



Montenegro

Permanent Mission of Montenegro to the
United Nations Office and other International Organizations
in Geneva

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The Permanent Mission of Montenegro to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights, and with reference to the letter of the Special Rapporteur on the independence of judges and lawyers Mr. Diego Garcia-Sayan, dated 3 April 2020, has the honor to submit the responses provided by the Government of Montenegro to the questionnaire of the Special Rapporteur.

The Permanent Mission of Montenegro to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 8 June 2020

Office of the United Nations High Commissioner for Human Rights
GENEVA



Questionnaire of the Special Rapporteur on the independence of judges and lawyers, Mr. Diego Garcia-Sayan – information provided by Montenegro

Disciplinary liability

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

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

Question 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 national legislation and/or professional codes of ethics?

Response

The answers to the first three questions are contained in the **Law on Judicial Council and Judges – chapter VII DISCIPLINARY LIABILITY AND DISMISSAL**, Articles 108 to 129.

Translation of this Law into English can be downloaded from the web portal of the Judicial Council, link:<http://sudovi.me/static/sdsv/doc/2437.pdf>

The above Articles of the Law describe in details the examples of unworthy conduct of judges that can lead to initiation of disciplinary proceedings, procedure for initiating the proceedings, disciplinary sanctions, authorities of the Disciplinary Plaintiff, the bodies with authority to establish disciplinary responsibility, the manner of rendering decisions, as well as other matters related to the comprehensive field of disciplinary liability.

In addition to the Disciplinary Plaintiff, Disciplinary Council is established by the Judicial Council. It is a permanent body whose composition and decisions can be found in the following link - <http://sudovi.me/sdsv/sadrzaj/D7bR>

In addition to the Disciplinary Council and Disciplinary Plaintiff, there is also the Commission for Code of Ethics of Judges. Their decisions and the adopted guidelines can be found on the portal:<http://sudovi.me/sdsv/sadrzaj/8Pmr>

Article 11 paragraph 3 of the Law on Judicial Council and Judges reads as follows: "Anyone may address the Commission for Code of Ethics for Judges requesting an opinion on whether certain conduct of a judge is in accordance with the Code of Ethics for Judges." In our court system there are no disciplinary punishments for violation of the Code of Ethics, but the Commission issues an opinion on whether the Code of Ethics was violated or not.

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

Response

2019 – One disciplinary procedure was conducted and it was established that the judge committed a severe disciplinary violation. The judge was punished by a 20% salary reduction for the period of 3 months.

2018– There were no proposals for establishing disciplinary liability of any judge, so Disciplinary Plaintiff did not act.

2017– Disciplinary Plaintiff has filed one proposal for establishing disciplinary liability of a judge. After the procedure was conducted, Disciplinary Council rendered the decision that the judge was liable for the violation. The judge was imposed the disciplinary measure of 20% reduction in the salary for the period of up to 3 months. According to Article 121 paragraph 3 of the Law on Judicial Council and Judges, the Judicial Council accepted the request of the Disciplinary Plaintiff for temporary removal of one judge of the Basic Court in Podgorica, and the criminal procedure was initiated against this judge due to the extended criminal offence of counterfeiting the official document defined in Article 414 paragraph 1 in relation to Article 49 of the Criminal Code of Montenegro, as the criminal offence that makes the judge unworthy of the judicial office. This procedure is still in progress.

2016 – One proposal for establishing disciplinary liability of a judge was filed. After the procedure was conducted, the Disciplinary Council rejected the proposal and found that the proposal should be considered as the Initiative for establishing whether there was a violation of the Code of Ethics for Judges. Therefore, the proposal was forwarded to the Commission for the Code of Ethics for Judges.

2015 – **Three** disciplinary proceedings against judges were conducted due to the improper performance in the judicial office. **The sanction of warning** was issued in all three cases.

2014 – **Three** disciplinary proceedings against judges were conducted due to the improper performance in the judicial office because they did not process their decisions within the required period of time and they had improper attitude towards the participants in the court proceedings

and court employees. In two cases the disciplinary measure of 20% reduction in the salary for the period of two months was imposed, while the measure of warning was imposed in the third case.

2013 - Five requests were filed to initiate disciplinary proceedings due to the improper performance in the judicial office defined in Article 33 paragraph 1 item 5 of the Law on Courts. Two proposals were rejected as ill-founded, while three proposals were rejected as untimely.

2012- One proposal for initiating disciplinary proceedings was filed. Decision was rendered and the measure of warning was issued due to improper performance in the judicial office.

2011 - Disciplinary Commission was filed **one** proposal for initiating disciplinary proceedings against a judge. This proposal was decided upon in 2012.

In 2010 there was one proposal for initiating a disciplinary procedure against a judge. That procedure was terminated because there were elements for dismissal of the judge and the file was forwarded to the Judicial Council. In the meeting of the Judicial Council of 16 November 2010, attended by the judge in person, the Proponent accepted the opinion of the Disciplinary Commission that there were reasons for dismissal of the judge and that therefore the proposal for establishing disciplinary liability was to be considered as the proposal for dismissal.

Since the President of the Court accepted the decision of the Disciplinary Commission as his proposal for dismissal of the judge, the Judicial Council in the same meeting established that the reasons for dismissal of the judge existed and lied in the unprofessional performance in the judicial office, defined as one of the reasons for dismissal in Article 121 paragraph 3 of the Constitution of Montenegro. By the Decision of 8 February 2011 the judge was dismissed.

2010 – Three proposals for initiating disciplinary procedures were filed. One was rejected as ill-founded. In one of the procedures the judge was imposed the sanction of 20% reduction in salary for the period of one month. In the third case the Disciplinary Commission terminated the procedure because there were elements for dismissal of the judge. That case was forwarded to the Judicial Council. The judge in the mean time lodged the request for termination of office and the Judicial Council terminated the procedure.

2009 – Presidents of the courts filed in 2009 three (3) proposals to Disciplinary Commission for initiating disciplinary procedures against judges. One proposal was rejected as ill-founded, one was adopted and the judge was imposed the disciplinary measure of 20% reduction in the salary for the duration of one month. In one case the Disciplinary Commission established that there were elements for dismissal of the judge and therefore the procedure was terminated and the case forwarded to the Judicial Council. Deciding upon the proposal for dismissal, the Judicial Council terminated the procedure since the proponent withdrew the proposal for dismissal because the judge filed the request for termination of office during the procedure.

Civil and criminal liability

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

Question 6 - Please provide detailed information, including disaggregated data, on the number of judges that have been subject to civil/criminal liability proceedings in the last ten years. How many of them were found liable for judicial errors? What was the outcome of these proceedings?

Response

The judges can be subject to civil and criminal liability as a consequence of performing the judicial office. Complaints can be lodged by the body or a party that suffered damage due to illegal performance of judicial office. Articles 103, 104 and 105 of the Law on Judicial Council and Judges stipulate issues of imposing detention on a judge, liability for damage and termination of office. Article 122 of the Constitution of Montenegro deals with the functional immunity of judges and stipulates that the judge may not be detained without approval of the Judicial Council in the procedure initiated due to the criminal offence committed within performing the judicial office.

In the last ten years the procedure was conducted against three judges. They ended in final judgments and they were initiated due to the criminal offences of corruption, domestic violence and abuse of office.