

**GROUP OF  
INDEPENDENT  
LAWYERS**



**JUDICIAL  
DISCIPLINARY  
SYSTEM IN  
GEORGIA AND  
ABROAD**



**TBILISI 2021**

# GROUP OF INDEPENDENT LAWYERS



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# JUDICIAL DISCIPLINARY SYSTEM IN GEORGIA AND ABROAD

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## INTRODUCTION

Disciplinary liability of judges is one form of judicial accountability. The system of disciplinary liability determines which actions of a judge are disciplined and what sanctions can be imposed on a judge, as well as effective mechanisms for detecting, investigating and adjudicating disciplinary misconduct. The system of disciplinary responsibility of judges should maintain a balance between the independence and accountability of the judge, should enjoy public trust<sup>1</sup>, should not violate the rights of judges, should maintain a balance between confidentiality and transparency<sup>2</sup>.

During the last 10 years, the system of disciplinary responsibility of judges in Georgia has undergone many changes. Both substantive and procedural legislation have been changed and refined, as well as the rules for the formation of disciplinary bodies. Nevertheless, it must be said that the disciplinary system never adequately met the requirements placed on it. If before 2012 the system of disciplinary responsibility was used to punish and intimidate politically disobedient judges, after 2012 it became a mechanism for corporate self-protection and pressure upon judges disloyal to the clan<sup>3</sup>. The disciplinary system, like all administrative levers, is in the hands of clan which controls justice through formal and informal mechanisms<sup>4</sup>. The credibility of the disciplinary system is low among court users.

Within the framework of the project, the group of independent lawyers studied the international standards of disciplinary responsibility of judges, as well as foreign countries, especially Eastern European countries (Hungary, Czech Republic, Slovakia, Lithuania, Hungary, Poland, Ukraine, Moldova, Romania, Croatia, Slovenia).

The experience of foreign countries shows that in transitional democracies, a disciplinary mechanism can be used to both for politically motivated repression and avoidance of liability for certain judges<sup>5</sup>.

In general, the existing legal framework in Georgia is in line with both international standards and the experience of advanced countries, although the current model of arranging and functioning of disciplinary bodies needs to be revised taking into account the specific conditions created in Georgia.

1 [1] ENCJ, Councils for the Judiciary Report, 2010-2011, par. 3.11 [https://www.encj.eu/images/stories/pdf/working-groups/report\\_project\\_team\\_councils\\_for\\_the\\_judiciary\\_2010\\_2011.pdf](https://www.encj.eu/images/stories/pdf/working-groups/report_project_team_councils_for_the_judiciary_2010_2011.pdf)

2 see. Also, the Need to introduce the Independent Inspector service in the Common Court system, [http://www.supremecourt.ge/files/b\\_upload-file/pdf/nino-gvenetadzis-moxsenebis-sruli-texti.pdf](http://www.supremecourt.ge/files/b_upload-file/pdf/nino-gvenetadzis-moxsenebis-sruli-texti.pdf)

3 The term “clan” refers to an interconnected group of judges who possess the levers of governing the court and exercising political control over the judiciary. See. E.g. Tsikarishvili K. Clan based government in Judiciary since 2007 - [shorturl.at/htBW5](http://shorturl.at/htBW5)

4 see. E.g. Tsikarishvili K., Clan Based Governance in Georgia Judiciary from 2007 till Present,, [shorturl.at/htBW5](http://shorturl.at/htBW5)

5 E.g. Ukrainian Experience, Halyna Chyzhyk, How to Achieve Successful Judicial Reform in Transition Democracies: Ukraine’s Recipe, <https://drive.google.com/file/d/16KgIH967jo2rYcQUGEfdNXPIF382EiiY/view>; See also OHCHR Report, Disciplinary measures against judges and the use of ‘disguised’ sanctions, response from Bulgarian Judges’

# 1. DEVELOPMENT OF THE DISCIPLINARY SYSTEM IN GEORGIA – SHORTCOMINGS AND RECENT LEGISLATIVE CHANGES

Until 2012, there was a strict disciplinary policy in the common courts of Georgia, which was often used as a mechanism to put pressure on judges<sup>6</sup>. Among the shortcomings of the disciplinary system, the following was particularly noteworthy.

- The decisions and disciplinary proceedings of the Disciplinary Board were closed and neither the public nor other judges had access to the content of these decisions;
- Judges were often punished for formal violations that did not cause any harm or that could be remedied by appeal and cassation<sup>7</sup>;
- detection of violations was often done proactively, with a reporting system, which enabled selection, detection and punishment of unwanted judges<sup>8</sup>;
- Disciplinary body - The High Council of Justice staffed the body reviewing the merits of disciplinary cases - the Disciplinary Board, which is why there was no formal mechanism for independent review of disciplinary cases;
- The investigative body had no formal guarantees of independence;

Since 2012, a number of important legislative changes have taken place in the system of disciplinary proceedings under the 4 waves of judicial reform, including the following:

- A separate disciplinary body, the Disciplinary Board, has been set up, formally independent of the High Council of Justice;
- A specialized body for investigating disciplinary cases was introduced - the Independent Inspector;
- The rights of judges in disciplinary proceedings have increased;
- A detailed list of disciplinary misconduct was approved, and a general reference to violations of judicial ethics was revoked;
- Decisions of the Disciplinary Board and the High Council of Justice are published without personal data;
- At the request of the judge, it became possible to make public the meetings of the Council of Justice and the Disciplinary Board on disciplinary matters.

The 2019 legislative amendment removed the non-performance or inappropriate performance of a duty by the judge from the list of disciplinary misconduct.

Despite these changes, the disciplinary system still failed to gain public trust. A 2020 study found that a large proportion of practicing attorneys<sup>9</sup> do not trust the disciplinary system, which is why many attorneys refrain from filing a disciplinary complaint.

6 E.g. Article 42 of the Constitution, a survey of practicing lawyers on the factors hindering the independence of a judges in 2006-2016, 2017.

7 See Practice and Statistics of the Disciplinary Board of Judges of General Courts, [dcj.court.ge](http://dcj.court.ge)

8 The need to introduce an Independent Inspector in the Common Court system, the essence and justification of the proposed changes, 2015 <https://bit.ly/3oiLrqR>

9 Rights Georgia Report on monitoring of disciplinary proceedings by Independent Inspector and the High Council of Justice, 2020 (sponsored by the East-West Management Institute Project USAID / PRoLOG).

According to a study conducted by “Rights Georgia” in 2020, the disciplinary system reveals signs of corporatism and favoritism and is ineffective. The problem is the proper substantiation of disciplinary decisions; There are cases when disciplinary cases are terminated due to lack of quorum, which can be a mechanism to divert liability from a judge; When the complaint concerns the case delay, the judges are routinely released from liability and -there is an inadequate reaction to the disciplinary violations reported in media<sup>10</sup>.

The same study also identified legislative gaps, in particular the need to refine the system of disciplinary misconduct; The study recommended that the rights of both the judge and the appellant must be extended; The number of votes required to initiate disciplinary proceedings in the High Council of Justice must be reduced; The competition for the selection of an Independent Inspector should be refined;

As to improper performance of judicial duties as a basis for disciplinary liability. Accordingly, as of today, except in certain cases, intentional or negligent violation of the law by a judge is no longer punishable, even if it results in irreparable damage<sup>11</sup>. This can be seen as a step towards the independence of judges, but on the other hand it can create a certain vacuum in terms of judicial accountability. In an ideal system, gross legal errors which are of systematic nature or intentional violations of law should be punished by discipline, but in Georgia while there is a high risk of abuse of disciplinary power, such change is not recommended at this stage. By now, we can recommend one disciplinary violation envisaged in Moldova: Conduct of the judge committed in the exercise of justice, which points to the clear and serious incompetence.

Under the 2017 legislative amendment, the authority to conduct disciplinary proceedings and investigations was transferred from many different entities (court presidents, secretary of the High Council of Justice, etc.) to one entity - the Independent Inspector of the High Council of Justice. This change seems to be positive at first glance, as it involves the investigation of a disciplinary case by a specialized officer, but in Georgia it is in fact a monopoly on the initiation and investigation of disciplinary proceedings, which falls into the hands of a dominant group of judges - the clan. Also, the clan is controlling disciplinary prosecution body - the High Council of Justice and a substantive review body - the Disciplinary Board of Judges of Common Courts. Although judges in this body are elected by the Conference of Judges, candidates are represented by only one group of persons. There is no competition between the candidates<sup>12</sup>.

Disciplinary statistics show a change in the disciplinary system: in 2005-2012, 206 judges were disciplined. Of these, 37 judges were dismissed, 29 were severely reprimanded, and 59 judges were reprimanded; The remark was issued to 58 judges, 33 judges were addressed with a private recommendation letter. In 2013-2020, a total of 10 judges were disciplined, against whom the most lenient disciplinary sanctions were applied (5 recommendation letters, 4 reprimands, 1 reprimand)<sup>13</sup>. As it can be seen from this, the Georgian disciplinary system moves between two extremities- until 2012 we had a strict and selective disciplinary policy, and after 2012 we had an overly liberal policy, which in some cases shows the signs of protectionism and favoritism<sup>14</sup>.

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10 Supra note.

11 The wording of the law “improper performance of duties of the judge” enabled the Disciplinary Board to introduce “legal error plus” doctrine in 2013. However, because of elimination of this disciplinary violation from the law, the legal errors (violations of the law) are not punished neither committed by intention nor by negligence. In other words, the judicial performance is no longer subject to discipline (except for those limited cases of bias, discrimination or delay, listed by the law).

12 See. <https://m.facebook.com/HighCouncilofJusticeofGeorgia/photos/a.525314530884940/1383453421737709/?type=3>

13 As it is clear from disciplinary caselaw, in many cases the judges were punished for mere legal errors, which did not entail any damage to the party. There are also clear examples where judges were punished for political disobedience (see for example the case of “Rebel Judges” (<https://old.civil.ge/eng/article.php?id=11416>) However, the comparison of disciplinary statistics before 2012 and after 2012 clearly show a shift of disciplinary policy from “overdiscipline to “underdiscipline”.

14 Rights Georgia “Report on monitoring of disciplinary proceedings by Independent Inspector and the High Council of Justice”, 2020 (sponsored by the East-West Management Institute Project - USAID / PRoLOG). However, in



A review of Georgian legislation shows that the mechanisms for investigating disciplinary cases are weak. Although an Independent Inspector has the ability to retrieve information from state databases for investigation, he or she does not have the right to request a document from a private institution or to call a witness compulsorily, and there is no provision in the disciplinary process to prosecute a witness for perjury

The two-stage procedure of disciplinary investigation in Georgia, within the framework of which there is an artificial barrier in the form of initiating disciplinary proceedings by the High Council of Justice raises questions. In some cases, this mechanism (artificial filter) is used to absolve favorite judges from liability.

So far, disciplinary proceedings remain closed to the public. It is true that with the legislative changes of 2017, the judge was given the right to make disciplinary hearings public, but so far no one has exercised this right.

The issue publicity of disciplinary decisions is problematic. Disciplinary decisions are published in anonymized form which makes them difficult to read and understand. In addition to the anonymity of the judge does not help to increase public confidence in the system. The decisions made by the panel of judges of the common courts should be published in full.

According to the amendment to the Constitution of Georgia of October 13, 2017, dismissal of members of the Supreme Court is possible only by impeachment<sup>15</sup>. According to amendment to the Law on Common Courts on July 21, 2018 disciplinary misconduct may not be a ground for dismissal of a member of the Supreme Court<sup>16</sup>

The two-tier system of disciplinary liability in Georgia, by which all judges for serious disciplinary misconduct can be dismissed except for Supreme Court justices is problematic. On the one hand it puts a certain group of judges in a privileged position and on the other hand it undermines the effectiveness of the disciplinary system in relation to the judges of the Supreme Court. We are not familiar with any foreign country where the dismissal of a Supreme Court judge would be impossible in the event of a serious disciplinary misconduct.

Due to the fact that the selection mechanisms of the disciplinary bodies are in the hands of the clan and there is no reliable mechanism for checking the good faith of the candidate, the Ukrainian experience may be taken into account, which envisages civil society and international participation in the selection process of judges as a Public Integrity Council<sup>17</sup>. Similar mechanism can be envisaged in the election of members of disciplinary bodies.

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some cases the sanction applied is unreasonably lenient, for example in case 2 / 01-2020 in which a judge heard a private complaint in a case where his wife was a party representative, the disciplinary panel applied a private recommendation letter as a sanction. <http://dcj.court.ge/uploads/gadackvetilebebi/123.pdf>

15 The first paragraph of Article 48 of the Constitution of Georgia.

16 Pursuant to Article 43 -2 of the Law on Common Courts of the, a disciplinary misconduct may not constitute grounds for dismissal of a member of the Supreme Court. According to art. 48.1 of the Constitution of Georgia, the Supreme Court Judge may be impeached only for the commission of the crime or breach of Constitution.

17 <https://newjustice.org.ua/en/partners/public-integrity-council/>

## 2. SYSTEM OF DISCIPLINARY RESPONSIBILITY – INTERNATIONAL STANDARDS

International standards concerning the Disciplinary System of Judges are set out in both universal and regional instruments, most of which are of a recommendatory nature. International standards address both the basics of disciplinary liability and the disciplinary process. Among the internationally recognized standards, the following provisions can be singled out:

- Disciplinary liability should be based on pre-established standards of judicial conduct<sup>18</sup>.
- The basics of disciplinary liability should be formulated with sufficient precision to reduce the risks of arbitrariness and subjectivism<sup>19</sup>;
- It is recommended to have an advisory body for judges, which can advise judges on the issues of disciplinary misconduct<sup>20</sup>;
- Judicial error can only be the subject of disciplinary action if it is committed in bad faith, for the benefit or to the detriment of the party or gross negligence<sup>21</sup>;
- The judge's violation of rules of professional conduct may become ground of disciplinary liability, when it is so grave that it can justify disciplinary sanction<sup>22</sup>;
- Anyone who has a claim that has suffered damage due to disciplinary misconduct should have the right to file complaint against the judge<sup>23</sup>;
- The applicant must be notified of the outcomes of the review of disciplinary complaint<sup>24</sup>
- The body conducting the disciplinary investigation should be able to handle clearly unsubstantiated complaints at an early stage<sup>25</sup>;
- At the initial stage, the review of a judge's case may be confidential if the accused judge does not request publicity;<sup>26</sup>
- The investigation should be able to obtain both oral and written evidence<sup>27</sup>;
- The deadlines for investigation, substantive review and sanctioning should be set in advance<sup>28</sup>;

18 UN Basic Principles on the Independence of the Judiciary: Par. 19: Disciplinary action should be determined under established standards of judicial conduct.

19 Joint Opinion of the Venice Commission and the Council of Europe Directorate of Human Rights on the Law on Disciplinary Liability of Moldovan Judges (2014) Par. 16

20 OSCE ODIHR, Standards and Best Practice in Judicial Disciplinary Responsibility, 2018

21 UN Special Rapporteur on the Independence of Lawyers and Judges, 2020. <https://undocs.org/A/75/172>

22 Measures for Effective Implementation of the Bangalore Principles of Judicial Conduct, Art. 15

23 Measures for Effective Implementation of the Bangalore Principles of Judicial Conduct, Art. 15

24 Istanbul Declaration on Transparency in the Judiciary, 2015, para. 15

25 Measures for Effective Implementation of the Bangalore Principles of Judicial Conduct, Art. 15.3

26 Basic UN Principles on the Independence of the Judiciary. 17, 1985. See also Universal Declaration of Independence of the Justice, 1989, para. 26.

27 ENCJ, Minimum Standards for Disciplinary Liability of Judges and Prosecutors, standard 6

28 ENCJ, Minimum Standards for Disciplinary Liability of Judges and Prosecutors, p. 29.

- The disciplinary process must be conducted by an independent body or court with all the guarantees of a fair trial, the judge must have the right to appeal the decision and the sanction<sup>29</sup>.
- The body dealing with the issue of judicial discipline should be free from political interference and influence<sup>30</sup>;
- The executive may participate in the disciplinary proceedings only by referring complaints or initiating disciplinary proceedings, but not by resolving such complaints<sup>31</sup>;
- The disciplinary process should ensure a fair and thorough hearing of the case proceedings<sup>32</sup>, including the principles of adversariality and equality of arms<sup>33</sup>. The question of disciplinary liability of a judge should be considered by a court or commission with a majority of judges<sup>34</sup>. This body should not consist exclusively of judges<sup>35</sup>. The disciplinary system should not become a corporate self-protection mechanism for judges<sup>36</sup>;
- The decision on the issue of disciplinary liability of a judge may be appealed to an independent body<sup>37</sup>
- The disciplinary sanction imposed on the judge should be proportionate<sup>38</sup>. Dismissal or suspension of a judge is permissible only if he / she is not suitable for the position due to his / her ability or behavior<sup>39</sup>.

The case law of the European Court of Human Rights is quite extensive in relation to disciplinary systems, according to which the guarantees established by Article 6 of the European Convention (Fair trial) apply to proceedings against judges<sup>40</sup>.

29 Council of Europe Recommendation CM / REC 2010-12 on the Independence, Efficiency and Responsibilities of Judges, para. 69.

30 ENCJ, Minimum Standards for Disciplinary Liability of Judges and Prosecutors, p. 30.

31 IBA Minimum Standards of Judicial Independence, file: /// C: /Users/GeoComputers/Downloads/IBA\_Resolutions\_Minimum\_Standards\_of\_Judicial\_Independence\_1982.pdf

32 Universal Declaration of Independence of Justice, 1989, par. 28

33 OSCE ODIHR, Standards and Best Practice in Disciplinary Responsibility for Judges.

34 . See also Universal Declaration of Independence of the Justice, 1989, para. 26

35 Kyiv Recommendations of the Independence of the Judiciary, 2010, para. 9 It is also indicated that the disciplinary body should not be controlled by the executive power, neither should it be under political influence.

36 They should avoid self interest or self protection / node / 257 p. 18.

37 UN Principles on the Independence of the Judiciary: Paragraph 20

38 European Charter on the Status of Judges 5.1.

39 UN Basic Principles on the Independence of the Judiciary: Par. 18

40 Cf. E.g. Oleksandr Volkov against Ukraine (*OleksandrVolkov v.Ukraine*), application no. 21722/11, Judgment of the European Court of Human Rights of 9 January 2013.



## 3. DISCIPLINARY LIABILITY OF JUDGES IN FOREIGN COUNTRIES

### 3.1. Grounds of disciplinary liability.

The list of disciplinary misconduct in European countries is usually provided by a legislation. In some countries this list is very detailed, while in others it is very short.

For example, Spanish law recognizes more than 30 disciplinary offences<sup>41</sup>.

In contrast, Hungarian law provides for only 2 disciplinary offenses:

a. The judge violates the obligations arising from his employment relationship b. judge's lifestyle and behaviors damage the prestige of the judiciary<sup>42</sup>.

The disciplinary misconduct given in the legislation of the countries under study may be divided into two broad groups:

- **misconduct committed by the judge in the course case proceedings**
- **misconduct committed by the judge outside case proceedings.**

Let us consider each of these groups.

#### a. Misconduct committed in the process of hearing cases.

##### 3.1.1. *Failure to perform the duties of a judge or improper performance or other violation of the law during the hearing of the case.*

Such a category of disciplinary misconduct is known in many Eastern European countries. This group includes: failure to perform duties of the judge (Slovakia)<sup>43</sup>, issuing the decision of a judge without a motivational part or omit important argument of the party in the decision (Ukraine)<sup>44</sup>, drafting a procedural act, the motivational and resolution parts of which contradict each other<sup>45</sup> (Italy, Ukraine<sup>46</sup>) intentional violation of the law by a judge that caused harm to a party (Slovakia)<sup>47</sup>; Obvious and gross violation of the law (Poland)<sup>48</sup>; Refusal of a judge to administer justice to a party (Ukraine)<sup>49</sup>; Violation of the principle of

41 See. *Tsiskarishvili T*, Disciplinary Responsibility of Judges and Disciplinary Proceedings in Different European Countries, 2014 <http://dcj.court.ge/uploads/kvlevebi/Researches/DCJ-DisciplinaryoverviewinEurope.pdf>

42 Act CLXII of 20.11 on the Legal Status and Remuneration of Judges (hereinafter: Legal Status of Judges Act)

43 Slovakia: causing failure to meet or infringement of obligations of Judge. Law on Judges and Prosecutors, Art. 102.1. See also Law on the Courts of Northern Macedonia, Art. 74 <https://www.ohchr.org/EN/Issues/Judiciary/Pages/ResponsesDCCLJ.aspx>

44 OHCHR Report, Disciplinary measures against judges and the use of 'disguised' sanctions

45 Kakha Tsiskarishvili, Disciplinary Liability of Judges and Disciplinary Proceedings in Different European Countries, 2014

46 OHCHR Report, Disciplinary measures against judges and the use of 'disguised' sanctions, <https://www.ohchr.org/EN/Issues/Judiciary/Pages/ReportDisciplinaryMeasures.aspx>

47 Slovakia: arbitrary decision of Judge, which is in contradiction with law, if such decision caused considerable damage or another especially serious consequence. Also intentional gross violation of the law (Lithuania)

48 Poland: obvious and gross violation of legal provisions. See, OHCHR Disciplinary measures against judges and the use of 'disguised' sanctions: report, <https://www.ohchr.org/EN/Issues/Judiciary/Pages/ReportDisciplinaryMeasures.aspx>

49 Supra note, Chapter on Ukraine

adversarial proceedings; Obstruction of the presentation of evidence by the parties (Ukraine)<sup>50</sup>; Obstruction of the rights of the accused and other participants in the proceedings (Ukraine)<sup>51</sup>. Intentionally or grossly negligent violation of fundamental human rights and freedoms during the trial, which resulted in a damaging outcome (Ukraine<sup>52</sup>), failure to perform the duties of a judge or negligent performance (Lithuania<sup>53</sup>); Failure to review of a criminal case within reasonable time, due to which the statute of limitations for criminal liability has expired (Northern Macedonia)<sup>54</sup>, conduct of the judge committed in the exercise of justice, which points to the clear and serious incompetence (Moldova)<sup>55</sup>;

In the United States, the doctrine of “legal error plus” is quite widespread, according to which the judicial error can become ground for disciplinary liability if committed in bad faith, violates constitutional right, is of systematic nature or cannot be corrected on appeal<sup>56</sup>

Law on Common Courts of Georgia included a disciplinary offense, “the judge’s failure to perform duties or improper performance”, which was removed from the December 13, 2019 on the amendment. Prior to 2013 this provision was used to prosecute judges also for mere legal errors. However, in 2013, the disciplinary Board of Judges of Common Courts of Georgia has adopted an approach similar to “Legal Error Plus doctrine” and limited the interpretation of this statute.

### 3.1.2. Case delay

This category of misconduct includes unreasonable delays in proceedings (see, for example, Ukraine) as well as delays in decision-making (eg, Serbia)<sup>57</sup>.

In Georgia, the disciplinary violation stipulated by art. 75<sup>1</sup> of the law on common courts is: violation of procedural deadline committed by the judge without valid excuse. The excuse shall be valid if the judge could not observe the deadline due to the objective grounds (such as the multitude of cases, complexity of case, etc).

As it is indicated in the report issued by “Rights Georgia”, the disciplinary violation should not be tied to the procedural deadlines but to the reasonable times. On the one hand the case may be delayed even within statutory timeframes and on the other hand, the statutory deadlines are themselves unreasonable (for example, the labor disputes should be tried within 1 month, which is not a reasonable deadline), due to which they are frequently violated<sup>58</sup>.

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50 Supra note

51 Supra note

52 A similar kind of misconduct is provided by the Moldovan legislation. See. Moldovan Law on Disciplinary Liability of Judges, Art. 14 [https://www.legis.md/cautare/getResults?doc\\_id=106165&lang=ro](https://www.legis.md/cautare/getResults?doc_id=106165&lang=ro)

53 Lithuania, Statute of the Ethics and Discipline Commission, Art. 17.1.1.

54 Law of the Judiciary Council of Northern Macedonia, Art. 76.

55 Moldovan Law on Disciplinary Liability of Judges, Art. 14, [https://www.legis.md/cautare/getResults?doc\\_id=106165&lang=ro](https://www.legis.md/cautare/getResults?doc_id=106165&lang=ro)

56 Tsikarishvili K., Line between Legal Error and Misconduct of the judge, 2014, <http://dcj.court.ge/uploads/Articles/differencebetweenlegallerrorandjudicialmisconduct.pdf>

57 OHCHR Report, Disciplinary measures against judges and the use of ‘disguised’ sanctions <https://www.ohchr.org/EN/Issues/Judiciary/Pages/ReportDisciplinaryMeasures.aspx> See also Serbian Law on Judges, Art. 90.

58 Rights Georgia Report on monitoring of disciplinary proceedings by Independent Inspector and the High Council of Justice”, 2020 (sponsored by the East-West Management Institute Project USAID / PRoLOG)

3.1.3. *Frequent delays in meetings without good reason, as well as systematic absence from work (Moldova, Serbia)*<sup>59</sup>;

3.1.4. *Violation of professional secrets*;

This category of misconduct includes violation of the secrecy of deliberations and other secrets protected by law (Ukraine, Albania)<sup>60</sup>; Disclosure of Personal Data Protected by Law (Croatia)<sup>61</sup>.

3.1.5. *Violation of the rule of distribution of the case by the judge*<sup>62</sup>;

3.1.6. *Violation of obligations related to impartiality*;

Appearance of bias by the judge (Slovakia, Kosovo)<sup>63</sup>, or intentional bias (Slovakia, Albania)<sup>64</sup>. Violation of the rules of recusal (self-recusal) by a judge (Ukraine, Albania, Serbia)<sup>65</sup>.

3.1.7. *Failure to notify the High Council of Justice of unlawful interference into the judge's work (Ukraine)*<sup>66</sup> ;

3.1.8. *Unlawful interference with the administration of justice by another judge (Ukraine, Albania, Macedonia, Kosovo)*<sup>67</sup> ;

3.1.9. *Making a public statement about the pending case (Albania, Kosovo)*<sup>68</sup> ;

3.1.10. *Failure to comply with the decision of judicial transfer or temporary assignment to another court*<sup>69</sup>;

3.1.11. *Use of inappropriate, reckless, or blatantly offensive or disrespectful expressions in court decisions (Spain)*<sup>70</sup>

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59 Serbia, Law on Judges, Art. 90. Also, absenteeism for an unreasonable reason that hindered the work of the Court, cf. Moldovan Law on Disciplinary Liability of Judges, Art. 14, [https://www.legis.md/cautare/getResults?doc\\_id=106165&lang=ro](https://www.legis.md/cautare/getResults?doc_id=106165&lang=ro)

60 Ukraine, OHCHR Report, Disciplinary measures against judges and the use of 'disguised' sanctions: <https://www.ohchr.org/EN/Issues/Judiciary/Pages/ReportDisciplinaryMeasures.aspx>; See. Also, Albania Albania, Law on Judges and Prosecutors, Art. 102.1

61 Croatian Law on the High Council of Justice, Art. 62.9. <https://www.zakon.hr/z/127/Zakon-o-Dr%C5%BEavnomsudbenom-vije%C4%87u>

62 Slovakia: infringement of random case assignment to panels, Judges, and court clerks, and of random redistribution of cases already assigned

63 Slovakia: actions, which evoke valid doubt about independence and impartiality of Judge during decision-making, bias against parties to the proceedings

64 Slovakia: willful infringement of obligation of Judge to rule independently and without bias. See. Albania, granting an unfair advantage to a party in breach of the duty of a judge or putting him in an unfavorable position: Albanian Law on the Status of Judges and Prosecutors, Art. 102.1 (c).

65 OHCHR Chapter on Ukraine; Also,. Albania, refusal to avoid the case on proper grounds, as well as unjustified withdrawal of the case, Albanian Law on the Status of Judges and Prosecutors, Art. 102.1.a. And b). See also Serbian Law on Judges, Art. 90.

66 OHCHR Report, Disciplinary measures against judges and the use of 'disguised' sanctions

67 OHCHR Report, Disciplinary measures against judges and the use of 'disguised' sanctions; Albanian Law on the Status of Judges and Prosecutors, Art. 102.1; See. See also Macedonia, Law on Court, Art. 75; Kosovo Law on Disciplinary Liability of Judges and Prosecutors, Art. 5. <https://md.rks-gov.net/desk/inc/media/9C0BBF11-FCEE-407B-B070-C1105A070746.pdf>

68 Albania, Law on Judges and Prosecutors, Art. 102.1, cf. See also Kosovo Law on Disciplinary Liability of Judges and Prosecutors, Art. 5. <https://md.rks-gov.net/desk/inc/media/9C0BBF11-FCEE-407B-B070-C1105A070746.pdf>

69 Slovenia, Law on Judicial Service, Art. 81.

70 Tsikarishvili T., Disciplinary Liability of Judges and Disciplinary Proceedings in Different European Countries, 2014



## **b. Offenses committed off-bench**

- 3.1.12. *use of a judge's position to obtain material or other benefits illegally (Ukraine, Moldova, Kosovo)*<sup>71</sup> ;
- 3.1.13. *Failure to submit a financial declaration (Slovakia)*<sup>72</sup> , *or entering incorrect data (Northern Macedonia)*<sup>73</sup> ;
- 3.1.14. *Inability of a judge to substantiate acquired property in proportion to income (Slovakia)*<sup>74</sup>
- 3.1.15. *Appearing to work under alcohol or drug Intoxication (Slovakia)*<sup>75</sup>;
- 3.1.16. *Interference with the activities of a disciplinary body (Italy, Spain)*<sup>76</sup>. *Failure to present clarifications on disciplinary charge (Kosovo)*<sup>77</sup>;
- 3.1.17. *failure to act as President of the Court (Albania)*<sup>78</sup>;
- 3.1.18. *Activity incompatible with the position of a judge (Poland, Lithuania)*<sup>79</sup>
- 3.1.19. *Unsuitable behavior for a judge, which harms the authority of the court (Poland, Ukraine)*<sup>80</sup>
- 3.1.20. *Failure to observe restrictions on the political activity of a judge (Lithuania, Kosovo)*<sup>81</sup>;
- 3.1.21. *Refusal to take a professional development course (Macedonia, Bosnia)*<sup>82</sup>.
- 3.1.22. *Disrespect of others by a judge in the performance of official duties (Romania, Bosnia, Albania)*<sup>83</sup>;

71 OHCHR Report, Disciplinary measures against judges and the use of 'disguised' sanctions; See. See also Moldovan Law on Disciplinary Liability of Judges, Art. 14, [https://www.legis.md/cautare/getResults?doc\\_id=106165&lang=ro](https://www.legis.md/cautare/getResults?doc_id=106165&lang=ro) See. See also Kosovo, Law on Disciplinary Liability of Judges and Prosecutors, Art. 5 <https://md.rks-gov.net/desk/inc/media/9C0BBF11-FCEE-407B-B070-C1105A070746.pdf>

72 Slovakia, Section 116 para 1 letter a) of Act on Judges: failure to meet the obligation of lodging asset declaration pursuant to Section 32 para 1 even within deadline laid down in Section 33 para 1

73 North Macedonia, Law on Court, Art. 75.,

74 Slovakia: Section 116 para 1 subpar. a) of Act on Judges: inability of Judge to provide a trustworthy proof of property increase, which obviously exceeds the amount of his salaries and other quantified incomes,

75 Slovakia: Section 116 para 1 subpar. a) of Act on Judges.

76 A similar offence is found in Italian and Spanish legislation. <http://dcj.court.ge/uploads/kvlevebi/Researches/DCJ-DisciplinaryoverviewinEurope.pdf>

77 See. Kosovo Law on Disciplinary Liability of Judges and Prosecutors, Art. 5 <https://md.rks-gov.net/desk/inc/media/9C0BBF11-FCEE-407B-B070-C1105A070746.pdf>

78 Albania, Law on Judges and Prosecutors, Art. 102.1

79 Poland: public activity that cannot be reconciled with the principles of judicial independence; See. See also Law on the Lithuanian Court, Art. 83

80 Poland: offending dignity of a judicial office; See. See also OHCHR response on the questionnaire from Poland.

81 Lithuanian Law on Courts, Art. 83 <https://www.infolex.lt/ta/122442:str83> Kosovo Law on Disciplinary Liability of Judges and Prosecutors, Art. 5 <https://md.rks-gov.net/desk/inc/media/9C0BBF11-FCEE-407B-B070-C1105A070746.pdf>

82 OHCHR, response from Ukraine; See. See also Albania, Albania, Law on Judges and Prosecutors, Art. 102.1 Bosnia and Macedonia Have Similar Misconduct <http://dcj.court.ge/uploads/kvlevebi/Researches/DCJ-DisciplinaryoverviewinEurope.pdf>

83 This includes disrespectful treatment of colleagues, the judiciary and persons involved in litigation during a judge's official duties. Such entries are found in the legislation of Italy, Romania, Spain, Bosnia, Albania. <http://dcj.court.ge/uploads/kvlevebi/Researches/DCJ-DisciplinaryoverviewinEurope.pdf>

3.1.23. *False information in official documents*(Bosnia, Spain)<sup>84</sup>;

3.1.24. *Violation of the Code of Ethics for Judges* (Lithuania<sup>85</sup>, Serbia<sup>86</sup>)

Under Polish law, a judge may also be held liable for conduct committed before taking judicial office that violates the rules of conduct of a public official or that makes a judge unfit for office<sup>87</sup>.

In Poland, a judge is also subject to disciplinary action even after he or she retires for a misconduct committed during his or her judicial term that has damaged the court's reputation<sup>88</sup>. Under Estonian law, a former judge can also commit a disciplinary offense in case of disclosure of a professional secret<sup>89</sup>.

## 3.2. Disciplinary sanctions

Disciplinary sanctions can be conditionally divided into verbal sanctions, financial sanctions, and career-related sanctions.

The legal system of all advanced countries provides for sanctions that result in a negative assessment of a judge's action without any additional legal consequences (reprimand, severe reprimand, warning).

As for financial sanctions, such may be fines (Germany, Spain) or deductions from salary (Bosnia, Bulgaria, Macedonia, Montenegro, Kosovo, Romania, Serbia, Croatia)<sup>90</sup>. Estonian law provides for both types of sanctions: fines and deductions from salary<sup>91</sup>.

As for career-related sanctions, this group includes sanctions that affect a judge's authority or career, such as transfer to another court (Bosnia, Albania, Germany, Spain<sup>92</sup>), demotion (Bulgaria), reduction of length of service (Italy), restriction of promotion for a certain period of time (Serbia), dismissal of the court president or other court officer with supervisory powers (e.g. Italy, Bosnia), suspension from office (Spain, Netherlands), forced retirement (Portugal) and finally dismissal<sup>93</sup>.

## 3.3. Investigating or adjudicating disciplinary bodies.

### 3.3.1. *investigating bodies*

No minimum international standard with regard to disciplinary investigation bodies exists. Disciplinary cases are investigated by different bodies in different countries. This body can exist both inside and outside the judicial system. In the Czech Republic, for example, disciplinary proceedings are conducted by the Ministry of Justice, and in Romania, Ukraine, and Moldova by the High Council of Justice.

Consultative Council of Judges of COE (CCJE) recommends the existence of a body that receives

84 Offences of this category are found e.g. Spanish and Bosnian legislation <http://dcj.court.ge/uploads/kvlevebi/Researches/DCJ-DisciplinaryoverviewinEurope.pdf>

85 Statute of the Ethics and Discipline Commission, Art. 17.2.

86 Serious violation of the Code of Judicial Ethics, cf. Law on Serbian Judges, Art. 90.

87 Poland: conduct before taking office if the judge failed in the duty of a civil servant at that time or appeared unworthy to hold a judicial position;

88 A similar possibility is also recognized in some US state disciplinary systems (Synthia Gray, How Judicial Conduct Commissions Work, 2004).

89 Estonian Law on Courts, Art. 88.2, <https://www.riigiteataja.ee/en/eli/ee/514022014001/consolide>

90 See. Tsikarishvili K., Disciplinary Responsibility of Judges and Disciplinary Proceedings in Different European Countries, 2014

91 Estonian Law on Courts, Art. 88 In

92 Poland - the disciplinary sanction is also a compulsory business trip of a judge

93 Tsikarishvili K., Disciplinary Responsibility of Judges and Disciplinary Proceedings in Different European Countries, 2014



complaints, assesses their merits and draws up a conclusion on the initiation or refusal of disciplinary proceedings<sup>94</sup>.

In most Eastern European countries, a preliminary investigation (investigation) of a disciplinary case is conducted by one specific official (prosecutor, inspector, investigator, commissioner, judge, etc.). However, there is also a model when the case is investigated by a collective body. For example, in Croatia, where a case is being investigated by a disciplinary committee appointed by the Judicial Council, consisting of 3 different members, at least one of whom must be a judge<sup>95</sup>. A similar model is in Kosovo, where a panel of three judges of different courts of different instances is established ad hoc in each case by decision of the Council of Justice<sup>96</sup>. Disciplinary investigations in France are conducted by a member of the Supreme Council of Magistrates who is appointed rapporteur in this case<sup>97</sup>.

Some countries, such as Estonia, Kosovo, Lithuania, Latvia do not have a specialized officer who will only deal with disciplinary cases.

In countries where a special official is conducting a disciplinary inquiry, it may be one official (e.g. Serbia, Slovenia) or multiple (eg Poland).

It should generally be noted that monopolizing the receipt of disciplinary complaints in the hands of one official closes disciplinary proceedings creates the risk of misuse of the system, although the receipt of complaints in the hands of many individuals or bodies poses the risk of inconsistent practices.

The investigator can be either a judge (eg Spain, Poland, Slovenia) or a non-judge (Romania, Moldova)<sup>98</sup>.

In Latvia, the Minister of Justice and the Presidents of the Courts begin a preliminary examination and conduct a preliminary investigation and taking of explanation from the judge<sup>99</sup>.

In Estonia, disciplinary proceedings are initiated and investigated by court presidents<sup>100</sup>.

In Albania, disciplinary proceedings are conducted by the office of Inspectors. Inspectors are elected by the High Council of Justice on the basis of a public competition. Inspectors are selected from judges, and in their absence from lawyers with at least 5 years of practical experience<sup>101</sup>. The years of work of a judge as an inspector are counted in the length of judicial service<sup>102</sup>. After the expiration of the term of office of the inspector, he has the right to be appointed a judge again without a competition<sup>103</sup>. Inspectors are appointed for a period of 5 years and can be reappointed<sup>104</sup>.

94 CCJE Opinion N. 3 on ethics and responsibility of judges, 2002.

95 <http://dcj.court.ge/uploads/kvlevebi/Researches/DCJ-DisciplinaryoverviewinEurope.pdf> ; See also Croatian Law on the High Council of Justice, Art. 67, <https://www.zakon.hr/z/127/Zakon-o-Dr%C5%BEavnom-sudbenom-vije%C4%87u> A similar model operates in northern Macedonia, where a three-member committee is set up for each case by members of the High Council of Justice. (Law on the Judicial Council of Northern Macedonia, Art. 63, OHCHR)

96 Kosovo Law on Disciplinary Responsibility of Judges and Prosecutors, Art. 12, <https://md.rks-gov.net/desk/inc/media/9C0BBF11-FCEE-407B-B070-C1105A070746.pdf>

97 [https://www.courdecassation.fr/IMG/File/pdf\\_2007/publications\\_2007/responsabilite\\_juges.pdf](https://www.courdecassation.fr/IMG/File/pdf_2007/publications_2007/responsabilite_juges.pdf)

98 See. Kakha Tsikarishvili, Disciplinary Responsibility of Judges and Disciplinary Proceedings in Different European Countries, 2014; See. See also Slovenian Law on the Council of Justice, Art. 39.

99 <https://likumi.lv/ta/en/en/id/57677-judicial-disciplinary-liability-law> Section 3.

100 Estonian Law on the Court, Art. 91.

101 See. Albanian Law on the High Council of Justice, Art. 14 [https://www.legislationline.org/download/id/6929/file/Albania\\_Law\\_organization\\_functioning\\_high\\_council\\_justice\\_2001\\_am2014\\_en.pdf](https://www.legislationline.org/download/id/6929/file/Albania_Law_organization_functioning_high_council_justice_2001_am2014_en.pdf)

102 See. Albanian Law on the High Council of Justice, Art. 15 [https://www.legislationline.org/download/id/6929/file/Albania\\_Law\\_organization\\_functioning\\_high\\_council\\_justice\\_2001\\_am2014\\_en.pdf](https://www.legislationline.org/download/id/6929/file/Albania_Law_organization_functioning_high_council_justice_2001_am2014_en.pdf)

103 See. Albanian Law on the High Council of Justice, Art. 15 [https://www.legislationline.org/download/id/6929/file/Albania\\_Law\\_organization\\_functioning\\_high\\_council\\_justice\\_2001\\_am2014\\_en.pdf](https://www.legislationline.org/download/id/6929/file/Albania_Law_organization_functioning_high_council_justice_2001_am2014_en.pdf)

104 See. Albanian Law on the High Council of Justice, Art. 15 [https://www.legislationline.org/download/id/6929/file/Albania\\_Law\\_organization\\_functioning\\_high\\_council\\_justice\\_2001\\_am2014\\_en.pdf](https://www.legislationline.org/download/id/6929/file/Albania_Law_organization_functioning_high_council_justice_2001_am2014_en.pdf)

The office of Inspectors of the High Council of Justice also exists in Romania, where inspectors are also selected from among judges. The service includes 32 inspectors, and the service is headed by a Chief Inspector<sup>105</sup>. There is also a similar model in Serbia, where a disciplinary case is investigated by a disciplinary prosecutor, or a deputy disciplinary prosecutor appointed by the High Council of Justice<sup>106</sup>. There is also a similar service in Moldova, which also consists of a Chief Inspector and inspectors<sup>107</sup>.

In Albania, the Chief Inspector and Inspectors undergo an assessment every two years, the rules of which are determined by the High Council of Justice<sup>108</sup>. In Albania, the Disciplinary Inspectorate also conducts professional evaluation of judges in addition to disciplinary matters<sup>109</sup>.

In Albania, inspectors also ex officio check judges' financial declarations and their compliance with the law<sup>110</sup>.

In Albania, the Minister of Justice also inspects the courts both on the basis of complaints and on his own initiative<sup>111</sup>.

In Hungary, a preliminary investigation of a disciplinary case is carried out by a disciplinary commissioner appointed by the disciplinary court from among its members<sup>112</sup>.

Disciplinary proceedings in Poland are conducted by disciplinary officers appointed by the Minister of Justice for a term of 4 years<sup>113</sup>.

In California, the disciplinary case is overseen by the director of the Judicial Conduct Commission, and the investigation is conducted by subordinate attorneys<sup>114</sup>.

In Lithuania, disciplinary investigations are conducted by members of the Ethics and Discipline Commission. The Commission consists of 7 members, of which 4 judges are appointed by the High Council of Justice and 3 non-judges are appointed by the President and the Speaker of Parliament<sup>115</sup>. The chairperson of the commission may also instruct the chairperson of the relevant court to investigate the case according to the location of the judge<sup>116</sup>.

Prior to 2017, Georgia had a model according to which the Secretary of the High Council of Justice, or another member of the Council, or an official of the High Council of Justice - on the instructions of the Secretary - checked the merits of a disciplinary complaint. As a result of the legislative reform in Georgia in 2017, the function of receiving complaints on disciplinary cases and investigating / pre-examining disciplinary cases has been transferred to the Independent Inspector of the High Council of Justice, who is elected by the High Council of Justice for a five-year term<sup>117</sup>. Functions are divided between the Independent Inspector

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105 <http://newjustice.org.ua/wp-content/uploads/2018/10/Georgiana-Disciplinary-liability-of-judges-in-Romania-ENG.pptx>

106 Serbia, Law on Judges, Art. 93.

107 Law on Disciplinary Liability of Judges, Art. 21.

108 See. Albanian Law on the High Council of Justice, Art. 14 [https://www.legislationline.org/download/id/6929/file/Albania\\_Law\\_organization\\_functioning\\_high\\_council\\_justice\\_2001\\_am2014\\_en.pdf](https://www.legislationline.org/download/id/6929/file/Albania_Law_organization_functioning_high_council_justice_2001_am2014_en.pdf)

109 See. Albanian Law on the High Council of Justice, Art. 16 [https://www.legislationline.org/download/id/6929/file/Albania\\_Law\\_organization\\_functioning\\_high\\_council\\_justice\\_2001\\_am2014\\_en.pdf](https://www.legislationline.org/download/id/6929/file/Albania_Law_organization_functioning_high_council_justice_2001_am2014_en.pdf)

110 See Albanian Law on the High Council of Justice, Art. 15 [https://www.legislationline.org/download/id/6929/file/Albania\\_Law\\_organization\\_functioning\\_high\\_council\\_justice\\_2001\\_am2014\\_en.pdf](https://www.legislationline.org/download/id/6929/file/Albania_Law_organization_functioning_high_council_justice_2001_am2014_en.pdf)

111 See. Albanian Law on the High Council of Justice, Art. 16 [https://www.legislationline.org/download/id/6929/file/Albania\\_Law\\_organization\\_functioning\\_high\\_council\\_justice\\_2001\\_am2014\\_en.pdf](https://www.legislationline.org/download/id/6929/file/Albania_Law_organization_functioning_high_council_justice_2001_am2014_en.pdf)

112 OHCHR response on questionnaire from Hungary.

113 Polish Law on Common Courts, Art. 112

114 [https://cjp.ca.gov/organization\\_budget/](https://cjp.ca.gov/organization_budget/)

115 Lithuania, Statute of the Commission on Judicial Ethics and Discipline.

116 Lithuania, Statute of the Commission on Judicial Ethics and Discipline, Art.22.6

117 See art. 51<sup>1</sup> of the Law on Common Courts.



and the High Council of Justice, with the Independent Inspector conducting the investigation and the High Council of Justice prosecuting<sup>118</sup>.

Unlike in Georgia, in most European countries there is no division between the functions of prosecution and investigation, and the function of prosecution is performed by the same body that conducts the investigation.

### *3.3.2. Adjudicating bodies.*

As to adjudicating bodies, we can distinguish two models from each other. 1. When the case is considered on its merits by the High Council of Justice 2. The case is considered by a body outside the Council. In countries belonging to the first group, the case is considered by the full Council of Justice (Croatia) or its disciplinary board (Bulgaria, Spain, Macedonia, Kosovo, Romania, France)<sup>119</sup>.

Disciplinary matters in Albania are essentially handled by the High Council of Justice, which consists of the President of the Republic, the President of the Supreme Court, the Minister of Justice, three members elected by Parliament and 9 judges elected by a Conference of Judges<sup>120</sup>.

Disciplinary proceedings in Ukraine are essentially handled by the Disciplinary Chamber of the High Council of Justice<sup>121</sup>. Interestingly, the complainant represents the party involved in the hearing of the case in the Disciplinary Chamber<sup>122</sup>.

As for the second model, when the case is considered by a body outside the High Council of Justice, it may consist entirely of judges or may also include members of the public. In this respect, a noteworthy example is Hungary, where a disciplinary case is essentially heard by a disciplinary court composed entirely of judges, and its members are elected by the High Council of Justice<sup>123</sup>. A similar model exists in Slovenia, but here the disciplinary court is composed of 9 members from 6 different instances of the judge, and 3 are from the High Council of Justice<sup>124</sup>.

Similar to Hungary, in Poland disciplinary cases are substantially reviewed by the disciplinary court, whose members are selected by the Minister of Justice upon consultation with High Council of Justice<sup>125</sup>.

In Estonia cases are adjudicated by the Supreme Court disciplinary chamber composed of judges of the Supreme Court, the District Court and the Court of First Instance<sup>126</sup>. Likewise, the Disciplinary Board consists entirely of judges in Latvia, of which 4 are judges of the Supreme Court elected by the Conference of Judges and 7 are presidents of different courts<sup>127</sup>. Latvia's peculiarity is that the Minister of Justice, as well as the Prosecutor General, the Chairman of the Association of Judges also have the right to take part in an advisory capacity to the disciplinary Board<sup>128</sup>.

The participation of public in disciplinary bodies serves to the maintenance of public control over

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118 Nevertheless, the High Council of Justice may instruct an Independent Inspector to conduct further investigations and give relevant instructions (Article 75<sup>13</sup> of the Law on Common Courts).

119 <http://dcj.court.ge/uploads/kvlevebi/Researches/DCJ-DisciplinaryoverviewinEurope.pdf>

120 See. Albanian Law on the High Council of Justice, Art. 3 [https://www.legislationline.org/download/id/6929/file/Albania\\_Law\\_organization\\_functioning\\_high\\_council\\_justice\\_2001\\_am2014\\_en.pdf](https://www.legislationline.org/download/id/6929/file/Albania_Law_organization_functioning_high_council_justice_2001_am2014_en.pdf)

121 Law of Ukraine on Litigation and Status of Judges, Art. 108.

122 Law of Ukraine on the High Council of Justice, Art. 49

123 OHCHR Report, Disciplinary measures against judges and the use of 'disguised' sanctions.

124 Slovenian Law on the Council of Justice, Art. 40.

125 Law on Common Courts of Poland, Art. 110 a. Disciplinary court judges also exercise other judicial powers.

126 Estonian Law on the Court, Art. 93

127 <http://at.gov.lv/en/tieslietu-padome/tiesnesu-pasparvaldes-institucijas/tiesnesu-disciplinarkolegija>

128 Law on Disciplinary Liability of Judges, Latvia, Art. 2. <https://likumi.lv/ta/en/en/id/57677>

the activities of the judiciary, judicial accountability and prevention of corporativism<sup>129</sup>. E.g. In Moldova, disciplinary matters are essentially handled by a 9-member disciplinary board. 5 judge members will be elected by the Conference of Judges and 4 non-judge members will be selected by the Minister of Justice on a competitive basis<sup>130</sup>.

The European standard according to which a majority of members must be on the panel hearing the merits of a disciplinary case is not universal. For example, in most US states, the majority of commission members are non-judges. Non-judicial members are appointed by the state governor, as well as the Bar Association<sup>131</sup>.

Disciplinary cases in Georgia are essentially handled by the Disciplinary Board of Judges of the Common Courts, which consists of 3 judges elected by the Conference of Judges and 2 non-judicial members elected by the Parliament of Georgia<sup>132</sup>.

### 3.4. Disciplinary process

#### 3.4.1. Initiation of disciplinary proceedings.

Preliminary investigation of a disciplinary case requires the judge to receive complaints, statements and other information about the disciplinary misconduct, to investigate the disciplinary case and to submit a conclusion to the decision-making body.

A number of countries (eg Albania, Lithuania, Poland, Romania, Serbia) have a clear legislative provision which does not allow disciplinary proceedings to be initiated on the basis of an anonymous complaint<sup>133</sup>. In contrast, a disciplinary statement in Montenegro may be anonymous<sup>134</sup>. Art. 75<sup>5</sup> of Law on Common Courts in Georgia explicitly excludes the initiation of disciplinary proceedings on the basis of an anonymous complaint.

A number of countries (Scotland, Norway, Italy, Ireland)<sup>135</sup> are familiar with the initial filtering mechanism for disciplinary grievances designed to avoid wasting resources or bothering a judge over clearly unsubstantiated complaints. This mechanism is also envisaged by international standard<sup>136</sup>. In Georgia, a similar filter is performed by the Independent Inspector. According to art. 75<sup>12</sup> of the Common Courts the Independent Inspector is authorized to terminate a disciplinary case if there are a number of formal grounds. HCOJ can also refuse to institute disciplinary proceedings on unsubstantiated complaint<sup>137</sup>.

In some countries, disciplinary proceedings are instituted and a preliminary investigation is carried out by one and the same body or official. In Bosnia, for example, it is a disciplinary prosecutor. In a number of countries one body initiates the proceedings but another body investigates. E.g. proceedings may be commenced by Lord Chancellor of Great Britain, Justice Minister of France, president of the court or the Ministry of Justice in Germany, as well as Croatia<sup>138</sup>

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129 See. Guy Canivet, *Responsabilite des Juges, ici et ailleurs*, 2007. [https://www.courdecassation.fr/IMG/File/pdf\\_2007/publications\\_2007/responsabilite\\_juges.pdf](https://www.courdecassation.fr/IMG/File/pdf_2007/publications_2007/responsabilite_juges.pdf)

130 Moldovan Law on Disciplinary Liability of Judges, Art. 9-10.

131 See. Victoria Hanley at the international roundtable on judicial reforms in transition countries, 35:24 [https://drive.google.com/file/d/1H3j46uDmLb1n63nZpm-Rkc9Z9HH6G1l/view?fbclid=IwAR3obKqPZ-9MlfdFU5nfdHQId-xG7yBm80LkczGppnDAf0XGKi4kz-nm\\_aU](https://drive.google.com/file/d/1H3j46uDmLb1n63nZpm-Rkc9Z9HH6G1l/view?fbclid=IwAR3obKqPZ-9MlfdFU5nfdHQId-xG7yBm80LkczGppnDAf0XGKi4kz-nm_aU)

132 Art. 75<sup>19</sup> of the Law on Common Courts.

133 ENCJ, *Minimum Standards for Disciplinary Liability of Judges and Prosecutors*, p. 25

134 <http://dcj.court.ge/uploads/kvlevebi/Researches/DCJ-DisciplinaryoverviewinEurope.pdf>

135 ENCJ, *Minimum Standards for Disciplinary Liability of Judges and Prosecutors*, p. 27

136 *Measures for the Effective Implementation of the Principles of Judicial Conduct of Bangalore*, Art. 15.3

137 Art. 75<sup>8</sup> of the Law on Common Courts

138 <http://dcj.court.ge/uploads/kvlevebi/Researches/DCJ-DisciplinaryoverviewinEurope.pdf> ; See. Also the Croatian Law on the High Council of Justice, Art. 67. <https://www.zakon.hr/z/127/Zakon-o-Dr%C5%BEavnom-sudbe->



Until 2017, both the Secretary of the High Council of Justice and the chairmen of the courts had the authority to initiate disciplinary proceedings in Georgia. The February 8, 2017 amendment established the Institute of Independent Inspectors of the High Council of Justice and all these powers were delegated only to Independent Inspectors<sup>139</sup>.

### *3.4.2. Investigation of disciplinary case and indictment of the judge.*

A disciplinary inquiry involves gathering all the necessary information about a disciplinary case for its substantive review.

In some countries, such as Malta or Portugal, there is no formal disciplinary stage. A disciplinary complaint is referred directly to the disciplinary tribunal.<sup>140</sup>

In some countries, the investigative powers of the investigative body are clearly established by law, while the legislation of some countries contains a general reference to the collection of information. In some countries, e.g. Georgia and Northern Macedonia have a two-stage procedure, which requires the consent of the High Council of Justice, as well as the initiation of formal prosecution in a disciplinary case<sup>141</sup>.

In Poland, as in Kosovo, a judge can petition a disciplinary officer to request evidence<sup>142</sup>.

In Poland, a disciplinary officer has the right to fine a witness who refuses to appear and testify before him/her<sup>143</sup>.

In Georgia, an Independent Inspector does not have the authority to call a witness compulsorily or request information from private sources, although he or she has the right to request information from State-owned databases<sup>144</sup>.

As mentioned above, in some countries, e.g. In Lithuania and Georgia, there is a two-tier system, where the functions of disciplinary investigation and prosecution are divided: the disciplinary investigation is carried out by a specific person, and the prosecution is conducted by a collective body. In Poland, both investigative and prosecution functions are performed by a disciplinary officer<sup>145</sup>, although the Council of Justice may appeal a decision on a disciplinary matter.

In Lithuania, a judge is disciplined by an ethics and discipline commission composed of 7 members. Two members (public members) are appointed by the President of the Republic, one (public member) by the Speaker of Parliament, and four by the Council of Justice<sup>146</sup>. In case of prosecution by the commission, the case will be considered by the Court of Honor.

In Moldova, disciplinary investigations are conducted entirely by the Service of Disciplinary Inspectors, which also supports the prosecution in the Disciplinary Board. In the absence of elements of disciplinary misconduct, the Service may terminate the case, although the appellant may appeal his decision to the Disciplinary Board<sup>147</sup>.

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139 cf. Law on Disciplinary Liability and Disciplinary Proceedings of Judges of Common Courts, Art.

140 7. Guy Canivet, Professional Discipline of Supreme Court judges.

141 see. Law on the Judicial Council of Northern Macedonia, Art. 63 (OHCHR North Macedonia)

142 See. Polish Law (Art. 114.4), Kosovo, Law on Disciplinary Responsibility of Judges and Prosecutors, Art. 12.

143 Law on Common Courts of Poland, Art. 114 a.

144 Law on Common Courts, Article 75<sup>7</sup>

145 Law on Common Courts in Poland, Art. 112

146 Law of the Lithuanian Court, Art. 85

147 Moldovan Law on Disciplinary Liability of Judges

### 3.4.3. *Substantive consideration of the disciplinary case and decision making.*

A substantive hearing of a disciplinary case involves an oral examination of the evidence in the presence of the parties, a hearing of the parties' positions, and the imposition of a disciplinary sanction.

In different countries, including Estonia, due to the gravity of the misconduct, it is possible to suspend a judge from the hearing of a case before the substantive hearing of a disciplinary case<sup>148</sup>.

In Moldova and Ukraine, the applicant also took part in the substantive hearing of the disciplinary case<sup>149</sup>.

The collegial body usually makes a decision on imposing disciplinary liability on a judge by a majority vote<sup>150</sup>. In Macedonia, however, the decision to dismiss a judge is made by a two-thirds majority of the council members<sup>151</sup>.

The substantive hearing of a disciplinary case in Georgia is regulated in detail by art. 75<sup>33</sup> of Law on Common Courts. According to paragraph 5 of this article, "Parties have the right to fully express and duly defend their positions, to ask questions of each other, to submit written and other evidence, to initiate motions for publishing various documents, materials or information, or to hear additional information of invited persons, make a request or invite additional persons and hear their information, request a relevant court case, as well as take other measures. The motions are considered by the disciplinary board. According to the Georgian legislation, the author of the disciplinary complaint is not a party to the disciplinary process and he does not participate in the hearing of the case, nor does he have the right to appeal. Georgian law does not recognize the temporary removal of a judge from office during a hearing.

### 3.4.4. *Publicity of disciplinary proceedings.*

There are 3 different models in terms of publicity of disciplinary proceedings: 1. In some countries (e.g. Bosnia, Poland, France) the proceedings are public, although they can be closed only in certain circumstances, such as. public order, or the secret of private life, or the interests of justice; 2. In some countries the case is open to the public but may be closed at the request of the parties (Italy, Montenegro); 3. In some countries (Bulgaria, Macedonia) the disciplinary process is completely closed.<sup>152</sup>

In Poland, disciplinary proceedings are public, but may be closed in the interests of morality, State security or privacy<sup>153</sup>.

An open hearing is also held in Ukraine, which may be closed on the same grounds provided by law for the closure of a hearing in general<sup>154</sup>.

Under Georgian law, a judge indicted to disciplinary responsibility has the right to request that the sessions of the High Council of Justice, as well as the Disciplinary Board, as well as the Disciplinary Chamber be made public<sup>155</sup>, although so far no one has exercised this right.

### 3.4.5. *Application of disciplinary sanction.*

The law of different countries determines the circumstances that will be taken into account when imposing a disciplinary sanction. Their list is quite similar to the list in the Georgian legislation. A rather detailed list

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148 See E.g. Estonian Law on Courts, Art. 95.

149 Moldovan Law on Disciplinary Liability of Judges, Art. 31.

150 <http://dcj.court.ge/uploads/kvlevedi/Researches/DCJ-DisciplinaryoverviewinEurope.pdf>

151 Supra note

152 <http://dcj.court.ge/uploads/kvlevedi/Researches/DCJ-DisciplinaryoverviewinEurope.pdf>

153 Law on Common Courts of Poland, Art. 116

154 Law on the High Council of Justice, Art. 49.

155 Law on Common Courts, art. 75<sup>1</sup>



is contained in the Albanian Law on the Status of Judges and Prosecutors, Art. 115. Unlike Georgian law, this law contains a list of mitigating and aggravating circumstances: in particular, mitigating circumstances are:

a) The misconduct is a first incident for the magistrate; b) The magistrate acted under the influence of a third person guided by loyalty or fear; c) The magistrate's misconduct played a minor part taking account of the overall circumstances; ç) The magistrate cooperated in the investigation and disciplinary proceedings, including where relevant by providing admissions and helpful information for the investigation and disciplinary proceedings; d) The magistrate has repaired damage caused by the misconduct or has actively assisted in obliterating or alleviating the consequences; dh) The time elapsed since the misconduct occurred; e) Any other circumstance existing, that in the opinion of the Council deserving leniency. 4. Aggravating circumstances in accordance with paragraph 2 of this Article are: a) Misconduct being committed more than once, or the misconduct is committed after a disciplinary measure was imposed for a previous misconduct; b) Misconduct has been continuous; c) The misconduct was committed due to discriminatory motives; ç) The misconduct was committed due to other weak motives; d) Instigating others to a misconduct or unlawful behavior; dh) The misconduct was committed by way of exploiting weaknesses or vulnerabilities of others; e) Upon the existence of any other circumstance, wherefore the Council deems aggravating the committed misconduct.

The legislation of some countries also stipulates what kind of penalties can be used for committing a misdemeanor of this or that severity. For example, the Spanish legislation makes a distinction between three types offenses (light, serious and very serious), indicating that the light and heavy violation is punishable by a warning or a fine, while especially serious violations - suspension, forced temporary transfer or a dismissal<sup>156</sup>. Based on the fact that disciplinary offences can be committed under various forms and in various circumstances, we believe that such classification of disciplinary offences is neither possible nor recommended.

According to Georgian legislation, the list of circumstances that the disciplinary panel takes into account when making a decision is quite scarce. According to art. 75<sup>47</sup> of the law of Common Courts, they are: content and severity of the disciplinary misconduct, the consequences that it had or could have had, the degree of guilt.

### 3.4.6. Appeal

#### a. The subject with the right to appeal

Prosecuting body as well as the appellant usually has the right to appeal the decision on the disciplinary matter to the disciplinary body, although there are some exceptions.

In Ukraine, both the judge and the complainant have the right to appeal the decision of the Disciplinary Chamber<sup>157</sup>

In Poland, the Minister of Justice, the High Council of Justice, the Disciplinary Officer and the judge have the right to appeal against disciplinary decisions<sup>158</sup>.

Under Georgian law, only the parties to a disciplinary case, a judge and the High Council of Justice have the right to appeal the decision of the Disciplinary Board<sup>159</sup>.

#### B. Complaints review bodies.

In Albania, the decision to impose disciplinary liability is made by the High Council of Justice, whose decision is appealed to the Supreme Court<sup>160</sup>.

156 <http://dcj.court.ge/uploads/kvlevebi/Researches/DCJ-DisciplinaryoverviewinEurope.pdf>

157 Law of Ukraine on the High Council of Justice, Art. 51.7

158 Law on Common Courts of Poland, Art. 121

159 Art. 75<sup>54</sup> of the law on Common Courts

160 See. Albanian Law on the High Council of Justice, Art. 36 <https://www.legislationline.org/download/id/6929/file/>

In Ukraine, the decision of the Disciplinary Chamber of the High Council of Justice is appealed in the Plenum of the High Council of Justice. The members of the Disciplinary Chamber which took part in the initial hearing of the disciplinary case shall not take part in its consideration<sup>161</sup>. The decision of the Plenum of the High Council of Justice is being appealed in court<sup>162</sup>.

The decision of the Disciplinary Chamber of the Supreme Court in Estonia is being appealed to the Plenum of the Supreme Court<sup>163</sup>

The decision of the Court of Honor in Lithuania is being appealed to the 3-member panel of the Supreme Court.

The decision made by the High Council of Justice in Croatia is being appealed to the Constitutional Court<sup>164</sup>.

The decision of the Disciplinary Board of Judges of Common Courts in Georgia is appealed to disciplinary Chamber of the Supreme Court

#### 3.4.7. *Publication of disciplinary decisions.*

In different systems, the disciplinary decision may be published either anonymously or fully, disclosing the name and surname of the judge. In Poland, disciplinary convictions are made public, although a disciplinary body may not issue a decision for the purposes of the disciplinary proceedings or for the protection of privacy<sup>165</sup>.

Disclosure of name of judge subjected to disciplinary sanction in the US state of California depends on the type of sanction: letters of recommendation and private admonition are closed, and public reprimands, public censures, and dismissals are published with the judge's first and last name<sup>166</sup>.

In Latvia, disciplinary decisions are published by anonymizing the name of the judge.<sup>167</sup>

According to art. 75<sup>73</sup> of the Law of Common Courts of Georgia

1. Decisions of the Disciplinary Board and the Disciplinary Chamber without identifying information of a judge, unless the judge himself/herself requires the disciplinary proceeding be public, shall be published on an official website upon their entry into legal force. A decision on dismissing a judge shall be published in full.

### 3.5. Disciplinary statistics

Since 2013, the Disciplinary Board of the Common Courts of Georgia has considered a total of 19 cases. Of these, only 10 judges were disciplined<sup>168</sup>. None of the judges have been removed by way of disciplinary procedure. A review of statistical information from foreign countries confirms that Georgia's disciplinary system lags far behind European indicators in terms of efficiency<sup>169</sup>.

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Albania\_Law\_organization\_functioning\_high\_council\_justice\_2001\_am2014\_en.pdf

161 Law of Ukraine on the High Council of Justice, Art. 51.7

162 Law of Ukraine on the High Council of Justice, Art. 52

163 Estonian Law on the Court, Art. 97. A similar model applies in Kosovo with the difference that a disciplinary complaint is not considered by the Plenum but by the Supreme Court Chamber. Kosovo Law on Disciplinary Liability of Judges and Prosecutors, Art. 15 <https://md.rks-gov.net/desk/inc/media/9C0BBF11-FCEE-407B-B070-C1105A070746.pdf>

164 Croatian Law on the High Council of Justice, Art. 71. <https://www.zakon.hr/z/127/Zakon-o-Dr%C5%BEavnomsudbenom-vije%C4%87u>

165 Law on Common Courts of Poland, Art. 109.a

166 [https://cjp.ca.gov/complaint\\_process/](https://cjp.ca.gov/complaint_process/)

167 <http://at.gov.lv/en/tieslietu-padome/tiesnesu-pasparvaldes-institucijas/tiesnesu-disciplinarkolegija>

168 <http://dcj.court.ge/>

\* <https://www.kohus.ee/et/eesti-kohtud/eesti-kohtunikud>



| Country        | Number of judges | Number of judges discipline in the last 10 years | Removed from office. |
|----------------|------------------|--|----------------------|
| Croatia        | 1700             | 152  | 8                    |
| Czech Republic | 3063             | 117  | 6                    |
| Romania        | 6822             | 165  | 32                   |
| Estonia*       | 242              | 20   | 2                    |
| Spain**        | 5171             | 212  | 5                    |

Disciplinary Statistics in Georgia in the Last 10 Years :

| Year | Private Recommendation Card | Note | Reprimand | Strict Reprimand | Release |
|------|-----------------------------|------|-----------|------------------|---------|
| 2011 | 2                           | 2    | 9         | 2                | 1       |
| 2012 | 1                           | 1    | 2         |                  |         |
| 2013 | 1                           |      |           |                  |         |
| 2014 |                             |      |           |                  |         |
| 2015 |                             |      |           |                  |         |
| 2016 |                             | 1    | 1         |                  |         |
| 2017 |                             | 1    |           |                  |         |
| 2018 | 1                           |      |           |                  |         |
| 2019 | 2                           | 1    |           |                  |         |
| 2020 | 1                           | 1    |           |                  |         |

As mentioned above, prior to 2012, there was a strict disciplinary policy in Georgia, and since 2012, disciplinary statistics have changed radically. In 2014-2015, no judge in Georgia was disciplined and in 2016-2020, a total of 9 judges were disciplined<sup>170</sup>. On the scale of severity, lightest sanctions were applied the judges - 4 private recommendation letters, 4 remarks and 1 reprimand.

\*\* <https://www.poderjudicial.es/stfls/ESTADISTICA%20JUDICIAL%20NUEVO/FICHEROS/Datos%20de%20Justicia/Boletines%20Anteriores/Bolet%3%ADn%20n%C2%BA%2037%20-%20E1% % C3% BAmero% 20de% 20jueces% 20en% 20los% 20pa% C3% ADses% 20de% 20la% 20Uni% C3% B3n% 20Europea% 20.pdf>

169 Source - <https://www.ohchr.org/EN/Issues/Judiciary/Pages/ReportDisciplinaryMeasures.aspx>

170 Such a change in disciplinary statistics cannot be explained by amendments to disciplinary misconduct. The institution of improper performance of duty (which also covered up the “gross violation of the law” in force until 2012) was abolished by a December 2019 legislative amendment.

## CONCLUSION

While Western European, Eastern European and American systems are significantly differ from each other on the issue of disciplinary misconduct, sanctions, disciplinary process, the common features and common models are obvious. In terms of formulating disciplinary misconduct, there are both highly detailed and less detailed models. Improper performance of duties by a judge and gross violation of the law are punishable in one way or another in many legal systems. There are different models concerning disciplinary investigation, prosecution, substantive review and appeal. In some systems, the disciplinary process - from complaint to appellate review- takes place entirely within the judiciary, while in some systems external bodies are involved in the disciplinary proceedings, such as the Minister of Justice. In some countries, decision-makers are only judges, while a number of countries provide for the participation of public members in disciplinary bodies, with the aim of ensuring system openness and accountability. Finally, it should be noted that modern disciplinary systems strive for greater professionalism, transparency and public involvement, with the aim of ensuring public confidence in the disciplinary system.

Georgia's disciplinary system is fully in line with international standards, as well as the experience of advanced countries. However, in the case of Georgia, the problem is not in legislative regulations, but their improper use. Disciplinary action is concentrated in the hands of an influential group of judges - the clan, so it can be used as a mechanism for undue influence on judges, as well as a mechanism for exempting favorite judges. Accordingly, in the Georgian reality, the models through which it is possible to deconcentrate disciplinary power should be considered.

