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Disciplinary liability of judges: constitutional discourse, rethinking the harmonization of the national legal framework with international standards”

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Judicial independence is a core element of the right to due process, the rule of law and democracy.

Therefore, the impact of European Union law on national law is currently reflected in the area of judiciary independence. It has been rightly attributed not only as a part of the national constitutional identity, but also belongs to the 'main constructions' of legal identity of EU.

Rule of Law Report of EU 2021 is clear stated - judicially independency is not only an integral part of the democratic identity of the EU and of the Member States, but is also essential for the functioning of the EU as a rule of law society.

For example stating that compliance with the rule of law is a precondition for the accession to the EU and Member States cannot subsequently amend their legislation in such a way as to bring about a reduction in the protection of the value of the rule of law. See judgement of 20 March 2021, *Repubblika v Il-Prim Ministru*, C-896/19, ECLI:EU:C:2021:311.

A specific focus: integrity and accountability of judges.

In [Belgium](#), the integrity framework has been strengthened by applying general ethical principles to all categories of members of the judiciary, as well as ethics training for both regular and lay judges.

In [Austria](#), a comprehensive compliance management system is being implemented for courts.

In [Latvia](#), a new code of ethics for judges was adopted.

In [Lithuania](#) and [Italy](#), initiatives to strengthen integrity rules are ongoing.

In [Portugal](#), [Croatia](#), [Slovakia](#), and [Italy](#), the judicial authorities, including the Councils for the Judiciary, have taken significant steps to address allegations of breaches of judicial ethics and disciplinary misconduct or corruption within the judiciary.

In [France](#), reflection has started on possible reforms of the liability and protection of magistrates, while a broader reform of the disciplinary regime to improve judicial independence is being discussed.

In [Ireland](#), work is ongoing to establish a disciplinary regime for judges, though Parliament's role in removing judges remains unchanged.

In [Slovenia](#), the judiciary initiated discussions on improving the framework for disciplinary proceedings.

In [Czechia](#), a draft law introducing the possibility for review in disciplinary proceedings is being discussed in Parliament.

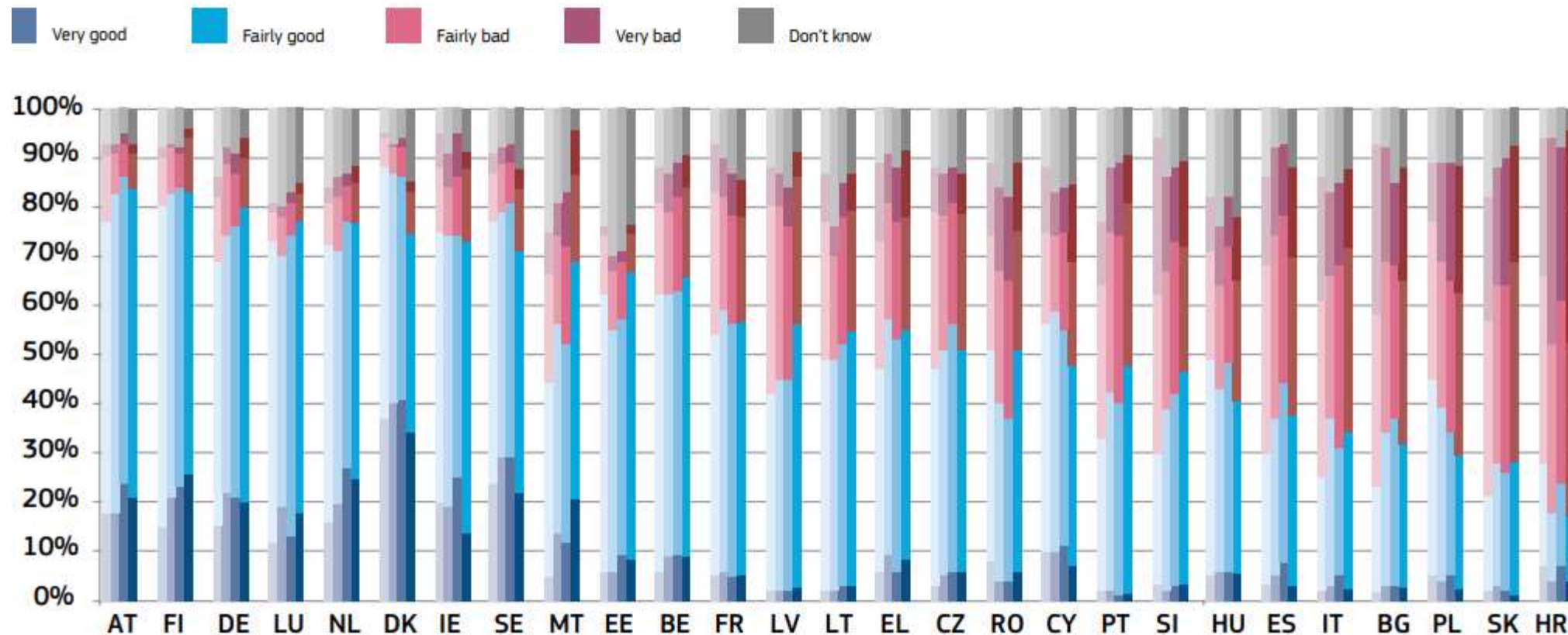
In [Malta](#), the 2020 reform of the procedure for dismissal judges provides additional guarantees.



Perceived independence of courts and judges among the general public: Eurobarometer 2021

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Figure 48 Perceived independence of courts and judges among the general public (*) (source: Eurobarometer ⁽⁸⁵⁾ — light colours: 2016, 2019 and 2020, dark colours: 2021)



(*) Member States are ordered first by the percentage of respondents who stated that the independence of courts and judges is very good or fairly good (total good); if some Member States have the same percentage of total good, then they are ordered by the percentage of respondents who stated that the independence of courts and judges is fairly bad or very bad (total bad); if some Member States have the same percentage of total good and total bad, then they are ordered by the percentage of respondents who stated that the independence of courts and judges is very good; if some Member States have the same percentage of total good, total bad and of very good, then they are ordered by the percentage of respondents who stated that the independence of courts and judges is very bad.

In national laws apply quite a variety of models of judge professional ethics and disciplinary liability.

This question has long been left to the autonomous regulation of each national state.

The limits of the model of disciplinary liability of judges are primarily derived from the constitutional guarantee of the independence of judges, where it is emphasized that disciplinary measures against judges must be organized in such a way as not to undermine the real independence of judges.

This means that the balance between the independence and accountability of the judiciary must be maintained in the application of disciplinary liability.

Firstly, the rules of ethics (code of ethics) as a value framework that sets minimum standards for a judge's professional conduct (competence, objectivity) and personal conduct (ethical: honesty, tact, diligence, dignity).

The second element is - the procedure for disciplinary liability of judges.

According the constitutional doctrine, it should be emphasized that, first of all, the system of self-government of the judiciary must ensure that any illegal or unethical conduct of a judge is duly assessed.

What does it mean – “an act degrading/demeaning the name of a judge”? Vilniaus universitetas

It is important, that the grounds for disciplinary liability **should be clearly defined in the law**, not only to provide legal certainty, but also to avoid any arbitrariness that might affect the judicial independence.

In mostly countries the legal ground for the disciplinary liability of a judge is usually defined in the law as “an act demeaning the name of judge or judicial system”. However, what exactly this means and in what factual circumstances such a judge's conduct should occur is left to be formed in legal practice.

Whether an act of a judge is one that demeans the judicial office, must be decided each time after assessing all the circumstances, related to that act and relevant to the case. Finally, according the international standarts, disciplinary proceedings against judges shall deal with alleged instances of professional misconduct that are **gross and inexcusable** and that also bring the **judiciary into disreputation**.

An ineffective or improper performance of a judge's duties as an action demeaning the name of judge and a threat to a judge's independence?

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In general it is constitutional forbidden in any way violate the real procedural independence of a judge. It must not be possible to interfere in the activities of judges in proceedings and decisions.

However, disciplinary action may be taken against a judge for certain misconduct. For example, by avoiding or improperly performing duties, *inter alia* for a negligent handling of cases.

But in practice, a criteria of the meaning of "negligent (ineffective) work of a judge" a developed by case law.

It should be emphasized that only **repeated gross, manifest errors of interpretation** and/or application of the law are grounds for a judicially liability.

The lack of the necessary professional qualifications must be first of all acknowledged during the evaluation proceeding. And later could be a ground for imposing disciplinary liability for the judge.

Therefore, in the application of disciplinary liability the procedure must comply with the principle of **independence** and disciplinary measures must **be proportionate**.

Both European and national constitutional jurisprudence allow nation states to establish disciplinary proceedings specific to each state. But it should be noted that, the autonomous judiciary **cannot be over-centralized trough the Council of Judges**.

However, in some cases, **an accelerated disciplinary procedure** is also applied, with the most severe sanction being the dismissal of a judge.

An interesting constitutional discourse should be mentioned regarding the model of **disciplinary proceedings of the highest instance judges**, which has additional peculiarities.

Conclusions

Not only the constitutional doctrine, but also international jurisprudence has taken on **a new issue - to develop a jurisprudential approach to the model of disciplinary liability of a judge.**

The practice recognizes the need to ensure the impartiality of the authorities, dealing with the liability of the judge as well as clarity and transparency of disciplinary procedures.

In addition, depending on the status of the judge, separate features of disciplinary liability may be applied.

However, in all cases, a model of judicial disciplinary liability must maintain a balance between accountability and independence of judiciary.