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INTRODUCTION

In January 2020, the Fourth Wave of Judicial Reform came into force, which refined the process of disciplinary proceedings against judges, amended and improved the disciplinary proceedings against judges of common courts. Although the Office of the Independent Inspector prepares and publishes annual reports from the very first year of its activity, as a result of the above-mentioned legislative amendments, the Independent Inspector has been obliged¹ to proactively publish information on the activities performed, based on which 4 quarterly reports were prepared. Each includes a detailed analysis of statistical information, while the Independent Inspector's Office's annual activity report provides generalized information on disciplinary cases against judges of common courts.²

On January 24, 2020, the High Council of Justice of Georgia elected³ a new independent inspector, although 2020 was particularly difficult for both the independent inspector and the office of the independent inspector. The current situation provoked by the Covid-19 pandemic and the restrictions imposed reduced the referral rate. Despite the reduced number of complaints, the past year has been a busy one in terms of the number of decisions and conclusions reached. 137 conclusions prepared in 2018-19 were submitted to the High Council of Justice of Georgia for consideration at the disciplinary sessions, and 535 documents were prepared in the form of decisions and conclusions based on legislative amendments. The full report on the activities of the Independent Inspector's Office for 2020 is enshrined in the following report, which consists of 7 main chapters. Chapter One - Statistical Analysis of the Independent Inspector's Office Includes information in which data are analyzed by Authors of complaints, case categories, court instances, and judges. The second chapter provides statistical information according to the results of the preliminary survey. The findings of the independent inspector on the types of misconduct are summarized in Chapter Three. Information on the Independent Inspector's decisions on termination of disciplinary proceedings is provided in Chapter 4 of the Report, while the measures taken by the Independent Inspector's Office are outlined in Chapter 5.

In order to improve the activities of the Independent Inspector's Office and the legal process, as well as to strengthen the institutional and human resources, a strategic development document of the Office has been created. Information on the latter is posted on the website of the Independent Inspector's Office. The progress report on the implementation of strategy is set out in Chapter 6 of this report. The document also includes the main recommendations that revealed from the generalization of the practice of the office.

1 Paragraph 12 of Article 51¹ of the Organic Law of Georgia on Common Courts

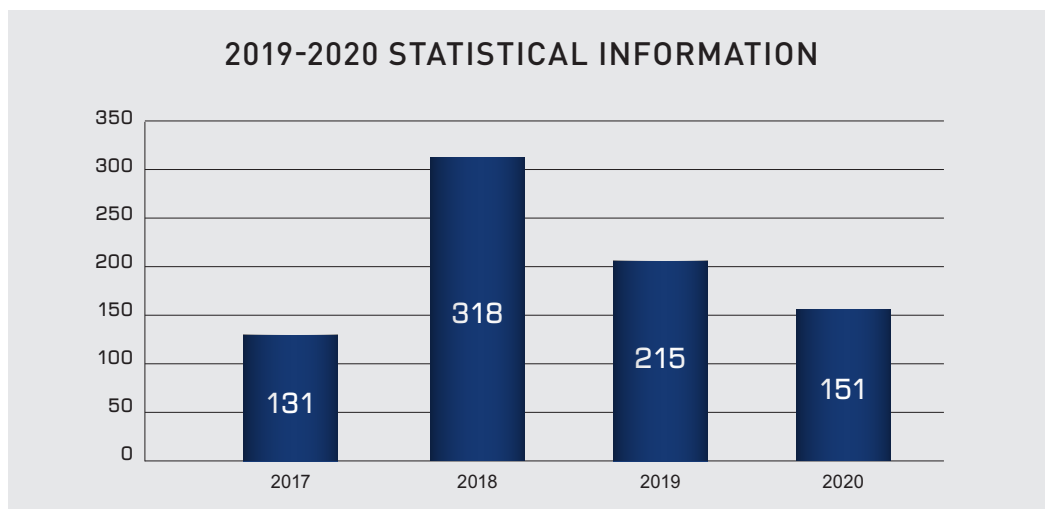
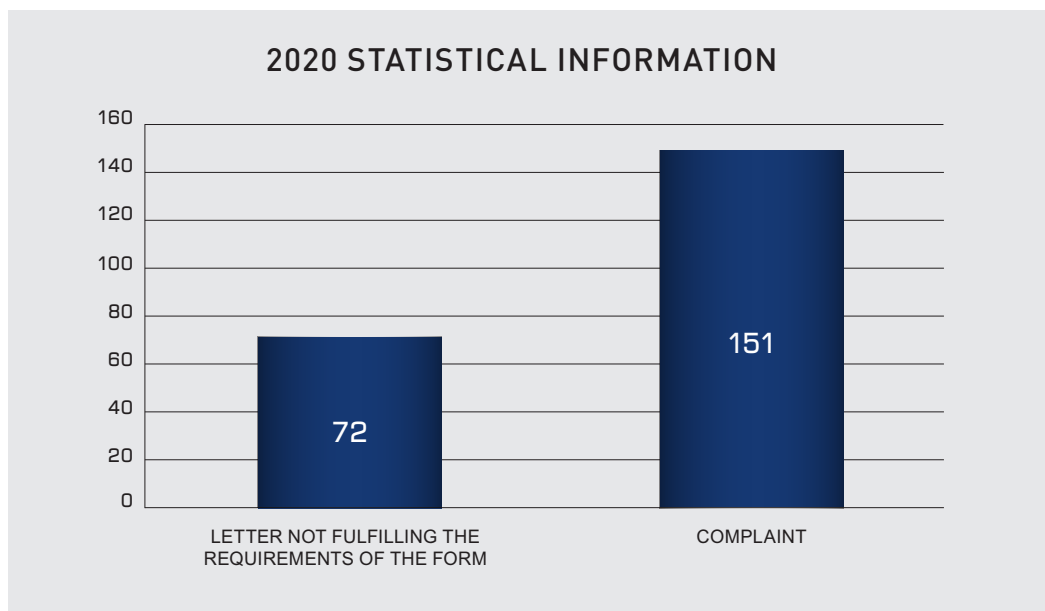
2 2019 annual report of the office of Independent Inspector, P. 3, <https://dis.court.ge/wp-content/uploads/2020/07/dis2.pdf> [last seen on 28.12.2020]

3 <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/2020/1-3.pdf> [last seen on 28.12.2020]

1. STATISTICAL ANALYSIS OF THE ACTIVITIES OF THE INDEPENDENT INSPECTOR'S OFFICE

1.1. GENERAL STATISTICAL INFORMATION

From January 1 to December 31, 2020, 151 disciplinary complaints and 72 letters not fulfilling the requirements of the form, were registered with the Independent Inspector's Office.

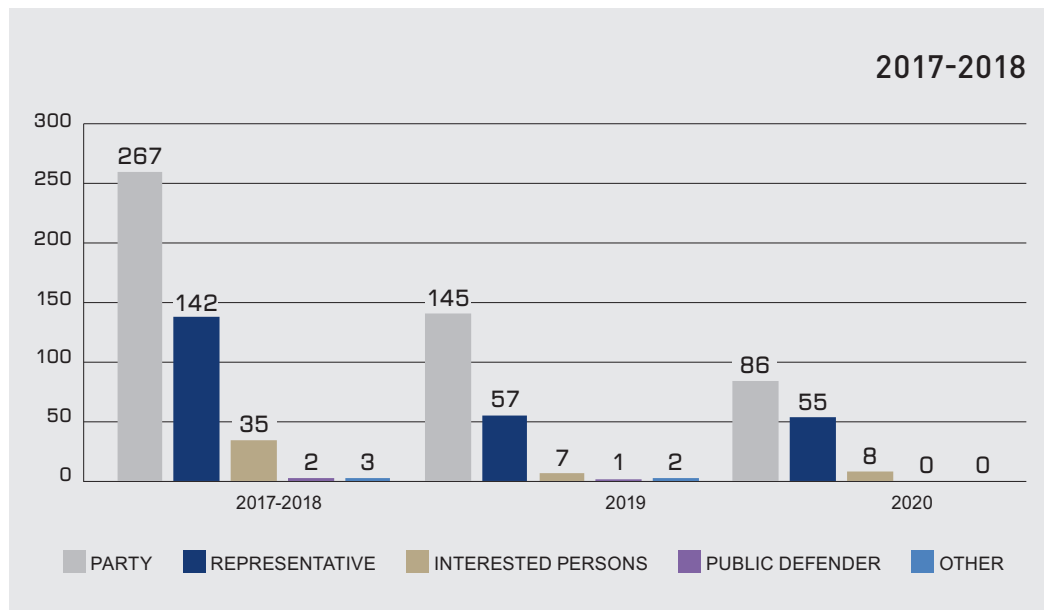
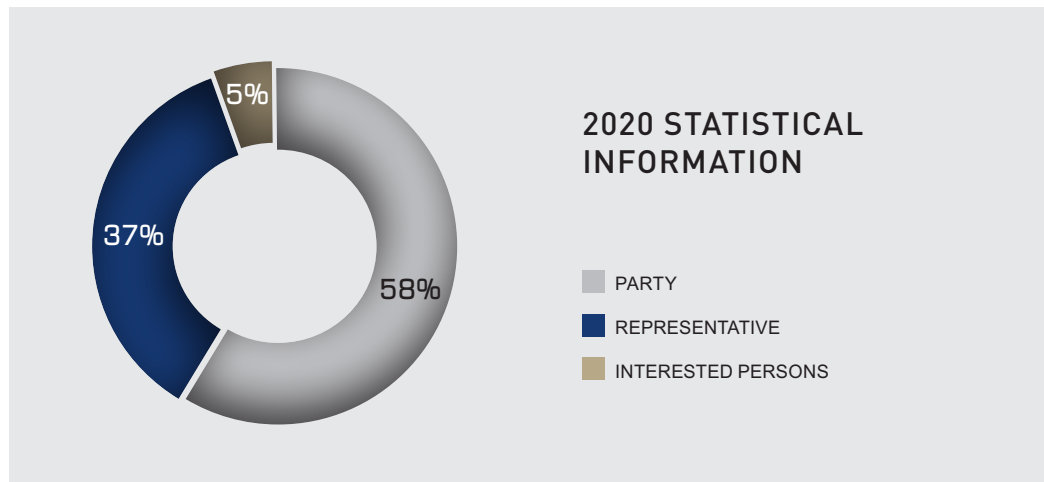


Compared to 2019, the number of complaints in 2020 has decreased, although this was caused by the global pandemic and the restrictions imposed in the country.

It is noteworthy that up to 20 citizens received information about disciplinary proceedings during the reporting period through the hotline launched on November 27, 2020.

1.2. STATISTICAL INFORMATION ON THE AUTHORS OF COMPLAINTS

Statistical information about the authors of the complaint was processed according to their status in the pending cases in court.⁴ Compared to last year, the number of complaints filed by representatives increased by 10%, the number of complaints filed by interested parties increased by 2%, and the number of complaints filed by parties decreased by 10%. During the reporting period, disciplinary proceedings were initiated on the basis of an explanatory note in one case, and unlike last year, in 2020, disciplinary proceedings were not initiated on the basis of information spread in the media or on the Public Defender's proposal.⁵



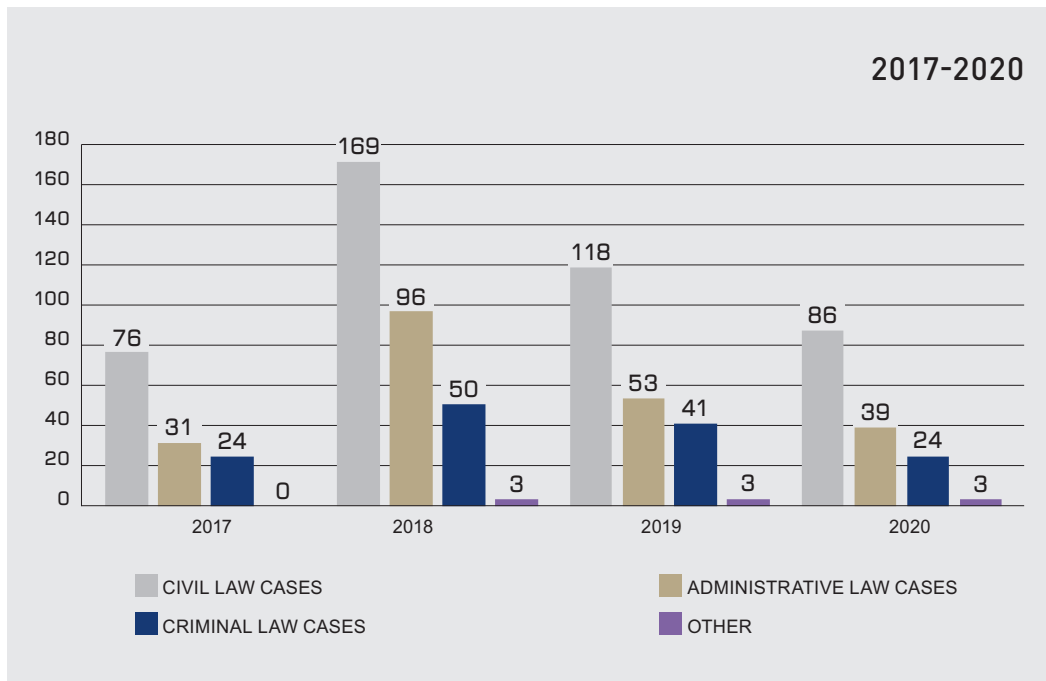
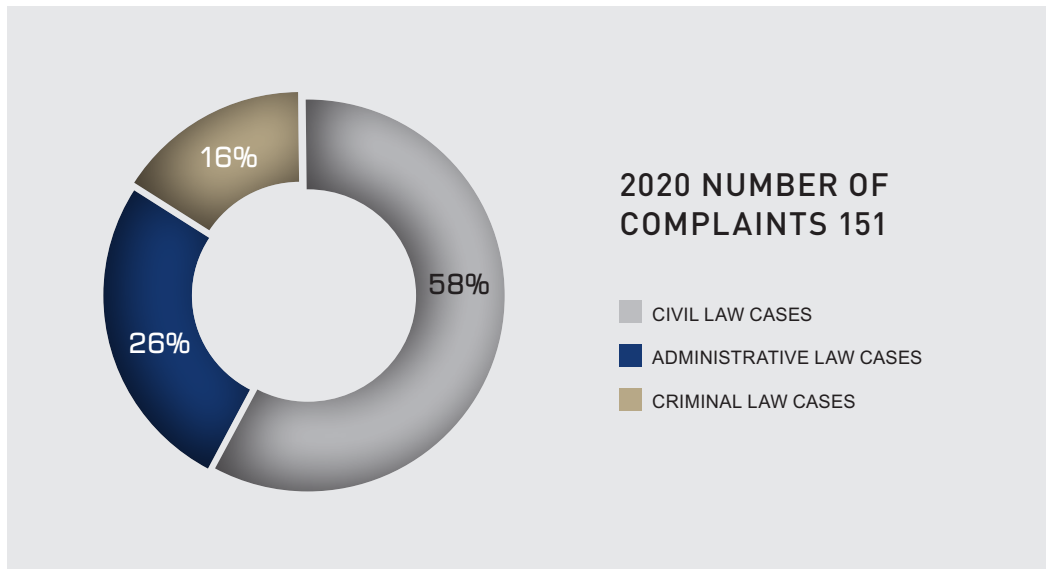
⁴ The authors of the complaint are: the parties, representatives (legal representatives or persons with representative powers, lawyers), other interested persons (family members, person present at the hearing or any other person), the Public Defender. Also, the disciplinary proceedings might be initiated on the basis of information disseminated in the media and based on the explanatory note.

⁵ It should be noted that the 2020 diagram also includes information on the initiation of disciplinary proceedings with an explanatory note, although due to its small percentage it was not reflected in the diagram.

1.3. STATISTICAL INFORMATION BY CASE-CATEGORIES

According to the case categories, both last year and the current year, the majority of complaints are related to civil law cases and it stands at 58%, which makes 3% more than in 2019. The rate of referrals in administrative law cases is almost identical to last year. The number of complaints received in criminal law cases decreased by 3%.

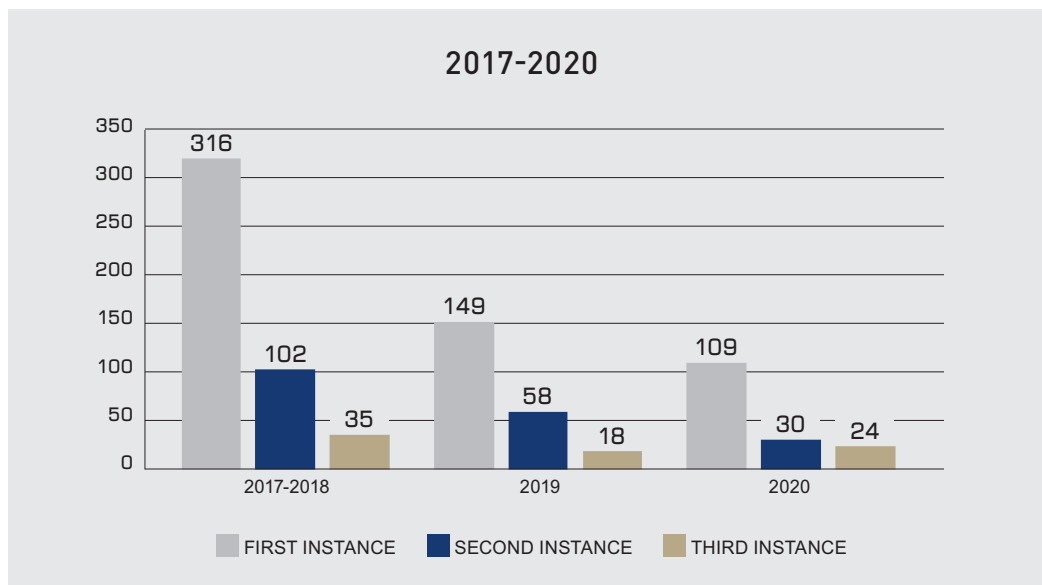
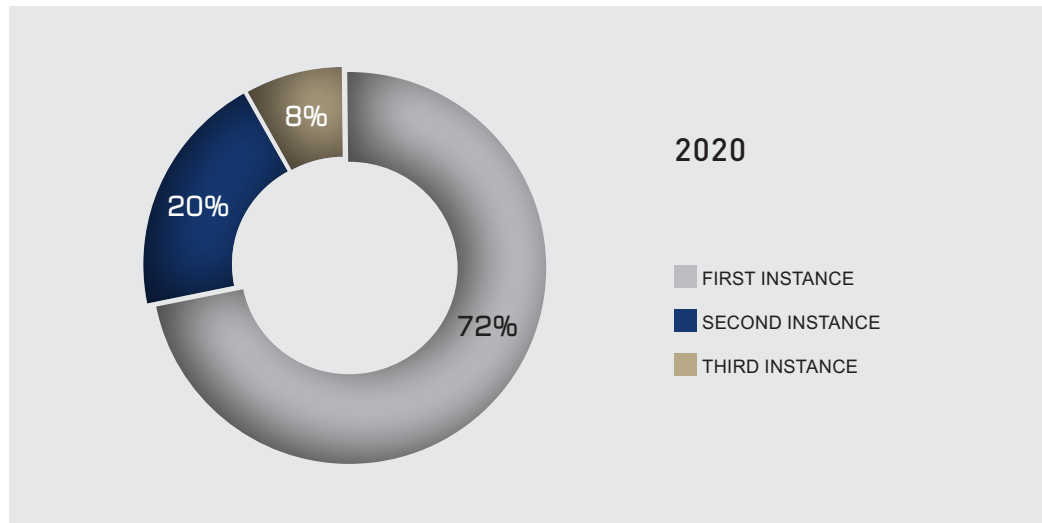
During the reporting period, disciplinary proceedings were initiated in two cases on issues arising from none of the categories of cases.⁶



⁶ In statistical information, "other" refers to cases that do not arise from any category of case. It should be noted that the 2020 diagram also includes information on the initiation of disciplinary proceedings with an explanatory note, although due to its small percentage it was not reflected in the diagram.

1.4. STATISTICAL INFORMATION BY COURT INSTANCES

As a result of the generalization of cases, it was found that the number of complaints filed against judges of the first instance increased by 6% compared to last year and amounted to 72%. The number of complaints against judges of the courts of appeal decreased by 6% and reached 20%. The number of complaints filed against judges of the Supreme Court of Georgia still stands at 8%.

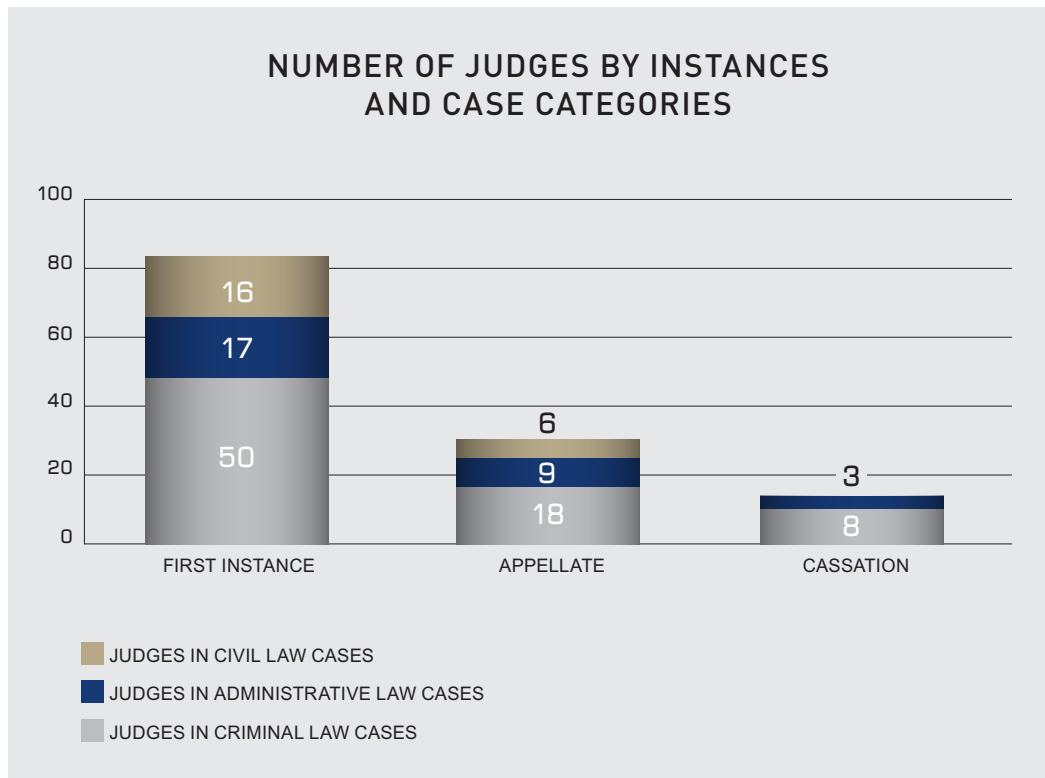


1.5. STATISTICAL INFORMATION BY JUDGES

During the reporting period, 151 complaints pending before the preliminary investigation concerned 127 judges.⁷

The number of complaints against judges by case-categories and court instances looks as follows:

⁷ It should be noted that some judges review two or three categories of cases. Accordingly, the number of judges differs from the number of judges by case categories. At the same time, it is important to note that in some cases several complaints are filed against the same judge.



According to the data, the highest number of appeals is filed against judges of civil law cases of the courts of first instance, which makes 60% of the complaints against judges of the first instance. Most of the complaints against judges of the courts of second instance concerned judges of civil and administrative law. In particular, the number of complaints against judges reviewing civil law cases amounted to 54% of the total number of judges of the appellate instance, which is 27% more than the number of complaints against judges reviewing administrative law of the same instance.

The number of complaints against judges of the Chamber of Civil Cases of the Supreme Court of Georgia was 72.8% out of the number of complaints against judges of the third instance, and the number of complaints against judges reviewing administrative law was 27%. In 2020, no complaints were registered against criminal judges.

2. STATISTICAL INFORMATION ON THE RESULTS OF THE PRELIMINARY INVESTIGATION

During the reporting period, 179 complaints were submitted to the Independent Inspector's Office for consideration.⁸ Flaw of complaints were identified in only 7 cases.⁹ The flaw in the complaints was identified on the following grounds:

- ☑ The identity of the judge was not specified – 4 cases;
- ☑ The case was not specified – 4 cases.
- ☑ The fact of possible disciplinary misconduct was not specified – 1 case.¹⁰

As a result of correcting in the flaws, disciplinary proceedings and preliminary investigation were initiated on 4 complaints, while 3 of them were not considered due to the unfulfilment of the requirements of the form.

Thus, during the reporting period, the preliminary investigation began based on 176 complaints and ended on 165 complaints. So far, a preliminary investigation is underway into 11 complaints filed in 2020.

As a result of the preliminary investigation, the independent inspector prepared:

- ☑ 55 decisions on termination of disciplinary proceedings;
- ☑ 34 decisions on partial termination of disciplinary proceedings;
- ☑ 117 Conclusions on possible disciplinary misconduct indicated in the complaints (including 22 conclusions on complaints filed in 2019 and 95 conclusions on complaints filed in 2020).¹¹

At the same time, it should be noted that during the reporting period, the independent inspector did not send any case to the Prosecutor's Office of Georgia.

2.1. STATISTICAL INFORMATION ON DECISIONS MADE BY AN INDEPENDENT INSPECTOR

An independent inspector made 88 decisions in 2020 to terminate disciplinary proceedings as a result of a preliminary investigation. In particular:

- ☑ 86 Decisions on termination of disciplinary proceedings, as the complaint concerned the legality of the act rendered by the judges;¹²

⁸ Among them, the 28 complaints received in 2019 did not expire within 2 months set by law for the preliminary investigation, as the complaints were submitted to the Office of the Independent Inspector in late November-December 2019. The preliminary investigation into these complaints was completed in 2020. Thus, during the reporting period, the Independent Inspector conducted a preliminary investigation into 281 complaints in 2019 and 151 in 2020.

⁹ According to Article 75⁵, Paragraph 3 of the Organic Law of Georgia on Common Courts, "If the complaint does not indicate the identity of the judge, the case and / or the fact of possible disciplinary misconduct, the independent inspector notifies the author of the complaint (application) of the flaw and gives him or her no more than 10 days' time. If the flaw is not corrected within that period, the complaint (application) shall not be considered."

¹⁰ The complaints contained several flaws at the same time, hence the number of complaints and the grounds for flaw in them differ.

¹¹ It should be noted that the results of the submitted complaints and the preliminary investigation are quantitatively different from each other. The difference is due to several circumstances. In particular, a single complaint may in several cases be filed against several judges, and decisions are made individually for each judge. Consequently, the number of complaints differs from the number of decisions rendered. However, some complaints contain information about a possible disciplinary misconduct, as well as information about the legality of an act rendered by a judge. Proceedings on such complaints are divided and disciplinary proceedings are terminated only partly on the basis of the respective subparagraph of Article 75¹² of the Organic Law of Georgia on Common Courts, while disciplinary proceedings and preliminary investigation of the circumstances of the case continue. As a result of the investigation, the independent inspector prepares conclusions on possible disciplinary misconduct.

¹² Out of 86 decisions, disciplinary proceedings were terminated only in 52 cases on the grounds of the legality of the act. In 34 cases, Article 75¹² of the Organic Law of Georgia on Common Courts of Disciplinary Proceedings was partially ter-

- ☑ 1 Decision on termination of disciplinary proceedings, as the complaint was filed in violation of the deadline for initiating disciplinary proceedings;
- ☑ 2 Decisions on termination disciplinary proceedings due to the expiration of the judicial term for judges.

In order to achieve the effectiveness of the disciplinary proceedings, the Independent Inspector makes a decision on the termination of the proceedings regarding the complaints received in 2018-2019, which have not yet been reviewed by the High Council of Justice of Georgia. This rule applies to:

- Complaints submitted based on legality of the act;
- Imposing disciplinary liability on a judge, however, the statutory limit for the latter expired;
- An action on which there is a decision rendered by the body conducting the disciplinary proceedings against the same judge;
- A judge whose judicial authority has been terminated.¹³

If the complaint concerns both the grounds for termination provided for in the first paragraph of Article 75¹² of the Organic Law of Georgia on Common Courts, and also disciplinary misconduct, the High Council of Justice will discuss and make the decision. The independent inspector makes a partial decision to terminate the proceedings if the independent inspector has the grounds for such a decision. All of the above increases the efficiency of the Independent Inspector's Office and the change contributes to the effective realization of the rights of the complainants - to make a timely decision on the complaints they file.

In view of the above, from September 2020 to December 31, the Independent Inspector made 342 decisions to terminate disciplinary proceedings based on the findings prepared in 2018-2019. Among them:

- 20 decisions due to the expiration of the judicial authority;
- 22 decisions due to the expiration of the statute of limitations for disciplinary action;
- 1 decision on the ground that there is a decision rendered by the body conducting the disciplinary proceedings against the same judge due to the same action;
- 218 decisions on termination in its entirety because the complaint requested a review of the legality of the act.
- By 68 decisions, the disciplinary proceedings were partially terminated in the part of legality. The High Council of Justice of Georgia made relevant decisions in the part of disciplinary misconduct.

It should be noted that the Independent Inspector did not make a decision (against 4 judges) to terminate disciplinary proceedings during the reporting period on the 3 conclusions prepared in 2018-19.

minated on the basis of subparagraph (d) of the first paragraph, as part of the claims in the appeals concerned the legality of the act rendered by the judges. Other alleged misconduct in the complaints is subject to disciplinary proceedings and preliminary investigation of the circumstances of the case and the respective conclusions are prepared in accordance with the law. At the same time, in accordance with Article 75⁹ of the Organic Law of Georgia on Common Courts, 2 complaints were merged into one proceeding, same number was assigned and a single decision was made on them.

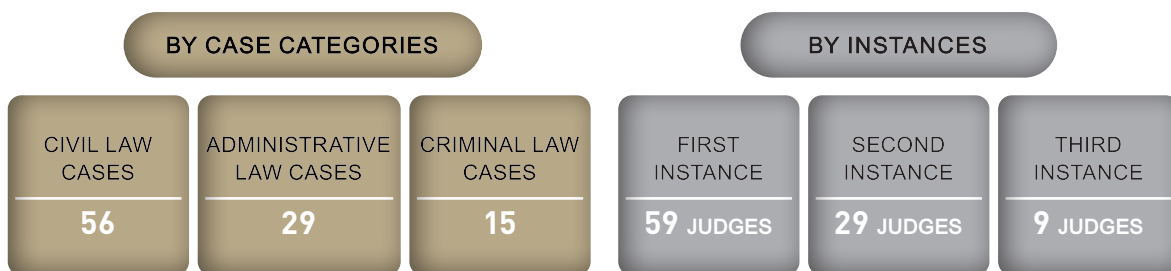
¹³ The agreement was reached with the High Council of Justice of Georgia on September 9, 2020.

2.2. STATISTICAL INFORMATION ON THE PREPARED CONCLUSIONS

For the better investigation of the disciplinary case, the Independent Inspector's Office requested case materials, video and audio recordings, interviewed the complainants and found various types of written evidence (eg, information on the hearing schedule, judges' property declaration, etc.).

During the reporting period, as a result of a preliminary investigation by an independent inspector, 117 conclusions were prepared on 120 complaints against 94 judges.¹⁴ Significantly, during the reporting period, the Independent Inspector completed the investigation and prepared a conclusion on 92% of the complaints filed, which is 5% more than last year.

It should be noted that the right to challenge an independent inspector was not exercised by any judge, just as the right to recusal was not exercised by an independent inspector.



2.3. STATISTICAL INFORMATION ON THE RESULTS OF DISCIPLINARY SESSIONS

During the reporting period, the High Council of Justice of Georgia held 4 disciplinary sessions and reviewed the conclusions prepared by the Independent Inspector based on the complaints for 2018-2019. Including 101 reports prepared in 2018 and 36 reports prepared in 2019.

At the disciplinary session, the High Council of Justice of Georgia reviewed 137 reports prepared by an independent inspector and made 156 decisions¹⁵, including 147 decisions on termination of disciplinary proceedings¹⁶ and 9 decisions on initiation of disciplinary proceedings against a judge and request of explanation.

At the disciplinary sessions in 2020, the High Council of Justice of Georgia reviewed 96 more conclusions compared to 2019, while 69 conclusions prepared in 2019 and 116 conclusions prepared in 2020 remained to be reviewed.

¹⁴ The number of judges is counted in a particular complaint according to the category of cases they considered/are considering or by the court instance. It should be noted that some judges consider two or three categories of cases. However, several complaints have been filed against the same judges. Due to the transfer of judges to different instances, their total number differs from the number of judges in different instances, and in some cases, due to the lack of judges in the chamber or panel, different categories of judges considered the category in which they were not assigned. Consequently, the number of judges according to the categories or instances of the case differs from the total number of judges in the findings.

¹⁵ Regardless of the number of judges indicated in the disciplinary complaint, the independent inspector prepares one conclusion on one disciplinary complaint, in which he evaluates the actions of each judge individually and submits the prepared conclusion to the High Council of Justice of Georgia. In addition, the independent inspector is authorized to combine several complaints against one judge into one proceeding. The HCOJ makes a decision on the commission of disciplinary misconduct by each judge individually. Due to the above, the number of complaints, conclusions submitted and decisions made by the High Council of Justice of Georgia varies.

¹⁶ Among them, disciplinary proceedings were terminated in 17 cases accordance with the first paragraph of Article 75⁸ of the Organic Law of Georgia on Common Courts, because the HCoJ could not reach a decision by a 2/3 majority.

DECISIONS MADE BY THE HIGH COUNCIL OF JUSTICE

147 DECISIONSON TERMINATION
DISCIPLINARY
PROCEEDINGS**9 DECISIONS**ON THE INITIATION OF DISCIPLINARY
PROCEEDINGS AND REQUEST OF
AN EXPLANATION

The authors of the complaints were not invited to the disciplinary sessions of the High Council of Justice of Georgia.

Judges did not exercise their right to challenge and the right to make the hearing public.

The High Council of Justice of Georgia did not instruct the Independent Inspector to conduct additional investigation during the reporting period.

The members of the High Council of Justice of Georgia did not present a dissenting opinion on the decision made by the High Council of Justice.

2.4. STATISTICAL ANALYSIS ON THE INITIATION OF DISCIPLINARY PROCEEDINGS AND REQUEST OF AN EXPLANATION

During the reporting period, the Independent Inspector addressed the High Council of Justice of Georgia with a recommendation to initiate disciplinary proceedings against judges at disciplinary hearings in 46 cases,¹⁷ out of which:

- ☑ In 8 cases, agreed with the recommendation of the independent inspector and decided to initiate disciplinary proceedings against judges and request explanations;
- ☑ In 21 cases disagreed with the independent inspector's recommendation and decided to terminate the disciplinary proceedings;
- ☑ In 17 cases, disciplinary proceedings were terminated due to the lack of votes required for a decision.¹⁸

The conclusion of the Independent Inspector contained one recommendation on termination of the disciplinary proceedings, however, the High Council of Justice of Georgia did not agree with this conclusion and decided to initiate disciplinary proceedings against the judge and to request an explanation.

In total, in 2020, the High Council of Justice of Georgia decided to initiate disciplinary proceedings against 9 judges in 9 cases.

The 8 decisions made by the High Council of Justice of Georgia to initiate disciplinary proceedings concerned:

- Substantial violation of the deadline (4 cases);
- Refusal of the judge to self-recusal/recusal (1 case);
- Expression of obvious disrespect (1 case);
- Exercising judicial authority by a judge under personal interest (1 case);

¹⁷ The authors of the complaints point to several facts of disciplinary misconduct in a number of disciplinary cases. Consequently, the number of complaints and facts of disciplinary misconduct varies.

¹⁸ According to the first paragraph of Article 75¹³ of the Organic Law of Georgia on Common Courts, "If the High Council of Justice of Georgia fails to make a decision, the disciplinary proceedings against the judge will be terminated."

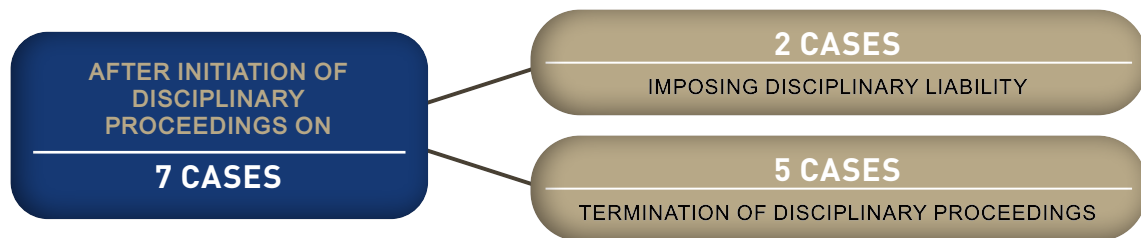
- Violation of the principle of competency, in particular, non-fulfillment of administrative powers (1 case);
- Hindrance of disciplinary proceedings (1 case).

The High Council of Justice of Georgia did not share 21 findings of an independent inspector submitted on the recommendation to initiate disciplinary proceedings, which concerned:

- Substantial violation of the deadline (17 cases);
- Expression of obvious disrespect (1 case);
- Refusal to self-recusal/recusal (1 case);
- Exercising judicial authority by a judge under personal interest (1 case);
- Other activities of a judge incompatible with the status (1 case).

2.5. STATISTICAL INFORMATION ON THE TERMINATION OF DISCIPLINARY PROCEEDINGS AFTER THE INVESTIGATION AND IMPOSING DISCIPLINARY LIABILITY

At the disciplinary hearings in 2020, the High Council of Justice of Georgia reviewed 7 disciplinary cases against the termination of disciplinary proceedings against judges or their disciplinary liability.¹⁹ Among the submitted cases, the disciplinary proceedings against the judges were terminated in 5 cases, and in 2 cases the judges were imposed the disciplinary liability.



Out of 5 decisions on termination of disciplinary proceedings, 4 concerned the substantial violation of the deadline, and 1 to the expression obvious of disrespect to the participant in the proceedings. In all five cases, there was an independent inspector's conclusion of a possible disciplinary misconduct.

Out of the decisions made by the High Council of Justice of Georgia on the disciplinary liability of a judge, 1 concerned the expression of obvious disrespect to the party participating in the proceedings, and 1 - the refusal to self-recuse/recuse.

These cases were reviewed by the Disciplinary Board of Judges of the Common Courts. In one case the judge was found guilty of committing disciplinary misconduct and the warning was imposed as a penalty. In another case, the judge was given a private letter of recommendation.

¹⁹ Disciplinary proceedings have been initiated on 6 cases, and on 1 case in 2020.

3. GENERALIZATION OF THE CONCLUSIONS OF THE INDEPENDENT INSPECTOR

Legislative amendments were introduced on January 1, 2020, which specified the types of disciplinary misconduct into 7 categories:

- An action that violates the principle of independence;
- Actions that violate the principle of impartiality;
- Actions that violate the principle of Integrity;
- Actions that violate the principle of propriety;
- Actions that violate the principle of equality;
- Principles that violate the principles of competence and diligence;
- Other actions that are not compatible with the high status of a judge.

According to each category, the components of disciplinary misconduct were formed and as a result of Article 75¹, Paragraph 8 of the Organic Law of Georgia on Common Courts envisages 20 types of disciplinary misconduct.²⁰ The disciplinary liability may be imposed on a judge solely based on specific disciplinary misconduct defined by Organic Law, thus emphasizing the significance of the foreseeability of the misconduct.²¹

The independent inspector investigates the disciplinary case objectively and thoroughly at the preliminary stage of an investigation. Studies both mitigating and aggravating circumstances of a judge's liability and also focuses on objective and subjective factors.

The conclusion prepared as a result of the preliminary investigation contains:

- Opinions of the author of the complaint;
- Established factual circumstances;
- Legal reasoning / analysis;
- Conclusion on the commission of the alleged disciplinary misconduct and / or the existence of the latter;

At the stage of the preliminary investigation, the judge's action is assessed according to the standard of probable cause. The conclusion includes:

- Reasoning as of the signs of the alleged disciplinary misconduct;
- What facts and circumstances were taken into account during the preparation of the respective conclusion;
- Substantiation of the existence / absence of damage caused by the judge's action or inaction;
- Final reasoning / summary as to whether the action contains signs of disciplinary misconduct.

When assessing a judge's action as alleged misconduct, it is necessary to match it with any type of disciplinary misconduct.

During the reporting period, 20 misconduct related to actions under only 12

²⁰ The grounds for liability [...] should be reviewed and more precisely defined in such a way as to preclude their use for purposes other than the actual purposes of disciplinary proceedings." - Directorate-General for Human Rights and Rule of Law (DHR) of the Venice Commission (DGI) Joint Opinion on the Draft Law on Amendments to the Law of Georgia on Disciplinary Liability and Disciplinary Proceedings of Judges of the Common Courts of Georgia, adopted at the 100th Plenary Session of the Venice Commission (Rome, October 10-11, 2014), §27, p. 12

²¹ The fourth round of the GRECO evaluation report sets out six recommendations in the section of Judiciary. Among others, the Greco Recommendation should take the necessary measures to increase the efficiency, transparency and objectivity of judicial disciplinary proceedings, including more specifically identifying disciplinary misconduct. " - The Group of States against Corruption of the Council of Europe (Greco) Recommendation 2017-2018.

different subparagraphs.²²

The following chapter of the report summarizes the findings prepared by the Independent Inspector according to the case-categories, disciplinary misconduct and outcome of the cases.

The generalization of the cases reveals that the authors of the complaints mostly indicate:

- Substantial violation of the deadline set by the judge in accordance with the procedural legislation of Georgia due to unreasonable excuse;
- Exercising judicial authority by a judge under personal interest, political or social influence;
- Expression of obvious disrespect towards another judge, an officer of an administration of the court, or parties of the hearing

95

Substantial violation of the deadline set by the judge in accordance with the procedural legislation of Georgia due to unreasonable excuse

15

Exercising judicial authority by a judge under personal interest, political or social influence

12

Expression of obvious disrespect towards another judge, an officer of an administration of the court, or parties of the hearing.

8

Other activity of a judge, incompatible with his / her high status

8

Refusal of the judge to Challenge / recusal when there is an obvious ground provided by the law on the latter

3

Discriminatory actions of a judge expressed verbally or in any other form against any person due to any grounds in the exercise of his / her judicial powers

2

Violation of Articles 5, 5², 7, 8, 10, 11, 13, 13⁴, 13⁵ or 20⁴ of Georgian Law on Conflict of Interest and Corruption in Public Service

1

Forming a personal and intensive (friendly, family) relationship directly with the participant in the proceedings, which causes the judge to be biased and / or give preference to the participant if he / she had information about the party.

1

Pre-disclosure of the Court decision on the pending case by the judge, except in cases provided for by the procedural legislation of Georgia

1

Hindrance of Disciplinary Proceedings by a judge

1

Unlawful interference by a judge in the distribution of court-cases

1

Failure to perform or improper performance of duties by a judge of relevant administrative authority, in particular, the court, the judicial panel or the head of the chamber

²² The table provides information on the number of disciplinary misconduct indicated in the complaints.

3.1. SUBSTANTIAL VIOLATION OF THE DEADLINE ESTABLISHED BY THE PROCEDURAL LEGISLATION

As a result of the amendments to the Organic Law of Georgia on Common Courts, one of the types of disciplinary misconduct was defined as „substantial violation of the deadline established by the procedural legislation of Georgia due to an unreasonable excuse“, which combined an unreasonable delay²³ in the proceedings and improper performance of the duties of a judge (version valid until January 1, 2020).²⁴ The review of a case within the established procedural time period is interlinked with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which considers not only the hearing of the case within a reasonable time, but also the enforcement of the decision.

The right to appeal to a court is not a theoretical right and the final decision, together with the recognition of the right, includes the legitimate expectation of enforcement of the decision itself. Effective protection of parties and restoration of legality implies an obligation on administrative bodies to enforce legally binding judgments (*Hornsby v. Greece*, § 40). The clear administration of justice contributes to the attainment of the purpose of the first paragraph of Article 6, namely, a fair trial (*Diennet v. France*, § 33; *Martinie v. France* [GC], § 39).

Thus, the type of disciplinary misconduct - „substantial violation of the deadline established by the procedural law for an unreasonable excuse“, implies (i) violation of the deadline established by law and (ii) violation of the deadline for sending a decision to a party. According to the amendments of January 1, 2020, the misconduct, which until now was considered as improper performance of duty by a judge, was included in the substantial violation of the deadline established by the procedural legislation due to unreasonable excuse.²⁵

Most of the complaints filed with the Office of the Independent Inspector in 2020, like in 2019, relate to cases of violation of the deadline for hearing a case. In 2020, the number of complaints, where the substantial violation of the procedural deadline was indicated as disciplinary misconduct, accounted for 64%, which is 20% more than last year. Since, from January 1, 2020, an improper performance of the duties of a judge is no longer considered as disciplinary misconduct, the complaints submitted on the grounds of late submission of a reasoned decision were incorporated within Article 75¹ par. 8, subparagraph „V.A“ of the Organic Law of Georgia – Substantial violation of the deadline due to unreasonable excuse established by procedural legislation. Consequently, compared to 2019, the number of complaints filed in substantial violation of the procedural deadline has increased, as the latter combines two types of misconducts.

An action committed by a judge, which violates the principle of competence and diligence - substantially violates the deadline²⁶ established by the procedural legislation of Georgia, shall be deemed as disciplinary misconduct. When discussing disciplinary misconduct, it is necessary to determine the cumulative existence of three conditions defined by the norm:

- Violation of the deadline established by the procedural legislation of Georgia;

²³ Subparagraph „d“ of Article 75¹ of the Organic Law of Georgia on Common Courts, effective until January 1, 2020

²⁴ Ibid, Subparagraph „E“

²⁵ 2019 annual report of the Office of the Independent Inspector, P. 13, <https://dis.court.ge/wp-content/uploads/2020/07/dis2.pdf> [last seen on 28.12.2020]

²⁶ Subparagraph „v.a“ of paragraph 8 of Article 75¹ of the Organic Law of Georgia on Common Courts

- Substantiality of the violation;
- Lack of an excusable reason for the violation.

The Independent Inspector uses procedural law and domestic law, as well as international law, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Bangalore Principles of Judicial Conduct, the European Court of Human Rights (ECHR) Guidelines and more. The interpretation is based on the decisions of the Constitutional Court of Georgia²⁷ and the European Court of Human Rights.²⁸

According to the Bangalore Principles, a judge should exercise control and oversight over pending cases before a court to reduce wasted costs and unnecessary delays of the proceedings. A judge shall perform all judicial duties efficiently, fairly and with reasonable promptness, pay due attention to the rights of the parties and ensure that disputes are resolved without undue costs and unjustified delays in the proceedings.²⁹ When reflecting on the procedural deadlines, the Constitutional Court of Georgia attaches importance to the deadline for ensuring effective, objective and fair justice in the process of exercising the right to a fair trial; Adherence to procedural deadlines promotes legal certainty, transparency, order and stability in civil relations.³⁰

When discussing the matter of disciplinary misconduct, the independent inspector focuses on the complexity of the case, the actions taken in the case, the hearings held and the various procedural measures, the workload of the judge and individual responsibilities of the latter.³¹

When discussing the matter of disciplinary misconduct, at the pre-trial stage, the independent inspector examines the actual circumstances of the case and the actions taken, focuses on the number of cases and statistics available to the judge, as well as the judge's leave and the period of a hospital stay.

When discussing the matter of a substantial violation of a procedural deadline, an important case is one in which the independent inspector considered it a possible disciplinary misconduct for a judge to hear a civil case for the time period of 3 years and 8 months. A detailed examination of the case revealed that the case was not particularly complex, which could be related to both the factual and legal complexity of the case. Nor were the actions of the parties aimed at delaying the hearing of the case. At the same time, the number of cases pending before the judge, the statistics, the length of time in the proceedings, and the procedural actions taken by the judge in relation to the case under consideration - did not give grounds to assume that the specific time limit was reasonable.³²

As possible disciplinary misconduct was assessed a 1-year period for reviewing a civil case pending before a judge, as the judge held the first hearing only 11 months after receiving the case. When discussing the possible violation of the procedural deadline of the case, the focus was on Article 6 of the European Convention on Human Rights and the criteria used by the European Court of Human Rights in deducing a violation of Article 6

27 See.: Decision of the Constitutional Court of Georgia №2/5/879, 2019, 14 November, II 2 [5], Decision of the Constitutional Court of Georgia №3/1/531, 2013, 05 November, II 17-19, Decision of the Constitutional Court of Georgia №3/2/577, 2014, 24 December, II 7

28 See.: *Boddaert v. Belgium*, *Dobbertin v. France*, *Frydlender v. France*, *Koenig v. Germany*, *Poiss v. Austria*; *Bock v. Germany and Other*.

29 "Bangalore Principles of Judicial Conduct" and its Commentaries, Tbilisi 2015, P. 192, §207

30 Decision of the Constitutional Court of Georgia, №3/1/531, 2013, 05 November, II 17-19

31 The detailed criterion is illustrated in the 2018 annual report of the office of the Independent Inspector, P. 28, [https://dis.court.ge/wp-content/uploads/2020/07/inspegtori_new.indd .pdf](https://dis.court.ge/wp-content/uploads/2020/07/inspegtori_new.indd.pdf) [last seen on 28.12.2020]

32 Disciplinary Case №195/19-2

(due to violation of a reasonable deadline for hearing a case).³³

In one of the disciplinary cases, the independent inspector found that there was a substantial violation of the procedural deadline due to unreasonable excuse, as the judge had not taken any procedural action in the case for almost a year.³⁴

Also, the independent inspector considered it possible disciplinary misconduct to review a civil case for 2 years and 4 months, since as a result of the assessment of the number of cases in the proceedings of the judge, statistics and workload, the period of the judge's presence in the proceedings, there were signs of a substantial violation of the procedural deadline due to an unreasonable excuse.³⁵

As a result of the investigation, the Independent Inspector considered it a disciplinary misconduct for the judge to violate the procedural deadline set by law, as the claim was submitted to the opposing party in compliance with the law, however, the objection was not submitted to the court not only within the 10-day period established by the court, but after 7 months. Thus, the judge, regardless of the motion of the parties, was authorized to make a decision in absentia on the case on his own initiative, or to hear the case, however, no procedural action was taken by him/her.³⁶

It is important that the Independent Inspector assessed the violation of the procedural deadline of 2 years and 8 months as a possible disciplinary misconduct. As a result of the detailed examination of the case file, it was established that during the specified period, the judge scheduled 6 hearings on the case, of which only 2 hearings were held, and 4 hearings were postponed on the basis of the defendant's motion. According to the Civil Procedure Code of Georgia, postponement of a case is allowed only when provided by law. Postponement of the hearing should not serve as an unreasonable delay of the hearing. If the motion to adjourn the case has become systematic and substantially delays the hearing of the case, the judge is obliged to refuse to satisfy the author of the motion and to continue the hearing of the case. No such action has been taken by the judge in this particular case, which led to a substantial violation of the deadline established by the procedural legislation of the case. When examining the circumstances of the case, the independent inspector took into account the period of the judge's stay on leave, however, 2 years and 8 months still was not considered as a reasonable deadline.³⁷

Unlike in the abovementioned case, the fact of violation of the procedural deadline by the judge for 3 years and 1 month was not assessed as a disciplinary misconduct. The independent inspector took into account the fact that several defendants were involved in the case, to whom the lawsuit was filed inconsistently. Upon the motion of the parties, the judge was obliged to take appropriate procedural measures on handing over the counterclaims to the parties through the police or public notice. Also, the claimant specified the claim twice, which contributed to the delay of the case. The judge had to take procedural measures related to the submission of the claim to the defendants in accordance with the specified claim. Thus, given the workload of the judge, the number of motions heard by him and the periodicity of the proceedings, the violation of the trial period, even for more than 3 years, was not considered a disciplinary misconduct, as the violation of the procedural deadline

33 Disciplinary Case №202/19-1

34 Disciplinary Case №97/20

35 Disciplinary Case №40/20

36 Disciplinary Case №214/19

37 Disciplinary Case №24/20

was not the result of a judge's fault.³⁸

In one of the disciplinary cases, the complainant pointed to a violation of the procedural deadline by the judge, however, a detailed examination of the case file revealed that the judge heard the case in 2 months and 16 days, which was not considered a disciplinary misconduct, as the judge heard the case in compliance with the deadline set by Article 59, Paragraph 3 of the Civil Procedure Code of Georgia.³⁹ It was not considered a disciplinary misconduct to hear a case of administrative law in 4 months and 9 days.⁴⁰ It should be noted that in both cases the judge heard the case in accordance with the rules established by procedural law.

It was not considered a disciplinary misconduct for a judge to hear a case within 1 year and 2 months, for the following reasons: During the reporting year, the judge completed more than half of the cases, carried out a number of procedural actions in relation to a specific case, and a specific civil case, due to a large number of defendants, was deemed as a technically complex case.⁴¹

It is important that the independent inspector evaluates the actions of a particular judge when reflecting on a disciplinary misconduct. In the disciplinary case №120 / 20, the independent inspector considered that the procedural deadline set for the hearing of the case had been violated as a whole, although each judge was assessed individually. The investigation confirmed that the case had been pending for 5 years, although the case was being heard by not one but several judges. One of the judges's trial lasted 3 years and 5 months, which naturally was not considered as a reasonable deadline. Accordingly, the Independent Inspector considered only one judge to have committed a possible disciplinary misconduct.⁴²

Thus, the violation of the deadline of hearing the civil and administrative law cases varies from 2 months to 5 years. The violation was mostly due to the actions of the parties, a large number of cases pending before the judge, as well as the inaction of the judge in certain cases. As already mentioned, disciplinary misconduct is considered in the light of mitigating and aggravating circumstances in relation to an individual judge.

With regard to criminal cases, it should be noted that, as a rule, complaints about substantial violation of procedural deadlines are not filed in criminal cases, although in one of the disciplinary cases before the criminal judge, the Independent Inspector considered that a disciplinary misconduct may have occurred. As the deadline for consideration of the dispute was 9 months longer than the term established by the procedural legislation.⁴³ It was also considered a disciplinary misconduct for the judge to exceed the deadline for hearing the case established by law for the period of 10 months.⁴⁴

In addition to the procedural deadline set for the hearing of the case, as already mentioned, Article 75¹, Paragraph 8, Subparagraph „v.a“ of the Organic Law of Georgia also encompasses the preparation of a decision or delivering the latter to a party. In this regard, a disciplinary case is important, where it was established that the decision in absentia

38 Disciplinary Case №116/20

39 Disciplinary Case №211/19

40 Disciplinary Case №60/20

41 Disciplinary Case №196/19

42 Disciplinary Case №120/20

43 Disciplinary Case №209/19

44 Disciplinary Case №212/19

was delivered to the party with a delay of 1 year. At the same time, during this period, no procedural action was taken by the judge and the case was not particularly complicated (factual and legal difficulty). Accordingly, the independent inspector considered that a disciplinary misconduct had taken place.⁴⁵

The fact of violation of the deadline established by law for 1 year and 5 months for sending a reasoned decision to the party was considered a disciplinary misconduct. The Independent Inspector drew attention in the report to the fact that the late delivery of a reasoned decision caused substantial damage to the party, as the dispute concerned the reimbursement of social assistance provided by the decision.⁴⁶ Although the deadline for appealing a decision in an administrative case is calculated from the moment the reasoned decision / judgment is served on the parties, the fact that the decision was sent to the parties 1 year and 6 months later was considered a disciplinary misconduct by an independent inspector.⁴⁷

The fact of sending a decision 28 days late to the party in the administrative case was not assessed as a disciplinary misconduct⁴⁸, neither was the fact of sending a reasoned judgment to the parties with a delay of 2 months and 16 days.⁴⁹ It should be noted that both cases where the judgement / decision was sent late belonged to the administrative law, the deadline for appealing of which is calculated from the delivery of the relevant act to the parties. Thus, the parties were not restricted from their fundamental right to appeal. At the same time, when considering specific cases, the independent inspector took into account the workload of the judge.

Thus, the independent inspector is guided by the standard of reasonable time-period⁵⁰ when discussing the violation of the procedural deadline provided by law, because „the parties have the right to have their claim or defense arguments reviewed by a fair court within a reasonable time.“⁵¹

It is interesting to what extent the High Council of Justice of Georgia shares the assessment of the possible commission of the disciplinary misconduct established by the independent inspector in relation to the substantial violation of the procedural deadline and what standard it leads with while reviewing the findings of the independent inspector. According to statistics, 76% of the findings submitted by an independent inspector were related to a substantial violation of the procedural deadline, most of which were not shared by the High Council of Justice of Georgia.⁵²

In particular, the High Council of Justice did not share the opinion of the independent inspector and did not assess the delay of the case for 1 year and 4 months as a possible disciplinary misconduct. The High Council of Justice of Georgia focused on statistics, the number of cases and, considering the workload of the judge, terminated the disciplinary proceedings in the case.⁵³

45 Disciplinary Case №58/20

46 Disciplinary Case №79/20

47 Disciplinary Case №86/20

48 Disciplinary Case №34/20

49 Disciplinary Case №215/19

50 The first paragraph of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

51 Consultative Council of European Judges (CCJE), Fair trial with a reasonable time and the use of alternative dispute resolution methods", Strasbourg, 2004, 24 November, Conclusion №6, P. 27, §98

52 For the detailed statistical information, see Chapter 2.4 of the following report.

53 Disciplinary Case №138/18

In one of the disciplinary cases, the Independent Inspector considered that the 1-year and 6-month extension of the trial period contained signs of disciplinary misconduct as the case was not a complex one and the judge did not intervene in the case at short intervals. However, the High Council of Justice did not share the submitted opinion and terminated the disciplinary proceedings due to the workload of the judge by an absolute majority of votes.⁵⁴

As in the cases above, the High Council of Justice of Georgia did not share the recommendation of the independent inspector and did not assess the violation of the case for 1 year and 9 months as a possible disciplinary misconduct. In this case, too, the High Council of Justice of Georgia took into account the workload of the judge and the procedural actions taken by the parties in the case, which contributed to the delay of the hearing.⁵⁵

The High Council of Justice of Georgia shared the conclusion of the independent inspector and made a decision to initiate disciplinary proceedings in the case where the hearing was taking place for 2 years. The Independent Inspector noted in the report that the judge had scheduled a hearing 1 year and 11 months after the case was handed over to the latter. The High Council of Justice of Georgia considered that the combination of factual circumstances established as a result of the examination of the grounds of the case in accordance with the standard of probable cause provided sufficient evidence for the presumption that the judge's action contained signs of disciplinary misconduct.⁵⁶

The High Council of Justice of Georgia shared the independent inspector's conclusion on the belated delivery of a reasoned judgment by a judge to the party and initiated disciplinary proceedings in the case where, instead of the 5 days established by procedural law, the judgement was sent to the party in 5 months and 17 days. In assessing the judge's actions, the period of the presence of the latter in the proceedings (02 years, 05 months and 19 days, of which the longest interval of proceedings was 06 months and 13 days) was taken into account. In consideration of the workload of the judge, actions taken by the latter in relation to the case, including the hearings held, the High Council of Justice of Georgia concluded that the circumstances above did not create sufficient grounds for a misdemeanor.⁵⁷

In one case, a judge sent a decision requesting evidence to the National Agency of Public Registry 1 year, 1 month, and 18 days later, which was deemed a disciplinary misconduct by an independent inspector. This recommendation was shared by the High Council of Justice and a decision was made to initiate disciplinary proceedings against the judge and to request an explanation from the latter.⁵⁸

3.2. EXERCISING JUDICIAL AUTHORITY BY A JUDGE UNDER PERSONAL INTEREST, POLITICAL OR SOCIAL INFLUENCE

As a result of the amendments made within the framework of the fourth wave of judicial reform, Article 75¹ of the Organic Law of Georgia on Common Courts defined a new type

⁵⁴ In one of the disciplinary cases, the Independent Inspector considered that the 1-year and 6-month extension of the trial period contained signs of disciplinary misconduct as the case was not a complex and the procedural actions were not carried out in judge did not intervene in the case at short intervals. However, the HCOJ did not share the submitted opinion of Independent Inspector and due to the workload of the judge by an absolute majority of votes terminated the disciplinary proceedings.

⁵⁵ As in the cases above, the HCOJ did not share the recommendation of the Independent Inspector and violation of the case hearing for 1 year and 9 months was not assessed as possible disciplinary misconduct. In this case, too, the HCOJ took into account the workload of the judge and the procedural actions taken by the parties, which contributed to the delay of the hearing.

⁵⁶ Disciplinary Case №161/18

⁵⁷ Disciplinary Case №26/247-18

⁵⁸ Disciplinary Case №204/18

of disciplinary misconduct, „Exercising judicial Authority by a judge under personal interest, political or social influence.“ Unfortunately, organic law does not provide a precise definition of what constitutes a personal interest or what kind of influence can be considered a disciplinary misconduct. Consequently, investigating disciplinary cases on this ground constitutes a challenge.

The claims of the complainants regarding the abovementioned misconduct are usually related to the fact that the judge is interested in the outcome of the case, has a biased attitude towards any party, or is accused of improper performance of the duties.

In dealing with the above-mentioned type of misconduct, the independent inspector relies on international legal acts. For the most part, the Bangalore Principles and the conclusions of Consultative Council of European Judges.⁵⁹ In particular, according to the Commentaries on the Bangalore Principles, „a potential possibility of a conflict of interest arises when the personal interests of a judge (or its relatives) conflict with his / her duty to hear cases impartially.“⁶⁰

Personal interest and conflict of interest are mainly derived from financial and economic interests, are close to personal relationships, other personal interests and duties. Conflict of interest implies the possibility of both direct and indirect compromise in the performance of public service duties.⁶¹ Conflict of interest is a contradiction arising from the performance of duties when public and personal interests merge, involving financial interests of a direct or indirect nature.⁶² The independence of judges should be seen as a guarantee of an impartial judiciary, free from influences. The independence of judges is not a prerogative or privilege for the personal interest of judges,⁶³ as private or personal ties between a judge and a party calls into question the impartiality of the judiciary (*Pescador Valero v. Spain*, § 27; *Micallef v. Malta*, §102).

In order for a judge's action to be considered under personal interest, politically or socially influenced, the judge must abuse his / her power and / or he / she must act in a bad faith, biased manner, have some personal interest or benefit from a particular case.

In the pursuit of personal interest, the actions taken by a judge within his or her discretion, constitute a particular difficulty. In particular, if a judge acts within the discretionary powers provided by law, in some cases it is quite difficult to prove the existence of personal interest by the standard of a probable cause.⁶⁴ Furthermore, if a judge makes a mistake when rendering a decision in a particular case, however, exercises his / her authority based on inner belief and good faith, considers his / her actions lawful and has no personal interest, then imposing disciplinary liability on the judge on such a ground would be inadmissible.⁶⁵

⁵⁹ on the Principles and Rules governing the Professional Conduct of Judges, In particular, the Ethics, Misconduct and Impartiality, the European Council of Judges (CCJE), conclusion 3 (2002) and Council for the Judiciary in the service of society, opinion 10 (2007)

⁶⁰ "Bangalore Principles of Judicial Conduct" and its Commentaries, Tbilisi 2015, P. 98, §67

⁶¹ Managing Conflict of Interest in the Public Service, OECD GUIDELINES AND COUNTRY EXPERIENCES, 2003, p. 48

⁶² Managing Conflict of Interest in the Public Service, OECD GUIDELINES AND COUNTRY EXPERIENCES, 2003, p. 57

⁶³ The Consultative Council of European Judges (CCJE), Council for the Judiciary at the service of society, Conclusion №10, Strasbourg, 2007, 23 November, §9, P. 4

⁶⁴ In practice, a problem may arise in resolving issues where a judge has acted in a discretionary manner in making a particular decision, although the complainant believes that the judge made the decision out of personal interest, political or social influence. During the examination of the complaint submitted on this ground, the challenge is to determine whether any kind of pressure was exerted on the judge, he acted on the basis of personal interest, if at the time of making the decision he/she acted only within the discretionary powers granted to him/her by the Code of Procedure. In this case, it is also problematic for the action to be evaluated and a decision made on the inadmissibility of oversight of the legality of the act if a conclusion is reached on the presence/absence of signs of disciplinary misconduct.

⁶⁵ Analysis of the Judicial Liability System, Tbilisi 2014, P. 24, See. http://coalition.ge/files/analysis_of_the_judicial_liability_system_ge.pdf [last seen on 28.12.2020]

The special nature of judicial functions and the need to preserve the dignity of the judiciary, and to protect judges from all forms of pressure, imply that judges must act in a way that averts conflicts of interest or the abuse of power.⁶⁶ Therefore, a possible conflict of interest, abuse of a judge's power or possible impartiality in the eyes of an objective observer is reviewed by an independent inspector based on personal interest.

In discussing the above-mentioned disciplinary misconduct, it is interesting to note that a case was not deemed as a disciplinary misconduct, in which a judge was busy assessing the actions of the parties, answered some questions himself / herself, did not allow the party to listen to the answer, directly asking another question. When discussing the issue, the independent inspector focused on the second part of Article 127 of the Code of Civil Procedure, pursuant to which the question is considered inappropriate or inadequate and can be removed by the judge alone, or when the case is heard by a collegial court - by the presiding judge. Accordingly, procedural law allows the judge to ask questions. Examination of the minutes of the hearing revealed that although the judge had intervened several times during the stage of questioning and stopped the party, the action was aimed at a better examination of the case, which was granted to the judge by the procedural law.⁶⁷ Thus, by the independent inspector's opinion the judge's interference in the questioning stage was not motivated by any personal interest .

Also, the possible commission of a disciplinary misconduct was not concluded in the case where, according to the complainant, the judge improperly performed the duties imposed on the latter because he / she was related to the defendant. In the present case, no document was submitted by the plaintiff confirming the connections between the judge and the defendants. Furthermore, the complainant did not provide any explanation as to what connection the judge had with the defendants or which specific defendant was in question in this case. Preliminary investigation revealed no evidence to support the judge's connection to the parties to the case.⁶⁸

The Independent Inspector did not consider the action of a judge as an improper performance of his / her duties (the version of the Organic Law of Georgia on Common Courts valid until January 1, 2020), as claimed by the plaintiff, based on the appointment of the main hearing within 5 days of receiving the counterclaim was against the law and violated the parties' rights. the High Council of Justice of Georgia reclassified the action, placed it with the disciplinary misconduct valid from January 1, 2020, and noted that the fact of possible exercise of judicial power by a judge in his / her own interest was not revealed, because it was confirmed by the case materials that the defendant filed a counterclaim with the court on April 5, 2018. The judge scheduled the main hearing in the case by the decision of April 10, 2018 on May 08, 2018, which fully complies with the requirement of Article 207 of the Civil Procedure Code of Georgia. And the conduct of the judge during the hearing of the case did not arouse any suspicion of any interest in the particular case.⁶⁹

It should be noted that the complaints received regarding the given misconduct during the reporting period were not assessed as a disciplinary misconduct by an independent inspector.

⁶⁶ 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, (2002), §37 "

⁶⁷ Disciplinary Case №30-20

⁶⁸ Disciplinary Case №19/20

⁶⁹ Disciplinary Case №128/18

3.3. EXPRESION OF AN OBVIOUS DISRESPECT TOWARDS ANOTHER JUDGE, AN OFFICER OF THE COURT, OR PARTIES OF THE HEARING

When assessing the possible occurrence of expression of obvious disrespect towards another judge, an officer of an administration of the Court or parties of the hearing, The Independent Inspector considers the №3 report of the Consultative Council of European Judges (CCJE) 2002, as well as the Bangalore principles of judicial conduct and the rules of ethics for judges.

The behavior of the judge, the manner of self-control is of special significance for strengthening the confidence in his / her impartiality, since the behavior of the judge captures the attention of those around him / her in the first place. The public respects the court and trusts it as an institution.⁷⁰ Consequently, possible misconduct by a judge undermines confidence in the court because it creates a sense of bias. A rude, disrespectful attitude towards a party during a trial violates a party's right to a hearing and casts a shadow over the authority and solidarity of the court that should reign in the courtroom. The judge's negligence also has a negative impact on the satisfaction of the party with the proceedings and ultimately creates a negative image of the court in general.⁷¹

According to Bangalore Principle 6.6 of Judicial Conduct, a judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants and to all with whom the judge deals in an official capacity.

In and out of the courtroom, a judge must always be courteous and respect the dignity of those around him / her.⁷² The judge should demand the same attitude from all participants in the trial, as well as from other judges and court staff. The judge should stand above personal antipathy and should not single out any of the lawyers appearing before the court. The judge's unfounded remarks towards the lawyer, insulting comments towards the parties or witnesses of the court hearing, sarcasm and restrained, biased behavior violate the order and etiquette appropriate for the court in the courtroom. If the judge wants to intervene, the tone and manner of his / her expression should not overshadow the impartiality of the latter.⁷³

An analysis of the disciplinary complaints lodged with the Office of the Independent Inspector and the findings prepared on them reveals that in key cases, the parties to the proceedings refer to the Office of the Independent Inspector for possible disrespect to a party by a judge.

In one of the disciplinary cases, the complainant alleges that at the substantive hearing, the judge referred to the lawyer as „a lawyer who arrived unprepared.“ The examination of the case file revealed that the judge, after expelling the lawyer from the courtroom for disorderly conduct, made the explanation: „The party must either go to court prepared or be ready to respond promptly to the court.“ According to the Independent Inspector, this explanation by the judge casts doubt on the professional authority of the lawyer. Especially when the definition was not of a general nature and was directed towards a specific subject.

⁷⁰ The Consultative Council of European Judges [CCJE] 2005, №7 Conclusion, paragraph 8, http://hcoj.gov.ge/files/pdf%20files/aqtebi/CCJE%282005%29OPINION%207_GEO.pdf [last seen on 28.12.2020]

⁷¹ "Bangalore Principles of Judicial Conduct" and its Commentaries, Tbilisi 2015, Principle 6.6. paragraph 213, P. 195

⁷² Judges Ethics Code of Georgia, Article 9

⁷³ "Bangalore Principles of Judicial Conduct" and its Commentaries, Tbilisi 2015, Principle 6.6. paragraph 215, P. 196

Accordingly, the action was assessed as a possible disciplinary misconduct.⁷⁴

The independent inspector concluded a disciplinary misconduct in the following case – the judge expressed disrespect toward the party: „You cannot, madam, I speak in Georgian, I don't speak in Chinese, do I?“ – „You will be expelled from the courtroom, we will not miss your absence, believe me“ – „I do not care what you are interested in“. ⁷⁵

The independent inspector concluded a disciplinary misconduct in the following case – judge to the defendant: I thought I was dealing with serious people. Forgive me for making such a statement.“ According to the Independent Inspector, such disrespectful attitude by a judge violates the right of a party to have the case heard and casts a shadow over the authority and solidarity of the parties to the proceedings that should reign in the courtroom.⁷⁶

After hearing the audio and video recordings of the disciplinary case, the fact of unethical, degrading or abusive treatment by the judge was not confirmed in the disciplinary case №6 / 20, where the complainant indicated that the judge addressed the latter with the following words: „You speak like a good lawyer, you would have been a good lawyer“. Preliminary investigation of the circumstances of the case revealed that the plaintiff presented an explanation at the court hearing. After that, the judge gave the floor to the plaintiff's representative, who started the conversation by saying that the plaintiff himself spoke well on the subject of the dispute, to which the judge said „Mr. - has also become a lawyer in the meantime.“

The Independent Inspector considered a number of appeals to the lawyers at the court hearing from the side of a judge as a clear violation of the principle of competence and diligence - a clear disrespect to the participant in the trial. In particular, the judge told the party representative that the latter was only promoting itself and that its purpose was not to participate in the substantive hearing of the case, which, according to the independent inspector, was beyond the scope of correctness, was a public expression of negative opinion on the professionalism of the representative, which loses credibility and authority not only in the eyes of the accused but in the eyes of the whole community. Accordingly, the judge's action was assessed by the independent inspector as an expression of obvious disrespect to the participant in the proceedings and established a possible disciplinary misconduct under Article 75¹ paragraph 8 (v.b) of the Organic Law on Common Courts. ⁷⁷

The expression of disrespect to the convicted person was concluded by the independent inspector in the case where the convicted person complained at the court hearing that the audio recording of the court transcript could not be opened. He informed the court in writing on October 9, but did not get a response. The judge replied that he / she was not aware of this because the same disc had been tested on several computers and only one had a similar problem. In response to this, the convict remarked: „I told you two weeks ago that it does not open,“ to which the judge answered in a loud tone: „Wait for a second, how do you dare to talk to me in this manner...“; In the opinion of an independent inspector, such a statement by a judge goes beyond correctness and ethics and constitutes a public expression of a negative opinion. Such behavior of a judge violates the internationally recognized rule of respect for the dignity of convicts and damages the

⁷⁴ Disciplinary Case №32/20

⁷⁵ Disciplinary Case №9/20

⁷⁶ Disciplinary Case №21/20

⁷⁷ Disciplinary Case №2/20

image of the judiciary. This action was assessed by the independent inspector as a violation of the principle of competence and diligence, in particular, expression of obvious disrespect by a judge towards another judge, an officer of an administration of the court or parties of the hearing.⁷⁸

The conclusion of the Independent Inspector on the absence of possible disciplinary misconduct as a result of the study of video recordings was shared by the High Council of Justice in the case, where the complainant indicated that the judge laughed with the secretary of the hearing while the representative was giving an explanation.⁷⁹

The High Council of Justice of Georgia did not consider the action as an obvious disrespect to the party, when the judge addressed the defendant with the following words: „I did not think you would refuse the victim to be here today“, „What’s wrong with you? You are sick today? Are you a man after all?!“; The judge’s addressing displeased the defendant and asked the judge not to assess his „manhood“ in the courtroom. The High Council of Justice of Georgia did not agree with the independent inspector’s conclusion and concluded that although the judge may have addressed the party unethically, it was only aimed at conducting the process properly, which served to protect the rights of the parties.⁸⁰

Thus, the generalization of disciplinary cases reveals that the detection of facts of possible disrespect to a party by a judge is mainly accomplished through the study of audio and video recordings of court records. The basis for assessing the actions of judges as disciplinary misconduct is the expressions of disrespect to the party by words and phrases during the court proceedings. However, there are cases when the facts stated in the complaint do not correspond to reality and in some cases they are based on the subjective perception of the author of the complaint.

3.4. OTHER ACTIVITY OF A JUDGE INCOMPATIBLE WITH THE HIGH STATUS

According to Article 8 of the Basic Principles on the Independence of the Judiciary, a document developed by the United Nations in 1985, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

The conduct of a judge should be commensurate with the position held, which will help increase public confidence in the judiciary. From the protection of aforementioned purpose derives the following disciplinary misconduct.⁸¹

The main part of the disciplinary misconduct has been changed due to the legislative amendments, however, it should be noted that before January 1, 2020, the disciplinary misconduct was „inappropriate action for a judge, which undermines the authority of the court or damages the trust in the court“, which corresponds to Article 75¹, Paragraph 8, Subparagraph „g“ of the current Organic Law.

When discussing inappropriate conduct for a high status judge, the Independent

⁷⁸ Disciplinary Case №197/19

⁷⁹ Disciplinary Case №211/18

⁸⁰ Disciplinary Case №206/18

⁸¹ Article 75¹, Paragraph 8, Subparagraph “g” of the Organic Law of Georgia on Common Courts - “Any other action of a judge, which is incompatible to the high status of a judge [action [behavior] inappropriate for the high status of a judge, committed in or out of the court, which clearly violates public order or universally recognized moral norms, thereby undermining the authority of the court or undermining confidence in the court].”

Inspector usually focuses on „Principles and Rules governing Judges’ professional conduct, in particular, ethics, conduct incompatible with the status and impartiality“ of Consultative Council of European Judges (CCJE) N3, as well as on the Bangalore principles of conduct, pursuant to the principle 3 of the latter – a judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer. The behaviour and conduct of a judge must reaffirm the people’s faith in the integrity of the judiciary. In and out of court, a judge must uphold and develop norms of conduct that protect the court’s reputation and increase public confidence in the judge.⁸²

When assessing the incompatible behaviour of a judge, it is relevant to identify and assess the following circumstances: Does such conduct of a judge pose a threat to the authority of judges; Does it substantially violate public order; Does it substantially violate universally accepted moral norms; Does it harm public confidence in the court; Does it call into question the protection of the rights of the parties by the court.

During the investigation of the complaints submitted, the Office of the Independent Inspector will examine both audio and video records. If necessary, it will take a written explanation from the author of the complaint (statement), invite other persons and receive information from them. A thorough investigation of the facts will determine whether there was an act incompatible for the high status of a judge.

In this regard, it is important to note the following disciplinary case where the independent inspector concluded the judge’s action as a disciplinary misconduct - When during the questioning the judge interrupted the lawyer and addressed the latter with the following words: „More specifics, gentlemen, I am not researching hypothetical questions here... Question an expert about a specific case“; In protest of the judge’s activity, the latter claimed that he/she was a judge and was not obliged to listen to everything; The judge’s actions should also be noted in regard with the questioning of the witness by the representative of the defendant, in particular, addressing the prosecutor: „In general, a prosecutor should raise an objection against such questions and should not just sit passively in the trial. The question, which is so simple and clear, not everything shall be voiced in the courtroom... I do not have a duty to endure“. According to the Independent Inspector in the case above, the judge violated the imperative requirement of the law, in particular, the judge’s actions violated the principle of adversarial proceedings, endangering the provision of evidence and examination by the parties on equal terms. Repeated actions of a judge reveal signs of disciplinary misconduct and the judge’s actions were incompatible with the high status of a judge.⁸³

In one of the cases, the author of the disciplinary complaint pointed to the fact that a judge could have committed an act incompatible for the status. In particular, the complaint stated that the judge had consumed the neighbor’s electricity without permission during the renovation of the apartment. At the same time, he / she expressed disrespect to the neighbor and verbally abused the latter. The examination of the case file did not reveal the fact of possible disciplinary misconduct by the judge. Preliminary investigation revealed that the judge in the neighborhood did not use the status and the position of a judge. Neither did the judge verbally abuse the neighbor. In the conclusion, the Independent Inspector also discussed the importance of a standard of probable cause in disciplinary proceedings and

82 “Bangalore Principles of Judicial Conduct” and its Commentaries, Tbilisi 2015, P. 35, §1.6

83 Disciplinary Case №2/20

explained that the combination of facts or information gained did not constitute a standard of a probable cause that would satisfy a neutral (reasonable) observer to conclude that a judge could have committed an act incompatible with the high status.⁸⁴

In the process of investigating and evaluating the matter, the Independent Inspector drew attention to the Opinion N3 of the Consultative Council of European Judges (CCJE) – pursuant paragraph 27, judges should not be isolated from the society in which they live, since the judicial system can only function properly if judges are in touch with reality. Consequently, the fact of possible disciplinary misconduct was not established as a result of a thorough investigation of the case.

Thus, as already mentioned, an action incompatible with the high status of a judge contains in itself a standard, the violation of which in private or professional life depends on public perception. The judge must maintain public order in which we can conceive universally recognized fundamental principles that are consistent with respect for human rights, on which a democratic society is founded, and respect the social or moral norms established in society. However, all actions of a judge, which are perceived by a part of the society as a violation of public order and moral norms, can not be a basis for disciplinary liability of a judge, because not only the behavior itself but also the accompanying circumstances must be considered as a misconduct.

3.5. REFUSAL OF THE JUDGE TO SELF-RECUSAL / RECUSAL WHEN THERE IS AN OBVIOUS GROUND PROVIDED BY THE LAW

Pursuant to Article 75¹, paragraph 8, Subparagraph „B.D“ of the Organic Law of Georgia on Common Courts, „An act that violates the principle of impartiality, in particular, a judge’s refusal to self-recuse / recuse itself, when there is an obvious ground provided by the law on the latter, is considered as disciplinary misconduct“. On the basis of this ground, in 2020, 8 conclusions were prepared by an independent inspector.

It should be noted that prior to the amendments to the Organic Law of Georgia on Common Courts on January 1, 2020, it was impossible to assess a decision on judge’s recusal in terms of disciplinary misconduct. Such an action was considered in terms of the legality of the judge’s decision / judgement. Thus, the conclusions prepared by an independent inspector for the definition of the misconduct are of particular importance in relation to a given misconduct.

The complaints on the basis of which the relevant conclusions were prepared concerned civil law cases and, therefore, this section of the generalization focused only on the relevant articles of the Code of Civil Procedure and the standard applied by the independent inspector in preparing the conclusion.

When examining the issue of recusal / self-recusal, the Independent Inspector relies on Articles 31⁸⁵ and 32⁸⁶ of the Civil Procedure Code of Georgia, which provide the legal

⁸⁴ Disciplinary Case №64/20

⁸⁵ Paragraph 1, Article 31 of Civil Code of Georgia, A judge may not hear a case or participate in the hearing of a case, if he/she:

a) represents a party to the case or shares common rights or obligations with any of the parties;
 b) participated in a previous hearing of this case as a witness, an expert, a specialist, an interpreter, a representative or a secretary of a court session;
 c) is a relative of one of the parties or of the party’s representative;
 d) is personally interested, directly or indirectly in the outcome of the case, or if there are other grounds for questioning his/her impartiality;
 e) participated in this case as a mediator.

⁸⁶ Article 32 of Civil Code of Georgia If there are grounds for recusal, a judge shall be obliged to recuse himself/herself. A ruling on self-recusal that contains a reference to the grounds for self-recusal shall be delivered by the judge [court].

grounds for the recusal of a judge and regulate the issue of the self-recusal (the right of a judge, on his / her own initiative, to recuse itself without the motion of the parties and to make a respective decision). These Articles are of special significance in terms of disciplinary proceedings. Unlike Article 31 paragraph 1, subparagraph (a), (b), (c) and (e) of the Code of Civil Procedure of Georgia, subparagraph (d) is characterized by dispositional content and a high degree of possibility of interpretation. Article 75¹, Paragraph 8, Subparagraph „b.d.“ of the Organic Law of Georgia on „Obvious Grounds Provided by the Law on Recusal“, in addition to sub-paragraphs „a“, „b“, „c“ and „e“ of the first part of Article 31 of the Civil Procedure Code of Georgia, there may also be sub-paragraph „d“. It is important to note that in relation to first part of Article 31 (d) of the Code of Civil Procedure of Georgia, there must be a causality between the factually established circumstance and the judge's biased decision in the interest of the latter. Here, it should be noted that an objective and subjective assessment test is used when discussing the facts of the alleged violation.

It should be noted that in case of applying objective and subjective criteria in evaluating a judge's action, the independent inspector relies on the general standards⁸⁷ set by the Constitutional Court of Georgia and the „Bangalore Principles of Judicial Conduct.“ Given the specific nature of disciplinary proceedings against judges and their importance in terms of accountability of the judiciary, this fact should be considered a step forward. This view is supported by the conclusion of the Independent Inspector, which states that the requirement of impartiality includes two aspects: Firstly, the court must be impartial from a subjective point of view, i.e. the judge must not have personal bias or preconceived notions. Secondly, the court must be impartial from an objective point of view, that is, the actions of the latter must exclude any doubt as to its impartiality. According to this criterion, it is necessary to determine whether there are credible facts independent of the judge's conduct that give rise to doubts as to his or her impartiality.⁸⁸ Thus, in cases where the subjective bias of a judge cannot be proven, the test of objective impartiality of the court should be additionally applied. That is, there must be some circumstance that creates an objective ground for a party's suspicion of the court's impartiality. At such time it no longer matters whether the judge is really biased subjectively. „The main criteria is that there is some objective, factual circumstance on the basis of which the suspicion of a party can be justified and logical.“⁸⁹

Accordingly, the present part of the annual report will discuss the findings that make this correlation visible.

The following disciplinary case in regards to the recusal is quite interesting. The complainant indicated that in resolving the issue of recusal, the judge violated the requirement of Article 31 paragraph 1 (d) of the Civil Procedure Code of Georgia. The preliminary investigation on the basis of the disciplinary complaint revealed that the defendant had not submitted any evidence of financial or personal interest on the part of the judge in the hearing of the case (first abstract precondition of Article 31 paragraph 1 (d) of the Code of Civil Procedure). As to the party's arguments concerning the judge's bias (the last abstract precondition of the same subparagraph), there was no evidence in the case file to substantiate these allegations. The actions of the judge during the proceedings were not unlawful and did not differ from the practice established in reviewing of similar

⁸⁷ Judgment of the Constitutional Court of №1/1/1334, 2019 წ.

⁸⁸ „Bangalore Principles of Judicial Conduct“ and its Commentaries, Tbilisi 2015, P. 91, §53

⁸⁹ Judgment of the Constitutional Court of Georgia №1/1/1334, 2019 წ.

cases. During the evaluation, the independent inspector applied subjective and objective criteria and considered that no disciplinary misconduct was committed by the judge.⁹⁰

The same approach was taken with regard to the exercise of the right of self-recusal by a judge in disciplinary case №22 / 20, where the judge informed the parties in advance about a friendly relationship with one of the parties, but neither party filed a motion to recuse the judge. In this case, the independent inspector focused on the „common sense observer standard“⁹¹, because it is the common sense observer standard that should examine the judge’s biased attitude towards one of the parties. The fact that a judge reviews a case involving his / her friend and satisfies a request (reversing a lower court decision) can be seen as a circumstance that casts doubt on his / her impartiality. According to the test of objectivity, in assessing impartiality, the decisive factor is not the actual existence of the indicated circumstances or its assessment by the party, but whether the party’s suspicion is justifiable from the position of a reasonable observer. The conclusion focuses on the criteria applied to determine the ground of a biased assumption. In particular, „what conclusion would a common sense observer and informed person draw, if the latter approached the issue realistically and practically. Does the latter believe that the judge present will not be able to make a fair and impartial decision?“. „The judge’s conduct is assessed from the position of a hypothetical observer to emphasize the objectivity of the criterion applied to maintain public confidence in the court and not to rely solely on the assessment of the judge’s work by his / her fellow judges.“⁹²

Consequently, according to the Independent Inspector, even if the judge informed the parties in advance of a friendly relationship with one of the parties during the hearing and the parties did not file a motion to recuse the latter, the judge’s disregard for the judge’s right to self-recusal may be considered a disciplinary misconduct.⁹³

Thus, on the basis of several conclusions prepared, the independent inspector established a different approach between Article 31 paragraph 1, subparagraphs „a“, „b“, „c“, „e“ and, on the other hand, sub-paragraph „d“ of the Code of Civil Procedure of Georgia. It was explained that in the case of the first four sub-paragraphs, the consideration of subjective factors makes no sense, because the correlation between the action and the established result is objectively determinable. The correlation between Article 31 (1) (d) of the Civil Procedure Code of Georgia and Article 32 of the Civil Procedure Code for the purposes of disciplinary proceedings was also explained. The criteria established by the independent inspector were found to be relevant both in cases of a party’s motion on the recusal of the judge as well as the refusal of a judge to exercise the right on self-recusal.⁹⁴

The practice of the High Council of Justice of Georgia deserves special distinction in relation with the disciplinary misconduct provided for in Article 75¹, Paragraph 8, Subparagraph „b.d“ of the Organic Law of Georgia, which in some cases adopts a different approach from that of an independent inspector.

The High Council of Justice did not share the opinion of an independent inspector in the case of recusal / self-recusal of the judge at the motion of the complainant, according

⁹⁰ Disciplinary Case №199/19-2

⁹¹ “Bangalore Principles of Judicial Conduct” and its Commentaries, Tbilisi, 2015, P. 78

⁹² Ibid, P. 107, §81

⁹³ Consequently, according to the conclusion of Independent Inspector, even if the judge informed the parties in advance of a friendly relationship with one of the parties during the hearing and the parties did not file a motion to recuse the latter, the judge’s disregard for the judge’s right to self-recusal may be considered as a disciplinary misconduct.

⁹⁴ Disciplinary Case №199/19-2

to whom, the judge reviewed the case, where the party was a university, where the judge held an academic position. The judge did not exercise the right of the self-recusal. The independent inspector considered that there might have been a disciplinary misconduct in the judge's actions, but the High Council of Justice of Georgia did not share the conclusion and pointed out the following that judges should not be isolated from society. They should have the opportunity to share their knowledge and experience to the future lawyers. Consequently, the fact that a judge reviews a private dispute of the university where he / she holds an academic position does not constitute a probable cause for a suspicion of a judge's impartiality, as the party has not lodged a motion of the judge's recusal. At the same time, It is important to note that the judge would have the obligation to exercise self-recusal only if, given the subjective test, he / she had a preconceived notion of a particular dispute. It should be also noted that a disciplinary misconduct is a case where an obvious ground for recusal is in place. Since the party did not appeal to the court and the judge had no clear grounds for recusal, there are no signs of misconduct in the given disciplinary case.⁹⁵

In the disciplinary case №211 / 18, the complainant indicated that the judge was a co-worker and a friend of the opposing party's lawyer, which is why he / she had no right to hear the case and there were grounds for the recusal. The Independent Inspector considered that based on the factual circumstances established as a result of the study of the case materials, as well as the reference of the person interviewed in the case during the disciplinary proceedings, the fact indicated by the complainant was not confirmed. The HCOJ shared the conclusion of the Independent Inspector and considered that the only acquaintance between a judge and a representative of the party is not a ground for the recusal provided by law.

Thus, when examining the issue of recusal / self-recusal, the factual circumstances of the case are taken into account and the search for relevant evidence is carried out directly in line with the latter. During the preliminary investigation, the independent inspector examines not only the video and audio recordings, but also, if necessary, carries out the questioning of the parties and examines the various written evidence, and the existence of a disciplinary misconduct in a particular case is determined by reconciling the facts.

3.6. THE SIRCUMTANCES PROVIDED BY THE COMPLAINANTS, WHICH DO NOT COMPLY WITH ANY TYPE OF MISCONDUCT

It is important for judges to follow disciplinary proceedings that are conducted on the basis of clearly defined disciplinary misconduct.⁹⁶ In order for disciplinary proceedings against judges to be based on foreseeable and clearly established types of misconduct, amendments were made to the law from 1 January 2020, which clarified and specified the types of disciplinary misconduct.

It is quite important to differentiate and concretize disciplinary penalties based on the individual signs of the case when considering the issue of disciplinary liability towards a judge. The requirement of „foreseeability“ emphasized by the European Court of Human Rights is a guideline according to which a disciplinary misconduct (action) must be defined quite clearly and precisely in order for the person against whom it can be applied be able

⁹⁵ Disciplinary Case №76/18

⁹⁶ The Consultative Council of European Judges (CCJE), Council for the Judiciary at the service of society, Conclusion №10, Strasbourg, 2007, 23 November, §62, P. 14 http://hcoj.gov.ge/files/pdf%20files/aqtebi/CCJE%282007%29OPINION%2010_GEO.pdf [last seen on 28.12.2020]

to foresee and correct its actions in the future⁹⁷. ... The Venice Commission has stated in one of its findings that only those misconduct should result in disciplinary liability and, consequently, disciplinary penalty, committed with intentional or gross negligence.⁹⁸

It is important that the principles contained in organic law are sufficiently foreseeable and responsive to all possible challenges, although existing practice has demonstrated that the circumstances set out in a number of complaints concerning possible breaches of procedural rules by a judge do not correspond to any disciplinary misconduct, or is corresponding only with the principle, but the specific subparagraph on the basis of which disciplinary proceedings are initiated does not apply to the circumstances set out in the appeal and the judge's action.

For example, in the disciplinary case №58 / 20, in which the author of the complaint stated that despite the fact that the defendant had filed a counterclaim in the civil case, the judge ruled in absentia and upheld the claim. According to the author of the complaint, the judge violated Article 232¹ of the Code of Civil Procedure. The Independent Inspector noted that Article 75¹ paragraph 3 of the Organic Law of Georgia on Common Courts unequivocally indicates that only an action that is on the list of types of disciplinary misconduct of Article 75¹ paragraph 8 of the Organic Law of Georgia on Common Courts, are considered as disciplinary misconduct. The request submitted by the complainant does not by its nature correspond to any type or sub-paragraph of the disciplinary misconduct, as it does not contain any of the misconduct (actions and charges) defined by law.

Also, in the disciplinary case №35 / 20, the author of the complaint stated that he / she had no information about the pending dispute in court, was not invited to the court hearings in compliance with the norms provided by the Civil Procedure Code of Georgia. The Independent Inspector noted in the report that according to the old version of the Organic Law of Georgia on Common Courts (current version valid until January 1, 2020), one of the types of disciplinary misconduct was „non-performance or improper performance of a judge's duty“ by a judge, which implies substantial violation of constitutional and fundamental procedural rights or fundamental guarantees of a fair trial that has harmed a party, the court or the public interest. Accordingly, up until January 1, 2020, the circumstance indicated by the complainant would serve as a ground for initiating an investigation into the case and then evaluating the judge's action. However, according to the current version, the types of disciplinary misconduct are more precise, specific and foreseeable, and the circumstances indicated by the complainant cannot be considered in terms of disciplinary misconduct, as in this case, we do not have any influence or bias and violation of the procedural norm taken separately does not constitute a disciplinary misconduct.

Both of the above cases are a clear example of the fact that a judge may indeed violate procedural norms, however, an independent inspector lacks the opportunity to discuss an action in terms of disciplinary proceedings, Because a violation of a procedural norm taken separately by a judge does not constitute a disciplinary misconduct.

Thus, it is true that as a result of the implemented legislative amendments, the types of disciplinary misconduct have been specified, however, the practice has shown that it still needs some kind of changes and refinements.

⁹⁷ Decision of the Disciplinary Chamber of the Supreme Court of Georgia of September 27, 2019, case №-26-19, P.6 <http://www.supremecourt.ge/files/upload-file/pdf/27-seqtemberi-26-19.pdf> [last seen on 28.12.2020]

⁹⁸ Decision of the Disciplinary Chamber of the Supreme Court of Georgia of September 27, 2019, case №-26-19, P.7 <http://www.supremecourt.ge/files/upload-file/pdf/27-seqtemberi-26-19.pdf> [last seen on 28.12.2020]

4. GENERALIZATION OF DECISIONS OF INDEPENDENT INSPECTOR

Due to the implementation of 2019 legislative amendments in the Organic Law of Georgia on Common Courts, the powers of the independent inspector were increased. The most important change resides in the granting of the authority to terminate disciplinary proceedings to an independent inspector, which simplifies and makes the disciplinary proceedings more efficient.

Pursuant to Article 75¹² paragraph 1 of the Organic Law of Georgia on Common Courts, an independent inspector makes a reasoned decision to refuse to initiate disciplinary proceedings against a judge or to terminate disciplinary proceedings against a judge if:

- a) The time limit for imposing disciplinary liability, or imposing disciplinary liability and penalty on a judge has expired;
- b) There is a decision made by the body conducting disciplinary proceedings against the same judge and on the same grounds;
- c) Judicial powers of a judge have been terminated;
- d) Disciplinary proceedings are terminated if the complaint concerns the legality of the act rendered by the judge.

Pursuant to Article 75¹⁰ paragraph 5 of the organic law on common courts, During disciplinary proceedings, control over legality of the acts issued by a judge shall not be permitted. Subparagraph „d“ does not depend on any specific statute of limitations or the presence of a subject (judge), which can be resolved only by assessing specific facts. Decisions terminated on the basis of the legality of the act are interesting in terms of the claims of the complainants and the assessments of an independent inspector. That is why this chapter of the report focuses only on the decisions made on the basis of subparagraph „d“ of the above-mentioned organic law.

In preparing the decision, the independent inspector relies on Article 59 paragraph 3 of the Constitution of Georgia, which states that justice is administered by the courts, and Article 62 paragraph 2, which stipulates that the authority to review and reverse a judge's decision is the competency of the higher instance courts. It should be noted that pursuant to Article 63 paragraph 1 of the Constitution of Georgia, a judge shall be independent in his / her activity and shall only comply with the Constitution and law. Nobody shall have the right to demand an account concerning a particular case from a judge. The independent inspector's decisions reflect important cases of the European Court of Human Rights in regard with the same guarantees, including *Alexander Volkov v. Ukraine*, according to which a judge's decision can not be the subject of a review other than the traditional appeal procedure (§ 80).

Thus, in the context of disciplinary proceedings, an independent inspector cannot discuss the legality of a judgment / decision made by a judge, as the Office of an Independent Inspector is not a higher court instance that can reverse / overturn a decision. According to the decision of the Disciplinary Chamber of the Supreme Court of Georgia of July 21, 2016 / 9-16, the principle of legality is based on the rule of law, pursuant to which no one has the right to take any action in contradiction with the requirements of the law. Accordingly, if the circumstances referred to in the complaint relate to the legality

of the acts rendered by the judge, the independent inspector shall make a reasoned decision on termination of the disciplinary proceedings against the judge.

During the reporting period, the ratio of complaints received regarding the legality of an act to other complaints decreased slightly: in 2020, a total of 151 complaints were filed, of which 40 were on the grounds of legality - 29% of complaints. The total number of such complaints has decreased by 30% compared to 2019 - in 2019 a total of 215 complaints were received, of which 65 complaints (30%) were related to legality.

Statistically, the appellants mainly point out the illegality of the judge's decision, for example, in the disciplinary case №7/20, the appellant challenged the judge's decision, noting that the judge should leave the first-instance court's decision unreversed, which fully satisfied the claim of the latter.⁹⁹ In the disciplinary case №27/20, the complainant also pointed to the illegality of the judge's decision.¹⁰⁰ It is noteworthy that the complainants not only dispute the legality of the decisions and rulings, but also some of the claims regarding the legality of the stages of the process. For example, complainants often point to circumstances such as disapproval of the motion, improper examination of the evidence, and so on. In this case, too, the judge acts on the basis of his or her internal beliefs, therefore, a legal assessment of his or her actions is possible only in terms of the extent to which the judge acted within the framework of existing law.

As already mentioned, the complaints are not only about the illegality of the judgement / decision. 39% of them also pointed out about possible disciplinary misconduct, for example, a decision to terminate a disciplinary proceeding was made on a complaint, where the author indicated that the judge had made an unlawful and unjustified decision based on personal interests and revoked the precautionary measure. In the present case, it was established that the claim of the plaintiff's legal successor had not been upheld by a court decision; The court order was revoked and the registration decision was suspended until the court decision enters into force. It should be noted that the judge acted within the powers granted to him / her by the procedural law when rendering the decision. Accordingly, the independent inspector was not empowered to review the legality of the decision rendered by the judge on the basis of his or her internal beliefs, as a result of the evaluation of the evidence.¹⁰¹

The author of one of the complaints pointed out that the judge in the case had missed the preparatory hearing in gross violation of the law and had scheduled the main hearing at the admission stage of the case. As a result of the review of the case, the independent inspector found that according to the Code of Civil Procedure of Georgia, if there are preconditions for holding the main hearing of the court, the judge is authorized to skip the preparatory hearing to the main hearing. According to the case file, the judge ruled in favor of the admission complaint by ordering the main hearings. The legal ground for the aforementioned ruling was the Civil Procedure Code of Georgia, which, in the interests of speedy and efficient administration of justice, served to conduct the process economically and to avoid delays in hearing the case. At the same time, the assessment

⁹⁹ Disciplinary Case №7/20

¹⁰⁰ Disciplinary Case №27/20

¹⁰¹ Disciplinary Case №2/223-18 <https://dis.court.ge/wp-content/uploads/2021/01/distsiplinuri-saqme-223-18.pdf> [last seen on 28.12.2020]

of whether there were preconditions for holding a main hearing was a discretionary power granted to the judge, which could not be the subject of discussion during disciplinary proceedings.¹⁰²

The disciplinary case in which according to the author of the complaint, the judge, without any evidence, accepted the defendant's argument for inappearance at the hearing due to health issues and unlawfully satisfied his / her motion to overturn the decision in absentia. In the following disciplinary case, the Independent Inspector focused on the preconditions for rendering a decision in absentia under the Civil Procedure Code of Georgia and found that the judge was authorized to rule on the defendant's motion to make a decision in absentia.¹⁰³

The Independent Inspector reviewed the case №104 / 20, where the author of the complaint challenged the legality of the decision made by the judge on the measure of securing the claim. According to the complainant, the latter was discriminated by the judge on the basis of property ownership and place of residence. In particular, the complainant noted that the judge found that because the bank is a strong financial institution, a measure of securing a claim could be applied against it, since the bank would not go bankrupt. At the same time, the judge is originally from the same area where the complainants reside, which is a significant impediment to the judge's independence and impartiality, manifested in the unsubstantiated and ungrounded judgment. According to the decision of the Independent Inspector, pursuant to the Code of Civil Procedure, the complainant can apply to the court for securing the claim and must indicate the substantiated circumstances that will make the enforcement of the decision difficult or impossible. If the court determines a probable cause that the non-implementation of the security measures will make it difficult or impossible to enforce the decision, it will issue a decision on securing the claim. Accordingly, the law establishes the general ground for the application of the claim, and the court determines whether such a ground exists in the case. Thus, when a judge makes a decision, he / she acts within the authority given to him / her by the procedural law, and it is at the discretion of the latter to assess the application of the security measure.¹⁰⁴

The criminal case is quite important in this regard, in which the complainant challenged the lawfulness of the order against the lawyer. In this case, the Independent Inspector drew attention to the provisions of the Criminal Procedure Code, according to which the participants in the proceedings and the persons present at the hearing are obliged maintain order. According to the Criminal Procedure Code of Georgia, in case of breach of order, disobedience to the order of the chairperson or disrespect to the court by the participant of the process and / or the person present at the hearing, the chairperson gives him / her an oral remark and calls to stop the improper behaviour. In case of disobedience to the mentioned remark, the chairperson of the court hearing shall issue an ordinance on the spot to fine the person and / or expel him / her from the courtroom. It is an imperative rule of procedure that a judge must give an oral remark to a person who violates the order, and in case of disobedience, then issue an

102 Disciplinary Case №29/250-18 <https://dis.court.ge/wp-content/uploads/2021/01/distsiplinuri-saqme-250-258-18.pdf> [last seen on 28.12.2020]

103 In the disciplinary case №94 / 20, the decision of the independent inspector was prepared to terminate the case only in part of the legality, and in the other part of the claims of the complainant, a report was prepared to be submitted to the disciplinary session of the High Council of Justice. <https://dis.court.ge/distsiplinuri-saqme-94-20/> [last seen on 28.12.2020]

104 Disciplinary Case №104/20 <https://dis.court.ge/distsiplinuri-saqme-104-20> [last seen on 28.12.2020]

order - a fine. Such remarks by the judge should be clearly worded, understandable and perceptible and should not be of a formal nature. General references that are not clearly defined cannot be considered as a precondition for a statutory fine for improper behaviour. In the following case therefore, the court has violated the requirement of the Criminal Procedure Code of Georgia (there was no oral remark before the fine). In the following case, the Independent Inspector drew attention to „the explanation of the Disciplinary Board of Judges of the Common Courts, according to which one of the distinguishing points between disciplinary misconduct and legal error is the possibility of correcting the latter. Consequently, it is true that the judge made a mistake, but it is subject to correction. A mistake made by a judge, which can be corrected, does not constitute a disciplinary misconduct. It is qualified as a legal error and it is inadmissible to impose a disciplinary penalty on a judge on such a ground“.

The criminal case is quite important, in which the author of the complaint challenged the lawfulness of the order against the lawyer. In the following case the Independent Inspector found that the legal process for the application of the norm was carried out on the basis of assessments based on the internal belief regarding the circumstances. Accordingly, the discussion of the legality and justification of the order rendered by the judge to the lawyer goes beyond the scope of disciplinary proceedings.¹⁰⁵

The independent inspector, when making a decision, assesses the relevance of the circumstances indicated in the complaint to the specific sub-paragraphs of the disciplinary misconduct. According to a report by the Council of Europe Commissioner for Human Rights, „a decision of a judge may not be subject to review other than the traditional appeal procedure“. Consequently, matters which do not correspond to any misconduct and which are the result of a judge's assessment of evidence solely on the basis of internal belief cannot be considered as a disciplinary misconduct.¹⁰⁶

Based on all the above, the decisions made by the independent inspector in regard to the legality part, are fully based on the reservation in the Constitution of Georgia, according to which the judge has the authority to administer justice, and only the higher instance court has the right to review the decision in compliance with the law.

1.

105 Disciplinary Case №2/20-1 <https://dis.court.ge/distsiplinuri-saqme-2-20-1> [last seen on 28.12.2020]

106 CommDH (2012)10, 23.02.2012

5. MEASURES IMPLEMENTED BY THE INDEPENDENT INSPECTOR AND THE FUTURE PLANS

2020 was a year of challenges for the Office of the Independent Inspector. A new Independent Inspector was elected on January 24. Legislative amendments came into force on January 1, 2020, so the main challenge for the Office of the Independent Inspector was to develop the practice of new types of misconduct and to increase awareness on the Independent Inspectors activities.

On 24 February 2020, a presentation of the 2019 Annual Report was held with the support of the EU Judiciary Support Project. The report was published on the website of the Office, social network and sent to the courts.¹⁰⁷

Prior to the outbreak of the pandemic, an independent inspector participated in the tv-program „Business and Law with Nino Lipartia“ to raise awareness and spoke about the peculiarities of disciplinary proceedings and related legislative innovations. In the same period, as a result of cooperation between the Office of the Independent Inspector and the School of Justice Themis, Iv. Javakhishvili Tbilisi State University hosted a public lecture on „The Role of the Independent Inspector in the Disciplinary Liability of Judges.“ During the public lecture, the staff of the Independent Inspector’s Office introduced the principles of the Independent Inspector’s Office to the attending public, spoke about the legislative innovations implemented within the framework of the fourth wave of reform.¹⁰⁸

As part of the battle against the new coronavirus, a state of emergency was declared in Georgia on March 21, 2020.¹⁰⁹ Like many other countries around the world, Covid-19 has also affected Georgia. Due to the imposed restrictions, part of the activities planned by the Independent Inspector’s Office was canceled or postponed to next year. Among them, the annual international forum could not be held, the regional meetings planned to raise awareness with representatives of professional circles and students could not be held.

Despite the restrictions, numerous online workshops and trainings were held with the support of donor organizations. Among them:

- A working meeting was held with the participation of an international expert on the topic - threats to the independence of the judiciary (impartiality of the judge);¹¹⁰
- A working meeting was held between the Office of the Independent Inspector and a representative of the Office of the State Inspector on the protection of personal data.¹¹¹

Trainings were conducted on the following Topics:

- New Types of Disciplinary Misconduct (USAID/PROLoG)¹¹²
- Disciplinary proceedings / American Experience (USAID/PROLoG)¹¹³

¹⁰⁷ <https://dis.court.ge/damoukidebeli-inspeqto-4/> [last seen on 28.12.2020]

¹⁰⁸ <https://dis.court.ge/sajaro-leqtsia/> [last seen on 28.12.2020]

¹⁰⁹ Decree of the President of Georgia of March 21, 2020, on Measures to be Implemented in connection with the Declaration of a State Emergency throughout the Whole Territory of Georgia

¹¹⁰ <https://dis.court.ge/distantsiuri-samushao-shekhv/> [last seen on 28.12.2020]

¹¹¹ <https://www.facebook.com/CoEOfficeinGeorgia/photos/a.363746207509850/693841961166938/> [last seen on 28.12.2020]

¹¹² <https://dis.court.ge/treningi-themaze-distsipl/> [last seen on 28.12.2020]

¹¹³ <https://www.facebook.com/EWMIPROLoG/photos/a.116578475342863/1304042056596493/> [last seen on 28.12.2020]

- ☑ Delay of the proceedings (USAID/PROLoG)¹¹⁴
- ☑ The Reasoning of the decision and legal writing(Council of Europe)¹¹⁵
- ☑ Effective Communication (Council of Europe)¹¹⁶
- ☑ Legal research and reasoning, standards of reasoning (EU).¹¹⁷

From January 1, 2020, the Office of the Independent Inspector was authorized to access electronic databases. ¹¹⁸ An online meeting was held with the participation of representatives of the Inspectorate of France, Romania, Bulgaria, Italy and Portugal in the context of access to electronic databases, in partnership with the European Court of Human Rights Network. The meeting was organized with the support of the Council of Europe and the EU Support to the Judicial Reform in Georgia.¹¹⁹

It should be noted that based on the legislative amendments, the High Council of Justice of Georgia approved a new form of complaint. The complaint changed the types of disciplinary misconduct and set out the requisites, the filling of which is considered mandatory by organic law. The complaint is posted on the website of the Independent Inspector's Office.¹²⁰ Also, any interested person can get a copy of the complaint at the Office of the Independent Inspector and the Chancellery of the High Council of Justice of Georgia.

Importantly, in addition to publishing the quarterly reports established by the organic law, the Office, with the support of the EU Judiciary Support Project, prepared infographics, which were published on the Office's social network in parallel with the publication of each quarterly report on the website.

At the same time, during the reporting period, a report on the grounds for disciplinary misconduct was prepared by expert Gerhard Reisner for the Office of the Independent Inspector, with the support of the Council of Europe Judiciary Support Project. The meeting to discuss the report, on November 3, 2020, was held remotely.¹²¹ With the support of the Council of Europe, a legal document on guidelines for effective writing and reasoning has been prepared.¹²²

¹¹⁴ <https://www.facebook.com/officeofindependentinspector/photos/pcb.2952503911507845/2952647711493465/> [last seen on 28.12.2020]

¹¹⁵ <https://www.facebook.com/officeofindependentinspector/photos/a.1718530644905184/2954653391292897/> [last seen on 28.12.2020]

¹¹⁶ <https://dis.court.ge/treningi-themaze-epheqtur/> [last seen on 28.12.2020]

¹¹⁷ <https://dis.court.ge/damoukidebeli-inspeqto-32/> [last seen on 28.12.2020]

¹¹⁸ Article 75⁷ Paragraph 1¹ of the Organic Law on Common Courts

¹¹⁹ <https://dis.court.ge/shekhvedra-personaluri-mon/> [last seen on 28.12.2020]

¹²⁰ <https://dis.court.ge/discipline-judicial-process/> [last seen on 28.12.2020]

¹²¹ <https://dis.court.ge/onlain-shekhvedra-distsipli/> [last seen on 28.12.2020]

¹²² <https://www.facebook.com/officeofindependentinspector/photos/a.1718530644905184/3378552692236296/> [last seen on 28.12.2020]

6. PROGRESS REPORT ON THE IMPLEMENTATION OF THE KEY DIRECTIONS OF STRATEGIC DEVELOPMENT

The institutional development of the Independent Inspector's Office, as well as the improvement of the disciplinary proceedings, are important for the establishment of effective disciplinary proceedings, which in turn, will ensure a system of accountable justice. To this end, the Office of the Independent Inspector has developed a key strategic development document prepared with the support of the EU Judiciary Support Project. The document is the first concept for the development of the Office and is intended for 2020-2021.

The key directions of strategic development were prepared and updated through a participatory process. The draft document was submitted to present their positions and recommendations:

- The High Council of Georgia, the Disciplinary Board and the Disciplinary Chamber of the Supreme Court of Georgia;
- International organizations, as well as representatives of civil society working on the issue of the judiciary.¹²³

During the drafting process, recommendations were made by international organizations on setting out the indicators and expenditures, the extension of the validity of the document, the identification of the person responsible for approval and amendment. Recommendations regarding activities related to increasing communication with judges, deepening cooperation with the High Council of Justice, the Disciplinary Board and the Disciplinary Chamber. The NGOs proposed recommendations for legislative amendments, drafting comments and approval by the High Council of Justice, developing practical guidelines, establishing an electronic case management program, as well as improving the reasoning of the High Council of Justice decisions and on the activation of the hotline.

It should be noted that most of the submitted recommendations were taken into account and reflected in the document. Among them:

- The person responsible for approving the strategy document has been identified;
- The number of planned activities with judges, the Disciplinary Board, the Disciplinary Chamber and the High Council of Justice of Georgia has increased.

Taking into account the recommendations submitted by non-governmental organizations, the names of the activities were specified:

- Preparation of the Commentaries on types of disciplinary misconduct;
- Preparation of guidelines;
- Development of a concept for an electronic case management program.

As for the recommendation to increase the reasoning of the decisions, a number of trainings were conducted for this purpose in 2020, and some of them are planned for 2021.

It should be noted that the hotline was launched on November 27, 2020. If a person has any questions regarding the disciplinary proceedings, one can contact

¹²³ To the representatives of EU and Council of Europe Projects, representatives of USAID/PROLoG Rule of Law at courts, and representatives of non-governmental organizations: GYLA, TI, IDFI, GDI, Rights Georgia, EMC, OSGF.

the Independent Inspector's Office at 571 071 993. The hotline has received a total of 20 calls since its launch. In addition, online consultation can still be obtained through the Independent Inspector's Office Fixed Phone Number and the social network Facebook, website and email.

After reviewing the document with the parties involved in the presentation and elaboration of the key directions of strategic development, the strategy was approved by an independent inspector, after which it was published on the website of the Independent Inspector's Office.¹²⁴

The document of key directions of strategic development consists of three parts:

- The first part outlines the mission and vision of the Office of Independent Inspector;
- The second part deals with 4 key development goals and names the measures to be taken in each direction;
- The last part sets out procedures for implementation, monitoring and evaluation activities.

Since the draft document was prepared in July and the estimated activities were also outlined, the Office of the Independent Inspector planned and implemented a number of activities in the project following 2020. During the reporting period, a survey was conducted in the Office of the Independent Inspector to determine the necessity of training. Based on the research, the necessary trainings for the Office were determined, part of which was conducted in 2020, and part is planned for 2021.

Due to the strategic goals, with the support of the human resources of the Department of Common Courts, a new website <https://dis.court.ge/> was created, the first page of which illustrates all the important information of the Office. The website contains disciplinary regulatory acts, information on disciplinary proceedings, disciplinary proceedings and procedures, complaint form, statistical information, annual and quarterly reports. The website also publishes independent inspector's decisions on termination of the disciplinary proceedings.

In addition, the Office of the Independent Inspector made videos with the support of the Council of Europe office in Georgia. The process of filling out the complaint form and the stages of the disciplinary proceedings are depicted in two videos. The news videos are posted on the Independent Inspector's Office website and on the youtube channel. At the same time, working on the guidelines for disciplinary misconduct with the support of donor organizations have begun which will be finalized and presented in 2021.

124 <https://dis.court.ge/category/strategy/> [last seen on 28.12.2020]

RECOMMENDATIONS

The Office of the Independent Inspector believes that there are a number of issues that will make disciplinary proceedings more effective.

In this regard, it is important to focus on the recommendations made by the Independent Inspector in the 2019 report and review the dynamics of their implementation. The Office of the Independent Inspector has summed up the 2019 recommendations and the needs identified in 2020 in the disciplinary proceedings, and developed the following recommendations:

- The analysis of the violations revealed in the disciplinary proceedings and the disciplinary practice of the High Council of Justice of Georgia shows that the violation of the deadlines by the judges in the cases is not the result of their guilty actions. The small number of judges (despite the increase in the number of judges), a large number of cases pending and the infrastructural challenges in the judiciary often make it impossible for judges to meet the deadlines set by the Civil Procedure Codes of Georgia. Thus, it is important to revise the norms of the Civil Procedure Code of Georgia, which set unrealistically short deadlines for reviewing the case or the implementation of certain procedural actions.
- The recommendation of an independent inspector on the development of alternative dispute resolution mechanisms (arbitration, mediation) and the imposition of certain mandatory pre-litigation requirements (eg, exchange of evidence, so-called protocols) is also relevant.

A special significance in the 2019 recommendations of the Independent Inspector's Office is placed upon delivering the information on the disciplinary proceedings to the authors of potential complaints. An important determinant of awareness of the process of disciplinary proceedings against judges is the number of complaints concerning the legality of decisions made by judges or other procedural actions taken by them. According to 2020 statistics, the number of referrals on this issue has decreased, however, not so much that one may consider the challenge to be resolved. Thus, there is still a need for informational meetings and events with relevant professional circles (persons engaged in advocacy) and other stakeholders both in Tbilisi and in the regions.

The disciplinary proceedings have been refined as a result of the amendments made in the Organic Law of Georgia on Common Courts on December 13, 2019 (entered into force on January 1, 2020), in accordance with the recommendations of international partners. However, the work carried out by the Office of the Independent Inspector in 2020 identified legislative loopholes that need to be addressed in terms of the effectiveness of disciplinary proceedings. Accordingly, the main recommendation of the Independent Inspector in 2020 is to amend the Organic Law of Georgia on Common Courts:

- Disciplinary proceedings against a judge may be initiated only on the grounds provided for in Article 75¹ of the Organic Law of Georgia on Common Courts. The amendments to the Organic Law of Georgia on Common Courts, which entered into force on January 1, 2020, were aimed at specifying the grounds for disciplinary proceedings against judges, and as a result of the implemented amendments, the principle of „Numerus Clausus“ was established in the frames disciplinary proceedings. Following the implementation of these amendments, in the course of disciplinary proceedings, actions of a judge were identified that did

not comply with any of the sub-paragraphs of the misconduct, although in their essence may constitute a disciplinary misconduct.

- In many cases, the possibility of initiating disciplinary proceedings on the basis of the facts stated by the complainant is also problematic, as the circumstances stated in the complaint do not meet the elements of any of the norms. Hypothetical cases are noteworthy when a judge makes a clearly biased decision, however, the action of the latter is not based on the fact that the judge has a personal interest in the case. Also, the cases when the judge restricts the right of the party to the litigation, violates the rule of inviting the party to court, does not discuss the motion and leaves it unanswered, openly ignoring the positions and opinions of the party. Thus, it is better to formulate Article 75¹, Subparagraph 8 of the Organic Law of Georgia on Common Courts in such a way that it takes into account all possible cases of disciplinary misconduct.
- Pursuant to paragraph 3 of Article 75⁵ of the Organic Law of Georgia on Common Courts, the independent inspector was authorized to identify a defect in the complaint. If the complainant does not rectify the defect (no later than 10 days after receiving the notification of the defect), the independent inspector will leave the complaint unconsidered. This norm does not contain a provision on what act the independent inspector is obliged to take in such a case and whether the adopted act should be sent to the complainant. Although, the issue is regulated by practice (an independent inspector makes a decision as a result of failure to rectify the defect and sends it to the complainant within 5 days of receipt), it is necessary to regulate this issue at the legislative level.
- The issue of correcting inaccuracies in the decrees adopted by the High Council of Justice and the decisions of the Independent Inspector is also problematic. In practice, there are cases of technical inaccuracies in the acts. However, the current legislation does not contain a provision on how to correct mechanical errors in decrees and decisions by its receiving authority. In the Code of Civil Procedure of Georgia, this factor of human error is envisaged within the framework of Article 260, according to which a judge has the right to correct on his / her own initiative (or at the request of the parties) the inaccuracy or obvious arithmetical error found in the decision. Thus, it is important to make an amendment to the Organic Law on Common Courts, which, similar to Article 260 of the Civil Procedure Code of Georgia, will allow the High Council of Justice of Georgia and the Independent Inspector to remove inaccuracies in their acts.