflected on a written document – the judgment of the Section.

b) The procedure is held in private.

c) Yes, the Judge against whom the complaint is made have the right to attend and can be represented by a lawyer or by another judge.

d) The judge himself.

SERBIA

a) They are in the written and oral form.

b) Disciplinary proceedings shall be urgent and closed to the public, unless the judge against whom the disciplinary proceedings are conducted requests that they be public.

c) Judge shall be allowed to have a representative throughout the disciplinary proceedings.

8 In relation to disciplinary proceedings
a) Are they on paper or at an oral hearing? b) Are they in private or in public? c) Does the Judge against whom the complaint is made have a right to attend and/or be represented? If so at what stage can they be represented? By whom can they be represented? d) Who pays for the representation?

d) The judge pays his own expenses during the proceeding.
 If disciplinary proceedings should end by discontinuation or rejection, at the request of the judge against whom disciplinary proceedings have been conducted, the judge shall be compensated for justifiable expenses relating to the proceedings, including expenses of the representative.

SLOVAKIA

a) Preliminary inquiry shall be on paper, subsequently or if the preliminary inquiry is not necessary - there shall be an oral hearing.

b) Public.

c) The judge has right to attend and also to be represented by legal counsel or a judge.

d) If the disciplinary panel had acquitted the Judge, the Judge, who is defendant in the proceedings, is entitled to reimbursement of expenses he had purposefully incurred in relation with the disciplinary proceedings. Disciplinary panel shall decide on such entitlement by its decision. If further investigation is required, the entitlement of Judge shall be decided by separate decision.

SLOVENIA

a) There is an oral “disciplinary” hearing and on the basis of such minutes of the hearing are composed, into which all the names of those attending as well as crucial points of the hearing are entered.

b) In disciplinary proceedings the public is excluded unless the judge subject to the proceedings explicitly opposes such exclusion.

c) Such a judge has the right to attend the proceedings and be represented at all levels of the proceedings by an attorney at law or by another judge.

d) If the judge is represented by another judge such has the right that his or her necessary expenses be reimbursed from public funds?

SPAIN

a) As indicated above, disciplinary proceedings are normally processed through written procedures, with the exception of the appearance of the Judge subject to disciplinary proceedings before the Promoter of Disciplinary Action, with the participation of the State Prosecutor. This appearance is done through an oral hearing.

8 In relation to disciplinary proceedings
a) Are they on paper or at an oral hearing? b) Are they in private or in public? c) Does the Judge against whom the complaint is made have a right to attend and/or be represented? If so at what stage can they be represented? By whom can they be represented? d) Who pays for the representation?

b) Disciplinary proceedings are conducted in a private and confidential manner, given the nature and the character of this type of proceedings.

c) Yes. The Judge does have this right, from the initiation of the proceedings, through the legal representation of a registered advocate of his choice, in accordance with Article 425.1 of the Organic Law on the Judiciary.

d) The Judge subject to disciplinary proceedings must pay for the legal representation. Furthermore the representation can be paid for by an insurance company, in case the Judge subject to disciplinary proceedings has signed up a professional liability insurance policy for such a purpose.

SWEDEN

a) The main rule and the main procedure are on paper. The Judge can be represented when the board decides the case.

b) They are private.

c) Yes if the Board considers it to be in order. The Judge can be represented by an agent from the union or another agent with legal expertise.

d) If the union represents the Judge it does not normally charge for the work. Otherwise the Judge can choose to be represented by another legal adviser and then the Judge pays the costs himself.

TURKEY

a) Disciplinary proceedings are conducted on paper, therefore no hearings take place. In line with the last paragraph of Article 73 of Law 2802, those judges and prosecutors against whom dismissal from profession is required are entitled to defense (oral or on paper) via proxy or personally before the Plenary.

b) Disciplinary proceedings are conducted in private and not available to public.

c) Should an investigation be granted against the judge about whom the complaint is issued, she/he is entitled to right to defence in line with the Articles 71 & 84 of Law 2802 on Judges and Prosecutors.

In case it requires criminal prosecution be conducted due to the activities which are the subject of the investigation, the concerned is entitled to representation via defence council as the suspect's statement has to be taken after her/his rights are reminded in line with Law 5271 on criminal procedure.

Moreover, the judge in question is entitled to representation via attorney in every phase of the investigation and prosecution.

Appendix C

8 In relation to disciplinary proceedings

a) Are they on paper or at an oral hearing? b) Are they in private or in public? c) Does the Judge against whom the complaint is made have a right to attend and/or be represented? If so at what stage can they be represented? By whom can they be represented? d) Who pays for the representation?

d) Article 149 and others of Law 5271 on criminal procedure apply to matters regarding payment to defence council, and the convicted party will be sentenced to pay the judicial costs (excluding the cases where the defence council is required to be appointed by the court).

9 **What sanctions are available?**

9 What sanctions are available?
<p>ALBANIA</p> <p>Imposed in right relation to the offense committed, disciplinary measures are:</p> <ol style="list-style-type: none">Warning;Warning to be dismissed of duty;Temporary demotion in office for 1 or to 2 years in a court of a lower level;Transfer for 1 or to 2 years in a court of the same level outside the judicial district where the judge was appointed;Dismissal.
<p>AUSTRIA</p> <p>According to sec 104 RStDG and depending on the degree of the offence, the disciplinary panel may</p> <ol style="list-style-type: none">issue a warning,impose a fine (up to 5 monthly salary payments),may decide the judge to be transferred to another post without paying him/her the costs of moving and finallymay decide on the dismissal of the judge.
<p>BELGIUM</p> <p>(art. 405)</p> <p>The minor disciplinary sanctions are:</p> <ol style="list-style-type: none">1) a reprimand2) a blame (censure) <p>The major disciplinary sanctions are:</p> <ol style="list-style-type: none">1) Deduction of salary2) Disciplinary suspension3) Degrade in salary classification or loss of the last salary supplement4) Retrogradation (degrade in rank) or withdrawal of a mandate5) Discharge6) Removal or revocation.
<p>BULGARIA</p> <p>The disciplinary sanctions on a judge, prosecutor, investigating magistrate, administrative head and deputy administrative head are:</p> <ul style="list-style-type: none">- reprimand;- censure;- reduction of the basic labour remuneration by 10 to 25 percent for a period from 6 months to two years;- demotion in rank or position at the same judicial authority for a period of one to three

9 What sanctions are available?
<p>years;</p> <ul style="list-style-type: none"> - removal from office as administrative head or deputy administrative head; - disciplinary removal from office. <p>An elected member of the SJC is disciplined for disciplinary offence committed under Article 307(2) of JSA (severe offence, systematic failure to discharge the official duties, as well as actions undermining the prestige of the Judiciary) by removal from office.</p>
<p>CROATIA</p> <p>The following disciplinary penalties may be imposed for disciplinary offences committed: a reprimand, a fine of up to one third of the salary earned in the previous month for a period of one to three months, a fine of up to one third of the salary earned in the previous month for a period of four to six months, a fine of up to one third of the salary earned in the previous month for a period of seven to twelve months, removal from office (Article 63, Act on the State Judiciary Council).</p> <p>For certain disciplinary offenses there have not been provided specific sanctions. For any disciplinary offense there may be imposed any law determined sanction. Which sanctions will be imposed in a particular case depends on the circumstances of the case, mitigating and aggravating circumstances.</p>
<p>CZECH REPUBLIC</p> <p>Reprimand, temporary reduction of salary, removal from office of the chairman of a panel of judges or removal from the office of judge. For president and vice-president of the court also removal from his/her post.</p>
<p>DENMARK</p> <p>The Special Court of Indictment and Revision can give a judge a reprimand or a severe reprimand, or it can issue a fine.</p> <p>The Special Court of Indictment and Revision also has the exclusive jurisdiction to remove a judge from office. Judges are and must be independent from the legislative and executive branch, and thus a judge can only be removed by judgement by the Special Court of Indictment and Revision.</p>
<p>ENGLAND AND WALES</p> <p>The following sanctions may be imposed:</p> <ul style="list-style-type: none"> • Formal advice • Formal warning • Reprimand • Suspension • Removal from office
<p>FRANCE</p> <ol style="list-style-type: none"> 1. Reprimand with an entry in judge's personal file 2. Removal 3. Removal from specific functions 4. Prohibition from appointments as a single judge during 5 years

9 What sanctions are available?

5. Lower judge's echelon
6. Provisional ban on specific functions
7. Downgrading
8. Compulsory retirement or admission to cease to exercise
9. Revocation

HUNGARY

If the judge's culpability is minor and the breach did not involve consequences or only involved minor consequences, the institution of disciplinary proceedings may be dispensed with. In its reasoned decision, the service court chamber shall remove the judge subjected to the proceedings, pronounce the judge subjected to the proceedings culpable and shall impose a disciplinary sanction, and terminate the proceedings instituted against the judge.

If the judge's culpability is minor and the breach did not involve consequences or only involved minor consequences, the service court chamber may in its reasoned decision dispense with the imposition of a disciplinary sanction and may serve a warning on the judge parallel with the termination of the proceedings.

Disciplinary sanctions that may be imposed on judges committing disciplinary breaches:

- a) reprimand,
- b) censure,
- c) demotion by one pay grade,
- d) demotion by two pay grades,
- e) exemption from senior office,
- f) motion seeking removal from the office of judge.

IRELAND

The following sanctions are provided (Head 30(3)):

- (a) Issuing of advice to the judge concerned
- (b) Making of a recommendation to the judge concerned on the course of action he or she should follow, including a recommendation to attend a course of a type specified in the recommendation
- (c) Making of a recommendation to the Chief Justice where the ordinary member of the Supreme Court or to the President of the court of which the judge concerned is a member
- (d) Issuing of a recommendation for organisational or procedural change
- (e) Issuing of a reprimand

ITALY

There are various penalties provided by law, related to the type of offense committed. In order of increasing severity are: warning, censure, loss of seniority, temporary incapacity to exercise executive office; the suspension of the functions from three months to two years; removal.

ITALY (Council of Presidency for administrative Justice)

The same sanctions foreseen for civil servants:

- 1) censure;
- 2) loss of years of service;
- 3) removal,

9 What sanctions are available?
4) destitution;
<p>LITHUANIA</p> <p>If the Judicial Ethics and Discipline Commission decide to institute the disciplinary case, it goes to the Judicial Court of Honour. The Judicial Court of Honour may impose one of the following disciplinary sanctions: 1) censure; 2) reprimand; 3) severe reprimand. Also, in more serious cases, the Judicial Court of Honour may, by its judgement, suggest the President of the Republic or the Seimas to dismiss the judge from office according to the procedure established by law or suggest to the President of the Republic to apply to the Seimas to institute impeachment proceedings against the judge.</p>
<p>THE NETHERLANDS</p> <p>Sanctions currently provided by law:</p> <ul style="list-style-type: none"> - a written warning, issued by the President of the court - dismissal by the Supreme Court of the Netherlands <p>Order measure currently provided by law:</p> <ul style="list-style-type: none"> - suspension <p>Additionally, control measures – not provided by law – enable transfer within the court and the oral warning. However, these are not disciplinary measures.</p> <p>Sanctions according to the draft bill pending:</p> <ul style="list-style-type: none"> - a written reprimand by the president or by the Supreme Court - disciplinary suspension by the Supreme Court - dismissal by the Supreme Court <p>Order measures according to the draft bill pending:</p> <ul style="list-style-type: none"> - suspension - transfer by the Supreme Court to a different court - emergency suspension from service by a single-judge chamber of the Supreme Court (pending a motion for suspension) - withholding remuneration, if no work is being performed <p>Additionally, the control measures – not provided by law – enable transfer within the court and the oral warning.</p>
<p>NORTHERN IRELAND</p> <p>In addition to an explanation and/or apology, one or more of the following may apply:</p> <ul style="list-style-type: none"> * No Further Action * Advice / Training / Mentoring * Informal Warning * Formal Warning * Final Warning * Restriction of Practice * Referral to a Statutory Tribunal if the Lord Chief Justice determines that the Judicial Office Holder’s conduct fell so short of the required standard that removal may be warranted.
<p>NORWAY</p> <p>Criticism or warning.</p>

9 What sanctions are available?

POLAND

According to the Art. 109 of the Act law on common courts system:

Art. 109. § 1. Disciplinary penalties include:

- 1) an admonition,
- 2) a reprimand,
- 3) the dismissal from the function held,
- 4) the transfer to another place of service,
- 5) the dismissal from the office.

§ 2. A court may make a valid disciplinary decision public.

§ 3. A judge penalised as referred to in § 1 item 3 or 4 is deprived for the period of five years of the possibility to be promoted to a higher judicial post, to sit in the board of the court, to adjudicate in the disciplinary court and to perform the lost function .

§ 4. The disciplinary penalty referred to in § 1 item 5 excludes the reinstatement of the person subject to it in the judicial post.

§ 5. In case of a disciplinary misconduct or an offence of lesser gravity, the disciplinary court may refrain from imposing a penalty.

ROMANIA

The disciplinary sanctions that may be applied to judges, according to the seriousness of their transgressions, are:

- a) Warning;
- b) Decreasing the gross monthly indemnity by up to 20% for a period from one to 6 months;
- c) disciplinary transfer for a period of up to one year to a court or prosecutor's office within the jurisdiction of another court of appeal or prosecutor's office attached to the court of appeal;
- d) Suspension from office for a period of up to 6 months;
- e) Exclusion from the magistracy.

The disciplinary sanctions shall be decided by the section for judges of the Superior Council of Magistracy, according to its organic law.

SERBIA

A disciplinary sanction is imposed in proportion to the gravity of the offence.

The Law on Judges stipulated the following sanctions:

- A public reprimand, which may be imposed only when you first establish the responsibility of judges for misconduct;
- Salary reduction to 50% in one year;
- Prohibition of promotion for up to three years.

If the Disciplinary Commission establishes the responsibility of a judge for a serious disciplinary offence, it shall institute dismissal proceedings.

SPAIN

- A warning and/or a fine of up to 300 € for minor disciplinary offences.
- A fine of between 301 and 3,000 € for serious disciplinary offences.
- Removal from office, suspension of up to 3 years or forced transfer for very serious

9 What sanctions are available?

disciplinary offences.

PORTUGAL

The penalties provided in article 85 of EMJ are , in order of severity:

Warning;
Fine;
Transfer;
Suspension from duties;
Inactivity;
Compulsory retirement;
Dismissal.

SLOVAKIA

Disciplinary measures for disciplinary offenses:

- admonition,
- reduction of functional salary by up to 30 % for maximum of three months and with repeated disciplinary offense Judge had committed during the time prior to expunging of disciplinary sanction, for maximum of six months,
- recall from the function of Court President or Vice-President, if it concerns offense pursuant to Section 116 Para 1 e) of the Act
- issuing and publishing of decision that the Judge under consideration failed had in that particular year to submit in lawfully prescribed manner the source of increase of his assets.

Disciplinary measures for misdemeanour or other violation of law under conditions laid down by special regulation:

- admonition,
- fine in the amount stipulated by special regulation
- ban on activity with the exception of execution of judicial office for time laid down by special regulation
- forfeiture of a thing

Disciplinary measures for serious disciplinary offense or for misdemeanour, which has the nature of serious disciplinary offense:

- reassignment of Judge to lower instance Court,
- reduction of functional salary by 50 % to 70 % for the period of three months to one year,
- recall from the function of Court President or Vice-President, if it concerns serious disciplinary offense pursuant to Section 116 Para 2 c), or
- issuing and publishing of decision that the Judge under consideration failed to prove the source of increase of his assets in a way stipulated by law for the respective year, by which he could have harmed the seriousness and dignity of judicial office or threaten the confidence in independent, impartial, and fair decision-making of courts.

SLOVENIA

The Judicial Service Act determines the following disciplinary sanctions:

- a) written reprimand;
- b) limitation to promotion;
- c) salary reduction;

9 What sanctions are available?
<p>d) replacement to another court; and e) termination of the judicial office.</p>
<p>SWEDEN</p> <p>Warning or payroll deductions are the available sanctions. The sanctions cannot be issued at the same time only individually. Payroll deductions may be made for a maximum of 30 days and not exceed 25% of the daily rate. Payroll deductions can be made for a minimum of one day.</p>
<p>TURKEY</p> <p>In Law 2802 on Judges and Prosecutors: Warning, salary cut, reprimand, suspension of advancement, suspension of progress, displacement, dismissal.</p>

10 Can disciplinary proceedings be compromised, and if so in what circumstances and at what stage?

10 Can disciplinary proceedings be compromised, and if so in what circumstances and at what stage?
<p>ALBANIA</p> <p>There are no compromises or agreements provided in connection with a disciplinary proceeding.</p>
<p>AUSTRIA</p> <p>Once pending, no.</p>
<p>BELGIUM</p> <p>It's not clear to us what the word "compromised" means. If it means that an agreement can be reached during the procedure, we can give the following clarifications: The disciplinary court can decide to suspend the pronouncement of a sanction and impose certain conditions to the concerned judge. If the judge respects these conditions and doesn't commit any new facts during the period indicated by the court, the case ends without sanction. The disciplinary court can also decide to suspend the execution of the imposed sanction. In that case, a sanction is imposed but it is not executed as long as the concerned judge respects the conditions (art. 405, §10).</p>
<p>BULGARIA</p> <p>At present, no opportunity is foreseen for disciplinary proceedings to be compromised. The draft SJC's Methodology of Disciplinary Activity provides for possible settlement as an alternative way to resolve promptly and to close disciplinary proceedings, which, by virtue of the referring provision of Article 328 of JSA in conjunction with Article 20 of APC, applies to disciplinary proceedings under Chapter XVI of JSA. The settlement is valid under the condition that it does not contradict the law.</p>

10 Can disciplinary proceedings be compromised, and if so in what circumstances and at what stage?

As the draft Methodology states, a settlement of disciplinary proceedings can be concluded in two ways:

- a) between the parties to the disciplinary proceedings - the entity proposing a disciplinary sanction and the magistrate subject to disciplinary proceedings or his/her legal representative authorised via a power of attorney and the disciplinary sanctions authority;
- b) between the parties to the disciplinary proceedings - the entity proposing a disciplinary sanction and the magistrate subject to disciplinary proceedings or his/her legal representative authorised by a power of attorney, and is approved by the disciplinary sanctions authority.

The settlement is concluded in writing and contains the details listed in detail in Article 20(5) of APC:

- a) identification of the authority before which the settlement has been reached;
- b) date of settlement;
- c) parties (description of all their principal characteristics);
- d) subject matter of the settlement (explicit reference to the specific disciplinary proceedings and its scope);
- e) content of the settlement (rights, obligations, responsibilities of the parties to the settlement);
- f) note that the settlement was read and accepted;
- g) signatures of the parties;
- h) name and signature of the official.

The procedure envisages that after the circumstances of the disciplinary case have been clarified, the disciplinary panel, before proceeding to its adjudication, should invite the entity having made the proposal and the magistrate subject to disciplinary proceedings to reach settlement in writing.

The settlement signed by the parties is submitted to the meeting of the disciplinary sanctions body which the entity having proposed the sanction and the magistrate subject to the disciplinary proceedings are invited to attend.

The disciplinary sanctions body concludes or approves the settlement by a decision in secret voting by a majority of more than half the members of the SJC (13 votes).

Reaching an agreement with the disciplinary sanctions body and its approval by the latter is within the discretion conferred on it (operational discretion).

Where the disciplinary sanctions body has rejected the settlement, the disciplinary case is returned to the disciplinary panel for a reasoned decision to impose a disciplinary sanction.

The settlement of the disciplinary case is admissible before the court in any court proceedings in accordance with the rules of Article 178 of APC.

For issues not mentioned herein, the rules set out in the APC governing settlements apply. Please find attached the Administrative Procedure Code

CROATIA

No.

CZECH REPUBLIC

No.

DENMARK

The complainant can withdraw his complaint at any time. The Special Court of Indictment and

10 Can disciplinary proceedings be compromised, and if so in what circumstances and at what stage?
Revision does not make efforts to compromise cases.
ENGLAND AND WALES At the end of the process the complainant and/or the judicial office holder may complain to the Judicial Appointment and Conduct Ombudsman if there are concerns about the way in which the complaint has been handled. If the Ombudsman considers that the proper process has not been followed he may overturn the decision and remit it for further investigation.
FRANCE No. Disciplinary proceedings can not be compromised. If a case is referred to the high Council, the Conseil superieur de la magistrature, as a disciplinary body shall render a decision.
GERMANY Yes, see answer to question 5.
HUNGARY The regulation in effect does not allow proceedings be compromised and the closing of the proceeding this way.
IRELAND No specific provision as of now.
ITALY It is not possible to compromise disciplinary proceedings.
ITALY (Council of Presidency for administrative Justice) No.
LITHUANIA The Judicial Ethics and Discipline Commission has a right to refuse to institute a disciplinary case against a judge if he/she recognises himself in committing the disciplinary offence and the kind of offence, the consequences, the previous work of the judge, his/ her attitude to the disciplinary offence committed and his/her efforts to eliminate or to diminish the harm or other similar circumstances allow the Commission to conclude that procession itself has sufficient effect on the judge.
THE NETHERLANDS The judge may at any time, even if a motion for dismissal has been submitted to the Supreme Court, ask the Crown to discharge him.

10 Can disciplinary proceedings be compromised, and if so in what circumstances and at what stage?
<p>NORTHERN IRELAND</p> <p>If it is considered appropriate the process of informal resolution of less serious complaints aims to achieve a speedy resolution that is agreeable to both parties. This process, managed by the complaints officer, cannot take place without both the complainant and the judge agreeing to proceed informally.</p>
<p>NORWAY</p> <p>No.</p>
<p>POLAND</p> <p>According to the Art. 128 of the Act law on common courts system: Art. 128. To matters not regulated herein the provisions of the Code of penal procedure apply. This results in the possibility for a judge to voluntarily accept the penalty (Art. 387 of the Code of penal procedure). It is a kind of a plea-bargaining.</p> <p>The Act law on common courts system does not foreseen the possibility of compromise. There is no possibility in disciplinary cases (which are public cases) to act according to the Art. 494 of the Code of penal procedure which foresees the possibility of a compromise for the private prosecution criminal procedures.</p>
<p>PORTUGAL</p> <p>No.</p>
<p>ROMANIA</p> <p>The acts of procedure may be annulled, according to the code of civil procedure which is applicable in case. For example, any act that is carried out beyond the status of limitation is void and cannot be used because of prescription.</p>
<p>SERBIA</p> <p>Due to the statute of limitation after two years from the day of the commission of an offence, disciplinary proceedings may be compromised.</p>
<p>SLOVAKIA</p> <p>No, it cannot.</p>
<p>SLOVENIA</p> <p>There is no special provision in the Judicial Service Act on this possibility.</p>
<p>SPAIN</p> <p>The disciplinary procedure is only regulated in the Law on the Judiciary and there is no</p>

10 Can disciplinary proceedings be compromised, and if so in what circumstances and at what stage?

regulatory development by secondary legislation. The relevant provisions of the Law on the Judiciary do not envisage specifically the possibility of a compromise in the context of disciplinary proceedings. However, the Disciplinary Committee of the Council for the Judiciary has in fact accepted for the disciplinary proceedings to be compromised on two occasions, applying in a supplementary manner the provisions that allow to compromise disciplinary proceedings against public servants (i.e. the generic Regulation on the Administration's power to discipline public servants).

Compromise was accepted with respect to a Judge who was subject to two separate disciplinary proceedings that were being processed simultaneously, at the Judge's behest, and this led to the shortening of the disciplinary proceedings until the final decision respecting the terms of the compromise was issued.

SWEDEN

The question is not quite easy to understand. However there is a restriction in place to avoid double sanctions for one offence. If a criminal charge has been launched against the judge no further disciplinary actions can be taken. If the judge is acquitted from the charge due to any other reason than lack of evidence disciplinary proceedings may continue.

TURKEY

There is no possibility of settlement or compromise in disciplinary proceedings.

11 Is there any right of appeal and/or review, and if so to whom and what is the procedure?

11 Is there any right of appeal and/or review, and if so to whom and what is the procedure?
<p>ALBANIA</p> <p>Yes. Dismissal of duty can be challenged to the High Court, which proceeds with Joint Panels of Judges. Other disciplinary sanctions can be challenged to the Administrative Court of Appeal, which proceeds with a panel of 3 judges. Both of the Courts follow the procedural rules of Administrative Procedural Court Cases.</p>
<p>AUSTRIA</p> <p>If the disciplinary proceedings are pursued and the disciplinary panel finally decides the case, the decision of the disciplinary panel can be appealed to the Supreme Court by the disciplinary defendant and the Disciplinary Public Prosecutor. It has suspensive effect (sec 139 RStDG).</p>
<p>BELGIUM</p> <p>Yes.</p> <ul style="list-style-type: none"> - If the disciplinary authority imposes a minor sanction, the concerned judge and the public prosecutor can appeal to the disciplinary court of appeal(413, §2 and 420, §3); - The concerned judge, the public prosecutor and the disciplinary authority, can lodge an appeal to the disciplinary court of appel against the judgement of the disciplinary court (art. 420, §1). <p>Note: In case of the revocation (discharge) of a member of public prosecution the disciplinary court only sends an advice to the King. The Royal Decree of revocation can only be challenged by an administrative appeal to the “Conseil d’Etat”.</p>
<p>BULGARIA</p> <p>The decision of the Supreme Judicial Council is notified promptly to the person subject to disciplinary proceedings and to the entity having made the proposal.</p> <p>The decision of the Supreme Judicial Council may be appealed against before the Supreme Administrative Court within 7 days of notification, by the individual who has been imposed a disciplinary sanction and by the entity having made the proposal. The appeal does not suspend the execution of the SJC decision, unless the Supreme Administrative Court decides otherwise. The appeal is examined by a three-member panel of the Supreme Administrative Court within one month of being received in court.</p> <p>The decision of the three-member panel of the Supreme Administrative Court is subject to appeal on points of law within 7 days after being announced, before a five-member panel of the Supreme Administrative Court. The five-member panel examines the case within one month after the appeal on points of law is received.</p> <p>A review of the decision of the SJC (to impose a disciplinary sanction) is possible in the cases where the Supreme Administrative Court, upon verification of its legality, has accepted that</p>

11 Is there any right of appeal and/or review, and if so to whom and what is the procedure?
<p>the imposed sanction is disproportionate to the committed disciplinary offences and has sent back the file requesting imposition of a less severe sanction. The guidelines of the Supreme Administrative Court for application of the law, which are provided in the repealing decision, are mandatory for the Supreme Judicial Council in the procedure of reviewing the decision. The effective decision of the Supreme Judicial Council for the imposition of a disciplinary sanction is subject to immediate execution (Article 325 of JSA).</p> <p>The effective decision to impose the disciplinary sanction of demotion in rank or position or of removal from office of an administrative head or deputy administrative head gives also grounds to reduce the remuneration received by the judge, prosecutor or investigating magistrate concerned in line with the lower rank or position, for the term of the sanction involved.</p>
<p>CROATIA</p> <p>The judge shall have the right to lodge an appeal with suspensive effect against a decision on dismissal from office, or on disciplinary liability.</p> <p>The appeal shall be lodged with the Constitutional Court of the Republic of Croatia within 15 days of the delivery of the decision.</p>
<p>CZECH REPUBLIC</p> <p>No.</p>
<p>DENMARK</p> <p>Judgements by the Special Court of Indictment and Revision can be appealed to the Supreme Court.</p> <p>Within 2 weeks of the judgement appeals, which do not concern the removal of a judge, must be sent in writing to the Special Court of Indictment and Revision. The Special Court of Indictment and Revision then forwards the complaint to the Supreme Court.</p> <p>In cases that concern removal of a judge, appeals must be sent in writing to the Supreme Court within 4 weeks of the judgement.</p>
<p>ENGLAND AND WALES</p> <p>There is no right of appeal in respect of the decision made but see above in respect of the role of the Judicial Appointment and Conduct Ombudsman. Complainants or judges may apply for a decision to be judicially reviewed through the Administrative Court.</p>
<p>FRANCE</p> <p>Decisions of the French High Council may be appealed against before the Council of State on a point of law.</p>
<p>GERMANY</p> <p>See answer to question 5a)</p>
<p>HUNGARY</p>

11 Is there any right of appeal and/or review, and if so to whom and what is the procedure?

One copy of the disciplinary decision shall be served upon the judge and the person initiating the disciplinary proceedings within 8 days of the pronouncing thereof. The judge may request the appeal of disciplinary proceedings in response to the decision served in writing within 15 days of the service thereof. The appeal shall be investigated by the service court of appeal in accordance with the rules of the first instance procedure.
The relevant sections can be found in the appendix.

IRELAND

According to Head 30(5), the Panel of Inquiry shall send a draft of the report to the judge the subject of the investigation and specify the time allowed to make submissions or requests to the Panel. Where the judge concerned believes that the Panel of Inquiry has not observed fair procedures, he or she may submit a written statement setting out the reasons for the belief and requesting the Panel of Inquiry to review the draft report in light of the statement (Head 30(7)).

No procedure for appeal or review of the determination of the Judicial Conduct Committee is set out in the General Scheme of the Judicial Council Bill.

ITALY

The judgment of the Disciplinary Committee can be appealed to the Supreme Court; the appeal has suspensive effect ; also the appeal proceedings are at an oral hearing; in public. In specific cases (f.e. new evidence supervening) , it is also possible a revision of the judgment.

ITALY (Council of Presidency for administrative Justice)

Yes, disciplinary decisions concerning administrative judges are considered as administrative acts and then may be challenged before the administrative judge. (First instance: Administrative Tribunal of Rome; second instance: Council of State).

LITHUANIA

Decisions adopted by the Judicial Ethics and Discipline Commission shall not be subject to an appeal.

A decision of the Judicial Court of Honour may, within ten days after its adoption, be appealed to the Supreme Court. Such appeals shall be heard by a judicial panel of three judges of the Supreme Court. An appeal may be filed by the judge and the party which instituted the disciplinary action.

THE NETHERLANDS

In the event of a written warning issued by the President of the court, the individual concerned may object and subsequently possibly appeal to the Central Appeals Tribunal, which is the highest court ruling on cases involving civil servants.

No legal recourse is available against disciplinary sentences and measures imposed by the Supreme Court.

11 Is there any right of appeal and/or review, and if so to whom and what is the procedure?

NORTHERN IRELAND

In the case of 'Less Serious Complaints', the parties have 10 working days from notice of the Lord Chief Justice's decision within which to apply for review. This is a review of the process of investigating the complaint and is not a second investigation of the complaint in its entirety. Either party may make representations to the Lord Chief Justice and he may refer the matter to an independent judge of appropriate seniority to review the findings of the investigation and the outcome and will make recommendations to the Lord Chief Justice.

In the case of 'Serious Complaints' the Lord Chief Justice will consider the recommendations of the Complaints Tribunal and will invite the parties to submit comments in writing on the report within 10 working days. In reaching his final decision, the Lord Chief Justice will have regard to any comments received.

NORWAY

The Supervisory Committee for Judges will evaluate their own decision a second time if requested to do so by the Judge or the complainant. The Judge or the complainant can initiate legal proceedings to contest the legality of the Committees decision.

POLAND

Yes.

According to the Art. 121 § 1 and 2 of the Act law on common courts system:

Art. 121. § 1. The accused judge, the disciplinary commissioner, as well as the National Council of the Judiciary and the Minister of Justice may appeal against the disciplinary court judgements rendered in the lower instance and against decisions and orders closing the procedure to render the judgement.

§ 2. The appeal should be considered within two months from the date of lodging thereof with the disciplinary court of the higher instance.

The Supreme Court is the disciplinary court of the higher instance which adjudicate the disciplinary cases in appeal proceedings.

PORTUGAL

There is a right of appeal to the Supreme Court.

The appeal must be filed within thirty days, by written application.

ROMANIA

Rejection resolutions of the referral may be appealed by the person who made the complaint, within 15 days of communication, without the requirement of prior proceedings, at the administrative department of the Court of Appeal.

The decision of the Section for judges of the SCM may be appealed at a panel of 5 judges at the High Court of Cassation and Justice within 15 days from the communication of the decision.

SERBIA

11 Is there any right of appeal and/or review, and if so to whom and what is the procedure?

The Disciplinary Prosecutor and the judge who is subject to disciplinary proceedings may file an appeal with the High Judicial Council against the decision of the Disciplinary Commission, within 8 days of the delivery of the decision.
 The High Judicial Council may either uphold or reverse the first-instance decision of the Commission.
 The High Judicial Council shall decide on the appeal within 30 days from the date of receiving the appeal.
 The decision of the High Judicial Council is final, against the judge may file a complaint with the Administrative court.

SLOVAKIA

Yes, there is a right of appeal.
 Appeal may be lodged against the decision of disciplinary panel within 15 days from the day of the decision being delivered to the appellant. Appeal against the decision of disciplinary panel on temporary suspension of judicial office and on cancellation of temporary suspension of judicial office may be lodged within 5 days from the delivery of the decision. Disciplinary panel shall decide on such appeal forthwith and deliver its decision to the Judge to his own hands within three days from announcement of its decision on appeal. Appeal shall be lodged at the disciplinary panel. Appeal lodged in time has deferring effect.
 Appeal may be lodged by:
 - judge, who is defendant in the proceedings,
 - president of appropriate Court who had lodged the motion to commence disciplinary proceedings or to whom the case was referred by law enforcement body,
 - also the body which had lodged the motion.
 Appeal is decided by appellate disciplinary panel.
 If appellate disciplinary panel shall not dismiss the appeal, it shall cancel the appealed decision in full or in part and shall decide alone, as a rule, or shall return the case to new hearing and decision.

SLOVENIA

Yes. Against decisions of the disciplinary court of first instance there is the possibility of appeal to a panel composed of its president of two judges. The composition of the panel is determined by the president of the disciplinary court of second instance.

SPAIN

The State Prosecutor and the disciplined Judge may appeal the decision issued in the context of disciplinary proceedings. However, the complainant is not entitled to lodge an appeal or review against that decision, since the Law on the Judiciary does not recognise the complainant's right to have the Judge disciplined, in so far as the imposition of a sanction does not bring about any direct beneficial effect for the complainant.
 The appeal procedure is similar to that generally envisaged in the regulations of the common administrative procedure.
 Appeals against disciplinary decisions adopted by the Disciplinary Committee of the Council for the Judiciary are adjudicated by the Plenary of the Council for the Judiciary. Furthermore,

11 Is there any right of appeal and/or review, and if so to whom and what is the procedure?

all decisions adopted by the Plenary of the Council for the Judiciary in the context of disciplinary proceedings (including the decision on the appeal against the decision by the Disciplinary Committee imposing any disciplinary sanction) are subject to judicial review before the Administrative Division of the Supreme Court.

SWEDEN

If the Board imposes a disciplinary action the Judge has a possibility to appeal to court. If the Judge is represented by a union agent, the case shall be directly brought before the Labour Court. Otherwise the case shall be instituted before the District Court, and possibly then after an appeal to the Labour Court.

TURKEY

Procedures for appeal and/or review are laid down in article 33 of Law on HCJP as follows:
 “Article 33- (1) The President or the concerned may request the Plenary to reexamine a decision within ten days after notification of the decision which had been initially taken by the Plenary. Decisions after reexamination requests are final.
 (2) The President or the concerned may request reexamination of decision from chambers, within ten days after notification of the decisions taken by the chambers.
 (3) The President or the concerned may object to the Plenary within ten days after date of notification against decisions taken by chambers after reexamination. In this case, decisions of the Plenary on objection are final.
 (4) Complainants also have the right to object and request reexamination of disciplinary decisions.
 (5) No appeal may be made to judicial authorities for decisions of the Plenary and chambers other than those regarding removal from profession. The Council of State shall review cases concerning removal from profession in its capacity as a first instance court. Such cases shall be deemed urgent by the Council of State.”

12 Can the disciplinary proceedings be reopened? If so, in what circumstances?

12 Can the disciplinary proceedings be reopened? If so, in what circumstances?
<p>ALBANIA</p> <p>No.</p>
<p>AUSTRIA</p> <p>Yes</p> <p>a) to the judge’s advantage (sec 151 RStDG) or a) to the judge’s detriment (sec 152 RStDG).</p> <p>ad a) The judge being disciplined may apply for the reopening of the proceedings – even after the enforcement of the disciplinary sentence – when new facts or evidence arise that may be the grounds for an acquittal or for the adaption of the sentence passed.</p> <p>ad b) Only the Disciplinary Public Prosecutor may apply for the reopening of the proceedings to the detriment of the defendant as long as the statutory limitation period has not yet expired and when new facts or evidence arise that may be the grounds for a sentence.</p>
<p>BELGIUM</p> <p>If he proves the existence of a new element, the concerned person can ask a review by the disciplinary court (art. 422)</p>
<p>BULGARIA</p> <p>Should any of the circumstances referred to in Article 54(1) of APC arise, the Supreme Judicial Council suspends the disciplinary proceedings by a reasoned decision which is notified to the parties.</p> <p>The disciplinary proceedings are reopened ex officio and at the request of either of the parties by a SJC decision after the grounds for its suspension are no longer in force. Upon reopening, the proceedings continue from the stage where they were suspended.</p> <p>Suspension of Proceeding</p> <p>Article 54. (1) The administrative authority shall suspend the proceeding:</p> <ol style="list-style-type: none"> 1. in case of death of an individual concerned who is a party to the proceeding; 2. where guardianship or custodianship has to be arranged for an individual concerned who is a party to the proceeding; 3. where incriminating circumstances are detected in the course of the proceeding whereof the establishment is relevant to the issuance of the act; 4. where the Constitutional Court has admitted the consideration on the merits of a petition contesting the constitutionality of an applicable law; 5. if another administrative or court proceeding has been instituted and the act may not be issued prior to the close of the said proceeding; in such cases, suspension shall be decreed after presentation of a certificate of the existence of an instituted proceeding issued by the authority before which the said proceeding has been instituted; 6. where the parties submit an application on reaching a settlement. <p>(2) The administrative authority shall not suspend the proceeding in the cases referred to in</p>

12 Can the disciplinary proceedings be reopened? If so, in what circumstances?
<p>Item 1, 2 and 4 of Paragraph (1) if suspension may endanger the life or health of individuals or jeopardize important State or public interests.</p> <p>(3) Upon suspension of the proceeding, the time limits provided for the issuance of the act shall cease to run.</p> <p>(4) The administrative authority shall inform the parties to the proceedings of the suspension of the proceeding according to the procedure for communication of the act.</p> <p>(5) The act on suspension of the proceeding shall be appealable according to the procedure established by Section IV of Chapter Ten herein.</p>
<p>CROATIA</p> <p>Yes, to supplement the proceedings or to clarify some important issues.</p>
<p>CZECH REPUBLIC</p> <p>Yes, when new facts occur, the retrial is possible.</p>
<p>DENMARK</p> <p>Yes, if new information becomes available.</p>
<p>ENGLAND AND WALES</p> <p>The Rules provide for a case to be re-opened where there is new information in relation to the complaint.</p>
<p>FRANCE</p> <p>No, under no circumstances, disciplinary proceedings can be reopened.</p>
<p>GERMANY</p> <p>The superior can re-institute disciplinary proceedings based on the same set of facts if new insights have come to light and the reasons underlying the order of discontinuance do not present an obstacle thereto.</p> <p>Please see more details above, answers to question 5a).</p>
<p>HUNGARY</p> <p>New proceedings may only be initiated to the judge's detriment while the judge is alive and only within the period of limitation. The judge subjected to the proceedings and his counsel as well as the person entitled to initiate the disciplinary proceedings may initiate new proceedings against a final and absolute disciplinary decision with reference to a fact or evidence or final and absolute decision which was not assessed in the disciplinary proceedings, provided that these circumstances would have resulted in a different decision. The relevant sections can be found in the appendix.</p>
<p>IRELAND</p> <p>According to Head 31(7), where a complaint is made, or the Judicial Conduct Committee of its own motion considers, that a judge may have failed to comply with a determination of the</p>

12 Can the disciplinary proceedings be reopened? If so, in what circumstances?
Committee, the Judicial Conduct Committee shall consider the most appropriate action to take in the circumstances, including the question of recommending the investigation.
ITALY Procedures, as a rule, can not be reopened.
ITALY (Council of Presidency for administrative Justice) No.
LITHUANIA When the President of the Republic or the Seimas refuses to apply disciplinary measures provided, the Judicial Court of Honour shall restart the hearing of a disciplinary action and adopt one of the decisions following decisions (Article 86 of Law on Courts): 1) dismiss a disciplinary action because of the absence of grounds for disciplinary liability; 2) dismiss a disciplinary action because of lapse of time; 3) limit itself to the review of a disciplinary action; 4) impose a disciplinary sanction.
THE NETHERLANDS No such provisions exist.
NORTHERN IRELAND No.
NORWAY Yes. If new evidence is presented.
POLAND Yes. According to the Art. 125 and 126 of the Act law on common courts system: Art. 125. The National Council of the Judiciary, the First President of the Supreme Court and the Minister of Justice may move for resuming the disciplinary proceedings. Art. 126. § 1. The disciplinary proceedings to the disadvantage of the accused may be resumed if the proceedings were discontinued or the judgement was rendered as a result of an offence or if within five years from the discontinuation or rendering of the judgement, new circumstances or evidences are discovered, which could constitute the grounds for conviction or the imposition of a more severe penalty. § 2. The disciplinary proceedings may be resumed for the benefit of the convict also upon his/her death if new circumstances or evidence is discovered, which could constitute grounds for acquittal or imposition of a more lenient penalty. § 3. In the event of the death of the convict, the motion for resuming the proceedings may be lodged by his/her spouse, relatives in linear kinship, siblings, an adopter, an adoptee and the disciplinary commissioner.

12 Can the disciplinary proceedings be reopened? If so, in what circumstances?**PORTUGAL**

Sentencing decisions in disciplinary proceedings may be reviewed at any time if circumstances arise or evidence capable of demonstrating the absence of facts that determined the punishment and that could not be appropriately used by the accused.

The review is required by the judge to the High Council of the Judiciary.

The High Council of the Judiciary shall decide within thirty days whether there should be review.

If the request for review is upheld, the sentencing decision will be modified.

ROMANIA

Disciplinary proceedings are suspended when against the judge or prosecutor has been ordered the initiation of criminal proceedings for the same offense. On the basis of the act that set in motion the criminal action, communicated by the prosecuting authority, the judicial inspector or, where appropriate, judicial inspectors team, by resolution, suspend the disciplinary research until a final solution has been pronounced in the case which led to the suspension. After communication of the definitive solution which caused the suspension made by the prosecuting authority, it is ordered, by resolution, by judicial inspector or, where appropriate, by the team of inspectors the reopening of the judicial disciplinary investigation, which continues from the last concerned act conducted.

SERBIA

Yes. As an exception, when the High Judicial Council finds that, for the purpose of determination of the factual state or elimination of violation of rules of proceedings, there is the need to repeat the presentation of already presented evidence before the Council, the Council shall schedule a hearing. The reporting judge shall provide a short presentation of the case and the facts, without opinion about the merits of the appeal. The parties shall, then, present their arguments.

SLOVAKIA

Within three years of decision of disciplinary panel becoming effective, Judge may lodge motion to renew disciplinary proceedings.

No other extraordinary remedy is admissible against final decision of disciplinary panel.

SLOVENIA

The Judicial Service Act is not specific concerning this issue but there is a special provision on subsidiary application of the Criminal Procedure Act provisions dealing with summary proceedings if a certain issue is not regulated by the Judicial Service Act. This would apply to the possibility of disciplinary proceedings being reopened, under general conditions determined in the Criminal Procedure Act.

SPAIN

Disciplinary proceedings may be reopened if they have been previously suspended as a consequence of the initiation of criminal proceedings (awaiting completion of a criminal trial),

12 Can the disciplinary proceedings be reopened? If so, in what circumstances?

when the subject of the criminal proceedings is the same as the subject of the disciplinary proceedings. In this case, the Law on the Judiciary envisages that the disciplinary proceedings must be continued until their final stage (prior to the adjudication of the disciplinary case), and then suspended until the final criminal judgment is passed. If criminal conviction ensues, the disciplinary proceedings must be dismissed with the sole exception of those cases where the protected interest by the criminal offence and the disciplinary offence is different. In any case, the proven facts in the context of the criminal proceedings must be accepted as such in the disciplinary proceedings.

SWEDEN

The Board can't do a review of a decision not to impose disciplinary sanctions because the decision is favorable to the individual. Obligation for review of a decision arises if the decision is clearly incorrect, due to new facts or other reasons. A review may not lead to detriment for the judge in question. The obligation to review the decision applies even if the decision is being appealed.

TURKEY

In line with article 97/c of Law on Judges and Prosecutors, the matters previously issued and finalized can only be re-processed if new denunciations and complaints with new evidence should be issued.

13

a) Is there any publication of the proceedings?

b) Is the identity of the Judge protected or made public?

13 a) Is there any publication of the proceedings?

b) Is the identity of the Judge protected or made public?

ALBANIA

a) The recent amendments to the law for the HCJ, provides the publication of the minutes of the meeting in the official website of the HCJ, including the minutes of disciplinary proceedings against judges. All the publication are made without the names of the persons involved.

b) The Law on Data Protection doesn't allow the name of the judge to be public.

AUSTRIA

a) Yes; the decisions are made available on the website of the Legal Information System of the Republic of Austria (=Rechtsinformationssystem = RIS).

b) The identity of the Judge is protected and it is not made public.

BELGIUM

a) The start of a disciplinary procedure and the disciplinary decision/judgement are communicated to the minister of Justice/King and to the actors in the disciplinary procedure.

b) The identity of the judge is not made public during the procedure. The hearing before the disciplinary court can however be public in some cases (see above). Moreover, if the procedure results in a discharge/removal/revocation this fact might have to be published by the ministry of Justice in the official journal.

BULGARIA

a) Until entry into force of the order or the decision to impose a disciplinary sanction, no facts or circumstances concerning the disciplinary proceedings may be disclosed.

The effective decision to impose a disciplinary sanction on a judge, prosecutor, investigating magistrate, administrative head and deputy administrative head, as well as an elected member of the Supreme Judicial Council, is posted on the website of the Supreme Judicial Council.

A register of disciplinary proceedings is published on the SJC website allowing all interested persons to get familiar with a particular effective decision to impose a disciplinary sanction, by redirecting them to the decision published on the website of the Supreme Administrative Court.

b) In the Republic of Bulgaria, which is a state committed to the rule of law as set out in

**13 a) Is there any publication of the proceedings?
b) Is the identity of the Judge protected or made public?**

Article 4(1) of the Constitution, there is no anonymous administration of justice. The state's function of administration of justice is open to the public – Article 121(3) of the Constitution. Judges are empowered to administer justice in the name of the people – Article 118 of the Constitution, while the people gives mandate to physical persons who meet the legal requirements to occupy the position of a judge and who, in compliance with the current regulations (Article 9(1) of the Civil Registration Act), are identified by their name having three components. In order to ensure independence in the execution of judicial powers, Article 132(1) of the Constitution provides functional immunity to judges. The judge stands behind his/her judicial act by his/her name and signature, for which the state guarantees his penal and civil non-liability. The decisions of the Supreme Administrative Court on disciplinary cases against magistrates do not differ from the other judicial decisions and the regime for disclosure of the judges' identity that have provided the cases is identical for all of them.

CROATIA

a) Yes, on the website of the State Judiciary Council calls for disciplinary hearings and decisions made in disciplinary proceedings are published.

b) The identity of the judge against whom a disciplinary proceeding is conducted is not protected.

CZECH REPUBLIC

a) Yes, all decisions are published on the website of the Supreme Administration Court.

b) The decisions are published without any names.

DENMARK

a) Not in general. Some cases are publicised in a private database containing relevant case law.

b) The identity of the judge is not made public.

ENGLAND AND WALES

a) A statement is issued on behalf of the Lord Chancellor and the Lord Chief Justice at the end of the proceedings in all cases where a disciplinary sanction is issued. However, the steps taken and evidence gathered in the course of an investigation remains confidential.

b) In cases where a disciplinary sanction is issued the name of the judge and the sanction issued are made public.

FRANCE

a) Any disciplinary decision is published

b) The identity of the judge is made public before the hearing by information on the high council website, but the decision published is anonymized.

13 a) Is there any publication of the proceedings? b) Is the identity of the Judge protected or made public?
<p>GERMANY</p> <p>a) No.</p> <p>b) No.</p>
<p>HUNGARY</p> <p>a) The service court prepares an annual report, which contains the sanctions set by the court. The NJC shall discuss and approve the report, the approved report shall be published on the intranet, thus made available within the judiciary. Besides the report, impersonalised final decisions shall be published on the intranet. NOJ collects impersonalised statistical data concerning the disciplinary situation of judges and the president of NOJ reports annually to NJC. The relevant sections can be found in the appendix.</p> <p>b) The identity of the judge is protected. The decision of the disciplinary proceeding is published in an impersonalised way.</p>
<p>IRELAND</p> <p>a) The Judicial Conduct Committee may cause any determination it makes in respect of an investigation by a Panel of Inquiry to be made public at such time and in a manner it deems appropriate (Head 31(5)).</p> <p>b) The determination in respect of an investigation by a Panel of Inquiry may be made public at a time and manner deemed appropriate to the Judicial Conduct Committee. In making the determination public, the Judicial Conduct Committee shall not identify the judge concerned, shall not identify the complainant where there has been a complaint nor shall it publish material that might identify the judge or complainant concerned (Head 31(5)).</p>
<p>ITALY</p> <p>a) There is no publication of the proceedings</p> <p>b) Disciplinary proceedings are in public hearing: in this sense the identity of the judge is made public.</p>
<p>ITALY (Council of Presidency for administrative Justice)</p> <p>a) No.</p> <p>b) It is protected.</p>
<p>LITHUANIA</p> <p>a) Not later than three days before the meeting of the Commission the agenda of the meeting shall be announced in the internet website of the National Courts Administration stating the person, whose motion is going to be investigated.</p>

- 13 a) Is there any publication of the proceedings?
b) Is the identity of the Judge protected or made public?**

Decisions on the institution of the disciplinary case shall be announced in the separate section of the internet website of the National Courts Administration, except cases when it may infringe the State, official, commercial secret or the protection of individual's private life. Only resolution parts of decisions adopted by the Judicial Ethics and Discipline Commission, after non-public examination of the case, shall be announced.

The National Court Administration shall publish the information on the session of the Judicial Court of Honour and its agenda on www.teismai.lt not later than 3 business days before the session.

Information on decisions taken by the Judicial Court of Honour shall be published on www.teismai.lt within 10 days as of the session.

The National Courts Administration shall publish the decisions taken by the Judicial Court of Honour that come into effect as well as separate opinions proposed by the members of the Court of Honour as to such decisions on www.teismai.lt without prejudice to the requirements of protection of personal data, state, service, commercial, professional, and such other secrets protected by laws, also pursuant to such other restrictions and prohibitions provided in laws. When publishing the decisions taken by the Court of Honor, forename and surname of the judge, as to whom the decision is taken by the Court of Honor in disciplinary case, shall not be depersonalized.

b) Always made public (see above).

THE NETHERLANDS

a) Yes, anonymised versions of the decisions by the Central Appeals Tribunal and the Supreme Court are published at www.rechtspraak.nl.

b) It is protected.

NORTHERN IRELAND

a) b) All complaints will be treated in confidence. A public statement or press release will normally only be made where it is the public interest – usually this will be in serious cases, or where the case has already attracted publicity. Any statement will not identify the complainant or judge unless that person consents or the information is already in the public domain.

Information concerning complaints upheld in relation to an individual judge may be made available to the Northern Ireland Judicial Appointments Commission if that office holder is seeking re-appointment or a new appointment.

Statistics will be recorded of all complaints received, the number of complaints against each tier, the nature of complaints received and disposed of, the manner of disposal and the time taken to investigate and dispose of complaints. These statistics are published on the website of the Northern Ireland Courts and Tribunals Service.

NORWAY

a) The final decision is available online in an anonymous version.

b) The Judges name is not protected as a general rule. Citizens can ask for access to the

13 a) Is there any publication of the proceedings? b) Is the identity of the Judge protected or made public?
decision in accordance with the Civil Services Act.
<p>POLAND</p> <p>a) Public hearing. According to the Art. 116 of the Actlaw on common courts system: Art. 116. § 1. Disciplinary proceedings are open to the public. § 2. The disciplinary court may hear the case at a non-public session for reasons of morality, state security and public order as well as for the reason of the protection of private life of the parties or significant private interest. § 3. Should the case be heard at a non-public session the disciplinary decision is made public. Judgments publishing. The judgment of the Supreme Court as a disciplinary court of the higher instance are published on the website of this Court – after so called anonimization, i.e after hiding the name of the accused judge.</p> <p>b) See above. The identity of the sentenced judge is protected – his/her name is not published on official website of the court, where the judgments of the disciplinary court are published. Nevertheless journalists can participate in public hearing (as a public) and can publish the name of sentenced judge in newspapers or electronic media.</p>
<p>PORTUGAL</p> <p>a) The procedures are subject to confidentiality. Only the final decision may be disclosed</p> <p>b) The final decision is public knowledge The identity of the judge is protected according to the Act on the Protection of Personal Data.</p>
<p>ROMANIA</p> <p>a) The complete list with the decisions is being uploaded on the Judicial Inspection's and the Superior Council of Magistracy's websites, after deleting all the personal data. The hearings are not public.</p> <p>b) The identity of the Judge is protected.</p>
<p>SERBIA</p> <p>a) Disciplinary proceedings are urgent and closed to the public, unless the judge against whom the disciplinary proceedings are conducted requests that they be public.</p> <p>b) Yes, unless he requests to be public .</p>
<p>SLOVAKIA</p> <p>a) Yes, the proceedings are published.</p>

<p>13 a) Is there any publication of the proceedings? b) Is the identity of the Judge protected or made public?</p>
<p>b) Within the published disciplinary decision, the data concerning identity of the judge, are anonymized. However the hearing itself is public.</p>
<p>SLOVENIA</p> <p>a) The general exclusion of the public from disciplinary proceedings unless the judge subject to the proceedings requires otherwise would also apply to this issue.</p> <p>b) See above.</p>
<p>SPAIN</p> <p>a) The complainant, the State Prosecutor and the Judge subject to the disciplinary proceedings have full access to the file of the disciplinary proceedings. Furthermore, once the disciplinary proceedings have been finalised, they are published on the open website of the Council for the Judiciary, although all the personal data are previously expunged in order to grant anonymity.</p> <p>b) All the personal data pertaining to the Judge subject to disciplinary proceedings are never publicised or disclosed, except for the participants in the disciplinary proceedings (i.e. the disciplined Judge, the complainant and the State Prosecutor) and other governing bodies of the Judiciary, including the court where the disciplined Judge sits.</p>
<p>SWEDEN</p> <p>a) There are protocols and the final decision. When the case deals with a fundamentally important issue of disciplinary procedures, the Board publishes the decision.</p> <p>b) It is made public.</p>
<p>TURKEY</p> <p>a) b) Decisions regarding disciplinary proceedings are published anonymised on the official website of High Council.</p>

14 Please provide details of the number of Judges in your country.

14 Please provide details of the number of Judges in your country									
ALBANIA A number of 383 judges is determined by the Presidential Decree. The actual number of judges we have is as follows, In the Courts of first instance: 272 judges In the Courts of Appeal: 85 judges In total: 357 judges Although, the total number of judges in the Supreme Court is 19, as stated in the Law Nr. 8588, dated 15.3.2000 “ on the organization and functioning of the Supreme Court”, the actual number of judges in the supreme court is 17.									
AUSTRIA <table border="1"><tbody><tr><td>2014</td><td>1662,85</td></tr><tr><td>2013</td><td>1647,45</td></tr><tr><td>2012</td><td>1627,50</td></tr><tr><td>2011</td><td>1593,00</td></tr></tbody></table>		2014	1662,85	2013	1647,45	2012	1627,50	2011	1593,00
2014	1662,85								
2013	1647,45								
2012	1627,50								
2011	1593,00								
BELGIUM In 2011 there were 2452 Magistrates: - 1604 judges in courts and courts of appeal - 848 members of public prosecution									
BULGARIA Full-time payroll staff at present – 2205 judges (the number includes administrative heads, deputy administrative heads, judges and junior judges).									
CROATIA Republic of Croatia has 1910 judges.									
CZECH REPUBLIC On January 1, 2014 there were 3 054 judges.									
DENMARK About 373 appointed judges and 250 deputy judges.									
ENGLAND AND WALES There are 3600 members of the full and part time judiciary, approximately 29,000 magistrates and 7000 tribunal members.									
FRANCE									

14 Please provide details of the number of Judges in your country
There are about 5807 judges in France
GERMANY Germany had 20332 Judges (459 Judges on federal level and 19923 Judges at federal state (Länder) level) in 2012.
HUNGARY On 30 June 2014 the number of judges was 2730.
IRELAND As of 13th November 2014, there are 156 judges.
ITALY N. 9.356
ITALY (Council of Presidency for administrative Justice) Administrative judges in Italy are about 400.
LITHUANIA At the end of 2013 there were 773 judges in Lithuania, among them: 481 working in the district courts of first instance, 161 working in the regional courts, 31 in the Court of Appeal, 35 in the Supreme Court, 48 in the administrative courts and 17 in the Supreme Administrative Court.
THE NETHERLANDS The Netherlands has about 2,400 judges.
NORTHERN IRELAND In Northern Ireland as at 26th August 2014 * 68 full time judges * 64 deputy/ fee paid judges * 174 Lay Magistrates
NORWAY The total number of judges are 660.
POLAND There are 10 448 judges.

14 Please provide details of the number of Judges in your country
<p>PORTUGAL</p> <p>On December 31, 2013 , there were 2012 judges</p>
<p>ROMANIA</p> <p>On 1 October 2014 there were registered a total of 4383 judges in activity.</p>
<p>SERBIA</p> <p>Total number of judges in Serbia is 2792.</p>
<p>SLOVAKIA</p> <p>1371 judges (at 31 August 2014)</p>
<p>SLOVENIA</p> <p>As of 30 June 2014, there were 957 judges in Slovenia.</p>
<p>SPAIN</p> <p>There are currently 5,353 members of the Judiciary (professional judges) in active service. There are also Justices of the Peace (around 7,900) and Deputy Judges (around 1,300). All these may be subject to disciplinary proceedings.</p>
<p>SWEDEN</p> <p>There are 1 184 permanent Judges in Sweden (exkl leave of absence 1159).</p>
<p>TURKEY</p> <p>As of 24/09/2014, the number of judges employed is 9297, allocated as follows: 6446 in civil and criminal jurisdiction, 1026 in administrative jurisdiction, 1078 in Court of Cassation, 375 in Council of State, 158 in High Council of Judges and prosecutors, 168 in Ministry of Justice, 41 in Constitutional Court, 5 in Turkish Justice Academy.</p>

- 15 Please provide details for each of the last 3 years of**
- a) the numbers of complaints made,**
 - b) the number of complaints dismissed on a summary basis,**
 - c) the number of complaints adjudicated upon and upheld or dismissed,**
 - d) the number of Judges disciplined**
 - e) the nature of the disciplinary action taken in respect of each Judge**

15 Please provide details for each of the last 3 years of
a) the numbers of complaints made, b) the number of complaints dismissed on a summary basis, c) the number of complaints adjudicated upon and upheld or dismissed, d) the number of Judges disciplined e) the nature of the disciplinary action taken in respect of each Judge

ALBANIA

(Information for 2013-2014). For 2012 we couldn't find reliable data.

a) Number of complains arrived at the HCJ during 2013: 885 complains
 Number of complains arrived at the HCJ during 2014 (January – October) : 732 complains

b) in 2013: 637 cases
 in 2014: 420 cases

c) in 2013: 246 cases
 in 2014: 302 cases

d) During 2013 were reviewed 4 requests for disciplinary proceeding
 During 2014 were reviewed 20 requests for disciplinary proceeding against 20 judges:

e)
 2013
 - 1 judge "dismissed"
 - 1 judge rejection of the request for disciplinary proceeding
 - 2 judges "suspension of the process because the subjects of inspection are being reviewed in the Supreme Court."
 2014
 - 2 judges "dismissed"
 - 8 judges "remark with warning"
 - 1 judge "Transfer in a court of lower level two years"
 - 2 judges "Warning"
 - 6 judges rejected the request of the Ministry of Justice and the Minister proposes no other disciplinary measure
 - 1 judge Minister urges the "cessation of the disciplinary proceeding"

15 Please provide details for each of the last 3 years of
a) the numbers of complaints made, b) the number of complaints dismissed on a summary basis, c) the number of complaints adjudicated upon and upheld or dismissed, d) the number of Judges disciplined e) the nature of the disciplinary action taken in respect of each Judge

AUSTRIA

a)

2013	45
2012	64
2011	45

b)

2013	26
2012	43
2011	34

c)

	dismissed	upheld
2013	16	1
2012	12	9
2011	4	5

d)

	guilty /disciplined	Guilty/ not disciplined
2013	2	0
2012	4	1
2011	3	2

e)

	nature of disciplinary action
2013	1 warning /1 fine
2012	4 fines/1 not disciplined
2011	1warning/2 reductions of salaries (one combined with the retirement for five years)/ 2 not disciplined

BULGARIA

a) 48 in total for 2011, 2012, 2013 and until 31.10.2014 r. (10 for 2011; 7 for 2012; 19 for 2013 и 12 for 2014);

b) 8 in total for 2011, 2012, 2013 and until 31.10.2014 (3 for 2011; 2 for 2012; 2 for 2013 and 1 for 2014);

c) 30 in total for 2011, 2012, 2013 and until 31.10.2014 r. (7 for 2011; 5 for 2012; 11 for 2013 и 7 for 2014r.);

d) 30 judges in total with disciplinary sanctions imposed for 2011, 2012, 2013 and until 31.10.2014.

e) A disciplinary sanctions imposed as follow:

- "Reprimand" – 6 judges
- "Censure" – 6 judges

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a) the numbers of complaints made, b) the number of complaints dismissed on a summary basis, c) the number of complaints adjudicated upon and upheld or dismissed, d) the number of Judges disciplined e) the nature of the disciplinary action taken in respect of each Judge

- "Reduction of the basic labour remuneration by 10 to 25 percent for a period from 6 months to two years" – 10 judges
- "Demotion in rank or position at the same judicial authority for a period of one to three years"- 2 judges
- "Removal from office as administrative head or deputy administrative head" – 1 judge
- "Disciplinary removal from office" – 5 judges

CROATIA

a) 2011. - 8 initiated disciplinary proceedings
 2012. - 44 initiated disciplinary proceedings
 2013. - 37 initiated disciplinary proceedings

b) 2011. - 0 suspended disciplinary procedures
 2012. - 6 suspended disciplinary procedures
 2013. - 8 suspended disciplinary procedures

c) 2011. - 12 were final of which 8 cases the decisions were confirmed by the Constitutional Court of Republic of Croatia and in other 4 cases the remedy was not filed.
 2012. - 37 were final, out of which 8 decisions were confirmed by the Constitutional Court of Republic of Croatia.
 2013. - 26 were final of which 7 decisions were confirmed by the Constitutional Court of Republic of Croatia and 3 decisions the State Judiciary Council were revoked.

d) 2011. - 10 judges disciplined
 2012. - 29 judges disciplined
 2013. - 16 judges disciplined

e) 2011. - 4 disciplinary penalty of reprimand
 5 fines
 1 removal from office
 Total - 10 decision on the disciplinary responsibility

2012. - 20 disciplinary penalty of reprimand
 3 fines
 2 removal from office
 4 conditional penalties of removal from office
 Total - 29 decision on the disciplinary responsibility

2013. - 4 disciplinary penalty of reprimand
 6 fines
 5 removal from office
 1 conditional penalties of removal from office
 Total - 16 decision on the disciplinary responsibility

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CZECH REPUBLIC

a) 2011 - 40
 2012 - 27
 2013 - 35

b) NAP

c) 2011 - 36
 2012 - 27
 2013 - 31

d) 2011 - 36
 2012 - 27
 2013 - 31

In 2011 two proceedings were joined for joint proceedings against one judge and 3 proceedings were joined for joint proceedings against one judge.

In 2013 two proceedings were joined for joint proceedings against two judges.

e)
 2011
 reprimand - 2
 temporary reduction of salary - 8
 temporary reduction of salary of vice-president of court - 1
 removal from the office of judge - 1
 acquittal of disciplinary charges - 11
 discontinuance of proceedings - 13

2012
 reprimand - 0
 temporary reduction of salary - 9
 discharge from disciplinary punishment - 2
 acquittal of disciplinary charges - 4
 discontinuance of proceedings - 12

2013
 reprimand - 4
 temporary reduction of salary - 11
 removal from the office of judge - 2
 discharge from disciplinary punishment - 3
 acquittal of disciplinary charges - 4
 discontinuance of proceedings - 7

DENMARK

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a) 239

b) Unfortunately we are not in possession of such statistics. The total number of cases dismissed is 224, but how many of these were dismissed on a summary basis is unknown.

c) 228

d) 4

e) In two cases the Special Court of Indictment and Revision reprimanded the judges, and in two cases the judges were given a severe reprimand.

Statistics regarding § 49	2009	2010	2011	2012	2013
Complaints regarding judges	86	61	72	85	82
Dismissed	80	54	66	84	74
Rreprimand or suspension	1	0	2	0	2
Case closed due to other circumstances	5	7	4	1	6

ENGLAND AND WALES

	2011/2012	2012/2013	2013/2014
a)	1615	2154	2018
b)	*867	*1019	*1036
c)	748	1135	982
d)	57	55	58
e)	28 ***received a formal sanction	35 ***received a formal sanction	39***received a formal sanction 2 suspended

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	29 removed from office	20 removed from office	17 removed from office
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* These figures are an approximation, as prior to October 2013, complaints were not recorded as being dismissed on a summary basis. The figures in the table therefore reflect the number of cases that were dismissed as they related to the judicial decision or management of a case. The majority of these cases would have been dismissed immediately without investigation, however, a small number included here, may have been dismissed on this basis following an investigation.

From October 14, cases that cannot be considered by the JCIO, for example because it is immediately obvious that the complaint relates to judicial decision, are rejected without investigation. The figure for 13/14 therefore incorporates those that were dismissed under the regulations for April – September and those rejected from October – March.

** These figures include cases that have been investigated and dismissed by JCIO officials and those that have been further considered by the Lord Chancellor and the Lord Chief Justice. The level of adjudication is therefore not uniform.

*** a formal sanction is recorded on the judge’s personal file and may be in the form of : formal advice; formal warning; or, reprimand

FRANCE

Since 2012,

- a) 872 complaints lodged by litigants were brought before the High Council
- b) 843 complaints lodged by litigants were dismissed on a summary basis.
- c) 29 complaints were adjudicated and 7 were upheld.
- d) 3 Judges were disciplined
- e) No sanction was taken from litigants ‘ complaints.

The French code of ethics, which is more likely a guideline than a code, defines the judge’s obligations as follows : independence, impartiality, integrity, legality, care, discretion and reserve.

During the last three years, the ministry of Justice and courts of appeal’s presidents referred 12 disciplinary proceedings to the high Council. During that period, the french high Council has rendered 21 decisions which can be detailed as follows

- 16 sanctions against a judge
- 4 cases were dismissed

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- 1 decision was a formal note because of the discontinuation of the proceedings by the ministry of justice.

The French high Council has sanctioned misuses of the judge's status, delays, absenteeism, judge's behaviour with regards to parties to the proceeding, use of social network, relations with prosecutors or attorneys, breach of confidentiality...

Among these sanctions, the French high Council has decided in particular:

- Delays in cases' treatment and drunkenness by admission to cease to exercise
- Misuses of the judge's status by reprimand with an entry in judge's file
- Judge's behaviour with regards to parties to proceedings and colleagues by reprimand with an entry in judge's file
- Breach of the collegiality principle by reprimand with an entry in judge's file
- Lack of involvement for a president by removal from presidents' functions with transfer to another jurisdiction
- Delays and inappropriate behaviour during hearing by prohibition from appointment as a single judge during 5 years
- Constant delays and critical financial situation by prohibition from appointment as a single judge during 5 years
- Breach of integrity duty by reprimand with an entry in judge's file.

GERMANY

a) The data regarding disciplinary proceedings in Germany are not collected and evaluated statistically.

b) See answer to question 15a)

c) See answer to question 15a)

d) See answer to question 15a)

e) See answer to question 15a)

HUNGARY

a) The number of complaints made differ from the actual cases of complaints, since a complaint may be submitted multiple times or due to administrative mistake other notifications are filed as complaints, or there might be complaints not concerning the judiciary, which might distort the numbers.

In the judiciary

In 2012: 5766 complaints were filed

In 2013: 5576 complaints were filed

In 2014: national data not complete

However, considering the distortion of the numbers above and taking the number of

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complaints filed in NOJ:

2012: 569 cases started at NOJ, in connection which 1065 statements of case were submitted

2013: 478 cases started at NOJ, in connection which 1092 statements of case were submitted

b) If the complaint concerns a substantive problem or failure, measures are taken in all cases.

c) Cf. 15. a.). The presidents of the regional courts of appeal and the presidents of the regional courts report annually to the president of NOJ concerning complaints as well, but regarding the answers of a), we do not have the exact numbers.

d) In 2011: 32 judges

- 26 cases: warning without disciplinary sanction

- 3 cases: the service court terminated the disciplinary procedure and issued warning

- 2 cases: censure

- 1 case: the disciplinary procedure was not started

2012: 21 judges

- 17 cases: warning without disciplinary sanction

- 2 cases: the service court terminated the disciplinary procedure

- 1 case: censure

- 1 case: reprimand

2013: 37 judges

- 22 cases: warning

- 4 cases: the service court terminated the disciplinary procedure and issued warning

- 3 cases: censure

- 4 cases: reprimand

- 3 cases: demotion by one pay grade

- 1 case: the service court denied the disciplinary procedure

e) It is a peculiarity that in the disciplinary cases of judges and related compensation cases and further in legal disputes arising from the professional evaluation of the activities and of the leaderial duties of judges, the service court of first instance attached to the court of appeal in the territory of Budapest and the service court of second instance attached to the Curia shall proceed as of 1 July 2011. The chair and members of the service court shall be appointed by the NJC. The rules of procedure of the service court shall contain rules on the composition of the proceeding chambers and on the distributing cases. The rules of procedure set by the service court shall be approved by the NJC. The rules of procedure of the service court shall be published by the NJC on the central website of the courts.

ITALY

a) Year 2011, number of complaints made: 1780

Year 2012, number of complaints made : 1316

Year 2013, number of complaints made: 1373

b) Year 2011, dismissed on a summary basis: 1340

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Year 2012, dismissed on a summary basis: 1289
 Year 2013, dismissed on a summary basis: 1222

c) Year 2011, complaints adjudicated upon: n. 149
 Year 2012, complaints adjudicated upon: n. 142
 Year 2013, complaints adjudicated upon: n. 127

Year 2011, complaints upheld n.: 43
 Year 2012, complaints upheld n.: 53
 Year 2013, complaints upheld n. :45

Year 2011 complaints dismissed n.: 96
 Year 2012 complaints dismissed n.: 89
 Year 2013 complaints dismissed n.: 82

d) Year 2011 Judges disciplined n. : 149
 Year 2012 Judges disciplined n. :142
 Year 2013 Judges disciplined n. :127

e) 42% because they exceeded the legal deadline for the filing of judgments; 21% for serious violation of the law, in the exercise of functions, resulting from ignorance or inexcusable negligence; 10% for a crime is likely to affect the image of the magistrate; 8% wrongful acts adopted in the exercise of functions in respect of the parties, lawyers or colleagues; 6% for behaviors that are causing, in the exercise of functions, undue harm or unfair advantage to one of the parties; 4% for failure to disclose the High Council of a situation of incompatibility (family relationship with lawyers and judges in the same district); 3% undue interference in the activity of another judge; 3% judgments and orders not showing the reasons for the decision; 2% failure to comply with the Judicial Service;1% non-compliance with abstention.

ITALY (Council of Presidency for administrative Justice)

a) Not available.

b) nov.2013- nov. 2014: 19

c) nov.2013- nov. 2014: 6

d) nov.2013- nov. 2014: 4 judges.

e) 2010 – 2013 ; censure in two cases ; removal in one case.

LITHUANIA

a) During the years 2012, 2013 and 2014 in total 981 complaints, requests and offers to initiate a disciplinary case were made:

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2012 – 435

2013 – 332

2014 – 214

b) 861

c) 19

d) 8

e) - Decision of the Judicial Court of Honour No 21P-1 of 20 January 2012. It has been established in the disciplinary case that, while hearing a civil case in court, Ms Justice R. K. communicated with Defendant J. R. in the Russian language. The Judicial Court of Honour has held that responsibility for the true interpretation lies with the interpreter who signs an oath documents and not the judge who does not assume personal responsibility for the interpretation quality when speaking in a language other than the official language at a hearing. The Judicial Ethics and Disciplinary Commission has concluded that Ms Justice R. K. has failed to follow the principle of duty laid down in Article 15 of the Code of ethic of judges, which requires compliance with the Constitution of the Republic of Lithuania, the laws and other regulations and performance of duties in an impeccable, professional and business-like manner (Article 15, paragraphs 1 and 3), and has violated the principle of respect and loyalty to the State laid down in Article 7 of the Code of ethic of judges, which obligates the judge to honour the oath (Article 7(1)). The Judicial Ethics and Disciplinary Commission has evaluated such conduct of the judge as the conduct derogating the name of a judge and damaging the authority of the judicial system, which forms the grounds for the disciplinary liability of the judge.

In deciding on the applicable judiciary disciplinary action, the Judicial Court of Honour took account of the degree of graveness and the circumstances of the offence, of the reasons for such behaviour provided by Ms Justice R. K., of the fact that the judge had admitted the violations and assessed them with self-criticism and regretted her actions, and of the fact that the judge had no previous disciplinary record. The Judicial Court of Honour decided that no disciplinary action would be taken with respect to the judge, with the disciplinary hearing being sufficient.

- Decision of the Judicial Court of Honour No 21P-2 of 20 January 2012. The disciplinary case has been instituted against a judge on the grounds that he, acting on a request of his acquaintance, a prosecutor, called a judge working at another court and asked whether a judgment had been passed in administrative proceedings instituted against the prosecutor's son, and if it had been passed, then why it was not published in the Judicial Information System; furthermore, he recorded the telephone conversation with the judge working at another court and later submitted the recording to the investigation. The Judicial Court of Honour has decided that such conduct of the judge, whereby he, acting as an intermediary for the prosecutor – his acquaintance, approached another judge requesting assistance for an external party in the case being tried by him and recorded the telephone conversation with the aim to use it against another judge, is not tolerable and is in contravention of the

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requirements for impartiality, decency, fairness, tactfulness, courtesy and honesty. In the opinion of the Judicial Court of Honour, such conduct of the judge derogated the name of the judge and damaged the authority of the court. The Judicial Court of Honour issued the judge with a reprimand.

- Decision of the Judicial Court of Honour No 21P-3 of 24 February 2012. The disciplinary proceedings were instituted against the judge on the grounds that he, having received an appeal timely submitted by the convicted person E. R. on 29 April 2011, wrote down his resolution on the appeal and the referral of the case to the appeals court as late as on 30 May 2011. In this way, the action that must be taken within three days under the law on criminal proceedings was delayed by him almost by one month. The Judicial Court of Honour has concluded that Mr Justice R. G. violated the term stated in Article 319(1) in the Code of Criminal Procedure of the Republic of Lithuania and did not ensure that the case file including the appeal would be sent to the appeals court in due time, thus violating the provisions of Article 15, paragraphs 1, 3 and 4 of the Code of ethic of judges and failing to perform his duties with due care as well as derogating the name of the judge and damaging the authority of the court. On the other hand, the Judicial Court of Honour has recognised that the delayed sending of the criminal case was influenced by the heavy workload of the judge and the process of drawing up a reply in the civil case initiated by the convicted person, which was done by the judge, acting in the capacity of a third party in the proceedings, using the materials collected in the criminal case. It should be noted that the delayed sending of the case had not caused any harmful consequences for the participants in the proceedings and the appeals procedure was not deferred too much and resulted in the rejection of the appeal. It should also be noted that Mr Justice R. G., while hearing the criminal case based on a criminal offence committed by E. R. in a court of first instance, had sincerely put forth efforts to decide the case within the shortest term possible. The Judicial Court of Honour decided to confine itself to the disciplinary hearing and did not take any disciplinary action.

- Decision of the Judicial Court of Honour No 21P-4 of 23 March 2012. The Judicial Ethics and Disciplinary Commission instituted disciplinary proceedings against a judge on the grounds that he, while hearing a criminal case, gave a decision on termination of criminal proceedings against Ž. P. on 21 April 2011 on the grounds of completion of the prescription for criminal liability even though the latter grounds did not exist as, based on the factual data on other pre-trial investigations instituted against the accused Ž. P. and on his criminal record, the prescription had been interrupted and, as of the date of giving of the said decision, the time limit for the holding to criminal account was not yet due. Furthermore, Mr Justice P. F. did not take any procedural action from 25 May 2010, when the criminal case was referred to him, until 14 April 2011, when he scheduled a hearing, i. e. almost one year. The Judicial Court of Honour has established that Mr Justice P. F. considered the case in a superficial manner, he failed to collect all the data relevant to the decision on termination of criminal proceedings, even though he was obliged to be proactive in the criminal proceedings and to clarify all the circumstances relevant to the deciding of the case. In the application of the law, he failed to determine all the relevant circumstances thus violating a provision of the criminal law due to his obvious carelessness. Such actions by the judge gave rise to significant negative consequences: the criminal proceedings against the accused were terminated, even though the prescription period for the holding to criminal account is still not completed. The Judicial

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Court of Honour has decided that, by such conduct, the judge degraded the name of the judge and damaged the authority of the court. The Judicial Court of Honour issued the judge with a reprimand.

- Decision of the Judicial Court of Honour No 21P-5 of 27 April 2012. The disciplinary proceedings have been instituted against a judge on the grounds that she, while chairing a preliminary court hearing, failed to comply with the basic procedure for conducting a hearing established in the procedural law, thus restricting the procedural rights of the participants in the case (failed to ensure that the serving of summons upon those persons who had failed to appear in court and the known reasons for their non-appearance is announced (Article 239 of the Code of Civil Procedure of the Republic of Lithuania); failed to announce that the hearing is being recorded; failed to announce the judicial bench and the participation of the secretary of court hearings; failed to explain to the participants in the case, who were present at the hearing, their rights to challenge; failed to explain the rights and duties to the claimant, who was present at the hearing and whose solicitor had his powers of authorisation expired, and to the third party's representative, who was present at the hearing; failed to resolve the issue of the possibility to hear the case at the preliminary court hearing in the absence of the defendant, whose attendance had been recognised as obligatory by a decision made on 2 May 2011 for the record, and of the third party; heard the case while not being duly prepared for it and having not properly familiarised herself with the materials of the case; during the preliminary hearing, asked the participants in the proceedings to inform her about the situation in the case, stating that they knew the situation better than the judge; was not aware of the evidence submitted on 16 August 2011 by Defendant AB DnB NORD bankas; failed to resolve the requests made by the third party even though she had indicated in the resolution that they would be resolved during the hearing; while leaving the courtroom to look for the evidence submitted by AB DnB NORD bankas, which had not been included in the case file, failed to inform the participants in the proceedings about the end of the preliminary hearing, failed to schedule another hearing and failed to inform the persons present at the hearing about it. The Judicial Court of Honour has evaluated such conduct of the judge as the conduct contrary to the principle of dutifulness laid down in the Code of ethic of judges, derogating the name of the judge and damaging the authority of the court, and issued the judge with a reprimand.

- Decision of the Judicial Court of Honour No 21P-6 of 27 April 2012. Ms Justice E.P. was recognised as an injured party in a criminal case. While the judge hearing the case recognised the injured party's appearance in court as obligatory, she failed to comply with the provisions of the Code of ethic of judges by failing to appear at the hearings held on 20 September 2011 and 24 October 2011 of which she had been duly notified and by failing to inform the court about the reasons for non-appearance. In this way, she derogated the name of the judge and damaged the authority of the court. The Judicial Court of Honour has taken account of the degree of graveness and the circumstances of the offence, of the absence of previous disciplinary record, and of the fact that she is the mother of three young children. Upon assessing all the circumstances relevant to the selection of the judicial disciplinary action, the Judicial Court of Honour has concluded that the aims of judicial disciplinary responsibility had already been achieved in this disciplinary case, therefore, no disciplinary action was taken

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with respect to Ms Justice E. P. as disciplinary hearing was sufficient.

- Decision of the Judicial Court of Honour No 21P-3 of 4 March 2013. A disciplinary case was instituted against a judge on the grounds that she had failed to comply with Article 15, paragraphs 3 and 4 of the Code of ethic of judges by violating the provisions of the Code of Civil Procedure of the Republic of Lithuania governing the summoning of procedural documents, notification of the parties and acceptance of an individual complaint, by failing to ensure that the case file including the individual complaint is delivered to the appeals court within three working days and by failing to have regard to the specificity of family cases that requires a proactive role of the court in the hearing of cases of this type. In particular, due to such conduct of the judge, the case file was not referred to the appeals court within the time limit set by the Code of Civil Procedure of the Republic of Lithuania, resulting in negative consequences, namely, the matter of awarding maintenance to a person of full age still remains undecided. In the opinion of the Judicial Court of Honour, such conduct of Ms Justice R. A. is not in line with the basic standards of the judicial professional conduct requiring that the duties of a judge must be performed in an impeccable, timely and professional manner and that the judicial proceedings must not be delayed, therefore, such conduct should be treated as an obvious carelessness in the performance of duties, contrary to the interests of administering justice, and should be recognised as a conduct derogating the name of the judge and damaging authority of the court. The Judicial Court of Honour however, has taken account of the nature, the degree of graveness and the consequences of the offence and other relevant circumstances inter alia characterising the judge, and has decided that disciplinary hearing is sufficient, without taking any disciplinary action.

- Decision of the Judicial Court of Honour No 21P-4 of 1 July 2013. The disciplinary proceedings were instituted against a judge on the grounds that she, acting in the capacity of a chairperson of the court, violated Article 34(2) of the Republic of Lithuania Law on Courts by failing to approach the chairperson of the court of a higher instance with a request to resolve the issue of referral of an administrative case, in which the person being held to administrative account was Ms Justice D. Ž working in the same court, to another court; instead, she assigned the hearing of the case to herself and gave a decision in it. Article 34(2) of the Republic of Lithuania Law on Courts establishes that in the case if a judge is a party to the proceedings, and the case falls within the jurisdiction of the court in which he/she works as a judge (except for the Supreme Court of Lithuania, the Lithuanian Appeals Court and the Lithuanian Supreme Administrative Court), the chairperson of a court of a higher instance shall refer the case to another court of the same instance. The Judicial Court of Honour has stated that the conduct of the judge was contrary to the law and the basic standards of judiciary professional conduct, obligating the judge to perform his/her duties in an impeccable, professional and business-like manner, therefore, the name of the judge was derogated and the authority of the court was damaged. The Judicial Court of Honour issued the judge with a reprimand.

- Decision of the Judicial Court of Honour No 21P-5 of 7 October 2013. The disciplinary proceedings were instituted against a judge on the grounds that he had failed, in administrative cases No A. 6-1299-804/2012 and No A2.6-1338-804/2012 and in criminal case

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No PK-184-804/2012, to word the procedural decisions taken in the cases in such a way that they would meet the statutory requirements, i. e. had indicated a wrong grounds giving rise to administrative liability, imposed a wrong penalty, and failed to state, in the resolution part of the decision whereby the private prosecution case was terminated, the reconciliation conditions agreed by the parties. Later, upon receiving of information about inaccuracies in these decisions, he altered them according to a procedure other than the procedure prescribed the law, and changes the substance of the decisions: in one of the cases, he adopted a new resolution by changing the grounds giving rise to the administrative liability but leaving the date of the previous resolution, i. e. 13 November 2012; in another case, by a resolution of 16 November 2012 he changed the substance of the resolution of 14 November 2012 whereby a LTL 3,000 fine had been imposed on the offender, and added the penalty of forfeiture of the right to drive vehicles; on 15 January 2013, he adopted a new resolution in the criminal case, whereby the resolution part of the previous decision of 17 May 2012, which had not specified the reconciliation conditions agreed by the parties, was amended by specifying the amount of the awarded damages. In addition, the judge failed to comply with the terms and procedures for the taking of procedural actions as stated in the Code of Civil Procedure of the Republic of Lithuania while hearing civil cases: failed to enter, in the decision, the fact of presence of a party to the case at the hearing; when giving an additional decision in a civil case, failed to notify the date, time and place of the hearing to the parties; took action on a request for an additional decision in a civil case as late as after two months; specified a wrong term for filing of appeals. The Judicial Court of Honour has stated that the judge performed his duties in an obviously careless and inappropriate manner, which gave rise to serious consequence, the constitutional right of the participants in the proceedings was restricted and denied; the time limit for the execution of the decision was not complied with. The Judicial Court of Honour issued the judge with a severe reprimand.

- Decision of the Judicial Court of Honour No 21P-7 of 16 December 2013. The disciplinary proceedings were instituted against a judge on the grounds that she, while hearing civil cases on the issue of a court order, which must be heard by way of summary proceedings, with the principle of effectiveness being the priority, unduly delayed the hearing of these cases, formally applied the institute of correction of deficiencies, failed to take account of the rules for the application of legal provisions established by the court of a higher instance and of the instructions given by the court in specific proceedings, ignored these instructions on a systematic basis, and ignored judicial precedent as a source of law. The said procedural violations have caused undesirable consequences for persons who had applied to court as the resolution of the issue of acceptance of applications for a court order took an unreasonably long time. The Judicial Court of Honour has stated that in this case disciplinary liability is imposed on the judge not for the procedural actions but for the failure of the judge to act in a way which would not damage the authority of the court, resulting in a conduct derogating the name of the judge. The Judicial Court of Honour issued the judge with a severe reprimand.

- Decision by the Judicial Court of Honour No 21P-2 of 24 February 2014. The disciplinary proceedings were instituted against a judge on the grounds that during a hearing she had reproached solicitor E. M. who, because of her work on another case, was slightly late arriving at the hearing, and who failed to duly notify the court thereof. As the accused O. P. was late

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arriving at the hearing and his defender L. G. informed the judge thereof, Ms Justice L. G. asked in a raised voice why did the defender permit the accused to be late and ordered the defender to call O. P. and to warn him that sanctions would be imposed, and after the solicitor refused to do this, the judge called the accused herself and asked, in a raised voice, where he was and why did he fail to inform the court that he was going to be late. While communicating with the accused over the phone in a non-procedural order, the judge asked him, in a raised voice, whether he knew that the court may consider changing the pre-trial measure for him. The judge showed her irritation while talking. Despite the proposal to have several minutes' break while the accused arrives, which was made by the participants in the proceedings, the judge quickly went to the hearing room and gave a decision whereby a fine was imposed on the accused for being late and warnings were issued to solicitors E. M., L. G. and R. M. for their conduct; the judge only established the reasons for the accused's being late after announcement of the decision.

In the opinion of the Judicial Court of Honour, the judge, who herself must demonstrate polite and exemplary behaviour to other participants in the proceedings, failed to act in a patient, business-like, formal and proper manner, thus derogating the name of the judge and damaging the authority of the court. The Judicial Court of Honour issued the judge with a reprimand.

THE NETHERLANDS

a) Internal right of complaint to the courts (complaints about both judges and other staff members):

2013: 1,794

2012: 1,398

2011: 1,412

External right of complaint (to the Procurator General at the Supreme Court):

2013: 47

2012: 39

2011: 13

Cases involving suspension or dismissal investigated by the Procurator General:

2013: 3

2012: 2

2011: 6

Cases involving suspension or dismissal submitted to the Supreme Court:

2013: 1 (dismissal due to incapacity for work)

2012: 0

2011: 0

b) Internal right of complaint:

2013: 950 not addressed in substance

2012: 728 not addressed in substance

2011: 688 not addressed in substance

External right of complaint: no figures available

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c) Internal right of complaint:
 2013: 844 addressed in substance, 375 upheld
 2012: 670 addressed in substance, 266 upheld
 2011: 724 addressed in substance, 264 upheld
External right of complaint:
 In 2013 3 complaints were submitted to the Supreme Court. The Supreme Court declared these complaints unfounded in 2014.
 In 2012 3 complaints were also submitted to the Supreme Court. The Supreme Court upheld 2 complaints and dismissed 1 in 2013.
 In 2011 no complaints were submitted to the Supreme Court.

d) By the Supreme Court
 2013: 0
 2012: 0
 2011: 0
By Presidents of the Court (a written warning)
 2013: unknown
 2012: 0
 2011: 2

e) Written warning issued by the President of the Court.

NORTHERN IRELAND

a) 2013 – 46
 2012 – 22
 2011 - 31

b) 2013 - 28
 2012 - 20
 2011 - 24

c) 2013 – 12 investigated, none upheld
 2012 – 2 investigated, none upheld
 2011 - 7 investigated, 2 upheld, 5 dismissed

d) 2013 - none
 2012 - none
 2011 - two

e) 2013 - n/a
 2012 - n/a
 2011 - letters of apology issued to each complainant on behalf of each judge

15 Please provide details for each of the last 3 years of
a) the numbers of complaints made, b) the number of complaints dismissed on a summary basis, c) the number of complaints adjudicated upon and upheld or dismissed, d) the number of Judges disciplined e) the nature of the disciplinary action taken in respect of each Judge

NORWAY

a) 2013: 96
 2012: 113
 2011: 176

b) 2013: 63
 2012: 46
 2011: 81

c) 2013 upheld: 2
 dismissed: 31

2012 upheld: 4
 dismissed: 63

2011 upheld: 3
 dismissed: 92

d) 2013: 2
 2012: 3
 2011: 3

e) 2013: Judge 1 - criticism
 Judge 2 - warning

2012: Judge 1 - criticism
 Judge 2 - criticism

Judge 3 - two warnings. Dismissed after legal actions initiated by MOJ.

2011: All 3 Judges - criticism

POLAND

a) There were about 600 complaints against judges during last three years. There were about 100-120 disciplinary proceedings against judges every year. A part of accused judges was acquitted on all charges.

b) No such statistics.

c) No such statistics.

d) There were about 160 judgements with sentenced judges during those three years.

e) No such statistics.

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PORTUGAL

	2011	2012	2013
a)	817	1032	881
b)	565	732	732
c)	44	40	34
d)	41	26	36

e)

Penalty	Number of judges
Compulsory retirement	3
Transfer	1
Suspension from duties	6
Fine	15
Warning	10

2012

Penalty	Number of judges
Compulsory retirement	3
Transfer	4
Suspension from duties	1
Fine	16
Warning	5

2013

Penalty	Number of judges
Compulsory retirement	1
Transfer	0
Suspension from duties	2
Fine	22
Warning	11

ROMANIA

a) The total volume of complaints recorded in 2013, was 4205 complaints. The total volume of complaints recorded in 2012, was 3795 complaints. The total volume of complaints recorded in 2011, was 3586 complaints.

b) The total volume of complaints dismissed on a summary basis in 2013, was 4149 complaints. The total volume of complaints dismissed on a summary basis in 2012, was 3760 complaints. The total volume of dismissed cases on a summary basis in 2011, was 3428

15 Please provide details for each of the last 3 years of
a) the numbers of complaints made, b) the number of complaints dismissed on a summary basis, c) the number of complaints adjudicated upon and upheld or dismissed, d) the number of Judges disciplined e) the nature of the disciplinary action taken in respect of each Judge

complaints.

c) The total volume of complaints adjudicated upon in 2011 was 18 of which 4 were dismissed by the Section of Judges of the Superior Council of Magistracy and 13 were upheld and 2 were rejected by the High Court of Cassation and Justice. The total volume of complaints adjudicated upon in 2012 was 18 of which 7 were dismissed by the Section of Judges of the Superior Council of Magistracy and 10 were upheld and one was rejected by the High Court of Cassation and Justice (we note that among disciplinary action exercised during 2012, one is pending before the Section of Judges of the Superior Council of Magistracy). The total volume of complaints adjudicated upon in 2013 was 19 of which 3 were dismissed by the Section of Judges of the Superior Council of Magistracy, 11 were upheld (we note that among disciplinary action exercised during 2013, five are pending before the Section of Judges of the Superior Council of Magistracy)

d) The number of Judges disciplined in 2013 was 14 judges, in 2012 there were 7 judges disciplined and in 2011 there were 12 judges disciplined.

e) The nature of the disciplinary action taken in 2011 was, 5 warnings, 3 judges were sanctioned with decreasing the gross monthly indemnity by 15% for a period of 3 months and 4 judges were excluded from the magistracy. In 2012, one judge was sanctioned with warning, 3 judges were sanctioned with decreasing the gross monthly indemnity by 15% for a period of 3 months, one judge was excluded from the magistracy and two judges although were excluded from magistracy by the section for judges of the Superior Council of Magistracy, after the appeal filed at the High Court of Cassation and Justice, the Court changed the sanction with disciplinary transfer for a period of 3 months to a court within the jurisdiction of another court of appeal. In 2013, 6 judges were sanctioned with warning (of which one cause is pending before the High Court of Cassation and Justice), 3 judges were sanctioned with decreasing the gross monthly indemnity by 20% for a period of 6 months (of which one cause is pending before the High Court of Cassation and Justice), one judge was sanctioned with decreasing the gross monthly indemnity by 20% for a period of 2 months, 2 judges were excluded from the magistracy (of which one cause is pending before the High Court of Cassation and Justice) and one judge was suspended from office for a period of 3 months.

SERBIA

a) In 2011 – 169
 In 2012-523
 In 2013- 540

b)

c)

d) In 2011 – 2
 In 2012 – 4

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In 2013 - 4

e) 2013

- serious violation of provisions of the Code of Ethics
the disciplinary sanction - Salary reduction to 20% in six months
- serious violation of provisions of the Code of Ethics
the disciplinary sanction - Salary reduction to 20% in six months
- engaging in activities that are incompatible with a judge's function under the law the disciplinary sanction - Salary reduction to 15% in three months.
- serious violation of provisions of the Code of Ethics and engaging in inappropriate relations with parties in proceedings and their legal representatives.
The Council issued a decision on the dismissal of a judge.

2012

- serious violation of provisions of the Code of Ethics
the disciplinary sanction - Salary reduction to 10% in four months
- serious violation of provisions of the Code of Ethics
the disciplinary sanction - Salary reduction to 30% in six months
- serious violation of provisions of the Code of Ethics– provision of incomplete or incorrect information relevant for the work and decision making of the High Judicial Council
the disciplinary sanction – A public reprimand
- serious violation of provisions of the Code of Ethics
the disciplinary sanction - Salary reduction to 40% in one year.

2011

-unjustifiable delays in the drafting of decisions
The Council issued a decision on the dismissal of a judge.
- serious violation of provisions of the Code of Ethics
the disciplinary sanction - Salary reduction to 30% in six months

SLOVAKIA

a) 2012: 20 submissions
2013: 19 submissions
2014: 23 submissions (so far)

b) None

c) 2012: 2 cases adjudicated
2013: 5 cases adjudicated
2014: 0 cases adjudicated

d) 7

e) - 1 case: reduction of salary by 50% for the period of 3 months

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- 1 case: reduction of salary by 30% for the period of 6 months
- 2 cases: admonition of judge is invalid
- 2 cases: proceedings quashed
- 1 case: judge was found guilty; imposition of the disciplinary measure was waived

SLOVENIA

a) 2011 – 9;
 2012 – 3;
 2013 – 2.

b) 2011 - 1;
 2012 - 0;
 2013 - 0.

c) 2011 - 8;
 2012 - 3;
 2013 - 2.

d) e) 2011 - 7 proceedings initiated (3 - written reprimands; 2 - hindering of promotion for 1 year; 3 - charges dismissed);
 2012 - 1 proceeding initiated (charges dismissed);
 2013 - 1 proceeding initiated (written reprimand); and
 2014 - 1 proceeding initiated (the proceedings discontinued as the judge retired)

SPAIN

a)

	INITIATED
2011	569
2012	422
2013	423
2014 (until 13/10)	687

b)

	DISMISSED
2011	547
2012	337
2013	370
2014 (until 13/10)	346

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c) In 2011 53 disciplinary proceedings were adjudicated upon. 22 were dismissed and 31 ended with the imposition of a sanction.

In 2012, 42 disciplinary proceedings were adjudicated upon. 23 of these were dismissed and 19 ended with the imposition of a sanction

In 2013, 47 disciplinary proceedings were adjudicated upon. 19 were dismissed and 28 ended with the imposition of a sanction.

d) In 2011 31 Judges were disciplined.
 In 2012 19 Judges were disciplined.
 In 2013 28 Judges were disciplined.

e) Disciplinary actions taken in 2011: warning: 9; fine: 17; suspension: 4; forced transfer: 1.
 Disciplinary actions taken in 2012: warning: 3; fine: 12; suspension: 3; removal from office: 1.
 Disciplinary actions in 2013: warning: 9; fine: 5; suspension: 12; removal from office: 2.

SWEDEN

a) 2011 – 3 complaints totally
 2012 – 2 complaints totally
 2013 – 5 complaints totally

b) 2011 – 1
 2012 – 1
 2013 – 4

c) 2011 – 1
 2012 – 1
 2013 – 4

d) 2011 – 3
 2012 – 1
 2013 – 1

e) The disciplinary action taken has overall been in the nature of a warning.

TURKEY

a) 9798 complaints in 2012; 9000 in 2013; and 8958 in 2014 as of October 2014.

b) In our disciplinary proceedings, all denunciations and complaints delivered to High Council of Judges and Prosecutors are discussed in the agenda of the relevant chamber and decisions regarding them are rendered. Therefore, there is no such practice as “refusal” or “dismissal on a summary basis”.

c) The number of complaints adjudicated upon is as follows: 9077 in 2012; 9347 in 2013; 8296

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in 2014 (as of October). The reason why the output is higher than input in 2013 is the number of excessive workload from previous years.

d) The number of the judges receiving disciplinary sanctions: 86 in 2012; 105 in 2013; and 37 in between 01.01.2014-09.10.2014.

e) Provisions regarding disciplinary sanctions for judges are as follows (Law 2082):

WARNING PENALTY:

Article 63 – Warning means to inform the concerned in written that they need to be more attentive to their duties.

A warning shall be issued when a judge or prosecutor:

- a) is indifferent to work and irregular,
- b) offends colleagues, subordinates, people s/he interacts in the course of duty or clients,
- c) comes to work late and leaves early without an excuse,
- d) defers work in matters explicitly scheduled in the laws, by-laws, regulations, decisions and instructions and fails to respond to letters and reminders in a timely manner,
- e) commits acts of similar nature and gravity as those described above.

PENALTY OF SALARY CUT:

Article 64 – The penalty of salary cut means cutting the daily wage of judges and prosecutors for each day of absenteeism without permission or an acceptable excuse when they fail to show for 1 or 2 days.

REPRIMAND PENALTY:

Article 65 - Reprimand means informing a judge or prosecutor in written that a certain act or conduct of the concerned is faulty.

The penalty of reprimand shall be imposed when a judge or prosecutor:

- a) engages in a conduct in or outside the course of duty which may impair the respectability of and confidence in the judicial profession,
- b) dresses in contrast with the dignity of the profession,
- c) uses public vehicles and equipment for private affairs,
- d) ill-treats colleagues, subordinates, people s/he interacts in the course of duty or clients,
- e) fails to inform the Ministry of Justice within fifteen days the income generating activities of spouse or dependent children,
- f) fails to fulfill the instructions of the Ministry issued pursuant to the legislation and neglects the supervision of the bureaus and Registry offices.
- g) engages in conduct or behavior which hinders a collaborative and smooth working environment,
- h) fails to show for three days without permission or an acceptable excuse,
- i) commits acts of similar nature and gravity as those described above.

PENALTY OF SUSPENSION OF ADVANCEMENT:

Article 66 – Suspension of advancement means putting off the advancement of grade of a judge or prosecutor for one year.

The penalty of suspension of advancement shall be imposed when a judge or prosecutor:

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- a) develops a habit of coming to office late or leaving early,
- b) borrows much more than his/her capacity to repay and defaults or becomes the subject of a court case by deliberately failing to pay finalized debts,
- c) fails to declare property in established circumstances and timings,
- d) fails to show for 4 to 9 nine successive days without permission or an acceptable excuse,
- e) commits acts of similar nature and gravity as those described above.

PENALTY OF SUSPENSION OF PROGRESS:

Article 67 – Suspension of progress means putting off the promotion of degree of a judge or prosecutor for two years.

The penalty of suspension of progress shall be imposed when a judge or prosecutor:

- a) fails to show for a total of 15 days in a calendar year without permission or an acceptable excuse,
- b) engages in income generating activities which members of the judicial profession are banned from or which are incompatible with the nature of the profession.

PENALTY OF DISPLACEMENT:

Article 68 – Displacement means changing the place of duty of a judge or prosecutor by assigning to a place in a lower zone where s/he will have to serve the minimal length of service in that place.

The penalty of displacement shall be imposed when a judge or prosecutor:

- a) impairs the honor and respectability of the profession or loses personal dignity and reputation due to inappropriate and improper acts and relations,
- b) creates the impression, by way of acts or conduct, that s/he fails to perform duties properly and impartially,
- c) creates the impression that their work is influenced by others or personal emotions,
- d) disrupts work by quarreling with and acting cantankerously towards colleagues because of his/her own faults,
- e) creates the impression of involvement in bribery and corruption even if it is not established by substantive facts and evidence,
- f) requests gifts directly or through intermediaries, receive gifts for obtaining a benefit or borrow from clients even if not in the course of duty.

DISMISSAL PENALTY:

Article 69 - (Amended: 1/12/2007 – 5720/Art. 4)

Dismissal is removal from the judicial profession without the possibility of readmission.

Judges and prosecutors of any category and degree who have been imposed the penalty of displacement or suspension of progress twice on account of the circumstances described in subparagraph (e), and twice in the course of any degree or three times regardless of degree and category on account of other circumstances and those sentenced to a minimum of six months of imprisonment -even if pardoned- or convicted of any of the offenses listed in Article 8(h). However, the penalty of displacement and not dismissal shall be imposed if the sentence was not based on one of the offenses listed in Article 8(h), postponed or turned into one of the security measures provided in Article 50 of the Turkish Criminal Code numbered 50.

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As regards sentences other than those specified in paragraph (1), one of the disciplinary penalties listed in Articles 64, 5, 66, 67 or 68 herein shall be imposed depending on the nature and regardless of the whether the sentence was postponed or turned into one of the penalties or measures in Article 50 of the Turkish Criminal Code numbered 5237.

As regards offenses requiring conviction which mar the honor, dignity and respectability of the profession and which impair confidence in the judiciary, the penalty of dismissal shall be imposed if a lower degree of disciplinary penalty is not provided in the Law and regardless of the length or amount of the sentence and regardless of whether it was turned into one of the penalties or measures listed in Article 50 of the Turkish Criminal Code numbered 5237.

The penalty of dismissal shall be imposed where the act calling for the disciplinary penalty mars the honor and dignity of the profession and respectability and reputation of the public service even if it does not constitute an offense.

IMPOSING A DISCIPLINARY PENALTY OF A LOWER OR HIGHER DEGREE

Article 70 – A higher degree of disciplinary penalty shall be imposed if an act or conduct resulting in a disciplinary penalty that may be removed from the credentials of the concerned was repeated within the periods set out in Article 75 on removal of penalties from the credentials or if several acts or conducts calling for the disciplinary penalty were committed.

A disciplinary penalty of a lower degree may be imposed on a judge or prosecutor who has committed a disciplinary offense for the first time- with the exception of an offense which requires dismissal, who had a positive track record or excellent credentials and been granted with a privileged or preferential promotion.

statistics of the last 3 years regarding the punishments/sanctions against judges is as follows:

TYPE OF PUNISHMENT	2012	2013	2014
<u>Warning</u>	37	45	17
63/a	24	23	7
63/b	4	9	3
63/c	2	1	-
63/e	7	11	7
64,70/2	-	1	-
<u>Salary cut</u>	12	11	4
65/a,70/2	6	7	2
65/i,70/2	4	2	2
65/d,70/2	1	-	-

Appendix C

15 Please provide details for each of the last 3 years of
a) the numbers of complaints made, b) the number of complaints dismissed on a summary basis, c) the number of complaints adjudicated upon and upheld or dismissed, d) the number of Judges disciplined e) the nature of the disciplinary action taken in respect of each Judge

65,70/2	1	-	-
63,70/1	-	1	-
64	-	1	-
<u>Reprimand</u>	21	37	18
65/a	13	21	13
65/i	7	8	1
66/b,70/2	1	3	1
65/d	-	2	-
65/f	-	2	-
64,70/1	-	1	-
65/g	-	-	1
66/a,70/2	-	-	1
66,70/2	-	-	1
Suspension of advancement	10	8	-
66/a	3	3	-
66/b	3	2	-
66/c	4	1	-
66/d	-	1	-
67,70/2	-	1	-
TYPE OF PUNISHMENT	2012	2013	2014
<u>Suspension of progress</u>	4	3	-
66/b,70/1	1	1	
68/a,70/2	3	-	
68,70/2	-	1	

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66/a,70/1	-	1	
<u>Displacement</u>	14	11	5
68/a	7	8	1
68/b	3	2	-
68/c	1	1	-
68/f	2	-	-
68/e	1	-	-
69/2	-	-	4
<u>Dismissal</u>	8	10	5
69/2	2	6	3
69/3	1	-	-
69/son	5	4	1
69/4	-	-	1
TOTAL	106	125	49

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