



FIRST ANNUAL REPORT
OFFICE OF AN INDEPENDENT INSPECTOR

2017-2018



ევროკავშირი
საქართველოსთვის
EU4Justice



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*The Work you Serve is the Fundament
of the Society You Live In.¹*

An independent and impartial judiciary is a crucial condition for human rights protection and establishment of a democratic state. Accountable justice has a vital role in this process, through such an important component as effective disciplinary procedures. Open and transparent process of disciplinary proceedings based on objective criteria ensures protection of judicial independence and reputation and increases public trust towards the judiciary.

The primary purpose of this new institution is to increase efficiency of disciplinary proceedings along with the accountability of the judiciary through refined procedures. Therefore, we value the prominence of the first progress report of the newly established institution.

Taking into consideration, the reinforcing function of the disciplinary proceedings in Georgia's justice system, particularly amidst judges' lifetime appointment, we would do our utmost to ensure effectiveness of disciplinary proceedings on the one hand and compatibility of disciplinary proceeding with the principle of judicial independence and non interference in judge's activity.



¹ Sir Gerard Brennan, Chief Justice of Australia, addressing the National Judicial Orientation Programme, Wollongong, Australia, 13 October 1996. Available at: www.hcourt.gov.au/speeches/brennanj/brennanj_wollong.htm

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INTRODUCTION

Justice system is a crucial component of a democratic society, which is mostly based on independence and impartiality of the judiciary. Judicial independence as a condition of Judge's impartiality is the major guarantee of equality between the citizens.²

Accountable justice system implies openness of the process and protection of judge's independence and impartiality at the same time. This implies improvement of accountability mechanisms for the judiciary and for an individual judge as well as increase of a public trust by ensuring disciplinary proceedings among other actions.

In 2017, in order to strengthen accountable and independent judicial system, an institution of an independent inspector along with the new regulations on disciplinary proceedings was adopted within the framework of third wave of reforms.

The first independent inspector Ketevan Tsintsadze took the office on November 21, 2017.³ Correspondingly, the annual report of independent inspector for year 2018 covers the information on disciplinary complaints, legal opinions and measures taken from January 21, 2017 to December 31, 2018.

This report aims to ensure transparency and accountability of disciplinary proceedings as well as reviews existing tendencies and challenges. It outlines essential principles guiding preliminary examination and opinion drafting; indicates the standards which are applied to disciplinary proceedings.

The report recaps legislative amendments, which regulate preliminary examination procedure against a common court judge. The Independent Inspector's achievements and work are completed with the statistic data. In addition, the report provides for the legal analysis of the Opinions issued by an Independent Inspector with respect to prevailing disciplinary misconducts. The report depicts exemplary cases of the disciplinary misconduct along with the measures undertaken.

² Consultative Council of European Judges, Opinion n°10 (2007) on "Council for the Judiciary at the service of society";

³ Decision of HCoJ N 1/312, November 20, 2017 on election of K. Tsintsadze on the position of independent inspector, <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/312.pdf>

1. INSTITUTION OF INDEPENDENT INSPECTOR – NOVELTY IN GEORGIA'S JUSTICE SYSTEM

1.1 LEGISLATIVE AMENDMENTS

The disciplinary proceedings against common court judges was accompanied with several legislative amendments throughout the years. In 2017, the procedure went through fundamental changes as the authority to conduct preliminary examination moved from HCoJ to the mandate of the Independent Inspector.

The primary aim of the institution is to improve process of disciplinary proceedings, gaps in legislation and procedure. As a result, the process of the disciplinary proceedings has been optimised, legal safeguards of a judge/complainant strengthened and transparency of the procedure increased.

Legislative amendments were adopted on February 8, 2017 within the framework of third wave of judicial reform.⁴

Disciplinary proceedings against common courts judges were regulated by the Law of Georgia “On Disciplinary Liability of Judges of Common Courts of Georgia and Disciplinary Proceedings” until May 1, 2018. Since then, proceedings are regulated by Organic Law “On Common Courts”. On initial stage of legislative amendments, the office of independent inspector used to consider only complaints related to possible misconducts, committed after March 15, 2017. Complaints related to facts before this date were referred to the Secretary of HCoJ.⁵

This rule has changed after invalidation of the Law of Georgia “On Disciplinary Liability of Judges of Common Courts of Georgia and Disciplinary Proceedings” on May 1, 2018 and transfer of the complaints to the authority of an independent inspector through the Law on Common Courts.

⁴ On amendments to the Law Georgia “On Disciplinary Liability of Judges of Common Courts of Georgia and Disciplinary Proceedings”, Legislative Herald 13.02.2017, 256-ILs;

⁵ The examination was conducted by Judicial Ethics Department of the HCoJ;

1.2. THE MANDATE OF AN INDEPENDENT INSPECTOR

The Organic Law On Common Courts regulates appointment procedure.⁶

An Independent inspector conducts preliminary examination in objective, inclusive and impartial manner. During the preliminary examination, an Independent Inspector inspects both aggravating and mitigating circumstances for the liability of a judge.⁷

In course of a comprehensive preliminary examination, the Independent Inspector is entitled to request all information, documents, audio and video materials related to the disciplinary misconduct from the relevant authorities. She is also entitled to receive information from a person who holds pertinent knowledge related to the disciplinary misconduct (complainant, respondent judge, interested person, third party, and etc.).⁸

The Independent Inspector conducts preliminary examination independently from the HCoJ and submits the finding in the form of an opinion to the HCoJ for final conclusion. The opinion contains information regarding the grounds for initiating disciplinary liability, measures/actions instituted, complainant's request, established facts of the case and legal assessment. Finally, the document reflects Inspector's opinion whether the disciplinary misconduct took place. Inspector conducts legal assessment based on the national legislation, international standards and practice. Notably, the ECHR caselaw, CCJE opinions, Bangalore Principles and other legal documents are used in process of legal reasoning.

1.3. OFFICE OF AN INDEPENDENT INSPECTOR

An independent inspector conducts preliminary examination and inquiry with the assistance of his/her office. The Office staff shall be appointed on the bases of the competition and dismissed from the office only by the Independent Inspector.⁹ The competition procedure is governed by the law of Georgia on Civil Service and the Regulations adopted by the HCoJ. The power of an Inspector to appoint his/her staff independently from HCoJ reinforces the independence of this institution. The Office is composed of 8 staff members one of whom is employee of a chancellery/secretary. The cases are assigned to the staff members according to their categories.

6 Organic Law on Common Courts, Article 51¹, paragraph 2. The Independent Inspector shall be elected on competition basis for a five-year term by the majority of the full composition of, and dismissed by the High Council of Justice of Georgia. The procedure for conducting the competition shall be determined by the Regulations of the High Council of Justice of Georgia;

7 Organic Law on Common Courts, Article 75¹⁰, paragraph 3;

8 Organic Law on Common Courts, Article 75¹⁰, paragraph 2;

9 Organic Law on Common Courts, Article 51¹, paragraph 10;

Since August 30, 2018, the front office (the chancellery) of the HCoJ and Independent Inspector operate separately. Any individual is entitled to submit disciplinary complaint, correspondence or document related to disciplinary case to the office of an independent inspector.

1.4. ENSURING ACCESSIBILITY AND TRANSPARENCY OF THE ACTIVITIES

As of June 2018, in order to ensure accessibility, it is possible to submit the complaint to the Inspector's chancellery or in electronic manner through its web-page www.independent-inspector.ge

or via e-mail info@independent-inspector.ge. In addition, the office manages the page on social network to raise awareness among public about the institutions, its mandate and capacity.¹⁰

For the purpose of ensuring transparency of disciplinary proceedings, accountability and openness of the process, the Inspector's Office proactively presented 6 month report covering data on the opinions issued and preliminary examination conducted on June 20, 2018.

WWW.INDEPENDENT-INSPECTOR.GE

**CHANCELLERY OF OFFICE OF
INDEPENDENT INSPECTOR**



<https://www.facebook.com/officeofindependentinspector/>

¹⁰ [HTTPS://WWW.FACEBOOK.COM/OFFICEOFINDEPENDENTINSPECTOR/](https://www.facebook.com/officeofindependentinspector/)

1.5. PROCEDURE OF DISCIPLINARY PROCEEDINGS BEFORE AND AFTER THE REFORM

Prior to March 17, 2017, the Secretary, member or apparatus of HCoJ had power to initiate and conduct the preliminary examination and disciplinary proceedings. The Secretary/member of HCoJ was authorised to make a decision on termination of disciplinary proceedings, to request an explanation from a Judge as well as to present the opinion for a decision to HCoJ. The HCoJ used to approve decision on termination of proceeding or imposition of disciplinary liability on a Judge through the Disciplinary Council meeting. In case the HCoJ did not agree with the decision on termination of proceeding against the Judge, the Secretary had the authority to make decision on reinitiation of proceedings or to request explanation from a Judge. In case the HCoJ did not agree with the decision on imposition of liability, the proceedings were terminated. If there was no sufficient number of votes for either approach, the complaint used to remain without any status.¹¹

As of March 15, 2017 the Independent Inspector initiates and conducts preliminary examination. As a result, Inspector prepares an opinion on termination or initiation of disciplinary proceedings against a Judge and has the authority to request explanation from a Judge. The opinion is submitted to the HCoJ. However, in contrast to previous regulation allowing the Secretary of Council to require explanation from a Judge, an Independent inspector has no power to ask for explanation independently. This power is assigned to a collegial body – the HCoJ, which takes a decision on a judge's statement, termination and initiation of disciplinary proceedings or imposition of disciplinary liability.

Amidst the final stage of the case examination, the HCoJ takes decision on imposition of disciplinary liability. In case the Council considers, there is no sufficient evidence or there are some unanswered questions in course of the examination, the HCoJ is authorised to revert the case to Inspector's Office.

¹¹ Until the expiration of the term for imposition of disciplinary liability or termination of judicial powers;

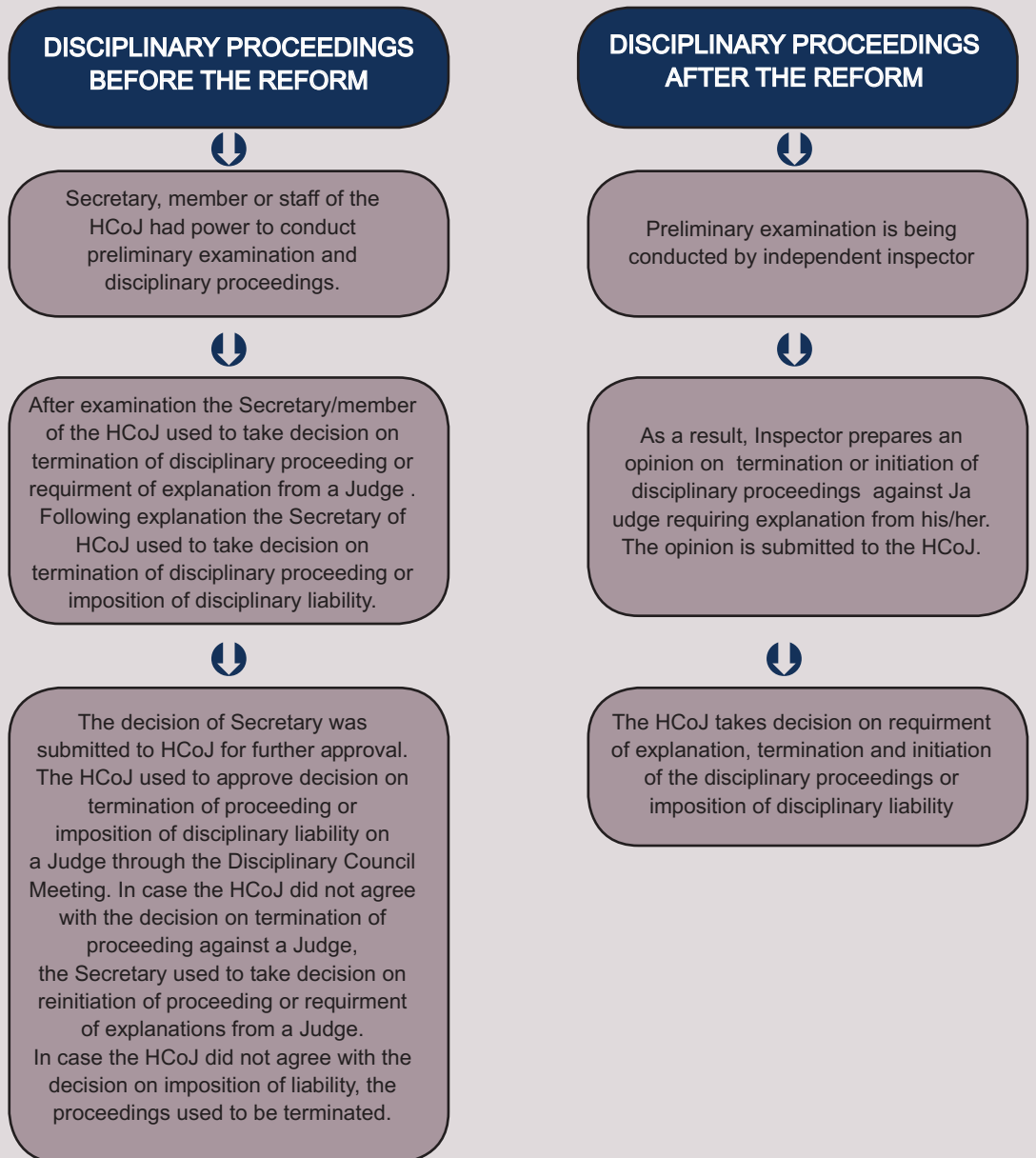
Notably, the case hearing is closed. The HCoJ makes a final decision with majority of 2/3 of its members through a secret ballot. Reasoned decision without personal data is published on the HCoJ web site.¹² In case the Council is not able to take decision either on the imposition of the disciplinary liability or requirement of explanation, the proceeding against a Judge is terminated. The member of HCoJ who does not agree with the decision is entitled to prepare written dissenting opinion,

In case the Council is not able to take decision either on the imposition of the disciplinary liability or requirement of explanation, the proceeding against a Judge is terminated. The member of HCoJ who does not agree with the decision is entitled to prepare written



¹² <http://hcoj.gov.ge/ge/distsiplinuri-samartaltsarmoeba/distsiplinuri-dagatskvatilebebi>

dissenting opinion, which shall be attached to the case file.¹³



13 Organic Law on Common Courts, Article 75⁸, paragraph 1;

1.6. RIGHTS AND LEGAL GUARANTEES OF A JUDGE/COMPLAINANT

The new legislative amendments provide for additional legal guarantees for the Judges as well as prescribes the right for a person submitting a complaint. New regulation introduced an obligation to inform a Judge on each stage of proceedings – receipt of complaint or application, consideration of issue of disciplinary liability at the disciplinary hearing.

Judges have right to have a legal representative from the moment the preliminary examination is initiated. The legal representatives could be a lawyer, the other Judge or a third person.

Judge is entitled to require the recusal of an Independent Inspector that shall be considered by three-member board from the HCoJ. A member of the HCoJ will exercise the powers conferred on the Independent Inspector in case the motion is satisfied.

According to the amendments, a Judge can make disciplinary board meeting public. The Law explicitly defines that submission of explanation is the right of a Judge and not a obligation.

The decision on terminating, suspending or resuming disciplinary proceedings against a judge, as well as other decisions are subject to reasoning and shall, within 5 days, be forwarded to the author of the complaint and the judge in question.¹⁴

¹⁴ Organic Law on Common Courts, Article 75⁴, paragraphs 2, 3;

RIGHTS OF A JUDGE AND THE AUTHOR OF A COMPLAINT BEFORE THE REFORM



Judge was not informed on initiation of disciplinary proceeding



Judges were entitled to enjoy legal protection after disciplinary proceedings were instituted



Previous regulation did not provide possibility of recusal of a authority exercising disciplinary proceedings



Disciplinary case was considered at the closed board meeting



Judge was not able to publicize the board meeting



The board was not obliged to reason the decision on termination of proceedings



The decision was forwarded to a Judge upon latter's request

RIGHTS OF A JUDGE AND THE AUTHOR OF A COMPLAINT AFTER THE REFORM



Judge is informed about initiation of the preliminary examination



Judges are granted the right to enjoy services of representative during the preliminary examination and hearing.



Judges can recuse independent inspector



Judges are informed on consideration of disciplinary case against them by the disciplinary board



Judges are entitled to make the board meeting public



All decisions of the board are subject to reasoning/shall be substantiated



Within 5 days decision is forwarded to the author of the complaint (application) and the judge in question

2. STATISTIC ANALYSIS OF THE ACTIVITIES OF THE INDEPENDENT INSPECTOR

2.1. GENERAL STATISTIC DATA

Since appointment of the Independent Inspector (November 21, 2017) **103** complaints were referred to the Independent Inspector. Overall **131** complaints were processed in 2017.

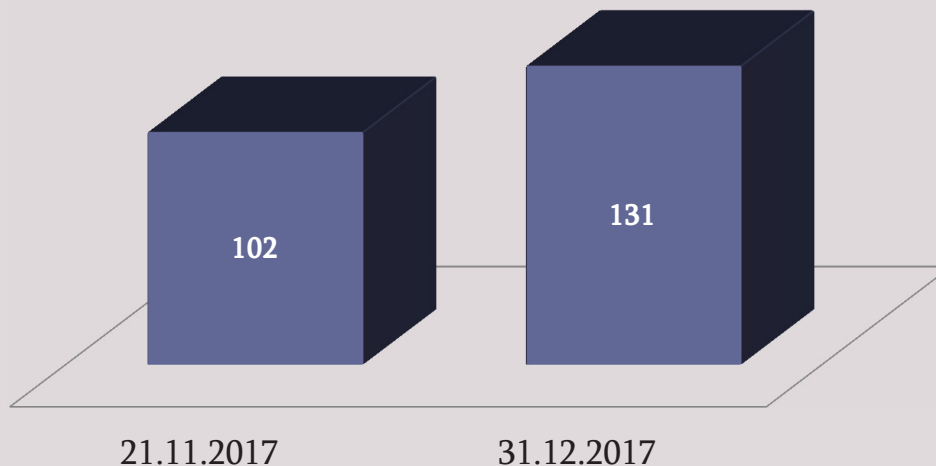
In 2018 **318** complaints were referred to the Independent Inspector.

During the reporting period 183 complainant's lacked the formal requirements of the application.

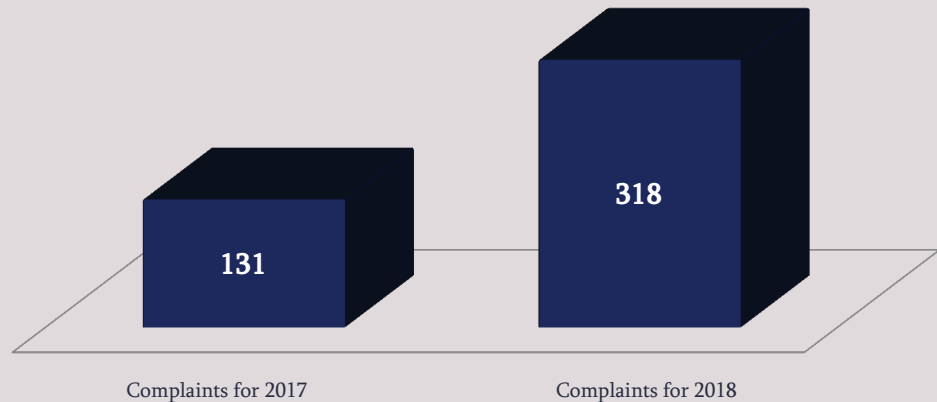
Since the chancellery (front office) of an inspector was established **97** complaints and **57** applications lacking formal requirements were registered from September 1 to December 31, 2018.

Overall **449** disciplinary complaints were referred to independent inspector during reporting period including **2** information spread through media, **2** proposals from public defender and **2** explanatory notes.

2017 STATISTIC DATA OVERALL NUMBER OF COMPLAINTS 131



2018 STATISTIC DATA OVERALL NUMBER OF COMPLAINTS 449



2.2. STATISTIC DATA ON DISCIPLINARY MISCONDUCTS

During the reporting period, the Office of an Independent Inspector had responded to number of questions raised by interested party and/or authors of complaints. In course of the preliminary examination the Office has requested case materials from the courts, video and audio recordings, heard authors of complaints and other persons related to the case, collected written evidence, etc. Despite the considerable number of applications, the Office was able to consider cases within two-month period time as prescribed by the law. **89%** of the complaints submitted in 2017-2018 were followed by a preliminary examination.

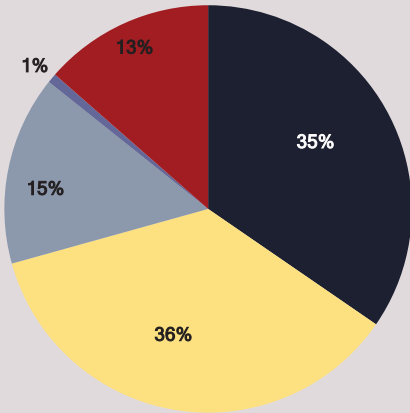
Majority of the complaints submitted to office of independent inspector are related to possible facts of improper performance of an obligations of a judge, ungrounded delays in proceedings and legality of the decisions. Large number of complaints include information on possible misconduct, that is not proved by the evidence. For instance, a complaint indicates the exact time of hearing when a Judge used inappropriate wording towards him/her, however that fact can not be proved through examination of video-audio materials of the whole case. Moreover, the authors of a complaint indicate, that Judge did not consider their motion, whereas review of the case-file confirms that a Judge has considered the motion either granting or denying the request.

According to the statistic data of 2017-2018 up to **36%** of complaints related to improper performance of an obligations by a judge. In 2018, the number of cases related to ungrounded delay in proceedings decreased **13%** compared to 2017; In 2017 - 35% of

complaints related to ungrounded delay in proceedings while in 2018 only 22% referred to similar misconduct. In 2018, 24% of complaints related to legality of judicial decision, which is 11% more compared to 2017. In 2017, 15% of complaints related to breach of judicial ethics and 18% in 2018.

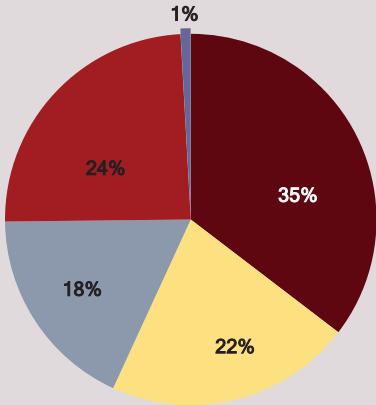
YEAR 2017

- Ungrounded delay in proceedings
- Improper performance of obligations
- Violation of the ethic norms
- Corruption
- Legality of an Act



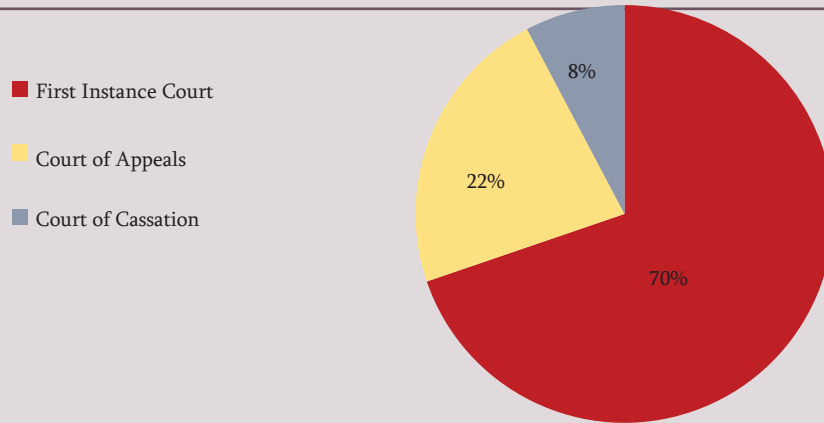
YEAR 2018

- Improper performance of obligations
- Ungrounded delay in proceedings
- Violation of the ethic norms
- Legality of an Act
- Other Misconducts



2.3. STATISTIC DATA ACCORDING TO THE COURT INSTANCES

In 2017-2018 - **70%** complaints were against judges of the first instance courts, **22%** - judges of Tbilisi and Kutaisi Apellate Courts, **8%** - judges of the Supreme Court of Georgia.

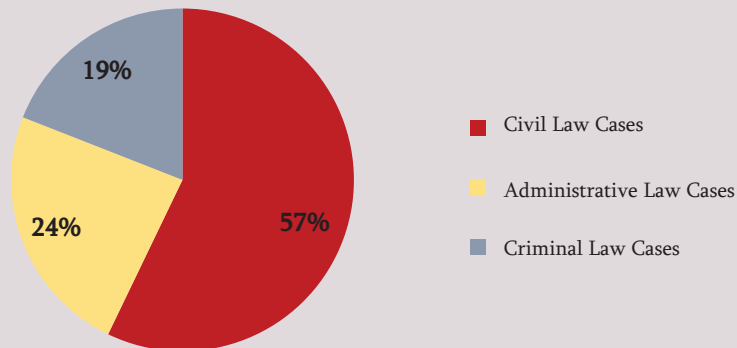


2.4. STATISTIC DATA ACCORDING TO CASE CATEGORISATION

During 2017-2018. The majority of complaints related to civil cases. Although, in 2018 share of complaints in civil cases decreased by 4 %, whereas administrative cases increased by 6%. Share of complaints related to criminal cases was 19% in 2017 and 16% in 2018. Notably, the Office of an Independent Inspector has initiated preliminary examination on complaints, explanatory notes and information spread through media, that were not related to a specific case.

2017

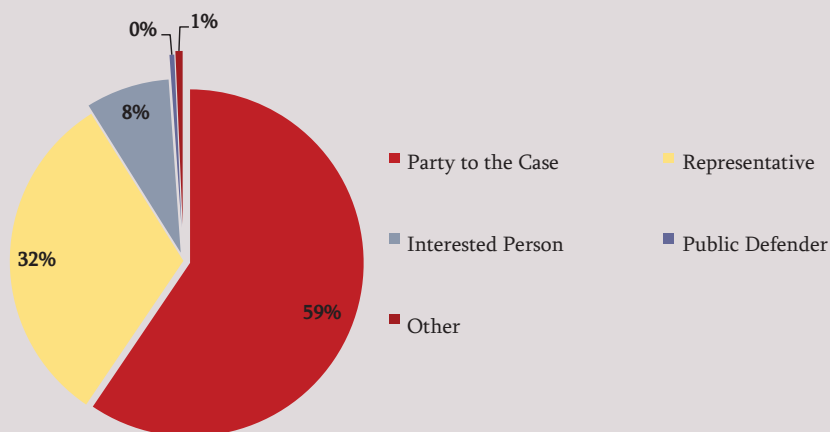
NUMBER OF COMPLAINTS 131



2.5. STATISTIC DATA ON COMPLAINANTS

Office of independent inspector has elaborated statistical data regarding the authors of complaints and categorised them on the basis of their status in court proceedings. The authors of complaints are: parties, third persons, representatives including legal representatives and lawyers, persons interested (relatives of parties or any other individual attending the hearing), public defender and etc.¹⁵

According to statistical data, **59%** of author of complaints represent – parties and third persons, **32%** - representatives, **8%** - persons having legal interest.



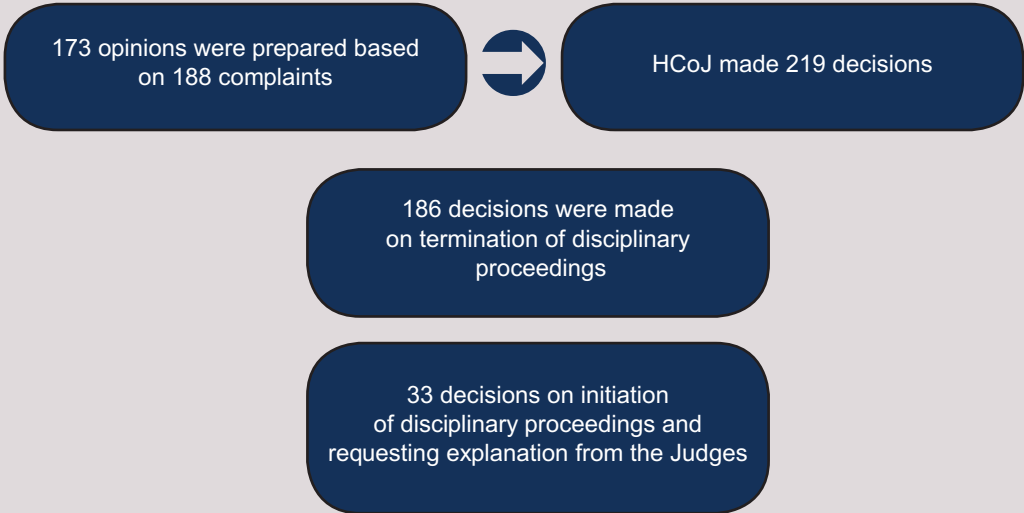
2.6. STATISTIC DATA ON DISCIPLINARY HEARINGS

The HCoJ has held 8 disciplinary hearings. The Independent Inspector has presented 173 Opinions with respect to 188 complaints to the HCoJ.¹⁶ The Council has considered **42%** of complaints and adopted **219** decisions.¹⁷ Non of the Council members have prepared dissenting opinion regarding any decisions. Non of the judges concerned have claimed for recusal or public hearing.

¹⁵ Indication “other” implies information spread through media and explanatory notes. This is presented in order to provide comprehensive statistical data;

¹⁶ The Independent Inspector may, by its decision, consolidate two, or more than two disciplinary cases conducted on different grounds against one judge into one proceeding. Therefore the number of complaints and opinions may not coincide;

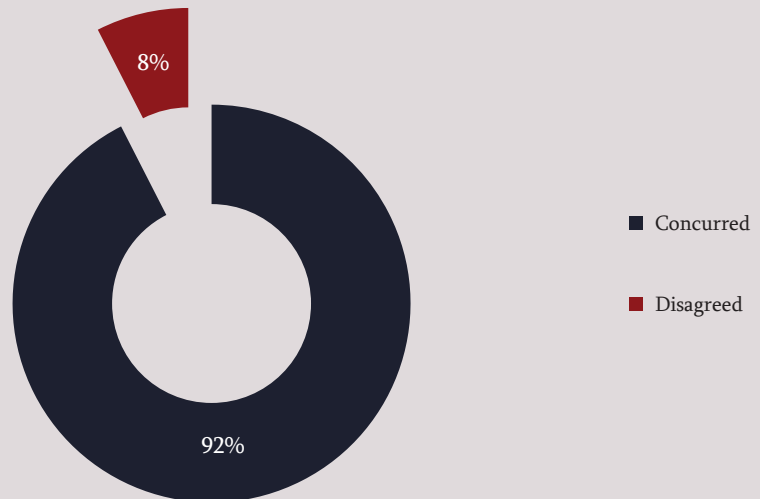
¹⁷ Despite the number of Judges indicated in disciplinary complaint, one opinion is prepared per one disciplinary case assessing actions of different Judges individually and submitted opinion to HCoJ. The Council itself makes decision on disciplinary misconduct individually. Therefore, the number of submitted opinions and the number of the HCoJ decisions may not coincide;



Decisions on termination of disciplinary proceedings include instances where the disciplinary misconduct was not proved or the statutory period for the complaints has expired (5 cases), dismissal cases (4 cases), complaints were not directed towards the judge (2 cases).

2.7. STATISTIC DATA ON THE OPINIONS SUBMITTED AND DECISIONS MADE BY THE HCOJ

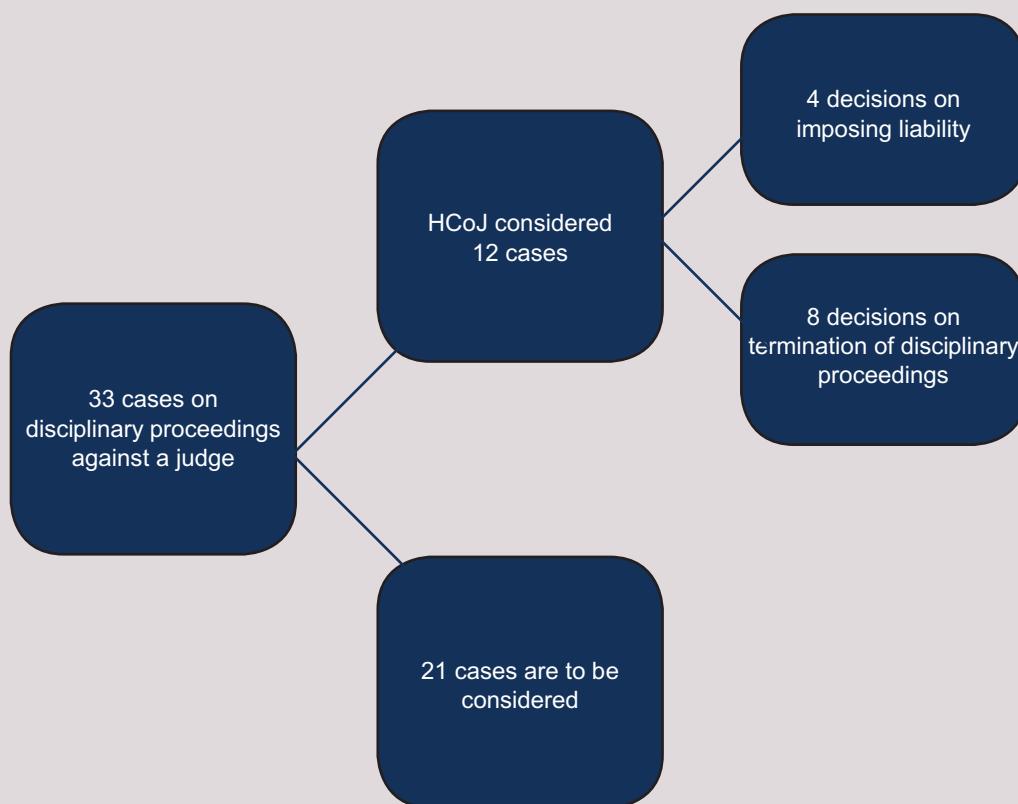
The HCoJ concurred with the Inspector’s opinion 160 cases and disagreed in 13 cases.



2.8. STATISTIC DATA ON INITIATING DISCIPLINARY PROCEEDINGS AGAINST JUDGES AND REQUESTING EXPLANATORY NOTE

Independent inspector has prepared 46 opinions requesting explanatory note from judges and initiating disciplinary proceedings. Namely, **28** cases related to ungrounded delay in proceedings, **16** cases of improper performance of obligations and **6** cases - breach of ethics.¹⁸

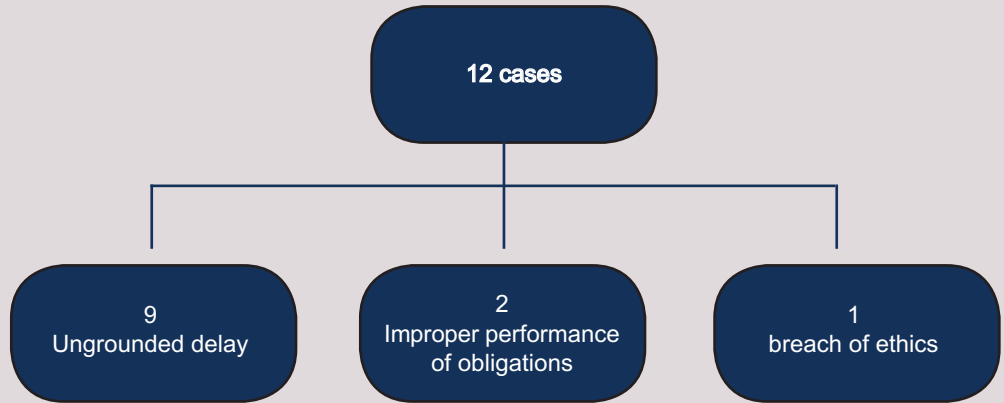
The HCoJ concurred with 33 opinions (72% of cases on initiating disciplinary proceedings) in which **20** cases of ungrounded delay in proceedings, **13** cases of improper performance of obligations and **5** cases of breach of ethics.



The HCoJ disagreed with the Independent Inspector in 13 cases – 28 % of cases submitted for initiation of disciplinary proceedings. Namely, **8** cases of ungrounded delay in proceedings, **9** cases of improper performance of obligation and **2** cases of breach of ethics.

¹⁸ In some cases authors of disciplinary complaints indicate on several potential disciplinary misconducts. Therefore the number of complaints and number of facts of misconduct vary;

The HCoJ considered 12 cases of disciplinary liability: 9 cases related to ungrounded delay, 2 cases related to improper performance of obligations and 1 case on breach of ethics. The Opinions of the Independent Inspector confirmed possible fact of disciplinary misconduct in all of 12 cases. He HCoJ made decision on imposition of disciplinary liability in 4 cases and on termination of disciplinary proceedings in 8 cases.



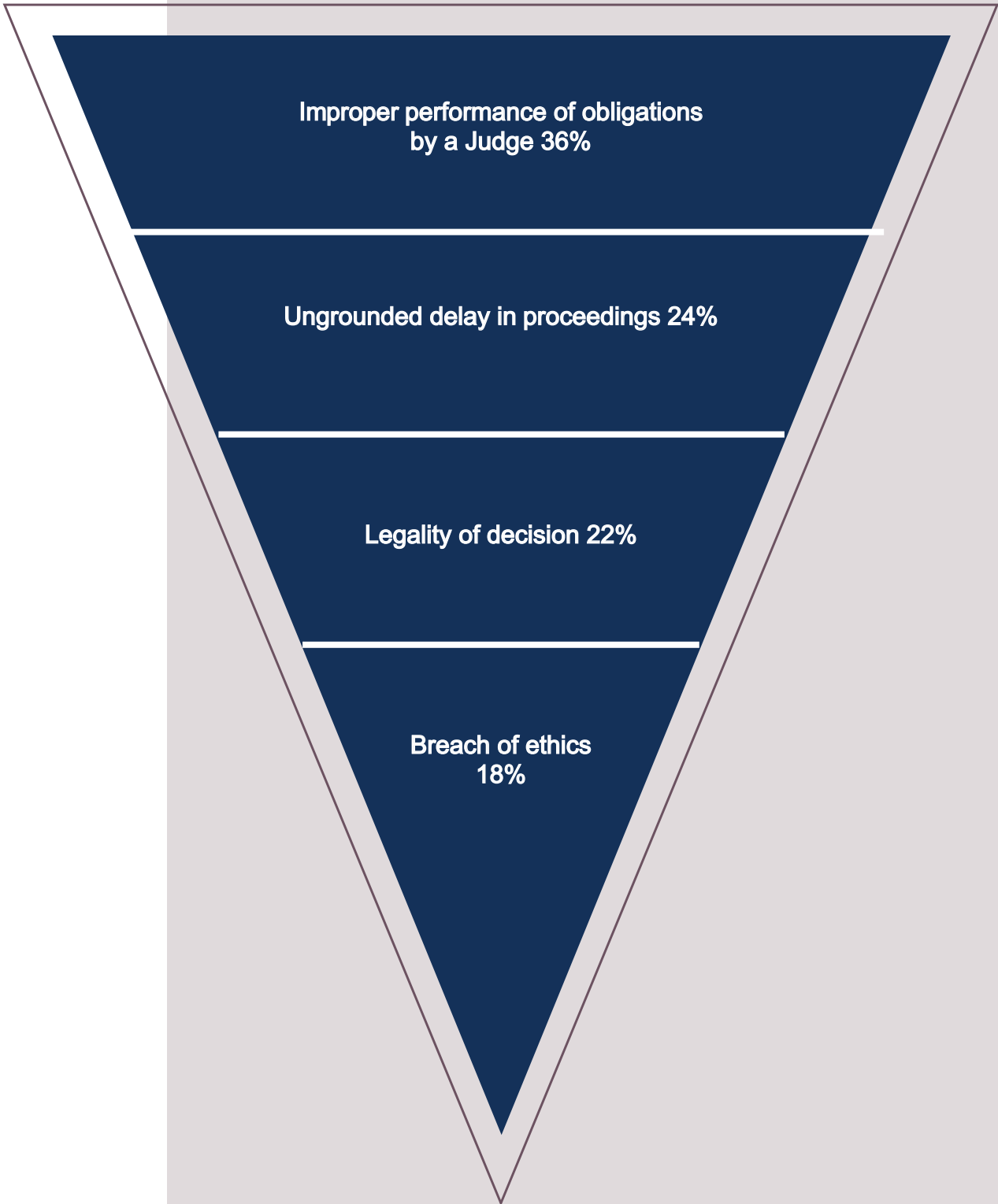
3. GENERALISATION OF THE OPINIONS OF AN INDEPENDENT INSPECTOR

The present chapter of the report generalises Opinions of an Independent Inspector submitted to disciplinary board for further consideration. The chapter reflects the criteria, legal documents and court practice used as basis in process of preparation of the Opinions.

Disciplinary cases are generalised according to case categorisation, type of misconduct and legal consequences. The HCoJ has not issued decision on several disciplinary cases, which are generalised in the report.¹⁹

Generalisation of cases indicate, that in most cases authors of complaints raise concerns related to the improper performance of obligations, ungrounded delay of proceedings and breach of ethics. In addition, complaints relate to the legality of judicial decisions.

¹⁹ According to Article 75⁴ of the Law of Georgia on Common Courts, complying with the principle of confidentiality the numbers of present cases under consideration are not indicated in footnotes;



3.1. UNGROUNDED DELAY IN PROCEEDINGS

Ungrounded delay in proceedings as a ground for disciplinary liability was indicated in **35%** of complaints in 2017 and **22%** in 2018.

While considering issue of ungrounded delay in proceedings, the Office of the Inspector is guided by the caselaw of the European Court of Human Rights regarding the time-frame for consideration of the case in reasonable time. In order to decide whether case was considered in reasonable time, it is important to determine:

- 1) The difficulty of case consideration that might be related to factual and legal complexity of the case;²⁰ involvement of several parties in case proceedings;²¹ examination of evidence²² and etc. Even if the case by its nature is not difficult but the national legislation is not clear, this condition may cause delay in the proceedings;²³
- 2) Actions of parties like frequent change of representatives²⁴, submitting motions aiming to delay the process or simply the motion to be submitted in specific timeframe²⁵, or any other actions related to time frame;
- 3) Conduct of a Judge considering the case – in this instances, attention is paid to the length of period in which a judge has not acted in line with the procedures prescribed by law ²⁶.

While considering the issue of ungrounded delay, the Independent Inspector emphasises complexity of case, actions taken by the Judge and the parties, number of conducted trials and other procedural actions, the length of a period that certain case has been assigned to specific Judge, workload of a Judge and individual liability. This means that civil/administrative case may be under consideration for 2 years, however assigned to a specific Judge under question for 3 or 4 months. For example, the case was under consideration in the City Court for more than 1 year, though it had been assigned to one judge for 4 months and 28 days and to another for 8 months and 23 days. The Inspector has established general fact of ungrounded delay and while considering violation of the

²⁰ *Katte Klitsche de la Grande v. Italy*, ECtHR, 27 October 1994, §55; *Papachelas v. Greece*, ECtHR, 25 March 1999, §39

²¹ *H. v. United Kingdom*, ECtHR, 9 June 1988, §72

²² *Human v. Poland*, ECtHR, 15 October, 1999, §63

²³ *Lupeni Greek Catholic Parish and others v. Romania*, ECtHR, 29 November 2016, §150

²⁴ *Koenig v. Germany*, ECtHR, 28 June 1978, §103

²⁵ *Acquaviva v. France*, ECtHR, 21 November 1995, §61

²⁶ *Pafitis and others v. Greece*, ECtHR, 26 February 1998, §93; *Tiece v. San Marino*, ECtHR, 25 July 2000

established time-frames with respect to each judge individually.²⁷

In addition in order to establish the fault of specific Judge in ungrounded delay of proceedings, the Inspector examines his/her workload. For example: it took a judge of a City court 11 months and 16 days instead of 5 months established by law²⁸ to examine specific case; the Inspector took into consideration the complexity of the case (10 hearings were conducted) and the workload of a Judge (883 cases were assigned to specific judge with 759 being completed (91%) in 2016; in 2017 – out of 1064 cases 905 (85%) completed ²⁹); therefore, the inspector did not identify any signs of willful delay in present case.

Despite of complexity of case, the Inspector established signs of disciplinary misconduct in cases where hearings were not conducted for a year and 1 month, whereas the court hearing was appointed 5 months following previous hearing³⁰ or non of the procedural steps were conducted for 1 year and 1 month under consideration.³¹ In addition statistic data on the caseload did not exclude a Judge from the disciplinary liability.

Independent Inspector established fact of possible misconduct in 2 cases where consideration of administrative cases were delayed for 2 years and 6 months in one case and 1 year and 8 months in another case and none of procedural actions were taken by a judge. Notably, nine members of HCoJ supported initiation of disciplinary proceedings against judges in indicated complaints and requested explanations from them, while 2 members supported termination of the disciplinary proceedings. Hence, the proceedings were terminated, as decision was not made by 2/3 majorities of votes.³²

The Inspector established the fact of ungrounded delay in proceedings in one instance as the judge spent 7 months considering the case which was meant to be considered in one month. The HCoJ did not concur with the opinion due to caseload of a Judge and the fact that Judge has taken several procedural actions. Namely, the Council considered, that the delay was caused due to the complexity of the case requiring extra time for examination.³³

It shall be noted, that the delay in proceedings in civil and administrative cases varies from 3 months up to 36 months.

Whereas delays in criminal proceedings mostly relate to the complaints regarding

, §31; *Sürmeli v. Germany*, ECtHR, 08 June 2006, §129

²⁷ Disciplinary case №14-18-1; Disciplinary case №14-18-2;

²⁸ Code of Civil Procedure, Article 59, paragraph 3;

²⁹ Disciplinary case №67-17;

³⁰ Disciplinary case №112-17;

³¹ Disciplinary case №43-17;

³² Disciplinary case №60-17;

³³ Disciplinary case №140-17;

non-custodial cases. The issue is assessed based on procedural time frames³⁴ and reasonable time frame standard set by European Convention on Human Rights and Fundamental Freedoms.³⁵

In one of non-custodial cases the author of a complaint relied on ungrounded delay in proceedings, whereas the examination revealed that defined time frame for criminal case proceeding was 36 months which has not expired.³⁶ Therefore, the violation of procedural time frame was not established. The delay in proceedings was assessed against the standard of reasonable time frame. Within the scope of examination following was taken into consideration: initiatives of the parties, the Court's actions (number of hearings, interval between the hearings, actions to prevent intentional delay in proceedings by the parties), complexity of the case, caseload of a Judge and etc. In present case, the number of hearings held amounted to 54 hearings and delay in proceedings was mostly caused by the need to allow defense proper preparation.³⁷ Therefore, despite the long duration of proceedings, the Inspector did not find a fault with the judge's actions and terminated disciplinary proceedings. Similarly, in other case the term argued was 1 year and 2 months³⁸ and as such did not exceed 24 months. The case was assessed against the standard of reasonableness and based on abovementioned criterion the misconduct has not been established. The HCoJ concurred with the Opinion of the Inspector regarding the present case and disciplinary proceedings have been terminated.

One case related to standard of reasonable time: the HCoJ concurred with the opinion of Independent Inspector and established ungrounded delay in proceedings by the judge. The case materials revealed, that on one of non custodial cases the proceedings were delayed due to permanent illness of defendant and the defense side has not presented documentation substantiating this fact to the court. The Independent inspector assessed actions of a judge in connection with the case: the judge has on several occasion re-scheduled the hearing due to the aforementioned reasons and made a decision to proceed with the case without the presence of a defendant only after 2 years, 3 months and 22 days. In addition, the proceedings showed that the Judge had not taken any measures to exercise justice in an efficient manner.³⁹

The aforementioned examples clearly show that the violation of the procedural rules defining time-frame is considered as ungrounded delay in proceedings. Though, the process of assessment encompasses several aspects such as the complexity of the

³⁴ Criminal Procedure Code of Georgia, Article 185, Paragraph 6 and Article 333 paragraph 8;

³⁵ *Wemhoff v Germany*; *Ciricosta and Viola v. Italy*; *Katte Klitsche de la Grande v. Italy*; *Papachelas v. Greece*; *Human v. Poland*; *König v. Germany*; *Pafitis and others v. Greece*; *Tiece v. San Marino*; *Sürmeli v. Germany*;

³⁶ Disciplinary Case №166/17;

³⁷ Criminal Procedure Code of Georgia, Article 8, Paragraph 2;

³⁸ Disciplinary Case №186/17;

³⁹ The final decision is not made;

case, procedural actions taken, the time period case is under consideration by a particular judge as well as the workload of that judge.

3.2. FAILURE TO FULFIL OR IMPROPER PERFORMANCE OF THE OBLIGATIONS BY A JUDGE

The substantial violation of fundamental constitutional or procedural rights or main guarantees of fair trial, which has caused damage to parties or judicial or public interest, may be considered as a failure to fulfil or improper performance of an obligations by a judge.

The failure to fulfil or improper performance of an obligation by a judge represents ground for disciplinary liability not only for the judges but also for the civil servants (i.e. resulting into termination of the contract for employees recruited based on employment contract). In one of its decisions, the disciplinary board pointed out, that while assessing the fact of failure to fulfil or improper fulfilment of the obligations by a judge, it is important to distinguish between the disciplinary misconduct and the legal mistake. In particular, in process of assessment the board should take into consideration: possibility of error correction, gravity of an error, intensity and repeated nature of actions, guilt of the judge and its gravity.⁴⁰ Furthermore, if its established, that the judge acted based on his/her inner conviction, this fact exempts him/her from disciplinary liability.

While considering the fact of improper performance of an obligation by a judge, the Office of an Independent Inspector is guided by the practice of the Disciplinary Chamber regarding the case Neds-Sh/9-16, in which the chamber has distinguished the legal error and the disciplinary misconduct. According to the Chamber's interpretation - the provision of the law shall be interpreted in light of two major principles – the principle of legality and the principle of exercising discretionary powers by a judge. The principle of legality is based on the rule of law. This is the constitutional principle according to which, no action shall contradict to the requirements of the law. While exercising the discretionary powers, the judge is obliged while exercising these powers not to go beyond the law. "The Court is obliged to exercise discretional powers within the framework established by the law."⁴¹ Therefore, according to the existing practice, the incorrect actions/inactions of a judge shall be considered as the disciplinary misconduct only in case it breaches the framework established by the law and violates imperative requirements of the law.

The Independent Inspector concluded the fact of improper performance of an obligation in case where the judge had applied invalid legal provisions to the case that has caused

40 Disciplinary Case №1/04-12, Disciplinary collegium of Common Courts, April 12, 2013;

41 Disciplinary Case Neds-Sh/9-16, Disciplinary Chamber of Common Courts, July 21, 2016;

substantial violation of procedural rights of a party; in particular, the right to consider specific motion on oral hearing. The HCoJ appraised this fact as a legal error, due to the existing possibility to repair an error, as well as due to the lack of intentional action or grave negligence from side of a judge.⁴²

The majority of cases of improper performance of an obligation relate to violation of time frames for delivering reasoned final or interim decisions to the parties. Access to justice implies not only the right to initiate proceedings, but also the right to finalise the case and enforce the decision at the same time. The Right to fair trial implies enforcement of judicial decisions that ensures full restoration of a violated right. The Right to submit a complaint to the court is not only a theoretical right, which aims declaratory recognition of a right through court decision, but rather it includes a legitimate expectation, that the decision shall be enforced. Efficient protection of parties and restoration of justice includes obligation of administrative bodies to ensure enforcement of the judicial decision.⁴³ Therefore, when an applicant indicates towards the fact of delayed delivery of court decision, this shall not be considered as ungrounded delay in proceedings but rather as improper performance of an obligation.

In practice, the period of delay in delivering court decision varies from 10 days up to 10 months.

While considering the fact of delay, the Independent Inspector takes into consideration whether delayed delivery of the document caused violation of a fundamental right. In addition, the Inspector determines whether the document was sent in reasonable time considering the workload of a judge and complexity of legal issue under question.

The Independent Inspector concluded the disciplinary misconduct in civil cases where decision was delivered after 5 months,⁴⁴ 8 months⁴⁵ and 6 months.⁴⁶ The disciplinary liability has not been established in case where reasoned summary judgment was sent in 2 weeks after the judgment was issued;⁴⁷ The decision was delivered to the respondent on 13th day following submission of the case by the applicant (the delay by 10 days). Though, the party concerned maintained its right to appeal.⁴⁸

The Independent Inspector did not establish improper performance of an obligation in case where there was a 9 month delay, as the party maintained right to appeal and the workload of a judge was particularly heavy - the judge work-load was 1674 civil cases

42 Disciplinary Case №202-17;

43 *Hornsby v. Greece*, 19 March 1997, §40, Reports of Judgments and Decisions 1997-II; *Assanidze v. Georgia*, App. No. 71503/01 (Eur. Ct. H.R. Apr. 8, 2004); *Apostol v. Georgia*, no. 40765/02, § 71, ECHR 2006;

44 The final decision is not made ;

45 The final decision is not made ;

46 The final decision is not made ;

47 Disciplinary Case №212-17;

48 Disciplinary Case №133-17;

out of which 888 were completed (53%).⁴⁹

It is worth to mention, that there are a few complaints regarding the delay in delivering criminal case judgments. The Inspector concluded improper performance of an obligation in custodial case were delivering the copy of summery judgment was delayed (by 1 month and 14 days) and time frame for referring the case to appellate court was violated (by 3 months and half). This opinion was upheld by the HCoJ.⁵⁰

The complainants in criminal cases primarily argue that the procedural rules for case proceedings were violated; The Independent Inspector did not establish existence of the disciplinary misconduct in any of the cases as the actions did not result either into negative effect on the rights of parties' or violate the public interest.

The analisys of disciplinary cases indicate that improper performance of an obligation by a judge implies actions or inections of a judge, which substantially violates imperative and fundamental norms and does not represent a legal error. Nonetheless, the Inspector assesses every case individually considering existence of specific evidence and circumstances.

3.3. BREACH OF JUDICIAL ETHICS

High professional ethics of a judge is crucial condition for public reputation of the Judiciary. Therefore, compliance with the judicial ethics has significant importance in disciplinary proceedings.

The Consultative Council of European Judges (CCJE) Opinion №3 of 2002,⁵¹ the Bangalore Principles⁵² and the Rules of Judicial Ethics⁵³ represent major regulatory frameowkr on this matter. The Independent Inspector applies the abovementioned standards and international act⁵⁴ while considering the complaints on potential violation of judicial ethics.

The criterion used for assesing potential misconduct related to judicial ethics, is to define whether the conduct compromises the ability of the judge to carry out judicial responsibilities with integrity, impartiality, independence and competence, or whether it is likely to create, in the mind of a reasonable observer, a perception that the judge's ability to carry out judicial responsibilities in that manner is impaired. ⁵⁵

⁴⁹ Disciplinary Case №49-18;

⁵⁰ The final decision is not made;

⁵¹ <http://independent-inspector.ge/Legislation/Decision/13>

⁵² <http://independent-inspector.ge/Legislation/Decision/13>

⁵³ Rules of Judicial Ethics, Conference of Common Court Judges, 2007;

⁵⁴ <http://dcj.court.ge/geo/%E1%83%99%E1%83%95%E1%83%9A%E1%83%94%E1%83%95%E1%83%94%E1%83%91%E1%83%98>

⁵⁵ Commentary to the Bangalore Principles of Judicial Conduct, principle 4.1, page 128;

At the court hearings as well as outside the court, a judge should always act courteously and respectfully towards third person's dignity. A judge should also require similar courtesy from those who appear before him/her within the court, and from the court staff and others subject to the judge's direction or control. A judge should be above personal animosities, and must not have favourites amongst advocates appearing before the court. Unjustified reprimands of counsel, offensive remarks about litigants or witnesses, cruel jokes, sarcasm, and intemperate behaviour by a judge undermines both order and decorum in the court. When a judge intervenes, he or she should ensure that impartiality and the perception of impartiality are not adversely affected by the manner of the intervention.⁵⁶

In order to establish the fact of breach of judicial ethics, the Independent Inspector examines audio and video materials (all the recordings are collected from courtroom and outside) and only through the full examination of facts and consideration of all specific circumstances, the fact of breach of ethics could be concluded.

The Independent Inspector deduced the breach of ethics in case, where the judge ordered the interpreter to fulfill his/her obligation in a rude manner. Notably, the HCoJ concluded that the interpreter aimed to compromise the process of hearing, whereas the action of the judge was aimed to ensure effective and continuous exercise of justice. Therefore, the HCoJ did not uphold the position of the Inspector, accordingly terminating the disciplinary proceedings against the judge.⁵⁷

The disciplinary misconduct was established in an instance when the judge has communicated with the representative in humiliating manner, i.e. publicly expressing negative opinion regarding the competence of lawyer. This Opinion was shared by the HCoJ.⁵⁸

In one of the cases, the judge used following wording while communicating with the representative of an appealing party: "Of course you will get the reasoning, I will not ask for your gratitude for it;" This was considered unethical by the Inspector as well as by Council.⁵⁹

In a case, when the Judge was asking for detailed explanation during the hearing from the representative of a claimant regarding the complaint was considered as possible breach of ethics. The Independent Inspector noted that the Chair of Chamber is authorised (even obliged) to take necessary measures in the event the party to the case acts disrespectful towards court; However, even in this case, the judge shall comply with rules of judicial ethics, therefore asking for explanations regarding/reporting on the substance of application (which does not aim to establish any factual circumstances)

⁵⁶ Commentary to the Bangalore Principles of Judicial Conduct, principle 6.6, Paragraph 215, page. 196;

⁵⁷ Disciplinary Case №101-17;

⁵⁸ The final decision is not made ;

⁵⁹ The final decision is not made ;

represents potential breach of judicial ethics.⁶⁰

The disciplinary misconduct was not established in an instance when the judge deciding upon the application of the pre-trial measure, indicated on personal characteristics, family and lifestyle of an adult defendant. The Inspector took into consideration the fact that the purpose of the discussion was to substantiate the grounds for using specific pre-trial measure (give a reasoned decision) and did not aim to offend the defendant or his/her family.⁶¹

The complainants' often dispute impartiality or bias attitude of a judge and as such the breach of judicial ethics. Often, examination of the factual circumstances do not reveal existence of such facts. For example, one of the complainant's claimed that the the judge and the respondent side were relatives, hence questioning judge's impartiality. The Office of Independent Inspector reviewed asset declaration of the Judge (in order to examine the family members). However, there was no evidence proving alleged relation between thee Judge and respondent side. The proceedings were terminated due to lack of reasonable grounds for disciplinary liability.⁶²

In order to increase public trust towards judiciary,⁶³ generalisation of disciplinary cases indicate on importance of establishment of high standards of judicial ethics.

3.4. LEGALITY OF THE JUDICIAL ACT

In 2017, 13% of complaints related to legality of judicial act whereas in 2018 - its 24%.

It is prohibited to review the legality of judicial decision during disciplinary proceedings. Notably, substantial number of compaints relate to thw legality of judicial act: often, parties are not satisfied with the decision/judgment and therefore submit application to the Office of Independent Inspector.⁶⁴ While discussing the issue of the legality, it is important to refer to constitutional provision according to which no one shall have the right to demand an account concerning a particular case from a judge.⁶⁵ The judge shall assess facts and make decisions only according to the Constitution of Georgia, universally accepted principles and standards of international law, other laws and by his/her inner conviction.⁶⁶ Only the Court is authorised to amend or annul the (lower) court's decision according to rules prescribed by law. Disciplinary proceedings do not imply examination of the content and reasoning of the court's decision. Furthermore,

60 Disciplinary Case №102-17;

61 Disciplinary Case №173-17;

62 Disciplinary Case №2-18;

63 CCJE opinion No. 3(2002), paragraph 50, recommendation ii.

64 Organic Law on Common Courts, Article 7510, paragraph 5;

65 Constitution of Georgia, Article 63, Paragraph 1;

66 Organic Law on Common Courts, Article 7, paragraph 1;

incorrect interpretation of the law based on a judge's internal faith shall not constitute disciplinary misconduct resulting into disciplinary liability.⁶⁷

Accordingly, the Independent inspector was not authorised to assess complaints related to legality of judicial decision.

⁶⁷ Organic Law on Common Courts, Article 751, paragraph 3;

4. ONGOING ACTIVITIES AND FUTURE PLANS OF THE OFFICE OF AN INDEPENDENT INSPECTOR

The Office of Independent Inspector pays particular attention to raising public awareness about the new institutions. For this purpose, with the financial assistance from the CoE Project “Support to the Judicial Reform in Georgia” launched the new web-page www.independent-inspector.ge. The webpage includes a number of innovative features, such as adaptability to the needs of people with disabilities, possibility to submit disciplinary complaint online, digital signature, etc. Statistic data on disciplinary proceedings is proactively published and renewed on the web-page.

The CoE -“Support to the Judicial Reform in Georgia” and USAID/PROLoG has further supported the Office with the professional training led by international experts and foreign judges.⁶⁸ The Independent Inspector had participated in seminar “Ethics and Corruption Prevention in Judiciary” organised by European Network of Judicial Training in Riga, Latvia.⁶⁹

The Independent Inspector is actively involved in the Working Group created for the implementation of Judiciary Strategy, one of the main directions of which is to improve disciplinary proceedings against judges of the common courts.⁷⁰

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68 <http://independent-inspector.ge/News/Index/2>

69 <http://independent-inspector.ge/News/ReadMore/3>

70 <http://independent-inspector.ge/News/ReadMore/2>

disciplinary proceedings against judges of the common courts.⁷¹

Effective implementation of disciplinary proceedings requires awareness of the public. For that purpose, the Independent Inspector participates in TV and radio programs, scientific and academic activities.⁷² The Office actively uses the social network, where the necessary information for the public is also published.

In 2019, the Office is planning meetings with locals, attorneys, representatives of Public Defender's Office, representatives of scientific circles and students of higher educational institutions are planned in the capital and regions.

In spring of 2019, the Independent Inspector's Office is planning to organise international forum on judicial ethics. The aim is to increase information and share best practices: representatives of judiciary and international experts will participate in the forum.

PROPOSALS AND RECOMMENDATIONS

Disciplinary proceedings are important component of the Judiciary's accountable. There are number of issues in legislation regulating disciplinary proceedings that require further clarification. The Organic Law On Common Courts does not provide exhaustive list of disciplinary misconduct, which is currently being considered within the framework of Working Group II responsible for implementation of the Judiciary Strategy (i.e. the types of disciplinary misconducts are being defined in accordance to Bangalore Principles). Other recommendations relate to improvement of the disciplinary proceedings. For example, the Law on Common Courts does not provide mechanism for determination of the error in the complaint application.

In order to optimise disciplinary proceedings it is important to grant power to the Inspector to determine an error in the application of a complaint and allow complainant to correct application within specific time-period in case the name of a judge or the essence of possible disciplinary misconduct is not indicated in a complaint. It is also important for the Law to grant power to the Inspector to reject initiation of disciplinary proceedings in cases where there is no subject of the proceedings or the time-limit for imposing disciplinary liability has expired or the complaint relates to the legality of the decision.

All the above mentioned would enhance development of accountable Judiciary and shall increase the trust towards Judicial System.

⁷¹ <http://independent-inspector.ge/News/ReadMore/2>

⁷² <http://independent-inspector.ge/News/ReadMore/21>

„The Judiciary does not yeald the sword or govern the finances, its ultimate power is in the Judgement that serves the trust of the Soceity. “ 73

The primary aim of operation of the Office of Independent Inspector is to improve trust towards Judiciary through ensuring accountable justice system.

73 US Supreme Court Judge Felix Frankfurter, (Baker v.Carr; 1960);