

**Questionnaire 2022 of the 1<sup>st</sup> Study Commission IAJ-UIM**  
**“Disciplinary Proceedings and Judicial Independence”/ Georgia**

**1) What kind of allegations can justify disciplinary proceedings against judges in your country: an individual’s behavior only in the workplace or also in his or her private life? Give some examples, please. Can the content of the decisions taken by judges also lead to disciplinary proceedings? Can judges be charged criminally for the content of their judicial decisions under any circumstances?**

The legislative amendments elaborated within the framework of the fourth wave of the judicial reform in Georgia, further strengthened the accountability of the judiciary by setting forth the precise grounds for disciplinary liability, which conform to the international standards and distinguishes the standards of professional conduct from the disciplinary rules<sup>1</sup>. As a result of the reform, the breach of the rules of Judicial Ethics as a basis for imposing a disciplinary liability has been excluded from the law.

The disciplinary liability shall be imposed on a judge only if the fact of committing disciplinary misconduct by the judge is established as a result of the disciplinary proceedings. Pursuant to the Organic Law, only intentional or negligent<sup>2</sup> behaviors of a judge that are listed in the law may constitute a disciplinary misconduct.

In order to ensure that the rules relating to judicial accountability and the review of court decisions fully respect the principles of judicial independence and impartiality, the Organic Law sets forth the following provisions: “an incorrect interpretation of a law, which is based on judge's inner conviction, shall not constitute disciplinary misconduct, and disciplinary liability shall not be imposed on a judge for such conduct”. “During disciplinary proceedings, supervision over legality of the acts issued by a judge shall not be permitted”.

Article 75<sup>1</sup> of the Organic Law of Georgia on “Common Courts” (LCC) on prescribes the specific and exhaustive list of types of disciplinary misconducts. The types of disciplinary misconducts are defined according to the main principles of the judicial conduct. For instance, the conduct that violates the principle of independence includes exercising judicial powers with the political or social influence or influence of personal interests, as well as interference in other judge’s activities for the purpose of influencing the outcome, while the conduct that violates the principle of integrity includes corruption-related offenses set forth in the Law of Georgia “on Conflict of Interests and Corruption in Public Service” and hindering disciplinary proceedings by a judge.

There is no criminal or administrative punishment for judicial decisions (including for wrong decision or miscarriage of justice) in Georgia.

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<sup>1</sup> Before January 2020, violation of the rules of judicial ethics has belonged to the list of grounds for disciplinary liability. Therefore in case of violation of the rules of judicial ethics by a judge, the disciplinary proceedings were applied in accordance with the legislation on disciplinary liability and disciplinary proceedings against judges.

<sup>2</sup> A disciplinary misconduct is considered to be intentional, when a judge realized the possibility of causing harm, while negligent behavior means when a judge did not realize the possibility of harm while acting, but could have and should have considered it.

**2) Which body is responsible for disciplinary proceedings against judges in your country? Is the body that carries out the disciplinary procedure the same one that imposes the penalties? What is the composition of the body responsible for disciplinary proceedings (as well as the one who must apply penalties to judges, when it is not the same)? Is it composed only by judges, does it have a mixed composition, or is it composed only by professionals outside of the Judiciary Branch? Kindly describe the composition of that body (those bodies).**

According to the current legislation, four different institutes are involved in disciplinary proceedings against judges of the common courts: the Independent Inspector, the High Council of Justice (HCJ), the Disciplinary Panel of Judges of the Common Courts, and the Disciplinary Chamber of the Supreme Court. The separation of powers between the different institutes involved in the disciplinary proceedings and the composition of these bodies ensure the exclusion of any possibilities of undue influence or interference in the process of disciplinary liability of judges.

Noteworthy, the legislative amendments of 2017 abolished the previous practice according to which the court chairpersons were entitled to initiate disciplinary proceedings against judges. As a result of the reform, a position of an Independent Inspector was introduced in 2017, who operates independently from the HCJ and ensures an objective and unbiased examination of alleged disciplinary misconducts of judges.

Pursuant to the current legislation, only the Independent Inspector is entitled to initiate the disciplinary proceedings and conduct the preliminary examination and investigation of an alleged disciplinary misconduct. The Independent Inspector is elected on the basis of a competition, for a term of five years by a majority of the full composition of the HCJ. The Independent Inspector has his own office. The structure, staff list and salaries of the office are approved exclusively by the Independent Inspector within the limits of the allocations to the Office of the Independent Inspector.

The LCC separates the initiation of disciplinary proceedings and initiation of disciplinary prosecution from each other: the Independent Inspector is able to initiate disciplinary proceedings against a judge, whereas the HCJ has an authority to initiate the disciplinary prosecution. More precisely, as a result of the examination of the opinion submitted by the Independent Inspector, made after the preliminary examination of an alleged disciplinary misconduct of a judge, the HCJ shall adopt a reasoned decision to terminate the disciplinary proceedings or to initiate disciplinary prosecution against the judge and to take explanations from the judge concerned. Whereas, following the initiation of disciplinary prosecution against the judge and having taken an explanation from the judge concerned, the HCJ shall adopt a reasoned decision to terminate disciplinary proceedings or to impose disciplinary liability on a judge.

The HCJ consists of 15 members: 8 judge and 6 non-judge members, as well as the chairperson of the Supreme Court. Eight members of the HCJ, of whom at least one member represents each court instance, shall be elected by a self-governing body of judges of the common courts of Georgia – the Conference of Judges, according to the procedure determined by this Law; five

members shall be elected by the Parliament of Georgia and one member shall be appointed by the President of Georgia. The chairperson of the Supreme Court is an *ex officio* member of the HCJ.

In case the HCJ adopts a decision on imposing a disciplinary liability on a judge, the disciplinary case shall be forwarded to the Disciplinary Panel of Judges of the Common Courts of Georgia. The Disciplinary Panel is authorized to consider a disciplinary case and adopt a decision on acquittal or impose a disciplinary penalty/a disciplinary measure against a judge. The Disciplinary Panel is composed of 5 (3 judge and 2 non-judge) members. The judge members are elected by the Conference of Judges with two-third majority of members present, while the non-judge members are elected by the Parliament of Georgia with a majority of full composition of its members. The Panel elects its chairperson from among its members. The non-judicial members of the panel are elected from among the professors, academic researchers employed in the higher education institutions of Georgia, members of the Georgian Bar Association and/or persons nominated by non-entrepreneurial (non-commercial) legal entities of Georgia.

A decision of the Disciplinary Panel may be appealed to the Disciplinary Chamber of the Supreme Court. The Disciplinary Chamber of the Supreme Court, composed of 3 members, shall be elected by the Plenum of the Supreme Court for a three-year term with two-third majority of its members present at the meeting. In order to elect members of the Disciplinary Chamber of the Supreme Court, candidates for the membership, including a candidate for the chairperson of the Disciplinary Chamber, shall be nominated to the Plenum of the Supreme Court, from among the Supreme Court members, by a member of the Plenum. The decision of the Disciplinary Chamber shall be final and shall not be subject to appeal.

**3) Which disciplinary penalties can be imposed on judges in your country? Is the disciplinary penalty of removal from office among them? Can a judicial conviction for a crime lead to a penalty of removal from office?**

According to the current legislation, the Disciplinary Panel of Judges of the Common Courts is authorized to consider a disciplinary case and adopt a decision on acquittal or impose a disciplinary penalty/a disciplinary measure against a judge. The types of disciplinary penalties are as follows: a) Reprimand; b) Severe Reprimand; c) Withholding 5% to 20% of salary for no longer than 6 months' period; d) Dismissal of the chairperson, the first deputy or a deputy chairperson of a court, the chairperson of a judicial panel or chamber from the position; e) Involvement in the relevant program to improve the qualification of a judge; f) Dismissal of a judge. The Disciplinary Measure constitutes giving a private recommendation letter to a judge.

A disciplinary penalty and a disciplinary measure are imposed by preserving the principle of independence and non-interference in the activities of a judge. When selecting a disciplinary penalty and a disciplinary measure for a judge, the Disciplinary Panel shall consider the nature and gravity of a disciplinary misconduct, consequences it entailed or may have entailed, and the degree of the guilt.

According to the LCC, dismissal of a judge as a disciplinary penalty is a measure of last resort, and it shall be applied in a special situation. The Disciplinary panel shall make a decision on dismissing a judge from the judicial office if - based on the gravity and number of a specific disciplinary misconduct, and considering a previously committed disciplinary misconduct - the Panel deems it inappropriate for that judge to continue with the exercise of judicial powers. From the moment the Disciplinary Panel makes the decision to dismiss the judge, the latter must be withdrawn from hearing a case and exercising other official powers under the procedure established by law.

A decision of the Disciplinary Panel may be appealed before the Disciplinary Chamber, who may uphold, modify or reverse the decision of the Panel, or return the case for reconsideration. When dismissal of a judge is applied as a disciplinary penalty, the Disciplinary Panel or the Disciplinary Chamber shall submit the binding decision on dismissal for formal enforcement to the HCJ.

As concern the judicial conviction of a crime, in case the Independent Inspector, during preliminary examination of a case, finds out that the case file expressly indicate at commission of a crime by a judge, he/she shall submit reasoned submission before the HCJ to forward the case to the Prosecutor's office. The final judgment of conviction against a judge constitutes a ground for dismissal of judges of the common courts.

**4) In the disciplinary proceedings against judges in your country, is a fair trial granted? In there an appeal against the decision imposing a disciplinary penalty of judges? During the disciplinary proceedings, can the judge be suspended from office? Does the judge who is suspended during disciplinary proceedings continue to earn a salary normally or does the judge suffer any reduction in income?**

The Organic Law describes in detail the procedural guarantees of due process for a judge.

- ✓ The relevant judge shall be immediately notified of the complaint against him/her;
- ✓ Involvement of a judge in the disciplinary proceedings against him/her is ensured at every stage of the proceedings;
- ✓ The judge has the right to file a motion for recusal of the Independent Inspector, as well as the members of the Disciplinary Panel and the Disciplinary Chamber;
- ✓ The judge is entitled to request the public hearing of his/her case;
- ✓ The decisions of the Independent Inspector and the HCJ on termination of the disciplinary proceedings against a judge shall be communicated to the respective judge and shall be published on the webpage of the HCJ without identifying information of the judge concerned and the parties to the disciplinary proceedings. In case the judge requests that the disciplinary proceedings be public, the decision of the HCJ to terminate disciplinary proceedings against the judge concerned shall be published with identifying information of the judge;
- ✓ The judge is able to benefit from the services of an advocate/lawyer;

- ✓ The standards of proof have been introduced in disciplinary proceedings. In particular, when making a conclusion the Independent Inspector shall apply the reasonable supposition standard. And while making a decision on imposing a disciplinary liability the HCJ shall apply the prima facie standard.

The parties to a disciplinary case have the right to appeal the decision of the Disciplinary Panel (the body authorized to impose a disciplinary penalty on a judge). A decision of the Disciplinary Panel may be revised by appealing it to the Disciplinary Chamber of the Supreme Court.

The HCJ is authorized (on the basis of a substantiated motion submitted by the Independent Inspector), if supported by the majority of the full composition of the Council, to apply to the Disciplinary Panel of the Judges of Common Courts of Georgia to decide on withdrawing a judge of district (city) court or court of appeals from hearing cases if any of the following grounds are present:

- a) criminal proceedings have been brought against a judge;
- b) disciplinary prosecution has been initiated against the judge of a district (city) court or a court of appeals and there is a reasonable doubt suggesting that if the judge continues to exercise judicial powers he/she will interfere with the disciplinary proceedings and/or with the reimbursement of damages caused by the disciplinary misconduct and/or will continue with the breach of the work discipline.

The Disciplinary Panel of the Judges of Common Courts of Georgia reviews the Submission of the HCJ within 5 working days. If the Disciplinary Panel agrees to the conclusions provided for in the Submission of the HCJ, the Panel will render a decision on withdrawing the judge from hearing cases until the conclusion of the relevant proceedings. Otherwise, the Disciplinary Panel will render a decision refusing the submission.

The decision of the Disciplinary Panel regarding the Submission of the HCJ may be challenged by the parties to the disciplinary proceedings, within 3 working days after having been served with the decision, before the Disciplinary Chamber of the Supreme Court.

Upon the withdrawal of a judge from hearing disputes, his/her judicial powers are suspended within the time limits set by the decision, thus the remuneration and payment of other material benefits to the judge shall be suspended as well. If acquitted, the judge is entitled to full compensation of any salary and other material benefits not received. Within that period, the judge still enjoys immunity.

**5) Where there any recent changes regarding disciplinary proceedings that may be considered to infringe upon judicial independence in your country? If so, were those changes introduced by legislation, or were existing laws applied differently? Please specify**

No.