

The liability of judges in Austria

(summary)

The Austrian regulations on the liability of judges are *grosso modo* quite similar to those of most European countries. We do also consider penal, disciplinary and civil liability.

Penal liability:

A judge is, of course, subject to penal law like any other citizen. Regarding the penal code, he is being considered as a public servant. There are a few crimes that can be committed only by public servants, as for instance abuse of power or revelation of professional secrets. Other crimes are being punished more severely if committed by or against a public servant. A public servant sentenced to more than one year of jail loses his job.

Civil liability:

The state is liable for all damages caused by a mistake, even a light one, of a public servant, provided that the claiming party has exercised all possible appeals. Here again, judges are considered as public servants, except those of the three supreme courts whose rulings can never lead to a civil claim.

However, a wrong decision is being considered as a mistake only if it's clearly against the law or against the jurisprudence of the supreme court without proper motivation. A judge is free not to agree with the supreme court as long as he takes into account the existing jurisprudence and motivates his dissenting opinion. Only indefensible rulings are therefore engaging the liability of the state.

Once the state has paid an indemnity, it can ask the judge for reimbursement, but only if there has been a heavy fault. This rarely happens, but it happens. That's why we all are insured against this risk, which costs are not being taken over by the state.

Disciplinary liability:

The disciplinary procedure is to be reformed, as the current system does not work properly. There are still elements of an inquisitorial trial; hearings are not public. The courts of appeal are competent for the trials, the prosecution is done by the superior public prosecutor. A judge can be prosecuted disciplinarily when he fails to fulfil his legal duties. The sanctions are various and reach from admonition to destitution. The reform focuses on the adoption of the principles of common penal procedure.

Ethics:

As the main duties and deontological rules for the judges are regulated by law, there is no need for ethical rules given by the state. But our association considers that ethics are very important regarding the self-consciousness of the judge, helping him to improve the acceptance of his work and to develop a true authority which is necessary for the good function of the state of law. Therefore, we are working on a declaration of ethical principles which shall be adopted next year.