Research and Documentation
Directorate

RESEARCH NOTE

Impact of ongoing criminal proceedings on the conduct of disciplinary proceedings

[…]

Subject : […]

- Review of the extent to which disciplinary authorities and courts hearing disciplinary matters are required, under the laws of the Member States, to await the outcome of ongoing criminal proceedings before giving a ruling.

[…]

March 2020

[…]

SUMMARY

I. INTRODUCTION

1. The purpose of this research note [1] is to describe the relationship between criminal proceedings and disciplinary proceedings concerning the same acts.

2. More specifically, the research note focuses on the possible binding character in disciplinary proceedings of findings of fact made in criminal proceedings (first question) and the possibility of imposing disciplinary measures in respect of conduct which does not give rise to penal consequences (second question). [2]

3. In addition, the research note reviews the extent to which disciplinary authorities and national courts hearing disciplinary matters are required to await the outcome of ongoing criminal proceedings before giving a ruling (third question).

4. The first point of note here is that the scope of the research covers the regime applicable to officials. Further, while some legal systems provide for a number of regimes that apply to different categories of officials (**Austrian, Belgian, Czech, German, Italian** and **Polish** law), none of them distinguish between the regime applicable to senior officials and the regime applicable to lower-ranking officials. Consequently, the rules reviewed below are applicable to senior officials even if they do not refer to them specifically.

5. Fifteen legal systems are reviewed in this note, namely **Austrian, Belgian, Czech, Danish, Finnish, French, German**, **Greek, Hungarian, Irish, Italian, Luxembourg, Polish, Slovenian** and **Spanish** law. [3]

6. As regards the binding effect of findings of fact made in a criminal judgment, most of the legal systems reviewed are characterised to varying degrees by the principle

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of the primacy of criminal proceedings over disciplinary proceedings: under those systems, findings of fact made in criminal proceedings are binding on the disciplinary authority where the proceedings concern the same conduct (II.A). Only a very small number of legal systems are based on the principle of independence of disciplinary and criminal proceedings (II.B).

7. By contrast, the situation in the systems reviewed is uniform as far as the second question is concerned: conduct which does not give rise to penal consequences may nevertheless be subject to disciplinary measures (III).

8. As regards the third question, it should be noted that an obligation for disciplinary authorities and courts hearing disciplinary matters to await the outcome of ongoing criminal proceedings before giving a ruling could be identified in 5 of the 15 Member States reviewed (IV).

9. Three tables annexed to this summary offer a brief overview of the state of the law in relation to the three questions covered in this note, for all the national legal systems reviewed.

II. BINDING EFFECT OF FINDINGS OF FACT MADE IN CRIMINAL PROCEEDINGS

A. LEGAL SYSTEMS BASED ON THE PRIMACY OF CRIMINAL PROCEEDINGS OVER DISCIPLINARY PROCEEDINGS

1. PRIMACY OF CRIMINAL PROCEEDINGS AS A PRINCIPLE ESTABLISHED BY LAW

10. The **Austrian, Danish, German, Greek, Italian, Polish, Slovenian** and **Spanish** legislatures have expressly provided that findings of fact made by a final criminal judgment are binding on disciplinary authorities and courts hearing disciplinary matters. [4]

11. However, a number of specific aspects are worth noting. First of all, in **Germany**,

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[4] In Germany: Paragraph 23(1) and first sentence of Paragraph 57(1) of the Bundesdisziplinargesetz (Federal Disciplinary Law) of 9 July 2001 (BGBl. I p. 1510); in Denmark: third paragraph of Article 24 of the Tjenestemandsloven, jfr. lovbekendtgørelse nr. 511 (Law No 511 on civil servants) of 18 May 2017 (Lovtidende A, No 511 of 24 May 2017); in Spain: Article 77(4) of the Ley 39/2015 del Procedimiento Administrativo Común de las Administraciones Públicas (Law 39/2015 on the common administrative procedure for public administrations) of 1 October 2015 (BOE No 236 of 2 October 2015, p. 89343); in

case-law has clarified that disciplinary authorities are not bound by findings of fact made by a criminal judgment where they are not decisive for the final criminal judgment nor by findings of fact contained a judgment ordering an acquittal on procedural grounds. In addition, under German law, a court hearing a disciplinary matter must exceptionally order a re-examination of the facts where it transpires, during the proceedings before it, that findings of fact made by the criminal court are manifestly incorrect. [5] No such obligation is laid down for proceedings before a disciplinary authority, which is therefore bound by the findings of fact contained in a decision delivered in criminal proceedings, even if it considers those findings to be manifestly incorrect. [6]

12. In **Greece**, under the Code for civil servants, [7] criminal judgments are binding on disciplinary bodies in so far as they concern the existence or non-existence of facts giving rise to the establishment of the disciplinary offence, provided, [8] according to case-law, that the facts on which the criminal court has ruled are identical to those on which the disciplinary proceedings are based. [9] The disciplinary body is not, however, bound in principle by the criminal judgment if that judgment finds the defendant innocent. [10] Under the Code for civil servants, it is obliged, on the other hand, to initiate disciplinary proceedings in the case of a criminal conviction. [11]

Greece: Article 114(3) of nomos 2683/1998, ΦΕΚ A 19 (Code on civil servants); in Italy: Article 653 of the Code of criminal procedure, as amended by Legge No 97, Norme sul rapporto tra procedimento penale e procedimento disciplinare ed effetti del giudicato penale nei confronti dei dipendenti delle amministrazioni pubbliche (Law No 97 on the relationship between criminal proceedings and disciplinary proceedings and on the effects of a criminal judgment on employees of public administrations) of 27 March 2001 (GURI No 80 of 5 April 2001); in Poland: Article 122 of the Ustawa z dnia 21 listopada 2008 r. o służbie cywilnej (Law on the civil service) of 21 November 2008 (Dz.U. z 2017 r. poz. 1889, 2203, z 2018 r. poz. 106); in Slovenia: Article 14 of the Zakon o pravdnem postopku (Law on civil procedure) of 13 April 2004 (Uradni list RS, št. 36/2004), the provisions of which apply *mutatis mutandis* in disciplinary proceedings.

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6 Idem.

7 Article 114(3) of Law 2683/1998, ΦΕΚ A 19.

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9 ΣΕ 116/2010, 1670/2009, 4651/2012, 3272/2014, 76/2015, 414/2018, NOMOS.

10 Three situations have been identified, however, in which the disciplinary body is bound by a criminal judgment wherein it is found that the defendant is innocent, namely, where a criminal judgment has acquitted the defendant (i) on the ground that the acts constituting the offence on which the criminal proceedings are based did not take place, (ii) on the basis of a finding that the offence in question was not committed, or (iii) on account of doubts as to the guilt of the defendant.

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13. The **Italian** Code of Criminal Procedure [12] provides that the disciplinary authority is bound by findings regarding the existence of facts, the identity of the perpetrator and the classification of the conduct as a criminal offence.

14. Lastly, in **Slovenian** law, a judgment ordering a conviction prevails, in general, over disciplinary proceedings only in respect of the existence of a criminal offence and criminal liability. However, where the criminal offence committed by the official is the actual constituent element of disciplinary misconduct, the decision on disciplinary action is determined by that judgment having the force of *res judicata* and having been delivered in relation to the same acts.

2. PRIMACY OF CRIMINAL PROCEEDINGS AS A CASE-LAW-BASED MITIGATION OF THE PRINCIPLE OF INDEPENDENCE

15. **Belgian, French and Luxembourg** law are based on the principle of independence of criminal and disciplinary proceedings. Nevertheless, according to case-law, disciplinary authorities and national courts hearing disciplinary matters are bound only by findings of fact made by a criminal court. For example, according to Luxembourg case-law, an order that there is no need to adjudicate prevents the disciplinary authority considering facts which are covered by that order and which cannot therefore form the basis for the initiation of disciplinary proceedings unless new incriminating evidence emerges.

16. Similarly, in **France**, case-law often limits the binding effect of findings of fact made by a criminal court only to cases where the court makes a positive finding of their material existence or non-existence. In this regard, French case-law has made clear, for example, that because the decisions stating that there is no need to adjudicate do not relate to the substance of the facts, the disciplinary authority is not bound by them or by decisions to discharge or to acquit for lack of evidence or by acquittal judgments which do not contain grounds.

17. The situation is much more nuanced in **Ireland** where, in the absence both of relevant statutory provisions and of a general period of limitation, some broad lines can be

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[12] Article 653 of the Code of criminal procedure, as amended by the Law of 27 March 2001, No 97, Norme sul rapporto tra procedimento penale e procedimento disciplinare ed effetti del giudicato penale nei confronti dei dipendenti delle amministrazioni pubbliche (GURI No 80, 5 April 2001).

inferred from case-law. A first approach precludes the possibility of imposing disciplinary sanctions on an official acquitted following criminal proceedings concerning the same conduct or the same acts where the same question is raised in both proceedings. However, that case-law does not preclude a defendant being the subject of disciplinary proceedings concerning the same acts but covered by different charges. In the second approach, case-law has afforded more nuanced recognition of the binding nature of a jury verdict: the fact that criminal and disciplinary proceedings entail differences in the burden of proof (beyond a reasonable doubt in criminal matters and preponderance of evidence in disciplinary matters) and have different purposes, implies that an acquittal in the criminal proceedings does not preclude the imposition of disciplinary measures for the same acts in the disciplinary proceedings. In the case of a conviction, the acts forming the constituent elements of the criminal offence must be regarded as established in respect of the same conduct for the disciplinary matter. [13] [14]

18. It should be noted, lastly, that in **Finland** neither legislation nor case-law clarifies precisely the value of findings of fact made in the course of criminal proceedings for disciplinary proceedings. Academic literature appears to take the view that the force of *res judicata* of a criminal judgment could be binding on the administration in respect of facts established by the criminal court. There are, however, differences of opinion on the extent of the *res judicata* of such a judgment.

B. SYSTEMS BASED ON INDEPENDENCE OF CRIMINAL AND DISCIPLINARY PROCEEDINGS

19. In two of the Member States reviewed, the relationship between criminal and disciplinary proceedings is governed by the principle of complete independence between the two kinds of proceedings such that the court hearing the disciplinary matter is not bound by findings of fact made by the criminal court.

20. That is the case, first, in **Hungary**, where the provisions of the Law on Civil

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[13] Hogan, G., and Gwynn Morgan, D., *Administrative Law in Ireland*, 4th ed., 2010, Round Hall Ltd, Dublin, p. 330.

[14] […]

Procedure, [15] which apply to disciplinary proceedings, stipulate essentially that the civil court is not bound by a criminal judgment or by findings of fact made in criminal proceedings. The only exception is that the civil court does not have jurisdiction to rule that the convicted person did not commit the criminal offence previously established by the criminal court. The civil court may not find the convicted person not guilty under criminal law.

21. As far as **Czech** law is concerned, in the absence of an explicit legislative provision and case-law in this regard, it would appear that the disciplinary body is bound only by the definition of the conduct set out in the operative part of the decision by which a criminal court relinquishes jurisdiction over the case in favour of the disciplinary authority, in particular on the ground that the act does not constitute a criminal offence. According to the principle of procedural economy, the disciplinary body could use the factual findings made in the criminal proceedings as the basis for its own decision. However, in the light of the principles of the separation of powers and unfettered evaluation of evidence, it would appear that that body is not bound by those facts.

III. POSSIBILITY IN DISCIPLINARY PROCEEDINGS OF SANCTIONING CONDUCT WHICH DOES NOT GIVE RISE TO PENAL CONSEQUENCES

22. As for the answer to the second question, the review of the legal systems examined showed that, in the light of the fact that criminal and disciplinary proceedings have different aims, in all those legal systems conduct that is not sanctioned by criminal law may nevertheless be subject to disciplinary measures.

IV. OBLIGATION FOR DISCIPLINARY AUTHORITIES AND COURTS HEARING DISCIPLINARY MATTERS TO AWAIT THE OUTCOME OF ONGOING CRIMINAL PROCEEDINGS BEFORE GIVING A RULING

23. In 10 of the Member States reviewed, disciplinary authorities and courts hearing

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15 Article 263(2) and Article 264(1) of the Polgári perrendtartásról szóló 2016. évi CXXX. törvény (Law No CXXX of 2016 laying down the Code of civil procedure).

disciplinary matters are not required to await the outcome of ongoing criminal proceedings before giving a ruling. It should be noted, however, that in most cases they may, nevertheless, decide to stay the proceedings in order to await the outcome of those criminal proceedings.

24. The obligation for disciplinary authorities and courts hearing a disciplinary matter to await the outcome of ongoing criminal proceedings before giving a ruling was identified in only five of the national legal orders reviewed. Furthermore, in three of those it is not a general obligation.

A. LEGAL SYSTEMS IN WHICH DISCIPLINARY PROCEEDINGS DO NOT HAVE TO AWAIT THE OUTCOME OF CRIMINAL PROCEEDINGS

25. In **Belgian, Danish, French, Greek, Hungarian, Irish, Italian, Luxembourg, Polish and Slovenian** law, there is no obligation for national disciplinary authorities and national courts hearing disciplinary matters to await the outcome of ongoing criminal proceedings before giving a ruling.

26. As far as **Belgian and Danish** law are concerned, it is for the disciplinary authority to decide whether or not to await the result of the criminal proceedings. That authority thus enjoys a discretionary power which is, however, framed by the principle of prudence (where facts are not sufficiently clear or adequately proven, the person concerned denies the facts or the authority considers that there is insufficient evidence to convict the official in the criminal proceedings, it is reasonable to await the outcome of those proceedings). In addition, the principle that proceedings must be brought within a reasonable period also applies in Belgian law, such that a person against whom disciplinary action is taken may not be left for too long in a state of uncertainty as to his or her fate. Note should also be taken of a development in the relevant statutory provisions in Belgian law, with regard both to federal officials [16]

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[16] The Decree laying down the staff regulations of federal officials (Royal Decree of 2 October 1937 laying down the staff regulations of public servants, Moniteur belge, 8 October 1937, p. 6074), which previously provided for an explicit derogation making disciplinary proceedings subject to criminal proceedings, has stipulated since 1 October 2016, in Article 81(5), that 'criminal proceedings shall be without prejudice to the possibility for the disciplinary authority to impose a disciplinary penalty'.

and to staff in the services of the Flemish authorities, [17] whereby the previously existing derogations under which it was necessary to await the outcome of ongoing criminal proceedings have now been abolished. Only statutes adopted by local and provincial authorities may still contain an explicit derogation making disciplinary proceedings dependant on the outcome of criminal proceedings.

27. Under **Greek** law, criminal proceedings do not have automatic suspensory effect over disciplinary proceedings either. However, the disciplinary body may stay the disciplinary proceedings temporarily (for a period not exceeding one year) for exceptional reasons. [18] It is free to revoke that decision with a view to a reappraisal of the exceptional reasons. [19] According to academic literature, an exceptional reason justifying the stay of disciplinary proceedings could be difficulties encountered in collecting evidence or in conducting the investigation, in particular when the criminal investigation has already commenced. [20] There is a single exception to this rule, namely a disciplinary offence that has occasioned 'public outrage' or seriously undermines the reputation of the service. In that case, it is not possible to stay the proceedings.

28. The situation is relatively similar in **Italian** law where, without, however, making reference to exceptional reasons, provision is made [21] for the possibility to stay disciplinary proceedings if certain conditions related to the gravity or complexity of the case are met. Nevertheless, the disciplinary proceedings may be resumed if the administration becomes aware of new evidence which is sufficient to conclude the proceedings, including a judgment which is not final. Furthermore, disciplinary proceedings that have already been concluded are reopened if they resulted in the imposition of a sanction where the criminal proceedings terminate in an irrevocable

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17 Article 8.20 of the Flemish staff regulations (Decree of the Flemish Government of 13 January 2006 laying down the staff regulations for the services of the Flemish authorities, Moniteur belge, 27 March 2006, p. 17287), as amended by the Decree of 23 May 2014, Moniteur belge, 11 September 2014, p. 71747.

18 See, in this regard, in the case of firefighters, doctors and lawyers, Pantazis, N., *Eidiko Peitharchiko Dikaio*, Nomiki Vivliothiki, Athens, 2017, p. 148, 273 and 313.

19 Idem, p. 1305.

20 Pantazis, N., *Peitharchiko Dikaio Dimosion Ipallilon*, Nomiki Vivliothiki, Athens, 2015, p. 196

21 Article 55b of Decreto legislativo 30 marzo 2001, n. 165, Norme generali sull'ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche (Legislative Decree No 165 of 30 March 2001 laying down general rules concerning the organisation of employment in public administrations) (GURI No 106, 9 May 2001, and Ordinary Supplement No 112), as amended.

decision of acquittal (establishing that the alleged acts did not exist or do not constitute a criminal offence or establishing that the official himself did not commit the offence) or if the disciplinary proceedings were terminated by a decision to take no further action and the criminal trial by a final conviction. The disciplinary proceedings are also reopened if it is apparent from the final conviction that the act with which the official has been charged in disciplinary proceedings entails the sanction of dismissal, whereas another sanction was applied.

29. Provision is also made for an optional stay of proceedings, along very similar lines, in **French, Hungarian, Luxembourg and Slovenian** law. Thus, under **Hungarian** law, the disciplinary authority is free to stay the proceedings in so far as the facts can be established only in criminal proceedings. [22] However, if the disciplinary proceedings are not stayed and are concluded before the judgment is delivered in the criminal proceedings, the findings of fact made by the court in the criminal proceedings, the finding of guilt and the penalty imposed have no bearing on the disciplinary proceedings. The judicial proceedings before the court having jurisdiction to hear the disciplinary matter may also be stayed if a preliminary question is raised and the answer to that question depends on the adjudication on the merits in the criminal proceedings. [23]

30. In **Luxembourg** law, disciplinary proceedings do not have to await the outcome of criminal proceedings and the disciplinary proceedings may, in theory, be concluded despite the existence of pending criminal proceedings. Nevertheless, the general regulations applicable to State officials provide that in the case of proceedings before a criminal court, the disciplinary authority may offer to stay the disciplinary proceedings pending delivery of the final decision by the criminal court. Similarly, in **French** law, although the disciplinary authority may decide in civil service disputes to stay the proceedings where this seems necessary for the quality of the investigation, the establishment of the facts or the sound administration of justice, it

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22 Article 2(6) of 31/2012. (III. 7.) Korm. Rendelet a közszolgálati tisztviselőkkel szembeni fegyelmi eljárásról (Government Decree No 31/2012 of 7 March 2012 on disciplinary proceedings against public officials).

23 Article 123(1) of the Polgári perrendtartásról szóló 2016. évi CXXX. törvény (Law No CXXX of 2016 laying down the Code of civil procedure).

is not required to do so. [24]

31. In **Slovenian** law, because the two kinds of proceedings are distinct and governed by different principles, both disciplinary authorities and courts hearing disciplinary matters are permitted to give a ruling before the completion of criminal proceedings concerning the same conduct.

32. In **Irish** law, although there is no provision for any formal obligation requiring a disciplinary body to stay the proceedings until a criminal court has given its decision, case-law shows that disciplinary bodies generally stay the proceedings pending the decision by the criminal courts concerning acts to which the disciplinary proceedings relate. [25]

33. In order to redress the potentially negative consequences of the independence of criminal liability and liability to disciplinary action of public officials, the **Polish** legislature has provided for a number of cases where disciplinary proceedings may optionally be stayed pending the conclusion of criminal proceedings. [26] That is the case, inter alia, for disciplinary proceedings against police officers where the disciplinary superior may stay disciplinary proceedings against the officer by reason of a long-term obstacle affecting those proceedings. [27] However, ongoing criminal proceedings can never prevent the initiation of disciplinary proceedings. [28] Further, where a criminal judgment is handed down after the disciplinary decision in respect of the same person and the same acts has taken effect, if the findings of fact and law in the criminal judgment diverge from those adopted in the disciplinary proceedings,

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24 Conseil d'État (Council of State, France), decision of 30 December 2014, No 381245, *Bonnemaison:* in a case where a doctor was struck off the register of doctors by a disciplinary chamber, the Conseil d'État (Council of State) ruled that that chamber did not commit an irregularity in not awaiting the judgment of the Cour d'assises (Assize Court, France). Therefore, the decision of the disciplinary chamber did not prevent the person concerned from organising his or her defence before that disciplinary body, for example by adducing evidence from the criminal proceedings, as the principle of investigative confidentiality did not apply to the person being investigated. See also in this regard the second paragraph of Article 9 of Decree No 84-961 of 25 October 1984.

25 As was the case in the judgments of the High Court, Ireland, in *Walsh* v *The Commissioner of An Garda Síochána and Others* [2010] IEHC 257 and of the Court of Appeal, Ireland, in *Higgins* v *The Commissioner of An Garda Síochána* [2018] IECA 68, paragraph 10.

26 Giętkowski, R., Odpowiedzialność dyscyplinarna w prawie polskim, Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 2013, p. 127.

27 Article 135h(3) of the Ustawa z dnia 6 kwietnia 1990 r. o Policji (Law of 6 April 1990 on police).

28 Order of the Sąd Najwyższy (Supreme Court, Poland) of 7 April 2004, SNO 12/04.

it is possible to revise the disciplinary decision subsequently. [29] In order to avoid this form of revision, Polish academic literature indicates that an alternative to the option of staying the proceedings is to extend the limitation period for the disciplinary act which fulfils the criteria for an offence. [30] A similar situation can be identified in **Czech** law where, if the option is taken to stay disciplinary proceedings against an official, the one-year limitation period is suspended during the stay of proceedings.

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29 Order of the Sąd Najwyższy (Supreme Court) of 7 April 2004, SNO 12/04.

30 Bojańczyk, A., Razowski, T., *Konsekwencje procesowe przewinienia dyscyplinarnego będącego przestępstwem*, Prokuratura i Prawo, 11-12, 2009, p. 50. Academic literature refers in this regard to disciplinary proceedings before courts, as mentioned in the resolution of the Sąd Najwyższy (Supreme Court), I KZP8/06. In principle, however, for the legal professions, in the specific case of a disciplinary offence that also fulfils the criteria of a criminal offence, it remains optional to stay the disciplinary proceedings.

B. LEGAL SYSTEMS IN WHICH DISCIPLINARY PROCEEDINGS MUST AWAIT THE OUTCOME OF CRIMINAL PROCEEDINGS

34. In **Austrian** law, where criminal proceedings are pending against an official, the Staff Regulations of Officials of the Federal State provide for the disciplinary proceedings against that official to be stayed by operation of law. [31]

35. As far as **German** law is concerned, the obligation to stay the disciplinary proceedings comes into effect as soon as the prosecutor has brought a public prosecution against the official concerned. In addition, that obligation rests solely on the disciplinary authority and does not apply to subsequent proceedings before courts hearing the disciplinary matter. [32]

36. Where, in the course of disciplinary proceedings, the administration uncovers sound evidence of criminal acts, **Spanish** civil service law [33] explicitly requires the administration to stay the disciplinary proceedings pending a decision by the criminal court. In this situation, the disciplinary proceedings must also be transferred to the criminal courts or to the prosecutor.

37. In **Finland**, in the absence of relevant statutory provisions and case-law on this point, academic commentators take the view that a written warning may not be issued to the official if the nature of the case requires it to be referred to the criminal courts. [34] Thus, the question of the obligation to await the outcome of the criminal proceedings does not arise in practice. It should be noted, however, that if the reason for which a written warning could be issued is the criminal nature of an act, the disciplinary

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31 Paragraph 114(2) of the Beamten-Dienstrechtsgesetz 1979 (Law on civil servants) (BGBl 333/1979), as amended.

32 Paragraph 22 of the Federal Disciplinary Law, which provides for the obligation to stay proceedings, appears in the part of that law relating to proceedings before the disciplinary authority and therefore applies only to such proceedings. No such provision is made, on the other hand, in the part of the Federal Disciplinary Law devoted to proceedings before courts hearing disciplinary matters.

33 Real Decreto Legislativo 5/2015 por el que se aprueba el texto refundido de the Ley del Estatuto Básico del Empleado Público (Royal Legislative Decree 5/2015 approving the consolidated text of the Law on the basic regulations relating to public employees), 30 October 2015.

34 Heinonen, O. et al., *Rikosoikeus*, Juva 2002, p. 1276.

authority is required to wait until the criminal judgment becomes final. [35] As regards other administrative measures, public authorities and administrative courts tend to await the outcome of the criminal proceedings and to give a ruling after the criminal judgment has acquired the force of *res judicata*. [36] That is the case, in particular, if the administrative authority proposes to take into consideration the criminal nature of an alleged act, for example where the authority intends to dismiss the official or to terminate his or her employment without notice following criminal proceedings. [37]

38. With regard, specifically, to disciplinary proceedings brought against judges, public prosecutors and judicial officers, **Czech** law provides for two cases in which the disciplinary chamber is required to stay the proceedings, namely where it considers that the acts in question have the characteristics of a crime or where it learns that criminal proceedings have been brought against the same person for the same acts.

39. Accordingly, it is only in **Austrian** law and in **Spanish** law that there is a generally applicable principle that disciplinary proceedings must await the outcome of criminal proceedings, while in **German, Finnish and Czech** law the application of that principle may be subject to exceptions.

V. CONCLUSIONS

40. In all the legal orders reviewed, conduct that does not give rise to penal consequences may nevertheless be subject to disciplinary measures.

41. As regards the binding character in disciplinary proceedings of findings of fact made in criminal proceedings, such binding effect was identified in the vast majority of those legal orders. However, it should be made clear, first, that it is very often subject to the condition that the acts in question are identical and, second, that it is not

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35 Launiala, M., 'Syyllisyysolettamasta erityisesti esitutkinnan näkökulmasta', *Edilex database*, Edita Publishing Oy, Helsinki, 2010, p. 15-18.

36 Korkein hallinto-oikeus (Supreme Administrative Court, Finland), 2008, Case 2754, Korkein hallinto-oikeus (Supreme Administrative Court), 2015, Case 3049, Helsingin hallinto-oikeus (Administrative Court, Helsinki, Finland), 2015, Case 15/0465/2. See also Launiala, M., Tervonen, T., 'Valtion virkamiehen määräaikainen erottaminen – menettely ja asialliset edellytykset', *Defensor Legis 3/2016*, Helsinki, p. 424.

37 Virkamieslautakunta (Civil Service Appeals Board, Finland), 14 May 1997, Case 10/97: irtisanominen ja virantoimituksesta pidättäminen.

absolute, as the binding character does not apply to all findings of fact made in criminal proceedings.

42. In most of the legal orders reviewed, although disciplinary authorities and national courts hearing disciplinary matters are not required to await the outcome of ongoing criminal proceedings before giving a ruling, they may nevertheless decide to stay the proceedings. A single exception, where it is not permitted to stay the proceedings, could be identified in Greek law. In the other Member States, where provision is made for an obligation to stay the proceedings, that obligation often has limited scope or is subject to certain conditions.

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SUMMARY TABLES

I. SUMMARY TABLE CONCERNING THE BINDING CHARACTER IN DISCIPLINARY PROCEEDINGS OF FACTS FOUND IN CRIMINAL PROCEEDINGS

BINDING CHARACTER OF FACTS FOUND IN CRIMINAL PROCEEDINGS	
YES	**NO**
MEMBER STATES Austria Belgium Denmark Finland France Germany Greece Ireland [38] Italy Luxembourg Poland Slovenia Spain	**MEMBER STATES** Czech Republic [39] Hungary

[38] Despite the absence of statutory provisions and the nuanced character of the relevant case-law (see section II.A.2 of the summary), it would nevertheless appear that Ireland can be included in this column.

[39] In the absence of explicit statutory provisions and case-law in this regard, it would appear that the Czech Republic can be included in this column.

II. SUMMARY TABLE CONCERNING THE POSSIBILITY THAT CONDUCT WHICH DOES NOT GIVE RISE TO PENAL CONSEQUENCES MAY BE SUBJECT TO DISCIPLINARY MEASURES

POSSIBILITY THAT CONDUCT WHICH DOES NOT GIVE RISE TO PENAL CONSEQUENCES MAY BE SUBJECT TO DISCIPLINARY MEASURES	
YES	**NO**
MEMBER STATES Austria Belgium Czech Republic Denmark Finland France Germany Greece Hungary Ireland Italy Luxembourg Poland Slovenia Spain	**MEMBER STATES**

III. SUMMARY TABLE CONCERNING THE OBLIGATION FOR DISCIPLINARY AUTHORITIES AND COURTS HEARING DISCIPLINARY MATTERS TO AWAIT THE OUTCOME OF ONGOING CRIMINAL PROCEEDINGS BEFORE GIVING A RULING

OBLIGATION TO AWAIT THE OUTCOME OF CRIMINAL PROCEEDINGS	
YES	**NO**
MEMBER STATES Austria Czech Republic [40] Finland [41] Germany [42] Spain	**MEMBER STATES** Belgium [43] Denmark France Greece Hungary Ireland Italy Luxembourg Poland Slovenia

[40] Only in respect of the disciplinary authority.

[41] In cases where the reason for which a written warning could be issued is the criminal nature of an act.

[42] Only if the person to whom the disciplinary proceedings relate is a judge, a public prosecutor or a judicial officer.

[43] Statutes adopted by local and provincial authorities may contain an explicit derogation subordinating disciplinary proceedings to criminal proceedings.