



# GUIDELINES ON ALTERNATIVES TO EXTRAORDINARY JUDICIAL VETTING

Compendium of CEE  
Experiences

## GUIDELINES ON ALTERNATIVES TO EXTRAORDINARY JUDICIAL VETTING

### COMPENDIUM OF CEE EXPERIENCES<sup>1</sup>

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<sup>1</sup> The reports below and the information contained in the Compendium were prepared by judges from their respective jurisdictions in order to provide local context. While the views expressed in Chapter III and in the Compendium are those of the judges who drafted them, the CEELI Institute and the authors of this publication are deeply appreciative of the *pro bono* efforts of these experts in providing this comparative survey.

## ALBANIA

**The Constitution.** The Albanian Constitution establishes a detailed framework for judicial accountability and the operation of specialized criminal courts to address corruption, organized crime, and offenses committed by high-ranking officials.<sup>2</sup> These courts are tasked with handling cases involving the President of the Republic, the Speaker of the Assembly, the Prime Minister, members of the Council of Ministers, judges of the Constitutional and High Courts, the Prosecutor General, the High Justice Inspector, mayors, members of the Assembly, deputy ministers, and officials from key state institutions. Their jurisdiction extends to cases against former holders of these offices, ensuring accountability at all levels of governance. To uphold the integrity of the judiciary, the Constitution mandates rigorous vetting for judges in specialized courts and newly appointed judges and also for judges who apply for the promotion, across the system. Article 135(4) specifies that judges in specialized courts can only be removed from office by a two-thirds majority of the High Judicial Council. Before their appointment, candidates and their immediate family members undergo detailed scrutiny, including reviews of assets, financial accounts, and personal communications, ensuring transparency and accountability. For new judges entering the judiciary, Article 136/a sets clear conditions. *Judges must be Albanian citizens who have completed the School of Magistrates and passed a preliminary evaluation of their assets and background.* This vetting process of new judges ensures that only individuals of high moral and professional integrity join the judiciary, reinforcing public trust in the system.

In regard to the disciplinary accountability of judges, the Albanian Constitution also provides mechanisms to address professional and ethical misconduct by judges. Article 140 outlines that judges are disciplinarily liable for their actions. The High Judicial Council is empowered to dismiss judges for serious misconduct that undermines their role or for criminal convictions. Suspension is mandated for judges under investigation for intentional serious crimes or those subject to pre-detention or house arrest. These measures balance judicial independence with accountability, safeguarding the judiciary's reputation and functionality. Judges who face dismissal have the right to appeal to the Constitutional Court, ensuring fairness and legal recourse. Central to Albania's judicial accountability system is the High Judicial Council (HJC), as defined in Article 147. This body ensures judicial independence and oversees the proper functioning of the judiciary. Comprising 11 members in total—six judges elected by their peers and five lay members chosen by the Assembly—the HJC reflects a balance of expertise and impartial oversight. Lay members must meet strict criteria, including at least 15 years of professional experience and the absence of recent political affiliations. The HJC's responsibilities include enforcing judicial ethics, initiating disciplinary proceedings, and proposing candidates for the High Court. Its procedures are guided by principles of transparency and meritocracy, fostering public confidence in its decisions.

However, the Constitution establishes the High Justice Inspector (HJI) as an independent authority responsible for investigating complaints against judges and prosecutors. Article 147/d empowers

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<sup>2</sup> Venice Commission. (2016). *Opinion No. 868/2016 on the Albanian Constitution* (CDL-REF(2016)064). European Commission for Democracy through Law. Strasbourg: Council of Europe.

the HJI to conduct disciplinary investigations, inspect courts and prosecution offices, and initiate proceedings for misconduct. Elected by a three-fifths majority of the Assembly for a nine-year term, the HJI operates independently, with safeguards against political interference. To ensure the credibility of its decisions, the HJI's actions are subject to appeal, further strengthening accountability within Albania's legal system.

**The Law on the Organization and Functioning of Institutions for Combating Corruption and Organized Crime.**<sup>3</sup> This law establishes rigorous conditions for the appointment, transfer, and promotion of judges in the specialized anti-corruption and organized crime courts, as well as prosecutors and personnel in related institutions. It also sets forth the processes for conducting background checks, monitoring financial records, and reviewing telecommunications of these judges and their close family members, ensuring a high standard of integrity and accountability. Article 6 of the law specifies stringent security conditions that must be fulfilled before individuals can be appointed or hired in these roles. Candidates for positions within the Anti-Corruption and Organized Crime Courts, the Special Prosecution Office, and the National Bureau of Investigation must meet the following requirements: (I) A thorough review of their background and assets. (II) Written consent for periodic monitoring of their bank accounts and personal communications. (III) Consent from their close family members for similar monitoring, accompanied by signed waivers. All candidates are required to submit declarations of assets and background assessments, along with their application, to the appointing authority. If a recent audit by the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interests has found no discrepancies, this criterion may be considered satisfied. To verify these preconditions, an *Ad Hoc Committee for the Verification of Assets and Background of Candidates* is established, consisting of: two prosecutors from the Special Prosecution Office, selected by lot and monitored by the Ombudsperson; one judge from the Anti-Corruption and Organized Crime Courts, also selected by lot and monitored by the Ombudsperson; one investigator from the National Bureau of Investigation and one employee from the financial investigation section of the Special Prosecution Office, appointed by their respective leaders. This committee is tasked with conducting detailed verifications and submitting comprehensive reports on the legality of candidates' assets and background within 120 days. It can request additional information from state institutions and ensures that all documentation is handled in accordance with data protection laws.

To enhance transparency, Article 48 of the law mandates that candidates waive certain privacy rights as a condition of their appointment. Special criminal judges are also subject to periodic monitoring of their financial records and communications under Article 49, which aims to detect and prevent unethical conduct. The General Directorate for the Prevention of Money Laundering, as stipulated in Article 50, monitors large or unusual financial transactions, undeclared accounts, and other irregularities. Any suspicious activity is reported to the Special Prosecution Office for further investigation. Additionally, Article 51 empowers the National Bureau of Investigation to schedule regular reviews of judges' telecommunications, including phone calls, text messages, and emails. If these communications suggest corruption, information leaks, criminal connections, political

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<sup>3</sup> Law No. 95/2016. (2016). *On the Organization and Functioning of Institutions for Combating Corruption and Organized Crime*. Official Gazette of the Republic of Albania. <https://ild.al/en/laws/>

interference, or other violations, they are reported to a Special Prosecutor who is uninvolved in the case. Records of these communications are maintained for two months and destroyed unless an extension is requested. Concerning the grounds of dismissal of judges and prosecutors in these specialized roles. The law provides that evidence of releasing sensitive information—whether intentional or through negligence—can result in dismissal by the High Judicial Council or the High Prosecutorial Council. This ensures that breaches of confidentiality and ethical misconduct are met with decisive action.

**The Law on the Status of Judges and Prosecutors.** This law establishes a comprehensive framework and rules for regulating the status, promotion, rights, obligations, and accountability of judges and prosecutors. It lays out procedures for vetting new entrants into the judiciary, the evaluation of judicial performance, and mechanisms for addressing misconduct and disciplinary action.<sup>4</sup> This law reflects Albania's commitment to upholding judicial integrity while ensuring accountability and transparency. The procedure begins with a rigorous pre-vetting process outlined in Article 32 of the law. This process ensures that only candidates of the highest moral and professional standards enter the judiciary. Candidates who achieve top scores on the admissions list for the School of Magistrates are subjected to extensive asset and background checks. This involves collaboration with multiple institutions, including the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interests, the National Bureau of Investigation, and the State Intelligence Service. These checks uncover any undisclosed assets, false declarations, or ties to organized crime. If a candidate fails to meet the criteria, they are disqualified from entering the School of Magistrates. Those deemed eligible are given the right to inspect their files and appeal decisions they believe are unfair. By the end of September each year, a final list of admitted candidates is published, ensuring transparency and adherence to the law. Based on the results of the initial screening the Appointment as a magistrate requires not only successful completion of the School of Magistrates but also passing asset and background checks conducted by the High Judicial Council, as stipulated in Article 35. Dismissal may occur due to disciplinary liability, as outlined in Article 64, which lists disciplinary grounds as a key cause for termination of a magistrate's status. This includes behaviors or actions that discredit the judiciary or violate ethical and legal standards. Evaluation on judicial performance is assessed periodically, with evaluations ranging from "very good" to "incapable." Article 78 details the criteria for such evaluations. A magistrate receiving an "incapable" rating across three key criteria or in critical areas like professional skills or ethics may face consequences, including salary reductions or referral to the High Justice Inspector. The evaluation process involves a thorough review of statistical data, case complexity, and working conditions to ensure fairness. Magistrates are also allowed to submit self-evaluations and appeal unfavorable outcomes. The self-evaluation of the magistrate and the chairperson's opinion is verified against the other information gathered from other sources of evaluation.

**Disciplinary Accountability.** Disciplinary procedures are meticulously structured, spanning Articles 100 to 159, and are guided by principles such as fairness, proportionality, and the

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<sup>4</sup> Law No. 96/2016. (2016). *On the Status of Judges and Prosecutors in the Republic of Albania*. Official Gazette of the Republic of Albania. Retrieved from <https://ild.al/wp-content/uploads/2021/04/LAW-NO.-96-2016-ON-THE-STATUS-OF-JUDGES-AND-PROSECUTORS-IN-THE-REPUBLIC-OF-ALBANIA-AS-AMENDED.pdf>



presumption of innocence. These principles aim to balance judicial independence with accountability while protecting magistrates from baseless allegations. There are three types of Misconduct: (I) *During Function*: Includes delays, unprofessional behavior, or failure to fulfill judicial duties as outlined in Article 102. (II) *Outside Function*: Covers behaviors that discredit the judiciary, such as associating with individuals under investigation or accepting improper benefits, as stated in Article 103. (III) *Criminal Offenses*: Covers Any action resulting in a criminal conviction can lead to dismissal, as per Article 104. For any type of misconduct there is an appropriate disciplinary measure. The range of disciplinary measures is from confidential warnings to dismissal, under Article 105. Each measure is tailored to the severity of the misconduct.<sup>5</sup> For instance: Private warnings are issued for minor, non-public infractions (Article 106). Public reprimands are reserved for public misconduct (Article 107). Salary reductions and demotions address more serious breaches (Articles 108 and 109). Dismissals occur in cases of severe misconduct or criminal convictions (Article 111). Magistrates have the right to appeal disciplinary decisions to the competent court, ensuring checks on the system's fairness (Article 147). The Investigations into misconduct are initiated by the High Justice Inspector and follow strict timelines and procedures: (a) Statutes of Limitations: Investigations must generally commence within five years of the alleged misconduct (Article 117). (b) Complaint Handling: Complaints can be filed by individuals or institutions and must meet criteria for admissibility. (c) Evidence Collection: The High Justice Inspector may gather information from state institutions or request court orders to access confidential data when necessary. (d) Upon completing an investigation, the Inspector must submit a detailed report, summarizing findings and recommendations for further action. Furthermore, Suspension from duty is a critical measure applied during investigations or legal proceedings. Articles 151 and 152 specify conditions for suspension, including pre-trial detention, criminal charges for serious offenses, or circumstances that damage the magistrate's credibility. There are two types of suspensions: Mandatory and discretionary suspension. Magistrates are automatically suspended if they face pre-trial detention, house arrest, or criminal charges (*mandatory suspension*). In cases where disciplinary proceedings could be compromised by the magistrate's continued service (*discretionary suspension*), the High Justice Inspector may request the magistrate's suspension from the High Judicial Council (Article 152). Suspension decisions are made within three days of the request, and magistrates are given an opportunity to present their arguments before the Council. During suspension, magistrates are entitled to receive reduced salaries, depending on the nature of the allegations and outcomes of ongoing investigations. Concerning the disciplinary hearings before the High Judicial Council are typically public unless privacy or security concerns justify exclusion. The Council is responsible for evaluating evidence, hearing arguments, and issuing reasoned decisions. Final disciplinary decisions are published in a manner that respects personal data protection while ensuring public accountability. To institutionalize accountability, the High Judicial Council maintains a Disciplinary Register, documenting all proceedings and their outcomes (Article 150). This register serves as a resource for monitoring patterns of misconduct and evaluating the effectiveness of disciplinary measures. While

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<sup>5</sup> Law No. 48/2019. (2019). *Amendments to the Law on the Status of Judges and Prosecutors in the Republic of Albania*. Official Gazette of the Republic of Albania. Retrieved from <https://euralius.eu/index.php/en/library/albanian-legislation?catid=103&id=216&m=0&task=download.send>

private warnings are excluded from the public record, other disciplinary measures remain on file for specified periods, ensuring that repeat offenses are duly considered in future evaluations.

## ARMENIA

**Legal Framework.** In Armenia (RA), disciplinary practices within the judiciary have evolved significantly since its independence on September 21, 1991. Prior to the constitutional amendments of 2015 and the adoption of the RA Judicial Code in 2018, judicial oversight was primarily managed by the Council of Justice, established under the 1995 Constitution<sup>6</sup> and modified through amendments in 2005. Under the 2005 constitutional framework, the Council of Justice was composed predominantly of judges, with nine judicial members, alongside two jurist-scientists appointed by the President and the National Assembly (NA).<sup>7</sup> The Judicial Code of 2007 designated the Council of Justice as an independent body tasked with critical judicial functions, including the appointment, promotion, and dismissal of judges, as well as ensuring their disciplinary accountability. Recognizing the need for further refinement in judicial oversight, the 2012-2016 Strategic Plan for RA Legal and Judicial Reforms proposed several changes. These included explicitly defining "obvious and gross violations" of material and procedural laws, delineating the roles of entities initiating and adjudicating disciplinary proceedings, and enhancing the efficiency and transparency of the Ethics and Disciplinary Commission (Disciplinary Commission). To support these objectives, amendments to the Judicial Code were enacted on June 10 and 21, 2014. The 2015 constitutional amendments led to the establishment of the Supreme Judicial Council (SJC), which replaced the Council of Justice. The SJC was designed to uphold the independence of the judiciary and the courts, serving as the judiciary's self-governing body. Its responsibilities encompass the appointment, promotion, and dismissal of judges, along with the authority to decide on matters of judicial disciplinary responsibility. This structural shift underscores Armenia's commitment to strengthening judicial independence and accountability.<sup>8</sup>

**Disciplinary Proceedings.** Disciplinary proceedings in Armenia can be initiated by three entities: the Disciplinary Commission, the Minister of Justice, and the Corruption Prevention Commission (CPC). These bodies play distinct but interconnected roles in maintaining judicial accountability. The Disciplinary Commission's formation, activities, and authorities are primarily governed by the Judicial Code. It is constituted by the General Assembly of Judges, with strict eligibility criteria to ensure impartiality. Members include six judges and two non-judicial representatives.<sup>9</sup> Judges serving as court chairpersons, chamber chairpersons of the Court of Cassation, or members of the Supreme Judicial Council (SJC) are excluded from eligibility. Judicial members are selected to represent various courts: (2) judges from specialized courts (one per court); (1 one) judge from the Court of First Instance of General Jurisdiction, (1- one) judge from the courts of appeal, and (1- one)

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<sup>6</sup> Articles 94-95 of the 1995 Constitution.

<sup>7</sup> See Articles 94, 94.1 and 95 of the Constitution with the amendments of 2005.

<sup>8</sup> The practice of disciplinary responsibility of judges in the years 2012-2017, analysis of the decisions of the RA Council of Justice", Rights Protection Without Borders NGO, Yerevan, 2019. p. 3-4.

<sup>9</sup> According to the Article 74 of the Judicial Code: 1. The General Assembly shall be a self-government body of judges. 2. The General Assembly shall be composed of all the judges of the RA, who are ex officio members of the General Assembly.

judge from the Court of Cassation. Candidates may nominate themselves or be nominated by peers with their consent. Elections are conducted via secret ballot by the General Assembly of Judges, with members serving a four-year term.<sup>10</sup> Non-judicial members are lawyers who meet specific qualifications such as high professional competence; A law degree or at least five years of experience in law; political neutrality, and absence of legal or criminal disqualifications as outlined in Article 112 of the Judicial Code. The Judicial Department announces a competition at least 30 days before elections, allowing NGOs that meet SJC requirements to nominate candidates. Candidate information, including biographies and affiliations, is published on the judiciary's official website. The General Assembly elects non-judicial members by open majority vote for a four-year term, considering the candidates' qualifications and compliance with established criteria. The Disciplinary Commission elects its chairperson from among the judicial members by majority vote. The chairperson oversees the commission's operations. The primary function of the commission is to initiate disciplinary proceedings against judges and submit motions to the SJC for final adjudication.

The notable body in the disciplinary proceedings is the Corruption Prevention Commission (CPC). The CPC is an autonomous state body comprising five members, including a chairperson.<sup>11</sup> Members are appointed by the National Assembly (NA) for a six-year term, following procedures outlined in the Constitutional Law of the RA. The CPC's mandate includes initiating disciplinary proceedings against judges and SJC members under the Judicial Code. It may also recommend that NA factions petition the Constitutional Court to terminate the tenure of a Constitutional Court judge for significant disciplinary violations, as stipulated by law. On the other hand the Ministry of Justice, a republican executive body, develops and implements state policies within its jurisdiction. The Minister of Justice manages the ministry's activities and initiates disciplinary proceedings against judges when legal grounds exist. These proceedings reflect the ministry's broader mandate to uphold legal and ethical standards across the judiciary.<sup>12</sup>

**Procedural Rights and Guarantees.** Under the Judicial Code of Armenia, the Supreme Judicial Council (SJC) holds authority to resolve issues related to a judge's disciplinary responsibility and acts as a judicial body in these matters. The disciplinary proceedings are governed by principles designed to ensure fairness, transparency, and adherence to legal safeguards.<sup>13</sup> Concerning presumption of innocence and the burden of proof, the body initiating disciplinary proceedings must substantiate the grounds for disciplinary action.<sup>14</sup> Judges are presumed innocent of any violations until proven otherwise through a decision by the SJC, following the procedures outlined in the Judicial Code. Any unresolved doubts about the alleged violation are interpreted in favor of the judge.<sup>15</sup> However, any disciplinary action must be initiated within one year of the initiating body discovering a violation of material or procedural law, whether the violation was intentional or due to gross negligence. Disciplinary proceedings cannot be initiated in the following circumstances: (I) An ongoing proceeding exists against the same judge for the same act, initiated by the same body.

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<sup>10</sup> Article 77 of the Judicial Code.

<sup>11</sup> Part 1 of Article 2 of the RA Law "On CPC".

<sup>12</sup> Prime Minister's decision No. 704-L of June 11, 2018 "On approving the statute of the RA Ministry of Justice".

<sup>13</sup> Article 175 of the Judicial Code.

<sup>14</sup> Part 2 Article 90 of the Judicial Code.

<sup>15</sup> Article 24 of the RA Law "On CPC".



(II) The initiating body has previously decided not to initiate or has terminated proceedings against the same judge for the same act. (III) The SJC has already resolved the matter of disciplinary responsibility for the same act. (IV) There is no apparent basis for initiating disciplinary action.<sup>16</sup> All members of the judiciary subjected to such proceedings are entitled to (a) submit written explanations, evidence, and motions. Within two weeks of receiving notice of the disciplinary motion and related materials, judges may provide a response to the SJC and the initiating body, including electronic evidence. This deadline can be extended by up to one week at the judge's request if valid reasons are recognized.<sup>17</sup> (b) Access and obtain copies of all materials related to the proceedings. Decisions and relevant materials must be sent to the SJC and the judge within three days of issuance. (c) Exercise these rights either personally or through legal representation. The SJC must address the issue of disciplinary responsibility within three months of receiving the petition. In exceptional cases, the period may be extended by a reasoned decision for no more than three additional months. If an expert is appointed, the timeframe may be extended to accommodate the expert's work. During the examination of complaints and questions of disciplinary responsibility, judges have the right to: (a) Review and copy materials underlying the proceedings. (b) Pose questions, present objections, provide explanations, and submit motions. (c) Present and examine evidence. ((d) Attend sessions in person or through legal representation. (e) Receive reimbursement for reasonable attorney's fees if not found liable for disciplinary action. (f) Appeal SJC decisions regarding disciplinary liability as prescribed by the Judicial Code.

**Appeal of the Procedure.** Appeals must be submitted to the Supreme Judicial Council (SJC) within one month of the decision's publication. The right to file a complaint is reserved for the judge subjected to disciplinary action and the body that initiated the proceedings.<sup>18</sup> Upon receiving a complaint, the SJC promptly forwards it to the other party, which has one week to submit a response. If no response is provided, the party's previously stated position during the initial examination of disciplinary responsibility will be considered as the basis for determining the judge's liability. The appeal is examined by SJC members who were not involved in the initial decision, with a maximum of six members selected according to SJC procedures. The SJC must resolve the complaint within two months of its receipt, adhering to principles such as legality, judicial independence, respect for the judge's reputation, proportionality of disciplinary measures, and the prohibition of arbitrariness and discrimination.<sup>19</sup> The examination process follows the same rules as the initial disciplinary proceedings unless otherwise specified by the Judicial Code. The SJC limits its review to the grounds and justifications presented in the complaint but may accept new evidence if the appellant demonstrates that it could not have been presented earlier due to circumstances beyond their control. The SJC will also consider the appellant's initial position on the disciplinary matter unless they were denied the opportunity to present it during the original hearing. Facts established during the initial disciplinary examination are generally accepted as the basis for review unless specifically contested in the complaint.<sup>20</sup> If an error is identified, the SJC may establish new facts based on the evidence presented. Similarly, if no conclusive fact was established during the

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<sup>16</sup> Article 143 of the Judicial Code.

<sup>17</sup> Article 145 of the Judicial Code.

<sup>18</sup> Articles 156.1-156.3 of the Judicial Code.

<sup>19</sup> Part 6 Article 146 and 147 of the Judicial Code.

<sup>20</sup> Article 146 of the Judicial Code, see also Decision No. SJC-68-N-15 of October 22, 2020 of the SJC of the RA on "Confirming the Rules of Procedure of the SJC of the RA", Paragraph 92.

initial examination, the SJC may accept a contested fact as established if supported by available evidence.<sup>21</sup>

**Transparency in the Proceedings.** The Supreme Judicial Council (SJC) conducts its activities through formal sessions, addressing matters such as the disciplinary responsibility of judges or SJC members, the termination of their powers, the initiation of criminal prosecution against them in connection with their duties, and granting consent to restrict their freedom.<sup>22</sup> When the SJC functions as a court, particularly in appeals regarding the termination of a judge's powers, its sessions are generally open to the public. However, sessions may be held behind closed doors upon a reasoned decision by the SJC, prompted by a request from a member or participant, to safeguard the privacy of participants, the interests of justice, state security, public order, or morals. On the other hand, publicity in judicial proceedings is a cornerstone of the right to a fair trial. As affirmed by the Constitutional Court in decision No-1709, the principle of open trials ensures public scrutiny, accountability of the judiciary, and confidence in judicial independence and impartiality.<sup>23</sup> It facilitates access to justice for participants and oversight by the public and media. Nonetheless, the principle of publicity may be restricted in exceptional cases to protect constitutionally defined interests, provided the restrictions are strictly necessary and justified. When court proceedings are held in private, it is to safeguard significant public interests, such as justice, public order, or state security. The Constitutional Court emphasizes that such measures must be based on real and foreseeable threats. Courts are required to carefully assess and justify the need for limitations on publicity, demonstrating a clear cause-and-effect relationship between the identified threat and the potential harm to the interest of justice. Limitations must be proportionate, well-reasoned, and specific to the circumstances of each case, ensuring the constitutionality of any deviation from the general rule of open proceedings. Transparency remains a priority in the SJC's operations. Sessions examining disciplinary liability are recorded and documented in accordance with SJC procedures. Open sessions are broadcast on the judiciary's official website, managed by the press and public relations service of the Department. Media coverage is governed by the *Rules of Interaction with the Mass Media and the Courts*, and information about the SJC's activities is regularly published on the judiciary's website.<sup>24</sup>

**Compositions of Disciplinary Councils.** The SJC comprises ten members, five of whom are judges elected by the General Assembly of Judges. These judges must have at least ten years of judicial experience and represent all levels of the judiciary. However, court presidents and chamber presidents of the Court of Cassation are ineligible for election. The remaining five members are elected by the National Assembly (NA) through a three-fifths majority vote of all deputies.<sup>25</sup> These members must be legal scholars or distinguished lawyers with Armenian citizenship, high professional qualifications, and at least fifteen years of professional experience. Members elected by the NA cannot be judges. SJC members serve a five-year term without the possibility of re-

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<sup>21</sup> Articles 150, and 153 of the Judicial Code.

<sup>22</sup> Article 90 of the Judicial Code.

<sup>23</sup> Constitutional Court, decision No. 1709, January 17, 2024.

<sup>24</sup> Decision No. SJC-68-N-15 of October 22, 2020 of the SJC of the RA on "Confirming the Rules of Procedure of the SJC of the Republic of Armenia", Paragraphs 179-180.

<sup>25</sup> Article 173 of the Constitution of the RA.

election.<sup>26</sup> The Judicial Code imposes incompatibility restrictions on members elected by the NA, barring them from political activities, holding positions in government or commercial organizations, engaging in entrepreneurial activities, or performing paid work, except for scientific, educational, or creative endeavors.<sup>27</sup> The SJC elects its chairman alternately from members elected by the General Assembly of Judges and the NA, as outlined in the Judicial Code. The chairman serves a term of two years and six months, with no possibility of re-election, provided their term does not exceed their overall tenure as an SJC member. Judicial representation within the SJC is proportionally allocated as follows: one member from the Court of Cassation, one from the appellate courts, and three from the first-instance courts, including at least one from the general jurisdiction courts in the regions (marzes).<sup>28</sup> Additionally, the SJC must include judges from various specializations and uphold gender balance, limiting the number of members of the same gender to three, with exceptions as defined by law. All candidates for SJC membership must complete a questionnaire on good conduct, reviewed by the Corruption Prevention Commission (CPC), which issues an advisory opinion. For members elected by the NA, the nomination and election process is regulated by the "Regulations of the NA" constitutional law. Each faction may nominate one candidate through a decision that includes the candidate's name, supporting documentation, and a complete conduct questionnaire. If the documentation fails to meet constitutional or legal requirements, the NA President returns it to the faction with an explanation. If compliant, the NA Speaker forwards the questionnaire to the CPC, which has ten days to issue an advisory opinion. Elections are conducted by secret ballot, requiring a three-fifths majority vote of all deputies.

**Perceived Weaknesses.** The amendments to the Judicial Code introduced on October 25, 2023, have sparked significant concerns, particularly regarding their impact on the composition and functioning of the Supreme Judicial Council (SJC) in matters of disciplinary responsibility. The RA Constitution establishes the SJC as an independent state body tasked with safeguarding judicial independence and functioning as a single, collegial body of ten members to ensure balanced and credible decision-making. However, the amendments introduce a modified structure for the SJC when addressing issues of disciplinary responsibility and judge termination. These changes have raised questions about the legitimacy and credibility of the Council's decisions in these matters. In decision No. 1598, the Constitutional Court of the RA emphasized the importance of collegiality as a fundamental management principle, which requires collective deliberation and decision-making to ensure pluralism, prevent arbitrariness, and uphold the constitutional and legal significance of the SJC.<sup>29</sup> The amendments provide for the formation of separate panels for disciplinary proceedings, with panel members selected by a lottery system as outlined in part 1.5 of Article 141. While intended to ensure random case assignment, this approach risks compromising the independence, impartiality, and legitimacy of the SJC's judicial role. Moreover, part 2 of Article 92 permits the SJC to address disciplinary issues and judge termination with a quorum of just over half its members. This allows decisions to be made by as few as three members, undermining the Council's collegial structure and its constitutional purpose.<sup>30</sup> These changes introduce

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<sup>26</sup> Article 83 of the Judicial Code.

<sup>27</sup> Part 9 of Article 84 of the Judicial Code.

<sup>28</sup> Article 76 of the Judicial Code.

<sup>29</sup> Constitutional Court, decision No. 1598, June 10, 2021.

<sup>30</sup> Opinion submitted by a number of civil society organizations:  
<https://ldpf.am/uploads/files/c25c902f256b97ccb34c34d2cfeca48e.pdf>.

inconsistencies within the SJC's operation, as it maintains a ten-member structure for all other responsibilities but adopts a reduced composition for disciplinary matters. This structural discrepancy undermines the Council's credibility, weakens its constitutional role, and risks diminishing public confidence in its ability to ensure judicial independence and fairness.

**Problems and Proposed Solutions.** The authority of the Minister of Justice of the Republic of Armenia to initiate disciplinary proceedings against judges has been a topic of significant legal debate and concern. Critics have highlighted the lack of clearly defined criteria for such interventions and the absence of a robust appeal mechanism to challenge them. On February 23, 2022, the RA Human Rights Defender petitioned the Constitutional Court, arguing that granting an executive branch representative the power to exercise "general control" over judges poses inherent risks. This concern has been supported by advisory opinions from respected organizations, including the Venice Commission<sup>31</sup>, the United Nations<sup>32</sup>, the International Union of Judges<sup>33</sup>, the OSCE/ODIHR<sup>34</sup>, and the Advisory Council of European Judges<sup>35</sup>. Despite these apprehensions, the Constitutional Court of the RA ruled that the Minister of Justice's authority to initiate disciplinary proceedings does not amount to direct interference with judicial independence. According to the Court, the Minister's motion serves only to initiate a process under the jurisdiction of the Supreme Judicial Council (SJC), which retains the exclusive authority to decide on disciplinary matters. The Court acknowledged, however, that the Minister of Justice plays an important role in promoting accountability. By initiating disciplinary proceedings, the Minister can provide oversight of the Disciplinary Commission, which is predominantly composed of judges and may be subject to internal solidarity.<sup>36</sup> This oversight helps ensure that disciplinary complaints are addressed effectively and that access to disciplinary justice is not hindered. While the Minister's involvement can strengthen the disciplinary system by addressing potential misconduct, the ultimate effectiveness of the Disciplinary Commission depends on restoring public confidence in the judiciary. This requires addressing issues such as perceived permissiveness, arbitrary decision-making, and actions that could undermine judicial dignity. Additionally, demonstrating judicial independence and upholding the principle of separation of powers are essential to fostering trust in the judicial system.

**Case I. (Closed Disciplinary Hearings and the Removal of a Judge).** On May 24, 2023, the Acting Minister of Justice initiated disciplinary proceedings against Judge D.H. for alleged violations of conduct rules. The Supreme Judicial Council (SJC) held closed-door hearings and terminated the judge's authority. Judge D.H. appealed, asserting that the private proceedings violated their right to a public hearing and fair trial. The Constitutional Court agreed, ruling that disciplinary sanctions must not undermine procedural fairness or a judge's right to be heard. Armenian law mandates fair and public hearings, allowing private sessions only when justified by significant public interest. The

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<sup>31</sup> Opinion CDL-AD (2017)019 on the Constitutional Law "Judicial Code of the Republic of Armenia", Collection of Opinions and Reports of the Venice Commission on Courts and Judges No. CDL-PL (2019)008.

<sup>32</sup> the Basic principles of independence of judges adopted by the 7th UN Conference on Crime Prevention and Treatment of Offenders dated 06.09.1985.

<sup>33</sup> Article 7.1 of the Universal Judicial Charter adopted by the International Union of Judges on 17.11.1999.

<sup>34</sup> Kyiv Recommendations of the OSCE/ODIHR on judicial independence in Eastern Europe, the South Caucasus and Central Asia. Paragraph 26.

<sup>35</sup> Opinion No. 3 of the Advisory Council of European Judges adopted in 2002.

<sup>36</sup> Constitutional Court, decision No. 1709, January 17, 2024, clause 4.1. and 4.2.

SJC reviews appeals within two months, with new circumstances potentially prompting reconsideration. Following Constitutional Court Decision No. SDO-1729 (May 21, 2024), the SJC permitted Judge D.H. to submit written arguments to address procedural shortcomings. However, these submissions failed to present sufficient new evidence to warrant revisiting the original decision. The SJC upheld the disciplinary sanction and termination of Judge D.H.'s authority, citing no adequate grounds for reconsideration under Article 157 of the Judicial Code. This case highlights the importance of procedural fairness, judicial independence, and adherence to constitutional principles in disciplinary proceedings.

**Case II (Examination of Cases Within a Reasonable Time).** Disciplinary proceedings against Judge V.M. of the Criminal Court of First Instance in Yerevan were initiated by lawyer T.K., representing I.A., on October 12, 2023. The Ethics and Disciplinary Affairs Committee proceeded with the case on December 18, 2023, and submitted a petition for disciplinary action to the Supreme Judicial Council (SJC) on February 19, 2024. The case concerned delays in criminal case No. 60186920, initiated on September 17, 2020, under part 1 of Article 242 of the RA Criminal Code. Although the case was entered into proceedings on May 12, 2021, only two hearings were held—on December 20, 2021, and January 20, 2023—before the court terminated the prosecution due to the expiration of the statute of limitations. The SJC reviewed the disciplinary petition, the Disciplinary Commission's findings, and arguments from both parties. The Council emphasized the importance of timely judicial proceedings, as delays undermine justice and public confidence. Applying standards from the European Court of Human Rights, the Council evaluated the case's complexity, consequences of delays, and the conduct of both the judge and other parties. It found the duration of the court proceedings—one year and eight months—to be unreasonable, violating the victim's right to a fair hearing and discrediting the judiciary. The Council determined that Judge V.M. had committed gross negligence by failing to ensure timely case management, violating procedural law. While Judge V.M. had no prior disciplinary penalties, the SJC upheld the petition from the Ethics and Disciplinary Affairs Committee and issued a strong reprimand, considering the nature and consequences of the violations. This case highlights the judiciary's responsibility to ensure that cases are resolved within a reasonable timeframe to prevent undue hardship on parties involved and maintain the credibility of the legal system. By addressing delays and holding judges accountable, the Supreme Judicial Council reinforces the principle that justice delayed is justice denied, while setting a precedent for prioritizing procedural efficiency and adherence to judicial standards.

**Case III (Acknowledgment of a procedural rights violation by the Court of Cassation, along with an assessment of the act's minor significance.).** In 2021, disciplinary proceedings were initiated against Judge S.M. of the Criminal Court of Appeals following a report from the General Prosecutor to the Minister of Justice. The Minister subsequently submitted a petition to the Supreme Judicial Council (SJC) for disciplinary action. The case involved accused Zh.S., whose appeal to overturn a detention decision was rejected by the Appellate Court. Judge S.M. determined that the evidence, particularly witness testimonies, failed to establish a direct connection between Zh.S. and the alleged act of violence against A.M. However, the Court of Cassation overturned this decision, reaffirming the First Instance Court's ruling. It criticized the Appellate Court for failing to assess the legality of the detention decision thoroughly and for neglecting to evaluate evidence related to the



timing and location of the alleged crime. The Cassation Court emphasized that these errors blurred the distinction between pre-trial and trial functions, violating procedural norms. The SJC conducted disciplinary proceedings in accordance with Article 151 of the Judicial Code. It reviewed reports from the Acting Minister of Justice and the Judge's position, along with all relevant evidence. The SJC concluded that Judge S.M. exceeded his judicial authority during the pre-trial phase by misapplying the reasonable doubt standard concerning the accused's presence at the crime scene. However, the Council determined that the Judge's actions were not knowingly illegal and did not involve guilty intent, as defined by the Judicial Code. The Judge had impartially evaluated the facts and acted without an awareness of procedural errors. Despite the identified violation, the SJC ruled that Judge S.M.'s conduct did not undermine his professional suitability or discredit judicial authority. Consequently, the motion to impose disciplinary responsibility was rejected. The emphasis here that while errors in legal interpretation can occur, this decision highlights the importance of distinguishing between objective violations and willful misconduct. By rejecting the motion for disciplinary action, the SJC reinforced the principle that accountability should be measured by intent and adherence to impartiality, thereby protecting judicial independence while ensuring procedural standards are upheld.

## BULGARIA

**Legal Framework.** Maintaining a balance between judicial independence and accountability is essential to the rule of law. Disciplinary mechanisms for judges must be legally grounded, fair, and designed to prevent misuse that could intimidate judges. Key safeguards include clear legal regulation of disciplinary procedures, the right to defense for judges, oversight by an independent body with a majority of judges elected by their peers, and a filtering process to eliminate unfounded complaints early. These measures protect judicial independence while ensuring accountability. Under Article 129, Paragraph 1 of the 1991 Constitution of the Republic of Bulgaria (CRB), the Judicial Chamber of the Supreme Judicial Council (SJC) oversees the appointment, promotion, demotion, transfer, and dismissal of judges. Similarly, the Prosecutorial Chamber of the SJC is responsible for prosecutors and investigators. The presidents of the Supreme Court of Cassation (SCC), the Supreme Administrative Court (SAC), and the Chief Prosecutor are appointed by the President of the Republic via a presidential decree based on the SJC's proposal. Their terms are limited to seven years. While most judicial appointments are indefinite, the presidents of the SCC and SAC have term limits. Judges achieve irremovability after five years of service, contingent on a performance assessment and a formal decision by the SJC. Following a constitutional amendment in 2015, the SJC was divided into two chambers: the Judicial Chamber and the Prosecutorial Chamber. The Judicial Chamber consists of 14 members: six elected by judges, six elected by the National Assembly, and two *ex officio* members, the presidents of the SCC and SAC. This chamber governs all aspects of a judge's career, including appointments, promotions, disciplinary actions, and dismissals. A notable concern is the minority representation of judges elected by their peers within the Judicial Chamber. The majority is held by members elected by the National Assembly and the *ex officio* presidents of the SCC and SAC. These two presidents are nominated by the Plenary of

the SJC, which includes 25 members, 11 of whom are from the Prosecutorial Chamber. Judges may be dismissed upon reaching the age of 65, resignation, a conviction for an intentional criminal offense with a prison sentence, permanent incapacity to perform their duties for more than a year, or for serious misconduct, systematic non-performance of duties, or actions damaging the judiciary's reputation. In Bulgarian legal theory, it is widely held that a judge's role is not based on an employment relationship. Instead, it is considered an independent public office within the judicial system.

**Overview of Disciplinary Proceedings.** Disciplinary violations for judges in Bulgaria are explicitly defined in the 1991 Constitution and supplemented by provisions in the Judicial Act (JA) of 2007. The Constitution specifies three primary violations: (I) Serious misconduct; (II) Systematic failure to perform official duties, and (III) Actions that damage the judiciary's prestige, with dismissal as the corresponding sanction. Additionally, the Constitution empowers the Supreme Judicial Council (SJC) to demote judges, a measure often treated as a disciplinary penalty. The JA broadens the scope of disciplinary accountability to include delays in proceedings, breaches of the Code of Ethical Conduct, and other failures to fulfill official duties. Military judges are subject to additional rules under specific statutes. The JA outlines a range of disciplinary sanctions for judges, including reprimands, salary reductions, temporary demotion in rank or position, dismissal from leadership roles, and full dismissal from office. While the court president may impose reprimands, more severe sanctions fall under the authority of the Judicial Chamber of the SJC. Disciplinary proceedings are governed by Chapter Sixteen of the JA, which establishes clear procedures to ensure fairness. Before imposing a sanction, the disciplinary body must allow the judge to present their case through a hearing or written explanation. Failure to do so renders the sanction void, barring cases where the judge declines to participate. Further, for minor violations, court presidents may issue reprimands through a reasoned order, notifying the Judicial Chamber of the SJC, which can confirm or revoke the sanction within a month. If grounds for harsher penalties arise, the court president forwards the case to the Judicial Chamber for further action. However, proceedings before the Judicial Chamber are typically initiated by proposals from court presidents, higher-ranking officials, the Inspectorate to the SJC, or the Minister of Justice. The Inspectorate plays a critical role in investigating judges' conduct, integrity, and conflicts of interest. However, its composition and election process, which exclude judiciary participation, have raised concerns about potential political influence. When a disciplinary proposal is submitted, the Judicial Chamber forms a three-member panel to investigate the case, gather evidence, and recommend sanctions. The proceedings follow the Administrative Procedure Code and involve closed sessions, during which the judge may participate with legal or peer assistance. Decisions to impose sanctions require a majority of at least eight votes from the 14 members of the Judicial Chamber. These decisions can be appealed to the Supreme Administrative Court, which provides two levels of review, ensuring judicial oversight of disciplinary outcomes. Within 14 days of its notification to the penalized judge. The appeal is heard by a three-member panel of the Supreme Administrative Court, and its decision is subject to a further appeal before a five-member panel of the same court.

**Trends in Disciplinary Actions against Judges.** Between 2018 and 2023, the Judicial Chamber of the Supreme Judicial Council (SJC) initiated 44 disciplinary cases. Of these, 20 were proposed by court presidents, 17 by the Inspectorate to the SJC (ISJC), three by higher-ranking court presidents,

and one by the Minister of Justice. The majority of these cases involved violations of procedural deadlines, with some addressing breaches of ethical standards. In 2017, 39 disciplinary proceedings were initiated against 27 judges, with several judges facing multiple cases. Of these, 12 proposals came from court presidents, 13 from higher-ranking court presidents, and 14 from the ISJC. That year, three judges were dismissed from office as a result of disciplinary action. The trends in previous years show similar patterns. Between October 2012 and April 2016, 138 disciplinary proceedings were initiated by the SJC, resulting in ten dismissals. From October 2007 to December 2011, the SJC initiated 179 disciplinary cases, with the majority concerning systematic non-compliance with procedural deadlines and actions causing unjustifiable delays. Many of these cases stemmed from ISJC audits conducted in the courts. Since 2011, violations of procedural deadlines under Article 307, Paragraph 3, Points 1 and 2 of the Judicial Act (JA) have been the most frequent basis for disciplinary proceedings against judges. For instance, in 2016, 11 of the 19 completed disciplinary cases involved such violations. This persistent focus highlights procedural compliance as a central issue in maintaining judicial accountability.

Statistical data from 2007 to 2017 reveal that the Supreme Judicial Council (SJC) maintained a steady and relatively high level of disciplinary activity, averaging about 36 cases annually. This consistent trend shifted dramatically in the following six years (2018–2023), with the average dropping to just seven cases per year. Notable exceptions during this period were 2009 and 2010, when disciplinary cases spiked to 68 and 49, respectively, primarily due to a corruption scandal involving a prominent judicial lobbyist. Beyond these exceptional years, the majority of disciplinary actions targeted judges for failing to meet procedural deadlines. This shift in disciplinary activity raises important questions about the judiciary's structure and effectiveness, particularly the status of judges and the overall quality of justice delivery. Several potential explanations emerge. First, the high number of disciplinary cases for deadline violations may reflect inadequate judicial performance. Second, it could point to flaws in the judicial appointment process or the challenges of maintaining motivation over long careers. Third, many judges, particularly those in large regional or district courts, face overwhelming caseloads, making it difficult to meet stringent procedural deadlines. Lastly, the Inspectorate to the SJC (ISJC) has long emphasized compliance with procedural deadlines, potentially fostering a rigid, standardized approach that discourages independent judgment and nuanced decision-making. Moreover, some disciplinary cases suggest the misuse of disciplinary powers by court presidents and the ISJC, highlighting concerns about fairness and potential overreach. These issues warrant further exploration to better understand their impact on judicial accountability and independence.

**Challenges to Disciplinary Actions Against Judges.** Disciplinary reviews of judges in Bulgaria face significant challenges, particularly the risk of being misused as tools for repression and intimidation against judges who publicly express critical views on upholding the rule of law. A prominent example of the abuse of disciplinary powers is the case of *Miroslava Todorova v. Bulgaria*, decided by the European Court of Human Rights (ECtHR) on October 19, 2021, and finalized on January 19, 2022. This case centered on disciplinary proceedings initiated by the Supreme Judicial Council (SJC) against Judge Miroslava Todorova between 2011 and 2015. As the head of the Bulgarian Judges Association, Judge Todorova had publicly criticized the SJC and the executive branch on issues such as judicial appointments, government policies on judicial independence, and measures addressing

corruption. In response to these criticisms, the SJC imposed disciplinary sanctions on Judge Todorova, initially reducing her salary and later dismissing her from her judicial position, citing delays in her handling of cases. This dismissal was enforced for a year before being overturned by the Supreme Administrative Court, which demoted her to a lower court position for two years. The ECtHR emphasized the importance of freedom of expression in public-interest matters, particularly concerning judicial independence and the judiciary's functioning. It found that the disciplinary actions and disproportionately severe sanctions imposed on Judge Todorova were directly tied to her critical public statements, constituting an unjustified interference with her right to freedom of expression. The Court ruled that this interference was *not necessary in a democratic society* and determined that the sanctions, particularly her dismissal, had a *chilling effect* on both Judge Todorova and other judges. This constituted a violation of Article 10 of the European Convention on Human Rights. Additionally, the ECtHR found that the primary aim of the disciplinary actions was to punish and intimidate Judge Todorova for her criticism of the SJC and the executive branch, violating Article 18 (limitation of rights for improper purposes) in conjunction with Article 10 of the Convention.

The *Miroslava Todorova* case highlights two key issues: undue political influence over the SJC's Judges' Chamber and the Inspectorate. A majority of Judges' Chamber members are appointed by the National Assembly through a process often dominated by political-party interests, undermining judicial independence. Similarly, the Inspectorate's composition and powers are vulnerable to political interference. Attempts to address this were included in constitutional amendments introduced in December 2023, but these were struck down by the Constitutional Court in July 2024 as unconstitutional, leaving the issue unresolved. Proposed amendments to the Judicial Act (JA), developed with input from the judicial community in March 2024, sought to establish fair and abuse-resistant disciplinary procedures. These included clear criteria for initiating disciplinary proceedings, grounds for dismissing baseless cases, rules for suspending or terminating proceedings, and an appeal process involving a mixed panel of judges from the Supreme Administrative Court (SAC) and the Supreme Court of Cassation (SCC). The proposal also recommended removing the power of court presidents to impose disciplinary sanctions, as this authority could be exploited for undue influence. New nomination procedures for Inspectorate members, including greater judicial participation, were also proposed. However, ongoing political instability has stalled these reforms. With seven consecutive parliamentary elections over three years and no stable government committed to judicial reform, the future of these amendments remains uncertain. This lack of progress perpetuates vulnerabilities in the disciplinary system, undermining efforts to ensure judicial independence and accountability.

**Ongoing Cases of Abuse of Disciplinary Powers.** In October 2023, the Judicial Chamber of the Supreme Judicial Council (SJC) declined to impose a disciplinary sanction on a judge from the Sofia Regional Court over a social media post shared on the judge's personal profile. The case, initiated by the SJC's Inspectorate, centered on whether the judge's post constituted misconduct or was a legitimate exercise of freedom of expression. The Judicial Chamber considered the precedent set by the *Todorova v. Bulgaria* case and referred to Opinion No. 25/2022 of the Consultative Council of European Judges, which underscores the importance of judges' freedom of expression in matters of public interest. The Supreme Administrative Court, acting as the first-instance court, upheld the

SJC's decision. It found *that the judge was exercising their right to freedom of expression within the context of a public debate on the judiciary's functioning—specifically, the controversial closure of specialized criminal courts*. This case highlights a concerning pattern of the Inspectorate's disregard for judges' rights to freedom of expression. The Inspectorate's decision to pursue disciplinary action against a judge known for critical views on judicial matters suggests a troubling misuse of its authority. However, this incident also demonstrates the Judicial Chamber's role in safeguarding individual judicial independence, as it ultimately defended the judge's right to contribute to public discourse on significant judicial reforms.

Further, two judges from the Plovdiv Regional Court faced disciplinary proceedings initiated by the court president, reportedly in retaliation for their criticisms of the president's management style. Publicly available information suggests that these proceedings, conducted between 2022 and 2023, appeared on the surface to have legitimate purposes but were widely perceived as punitive measures against the judges for expressing dissenting opinions. In most cases, the Supreme Judicial Council's Judicial Chamber initiated disciplinary proceedings but declined to impose penalties, a position upheld by the Supreme Administrative Court. In one instance, the Judicial Chamber supported a reprimand issued by the court president for delays in case handling, but the Supreme Administrative Court overturned the sanction, citing an incorrect assessment of the facts. Another case involved the president initiating proceedings against a judge for being absent from work, despite knowing that the judge was attending a hearing before the Supreme Judicial Council to defend themselves in a separate disciplinary case initiated by the same president. The Supreme Administrative Court ruled that the president had misinterpreted the law. The judges also contested the denial of financial bonuses in 2022, which they argued were covert punitive measures linked to the disciplinary proceedings. According to the judges, the denial violated their rights and aimed to indirectly punish them for their critical remarks about court management. The Supreme Administrative Court largely upheld the denials, referencing rules adopted by the Supreme Judicial Council that prohibit bonuses during unresolved disciplinary cases involving delays in case handling. However, the rules stipulate that bonuses must be restored if no sanctions are ultimately imposed. The court found no evidence of covert retaliatory intent in two cases, stating that the court president lacked the authority to impose the requested sanctions independently. In another instance, the Supreme Administrative Court rejected the relevance of the *Miroslava Todorova* case, noting that the judge in question had not been sanctioned in any of the proceedings. In a third case, the Supreme Administrative Court referred the matter to a lower court to gather additional evidence regarding the claim of covert punitive intent.

**Disciplinary Responsibility as *Ultima Ratio*.** Disciplinary proceedings against judges should serve as a last resort, or *ultima ratio*, in addressing issues within the judiciary. Experience demonstrates that such proceedings rarely resolve underlying challenges and often exacerbate tensions, both for the judiciary as a whole and the individual judge. The 2016 amendments to Bulgaria's Judiciary Act introduced the concept of an individual professional development plan for judges. This mechanism, which includes targeted training to address specific shortcomings identified during assessments or disciplinary proceedings, remains unused. Although the law allows disciplinary penalties to be suspended for six months to implement such plans, this provision has yet to be applied, highlighting the punitive rather than restorative nature of the current disciplinary framework. This approach



resembles conditional sentencing in criminal law, emphasizing punishment over problem-solving or support. A significant gap in Bulgaria's judicial system is the lack of mechanisms to identify and address the root causes of a judge's work-related difficulties. Factors such as insufficient motivation, errors in selection, and overwhelming workloads are often ignored. Objective criteria for judicial selection, promotion, and evaluation focus heavily on professional competence while neglecting essential qualities like emotional stability, resilience, and interpersonal skills, which are critical for maintaining long-term motivation and effectiveness. Additionally, the judiciary suffers from low levels of professional solidarity, exacerbated by divisive leadership practices, nepotism, and rigid adherence to procedural formalities promoted by the Inspectorate to the Supreme Judicial Council (ISJC). This environment fosters fear and conformity rather than collaboration, undermining the judiciary's core values of empathy, ethical behavior, and the pursuit of justice. Judges often face personal or health challenges that affect their work. Instead of providing support, the Bulgarian judiciary tends to respond with disciplinary measures, even in cases where judges are dealing with serious personal crises or illnesses. For example, judges failing to meet procedural deadlines due to health issues are subjected to disciplinary proceedings, forcing them to defend themselves against unfounded charges rather than receiving needed assistance. By contrast, jurisdictions like the Netherlands offer proactive social and medical support systems for judges, ensuring issues are addressed collaboratively rather than punitively. Judicial disciplinary proceedings in Bulgaria often reflect a command-and-control culture with deep historical roots. Inspections and audits focus on procedural compliance rather than systemic improvement, revealing the judiciary's vulnerabilities and reliance on punitive measures. This system undermines judicial independence and contributes to a climate of fear and insecurity.

**Conclusion.** Conclusions stipulate that judges play a pivotal role in democratic societies, balancing independence with accountability. While disciplinary proceedings are necessary for judicial integrity, they should be exceptional and fair. Safeguards against political influence, high standards of leadership integrity, and support measures for judges are essential to ensure a just system. Overuse of disciplinary measures risks reducing judges to targets of fear and undermines their ability to function as impartial protectors of societal harmony. A shift toward supportive, restorative approaches could better address challenges in the judiciary, empowering judges to perform their roles effectively and independently.

## BOSNIA AND HERZEGOVINA

**Legal Framework.** In Bosnia and Herzegovina, the legal framework that encompasses clear rules on the civil, criminal, and disciplinary liability of judges, is stipulated in the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC Law).<sup>37</sup> Article 87 of the HJPC Law grants judges and prosecutors immunity from criminal prosecution, arrest, or detention, and protects them from civil liability for opinions expressed or decisions made within their official

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<sup>37</sup> Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, "Official Gazette of Bosnia and Herzegovina", no. 25/2004, 93/2005 and 48/2007, 63/2023, 9/2024 and 50/2024, Article 87.

duties. However, this immunity does not obstruct or delay investigations into criminal or civil proceedings against judicial officeholders, ensuring accountability remains intact. The concept of disciplinary liability for judges and prosecutors is detailed in Chapter VI of the HJPC Law and It defines: (I) Disciplinary Offenses: Articles 56 and 57 enumerate 23 disciplinary offenses, each varying in nature and severity. (II) Disciplinary Measures: Article 58 outlines seven possible measures, ranging from public reprimands to dismissal. This limited number of measures creates a disproportionate relationship between offenses and sanctions, giving disciplinary panels broad discretion in their decisions. This broad discretion is further reinforced by Article 58(2), which allows the HJPC to impose additional measures, such as participation in rehabilitation programs or professional training. While this flexibility enables tailored responses, it compromises predictability and consistency in sanctions—essential features of any preventive and repressive legal framework. The absence of explicit proportionality principles in Article 59 exacerbates this issue.<sup>38</sup> The lack of detailed guidelines for linking offenses to appropriate sanctions creates potential for selectivity and arbitrariness in disciplinary decisions. Measures such as public reprimands and non-public written warnings, when anonymized in final decisions, fail to provide the preventive and repressive impact necessary to maintain judicial integrity. The Office of the Disciplinary Prosecutor (ODP), functioning within the HJPC, is responsible for investigating allegations of judicial misconduct and initiating disciplinary proceedings when warranted.<sup>39</sup> The ODP is led by a Chief Disciplinary Prosecutor, appointed for a renewable four-year term. Candidates for this role must be of high moral standing and possess substantial legal expertise. Disciplinary proceedings are conducted by: (I) First-Instance Disciplinary Commission: Comprising three members (at least two from the HJPC), it determines responsibility and imposes initial sanctions. (II) Second-Instance Disciplinary Commission: Composed of three HJPC members, it reviews appeals, with authority to confirm, modify, or annul decisions made by the First-Instance Commission. The decision of the Second-Instance Commission constitutes a final administrative act, subject to appeal through an administrative lawsuit before the Court of Bosnia and Herzegovina.<sup>40</sup> Statutory deadlines are as follows: (a) Proceedings must conclude within one year of the complaint's filing, extendable for justified reasons; (b) Complaints cannot be filed after two years from discovery or five years from the offense's occurrence. (c) In cases involving criminal proceedings, disciplinary action must be initiated within one year of a final judgment, or the longer of the two periods. However, there is the possibility of alternative disciplinary resolution through Mutual Consent Agreements, allowing the accused judicial officeholder, their legal representative, and the ODP to negotiate the acknowledgment of offenses and corresponding sanctions. This mechanism fosters efficiency and reduces procedural complexities while preserving the essence of accountability.<sup>41</sup>

**Disciplinary Proceedings in Practice.** The Law on the High Judicial and Prosecutorial Council (HJPC) mandates that disciplinary proceedings to determine judicial accountability must be

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<sup>38</sup> The Rules of Procedure of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina elaborate the procedure of disciplinary liability of judicial officeholders in Bosnia and Herzegovina, "Official Gazette of BiH", no. 55/13, 96/13, 46/14, 61/14, 78/14, 27/15, 46/15, 93/16, 48/17, 88/17, 41/18, 64/18, 12/ 21, 26/21, 35/21, 68/21, 1/22, 26/23, 83/23, 9/24 and 27/24)

<sup>39</sup> Office of the Disciplinary Prosecutor of the HJPC BiH, see: <https://udt.pravosudje.ba/vstvfo/B/200/kategorije-vijesti/116319>

<sup>40</sup> Supra note 36, Article 61, para (3) and (7).

<sup>41</sup> Supra note 36, Article 72 and 73.

completed within one year from the date of the official complaint, except when justified reasons warrant an extension. Additionally, the HJPC Rules of Procedure specify timeframes for key stages of disciplinary proceedings: (I) Preparatory Hearing: Scheduled within 15 days after the deadline for responding to a disciplinary complaint; (II) Main Hearing: Held within 15 days after the preparatory hearing.<sup>42</sup> However, a 2023 report by Transparency International evaluated the efficiency and expediency of disciplinary proceedings, focusing on adherence to these deadlines.<sup>43</sup> The findings, based on the monitoring of 33 disciplinary cases involving judges and prosecutors, revealed significant deviations: (I) Non-Compliance with Deadlines: (a) In 22 of the 33 cases (67%), preparatory and main hearings were not held within the stipulated timeframes. (b) The Constitutional Court of Bosnia and Herzegovina, in case AP-4086/17, highlighted the importance of adhering to these deadlines, emphasizing that delayed proceedings undermine the judiciary's efficiency and public trust.<sup>44</sup> (II) Compliance with Deadlines: In 11 cases (33%), hearings were conducted within the prescribed timeframes. These cases often involved uncontested liability, mutual agreements, or admissions of responsibility, which expedited the process. In some instances, both preparatory and main hearings were held on the same day to enhance procedural efficiency. (III) Average Duration, despite delays in scheduling hearings, the average duration of disciplinary proceedings from the complaint's filing to the final decision was 228 days, within the statutory one-year limit. Concerning the exceptions to timeliness certain cases exceeded the prescribed limits: (a) Case of a Basic Court Judge: Proceedings lasted 13 months. (b) Case of a Prosecutor: Proceedings extended to 16 months. To illustrate this, let us examine several examples of procedural delays:

**The case of the former president of the basic court,** the procedural challenges and inefficiencies within the disciplinary system in Bosnia and Herzegovina are emphasized. Initially, the preparatory hearing was postponed twice without any explanation, disrupting the expected timeline. When the hearing finally occurred, the main hearing was not scheduled until two months later, blatantly disregarding the mandated 15-day deadline set by the HJPC Rules of Procedure. The main hearing itself unfolded over several sessions, with significant delays between them. The final session, which concluded the evidentiary proceedings, took place three months after the previous one, further highlighting the lack of urgency in adhering to procedural standards. Despite these prolonged proceedings, the first-instance disciplinary committee ultimately issued a decision to dismiss the disciplinary process. This decision came 44 days after the final session and was primarily based on the respondent's retirement, effectively absolving the individual of accountability. Through this case the systemic issues within the disciplinary framework, where procedural delays and retirement often undermine the pursuit of justice, allowing judicial officeholders to evade responsibility for alleged misconduct, are clearly demonstrated. It highlights the pressing need for reforms to ensure that the principles of efficiency, accountability, and integrity are upheld in judicial disciplinary processes.

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<sup>42</sup> Supra note 37, Article 92.

<sup>43</sup> Transparency International Bosnia and Herzegovina. (2020). *Analysis of Disciplinary Liability of Judicial Officeholders in Bosnia and Herzegovina*. Retrieved from [https://ti-bih.org/wp-content/uploads/2020/03/Analiza-disciplinske-odgovornosti-nosilaca-pravosudnih-funkcija-u-BiH\\_2020\\_ENG.pdf](https://ti-bih.org/wp-content/uploads/2020/03/Analiza-disciplinske-odgovornosti-nosilaca-pravosudnih-funkcija-u-BiH_2020_ENG.pdf)

<sup>44</sup> The Constitutional Court of Bosnia and Herzegovina, Case No.: AP-4086/17, Paragraph 42.

The **case of the municipal court judge** it is revealed that in another example where disciplinary proceedings were hindered by procedural inefficiencies and the exploitation of retirement as a means to evade accountability. The judge faced serious charges, including behavior that damaged the reputation of the judicial office and violations of the Code of Judicial Ethics. A preliminary hearing was conducted in May 2022, promptly followed by a main hearing in June. Despite this initial adherence to the procedural timeline, the proceedings encountered a significant disruption. A continuation of the main hearing was scheduled for September; however, before this could take place, the judge retired. As a result, the disciplinary process was terminated without a resolution to the charges. Through this case, the vulnerabilities within the disciplinary system are highlighted, where retirement can abruptly end proceedings, leaving allegations unresolved and undermining the principles of accountability and transparency. It underscores the critical need for structural changes to ensure that retirement does not serve as a shield against disciplinary action, preserving the integrity of the judiciary.<sup>45</sup>

**The case of the Cantonal Court judge** highlights another troubling example of how serious allegations can be left unresolved due to procedural loopholes. The judge was accused of providing false or incomplete information in his application for a judicial position, specifically omitting a prior conditional conviction for attempted rape and causing bodily harm. These allegations, if proven, represented a grave breach of trust and professional ethics. The disciplinary proceedings progressed to the decision-making phase, where the evidence and charges were under review. However, before any resolution could be reached, the judge requested retirement. This request was promptly granted, effectively halting the proceedings and leaving the allegations unaddressed. This case underscores a systemic flaw in the disciplinary process, where retirement can preempt accountability, even in the face of severe misconduct. It emphasizes the need for reforms to close this loophole and ensure that judicial officeholders cannot evade responsibility for their actions, thereby upholding the integrity of the judiciary. Observing the procedural efficiency of the practice of prematurely terminating disciplinary proceedings due to retirement raises concerns about accountability. In several instances, judges and prosecutors avoided substantive rulings by retiring during ongoing proceedings. This pattern undermines the integrity of the disciplinary process and highlights the need for stricter measures to ensure accountability, regardless of retirement status.

**Transparency of the Disciplinary Proceedings.** Concerning the transparency of the disciplinary proceedings, under Article 68, paragraph (1) of the HJPC Law, these proceedings are intended to be open to the public, guided by the principles of fairness and transparency. Additionally, it mandates that judgments be pronounced publicly or made accessible in some manner. These guarantees theoretically allow public presence during disciplinary hearings. However, in practice, the High Judicial and Prosecutorial Council makes only the first- and second-instance disciplinary decisions public and available, and only in anonymized form. While the HJPC website publishes the schedule of disciplinary hearings, providing case numbers, dates, times, and hearing types, this information does not include the identities of the respondents or the grounds for the proceedings. Consequently, although the public may attend hearings, they remain unaware of the outcomes of disciplinary cases or the appropriateness of the sanctions imposed. Furthermore, the public is entirely excluded from decisions on appeals against second-instance panel rulings, further reducing

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<sup>45</sup> Decision of the High Judicial and Prosecutorial Council no. 04-07-7-512-1/2018 of 26/01/2018.

transparency. The HJPC, when acting as an appellate body in disciplinary matters, has unrestricted access to all investigative and procedural actions undertaken by the Office of the Disciplinary Counsel (ODC) regarding filed complaints. While the HJPC Law and Rules of Procedure govern many aspects of disciplinary proceedings, any unregulated issues fall under the Civil Procedure Code applicable to the location of the disciplinary offense. This reliance on civil procedure introduces significant challenges. The principle of establishing material truth, a cornerstone of disciplinary accountability, has been abandoned in civil procedure codes. Instead, the burden of presenting facts and proposing evidence is placed entirely on the parties involved in the proceedings.<sup>46</sup> This procedural framework raises critical questions about the impartiality and independence of disciplinary panels. These panels, often composed entirely of HJPC members, must base their decisions on evidence presented during the proceedings. However, their unrestricted access to records of investigative actions taken by the ODC—one of the parties—compromises this principle. Such access risks undermining the objectivity of the decision-making process, as panel members are exposed to pre-existing information before hearing the case formally. This systemic flaw threatens the fairness and transparency that the HJPC Law seeks to uphold, leaving the integrity of disciplinary proceedings vulnerable to criticism.

**Sanctioning Policy of the HJPC.** The 2018 report from the Office of the Disciplinary Counsel highlighted a lenient approach to sanctioning judicial officeholders for disciplinary offenses. That year, 27 proceedings resulted in 29 disciplinary measures, including written warnings (non-public), public reprimands (anonymized), salary reductions of up to 50% for one year, two removals from office, and one measure requiring participation in rehabilitation programs, counseling, or training. These outcomes illustrated a trend toward mild penalties for misconduct, raising questions about the efficacy of the disciplinary framework.<sup>47</sup> Data from 2021 and 2022 reveal a persistent pattern. In 2021, 25 cases concluded with disciplinary measures, most commonly salary reductions (60%), followed by written warnings (28%), transfers (8%), and dismissals (4%). In 2022, the number of measures rose to 33, with salary reductions again predominating. The discretionary nature of these measures created inconsistencies, as similar violations were met with differing penalties, further undermining public confidence in the process.<sup>48</sup> A closer examination of specific cases illustrates systemic shortcomings. In one instance, a judge who used ethnic and religious slurs in a brazen and inappropriate manner, tarnishing the judiciary's reputation, received only a 50% salary reduction for one year.<sup>49</sup> Another judge archived an active criminal case against court rules, leading to a statute of limitations issue for an accused party. The imposed penalty was a public reprimand, which lacked the necessary deterrent effect. Similarly, a judge grossly violated procedural rules and ignored a defendant's basic rights in a civil lawsuit but faced only anonymized disciplinary action.<sup>50</sup> The issue of delayed proceedings compounds the problem. For example, the case of the former

<sup>46</sup> High Judicial and Prosecutorial Council of BiH, Initial training – Module 2, p. 5. 2009. Available at: <https://advokatprnjavorac.com/sudska-praksa/Najvaznije-osnovne-i-opste-odredbe-Zakona-o-parnicnom-postupku.pdf>. Accessed on: 21/11/2019/, Article 7, paragraph (2): “The court shall consider and establish only the facts presented by the parties and shall order the taking of only the evidence that is proposed by the parties, unless otherwise specified” (“Official Gazette of BiH”, no. 53/03, 73/05, 19/06 and 98/15).

<sup>47</sup> Supra note 36, Article 60 and 61.

<sup>48</sup> Report of the Office of the Disciplinary Counsel, 2018. Also see Supra note 7 at page 9.

<sup>49</sup> Decision of the High Judicial and Prosecutorial Council no. 04-07-6-602-17/2018 of 06/09/2018.

<sup>50</sup> Database of disciplinary sanctions against judges and prosecutors, CIN, Disciplinary sanctions against judges and prosecutors - CIN.



president of the Basic Court involved repeated postponements and extended delays. Hearings were rescheduled multiple times, with significant gaps between sessions. Ultimately, the disciplinary proceedings were dismissed due to the respondent's retirement, effectively nullifying accountability. Such practices have led to a perception of procedural manipulation, where judicial officeholders can evade responsibility through resignation or retirement during proceedings. In 2021 and 2022, ten cases each year were resolved through agreements on joint acknowledgment of disciplinary responsibility, which are typically concluded within the recommended timeframe. However, the HJPC's broad discretion in these agreements perpetuates inconsistencies in penal policies. The leniency observed in sanctioning, coupled with frequent delays, undermines the deterrent and corrective purposes of the disciplinary system. Higher-level disciplinary proceedings, such as those before the third-instance HJPC panel, often involve senior judicial officials. These cases generally maintain or increase the severity of penalties, as seen in the reduction of a Chief Republic Prosecutor to a lower position after an appeal by the Office of the Disciplinary Counsel. However, the existence of a three- or even four-instance disciplinary process significantly prolongs decision-making, complicating efforts to deliver timely justice.<sup>51</sup> A two-instance model could satisfy the requirements of the European Convention on Human Rights while streamlining proceedings. The 2020 roundtable on judicial accountability brought together key stakeholders, including representatives from the HJPC, the Disciplinary Prosecutor's Office, the Court of Bosnia and Herzegovina, and civil society. The participants recognized the need for reforms, emphasizing greater transparency, proportionality in disciplinary measures, and a reduced role for the HJPC in the disciplinary process. Recommendations included making all disciplinary decisions public without anonymization, expanding the range of sanctions to better match the severity of violations, and adopting a new procedural model to enhance fairness and efficiency. Despite incremental improvements in recent years, the disciplinary framework in Bosnia and Herzegovina remains inadequate in addressing systemic issues. Delays, lenient penalties, and excessive discretion in decision-making hinder accountability and public trust in the judiciary. Comprehensive reforms are essential to ensure that disciplinary processes serve their intended purpose of maintaining judicial integrity and deterring misconduct.<sup>52</sup>

## CROATIA

**Legal Framework.** Judicial accountability in Croatia is primarily regulated by the *Act on Courts*<sup>53</sup> and the *Act on the State Judicial Council*<sup>54</sup>. Secondary regulations include the *Code of Judicial Ethics*<sup>55</sup>

<sup>51</sup> Guide to Article 6 of the European Convention on Human Rights, paragraph 36. August 31, 2018, European Court of Human Rights. Available at: [https://echr.coe.int/Documents/Guide\\_Art\\_6\\_BOS.pdf](https://echr.coe.int/Documents/Guide_Art_6_BOS.pdf).

<sup>52</sup> Conclusions of the Roundtable "Disciplinary Liability of Judicial Officeholders" held on 28 February, 2020, Sarajevo.

<sup>53</sup> Official gazette no. 28/2013, 33/2015, 82/2015, 82/2016, 67/2018, 126/2019, 130/2020, 21/2022, 60/2022, 16/2023, 155/2023, 36/2024

<sup>54</sup> Official gazette no. 116/2010, 57/2011, 130/2011, 13/2013, 28/2013, 82/2015, 67/2018, 126/2019, 80/2022, 16/2023, 83/2023, 155/2023

<sup>55</sup> Official gazette no. 131/2006

and the *Rules of Procedure of the State Judicial Council*.<sup>56</sup> The *Act on Courts* provides the foundational legal framework for the functioning of courts and the responsibilities of judges, with Article 95 being particularly relevant. The *Act on the State Judicial Council* empowers the State Judicial Council to conduct disciplinary procedures and decide on the disciplinary liability of judges. Disciplinary offenses include irregular performance of judicial duties, such as failing to deliver decisions without justified reasons, receiving unsatisfactory evaluations from the Judicial council (Judicial councils, distinct from the State Judicial Council), delivering fewer decisions than required by the *Framework Guidelines for the Work of Judges*, deviating without justification from the order of receipt in court, neglecting the urgency of cases, or allowing the statute of limitations to expire due to inaction. Other offenses include failing to act in accordance with decisions protecting the right to a trial within a reasonable time, engaging in incompatible activities, causing disruptions in court operations, violating official secrecy, harming the reputation of the court or judicial duties, failing to submit an asset declaration or providing false information in it, refusing to undergo assessments of fitness (mental or physical) for judicial duties and violating personal data protection regulations. The *Code of Judicial Ethics* outlines fundamental ethical principles for judicial conduct and includes procedures for addressing breaches. While a breach of the code does not constitute a disciplinary offense on its own, it may trigger disciplinary proceedings. The *Rules of Procedure of the State Judicial Council* define the operational framework and decision-making processes of the State Judicial Council, ensuring that the council is functioning effectively and adheres to its principles. This legislative framework establishes a comprehensive system for judicial accountability, with the State Judicial Council playing a central role in enforcing standards and addressing misconduct. Although breaches of ethical principles do not automatically result in sanctions, the linkage between ethical violations and disciplinary procedures underscores the importance of maintaining high standards of judicial conduct. The State Judicial Council comprises of 11 members: 7 judges, 2 faculty of law professors, and 2 parliamentary representatives, one of whom is from the opposition. Among the judges elected, there are 2 from the Supreme Court, 1 from high courts, 3 from county courts, and 1 from a first-instance court. Members serve a four-year mandate. All judges are eligible to vote in elections for the State Judicial Council, but they can only vote for judges as candidates. Faculty of law professors and parliamentary representatives are not part of this election process; they are nominated by the faculty board and parliament, respectively. The entire election procedure for the State Judicial Council is governed by the *Act on the State Judicial Council*.

**Key Stakeholders.** The State Judicial Council oversees disciplinary proceedings and sanctions against judges. The Council collectively decides on proposals for disciplinary liability but may delegate certain cases to a Disciplinary Chamber, as permitted by Article 66, Section 2 of the *Act on the State Judicial Council*. The Disciplinary Chamber is comprised of three members of the Council. At least two out of three members of the Disciplinary Chamber must be judges and the judge is always a president of the Disciplinary Chamber. The president of the Disciplinary Chamber must at least be a judge of the same level as the judge against whom a disciplinary proceeding is being conducted.

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<sup>56</sup> Page of the State Judicial Council, <https://drzavnosudbenovijece.hr/hr/podzakonski-akti>, access 8. October 2024.

This Disciplinary Chamber conducts hearings, establishes facts, and presents findings to the Council. In cases requiring additional investigation, the Council may appoint an Investigative Commission from judges of regular or specialized courts to establish facts before the disciplinary hearing. Decisions on disciplinary liability are made by a majority vote of all Council members. Disciplinary proceedings are quasi-penal in nature, governed by the *Act on the State Judicial Council*, its Rules of Procedure, the *Criminal Procedure Act* (for hearing procedures), and the *Criminal Code* (for substantive questions such as intent, negligence, and culpability). Authorized bodies to initiate proceedings include the president of the court, higher court, Supreme Court, minister competent for the affairs of judiciary or Judicial council. This broad authority raises concerns about potential politicization, particularly regarding the minister's involvement. Requests to initiate disciplinary proceedings must be submitted in writing and resemble criminal indictments, including personal details of the accused judge, a factual and legal description of the offense, a proposed penalty, and supporting evidence. The disciplinary prosecutor, whether a judicial council or individual (e.g., court presidents or minister competent for the affairs of judiciary) represent the indictment and may act personally or through a representative. The accused judge may present defense in writing, in person, or through an attorney. If the judge opts not to defend, the hearing proceeds in their absence. The prosecutor may amend the indictment, and if done so, outside a hearing, the Chamber must schedule a new hearing within 15 days, ensuring the judge's right to respond.

The main hearing, conducted by the Disciplinary Chamber, adheres to criminal procedure rules. Article 62, Section 2 of the *Act on the State Judicial Council* requires the removal of inadmissible evidence before the hearing, with legality determined under the *Criminal Procedure Act*. The hearing mirrors a criminal trial, involving the prosecutor, the accused judge and witnesses, presenting evidence before the Chamber. Following the hearing, the Council decides by majority vote. Its decisions are confined to the charges and individuals specified in the prosecutor's motion. While bound by the factual basis of the charges, the Council has discretion over penalties and may impose a lighter or harsher sanction than proposed. Sanctions include restrictions on promotion for one to four years, depending on the offense's severity, alongside the primary penalty.

Both the disciplinary prosecutor and the judge have the right to appeal to the Constitutional Court of Croatia on any grounds, including procedural issues, substantive law violations, or objections to the penalty.

**Functioning in Practice.** As mentioned previously, disciplinary procedures can be initiated by the president of the court or an acting court president, the president of the Supreme Court, the president of a higher court, the judicial council, or the minister competent for the affairs of judiciary. These procedures begin with a motion and are conducted in accordance with the Criminal Procedure Act and Criminal Code (for defining disciplinary offenses). Decisions regarding disciplinary responsibility are made by a majority vote of all council members. Once a motion for disciplinary proceedings is submitted, the judge in question has the right to present a defense personally, in writing, or through a defender. If the judge fails to present a defense, the hearing will proceed in their absence. The decision must be documented in writing and delivered to the parties involved within 30 days of its issuance. Possible disciplinary sanctions include a reprimand (*ukor*), a fine amounting to one-third of the judge's salary for a period ranging from one to twelve months, or dismissal from duty. Suspension of a sentence is permitted only in cases where dismissal from

duty is imposed as a disciplinary sanction. Although breaches of ethical principles do not automatically result in sanctions, the linkage between ethical violations and disciplinary procedures underscores the importance of maintaining high standards of judicial conduct.

Furthermore, the functioning of the accountability system can be evaluated by analyzing the number of disciplinary proceedings conducted over the last three years. In 2021, 23 new disciplinary proceedings were initiated, and 14 cases were concluded, resulting in 6 reprimands, 6 monetary fines, 1 conditional dismissal, and 1 case rejection. In 2022, the State Judicial Council initiated 22 new proceedings and concluded 25, issuing 9 reprimands, 2 monetary fines, 1 conditional dismissal, and permanently dismissing 4 judges. Additionally, 5 judges were acquitted of disciplinary offense allegations, and 4 proceedings ended with case rejections due to reasons such as the withdrawal of charges or the judge leaving office during the proceedings. By 2023, 12 new disciplinary proceedings were initiated, and 17 cases were resolved, leading to 1 reprimand, 5 monetary fines, 7 acquittals, and 5 case rejections.<sup>57</sup>

Comparing the 57 new disciplinary proceedings initiated during this period with the average number of judges (1,662), approximately 3.43% of Croatian judges were subject to disciplinary actions. This indicates that the system functions and does not shy away from initiating proceedings when necessary.<sup>58</sup>

When a judge is dismissed due to a criminal offense, and the criminal conviction is later annulled through extraordinary legal remedies or a constitutional complaint, the conditions for dismissal are no longer met. Dismissal on such grounds requires a final criminal conviction proving the judge's unworthiness to serve. The Constitutional Court affirmed this principle in decision U-IX-384/2014, dated March 19, 2015. In this case, a judge was initially dismissed for a criminal offense committed during judicial duties. However, the Constitutional Court annulled the criminal conviction upon reviewing the constitutional complaint and remanded the case for retrial. This ultimately led to the judge's successful appeal against the dismissal decision by the State Judicial Council.

**Challenges in Practice.** Article 95, paragraph 1 of the Act on Courts mandates that the president of the court where a judge performs judicial duties shall, by decision, ascertain whether the judge has fulfilled their judicial obligations in accordance with the specific criteria for the previous calendar year. Paragraph 3 of the same Article outlines that the court president is required to initiate disciplinary proceedings against a judge if they determine that the judge has not rendered the number of decisions established by the Framework Guidelines for the Work of Judges within a one-year period or has performed their judicial duties in a disorderly manner, without justifiable reason. In the event that the court president determines that the judge has not rendered the number of decisions established by the Framework Guidelines for the Work of Judges within a one-year period due to justifiable reasons, paragraph 4 of the same article mandates that the president must provide a detailed explanation of the decision regarding the judge's obligation to fulfil their duties and forward the decision to the president of the immediately higher court. Article 79 of the Act on Courts mandates that the Framework Guidelines for the Work of Judges are issued by the minister

<sup>57</sup> Data presented are publicly available, and can be found in Annual reports on the work of the State Judicial Council.

<sup>58</sup> Data available from the annual Reports of the President of the Supreme Court of the Republic of Croatia on the state of the judicial authority for the years 2021., 2022. and 2023.

competent for the affairs of judiciary following the opinion of the General Session of the Supreme Court of Croatia. The Supreme Court must provide its opinion on the proposed guidelines or any amendments within 30 days. If no opinion is given within this period, the Minister may proceed without it. Article 62 of the State Judicial Council further requires that disciplinary proceedings be initiated against judges who fail, without justifiable cause, to meet the decision quotas set by these guidelines within a year. Judges are required to meet the decision quotas set by the Framework Guidelines for the Work of Judges. If a judge fails to do so, the president of the court assesses whether the reasons for the shortfall are justified. If the reasons are deemed unjustified, the court president must initiate disciplinary proceedings against the judge. No matter what the General Session of the Supreme Court of the Republic of Croatia may conclude, the Framework Guidelines for the Work of Judges are enacted by the minister competent for the affairs of the judiciary. In fact, the current Framework Guidelines were put into effect after the proposal made by the minister competent for the affairs of the judiciary was unanimously rejected as unfit for discussion by the General Session of the Supreme Court of the Republic of Croatia.<sup>59</sup> That was because the proposal did not include any explanation or grounds for its suggestion. It was also emphasised that there was no analysis of the quantitative and qualitative impact of the Framework Guidelines that had been applicable in the past. There is a clear correlation between the Framework Guidelines and the evaluation of judges, which in turn has a direct impact on the judges' professional growth and disciplinary responsibilities. Therefore, the Framework Guidelines are of tremendous importance.

The judges have not been exposed to any objective analysis of work that may lead them to the conclusion that these Framework Guidelines for the Work of Judges are the product of an objective examination of the feasible quality work that a judge could produce over the course of a year, which is supposed to have 220 days. An obvious illustration of this is the fact that a portion of the task is contingent on the behaviour of the many parties involved. For example, if creditors agree to a pre-bankruptcy settlement, the court is expected to consider 25 cases of this sort each year. Nevertheless, the court is compelled to address 800 cases of this sort each year if, following the voting process, the creditors do not accept the settlement offering. Therefore, if they vote in favour of the pre-bankruptcy settlement, it counts as 4% of the judge's yearly "quota," but if they vote against it, it only counts as 0.125% of the judge's annual "quota."

According to the aforementioned legal regulations, the court president is required to evaluate once a year whether the judge has completed their judicial obligations. In this decision, the court president, in accordance with the existing Framework Guidelines, assesses the proportion of the judge's tasks completed. If this proportion is less than 100%, the court president may conclude that there were objective barriers to meeting these responsibilities. However, if the court president determines that the judge has failed to perform their judicial duties, they must launch disciplinary actions. As a result, whether the president of the court will initiate disciplinary proceedings in a similar situation is determined by discretionary assessment of whether the specific circumstances of a given year were justified, preventing the judge from issuing an adequate number of decisions that year. In this regard, the duty to commence disciplinary proceedings is not determined by

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<sup>59</sup> See the announcement from the website of the Supreme Court of the Republic of Croatia - <https://www.vsrh.hr/prosirena-sjednica-vrhovnog-suda-republike-hrvatskejednoglasno-odbacila-prijedlog-ministarstva-pravosudja-i-uprave-za-donosenje-novih-okvirnih-mjerila-za-rad-sudaca.aspx> accessed: September 26, 2024.



whether the judge accomplished 105% in one year and 95% in another; the court president is required to initiate disciplinary proceedings for the year in which only 95% of the "quota" was met. Given that the minister competent for the affairs of judiciary is also authorised to initiate disciplinary proceedings against a judge, it would be useful to prescribe that, before initiating disciplinary proceedings for this disciplinary offence, the court president or another authorised person must request the opinion of the competent Judicial Council on whether the circumstances cited by the judge as the reason for not rendering an adequate number of decisions are justified. This is significant since the Judicial Council's work is not directly controlled by the ministry in charge of judicial affairs, which independently enacts the Framework Guidelines for Judges' Work. Obviously, the fact that the Framework Criteria for Judges' Work is issued by the minister in charge of judicial affairs on their own, without any kind of study, raises issues about the likelihood of such a legal solution. This is because the possibility of such a solution has a substantial impact on the autonomy and independence of judges.

Although the Constitutional Court of the Republic of Croatia, in its decision U-I-5197/2022 of February 7, 2023,<sup>60</sup> concluded that there are no grounds to initiate proceedings for the assessment of the constitutionality of the provisions of Article 62, paragraph 3, points 3 and 5 of the Act on the State Judicial Council, the decision first referred to the stance expressed in its earlier decision No. U-I-5088/2013 et al. of July 10, 2018, that the Framework Standards for the Work of Judges do not have the characteristics of a "secondary regulation" that the Constitutional Court would be authorized to evaluate. Furthermore, it emphasized that the independence of the State Judicial Council ensures the independence of judges, and that the question of whether the obligation to fulfill 100% of the judicial quota is set too high and rigidly, or whether the statute of limitations on cases due to unjustified inactivity of a judge cannot constitute grounds for their disciplinary responsibility, but rather that only other actions or omissions by the judge in principle may, does not fall within the scope of the (un)constitutionality of the law.

**Ethical v. Disciplinary Accountability.** Croatia's *Code of Judicial Ethics*, adopted by the Council of Presidents of Judicial Councils<sup>61</sup>, has been in force since October 26, 2006. It is interpreted alongside the *Guidelines for the Interpretation and Application of the Code of Judicial Ethics*, issued on February 4, 2016. The Code sets ethical principles essential for judicial duties, drawing from the *Bangalore Principles of Judicial Conduct*, Council of Europe documents, and other relevant sources. Its purpose is to establish professional and personal standards for judges, ensuring independence, impartiality, integrity, and the judiciary's good reputation. The disciplinary regime is separate from the process for addressing breaches of judicial ethics. Disciplinary responsibility covers a narrower range of conduct, while ethical misconduct is broader. However, harming the reputation of the court or judicial office, as defined in the *Act on the State Judicial Council*, links severe breaches of ethics to potential disciplinary liability.<sup>62</sup> These councils are established at county courts for municipal courts at the High Commercial Court for commercial courts, and at the High Administrative Court for administrative courts. They evaluate judges' performance and provide opinions on judicial appointments. They cannot impose sanctions for ethical breaches, but determine if a violation

<sup>60</sup> Published in Official gazette no. 16/2023

<sup>61</sup> Published in Official gazette no. 131/2006

<sup>62</sup> Article 62, Section 2, Paragraph 6 of the Act on the State Judicial Council

occurred. If a breach is severe enough to suggest disciplinary misconduct, the council can initiate proceedings before the State Judicial Council. Judicial council decisions on ethical responsibility can be appealed to the Judicial Council of the Supreme Court, comprising the presidents of all judicial councils. This differs from disciplinary proceedings, where appeals are decided by the Constitutional Court. While not all ethical breaches lead to disciplinary action, severe violations that harm the judiciary's reputation may result in disciplinary proceedings.

**Appeals and Transparency.** Under Article 71 of the Act on the State Judicial Council, judges have the right to appeal decisions regarding termination of duties or disciplinary responsibility. Filing an appeal automatically postpones the execution of the decision. The appeal must be submitted to the Constitutional Court of the Republic of Croatia within 15 days of the decision's delivery. The Rules of Procedure of the Constitutional Court<sup>63</sup> govern the appeal process. Article 27 outlines the procedures for handling appeals concerning judicial termination of duties and disciplinary responsibility. Two councils, each comprising six judges, are established within the Constitutional Court to decide on such appeals. If the majority of judges within the council do not support the proposed decision, or if there is a tie vote (three in favor and three against), the matter is escalated. In such cases, the president of the council refers the matter to the president of the Constitutional Court, who forwards it to the full session of the court for a final decision. The appeal process involves reviewing the content of the appeal and examining the disciplinary procedure file prepared by the State Judicial Council. Although the process is conducted in writing, the Constitutional Court publishes its decisions in full, including detailed reasoning, ensuring transparency and public accessibility to the critical elements of the decision-making process. In contrast, the State Judicial Council only publishes the decision and its legal basis, without disclosing the reasoning behind it. This means that the aspects of the case considered significant by the State Judicial Council, particularly those influencing the disciplinary decision, remain unavailable to the public.

## CZECH REPUBLIC

**Background and Legal Framework.** After the Velvet Revolution in 1989 and the establishment of the Czech Republic in 1993, the judiciary underwent significant reforms to transition from a socialist legal system to an independent and democratic framework. These reforms introduced disciplinary mechanisms to ensure judicial accountability and uphold the dignity and integrity of the judiciary. The legal framework for addressing judicial misconduct in the Czech Republic is grounded in several key statutes. Act No. 6/2002 Coll., on Courts and Judges, governs the organization of courts, delineates the powers and responsibilities of judges, and establishes provisions for their disciplinary accountability. Under this law, judges may face disciplinary proceedings for conduct deemed incompatible with the dignity of their position or for violations of their professional duties. Additional guidance is provided by Act No. 7/2002 Coll., on Proceedings in Matters of Judges, Public Prosecutors, and Court Executors, which details the procedural rules for handling disciplinary cases. When issues arise that are not explicitly covered by this act, Act No. 141/1961 Coll., the Criminal Procedure Code, is applied subsidiarily. Disciplinary proceedings are conducted before the

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<sup>63</sup> Official Gazette No. 181/03, 16/06, 30/08, 123/09, 63/10, 121/10, 19/13, 37/14, 83/14 – official consolidated text, 2/15

Supreme Administrative Court, which functions as the disciplinary court. Cases are adjudicated by panels composed of six members: a judge from the Supreme Administrative Court, a judge from the Supreme Court, a judge from another court, a member of the bar association, a public prosecutor, and another legal expert. This institutional framework ensures a balanced and comprehensive approach to evaluating judicial conduct, reinforcing the principles of accountability and fairness within the Czech judiciary.

**Disciplinary Proceedings – Bodies, Rights and Guarantees.** In the Czech Republic, the Supreme Administrative Court holds primary responsibility for deciding matters of judicial disciplinary responsibility, with Judicial Councils serving as advisory bodies to support the process. The Supreme Administrative Court plays a central role in disciplinary proceedings. Its disciplinary panels are composed of six members: three judges and three legal experts, ensuring a balanced perspective in evaluating cases. The court's mandate is to uphold fairness and objectivity throughout the disciplinary process, maintaining judicial accountability while respecting the rights of the accused. Judicial Councils, established at each court, complement the work of the Supreme Administrative Court by serving as advisory bodies. These councils typically consist of five members elected by the assembly of all judges of the respective court. Their role is to advise the court president on matters such as appointing judges to oversee disciplinary proceedings and addressing ethical concerns within the judiciary. By providing guidance on these issues, Judicial Councils help reinforce ethical standards and the proper administration of justice within the Czech judiciary.

The procedural framework for disciplinary proceedings in the Czech Republic is designed to ensure fairness, accountability, and adherence to judicial standards while safeguarding the rights of judges. Disciplinary proceedings can be initiated by a proposal submitted by the President of the Republic, the Minister of Justice, a court president, or the ombudsman. Grounds for initiating such proceedings include a culpable breach of judicial duties, behavior that undermines the dignity of the judicial office, or actions that threaten public trust in the independence, impartiality, expertise, and fairness of the judiciary. Proposals must be filed within six months of discovering the misconduct and no later than three years after its occurrence. Once a proposal is submitted, the disciplinary panel reviews the case to determine whether the accused judge committed the alleged misconduct. If the charges are unfounded, they are dismissed. Sanctions for proven misconduct vary in severity and may include a reprimand, a salary reduction of up to 30% for up to one year (or two years for repeated offenses), removal from the position of panel president, or removal from the judiciary altogether. In cases of acquittal, judges are entitled to compensation for their legal costs. Judges subject to disciplinary proceedings are guaranteed a range of procedural rights to protect their interests and ensure the process is conducted fairly. These rights, rooted in the Charter of Fundamental Rights and Freedoms as well as Acts No. 6/2002 Coll. and No. 7/2002 Coll., include the right to be informed of the reasons for initiating the proceedings and to receive timely notification to allow adequate preparation. Judges are entitled to an unbiased disciplinary panel, a public hearing, and the opportunity to be present during proceedings. They may select legal representation for their defense and are allowed to present arguments and evidence. Judges also have the right to be heard by the disciplinary panel and to receive a well-reasoned decision from the panel. These procedural guarantees uphold the principles of fairness and transparency, reinforcing the integrity of the disciplinary process within the Czech judiciary.

**Composition of Disciplinary Panels.** Disciplinary proceedings in the Czech Republic are conducted by panels within the Supreme Administrative Court. The president of the disciplinary court oversees a list of judges and panel members from which the panels are formed, ensuring a structured and balanced approach to handling disciplinary matters. Each disciplinary panel consists of six members: a president, a deputy, a judge, and three non-judge panel members. The president is a judge from the Supreme Administrative Court, while the deputy is a judge from the Supreme Court. The third judicial member is drawn from the High, regional, or district courts. The non-judge panel members include a public prosecutor, a member of the bar association, and a legal expert. The selection process for judges designated as disciplinary judges begins with court presidents, who propose candidates in consultation with the Judicial Council of their respective court. For non-judge panel members, the president of the Czech Bar Association, the Supreme Public Prosecutor, and the deans of public law faculties propose suitable candidates. Panel members are appointed through a random draw conducted by the president of the disciplinary court. This draw determines the president, deputy, judges, non-judge panel members, and their substitutes, ensuring impartiality in the composition of the panels. Judges on the list of disciplinary judges are selected based on the discretion of court presidents and the Judicial Councils. Non-judge panel members must meet several criteria, including being at least 30 years old, having full legal capacity, and holding a university degree in law. They must also demonstrate integrity, relevant experience, moral character, professional qualifications, and a commitment to deciding independently and impartially in accordance with Czech legal principles. All panel members serve a term of five years, during which they uphold the values of fairness and accountability in the judiciary.

**Transparency.** Disciplinary proceedings in the Czech Republic emphasize transparency to ensure accountability and maintain public trust in the judiciary. As a general principle, these proceedings are open to the public, allowing access to the media, civil society members, and other interested parties. Public access helps foster understanding and oversight of judicial accountability processes. However, certain circumstances may warrant restrictions on public access. Hearings can be closed if disclosing information might compromise confidentiality, security, or the privacy of participants, or if it poses risks to other significant interests. Such exceptions are applied judiciously to balance transparency with the need to protect sensitive information. The participation of journalists and civil society organizations further underscores the openness of the process. Journalists and representatives of civil organizations are entitled to attend public disciplinary proceedings, though their participation may be subject to specific conditions. These may include advance registration or limitations on the number of attendees, especially in cases that attract significant public attention. Decisions arising from disciplinary proceedings are published on the Supreme Administrative Court's website, ensuring accessibility and public awareness. Media outlets play a crucial role in disseminating this information, providing the public with updates and insights through various channels. This commitment to transparency strengthens public confidence in the fairness and integrity of the judicial disciplinary process.

**Appeal Procedure.** Under § 21 of Act No. 7/2002 Coll., appeals against decisions in disciplinary proceedings are not allowed. However, final decisions may be revisited through a proposal for reopening disciplinary proceedings within three years of the decision becoming final. Additionally, a constitutional complaint can be filed with the Constitutional Court. Historically, disciplinary

proceedings in the Czech Republic followed a two-instance structure. This changed with the amendment of Act No. 7/2002 Coll. by Act No. 314/2008 Coll., effective October 1, 2008, which introduced a single-instance system. While this system has not been deemed unconstitutional, it has been subject to criticism and legal challenges. In *Grosam v. Czech Republic* (June 23, 2022, application No. 19750/13), the European Court of Human Rights acknowledged concerns about fairness but upheld the system's compliance with constitutional principles.<sup>64</sup> The lack of an appeal mechanism has drawn criticism from legal experts and institutions, such as the GRECO group, which in 2016 recommended adopting regulations to allow judges to appeal disciplinary decisions, particularly those involving removal from office.

**Perceived Weaknesses of the System.** The single-instance system has raised concerns about fairness, transparency, and potential for abuse. Critics argue that the absence of an appeal mechanism could encourage leniency in decision-making, as disciplinary panels are aware that their rulings are final. There is also concern about the potential for political manipulation, given that most disciplinary proceedings are initiated by court presidents appointed on the recommendation of the Minister of Justice. Although there is no evidence of such misuse, the possibility undermines trust in the system. Court management may also use disciplinary proceedings to exert pressure on judges perceived as problematic. While Judicial Councils are tasked with oversight, their advisory role is not sufficient to prevent potential abuse. Another issue is the lack of professional training for members of disciplinary panels, who often see this role as a secondary responsibility. This can affect the quality of their decisions. The ethical framework for judges is another area of concern. Insufficiently defined norms and standards lead to inconsistencies in the application of disciplinary measures and conflicting outcomes. Public mistrust is further exacerbated by a lack of transparency in the process. Media coverage often fails to convey that disciplinary cases are rare and exceptional, contributing to the perception of widespread judicial misconduct. The internal workings of disciplinary panels are not made public, limiting oversight and further diminishing transparency. The Czech judiciary comprises 3,027 judges. From 2008 to 2024, there were 324 proposals for disciplinary proceedings. These ranged from a peak of 40 cases in 2011 to a low of six in 2024. Of these cases, 138 proceedings were terminated, 38 judges resigned during the process, and six were concluded due to judges being convicted in criminal cases. The majority of offenses involved long-term delays in proceedings or repeated procedural errors, underscoring that disciplinary violations are committed by only a small fraction of the judiciary.<sup>65</sup>

**Problems and Proposed Solutions.** The disciplinary responsibility of judges in the Czech Republic is governed by law, offering mechanisms to address violations of judicial duties while safeguarding judicial independence and the right to a fair trial. This framework, developed during the democratic reforms of the 1990s, has been influenced by the experiences of Western legal systems. Judges are afforded procedural rights in disciplinary proceedings to ensure they have a fair opportunity to defend themselves against allegations and protect their professional integrity. Despite these safeguards, the current system for sanctioning judges has revealed several shortcomings over the

<sup>64</sup> **Grosam v. the Czech Republic (Application No. 19750/13):** This case addresses the fairness of disciplinary proceedings against an enforcement officer in the Czech Republic. The judgment, delivered on June 23, 2022, is available on the ECtHR's HUDOC database.

<sup>65</sup> Karel Šimka, *Jednoinstanční kárná řízení: data a fakta*. Available at: [https://www.nssoud.cz/fileadmin/user\\_upload/2024\\_04\\_25\\_Karna\\_jednoinstancni\\_karna\\_rizeni\\_data.pdf](https://www.nssoud.cz/fileadmin/user_upload/2024_04_25_Karna_jednoinstancni_karna_rizeni_data.pdf)

years. The absence of a two-instance procedure has been a significant criticism, as it limits the options for appeal and potentially affects the perceived fairness of disciplinary decisions. Recognizing these issues, a revision of the disciplinary framework is underway, with the aim of introducing a more robust system. On February 14, 2024, the government submitted a draft amendment to Act No. 7/2002 Coll. to the Chamber of Deputies. This proposal is currently under parliamentary discussion, with several amendments being debated and the final text of the law still pending approval. The amendment seeks to introduce a two-instance disciplinary procedure, allowing appeals in such proceedings. Under the proposed changes, the High Courts in Prague and Olomouc will serve as the first-instance disciplinary courts, while the Supreme Court or the Supreme Administrative Court will handle appeals. Additionally, the amendment includes provisions for a plea agreement mechanism, enabling judges and disciplinary bodies to agree on guilt and appropriate disciplinary measures. This change aims to streamline proceedings while ensuring accountability and fairness. These proposed reforms are expected to address the current system's weaknesses, enhance procedural safeguards, and bolster public confidence in the judiciary's integrity. as of January 1, 2025, Act No. 438/2024 Coll., amending Act No. 7/2002 Coll. on the disciplinary responsibility of judges, has come into effect. Under this law, disciplinary proceedings are now decided by disciplinary courts, with High courts serving as the first instance and the Supreme Court and the Supreme Administrative Court at the second instance. Appeals are not allowed against decisions of a procedural nature. The unity of decisions by appellate disciplinary courts will be ensured by the unifying disciplinary panel of the Supreme Administrative Court.

## GEORGIA

**Legal Framework.** Disciplinary liability may be imposed if a judge commits a guilty act of disciplinary misconduct. Disciplinary misconduct can only be a deliberate or negligent action committed by a judge. The law protects a judge from disciplinary liability in cases of incorrect interpretation or application of a law if such a decision of the judge is based on his/her inner conviction. Georgia's disciplinary system does not recognize the "legal error plus" model of disciplinary liability for violation of law. The law breaks down the list of narrowly construed 20 types of disciplinary misconduct<sup>66</sup> into six major groups, namely, acts that violate principles of: independence, impartiality; integrity, equality; competence, and diligence. Additionally, one more general type of disciplinary misconduct is established.<sup>67</sup> Two types of grounds for disciplinary liability have been identified as particularly problematic. Violation by a judge of the "principle of

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<sup>66</sup> List of grounds for disciplinary misconduct of a judge is provided in Article 75<sup>1</sup>(8) of the Organic Law of Georgia on General Courts accessible in the official database of laws:

<https://matsne.gov.ge/en/document/view/90676?publication=52>

<sup>67</sup> Article 75<sup>1</sup>(8.g) of the Organic Law of Georgia on General Courts as of May 29, 2024 "Any act committed by a judge which is not appropriate to the high status of a judge, committed within the court or outside it, and which obviously violates public order or universally recognized moral standards and thereby impairs reputation of court or undermines the credibility of court."



political neutrality” as an extensively broad ground for disciplinary liability was first introduced in the law in 2021<sup>68</sup> and criticized for posing a threat to the freedom of judges to participate in debates of public interest. After several opinions issued by the Venice Commission, in 2024, certain exceptions were added to the ground of “political neutrality”;<sup>69</sup> however, the broad concept of “political neutrality” remains in the law and risks being enforced to the detriment of democracy, separation of powers, and pluralism.<sup>70</sup> Breach by a judge of time limits set by procedural law constitutes a ground for disciplinary liability.<sup>71</sup> Delay in court proceedings has been a major problem in the Georgian judiciary.<sup>72</sup> In the situation where the majority of judges have to deal with an excessive workload, the possibility of various interpretations of the law produces the risk of a selective approach towards judges. Out of 230 complaints lodged against judges in 2023 more than half (137) concerned delay of proceedings.<sup>73</sup>

**Disciplinary proceedings.** Disciplinary proceedings against a judge may be initiated at the complaint of any person, except anonymous complaints; at the note of the other judge, the court president, or a staff member of judicial administration; note by an investigative body or the Public Defender of Georgia; or media information. Disciplinary proceedings consist of the following stages: Stage I. Preliminary examination is initiated, and disciplinary proceeding is conducted by an independent inspector. The Inspector submits the findings of the preliminary examination to the HCOJ. Stage II. Accusation. Based on findings of a preliminary examination, the decision is made by the HCOJ to accuse a judge of disciplinary misconduct and take explanations from a judge or terminate the case. If 2/3 majority is not reached, the case is regarded as terminated. Stage III. Investigation of disciplinary case: based on the decision of the HCOJ to accuse a judge of disciplinary misconduct and take explanations from him/her, the Independent Inspector conducts investigation of the case. Stage IV. Imposing disciplinary liability: following the investigation of a disciplinary case, the HCOJ decides to impose disciplinary liability on a judge by 2/3 majority of its members. If 2/3 majority is not reached, the case is regarded as terminated. Stage V. Decision: following imposition of disciplinary liability, the final decision about guilty misconduct of a judge is made by the Disciplinary Board of Judges of the General Court (a specialized body outside the court system).

The complaint/note shall be submitted to the Independent Inspector’s Office, which is established at the High Council of Justice of Georgia. Independent inspector is elected by the majority members

<sup>68</sup> Article 75<sup>1</sup>(8.b.g) of the Organic Law of Georgia on General Courts as of December 30, 2021: “Public expression of an opinion by a judge in violation of the principle of political neutrality.”

<sup>69</sup> Article 75<sup>1</sup>(8.b.g) of the Organic Law of Georgia on General Courts as of May 29, 2024: “public expression of an opinion by a judge in sheer violation of the principle of political neutrality. Scientific and/or analytical judgement of a judge about the judicial reform, the improvement of operation of the justice system and/or another issue regarding the development of law shall not be considered a sheer violation of the principle of political neutrality.”

<sup>70</sup> The same risks are raised in the Venice Commission Opinion on the Organic Law of Common Courts of Georgia, October 6-7, 2023 CDL-AD(2023)033 paras.: 31-33.

<sup>71</sup> Article 75<sup>1</sup>(8.b.g) of the Organic Law of Georgia on General Courts as of May 29, 2024: material breach, without reasonable excuse, by a judge of the time limit set by the procedural law of Georgia. The excuse for the material breach of this time limit shall not be deemed unreasonable if the judge failed to observe the aforementioned time limit due to the objective circumstances (a multitude of cases, complexity of a case, etc.) directly related to the administration of justice.

<sup>72</sup> Democracy Index – Georgia, Group of Independent Lawyers, The Problem of Case Delay in Common Courts of Georgia, 2023, p. 18-22 [https://democracyindex.ge/uploads\\_script/studies/tmp/phpB8XAL1.pdf](https://democracyindex.ge/uploads_script/studies/tmp/phpB8XAL1.pdf)

<sup>73</sup> Social Justice Center, System of Disciplinary Liability of Judges (2022-2023 Assessment Report), p. 22 [https://socialjustice.org.ge/uploads/products/covers/ENG\\_-\\_System\\_of\\_Disciplinary\\_Liability\\_of\\_Judges\\_1727882039.pdf](https://socialjustice.org.ge/uploads/products/covers/ENG_-_System_of_Disciplinary_Liability_of_Judges_1727882039.pdf)

of the High Council of Justice and serves for 5 years, with no restriction on being reelected. The competence of the Independent Inspector is limited to the preliminary examination of the disciplinary complaint/note. The Independent Inspector is authorized to transfer the findings of the preliminary examination only to the High Council of Justice or to refuse to initiate or terminate the disciplinary proceedings only on concrete grounds. Termination on the grounds that commission or culpable commission of a disciplinary misconduct was not proved is made by the High Council of Justice. The High Council of Justice is a so-called main “gatekeeper” in the disciplinary proceedings against a judge. On the submission of an Independent Inspector, the High Council of Justice decides: a. to initiate or refuse to initiate disciplinary proceedings; b. terminate the disciplinary proceedings against a judge; c. transfer the case to the prosecutor’s office for further investigation in case signs of crime are identified. Along with the role of a gatekeeper, the High Council of Justice also has a role of a prosecutor in disciplinary proceedings. The Council with 2/3 majority votes decides to accuse a judge of disciplinary misconduct and supports its accusation before the Disciplinary Board and further the Disciplinary Chamber. The standard of a high degree of probability is applied when making the accusation. Disciplinary cases against judges are considered by the Disciplinary Board of Judges of General Courts of Georgia, which consists of 3 judge members elected by the Conference of Judges and 2 non-judge members elected by the Parliament. The Disciplinary Board determines whether a judge has committed disciplinary misconduct and determines whether the judge is culpable. The decision is made by the majority votes of the Board members present. The decision of the Disciplinary Board may be appealed to the Disciplinary Chamber of the Supreme Court of Georgia. Three judges of the Supreme Court are assigned to a disciplinary case.

**Procedural rights and guarantees.** A judge is not informed about the preliminary examination of his/her case and does not participate in the first stage of disciplinary proceedings. At the preliminary investigation stage prohibition of double jeopardy is guaranteed. During investigation of disciplinary case a judge has the following rights and guarantees: a right to defense; submission of explanation is not an obligation of a judge; right to challenge Independent Inspector or member of the HCOJ or member of the Disciplinary Board; control over legality of judicial decisions is prohibited; right to be informed about the termination of a case; right to respond on the imposition of disciplinary liability and present evidence; right to participate in oral hearings of his/her case in the HCOJ or in the Disciplinary Board; equality of parties to disciplinary proceedings, etc. Disciplinary Board and the Disciplinary Chamber have no right to go beyond the scope of disciplinary accusation (facts of the case) and are authorized to reclassify the action of a judge to replace it with any other disciplinary misconduct.

**Transparency of disciplinary proceedings.** Disciplinary proceedings at all stages are strictly confidential. As an exception, an accused judge has a right to request that hearings in the HCOJ, in Disciplinary Board and the Disciplinary Chamber (except the deliberation and decision-making procedures) be public. A decision on accusation, imposition of disciplinary liability, termination of disciplinary case, suspension or resumption of disciplinary proceeding against a judge, the acquittal of a judge by the Disciplinary Board, or other decisions of the Disciplinary Board shall be forwarded to the applicant party and the judge. Decisions of the Independent Inspector and the HCOJ on termination of disciplinary proceedings, as well as decisions of the Disciplinary Board and the Disciplinary Chamber, shall be published on the relevant web pages.

**Disciplinary bodies.** A body having the competence to accuse a judge of disciplinary misconduct is the HCOJ. It consists of 15 members. More than half of HCOJ members are judges: 8 judge members are elected by the Conference of Judges from courts of each instance; chief justice of the Supreme Court of Georgia is an ex-officio member of the Council. 5 non-judge members are elected by the Parliament of Georgia with 3/5 qualified majority votes; one non-judge member is appointed by the President of Georgia. Non-judge members cannot hold political or prosecutorial positions and shall represent the society. Non-judge candidates of the HCOJ are selected from professors and scholars, members of GBA, and persons nominated by civil society organizations experienced in human rights protection and participation in court proceedings. Non-judge candidates shall hold a master's degree in law, at least 10 years of professional experience, an excellent reputation, and be recognized specialist in the field of law. HCOJ members are elected for a four-year term. Re-election is not prohibited. Disciplinary Board consists of 3 judges and 2 non-judge members. Judge members of the Disciplinary Board are elected by the Conference of judges for a 2-year term. Non-judge members of the Disciplinary Board are elected by the Parliament of Georgia by simple majority vote. Non-judge members of the Disciplinary Board shall have a higher education degree in law, at least 10 years of professional experience, he/she shall be a recognized expert in law, and have a high reputation. Non-judge members of the Disciplinary Board shall not hold any other public position or be engaged in entrepreneurial activities, or be engaged in any paid activity other than scientific, pedagogical, and creative activities.

**Appeal procedure.** A decision of the Disciplinary Board may be appealed to the Disciplinary Chamber of the Supreme Court of Georgia within 10 days. Within 5 days after the appeal of one or both parties to the case is received, the Disciplinary Board shall submit the appeal and the case to the Disciplinary Chamber and notify the parties. The following decisions of the Disciplinary Board may be appealed by parties: on the termination of a disciplinary proceeding; guilty decision, decision on acquitting a judge. The following grounds of appeal are established: incorrect legal classification of misconduct; Disciplinary Board has applied unlawful, unfair or inappropriate penalty; Disciplinary Chamber will repeal Disciplinary Board decision if it finds that any of the decisions – acquittal, termination of a case or imposition of disciplinary liability and a sanction applied – contradicts the law. The decision to remit the case to the Disciplinary Board for reconsideration is also envisaged (Article 75<sup>67</sup> of the Organic Law of Georgia on General Courts). The admissibility of the appeal is decided within 5 days after an appeal is received. The Disciplinary Chamber shall consider the case within 15 days after admission of the case. This term may be extended only once and by 15 days. Oral hearing is conducted on the case and parties are invited to participate. The Disciplinary Chamber considers the case on both factual and legal grounds and on the lawfulness of the penalty imposed. The Disciplinary Chamber is authorized to uphold or change the decision of the Disciplinary Board, revoke and make a new decision, or revoke and remit a case for reconsideration.

**Weaknesses of the disciplinary system and possible solutions.** The lack of guarantees for the independence of the Disciplinary Inspector undermines the impartiality of disciplinary investigations. Currently, the Inspector is elected by the High Council of Justice (HCOJ) through simple majority voting, making independent investigations unlikely. Furthermore, the Inspector's office functions as a structural unit within the HCOJ, which compromises its functional

independence. To address these issues, a qualified majority voting system should be introduced, and the authority to elect the Inspector should be transferred to Parliament. The selection process must also be transparent, with public announcements of competitions and candidate information. Additionally, the Inspector's powers are limited to investigation without the competence to prosecute disciplinary cases. The Inspector should be granted expanded powers, including the ability to summon and interrogate witnesses, request evidence from private organizations, and order expert examinations. The Disciplinary Board, which is responsible for adjudicating cases, operates on simple majority voting. This decision-making process excludes meaningful participation of non-judge members, further undermining confidence in the system. Transparency in disciplinary proceedings remains inadequate. HCOJ is not obligated to publish decisions on disciplinary accusations. Only decisions terminating disciplinary proceedings are disclosed. This lack of transparency erodes trust and limits accountability within the judiciary. The disciplinary mechanism itself is largely non-functional to the detriment of judicial independence. Cases are frequently delayed or terminated at the HCOJ level without resolution. Rarely are judges accused of misconduct, and even fewer cases are forwarded to the Disciplinary Board. As of January 2024, the HCOJ had not reviewed 76 conclusions prepared by the Independent Inspector as far back as 2021. Meetings on disciplinary matters are infrequent, and conclusions submitted by the Inspector often await discussion for years. This inefficiency leaves most judges vulnerable to prolonged disciplinary uncertainty and selective accountability. The increasing number of disciplinary complaints against judges highlights another issue. In 2022, 205 complaints were lodged, rising to 230 in 2023, with the majority concerning delays in court proceedings. Despite this, the HCOJ rarely prosecutes such cases and raises concerns about a selective approach. For example, in 2022, only one case out of 114 reviewed resulted in an accusation being forwarded to the Disciplinary Board, and the numbers were similarly low in 2023. The systemic overburdening of courts exacerbates the issue, placing judges at constant risk of disciplinary action for delays. To address this, disciplinary violations related to delays should not be tied strictly to statutory deadlines. Instead, they should be assessed based on the principle of "reasonable time," framed as violations occurring without valid excuses. This combination of structural, procedural, and practical flaws highlights the urgent need for comprehensive reform to ensure the independence, functionality, and fairness of Georgia's judicial disciplinary system.

**Case I. Decision of the Disciplinary Chamber of the Supreme Court of Georgia Case #SSD-26-19 September 27, 2019<sup>74</sup>** In September 2019, the Supreme Court of Georgia acquitted Judge M.Ts. of disciplinary charges related to alleged delays in a criminal case, finding that the delays were justified and not the result of intentional or negligent misconduct. The case, assigned to Judge M.Ts. in May 2014, faced delays due to the health condition of one defendant and the unavailability of legal counsel, resulting in 18 postponements. The judge's term expired in December 2016, further interrupting the proceedings. The case resumed upon the judge's reappointment in June 2017 and concluded with an acquittal in March 2018. The Supreme Court ruled that the delays were objectively justified and within the 36-month time limit established under the law in force at the

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<sup>74</sup> Full text of the decision is accessible in Georgian language <https://www.supremecourt.ge/old/files/upload-file/pdf/27-seqtemberi-26-19.pdf>

time, despite subsequent legislative amendments reducing the limit to 24 months. The court emphasized that unjustified delays, constituting a disciplinary offense, must involve a judge's intentional or negligent failure to fulfill obligations. Since no evidence of such failure was found, the judge was not held liable. The court also noted that the legislation of Georgia does not incorporate the principle of reasonable time for case consideration. Therefore, the judge could not be faulted for not expediting the case by holding external hearings or separating proceedings, especially as no motions for such actions were filed by the parties. The lack of motions indicated that the parties did not perceive the delays as unreasonable.

**Case II. Decision of the Disciplinary Board of Judges of the Common Courts of Georgia Case N1/01-2022, December 28, 2022<sup>75</sup>** In December 2022, the Disciplinary Board of Judges of the Common Courts of Georgia found Judge T.Kh. guilty of obstructing disciplinary proceedings and imposed a reprimand as a penalty. The case arose from a 2018 disciplinary complaint filed by K.O., for which the Independent Inspector requested case materials from Judge T.Kh. on December 13, 2018. Despite repeated requests, the judge delayed submitting the materials, eventually providing them on February 7, 2019, one month and 25 days after the initial request. This delay hindered the Independent Inspector's investigation, which had a strict two-month timeframe to prepare conclusions. The High Council of Justice initiated formal disciplinary proceedings in October 2020, and Judge T.Kh. provided an explanatory note in December 2020. The Disciplinary Board determined that the judge's actions constituted deliberate obstruction, citing the judge's own admission that the materials were withheld to avoid a potentially negative conclusion by the Inspector. The board emphasized that repeated intentional neglect of lawful requests is incompatible with judicial conduct, rejecting the judge's justification as insufficient. Although a separate disciplinary proceeding against Judge T.Kh. for delaying the final judgment in the same case was terminated in September 2020, the Board concluded that the delay in submitting case materials to the Independent Inspector significantly disrupted the disciplinary process. Consequently, the judge was reprimanded for behavior unbecoming of a judicial officer.

**Case III. Decision of the Disciplinary Board of Judges of the General Courts of Georgia, Case N2/01-2020, December 11, 2020.<sup>76</sup>** The case involved a lawsuit filed on July 5, 2016, seeking the registration and realization of a debtor's mortgaged property. The judge upheld the lawsuit on September 8, 2016. However, on October 21, 2016, a party appealed the decision and requested the judge's disqualification, revealing that the judge's spouse was an employee of the party and had represented the company in court. The judge admitted to the disciplinary offense, acknowledging that he should not have participated in the case. He stated he was unaware of his spouse's involvement until after the disciplinary complaint was filed. The Disciplinary Board concluded that the judge had violated the law by failing to recuse himself but found no evidence of criminal intent. The refusal to recuse was determined to be a disciplinary offense, as the judge's impartiality could have been reasonably questioned. In deciding the penalty, the Board considered the judge's previously unblemished record, good moral standing, and the lack of harm caused by the

<sup>75</sup> Full text of the decision is accessible in Georgian language [http://dcj.court.ge/uploads/gadackvetilebebi/18\\_12\\_2022\\_101.pdf](http://dcj.court.ge/uploads/gadackvetilebebi/18_12_2022_101.pdf)

<sup>76</sup> Full text of the decision is accessible in Georgian language, <http://dcj.court.ge/uploads/gadackvetilebebi/123.pdf>

misconduct. The case had been handled without an oral hearing, and no party suffered damages as a result. The judge's refusal to recuse himself was addressed with a private letter of recommendation, reflecting the relatively minor consequences of the misconduct and the judge's overall reputation.

## HUNGARY

**Legal Framework.** Disciplinary proceedings against judges in Hungary are governed by a combination of primary and secondary legal norms, providing a cohesive framework for accountability across all judicial levels. The primary legal norms are established through constitutional acts passed by a two-thirds majority in the National Assembly. These include the Act CLXII of 2011 on the Legal Status and Remuneration of Judges, which details the disciplinary responsibilities of judges in a dedicated chapter, and the Act CLXI of 2011 on the Organization and Administration of Courts, which touches on disciplinary proceedings in the context of the National Judicial Council's tasks and other court management issues. The secondary norms, adopted by the service courts and approved by the National Judicial Council, further regulate disciplinary procedures. The Rules of Procedure of the Service Courts outline the composition of acting panels, rules for case allocation, and the scope of the service court's authority. They also address the exclusion of service judges and investigating commissioners, case management, and the procedures for first- and second-instance disciplinary hearings, as well as the obligation to inform relevant parties. Together, these primary and secondary norms form a binding framework for all judges, regardless of their judicial rank or jurisdiction, ensuring a uniform approach to disciplinary accountability within Hungary's judiciary.

**Disciplinary proceedings-** Disciplinary proceedings in Hungary are adjudicated by *two service courts* with nationwide jurisdiction: the Service Court of First Instance at the Budapest Regional Court of Appeal, and the Service Court of Second Instance at the Kúria (the Supreme Court of Hungary). Both courts handle disciplinary matters, ensuring consistency and fairness in the judiciary's accountability processes. The service court judges, who are themselves full-time acting judges, serve a term of nine years upon appointment. Judges for the service courts are nominated during plenary meetings of the Kúria, regional courts of appeal, and regional courts. The National Judicial Council appoints the chair and members of the service courts from among the nominated judges, while the vice-chair is appointed by the chair of the respective service court. According to the law, the Service Court of First Instance may consist of up to 75 judges, while the Service Court of Second Instance is limited to 15 judges. Judges holding certain top leadership positions are ineligible for service court appointments. The service courts are required to report annually to the National Judicial Council, detailing their compliance with the Rules of Procedure during the previous year. This report includes the number of cases filed, cases concluded, pending cases, the punishments imposed, and the number and nature of complaints received. During the first quarter of each year, the National Judicial Council reviews and approves the report, which is then published on the judiciary's intranet. To ensure confidentiality, only impersonalized final decisions are made



publicly available, protecting the identities of the judges involved. Professional misconduct is defined by law as instances where judges culpably violate their service obligations or harm the reputation of the judiciary through lifestyle or behavior. The current Code of Ethics for Judges, adopted in 2022 under decision no. 16/2022 (III.2.) by the National Judicial Council outlines the minimum rules of conduct expected in both official and personal capacities, emphasizing the importance of integrity and professionalism in maintaining public trust in the judiciary.

**Initiation of Disciplinary Proceedings.** Disciplinary proceedings for judges in Hungary are initiated by clear procedural and legal standards. If professional misconduct is suspected in the case of a court president or other high-level court executive, the individual with appointment authority initiates disciplinary proceedings before the chair of the Service Court of First Instance. For judges who are not court executives, the process varies depending on their position. The President of the Kúria initiates proceedings for Kúria judges, the president of the regional court of appeal for appellate judges, and the president of the regional court for judges in regional and district courts. In all cases, proceedings begin with the abovementioned Service Court of First Instance. The President of the National Office for the Judiciary, responsible for court administration, may initiate disciplinary proceedings only against high-level court executives or judges seconded to the office. Such proceedings must begin within three months of the entity learning of the facts or within three years of the misconduct. The judge in question must be notified promptly of the initiation, and if initiated by another authority, the President of the National Office for the Judiciary must also be informed. If the alleged misconduct is minor value and has negligible consequences, disciplinary proceedings may be waived in favor of a written warning. However, judges can request that full proceedings be initiated instead. In such cases, the proceedings must proceed without refusal. The law provides essential procedural rules, while secondary norms cover more detailed aspects. An investigating commissioner, selected from the service court judges, conducts the initial phase by gathering evidence, interviewing involved parties, and preparing for the disciplinary trial. The commissioner can access court documents and require cooperation from judges and court staff.

The disciplinary case is adjudicated by a three-member panel of the service court in a non-public trial. The judge under investigation may be represented by another judge or an attorney, and all parties, including the investigating commissioner and the initiator of the proceedings, must attend the hearing. Evidence can be presented, and questions may be raised during the trial. Deadlines exist for certain procedural steps, such as the investigating commissioner's report (30 days) and decisions to initiate proceedings (15 days). However, there is no specific deadline for the final decision. Judges facing criminal proceedings, except those involving private actions, are subject to disciplinary proceedings. The president initiating the proceedings determines whether the judge can continue handling cases during this time. Suspension from office is mandatory in cases involving arrest, involuntary treatment in a mental institution, or charges brought by the public prosecutor that could impede the establishment of facts in court. Suspension is discretionary in other cases where the judge's presence could hinder the investigation or when the severity of the misconduct justifies absence from service. During suspension, judges receive their salary, though up to 50% may be retained for one month. If a decision to remove a judge from office is made, their salary may be fully retained until the decision becomes final. Judges undergoing disciplinary proceedings or facing disciplinary sanctions cannot be appointed to specific posts, such as

president of the National Office for the Judiciary, president of the Kúria, or member of the National Judicial Council. Additionally, elected membership in the National Judicial Council is terminated upon disciplinary proceedings or punishment.

**Decisions, Disciplinary Sanctions and Legal Remedies.** Disciplinary proceedings in Hungary culminate in various possible outcomes, depending on the circumstances and findings. The service court may decide to dismiss the case against the judge, terminate the proceedings either with or without a warning, or find the judge liable and impose a disciplinary sanction. If a judge's service is terminated during the proceedings, the service court may establish liability for professional misconduct but cannot impose a disciplinary sanction. The sanctions for professional misconduct are carefully calibrated and include the following measures: a reprimand, a censure, a downgrade by one or two pay grades, a discharge from an executive or leadership position, or a motion for dismissal from judicial office. The disciplinary sanction must be proportional to the seriousness of the misconduct, its consequences, and the degree of culpability involved. Once a decision is reached, the service court is required to serve a copy of the disciplinary decision to the judge and the initiator of the proceedings within eight days of its announcement. Both parties have the right to appeal the first-instance decision within fifteen days of receiving it. Appeals are reviewed by the Service Court of Second Instance, which adheres to the same procedural rules as the first-instance proceedings. A judge under the effect of a disciplinary sanction is subject to certain limitations. They are ineligible for promotion to a higher position, cannot be appointed to an executive or leadership office, cannot be transferred to a higher pay grade, and are barred from receiving titles associated with higher judicial offices. However, judges may seek exoneration from these legal consequences after a defined period, provided they have not been implicated in other disciplinary proceedings. Exoneration requests are reviewed by the Service Court of First Instance, offering an opportunity for judges to rehabilitate their professional standing within the judiciary.

**Practical Application and Implications.** Disciplinary proceedings in Hungary are governed by a combination of statutory laws and secondary norms outlined in the Rules of Procedure of the service courts. While the law establishes the fundamental framework, including the competencies of service courts and general legal consequences, many procedural specifics, such as the detailed conduct of disciplinary hearings, are delegated to these rules. The Rules of Procedure are adopted at a joint meeting of service court judges from both the first and second instances. For validity, more than half of all service court judges must be present to constitute a quorum, and adoption requires a two-thirds majority of those present. The National Judicial Council, with a quorum of at least ten members out of fifteen, must then approve the rules by a simple majority. Upon approval, the rules are published for public access. The current Rules of Procedure, effective since 2020, provide guidance in areas left unregulated by the legislature. These include: (I) General Provisions: Competences and composition of service courts, rules on the exclusion of judges and investigating commissioners, and guidelines for administration and training. (II) Disciplinary Procedures: Steps for initiating proceedings, roles and responsibilities of the investigating commissioner, and the process for first- and second-instance hearings. (III) Conflict of Interest and Dispute Resolution: Rules for addressing service-related disputes. (IV) Case Allocation and Panel Composition: Detailed annexes specify how cases are distributed and panels formed. Despite the comprehensive structure, the rules often reiterate statutory provisions or focus on internal operations, leaving the disciplinary

hearing process minimally detailed. The disciplinary process begins when allegations of professional misconduct arise. The Investigating Commissioner which is appointed by the president of the service court, preferably from the same division as the accused judge, conducts preliminary investigations. Responsibilities include interviewing the judge, witnesses, and experts; reviewing evidence; and preparing a detailed report within 30 days. The report must address both incriminating and exculpatory facts, along with recommendations. The Panel Formation comes when cases are adjudicated by a rotating three-member panel, with chairmanship alternating among members. Ad hoc panels may be formed for extraordinary cases. Decisions require majority approval and are deliberated in closed sessions. The disciplinary hearings commence with a formal decision by the service court panel. Judges are informed of their right to silence and protection against self-incrimination. Witnesses and experts are warned about the legal consequences of false testimony or opinions. The judge, their representative, and the initiating party may present arguments and ask questions during the hearing. Sanctions must be proportional to the seriousness of the misconduct and the degree of culpability. The service court presidents must submit annual reports to the National Judicial Council and the President of the National Office for the Judiciary by February 15. These reports summarize case statistics, decisions made, and procedural compliance. Appeals against first-instance decisions are allowed within 15 days of receipt. The Service Court of Second Instance reviews appeals under similar procedural rules, addressing deficiencies within 15 days and setting hearings promptly. Appeals may introduce new facts and evidence but must adhere to initial time limits. While the Rules of Procedure provide a framework for disciplinary processes, their lack of detail in certain areas, particularly regarding disciplinary hearings, can result in inconsistent practices. Most rules focus on internal operations, leaving substantive procedural guidance underdeveloped. Furthermore, the service courts lack independent staff and budgets, relying on administrative support from the Budapest Regional Court of Appeal and the Kúria. Nonetheless, provisions for impartial investigations, annual reporting, and training for service court judges enhance the system's accountability. The inclusion of specific rules for appeals and suspension ensures procedural fairness, balancing judicial accountability with the protection of judicial independence.

**Statistical Data.** The table includes only disciplinary cases, excluding judge assessments, tender objections, and discharges, which are rare. With around 2,800 judges in Hungary, disciplinary proceedings remain low, consistently below 1% annually, and recently under 0.5%. Cases where judges received written warnings are only counted if appealed. Most disciplinary cases result in sanctions, while some end in acquittals or discontinuance. Appeals to the Second Instance Service Court generally uphold first-instance decisions, with occasional modifications. In 2023, 55% of cases were resolved within three months, 35% in three to six months, and 10% in over six months, but all were completed within a year, ensuring timeliness.<sup>77</sup>

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<sup>77</sup> All statistical data are based on the annual reports of the presidents of the service courts

Year	Initiated cases (number)	Completed cases (number)
2018	25	24
2019	36	36
2020	25	27
2021	15	23
2022	12	13
2023	12	15

**Challenges and Controversies.** A central issue concerning service courts that adjudicate disciplinary proceedings against judges, is their constitutional legitimacy. The current President of the Kúria (Supreme Court), whose election was objected by the National Judicial Council due to tailor-made legislation facilitating his appointment despite a lack of courtroom experience, argues that service courts may be unconstitutional. He contends that the Eighth Amendment to the Fundamental Law of Hungary, which removed provisions allowing for separate courts for specific categories of cases, undermines their legitimacy. According to this amendment, as of December 13, 2019, only district courts, regional courts, regional courts of appeal, and the Kúria may be recognized under the Fundamental Law.<sup>78</sup> Despite these constitutional changes, service courts continue to function under a cardinal law, and no legislative initiative or legal action has been introduced to challenge their existence. This alleged legal ambiguity raises questions about their long-term viability, taking into account that the powers of the Kúria have been steadily increasing in recent years.

Concerning the issue of the right to legal remedy, which is stipulated in Article XXVIII(7) of the Fundamental Law, guaranteeing everyone the right to a remedy against judicial, administrative, or other decisions affecting their rights or legitimate interests. In disciplinary proceedings against judges, however, this right appears to be limited. While decisions of the Service Court of First Instance can be appealed to the Service Court of Second Instance, the appeal process remains within the service court system, unlike other legal professions (e.g., the Bar), where decisions can be challenged in ordinary courts.<sup>79</sup> The only further recourse against final disciplinary decisions is through a constitutional complaint. The Constitutional Court can review such complaints exclusively for breaches of fundamental rights. If a breach is found, the disciplinary decision may be annulled. This limited scope of remedy highlights a potential gap in judicial accountability and procedural safeguards.<sup>80</sup> Issues in substantive and procedural fairness have been raised regarding the functioning of service courts. While the Rules of Procedure provide some framework, they are not considered formal legal instruments under the Act on Legislation. This raises questions about their legitimacy and enforceability. Despite being approved by the National Judicial Council, the adoption process lacks the rigor typically associated with legislative acts. Proceedings in service courts are entirely confidential; publicity of the hearings is clearly prohibited by the law, even at the request of the judge involved. This absolute exclusion of public scrutiny undermines transparency

<sup>78</sup> Decision no. 120/2020. (X. 9.) of the National Judicial Council

<sup>79</sup> Decision no. SzfÉ.8/2023/7. of the Service Court of Second Instance at the Kúria

<sup>80</sup> Decision no. 21/2014. (VII. 15.) of the Constitutional Court of Hungary

and fair trial principles. Regarding presumption of innocence, judges under disciplinary proceedings may face suspension, salary withholding, and restrictions on promotions or bonuses. These measures, imposed before a final decision, conflict with the presumption of innocence. Another issue is unclear procedural safeguards, where neither the law nor the Rules of Procedure comprehensively regulate key aspects of disciplinary hearings, including: detailed procedural steps, rights and obligations of participants, access to case documents, oversight of discretionary decisions to initiate or not initiate proceedings. Further questions about judicial attire during service court hearings—unaddressed in procedural rules—were resolved informally, with judges wearing robes in practice.<sup>81</sup> Disciplinary proceedings are not governed by any background provisions, so there is no room for reference to the rules of the Code of Civil Procedure, the Code of Criminal Procedure or the Labour Code. Even though the exact rights and obligations of the participants in the proceedings (the judge, witnesses) to be informed before their hearing are not yet settled, the single sentence in the Rules of Procedure is clearly not sufficient. The right of access to documents for the judge's representative is not regulated either; in practice, the presidents do not hand out documents to the judge's representative, citing the GDPR. Moreover, the initiation of proceedings is a discretionary decision; neither the initiation nor the non-initiation of proceedings is subject to any control.<sup>82</sup> The lack of clear procedural regulations continues to undermine the legal certainty of disciplinary proceedings. In 2020, the Ministry of Justice announced plans to address these gaps through consultations and the creation of a working group. However, progress has been sporadic.<sup>83</sup> By 2022, the President of the Service Court of First Instance reported submitting technical proposals to amend the Act on the Legal Status and Remuneration of Judges.<sup>84</sup> By 2023, the working group was suspended without further updates.<sup>85</sup> In 2024, discussions on regulatory reform resurfaced, but no concrete outcomes or public documents have emerged. This persistent delay perpetuates procedural uncertainties, posing challenges to the principles of fairness, transparency, and accountability in Hungary's judiciary.

**Threats to Judicial Independence.** The National Judicial Council (NJC) supervises and assists the President of the National Office for the Judiciary (NOJ) in the central administration of courts. In 2018, tensions arose when the NJC investigated the appointment practices of the NOJ President. In response, the President ceased cooperation with the NJC, citing alleged compositional issues despite the Council maintaining a quorum. This constitutional crisis limited the NJC's ability to exercise its oversight powers, as the NOJ President refused to engage or submit required information. The crisis eventually ended with the NOJ President's election to the Constitutional Court, and cooperation resumed under a new NOJ President.<sup>86</sup> During the crisis, judicial independence and disciplinary procedures were significantly impacted. The NJC could not elect sufficient service court members because the NOJ President failed to provide a list of eligible judges. Despite NJC's efforts to increase service court membership to the statutory 75 from the then 34, these attempts were obstructed. The President of the Service Court of First Instance warned that

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<sup>81</sup> Minutes of the meeting of the National Judicial Council on 3 March 2021

<sup>82</sup> 2021 Annual report of the President of Service Court of First Instance

<sup>83</sup> Minutes of the meeting of the National Judicial Council on 4 March 2020

<sup>84</sup> Minutes of the meeting of the National Judicial Council on 2 March 2022

<sup>85</sup> Minutes of the meeting of the National Judicial Council on 1 March 2023

<sup>86</sup> Viktor VADÁSZ: Crisis in the Hungarian judicial administration? (Law Working Papers of Hungarian Academy of Science – 19 June 2018)

the reduced membership endangered the court's functionality. Her successor reported improved operational capacity but faced criticism from NJC members for engaging with the NOJ President, who is a party in disciplinary cases and not entitled to influence service court operations. Additional concerns arose over the NOJ opening service court submissions to the NJC, further straining relations.<sup>87</sup> This period highlighted structural vulnerabilities in Hungary's judiciary, emphasizing the need for robust safeguards to preserve judicial independence and procedural integrity.

**Disciplinary Initiative as a Method of Muzzling Judges.** Hungary has faced significant challenges to judicial independence in recent years, becoming a potential model for similar actions in other states. Hungarian judges have experienced various violations, including forced early retirement, irregular judicial appointments, restrictions on freedom of expression, unjust disciplinary actions, workplace discrimination, media smear campaigns, and the lowest judicial salaries in the European Union.<sup>88</sup> One notable incident occurred in 2018, when the then-President of the National Office for the Judiciary (NOJ) and certain court presidents attempted to initiate disciplinary proceedings against members of the National Judicial Council (NJC). In a highly irregular move, the initiator of these proceedings violated the principles of fair trial and confidentiality by informing all court leaders and judges about the actions. The proceedings were ultimately discontinued because the NJC did not consent to disciplinary measures against its members, a legal prerequisite. This episode underscores the persistent threats to judicial independence and the importance of safeguarding judicial governance mechanisms.<sup>89</sup> A serious breach of the independence of the judiciary was the initiation of disciplinary proceedings against the judge by the President of the Budapest Regional Court, who referred questions to the Court of Justice of the European Union for a preliminary ruling on the issue of judicial independence, resulting in an important Luxembourg decision.<sup>90</sup> The Hungarian Association of Judges also expressed its protest against the disciplinary initiative.<sup>91</sup> The disciplinary initiative was quickly withdrawn by the President of the Budapest Regional Court, so this disciplinary procedure did not end with a disciplinary sanction, but, like the other methods of violating judicial independence listed above, it had a chilling effect on judges in case they stood up for judicial independence.

Another noteworthy development is that when, at the end of 2024, hundreds of Hungarian judges wrote to the website of the judges' associations to protest against the agreement on judicial pay rise linked to certain judicial reforms, which was signed under political pressure between the Minister of Justice and the new NJC, the presidents of the service courts publicly declared their support for freedom of expression of judges. In their letter<sup>92</sup>, they wrote that "Judges have the right to express their opinions within the legal framework, in accordance with the Code of Ethics for Judges, and under international conventions, and that they are obliged to do so in order to protect the independence of the judiciary. We will continue to ensure that the service courts uphold this

<sup>87</sup> Minutes of the meeting of the National Judicial Council on 8 May 2019

<sup>88</sup> Tamás MATUSIK and Sabine MATEJKA: Distinguished Presidents, Dear Colleagues - Speech given at IAJ Judicial Independence Award Ceremony in Taipei (Österreichische Richterzeitung 12/23 – 2023)

<sup>89</sup> Statement of the National Judicial Council on 2 August 2019

<sup>90</sup> CJEU decision C-564/19 IS

<sup>91</sup> Statement of the Hungarian Association of Judges (MABIE) on 8 November 2019

<sup>92</sup> <https://mabie.hu/images/LEVELEK%202024/1209/Szolgalati%20Birosag%20levele.pdf>



principle in their proceedings and that judges are not prejudiced by the opinions they express on the agreement." After this, the President of the Kúria sharply attacked the service courts again, claiming that "its presidents are fabricating falsehoods when, by stepping out of their judicial role, denying the requirement of impartiality, and giving prior exemption from the consequences of any unconstitutional or illegal conduct, and they are at the forefront of misleading judges."<sup>93</sup> It should be noted that the President of the Kúria has previously challenged the Code of Ethics for Judges before the Constitutional Court, precisely because of what he considered to be an overly broad interpretation of freedom of expression, which is still a pending case before the Constitutional Court<sup>94</sup>. This also contributes to the chilling effect when it comes to the protection of judicial independence.

## KOSOVO

**Legal Framework.** The Kosovo Judicial Council (KJC) holds a central position in maintaining judicial accountability, as outlined in the Kosovo Constitution.<sup>95</sup> It oversees various essential tasks, including judicial inspections, court administration, and the development of court rules, while also playing a critical role in handling disciplinary proceedings against judges.<sup>96</sup> To streamline its judicial accountability framework, Kosovo enacted a series of new laws in 2018. These include the Law on Courts<sup>97</sup>, the Law on the Kosovo Judicial Council<sup>98</sup>, the Law on the Kosovo Prosecutorial Council<sup>99</sup>, and the Law on Disciplinary Liability of Judges and Prosecutors (LDLJP)<sup>100</sup>, which was later amended to address emerging challenges. Complementing these legislative measures, the KJC adopted a regulation in 2019 to provide detailed procedures for managing disciplinary complaints, investigations, and decisions.<sup>101</sup> The 2019 KJC regulation further specifies how complaints are received, investigated, and resolved, ensuring a structured approach to maintaining judicial accountability. The Law on Disciplinary Liability of Judges and Prosecutors serves as a cornerstone in defining the mechanisms for addressing judicial misconduct. It establishes clear guidelines for disciplinary offenses and sanctions, procedures for initiating and investigating complaints, and the processes for adjudicating cases before the KJC or the KPC. Legal remedies are also outlined, allowing appeals of disciplinary decisions to the Supreme Court. The Law outlines various actions that constitute violations of a judge's duties. These include acting with bias or prejudice, failing to treat parties and participants in proceedings with fairness, disclosing non-public information,

<sup>93</sup> Minutes of the meeting of the National Judicial Council on 11 December 2024

<sup>94</sup> <https://alkotmanybirosag.hu/ugyadatlap/?id=B1E83AFC8B10B1D2C125885B005B3B7E>

<sup>95</sup> In Kosovo the judicial and prosecutorial systems are separate bodies, and disciplinary proceedings are conducted by KJC for judges, and KPC for prosecutors. Therefore, whenever only judges or prosecutors are mentioned, it is understood that the respective Councils are competent.

<sup>96</sup> Article 108 (par. 1, 3 and 5) of the Constitution of the Republic of Kosovo. [https://mapl.rks-gov.net/wp-content/uploads/2017/10/1.CONSTITUTION\\_OF\\_THE\\_REPUBLIC\\_OF\\_KOSOVO.pdf](https://mapl.rks-gov.net/wp-content/uploads/2017/10/1.CONSTITUTION_OF_THE_REPUBLIC_OF_KOSOVO.pdf), see also Article 7 par.1.14 of the Law on Courts.

<sup>97</sup> Law No.06/L-054 on Courts <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18302>

<sup>98</sup> Law No.06/L-055 on Kosovo Judicial Council <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18335>

<sup>99</sup> Law No.06/L-056 on Kosovo Prosecutorial Council <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18920>

<sup>100</sup> Law No.06/L-057 On Disciplinary Liability of Judges and Prosecutors, Official Gazette of the Republic of Kosova, No.23, 26 December 2018 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18336>

accepting improper gifts, abusing official positions, neglecting to report conflicts of interest, or failing to perform duties in a timely manner.<sup>102</sup> Other prohibited actions involve engaging in ex-parte communication, interfering with other judges' decisions, making inappropriate public statements during proceedings, or disclosing case details unlawfully. Judges are also barred from political activities, providing false information in disciplinary matters, neglecting mandatory training, or engaging in behavior that damages public confidence in the judiciary or the court's reputation. The current legal framework identifies three broad categories of disciplinary offenses: conviction of a criminal offense, violation of the law, and violation of official duties as a judge. However, despite its comprehensive structure, the law lacks clarity in two critical areas. It does not specify which criminal offenses would lead to disciplinary action or define what constitutes a "violation of the law" in the context of judicial misconduct. This ambiguity leaves room for interpretation and potential inconsistencies in applying disciplinary measures. To strengthen accountability mechanisms and promote ethical standards, the KJC has also established an Advisory Committee for Judicial Ethics.<sup>103</sup> This committee provides judges with guidance on ethical dilemmas, helping them understand and adhere to the Code of Professional Ethics for Judges and the Law on Disciplinary Responsibility of Judges and Prosecutors. Judges can consult the committee on various issues, ranging from conducting outside official duties to case management practices. The work of the Advisory Committee is distinct from that of the KJC's disciplinary bodies, which focus on investigating and adjudicating allegations of past misconduct. The committee has issued advisory opinions on numerous topics, including ethical concerns about judges' participation in prize games, the efficient use of working hours, and communication with justice system monitors. By offering proactive ethical guidance, the committee complements the disciplinary framework, fostering a culture of accountability and integrity within Kosovo's judiciary.

**Practical Operations of the Disciplinary System.** Before the legislative changes of 2018, the responsibility for investigating and recommending disciplinary measures against judges rested with the Office of the Disciplinary Counsel (ODC). The ODC, an independent body staffed by civil servants rather than judges, served both the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC).<sup>104</sup> Its primary role was to investigate allegations of misconduct by judges and prosecutors. Upon completing investigations, the ODC would present its findings and recommend disciplinary actions to the Disciplinary Commission within the KJC or KPC.<sup>105</sup> This framework positioned the ODC as an external authority empowered to initiate disciplinary proceedings and propose sanctions. With the enactment of the Law on Disciplinary Liability of Judges and Prosecutors (LDLJP), accountability mechanisms were centralized within the judiciary, specifically under the KJC and KPC. Unlike the earlier system relying on the external ODC, the new law entrusts these councils with the full responsibility for managing disciplinary processes internally. This shift ensures that disciplinary proceedings are handled exclusively within the judiciary. The law introduces the concept of a "Competent Authority" to receive complaints against judges. The appropriate authority depends on the judge's position: (a) For judges of lower courts, complaints

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<sup>103</sup> More information on the Advisory Committee for Judicial Ethics, available at: <https://www.gjyqesori-rks.org/judicial-ethics-advisory-committee/?lang=en>

<sup>104</sup> Law No.03/L-223 on the Kosovo Judicial Council, Official Gazette of the Republic of Kosova No. 84, 03 November 2010, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18335>

<sup>105</sup> Ibid, Article 43

are filed with the president of the respective court. (b) For court presidents, complaints go to the President of the Supreme Court. (c) For the President of the Supreme Court, complaints are directed to the KJC.<sup>106</sup> The Law lacks explicit provisions outlining the Supreme Court President's authority to oversee disciplinary proceedings against Supreme Court judges. This clarification is necessary to address a potential legal gap, as the current law does not explicitly grant this authority to the Supreme Court President. Complaints can also be filed with the Ombudsman, who forwards them to the relevant court president. However, the Ombudsman may request the KJC to initiate a disciplinary investigation if they believe a complaint has been unjustly dismissed. This dual role of the Ombudsman in judicial disciplinary matters has raised questions about potential conflicts with other institutions and alignment with constitutional principles. Upon receiving a written complaint, the competent authority has 30 days to review it and decide whether to request the KJC to initiate a disciplinary investigation, or to dismiss the complaint for reasons such as being frivolous, unfounded, unrelated to disciplinary offenses, or subject to statutory limitations (if five years have elapsed since the alleged violation). While the competent authority assesses complaints, they do not conduct investigations directly. Instead, they request the KJC's disciplinary panels to initiate formal inquiries, streamlining the process and enabling quicker responses to potential misconduct.

**Key Actors.** Disciplinary investigations into alleged offenses by judges are conducted by investigation panels, which play a critical role in establishing facts and collecting evidence. Each panel is composed of three judges, randomly selected from a roster of approximately 80 judges maintained by the Kosovo Judicial Council (KJC).<sup>107</sup> The KJC serves a dual function in this process: appointing the chair and members of the investigation panel and acting as the disciplinary body that reviews the panel's findings and decides on appropriate actions. During the investigation process, the law provides for three potential outcomes: Voluntary Settlement: The judge or prosecutor under investigation may agree to a voluntary settlement with the investigation panel regarding the alleged disciplinary offense. Suspension: The KJC may suspend a judge or prosecutor if the seriousness of the alleged offense or the need to protect the investigation's integrity warrants such action. Suspended individuals receive 50% of their monthly salary during the suspension period.<sup>108</sup> Completion of Investigation: The investigation panel must complete its inquiry within three months of its formation and submit a written report to the KJC, the individual under investigation, and the Competent Authority that requested the investigation. This report details the evidence and facts established during the process. Once the KJC receives the investigation report or a settlement agreement, it must convene within 30 days. Disciplinary sessions of the Council are conducted privately but are audio-video recorded for accountability. The KJC reviews the investigation report to determine if a disciplinary offense occurred. If the Council finds a violation, it issues a written, justified decision within two months of receiving the panel's report. Sanctions available to the KJC include: (a) Non-public written reprimand. (b) Public written reprimand. (c) Temporary wage reduction of up to 50% for a maximum of one year. (d) Temporary or permanent transfer to a lower-level court or prosecution office. (e) Proposal for dismissal. To safeguard judicial

<sup>106</sup> Article 2 par.1.1 and Article 9 par.1 of the Law on Disciplinary Liability of Judges and Prosecutors.

<sup>107</sup> See Article 12 par. 5 of the Law No.06/L –057 On Disciplinary Liability of Judges and Prosecutors, Official Gazette of the Republic of Kosovo, No.23, 26 December 2018 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18336>

<sup>108</sup> See Article 2 of the Law No. 08/L -003 on Amending and Supplementing the Law No. 06/L-057 No.06/L –057 on Disciplinary Liability of Judges and Prosecutors, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18336>

independence, the Kosovo Constitution stipulates that judges cannot be involuntarily transferred or have their salaries reduced, except as a disciplinary measure. Transfers or salary reductions may only be imposed as sanctions following a decision by the KJC.<sup>109</sup> These procedures aim to balance the need for accountability with the protection of judicial independence, ensuring that disciplinary measures are applied fairly and transparently.

**Appeals and Transparency.** Disciplinary decisions by the Kosovo Judicial Council (KJC) can be appealed directly to the Supreme Court within 15 days of receipt. No other court in Kosovo has jurisdiction to review such cases. Appeals to the Supreme Court have a suspensive effect, meaning the Council's decision is not implemented until the appeal process is concluded. A three-member panel of Supreme Court judges, appointed by the Court's President, reviews the appeal within 30 days.<sup>110</sup> If the Supreme Court President is the subject of the disciplinary decision, the oldest Supreme Court judge assumes the responsibility of appointing the panel. The Supreme Court has the authority to confirm, amend, or return the Council's decision for further review. If the Council fails to act within 30 days of receiving the Supreme Court's decision, the Supreme Court resolves the case within 15 days. All decisions of the Supreme Court in disciplinary matters are final. Although some disciplinary decisions have been challenged before the Constitutional Court, most applications have been dismissed for procedural reasons, such as claims being treated as a "fourth instance" or deemed unreasoned. To date, the Constitutional Court has not found the disciplinary process or related laws unconstitutional.<sup>111</sup> In an important (significant) case, a court president appealed a KJC decision clearing a judge of disciplinary charges, to the Supreme Court. The Supreme Court dismissed the appeal, ruling that the "competent authority" cannot appeal directly to the Supreme Court. This right is reserved for the judge subject to disciplinary proceedings or the KJC itself. The decision aligns with CCJE Opinion No. 3 on the Ethics and Liability of Judges, emphasizing that the role of the "competent authority" is limited. When the court president further appealed the Supreme Court's decision to the Constitutional Court, the application was deemed inadmissible. The Constitutional Court underscored that the court president was not an authorized party to challenge a decision issued in a procedure where they were not considered a procedural party, nor did the decision affect their individual rights or freedoms.<sup>112</sup> This ruling reinforces the principle that judicial disciplinary processes should focus on the rights of the judge involved. The KJC has made notable progress in promoting transparency in judicial disciplinary matters.<sup>113</sup> While disciplinary hearings are closed to the public by law, final decisions on disciplinary liability—excluding non-public reprimands—are published on the KJC website. The website serves as a vital tool for public access to information, offering disciplinary decisions in Albanian and Serbian.

<sup>109</sup> Article 104 of the Constitution, see also Article 28 par.4 and Article 35 par.2 of the Law on Courts

<sup>110</sup> Article 32 of the Law on KJC, and Article 15 par.5 of the LDLJP

<sup>111</sup> Constitutional Court of Kosovo, [https://gjk-ks.org/wp-content/uploads/2021/06/ki\\_125\\_20\\_av\\_ang.pdf](https://gjk-ks.org/wp-content/uploads/2021/06/ki_125_20_av_ang.pdf); <https://gjk-ks.org/decision/vleresim-i-kushtetutshmerise-se-aktgjykimit-aa-nr-44-2023-te-gjykates-supreme-te-kosoves-te-19-tetorit-2023/>

<sup>112</sup> Constitutional Court of Kosovo, <https://gjk-ks.org/decision/vleresim-i-kushtetutshmerise-se-aktvendimit-te-gjykates-supreme-aa-nr-14-2020-te-13-janarit-2021/>

<sup>113</sup> Commission Staff Working Document Kosovo\* 2024 Report Accompanying The Document Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of Regions 2024 Communication On Eu Enlargement Policy, See Page 5: [https://Neighbourhood-Enlargement.Ec.Europa.Eu/Document/Download/C790738e-4cf6-4a43-A8a9-43c1b6f01e10\\_En?Filename=Kosovo%20report%202024.Pdf](https://Neighbourhood-Enlargement.Ec.Europa.Eu/Document/Download/C790738e-4cf6-4a43-A8a9-43c1b6f01e10_En?Filename=Kosovo%20report%202024.Pdf)

Additionally, it provides comprehensive statistics and tools to generate custom reports, offering insights into disciplinary proceedings handled by the Council and Court Presidents. This freely accessible data enhances public understanding and oversight of the judiciary's disciplinary processes.<sup>114</sup>

**Challenges.** It is widely acknowledged that the Kosovo judicial system has made progress, particularly in terms of increased transparency and improved public communication. It should be emphasized that KJC has created an electronic database to record all complaints and requests for the initiation of disciplinary investigations as required by law.<sup>115</sup> Regardless of these improvements, weaknesses persist and require attention. Both the 2023 and 2024 EU Country Reports acknowledged the functioning of disciplinary systems for judges and prosecutors but highlighted the need to improve judicial accountability through stricter and more efficient proceedings. It has been suggested that the Law on Disciplinary Liabilities should be amended to allow for further specialization of investigation bodies. Additionally, current legislative amendments should align with European Standards, particularly regarding the authority to initiate or reject disciplinary proceedings.<sup>116</sup> The current implementation of disciplinary procedures has revealed several shortcomings in the legal framework. One significant issue is the broad discretion granted to court presidents as competent authorities to initiate disciplinary investigations. The law lacks sufficient safeguards for challenging their decisions, leading to potential inequality of arms in the process and a lack of procedural fairness for the subject of disciplinary procedures. Moreover, judges lack legal means to oppose the initiation of a disciplinary investigation by the KJC's investigative panel. Additionally, there are contradictions in the application of procedural rules. While the law references the Code of Criminal Procedure for evidence collection and the rights of the accused, the KJC's internal regulations apply administrative procedure principles to complaint handling. This inconsistency undermines the clarity and consistency of the disciplinary process.

## LITHUANIA

**Legal Framework.** The disciplinary liability of judges in Lithuania is primarily governed by several key legal instruments: the Constitution of the Republic of Lithuania, the Law on Courts, the Code of Ethics for Judges adopted by the General Meeting of Judges, the Regulations of the Judicial Ethics and Disciplinary Commission, and the Regulations of the Court of Honour of Judges, both adopted by the Judicial Council. Additionally, the Constitutional Court of Lithuania has developed a body of doctrine addressing the professional and ethical standards for judges and their disciplinary liability.

<sup>114</sup> <https://www.gjyqesori-rks.org/vendimet-e-komisionit-disiplinor/>

<sup>115</sup> Commission Staff Working Document Kosovo\* 2023 Report, Page.18, Available At:

<https://Op.Europa.Eu/En/Publication-Detail/-/Publication/98bb1e85-7eee-11ee-99ba-01aa75ed71a1/Language-En>

<sup>116</sup> Commission Staff Working Document Kosovo\* 2024 Report Accompanying The Document Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of Regions 2024 Communication On Eu Enlargement Policy, Available At: [https://Neighbourhood-Enlargement.Ec.Europa.Eu/Document/Download/C790738e-4cf6-4a43-A8a9-43c1b6f01e10\\_En?Filename=Kosovo%20report%202024.Pdf](https://Neighbourhood-Enlargement.Ec.Europa.Eu/Document/Download/C790738e-4cf6-4a43-A8a9-43c1b6f01e10_En?Filename=Kosovo%20report%202024.Pdf)

A judge is expected to uphold the responsibilities outlined in the Constitution and maintain professional integrity. Judicial independence does not shield judges from disciplinary liability for negligence or improper performance of their duties, including the mishandling of cases.<sup>117</sup> The judiciary's self-regulation system is tasked with ensuring that judges perform their duties properly and that any unethical or illegal conduct is appropriately addressed. However, as emphasized by the Constitutional Court, the application of disciplinary measures must preserve judicial independence and procedural autonomy. Disciplinary measures cannot be used to interfere with case decisions or violate a judge's independence. Disciplinary liability applies to both judicial conduct in the performance of duties and actions outside of judicial responsibilities. These measures, including their grounds and conditions, are prescribed by law. Assessing whether a judge's act constitutes a disciplinary offense requires a thorough evaluation of all related circumstances. The Code of Ethics for Judges<sup>118</sup> outlines the fundamental principles of judicial conduct, addressing both professional duties and personal behavior unrelated to judicial work. It is based on international standards, including the Basic Principles of Judicial Impartiality (United Nations), the Recommendations of the Council of Europe, the Universal Charter of the Judge, and the European Charter on the Statute for Judges. Adopted by the General Meeting of Judges, the Code reflects the judiciary's commitment to self-regulation. The Judicial Council has exclusive authority to adopt the regulations governing the Judicial Ethics and Disciplinary Commission and the Court of Honour. These regulations detail the procedures for disciplinary cases, decision-making processes, and the rights and obligations of judges and commission members. The Judicial Ethics and Disciplinary Commission focuses on promoting ethical awareness among judges, while the Court of Honour is tasked with addressing violations and ensuring accountability. Judges are subject to disciplinary proceedings before the Court of Honour for violations specified in Article 83, paragraph 2 of the Law on Courts. Proceedings must commence within three months of the violation being reported to the Judicial Ethics and Disciplinary Commission, excluding periods of illness or vacation. The purpose of the term in question is to guarantee that the issue of initiation of the judge's disciplinary responsibility is resolved within a reasonable, shortest possible time after the judge's possible misconduct becomes clear. No proceedings can be initiated more than three years after the violation occurred. The Judicial Council, the Judicial Ethics and Disciplinary Commission, court presidents, or any individual aware of judicial misconduct may propose initiating disciplinary proceedings. A reasoned submission must be presented to the Judicial Ethics and Disciplinary Commission to begin the process. This framework ensures accountability while safeguarding judicial independence and procedural integrity. A disciplinary action may be initiated against a judge for actions that demean the judicial office, violate the requirements of the Code of Ethics for Judges, or breach the legal limitations on judges' work and political activities. An act demeaning the judicial office includes behavior that is incompatible with the honor of a judge, conflicts with the ethical standards outlined in the Code of Ethics, discredits the judicial role, or undermines the authority of the court. Misconduct in office, such as the negligent performance of duties or unjustified failure to act, also constitutes behavior demeaning to the judicial office, as outlined in Article 83 (2-3) of the Law on Courts. The Constitutional Court has stated that the

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<sup>117</sup> Decision of the Constitutional Court of 10 March 2014.

<sup>118</sup> Its English version is accessible on website of the National Courts Administration <http://www.teismai.lt/en/self-governance-of-courts/judicial-ethics-and-discipline-commission/about-comission/667>.



Constitution does not explicitly define acts that demean the name of a judge. The term is broad, encompassing conduct that degrades the judge's name both in and outside their judicial duties. While the legislature and judicial self-governing bodies have discretion to determine such acts, no law or regulation can provide an exhaustive list. Whether an act humiliates the name of a judge must be assessed on a case-by-case basis, considering all relevant circumstances.<sup>119</sup>

It should be noted that the constitutional principle of judicial independence does not preclude the application of disciplinary liability to judges who avoid performing their duties without justifiable reason or perform them improperly, including negligence in handling cases. Judicial self-governing institutions authorized to evaluate judges' activities and impose disciplinary penalties must assess all circumstances related to a judge's performance in each case. If a judge negligently performs their duties—for instance, handling cases hastily, superficially, unjustifiably slowly, or in violation of procedural laws—they may be held disciplinarily liable. This includes instances where judges fail to thoroughly examine case materials or act dismissively toward their responsibilities. However, it is important to note that self-governing judicial institutions cannot impose disciplinary measures based on a judge's legal interpretations, procedural errors, or violations of procedural laws identified and corrected by a higher court or through the review process of a non-higher instance court. Allowing such powers would effectively grant these institutions authority to control and evaluate the content of judicial decisions, undermining the hierarchical judicial system, interfering with judges' independence in administering justice, and violating the constitutional principle of judicial independence.<sup>120</sup> Disciplinary actions against judges are transferred to the Judicial Court of Honour. If a disciplinary action relates to a specific case being heard by the judge, they are disqualified from continuing to preside over that case. Disciplinary proceedings can have significant consequences. Once initiated, the President of the Republic, upon the proposal of the Council of Judges, may suspend the judge's powers while the case is under review if the judge serves on the Supreme Court or the Court of Appeal. Between Seimas sessions, the President of the Republic can act independently to suspend the judge's powers until the Court of Honour's decision is finalized. If the Court of Honour proposes the judge's dismissal or impeachment, the President of the Republic may refer the matter to the Seimas until the final decision on dismissal or impeachment is issued. The entity that proposed disciplinary proceedings is notified if the proceedings are not initiated. Following a review of a disciplinary action, the Judicial Court of Honour may render one of the following decisions: Dismiss the action due to the absence of grounds for disciplinary liability. Dismiss the action due to the lapse of the statute of limitations. Limit its review to the disciplinary action without imposing sanctions. Impose a disciplinary sanction, which may include censure, reprimand, or severe reprimand. In certain cases, a judge who has demeaned the judicial office may be dismissed without disciplinary proceedings. The Constitutional Court has clarified that under the Law on Courts, it is not necessary to initiate a disciplinary case or for the Court of Honour to recommend dismissal to the President of the Republic. Regardless of whether such a recommendation is made, the President retains constitutional authority to seek advice from the

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<sup>119</sup> Rulings of the Constitutional Court of November 27, 2006, January 16, 2007.

<sup>120</sup> Decision of the Constitutional Court of 10 March 2014.

special judicial institution mentioned in Article 112, Part 5 of the Constitution and, based on that advice, dismiss the judge.<sup>121</sup>

**Body Responsible for Disciplinary Proceedings.** The disciplinary process for judges in Lithuania involves two main bodies: the Judicial Ethics and Discipline Commission and the Judicial Court of Honour. The Commission serves as the investigative body, examining submissions and initiating disciplinary cases when warranted, while the Court of Honour determines whether a violation occurred and imposes sanctions. The Ethics and Discipline Commission is a judicial self-governance institution responsible for initiating disciplinary proceedings and promoting judicial ethics. Its activities are governed by principles such as judicial independence, the rule of law, impartiality, objectivity, confidentiality, the presumption of innocence, and lawfulness. Decisions made by the Commission cannot be appealed. The Judicial Court of Honour is an autonomous authority responsible for hearing disciplinary cases and protecting the honor of judges. It ensures that judges' actions and conduct meet ethical standards while upholding judicial independence. The Court is guided by principles including judicial independence, the rule of law, impartiality, the presumption of innocence, the right to defense, and equality of arms. Decisions of the Court of Honour can be appealed to the Supreme Court within ten days of issuance, as outlined in Article 86, paragraph 3 of the Law on Courts. Both the Commission and the Court of Honour operate under the Constitution, the Law on Courts, and other relevant legal acts, ensuring fairness and integrity in their proceedings.

**Procedural Rights and Guarantees.** The procedural rules governing disciplinary proceedings are clearly outlined in the regulations of the Judicial Ethics and Disciplinary Commission and the Court of Honour. According to Paragraph 52 of the Regulations of the Judicial Ethics and Disciplinary Commission, a judge subject to proposed disciplinary proceedings has several rights. These include the right to familiarize themselves with the motion for the proceedings, provide oral and written explanations with supporting evidence, attend Commission meetings, request the disqualification of Commission members, be represented by a public organization of judges or an attorney, and receive a copy of the Commission's decision. However, the regulations do not mandate the judge's participation in the Commission meeting. Paragraph 41 specifies that the judge must be given an opportunity to be heard only if they request it or if the Commission deems it necessary. If the judge has been properly informed of the meeting details and does not attend, the Commission may still proceed with examining the application. Similarly, Paragraph 31 of the Regulations of the Court of Honour provides procedural guarantees for judges subject to disciplinary proceedings. These include the right to access the case materials, attend hearings, request the recusal of a Court member, have a chosen representative or request representation from a professional judges' organization, present explanations and evidence, and receive the Court's decision, including any dissenting opinions. Judges also have the right to appeal the Court of Honour's decision to the Supreme Court of Lithuania within ten days. The regulations do not require the participation of process participants at Court of Honour sessions. Paragraph 32 states that if a judge fails to appear without being notified of the hearing details, the Court of Honour must reschedule. If the judge is notified but does not attend and has not requested a postponement, the Court may proceed with the case. However, if the judge submits a justified request for postponement citing valid reasons, the Court may delay the hearing. If the reasons for non-appearance are deemed unimportant, the

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<sup>121</sup> Ruling of the Constitutional Court of January 16, 2007.

Court will proceed to examine the case on its merits. It is important to note that neither the Commission nor the Court of Honour is obligated to ensure that a judge has representation during proceedings. In a related case, the Supreme Court of Lithuania emphasized that a judge's failure to arrange representation over the course of a year reflected their own passivity rather than a procedural shortcoming.<sup>122</sup>

**Transparency of the Proceedings.** Commission meetings are public unless a closed session is necessary to protect personal data, state or professional secrets, or comply with legal restrictions. Participants may gather information, but cannot use recording devices. The Commission announces the operative part of its decisions with brief reasoning during meetings. Full decisions must be finalized within 30 days and published on the National Courts Administration website within 10 days, ensuring compliance with data protection and secrecy laws. For closed cases, only the operative part is published. The Chairperson or an authorized member communicates decisions to the media, and press releases follow each meeting. The National Courts Administration announces upcoming Court of Honour hearings on [www.teismai.lt](http://www.teismai.lt) three working days in advance. Hearings are public unless privacy or secrecy laws require otherwise, and recording devices are prohibited.

**Composition of Disciplinary Councils.** The Judicial Ethics and Discipline Commission consists of seven members: two appointed by the President of the Republic, one by the Speaker of the Seimas, and four by the Judicial Council. The President and Speaker appoint public representatives, while the Judicial Council approves the Commission's Chairperson. Although the law does not mandate that the Chairperson be a judge, in practice, only judges are elected. The Court of Honour comprises ten members for the term of the Judicial Council. Two are appointed by the President, two by the Speaker of the Seimas, and six by the Judicial Council. The Judicial Council elects members from the Supreme Court, the Court of Appeal, the Supreme Administrative Court, and other courts. The Chairperson is elected by the Judicial Council from among the judicial members. The independence and impartiality of these bodies are ensured to prevent political, personal, or biased influences. Only individuals of impeccable reputation, as defined by the Civil Service Law, may serve on the Court of Honour, limited to two consecutive terms. Judges with disciplinary sanctions or members of bodies initiating disciplinary cases cannot serve on the Court of Honour. However, no specific rules govern the selection of public representatives to these bodies. Members of the Commission or Court of Honour must recuse themselves if their impartiality could reasonably be doubted. Judges subject to disciplinary cases may request the recusal of Commission members. Similarly, participants in disciplinary proceedings may request the recusal of Court of Honour members before the substantive examination begins.

**Appeal Procedure.** Paragraph 4 of Article 86 of the Law on Courts provides that decisions of the Court of Honour may be appealed to the Supreme Court of Lithuania within ten days of adoption. However, the article does not specify the procedure for handling such complaints. Court practice clarifies that the norms of the Civil Procedure Code, governing appeal proceedings, apply *mutatis mutandis* to these cases. Appeals may be filed by the judge involved, the party initiating disciplinary action, the Judicial Ethics and Discipline Commission, or entities responsible for court

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<sup>122</sup> Ruling of the Supreme Court of Lithuania of 5 of January, 2023, case No. 21P-5

administration and oversight. While the Supreme Court typically reviews only legal matters, in disciplinary cases, it examines both the legality and reasonableness of the Court of Honour's decisions, functioning as an appellate instance.<sup>123</sup> The Supreme Court has confirmed that its role includes reviewing both facts and law in these cases. Notably, it serves as the sole and final instance in disciplinary proceedings.<sup>124</sup> Appeals are generally reviewed in a written procedure. However, the panel of judges may decide to hold an oral hearing if deemed necessary, provided the request for such a hearing is well-founded.<sup>125</sup>

**Perceived Weaknesses.** The Constitutional Court has noted that the Law on Courts establishes various self-governing judicial institutions as independent state authorities. This framework allows the legislature, aiming to maintain public trust in the judiciary and the legal system, to include non-judges in these institutions. However, neither the Law on Courts nor other laws specify rules for selecting public members for disciplinary bodies, leaving broad discretion to the President of the Republic and the Speaker of the Seimas. The law also lacks specific provisions requiring the Chairperson of the Judicial Ethics and Discipline Commission to be elected exclusively from among its judge members. Since 2013, judges have been able to seek consultations from the Judicial Ethics and Discipline Commission, which are available on the National Courts Administration website. Over a decade, the Commission has issued more than 50 consultations on various topics. Judges and the public can also refer to the Practical Guide of the Code of Ethics for Judges of the Republic of Lithuania, regularly updated to incorporate key consultations and relevant jurisprudence from the Court of Honour and the Supreme Court. Some consultations have sparked debate among judges due to differing interpretations, such as the 15 December 2022 consultation on judges engaging in rental activity under a business certificate, and the 3 September 2024 consultation on the limits of judicial freedom of expression.<sup>126</sup> Most consultations adopt a restrictive interpretation regarding the status and limitations imposed on judges. Additionally, neither the Civil Procedure Code nor the Law on Courts provides specific rules for appealing decisions of the Court of Honour in disciplinary procedures. This gap may weaken procedural guarantees and create uncertainty for participants in such proceedings.

**Problems and Proposed Solutions.** In the Law on Courts is prescribed only a general rule that members to the Commission and the Court of Honour by the President of the Republic of Lithuania and by the Speaker of the Seimas of the Republic shall appoint from the society. This procedure would be more transparent if the law prescribes general rules for the selection of members from society or at least an obligation of subjects who propose to them to motivate their decision. Institutional independence of the Commission would be strengthened if the rule of election of the chairman of the Commission from members-judges were enshrined in the Law on Courts. It is a need to amend the Law on Courts or Civil Procedure Code with special rules for peculiarities of adjudication of cases on Court of Honour decisions. The Judicial Ethics and Discipline Commission must have more human resources or the possibility to use external experts to prepare consultations on complex legal issues.

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<sup>123</sup> Ruling of the Supreme Court of Lithuania of 28 of March, 2022, case No. GT1-11/2021

<sup>124</sup> Ruling of the Supreme Court of Lithuania of 28 of March, 2022, case No. GT1-11/2021.

<sup>125</sup> Ruling of the Supreme Court of Lithuania of 10 of February, 2016, case No. GT1-4

<sup>126</sup> Ruling of the Constitutional Court of 5 of May, 2006.

**Case No. GT1-11/2021.** The President of the Vilnius District Court initiated a disciplinary case against Judge I.Š., alleging that she violated the Code of Ethics for Judges by making public statements that disparaged the judiciary and self-governing judicial institutions. The judge had posted on Facebook, criticizing the judicial community as corrupt, career-driven, and lacking principles, in response to an article about an acquitted former judge. The Court of Honour ruled that her statements exceeded the limits of judicial freedom of expression, undermined public trust in the judiciary, and warranted disciplinary action. Judge I.Š. appealed to the Supreme Court, arguing that ethical guidelines are subjective values rather than enforceable legal norms and that disciplinary liability based on such principles threatens judicial independence. She also contended that her comments were directed at a specific situation rather than the entire judiciary. However, the Supreme Court upheld the ruling, emphasizing that judges, as public officials, are subject to higher ethical standards and must consider the impact of their statements on public confidence in the judiciary. It concluded that Judge I.Š.'s comments were generalizing, harmful to the reputation of the judiciary, and justified disciplinary sanctions.

**Case No. GT1-8/2022 (S).** The President of the Vilnius Regional Administrative Court initiated a disciplinary case against Judge V.B., alleging misconduct in her treatment of court employees and fellow judges. Reports indicated that she belittled, manipulated, and set unreasonable demands on staff, leading to resignations and a general reluctance to work with her. She was also accused of behaving disrespectfully towards colleagues, including raising her voice in meetings and refusing to work with certain judges due to personal disagreements. The Commission found that her actions violated multiple ethical principles, concluding that she had degraded the reputation of the judiciary. The Court of Honour confirmed that court staff and judges had experienced ongoing mistreatment from Judge V.B., including inappropriate communication, excessive demands, and an overall toxic work environment. As a result, she was found to have violated the principles of respect, decency, and exemplary behavior outlined in the Code of Ethics for Judges. The Court ruled that her actions harmed the authority of the judiciary and issued her a formal admonition. Judge V.B. appealed to the Supreme Court, contesting the finding that she had refused to fulfill her judicial duties by declining to work in a specific panel. The Supreme Court partially upheld her appeal, ruling that her request to change the panel composition did not constitute a refusal to administer justice. However, the Court upheld the conclusion that she had mistreated court staff, finding that multiple confidential testimonies and an inspection report confirmed a pattern of disrespectful behavior. The Supreme Court affirmed that her actions were incompatible with judicial ethics and that the disciplinary measures were justified.

## MOLDOVA

**Legal Framework and Background.** After gaining independence in 1991 and adopting a new Constitution in 1994, Moldova implemented judicial reforms. In 1996, it adopted the Law No. 950/1996 on the Disciplinary Liability of Judges, which established the Disciplinary Board of Judges to handle judicial misconduct. Only members of the Superior Council of Magistracy (SCM) could

initiate proceedings, with investigations led by the Judicial Inspection. The SCM also reviewed appeals and had sole authority to dismiss judges. On January 1, 2015, the Law No. 178/2014 on the Disciplinary Liability of Judges introduced reforms to balance judicial independence and accountability.<sup>127</sup> It strengthened the Judicial Inspection, revised disciplinary procedures, and improved accountability mechanisms. The Venice Commission reviewed the draft law before its adoption. Moldova's legal framework for judicial discipline aims to balance independence and accountability through constitutional provisions, laws, and regulations. While the Constitution provides general parameters for judicial functioning, it mandates that judges be sanctioned "in accordance with the law" (Article 116(6)). The Law on the Status of Judges (No. 544/1995)<sup>128</sup> outlines judicial responsibilities, oversight, and mechanisms for discipline and removal in cases of misconduct. Judges committing disciplinary offenses, as defined by Law No. 178/2014, can be dismissed under Article 25(1)(f). The Law on the Superior Council of Magistracy (No. 947/1996) empowers the SCM to review appeals on Disciplinary Board decisions and decide on dismissals.<sup>129</sup> The Law on the Disciplinary Liability of Judges (No. 178/2014) governs disciplinary principles, grounds for liability, sanctions, and procedural stages. Ethical breaches are addressed by the Code of Ethics, adopted by the General Assembly of Judges in 2015.<sup>130</sup> Severe breaches of professional ethics may result in disciplinary action under this law. Judges can also face misdemeanor or criminal charges, such as under Article 307 of the Criminal Code, for intentional violations of imperative legal norms. Functional immunity protects judges, but, according to Article 2024(2) of the Civil Code, the state may recover damages from them following criminal conviction or disciplinary procedures for intentional misconduct or gross negligence. Organic laws, such as those regulating judicial accountability, take precedence over ordinary laws and require a parliamentary majority for adoption.

**Disciplinary Bodies.** The disciplinary procedure for judges in Moldova can be initiated by anyone affected by a judge's behavior, as well as by members of the SCM, the Board for Selection and Performance Evaluation of Judges, the Judicial Inspection, or the Ministry of Justice (Article 19(1), Law No. 178/2014). Most complaints are submitted by individuals dissatisfied with a judge's conduct, while the Judicial Inspection occasionally opens investigations ex officio following court audits. Other entities rarely initiate disciplinary procedures. The Judicial Inspection serves as the disciplinary prosecution body, responsible for investigating complaints and bringing substantiated cases to the Disciplinary Board. Its work is governed by Law No. 947/1996, Law No. 544/1995, Law No. 178/2014, and internal procedural rules. The inspection comprises seven inspectors, mostly retired judges, appointed by the SCM for six-year non-renewable terms. A Chief Inspector,

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<sup>127</sup> Law No. 178/2014 on the Disciplinary Liability of Judges

This law regulates the principles, procedures, and sanctions related to the disciplinary liability of judges in Moldova. Full text available at: [https://www.legis.md/cautare/getResults?doc\\_id=118998&lang=ro](https://www.legis.md/cautare/getResults?doc_id=118998&lang=ro)

<sup>128</sup> Law No. 544/1995 on the Status of Judges

Defines the rights, duties, and disciplinary responsibilities of judges, as well as mechanisms for their accountability. Full text available at: [https://www.legis.md/cautare/getResults?doc\\_id=119116&lang=ro](https://www.legis.md/cautare/getResults?doc_id=119116&lang=ro)

<sup>129</sup> Law No. 947/1996 on the Superior Council of Magistracy

Governs the structure, powers, and functions of the SCM, including its role in disciplinary procedures. Full text available at: [https://www.legis.md/cautare/getResults?doc\\_id=118776&lang=ro](https://www.legis.md/cautare/getResults?doc_id=118776&lang=ro)

<sup>130</sup> General Assembly of Judges. *Code of Ethics and Professional Conduct for Judges*, adopted by Decision No. 8 of September 11, 2015, and amended by Decision No. 12 of March 11, 2016. Available at: [https://www.csm.md/files/Acte\\_normative/Codul\\_de\\_etica\\_al\\_judecatorului.pdf](https://www.csm.md/files/Acte_normative/Codul_de_etica_al_judecatorului.pdf)



appointed by the SCM, oversees operations and assigns complaints. Inspectors are assisted by the secretariat of the SCM. They can dismiss manifestly unfounded complaints, but such dismissals can be appealed to the Disciplinary Board. The Disciplinary Board evaluates cases initiated by the Judicial Inspection and decides whether to sanction the judge or dismiss the case. It also reviews appeals against inspectors' decisions to dismiss a complaint as manifestly unfounded. The board includes seven members: four judges elected by their peers through secret ballot and three civil society representatives appointed by the Minister of Justice after a public selection process. Members serve six-year non-renewable terms. The board's decisions can be appealed to the SCM. The SCM examines appeals against decisions made by the Disciplinary Board. It comprises 12 members: six judges elected by their peers and six non-judges appointed by Parliament with a three-fifths majority. SCM members also serve six-year non-renewable terms. Appeals are heard publicly, with decisions on disciplinary matters made in deliberation, requiring at least half the participating members to be judges. The SCM has the authority to uphold, annul, or revise Disciplinary Board decisions. It is the only body authorized to dismiss judges or revoke the mandates of court presidents and vice-presidents. A special panel of three Supreme Court judges reviews appeals against SCM decisions. The panel has full authority to assess both procedural and substantive aspects of disciplinary cases, and its decisions are final.

**Disciplinary Offences.** Disciplinary offenses for judges in Moldova are exhaustively mentioned in Article 4(1) of Law No. 178/2014, listing 14 specific violations, including failure to abstain and issuing judgments that violate human rights. Offenses by court presidents and vice-presidents are addressed in Article 4(2). Disciplinary sanctions, outlined in Article 6(1), include warnings, reprimands, and dismissal, with court leaders also removable from their positions. Sanctions apply to both active and retired judges, with retired judges losing honorary status and special pensions if sanctioned (Article 7). Only severe ethical violations that breach the law or judicial office requirements qualify as disciplinary offenses. Ethical complaints are typically referred to the Ethics Commission under the SCM, separate from disciplinary cases. The statute of limitations for submitting a disciplinary complaint is three years from the offense. If a national or international court judgment reveals a disciplinary offense, action can be taken within one year of that judgment, but not beyond five years from the offense (Article 5). Judges are entitled to fair disciplinary procedures. They are informed of complaints, allowed to present evidence, and may be represented by lawyers. Public hearings are the norm, but hearings can be closed to protect state secrets or private life. The Disciplinary Board deliberates and issues decisions by majority vote. Decisions are published on the SCM website and can be appealed within 15 days. The SCM hears appeals in public, unless confidentiality is required, and issues decisions promptly, with written reasoning provided later. These decisions are also published online. Both the Disciplinary Board and SCM apply the preponderance of evidence standard, ensuring a fully adversarial process without shifting the burden of proof. Investigations by the Judicial Inspection must conclude within 60 days, and the Disciplinary Board and SCM must resolve cases within 60 and 30 days, respectively. SCM decisions can be appealed to the Supreme Court of Justice within 30 days. The Supreme Court reviews both facts and law, holding hearings and publishing final judgments online, sometimes beyond the statutory 30-day period. Public hearings are video-recorded and accessible on YouTube.

**Statistics.** According to the latest available report, in 2023, the Judicial Inspection received 1.152 disciplinary complaints against judges and solved 1.212 complaints. In the last 5 years, the number of complaints received by the Inspection was in slight decrease.<sup>131</sup> In only 30 cases (2.6%) the inspectors asked the Disciplinary Board to apply sanctions in 2023. In other 7 cases, the Disciplinary Board annulled the refusal of the Inspector to open an investigation. The most frequent breaches established by the Judicial inspection were the violation of human rights established by ECtHR (6 cases), the breach of the imperative norms (4 cases), serious breach of professional ethics (3 cases). In 2023, the Disciplinary Board accepted the position of the inspectors and applied a disciplinary sanction in only 4 cases. In other 15 cases, the reports of the inspectors have been dismissed and the disciplinary procedure was discontinued. Most of those decisions of the Disciplinary Board have been appealed to the SCM. Other several cases were still pending on 01 January 2024. In 2023, the [Disciplinary Board](#) never recommended the SCM to dismiss a judge. The Board applied as disciplinary sanctions only warnings and reprimands.

**Cases.** On 21 February 2023, the ECtHR published the judgment *Catana v. Moldova*. It concerned the disciplinary procedures against a judge that ended in 2012. The ECtHR criticized a number of legal provision that raised doubts as to the independence of the SCM. These norms have been repealed after 2012. In particular, the European Court highlighted that the case was not heard by an independent body, because the Supreme Court of Justice did not have full jurisdiction to review the decisions of the SCM, while the composition of the SCM (membership of the Minister of Justice and of the Prosecutor General, as well as the political appointment of 3 law professors by the Parliament) did not provide sufficient guarantees of independence when deciding on disciplinary matters.<sup>132</sup> On 18 July 2023, the ECtHR published the judgment *Manole v. Moldova*. The case concerns the dismissal of the judge from office for communicating to a journalist the reasons of her dissenting opinion after the operative part of the judgment was announced, but before the motivated judgment was published. The European Court found that the communication with the journalist was in breach of the professional duties of a judge, but concluded that the dismissal from office for such a deed was disproportionate.<sup>133</sup>

**Perceived Challenges.** The disciplinary mechanism for judges in Moldova faces significant inefficiencies. Even minor disciplinary offenses require a lengthy process involving investigation by the Judicial Inspection, review by the Disciplinary Board, appeals to the SCM, and further review by the Supreme Court of Justice. This process consumes substantial time and resources, which could be streamlined. The Judicial Inspection lacks the necessary independence to function effectively. To strengthen its role, it should operate autonomously from the SCM and have its own apparatus,

<sup>131</sup> Superior Council of Magistracy (CSM), Judicial Inspection. *Annual Activity Report 2023*. Available at: [https://www.csm.md/files/RAPOARTE/2023/RAPORT\\_IJ\\_2023.pdf](https://www.csm.md/files/RAPOARTE/2023/RAPORT_IJ_2023.pdf).

<sup>132</sup> *Catană v. the Republic of Moldova*, Application No. 43203/04, Judgment of the European Court of Human Rights, 19 October 2012. Available at: <https://hudoc.echr.coe.int/app/conversion/pdf/?filename=Judgment+Catana+v.+the+Republic+of+Moldova+-+Independence+and+impartiality+of+the+National+Judicial+Service+Commission+.pdf&id=003-7575472-10413483&library=ECHR>

<sup>133</sup> *Manole v. the Republic of Moldova*, Application No. 26360/19, Judgment of the European Court of Human Rights, 18 July 2023. Available at: <https://hudoc.echr.coe.int/app/conversion/pdf/?filename=Judgment+Manole+v.+Republic+of+Moldova+-+Judge+penalized+for+disclosing+prematurely+the+reasons+for+her+dissenting+opinion+%3A+breach+of+freedom+of+expression+provision.pdf&id=003-7706275-10639604&library=ECHR>

ensuring impartiality and improved performance. There is also an overlap in the disciplinary responsibilities of the Disciplinary Board and the SCM. To eliminate redundancy, the SCM could withdraw from minor disciplinary matters, delegating these responsibilities entirely to the Disciplinary Board. Excessive publicity of disciplinary procedures has drawn criticism from judges. Closing Disciplinary Board hearings and delaying the publication of decisions until they are final could address these concerns and mitigate reputational harm.

Finally, granting full standing to complainants, including unrestricted rights to plead and challenge decisions, risks enabling harassment of judges. Safeguards must be introduced to prevent such abuses while maintaining accountability within the disciplinary system.

## NORTH MACEDONIA

**Legal Framework.** In the Republic of North Macedonia, the legislative framework governing disciplinary procedures for judges is outlined in several key laws and regulations. These laws provide the foundation for judicial accountability while ensuring the integrity and independence of the judiciary. The primary legal sources include the Constitution, the Law on Courts, the Law on the Judicial Council, the Rules of Procedure of the Judicial Council, and the Judicial Code of Ethics. The Constitution of the Republic of North Macedonia establishes the general framework for judicial independence and accountability but does not explicitly detail disciplinary procedures. However, it provides that a judge may be discharged due to a serious disciplinary offense that renders them unsuitable to serve or due to unprofessional and unethical performance, as determined by the Judicial Council in accordance with legal procedures (Article 99, Paragraph 2). More specific rules and mechanisms for judicial discipline are outlined in the Law on Courts and the Law on the Judicial Council. The Law on Courts defines disciplinary accountability within its provisions for maintaining judicial integrity. Chapter V addresses termination, dismissal, and grounds for liability, setting clear guidelines on initiating disciplinary proceedings, the role of the Judicial Council, and the procedures for holding judges accountable for misconduct (Articles 73-81). While the Law on the Judicial Council plays a primary role in regulating disciplinary actions, the Law on Courts provides the procedural and institutional framework. The Judicial Council of North Macedonia is responsible for overseeing the disciplinary process and ensuring adherence to legal standards and ethical norms. Grounds for disciplinary action include violations of judicial ethics, failure to perform judicial duties, abuse of office, and misconduct outside the judiciary that compromises public trust. Disciplinary procedures can be initiated ex officio by the Judicial Council or based on formal complaints filed by affected parties. If misconduct is established, sanctions may include reprimands, salary reductions, temporary suspension, or dismissal from office. The Law on the Judicial Council of North Macedonia establishes the Judicial Council as the primary body overseeing judicial conduct. It grants the Council authority to initiate disciplinary proceedings, investigate misconduct, and impose sanctions. Grounds for disciplinary action under this law include failure to perform judicial duties, unethical behavior, abuse of power, and criminal offenses related to judicial functions. Disciplinary proceedings may be initiated by the Council itself, through complaints from individuals or institutions, or via internal reports from court officials. Investigations are conducted by a Commission of Rapporteurs, composed of members elected by lot from the Judicial Council.

The Commission gathers evidence, hears the accused judge, and submits a report to the Council, which then holds a hearing and determines the appropriate sanction. Possible disciplinary measures include reprimands, suspension, dismissal, or salary reduction. The Rules of Procedure of the Judicial Council regulate internal operations and decision-making processes. They specify the procedures for initiating disciplinary action, conducting investigations, and determining sanctions. Disciplinary hearings allow judges to present their defense, ensuring procedural fairness. The Rules also outline confidentiality provisions to protect judicial integrity while promoting transparency through public reporting of judicial appointments, promotions, and disciplinary actions. Final decisions on disciplinary cases are made public unless confidentiality is required for specific reasons. The Judicial Code of Ethics establishes ethical standards for judges, emphasizing impartiality, independence, integrity, competence, and professional conduct. Judges may be disciplined for violations such as bias, negligence, conflicts of interest, unprofessional behavior, breaches of confidentiality, and criminal conduct. The Code ensures that judges uphold public confidence in the judiciary through adherence to high ethical and professional standards.

**Challenges Observed.** The disciplinary procedures for judges in North Macedonia face significant challenges that impact their effectiveness, fairness, and transparency. Political influence remains a major concern, as judicial council appointments include members proposed by the President and Parliament, raising the risk of politically motivated disciplinary actions. This potential for interference undermines judicial independence and public trust. Lack of transparency is another issue, as disciplinary proceedings are often opaque, with limited public access to information on case handling, decision-making criteria, and investigation outcomes. Many disciplinary decisions remain undisclosed, fostering perceptions of secrecy and unfairness. However, That is in accordance with the law, ensuring the presumption of innocence and protecting the integrity and reputation of the judge from unfounded accusations. Inefficiency and delays in disciplinary procedures further weaken the system. Investigations and hearings frequently experience prolonged delays, leaving judges uncertain about their status and affecting the credibility of judicial oversight. The slow resolution of cases also diminishes public confidence in the judiciary. Additionally, inconsistency in disciplinary actions is a problem, as similar misconduct may result in different sanctions due to vague criteria and subjective interpretations. The lack of clear guidelines contributes to uneven enforcement and potential bias. The undue influence of powerful stakeholders poses another challenge, as judges handling politically sensitive cases may fear disciplinary retaliation, leading to self-censorship and compromised judicial independence. The risk of retaliation creates a chilling effect, discouraging judges from making impartial rulings. Weak oversight mechanisms exacerbate these issues, as there is limited external review of disciplinary decisions. The appeal process lacks strong safeguards, making it difficult to rectify wrongful decisions or hold disciplinary bodies accountable. Public perception and trust in the judiciary suffer due to these weaknesses, eroding confidence in judicial integrity and fairness.

**Handling Complaints.** Disciplinary processes, whether initiated ex officio or through complaints from citizens and legal entities regarding the conduct of judges and court presidents, are generally reviewed and resolved within legal deadlines. However, in some cases, proceedings take longer due to limited staff, high workloads, and procedural complexities. High-profile cases are often expedited under public scrutiny. Disciplinary actions range from dismissals and salary reductions to

temporary suspensions of judges. Notably, dismissals have significantly decreased in recent years. A large proportion (85%-90%) of complaints are rejected as unfounded. Many complaints stem from dissatisfaction with court decisions, with complainants seeking to overturn rulings rather than address judicial misconduct. The Judicial Council typically finds that such matters should be resolved through the appeals process before a second-instance court, as it lacks the authority to alter court decisions. Complaints are frequently dismissed for several reasons, including: a) The absence of new facts supporting the claim. b) The complaint having already been reviewed in a previous session. c) Incomplete or insufficient information for proper consideration. There is also an issue of inconsistent handling of complaints on their merits. Similar complaints are sometimes decided differently, with previous positions being reversed without explanation. During Council sessions, decisions on complaints—whether to dismiss them as unfounded or recognize them as fully or partially substantiated—are largely based on the proposal of the reporting member who initially reviewed the complaint.

Complaints regarding Judicial Council (JC) disciplinary decisions are frequently overturned by the Supreme Court Council on procedural grounds. However, when these cases are returned, the JC often reaffirms its initial decision, raising constitutional concerns about the right to appeal, as its rulings remain final. Calls for procedural reforms aim to enhance fairness and safeguard defendants' rights. The JC has adopted an Action Plan to implement the recommendations of the EU Assessment Mission (2023), focusing on increasing transparency, improving judicial assessment criteria, and strengthening communication. A key objective is to provide clearer explanations for decisions related to the appointment and dismissal of judges and court presidents. Based on these recommendations, the JC has revised its Rules of Procedure, introducing substantive changes. Members must now provide explanations when voting against a judicial candidate, rather than only justifying positive votes. Decisions are now individualized, ensuring objective standards, consistency, and comparability in judicial appointments and non-appointments. Deadlines have been established for each phase of the disciplinary process to ensure timely action. The Association of Judges of the Republic of Macedonia and civil society organizations are now involved in discussions and the adoption of the Annual Report on JC activities. The Rulebook on Judicial Candidate Ranking has been amended to refine the criteria for higher court appointments, prioritizing qualitative judicial performance. Judges' additional work, including temporary assignments between courts, is now factored into evaluations. The Guidelines for Calculating Effective Working Hours have been updated to ensure a realistic assessment of judicial performance.

**Appeals and Transparency.** The Law on the Judicial Council of North Macedonia provides for an Appeals Council within the Supreme Court to review disciplinary decisions. The Appeals Council consists of nine members, including Supreme Court judges, appellate judges, and judges from the same court as the disciplined judge. Members are selected publicly by lot, ensuring a degree of impartiality. Judges have 15 days to appeal a disciplinary decision, and the Appeals Council conducts a thorough review before issuing a final, binding decision. The Council may confirm the Judicial Council's ruling or revoke it if procedural violations occurred. If the decision is revoked, the Judicial Council must repeat the procedure in accordance with the Appeals Council's guidelines. In cases where the European Court of Human Rights (ECtHR) finds a violation of human rights in a

disciplinary proceeding, the affected judge may request a reopening of the case within 30 days, but no later than three years from the final ECtHR judgment. The Judicial Council must comply with ECtHR rulings, rectifying violations and their consequences through a reopened procedure that allows for new evidence and appeals. Publicity and transparency are essential in disciplinary proceedings. The Appeals Council's decisions are generally made public to ensure accountability. This transparency fosters trust in the judiciary and reinforces the legitimacy of disciplinary actions. However, in practice, there is sustained pressure from various stakeholders to restore public trust in the JC. Efforts to enhance transparency and accountability include increased publication of detailed session reports and decisions on the JC website, as well as regular court visits and evaluations to ensure compliance with judicial standards. Despite these reforms, concerns persist regarding inconsistent application of procedures and lingering challenges to judicial credibility.

**Notable Decisions.** In 2024, a judge elected as a member of the State Commission for the Prevention of Corruption in December 2023—expected to assume office in February 2024—was dismissed from judicial service. Separately, another judge requested suspension of judicial duties based on the Law on Labor Relations, referencing previous instances where similar suspensions were granted. However, the Judicial Council rejected the request, citing provisions of the Law on the Judicial Council, which states that judicial office is terminated upon election or appointment to another public position unless explicitly provided otherwise by law. Consequently, the judge's suspension took effect on the day of election or appointment. Council members held differing views on this decision. However, the majority relied on the Law on Courts, which specifies that judicial office is incompatible with positions such as a Member of Parliament, a member of a municipal council, or functions in state bodies, municipalities, or the City of Skopje. These cases highlight the ongoing tensions between judicial independence, procedural consistency, and institutional reforms aimed at strengthening accountability.

## POLAND

**Legislative framework:** Disciplinary proceedings against judges have long been established in the Polish legal system. Initially, these were governed by the Act of 6 February 1928 - Law on the System of Common Courts, and later by the Act of 20 June 1985 - Law on the Common Court System, which contained largely identical provisions. Under these laws, judges could face disciplinary action for misconduct in office, including blatant and severe violations of the law, as well as behavior unbecoming of their judicial office. Disciplinary penalties ranged from reprimands to expulsion from judicial service. After the fall of communism, these provisions were adopted into the Act of 27 July 2001 - Law on the System of Common Courts (Journal of Laws 2001, No. 98, item 1070), remaining in force for nearly two decades. The situation changed in 2019 following judicial opposition to reforms introduced by right-wing politicians under the leadership of Minister of Justice Zbigniew Ziobro. These reforms, including the appointment of judges by the newly politicized National Council of the Judiciary, faced significant pushback. Judges began questioning the legitimacy of these appointments and raised preliminary questions with the Court of Justice of the European Union (CJEU) regarding the implications of judicial appointees participating in cases involving the



new Council. In response, disciplinary proceedings against judges intensified. The Act of 20 December 2019, which amended the Law on the System of Common Courts, the Act on the Supreme Court, and other related laws (Journal of Laws 2020, item 190), introduced the so-called "Muzzle Law," expanding the scope of disciplinary offenses. New provisions categorized the following as disciplinary infractions: Acts or omissions likely to prevent or significantly impede the functioning of judicial authorities; Actions questioning the legitimacy of a judge's appointment or the effectiveness of their judicial role; Public activities inconsistent with judicial independence or the independence of judges. Disciplinary cases were overseen by the Disciplinary Chamber of the Supreme Court, which included former prosecutors as disciplinary judges. However, the status of this chamber was widely contested. European courts, including the CJEU, challenged its legitimacy. On 14 July 2021, the CJEU ordered the suspension of the Disciplinary Chamber. Poland faced significant penalties, including a daily fine of €1,000,000 for non-compliance, and was denied access to funds from the National Recovery Plan for failing to meet rule-of-law milestones. Under mounting pressure, the Polish government enacted reforms. At the request of President Andrzej Duda, the Disciplinary Chamber was abolished, replaced by the Chamber of Professional Liability, and disciplinary measures against judges defending the rule of law were relaxed. The new law introduced key provisions, stipulating that the following actions no longer constitute disciplinary offenses: Errors in interpreting and applying national or European Union law; Referring questions to the CJEU for preliminary rulings; Assessing the independence or impartiality of a judge. These revised sanctions are currently in effect.

**Scope of disciplinary liability of a judge.** Under Article 107, a judge may be held liable for disciplinary offenses, including manifest and flagrant contempt of the law, refusal to perform judicial duties, acts or omissions that could prevent or significantly impede the functioning of a judicial body, and actions questioning the validity of a judge's appointment, the legitimacy of their official relationship, or the legitimacy of a constitutional organ of the Republic of Poland. Public activities that contradict the principles of judicial independence and the independence of courts, as well as conduct unbecoming to the dignity of the judicial office, also fall under disciplinary offenses. Judges may additionally be held liable for actions taken prior to assuming office if those actions violated the duties of their previous state office or demonstrated unworthiness for the position of judge. Certain actions are explicitly excluded from being disciplinary offenses. These include errors in interpreting or applying national and European Union law, submitting preliminary questions to the Court of Justice of the European Union, and assessing whether a judge meets the requirements of independence and impartiality. These rules governing disciplinary liability are currently in force. Before 2015, the majority of disciplinary cases against judges concerned delays in preparing statements of grounds for judgments within the statutory period. Judges are required to prepare these statements within two weeks of a party's request, although extensions are possible. However, given the high workload and large number of cases, this deadline often proved insufficient. From 2015 to 2023, during the tenure of the right-wing government, disciplinary cases increasingly focused on allegations of misconduct to the dignity of the office. Many of these cases targeted judges who actively defended the rule of law and publicly criticized reforms initiated by the Minister of Justice, Zbigniew Ziobro.

**Disciplinary penalties.** Pursuant to Article 109 of the Act on the System of Common Courts, the disciplinary penalties currently include a warning (admonition), a reprimand, and a reduction in basic salary by 5% to 50% for a period ranging from six months to two years. A pecuniary penalty may also be imposed, amounting to one month's basic remuneration for the month preceding the issuance of a final conviction, plus the judge's long-service allowance, function allowance, and special allowance. Other penalties include removal from the occupied function, transfer to another official position, or dismissal from office. In cases involving a disciplinary offense or a minor offense, the disciplinary court has the discretion to waive the penalty. The Disciplinary Prosecutor. Disciplinary proceedings in Poland are initiated by special prosecutors. Under Article 112 of the Act on the System of Common Courts, these include the Disciplinary Prosecutor for Judges of Common Courts, their deputies, and other disciplinary prosecutors operating at courts of appeal and regional courts. The Disciplinary Prosecutor for Judges of Common Courts and their deputies handle cases involving judges of courts of appeal, presidents, and vice-presidents of appellate and regional courts. Other cases, including those involving regional court judges and judicial assessors, are managed by deputy disciplinary prosecutors at the relevant regional or appellate court. The Minister of Justice appoints the Disciplinary Prosecutor for Judges of Common Courts and their deputies for a four-year term. Additionally, the Minister may appoint a special disciplinary prosecutor for specific cases, who supersedes other prosecutors in handling that matter. Such appointments may include judges or, in cases involving intentional crimes, prosecutors nominated by the National Prosecutor. The role of this prosecutor concludes when the case is resolved, discontinued, or dismissed. In 2018, Minister of Justice Zbigniew Ziobro appointed Piotr Schab as the Disciplinary Prosecutor for Judges of Common Courts, with deputies Przemysław Radzik and Michał Lasota. During the tenure of the right-wing government, disciplinary actions targeted judges who criticized judicial reforms, with up to 50 judges facing investigations. Some, like Judge Waldemar Żurek, faced numerous cases for defending judicial independence. Disciplinary prosecutors are assigned cases based on the order of filing and an alphabetical roster, with exceptions for illness or other significant reasons. The Disciplinary Prosecutor for Judges of Common Courts and their deputies may reassign cases among themselves or to other deputies when necessary. Article 112b allows the Minister of Justice to appoint a disciplinary prosecutor for specific cases, excluding others from involvement. In cases of intentional crimes, the Minister may appoint a prosecutor from the National Prosecutor's nominees. If the appointed prosecutor is unable to serve, a replacement is designated. The appointment of a disciplinary prosecutor automatically initiates disciplinary proceedings, and the role ends upon final resolution of the case.

**Disciplinary Courts.** Disciplinary cases involving judges are regulated by Article 110 of the Polish Act on the System of Common Courts. In the first instance, cases are adjudicated by disciplinary courts at courts of appeal, composed of three judges, or by the Supreme Court in the Professional Liability Chamber. In the latter scenario, panels consist of two judges and one lay judge from the Supreme Court, specifically for cases involving intentional crimes prosecuted by the public prosecutor or intentional fiscal crimes. In the second instance, cases are heard by the Supreme Court in the Professional Liability Chamber, with a panel comprising two judges and one lay judge. Judges of disciplinary courts at courts of appeal must have at least ten years of judicial experience. Their appointment, made by the Minister of Justice in consultation with the National Council of the

Judiciary, is independent of their duties in their regular judicial roles. The term of office for these judges is six years.

**Disciplinary Proceedings.** Disciplinary proceedings are initiated by the disciplinary prosecutor, who may act at the request of the Minister of Justice, the president of a court of appeal or regional court, the board of the appellate or district court, the National Council of the Judiciary, or on their own initiative. Before initiating proceedings, the prosecutor conducts explanatory activities to determine if a disciplinary offense may have occurred. These explanatory proceedings must be completed within 30 days of the first action taken. During this process, the prosecutor may request the judge to submit a written statement regarding the matter within 14 days of receiving the summons. Oral statements may also be taken. A judge's failure to provide a statement does not delay the proceedings. If grounds are found to proceed, the disciplinary prosecutor initiates disciplinary proceedings, drafting the charges in writing. The charges are immediately delivered to the accused judge, who is then asked to provide written explanations and evidentiary motions within 14 days. If this deadline is missed, any evidentiary motions submitted later may be disregarded unless the accused can demonstrate the evidence was previously unknown. Explanations may also be given in a hearing at the request of the accused. Failure to appear or provide explanations does not suspend the proceedings. Upon delivering the charges, the disciplinary prosecutor requests the Supreme Court's Professional Liability Chamber to assign a disciplinary court for first-instance hearings. The Chamber must designate the court within seven days. After completing the necessary evidence collection, the prosecutor submits a detailed application to the designated disciplinary court, including a description of the alleged act, supporting evidence, and a justification. If the prosecutor determines there are no grounds to initiate proceedings, a decision to refuse is issued, with copies sent to the requesting body, the relevant court board, the accused, and the Minister of Justice. The Minister may object within 30 days, which obligates the prosecutor to initiate proceedings as directed. If proceedings are initiated but do not justify further action, the prosecutor may discontinue them. Decisions to refuse or discontinue proceedings can be appealed within seven days. The prosecutor must provide the collected evidence to the requesting body upon request, and appeals must be resolved within 14 days. The current regulations are stricter than those in the Polish Code of Criminal Procedure, particularly regarding the consequences of an accused judge's failure to appear. Disciplinary proceedings follow the rules of criminal procedure, including the use of witness testimony. Witnesses who fail to appear without justification or leave proceedings without permission may face financial penalties. The accused judge has the right to defense and may appoint up to three defense lawyers, chosen from judges, prosecutors, lawyers, or solicitors. Disciplinary hearings are public, but the court may exclude public access for reasons of morality, state security, public order, or to protect the private life of the parties or other significant private interests. Even in non-public proceedings, the decision is announced publicly.

**Practical Considerations.** In 2017, Poland introduced a disciplinary system designed to subordinate judges to political authority as part of a broader judicial overhaul. Appointed by the Minister of Justice and Prosecutor General Zbigniew Ziobro, Disciplinary Prosecutor Piotr Schab and his deputies, Przemysław Radzik and Michał Lasota, targeted judges who opposed unconstitutional judicial reforms. Judges faced disciplinary actions for reasons such as making public statements,

wearing a T-shirt with "Constitution," submitting preliminary questions to the Court of Justice of the European Union (CJEU), or issuing rulings unfavorable to prosecutors or political authorities. The introduction of new disciplinary offenses under the "Muzzle Law" further intensified this system. The proceedings under the Disciplinary Chamber routinely violated legal standards. Judges learned of charges against them through media leaks, investigations were launched but left unresolved to create a chilling effect, and hearings were often held in private or closed sessions without informing the accused. These practices eroded trust and transparency in the judiciary. Under pressure from the European Union, including financial penalties and withholding of funds, the Polish government amended the disciplinary system. The Disciplinary Chamber was abolished, disciplinary offenses were softened, and decisions made by the Disciplinary Chamber were overturned by the newly established Chamber of Professional Liability. Following the parliamentary elections in October 2023, a pro-democratic government came to power. Adam Bodnar, a former Polish Commissioner for Human Rights, was appointed Minister of Justice, signaling a significant shift in policy. Bodnar appointed Grzegorz Kasicki, a judge from the Regional Court in Szczecin, and Tomasz Szymański, a judge from the Regional Court in Kraków, as "ad hoc" disciplinary prosecutors under Article 112b § 1 of the Act on the System of Common Courts. These appointees, known for their high professional and ethical standards, are tasked with reviewing and terminating improperly initiated proceedings against judges who defended the rule of law. Judge Kasicki is overseeing cases involving Waldemar Żurek, a judge at the Regional Court in Kraków. Judge Szymański is handling cases related to judges such as Olimpia Barańska-Matuszek, Monika Frąckowiak, Agnieszka Niklas-Bibik, Paweł Strumiński, Dorota Lutostańska, Maciej Kawałko, and Marek Szymanowski. Their role includes rectifying injustices and ensuring fair treatment of judges previously targeted under the politicized system. Looking ahead, it is essential to amend the rules governing disciplinary procedures, eliminate the offenses introduced by the "Muzzle Law," and establish a transparent and independent disciplinary court to uphold judicial independence and the rule of law.

## SERBIA

**Legal Framework.** The legal framework for the disciplinary responsibility of judges in Serbia is built upon several foundational laws. Central to this framework are the Law on Judges<sup>134</sup>, the Law on the High Judicial Council<sup>135</sup>, and the Rulebook on Procedure for Establishing Disciplinary Responsibility of Judges and Court Presidents, a by-law of the High Judicial Council (HJC).<sup>136</sup> These legal instruments collectively regulate the composition of disciplinary bodies, the processes they follow, the offenses they address, and the sanctions they impose. The concept of disciplinary liability for judges was first introduced into Serbia's judicial system in 2008 through the Law on Judges, marking it as a distinct category of accountability. In 2022, constitutional amendments initiated significant reforms aimed at enhancing the independence of judges and prosecutors while improving

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134 The Official Gazette of the RS no. 10/2023 Available at: <http://www.ustavni.sud.rs/page/view/en-GB/235-100028/constitution>

135 The Official Gazette of the RS no. 10/2023

136 The Official Gazette of the RS no. 24/2024

transparency in the judicial appointment process. In response, new laws governing the organization of courts, the judiciary, and the High Judicial Council were enacted, reflecting the spirit of these reforms. Beyond these primary laws, additional legal instruments contribute to shaping disciplinary accountability. The HJC Code of Ethics<sup>137</sup> plays a substantive role by setting forth principles and rules of conduct for judges. This Code underpins the Law on Judges, which relies on its provisions to define disciplinary offenses. For example, Article 97, point 20 of the Law on Judges draws directly from the ethical standards established in the Code. Disciplinary liability applies equally to judges and court presidents. Its purpose is not to compromise judicial independence but to address inappropriate behavior or professional omissions that undermine the authority and impartiality of the judiciary. In doing so, it seeks to maintain public trust in the judicial system. A disciplinary offense is broadly defined as either the negligent performance of judicial duties or conduct that is inappropriate for the judicial role. Negligence may involve actions contrary to prescribed obligations, while inappropriate conduct can extend to behavior both within and outside the courtroom that damages the judiciary's reputation or public confidence in its impartiality. Guidance on judicial behavior is outlined in the Code of Ethics, which is built upon seven principles: independence, impartiality, competence and responsibility, dignity, commitment, freedom of association, and adherence to the Code itself. Each principle is supported by specific rules designed to govern the behavior of judges both in their professional and personal lives. The Law on Judges draws from these principles in defining what constitutes a disciplinary offense, addressing matters such as impartiality, procedural delays, improper treatment of court participants, and breaches of ethical standards. Despite these guidelines, challenges remain.<sup>138</sup> The term "major violation" of the Code of Ethics, for instance, lacks clear criteria to differentiate it from lesser offenses.<sup>139</sup> This ambiguity makes it difficult to ascertain when a breach of the Code escalates into a serious disciplinary matter. The Law on Judges attempts to address such issues by recognizing a qualified form of disciplinary offense. This occurs when a violation results in significant disruption to court operations, severe damage to judicial dignity, or substantial erosion of public trust. A positive development in the 2023 amendments to the Law on Judges provides protection for judges against disciplinary responsibility in cases where systemic factors hinder their efficiency. These factors include understaffing, excessive caseloads, or inadequate working conditions. This reform underscores a commitment to preserving judicial independence by ensuring that judges are not held personally accountable for institutional deficiencies. To promote accountability, any individual is entitled to file a disciplinary complaint against a judge or court president.<sup>140</sup> Complaints are submitted to the Disciplinary Prosecutor, ensuring public accessibility to the process and reinforcing transparency and trust in the judiciary. By addressing both individual and systemic accountability, the Serbian legal framework aims to balance the independence of the judiciary with its responsibility to uphold high standards of conduct and performance. This dual focus seeks to strengthen the judiciary as a cornerstone of democracy and public trust.

**Disciplinary Bodies.** The Law on Judges establishes specific disciplinary bodies responsible for overseeing and enforcing judicial accountability. These include the Disciplinary Prosecutor,

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137 The Official Gazette of RS, No. 96/10.

138 *Supra* Note 134, Article 96.

139 The Official Gazette of RS, No. 96/10. Article 97

140 Law on Judges, Article 101, Rulebook, art. 24

Deputies to the Disciplinary Prosecutor, and the Disciplinary Commission.<sup>141</sup> The High Judicial Council (HJC) plays a central role in managing these bodies. It determines the composition and termination of their mandates, appoints members, regulates their procedures, oversees decision-making processes, and acts as the appellate body in disciplinary proceedings.<sup>142</sup> The detailed establishment, composition, and functioning of these bodies are governed by the Rulebook on Procedure for Establishing the Disciplinary Responsibility of Judges and Court Presidents. For matters not specifically addressed by the Law on Judges or the Rulebook, the provisions of the Law on Criminal Procedure apply as a subsidiary framework. Members of disciplinary bodies are selected from the ranks of judges. Eligibility criteria include holding judicial office for at least 12 years and having no prior record of disciplinary sanctions. Judges meeting these criteria may be appointed as the Disciplinary Prosecutor, Deputy Disciplinary Prosecutor, or as the President and members of the Disciplinary Commission. The HJC initiates the appointment process by issuing a public announcement, inviting judges to submit applications for membership in disciplinary bodies.<sup>143</sup> In evaluating candidates, the Council considers their personal and professional biographies, relevant professional experience, and the opinions expressed during sessions of all judges or the Plenary Session of the Supreme Court. Appointments are finalized by a majority vote of the Council members.

**Disciplinary Proceedings.** First-instance disciplinary proceedings are conducted by the Disciplinary Commission upon the motion of the Disciplinary Prosecutor, which is based on a disciplinary complaint (Art. 101(1) and (2) of the Law on Judges). These proceedings are urgent and must guarantee a fair trial. They are closed to the public unless the judge subject to the proceedings requests otherwise (Art. 101(6) of the Law on Judges). The Law sets a three-year objective statute of limitations for initiating disciplinary proceedings, starting from the date the offence was committed (Art. 101(7) of the Law on Judges). The Disciplinary Prosecutor may request the judge or court president named in a disciplinary complaint to provide a statement. However, responding to this request is not mandatory. If the judge or court president chooses to respond, they must be informed that their statements can be used as evidence in the disciplinary proceedings.<sup>144</sup> Based on the complaint, the Disciplinary Prosecutor may either dismiss it or submit a proposal to the Disciplinary Commission to initiate proceedings. Disciplinary proceedings are formally initiated when the Disciplinary Prosecutor submits a proposal to the Disciplinary Commission. The judge or court president involved must promptly receive the proposal along with the supporting evidence. The individual is informed of their rights, including the right to engage a representative, respond to the proposal and evidence, provide explanations, and propose additional evidence within eight days of receiving the notification. The president of the Disciplinary Commission must inform the judge or court president of their procedural rights. These include the right to remain silent, refuse to answer specific questions, present allegations orally, admit or deny responsibility, propose evidence, question other participants, and comment on or challenge presented evidence. In exceptional cases, the Disciplinary Commission may independently introduce evidence not proposed by the

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<sup>141</sup> *Ibid*, Article 100

<sup>142</sup> *Law on High Judicial Council*, article 17, paragraphs 13 and 14

<sup>143</sup> *Ibid*, Articles 14 and 15

<sup>144</sup> *Rulebook on Procedure for establishing the disciplinary responsibility of the Judges and Court Presidents*, art. 27



parties or even withdrawn by them if the Commission deems it necessary to ensure an accurate and complete determination of the facts. The Disciplinary Commission has the authority to either reject the proposal for conducting disciplinary proceedings (Art. 104) or approve it. If approved, the Commission may declare the judge or court president responsible for a disciplinary offense and impose an appropriate disciplinary measure.<sup>145</sup> The Disciplinary Commission may suspend proceedings under specific circumstances. Suspension occurs if the Disciplinary Prosecutor withdraws the proposal, the judge or court president subject to the proceedings ceases to hold their position, the statute of limitations for conducting the proceedings expires, or if the Disciplinary Prosecutor, despite being properly summoned, fails to attend the hearing without a valid reason.<sup>146</sup>

**Disciplinary Measures.** Disciplinary measures are as follows: warning, salary reduction of up to 50% for a period not exceeding one year, prohibition of advancement to a court of higher instance for a period of up to three years. A disciplinary measure is imposed in proportion to the gravity of the disciplinary offence.<sup>147</sup> A warning may only be issued in the case of a judge's first disciplinary offence. Disciplinary measures of salary reduction of up to 50% and the prohibition of advancement to a court of higher instance for a period of up to three years may be imposed separately or cumulatively. The disciplinary measures may only be imposed cumulatively in case of a serious disciplinary offence.

**Right to Appeal.** The Disciplinary Commission may reject or approve a proposal for disciplinary proceedings. If approved, it can declare a judge or court president responsible for an offense and impose sanctions. Proceedings may be suspended if the Disciplinary Prosecutor withdraws the proposal, the judge or president leaves their position, the statute of limitations expires, or the prosecutor fails to attend without cause. Both the Disciplinary Prosecutor and the judge may appeal the Commission's decision to the High Judicial Council within eight days, citing procedural errors, factual inaccuracies, misapplication of law, or disputes over the imposed sanction.<sup>148</sup>

**Second-Instance Disciplinary Proceedings before the Council.** The Council typically decides on appeals without holding a hearing. The President of the Council appoints a reporter from among its elected members, who provides a summary of the procedure and facts without addressing the merits of the appeal. The Council then makes its decision. If deemed necessary, the Council may invite the judge or court president involved to provide additional statements or explanations to aid in its deliberations.<sup>149</sup>

**Decisions of the Council on the Appeal.** The Council must decide on an appeal within 15 days of receiving the file. If a hearing is held, the decision is made immediately afterward. Decisions are reached by majority vote, and deliberation minutes are prepared and signed by Council members and the recording civil servant. The Council may reject an appeal if it is untimely, incomplete, impermissible, or submitted by an unauthorized person. It may also dismiss the appeal as unfounded and uphold the Disciplinary Commission's decision, approve the appeal and amend the

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<sup>145</sup> *Ibid.*, Articles 28-36.

<sup>146</sup> Regulation, article 40, Law on Judges, art.104

<sup>147</sup> *Supra* Note 142. Article 14.

<sup>148</sup> *Ibid.* Article 42.

<sup>149</sup> *Ibid.* Article 45.

Commission's decision, or suspend proceedings if the judge or court president is no longer in office, the statute of limitations has expired, or the Disciplinary Prosecutor fails to attend a hearing without justification. Decisions are issued as formal rulings.<sup>150</sup> The High Judicial Council keeps records of disciplinary proceedings, including the judge's or president's name, unique citizen number, court, the offense, the outcome, and imposed sanctions.

**Ethics Committee.** If the Disciplinary Prosecutor does not dismiss the disciplinary report, they must first request the Ethics Committee to determine whether there has been a significant violation of the Code of Ethics, as outlined in Article 97, paragraph 1, point 20 of the Law on Judges ("Official Gazette of RS," No. 10/23), before submitting a proposal for disciplinary proceedings. In this request, the Disciplinary Prosecutor provides a factual description of the judge's or court president's behavior and the circumstances under which it occurred, omitting any personal data of the individual involved. The Ethics Committee must decide on the alleged significant violation within 90 days of receiving the request and submit its opinion to the Disciplinary Prosecutor.<sup>151</sup>

**Procedural Rights and Guarantees.** Judges and court presidents facing disciplinary proceedings are afforded several procedural rights and legal guarantees to ensure fairness and transparency. These include the following: The judge has the right to be informed immediately of the Disciplinary Prosecutor's proposal for initiating proceedings. Upon receipt of the proposal and accompanying evidence, the judge is entitled to review the case documentation, engage a representative, and provide explanations and evidence to support their case, either personally or through their representative. They are also entitled to present their arguments in person before the Disciplinary Commission. Judges, court presidents, their attorneys, and the Disciplinary Prosecutor may appeal the decision of the Disciplinary Commission to the High Judicial Council within eight days of receiving the decision.<sup>152</sup> However, the decision of the High Judicial Council is final, and no further legal remedies are available. The judge or court president may only challenge the Council's decision through an administrative dispute. These rights and procedural safeguards are designed to balance accountability with the protection of judicial independence, ensuring that disciplinary processes adhere to principles of fairness and due process.<sup>153</sup>

**Dismissal of Judges.** A judge may be dismissed if convicted of an offense carrying a prison sentence of at least six months or if a disciplinary proceeding establishes a severe violation that, in the opinion of the High Judicial Council, significantly harms the reputation of the judiciary or public trust in the courts. The High Judicial Council conducts a closed procedure to determine the grounds for dismissal (Art. 71). The Council must complete this process and issue its decision within 30 days of receiving the act initiating the dismissal. A judge may appeal the High Judicial Council's decision to the Constitutional Court within 30 days of receiving it. This appeal precludes the submission of a constitutional complaint (Art. 74). The Constitutional Court may either reject the appeal or accept

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<sup>150</sup> *Supra* Note 143, Article 105.

<sup>151</sup> Rulebook, article 30

<sup>152</sup> *Supra* Note 143, Article 103, 104 and 105.

<sup>153</sup> Rulebook. articles 31 and 32

it, annulling the Council's dismissal decision. The Court's ruling is final and is published in the "Official Gazette of the Republic of Serbia."<sup>154</sup>

**Transparency of the Proceedings.** The proceedings are not fully transparent, as they are closed to the public unless the judge facing the proceedings requests them to be open. However, the decisions of the Disciplinary Commission and the High Judicial Council (in appeal cases) are made public in anonymized form and are available on the official website of the High Judicial Council.

**Perceived Weakness and Advantages.** The judicial accountability system in Serbia has both strengths and weaknesses. A notable challenge is the lack of transparency and clear criteria in the appointment process for members of disciplinary bodies, including the Disciplinary Commission and the Disciplinary Prosecutor. This creates concerns about fairness and impartiality in the system. Additionally, the system struggles with resource constraints, which hinder its ability to conduct disciplinary proceedings within a reasonable timeframe. Another weakness lies in the ambiguity of certain provisions. For instance, Article 96, point 20 of the Law on Judges refers to "major violations" of the Code of Ethics but provides no clear criteria for distinguishing these from lesser violations. This allows the Ethics Committee significant discretion in determining whether a judge's behavior constitutes a major violation, potentially leading to inconsistent enforcement. Broad legal standards, such as "unjustifiable," "repeated," or "to a great extent," further complicate the consistent interpretation and application of disciplinary offenses. Despite these challenges, the system demonstrates significant strengths that align with international standards, particularly those outlined in CCJE Opinion No. 3 (2002). Disciplinary proceedings are overseen by the High Judicial Council, an independent authority with substantial judicial representation elected by peers. The process guarantees procedural safeguards, including the right to a defense, legal representation, and evidence presentation. The Law on Judges provides a defined list of disciplinary offenses and sanctions, ensuring predictability and legal certainty. Judges have access to multiple layers of recourse in disciplinary proceedings, with appeals to the High Judicial Council and, in dismissal cases, to the Constitutional Court. This multi-tiered approach ensures fairness and thorough review. Furthermore, judges are not held accountable for inefficiencies caused by systemic issues, such as understaffing or excessive caseloads, which protects them from liability for factors beyond their control. The system has also invested in improving judicial awareness. Between September 2019 and October 2021, a comprehensive training program on disciplinary liability, conducted in collaboration with the Judicial Academy, involved over 1,705 judges from all levels of the judiciary. This effort reflects a commitment to promoting professional conduct and ethical standards. To address existing weaknesses, the system would benefit from enhanced transparency in appointments, clearer definitions of ethical violations, and increased resources for disciplinary bodies. These improvements would strengthen the fairness, efficiency, and credibility of judicial accountability in Serbia.

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154 *Supra* Note 144, Articles 69 and 70.

## Cases

**Case I. (A judge's demeanor beyond the bench, in the role of a patient)<sup>155</sup>** **Facts:** Threats by the judge, who was unhappy with the fact that she was waiting in line for a medical examination, addressed to the medical workers, saying that she was the judge and would have them line up, and that she will use her power to make them all lose their job, represent behavior unworthy of a judge and a violation of the principle of dignity. **Decision:** The Commission finds that, in the sense of Article 80 paragraph 1 indent 1 of the Law on Judges (Official Gazzete no 116/08, 58/09 – US, 104/09,. 101/10) it is a violation of the Code of Ethics to a greater extent, bearing in mind the circumstances, i.e. that the event took place in the presence of a large number of people, not only doctors but also employees of the emergency service, as well as the number and content of the threats sent with reference to the power that the judge's office provides.

**Case II. (The impact of consistently exceeding reasonable deadlines for issuing written decisions in numerous criminal cases)<sup>156</sup>** **Facts:** Considering the number of undone decisions in writing within reasonable terms - 7 decisions and the length of exceeding the legal and reasonable terms from 141 to 504 days, consequently, this was reflected in the serious deterioration of the reputation and public trust in the judiciary. **Decision:** Thus, both the subjective and objective elements of a serious disciplinary offense from Article 90, paragraph 2, indent 3 of the Law on Judges were realized, because the judge was aware that he was obliged to issue decisions within a reasonable time and that the reputation and public trust in the judiciary could be damaged if he significantly exceeded deadlines for making decisions and this is done in a large number of cases.

**Case III. (Violation of the principle competence and responsibility (point 3 Code of Ethics) Facts:** By persistently insisting on the lack of jurisdiction of the misdemeanor court, against the decision of the Constitutional Court, which has a generally binding character according to the Constitution itself, which resolved the matter of the jurisdiction of the court instead of the jurisdiction of the Police Administration, in the same legal situation, the judge performed his judicial function unprofessionally and irresponsibly, which resulted in performing statute of limitations for misdemeanor prosecution in several cases. **Decision:** According to the circumstances of the specific case, starting from the previously existing generally binding decision of the Constitutional Court, from the Commission's point of view the principle of judicial independence cannot be justified by persisting in making illegal decisions that were assessed as such by the competent court in the appeal procedure, which is the only one competent to review the court decisions, and after they have been perceived as irregular in the proceedings before the Constitutional Court.

<sup>155</sup> (Decision of the Disciplinary Commission HJC no 116-04-504/2017-05 December the 15th 2017)

<sup>156</sup> (Decision of the Disciplinary Commission HJC no 116-04-00520/2014-05 September thr 18th 2014)

## SLOVAKIA

**Legal Framework.** Since the establishment of the Slovak Republic in 1993, the disciplinary justice system has undergone several changes. Articles 147 and 148 of the Constitution of the Slovak Republic provide the constitutional foundation for this system. Until 2000, disciplinary justice was exercised by disciplinary courts established within the regional courts for district court judges, higher military courts for military district court judges (now defunct), and the Supreme Court of the Slovak Republic for judges of regional courts, higher military courts, and the Supreme Court. Their status and competence were regulated by Article 40 of Act No. 335/1991 Coll. on Courts and Judges and Act No. 412/1991 Coll. on the Disciplinary Liability of Judges. With the adoption of Act No. 385/2000 Coll. on Judges and Lay Judges, a disciplinary court was established, effective from 1 January 2001. The Supreme Court of the Slovak Republic was designated as the disciplinary court for all judges, except for the President and Vice-President of the Supreme Court, over whom the Constitutional Court of the Slovak Republic exercised disciplinary jurisdiction. The Supreme Court carried out this function until 30 June 2017. From July 2017 to August 2021, disciplinary offences of judges were adjudicated by disciplinary chambers, whose activities were overseen by the Judicial Council of the Slovak Republic. Members of these chambers were also elected by the Judicial Council. In 2021, the Supreme Administrative Court of the Slovak Republic was established under Act No. 422/2020 Coll., which amended the Constitution of the Slovak Republic. Article 142(2)(c) of the Constitution granted the Supreme Administrative Court disciplinary jurisdiction over judges, prosecutors, and other individuals as determined by law. In December 2021, Act No. 432/2021 Coll., known as the Disciplinary Court Code, came into effect. This legislation introduced unified procedural rules for disciplinary proceedings against judges, prosecutors, notaries, and bailiffs, creating a more consistent framework for handling disciplinary matters.

**Disciplinary Bodies.** Disciplinary offences committed by judges are adjudicated by the disciplinary chambers of the Supreme Administrative Court (SAC), which serves as the highest judicial authority in administrative justice in the Slovak Republic. Beyond its general jurisdiction, the SAC also holds disciplinary jurisdiction over judges of general courts and, as specified by law, over other professions such as notaries and bailiffs. As a judicial body with full jurisdiction under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention"), the SAC has exclusive authority to determine guilt and impose sanctions for disciplinary misconduct by judges and prosecutors, including the Prosecutor General. The SAC does not, however, have jurisdiction over disciplinary offences committed by judges of the Constitutional Court, the President and Vice-President of the Supreme Court, or the President and Vice-President of the Supreme Administrative Court. These cases are adjudicated by the plenary of the Constitutional Court. Under the current wording of Article 136(3) of the Constitution, the Constitutional Court serves as the disciplinary authority for these high-ranking judicial officials. This arrangement represents a specific constitutional power granted to the Constitutional Court to handle disciplinary proceedings against certain officials. It reflects the principle of separation of powers within the judiciary, ensuring objective and impartial adjudication of disciplinary matters involving the highest judicial authorities. This separation helps to prevent potential conflicts of interest or undue

influence on the decision-making of the SAC's disciplinary chambers, which otherwise oversee the disciplinary responsibilities of judges in general and administrative courts.

**Procedural Rights.** Disciplinary proceedings in the Slovak Republic closely resemble criminal proceedings. They are governed entirely by specific laws, rather than sub-legislative regulations, ensuring a structured and comprehensive legal framework. In cases where these laws do not provide explicit guidance, or the nature of the case suggests otherwise, the general provisions of the Criminal Code are applied as a supplement. Similarly, key principles of the Criminal Procedure Code are integrated into disciplinary proceedings, covering areas such as joint proceedings, exclusion of judges or other participants, the rights of defense, evidentiary procedures, court decisions, appeals, plea bargaining, retrials, and procedural costs. The Act on Judges and Lay Judges categorizes disciplinary offences into three levels of severity: disciplinary misconduct, serious disciplinary misconduct, and serious disciplinary misconduct incompatible with the office of a judge. The Act also delineates corresponding disciplinary measures, tailored to the gravity of the misconduct. For disciplinary misconduct, the possible penalties include a warning, a salary reduction of up to 30% for a maximum of three months (or six months for repeated offences), and the issuance of a public decision highlighting the judge's failure to prove the source of financial gains in accordance with legal requirements. In cases of serious disciplinary misconduct, penalties escalate to measures such as transfer to a lower court, salary reductions ranging from 50% to 70% for a period of three months to one year, and public declarations of failure to account for financial gains that undermine judicial dignity or public trust in the judiciary. For the most severe category, serious disciplinary misconduct incompatible with the office of a judge, dismissal from office is the mandatory penalty. The Act also includes provisions for the expiration of disciplinary liability through limitation periods, set at three and five years, depending on the nature of the misconduct. Procedural rights during disciplinary proceedings are safeguarded primarily by the Disciplinary Procedure Code, supplemented by the Criminal Procedure Code. These rights include the random assignment of disciplinary motions to specific disciplinary chambers, timely notification of the accused judge about the initiation of proceedings, and the judge's right to be heard, present evidence, and select defense counsel. The proceedings are generally public and are conducted in the presence of the accused judge and their defense counsel. Exceptions are made only if the judge is duly notified but fails to appear without credible justification, explicitly waives their right to attend, or requests proceedings in their absence. Other essential rights include the judge's ability to refuse testimony, comment on evidence, question witnesses and experts, propose new evidence, and exercise their right to the last word during hearings.

**Transparency in the Proceedings.** The primary legislation governing disciplinary proceedings and the publication of judicial decisions in the Slovak Republic establishes clear procedural and transparency standards. Disciplinary Court Code emphasizes the principle of public hearings. Hearings before the Disciplinary Chamber are generally open to the public, ensuring transparency and accountability. Exceptions to this principle are limited and permitted only under specific circumstances outlined in Articles 249 to 251 of the Code of Criminal Procedure. The President of the Disciplinary Chamber announces disciplinary decisions during a public hearing. These decisions must be issued in writing within 30 days of their pronouncement. Each decision includes an operative part, the reasoning behind the decision, the applicable remedies, and the proportion of



votes by which the verdict and disciplinary measures were adopted. If the decision is not unanimous, any dissenting opinions from members of the Disciplinary Chamber, including lay judges, can be appended to the decision and shared with the accused and the complainant. The Disciplinary Court Code mandates the publication of disciplinary decisions, following procedures set out in the Courts Act. This requirement promotes transparency, allowing public scrutiny and understanding of the court's reasoning. The publication of decisions upholds high standards for openness and accountability in judicial proceedings.

**Publication and Disclosure of Judicial Decisions (Act No. 757/2004 Coll. on Courts)**

Courts are required to publish final decisions on the merits, decisions terminating proceedings, urgent measures, and orders suspending the enforceability of administrative authority decisions. These must be published within 15 working days of becoming final or, if the decision is not yet prepared, within 15 days of its completion. Similarly, all decisions rendered during proceedings—whether annulled, confirmed, or modified by higher courts—must also be published. Exceptions apply to judgments where public hearings were partially or fully excluded and to orders for payment, which are not published. Additionally, the Registry of the Supreme Administrative Court ensures the publication of final decisions from Disciplinary Chambers within three working days of finalization. Prior to publication, decisions are anonymized to protect the rights and legally protected interests of the individuals involved. The Ministry of Justice of the Slovak Republic provides technical support for publishing decisions on its official website, ensuring accessibility. Decisions from the Supreme Court and the Supreme Administrative Court are also published on their respective websites. Courts also accommodate individual requests for access to judicial decisions, including those that are not final or do not address the merits of a case. However, decisions involving telecommunications secrecy, information-technical means, or certain orders under the Code of Criminal Procedure are excluded, except where disclosure is deemed necessary and does not jeopardize state interests. To further enhance transparency, the Supreme Administrative Court issues press releases summarizing significant disciplinary decisions, providing the public with accessible and concise insights into important rulings.

**Composition of Disciplinary Councils.** Each Disciplinary Chamber in the Slovak Republic is composed of five members: three professional judges, one of whom serves as the President of the Chamber, and two lay judges. The professional judges and their replacements are appointed for a three-year term by the President of the Supreme Administrative Court, as stipulated in the court's work schedule. To ensure periodic renewal and prevent stagnation, the composition of the Disciplinary Chambers must be substantially changed every three years. Lay judges, on the other hand, are selected on an ad hoc basis for each disciplinary proceeding from dedicated databases. Each lay judge serves a three-year term and may be re-elected for a maximum of two consecutive terms. The structure of the Disciplinary Chamber is designed to ensure both stability and flexibility. It combines a fixed component of professional judges with a dynamic component of two lay judges selected for each case. This arrangement is intended to maintain objectivity and impartiality in disciplinary decision-making. The 3:2 ratio of professional judges to lay judges prevents tie votes while reflecting the judicial nature of the proceedings. Every member of the Disciplinary Chamber, including the lay judges, is considered a lawful judge for the purposes of the proceedings. The appointment of members to the Disciplinary Chamber follows strict criteria to ensure the integrity

and competence of its composition. Only judges of the Supreme Administrative Court may serve as professional members, and those designated as Presidents of the Disciplinary Chamber must already hold the position of chamber president within the Supreme Administrative Court. Candidates for these roles must not be involved in ongoing disciplinary or criminal proceedings, must not have been subject to disciplinary measures unless the sanctions have been formally lifted, and must not hold positions such as members of the Judicial Council, President of the Supreme Administrative Court, or Vice-President of the court. Lay judges, who bring a non-judicial perspective to the proceedings, are selected by designated bodies such as the Judicial Council. To qualify, candidates must be Slovak citizens with a second-degree law degree from a recognized institution. They must also have full legal capacity, good health, a clean reputation, and demonstrate moral qualities suitable for the role. Candidates must have at least ten years of legal practice, reside permanently in Slovakia, and be unaffiliated with political parties or movements, including refraining from running in parliamentary or European elections. Furthermore, they must not be involved in disciplinary proceedings or criminal prosecution, have no history of disciplinary sanctions unless rehabilitated, and cannot simultaneously serve as a judge, prosecutor, bailiff, notary, or member of the Judicial Council.

**Appeal Procedure.** An appeal against a disciplinary decision may only be filed under specific circumstances. The disciplinary respondent may appeal if the imposed measure involves removal from office, disqualification from holding office, suspension from office, or similar severe sanctions. Additionally, the complainant may appeal if they had proposed one of these severe measures but the Disciplinary Chamber failed to impose it. Appeals must be submitted within 15 days of receiving the disciplinary decision. Once filed within the prescribed period, the appeal has a suspensive effect, temporarily halting the enforcement of the decision. If the competent chamber does not dismiss the appeal outright, it will decide the case itself. However, it cannot annul the disciplinary decision and remit the case back to the Disciplinary Chamber for a new hearing and decision. Parties to the proceedings also have the option to file a motion for a retrial of the disciplinary case within three years of the date the disciplinary decision becomes final. Beyond this, no other remedies are permitted. When the Supreme Administrative Court handles ordinary or extraordinary appeals against decisions, including those from disciplinary chambers, the chamber of the Supreme Administrative Court comprises a president and four judges. Procedural rules may allow for a larger panel, but it must always consist of an odd number of judges to ensure definitive outcomes. This structure ensures fairness, consistency, and impartiality in the review process.

**Perceived Weaknesses and Proposed Solutions.** During the preparation of the Disciplinary Court Code, the question of whether disciplinary proceedings should be conducted in a single-instance or allow for appeals was a central topic of discussion. A compromise was reached, permitting appeals but only in cases involving serious disciplinary offences incompatible with the office of judge. However, the current arrangement, where appeals are decided by another five-member chamber of the Supreme Administrative Court—the same court that acts as the first-instance disciplinary tribunal—remains problematic. Given the requirement to substantially change the composition of disciplinary chambers every three years and the limited number of judges available at the Supreme Administrative Court, there is a risk that judges who ruled at the first instance may later participate in appellate decisions on cases in which they were indirectly involved. This overlap could lead to

concerns about the objective impartiality of the disciplinary tribunal, even though such situations are not unique to Slovakia. Nonetheless, this is not an ideal state of affairs. Another issue lies in the composition of the first-instance disciplinary chamber for judges, which includes only judges from the Supreme Administrative Court and excludes judges from general courts, such as district and regional courts, the Specialized Criminal Court, and the Supreme Court. The establishment of the Supreme Administrative Court and the administrative courts created a dichotomy between general and administrative courts in Slovakia. Each system has distinct characteristics that, if properly considered, would justify including judges from general courts in disciplinary proceedings. Criticism has also arisen regarding the selection process for judges appointed to the Supreme Administrative Court, as they did not undergo the same rigorous selection procedures required of judges in the general courts. The Disciplinary Court Code allows disciplinary complainants to withdraw their complaints, provided the withdrawal is substantiated. If the reasons given are deemed unsubstantial, the Disciplinary Chamber may reject the withdrawal. A notable decision by the Supreme Administrative Court refused to accept a withdrawal on the grounds that the stated reasons lacked substance. This approach, which evaluates the adequacy of the reasons for withdrawal, introduces an inquisitorial element into the process and risks blurring the line between the roles of the "prosecutor" and the judge. The issues within the current disciplinary framework highlight the need for legislative reform. One proposed solution is to amend the legislation to assign first-instance disciplinary proceedings to administrative courts and appellate proceedings to the Supreme Administrative Court, a change that would require a constitutional amendment. Additionally, the composition of disciplinary chambers should be revised to include equal representation from judges of general courts. Such changes would address concerns regarding impartiality, fairness, and inclusivity in the disciplinary process, ultimately strengthening the integrity of judicial accountability in Slovakia.

## Cases

**Case I Disregarding the Binding Opinion of the Court of Appeal. (Decision of the Supreme Administrative Court file no. 42Do/2/2023 of 21.3.2024 )** The Disciplinary Chamber initially ruled that a District Court judge had partially disregarded the binding legal opinion of the Court of Appeal, causing delays in proceedings and breaching his duty to act conscientiously. As a result, the judge was sanctioned with a 30% salary reduction for six months. However, on appeal, the petitioner sought the judge's removal from office, arguing that his actions constituted a serious disciplinary offence incompatible with his role. The Disciplinary Appeals Chamber disagreed with the initial decision and acquitted the judge, determining that his actions did not constitute a disciplinary offence under Article 34(2)(b) of the Disciplinary Procedure Code. Upon review, the Appeals Chamber found that the Regional Court's annulment decision did not include a clear, specific, or explicit legal opinion. Instead, it referred the case back for further evidence without prescribing a specific legal standard or instructions for evaluating the evidence. The Appeals Chamber concluded that disciplinary liability could only arise if a higher court provided a precise and explicit legal opinion that was subsequently disregarded. In this case, the judge's decision, based on additional evidence, did not breach any clear directive from the Court of Appeal. Thus, no disciplinary offence occurred, and the judge's original conclusions were deemed permissible.

**Case II. Violation of the Obligation for Judge to be Able to Provide in a Credible Manner the Honesty of the Origin of his/hers property (Decision of the Supreme Administrative Court file no. 32D/3/2023 of 2.10.2024)**

The Disciplinary Chamber of the Supreme Administrative Court of the Slovak Republic found a judge guilty of a serious disciplinary offence for failing to comply with legal obligations regarding the declaration of his financial circumstances, adherence to judicial ethics, and proving the honesty of the origin of his property. As a result, the court imposed the disciplinary measure of dismissal from the office of judge. The Chamber determined that the judge deliberately omitted significant information in his 2020 judicial assets declaration by failing to disclose deposits in bank accounts held for his minor children. These deposits exceeded EUR 6,600 individually and EUR 16,600 in total. Additionally, the judge violated judicial ethics by lying to the Judicial Council's control commission about his recreational expenses. Furthermore, the judge failed to dispel reasonable doubts about the legitimacy of his assets during proceedings before the Control Commission and the Judicial Council. These doubts included the justification for transferring funds to his children's accounts and the sources of funds used for living expenses. In its decision, the Disciplinary Chamber concluded that the judge's inability to credibly prove the honesty of his property's origin constituted a serious disciplinary offence incompatible with the office of judge, warranting dismissal.

**Case III. Doubts About the Origin of the Judge's Assets and Temporary Suspension of a Judge (Decision of the Supreme Administrative Court file No. 32D/9/2024 of 14.10.2024)**

The Disciplinary Chamber of the Supreme Administrative Court, in a closed session, decided to temporarily suspend a regional court judge following a motion by the President of the Judicial Council. This motion came after the Disciplinary Chamber's decision on October 2, 2024, which found the judge guilty of a serious disciplinary offence incompatible with the judicial office and imposed the disciplinary measure of dismissal. The judge was found to have raised and failed to resolve reasonable doubts regarding the honesty of the origin of his property during proceedings before the Control Commission of the Judicial Council and the Judicial Council itself. These doubts related to the justification for the origin of funds transferred to his children's accounts and funds used for living expenses. The judge's inability to credibly prove the honesty of his property's origin was deemed a serious breach of his obligations. In justifying the suspension, the Disciplinary Chamber emphasized the gravity of the judge's conduct, which fundamentally called into question his moral integrity and reliability. Such behavior was seen as undermining public confidence in the independent, impartial, and fair administration of justice, as well as the confidence of parties involved in proceedings presided over by the judge. The suspension was thus deemed necessary to preserve the integrity and trust in the judiciary.

**Case IV. Violation of Judicial Ethics (Decision of the Supreme Administrative Court file No. 32D/6/2023 of 23.10.2024)**

The Disciplinary Chamber found a judge guilty of multiple disciplinary offences, including failing to meet statutory deadlines for preparing and dispatching judgments in five cases, thereby violating her duty to act conscientiously and handle cases without unnecessary delays. The Chamber also determined that she breached her obligations by engaging in conduct that undermined the dignity and respect of the judicial office and violated principles of judicial ethics. This included discussing her health problems during hearings in the presence of the parties, making inquiries unrelated to the pending cases, contacting her family during proceedings,

informing her assistant about a call to the Ministry of the Interior regarding court organization, refusing to open a scheduled hearing until strongly instructed by the Vice-President of the Court, and demonstrating a lack of familiarity with the case files during hearings. Additionally, the judge was found guilty of creating undue pressure and time stress on senior court officials by imposing an excessive number of urgent tasks, frequently contacting them by telephone during their absence, and setting unreasonably short deadlines for administrative work that were impossible to meet given the size of the case files. She further undermined the dignity of the judicial office by placing a submission on a case file that challenged a senior judicial officer's competence and experience without any relevance to the matter at hand. Her conduct toward the officer was deemed insulting and patronizing. The Disciplinary Chamber concluded that her behavior constituted serious disciplinary offences that violated the ethical and professional standards expected of a judge. The decision, given the disciplinary measures imposed, is subject to appeal by the complainant.

**Case V. Violation of Judicial Ethics (Decision of the Supreme Administrative Court file No. 32D/16/2023 of 20.11.2024 )** The Disciplinary Chamber found a Supreme Court judge guilty of a serious disciplinary offence for reacting violently and inappropriately during a clash with another judge in a public car park. This conduct, involving a physical altercation, was deemed a violation of judicial dignity, respectability, and ethical principles. The Chamber emphasized that judges, as public figures, must exercise heightened self-control, especially in public settings.

As a long-serving Supreme Court judge, the disciplinary defendant was expected to serve as a role model for peers and lower court judges, both professionally and personally. Instead, his actions undermined public trust in the judiciary. To address the severity of the offence and ensure both punitive and preventive effects, the Chamber imposed a disciplinary measure of a 50% salary reduction for three months.

**Case VI – Violation of Judicial Ethics (Decision of the Supreme Administrative Court No. 41Do/2/2023 of 31.10.2023 )** The Disciplinary Appeals Chamber of the Supreme Administrative Court dismissed the appeal against the first-instance decision that found a district court judge guilty of a continuing serious disciplinary offence and imposed a 60% salary reduction for one year. The complainant sought the judge's removal from office, but the Appeals Chamber upheld the original penalty, considering it proportionate to the misconduct. The judge was found guilty of repeatedly violating his duty to uphold the dignity and respectability of the judicial office, undermining public confidence in the judiciary, and failing to observe judicial ethics. His actions included refusing to wear a respirator in public spaces and the courthouse, publicly asserting that laws need not be respected, and creating a negative image of the judiciary. The Disciplinary Chamber determined that the judge's behavior, characterized by deliberate and repeated violations, aggravated the harmfulness of his conduct, which was assessed as a continuing offence. The Appeals Chamber acknowledged the seriousness of the misconduct but concluded that it did not warrant removal from office, as it did not entirely deprive the judge of the moral credibility required for his judicial functions. It emphasized that the misconduct did not extend to his decision-making as a judge and reiterated that disciplinary measures must be proportionate and focused solely on the acts proven in the case. The salary reduction was deemed an appropriate and proportionate penalty.

**Case VII – Alcohol in the Workplace – (Decision of the Supreme Administrative Court file No.**

**41Do/1/2023 dated 29.6.2024)** In the first instance decision, the Disciplinary Chamber found the disciplinary defendant guilty of having been found officially guilty of performing her duties as a judge - signing written copies of decisions of the Court of Appeal - while performing her duties as a judge during working hours under the influence of alcohol. The Disciplinary Chamber held that the judge had thereby committed a serious disciplinary offence incompatible with the office of judge. It imposed on her the disciplinary measure of removal from judicial office for that misconduct. The Disciplinary Chamber of Appeal, at a public hearing held in the presence of the parties, concluded that, in view of the time lag between the signing of the decisions and the conduct of the breath test, it could not be regarded as unequivocally established that the disciplinary defendant was already under the influence of alcohol at the time of the signing of the decisions in question. At the same time, the course of the previous proceedings was sufficient to establish that, in the circumstances clearly established, the accused was under the influence of alcohol at the time she performed the judicial function of studying the case file. For the above reasons, the Disciplinary Chamber of Appeal annulled the decision of the Disciplinary Chamber of the Supreme Administrative Court, Case No. 33 D 22/2022 of 11 October 2022 and held that the disciplinary defendant was guilty of having been found to be under the influence of alcohol despite the prohibition to be under the influence of alcohol in the workplace and to perform her duties as a judge while under the influence of alcohol during working hours. On the basis of the above, the Disciplinary Chamber of Appeal found that the disciplinary defendant committed a serious disciplinary offence incompatible with the office of a judge, for which she was imposed a disciplinary measure - dismissal from the office of a judge pursuant to Section 117(5) of Act No. 385/2000 Coll. on Judges and Adjudicators and on Amendments and Supplements to Certain Acts, as amended by later regulations.

**Case VIII. Disciplinary proceedings as a means of punishing opinion opponents. (Decision of the Supreme Administrative Court file No. 32D/22/2022 of 22.5.2023 )**

The Disciplinary Chamber acquitted a Supreme Court judge, citing the European Court of Human Rights decision in *Miroslava Todorova v. Bulgaria*. The Chamber found that the disciplinary motion appeared to be aimed at punishing the judge for his critical comments on judicial reform and the new judicial map, rather than addressing genuine misconduct. The judge, a vocal critic of the reform as part of the Association of Judges of Slovakia, had clashed publicly with the complainant, who was the key architect of the reform. The Chamber emphasized that it was not tasked with deciding who was "right" in this debate but noted that the disciplinary motion could reasonably be perceived as retaliation for the judge's exercise of free speech. It underscored that freedom of expression and pluralism of opinion are foundational to a democratic society and that using disciplinary proceedings to silence judicial criticism undermines the rule of law, judicial independence, and the fairness of disciplinary processes. However, the Chamber clarified that this decision does not preclude prosecuting a judge for actual misconduct unrelated to their exercise of free speech, provided there is no indication of retaliation. Applying Article 10 of the European Convention on Human Rights, the Chamber concluded that the proceedings constituted an unnecessary interference with the judge's right to freedom of expression. By a vote of 4:1, the Chamber acquitted the judge, determining that his actions did not amount to a disciplinary offence. The decision is final and not subject to appeal.



## SLOVENIA

Judicial accountability in Slovenia is rooted in a constitutional framework that emphasizes the dual values of independence and responsibility. The Constitution of the Republic of Slovenia enshrines the independence of judges under Article 125, binding them solely to the Constitution and the law. At the same time, Articles 131 and 132 define the institutional and procedural foundations of the Judicial Council and the mechanisms for the dismissal of judges, reflecting a strong commitment to maintaining public trust in judicial impartiality. At the core of Slovenia's judicial accountability system stands the Judicial Council, an independent constitutional body entrusted with ensuring the integrity and professionalism of the judiciary. Composed of eleven members—six elected by judges themselves and five members on the proposal of the President of the Republic from among university professors of law, attorneys, and other lawyers by the National Assembly—the Council exercises broad powers in judicial appointments, performance evaluations, and disciplinary proceedings. Its composition, with a majority of judicial members, serves as a constitutional safeguard against political influence, reinforcing the perception of judicial impartiality.

Disciplinary procedures in Slovenia are governed by a carefully regulated framework designed to protect both judicial independence and accountability. A judge may only be dismissed under narrowly defined conditions, such as final criminal convictions, persistent incompetence, or serious breaches of duty or ethical standards. In later cases a disciplinary procedure must be conducted by the Disciplinary Prosecutor and the Disciplinary Court, both semiautonomous bodies attached to the Judicial Council. If the ruling by the Disciplinary Court is the termination of judicial office and the ruling is final, the termination of judicial service by Law is established by the Judicial Council. Similar procedure applies in the case of incompetence, where first the assessment of the judge's judicial service is made by a personnel council of a higher Court. If a final assessment determines whether a judge is unfit for judicial service, the Judicial Council will terminate his/her position by Law. Both procedures allow for legal remedies with the possibility to file a lawsuit in an administrative dispute against the decision of either the Disciplinary court or the Judicial Council.

Dismissal of a Judge on the other hand, follows in a case of final verdict in a criminal case against a Judge where he/she was found guilty of a crime and sentenced to serve a prison term longer than 6 months. Judicial Council submits a formal proposal to the National Assembly to dismiss the Judge. In the case of a lesser penalty, the decision of the Judicial Council depends of the nature of the felony. If the crime is such that the judge is deemed personally unsuitable for judicial office, the aforementioned procedure is initiated. The Council must allow the judge concerned to provide a written explanation within fifteen days before deciding whether to proceed. If the Council, by a two-thirds majority, determines that dismissal is warranted, it submits a formal proposal to the National Assembly, which alone has the constitutional authority to remove a judge from the office. This high threshold protects judges from arbitrary or politically motivated dismissals. Judges subjected to dismissal proposals have the right to initiate administrative proceedings before the Supreme Court, ensuring judicial protection and compliance with procedural fairness. Decisions of the Judicial Council are published in anonymized form, promoting transparency and reinforcing public confidence in the disciplinary process. In 2017, with the introduction of the Judicial Council Act

(adopted on 2.4.2017) the relocation of jurisdiction from the Supreme Court to the Judicial Council was made and the competent bodies are the Disciplinary Court and the Disciplinary Prosecutor attached to the Judicial Council. The latter provides financial resources, professional and administrative assistance, and other conditions for their work. Since spring 2024 the efforts are made to reform the legislature on Courts, Judges and Judicial Council. At the time of this publication, however, the process is not completed. The amendments to the Judicial Council Act (ZSSve) proposed in 2024, will also reshape the accountability landscape. These reforms were *inter alia* prompted by the Constitutional Court's finding that the Council's dual role - initiating and adjudicating disciplinary cases - violated the principle of impartiality under Article 6 of the European Convention on Human Rights. To address this, the proposed ZSSve leaves out the power of the Judicial Council to file an initiative to commence a disciplinary procedure. Changes will also include e.g., more Disciplinary Prosecutors, the procedure for exclusion of members of the Disciplinary Court to guarantee impartiality, the separate legal remedy in disciplinary procedures etc..

This will help to further ensure that disciplinary proceedings comply with international standards of fairness, bolstering the legitimacy of judicial accountability mechanisms. The reforms will also introduce more transparent procedures for the election of Judicial Council members. New regulations mandate the publication of key electoral stages, grant procedural rights to candidates, establish a special electoral dispute mechanism before the Administrative Court, and model judicial protection after Slovenia's parliamentary election law (ZVDZ). These changes enhance the democratic legitimacy of the Judicial Council, ensuring that its composition reflects both transparency and judicial self-governance. To further reinforce public trust, in 2017 the ZSSve imposed extensive transparency obligations. The Judicial Council must publish decisions of public interest, submit annual reports to the National Assembly, and communicate key decisions through its website and the Official Gazette. The Ethics and Integrity Commission, along with disciplinary bodies, will be strengthened to foster a culture of ethical accountability within the judiciary.

In terms of financial independence in 2017 ZSSve abolished the previous practice whereby the Supreme Court coordinated the Council's budget. The Judicial Council drafts and submits its own budget independently, aligning Slovenia's system with good practices for institutional autonomy and safeguarding it from undue influence by other branches of government. The Slovenian system of judicial accountability is also embedded in a broader European and international framework. Judges and individuals alike can seek redress before the Constitutional Court of Slovenia if fundamental rights are infringed, and ultimately before the European Court of Human Rights if domestic remedies are exhausted. These multilayered protections help ensure that the principles of judicial independence, impartiality, and accountability are respected at both the national and European levels. Although challenges remain, particularly in ensuring consistent application of new procedural safeguards, the 2024 proposed reforms mark a decisive move towards a more transparent, professional, and impartial judiciary. Slovenia's evolving model offers important lessons for judicial systems across Europe seeking to reconcile judicial independence with effective accountability.

## UKRAINE

**Background and Legal Framework.** Upholding the rule of law is vital for Ukraine, which faces challenges from corruption and political interference in its legal system. Strengthening judicial accountability builds public trust, reinforces the separation of powers, and promotes ethical conduct. Independent oversight and transparent disciplinary processes are crucial for deterring misconduct, aligning with European standards, and attracting foreign investment. These reforms support Ukraine's stability, development, and human rights. The Constitution, the Law on the Judiciary and Status of Judges, and the Law on the High Council of Justice form the judiciary's legislative framework. Significant changes to judicial disciplinary liability were introduced by the 2016 constitutional reform and 2023 amendments. The system remains in a transitional phase amid ongoing reforms. Since its establishment in 1998, the High Council of Justice (HCJ-old) handled disciplinary matters for Supreme Court justices and judges of high specialized courts, while other bodies, such as regional qualification commissions and the High Qualification Commission of Judges (HQCJ), dealt with appellate and local court judges. After legislative amendments in 2010, the HQCJ assumed responsibility for disciplinary proceedings, with the HCJ-old hearing appeals on disciplinary decisions for appellate and local court judges. The HCJ-old also addressed dismissals of judges based on violations of incompatibility requirements, breaches of the oath, or criminal convictions. In 2016, constitutional reforms replaced the HCJ-old with a new High Council of Justice (HCJ), which established Disciplinary Chambers to manage disciplinary proceedings. By February 2017, the HCJ Disciplinary Chambers took over all disciplinary proceedings for judges across national courts. Legislative amendments in 2021 and 2023 introduced significant reforms. A disciplinary inspector now conducts preliminary examinations and prepares cases for the HCJ Disciplinary Chambers. This led to the creation of the Service of Disciplinary Inspectors (SDI) as an independent structural unit. While the SDI's establishment is ongoing, members of the Disciplinary Chambers (rapporteurs) temporarily perform the inspector's duties. Between February 2022 and January 2023, the HCJ was inoperative due to a lack of quorum. Its disciplinary functions resumed on October 19, 2023, following legislative amendments that reinstated disciplinary case considerations. Automated case distribution was restored on November 1, 2023. The SDI is expected to become operational in December 2024. From January to September 2024, 6,048 disciplinary complaints were filed, averaging 672 complaints per month. As of October 1, 2024, the HCJ is managing 10,951 pending complaints with 17 members. The HCJ Chairman and Chief Justice of the Supreme Court do not participate in the Disciplinary Chambers, leaving an average of 730 cases per member.

**Disciplinary Actions Against Judges.** In Ukraine, these proceedings are initiated by the High Council of Justice (HCJ) upon receiving a complaint, by the Disciplinary Chamber's initiative, or by the High Qualification Commission of Judges (HQCJ) in cases defined by law. The process begins with a preliminary examination by a designated HCJ disciplinary inspector, who reviews the complaint for compliance with legal requirements and determines whether to return it without consideration, forward it to the Disciplinary Chamber, or propose opening a disciplinary case. If the Disciplinary Chamber opens a case, the inspector prepares it for hearing, identifies relevant witnesses, and submits it for consideration, with participation from both the judge and the

complainant. Sanctions imposed on judges are proportional to the offense and include warnings, reprimands with payment deprivation, temporary suspension, demotion, or dismissal. Grounds for disciplinary liability include denying access to justice, procedural delays, ethical breaches, and serious violations of the law. Reversed court decisions do not automatically result in liability unless misconduct or negligence is proven. Common grounds for liability include delayed case handling, behavior undermining public confidence, and violations of legal principles. Since the HCJ resumed its disciplinary function on November 1, 2023, it has resolved 9,300 complaints, averaging 845 per month. In the first nine months of 2024, 7,175 complaints were addressed, with 4,232 returned to complainants, 2,721 dismissed without opening cases, and 125 resulting in disciplinary actions against 95 judges. These actions included 41 warnings, 15 reprimands, 10 severe reprimands, 3 temporary suspensions, and 26 dismissals. As of October 1, 2024, 10,951 complaints remain pending before the HCJ. The disciplinary process is governed by 25 grounds outlined in the law, addressing violations such as unlawful denial of justice, delays in case handling, ethical misconduct, and improper use of judicial authority. Ongoing discussions aim to refine these grounds to enhance clarity and efficiency. These efforts are part of Ukraine's broader judicial reforms to align with European standards, as discussed in meetings with the European Commission under Title 23, "Judiciary and Fundamental Rights."

**Appealing Decisions.** The appeal procedure is governed by the Law on the Judicial System and Status of Judges, the Law on the High Council of Justice, the Code of Administrative Procedure of Ukraine, and the Rules of Procedure of the High Council of Justice (HCJ). There are two types of appeals: extrajudicial and judicial. The extrajudicial appeal involves a review by the HCJ plenary of decisions made by the HCJ Disciplinary Chamber. In this capacity, the HCJ functions as a quasi-court, as noted by the European Court of Human Rights in *Volkov v. Ukraine* (2013) and reaffirmed by the Grand Chamber of the Supreme Court in its 2023 decision, which stated that the HCJ balances evidence and performs a quasi-judicial role in disciplinary appeals. Judges have an unconditional right to appeal, while complainants may only appeal if the Disciplinary Chamber grants permission during its decision announcement. Grounds for appeal include procedural violations such as improper notification or restricted access to case materials, incorrect evidence assessment, or inappropriate penalties. Appeals must be filed within 10 days of receiving the Disciplinary Chamber's decision. Following an appeal, the HCJ may cancel the Disciplinary Chamber's decision and close the proceedings, partially or fully reverse the decision and adopt a new one, change the type of disciplinary sanction applied, or uphold the decision of the Disciplinary Chamber. The HCJ has wide discretion to address errors by the Disciplinary Chamber, including revising the legal qualification of offenses, altering sanctions, and imposing more severe penalties if warranted. Between November 1, 2023, and October 1, 2024, the HCJ adopted 66 decisions on appeals in disciplinary cases. These included upholding decisions of the Disciplinary Chambers, canceling decisions to impose disciplinary liability, changing decisions by applying different sanctions, reversing decisions to refuse liability and imposing warnings, and invalidating decisions due to external circumstances such as the death of the judge involved. Some appeals were left without consideration. To maintain consistency in disciplinary practices, the HCJ annually summarizes its decisions and publishes reports, covering the years 2017–2021 and 2023. Judicial appeals against HCJ decisions are heard exclusively by the Grand Chamber of the Supreme Court. This specialized process provides the sole opportunity for judicial review of HCJ disciplinary decisions, ensuring

fairness and adherence to the rule of law. Grounds for appealing a decision of the High Council of Justice (HCJ) include the illegality of the decision, such as when it contradicts the law, violation of a judge's rights, including restrictions on the right to defense or access to the case file, and incorrect qualification of the judge's actions. Appeals must be filed within 30 days of receiving the final decision of the HCJ. Between January 1, 2024, and October 1, 2024, the Grand Chamber of the Supreme Court received 21 complaints against HCJ decisions made after reviewing Disciplinary Chamber rulings. By October 1, 2024, the Grand Chamber had resolved 12 complaints. Of these, three HCJ decisions were canceled: one involved a penalty of a warning, another a severe reprimand, and the third a dismissal notice. Nine HCJ decisions were upheld, including two warnings, two reprimands, two severe reprimands, and three motions for dismissal. As of October 1, 2024, nine complaints remain pending before the Grand Chamber. These include three penalties of warnings, one motion for temporary suspension, and five motions for dismissal. If the Grand Chamber reverses a decision to hold a judge disciplinarily liable, the HCJ is required to reconsider the disciplinary case in a plenary session. It is worth mentioning that on the 19<sup>th</sup> of December 2024, HCJ has adopted the Regulation of the disciplinary inspectors service, that envisaged the proceedings and terms of the consideration of complaints against judges.

**Transparency in the Proceedings.** Public participation in disciplinary proceedings is facilitated through mechanisms regulated by current legislation. These include access to hearings, the ability to file complaints, and other forms of engagement. Open meetings of the High Council of Justice allow anyone to attend disciplinary proceedings. Online broadcasts of these meetings make the process more accessible to the public. Individuals may file complaints against judges for alleged ethical violations or disciplinary offenses. Decisions resulting from disciplinary proceedings are published on the official website, enabling the public to review the reasoning, penalties, and overall fairness of the process. Human rights organizations and the media can observe proceedings, report on significant cases, and request access to public information, ensuring broad oversight. However, the public cannot access the materials of disciplinary cases, as this right is reserved for the judge and other participants. Similar rules apply to judicial appeals of disciplinary decisions. Despite these limitations, the public can attend open meetings, watch broadcasts, file complaints, and access published decisions. These measures ensure transparency and fairness while fostering trust in the judiciary. In conclusion, judicial accountability through structured and transparent disciplinary proceedings is essential for maintaining the judiciary's integrity and credibility. Ukraine's reforms, including efficient mechanisms for handling complaints and emphasizing transparency, reflect its commitment to aligning with European standards and bolstering public trust. While challenges such as case backlogs and transitional mechanisms persist, the implementation of oversight structures like the High Council of Justice marks significant progress. These reforms promote ethical conduct, balance accountability with judicial independence, and strengthen the rule of law and democratic governance in Ukraine.