

SYSTEM OF DISCIPLINARY LIABILITY OF JUDGES

(2020-2021 Assessment Report)



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System of Disciplinary Liability of Judges

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Introduction

This report aims to assess the system of disciplinary liability of judges that has evolved following the "fourth wave" of judicial reform and the legislative changes of December 30, 2021.

The Georgian Parliament adopted the "fourth wave" of judicial reform on December 13, 2019, laying the groundwork for a comprehensive transformation of the disciplinary system. The types and list of disciplinary misconducts and liabilities have been newly regulated and specified as a result of legislative amendments; Standards for Inspector's institutional independence have been improved; The evidentiary standards required for decision-making in disciplinary proceedings have been established; Requirements for substantiation and transparency of acts adopted during the legal proceedings have increased, etc. Although there are still a number of shortcomings in the legislation and practice, the changes made ultimately have resulted in a major improvement in the system of disciplinary liability of judges.

On the contrary, the legislative changes adopted on December 30, 2021, given the need for further reforms, is a serious step backward, worsening the degree of foreseeability of the legislation, containing the risks of violating the individual independence of judges, and simplifying the process of initiating disciplinary proceedings against them. Under the changes, a new action has been added to the list of disciplinary misconduct, which, considering its content, provides an additional and vague mechanism for disciplinary liability. The legal grounds for removing a judge from a case have been newly regulated and expanded; The time limits of disciplinary proceedings have been halved; The majority votes required for the High Council of Justice to decide on disciplinary matters were reduced, and so on. The Parliament of Georgia did not take into account the real shortcomings of the system of disciplinary liability, the recommendations of the Civil Sector, and the Office of Independent Inspector and hastily changed the legislation, without widespread public involvement.

Finally, the present report discusses in detail the shortcomings identified in the staffing process of the bodies involved in disciplinary proceedings, as well as the practices developed by them.

This monitoring report covers the period from January 1, 2020, to December 31, 2021. The second report, including an analysis of the disciplinary liability norms and international standards, as well as the decisions of the High Council of Justice, the Disciplinary Panel, and the Chamber, made during the reporting period from 1 January 2019 to 1 September 2019, has been published in November 2019.

Methodology

While working on the present monitoring report, the project team used the following research and information gathering methods and resources:

Analysis of Legislation - One of the essential tools in the monitoring process was the analysis of the legislative framework formed as a result of the "fourth wave" of judicial reform, as well as the study of the legislative changes adopted on December 30, 2021;

Analysis of International Standards and Recommendations - In addition to the domestic legislative normative framework, the project team has studied international experience and assessed the compliance of national legislation with relevant recommendations and standards;

Analysis of Secondary Sources - Additional sources for the assessment were reports, surveys, and evaluations published by local and international organizations. Special attention was also paid to the 2020 and 2021 annual reports of the Independent Inspector's office;

Practice Analysis - Decisions of the Independent Inspector, the High Council of Justice, the Disciplinary Panel, and the Disciplinary Chamber were analyzed in detail to assess the implementation of legislative changes in practice;

Requesting and Processing Statistical Information - The project team asked for public information from the Office of Independent Inspector, the High Council of Justice, the Disciplinary Panel, and the Supreme Court.

Main Findings

It should be noted that the main findings identified during different monitoring periods do not significantly differ from each other. At the same time, the 2019 report has already assessed the draft law regulating the disciplinary liability of judges, developed within the framework of the "fourth wave" of judicial reform, which was adopted in its final form without substantial changes. However, the present monitoring report additionally includes the legislative changes of December 30, 2021, as well as an extensive analysis of the practices developed by the bodies participating in disciplinary proceedings during the reporting period. The main findings of the report are:

- Guarantees for the institutional independence of the Independent Inspector have been significantly improved. However, the procedure for selecting an Inspector is still problematic, as it does not fully ensure its proper institutional independence. Additionally, the legislation still does not provide for the disclosure of the information on the competition for the selection of the Inspector and the data regarding the participants;
- The new rule of decision-making on disciplinary issues by the High Council of Justice, according to which the Council makes such decisions by a majority vote of the full composition (instead of 2/3 of the full composition), is problematic. Reducing the qualified majority requirement to a simple majority is a step backward and increases the risks of undue influence on individual judges;
- The rule of decision-making by the disciplinary Panel, according to which it is possible for two out of five members of the Panel (if three members are present) to find a judge culpable and impose disciplinary liability and sanction, is problematic. The existing rule threatens the fairness of disciplinary proceedings;
- As during the previous monitoring period, disciplinary proceedings are conducted in breach of deadlines; At the same time, according to the legislative changes of December 30, 2021, the

terms of legal proceedings in the reporting period were halved. Such arrangement completely disregards the reality that exists in the system of disciplinary liability in terms of meeting deadlines and creates additional problems;

- The High Council of Justice still holds sessions on disciplinary matters with unsatisfactory frequency, which is another factor contributing to delays in disciplinary proceedings;
- In terms of transparency, the practice of non-publication of the decisions made by the Council on the disciplinary liability of judges is still problematic;
- The legislation still does not allow the publication of the Independent Inspector's conclusions without identifying personal data. Conclusions are also unavailable through public information requests, posing a significant challenge in terms of transparency;
- The obligation to substantiate the decisions made by the Inspector and the Council, as well as the conclusions made by the Inspector, deserves a positive assessment, although the quality of the reasoning (in the case of the High Council of Justice and the Disciplinary Panel) in practice is less satisfactory;
- Despite the possibility provided by law, judges still do not use the right to request the disclosure of disciplinary hearings, which indicates the closed nature of the system and the lack of critical thinking among judges about it;
- During disciplinary hearings, members of the High Council of Justice still do not use the opportunity to submit their dissenting opinion in writing;
- A new ground – initiation of disciplinary proceedings against district (city) or appellate court judges - was added for removal of judges from the case review. Furthermore, it remains vague whether removal from case review applies to an individual case or all cases pending before a judge. Such an intensive and unforeseeable restriction at the stage of initiating disciplinary proceedings when a mere reasonable doubt standard applies significantly worsens guarantees for independence and performance of judicial duties;
- Legislative changes have defined a specific and comprehensive list of types of disciplinary misconduct, which is welcomed. However, some of the misconducts included are still general in nature, while the practice is scarce and, in some cases, inconsistent, which poses a problem in terms of the predictability of the legislation;
- It is problematic that the law still does not consider liability for judicial action that contradicts clearly established legal provisions and there is no ambiguity that this action was committed by a judge with clearly and convincingly demonstrated bad faith and disrespect for human rights, which caused significant harm (legal error plus);
- The provision, according to which, an act formally containing signs of misconduct provided by law, if of little significance and not causing any damage that would have necessitated disciplinary action, is not regarded as disciplinary misconduct, remains a problem in the legislation;

- The legislation has established the necessary evidentiary standards for initiating the inquiry, disciplinary prosecution, and adopting a decision, which should be positively assessed;
- Establishment of a standard requiring the assessment of a judge's culpability deserves positive evaluation. However, it is problematic that the legislative formulation of a judge's culpability in committing disciplinary misconduct is related to the damage caused by the misconduct. It does not take into account the fact that some disciplinary misconducts have formal composition and, therefore, do not require proof of actual harm:
- The legislation still does not define the purposes of disciplinary proceedings and the imposition of sanctions.

Assessment of disciplinary liability system of common court judges

The independence of the judiciary is one of the most crucial measurements of democracy in sovereign states.¹ However, there is no independent court without the independence of an individual judge who makes decisions based on the law and his or her inner conviction. No one has the right to ask a judge for an explanation or to indicate what decision to make in a particular case.²

At the same time, the independence of judges is not a privilege, but rather, it serves the interests of the rule of law and the people pursuing justice.³ In other words, a high degree of independence does not absolve the individual judge from accountability to society. That is why democracies have developed a system of disciplinary liability, as one of the mechanisms of accountability for individual judges.

It should also be noted that the imposition of disciplinary liability also carries potential risks of affecting the independence of the judiciary.⁴ Therefore, it is important that the system of disciplinary liability, on the one hand, to be able to prevent misconduct and dishonest behavior by a judge and, in case of misconduct - to respond appropriately⁵ and, on the other hand, to ensure respect for the principles of judicial independence.⁶ The abovementioned golden interval is the cornerstone of the independence of both the individual judge and the judiciary system as a whole.⁷

¹ Monitoring Report of Human Rights Education and Monitoring Center (EMC) and the Institute for Development of Freedom of Information (IDFI): Evaluation of Judicial Reform Outcomes - Electronic Distribution of Cases, Disciplinary Liability System (2019), p. 50 (Available at: <https://bit.ly/380iayz>, Accessed on: 02.05.2022)

² Monitoring Report of Human Rights Education and Monitoring Center (EMC) and the Institute for Development of Freedom of Information (IDFI): Evaluation of Judicial Reform Outcomes - Disciplinary Liability System (2019), p. 11 (Available at: <https://bit.ly/39yDR9x>, Accessed on: 02.05.2022)

³ Evaluation of Judicial Reform Results - Electronic Distribution of Cases, System of Disciplinary Liability (2019), p. 50; Conclusion N1 of the Consultative Council of European Judges on the Standards of Judicial Independence and the Inviolability of Judges, paragraph 10

⁴ Evaluation of Judicial Reform Results - Disciplinary Responsibility System (2019), p. 11; Judgment of the Disciplinary Panel of 12 April 2013 in №1/04-12 disciplinary case.

⁵ Evaluation of Judicial Reform Outcomes - Electronic Distribution of Cases, Disciplinary Liability System (2019), p. 50

⁶ Ibid; Also, Opinion no. 10(2007) of the Consultative Council of European Judges (CCJE) on "Council for the Judiciary in the service of society", para. 63

⁷ Ibid.

I. Bodies involved in disciplinary proceedings

To evaluate the system of disciplinary proceedings, first of all, it is interesting to examine the dynamics of the bodies involved in the proceedings, their powers, and staffing, as well as to assess the impact of this issue on the litigation process itself.

At the initial stage of the proceedings, the primary decision-making body is Independent Inspector (hereinafter - the Inspector). In the event of alleged disciplinary misconduct by a judge, he is responsible for the objective, impartial and thorough examination of the case.⁸ After the examination, the Inspector makes one of the decisions - a conclusion, determining whether the judge's actions show signs of disciplinary misconduct or a decision - if there are grounds for refusal/termination of the proceedings provided by law.⁹ The Inspector is also involved in the later stages of the disciplinary proceedings: examining the case from the start of the disciplinary proceedings against the judge until he or she is brought to justice. At the same time, if there are grounds provided by law, the Inspector submits a substantiated motion to the High Council of Justice (hereinafter - the Council) for the removal of a judge from the hearing of his cases.¹⁰

With the "fourth wave" of judicial reform, a significant transformation of the disciplinary system was carried out. However, following the entry into force of the amendments, on January 24, 2020, the High Council of Justice elected a new Independent Inspector for a term of 5 years, on a competitive basis, by a majority of the full composition. This regulation is valid even today. The absence of a qualified majority election rule for Inspector fails to ensure the real involvement of non-judicial Council members in the process and the ability to have a significant impact on the selection of an Inspector candidate, which this report assesses as a shortcoming of the disciplinary system.¹¹

In disciplinary proceedings, the High Council of Justice is a particularly important body in terms of the scope of its authorities. In addition to electing an Independent Inspector, the Council is the body responsible for disciplinary prosecution against a judge and it also decides on imposing disciplinary liability on a judge.¹² Additionally, the Council reviews the Inspector's motion to recuse a judge from the trial hearings and submits it to the Disciplinary Panel (hereinafter referred to as the Panel).¹³

The most important criticism from the bodies involved in disciplinary proceedings is directed to the activities of the Council due to the clan practices and its corporatism, which obviously affects the legal proceedings as well. In addition to the legislative regulation¹⁴ of the role of the Council in the disciplinary proceedings, the current composition of the Council and the dynamics of its change are problematic. In particular, for more than a year, the Parliament of Georgia has been unjustifiably

⁸ Organic Law of Georgia on Common Courts, Article 51¹

⁹ Ibid, Article 75¹²

¹⁰ Ibid, Article 45

¹¹ Read more in Chapter II - "Legal Framework"

¹² Organic Law of Georgia on Common Courts, Articles 75⁸, 75¹³

¹³ Ibid, Article 45, Section 1

¹⁴ Ibid

delaying the process of electing non-judicial members. Consequently, the Council's composition is currently incomplete - with only 10 members. Such a reality is a serious challenge regarding the realization of the principle of legitimacy of the Council, its accountability, and the separation of powers in general. However, as practice shows, the incomplete composition does not provide the number of votes needed to make a decision, and disciplinary proceedings are often terminated on this basis.¹⁵ However, instead of electing non-judicial members, Parliament reduced the quorum required to decide on disciplinary matters and established a simple majority instead of a qualified one.

According to the decisions made at the XXX Conference of Judges held on October 31, 2021, two members of the Council (Tamar Oniani, and Tea Leonidze) resigned prematurely, without any justification, and the Conference instead of them elected 2 new members almost unanimously. At the same time, Tea Leonidze was appointed a member of the Disciplinary Panel at this session.¹⁶

It is also problematic that the legislative changes of 30 December 2021 abolished the ban on electing the same person as a member of the High Council of Justice twice in a row, which in its time was considered one of the major achievements of judicial reform because it reduced the risks of concentration of powers in the Council.¹⁷

The substantive review body of the disciplinary case is the Disciplinary Panel of Georgian General Court Judges, 3 members of which are elected by the Conference of Judges and two - by the Parliament of Georgia, by a majority of the full composition.¹⁸ In addition, the Panel decides to recuse the judge from the trial hearings.

Here, in addition to the problematic rule of decision-making by the majority of those present established by law,¹⁹ the existing dynamics of its staffing process are also problematic. In particular, the Parliament of Georgia has so far elected only 1 non-judicial member, therefore, the Panel has 4 members. The practice developed by the Panel is very scarce, as the Council only decides to discipline a judge in exceptional cases.²⁰ However, the analysis of the existing scarce practice also shows that the degree of reasoning of the decisions is low and it largely repeats the decisions of the Council (which in turn relies heavily on the reasoning developed by the Inspector in his conclusions).²¹

Finally, the decisions made by the Disciplinary Panel are appealed to the Disciplinary Chamber of the Supreme Court of Georgia (hereinafter - the Chamber), which is the final decision-making body on

¹⁵ "Another step back in the reform of the judiciary - the analysis of legislative changes adopted on December 30, 2021", 2022, p. 4 (Available at: <https://bit.ly/3KBTQR3>, Accessed on: 02.05.2022)

¹⁶ XXX Conference of Judges (Available at: <https://bit.ly/3FqqK5W>, Accessed on: 02.05.2022)

¹⁷ The ban was introduced with the following amendments: Law of May 1, 2013 on Amendments to the Organic Law of Georgia; "Another step back in the reform of the judiciary - the analysis of legislative changes adopted on December 30, 2021", 2022, pp. 6-7

¹⁸ Organic Law of Georgia on Common Courts, Article 75¹⁹; Rules of Procedure of the Parliament of Georgia, Article 208, Sections 17,18, 19

¹⁹ Ibid, Article 75⁴⁰

²⁰ Read more in Chapter III - "Statistical Information"

²¹ Read more in Chapter VI - "Decisions of the Disciplinary Panel"

disciplinary proceedings²². The Chamber, in the event of an appeal, also makes a final decision on the removal of the judge from the proceedings.²³ The Disciplinary Chamber consists of 3 members and is composed by the Plenum of the Supreme Court for a term of 3 years.²⁴

Similar to the Panel, the practice of the Disciplinary Chamber toward judges in the field of disciplinary proceedings is particularly scarce, however, its decisions are characterized by a better degree of justification than other bodies involved in the proceedings.²⁵

II. Legal framework

During the reporting period, significant changes were made in the norms regulating the disciplinary liability of judges of common courts as a two-stage process.

In the framework of the "fourth wave" of judicial reform, on December 13, 2019, the amendments to the Organic Law of Georgia on Common Courts addressed key issues essential to the independence of the judiciary.²⁶ One of the issues was the reform of the disciplinary system. According to the Parliament, the aim of the reform, in the spirit of the Bangalore Principles, was to raise the standards of judicial independence and to ensure the exclusion of any arbitrariness in the disciplinary proceedings.²⁷

The second stage of the changes was implemented by the Parliament of Georgia on December 30, 2021, in an extraordinary session, in an expedited manner, without public involvement and consultations.²⁸ According to the Parliament, the new regulation of a number of issues in the litigation process was aimed at increasing the efficiency and individualization of the disciplinary system and was based on the conclusions of the Venice Commission and the Council of Europe Directorate General for Human Rights and Rule of Law.²⁹ However, the changes adopted at the initiation stage became the subject of

²² Organic Law of Georgia on Common Courts, Article 75⁵⁴

²³ Ibid, Article 45, Section 5, 6

²⁴ Ibid, Article 19

²⁵ Read more in Chapter VII - "Decisions of the Disciplinary Chamber"

²⁶ Organic Law of Georgia 5569-Ilb "On Amendments to the Organic Law of Georgia on Common Courts" of December 13, 2019

²⁷ Explanatory note on Amendments to the Organic Law of Georgia on Common Courts (Available at <https://bit.ly/3OVVaBM>, Accessed on: 02.05.2022)

²⁸ Social Justice Center, Call on the President to Veto the Amendment to the Organic Law on Common Courts, January 13, 2022 (Available at: <https://bit.ly/3KAKeWH>, Accessed on: 02.05.2022)

²⁹ Explanatory Note on the Draft Organic Law of Georgia on Amendments to the Organic Law of Georgia on Common Courts (Available at: <https://bit.ly/3P3Zn6v>, Accessed on: 02.05.2022)

critical evaluation by civil society³⁰, international actors,³¹ and part of the judges themselves³², both in terms of procedure and content.

Both stages of legislative reform are critically assessed in this report.

A) Types of disciplinary misconduct

The "fourth wave" of judicial reform newly regulated the types of disciplinary offenses and they were divided into 7 categories.³³ In particular, actions that violate:

- *The principle of independence;*
- *The principle of impartiality;*
- *The principle of good faith;*
- *The principle of decency;*
- *The principle of equality;*
- *The principle of competence and diligence;*
- *Other actions that are incompatible with the high status of a judge.*

According to each of these categories, specific legal formulations of misconduct were shaped, as a result of which the legislation³⁴ provides for 21 misconducts.³⁵ However, a judge can be disciplined only based on the specific formulation of misconduct defined by the organic law,³⁶ thus giving special importance to the foresight of misconduct.³⁷

Such concretization of disciplinary misconduct is welcomed.³⁸ On the positive side, the list does not include non-compliance with judicial duties or due diligence, which were one of the most common grounds for applying to Independent Inspector by 2019.³⁹ It is also welcomed that organic law no longer

³⁰ Coalition Responds to Accelerated Hearings of Amendments to Organic Law on Common Courts, 28 December 2021, (Available at: <https://bit.ly/3HL9FDY>)

³¹ EU Delegation responds to expedited review of bills related to the Office of the State Inspector's Office and Judiciary in the Parliament, 28 December 2021, (available at: <https://bit.ly/3teNFXJ>)

³² Some of the judges address the Parliament of Georgia in an open letter requesting explanations on the initiated amendments to the Law on Common Courts, December 28, 2021 (available: <https://bit.ly/3FhRjIL>)

³³ Organic Law of Georgia on Common Courts, Article 75¹, Section 8

³⁴ Ibid.

³⁵ A total of 30 disciplinary misconduct, as far as Organic Law of Georgia on Common Courts, Article 75¹, paragraph 8, subparagraph "b.c" defines as a disciplinary misconduct, alternatively - violation of the requirements of the first paragraph of Article 72¹ or the first paragraph of Article 72² of this law by a judge, subsection (c.a) of this section - a judge committing a corruption act, or a violation under 10 different articles of the Law of Georgia on Conflict of Interest and Corruption in Public Institutions.

³⁶ Organic Law of Georgia on Common Courts, Article 75¹, Section 3

³⁷ 2020 Annual Report of Independent Inspector, p. 17

³⁸ Evaluation of Judicial Reform Outcomes - Electronic Distribution of Cases, Disciplinary Liability System (2019), p. 13

³⁹ Rights Georgia, Monitoring of the Activities of the Independent Inspector and the High Council of Justice during Disciplinary Proceedings, 2021, p. 4 (Available at: <https://bit.ly/3OKPj1Q>, Accessed on: 02.05.2022)

refers to the ethical norms for the judges in general, and instead, specific actions provided for in the Code of Judicial Conduct have been added to the list of misconduct.⁴⁰

Despite this positive trend, there are still some shortcomings regarding the types of disciplinary misconduct. With the legislative changes of December 30, 2021, another action was added to the list of misconduct, which violates the principle of impartiality - "public expression of opinion by a judge violating the principle of political neutrality." This composition essentially repeats the existing record in the organic law, according to which disciplinary misconduct is "the public expression of political views by a judge ...".⁴¹ It is therefore unclear what the existence of two distinct provisions on the action with substantially similar content serves. However, defining such actions as different disciplinary misconduct significantly worsens the degree of foreseeability of the legislation and carries risks of violating the independence of judges.⁴²

In terms of defining the formal composition of disciplinary misconduct, the decision⁴³ made by the Constitutional Court during the reporting period, which declared the provision⁴⁴ of the Criminal Procedure Code of Georgia unconstitutional, restricted the possibility for the judge hearing the case to ask a question during the trial about the right to a fair and timely hearing. According to the Independent Inspector, the complaints filed on the grounds of violation of the principle of adversarial proceedings by the judge were considered as possible disciplinary misconduct.⁴⁵ However, the Constitutional Court has clarified that "a legal system which precludes the participation of a judge in the criminal proceedings and the possibility of a full examination of the case by asking questions is fundamentally contrary to the objective of a fair trial and a fair decision-making."⁴⁶ Consequently, the sole fact of asking a clarifying question by a judge can no longer be assessed as disciplinary misconduct.

Also, the legislation still does not provide for disciplinary liability when a judge's mistake is accompanied by his or her dishonest action and is followed by significant damage (more than a legal error - legal error plus). In case of a legal error, while a judge acts in good faith, international standards on the subject indicate the necessity to protect the judge from disciplinary liability. This does not include cases where a legal error has been committed with malicious intent or gross negligence.⁴⁷ Therefore, to ensure stronger guarantees for the independence of judges and to introduce a uniform

⁴⁰ Ibid, p. 25

⁴¹ Article 75¹, Section 8, Sub-section "b.e" of the Organic Law of Georgia

⁴² Social Justice Center, "Another Step Back in Judicial Reform - Analysis of Legislative Amendments Adopted December 30, 2021", 2022

⁴³ Decision N3 / 2/1478 of the Constitutional Court of Georgia of 28 December 2021 on the case "Constitutional submission of the Tetrtskaro District Court on the constitutionality of the 2nd sentence of the 3rd paragraph of the 3rd article of the Criminal Procedure Code of Georgia, the 3rd sentence of the 2nd paragraph of the 25th article, the first and second parts of Article 48, the first sentence of part 5 and the first sentence of part 7

⁴⁴ Normative content of the 3rd sentence of Part 2 of Article 25 of the Criminal Procedure Code of Georgia

⁴⁵ 2021 Annual Report of Independent Inspector, pp. 54-55 (Available at: <https://bit.ly/3ycP0qL>; Accessed on: 02.05.2022)

⁴⁶ Decision N3 / 2/1478 of the Constitutional Court of Georgia of December 28, 2021, para. 2- 58

⁴⁷ Evaluation of Judicial Reform Outcomes - Electronic Distribution of Cases, Disciplinary Liability System (2019), p. 14

practice, it is important to clearly state in the law, in case of legal error, what additional circumstances may raise the issue of disciplinary liability of a judge.⁴⁸

It is also important that the types of disciplinary misconduct include liability for the actions of a judge that are clearly contrary to a well-established provision of law in which there is no ambiguity. In this case, the act committed by the judge with obvious and convincing dishonesty and disrespect for human rights and if this has caused significant damage will be qualified as misconduct. In this case, it is important that disciplinary action be imposed only if a higher court decision confirms the error (if any).⁴⁹

The current legislation indeed includes a more or less detailed list of disciplinary misconduct, however, some misconduct is still general in nature and needs to be properly clarified. Disciplinary practice is still scarce and there is no other official source for interpretation of some misconduct.⁵⁰

B) Grounds and purposes of disciplinary misconduct

The legislation still does not provide for the purpose of disciplinary proceedings and the imposition of sanctions.⁵¹ The purpose clearly stated in the law has not only theoretical but also practical significance, as it gives some direction and simplifies the process of legal proceedings and decision-making, as well as ensures the avoidance of its inappropriate use.⁵²

However, in the context of the reform, the standard requiring the assessment of the judge's culpability deserves a positive assessment. In particular, a judge will be subject to disciplinary action only for misconduct committed - if he or she could objectively take the appropriate action to prevent the misconduct, but did not do it. Moreover, misconduct is only an intentional or negligent act committed by a judge under this law.⁵³ The amendment requiring the assessment of the judge's culpability in disciplinary proceedings is welcomed and in line with international standards.⁵⁴ It should be noted, however, that the legal wording of a judge's culpability in committing disciplinary misconduct is related to the damage caused by the misconduct and does not take into account the fact that some of the disciplinary misconduct have formal composition and therefore does not require proof of actual harm.⁵⁵

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ "Monitoring the Activities of the Independent Inspector and the High Council of Justice in the Disciplinary Proceedings", 2021, p. 8

⁵¹ Evaluation of Judicial Reform Outcomes - Electronic Distribution of Cases, Disciplinary Liability System (2019), p. 13; Venice Commission, CDL-AD (2007)009, § 29. According to the Venice Commission, the purpose of disciplinary action is the protection of authority of the court rather than ensuring the proper application of the law, CDL-AD (2007) 009, § 29

⁵² Ibid., See also: Evaluation of Judicial Reform Outcomes - Electronic Distribution of Cases, Disciplinary Liability System (2019), p. 52

⁵³ Organic Law of Georgia on Common Courts, Article 75¹, Section 2-3

⁵⁴ "Monitoring the activities of the Independent Inspector and the High Council of Justice in the process of disciplinary proceedings", 2021, p. 52; Venice Commission Opinion on Macedonian Law on Disciplinary Liability of Judges and Evaluation of Judges, 2015, para. 18

⁵⁵ Ibid, p. 7

C) Types of disciplinary liability and the procedure for their imposition

The legislation establishes disciplinary sanctions and disciplinary measures as forms of disciplinary liability.⁵⁶ With the changes undertaken in the reporting period, this issue was newly regulated. In particular,

- The following was added to the list of disciplinary sanctions: a) Disciplinary measure of financial nature - "deduction from 5% to 20% of salary for not more than 6 months"; B) "Involvement in a relevant program to improve the qualification of a judge";
- "Dismissal of the President of the Court, the First Deputy or Deputy President of the Court, the President of the Judicial Panel or the Chamber", which was a measure of disciplinary influence, became a disciplinary sanction;
- Disciplinary sanctions were divided into main and additional categories.⁵⁷

The use of financial measures as a sanction is not unknown to existing international standards on disciplinary liability, which allow for the diversity of sanctions and the existence of both formal (reproof, reprimand) and financial sanctions (fine).⁵⁸ As for differentiation of main and additional sanctions, according to the Parliament of Georgia, such regulation makes it possible to impose both types of sanctions simultaneously, taking into account the content of the disciplinary misconduct (e.g. nature, severity), which allows the bodies interpreting the laws to individualize responsibility.⁵⁹ The latter, in itself, is a legitimate interest, although a separate issue is an extent to which the indicated amendments respond to the challenges that actually exist in the disciplinary system, especially given that disciplinary sanctions – a reproof, were applied to a total of 1 case during the reporting period.⁶⁰

D) Removal of a judge from the hearing of cases

Legislative changes of December 30, 2021, newly regulated the rule of removal of a judge from the hearing of cases. In particular, in addition to the criminal prosecution of a judge, a new basis has emerged - the initiation of disciplinary proceedings against a judge of a district (city) or appellate court. However, given this factual circumstance, there must be a reasonable doubt that if this person stays in the position, it will yield at least one of the following consequences:

A) it will impede disciplinary proceedings;

B) it will prevent compensation for damages caused by disciplinary misconduct;

⁵⁶ Organic Law of Georgia on Common Courts, Article 75³

⁵⁷ Reproof, reprimand, severe reprimand, dismissal of a judge may be used only as a basic sanction, and dismissal of a court chairperson, first deputy chairperson or deputy chairperson, court panel or chamber chairperson, as well as a deduction of 5% to 20% of salary may be used as a basic as well as an additional disciplinary sanction.

⁵⁸ Opinion N3 of the Consultative Council of European Judges (CCJE) on the rules and principles governing the professional conduct of judges, in particular ethics, misconduct and impartiality, para. 73

⁵⁹ Explanatory Note on Amendments to the Organic Law of Georgia on Common Courts (Available at <https://bit.ly/3MGJDNc>, Accessed on: 02.05.2022)

⁶⁰ 2020 Statistical Information on Disciplinary Proceedings (Available at: <https://bit.ly/3vC6c7i>, Accessed on: 02.05.2022)

*C) he continues to violate work discipline.*⁶¹

At the same time, the legislation defines in detail the rules for making and appealing this decision. In particular, the decision to remove a judge from trial hearings shall be made by the Disciplinary Panel upon the recommendation of the Council⁶². However, the Council makes its submission, by a majority vote of the full composition, only based on a substantiated motion by the Inspector and is not able to make such a decision independently.⁶³ The law also stipulates the procedure for appealing the decision of the Panel to the Disciplinary Chamber.⁶⁴ As for the legal status and powers of the judge during the period of removal from the trial hearings, they essentially repeat the restrictions imposed before the legislative amendments, with the provision that the judge holds the basic guarantees of inviolability.⁶⁵

According to the explanatory note, although no final decision on the judge's culpability has been made at this time, the removal of a judge from the hearing of the case is considered a precautionary and deterrent measure to protect the interests of the legal proceedings and its effective implementation. According to the authors of the amendments, this provision prevents a negative impact on the litigation process and its results.⁶⁶ The Council makes submissions on this matter only based on a substantiated motion by the Inspector and not independently. Although, all in all, the new arrangement is a significant step backward in terms of protecting the individual independence of judges. The law, apart from the exceptional cases, prohibited the removal of a judge from the case hearings and the exercise of other official powers during the disciplinary proceedings.⁶⁷

However, it is vague if this measure applies to a specific case or all cases pending before a particular judge. The latter is unjustified, as a possible violation in one or more cases should not be grounds for considering a judge unprofessional. In contrast, the judge's complete distancing from the cases before the imposition of disciplinary liability is, in fact, equivalent to the suspension of his right to work.⁶⁸ Also, such a restriction, before the legislative changes, had applied only to serious cases where a criminal liability was imposed on a judge or he/she was dismissed by a decision of the Disciplinary Panel (and the issue has not been finally resolved).⁶⁹ Imposing restrictions of similar severity and less foreseeable in nature at the onset of disciplinary prosecution, based solely on the standard of reasonable doubt, significantly undermines the guarantees of independence and interferes with the performance of judicial duties in the disciplinary liability system.

E) Time limits of disciplinary proceedings

⁶¹ Organic Law of Georgia on Common Courts, Article 45

⁶² Ibid, Article 45, Section 1

⁶³ Ibid

⁶⁴ Ibid, Article 45, Section 5, 6

⁶⁵ Ibid, Article 45, Section 7

⁶⁶ Explanatory note on Amendments to the Organic Law of Georgia on Common Courts (Available at <https://bit.ly/3MGJDNc>, Accessed on: 02.05.2022)

⁶⁷ Organic Law of Georgia on Common Courts, Article 75¹⁶, (Edition valid until December 30, 2021)

⁶⁸ "Another step back in the reform of the judiciary - the analysis of legislative changes adopted on December 30, 2021" (2022), p. 10

⁶⁹ Organic Law of Georgia on Common Courts, Article 45 (Edition valid until December 30, 2021)

With the legislative changes made on December 30, 2021, the deadlines for disciplinary proceedings were reduced (halved) at all stages.⁷⁰ In particular, the time limits for the preliminary investigation and investigation of the case, as well as the case hearing by the Disciplinary Panel were reduced from 2 months to 1 month, and the time limit to review the case in the Disciplinary Chamber - up to 15 days; According to the Parliament, the reduction of deadlines serves the legitimate aim of increasing the efficiency of the proceedings.⁷¹ However, this change completely ignores the reality that exists in the disciplinary liability system in terms of meeting deadlines. In particular, the Inspector repeatedly pointed out the difficulties of meeting the deadlines due to a large number of cases even before the legislative changes.⁷² Moreover, the analysis of the practice also shows that the deadlines for litigation are systematically violated, first of all, by the High Council of Justice.⁷³ Consequently, it is unclear how the new regulation will ensure the solution of existing, real problems, and there are risks that it will remain just a legislative provision that cannot be implemented in practice.⁷⁴

F) Statute of limitations for disciplinary proceedings

The "fourth wave" of judicial reform also affected the statute of limitations for ongoing litigation against judges. In particular, the 5-year time limit to impose liability on a judge (from the date of his or her misconduct to the initiation of proceedings on that misconduct) was reduced to 3 years.⁷⁵ This change should be welcomed, as the statute of limitations guarantees to the individual judge that the ongoing proceedings against him or her will be carried out effectively, within a pre-determined time frame, and that he or she will not be held liable after that time. Moreover, such regulation is in line with international standards, according to which the time limits of disciplinary proceedings should be clearly defined, and their continuation should be allowed only in exceptional cases.⁷⁶

G) Institutional guarantees of an Independent Inspector

The amendments of the "fourth wave" judicial reform have significantly changed the standards of institutional independence of the Inspector. Under the old version of the Organic Law, the Inspector was elected and dismissed by the High Council of Justice with a majority vote of the full composition, which failed to ensure the real influence of the non-judicial members of the Council on the decision-

⁷⁰ Organic Law of Georgia on Common Courts, Articles 75⁷, 75⁸, 75¹⁰, 75¹³, 75²⁵, 75⁵⁸

⁷¹ Explanatory note on Amendments to the Organic Law of Georgia on Common Courts (Available at <https://bit.ly/3LyAAoN>, Accessed on: 02.05.2022)

⁷² 2020 Annual Report of Independent Inspector, p. 56; „On December 14, 2021, on the initiative of the Independent Inspector's Office and with the support of USAID/PROLoG, a meeting was held with NGOs, where the Independent Inspector briefed the participants on the shortcomings identified in practice and discussed ways to address them“, 2021 Annual Report of Independent Inspector, p. 45

⁷³ For more on this issue, see Chapter V - "Decisions of the High Council of Justice"

⁷⁴ "Another step back in the reform of the judiciary - the analysis of legislative changes adopted on December 30, 2021" (2022), p. 9

⁷⁵ Organic Law of Georgia on Common Courts, Article 75²

⁷⁶ Monitoring the activities of the Independent Inspector and the High Council of Justice in the process of disciplinary proceedings", 2021, p. 29; European Network of Councils for the Judiciary, Minimum Standards for Disciplinary Responsibility and Disciplinary Proceedings of Judges, Standard 8.

making process.⁷⁷ Nor was the possibility and procedure for appealing the Council's decision clearly stated.⁷⁸

According to the current version of the Organic Law, the decision to dismiss an Inspector is made by the Council with a majority vote of not less than 2/3 of the full composition.⁷⁹ Moreover, the fact that the "improper performance of duties" is no longer the basis for the Inspector's dismissal deserves a positive assessment, as this provision, due to its ambiguity, earned a critical assessment by the Venice Commission.⁸⁰ In addition, the Inspector was given the right to appeal the decision of the Council in court and the relevant rule was written.⁸¹

Finally, the composition of the commission reviewing the issue of the Inspector's recusal was newly defined. It should be staffed by 2 judges and 1 non-judge member.⁸² According to the Parliament, the proposed change is aimed at minimizing the risk of legal error by a non-judicial member in resolving the issue of the Inspector's recusal.⁸³ On the other hand, the involvement of a non-judicial member of the Council in discussing the issue of the Inspector's recusal significantly reduces the risks of corporatism and professional bias.

An important amendment to ensure the independence of the Inspector is also the determination of his salary by law, which became equal to the remuneration of a judge of the Court of Appeals.⁸⁴ Also, the reduction of current expenses of the Office compared to the expenses of the previous year without the consent of the Inspector was restricted.⁸⁵ In addition, the structure of this Office, the staff list, and the salaries of the employees are approved by the Inspector himself within the budget allocations determined for him.⁸⁶ Consequently, defining the financial and institutional guarantees of the Inspector's Office at the level of organic law is an important step forward and reduces the risks of dependence of this institution on the Council.⁸⁷

Notwithstanding the above, significant challenges remain in the legislation in terms of the Inspector's independence. In particular, the Inspector is elected by the Council for a 5-year term based on a competition, by a simple majority vote of the full composition.⁸⁸ To ensure the real involvement of non-judicial members of the Council in the decision-making process, it is advisable to elect an Inspector

⁷⁷ Evaluation of Judicial Reform Outcomes - Electronic Distribution of Cases, Disciplinary Liability System (2019), pp. 60-61.

⁷⁸ Evaluation of Judicial Reform Outcomes - Disciplinary Liability System (2019), p. 15

⁷⁹ Organic Law of Georgia on Common Courts, Article 51¹, Section 2¹

⁸⁰ Venice Commission, OPINION ON THE PROVISIONS ON THE PROSECUTORIAL COUNCIL IN THE DRAFT ORGANIC LAW ON THE PROSECUTOR'S OFFICE AND ON THE PROVISIONS ON THE HIGH COUNCIL OF JUSTICE IN THE EXISTING ORGANIC LAW ON GENERAL COURTS, CDL-AD (2018)029, § 51. (Available at: <https://bit.ly/3LFIVHk>; Accessed on: 02.05.2022)

⁸¹ Organic Law of Georgia on Common Courts, Article 51¹, Section 2¹

⁸² Ibid, Article 75¹⁰, Section 4

⁸³ Explanatory note on Amendments to the Organic Law of Georgia on Common Courts, p. 11, (Available at: <https://bit.ly/3vZ5L6e>, Accessed on 02.05.2022)

⁸⁴ Organic Law of Georgia on Common Courts, Article 51¹, Section 8¹

⁸⁵ Ibid, Article 51¹, Section 13

⁸⁶ Ibid, Article 51¹, Section 1

⁸⁷ Evaluation of Judicial Reform Outcomes - Disciplinary Liability System (2019), p. 15

⁸⁸ Organic Law of Georgia on Common Courts, Article 51¹, Section 2

according to the consensus logic, with a double 2/3 majority vote of the full composition of the Council (According to this principle, a decision will require the consent of 2/3 of the members of the judge and 2/3 of the non-judge members); Moreover, despite the importance of the Office, the legislation still does not require the publicity of the competition for the selection of the Inspector and the data of its participants. At present, he is selected in accordance with the rules of procedure of the Council,⁸⁹ in a closed session, and the names and biographies of the candidates are not available.⁹⁰

H) Evidentiary standards and substantiation of decisions

Among the legislative changes made during the reporting period, the evidentiary standards set for the initiation of prosecution, imposing disciplinary liability, and decision-making are especially noteworthy, and deserve a positive evaluation.⁹¹ In particular, the organic law sets the standard for a reasonable belief when the Inspector examines the merits of a complaint, statement, or other information,⁹² as well as when the Council decides to initiate disciplinary proceedings and request an explanation from a judge.⁹³ As for the decision of the Council to discipline a judge, in this case, it is guided by a high probability standard.⁹⁴

At the same time, it is a significant step forward that the organic law has named the obligation to substantiate the decisions of the Inspector⁹⁵ and the Council⁹⁶. This obligation is also taken into account in the Inspector's conclusions.⁹⁷ The requirement of justification of decisions in disciplinary proceedings significantly improves the degree of transparency and control over the process. At the same time, it promotes the protection of the rights of individual judges in this process.⁹⁸

I) Quorum of the High Council of Justice of decision-making on disciplinary issues

Particularly noteworthy is the rule set out in the legislative amendments of 30 December 2021, according to which the High Council of Justice decides on disciplinary matters by a majority vote of the full composition (instead of 2/3 of the full composition). The explanatory note attached to the amendment refers to the conclusions of 2013-2014 issued by international organizations, which state that the establishment of such a qualified majority poses a serious threat that too many complaints will

⁸⁹ Rules of Procedure of the High Council of Justice of Georgia, Article 27², (Available at: <https://bit.ly/3vD3fn6>)

⁹⁰ "Monitoring of the activities of the Independent Inspector and the High Council of Justice in the process of disciplinary proceedings", 2021, p. 16

⁹¹ Ibid, p. 37; The obligation to substantiate decisions on disciplinary matters is set by the Consultative Council of European Judges N. 10 Opinions, Councils of Justice in the Service of the Society, Par. 39

⁹² Organic Law of Georgia on Common Courts, Article 75⁷, Section 1

⁹³ Ibid, Article 75⁸, Section 1

⁹⁴ Ibid, Article 75¹⁴, Section 1

⁹⁵ Ibid, Article 75¹², Section 1

⁹⁶ Ibid, Article 75¹², Section 1, 2

⁹⁷ Ibid, Article 75⁶

⁹⁸ "In the disciplinary proceedings, a judge has the right to make any decision in a substantiated manner and to appeal." - European Network of Justice Councils, Minimum Standards for Disciplinary Responsibility of Judges and Disciplinary Proceedings, Standard 14; "Monitoring the activities of the Independent Inspector and the High Council of Justice in the process of disciplinary proceedings", 2021, p. 38

stay unresolved.⁹⁹ However, the Parliament has ignored the latest findings of the same organizations, according to which, given the special situation in the Georgian judiciary, the direct introduction of universal standards may not be the best solution.¹⁰⁰ Moreover, the practice developed during the reporting period shows that leaving a significant proportion of disciplinary complaints unanswered is caused more by the inaction of the Council and lack of will to review cases than by a high quorum.

To increase trust towards the Council and ensure public involvement, it is essential to have a consensus-based approach to decision-making on disciplinary issues and to strengthen the involvement of non-judicial members. Consequently, reducing such a decision to a simple majority vote instead of a 2/3 majority is a clear step backward.¹⁰¹

J) Access to information

Reform of the disciplinary system has also affected standards on access to information. In particular, the organic law has defined:

- An obligation to publish statistical information on the conclusions submitted by the Inspector to the Council and data on the initiations of disciplinary prosecutions and impositions of disciplinary liability by the Council;¹⁰²
- An obligation to proactively disclose information about the Inspector's activities (including complaints received and relevant conclusions).¹⁰³

At the same time, the powers of the Inspector have increased, as a result of which, if there are preconditions defined by the organic law, he has the right to make a substantiated decision to refuse to initiate disciplinary proceedings against a judge or to terminate the proceedings.¹⁰⁴ It is important to note that organic law provides for the obligation to publish such decisions, as does the Council about decisions to terminate proceedings.¹⁰⁵

However, the law does not yet provide a guarantee for the publication of the Inspector's conclusions without identifying data. The conclusions are available only in the Inspector's annual report, in a generalized form, which poses a significant challenge in terms of transparency.

Council decisions on disciplinary action against a judge are also not available to the public. As mentioned, the organic law provides only for the publication of statistical information on imposing the liability, although it is in the public interest to be familiar with the substantiation of the decisions and

⁹⁹ "Another step back in the reform of the judiciary - the analysis of legislative changes adopted on December 30, 2021" (2022), p. 8; Venice Commission Opinion N774/2014 of 14 October 2014, paragraphs 24, 66, 72, Available at: <https://bit.ly/3ALNv1S>

¹⁰⁰ Opinion on the draft Organic Law amending the Organic Law on Common Courts, adopted by the Venice Commission at its 124th online Plenary Session (8-9 October 2020), CDL-AD(2020)021-e, Available at: <https://bit.ly/3J12Kam>

¹⁰¹ „Another step back in the reform of the judiciary - the analysis of the legislative changes adopted on December 30, 2021” (2022), p. 8

¹⁰² Organic Law of Georgia on Common Courts, Article 49, Section 4

¹⁰³ Ibid, Article 51¹, Section 12

¹⁰⁴ Ibid, Article 75¹², Section 1

¹⁰⁵ Ibid, Article 75¹², Section 2

the reasoning of the Council. Therefore, to ensure proper transparency, it is advisable to make a substantiated decision available by publishing it on the website.¹⁰⁶

K) decision-making by the Disciplinary Panel

Organic law still does not provide for the guarantees to eliminate significant deficiencies related to the decision-making procedure of the Panel. Under current law, a decision is considered adopted if it is supported by a majority of the present members of the Panel.¹⁰⁷ The Panel consists of 5 members and it is authorized if it is attended by 3 of them.¹⁰⁸ Such a rule jeopardizes the fairness of the litigation process, as it is theoretically possible for a judge to be found culpable, held liable, and imposed the sanction by two members out of five members of the Panel.¹⁰⁹

In the end, it is true that the changes made in the framework of the "fourth wave" of judicial reform provided for substantially improved regulation of certain key issues, but there were still challenges in terms of disciplinary proceedings, which required a timely and effective solution. In contrast, the expedited amendments to the Organic Law on Common Courts of 30 December 2021, without public involvement and consultation, is a significant step backward and creates the risk of using disciplinary liability to put pressure on individual judges.

¹⁰⁶ Evaluation of Judicial Reform Outcomes - Electronic Distribution of Cases, Disciplinary Liability System (2019), pp. 16-17

¹⁰⁷ Organic Law of Georgia on Common Courts, Article 75⁴⁰, Section 2

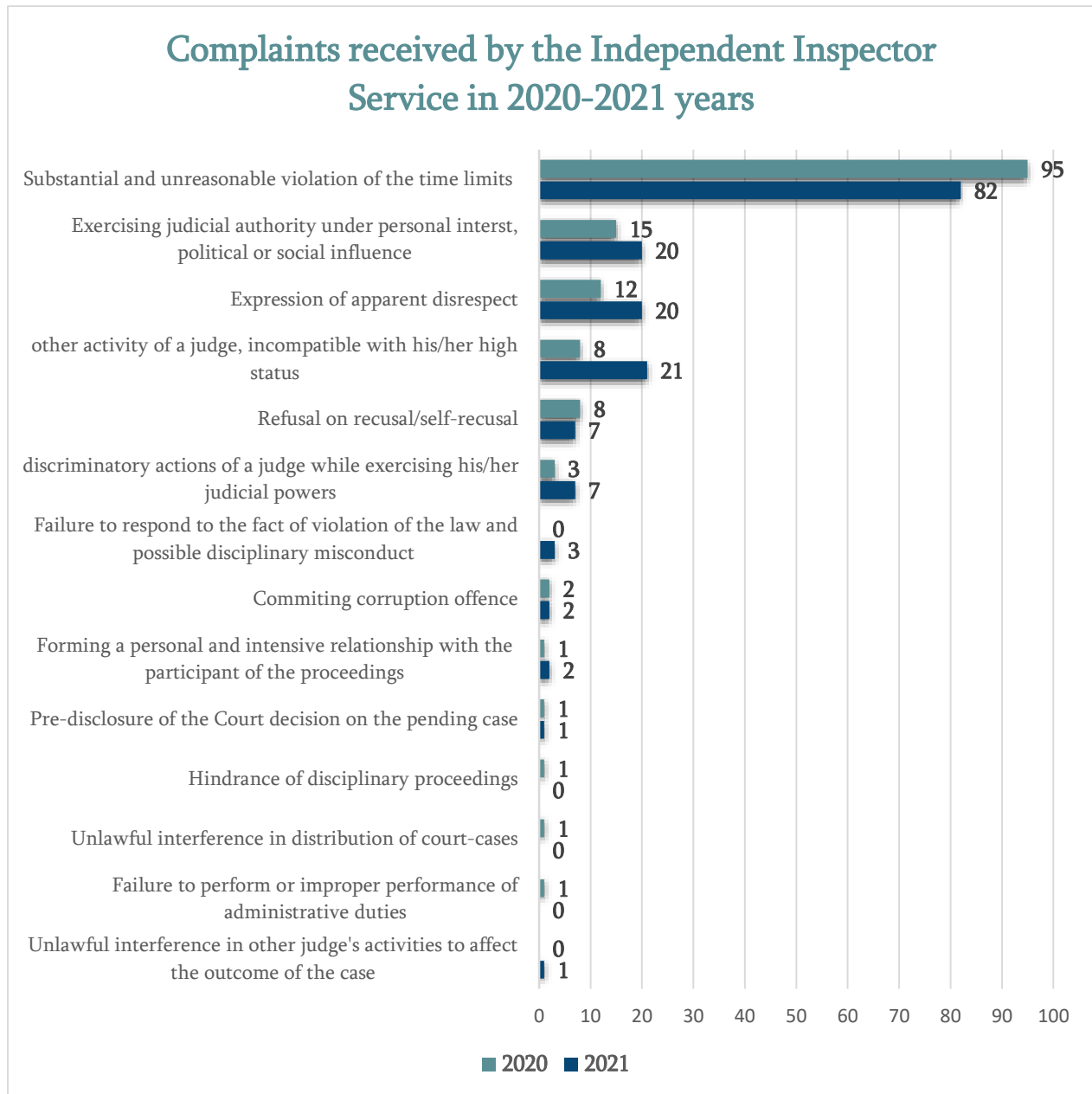
¹⁰⁸ Ibid, Article 75²⁴, Section 1

¹⁰⁹ Evaluation of Judicial Reform Outcomes - Electronic Distribution of Cases, Disciplinary Liability System (2019), pp. 17

III. Statistical Data

Office of Independent Inspector

According to the 2020 and 2021 Annual Reports of the Independent Inspector and statistics published by the High Council of Justice, 151 disciplinary complaints were lodged to Independent Inspector's Office in 2020,¹¹⁰ and 156 in 2021.¹¹¹



¹¹⁰ 2020 Annual Report of Independent Inspector, p. 6

¹¹¹ 2021 Annual Report of Independent Inspector, p. 6

The number of complaints received by the Inspector's Office in 2020 and 2021 is almost identical and significantly lags behind the 2018-2019 figures (2018 - 318 complaints, 2019 - 215 complaints). According to the Inspector, a pandemic was named as the reason for decreasing the number of complaints compared to the rate of previous years.¹¹²

In 2020, the Independent Inspector started a preliminary investigation based on 176 complaints (28 in 2019 and 151 in 2020) and 165 complaints were completed.¹¹³ As for the data for 2021, the preliminary investigation was based on 167 complaints (11 in 2020 and 156 in 2021), and 150 complaints were completed¹¹⁴

At the same time, in 2020 the Independent Inspector prepared 117 reports,¹¹⁵ and 118- in 2021.¹¹⁶ Thus, in the reporting period of 2020, the Inspector completed the investigation and prepared a report on 92% of complaints received, which is 5% higher than in 2019.¹¹⁷ In 2021, the investigation was completed and a report was prepared on 90.4% of the complaints received, which is almost identical to last year's figures.

As a result, the number of complaints received by the Independent Inspector during the reporting period of 2020-2021, as well as the effectiveness of the Inspector's activities is approximately the same. Moreover, the percentage of completion of the investigation by the Inspector and the preparation of conclusions is quite high and indicates the effectiveness of the Office.

If there are grounds provided by law, the Independent Inspector also makes decisions to terminate disciplinary proceedings. During the period 2020, the Inspector made 89 decisions, and on the conclusions of 2018-2019 - 342. In 2021, the number of such decisions on the complaints of the year was 82, and on the conclusions prepared in 2018-2019 - 4.

¹¹² 2021 Annual Report of Independent Inspector, p. 6

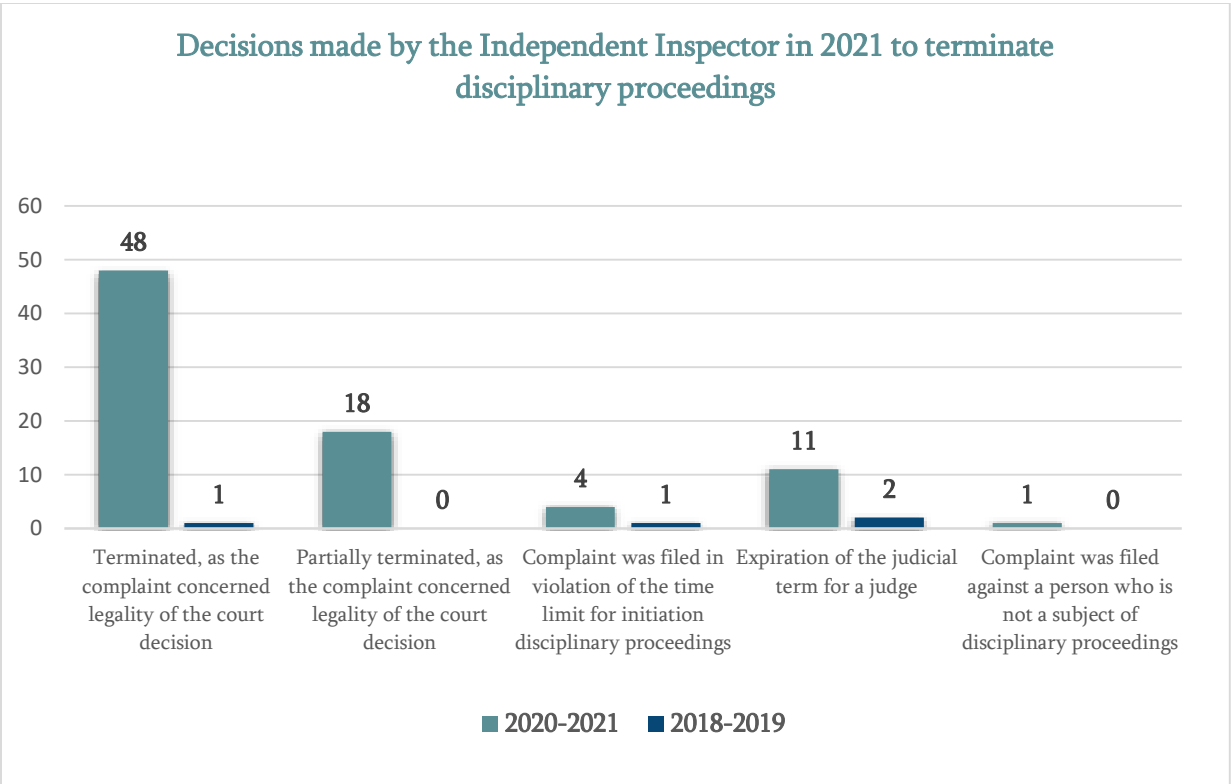
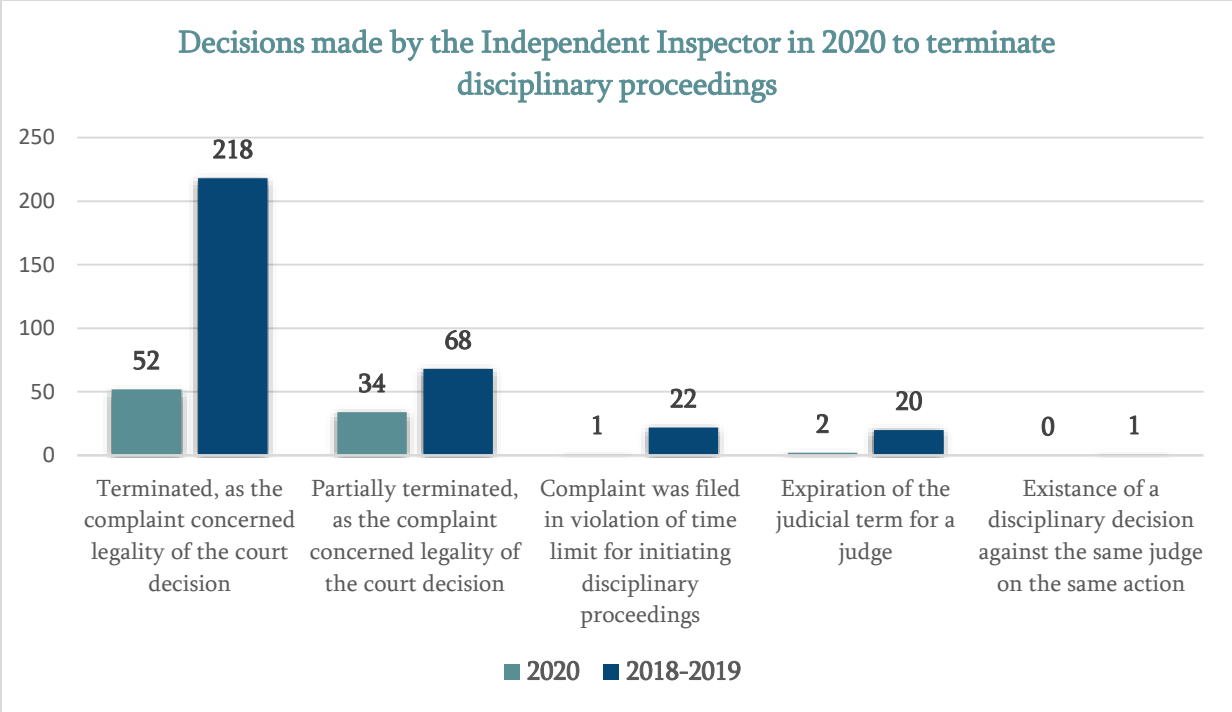
¹¹³ 2020 Annual Report of Independent Inspector, p. 11; By the end of 2020, a preliminary investigation was under way on 11 complaints received in 2020

¹¹⁴ 2021 Annual Report of Independent Inspector, p. 11; By the end of 2021, a preliminary investigation was under way on 16 complaints received in 2021

¹¹⁵ 22 conclusions on complaints were received in 2019, and 94 on complaints received in 2022; In addition, these 117 conclusions were prepared on 120 complaints against 94 judges - some judges reviewing two or three categories of cases. However, in a number of cases, several complaints have been filed against judges. Due to the transfer of judges to different instances, their total number differs from the number of judges in different instances, and in some cases, due to the lack of judges in the chamber or panel, different categories of judges considered cases in which they were not assigned. Therefore, the number of judges according to the categories or instances of the case differs from the total number of judges in the conclusions; 2020 Annual Report of Independent Inspector, p. 13

¹¹⁶ 11 conclusions on complaints received in 2020, and 107 on complaints received in 2021; In addition, these 118 conclusions were prepared on 121 complaints against 101 judges; 2021 Annual Report of Independent Inspector, p. 13

¹¹⁷ 2020 Annual Report of Independent Inspector, p.13



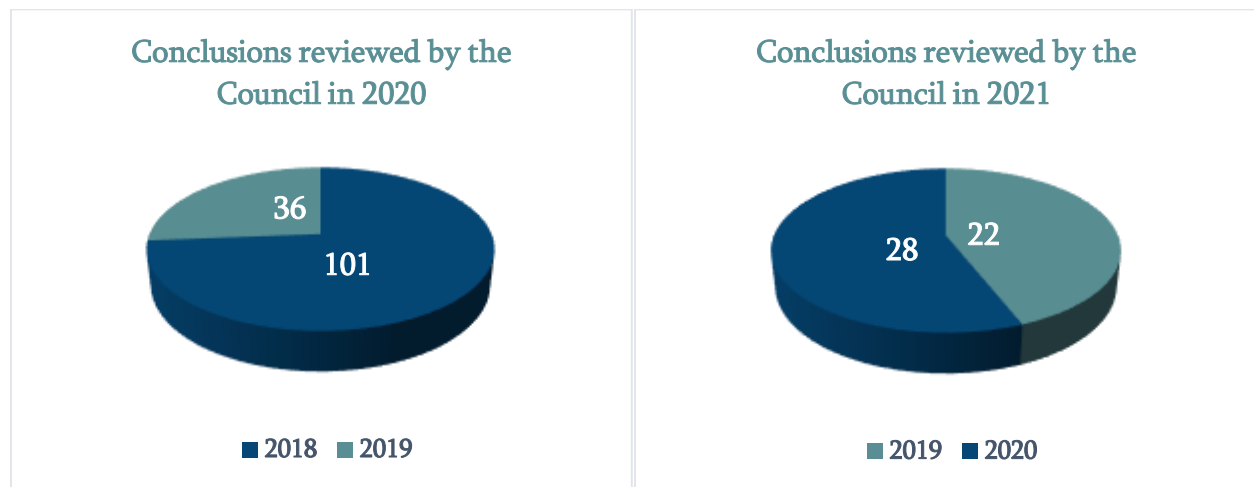
It is clear from the available data that the number of disciplinary complaints filed to an Independent Inspector requesting a review of the legality of the act and, consequently, decisions on termination of proceedings is still high. However, it should be noted, that the rate of decisions made in 2021 (completely or partially terminated based on the legality of the Act) has decreased by 23% (from 86 to

66) compared to 2020. Such dynamics are linked to the positive results of the measures taken by the Independent Inspector's Office to raise awareness of disciplinary proceedings against judges.¹¹⁸ At the same time, during the reporting period, the rates of termination of disciplinary proceedings based on the expiration of the term of office of a judge are also significant. However, the available data, as well as the analysis of the decisions made on this basis, do not give the possibility to determine exactly whether these judges were re-appointed after the expiration of the term.

High Council of Justice

The High Council of Justice of Georgia held 4 disciplinary sessions in 2020 and reviewed 137 conclusions prepared by an Independent Inspector.¹¹⁹ In 2021, a total of 1 disciplinary session was held, where 50 conclusions prepared by the Inspector were discussed.¹²⁰

In response to the public information requested by the Social Justice Center, Independent Inspector's Office stated in its letter¹²¹ that information on the completion of the disciplinary proceedings is provided to the High Council of Justice only after the conclusion is prepared. In addition, the Inspector provides information on the preparation of conclusions periodically to the Council (approximately once a month, depending on the number of conclusions), and conclusions are sent to the Council only after the disciplinary meeting is scheduled.



¹¹⁸ 2021 Annual Report of Independent Inspector, p. 12

¹¹⁹ 2020 Annual Report of Independent Inspector, p. 14; The data do not match the data on disciplinary proceedings indicated in the 2020 statistical information of the High Council of Justice of Georgia, according to which the Council reviewed 146 conclusions in 2020.

¹²⁰ 2021 Annual Report of Independent Inspector, p. 13

¹²¹ Official letter of the Independent Inspector Service N598/3575-03-0 of December 22, 2021

As for the decisions made by the High Council of Justice in the reporting period, in 2020 the Council made a total of 158 decisions,¹²² and in the period 2021 - 55.¹²³

Decisions made by the High Council of Justice									
2020					2021				
Terminated	Disciplinary prosecution started and the explanation was requested	After receiving the explanation			Terminated	Disciplinary prosecution started and the explanation was requested	After receiving the explanation		
		Results of the case review		Not discussed			Results of the case review		Not discussed
		Terminated	Was held liable				Terminated	Was held liable	
149	9 ¹²⁴	5	2	8	54 ¹²⁵	1 ¹²⁶	0	0	9

The available data makes it clear that the frequency of disciplinary hearings by the High Council of Justice has been declining in recent years, with far fewer cases being heard at hearings than are actually pending. In particular, during the reporting period, the Council did not review a significant part of the conclusions prepared by the Inspector in 2020¹²⁷ and did not review the conclusions prepared in 2021

¹²² Statistical information of the High Council of Justice of Georgia on disciplinary proceedings 2020; The data do not match the data provided in the 2020 Annual Report of Independent Inspector, according to which the High Council of Justice made 156 decisions during the reporting period; p. 14

¹²³ Statistical information of the High Council of Justice of Georgia on disciplinary proceedings in 2021; The data do not match the data provided in the 2021 Annual Report of Independent Inspector, according to which the High Council of Justice made 56 decisions during the reporting period; p.13

¹²⁴ 4 cases concerned substantial violation of procedural deadlines, 1 - refusal to self-recusal, 1 - disrespect to the party participating in the process, 1- performance of the judicial duties, 1 - non-performance of administrative powers, 1 - obstruction of the activities of disciplinary bodies; 2020 Annual Report of Independent Inspector, p. 15

¹²⁵ Statistical information of the High Council of Justice of Georgia on disciplinary proceedings in 2021; The data do not match the data provided in the 2021 Annual Report of Independent Inspector, according to which the High Council of Justice made 56 decisions during the reporting period, including 55 decision – on termination of disciplinary proceedings - p.13; According to information provided by the Independent Inspector’s Office, there is a technical mistake in 2021 Statistical information of the Council and instead of 55, 54 decision is indicated.

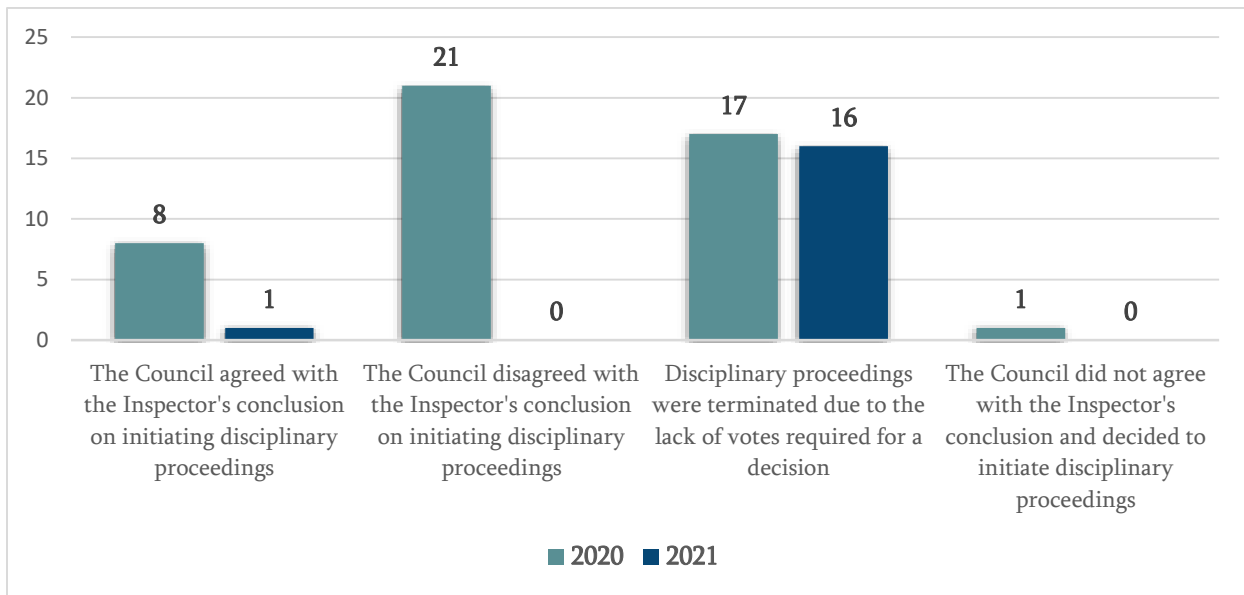
¹²⁶ 2021 Annual Report of Independent Inspector, p. 14. The decision concerned the fact of an obvious disrespectful behavior by a judge to a party and the possible commission of an action incompatible due to a judge’s position; 2021 Annual Report of Independent Inspector, p. 14.

¹²⁷ In 2020, 69 reports prepared in 2019 and 116 reports prepared in 2020 remained unresolved by the Council; 2020 Annual Report of Independent Inspector, p. 14

at all, which, given the tight deadlines for disciplinary proceedings, clearly indicates mass violations by the Council and delays in legal proceedings.

In addition, most of the decisions made by the High Council of Justice concern the termination/partial termination of proceedings, and the Council decides to initiate disciplinary proceedings against a judge only in exceptional cases, and even more rarely - to impose a disciplinary sanction on a judge.

It is also noteworthy that the High Council of Justice in most cases does not share the position expressed in the conclusions of the Independent Inspector regarding the presence of signs of disciplinary misconduct in the actions of judges. In particular, in 2020, in 46 instances out of 137 reports reviewed by the Council, and in 2021 in 17 instances out of 50 reports reviewed, there was an Inspector's recommendation to prosecute a judge.¹²⁸ However, the Council did not take most of them into account.



Finally, participants in the disciplinary proceedings do not use the opportunity to make the process public or to express a dissenting opinion at all. In particular, in the reporting period of 2020-2021:

- The authors of the complaint were not invited to the disciplinary sessions of the High Council of Justice;
- None of the judges exercised the right to recuse a member of the Council and to make the disciplinary meeting public;
- The members of the Council did not present a dissenting opinion on the decision made by the High Council of Justice;
- Independent Inspector was not instructed to conduct an additional investigation by the Council;

¹²⁸ Ibid, p. 15; 2021 Annual Report of Independent Inspector, p. 13

- None of the judges exercised the right to recuse an Independent Inspector, just as the Inspector did not exercise his right to recuse himself.¹²⁹

Eventually all the abovementioned significantly reduce the effectiveness and efficiency of the disciplinary system, which is a major challenge in ensuring effective and fair accountability of the judiciary.

IV. Activities of Independent Inspector

The new regulation of disciplinary misconduct under the "fourth wave" of reform took place in late 2019, and there is still no extensive, well-established practice that would allow litigants to determine the content of all prohibited conduct. Accordingly, the explanations made by the bodies involved in the proceedings during 2020-2021 regarding the types of misconduct are of particular importance.

The practice developed by Independent Inspector's Office is particularly important and interesting in this regard, as he develops the conclusions at the preliminary investigation stage. Also, as a result of the changes made in the framework of the "fourth wave" of the reform, if there is a proper legal basis, the Inspector's Office is authorized to decide on the termination of disciplinary proceedings on the case.

In addition, it is important to be aware of the conclusions and decisions made by the Independent Inspector's Office, as practice analysis shows, the Inspector's explanations of individual disciplinary misconduct and most parts of the reasonings developed are shared by the High Council of Justice in its decisions.

4.1. Generalised Opinions of Independent Inspector

The definition of types of disciplinary misconduct is first found in the conclusions of an Independent Inspector. However, unfortunately, these conclusions are only available in the Inspector's annual reports, in a generalized form. In response to the requested public information by the Social Justice Center, the Office noted in its letter¹³⁰ that according to the legislation disciplinary proceedings are confidential and the law¹³¹ does not provide for the disclosure of the Inspector's conclusions and opinions, even with redacted data about the parties, However, in the same letter, he submitted 7 conclusions to the Social Justice Center regarding certain types of disciplinary misconduct, without identifying the parties. Provision of access to these conclusions by the Inspector's Office indicates a willingness to improve the degree of transparency of the legal process and is welcomed. However, this practice has been established since June 15, 2020, when the Inspector partially upheld the administrative complaint of the Institute for Development of Freedom of Information and provided the

¹²⁹ 2020 Annual Report of Independent Inspector, pp. 14-15; 2021 Annual Report of Independent Inspector, pp. 13-14

¹³⁰ Letter N571/319-03 of December 2, 2021 of Independent Inspector's Office

¹³¹ Organic Law of Georgia on Common Courts, Article 75⁴

organization with some conclusions in the form of a general formulation, without identifying data.¹³² However, it should be emphasized, that such practices still do not meet the standards of access to public information and fail to adequately ensure the transparency requirements of the Independent Inspector's work. Clearly, the legitimate aims of the confidentiality of the proceedings serve to protect the interests of the judges in the ongoing proceedings, although the pursuit of this purpose in itself and all cases does not imply all other information related to the proceedings (the information, on which the obligation to disclose is not explicitly provided by law). Moreover, the availability of conclusions is essential to assess the degree of independence of the Inspector, the objectivity of the disciplinary process, and the consistency of the practice.¹³³

In addition, it should be noted that the conclusions provided by the Inspector to the Social Justice Center are, indeed, characterized by a satisfactory degree of substantiation. However, criteria for selection of cases as well as their time periods remain unknown. Consequently, it is difficult to draw any significant conclusions based on their analysis.

The time limits of disciplinary proceedings also deserve attention when analyzing the Inspector's conclusions. According to the legislation in force during the reporting period,¹³⁴ the time limit for preliminary investigation and preparation of a complaint, statement, or other information on the commission of disciplinary misconduct was 2 months, which could be extended by 2 weeks. Since the Inspector's conclusions are available only in a generalized form, their analysis makes it difficult to speak of compliance with the deadlines. However, general trends can be observed by reviewing the Inspector's decision to terminate the proceedings, the analysis of which reveals that the deadlines for preliminary inquiries on complaints filed between 2020 and 2021 are generally met, and in rare cases, several-day delays are observed.¹³⁵ It is also interesting to note that in some cases, despite such minor delays, the Inspector's Office rarely uses its powers to extend the time limit allowed by law.¹³⁶ A different picture is created by the cases of the period up to 2020, where the conclusions were often prepared with a delay of several months.¹³⁷ Accordingly, it is commendable that the practice in this area has significantly improved, although, given the recent legislative changes, it is unknown how the halved deadlines for litigation will affect the Inspector's work.

4.1.1. Substantial violation of the time limits established by the procedural legislation of Georgia by a judge due to an unreasonable excuse

This disciplinary misconduct, following the changes made in the framework of the "fourth wave" of judicial reform, entails in itself an unreasonable delay in the hearing of the case and the improper performance of the judicial duties, which were independent misconducts under the Organic Law as of

¹³² Freedom of Information Development Institute, Independent Inspector Partially Satisfies IDFI Administrative Complaint, July 9, 2020 (Available at: <https://bit.ly/39yE10H>, Accessed on 02.05.2022)

¹³³ Ibid.

¹³⁴ Organic Law of Georgia on Common Courts, Article 75⁷, Section 1 (Edition valid until December 30, 2021); According to the current version, this period is 1 month and may be extended to 2 weeks

¹³⁵ Disciplinary case №51/21-1, Disciplinary case №106/21

¹³⁶ As an exception see: Disciplinary case №189/19-1, Disciplinary case №189/19-2

¹³⁷ As an example see: Disciplinary case №283/18, Disciplinary case №159/18-4, Disciplinary case №165/18

January 1, 2020. In addition, the mentioned misconduct implies a violation of the time limits defined by law, as well as a violation of the term provided for sending a decision to the party.¹³⁸

When discussing this type of disciplinary misconduct, the Inspector determines the cumulative existence of 3 conditions: a) Violation of the time limits defined by the procedural legislation of Georgia; B) the substantive nature of the violation; C) Lack of a good reason for the mentioned violation.¹³⁹

*However, in each individual case, attention is paid to: a) the complexity of the case; B) actions taken in the case (both by the judge and the parties); C) the workload and individual responsibility of the judge;*¹⁴⁰

It is important to note that the assessment of a judge's workload takes into account the number of cases pending before a judge and statistics available, as well as the period of leave and sick leave.¹⁴¹ However, the complexity and "weight" of the cases by which the statistics are determined are still neglected.¹⁴²

While directly assessing the content of disciplinary misconduct, the Independent Inspector relies on procedural law and domestic law, as well as international law, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Bangalore Principles of Judicial Conduct, the conclusions of Consultative Council of European Judges (CCJE), etc. In the argumentation developed in the conclusions, we also find the decisions of the Constitutional Court of Georgia, the European Court of Human Rights, and the Federal and State Courts of the United States of America, etc.¹⁴³

As the analysis of the generalized conclusions shows, the cases related to the violation of the procedural deadlines mainly concern the civil and administrative proceedings. According to the data for 2020, the violation of time limits ranged from 2 months to 5 years,¹⁴⁴ and in 2021 - from 4 months to 35 months.¹⁴⁵ Moreover, according to the Inspector, the violation was mostly due to the actions of the parties, the large number of cases under the consideration of the judge, and in some cases - the inaction of the judge.¹⁴⁶

According to the Inspector, the complaints about the substantial violation of the procedural deadlines do not usually apply to criminal cases. In the practice of 2020, there are cases when the time limits for dispute settlement are violated for 9-10 months, and the time limits for preparation of decision/ruling and sending/delivery to the party are violated - for a period of 1 - 1.6 years.¹⁴⁷ However, in 2021, the

¹³⁸ 2020 Annual Report of Independent Inspector, p. 19-20

¹³⁹ Ibid, pp. 21-22

¹⁴⁰ Ibid; Also see: Evaluation of Judicial Reform Outcomes - Electronic Distribution of Cases, Disciplinary Liability System (2019), p. 21

¹⁴¹ 2020 Annual Report of Independent Inspector, p. 22

¹⁴² Evaluation of Judicial Reform Outcomes - Electronic Distribution of Cases, Disciplinary Liability System (2019), p. 21

¹⁴³ Ibid

¹⁴⁴ 2020 Annual Report of Independent Inspector, p. 24

¹⁴⁵ 2021 Annual Report of Independent Inspector, p. 18

¹⁴⁶ 2020 Annual Report of Independent Inspector, p. 25

¹⁴⁷ Ibid, pp. 24-25

Inspector did not consider the fact that the judge had the case under consideration for almost 3 years as a substantial violation of the procedural time limit for hearing the case, as the case belonged to a complex category consisting of more than 80 volumes and the judge had held more than 70 hearings during that period.¹⁴⁸ In contrast, the case of sending a substantiated judgment to the parties 4 months late was deemed to be misconduct, as according to the case file, the violation of the time limit delayed sending the case to a higher court within a reasonable time and hindered the rendering justice in a timely manner.¹⁴⁹

Finally, it is interesting to see how often the High Council of Justice agrees with the Inspector's conclusions regarding this type of misconduct and what standard governs their assessment. According to the Inspector, although 76% of the conclusions submitted by the Inspector requesting the initiation of disciplinary proceedings in the reporting period related to the substantial violation of the procedural deadlines, the Council did not agree with the majority of them and decided to initiate disciplinary proceedings in only 4 cases.¹⁵⁰ As for the period 2021, 74% of the conclusions reviewed by the Council in 2021 were related to the substantial violation of the procedural time limits, of which 32% contained a recommendation to initiate disciplinary proceedings against judges and obtain explanations from them. However, the Council did not share the conclusions of the recommendation to prosecute on this basis.¹⁵¹ In its arguments, the Council mainly refers to the statistics, the number of cases, and the procedural actions taken by the judge.

4.1.2. Exercise of judicial power by a judge under the personal interest, political or social influence

This formal composition represents a new type of disciplinary misconduct. Consequently, the existing practice in this direction is particularly scarce. However, according to the Inspector, what is included in "personal interest" and what action can be considered to have been carried out under the influence of this interest, is not defined by law. Consequently, the investigation of cases received on this basis is an important challenge for the disciplinary bodies.¹⁵²

The claims of the authors of the complaint regarding this disciplinary misconduct are usually related to the judge, *a) being interested in the outcome of the case, b) having a biased attitude towards any party or c) his improper performance of the judicial duties.*¹⁵³

¹⁴⁸ 2021 Annual Report of Independent Inspector, p. 18, Disciplinary case N20/21

¹⁴⁹ Ibid, p. 19, Disciplinary case N16/21

¹⁵⁰ 2020 Annual Report of Independent Inspector, p. 26

¹⁵¹ 2021 Annual Report of Independent Inspector, p. 14, 19

¹⁵² 2020 Annual Report of Independent Inspector, p. 28; The Inspector mainly refers to international legal acts in his explanations. For the most part, the Bangalore Principles and the conclusions of the Consultative Council of European Judges, as well as the case law of the European Court of Human Rights.

¹⁵³ Ibid, p. 28

The Inspector himself, for the qualification of the action, focuses on the following factors: *a) the judge must abuse his authority, and/or b) he must act in a dishonest and impartial manner, and must have any personal interest or benefit from a particular case.*¹⁵⁴

As can be seen from the generalized conclusions, it is particularly difficult to assess an act that the judge carries out at his or her own discretion, since it is difficult to prove the existence of personal interest here by the standard of reasonable belief. According to the Inspector, the challenge is to determine whether any pressure was exerted on the judge, whether he acted in his personal interest or made a decision only within the discretionary powers granted to him by procedural law. In this case, it is also problematic to determine whether the Inspector should evaluate such action and make a decision on the inadmissibility of oversight based on the legality of the act or make a conclusion on the presence/absence of signs of disciplinary misconduct.¹⁵⁵ And if there is an error on the part of the judge in resolving the matter, but the examination of the case shows that he exercised his authority based on inner conviction and good faith, in such a case it is forbidden to discipline the judge.¹⁵⁶

Finally, it is interesting to note that none of the complaints received during the 2020 reporting period were assessed by the Inspector as this disciplinary misconduct.¹⁵⁷ This fact, on the one hand, may indicate a misinterpretation of this formal composition of misconduct by the authors of the complaint, and, on the other hand, the difficulties of substantiating the existence of personal interest, which is mentioned by the Inspector himself.¹⁵⁸ As for the reporting period of 2021, the Inspector's report, unfortunately, does not even address the relevant practice.¹⁵⁹

4.1.3. Obvious disrespect by a judge to another judge, an Officer of the Court, or Parties of the Hearing

As it is clear from the analysis of the practice, the majority of the authors of the complaints submitted on this basis are the parties involved in the process and they address the Inspector on the facts of possible disrespect to the party by the judge. In particular, the basis for assessing the actions of judges as disciplinary misconduct is mostly the expressions/words conveying disrespect to the party, which they used during the court proceedings.¹⁶⁰ The Inspector's Institute investigates such actions mainly through the study of audio and video recordings of court minutes,¹⁶¹ however, the pronounced phrases are evaluated by the Inspector's Office, taking into account their context and intonation.¹⁶²

¹⁵⁴ Ibid, p. 29

¹⁵⁵ Ibid

¹⁵⁶ Ibid

¹⁵⁷ Ibid, p. 19, 31

¹⁵⁸ Ibid, p. 29

¹⁵⁹ 2021 Annual Report of Independent Inspector, p. 16

¹⁶⁰ Ibid. p. 32

¹⁶¹ Ibid. p. 34; In defining the composition of this disciplinary misconduct, the Independent Inspector also relies mainly on Opinion N3 (2020) of Consultative Council of European Judges (CCJE), as well as the Bangalore Principles and the Code of Judicial Ethics, with particular emphasis on the importance of proper judicial conduct in establishing public trust - 2020 Annual Report of Independent Inspector, pp. 31-32

¹⁶² 2021 Annual Report of Independent Inspector, p. 23

In addition, it should be noted that in addition to the alleged misconduct, in practice there are cases where the facts stated in the complaint do not correspond to reality or are based on the subjective perception of the party. The general conclusions also refer to cases where the High Council of Justice did not share the Inspector's conclusion on the judge's disrespect towards the party and, consequently, on existing disciplinary misconduct, indicating that "maybe the judge's address to the party was unethical, it only served to conduct the process perfectly and, consequently, to protect the rights of the parties".¹⁶³

4.1.4. Other actions of a judge that do not correspond to the high status of a judge,

as a formal composition of disciplinary misconduct, it is a kind of "open norm", the wording of which is quite general and allows for a wide interpretation.¹⁶⁴ It is important, however, that the formal composition of this misconduct includes the actions committed by a judge in or out of court. Consequently, it is particularly interesting to see what are the definitions in practice. It should also be noted that there was a similar provision in the version before January 1, 2020, and the disciplinary misconduct was "inappropriate action of a judge that undermines the authority of the court or undermines confidence/trust towards the court."

When investigating misconduct by a judge, the Inspector assesses the following circumstances: *a) whether the judge's conduct poses a threat to the authority of the court; B) whether it substantially violates public order; C) whether it substantially violates the generally accepted moral norms; D) whether it damages the public trust in the court; E) whether it calls into question the maximum protection of the rights of the parties by the court.* Additionally, according to the Inspector, an action unsuitable for the high status of a judge includes standards, the violation of which, in personal or professional life, depends on the public perception. However, all the actions of a judge, which are perceived by a part of the society as a violation of public order and moral norms, can not be grounds for disciplining a judge, because not only the behavior itself must be considered but also the accompanying circumstances.¹⁶⁵

As the analysis of the generalized conclusions shows, in practice, there are cases when the actions of a judge about this composition, carried out both during the court session and outside the court - in everyday life when the judge was not exercising his/her authority, have been evaluated. However, the Inspector determines the probable commission of misconduct mainly during the exercise of his or her powers as a judge and less while assessing actions carried out outside the court.

Interesting is one of the cases where the Inspector considered the judge's action as disciplinary misconduct, when he stopped the lawyer, asking another question and said: "Be more specific, gentlemen, I am not examining hypothetical questions here ... Ask an expert about a specific case"; At the lawyer's protest against the judge's activity, he said that he was a judge and was not obliged to listen

¹⁶³ 2020 Annual Report of Independent Inspector, p. 34, Disciplinary case N206/18

¹⁶⁴ In defining this composition of the disciplinary misconduct, the Independent Inspector relies on the "Basic Principles of Judicial Independence" developed by the UN in 1985, the Bangalore Principles of Judicial Conduct, and Consultative Council of European Judges (CCJE) Conclusion N3.

¹⁶⁵ Ibid, p. 37

to everything.¹⁶⁶ Also, during the interrogation of the prosecution witness by the defense, the judge indicated to the prosecutor when to protest. The Inspector concluded that the judge's actions violated the principle of adversarial proceedings, jeopardizing the parties' ability to present and examine evidence on equal terms.¹⁶⁷

This case is interesting due to the fact that in some instances, in other cases, the verbal remarks made by the judge towards the party were interpreted as an expression of obvious disrespect by him towards the participant of the trial and not an action that does not correspond to the high status of a judge.¹⁶⁸ Consequently, when observing the practice, it is somewhat vague how these two compositions are separated in cases when a judge's action is committed in a court session, against one of the parties of the proceedings. Unfortunately, the lack of access to the Inspector's conclusions does not allow for a more in-depth analysis of this issue.

Additionally, in the 2021 Generalized Practice, the Inspector focused on another important case where in a criminal case a judge did not allow the defense to question defense witnesses and examine the evidence. Moreover, the judge concluded the substantive hearing in such a way that he did not allow the accused to have a final say. Subsequently, he set an unreasonable deadline to prepare the closing statements. This action of the judge was assessed by the Inspector as a probable case of committing disciplinary misconduct.

4.1.5. Refusal of a judge to recuse/self-recuse case when there is a clear ground for recusal of the case provided by law,¹⁶⁹

as a formal composition of the disciplinary misconduct, did not exist before the amendments to the Organic Law of January 1, 2020. Such an action was considered under the formal composition of the legality of the decision/ruling made by the judge.¹⁷⁰ Thus, the conclusions developed by the Inspector are of special importance to define this misconduct. It should also be noted that the conclusions prepared by the Inspector on this basis are mainly related to civil law cases.¹⁷¹

When examining the issue of recusal/self-recusal, the Independent Inspector relies on Articles 31 and 32 of the Code of Civil Procedure of Georgia, which provide the legal basis for a judge's dismissal and regulate the issue of a judge's self-recusal. According to the Inspector, the grounds for recusal under Article 31, section 1 (d) of the Procedural Code differ in the definition of disciplinary misconduct (when a judge is personally, directly, or indirectly interested in the outcome of a case, or if other circumstances cast doubt on his or her impartiality), as far as this basis is distinctive due to its dispositional content and gives rise to a wide possibility of interpretation. Therefore, in relation to this

¹⁶⁶ Disciplinary case №2/20.

¹⁶⁷ 2020 Annual Report of Independent Inspector, p. 36

¹⁶⁸ Ibid; Disciplinary case N2/20

¹⁶⁹ Organic Law of Georgia on Common Courts, Article 75¹, Section 8, Subsection „b.d”

¹⁷⁰ 2020 Annual Report of Independent Inspector, p. 37

¹⁷¹ Ibid

composition, the existence of a causal link between the factually established circumstance and the judge's biased decision under the influence of his own interest on the recusal is important.¹⁷²

However, when discussing alleged violations of the recusal/self-recusal rule, the Inspector uses an objective and subjective impartiality assessment test.¹⁷³ In cases where a judge's subjective bias cannot be proven, an additional test of the court's objective impartiality should be applied. In other words, there must be some circumstance that creates an objective basis for the party's suspicion of the court's impartiality. At such times it no longer matters whether the judge is really biased subjectively. "The main thing is that there is some objective, factual circumstance on the basis of which the suspicion of a party can be justified and logical."¹⁷⁴

Interestingly, as the analysis of the generalized conclusions shows, the practice of the High Council of Justice is, in some cases, based on different approaches from the Inspector. For example, in one case, a judge reviewed a dispute involving a university in which a judge held an academic position.¹⁷⁵ The judge did not recuse himself from the case. The Council did not share the Inspector's conclusion, pointing out that judges should not be isolated from the public. They should have the opportunity to share their knowledge and experience with future lawyers. Consequently, this does not constitute a reasonable belief to cast doubt on the judge's impartiality, as the party has not appealed to the judge to recuse himself. It is important to note, however, that the judge himself would have had the obligation to exercise self-recusal only if, given the subjective test, he had formulated his opinion in advance of a particular dispute. According to the Council, disciplinary misconduct exists where there is a clear ground for recusal. In this case, since the party did not appeal to the court to recuse a judge and the judge had no clear grounds for self-recusal, the Inspector explained that there were no signs of misconduct in the given disciplinary case.¹⁷⁶

4.2. Generalised Decisions of Independent Inspector

An important novelty of the reform is the granting the authority to terminate disciplinary proceedings or refuse to initiate proceedings to Independent Inspector's Office.¹⁷⁷

The Inspector makes a substantiated decision on these issues if:

A) the time limit for initiation of disciplinary prosecution on a judge or imposing disciplinary liability (disciplinary sanction) on him/her has expired;

B) there is a decision made by the body conducting the disciplinary proceedings against the same judge due to the same action;

C) Judicial powers of a judge have been terminated;

¹⁷² Ibid, p. 38

¹⁷³ Ibid; When explaining the criteria of the test, the conclusions refer to the general standards set by the Constitutional Court of Georgia and the Bangalore principles of Judicial conduct.

¹⁷⁴ Disciplinary case №199/19-2

¹⁷⁵ Disciplinary case №76/18.

¹⁷⁶ 2020 Annual Report of Independent Inspector, p. 41

¹⁷⁷ Organic Law of Georgia on Common Courts, Article 75¹², Section 1

*D) the complaint concerns the legality of the act rendered by the judge.*¹⁷⁸

It should be noted that prior to the amendments, such powers were exercised by the High Council of Justice. According to the Inspector, this change greatly simplifies and makes the disciplinary process more efficient.¹⁷⁹ However, interestingly, the authority to terminate proceedings on the abovementioned grounds belongs exclusively to the Inspector (the High Council of Justice still has the authority to terminate proceedings, albeit based on other grounds)¹⁸⁰ even if they have been unveiled by the time the case is already before the High Council of Justice.¹⁸¹ Consequently, such an arrangement might, on the contrary, reduce the flexibility of the litigation process and delay its completion.

Another challenge to the exclusivity of this authority of the Inspector is the cases when several claims are submitted in the complaint/statement and one of them has grounds for termination/rejection of initiating the proceedings, while the other part deals with possible disciplinary violations. Organic law does not provide a specific regulation for such cases, although the Inspector has established a practice that the High Council of Justice will hear and rule on the part of the misconduct, and if the Inspector has the grounds to decide on the termination, the Inspector himself decides to partially terminate the proceedings.¹⁸²

The decisions of the Inspector, without exposing the identification data of the judge and other persons involved in the disciplinary case, are public and available on the website of the Inspector's office,¹⁸³ therefore, it is interesting to generalize and analyze these decisions based on each ground of termination of proceedings. Such analysis makes it possible to assess the time limits of disciplinary proceedings, the degree of justification of decisions, the uniformity, and consistency of practice, etc.

4.2.1. Expiration of the time limits of disciplinary action against a judge or imposition of disciplinary liability (disciplinary sanction) on him/her

One of the important components of the reform is the change of the statute of limitations from 5 to 3 years.¹⁸⁴ In addition, the Inspector makes a decision to refuse initiation/terminate the proceedings if the time limit of disciplinary action or imposition of liability (disciplinary sanction) on a judge has expired.¹⁸⁵ This reservation, at first glance, carries a much broader meaning than the preconditions set by the statute of limitations. However, according to the Inspector, this provision of the organic law gives him the authority to decide on the termination of the proceedings if 3 years have elapsed from

¹⁷⁸ Organic Law of Georgia on Common Courts, Article 75¹², Section 1

¹⁷⁹ 2020 Annual Report of Independent Inspector, p. 45

¹⁸⁰ For more on the powers of the High Council of Justice to terminate disciplinary proceedings see Chapter IV

¹⁸¹ Organic Law of Georgia on Common Courts, Article 75¹², Section 1

¹⁸² 2020 Annual Report of Independent Inspector, p. 12

¹⁸³ Organic Law of Georgia on Common Courts, Article 75¹², Section 3

¹⁸⁴ According to the version valid until January 1, 2020, a judge would not be disciplined if 5 years had passed since the day of committing the misconduct. According to the version of Article 75² of the Organic Law in force from January 1, 2020, "if 3 years have passed before the start of the disciplinary proceedings, and 1 year from the date of the decision on the disciplinary liability of the judge, he/she will not be disciplined".

¹⁸⁵ Organic Law of Georgia on Common Courts, Article 75¹², Subsection "a"

the commission of the action to the filing of the complaint.¹⁸⁶ Accordingly, the decisions made by the Inspector on this basis refer to the cases when the request indicated in the complaint is already outdated by the time of submission.

Decisions made by the Independent Inspector on the refusal/termination of disciplinary proceedings in 2020-2021 reveal that the estimated time of misconduct indicated by the complainants varies from 2004-2017. Consequently, in the vast majority of these judgments, the requirements for initiating proceedings are outdated. However, it is interesting to note that most of such requests, meanwhile, relate to the legality of acts rendered by judges. This observation emphasizes both the misunderstanding of the content of the disciplinary misconduct by the authors of the alleged complaint and the lack of awareness of the statute of limitations. Also, during the reporting period, the vast majority of decisions made on this basis relate to appeals filed in 2018-2019, on which the power to terminate proceedings independently was granted to the Inspector only by the 2019 legislative changes.¹⁸⁷

As for the generalization of the content of the decisions, it should be noted that the quality of substantiation of decisions by the Inspector has improved during the reporting period, compared to 2018-2019, although, it still is of a somewhat template nature

4.2.2. There is a decision made by the body conducting the disciplinary proceedings against the same judge due to the same action

The practice of terminating legal proceedings by an Inspector on this basis is scarce and covers a total of three cases in the reporting period of 2020-2021.¹⁸⁸ In all three cases, there were already decisions of the High Council of Justice to terminate disciplinary proceedings against the same judge for the same action, and the Inspector terminated the proceedings against them. There is no substantive reasoning in the decisions on this ground of termination of the proceedings. The Inspector relies only on the relevant factual circumstances and legal grounds.

4.2.3. The judge's judicial powers were terminated

In generalizing the decisions on termination of disciplinary proceedings, it was particularly interesting to analyze the decisions concerning the grounds for termination of powers for judges. First of all, it should be noted that in the reporting period of 2020-2021, most of the disciplinary decisions made on this basis relate to the appeals filed in 2018-2019. However, most of the decisions are based on the termination of the judicial powers, and the conclusions prepared by the Inspector on these complaints before the termination of the proceedings do not confirm the existence of the alleged misconduct. However, in the analysis of the decisions, we encounter several cases when the Inspector's report

¹⁸⁶ E.g. Disciplinary case №8/21, Disciplinary case №113/19

¹⁸⁷ During the period 2020, the Independent Inspector made 22 decisions to terminate disciplinary proceedings based on the conclusions prepared in 2018-2019 due to the expiration of the statute of limitations for disciplinary action; And of the cases reviewed in 2020, only 1 decision on termination of disciplinary proceedings was filed, as the complaint was filed in violation of the deadline for initiation of disciplinary proceedings;

¹⁸⁸ Disciplinary cases N197-18-1, N74/19, N174/19

indicates that a judge has committed specific disciplinary misconduct, but in these cases, the proceedings were later dismissed due to the termination of the judge's judicial duties.

For example, the decision in the disciplinary case N297/18-1 states that the complaint was submitted to the Inspector's Office on December 7, 2018, and the Inspector's conclusion was prepared on February 27, 2019, with a slight delay in the preliminary investigation period. According to the complainant, during the substantive hearing of the criminal case against him, the judge violated the rights of the accused, did not allow the accused to ask questions, and often threatened to remove him from the courtroom. The complainant also disagreed with the decisions made by the judge regarding the assessment of the evidence and the motions submitted to the court. The reasoning developed in the Inspector's conclusion concerns the violation of the norms of judicial ethics¹⁸⁹ and, as a result of the assessment of legal standards¹⁹⁰ and factual circumstances, indicates that the judge's actions reveal the fact of possible misconduct. In this case, the disciplinary proceedings were terminated by the decision of the Inspector on October 12, 2020, 8 months after the receipt of the conclusion, and in such a way that the Inspector's conclusion was not reviewed by the High Council of Justice.

Also, the complaint in the disciplinary case N145/20 was submitted to the Inspector on December 14, 2020, and the report was prepared on February 12, 2021. According to the complainants, on November 24, 2020, the judge, in the process of hearing a criminal case related to domestic violence, committed actions that contained signs of disciplinary misconduct. In particular, before the commencement of the interrogation of juvenile witnesses, the juvenile's accused father attended the court hearing; Juvenile Witnesses were denied access to a lawyer and the judge prevented their lawyers to fulfill their duties fully; The judge did not ensure the maintenance of order in the courtroom, the principle of equality between the parties and the dignity of the participant in the proceedings. According to the reasoning developed in the Inspector's conclusion, the judge's action contained signs of committing an act incompatible with his high status¹⁹¹ as a misconduct. Despite the stated circumstances, the disciplinary proceedings, in this case, were terminated on June 1, 2021, because by order of the High Council of Justice, the judge was no longer exercising his powers. The decision does not indicate the reasons for which the judge's judicial powers were terminated.

The disciplinary case N26/18, in the framework of which the Council decided on March 13, 2019, to initiate disciplinary proceedings against a judge and to request an explanation from him, is particularly interesting. The complaint filed to the Inspector's Office on February 5, 2018 (on which the Inspector's conclusion was received on October 1, 2018) concerned an unreasonable delay in hearing the case (version valid until January 1, 2020)¹⁹². According to the appellant, criminal proceedings were

¹⁸⁹ Organic Law of Georgia on Common Courts, Article 75¹, Section 2, Subsection "h"

¹⁹⁰ Conclusion №3 of the Consultative Council of European Judges (CCJE) 2002, Article 8 of the Rules of Judicial Ethics of Georgia, Bangalore Principles, Relevant Norms of the Code of Criminal Procedure

¹⁹¹ According to the Organic Law of Georgia on Common Courts, subsection "g" of section 8, of Article 75¹², a disciplinary misconduct is an act of a judge that does not conform to the high status of a judge (an act (conduct) incompatible with the high status of a judge), committed in or out of court that clearly violates public order or generally accepted moral standards and thereby undermines the authority of the court.

¹⁹² Article 75¹, Section 2, Subsection "d" of the Organic Law of Georgia

instituted against him in 2004, and the court of the first instance sentenced him in 2010. In March 2011, the verdict was appealed by the defense, however, the hearing of the case by the judges of the Court of Appeals is still unreasonably delayed. The complainant stated that he had been prosecuted for 14 years, including that the case had been pending before the Court of Appeals for 7 years at the time of filing the complaint.

The case is also interesting in that the decision is also accompanied by an explanation from the judge, which he submitted to the High Council of Justice on 12 April 2019. However, despite the initiation of the disciplinary prosecution and the submission of an explanation, the disciplinary proceedings in the case were terminated almost 17 months later on the grounds that the judge had been dismissed from his position by order of the Council.

The analysis of the decisions to terminate the disciplinary proceedings on the grounds of termination of judicial duties also indicates certain violations of deadlines for investigation by the Inspector in the period of 2018-2019,¹⁹³ moreover, in some cases, the decisions do not show the time when the Independent Inspector to reach a conclusion,¹⁹⁴ as well as the exact date of termination of judicial duties for the judge¹⁹⁵ and its basis¹⁹⁶, that complicates the ability to critically analyze decisions.

4.2.4. Legality of acts rendered by a judge

A request for a review of the legality of acts rendered by a judge is a ground for terminating disciplinary proceedings, as the Inspector's Office is not a higher court instance that can overturn/change the decision. However, according to the Inspector, the prohibition on overseeing the legality of the act is distinctive in its essence and it does not depend on a specific statute of limitations or the position of a judge.¹⁹⁷

In the legal justification of decisions made on this basis, it is interesting to distinguish between legal error and disciplinary misconduct, the explanation of which, the Inspector relies on the practice developed by the disciplinary Chamber. In particular, according to the Chamber, "... one of the distinguishing features of disciplinary misconduct and legal error is the ability to correct the mistake. This indicates the circumstance that, although the judge made an error, it is subject to correction. The most important mechanism for correcting an error is to appeal the decision, ... By appealing the decision, it is possible for the higher court to eliminate the error made by the lower court. ... Thus, using the above mechanisms, it is possible to correct the error and correct it by the same or a higher court, which excludes any negative consequences. A mistake made by a judge, which can be corrected,

¹⁹³ For example, see: Disciplinary case №75-18-1 -The Inspector's conclusion was prepared 6 months after the submission of the complaint; Disciplinary case №91/312-18 – after 4 months; Disciplinary case №283/18 – after 5 months.

¹⁹⁴ Disciplinary case №207/19, Disciplinary case №49/21, Disciplinary case №44/21

¹⁹⁵ Disciplinary case №165/18, Disciplinary case №1/20, Disciplinary case #304/18-4, Disciplinary case №66/287-3, Disciplinary case №49/270-2-18, Disciplinary case №52/19.

¹⁹⁶ Disciplinary case №145/20, Disciplinary case №91/312-18.

¹⁹⁷ The substantive analysis of the decisions made on this basis shows that the Independent Inspector in his reasoning relies on the Constitution of Georgia, the relevant practice of the European Court of Human Rights and the explanations of the Disciplinary Panel/Chamber.

does not constitute disciplinary misconduct. It is qualified as a legal error and it is forbidden to impose a disciplinary sanction on a judge on this basis."¹⁹⁸

According to the Independent Inspector's report and the results of the analysis of the decisions, the complainants mainly indicate only the illegality of the decision/ruling made by the judge. However, there are also cases when part of the claims argues also on the legality of different stages of the process, for example, the rejection of the motion, improper examination of evidence, etc.¹⁹⁹ In addition, there are frequent cases where the arguments of the authors of disciplinary complaints, in addition to the legality of the decision, also refer to the facts of possible disciplinary misconduct. The Inspector independently examines the requirements of the complaint, and if the standard of reasonable belief proves the existence of disciplinary misconduct in the judge's action, the disciplinary proceedings against the complaint are terminated only in part - in the part of the request for verification of the legality of the act.

4.3. Strategic Development and Recommendations of Independent Inspector's Office

In the reporting period of 2020-2021, a novelty in the activities of the Independent Inspector was the document of the main directions of strategic development, which is the first concept note prepared for the development of this Office and is intended for 2020-2021.²⁰⁰

First of all, it should be welcomed that the document was developed with the active involvement of the bodies participating in disciplinary proceedings, international organizations, and civil society organizations working on the issue of the judiciary.²⁰¹ In the process of cooperation, important issues were suggested to the Inspector's Office, such as deepening communication and cooperation with the bodies involved in disciplinary proceedings, additional legislative changes, improving the substantiation of the conclusions of the High Council of Justice to enhance its quality, etc.²⁰²

Interestingly, in the scope of the mission and vision outlined in the document the strengths, weaknesses, opportunities, and challenges of the Institute are assessed and it focuses on important issues such as *a) the institutional arrangement of the Office; B) scarcity of financial and material resources; C) predictability of duration of the legal proceedings and delays in the process; D) lack of adequate procedures; Also e) frequent legislative changes; F) scarcity of practice; G) trust and awareness about the Office.*²⁰³

The strategy document additionally addresses the possible difficulties of perceiving the existing list of disciplinary misconducts and its foreseeability,²⁰⁴ which is also deepened by the scarcity of existing practices. The Inspector also speaks of the "strict confidentiality"²⁰⁵ of disciplinary proceedings in the

¹⁹⁸ Disciplinary case №2/20-1,

¹⁹⁹ 2020 Annual Report of Independent Inspector, p. 46

²⁰⁰ Ibid., p. 53

²⁰¹ Ibid., p. 55

²⁰² Ibid, p. 54

²⁰³ Main directions of strategic development, p. 4 (Available at: <https://bit.ly/3KZrOPG>; Accessed on 02.05.2022)

²⁰⁴ Ibid, p. 5

²⁰⁵ Ibid, p. 10

context of enhanced accountability to the public, which does not allow the explanations and practices developed in the Inspector's conclusions to be made available to the public with guarantees of protection for an individual judge.

In addition, the Independent Inspector, during a meeting with NGOs on December 14, 2020, also pointed out the unreality of the deadlines set by the disciplinary proceedings, which complicates the thorough and in-depth investigation of the case by the Office. In addition, the Inspector spoke about the shortcomings of the legislative regulation of termination of disciplinary proceedings.

Separate chapters in the 2020 and 2021 Annual Reports of the Independent Inspector²⁰⁶ are devoted to the recommendations developed by the Office, which address both legislative changes related to legal proceedings and gaps in practice. In particular, the Inspector in his 2020 report pointed out the unreality of the deadlines set by the Code of Civil Procedure, which is often violated due to the small number of judges, the large number of cases to be heard, and the infrastructural challenges in the judiciary. Also, the actions of judges found in practice, that do not correspond to any of the components of the misconduct, although in their essence may be a disciplinary misconduct, indicating the need to establish new types of misconduct.²⁰⁷

In addition, the reports address the importance of legislative regulation in providing all kinds of information about the litigation process to the potential complainants, clarifying the institution of deficiencies, facilitating the development of alternative dispute resolution mechanisms, and correcting inaccuracies in legal acts.²⁰⁸

The content of the legislative changes of December 30, 2021, shows that most of the recommendations of the Independent Inspector regarding the improvement of the disciplinary proceedings have remained beyond the attention of the Parliament of Georgia. Moreover, according to the amendments, the deadlines for problematic proceedings have been further reduced, and a misconduct has been added to the list of disciplinary offences, the problematic nature of which in practice is neither mentioned in the Inspector's reports nor in the Parliament's justification.

Nevertheless, it is noteworthy that the 2021 Annual Report of the Inspector provides a detailed overview of the legislative changes of 30 December 2021, although they are not critically evaluated. For example, in its own assessment, the Inspector's Office speaks about the imposition of a new composition of disciplinary misconduct (public expression of opinion by a judge in violation of the principle of political neutrality). It points out that "any violation of ethical rules in the exercise of freedom of expression can not become the grounds for disciplining a judge. Therefore, it is necessary to draw a clear line between, on the one hand, a judge's breach of ethical obligations and, on the other hand, disciplinary misconduct committed by him." However, the conclusion states that it is welcomed to specify the list of disciplinary misconduct as it ensures the independence of judges. In sum, the recent legislative changes on the part of the Inspector's Office are assessed positively due to the fact that it

²⁰⁶ 2020 Annual Report of Independent Inspector, Chapter 7; 2021 Annual Report of Independent Inspector, Chapter 9

²⁰⁷ 2020 Annual Report of Independent Inspector, p. 56

²⁰⁸ *Ibid*, p. 58

increases the guarantees of independence of the Inspector and his staff, as well as the elimination of these shortcomings in the legal process, will ultimately determine the effectiveness of the proceedings.²⁰⁹ A similar substantive inconsistency in the official assessments of the Independent Inspector's Office has a negative impact on the degree of trust towards the institution and raises questions about its independence from the institutional and political authorities.

V. Decisions of the High Council of Justice

As already mentioned, with the changes made within the framework of the "fourth wave" of judicial reform, the Office of Independent Inspector is the main body authorized to decide on the termination of disciplinary proceedings.²¹⁰ However, the legislature still leaves the authority of making a similar decision to the High Council of Justice if the fact of the misconduct committed by the judge or his/her culpability as a result of the investigation of the case has not been proved.²¹¹ However, it is important that the obligation to substantiate and publish such decisions under organic law provides a good opportunity to analyze practice in this area.

Unfortunately, the legislation still does not allow the possibility to disclose decisions of the High Council of Justice on imposing disciplinary sanctions on a judge and requesting an explanation, even without identifying data of the parties. Like the Inspector, the High Council of Justice in its official letter pointed to the confidentiality of the litigation process and refused to disclose the decisions, even in a form where the data about parties is redacted.²¹² However, it should be noted that during the analysis of the practice, at least 2 decisions were found on the Council's website, which was published without identifying the parties and related not to the termination of the disciplinary proceedings, but rather to the initiation of disciplinary proceedings against the judge.²¹³

Council meetings on disciplinary matters are still rarely held, which leads to delays in the review of disciplinary cases and mass violations of the deadlines set by law.²¹⁴ The analysis of the decisions published on the website also gives us a clear picture of the violation of the time limits of the disciplinary proceedings. As the vast majority of cases reviewed during the reporting period relate to appeals in 2018-2019,²¹⁵ given the tight deadlines for litigation, it is clear that the timeframes on the part of the Council are significantly violated and delays range from 1 to 2.5 years on average.

Substantial violation of the time limits established by the procedural legislation of Georgia by a judge due to an unreasonable excuse

²⁰⁹ 2021 Annual Report of Independent Inspector, p. 53

²¹⁰ The first section of Article 75¹² of the Organic Law of Georgia on Common Courts

²¹¹ Ibid., Section 2 of Article 75¹²

²¹² Letter 882/3297-03- α of the High Council of Justice of Georgia dated December 6, 2021, Organic Law of Georgia on Common Courts, Article 75⁴

²¹³ Disciplinary case №50/271-18-2; Disciplinary case №27/19

²¹⁴ For more details, see Chapter III - "Statistical Information"

²¹⁵ Ibid

During the reporting period, the majority of decisions made by the Council to terminate disciplinary proceedings relate to complaints about compliance with procedural deadlines.

It is noticeable that the decisions of the Council, in defining legal standards, almost completely replicate the content of the conclusions of the Independent Inspector. Here, too, the Council relies on procedural law and national acts, as well as international legal acts and case law.

The Council, like the Inspector, assesses the breach of time due to an "unreasonable excuse" by taking into account the number of cases in the judge's proceedings and statistics, as well as the length of leave and sick leave. It is noteworthy, however, that when it comes to assessing the individual circumstances of a case based on legal standards, the Council's reasoning is very limited. It is unclear what statistics on the workload of a judge or what period of breach of time limits affects the decision of the Council to terminate or resume disciplinary proceedings. In particular, there are cases when the workload of a particular judge is not very high, the complexity of the case is not specified and there is a significant delay in the procedural time limits. Nevertheless, the Council makes a decision to terminate the proceedings.²¹⁶

However, as already mentioned, most of the assessments of the Independent Inspector regarding the violation of procedural deadlines as disciplinary misconduct are not shared by the High Council of Justice.²¹⁷ Even in decisions, we do not find reasoning and argumentations that would make clear what the Council's different approaches are based on.

Ultimately, such poor substantiation with a mainly template nature significantly reduces the degree of justification of the Council's decisions and make little insight on both the formal composition of this particular disciplinary misconduct and its evaluation criteria, and ultimately fails to ensure uniform and consistent practice.

Exercise of judicial power by a judge under personal interest, political or social influence

A significant portion of the decisions made by the Council in 2020-2021 relates to cases where the complainants indicate only possible cases of personal interest on the part of the judges in the case.

²¹⁶ For example, Disciplinary case N53/18, in which the judge ruled that the cassation appeal was admissible only 10 months after its receipt, and did not hear the appeal for 1 year and 5 months after the receipt of the case. In 2018, the judge completed 44.5% of the cases submitted to him for legal consideration;

Disciplinary case N47/19, where the judge violated the time limits of the case for 11 months and did not take any procedural action during this period, while according to the workload rate in 2018, out of 295 cases he completed only 201 (68.13%).

In disciplinary case N62/19, where is no argumentation on the individual circumstances of the case, the Council limited itself to refer to statistics only.

Disciplinary case N230/18, in which, according to the Inspector's conclusion, the case under consideration did not constitute a complex category of dispute and the judge took procedural actions on the case at not so short intervals. The procedural time limits of the case were extended by 1 year and 6 months. However, the workload of judges was not high: in 2018 - 93 out of 148 civil cases were completed (62%), and in 2019 - 88 out of 156 civil cases (56%). In the decision made in the mentioned case we do not find any individual reasoning and substantiation of the case by the Council;

In disciplinary case N234/18, a judge had the private complaint (complaint subject to a time limit), under consideration for 1 year and 9 days. As of 2018, 400 civil cases were registered for consideration, out of which only 225 cases (56%) were completed. We do not find any justification by the Council in this decision either.

²¹⁷ See 4.1. Subsection - "Independent Inspector's Generalised Conclusions"

However, like the Inspector, the Council in this composition considers both a) the judge's biased attitude towards one of the parties of the case and/or interest in the outcome of the case, and b) improper performance or refusal to perform the judicial duties.

It is unclear why an improper performance of judicial duties presupposes a personal interest on the part of the judge in the case, when such an action may be motivated by other reasons and motives. At the same time, as the Independent Inspector points out in his generalized conclusions, the substantial violation of the time limits established by the procedural law due to an unreasonable excuse, as a formal composition, is also considered as an improper performance of the judicial duties.²¹⁸ Consequently, such ambiguity poses a significant challenge both in the process of a uniform definition of the composition of this particular disciplinary misconduct and in the process of analysis of practice.

Also, when discussing the possible personal interest of a judge in the pending case, it is interesting to note that this composition of disciplinary misconduct, as regulated by the organic law, is included in the list of actions that violate the principle of independence. However, the Council in its reasoning mainly refers to the legal standards relating to the impartiality of the judge (both in decision-making and in the course of the proceedings) and not to its independence, its objective, and subjective aspects.²¹⁹

The analysis of the practice revealed individual decisions where, given the specificity of the circumstances of the case, we encounter different reasoning and legal standards that are not often repeated in practice.

For example, in the disciplinary case N177/18, the complainant indicated the judge's bias and interest in the outcome of the case. According to the author, the judge did not recuse himself from the case. According to the reasoning developed in the decision, the basis for the assumption of the existence of bias or preconceived opinion is determined by various criteria, such as: "increased probability", "real possibility", "high probability", as well as "reasonable doubt" of bias. The assumption of the existence of bias must be substantiated. Finally, after examining the factual circumstances of the case, the Council concluded that "the existing assumptions and facts, do not lead an outside observer to the degree of "increased probability", to the conclusion that the disputed fact may have resulted in a biased court decision." The defense's opinion in this regard does not raise a "reasonable doubt" about the judge's bias." It is noteworthy that we do not find reasoning using a similar standard in other decisions.

Also, the disciplinary case N195/18, in which the developed legal reasoning deals with the issue of separation of disciplinary misconduct and legal error, is of particular interest. The factual circumstances of the case indicated a violation of a particular rule of procedure by the judge (the court was aware of the change in the defendant's address, although the message was still sent elsewhere). Accordingly, the Council explained that "for the purposes of disciplinary proceedings, it is important to clarify and note that the mere fact of a breach of the Rules of Procedure does not qualify for disciplinary misconduct and in the process of assessing the non-performance or improper performance of judicial duties, the

²¹⁸ 2020 Annual Report of Independent Inspector, pp. 19-20

²¹⁹ For example Disciplinary case №19/20; Disciplinary case №18/20; Disciplinary case №30/20

consideration of these aspects cumulatively shall be taken into account: Possibility of correction of an error, degree of error, judge's motive, repetition and intensity of actions, etc. The decision also refers to the practice of the Disciplinary Council, according to which "the possibility of correcting an error, its quality, repetitive and repeated nature, the good faith of the judge, his motive are the main factors that create a line between disciplinary misconduct and legal error. Therefore, taking into account the abovementioned criteria, the judge's actions in the event of an accident must be given accurate qualification.²²⁰ Finally, the Council pointed out that the judge's motive for the error was not evident in the case, and the legal error was subject to correction. As a result, "due to the degree of error, the judge's motive, his intentional attitude towards the action, as well as the exclusion of gross negligence, the fact of violation of the procedure should be considered as a legal error, which excludes the qualification of disciplinary misconduct."

Disciplinary Case 51/271-18-2, first of all, is interesting and noteworthy due to the fact that it concerns the initiation of disciplinary proceedings against a judge and request for explanations and not the termination of disciplinary proceedings.

In the present case, the appellant indicated that in two identical cases (filed in court in violation of the prescribed time limit) the judge had rendered a different ruling. This indicates a heterogeneous, different approach by the judge in homogeneous cases. Accordingly, the legal reasoning developed in the decision addresses the question of what the connection is between uniformity of practice, the impartiality of the court, and equality of the parties.

According to the Council, "the existence of a uniform practice is necessary to strengthen public confidence in the court and to dispel doubts about the impartiality of the judge ... Conflict of court decisions in the context of heterogeneity, on the contrary, reduces the degree of public confidence in the court." At the same time, "establishing a correct and uniform practice of interpretation is important to avoid ambiguity of the law and to ensure equality between the parties. An essential aspect of a fair trial is the principle of equality of arms, which implies equal opportunity for both parties to present their case." Accordingly, the Council considered that in the present case there was a possible violation by the judge of the principle of equality and impartiality, which constitutes disciplinary misconduct. However, it should be noted here that the judge's personal interest in the case is disciplinary misconduct that violates the principle of independence. In contrast, the reasoning developed in the decision is entirely devoted to the principles of impartiality and equality.

Obvious disrespect by a judge to another judge, an Officer of the Court, or Parties of the Hearing

With regard to this disciplinary misconduct, the decisions significantly duplicate the legal standards used in the Inspector's conclusions and the international legal acts establishing them. However, the facts mentioned in the complaints are studied and evaluated mainly through the study of audio and video recordings of the hearings. However, even in this part, in the decisions of the Council, in some cases, we do not find extensive reasoning, as well as it is not clear what type of actions or phrases the

²²⁰ Decision of the Disciplinary Panel of 12 April 2013 on disciplinary case №1/04-12

complainant considers to be disrespectful from the judge and why the Inspector/Council does not share this opinion.²²¹

It is interesting, that in Disciplinary Cases 57/19 and 206/18, the Independent Inspector concluded that the factual circumstances in each case contained signs of disciplinary misconduct by the judges, although the Council did not share the Inspector's reasoning. The decisions of the Council in these cases are also interesting in terms of comparison, as in Case 57/19 it is not clear what factual circumstances the Inspector relied on in making a positive conclusion and what the complainant meant when he indicated that the judge "consistently interrupted and did not let him finish what he was saying". The judge also saw signs of a criminal offense, but did not turn the case over to the investigating authorities." We do not find a legal assessment of the facts directly in the argumentations of the Council, but only an indication that the facts specified in the study of the audio recordings of the meeting are not confirmed.

In contrast, in Case 206/18 the specific excerpts from the trial that the complainant deemed to have been verbally abused by a judge are indicated in a detailed manner and which most probably was shared by the Inspector in his conclusion on alleged misconduct. Here we also find the legal assessment of these phrases by the Council, which considered that "the judge may have addressed the party unethically, this statement was aimed only to conduct the process comprehensively and served to protect the rights of the parties."

Disciplinary Case N273/18 is of particular interest for comparison with the abovementioned cases, which, as is clear from the factual circumstances, concerned the facts of a disciplinary misconduct committed by a judge in a trial of high public interest. It is true that, according to the Independent Inspector, the factual circumstances established by the investigation of the case did not show any signs of misconduct by the judge, although the Council's legal assessment is unprecedentedly extensive and detailed.

The decision first addresses the standards of protection and restriction of the freedom of expression of judges and lawyers²²² set out in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights²²³. At the same time, the decision independently and in detail discusses and evaluates each action/phrase of the judge, which was indicated by the complainants (representatives of the accused), as well as the actions and phrases of the lawyers themselves participating in the trial. During the evaluation process, the Council made important and interesting explanations.

²²¹ For example, Disciplinary case N35/19, does not show what was considered an ironic question by the judge against the complainant. See also Disciplinary case N28/249-18, which does not specify what the complainant meant when he indicated that "the judge was aggressive, shouting and disrespectful to the parties during the hearing."

²²² Rodriguez Ravelo v. Spain, Nº 48074/10, January 12, 2016 (ECHR); Nikola V. Finland, March 21, 2002; European Convention on Human Rights (ECHR) Amikhalakioa v. Moldova, 20 April 2004; Consultative Council of European Judges (CCJE) Conclusion # 16 (2013) 425

²²³ Barfod v. Denmark; Prager and Oberschlick v. Austria; Lomakin v. Russia; Wingerter v. Germany; Falter Zeitschriften GmbH v. Austria; Klaus Jürgen BÖHM v. Germany

In particular, the reasoning in the judgment focuses on the purpose and desire of the judge's conduct, as well as on the context. It states that "the circumstances and the general background on which the court made the disputed statements do not form the basis for the conclusion that either the intention or the desire of the judge have been to insult the party. In each particular instance, the court's explanation is preceded by a dissatisfied comment from the defense, after which the court responds to the statement, referring to the rules of procedure. However, according to the audio recording of the court hearing, the judge speaks loudly in some cases, although not in the form of abusive speech. Offensive context, such words and tone of voice are important criteria for detecting incorrect behavior, which is not confirmed in this case."

The Council also emphasized that speaking out loudly during the trial was not an acceptable form of communication with the parties of the proceedings. However, "for the purposes of disciplinary proceedings, it is essential to confirm the offensive context. The action in its entirety should lead to insulting the person and humiliating his honor and dignity. The standard of an outside observer is used as an evaluation criterion. In the present data, such a reasonable doubt is not confirmed by the general background created, the previous action of the judge, and the content of what was said."

Other actions of a judge that do not correspond to the high status of a judge

As the analysis of the decisions shows, the practice on this issue is still scarce regarding the powers of both the Independent Inspector and the High Council of Justice. However, the Council's decisions in disciplinary cases 21/19, 41/19, and 42/19, concerning the judge's position on Facebook, as well as on TV shows and discussions which, according to the complainants, violate the rules of judicial ethics, damage the authority of the court and public confidence in it, are of particular interest.

The abovementioned cases are likely to concern the same person who was also a member of the High Council of Justice at the time of the appeal, as the legal standards set out in the reasoning of the decisions address the function and role of judicial Councils in protecting the reputation of judges and independence on individual judges. The description of the factual circumstances refers to publicly uttered/written phrases such as, for example, "This agitated liar, not a single cent was spent for today's meeting from the state budget: entirely funded by a donor!";²²⁴ "Today we heard the truth again from foreign partners, thanks for their objectivity! ..." ²²⁵

Interestingly, the Inspector's conclusions in all three cases are identical and indicate that the judge's actions may contain signs of disciplinary misconduct. However, the Council did not share the argumentation and focused on the scope of judges' freedom of expression in cases where the judiciary/judge is publicly and severely criticized.²²⁶ In the substantiation, we also find the explanation of the Chamber of Civil Cases of the Supreme Court of Georgia regarding the "opinion", according to which "for the correct qualification of disputed expressions, their content, form of expression and

²²⁴ Disciplinary case N21/19

²²⁵ Disciplinary case N41/19

²²⁶ Conclusions №7 and №10 of the Consultative Council of European Judges; "Rules of Judicial Ethics of Georgia"; Bangalore Principles of Judicial Conduct; European Charter on the Status of Judges.

context of expression should be checked, what factual components it includes, for what purpose they were made publicly."²²⁷

As a result, the High Council of Justice terminated the disciplinary proceedings in all three cases, arguing that "the judge, in expressing a specific position and an opinion, acted within the mandate given to him as a member of - - (presumably the High Council of Justice) in order to protect the authority of each judge as well as the judiciary."

Decisions of the High Council of Justice on other disciplinary misconduct

Several of the decisions made by the High Council of Justice during the reporting period related to cases where the complainants pointed to possible facts of discriminatory treatment by a judge.²²⁸ However, the facts cited in the cases referred to public statements made by judges, mainly on television.

Both the Council and the Inspector, in their legal justification, focused on the guarantees of equality defined by the Constitution of Georgia and the Law of Georgia on the Elimination of All Forms of Discrimination, as well as on the special mandate of the Public Defender to supervise the elimination of discrimination and ensure equality, and in cases related to discrimination in accordance with the special rules defined by the relevant norms of the Civil Procedure Code. The law,²²⁹ although refers to a discriminatory act verbally or otherwise expressed by a judge as a form of disciplinary misconduct, but focuses on the fact that such an act must have been committed while exercising the judicial powers. Consequently, statements made by a judge beyond the exercise of his or her powers, which may contain signs of discriminatory treatment, cannot constitute grounds for disciplinary action.

An interesting case is the disciplinary case 40/18, which concerned the forbidden communication with a judge as a disciplinary misconduct. At the behest of the appellant, the judge asked the plaintiff to leave the courtroom for 10 minutes and stay with the other party in the courtroom, which raised suspicions of his bias against the appellant. As it turned out from the factual circumstances established in the case, the judge did indeed make the plaintiff leave the courtroom with the argument that he should have talked to the defendant about the terms of the settlement. However, the legislation provides for the participation of both parties in this process.

This case is interesting because based on the mentioned decision disciplinary proceedings against the judge were initiated. However, the Council later adjourned the case because the judge's liability was not supported by a sufficient number of Council members (only 8 out of 10) as a result of a secret ballot in a disciplinary hearing. It should also be noted that the secrecy of the ballot does not allow for an assessment of what arguments the Council has debated and what its decision is based on. Additionally, the decision does not specify the content and outcome of the Inspector's conclusion.

The disciplinary case 51/19, in which the author of the complaint pointed out the indifference of the judge, is also interesting. In particular, he did not properly examine the case file, upheld the judgment

²²⁷ The Supreme Court decisions: სტსგ №სს-1304-1242-2014, May 27, 2015; სტსგ №სს-103-98-2014, July 28, 2016, სტსგ №სს-1278-1298-2011, February 20, 2012;

²²⁸ Disciplinary case N183/18, Disciplinary case N980-ტ-18

²²⁹ Organic Law of Georgia on Common Courts, Article 75¹, Section 8, Subsection "e.a"

of the first instance, and also signed and sent a writ of execution to the case while the convict had already submitted a receipt for the voluntary payment of the fine imposed.

The case is interesting in that the Council considered the facts set out in the complaint as possible violations of the principles of competence and diligence.²³⁰ However, the section of the Organic Law, referred to in it, if taken separately, does not constitute a disciplinary misconduct, but rather the subsections specify actions that violate the principles of competence and diligence and constitute disciplinary misconduct.

Administrative Case 27/19 deals with the case of obstruction of disciplinary proceedings by a judge. In the present case, the judge, in the course of the ongoing disciplinary proceedings against him, twice disregarded the Inspector's request to provide the case materials. The judge granted them only after the Inspector had asked the chairperson of the court for information on whether or not confidential letters were delivered to the judge.

According to the Inspector, the judge's actions significantly hampered the pre-trial investigation process. The Council, in its legal assessment, first of all, pointed to the importance of an accountable court and a system of disciplinary liability. However, according to the Council, disciplinary liability has 3 main reasons: a) accountability to a democratic society; B) observance and enforcement of the requirements of the law; C) Judges must comply with the norms and standards of professional conduct in order not to lose respect.

At the same time, in defining obstruction of disciplinary proceedings as a misconduct by a judge, the Council used the method of historical interpretation - the Law of Georgia on Disciplinary Liability and Disciplinary Proceedings of Judges of Common Courts (23/02/2000) and its explanatory note. According to the above, it is considered a misconduct to "create artificial obstacles for a judge to investigate a disciplinary case; providing incorrect information to a representative of a body or official with disciplinary powers; misleading them; refusal to compile explanations, etc. This disciplinary misconduct may be manifested not only by the actions of the judge against whom the disciplinary proceedings have been instituted or the issue of prosecution is being examined but also by the actions of another judge who is not involved in a particular disciplinary case."

Finally, the Council, based on the existing factual circumstances and legal assessment, decided to initiate disciplinary proceedings against the judge and to request an explanation from him by a two-thirds majority.

VI. Decisions of the Disciplinary Panel

During the reporting period, the Disciplinary Panel of Judges of the Common Courts considered a total of 2 cases, both of them in 2020.²³¹ One of the decisions made during the reporting period concerned

²³⁰ Organic Law of Georgia on Common Courts, Article 75¹, Section 8, Subsection "f"

²³¹ 2021 Statistical Information on Disciplinary Proceedings (Available at: <https://bit.ly/3vC6c7i>, Accessed on: 02.05.2022); 2021 Statistical Information on Disciplinary Proceedings (Available at: <https://bit.ly/3OTF70d>, Accessed on: 02.05.2022)

the judge's obvious disrespect towards a participant in the trial, and the second related to the judge's refusal to self-recuse the case. The Panel found the judges guilty in both cases. However, in the first case, a reproof was used as a disciplinary sanction, and in the second case, a private recommendation card was used as a measure of disciplinary liability.

It is important to clarify that under organic law, a Disciplinary Panel makes decisions based on mutually consistent and convincing evidence.²³² To do so, it should be determined a) whether the judge committed the act, b) whether the act in question is a disciplinary misconduct, and c) whether the judge is culpable. Only if all three circumstances are confirmed the Disciplinary Panel can make a decision to impose disciplinary liability on the judge. Otherwise makes an acquittal.²³³ Moreover, it is interesting to note that the Disciplinary Panel has the right to change the qualification of a judge's action totally with any kind of disciplinary misconduct provided by the organic law.²³⁴

Expressing obvious disrespect by the judge to the trial participant²³⁵

In the present case, the appellant pointed out that in hearing the criminal case of his client, the judge often violated the principle of adversarial proceedings and equality. Moreover, at the trial, the judge stopped the witness from testifying and stated his/her views on the testimony in advance.

According to the investigation of the case, based on the questions of the accused's representative, the witness was talking about the accused's private life, which is why the judge stopped the interrogation on his own initiative and asked the lawyer to explain what was the connection between the questions asked by him about the defendant's private life and the case. Moreover, the judge publicly expressed the view that the lawyer might have pre-distributed a witness with the answers he or she wanted. According to the judge, the prosecution showed an indifferent attitude and unfortunately was not involved in the process. Consequently, he interrupted the interrogation process as an exception, as it is a priority for every citizen to have the feeling that his personal life will not become the subject of irrelevant discussions in a public court session.

The Disciplinary Panel's deliberations regarding the legal standards set out in the decision say almost nothing new. It reiterates the international and national legal acts and explanations set out in the decisions of the Council and the Inspector's conclusions on the importance of trusting the Court, as well as the importance of adhering to the principles of impartiality of judges and equality of arms. In the judgment, we mostly do not encounter the argumentation on the individual circumstances of the case and their legal assessment.

Finally, according to the final part of the decision, "the Disciplinary Panel, in deciding the issue of imposing a disciplinary sanction, took into account the professional and moral reputation of the judge, the content of the disciplinary misconduct, the consequences." The Panel's reasoning is limited to this,

²³² Organic Law of Georgia on Common Courts, Article 75⁴⁴, Section 1

²³³ Ibid

²³⁴ Ibid, Section 75³⁹

²³⁵ Decision of the Disciplinary Panel of Judges of Common Courts of Georgia, November 09, 2020, № 1/01-2020

and it is unclear what each of the criteria means by which it imposes a disciplinary liability and a sanction - a reproof to the judge.

Refusal by the judge to self-recuse himself from the case²³⁶

In the present case, the appellant referred to the judge's friendly relationship with a representative of the opposing party. However, as the investigation of the factual circumstances of the case confirmed, the representative was, in fact, the judge's wife. According to the judge himself, he fully admitted the disciplinary charge and further clarified that he should not have participated in the consideration of the complaint subject to a time limit, however, the party did not suffer any damage in terms of results, as the lawsuit against him had already been completed and the decision was final. She was not aware of her involvement as a spouse in the case and learned of it after a disciplinary complaint was lodged.

The reasoning in the Panel's decision, as in the previous one, is largely limited to references to standards set by international and domestic instruments, and we rarely encounter extensive, consistent reasoning in the assessment of individual circumstances of the case based on those standards. Such reasoning is scarce, but still it is individualized only in the part of the decision that concerns the substantiation of a private recommendation card presented to the judge. In particular, according to the Disciplinary Panel, he took into account the fact that "a judge's refusal to recuse/self-recuse a case while considering a complaint subject to a time limit, when there was a clear legal ground for avoiding the case, is not inspired by elements of the crime." In addition, the judge's business and moral reputation (no disciplinary liability in the past), the content of the disciplinary misconduct and the consequences (it should be noted that the case was heard without an oral hearing and also, no harm was done) should be taken into account.

Finally, it should be noted that the practice of the Disciplinary Panel of Judges of Common Courts is scarce in general and especially during the reporting period. However, the analysis of the decisions discussed above clearly indicates that the Panel's legal justifications are of a template nature. However, the reasoning given in the judgments significantly replicates the legal standards set by other disciplinary bodies, and the Disciplinary Panel is less likely to substantiate on its own, taking into account the individual circumstances of the case in a particular instance. Finally, in the decisions under consideration, there are no uniform approaches in terms of substantiation. All of the above do not meet the standards set for the accurate and proper functioning of the disciplinary system, fail to ensure a high degree of substantiation of decisions, consistent, uniform practice, and the need to take into account the individual characteristics of the case.

²³⁶ Decision of the Disciplinary Panel of Judges of the Common Courts of Georgia December 11, 2020, №2/01-2020

VII. Decisions of the Disciplinary Chamber

During the reporting period, the Disciplinary Chamber of the Supreme Court of Georgia made a total of 2 decisions, although these complaints were related to the issues of disciplinary liability of lawyers.²³⁷ Consequently, no case has been filed with the Disciplinary Chamber during this period regarding the disciplinary liability of judges and no decisions have been made.²³⁸

Although the present monitoring report covers a period of 2020-2021 and analysis of the practice of disciplinary proceedings during this period, the decision of the Disciplinary Chamber of 27 September 2019,²³⁹ which refers to the most frequently mentioned misconduct by the authors of the disciplinary complaints - unreasonable delay in the hearing of the case (version of the Organic Law valid until January 1, 2020), is interesting and should be noted. Accordingly, the present decision of the Disciplinary Chamber is an important precedent in terms of practice analysis.

In the present case, the reason for the disciplinary action of the judge was the fact that the accused, for a certain period of time, due to his own health condition, did not appear at the trial, although he did not want to hold a hearing without him. Accordingly, the judge repeatedly postponed the hearing. However, according to the complainant, in most cases, the proceedings were adjourned in such a way that the defendant or his lawyer did not submit to the court a document proving that the defendant did not appear at the hearings for an honorable reason. Accordingly, the Disciplinary Panel, in its decision, held that the hearing of the case had been unreasonably delayed by the judge and that his decisions lacked reasonable substantiation. The Panel took into account the position of the accused but also indicated that the judge could use the opportunity provided by the procedural law to hold the hearing outside the courtroom²⁴⁰ or to separate the case into separate proceedings.²⁴¹ Finally, a reproof was taken as a disciplinary sanction in this case.

The decision of the Panel was appealed by the judge to the Disciplinary Chamber and requested the reversal of this decision on the following grounds: The High Council/Panel of Justice is not authorized to limit the judge with the so-called reference to a "reasonable time" when, given the state of health of the accused, the hearing of the case would have violated the right to a fair trial; Such a restriction is also "paradoxical" in terms of protecting the rights of the victim, as procedural guarantees exist primarily in favor of the accused; B) Disciplinary prosecution is illegal - the terms of disciplinary prosecution and disciplinary action are significantly violated by both the Independent Inspector and the High Council of Justice; Moreover, the case was substantially considered and decided by the incomplete composition of the Panel.

²³⁷ Statistics of Discussing Complaints in the Disciplinary Chamber of the Supreme Court of Georgia, 2020, (Available at: <https://bit.ly/3OTuW2z>, Accessed on: 02.05.2022)

²³⁸ Official letter of the Supreme Court of Georgia (in response to the letter NC 01/380 of October 13, 2021 of the Social Justice Center)

²³⁹ Judgment of the Disciplinary Chamber of the Supreme Court of Georgia of September 27, 2019 №სსკ-26-19

²⁴⁰ The first section of Article 185 of the Criminal Procedure Code of Georgia

²⁴¹ Ibid, Article 110, Section 2

Interestingly, the Disciplinary Chamber fully shared the judge's argument regarding the illegality of the Panel's decision and fully upheld it. However, the Chamber's argument is particularly noteworthy in the decision, which reveals the flawed nature of the decisions and actions of the High Council of Justice and the Disciplinary Panel in the proceedings.

First of all, the decision emphasizes the importance of the "foreseeability" of disciplinary misconduct and penalties and the definition of the term "unfounded", which should indicate the culpable non-performance of the judicial duties. This is directly related to the reasoning developed in the decision of the Disciplinary Panel. In particular, the case was initially disputed within the general timeframe established by law. However, we no longer encounter this argumentation in the final decision of both the Council and the Panel. Instead, an unreasonable delay in the hearing of the case has been established only due to the unreasonable delay of the ongoing proceedings within the time limit established by law, which the Disciplinary Chamber considered unjustified. Especially considering the fact that the representative of the Council did not refer to the legal provision that the judge violated, but took into account the circumstances of the case as a whole.

However, according to the Disciplinary Chamber, the judge attached to his written explanation a number of documents (including a document that certifies the lawyer's presence at the legal aid service's event and leaves, as well as information on the defendant's health, which did not contain information about just one day of illness) excluding the fact of unjustified postponement of disputed hearings. However, the Panel, in its decision, did not evaluate this evidence at all, including the fact that the prosecution did not present any evidence that would call into question the health status of the accused. As for the argument of the Panel, whether to use the possibility of holding the hearing outside the courtroom or separating the case into separate proceedings, the procedural law provides for such decisions only on the motion of a party and excludes the initiative of the judge. As neither party has appealed to a judge with a similar motion, the Panel's reasoning in this part is also incorrect.

Finally, according to the explanation of the Disciplinary Chamber, the legislation does not recognize a "definition of a reasonable time" and it must be determined in each case by an assessment of individual circumstances. The demand for a reasonable time is primarily in the interests of the accused and not the other participants in the proceedings (including the victim). Another problematic aspect of the Panel's decision, however, was the fact that it did not examine the individual circumstances in determining the number of cases pending before the judge and its workload.

Unfortunately, the Disciplinary Chamber did not consider the judge's arguments concerning the illegality of the disciplinary proceedings and the significant violations of the time limits. As already mentioned, the issue of meeting deadlines in disciplinary proceedings is a significant challenge and is constantly violated, especially by the High Council of Justice. Therefore, it would be important for the Disciplinary Chamber to discuss this issue in detail and with arguments.

The decision of the Disciplinary Chamber of the Supreme Court of Georgia is an important precedent, which allows for indirectly assessing some of the decisions of other bodies involved in disciplinary proceedings, which are not individually available due to the legislative requirement of confidentiality of the process. However, from the analysis of the reviewed decision, it is clear that the quality of the

reasoning of the decisions of the Disciplinary Chamber and the consistent argumentation on the individual circumstances of the case is much higher, which is welcomed. However, the scarcity of practice does not allow us to draw more generalized conclusions.

Conclusion and recommendations

The changes made in the framework of the "fourth wave" of judicial reform were a significant step forward in improving the system of disciplinary liability. Certain institutional, procedural or substantive issues have been significantly improved. However, a number of problems remained in the legislation and practice that needed further refinement. In contrast, the legislative changes of 30 December 2021 were an explicit step backward in terms of the institutional arrangement of the bodies involved in disciplinary proceedings, transparency, and effectiveness of the system, as well as independence guarantees for individual judges. The regulation of disciplinary proceedings, which was adopted by the Parliament of Georgia hastily and without widespread public involvement, fails to meet the real legal and practical challenges and to ensure a fair and reasonable balance between the independence and accountability of individual judges.

To improve the system of disciplinary liability, it is important to take the following effective and comprehensive steps:

- To strengthen the independence of the inspector and to ensure the real involvement of non-judicial members in the decision-making process, it is important that the legislation provides for the selection of an inspector by consensus, by a two-thirds majority of the High Council members (according to this principle consent of 2/3 of judge and non-judge members should be necessary for the selection decision); It is also important that the competition for the selection of the inspector and the data regarding the participants be publicized;
- Decision-making by the High Council of Justice on disciplinary matters should also be founded on the principle of consensus and the Council should make decisions based on the principle of a double 2/3 majority;
- To ensure that the Disciplinary Panel makes a fair decision (the ability to take into account the opinion of the majority of members as much as possible), it is necessary that the legislation defines that the decision is made by a majority vote of the full composition of the Panel;
- It is important to take effective steps to address the problem of delays in the disciplinary proceedings, including the setting of adequate procedural deadlines. It is also necessary to increase the frequency of meetings of the High Council of Justice discussing disciplinary cases;
- For greater transparency of disciplinary proceedings, it is important that the obligation to publish the conclusions prepared by the Independent Inspector, as well as the decisions of the High Council of Justice on disciplinary liability, with redacted data about the parties, be defined by legislation;
- It is necessary to establish a uniform, consistent and predictable practice in the process of disciplinary proceedings and to increase the quality of substantiation of the adopted acts. This particularly applies to the decisions of the High Council of Justice and the Disciplinary Panel;

- It is necessary to encourage individual judges to exercise the right to request the disclosure of disciplinary hearings, as well as to support the practice when the members of the High Council of Justice express a different opinion on the decisions made by the council;
- To exclude the risks of violating the independence guarantees and of interfering with the performance of judicial duties in the system of disciplinary liability, it is important to make the rule of recusing judges from the review of cases more foreseeable;
- It is necessary to further refine the composition of disciplinary offenses; Also, when interpreting specific disciplinary misconduct, a broad interpretation of the norms should be avoided in order to exclude the risks of influencing an individual judge;
- Clear legislative formulation of a judge's culpability in relation to damage caused by misconduct is required; It is also important that the purposes of disciplinary proceedings and the imposition of sanctions be set out in the legislation.