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Coordinator’s discussion paper¹

Part 4. Organization and composition of the Court

**4.1. Rules relating to situations that may affect the functioning
of the Court**

Removal from office and disciplinary measures

4.1.1 Definition of serious misconduct and serious breach of duty

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall be removed from office in such cases and with such guarantees as are established in the Statute and in the Rules of Procedure and Evidence.²

1. Serious misconduct

For the purposes of article 46 (1) (a), “serious misconduct” shall be constituted by conduct which:

(a) If it occurs in the course of official duties, involves the exercise of an activity which is incompatible with official functions and which causes or could cause serious harm

¹ This paper is subject to further discussion and is without prejudice to the positions of delegations; only parts 4.1.1, 4.1.2, 4.1.3 and 4.1.4 of the paper have been discussed in informal consultations.

² The necessity or otherwise of this paragraph will be reconsidered after the remainder of the text has been elaborated.

to the proper administration of justice before the Court or the proper internal functioning of the Court, such as:

- (i) Disclosing facts or information which a person has acquired in the course of his or her duties, where such disclosure is seriously prejudicial to the judicial proceedings or to any person, or disclosing facts or information on a matter which is *sub judice*;
 - (ii) Concealing information and circumstances, which would have precluded him or her from holding office;
 - (iii) Abuse of judicial office in order to obtain unwarranted favourable treatment from any authorities, officials or professionals; or
- (b) If it occurs outside the course of official duties, constitutes egregious conduct, whether of a criminal or other nature, that causes or could cause serious harm to the standing of the Court.

2. Serious breach of duty

For the purposes of article 46, paragraph 1 (a), a “serious breach of duty” shall be taken to have occurred where a person has been grossly negligent in the performance of his or her duties or has knowingly acted in contravention of those duties, such as:³

- (a) Failing to comply with the duty to request to be excused, knowing that there are grounds for doing so;
- (b) Repeated and unwarranted delay in initiating, prosecuting or trying cases, or in the exercise of any judicial powers.

4.1.2 Definition of misconduct of a less serious nature

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall be subject to disciplinary measures in such cases and with such guarantees as are established in the Statute and in the Rules of Procedure and Evidence.⁴

For the purposes of article 47, “misconduct of a less serious nature” shall be constituted by:

- (a) Conduct which, if it occurs in the course of official duties, causes or could cause harm to the proper administration of justice before the Court or the proper internal functioning of the Court, such as:
 - (i) Interfering in the exercise of functions by a person referred to in this rule;
 - (ii) Repeatedly failing 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;
 - (iii) 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 duty on their part; or
- (b) Any lesser conduct occurring outside the course of official duties that causes or could cause harm to the standing of the Court.

³ Several delegations expressed the view that the examples indicated in the text need to be re-examined.

⁴ The necessity or otherwise of this paragraph will be reconsidered after the remainder of the text has been elaborated.

4.1.3 Receipt of complaints

For the purposes of article 46 (1) and article 47, any complaint concerning any conduct characterized under these Rules as serious misconduct, serious breach of duty or misconduct of a less serious nature shall include the grounds on which it is based, the identity of the complainant and any relevant evidence, if available. The complaint shall remain confidential.

All complaints shall be transmitted to the Presidency, which may also initiate proceedings on its own motion, and which shall, pursuant to the Regulations of the Court, set aside anonymous or manifestly unfounded complaints and transmit the other complaints to the competent organ. The Presidency shall be assisted in this task by one or more judges, appointed on the basis of automatic rotation, in accordance with the Regulations of the Court.⁵

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4.1.4 Procedure

1. Common provisions on rights of the defence⁷

In any case in which removal from office under article 46 or the taking of disciplinary measures under article 47 is under consideration, the person concerned shall be so informed in a written statement.

The person concerned shall be afforded full opportunity to present and receive evidence and to make written submissions:

- (a) In the case of the Deputy Prosecutor, to the Prosecutor; or
- (b) In all other cases, in a plenary session of the Court specially convened for the purpose.

The person concerned shall also have full opportunity to supply answers to any questions put to him or her. He or she may be represented by a lawyer during the process established under this rule.

2. Procedure in the event of a request for removal from office

(a) Judges

- (i) The question of whether a recommendation should be made to the Assembly of States Parties that a judge be removed from office shall be put to the vote at a further

⁵ Some delegations expressed the view that this text should include language to the effect that the Prosecutor would be responsible for dealing with any complaint against a Deputy Prosecutor, and that the Presidency should not be responsible for dealing with a complaint against the Prosecutor. Some delegations also suggested that a distinction would need to be made between complaints of serious misconduct/serious breach of duty (article 46) and misconduct of a less serious nature (article 47).

⁶ Some delegations expressed a preference for inclusion of the following language:
 “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.”

⁷ Some delegations suggested that a distinction would need to be made between complaints of serious misconduct/serious breach of duty (article 46) and misconduct of a less serious nature (article 47).

plenary session of the Court to be held no later than one month after the session held pursuant to rule X [*the rule dealing with opportunity to present and receive evidence, make submissions, etc.*]. If no scheduled plenary session will be held within that time, a plenary session shall be specially convened to allow the vote to be taken ...

(ii) If the recommendation is adopted, it shall be transmitted to the President of the Bureau.

(iii)

Option one

It shall be open to the judges in an appropriate case, if they decide not to make a recommendation to the Assembly on removal from office, to decide in accordance with article 47 that the judge concerned has engaged in misconduct of a less serious nature and to impose a disciplinary measure.

Option two

If the judges decide not to make a recommendation to the Assembly on removal from office, they may, in an appropriate case, refer the case to the disciplinary chamber.

(b) Registrar or Deputy Registrar

(i) The question of whether the Registrar or the Deputy Registrar should be removed from office shall be put to the vote at a further plenary session of the Court to be held no later than one month after the session held pursuant to rule X [*the rule dealing with opportunity to present and receive evidence, make submissions, etc.*]. If no scheduled plenary session will be held within that time, a plenary session shall be specially convened to allow the vote to be taken.

(ii) The President shall inform the President of the Bureau in writing of the result of this vote.

(iii)

Option one

It shall be open to the judges in an appropriate case to decide in accordance with article 47 that the Registrar or the Deputy Registrar concerned has engaged in misconduct of a less serious nature and to impose a disciplinary measure.

Option two

If the judges decide in accordance with article 47 that the Registrar or the Deputy Registrar concerned has engaged in misconduct of a less serious nature, they may, in an appropriate case, refer the case to the disciplinary chamber.

(c) Deputy Prosecutor

(i) The Prosecutor shall ensure that rule X [*which deals with full opportunity to present and receive evidence, make submissions, etc.*] is complied with before deciding on whether he or she should recommend to the Assembly of States Parties that a Deputy Prosecutor be removed from office.

(ii) The Prosecutor shall inform the President of the Bureau of his or her decision under sub-rule (X).]

(iii)

Option one

It shall be open to the Prosecutor in an appropriate case to decide in accordance with article 47 that the Deputy Prosecutor concerned has engaged in misconduct of a less serious nature and to impose a disciplinary measure.

Option two

If the Prosecutor decides in accordance with article 47 that the Deputy Prosecutor concerned has engaged in misconduct of a less serious nature, he or she may, in an appropriate case, refer the case to the disciplinary chamber.

N.B.: This rule only applies to a Deputy Prosecutor. As the removal from office of the prosecutor is a matter to be addressed solely by the Assembly of States Parties, the Assembly should establish a procedural regime to govern the matter.

(d) Prosecutor

Some delegations consider that there should be a separate rule giving guidelines to the Assembly of States Parties in relation to removal from office of the Prosecutor.

E. Penalties

1. Removal from office

Once pronounced, removal from office shall take effect immediately. The person concerned shall cease to form part of the Court, including for unfinished cases in which he or she was taking part. That person may not at any time in the future be elected or appointed to again form part of the Court.

2. Disciplinary measures

The disciplinary measures which may be imposed are:

- (i) A reprimand; or
- (ii) [A suspension from duty for a period of no more than [(X)] [6] months involving suspension of salary for the same period]; or
- (iii) A fine, which may not exceed [six months] of the salary paid by the Court to the person concerned. [The disciplinary chamber may decide to allow the fine to be paid in instalments.]

[3. Time limits

The penalties imposed for serious misconduct shall expire after two years, and for 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.] Parties.