

PREFACE

2019 year was pivotal for the Office of an Independent Inspector and personally for me – as the first independent inspector. In the second year of our activity, we have established the practice of explaining major disciplinary misconducts, and we have taken a number of important measures to enhance our office and its visibility.

The Office of an Independent Inspector carried out preliminary examination and determination of factual circumstances in over 87% of complaints. Along with this, numerous meetings, public lectures and regional workshops were held. Also, an international forum addressing standards of online communication of judges was organised by the Office.

We are especially proud of the attitudes towards the Office expressed by the international partners, non-governmental community* and the court representatives. According to the report made by EMC, IDFI and CRRG-Georgia: “It can be positively noted that the statistics on disciplinary proceedings are timely and effectively provided to

the public after the establishment of the Office of Independent Inspector.”** This demonstrates our commitment to be as transparent and accountable as possible, in order to respond to the high public interest.

Along with being an Independent Inspector, in 2019, I took part in the competition for judges of the Supreme Court of Georgia and became a lifetime appointed judge of the Supreme Court. Thus, I am leaving this position wishing success to the future Independent Inspector in this highly important function. I hope that the practice developed by the Office in 2018-2019 will serve as precedent, and its further development will be secured. I wish for the Office of an Independent Inspector to become an even more transparent, high-profile, trusted institution that will be institutionally sustainable and will ensure an effective system of accountability for judges.

Ketevan Tsintsadze,

Judge of the Supreme Court of Georgia

* Report “Assessment of the Judicial Reform System of Disciplinary Liability of Judges”, prepared within the scope of the project – “Facilitating Implementation of Reforms in the Judiciary (FAIR)”, „EMC”, „IDFI” and „CRRG -Georgia”, p. 62

** Report on Monitoring the High Council of Justice №7, Georgian Young Lawyer's Association, TI Georgia, Tbilisi 2019, p.51

TABLE OF CONTENTS

Introduction	3
§1 Statistic Analysis of the Activities of the Independent Inspector	4
1.1. General statistical data	4
1.2. Statistical data on the complainants	5
1.3. Statistical data according to case categorization	6
1.4. Statistical data according to court instances	7
1.5. Statistical data on opinions submitted and the disciplinary hearings	8
1.6. Statistical data on initiating disciplinary proceedings against judges and requesting explanatory note	9
1.7. Statistical information on termination of disciplinary proceedings or imposition of disciplinary liability against judges	10
§2 Generalisation of the Opinions of an Independent Inspector 11	
2.1. Failure to fulfil or improper performance of the obligations by a judge	11
2.2. Ungrounded delay in proceedings	13
2.3. Breach of Judicial Ethics	15
2.4. Legality of the Judicial Act	17
§3 Landmark Cases	17
§4 Legislative Amendments	21
§5 On-going Activities and Future Plans of the Office of the Independent Inspector	23
Recommendations	25

INTRODUCTION

The existence of an independent and impartial judiciary is a necessary condition for the protection of human rights and the strengthening of a democratic state. Judges must fulfil their duties within the provisions set out in the disciplinary and procedural rules and (obviously) the criminal law. *

One of the key roles in this process is played by accountable judiciary, an important component of which is the process of effective disciplinary proceedings. The institution of Disciplinary Liability has a significant impact on the professional performance of judges. Its effectiveness is essential to the functioning of the judicial system.** Therefore the functioning of the Office of the Independent Inspector has special importance.

This report provides information to the public on disciplinary cases against judges of common courts. It contributes to strengthening the principles of transparency and accountability of the judiciary.

* 'The independence of the judiciary and its relations with the other powers in a modern democratic state', CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE), Opinion (2015), §18, P.9

* <https://cjp.ca.gov/> [Seen on 26.11.2019]

The report analyses the performance of the Office based on statistical information and compares it to last year's data. The findings of the Independent Inspector are generalized according to the types of disciplinary misconduct most frequently mentioned in the complaints and respective legal consequences. It should be noted, that this year publication no longer highlights the basic principles of operation of the Office, which were extensively detailed in the previous report. Focus of this year is on cases generalized according to the types of specific misconduct, which have precedential meaning in essence.

It is worth to mention, that at the end of 2019 Parliament adopted a reform package known as the 4th Wave. As a result of legislative reform, the institutional safeguards and powers of the Independent Inspector have increased, and the process of disciplinary proceedings itself has been further refined. These legislative changes are discussed in detail in Chapter 4 of this report.

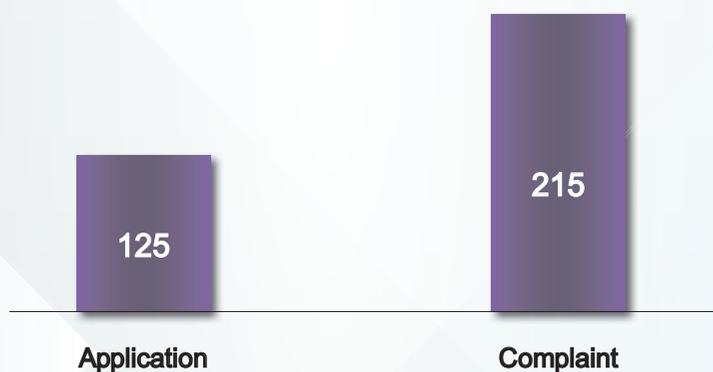
1. STATISTIC ANALISYS OF THE ACTIVITIES OF THE INDEPENDENT INSPECTOR

1.1 General Statistical Data

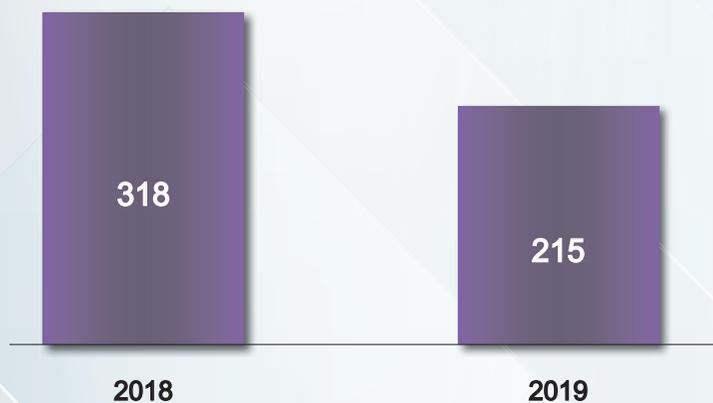
From January 1 to December 31, 2019, 215 disciplinary complaints and 125 applications, lacking formal requirements, were registered in the Office of Independent Inspector.

2019 Statistical Data

Overall number of complaints 215



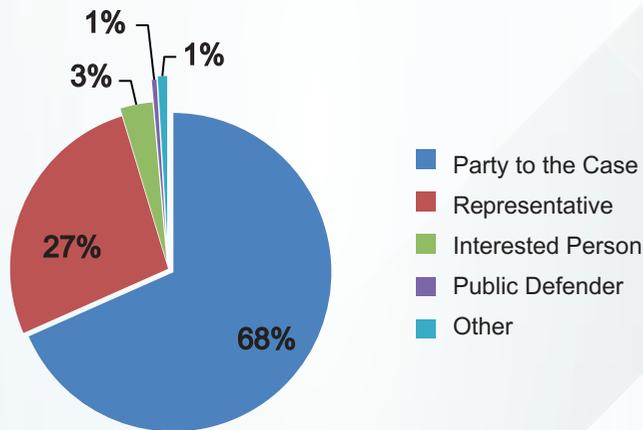
2018 -2019 Statistical Data



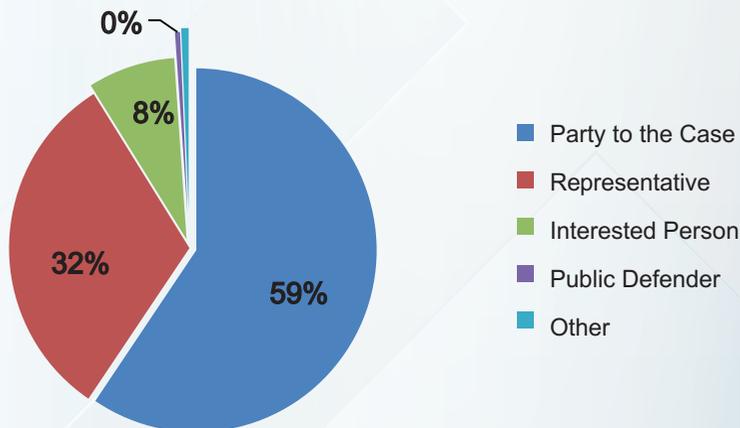
1.2 Statistical Data on Complainants

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.¹ According to existing data the number of complaints made by representatives has reduced by 5% and number of complaints made by parties has increased by 9%.

2019 Data



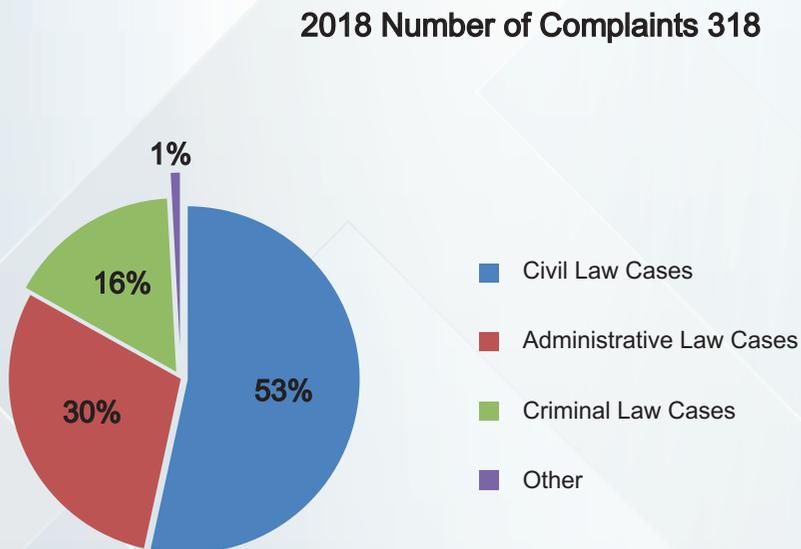
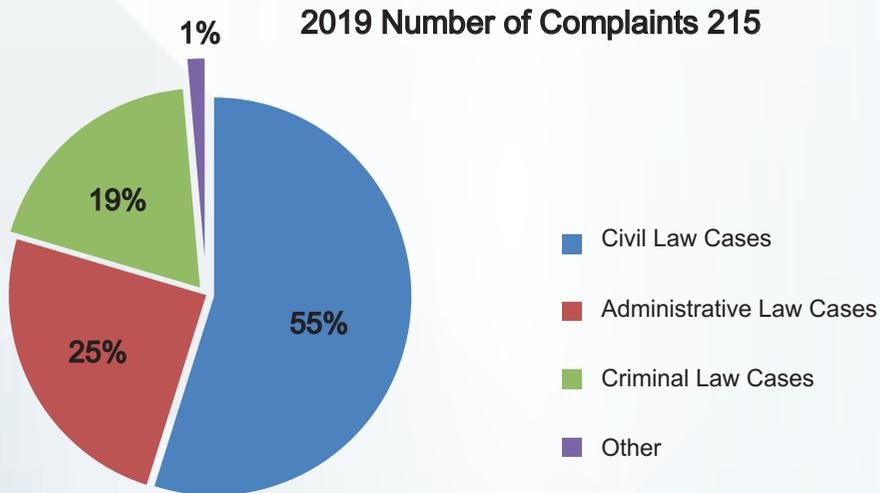
2017-2018 Data



¹ 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. Indication "other" implies information spread through media and explanatory notes. This is presented in order to provide comprehensive statistical data;

1.3 Statistical Data According to Case Categorisation

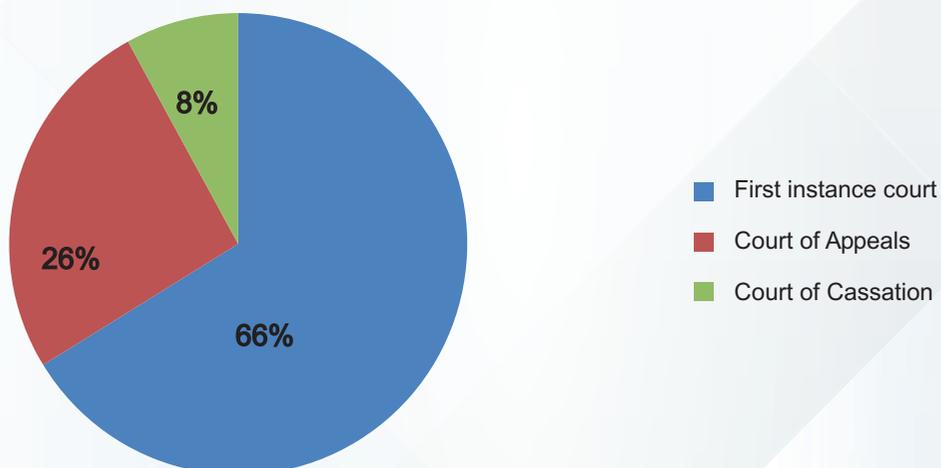
Although the number of complaints on civil cases has decreased by 3%, looking at the categories of cases most of the complaints, both last year and this year, relate to civil law cases, with a percentage of 55%. The rate of all types of applications on criminal cases increased by 3% and is 19%. The number of complaints submitted on administrative law cases has dropped by 5% this year.²



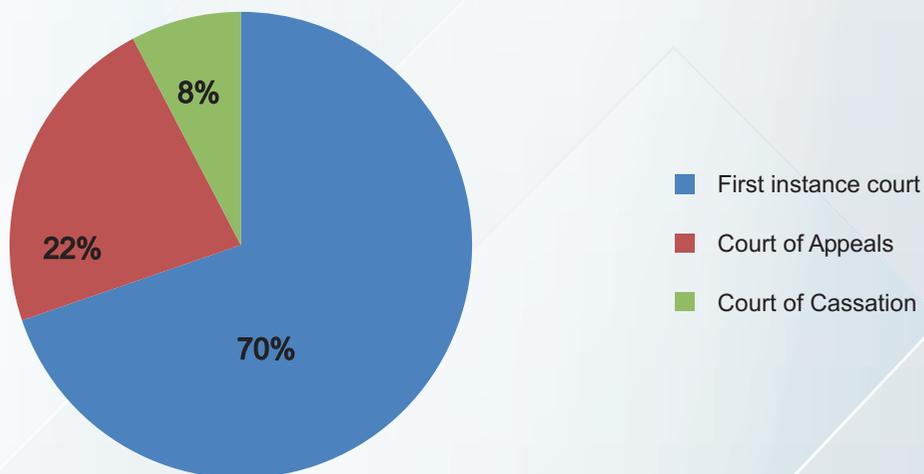
1.4 Statistical Data according to the Court Instances

The generalization of the cases revealed that 66% of appeals were against first instance judges, which is 4% less than last year. The number of complaints against the judges of appellate courts increased by 4% and reached 26%. As for the number of complaints against the judges of the Supreme Court of Georgia, it remains 8%.

2019



2017-2018



1.5 Statistical Data on Opinions Submitted and the Results of Disciplinary Hearings

For the purposes of effective examination of the disciplinary case, the Independent Inspector has requested materials, video and audio records from the courts as well as various administrative bodies, interviewed petitioners and persons related to the case, searched for different types of written evidence (e.g. the information on the meeting schedule, asset declarations of judges, etc.).

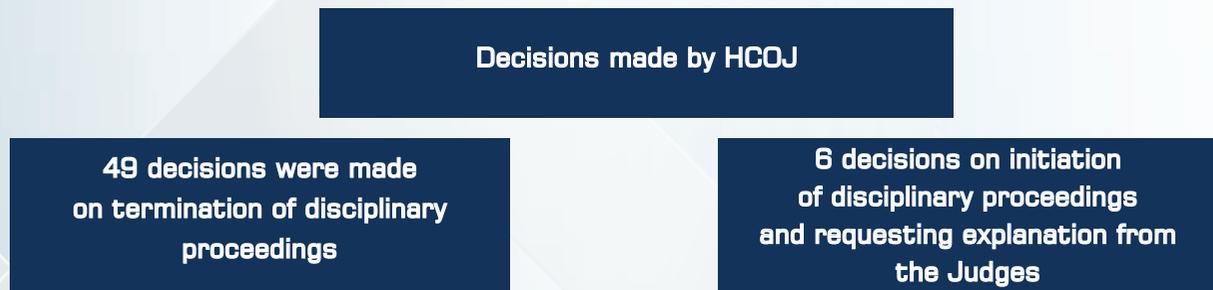
As part of the disciplinary proceedings, the Office of the Independent Inspector was actively engaged with the authors of the complaints or interested parties, answered their questions and provided information on the disciplinary proceedings. At the same time, an independent inspector used to meet with the authors of complaints or with those interested in disciplinary proceedings twice in a week.

An Independent Inspector's office investigated complaints, explanatory notes, or information spread through media that were not related to a specific case.

Importantly, during the reporting period an independent inspector conducted an examination and prepared an opinion on 87% of the complaints received.³ During the reporting period, the High Council of Justice of Georgia held two disciplinary hearings and considered 41 opinions.⁴

The High Council of Justice of Georgia made 55 decisions

The HCOJ made 55 decisions.⁵ None of the Council members have prepared dissenting opinion regarding any decisions. None of the judges concerned have claimed for recusal or public hearing.



³ On 13% of complaints received in 2019 (28 in total) the two-month statutory period for preliminary examination has not expired, as complaints were filed to the Office in late November-December, 2019. Accordingly, preliminary examinations on those cases are in progress.

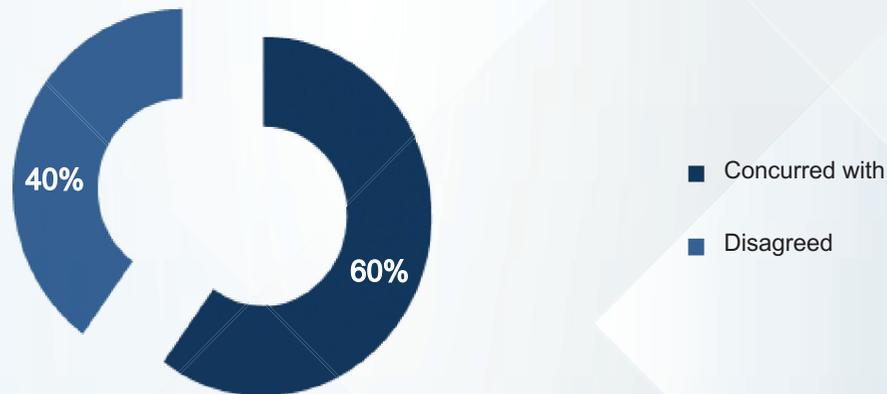
⁴ The Independent Inspector may, by its decision, consolidate two, or more than two disciplinary cases conducted on different grounds against one judge into one proceeding. Therefore the number of complaints and opinions may not coincide;

⁵ 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;

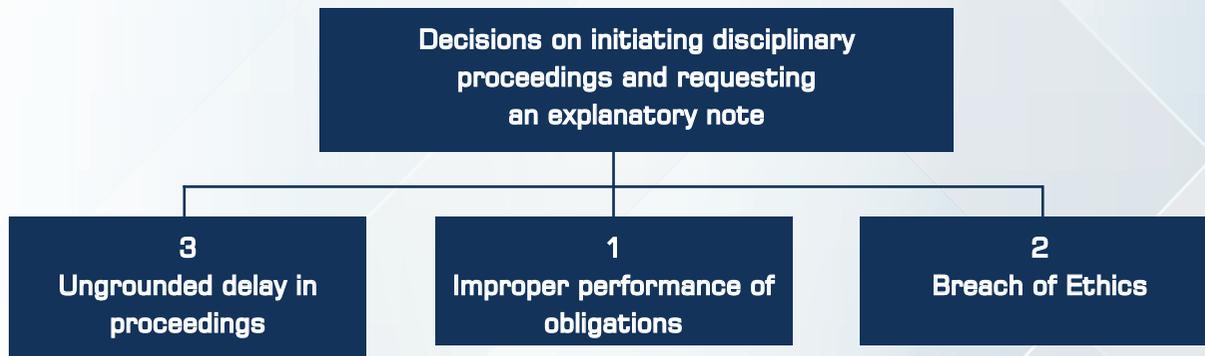
1.6 Statistical Data on Initiating Disciplinary Proceedings Against Judges and Requesting Explanatory Note

During the reporting period 10 opinions of the Independent Inspector out from total 41 considered by the HCOJ requested explanatory note from judges and initiation of disciplinary proceedings. Namely, 6 cases related to ungrounded delay in proceedings, 2 cases of improper performance of obligations and 2 cases - breach of ethics.⁶ In addition, 1 opinion of Independent Inspector submitted to HCOJ implied termination of disciplinary proceedings on the possible fact of improper performance of obligations by the Judge. The HCOJ disagreed with the opinion of Independent Inspector and decided to request explanatory note from the Judge.

The HCOJ concurred with 6 opinions submitted for initiation of disciplinary proceedings and requesting explanatory notes and disagreed in 4 cases and decided to terminate disciplinary proceedings against the Judge.



6 decisions made on initiation of disciplinary proceedings and requesting an explanatory note related to 6 facts of disciplinary misconduct.



The HcoJ disagreed with 3 opinions of Independent Inspector confirming ungrounded delay in proceedings and 1 opinion confirming improper performance of obligations by a Judge.

⁶ 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;

1.7 Statistical Data on Termination of Disciplinary Proceedings against Judges or Imposition of Disciplinary Liability

The HCOJ considered 16 cases of disciplinary liability. The HCOJ made decision on imposition of disciplinary liability in 4 cases and on termination of disciplinary proceedings in 12 cases. In 5 cases termination of proceedings was caused by termination of judicial term of respective Judges.



12 decisions on termination of proceedings related to 7 cases of ungrounded delay, 3 cases of improper performance of obligations, 1 case of breach of ethics and 1 case related to as to the ungrounded delay as improper performance of obligations. The Opinions of the Independent Inspector confirmed possible fact of disciplinary misconduct in all of 12 cases.

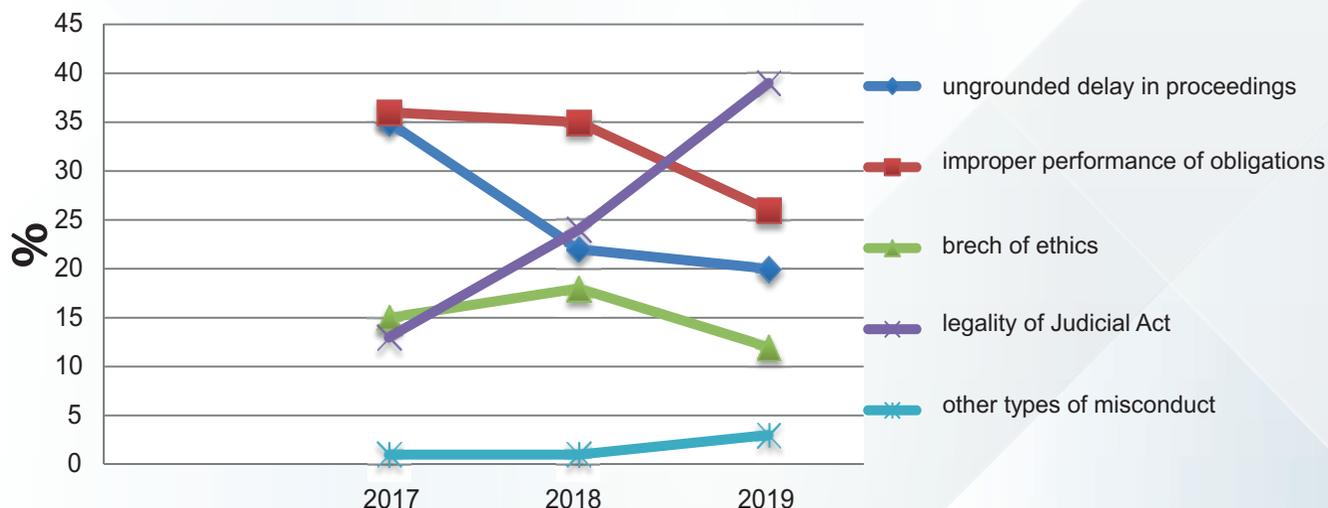
4 decisions made by HCOJ on imposition of disciplinary liability related to 1 case of ungrounded delay of proceedings and 3 cases of improper performance of obligations of a Judge.



2. Generalisation of the Opinions of an Independent Inspector

The present chapter of the report generalises Opinions of an Independent Inspector. Disciplinary cases reflected in the report of 2017-2018 as well as of 2019 are generalised according to case categorisation, type of misconduct and legal consequences.⁷

Generalisation of cases indicate, that in most cases authors of complaints raise concerns related to possible fact of the improper performance of obligations, ungrounded delay in proceedings and breach of ethics. In addition, complaints relate to the legality of judicial decisions.⁸



As it can be seen from the table, the share of applications complaining on the fact of ungrounded delay in proceedings is almost identical in in 2018-2019, though it is reduced compared to 2017.

Similarly, there is only a 5% difference in the share of breach of judicial ethics compared to 2018. It is noteworthy that there has been an increase in the number of complaints referring to the legality of the Act, which indicates the need for awareness raising measures. Accordingly, the Office of the Independent Inspector is ready to continue and expand regional outreach and other similar activities so that complaints only refer to information that is actually matter disciplinary misconduct.

2.1 Failure to fulfil or improper performance of the obligations by a Judge

The failure to fulfil or improper performance of an obligation by a judge represents one of the grounds for disciplinary liability according to the Law on Common Courts. It is worth to mention, that the share of applications indicating the improper fulfilment has decreased by 10%.

⁷According 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;

⁸ According to Article 7510 (paragraph 5) of the Organic Law of Georgia on Common Courts, it is inadmissible to supervise the legality of acts rendered by a judge during disciplinary proceedings.

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.⁹ During the reporting period the number of violation of time limits for delivering to parties the acts made by court has increased in civil/administrative cases.

Last year, the period of delay in delivering final or interim decisions varied from 10 days up to 10 months on civil and administrative cases. The present statistics has changed and the maximum delay in delivering court acts to parties was 3 years on civil cases and 1 year, 3 months and 25 days on administrative cases.¹⁰

Although the Judge violated the statutory period established by the Civil Procedure Code of Georgia by delivery of reasoned judgment to parties 9 months later, the HCOJ terminated disciplinary proceedings taking into consideration statistic data and workload of the specific judge.¹¹

Independent Inspector established disciplinary misconduct when the judge sent a ruling on request of evidence to the respondent 1 year, 1 month, and 18 days later, indicating signs of possible improper performance of obligations by the Judge.¹²

The fact of disciplinary misconduct was established in case where a judge had sent a ruling on suspension of the administrative legal act in 18 working days.¹³

It should also be noted that the High Council of Justice did not consider as the improper performance of obligations the fact of referring the case to the higher court 5 days after the expiration of the statutory period. The High Council of Justice considered that the author's statement of delay in submitting his complaint to the Court of Appeal was not confirmed by the materials of the case, and the insignificant violation was not considered to be an unreasonable time-limit.¹⁴

The issue of consideration of the motion should also be mentioned in relation to the improper performance. There are cases where a judge needs 2-3 months to consider a motion, and in some cases 1 week or 10 days are sufficient. According to the Independent Inspector, it is important to take into consideration the timing and content of the motion. In each particular case, a standard of reasonable timeframe shall be used.

The generalisation of Inspector's opinions regarding the improper performance of obligations is also interesting in relation with criminal cases.

Delivering a copy of the criminal Judgment to the defence of the criminal case 4 months later was considered as a disciplinary misconduct by the independent inspector. The inspector explained that due to failure to timely deliver the copy of the judgment, the defence was not given the opportunity to prepare a complete and substantiated appeal, as the party was not aware of the legal assessment of the specific factual circumstances by the court.¹⁵

The analysis of disciplinary cases indicate that improper performance of an obligation by a judge implies actions or inactions of a judge, which substantially violates imperative and fundamental norms

⁹ The First Annual Report of an Independent Inspector, Tbilisi 2018, p. 30

¹⁰ 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.

¹¹ Disciplinary case №49-18

¹² Disciplinary case №204-18

¹³ Pursuant to Article 29 of the Code of Administrative Procedure of Georgia, the ruling was to be served to the parties within one day of its adoption.

¹⁴ Disciplinary case №91-18

¹⁵ Disciplinary case №56-19

and does not represent a legal error. Nonetheless, the Inspector assesses every case individually considering existence of specific evidence and circumstances.

2.2 Ungrounded Delay in Proceedings

First of all, it is worth to mention, that during the reporting period the number of complaints indicating ungrounded delay in proceedings as a ground for disciplinary misconduct has decreased by 7.3%. According to statistic data only 18% of complaints are related to ungrounded delay in proceedings.

While assessing the ungrounded delay in proceedings, it is necessary to determine its essence- what is considered as unreasonable delay and what the term "ungrounded" means. The domestic legislation does not provide additional explanations in this regard, nor do the existing decisions of the Disciplinary Board and the Disciplinary Chamber allow the matter to be generalized.

While considering the issue of ungrounded delay, the Independent Inspector emphasizes 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.¹⁶ This means that the proceeding of the civil/administrative case may last up to 3 years, however a specific judge under the question may have been considering the case just for 8-9 months from whole proceeding period. For example, an administrative case in a city court was being adjudicated for 1 year, 6 months and 28 days (prior to the filing of a specified claim), and 6 months and 7 days after the receipt of a specified claim (2 years, 1 month, and 5 days, respectively). During this period, one judge was considering case for 11 months and 19 days and another judge - 8 months and 9 days. Time gap between court sessions ranged from 5 months to 8 months.¹⁷ Although the Independent Inspector established ungrounded delay in proceedings in general, the individual guilt related to alleged violation of terms was discussed individually with respect to each judge.

Independent Inspector established possible disciplinary misconduct in case, where timeframe for the hearing lasted for 1 year and 3 months. In present case Inspector emphasised on actions of the Judge and assessed procedural measures taken by the judge. Temporary disability (hospital sheet) and period of leave (2 months and 25 days in total), as well as the workload of the judge, the number of cases assigned to him and the cases pending before him were taken into consideration. (During the reporting period, 652 cases were assigned to the judge for review, of which 530 (81%) were completed). Accordingly, the Independent Inspector considered that there were no signs of ungrounded delay in proceedings by the judge.¹⁸

The actions of the parties were highlighted in the case, which exceeded the two-month review deadline by more than 8 months. While assessing the justification of the aforementioned delay, procedural actions were taken into account. The case file argued that the claim and the response to the claim had been amended several times, the parties filed a motion the court to prepare conclusion on the child's mental state, the parties had repeatedly requested the adoption of an interim order and

¹⁶ Detailed criteria are given in the First Annual Report of the Office of an Independent Inspector. p. 28

¹⁷ Disciplinary case №123-19

¹⁸ Disciplinary case №72-18

subsequently a change and revocation of the interim order. The judge conducted 8 court hearings, thus facilitating the completion of the case as closely as possible. As a result, despite the delay of more than eight months in the case, an Independent Inspector did not consider the actions of the judge as a disciplinary misconduct due to the actions of the parties and the complexity of the case.¹⁹

The delivery of the default judgment with the delay of 1 month and 24 days was not considered as disciplinary misconduct.²⁰

Despite of complexity of case, the Inspector established signs of disciplinary misconduct in cases where hearings on a civil case were not conducted for a year and 11 months and case was completed after 2 years.²¹

In one of the disciplinary cases, the Independent Inspector considered that there were signs of a possible ungrounded delay in proceedings, noting that it was not reasonable for the administrative case to be considered for up to two years and three months. The High Council of Justice of Georgia, after assessing the factual circumstances of the case, disagreed with the Independent Inspector's opinion on disciplinary responsibility of the judge, taking into account the judge's workload and the fact that judge had conducted sufficient procedural actions. Therefore, it was established that there were no signs of ungrounded delay in proceedings.²²

The hearing period of 1 year and 11 months was not considered as ungrounded delay. When examining the disciplinary case, the independent inspector took into account the fact that the case had been suspended for 7 months due to the death of the party (prior to the appointment of a successor). Attention was also paid to the multitude of cases pending before the judge and his workload as well as the number procedural actions taken, the number of hearings conducted, the complexity of the case (six volumes, two plaintiffs, six defendants, three third parties, a specified claims presented for six times, nine claims), which in this case was not a sufficient basis for the consideration of the case to be considered guilty unnecessary delay. All the circumstances excluded liability of the Judge for the delay.²³

As a result, the delay in proceedings in civil and administrative cases varies from 2 months up to 36 months.

As to the delay in the criminal case proceedings, the Independent Inspector established the delay of the case where hearing period lasted from November 26, 2012 to April 28, 2016, However the time period before September 30, 2013 the actions of a judge was not subject of assessment by Independent Inspector as the statutory limitation period for imposing disciplinary liability had expired, therefore, subject to discussion and evaluation within the disciplinary proceedings was time period only after September 30, 2013, which amounted to two years and seven months (Article 752 of the Organic Law of Georgia on Common Courts).

The HCOJ agreed with Independent Inspector's opinion and decided to initiate disciplinary proceedings against the judge and to request an explanatory note.²⁴

The independent inspector did not establish ungrounded delay in case where the appellate court Judge was considering a case for a year, as the results of the examination revealed that the court hearings were scheduled monthly. However, defending party acting in its own interests caused a delay in the proceedings for some time, on the other hand the motions itself were substantiated. Accordingly,

¹⁹ Disciplinary case №116-18

²⁰ Disciplinary case №81-18-2

²¹ Disciplinary case №161-18

²² Disciplinary case №110-18

²³ Disciplinary case №61-19

²⁴ Disciplinary case №26-18-2

the delay in proceedings necessary for the effective implementation of the defence may be regarded as an exceptional circumstance.²⁵

The opinion of NGOs on the assessment of the delay in proceedings by an Independent Inspector is very important. In their report- "The Assessment of Judicial Reform Outcomes and System of Disciplinary Liability" several organisations emphasise on neglecting the "weight of the case" when assessing the workload of judges by an independent inspector.²⁶ It is worth to mention that in process of preliminary examination of possible fact of ungrounded delay in proceedings, Independent Inspector examines each complaint individually. Independent Inspector emphasizes 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. In process of assessment Independent Inspector is guided by standard of reasonable time.

As for the form of judges' workload assessment, in particular disregarding the "case weight", it should be noted that the statistical elaboration of the workload of judges is currently carried out in a quantitative method (accounting for the number of cases referred to judges and the number of cases decided by judges). However, it should be noted that when determining the workload of each judge by an independent inspector, the number of cases assigned to a judge (lawsuit, petition, motion, complaint, etc.) is taken into account, considering their category and complexity.

2.3 Breach of Judicial Ethics

For the sake of public trust towards Judiciary and the importance of ethics and good faith, judges should behave with integrity in office and in their private lives.²⁷ 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.²⁸

12% of complaints registered during the reporting period related to breach of judicial ethics, which is less by 6% compared to previous year.

The independent inspector considered in breach of ethics the judge addressing the lawyer with words: "if you cannot do your job, that is not my problem ..." and the judge's statement "... 5 months have passed and the court has done nothing in this case." Inspector concluded, that these statements of a judge were beyond ethics and expressed negative thought on the Court's past actions in public, in addition, the judge's statement questioned the professionalism of the lawyer and in by doing so, undermined the trust and authority of the attorney in the defendant's eyes.²⁹

The breach of ethics was not established where a judge has discussed the ruling of the Supreme Court of Georgia in relation to a particular act. This was resulted in legal discussion among parties and

²⁵ Disciplinary case №93-18

²⁶ Report "Assessment of the Judicial Reform System of Disciplinary Liability of Judges", prepared within the scope of the project – "Facilitating Implementation of Reforms in the Judiciary (FAIR)", „EMC", „IDFI" and „CRRC -Georgia", p. 21

²⁷ Opinion no. 3 of the Consultative Council of European Judges (CCJE) 'On the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality(2002), §50, Recommendation ii

²⁸ Detailed criteria are given in the First Annual Report of the Office of an Independent Inspector. p. 33

²⁹ Disciplinary Case №178-19

discussion regarding the legal nature of the Act. The party noted at the hearing that the Supreme Court was no a legislator and was not empowered to amend the law, and the judge stated: "Here are the arguments you can make in the Supreme Court ... If you continue with the dispute you'll reason your case..." From audio records it is clear that the judge only was trying to present the Supreme Court's ruling to the parties, the said phrase in the context of the utterance could not be construed as a pre-trial position statement by the judge.³⁰

A breach of judicial ethical was established in case where judge referred to plaintiff in a loud voice. According to the Judge plaintiff did not talk about the issues related to the case, failed to respond adequately to his questions, and wasted his time.³¹

The fact of mistake of a Judge in order number (s) and the surnames mentioned in the case were not considered as disciplinary misconduct.³²

Ex parte³³ communication is an interesting issue regarding the breach of ethics. Specifically, in one case, the complainant indicated that the judge had requested the defendant's representative to remain in the courtroom "on some matter" after the hearing had ended. An interviewee (representative) interviewed by the Independent Inspector's Office explained that he could not remember the fact of staying face-to-face in the courtroom with a Judge, but noted that the judge had number of similar cases and occasionally spoke about the technical details of those cases (in the courtroom). Thus, it is noteworthy that the respondent's interpretation of the possible discussion of the technical details of the case with the judge raised a suspicion that the judge might have been subject to ex parte communication, which is the breach of Article 7 of the Rules of Judicial Ethics.³⁴

It was considered as a breach of the standard of impartiality in a case where a judge did not self-recuse a case where one of the parties represented an Institution where he had an academic position. Based on the analysis of National legislation³⁵, Universal Charter of Judges³⁶, recommendations of the Consultative Council of European Judges (CCJE) ³⁷, European Court's case law³⁸, the Bangalore Principles of Judicial Conduct³⁹ and Commentary⁴⁰, the independent inspector found that the consideration of the present case by a Judge, which is affiliated to one of the parties professionally (on the academic position) and financial (salary), may raise some doubt on judge's objective impartiality.

³⁰ Disciplinary Case №155-18

³¹ Disciplinary Case №57-19

³² Disciplinary Case №114-19

³³ ex parte communication is any communication between a judge and a party to a legal proceeding or any other person related to the case, outside of the presence of the opposing party or the opposing party's attorney. Ex parte communication is prohibited.

³⁴ Disciplinary Case №89/18-2

³⁵ According to Article 31 (1)(d) Judge may not consider the case where he/she is personally interested, directly or indirectly in the outcome of the case, or if there are other grounds for questioning his/her impartiality;

³⁶ According to Article 5 of Magna Carta of Judges, when conducting judicial work, the judge must be impartial and the form of appearance / expression, perception - is of the utmost importance, as the trust that the courts install in a democratic society is at stake.

³⁷ opinion no. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality paragraphs 12, 20, 21, 27 and 28;

³⁸ Pescador Valero v. Spain; Fey v. Austria; Wettstein v. Switzerland, Pullar v. the United Kingdom;

³⁹ Bangalore principles 2.1, 2.5, 3.1 and 3.2;

⁴⁰ Official Commentary on the Bangalore Principles of Judicial Conduct

2.4 Legality of the Judicial Act

The number of complaints related to legality of interim or final judicial decisions has increased and represents 40% of complaints. This is 20.4% more compared to data of 2017-2018. It is prohibited to review the legality of judicial decision during disciplinary proceedings. Notably, substantial number of complaints relate to the legality of judicial act what is resulted in termination of disciplinary proceedings on the case.^{41 42}

3. Landmark Cases

Disciplinary Case N27/19 Impediment to or Disrespect for the Activities of Bodies Having Disciplinary powers

One of the cases related to impediment to activities of Independent Inspector, what is ground for disciplinary liability according to Article 75¹ (2)(g) - "Impediment to or disrespect for the activities of bodies having disciplinary powers."

In present case, the Independent Inspector had sent a letter to the judge requesting case materials related to the disciplinary complaint against him in December 2018. A repeated letter requesting to deliver case materials to the Independent Inspector's Office was sent on January 10, 2019 - 28 days after the first letter was sent, however the judge submitted the case materials to the Independent Inspector's office only in early February 2019, 1 month and 25 days after while Inspector has to examine and prepare the case in 2 month time limit.⁴³ Moreover, the materials were submitted to Independent Inspectors Office only after requesting the information on delivery of confidential letters to the judge. Thus, the action of the judge was intended to impediment to disciplinary body since, despite numerous requests, the materials necessary for the disciplinary proceeding had not been sent within a reasonable time to the Office of an Independent Inspector, which prevented the preliminary examination of the disciplinary case and the further process. This in turn (impediment to the body conducting the disciplinary proceedings) constitutes disciplinary misconduct.

In the above case, the independent inspector emphasised on the importance of effective disciplinary proceedings, as an crucial precondition for independent and impartial judiciary, and noted that the Institution for disciplinary liability of judges has significant influence on their professional work. An effective system of disciplinary liability of judges is essential to the functioning of the judicial system.⁴⁴

⁴¹ Organic Law on Common Courts, Article 75¹⁰, Paragraph 5

⁴² Detailed criteria are given in the First Annual Report of the Office of an Independent Inspector, p. 36

⁴³ The Independent Inspector shall, within two months after receiving a complaint, application or any other information about a judge having committed a disciplinary misconduct, perform a preliminary examination of the validity of the complaint, application or information. The period of preliminary examination may be extended by, or suspended for two weeks if the preliminary examination cannot be performed (Article 757⁽¹⁾, Law of Georgia on Common Courts)

⁴⁴ <https://cjp.ca.gov/> [Seen on 20.03.2019]

The conclusion also focused on the practices of other countries. For example, obstructing the work of an inspector under Article 418 of the Organic Law of Spain on Judicial Power constitutes a form of grave misconduct. Similarly, impediment to or disrespect for the activities of bodies having disciplinary powers is a type of disciplinary misconduct under the Organic Law of Georgia on Common Courts.

The historical method of interpretation was also used to determine the intent of the legislator. The Law of Georgia On Disciplinary Liability of Judges of Common Courts of Georgia and Disciplinary Proceedings (23/02/2000) and its Explanatory Note, regulating the disciplinary proceedings in common courts system at the legislative level for the first time,⁴⁵ included 'Impediment to or disrespect for the activities of bodies having disciplinary powers' as a type of disciplinary misconduct. Article 75¹ (2(g)) of the Law of Georgia on Common Courts is identical and considers impediment to or disrespect for the activities of disciplinary body as a disciplinary misconduct. Therefore, it is important to determine the intent of Legislator in order to interpret the law, what is possible through explanatory note of the law.

According to the annex to the explanatory note (explaining the grounds for disciplinary liability of judges and other relative concepts in the law), impediment or disrespecting the activities of bodies of disciplinary authority may be expressed by creating artificial obstacles for a judge to investigate a disciplinary case; Providing incorrect information to a representative of a body or official with disciplinary authority; Misleading them; Mentioning representatives of disciplinary body in disrespectful manner. Such disciplinary misconduct may be expressed not only by the action of the judge against whom the disciplinary case is brought but also by the action of another judge who is not related to a particular disciplinary case.⁴⁶

Thus, in light of all the foregoing, in accordance with national law or international law⁴⁷, the conduct of the judge was assessed by an independent inspector as disciplinary misconduct.

Disciplinary Case N50/271-18 and Disciplinary Case N277-18 The Distinction Between a Judge's Impartiality and their Inner Conviction

Case №1. The complainant pointed to the judge's biased attitude, namely a different approach towards two identical cases. The preliminary examination found that there were two identical cases, although in one case the judge held substantive hearing and in the other case found it inadmissible for breach statutory period for the appeal. It is important that the judge interpreted the Article 268 of the Code of Administrative Offenses differently, and in one case considered the moment of delivery of the ruling as a start of a countdown, and in the other case - the moment of ruling announcement.

Development of uniform and consistent interpretation of law is important to avoid ambiguity of the law and to ensure equality between parties. An essential aspect of a fair trial is the principle of equality of arms, which implies equal opportunity for all parties, which was not ensured in present case.

Case №2. As to impartiality, it is also important to highlight a case where a judge has interpreted not an imperative but a dispositional provision and decided on the basis of inner conviction and the

⁴⁵ Before the adoption of the law, disciplinary proceedings against judges were governed by the Decree No. 534 of 23 September 1998 of the President of Georgia on the Disciplinary Liability and Disciplinary Proceedings of Judges of Common Courts.

⁴⁶ <https://info.parliament.ge/#law-drafting/11562> [Seen 20.03.2019] 'Explanatory Note on The Law of Georgia On Disciplinary Liability of Judges of Common Courts of Georgia and Disciplinary Proceedings, 1999

⁴⁷ The opinion was based on CCEJ Opinion №3; International Principles on the Independence and Accountability of Judges and Lawyers; Practitioner's Guide No. 1; Bureau of Democracy and Governance Bureau of Democracy, Conflict and Humanitarian Aid, US Agency for International Development (USAID) Handbook on Promoting Judicial Independence and Impartiality.

evaluation of evidence. Specifically, according to the author of the complaint, the judge completely unreasonably refused to satisfy the petition requesting immediate enforcement of the decision. The complainant notes that the judge has made a different decision on a similar case, which is a violation of the principle of equality by the judge. With respect to the present case, the Independent Inspector considered the judge had acted within the discretionary powers conferred on him by the procedural law and he had an authority to assess whether the petition should be satisfied.

While examining the case, the independent inspector was guided by the interpretation of the Grand Chamber of the Supreme Court of Georgia, which stated that the principle of equality of parties implies that the court, as a neutral arbitrator, should give equal opportunities for adversariality. However, the Court's refusal to satisfy of unreasonable motions cannot be regarded as a violation of those principles. In the Grand Chamber's view, the restriction on the right to a fair trial guaranteed by Article 6 of the European Convention on Human Rights cannot be regarded as restrictions established by procedures of law.

As interpreted by the European Court of Human Rights, the right to a fair trial under Article 6 of the European Convention on Human Rights also implies uniform application of the law. A different interpretation - as a characteristic of the judicial system - is permissible.

Thus, it should be noted that the Independent Inspector examined two substantially different disciplinary cases. In both cases the authors of the complaint indicated on the biased attitude of the judges. The Independent Inspector considered that in the first case the judge interpreted the apparent imperative wording of the provision differently, and there might be some signs of bias, whereas in the second case the court interpreted the provision and based on inner conviction and based on the evaluation of the evidence, what does not leave the room for the assessment of Judge's decision by the Inspector.

Disciplinary Case N195-18 Informing the Party on Ruling by public Notice as a Possible Improper Performance of Obligations by a Judge

It is important to mention, that complaints submitted to the Office of Independent Inspector often indicate on 'Failure to fulfil or improper fulfilment of the obligations of a judge' as a type of disciplinary misconduct.

In relation to this type of misconduct, it is important to highlight a case where the judge informed the party on the ruling by public notice, while the defendant's new address and telephone number were already known to the court. In this respect, it is important to refer to the judgment of the European Court of Human Rights - "Gakharia vs Georgia", where the Court ruled that 'a fair procedure requires that all parties to civil proceedings need to be informed and to have the opportunity to express an opinion on conclusions or evidence presented in order to influence the court's decision.'

In the present case, the presented evidence did not authorise the judge to make a default judgment provided by Article 232¹ of the Code of Civil Procedure. The court failed to deliver the information to the respondent in compliance with the requirements of Articles 70-78 of the Code of Civil Procedure. In addition, issuance of the default judgment has substantially damaged the rights and interests of the party.

Disciplinary Case N160-18 Disclosure of Secrecy of deliberations of Judges or Professional Secrecy

It is a precedent that the complaint concerns the disclosure of secrecy of deliberations of judges or professional secrecy. The complainant stated that prior to the judgment being announced, the judge's assistant had confirmed to the representative during the telephone conversation that claim was not satisfied.

It is noteworthy that the secrecy of the deliberations ensures the judge's freedom to express his or her opinion on certain issues and on a decision without any constraints. The secrecy of the deliberations implies the discussion between the judges.

In the present case, this fact cannot be considered as a breach of confidentiality as the Assistant to a Judge prepares the case, drafts the decision / judgment, and accordingly, the assistant holds all relevant information related to the case. Thus, the abovementioned circumstance was not assessed as a fact of disclosure of the secrecy by a judge, and the assessment of the assistant's conduct is beyond the mandate of an independent Inspector.

Disciplinary Case N94/315-18 Correction of inaccuracies in Criminal case

One of the disciplinary cases concerned the elimination of the inaccuracies in the resolution of the judgment. In particular, the judge revised the qualification of the action on the basis of Article 287 of the Code of Criminal Procedure.

In particular, as a result of the correction of inaccuracies in the judgment, the offender was found guilty on crime defined by Article 180 (2) (a) and Article 180 (3) (b) instead of Article 180 (2) (a) alone.

As a result of case examination, the possible disciplinary misconduct was not established, as the correction of the inaccuracy did not actually change the form and the measure of the sentence. Besides, neither the argumentation presented by the court in the reasoning of the judgment had changed.

Thus, the correction of a judge's inaccuracy in the abovementioned judgment cannot therefore be regarded as affecting the court's conclusion on the qualification and punishment of the offender and does not constitute disciplinary misconduct.

Legislative Amendments

In order to increase the efficiency of justice in Georgia, three waves of reform have been implemented since 2012. The constitutional reform of Georgia in 2016-2018 has increased the guarantees of institutional independence of the judiciary, but the latest reform aimed at improving the judiciary is known as the fourth wave of judicial reform. Within the framework of the Fourth Wave Reform, in addition to number amendments to the Organic Law of Georgia on Common Courts disciplinary procedures for judges of common courts have changed and improved.

Prior to the Fourth Wave reforms, numerous recommendations were made on the need for specification of the types of disciplinary misconduct. The conclusions of the Consultative Council of European Judges as well as the Bangalore Principles, indicate that disciplinary proceedings against judges should be based on the types of misconduct that are clearly and soundly defined. Accordingly, the types of misconduct provided by the legislation in force required further refinement. To this end, the Legislative Working Group, in which an independent inspector was actively involved, developed amendments to the organic law specifying the types of disciplinary misconduct.

According to the law, misconduct qualifies for disciplinary proceedings. As a result of legislative amendments, disciplinary misconduct is only a deliberate or negligent act of a judge defined by the Organic Law of Georgia on Common Courts.

Deliberate misconduct implies intentional disciplinary action, of a Judge being aware of the possible damage, while negligent misconduct includes disciplinary action, of a judge not considering the possibility of damage resulted by this action, but being able and ought to consider it.

A Judge is liable for disciplinary misconduct only for fruitful action – implying that he/she was objectively able to prevent the misconduct and did not do that. An act that, although formally containing the signs of an act provided for by the Law of Georgia on Common Courts, has not caused, due to its insignificance, did not create such harm or the risk of such harm that would require initiation disciplinary proceedings.

It is noteworthy that the types of disciplinary misconduct committed by a judge were more explicitly and clearly elaborated than those provided for in Article 75¹ (2) of the Organic Law of Georgia on Common Courts. Specifically, the types of disciplinary misconduct were divided into 7 categories:

- action that violates the principle of independence;
- actions that violate the principle of impartiality;
- acts that violate the principle of integrity;
- actions that violate the principle of fairness;
- actions that violate the principle of equality;
- acts that violate the principles of competence and diligence;

Any other act that does not fit the status of a judge.

Disciplinary misconduct constituents were formed for each category.

It is important that the current 5-year statutory limitation period for imposing disciplinary liability is reduced to 3 years, although the countdown of limitation period is suspended with the submission of the complaint.

In order to exclude any kind of bias in disciplinary proceedings against a judge and establish high standard of protection of a judge, the organic law establishes standard of reasonable assumption and

high probability of evidence, which implies the evidence sufficient to believe with high probability, that the sanction shall be applied to possible misconduct.⁴⁸ It shall be unequivocally determined that the High Council of Justice of Georgia should be guided by a high standard of probability when deciding whether to impose a liability on a judge.

Importantly, "deduction of the salary by 5% - 20% during up to 6 months was added as a type of disciplinary sanction."

In addition, the institution of an error in the disciplinary proceedings has been instituted, according to which in case the complaint (application) does not indicate the identity of the judge, the case and/or the fact of possible disciplinary misconduct, the Independent Inspector defines up to 10 days to eliminate the error. Unless the error is not eliminated within this period, the complaint will not be considered. This amendment, as well as granting access to the data bases, expands the powers of an independent inspector.

The most important change is the granting of access to an Independent Inspector to specific data. As a result of legislative amendments, while examining possible misconduct of the judge Inspector is authorized to directly use different data bases.⁴⁹ In addition, the Independent Inspector shall be entitled to submit a substantiated letter requesting additional information from the Ministry of Internal Affairs of Georgia. The Ministry shall decide on release of the information in accordance with the legislation.

It should be noted that an independent inspector has been given the power to terminate disciplinary proceedings. In particular, an independent inspector takes a reasoned decision on refusing to initiate disciplinary proceedings against a judge or to terminate initiated disciplinary proceedings if: the time period to establish disciplinary liability on a judge or to impose disciplinary sanctions or penalties has expired; There is a decision made by the body conducting the disciplinary proceedings against the same judge for the same action; Judge's judicial authority has been terminated; The appeal concerns the legality of the acts rendered by a judge. This in turn increases the powers of an independent inspector.

The legislative changes have not only improved the disciplinary proceedings and procedures, but also increased the guarantees of the Independent Inspector. If 1/3 of the Council members were sufficient for the dismissal of an independent inspector under the current version, 2/3 of the Council members would be required to make a decision with the proposed legislative changes. At the same time, the remuneration of an independent inspector has been set at the legislative level and is determined by the amount of remuneration of a judge of the appellate court, increasing the guarantees of an Independent Inspector. In addition, it is only possible to reduce the running costs of the Office of an Independent Inspector with the consent of the Independent Inspector itself.

In conclusion, as a result of the legislative novelties, the major shortcomings that existed in the disciplinary proceedings were eliminated and the guarantees and powers of the Independent Inspector and the Office increased significantly.

⁴⁸ Explanatory note to the Organic Law of Georgia on Common Courts <https://info.parliament.ge/file/1/BillReviewContent/224113?> (Seen 10.11.2019)

⁴⁹ Pursuant to Article 75⁷ (11) and (12) of the Organic Law of Georgia on Common Courts, an Independent Inspector may directly use: Electronic database of National Agency of Public Registry; Database of Notary Chamber; Electronic database of National Bureau of Enforcement and the Revenue Service electronic data base, as well as the right to check for interactive electronic system, within 10 days of Ministry of Internal Affairs to request administrative and criminal records, and the state border crossing, vehicles and firearms registration data directly, automated search of resources. However, the Independent Inspector may submit a substantiated letter requesting additional information from the Ministry of Internal Affairs of Georgia, the decision shall be made by the Ministry of Internal Affairs of Georgia in accordance with the legislation of Georgia.

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

The future vision of the Office of an Independent Inspector is to develop a trustworthy body, contributing to strengthening of efficient system of judicial accountability. For this purpose, the office works on increasing public awareness with the huge support of donor organisations.

The visit in Vienna of an Independent Inspector and a staff member of the Office within the framework of EU Judicial Support Project was hosted by the Chairman of the Supreme Court of Austria and judges of the Supreme Court of the Federal Republic of Austria. The participants exchanged information on the main peculiarities of the Austrian and Georgian disciplinary proceedings and expressed their opinions on possible improvement in disciplinary proceedings.⁵⁰

With the support of the Council of Europe, the Independent Inspector and the whole Office has visited the High Council of Justice of Spain in order to share best foreign practice. The purpose of the visit was to study and share the best foreign practices in the field of disciplinary proceedings against judges.⁵¹

It is worth to mention, that assessment of non-governmental organizations that monitor the operation of the Office is very important for the Office of an Independent Inspector. The majority of respondents of the 2018 population survey had no information about the establishment of this institution.⁵² In response, the Office of an Independent Inspector, with the support of USAID / PROLOG, initiated and conducted regional meetings to raise awareness and knowledge. Within the framework of regional visits (Gori, Kutaisi) meetings were held with lawyers, students and representatives of local centres. The Office introduced to participants the specifics of the disciplinary proceedings, existing statistics and generalization of cases. Meetings are planned in Batumi and Zugdidi in the nearest future.⁵³

The independent inspector signed a memorandum with state and private universities, university associations, including the Alliance of New European Universities and the Georgian Technical University. In addition, in order to raise awareness, the Independent Inspector conducted numerous public lectures both in Tbilisi and in the regions. During the lecture, students were provided with information on disciplinary proceedings, legislative changes and existing practices. Public lectures with the active involvement of students were held in a discussion format.⁵⁴

Importantly, in July 2019, with the initiative of the Independent Inspector and donor organizations, the International Forum on 'Freedom of Expression and Judicial Ethics' was organised for the first time. The purpose of the forum was to share international practice on freedom of expression and judicial ethics. International experts participated in the forum. Among them are CCJE member Judge Mirjana Popovic, Portuguese Supreme Court Judge Douro Matteo Cardoso, Czech Supreme Court Judge Ladislav Derka, expert Mirjana Vicentin, expert Xenia Renko, Vincent Bradford, University law professor - James

⁵⁰ http://independent-inspector.ge/News/ReadMore/35?fbclid=IwAR31eqDoe-FkOfEII82dMKqsFI6zaqnsorpGUqDPO-HHY7yy659_YxDx_cvM (Seen 10.01.2020)

⁵¹ http://independent-inspector.ge/News/ReadMore/37?fbclid=IwAR2eMNT4IXYk3_N0W-MvluO8eFj5gzGtnIQ3ATz-53Pj8BxTgmlZxG76aWmc (Seen on 10.01.2020)

⁵² Selection of Supreme Court judges: The public's knowledge and attitudes about the process, prepared by EMC, CRR, IDFI Tbilisi 2018, p. 15

⁵³ http://independent-inspector.ge/News/ReadMore/36?fbclid=IwAR2U_VwSFHhrqWgngkgP6jnhN7rGvyhSDocWHqmr3PSx-A5oQCOHhIMOosYw (seen 10.01.2020)

⁵⁴ http://independent-inspector.ge/News/Index/2?fbclid=IwAR3oG834TY_mEW4dCLgD_hS3_wlPqnlImmxodPzPzK5grb4zzQz-vlqf9yQfE (Seen 10.01.2020)

E. Moliterno. Participants reviewed the international practice on freedom of expression of a Judge, the general legal framework for judge's behaviour on social media, and country-specific experience. International experts provided forum participants with recommendations on the specificities of use of social media by judges.⁵⁵

In addition, during the reporting period, numerous trainings were conducted for the Independent Inspector's Office with the support of the Council of Europe, the European Union and USAID/ PROLOG. Including: best practices of examination of disciplinary complaints and preparation of substantiated conclusions, effective communication with target groups, social media and judicial ethics, planning and conducting public relations campaigns.

Finally, with the support of the Council of Europe, the Communication Action Plan for 2019-2020 was developed for the Office of Independent Inspector, listing specific activities, including the placement of court stands and leaflets, the organization of trainings, workshops and open door week; Schedule meetings with NGOs, media representatives, students and lawyers.

Recommendations

Disciplinary proceedings have a special importance for the Office of an Independent Inspector, as the only body authorized to initiate disciplinary proceedings against judges. Report 2018 of the Office of an Independent Inspector outlined several important recommendations that were directly aimed to optimise the proceedings itself. It is noteworthy that these recommendations were taken into account as a result of legislative changes developed by the Judicial Reform Working Group. In particular, new types of misconduct were introduced, the institute of error was introduced and the independent inspector was in some cases empowered to refuse and terminate disciplinary proceedings, which should be positively evaluated in this regard.

Similarly to 2017-2018 reporting period, there were challenges identified in the disciplinary proceedings this year that need to be addressed.

First of all, it should be noted that one of the most important challenges remain the backlog this in courts and the problem of delaying with cases. A number of reports or recommendations have been prepared with the initiative of the High Council of Justice of Georgia and with the support of international organizations on this matter. We think that in order to resolve this issue, the special attention should be paid to CCJE Opinion N° 6 (2004) On Fair Trial within a Reasonable Time and Judge's Role in Trials Taking into Account Alternative Means of Dispute Settlement. The opinion discusses in detail problems of the overloading and delaying by courts and the ways of solution, which includes on the one hand, the need to increase the number of judges, while on the other hand the growth in functions of court officials and assistants, to increase the efficiency of alternative dispute resolution mechanisms (arbitration, mediation) and establishment some of the mandatory requirements prior to submission of a claim in to court (for example, the exchange of evidence and exchange protocols, etc.), and etc.

A second important issue, however, concerns to complaints on the legality of the decision. Approximately 39% of complaints filed to the Independent Inspector concerned the legality of the decision. Thus, the above data indicates that the authors of the complaint do not have complete information about the mandate of the Independent Inspector and the nature and role of disciplinary proceedings in general. Therefore, it is still a challenge for the Office of an Independent Inspector to actively communicate with the public, hold meetings in the regions or in Tbilisi and provide more information so that the complainants do not have a vain expectation of changing their verdict/decision/judgment through disciplinary proceedings.

Finally, the importance of the rules of judicial ethics need to be emphasised. The judge must be courteous both inside and outside the courtroom and should respect the surroundings. The judge should always stand above his or her personal attitudes to unequivocally exclude any sense of bias or favouritism. To this end, it is fair to work on the rules of judicial ethics, but it is important to develop commentaries and trainings in addition to ethical rules that will make application of this rules in practice easy for judges.

