

Strasbourg, 6 December 2024

## **CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)**

### **CCJE Opinion No. 27 (2024)**

#### **on the disciplinary liability of judges**

### **I. Introduction**

1. In accordance with the terms of reference given by the Committee of Ministers, the Consultative Council of European Judges (CCJE) has prepared the present Opinion on the disciplinary liability of judges.
2. Judicial liability is closely related to judicial independence. If the liability of judges is not clearly and adequately regulated, judicial independence is undermined. This arises in circumstances where judges may face potentially detrimental consequences for their security of tenure and / or career prospects in unclear circumstances. Disciplinary liability is important for holding judges accountable to the public for misconduct in office. It is a means by which society can ensure that the judiciary fulfils its function properly, thereby strengthening public trust in the judiciary.
3. The liability of judges has become a topic of great concern in recent years. Several decisions by the European courts have found that the executive has used disciplinary

measures to silence or remove judges who did not decide in their favour.<sup>1</sup> In light of such recent developments, it is necessary to reflect on the basis, justification and limits of the disciplinary liability of judges.

## II. Purpose and scope of the Opinion

4. The CCJE has already dealt with this issue in Opinion No. 3 on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality. The purpose of this Opinion is to take stock of all developments since the adoption of Opinion No. 3 (2002), to assess, evaluate and develop standards for the disciplinary liability of judges and to consider their impact on judicial independence. It provides a set of core principles and recommendations applicable to all member states and is designed to deal with situations where judicial independence and impartiality may be jeopardised.
5. This Opinion examines the following questions:
  - a. How is the proper application of judicial disciplinary liability delimited?
  - b. What is an adequate legislative framework and organisation of disciplinary proceedings against judges?
  - c. What are admissible grounds for disciplinary liability of judges?
  - d. What are the necessary procedural safeguards for judges in disciplinary proceedings?
6. The Opinion does not address civil or criminal liability of judges, which are sufficiently broad topics on their own.
7. While this Opinion does not address vetting, the CCJE cannot pass over this issue in complete silence. Vetting must not be used as a substitute for disciplinary measures. Nor should vetting be used to address corruption. The CCJE recognises, however, that vetting may be permissible as an extraordinary one-time procedure in the transition from an authoritarian to a democratic government governed by the rule of law.
8. The Opinion has been prepared on the basis of previous CCJE Opinions, particularly Opinions No. 3 (2002) and No. 18 (2015), the CCJE Magna Carta of Judges (2010) and relevant instruments of the Council of Europe, including but not limited to the European Charter on the Statute for Judges, 2023 Report of the Secretary General of the Council of Europe on the State of Democracy, Human Rights and the Rule of Law in Europe, Recommendation of the Committee of Ministers CM/Rec(2010)12 on Judges: Independence, Efficiency and Responsibilities, the Report of the European Commission for Democracy through Law (Venice Commission) on the Independence of the Judicial System, the Evaluation Report of European Judicial Systems: 2024 Evaluation Cycle of the European Commission for the Efficiency of Justice (CEPEJ), the results of the Fourth Evaluation Round of the Group of States against Corruption (GRECO) in respect of judges, the Review of the Implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality of the European Committee on

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<sup>1</sup> Cf. Court of Justice of the European Union (CJEU), 15.7.2021, C-791/19 - *Commission v. Poland* (Régime disciplinaire des juges), ECLI:EU:C:2021:596; ECtHR *Grzęda v. Poland* [GC], 15.3.2022, No. 43572/18.

Legal Co-operation (CDCJ) and the case law of the European Court of Human Rights (ECtHR). It also takes into account the UN Basic Principles on the Independence of the Judiciary, the Bangalore Principles of Judicial Conduct, the Report of the European Network of Councils for the Judiciary (ENCJ) on Independence, Accountability and Quality of the Judiciary, the OSCE Recommendations on Judicial Independence and Accountability (Warsaw Recommendations) and other relevant instruments.

9. The Opinion also takes into account the replies of CCJE members to the questionnaire on disciplinary liability of judges and the preliminary draft prepared by the expert appointed by the Council of Europe, Dr Jannika Jahn.

### **III. Delimiting the proper application of judicial disciplinary liability**

10. The powers of a judge are linked to the values of truth, justice, fairness, and freedom.<sup>2</sup> Judges must perform their duties according to the highest standard of professional conduct in order to fulfil their constitutional role.<sup>3</sup> The corollary of society entrusting the judiciary with such extensive powers is that there must be some means of holding judges accountable, and even removing them from office in cases of misconduct so serious as to justify such a course.<sup>4</sup> This is particularly so in cases of judicial corruption, which fundamentally undermine public confidence in judicial impartiality and independence.<sup>5</sup> Disciplinary liability is a means of ensuring that judges abide by their duties. It thereby contributes to maintaining public confidence in the administration of justice.
11. All three state powers are accountable to the society which they serve. Disciplinary liability of judges provides for the accountability of the judiciary. This does not mean, however, that the judiciary is subordinate to another power of the state. That would betray the judiciary's constitutional function of being a state power consisting of independent arbiters whose function is to decide cases impartially and according to law.<sup>6</sup> It would also undermine the very foundation of a state governed by the rule of law that guarantees specific rights and freedoms to its citizens.<sup>7</sup>
12. As a general yardstick, the CCJE underlines that the individual rights of judges and their functional legitimacy, which serves as justification and limitation of their state power, should set the appropriate limits to the disciplinary liability of judges. Disciplinary liability may not interfere with the legitimate exercise of individual rights of judges such as their freedom of expression as enshrined in Article 10 of the European Convention on Human Rights (ECHR), their right to private life under Article 8 of the ECHR or their right to a fair trial pursuant to Article 6 of the ECHR.<sup>8</sup> Additionally, reasons for judicial disciplinary liability must be inherently linked to the judiciary's constitutional role. This includes the need to ensure that judges act as independent and impartial arbiters, respecting the rule of law, and that they generally contribute to the proper functioning of the administration of justice.

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<sup>2</sup> CCJE Opinion No. 18 (2015), para 18.

<sup>3</sup> In its Opinion No. 3 (2002), the CCJE discussed such standards and principles of professional conduct.

<sup>4</sup> CCJE Opinion No. 18 (2015), para 33.

<sup>5</sup> CCJE Opinion No. 18 (2015), para 33.

<sup>6</sup> CCJE Opinion No. 18 (2015), para 20.

<sup>7</sup> Cf. ECtHR, *Denisov v. Ukraine* [GC], 25.9.2018, No. 76639/11, paras 83 ff.; *Baka v. Hungary*.

<sup>8</sup> Cf. ECtHR, *Denisov v. Ukraine* [GC], 25.9.2018, No. 76639/11, paras 83 ff.; *Baka v. Hungary*.

13. Core principles follow from this delimitation of the proper use of judicial disciplinary liability:
  - a. disciplinary liability is necessary to maintain confidence in the judiciary;
  - b. disciplinary liability must not undermine the independence of the judiciary;
  - c. disciplinary liability is important to ensure the proper administration of justice in accordance with the rule of law;
  - d. the scope of disciplinary liability must be clearly defined in order to be consistent with the rule of law;
  - e. procedural institutions involved in disciplinary proceedings must respect the separation of powers and the proper administration of justice;
  - f. the legitimate exercise of a judge's legal rights must not give rise to disciplinary liability;
  - g. any disciplinary sanction imposed on a judge must be proportionate.

#### **IV. Legislative framework and organisation of disciplinary proceedings against judges**

14. The answers of the CCJE member states to the questionnaire show that there is a legislative framework for disciplinary proceedings against judges in almost all states. In some countries, the respective provisions are enshrined in the constitution; in most countries they are contained in statutory law with or without additional decrees, ordinances or rules. In some, but not all, states judges or judicial associations have participated in the drafting of these laws.
15. The organisation of disciplinary proceedings varies from country to country. Depending on their similarities and differences, the systems of disciplinary organisation can be broadly divided into two categories: the council system and the court system. The council system refers to a system in which a Council for the Judiciary makes the final decision, while in the court system it is a general or disciplinary tribunal. In the court system, it is usually the Ministry of Justice or a prosecutor general who initiates disciplinary proceedings against a judge before the disciplinary tribunal. In the council system, the group of persons and institutions that can initiate proceedings before the judicial council is much larger. It ranges from the Ministry of Justice to court presidents, parties to proceedings, individuals or lawyers. In both systems, complaints or information about judicial misconduct can be submitted formally or informally to the competent institution without personal restrictions.
16. In some council systems, there is an appeal procedure within the Council for the Judiciary; in others, the appeal goes to a higher court, even the constitutional court under certain circumstances. In several countries, court presidents are endowed with the authority to take a disciplinary decision in cases of warnings or more minor reprimands. In a few countries, disciplinary proceedings are handled by a parliamentary committee for judicial discipline, by the Chief Justice, respectively the President of Appeals, or by the Governmental Disciplinary Board for Higher Officials. In a few other cases, Ombudsmen and the Chancellor of Justice may initiate disciplinary proceedings.
17. In the vast majority of countries, there are safeguards to protect the independence and impartiality of the institutions involved in the disciplinary proceedings, particularly the

deciding body. In some countries, safeguards are provided to ensure that all institutions are independent after the initiating stage, including the investigative body and the decision-making body. In other countries, some risks for a certain form of politicisation of the proceedings are pointed out. This is the case when the investigating prosecutors are subordinate to the Ministry of Justice, when the same person initiates and decides on the proceedings as a member of the Council for the Judiciary, or when members of the Council for the Judiciary are appointed by Parliament. A similar risk exists if the members of the Council for the Judiciary are appointed by the executive.

18. The CCJE highlights the importance of having robust safeguards at the constitutional or legislative level as regards the disciplinary liability of judges and to implement these safeguards in practice.<sup>9</sup> It stresses that the independence of judges must be properly safeguarded against arbitrary and improper disciplinary practices being exercised against judges. The material and procedural provisions must be established in law. In the process of the preparation of disciplinary laws for judges, it is essential that there is meaningful consultation with judges, including their associations<sup>10</sup> which should be provided with the opportunity to consider and comment on intended legislation in matters connected with the status of judges.<sup>11</sup>
19. The body that is responsible for the initiation of a disciplinary procedure and its investigation should not be the same body deciding the disciplinary matter. Once a member of the public has made the complaint, this individual should not have any standing in the subsequent disciplinary proceedings.<sup>12</sup> The CCJE recommends that member states have a specific investigatory body or person with the responsibility for receiving complaints, for obtaining the representations of the judge and for considering in their light whether or not there is a sufficient case against the judge to call for the initiation of such proceedings. The investigatory body should be free from any political influence. In some legal systems where the administration of justice is under the authority of the Ministry of Justice, it may pose a real risk in this respect when disciplinary prosecutors are appointed by the government or authorities linked to the government<sup>13</sup> and when they are systematically subordinated to the executive branch in charge of the administration of justice.
20. Judges facing a disciplinary charge must have the right to access an independent tribunal or authority established by law pursuant to Article 6 of the ECHR.<sup>14</sup> It is highly important that any influence of the executive or parliamentary branch of government on

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<sup>9</sup> The CDCJ's Review of the Implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality, paras 223-224; see also, more generally CCJE Opinion No. 1 (2001) and Opinion No. 6 (2004).

<sup>10</sup> CCJE Opinion No. 18 (2015), para 31.

<sup>11</sup> CCJE Opinion No. 23 (2020), Chapter IX, clause 7.

<sup>12</sup> This does not apply to complaint systems in some member states where, for example, a citizen may file a complaint regarding the behaviour of a judge, provided that under the system: (1) the complaint cannot concern the decisions made by the judge in a case, (2) vexatious and other ill-founded complaints are effectively and expeditiously dismissed, and (3) the rights of the judge are properly safeguarded. For vexatious and other ill-founded complaints, see further in para 32.

<sup>13</sup> In some member states, even the court president may have a link to the executive.

<sup>14</sup> Cf. ECtHR *Pajak v. Poland*, 24.10.2023, No. 25226/18, 25805/18, 8378/19, 43949/19, paras 167-200, esp. 194-195; ECtHR *Baka v Hungary* [GC], No 20261/12, 23.6.2016, paras 100-106; cf. *Vilho Eskelinen and Others v. Finland*, 19.4.2007, No. 63235/00, para 62; cf. Recommendation CM/Rec(2010) 12, para 69.

the decision-making body is excluded in such disciplinary proceedings.<sup>15</sup> When the disciplinary body making the decision is not itself a court, then its members should satisfy the general requirements of independence and impartiality. The respective criteria include proper appointment, a fixed term of office, security of tenure, a guarantee against interference, the appearance of independence and the possibility of recusal in case of bias and a substantial representation of judges within such body.<sup>16</sup> Where they exist, Councils for the Judiciary are best placed in this regard.<sup>17</sup>

21. As regards the appointment procedure, the CCJE confirms its position that members of disciplinary bodies that are not courts should be appointed by an independent authority that mainly consists of judges who were appointed by other judges.<sup>18</sup>
22. In relation to the composition of the deciding body, the CCJE advocates that a Minister of Justice and/or other members of the executive must not be a member of the Council for the Judiciary, when it acts as a disciplinary body, especially if he or she is also authorised to initiate proceedings against a judge.<sup>19</sup> This would not only be a problem for the independence and impartiality of the judiciary, but also for the constitutional principle of separation of powers. Members of the disciplinary body must be excluded from the preliminary inquiry in a disciplinary case, because such a duplication of functions could cast objective doubt on the impartiality of those members.<sup>20</sup> Representatives of the prosecution, i.e. the prosecutor general and those delegated by the prosecution authorities, who are responsible at the investigative stage of disciplinary proceedings, should not be included in the composition of the disciplinary body for judges. This would conflate the investigative and accusatory function on the one hand and the judicial function on the other hand.<sup>21</sup>
23. There must be a review body/tribunal with full jurisdiction<sup>22</sup> to hear appeals, i.e. it can review both the procedure and the merits of the decision and must be independent and impartial. The review body must have jurisdiction to quash disciplinary decisions and to take any further remedial steps as are appropriate. It is not sufficient if a review body may only declare the previous decision to be unlawful.<sup>23</sup> It is essential that the review

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<sup>15</sup> Cf. ECtHR *Reczkowicz v. Poland*, 22.7.2021, No. 43447/19; ECtHR *Tuleya v. Poland*, 6.7.2023, Nos. 21181/19, 51751/20, para 340; ECtHR *Miroslava Todorova v. Bulgaria*, 19.10.2021, No. 40072/13. Cf. GRECO's Ad hoc Report on Poland (Rule 34), para 59 (iv); GRECO's Fourth Evaluation Round: corruption prevention in respect of members of parliament, judges and prosecutors, Interim Compliance Report on Poland 2021, para 73.

<sup>16</sup> Cf. ECtHR, *Denisov v. Ukraine* [GC], 25.9.2018, No. 76639/11, paras 60-65.

<sup>17</sup> Venice Commission Report on the Independence of the Judicial System. Part I: The Independence of Judges adopted by the Venice Commission at its 82<sup>nd</sup> Plenary Session (Venice, 12-13 March 2010), para 43.

<sup>18</sup> Cf. CCJE Opinion No. 3 (2002), para 77; cf. ECtHR *Denisov v. Ukraine* [GC], 25.9.2018, No. 76639/11, paras 68-72; ECtHR, *Volkov v. Ukraine*, 9.1.2013, No. 21722/11, para 112.

<sup>19</sup> Cf. *Pajak v. Poland*, 24.10.2023, No. 25226/18, 25805/18, 8378/19, 43949/19.

<sup>20</sup> Cf. ECtHR *Denisov v. Ukraine* [GC], 25.9.2018, No. 76639/11, paras 68-72; ECtHR *Volkov v. Ukraine*, 9.1.2013, No. 21722/11, para 115. Venice Commission CDL-AD(2015)042, para 73.

<sup>21</sup> ECtHR *Denisov v. Ukraine* [GC], 25.9.2018, No. 76639/11, paras 68-72; ECtHR *Volkov v. Ukraine*, 9.1.2013, No. 21722/11, para 114.

<sup>22</sup> The Opinion refers here to the formulation of the ECtHR *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 6.11.2018, 55391/13 57728/13 74041/13, paras 176 et seq.

<sup>23</sup> ECtHR *Denisov v. Ukraine* [GC], 25.9.2018, No. 76639/11, para 74; ECtHR *Volkov v. Ukraine*, 9.1.2013, No. 21722/11, paras 124-129.

body excludes members who were also members of the body that took the original disciplinary proceedings.<sup>24</sup>

24. In member states where there are lay members, the majority of the membership should be members of the judiciary.

## V. Grounds for disciplinary liability

25. In most CCJE member states, the grounds for disciplinary liability are prescribed in law and cover judicial and extrajudicial misconduct. The content and wording may vary. Due to cultural diversity, which affects the public's expectations of the behaviour of judges, the grounds for disciplinary liability differ, particularly in relation to the private behaviour of judges. While judges may express politically controversial opinions on social media in one country, they may not do so in another country. In some countries, grounds for judicial liability are enumerated in a strictly formulated exhaustive list, in other countries they are enshrined in formulations that are more open-ended.
26. Judges have the right to freedom of expression under Article 10 of the ECHR as further specified in Opinion No. 25 (2022). The legitimate exercise by judges of their rights under Article 10 of the ECHR must not give rise to disciplinary liability.<sup>25</sup> The right to freedom of expression includes the right of judges to speak out publicly about disciplinary proceedings against themselves or their colleagues. Grounds for disciplinary liability must not derogate either from a judge's entitlement to private and family life in accordance with Article 8 of the ECHR.
27. In each member state, the law should define expressly<sup>26</sup> and as far as possible in specific terms,<sup>27</sup> the grounds on which disciplinary proceedings against judges may be initiated. The possibility of introducing *ad hoc* grounds that apply retroactively must be ruled out. Vague provisions (such as the "breach of oath" or "unethical behaviour") lend themselves to an overbroad interpretation and abuse, which may be dangerous for the independence of the judges.<sup>28</sup> The regular publication of disciplinary decisions may help further clarify the legislative provisions.<sup>29</sup>
28. A judge's decision, including the interpretation of the law, assessment of facts or weighing of evidence and/or departing from established case law, must not give rise to disciplinary liability, except in cases of malice, wilful default or serious misconduct.<sup>30</sup> Likewise, the submission of a preliminary reference procedure pursuant to Article 267 of the Treaty on the Functioning of the European Union (TFEU) or the request for an Advisory Opinion of the ECtHR must not give rise to judicial liability. Any act that affects the possibility of resorting to the interpretation of the Court of Justice of the European Union (CJEU) represents a serious attack on the rule of law. Grounds for disciplinary

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<sup>24</sup> ECtHR *Kozan v. Turkey*, 1.3.2022, No. 16695/19, para 79.

<sup>25</sup> CCJE Opinion No. 25 (2022), para 35 and recommendations.

<sup>26</sup> Venice Commission CDL-AD(2016)009, para 34.

<sup>27</sup> CCJE Opinion No. 3 (2002), para 77.

<sup>28</sup> Venice Commission CDL-AD(2016)013, paras 24-27; CDL-AD(2018)032, para 78.

<sup>29</sup> Venice Commission CDL-AD(2016)013, para 27.

<sup>30</sup> Recommendation CM/Rec(2010)12, para 66; CCJE Opinion No. 3 (2002) para 60. Health issues or other particular circumstances should be taken into account when specifying malice, wilful default and serious misconduct.

liability of judges must refer to judicial conduct that contradicts one of the basic values enshrined in the Convention: independence, impartiality, propriety, integrity, equality, non-discrimination, competence and diligence.<sup>31</sup> The CCJE cautions against justifying grounds of disciplinary liability of judges by reference to the reputation of the judiciary, except when it is intended to refer to the authority of and public confidence in the judiciary.

29. The CCJE stresses the importance of a threshold criterion to demarcate misconduct that potentially justifies the imposition of disciplinary sanctions from other forms of misbehaviour.
30. Ethical standards should be clearly distinguished from misconduct that justifies disciplinary sanctions. Since the purpose of a code of ethics is different from that achieved by a disciplinary procedure, a code of ethics should not be used as a tool for disciplining judges. Where ethical standards and professional rules of conduct converge with respect to extrajudicial conduct potentially compromising the public trust in the judiciary the threshold criterion helps distinguish between behaviour that is unethical and behaviour that should be subject to disciplinary liability.

## **VI. Procedural safeguards in disciplinary proceedings against judges**

31. The procedure can be roughly divided into four phases: the information/complaint phase, the investigation phase, the report/initiation phase and the decision phase. In most countries, judges are informed in the first or second phase of the proceedings. Only some countries have a formalised complaint mechanism. The rest of the proceedings is formally regulated in the majority of member states. In view of the diverse organisation of the proceedings, different bodies are involved in the four phases of the proceedings. In some countries, a Panel of Inquiry convened by the Council for the Judiciary leads the investigation phase which ends with a report that forms the basis for the decision on the disciplinary complaint by the Council for the Judiciary. In other countries investigations by the prosecutor's office end with a specific charge, which is decided by a court. While in some countries disciplinary proceedings follow a civil law procedure, in others they follow a criminal or administrative law procedure. Only in some countries are disciplinary cases decided after a public hearing. In many countries where the final decisions are made public, they are anonymised.
32. It is essential to avoid any abuse of disciplinary proceedings. Therefore, the initiation of disciplinary proceedings has to rest on valid legal grounds. The grounds have to meet the criteria of legality, i.e. they must be clearly defined, precise and foreseeable in their application, so as to allow a judge to foresee to a reasonable degree the disciplinary consequences which a given action may entail.<sup>32</sup> Vexatious complaints or those that relate solely to a judge's decision or conduct in proceedings before him or her (i.e. error in judgment, procedure, substantive law) should be rejected as inadmissible and be

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<sup>31</sup> Cf. the Bangalore Principles of Judicial Conduct (2002); CCJE Opinion No. 21 (2018). It should be noted that any systemic backlog of cases must not be interpreted as amounting to serious misconduct of a judge.

<sup>32</sup> ECtHR *Khlaifia and Others v. Italy* [GC], 15.12.2016, 16483/12, para 92; *J.N. v. The United Kingdom*, 19.5.2016, 37289/12, para 77; *Del Río Prada v. Spain* [GC], 21.10.2013, 42750/09, para 125; *Medvedyev and Others v. France* [GC], 29.3.2010, 3394/03, para 80.



dismissed expeditiously. Member states should be mindful that allowing complaints as a means of instigating disciplinary proceedings might lead to a backlog of complaints with detrimental effects on the timely resolution of complaints.<sup>33</sup> In such cases, the CCJE advises member states to provide a filtering system for dealing with complaints.

33. The CCJE advocates for clear time limitations in respect of disciplinary proceedings. With respect to the judicial office, this legal certainty supports the independence of a judge.
34. The CCJE highlights that all general procedural guarantees enshrined in Article 6 of the ECHR apply to disciplinary proceedings against judges.<sup>34</sup> Member states must prescribe clear procedural rules in law that apply to disciplinary proceedings against judges.
35. The CCJE stresses that judges must have the opportunity to effectively participate in disciplinary proceedings against them. Judges are entitled to be informed and to be heard, and to defend themselves. The CCJE calls on the member states to ensure that equality of arms is established in adversarial proceedings. To this end, a judge must be entitled to legal representation. If witness evidence is permitted in the hearing, witnesses from both sides must be treated equally.<sup>35</sup> Furthermore, a judge can only be held liable for disciplinary misconduct if this conduct is proven.
36. The public character of proceedings before judicial bodies protects litigants against the administration of justice in secret in the absence of public scrutiny.<sup>36</sup> Hence, the CCJE underlines that whilst the investigations should be confidential, the hearing should be held in public, unless there are reasons prescribed in Art. 6 ECHR for a closed hearing.<sup>37</sup> Disciplinary decisions should be properly reasoned, i.e. address all relevant aspects brought forward by the investigatory body and the judge.<sup>38</sup> They should be publicly announced and published. When published, names may be anonymised. The decisions should also be complemented with statistics on disciplinary decisions.<sup>39</sup> The publicity of proceedings and decisions is important for the transparency of disciplinary proceedings and for strengthening public confidence in the proper administration of justice.
37. Member states should conduct the proceedings within a reasonable timeframe. This means that justice should be administered without delays as these might jeopardise its effectiveness and credibility.<sup>40</sup> The reasonable time depends on the complexity of the case and all relevant circumstances as well as the importance of the matter for the

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<sup>33</sup> Cf. Minimum Judicial Standards V Disciplinary proceedings and liability of judges ENCJ Report 2014-2015, p. 25.

<sup>34</sup> Cf. ECtHR *Baka v. Hungary* [GC], 23.6.2016, No. 20261/12, paras 100-106; cf. *Vilho Eskelinen and Others*, cited above, § 62.

<sup>35</sup> ECtHR *Ankerl v. Switzerland*, 23.10.1996, No. 17748/91, para 38; by contrast, see *Dombo Beheer B.V. v. the Netherlands*, 27.10.1993, No. 14448/88, para 35.

<sup>36</sup> ECtHR *Fazliyski v. Bulgaria*, 1.6.2010, No. 40908/05, para 69.

<sup>37</sup> ECtHR *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 6.11.2018, Nos. 55391/13 57728/13 74041/13, para 208.

<sup>38</sup> Cf. *Simić v. Bosnia-Herzegovina* (dec.), 15.11.2016, No. 75255/10, paras 35-36.

<sup>39</sup> Cf. CCJE Opinion No. 3 (2002), paras 15, 23.

<sup>40</sup> ECtHR *Scordino v. Italy* (no. 1) [GC], 29.3.2006, No. 36813/97, para 224.

complainant.<sup>41</sup> Disciplinary proceedings initiated against a judge must be brought to a timely conclusion. In the event of excessive delay, a procedure must be available to the judge to bring an application to have the proceedings dismissed.

38. The CCJE reiterates its position that judges should be granted the right to appeal against disciplinary decisions and sanctions.<sup>42</sup>

## VII. Disciplinary sanctions against judges

39. In most states there is an exhaustive list of potential disciplinary sanctions for judges. However, some interpretative leeway remains for the application of sanctions on a case-by-case basis. In all states, the principle of proportionality applies to the determination of the appropriate sanction. Sanctions may include a warning, reprimand, appropriate fine, reassignment, suspension from office, early (compulsory) retirement and dismissal.
40. The CCJE reiterates that disciplinary sanctions should be clearly defined in law, easily accessible and enumerated in an exhaustive list.<sup>43</sup> The principle of proportionality must guide the decision.<sup>44</sup> It requires a balancing exercise between the seriousness of the offence and its consequences on the one hand, and the quality and the amount of the sanction on the other.<sup>45</sup> The dismissal of a judge should only be ordered as a last resort in exceptionally serious cases.<sup>46</sup> A transfer and/or redeployment (even on a temporary basis) of a judge, or a demotion can only be justified in cases of serious judicial misconduct.<sup>47</sup> The CCJE advocates against reduction of salary as a disciplinary sanction because judges must be remunerated equally for like work.
41. All mitigating and aggravating factors of the individual case must be taken into account in order to clearly determine the responsibility of the judge in light of the specific circumstances under which the disciplinary offense was committed.

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<sup>41</sup> ECtHR, *Comingersoll S.A. v. Portugal* [GC], 6.4.2000, No. 35382/97; ECtHR *Frydlender v. France* [GC], 27.6.2000, No. 30979/96, para 43; ECtHR *Sürmeli v. Germany* [GC], 8.6.2006, No. 75529/01, para 128.

<sup>42</sup> Recommendation CM/Rec(2010)12, para 69; cf. GRECO's Fourth Evaluation Round: corruption prevention in respect of members of parliament, judges and prosecutors: conclusions and trends (2017), p. 18.

<sup>43</sup> CCJE Opinion No. 3 (2002), para 77; cf. as regards the application of the principle of proportionality, Recommendation CM/Rec(2010)12, para 69; Venice Commission CDL-AD(2014)039, para 72.

<sup>44</sup> *Ibid.*

<sup>45</sup> Venice Commission CDL-AD(2014)039, para 72.

<sup>46</sup> Cf. Venice Commission CDL-AD(2015)042, para 113; GRECO's Fourth Evaluation Round: corruption prevention in respect of members of parliament, judges and prosecutors: conclusions and trends (2017), p. 18.

<sup>47</sup> Cf. CEPEJ Evaluation Report of European Judicial Systems, 2022 Evaluation Cycle (2020 data), p. 50. The irremovability of a judge does not mean that a judge may not be assigned a different task. The irremovability is a key element for upholding judicial independence, ECtHR, *Baka v Hungary* [GC], 23.6.2016, No. 20261/12, para 172; CCJE Opinion No. 1 (2001) paras 57-59.

42. In all cases, the potential “chilling effect” that a certain sanction may have on the individual judge and on other judges must be considered when assessing the adequate sanction.<sup>48</sup>
43. The CCJE stresses that certain measures that are intended to or may have the same effect as disciplinary sanctions should be handled as such with all judicial rights and procedural safeguards applying.<sup>49</sup> This also applies to any measure whatever its form which is intended to sanction a judge.

## VIII. Recommendations

1. Judges must perform their duties according to the highest standards of professional conduct in order to fulfil their constitutional role. Disciplinary liability is a means of ensuring sure that judges abide by their standards of professional conduct.
2. Disciplinary liability must not undermine the independence of the judiciary.
3. The disciplinary liability of judges is important to ensure the proper administration of justice in accordance with the rule of law and necessary to maintain confidence in the judiciary.
4. Member states must have robust safeguards at the constitutional or legislative level as regards the disciplinary liability of judges and implement these safeguards in practice.
5. Procedural institutions involved in disciplinary proceedings must respect the separation of powers and the proper administration of justice. Judges and their associations must be consulted on disciplinary laws and regulations.
6. The body that is responsible for the initiation of a disciplinary procedure and investigation must not be the same body deciding the disciplinary matter. Member states should have a specific investigatory body or person with the responsibility for receiving complaints, for obtaining the representations of a judge and for considering whether there is a sufficient case against a judge to call for the initiation of such proceedings.
7. Judges facing a disciplinary charge must have the right to access an independent tribunal or authority established by law pursuant to Article 6 of the ECHR.
8. There must be an independent and impartial review body/tribunal which has jurisdiction to quash disciplinary decisions and to take any further steps to remedy the negative effects of such decisions, such as immediate reinstatement.

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<sup>48</sup> Cf. ECtHR *Baka v Hungary* [GC], 23.6.2016, No. 20261/12, para 173; *Żurek v. Poland*, 16.6.2022, 39650/18, para 227; *Kozan v. Turkey*, 1.3.2022, No. 16695/19, para 68; *Sarisu Pehlivan v. Türkiye*, 6.6.2023, No. 63029/19, para 48.

<sup>49</sup> This is the case, for example, when the retirement age for judges is lowered and the Ministry of Justice or a body under its political control is authorised to decide whether the term of office of a judge, for whom a higher retirement age was originally set, is “extended” under the new law until the end of the original term of office. See ECtHR *Paják v. Poland*, 24.10.2023, No. 25226/18, 25805/18, 8378/19, 43949/19, paras 167-200.

9. The scope of disciplinary liability must be clearly defined in order to be consistent with the rule of law. The law should define expressly and as far as possible in specific terms, the grounds on which disciplinary proceedings against judges may be initiated.
10. The legitimate exercise of a judge's legal rights must not give rise to disciplinary liability.
11. Reasons for judicial disciplinary liability must be inherently linked to the judiciary's constitutional role. This includes the need to ensure that judges act as independent and impartial arbiters, respecting the rule of law, and that they generally contribute to the proper functioning of the administration of justice.
12. A judge's decision, including the interpretation of the law, assessment of facts or weighing of evidence, must not give rise to disciplinary liability, except in cases of malice, wilful default or serious misconduct. The submission of a preliminary reference procedure pursuant to Article 267 of the Treaty on the Functioning of the European Union (TFEU) and the request for an Advisory Opinion to the ECtHR must never give rise to judicial liability.
13. A threshold criterion to demarcate misconduct that potentially justifies the imposition of disciplinary sanctions from other forms of misbehaviour should be established.
14. Ethical standards should be clearly distinguished from misconduct that justifies disciplinary sanctions.
15. Member states must prescribe clear procedural rules in law that apply to disciplinary proceedings against judges. A filtering system must be provided for dealing with complaints, ensuring that vexatious or unsubstantiated claims are dismissed expeditiously.
16. In cases of excessive delay, procedures must be available to the judges to bring an application to have the proceedings dismissed.
17. Judges must have the opportunity to participate effectively in disciplinary proceedings against them and to have legal representation.
18. They must have the right to appeal against disciplinary decisions and sanctions.
19. Disciplinary sanctions must be clearly defined in law, easily accessible and enumerated in an exhaustive list.
20. Any disciplinary sanction imposed on a judge must be proportionate.
21. The dismissal of a judge should only be ordered as a last resort in exceptionally serious cases.
22. In all cases, the potential "chilling effect" that a certain sanction may have on the individual judge and on other judges must be considered when assessing the adequate sanction.
23. Vetting must not be used as a substitute for disciplinary measures. Nor should vetting be used to address corruption.