

Responses of the High Council of Justice of Georgia to the Questionnaire of the Special Rapporteur on Independence of Judges and Lawyers

1. What are the types of misbehavior that may give rise to disciplinary proceedings against judges? Are these violations codified in national legislation and/or professional codes of ethics?

Organic Law of Georgia on Common Courts (*hereinafter* the Organic Law) sets forth the regulations for the disciplinary procedures against judges of common courts. According to the article 75¹ of the Organic Law, a judge shall be imposed disciplinary liability and penalty for committing a disciplinary misconduct. Types of disciplinary misconduct are as follows:

- Actions that violate the principle of independence;
- Actions that violate the principle of impartiality;
- Actions that violate the principle of good faith;
- Actions that violate the principle of decency;
- Actions that violate the principle of equality;
- Actions that violate the principle of competence and generosity;
- Any other action that do not fit the status of a judge.

2. Please describe the procedure for bringing disciplinary complaints against judges. Who can initiate disciplinary proceedings against a judge? Which body is responsible for receiving disciplinary complaints and conducting disciplinary investigations? Can decision of the disciplinary body appealed before a competent court?

Since March 2017, following the third wave of judicial reforms in Georgia, only an Independent Inspector of the High Council of Justice of Georgia has the authority to initiate disciplinary proceedings against a judge.

Independent Inspector is entitled to initiate disciplinary proceedings on the basis of a complaint or application filed by any person other than an anonymous complaint or application. Complaints can be filed either directly with the chancellery of the Independent Inspector's Office, or electronically, by email (email address of the Independent Inspector's Office - disciplinary@cour.ge) or by uploading a complaint to the official website (www.independent-inspector.ge).

Only the Independent Inspector is authorized to conduct the preliminary investigation on the basis of the complaint against a judge. Following the investigation, the Independent Inspector prepares a conclusion, which is submitted to the High Council of Justice of Georgia (*hereinafter* the HCoJ) for consideration.

After considering a conclusion provided by the Independent Inspector, the HCoJ shall make a decision on charging a judge (imposing disciplinary charges) or terminating the disciplinary proceedings. In case a judge is held accountable (e.i. he/she is imposed disciplinary charges), the case shall be forwarded for review to the Disciplinary Board of the Judges of the Common Courts.

The decision of the Disciplinary Board may be appealed to the Disciplinary Chamber of the Supreme Court.

3. Please provide information on the disciplinary penalties that may be imposed on the judge if found guilty of a professional misconduct. Are these penalties codified in the national legislation and/or professional codes of ethics?

The types of disciplinary penalties are provided for in the Organic Law of Georgia on Common Courts.

The types of disciplinary penalties are:

1. Reprimand;
2. Reproach;
3. Severe reproach;
4. Reduction of salary from 5% to 20% for not more than 6 months;
5. Dismissal of the Chairman of the Court, the First Deputy Chairman or Deputy Chairman of the Court, the Chairman of the Judicial Panel or the Chamber;
6. Dismissal of a judge.

It is also possible to use "recommendation letter" that is not a disciplinary penalty, but is measure of disciplinary action and includes recommendations for the judge.

4. Please provide detailed information, including disaggregated data, on the number of judges that have been subject to disciplinary proceedings in the last 10 years. How many of them were found guilty of a disciplinary misconduct? How many of them were removed from office?

a. Information on disciplinary proceedings carried out as of 15 March 2017

As noted above, the Independent Inspector's Office was established based on February 8, 2017 legislative changes and became fully functional since 15 March 2017.

From 15 March 2017 to 31 December 2019, 664 complaints were submitted to the Independent Inspector's Office for consideration. During the reporting period, the independent inspector had studied around 98.8% of the received complaints and prepared relevant reports.

During the reporting period, the Independent Inspector submitted to the HCoJ the 214 conclusions prepared on the basis of 231 complaints.¹

As a result of the discussion of these conclusions, the HCoJ made 274 decisions. Among them, 235 decisions on termination of disciplinary proceedings and 39 decisions on initiation of disciplinary proceedings against judges.

Out of the mentioned 39 cases

- 11 are pending;
- On 20 cases the HCoJ decided to terminate the disciplinary proceedings;
- On 8 cases disciplinary liabilities were imposed on judges. More precisely, as a result of the hearings held at the Disciplinary Board, on 4 out of 8 cases judges were acquitted. On 3 cases judges were addressed with a private recommendation letter, and on 1 case a judge was imposed a reprimand as a disciplinary sanction, which was later changed by the decision of the Disciplinary Chamber and the judge were acquitted.

b. Information on disciplinary proceedings carried out from 2010 until 15 March 2017

Prior to 2017, the disciplinary proceedings against judges could be conducted by:

- Chairman of the Supreme Court of Georgia - against the judges of the Supreme Court of Georgia, Courts of Appeals and District (City) Courts;
- Chairman of the Court of Appeal - against the judges of the relevant Court of Appeal, and the judges of those district (city) courts under its territorial jurisdiction;
- The High Council of Justice of Georgia (HCoJ) - against all judges of the common courts of Georgia.

Decisions made by the mentioned authorities authorized to initiate disciplinary proceedings were submitted to the HCoJ for consideration.

Between 2010-2017 disciplinary proceedings were initiated on the basis of 3,950 complaints (statements).²

As a result of the review of the complaints, on 2101 cases the proceedings against judges were terminated. On 104 cases issuing private recommendation letters had been used as a disciplinary action. Disciplinary charges had been brought and judges had given explanations on 166 cases³, out of which on 41 cases judges were imposed disciplinary liability (and the cases were forwarded to the Disciplinary Board); on 27 cases judges were addressed with a private recommendation letter and 42 cases were terminated. It should be noted that the decision on 9 cases has not been made. The HCoJ has 41 pending cases.

As a result of the consideration of the 41 cases at the Disciplinary Board, a reprimand was applied to the judges on 11 cases, a reproach was applied on 13 cases, and a severe reproach was used on 2 cases.

¹ Independent inspector is authorized to combine two or more disciplinary cases against one judge on different grounds. Accordingly, the number of complaints received and the conclusions drawn are different.

² Some statements may have been merged on the basis of repeated complaints on the same issues and some of the complaints may have been merged into one. Consequently, the sum of the applications and decisions adopted may appear different in numbers.

³ Some cases were merged at the first stage of disciplinary proceedings and one case number was assigned. Consequently, the number of decisions made on the initiation of disciplinary proceedings and the results of cases are different.

Judges were removed from the office on 2 cases, on 5 cases Disciplinary Board decided to acquit judges, disciplinary proceedings were terminated on 14 cases and 7 judges were affected by a private recommendation letter.

The decision of the Disciplinary Board was appealed to the Disciplinary Chamber of the Supreme Court on 12 cases⁴:

- In one case the decision of the Disciplinary Board was quashed and the case was terminated;
- In 2 cases the Disciplinary Chamber sustained the decision of the Disciplinary Board, e.i. one judge was removed from the office and one judge had been imposed a reprimand;
- In one case the decision was changed and the judge was acquitted;
- In one case the decision was changed and reprimand was applied against the judge instead of reproach;
- In 5 cases decision of the HCoJ was changed because of newly discovered circumstances and the case was sent back to Disciplinary Board;
- In 2 cases the decisions were quashed and disciplinary procedures were terminated due to the expiry of statute of limitations.

Civil and Criminal liability

5. Can a judge be subject to civil liability and/or criminal responsibility as a result of exercise of his or her functions? If so, in which cases? Who may lodge a complaint against the judge? And which authority is responsible of adjudicating of these cases?

Pursuant to Article 63, paragraph 2 of the Constitution of Georgia, a judge shall enjoy immunity. Criminal proceedings against a judge, his/her arrest or detention, and searches of his/her place of residence, place of work, vehicle or person shall be permitted only with the consent of the High Council of Justice. An exception may be made if a judge is caught at the crime scene, in which case the High Council of Justice shall be notified immediately. Unless the High Council of Justice consents to the detention, the detained judge shall be released immediately. Under Article 40, paragraph 1 of the Organic Law of Georgia on Common Courts, the decision on giving consent shall be made by the High Council of Justice of Georgia by a majority of two-thirds of the total number of members. Similar standard is set forth in Article 169, paragraph 7 of the Criminal Procedural Code of Georgia, which prescribes that a consent of the High Council of Justice shall be required for bringing charges against a judge of a common court.

Investigation of a crime committed by a judge belongs to the investigative jurisdiction of a prosecutor. Procedural guidance and supervision of an investigation, prosecution and supporting the state prosecution is exercised by a prosecutor's office. As regards a court hearing, a criminal charge of a judge is heard by a judge of a court which has jurisdiction.

Pursuant to Article 1005 of the Civil Code of Georgia, if a public servant breaches his/her official duty in relation to other persons intentionally or by gross negligence, then the State or the body by which the servant is employed shall pay for the damage inflicted. When the damage is caused intentionally or by gross negligence, the public servant together with the State shall be jointly and severally liable. The liability for damages shall not arise if the injured person did not try, intentionally or by gross negligence, to avert the damage by lawful activity. The damage inflicted on a rehabilitated person by an illegal conviction, illegal prosecution, illegal detention as a measure of restraint, improper imposition of an administrative penalty in the form of administrative detention, disciplinary detention or corrective labour shall be compensated for by the State irrespective of the fault of the investigation, prosecution or court officials. If the damage is caused intentionally or by gross negligence, these persons and the State shall be jointly and severally liable.

Pursuant to Article 3, subparagraph "b" of the Law on Public Service, a public (state) servant is a person holding an elected or appointed position, and whose legal status and powers are defined under the Constitution of Georgia and/or a relevant legislative act. Thus, a judge may become liable for reimbursing damages set forth in Article 1005 of the Civil Code. A person, who has incurred damages directly by an action of a judge, may claim damages. The court is entitled to settle such dispute.

⁴ Because the Disciplinary Board and the Disciplinary Chamber had to consider the statements of the former judges regarding the resumption of the trial due to the newly discovered circumstances, the number of decisions made by the High Council of Justice and the number of decisions taken by the Disciplinary Board / Chamber are different .

6. The High Council of Justice of Georgia and the Independent Inspector does not have any information about the cases about civil liability and/or criminal responsibility proceedings of judges.