



16 July 1999
English
Original: Spanish

Preparatory Commission for the International Criminal Court

Working Group on the Rules of Procedure and Evidence

New York

16–26 February 1999

26 July–13 August 1999

29 November–17 December 1999

Proposal submitted by Spain and Venezuela concerning the Rules of Procedure and Evidence

Disciplinary measures

(Development of articles 46 and 47 of the Statute)

A. Judges shall be subject to disciplinary measures in such cases and with such guarantees as are established in the Statute and in these Rules of Procedure and Evidence.

B. 1. Disciplinary measures may be enforced only by the competent authority under the procedure established in this rule.

2. (a) The initiation of criminal proceedings under article 70 of the Statute shall not preclude the initiation of disciplinary proceedings on the same grounds; however, no decision shall be taken regarding disciplinary measures until such time as an executory judgement has been rendered dismissing the criminal case.

(b) In any event, the statement of facts for which there was sufficient evidence contained in the judgement dismissing the criminal proceedings shall be binding on the decision taken in the disciplinary matter, regardless of the different legal assessments that may be made in each of the proceedings.

C. 1. Misconduct by judges in the course of their official duties may be serious or less serious.

2. Serious misconduct shall be barred from disciplinary action after two years and less serious misconduct after one year.

3. The statute of limitation shall be suspended as from the date of notification of the order to initiate disciplinary proceedings and shall recommence if the proceedings remain deadlocked for six months.

D. Serious misconduct includes:

- (1) Exercising any activity incompatible with judicial office;
- (2) Interfering, through orders or pressure of any kind, in the exercise of jurisdiction by another judge;
- (3) Participating in debates or making statements in notarized documents or in the mass media on *sub judice* issues of which a judge has knowledge in his or her capacity as a judge of the Court, even when such issues are *res judicata*;
- (4) Disclosing facts or information which a judge has acquired in the course of his or her duties, where such disclosure is prejudicial to the trial proceedings or to any person;
- (5) Concealing information and circumstances that would have precluded his or her election or resulted in his or her removal from office;
- (6) Failing to comply with the duty to request to be excused, knowing that there are legal grounds for doing so;
- (7) Neglecting or showing repeated and unwarranted delay in initiating, trying or judging cases or in the exercise of any judicial powers;
- (8) Being absent without justification, which would constitute a serious violation of the duty to be available to serve, as established in article 35 of the Statute;
- (9) Being guilty of less serious misconduct, where a judge has previously been sanctioned for two other instances of less serious misconduct in which the penalties have become enforceable, the records not having been deleted from the personal file of the person concerned, or their deletion not being called for.

E. Less serious misconduct includes:

- (1) Showing a lack of respect for the Court or for any of its members;
- (2) Participating, by making a recommendation of any kind, in the exercise of jurisdiction by another judge;
- (3) Making deliberate misstatements on applications for permits, authorizations, subsistence allowances and economic assistance and on statements involving conflicts of interest;
- (4) Abuse of judicial office in order to obtain unwarranted favourable treatment from the authorities, officials or professionals;
- (5) Overstepping or abusing authority or showing a lack of respect for the public, members of the Office of the Prosecutor, lawyers or officers of the Court;
- (6) Failing to enforce the disciplinary measures to which registrars and other officers of the Court are subject when a judge knows or should know of a serious breach of duties on their part;
- (7) Disclosing facts or information which a judge has acquired in the course of his or her duties, where this does not constitute serious misconduct;
- (8) Repeated and unjustified disregard of the schedule of public hearings and unjustified absence from scheduled proceedings involving public hearings, where this does not constitute serious misconduct;
- (9) Unwarranted delay in trying cases in the course of one's duties, where this does not constitute serious misconduct;

(10) Repeated failure to comply with or ignoring the requests made by the Presiding Judge of the Chamber or by the Presidency of the Court in the exercise of their lawful authority;

(11) Unwarranted and unexplained failure to observe the legally established time limits.

F. 1. Judges may be subject to the following penalties for misconduct in the course of their official duties:

- (a) Warnings;
- (b) Fines of up to ...;
- (c) Removal from office.

2. Less serious misconduct shall be punishable only by warnings or fines; serious misconduct shall be punishable by removal from office.

3. The penalties imposed for serious misconduct shall expire after two years, and those imposed for less serious misconduct after one year. The time limits shall be reckoned as from the day following the day on which the judgement imposing the penalties becomes enforceable.

G. 1. The Presidency of the Court shall be competent to impose penalties, except where removal from office is called for, pursuant to a decision to be made by the Assembly of States Parties in accordance with article 46, paragraph 2, of the Statute.

2. In imposing penalties, due proportionality between the seriousness of the act constituting the breach and the applicable penalty must be observed.

H. 1. Disciplinary warnings shall be issued without any procedure other than the hearing of the person concerned, following summary proceedings.

2. Other penalties shall be imposed in accordance with the procedure established in the following rules.

I. 1. Disciplinary proceedings shall be initiated ex officio or at the request of the Office of the Prosecutor.

2. Any complaint concerning the functioning of the Court in general and the conduct of the judges in particular shall, within one month, be the subject of a report by the judge whose turn it is to report, who may, after making inquiries, propose to the Presidency of the Court that the complaint be filed outright or that disciplinary proceedings be initiated.

If disciplinary proceedings are initiated, the complainant shall be notified of any resulting decisions and may make submissions.

3. The order initiating proceedings shall designate an examining magistrate, upon whose proposal a registrar shall be appointed.

J. 1. The examining magistrate shall produce such evidence and take such steps as may be necessary in order to determine the facts and establish the responsibilities subject to sanction, with the participation of the Prosecutor and the person concerned, who may make use of a lawyer from the start of the proceedings.

2. In the light of the evidence produced and the steps taken, the examining magistrate shall, where appropriate, prepare a list of charges, setting out the facts and specifying the alleged misconduct and the penalties which may be applicable.

The list of charges shall be transmitted to the person concerned, who may, within eight days, reply to it and propose such evidence as he or she may stipulate, the relevance of which shall be assessed by the examining magistrate.

3. Following the reply to the list of charges and the production, if necessary, of the evidence sought by the person concerned, or if the time limit has expired without any reply having been made to the charges, the examining magistrate shall, after consultation with the Prosecutor, prepare a draft decision containing a precise statement of the facts, a legal assessment thereof and an indication of the penalty which is deemed appropriate. The draft decision shall be communicated to the person concerned, who may, within eight days, invoke any legal arguments relevant to the case.

4. When this procedure has been carried out, or when the time limit for its completion has expired, the case shall be referred to the Presidency of the Court for whatever decision may be necessary.

5. The Presidency may send the case back to the examining magistrate so that other facts may be included in the list of charges, further investigations may be carried out or a draft decision containing a more serious legal characterization may be transmitted to the person concerned.

6. The disciplinary proceedings shall not exceed six months. If, for exceptional reasons, they are extended for a longer period, the examining magistrate shall report to the Presidency every 10 days on the status of the proceedings and on the circumstances preventing their conclusion.

7. The decision which concludes the disciplinary proceedings shall set out the grounds on which it is based and may not refer to facts other than those which served as the basis for the draft decision, regardless of the different legal assessment that may be made of them, provided that it is not more serious.

8. The resulting decision shall be communicated to the person concerned, the Prosecutor and the complainant, if any.

K. 1. Disciplinary sanctions shall be recorded in the personal file of the person concerned, together with a statement of the acts imputed to him or her.

2. The Presidency shall be responsible for ensuring that this is done.

L. 1. A record of a disciplinary warning shall be deleted after six months, if during that time the person in question has not been the subject of any additional disciplinary proceedings resulting in the imposition of a penalty.

2. Records of other penalties, with the exception of removal from office, may, at the request of the person concerned and in consultation with the Prosecutor, be deleted one year after the penalty was recorded, if during that time the person in question has not been the subject of any additional disciplinary proceedings resulting in the imposition of a penalty.

3. Deletion shall, to all intents and purposes, clear the record.

M. The provisions of this chapter shall apply, *mutatis mutandis*, to the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrars.

In order to impose on the Prosecutor the penalty of removal from office, a decision to that effect must be made by an absolute majority of the States Parties in accordance with article 46, paragraph 2 (b), of the Statute; in the case of a Deputy Prosecutor, such a decision shall also require the prior recommendation of the Prosecutor in accordance with paragraph 2 (c) of that article.