

**Programmatic Cooperation Framework for
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**



**Theme II “Ensuring Justice” – Action 5: Regional dimension for 6 EaP
Project for Regional Dialogue on Judicial Reform in the EaP Countries**

Working Group on Regional Dialogue
on Judicial Reforms in the Eastern Partnership Countries

Expert Report on the outcomes of the Working Group’s meeting on:

JUDICIAL ETHICS AND DISCIPLINARY LIABILITY OF JUDGES

with focus on:

- Better understanding of the distinctions and interrelations between judicial ethics and disciplinary liability of judges
- Legal foundations of ethical standards
- Sanctions for breaches of ethical codes
- Grounds for disciplinary measures for judges

8-9 December 2015, Supreme Court of Georgia, Tbilisi

Justice Duro Sessa
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The opinions expressed in this work are the responsibility of the author and do not necessarily reflect the official policy of the Council of Europe.

BACKGROUND

The meeting of the Working Group (WG), on which this report is based, has been organized in implementation of the project for regional dialogue on judicial reforms, within the framework of the joint Council of Europe and European Union Eastern Partnership (EaP) Programmatic Co-operation Framework (PCF). The project aims at fostering dialogue, professional networking and exchanges of experiences among legal professionals in view of addressing outstanding common challenges and consolidating national processes of judicial reform. In this framework, representatives from judiciaries, ministries of justice and bar associations of the EaP countries selected a number of areas of shared interest perceived as most challenging for the respective national reform processes and established three Working Groups that were tasked to examine, with the support of international experts, one of the selected issues in a dedicated meeting.

Topics selected by participants for further analysis included: judicial ethics and disciplinary liability of judges, with a focus on their distinctions and interrelations; e-justice, in particular aspects of electronic case management; legal aid schemes, with special attention to ways to ensure independence of legal aid financed lawyers; independence of judges; selection, evaluation and promotion of judges; the role of Courts of Cassation/Supreme Courts; ways to ensure inclusive and transparent judicial reforms; alternative dispute resolution mechanisms, with a focus on criminal restorative justice and mediation in civil cases; equality of arms between lawyers and prosecutors.

The first meetings of the three WGs were hosted in Tbilisi, Georgia, between 7 and 11 December 2015 and focused on the following topics: judicial ethics (WG A), e-justice (WG B) and legal aid (WG C). Discussions were facilitated by international experts, also tasked to produce a report on the outcomes of each meeting.

This paper provides an overview of the discussions held during the meeting of the WG A, focusing on judicial ethics and disciplinary liability of judges. It is based exclusively on the information provided by the participants by filling in a questionnaire prepared by the expert and the discussions held during the meeting. It does not in any way aim at providing an exhaustive presentation or a thorough assessment of the situation in the countries considered, but rather at reporting about the issues presented and discussed by the participants with the purpose of exchanging experiences and possibly identifying areas of common interest for further examination or co-operation.

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I. SUMMARY

This report summarizes the discussion and the results of the Working Group (WG) for regional dialogue on judicial reform on the topic “Judicial Ethics and Disciplinary Liability of Judges”, held at Supreme Court of Tbilisi, Georgia the 9 and 10 of December 2015.

The meeting was organized within the project for regional dialogue on judicial reforms in the Eastern Partnership (EaP) countries, under the joint EU-Council of Europe (CoE) ‘Programmatic Cooperation Framework’ (PCF).

The report takes into account the results of the discussions held during the WG meeting and answers given by the participants to a Questionnaire (Appendix I) compiled in preparation of the meeting. The list of participants and agenda are available in the appendix.

The first part of the report provides an overview of the relevant international standards addressing the issues of judicial ethics and disciplinary liability of judges, with focus on the council of Europe instruments.

International standards are important because they provide a reference against which it is possible to compare the state of national regulations and to assess whether national approaches are in line with the international standards.

The second part of the report provides an overview of the situation in the individual countries considered, based mostly on the inputs provided by participants, with regard to disciplinary liability of judges and judicial ethics.

With regard to disciplinary aspects, the report touches upon how systems of disciplinary responsibility for judges are structured; what are the bodies or persons in charge of initiating disciplinary proceedings; how disciplinary breaches are defined; what is the procedures, the measures and penalties that can be imposed to the judges, and what are procedural rights and guarantees for judges, including the right to appeal.

In relation to ethics aspects, it appears that all of the countries considered have adopted codes of ethic that are applicable to all judges of regular courts and that have been drafted and delivered by the bodies of judicial self-government. It also appears that most of the countries’ codes regulate in detail the duties of judges, and that the acts of judges which are contrary to the ethical rules lead to the disciplinary and other accountabilities of judges.

Finally, the report addresses those issues that have been identified as deserving further discussion and elaborates on the question of the use and aims of ethics codes for judges.

Looking to the different national experiences with regard to codes of judicial ethics and similar standards, perhaps it would be worth of trouble to create a Code of Ethics which would be common to all judges in the Member States of Council of Europe.

II. OVERVIEW OF INTERNATIONAL STANDARDS

The WG meeting focused on two issues that are of outmost importance to the position of judges and to the proper functioning of the national judiciary:

- Accountability of judges,
- Code of ethics for judges or similar compilation of standards governing judges' professional and extra-professional behaviour.

A brief overview of the content of major relevant international standards is provided below.

Accountability of Judges and Judiciary

International standards are self-explanatory, indicative and helpful for understanding the concept of accountability of judges. It is important to stress that the judiciary (as the other two powers of state) provide a public service. It is axiomatic that it should account to the society it serves.

Judicial authority must be exercised in the interest of the rule of law and of those seeking and expecting justice.

All the judiciaries in Europe face an increasing demand by the court users and business community for more efficient and effective court system. Better access to the courts is considered of increasing importance. Effectiveness and accessibility are ways in which accountability can be demonstrated. When various international instruments are stipulating that judicial systems should produce the highest quality justice and proper accountability should exist in a democratic system, they are highlighting one aspect of judicial accountability to society at large.

There are other reasons why the judicial power should be accountable to the other powers of the state in the sense discussed above. First, it is the legislature which creates the legislative framework which the judiciary applies. Therefore, the legislature is entitled to have an account, in properly formulated reasons in decisions, of how the laws it has enacted are being interpreted and applied by the judiciary. Secondly, for the fulfilment of its duties towards the society, the judiciary receives financial resources through decisions of the legislature and, in many member states, the executive. Thus, just as the legislature and the executive are accountable for how they allocate resources, so also the judiciary must be accountable to the society for how the financial resources allocated to it are spent in the fulfilment of its duties towards society.

Justice aims to resolve disputes and, by the decisions which it delivers, the judiciary provides citizens with relevant guidance, information and assurance as to the law and its practical application. Therefore, first and foremost, judges must be accountable through their work in deciding the cases brought before them, more particularly through their decisions and the reasons given for them. Judicial decisions must be open to scrutiny and appeal. In accordance with the fundamental principle of judicial independence, the appeal system is in principle the only way by which a judicial decision can be reversed or modified after it has been handed down and the only way by which judges can be held accountable for their decisions, unless they were acting in bad faith.

In countries where judges are responsible for the management of the court system (which sometimes includes the court budget), the judiciary must be held accountable for their stewardship to the other powers of the state and to society at large. In this area, judges entrusted with managing public funds are, in principle, in the same position as any other public authority that has responsibility for spending tax payers' money.

Individual judges and the judiciary as a whole are accountable at two levels. First, they are accountable to the particular litigants who seek justice in particular judicial proceedings. Secondly, they are accountable to the other powers of the state and, through them, to society at large.

There are different forms of accountability. As explained above, judges are accountable for their decisions through the appeal process. Secondly, judges must work in a transparent fashion. By having open hearings and by giving reasoned judgments which are made available to the public, individual judges will explain their actions and their decisions to the litigants who are seeking justice, to the other powers the state and to society at large. Lastly, if a judge has engaged in improper actions he/she must be held accountable in a more robust way, e.g. through the application of disciplinary procedures and, if appropriate, the criminal law. This aspect of accountability is sometimes most important to the society because it demonstrates that judges and their performance is not existing outside of general principles of responsibility for all citizens.

In this respect, the latter aspect of accountability (individual accountability) is internationally and generally based on following principles:

- International standards for judicial accountability should be established at least as guidance for the judiciaries in particular states.
- States should consider enacting specific legislation at the domestic level establishing a comprehensive system of judicial accountability that is effective, objective, transparent and in line with their international human rights obligations.
- A clear set of standards should be established on how to exercise supervisory powers of accountability, so that justice operators and the judicial institution are not held to account arbitrarily.
- The relationship between the individual to be held accountable and the forum, body or institution to which he or she must respond also needs to be clearly defined.
- Individual accountability should be applied to all justice operators, that is, judges, prosecutors and lawyers at all levels of their respective careers.
- Specific individual accountability mechanisms should include, but are not limited to, the obligation to write individual reasoned judgments or opinions in a language that is understandable to the beneficiaries of justice; the possibility of explaining personal views on the law and the constitution to the general public; and disclosing one's financial and other assets through an official registration system.
- Individual accountability should also encompass extrajudicial conduct, other permitted professional activities and the private lives of justice operators.
- Justice operators must be provided with clear rules of conduct and ethics in order to ensure that they behave in accordance with accepted standards that are appropriate to their professional functions.
- The justice system in its entirety should be submitted to accountability mechanisms to ensure that it is functioning with independence, competence, objectivity and impartiality.
- A code of ethics and conduct should be established for all justice operators, with the participation of their respective associations and representatives. Such codes should be applied in a consistent and transparent manner, with full respect for the fundamental guarantees of fair trial and due process.
- States should improve the transparency of the justice system. Hearings and decision-making should be made public so as to permit public scrutiny of the work of justice operators. Decisions should be rendered in written form, be reasoned and be published on databases and websites in order to make them truly accessible and free of charge.
- The transparency of the justice system should also encompass mechanisms relating to other State powers, civil society, the media, the police, public prosecutors and human rights commissions, among others.

- Accountability mechanisms and proceedings should respect the fundamental guarantees of fair trial and due process and should be implemented by an independent and impartial body.
- Accountability procedures should be limited to instances of professional misconduct that are gross and inexcusable and that also bring the judiciary into disrepute.
- All judges should be provided with training and education on their respective codes of ethics and conduct, rules of procedure and the consequences if those norms are breached.
- Judicial accountability should be undertaken through an independent body. That body should have the role of protecting judicial independence and promoting judicial accountability.
- Regarding the judiciary, the independent body should preferably be composed at least of one half of (active) judges, although some representation of the legal profession or academia could be acceptable. No political representation is allowed. In addition, the independent body should manage its own budget, have enough human and financial resources to carry out its mandate and be accountable for its activities.
- The right to have disciplinary decisions reviewed by a higher judicial tribunal should be guaranteed for judges, prosecutors and lawyers alike.
- The judiciary and the justice system as a whole engage the responsibility of the State. States should therefore provide effective remedies to individuals who have suffered damage owing to wrongful convictions or any other miscarriage of justice.

Judicial Ethics

In discussing the issue of judicial ethics, the question that often arises is whether constitution or laws could be enough to regulate the duties and the position of judges and whether they can provide sufficient guarantee that judges are independent and impartial and bound only by laws, justice and their own sense of fairness and justice.

The principle of division of powers ensures the independence of the judiciary. This puts the judge in a special position when compared with other civil servants. Because of the judiciary's position as third and equal power, the judge has to be in all times and in all situations conscious of his/hers duties and constantly open to life which surrounds him/her.

It is beyond any doubt that the constitution and laws are source of guarantees for a judge to be independent and that they are a source of protection from outside influences. At the same time, the judge's sense of his/hers own independence and the appropriate image that the judge is sending to the society cannot be only imposed from the outside, from the laws and regulations. This comes from the sole life of a judge. How personal independence of a judge is going to be expressed – this is something that each judge has to answer according to his/hers system of values and ideals. In that respect laws and regulations could be of some assistance as general sense of values shared in the society but modern judiciaries see that this is not enough especially when global development of the human society is creating more and more challenges to the values which existed for centuries. In that respect, judges need professional ethics which will single them out from the circle of simple legal experts.

Laws and regulations are only a frame. This frame has to be filled with values which have to be understood and implemented in the accordance with the concrete situation and which are influenced with the circumstances of the particular case but also with personal understanding and attitudes.

Ethical behaviour is always a result of personal evaluation of the concrete situation and it is always based on the free will of a person involved. It has to be stressed out that there are so many

questions to which it will be impossible to give unambiguous, correct or wrong answer. This is a reason why most of judiciaries and judges decided not to give precise definitions of the obligations and duties of judges, but instead to decide what are the values which characterize responsible and dutiful judge. That is why most of judiciaries until this very day in different ways created and delivered rules, principles, and goals to be achieved with an aim to help judges in finding answers when an ethical dilemma arises before them.

Most of judiciaries decided to create Code of Ethic for judges. The Codes are usually more compendium of values where the list is not closed, than a collection of definite values and answers to the each ethical dilemma, which could arise in the life of a judge. That is why one has always to have in mind that Codes of Ethic, where they exist, in most cases do not serve only as a manual for deontological issues but more as a guidebook about how to take a critical approach to any action or conduct of a judge.

All countries that participated in the WG, have adopted codes of ethics as part of a judicial reform process.

This brings us to the several important issues that all judiciaries have to answer regarding Codes of Ethic for Judges. Those questions, addressed in various international documents are:

- a. Who will create codes of Ethic for Judges?
- b. What form of the Code is the most appropriate to the purpose?
- c. How a judge's behaviour in breach of ethical rules will affect the judge's position in the judiciary?
- d. How can judges find an answer to their ethical dilemmas?

Codes of ethics are valuable to the extent that they stimulate discussion and understanding among judges, as well as the general public, on what constitutes acceptable and unacceptable conduct. They may also inspire public confidence that concrete steps are being taken to improve the integrity of the judiciary.

Because debate and discussion of ethical issues are among the most important results of a code of ethics, the process of developing a code can be as important as the final product. Ideally, a code should be drafted by the judiciary or a judges association, with extensive input from lawyers, civil society leaders, and others who have experience with the courts. If there is a national judicial commission in a country, it may be an appropriate task for that organization. Judicial ethics codes should not be drafted by the legislature or the executive branch.

Guidance in drafting can be sought from several models. However, as with all issues discussed in this paper, the specifics of judicial ethics will be determined by the local context. What appears to be clearly ethical or unethical in one country may be murky in another.

Additionally, the judiciary will need a mechanism to interpret the code and to keep a record of those interpretations that will be available to others seeking guidance. Judges should not be left solely responsible to determine how the general words of a code apply in particular situations. Enforcement will also need to be addressed. Most of the experts we surveyed did not believe that codes were being effectively enforced in the countries that already have them.

Although codes are meant to have a positive effect on judicial independence, it is possible that they could be a potential source of abuse. Firstly, codes have at times been used to punish judges who did not yet fully understand the details of the code and what behaviours were prohibited. Secondly,

they have also been used to punish judges considered too independent. Both problems occurred most often when a code was adopted without extensive discussion among judges and the public at large. Accordingly, international standards urge that ethics codes should not be used as the basis for discipline until they are widely known and understood. This generally does not leave a vacuum with respect to discipline, since the judges duties and obligations defined in the laws are usually adequate to support disciplinary proceedings. Lastly, judges should be able to rely on an advisory body or person providing advice on the issues related to the application of the code when questions arise in the professional or private life of a judge.

III. OVERVIEW OF THE SITUATION IN THE PARTICIPATING COUNTRIES¹

This Chapter is divided in two main parts; first part is dealing with accountability of judges in different aspects of this term and second part which is dealing with the question of existence a Codes of Ethic and how these documents are used in the member States.

III.1. Accountability of judges

III.1.1. Armenia

The main legal frameworks in Armenia defining the principles, rules and procedures for establishing and functioning of the judiciary are: the Constitution, amended by a national referendum in 2005 and the Judicial Code of 2007 amended in 2014 (10 June 2014), which applies to all courts in Armenia except the Constitutional Court. The law on the Constitutional court provides legal regulations for the establishments and functioning of the Constitutional court. By the time this report was being prepared a referendum for approving the Constitutional amendments in Armenia was held in December 2015; the proposed changes were approved by the majority vote and several changes in the judicial system of Armenia were introduced, also related to the appointment and discipline of judges and chairmen of courts. An extensive revision of the Judicial Code and other relevant laws has to follow in line with the changes introduced to the Constitution.

A. Judicial system

There are two self-governing judicial bodies in Armenia:

- General Assembly of Judges of the Republic of Armenia (hereinafter General Assembly of Judges) and
- Council of Court Chairmen ([hereinafter CCC).

The Judicial Department plays an important role in the judicial administration as well.

The General Assembly of Judges consists of all judges in Armenia, It is the highest self-governing body of the judiciary and meets at least annually and can discuss any matter relating to the functioning of the judiciary. It also elects judicial members of the Council of Justice or Justice Council (JC).

The CCC consists of the chairs of the courts of general jurisdiction, administrative courts, and courts of appeal, as well as the Chair and chamber chairs of the Court of Cassation. The CCC meets depending on the needs but at least once in three months. Among other things, the CCC has an authority to approve proposed budget drafted by the Judicial Department; approve rules for training of judicial servants; define the evaluation procedure of judicial servants and etc.

The Council of Justice consists of 13 members: nine judges elected by secret ballot for five years term by the General Assembly of Judges; two legal scholars appointed by the President of Armenia; and two legal scholars appointed by the National Assembly. The Chair of the Court of Cassation chairs the JC meetings, however has no voting right. The JC is responsible for: preparing the list of judicial candidates and the official promotion list and present them to the President for approval; nominating candidates for judicial appointment and for the positions of chair and chamber chairs of

¹ This chapter does not include the situation in Belarus, as they did not participate in the meeting in Tbilisi, Georgia on 7 and 8 December 2015.

the Court of Cassation, and chairs of the courts of appeal, courts of general jurisdiction, and specialised courts; giving opinions on pardons at the President's request; imposing disciplinary sanctions on judges; and submitting recommendations to the President on detaining or dismissing judges, or consenting to criminal prosecutions or administrative violation cases against judges.

The Judicial Department as State Agency divided from the Ministry of Justice and should not be considered as a part of Ministry of Justice but as independent State agency with aim to assist courts in ensuring day-to-day judicial administration, by providing material and technical support for the courts' work. Among other functions, it carries out decisions of the CCC, prepares budgetary proposals for the courts and submits them to the CCC.

B. Framework for Disciplinary Liability

The power to subject a judge to a disciplinary liability is vested in the JC. On the recommendation of the JC, the President of the Republic of Armenia appoints and dismisses judges and chairs of the courts of general jurisdiction, specialised courts, courts of appeal, and the Court of Cassation (including Chamber Chairs of the Court of Cassation).

The reasons for starting the disciplinary proceedings are the following:

- an application by the person;
- a communication from a state or local government body or official;
- **a finding, as a result of summarising or studying court practice, of an act that gives a ground for a disciplinary liability;**
- a finding, by the persons instigating the proceedings, of an act that gives a ground for a disciplinary liability;
- **a ruling of an international tribunal which confirms that the court during consideration of the case had violated the human rights and fundamental freedoms enshrined in the international treaty which Armenia is a party to.**

The grounds for subjecting a judge to disciplinary liability are:

1. an obvious and grave violation of a provision of substantive law in the administration of justice, which was committed maliciously or in gross negligence;
2. an obvious and grave violation of a provision of procedural law in the administration of justice, which was committed maliciously or in gross negligence;
3. a grave violation or regular violations of the Code of Conduct by a judge;
4. judge's failure to comply with obligations not to involve in entrepreneurial activities, not to hold an office not related to his or her duties in state or local bodies, not to hold office in commercial organizations, not to perform any paid work, except for scientific, pedagogical or creative work, failure to undergo medical examination if there is obvious bases that the judge acquired a physical handicap or illness after appointment that hinders his or her appointment to a judicial position, failure of the judge to undertake mandatory training and to perform his duties set by his mentor as defined by the Judicial Code or by the Republic of Armenia Law on the Justice Academy;
5. failure to notify the Ethics and Disciplinary Committee, in accordance with the procedure stipulated by the Judicial Code, of any interference with his activities of administering justice or exercising other powers stipulated by law, or of other influence not prescribed by law.

C. Disciplinary sanctions

Minister of Justice and the Ethics and Disciplinary Committee of the General Assembly of Judges have a right to initiate disciplinary proceedings against the first instance and appellate court judges and chairmen.—, have Disciplinary proceedings against a chamber chairman and judge of the Court

of Cassation can be initiated by the Chairman of the Court of Cassation on grounds of breaches of the ethical and the disciplinary rules and by the Ethics and Disciplinary Committee of the General Assembly of Judges— on the ground of breach of the ethics rules only. The Ethics and Disciplinary Committee of the General Assembly of Judges has a right to initiate disciplinary proceedings against a Chairman of the Court of Cassation.

The JC can apply any of the following types of **disciplinary sanctions** against a judge:

1. Warning;
2. Reprimand, which can be combined with depriving a judge of 25% of his salary for a six months period;
3. Severe reprimand, which can be combined with depriving a judge of 25% of his salary for a one year period; or
4. Termination of judge's powers, done on the basis of a motion to the President. This is applied only if a grave disciplinary offence or regular disciplinary offences committed by the judge makes him unsuitable for judge's position.

If a judge is not subjected to a new disciplinary sanction within two years after receiving a reprimand or severe reprimand, or within one year after receiving a warning, the disciplinary sanction is annulled. If a judge is consecutively subjected to disciplinary sanctions then his/her salary is diminished; judge's salary cannot be lowered more than by 50 %.

A judge found responsible for a disciplinary offence does not have a right to appeal to an authority within the judiciary or to the Constitutional Court.²

D. Immunity from criminal proceedings and civil responsibility for judges

Judges are enjoying immunity from the criminal prosecution, which is not an absolute one. Initiating a criminal procedure against judges is possibly only after approval by the President on the basis of the JC's proposal.

A judge cannot be arrested, with the exception of the cases in which the arrest is performed at the time of or immediately after committing a crime. The arrest of a judge must be immediately communicated to the President of the Republic and the Chairman of the Court of Cassation: in 24 hours arrest warrant must be forwarded to the President and the Chairman of the Court of Cassation. The bodies and officials that made the arrest must ensure the Cassation Court Chairman's unimpeded access to the place where the arrested judge is held and must ensure that the Cassation Court Chairman can visit with the judge.

Judge may not be detained, involved as a defendant, or subjected to administrative liability by court procedure without the consent of the President of the Republic, given on the basis of a proposal by the Justice Council.

Judge may not be subjected to civil liability for damage inflicted as a consequence of the improper performance of his official duties, unless the damage was inflicted as a consequence of an intentionally-performed act.

If and when immunity is lifted for judges ordinary criminal procedure is applied.

² See Case *Saghatelyan vs Armenia* (violation of article 6. of ECHR)

E. Code of Ethics

The Ethics and Disciplinary Commission of the General Assembly of Judges of was responsible for safeguarding of the Code of Ethics by the judges. It is composed of seven judges: two are from the first instance courts of general jurisdiction of Yerevan, two from the first instance court of general jurisdiction of other the regions of Armenia and three judges are from the appellate courts. After amendments to the Judicial Code (June 2014) Commission does not exist anymore.

Nomination for membership of this Committee is regulated in Art 74 Para 5 of the Judicial Code (self-nomination or nomination by another member). Members are elected by a secret ballot for a term of four years. Chairman of the Committee is elected among elected members. (Art 74 Para 9 of the Judicial Code). Chairmen of courts as well as the members of the Judicial Council cannot be involved in the Ethics and Disciplinary Commission. General Assembly of judges, within its jurisdiction as stipulated in Article 87 of the Judicial Code, delivered the Code of Conduct of Judges on September 5th 2014, and approved by-laws of the Ethical and Disciplinary Matters Committee on September 5th 2014. Analysis of relevant Articles of the JC shows that the Armenian legislator took an approach where a Code of Conduct for judges was adopted and delivered by judges themselves. It has to be added that after the amendments to the Judicial Code form December 2015 ethical rules are obligatory for every judge (Article 87)

Rules of the judicial conduct are set up in Art 87-95 of the Judicial Code. These rules according to Art 87 are bidding for all judges and it is even sets that they are not exhaustive and that the General Assembly of Judges may suggest additional rules of conduct to the list of these rules as defined in Art 89 -92. In addition, in Art 93, 94 and 95 are quite extensive and it would be difficult to imagine necessity of additional rules which would have to govern behaviour of a judge performing his/hers judicial duties or governing his/her extrajudicial life.

Art 87 adds to judges' obligation to act and lead their activities in a way to ensure impartiality and independence of the court, and to contribute to building respect for and confidence in the court. Judges have an obligation to personally follow standards set up in the Law and to pursue compliance with the rules by their colleagues. Articles regulating judges' obligations regarding their conduct, when they act in official capacity (Art 90) or when they perform non-judicial activities as holders of a judicial office (Art 89) are also defined in the Judicial Code.

We can conclude that beside the fact that list of rules is extensive, they are created in a form of obligation, with a strict definition of what a judge can or cannot do in his/her judicial and extra-judicial activities (detailed obligations can be seen in the answers to the questionnaire provided by the Armenian delegation).

Code of Conduct of Judges Armenia adopted by General Meeting of Judges is echoing and closely following the provisions set up in the Judicial Code

Code of Conduct had in total 20 rules and it is divided in four chapters:

1. General Rules of Conduct of Judges
2. Rules of conduct of Judges in the Administration of Justice
3. Rules of conduct of Judges during Non-judicial Activities.

The first chapter (General Rules of Conduct of Judges) obligates judges to be: independent when administrating justice governed by the Constitution and other sources of law, to make their decision autonomously, to refrain from any activity which could undermine reputation of judicial power, not to harm reputation of the judge, to refrain from ex- parte contacts with the parties, to remain free of

the influence from outside, and not to be a member of any political party and to demonstrate political neutrality.

Second chapter (Rules of Conduct of Judges in the Administration of Justice) requests from judges to give a priority to their duties in performing administration of justice, to perform their duties in good faith with respect to the principle of examination cases in reasonable time, to recuse them self from the case when there are legal reasons to do so, to refrain from such interpretation of facts or laws which could be seen as bias, to wear clothes during court sessions, to restrain from showing his positive or negative attitude toward parties.³

It is forbidden for judges to display any discrimination based on any ground. They have to take steps to increase their knowledge and skills, in relation with other judges they have obligation to be dignified, polite and treat respectfully everyone who they are working with, to protect principle of confidentiality and principle of public hearing with obligation not to obstruct media from having access to information about the court proceedings. Judges cannot conduct any activity with purpose of making public statements or comments on judicial decisions or essence of cases pending before the court. Judges may receive memorable gifts or awards.

Last, third chapter (Rules of Conduct of Judges During Non-judicial Activities) outlines position of a judge in relation to his/hers extra-judicial activities, forbidding judges to use their reputation of a judge to gain any advantages for him/her or their family members. Judges must avoid any conflict of interest, they must not show in public any doubt on acts or professional or personal qualities of his/hers colleagues and avoid any improper connections or relations. Judges can be engaged in the activities of association of judges and in scientific, educational and similar academic activities.

When comparing the Rules of Code of Conduct for Judges and the Judicial Act, particularly Art 89 – 95 it is quite obvious that the law regulates in details judges' obligations and position in relation to his/hers activities in performing judicial duties and in performing official capacity but also matters of self-withdrawal, receiving gifts and awards and activities outside of the courtroom. The Rules of Code of Conduct are closely following legal solutions, taking an approach that rules of conduct should precisely define duties, obligations and position of judges in relation to their official and non-official behaviour.

Judicial Code exhaustively prescribes all duties and all aspects of judge's life and his/hers activities at the bench, in the court and outside of it. The same approach strictly followed when cited Judicial Code's articles is transferred in the Code of Conduct of Judges.

When the rules and laws are consulted regarding possibility to initiate disciplinary proceedings against judges caused with breach of the Rules of Conduct, it is reasonable to conclude that:

- Rules of Conduct are binding for all judges regardless are they prescribed in the Judicial Code or in Code of Conduct for Judges.
- Ground for initiating disciplinary proceedings against judges is a grave violation or regular violation of Code of Conduct.
- Ethics and Disciplinary Committee and Ministry of Justice⁴ are bodies with an authority to initiate disciplinary proceedings against judges.

³ Rule 8 even lists examples of improper behavior.

⁴ See Chapter C

III.1.2. Azerbaijan

Following Azerbaijan's independence, fundamental judicial reforms were implemented in the country. In line with the reforms, new laws were adopted, including laws on Constitutional court, on Courts and Judges, on Prosecutor's Office adopted on June 10th 1997. As a result of this reform a new three - tiered independent judicial system was established, which is comprised of courts of first instance, appeal and cassation.

A. Judicial system

In recent years, a number of new first instance and appeal courts have been established in the regions and the number of judges has increased twice, structure of the judicial offices has been upgraded in order to improve the access of population to courts and to develop the regions. The Judicial Academy was established and has started to function and train the judiciary.

At present, in Azerbaijan district (city) courts, military, local administrative-economical courts and courts on grave crimes operate as courts of the first instance.

In line with the new judicial system, courts of appeal function in 6 regions of the country. Courts of appeal function under relevant territorial jurisdictions and consist of 4 chambers: civil, criminal, military and administrative-economical ones. The Supreme Court of Nakhchivan Autonomous Republic is a court of appeal in relation to the courts of the Autonomous Republic, and part of the judiciary of Azerbaijan. The rulings of the Supreme Court of Nakhchivan are considered by the Supreme Court of the Republic of Azerbaijan under cassation procedure.

There are 4 court chambers under the Supreme Court of Azerbaijan: civil, criminal, military and administrative-economical ones.

The Constitutional Court of Azerbaijan secures the supremacy of the Constitution of Azerbaijan as a supreme constitutional judicial body.

B. Discipline framework

The Judicial-Legal Council is a self-governing body regulated by the Law on Judicial-Legal Council. It is composed of 15 members and mainly of judges, including the representatives of the President of Azerbaijan, Prosecutor's office, Lawyers Collegium and others.

The Judicial-Legal Council has the authority to start disciplinary proceedings against judges. Presidents of the Supreme Court and courts of appeal, President of the Supreme Court of Nakhchivan Autonomous Republic, and relevant executive body (Ministry of Justice), in case of presence of lawful reasons and grounds for initiating the proceeding, should apply to the Judicial-Legal Council. Physical and legal persons, when possessing information on the grounds for initiating proceeding against judges, also have to apply to the Judicial-Legal Council. President of the Supreme Court shall apply to the Judicial-Legal Council for initiating the proceeding against the judges of the first instance courts, courts of appeal and Cassation. Presidents of the courts of appeal shall apply to the Judicial-Legal Council for carrying out the proceeding against the judges of the relevant courts of appeal, also the judges of the first instance courts within territorial jurisdiction of those courts. President of the Supreme Court of Nakhchivan Autonomous Republic shall apply to the Judicial-Legal Council for initiating the proceeding against judges of the same court and the judges of the first instance courts within territorial jurisdiction of those courts. Respective executive body (Ministry of Justice) shall apply to the Judicial Legal Council for carrying out the proceeding against judges of the

first instance courts and courts of appeal. Proceeding against judges can start during one year from the violation revealed and within three years of being committed.

Judges may be called to account only with a decision of the Judicial-Legal Council.

Request can be lodged to carry out the proceeding against judges in case of one or some of the following reasons:

- request by a physical and legal persons;
- information published in the mass media;
- violations of the laws discovered while considering the cases at courts of appeal or cassation, and special decisions made by these courts in respect of a judge;
- violations of the laws established in the resolutions of the European Court of Human Rights and Constitutional Court of the Azerbaijan;
- violations of the laws identified during evaluation of the activity of a judge and as a result of assessment of judicial experience;
- other information obtained by the persons, who have the a right to apply to carry out the proceeding.

Judges shall be called to disciplinary liability only on the following grounds:

- a gross infringement or multiple infringements of the requirements of legislation in the course of consideration of cases;
- **breach of the judicial ethics;**
- gross violation of legislative provisions or performance discipline;
- failure to comply with the requirement of financial nature contained in Article 5.1 of the Law on Fight against Corruption;
- committing acts provided by Article 9 of the Fight against Corruption Law of Azerbaijan;
- committing actions unworthy of the good name of a judge.

According to the Law on Judicial-Legal Council" (Art 21), within *three months* after initiating the disciplinary proceedings, the Judicial-Legal Council shall examine the case, as a rule with the participation of the judge, and issue an appropriate decision. The Judicial-Legal Council may extend this term if the judge is not able to appear at the hearing due to justifying reasons. President of the Judicial-Legal Council appoints a rapporteur from among the judge members of the Council on the issue, which serves as a ground for commencement of the disciplinary proceedings.

The rapporteur examines the incoming materials assisted by the staff of the Judicial-Legal Council and submits the report to the President of the Council. The President appoints a session of the Council on the issue. A judge, whose disciplinary case is being considered, shall be informed about the time and venue of the session of the Judicial-Legal Council at least five days before the session takes place. If a judge has not been informed about the date of the session in an appropriate way or if s/he has had a valid reason to miss the session of the Judicial-Legal Council, the hearing shall be adjourned. If a judge has been informed about the date of the session and got familiarised with the materials and has not had a valid reason not to attend the hearing, the Council examines the case *in absentia*. The official record is made about refusal to get familiar with the documents or attend the session.

C. Disciplinary sanctions

The disciplinary hearing of the Judicial-Legal Council is considered valid if five members of the Council with voting rights participate in the meeting. The hearing of the Judicial-Legal Council on the

disciplinary proceedings start with a report of the rapporteur who has examined the materials pertaining to the issue considered. Further, a judge whose case is considered, and invited persons are heard; motions are considered, appropriate documents and materials are studied, inquiry is made and the results are discussed. These steps lead to passing of one of the decisions provided by Art 112 of the Courts and Judges Act.

Judicial-Legal Council bases its decision on the disciplinary proceedings on facts, significant issues, character of the judge, gravity degree and consequences of the actions committed by the judge.

According to the Art 112 of the Law On Courts and Judges", the Judicial-Legal Council can adopt one of the decisions:

- reprimand,
- reassignment to another court,
- proposing to the relevant executive power of the Azerbaijan termination of judge's authorities.

If no appeal is lodged on the decision, the decision becomes effective in twenty days from its adoption. During this timeframe, appeal can be lodged to the Plenum of the Supreme Court by the decision of the Judicial-Legal Council. The Plenum of the Supreme Court shall consider the appeal in three months and either approve, annul the previous decision or present its own decision to the Council by amending it. Decision of the Plenum of the Supreme Court is final.

According to Art 1 of the Law on Judicial Legal-Council, the Council has different authorities in the justice system of Azerbaijan. It:

- evaluates activities of judges
- fulfils the self-management functions of the judicial power and resolves issues within its authorities:
 - arrangement of court system;
 - safeguarding independence of judges ,
 - selection of candidates to the vacant judge positions
 - replacement(transfer) of judges,
 - promotion of judges,
 - calling to disciplinary liability.

The grounds for disciplinary liability are mentioned above, on the previous page.

D. Immunity from criminal proceedings and civil responsibility for judges

According to the Constitution (Art 128, section 1) judges enjoy immunity.

According to the Law on Courts and Judges (Art 101) by no means judges can be arrested or detained, or be subject to investigation and examination, and criminal prosecution without approval of the Judicial-Legal Council except for the cases they are overtaken in committing any crime.

Immunity of judges also concerns their apartments, service rooms, transport and communication assets, post correspondence, personal property and documentation. In case a judge is discovered in committing any crime by a prosecution body, the same body should immediately notify the Prosecutor General of Azerbaijan. If the Prosecutor General identifies grounds for conducting the criminal prosecution of the judge, he should immediately notify the Judicial-Legal Council about the case. The Judicial-Legal Council, within 24 hours of the arrest of a judge, considers the case along

with the Prosecutor General or his deputy, and takes decision on this case. This decision has to be immediately rendered to the Prosecutor General.

In case of approval by the Judicial Legal Council, the criminal prosecution of the judge proceeds in accordance with the criminal procedural legislation of Azerbaijan. In absence of such approval, a judge should be released immediately. In other cases, the case presented by the Prosecutor General is considered within 10 days from the date of its receipt.

After being approved to precede the criminal prosecution, the judge is not allowed to fulfil his/her job duties from that time. But he/she is paid salary during the process. In case of issuance of a verdict of acquittal or termination of the criminal prosecution, with the justifying grounds in accordance with the criminal procedural legislation, he/she is allowed to re-start carrying of his/her duties as a judge.

Judges shall not bear responsibility with their special property for the damage inflicted to the party of the proceeding or person participating in the case as a result of judicial errors. Such damages have to be compensated by the state and by the order determined by the legislation.

E. Code of Ethics

Responsibilities of judges in performing their duties are regulated in the Constitution, Judicial Act and relevant by-laws.

The Constitution provides provisions and sets up the principles of obligations of judges and how judges should govern their activities:

Judges may not occupy any other posts (irrespective of the procedure – elections or appointment); may not be involved in business, commercial and other payable activity, except scientific, academic and creative activity; may not be involved in any political activity and join political parties; may not get remuneration other than their wages and money for scientific, academic and creative activity (Art 126). When considering legal cases, judges must be impartial, fair, they should provide juridical equality to parties, act based on facts and according to the law (Art 127).

Judiciary Act (1997) develops further the Constitutional rules and defines judges' duties. Art 99 recommends that judges should:

- comply with the statutory requirements precisely and implicitly, and secure moral and educational impact of judicial activity, to be just and impartial while administering justice;
- maintain the secrecy of deliberation and of information revealed in the closed court sessions;
- refrain from any act harming prestige of justice; good name, honour and dignity of a judge;
- other duties of the judges shall be provided by the legislation of the Republic of Azerbaijan.

While administering justice, judge shall not express his/her opinion on decision, until the final decision is passed. Judges shall not receive persons/parties at the stages of preparation for and hearing of the case in connection with that case.

Judicial Act in its Art 99.1 defines the Code of Ethics for Judges as collection of the principles and standards of ethics for the judiciary activity. The Code shall prescribe ethical and discretion

requirements and regulate their professional ethical issues and out-of-office behaviour, as well as their attitudes to the professional activities.

Code of Ethics of Judicial Conduct has been approved by the decision of the Judicial Legal Council of Azerbaijan Republic on 22 June 2007:

First part of the Code of Ethics provides general principles asking judges to commit themselves to the highest standards of conduct in the compliance with the oath, to obey Constitution and other laws, to uphold integrity and independence of judiciary and raise its prestige. Judges also have to devote most of their time to judicial activities and they have to comply with rule of law and be fair, impartial and self-confident. Finally “judge shall act at any times in a manner that protects honour and high prestige of the judicial office. While exercising his/her judicial duties a judge has to avoid all improprieties that can harm judge’s high position, his/her independence, honour and dignity.”

From the extracts of the Code of Ethics it is evident that its drafters take the approach that conduct of a judge should be regulated in strict and explicit manner.

In the Code of Ethics obligations of a judge are formulated as follows:

- Article 6. A judge shall perform his/her judicial duties with high responsibility, shall take all legal measures for reviewing cases and all materials on time.
- Article 7. Judge shall exclude any interference to his/her professional activity by relatives, friends and familiars. If the decision adopted by judge can touch the interests of family members and other relatives or any doubt his/her impartiality he/she shall disqualify himself/herself.
- Article 8. Judge shall perform judicial duties on the basis of principle of equality of treatment to everyone (defenders, prosecutors, witnesses and etc.) before the law and court, without bias or prejudice towards any party to the proceedings. Judge shall avoid from expressing thoughts about race, sex, religion and nation and other type of discrimination.
- Article 9. By demonstrating high judicial culture judge shall treat parties courteously, make demand of parties to respect each other and to the court and punish any party who expresses disrespect to court.
- Article 10. Judge shall not be under influence of any governmental and administrative bodies, as well as individuals, and public opinion or criticism shall not affect legality and substantiality of his decisions. While considering the case in staff, judge shall adopt decision based on his/her internal belief by reviewing opinions of other staff members.
- Article 11. Judge (the court's chairman, deputy chairman of the court, the chairman of the board, as well as those who perform the duties of the temporary) who has administrative powers shall fulfil these responsibilities in good faith, should not use this power as a means of pressure against the other judges, shall avoid any action restricting the independence of judges.
- Article 12. Judge shall not disclose information acquired in a judicial capacity. A judge shall not, while a proceeding is pending or just started, make any public comment. He/she shall not express his/her opinion on any case on public or during meetings with journalists. A judge shall not question any enforced court decision or acts of other judges in private capacity.
- Article 13. Judge shall not create relations and refrain from establishing non-procedural relationships with proceeding parties.
- Article 14. Judge shall obey principle of public hearing. This principle can be restricted only in cases defined by law. Judge must respect duty of mass media representatives on informing public about judicial activity. If there is not any reasonable doubt on influencing court with

obtained information, judge shall give an opportunity for activity representatives of mass media. Judge shall not create any relationship with mass media representative that can influence judges conduct or proceeding, and refrain from the use of these relations for his/her own interests.

- Article 15. In order to diligently discharge the judge's duties, a judge shall raise his professional competence and constantly improve his/her theoretical and practical knowledge.
- Article 16. Judge seems to be accurate, conduct court hearings by wearing special judge's gown in court hall equipped with symbols of judiciary, while complying procedural documents should obey law and use words and expressions that meet the requirements of state language.
- Article 17. Judge shall not lend the prestige of judicial office to advance the private interests of the judge or his family members. He/she shall act in a manner that his family, social and other relationship will not demean the prestige of judicial office.
- Article 18. Judge shall not accept a gift, award, favour or benefit in connection with the case under his/her consideration; shall refrain from receiving any services if they can affect case outcome.

Ethics Code of Judicial Conduct is applicable for all judges with the exception of the judges of the Constitutional Court

Judicial Act (Article 111) considers breach of judicial ethics as one of the grounds for disciplinary liability of judges. Sanctions that could be imposed are: reproof; reprimand; or proposing the relevant executive body of Azerbaijan to transfer this judge to a different judicial post.

The Judicial-Legal Council is a single body with the authority to commence disciplinary proceedings on basis of the motions submitted by the authorised persons.

Body or people to whom judges could refer in the dubious situations regarding application of the Code of Ethics do not exist.

III.1.3 Belarus

A. Judicial system

Under the Constitution of the Republic of Belarus judicial power in the country belongs to the court system.

The court system is represented by:

- the Constitutional Court
- general jurisdiction courts

All court proceedings have to follow the established system. Emergency courts cannot be set up under any circumstances.

As a result of the 2014 judicial reform there was an association of the Supreme Court and the Supreme Economic Court and formed a single supreme judicial body for civil, criminal, administrative and commercial courts - the Supreme Court, who heads the system of courts of general jurisdiction of the Republic of Belarus.

On July 1, 2014 abolished the Military Collegium of the Supreme Court, also eliminated the Belarusian Military Court, interpost military courts.

Universal courts in Belarus deal with civil, criminal, administrative and economic cases, as well as cases involving military personnel.

Belarus' universal courts include:

- the Supreme Court of the Republic of Belarus
- regional courts (Minsk city court), economic courts of regions (city of Minsk)
- district (city) courts

In the system of courts of general jurisdiction can be established specialized courts.

Currently, the new edition of the Code of the Republic of Belarus on judicial system and status of judges is under consideration in the House of Representatives of the National Assembly of the Republic of Belarus.

Jurisdiction and authority of courts includes the review of the following types of cases:

- criminal cases;
- civil cases on disputes arising from civil, family, labour, housing, land and other relations, provided that at least one of the parties is an individual;
- cases involving the creation, legal protection and use of intellectual property, regardless of the parties to the dispute (considered exclusively by the judicial board for intellectual property of the Supreme Court);
- cases involving legal entities only in cases expressly provided for by the laws of the Republic of Belarus, decrees and orders of the President of the Republic of Belarus.

The economic courts of regions (city of Minsk) review:

- cases on economic (business) disputes between legal entities and individual entrepreneurs;
- matters related to carrying out entrepreneurial and other economic activities;
- cases on appealing non-normative legal acts, actions (inactions) of state authorities that violate the rights of legal entities and individual entrepreneurs in entrepreneurial and other economic activities;
- cases on recognition and enforcement of judgments of foreign courts, including arbitration, on economic disputes;
- cases involving the Republic of Belarus, the administrative-territorial units of the Republic of Belarus, government bodies, local government bodies, organizations that are not legal entities, officials and citizens only in cases expressly provided for by the laws of the Republic of Belarus, decrees and orders of the President of the Republic of Belarus.

The main legal frame which regulates position of judges their obligations and accountability are:

- The Constitution of the Republic of Belarus of 1994 (as amended, adopted at the national referenda dd. November 24, 1996, October 17, 2004).
- The Code of the Republic of Belarus on Judicial System and Status of Judges dd. June 29, 2006 No. 139-Z (as amended).
- The Code of Honour of a judge of the Republic of Belarus adopted at the first congress of judges of the Republic of Belarus dd. December 5, 1997.

B. Discipline framework

In Republic of Belarus it is possible to initiate disciplinary proceedings against judges and to find them accountable for the disciplinary offences.

Judges could be found responsible in accordance of Article 111 of Code of the Republic of Belarus on Judicial System and status of Judges (CJS) for:

- violation of the law in administering justice;
- violation of the Code of honour of a judge of the Republic of Belarus;
- non-compliance of internal code of labour conduct, other service offense.

Body in charge for establishing the facts in the disciplinary proceedings against judges is Qualification boards of Judges.

Qualification boards of Judges are elected by conferences of judges of the respective regional (Minsk municipal) courts and economic courts of regions (c. Minsk) from among the judges of these courts, government officials, scientists-lawyers, and other experts in the field of law for the term of four years in the number of eleven persons.

Disciplinary proceedings against judges of general and commercial courts for the disciplinary offenses, except offenses of non-compliance with the internal code of labour conduct, shall be implemented by the qualification boards of judges.

Qualification board of Judges of the Supreme Court carries out disciplinary proceedings against judges of the Supreme Court (except for the Chairman of the Supreme the chairmen, deputy chairmen of the regional (Minsk municipal) courts, the commercial courts of regions (c. Minsk), members of the Qualifications Board of the judges of the Supreme Court of and the qualification boards of judges of regional courts (Minsk city court), economic courts of regions (city of Minsk).

Qualification board of judges of regional courts (Minsk city court), economic courts of regions (city of Minsk):

- exercise disciplinary proceedings against judges of the regional (Minsk municipal) courts, the economic courts of regions (city of Minsk) (except for the chairmen, deputy chairmen of the regional courts (Minsk city court), economic courts of regions (city of Minsk);
- and the members of the judicial Qualifications board), the chairmen, vice-chairmen, judges of district (city) courts.

Disciplinary proceedings against judges of courts of the Republic of Belarus for non-compliance with the internal code of labour conduct shall be made by the chairpersons of the respective courts in accordance with the legislation of the Republic of Belarus on labour.

Materials by the results of the disciplinary proceedings shall be sent by the qualifying boards of judges within three days with their findings to chairpersons of the respective courts in order to take decisions.

Decisions on the results of cases of disciplinary responsibility of judges shall be taken by:

- the Chairman of the Supreme Court of the Republic of Belarus towards the Supreme Court judges, chairmen of regional courts (Minsk city court), economic courts of regions (city of Minsk);
- the chairmen of the regional courts (Minsk city court) towards the Deputy Chairmen and judges of these courts, as well as the chairmen, deputy chairmen and judges of district (city) courts;
- the chairmen of the economic courts of regions (city of Minsk) towards the deputy chairmen and judges of these courts.

The President of the Republic of Belarus on the grounds provided in this Code may impose any disciplinary action on any judge without disciplinary proceedings. In addition, the judge is entitled to provide explanations about the disciplinary offense committed by him/her. (Article 122 of the Code of the Republic of Belarus on Judicial System and Status of Judges)

C. Disciplinary sanctions

When judges are found responsible for disciplinary offences following sanctions can be imposed:

- comment;

- rebuke;
- warning about service incompetence; Reduction in the qualifying class of a judge for up to six months;
- dismissal from office.

When imposing penalties, the nature of the violation and its consequences, the severity of the offense, the personality of the judge, the degree of guilt are taken into consideration.

D. Immunity and criminal and civil liability of judges

According to the answers from the questionnaire judges are inviolable during their term of office and they enjoy inviolability of home, office, transport and communication, correspondence, property and documents.

The judge, lay judge may not be subject to any liability for the opinion expressed by them in the exercise of judicial judgment and taken decision, if a judgment entered into force has not confirmed their guilt in committing a crime against the interests of service.

In case of approval under the procedure stipulated by the Criminal Procedure Code of the Republic of Belarus for the institution of a criminal proceeding against a judge, a lay judge within the criminal case, involving them as suspects or accused, as well as the application of a preventive measure in respect of these persons in the form of detention, the decision shall be taken on the suspension of their authorities.

Criminal proceedings against judges and lay judges shall be performed in accordance with Criminal Procedure Code of the Republic of Belarus. Thus, the judges of the Republic of Belarus may be held criminally liable. The judges cannot be held administrative liable.

In accordance with Article 939 of the Civil Code of the Republic of Belarus the harm caused within justice shall be compensated if the fault of the judge is confirmed by a court verdict.

The criminal cases against judges of the Republic of Belarus are heard before Supreme Court of R. of Belarus upon the indictment of Prosecutor General of the Republic of Belarus.

E. Code of Ethic

Code of Ethic called “Code of honour of a judge of the Republic of Belarus” has been delivered by Congress of Judges of the R. of Belarus on December 5th 1997.⁵

The rules in the Code are obligatory to all judges in the Country and also shall be applicable to retired judges, and those who retain the title and membership to the judicial community.

Obligations of a judge are set up in the Article 89 of the CJS.

Judges have to strictly observe the Constitution of the Republic of Belarus, laws and other legislation, to protect the rights and freedoms of the citizens, interests of the state and organizations and individual entrepreneurs protected by the laws, high level of culture of the judicial activities, to be fair and impartial.

⁵It must be noted that according to the answers to the Questionnaire the Code of honour does not contain a list of principles of justice. The principles are specified in the procedural laws and therefore it was deemed not necessary to be repeated in the code itself.

The judge is also required to strictly comply with the provisions of the Code of Honour of a Judge of the Republic of Belarus.

The judge and lay judge shall not express an opinion on the cases pending in their proceedings, as well as transfer case to anyone to review except in the manner and in cases stipulated by legislative acts.

In accordance with the Resolution of the Plenum of the Supreme Court of the Republic of Belarus "On raising the level of the culture of judicial activity and improving the organization of court proceedings" the judge responsible for the case shall ensure strict compliance with the law, which guarantees equal rights of participants of the proceedings. At the same time the judge responsible for the case is obliged to exercise tact, restraint and emotional balance, be careful and objective, not to allow the demonstration of own sympathy or antipathy towards someone of the participants of the proceedings, thereby creating an atmosphere of confidence in the court, which is obvious to all presenters. The court is obliged to listen carefully to the participants and is not entitled to limit time of their speech. Within the justice the judges shall strictly follow the rules of professional ethics and take measures to ensure that all parties involved act within the ethical norms and rules of conduct. Judges of all courts shall ensure absolute compliance with procedural legislation, specifying the rules of court etiquette, and claim their compliance from the participants of the hearing. Wearing of robes by the judges at the hearings is mandatory.

Article 111. of CJS stipulates that breaches of code of Honour is basis for bringing judges to disciplinary liability.

According to the answers to the Questionnaire in any dubious situation judges may seek advice with management of the courts.

III.1.4. Georgia

A. Judicial system

There is a three-tiered court system in Georgia. It consists of the first instance courts, two Courts of Appeal (Tbilisi and Kutaisi) and the Supreme Court. The Supreme Court has the strict admissibility criteria (such as severe violation/misuse of law by the lower courts and the cases when the already established precedent is about to be altered). There are no special courts.

Basic principles and obligations of judges are prescribed by the Constitution of Georgia as well as by the Organic Law on Common Courts and Procedural Codes and the Law on Disciplinary Proceedings and Disciplinary Responsibility of Judges.

In addition, a judge is a subject of the Law of Georgia on Conflict of Interest and Corruption in Public Service, violation of which is one of the grounds for disciplinary proceeding of a judge.

B. Discipline framework

Major institutions involved in the initiating and establishing disciplinary responsibility of judges are:

- High Council of Justice of Georgia (HCJ);
- Disciplinary Board of Judges;
- Disciplinary Chamber of the Supreme Court of Georgia.

The High Council of Justice is composed of 15 members, out of which 9 are judge members and 6 are not judges.

The Disciplinary Board consists of 5 members. Three of them are judges of the common courts of Georgia and two are non-judges. (Art 24, Law of Georgia on Disciplinary Liability and Disciplinary Proceedings of Judges of Common Courts of Georgia)

The Disciplinary Chamber of the Supreme Court is composed of 3 members.

Conference of Judges elects eight judge members of the HCJ, 5 non-judge ones are elected by the Parliament and 1 member is appointed by the President of Georgia. **Chairman of the Supreme Court is an ex officio member.**

The Disciplinary Board's judge members are elected by the Conference of Judges of Georgia. As for the non-judge members of the Board, they are elected by the Parliament of Georgia (Art 24 Law of Georgia on Disciplinary Liability and Disciplinary Proceedings of Judges of Common Courts of Georgia). Members of Disciplinary Chamber are Supreme Court judges are elected by the Plenum of the Supreme Court

The list of grounds for disciplinary liability of judges (Art 6) and types of a disciplinary misconduct (Art 2) are set in the Law on Disciplinary Liability and Disciplinary Proceedings of Judges of Common Courts of Georgia.

The grounds for initiating disciplinary proceedings against a judge could be (Art 6 Law on Disciplinary Liability and Disciplinary Proceedings of Judges of Common Courts of Georgia):

- a) A complaint or application of any person, other than an anonymous one;
- b) A clarification of another judge or an officer of court or High Council of Justice related the commission of a disciplinary violation by a judge;
- c) A notification by an investigator or prosecutor;
- d) Information disseminated by mass media on an action committed by a judge that could be considered to be disciplinary misconduct;
- e) Proposal of the Disciplinary Board to initiate disciplinary prosecution of a judge based on new grounds.

Types of a disciplinary misconduct include:

- a) Corruption law violation or abuse of power against the interests of justice and interests of office. The offence stipulated under the law of Georgia on "conflict of interest and corruption in public office" shall be deemed as corruption violation, unless it entails criminal or administrative liability;
- b) Activity incompatible with the position of a judge or conflict of interests with the duties of a judge;
- c) An action inappropriate for a judge, which discredits the prestige of the court or undermines public trust towards the court;
- d) Groundless delay of the consideration of the case;
- e) Failure to fulfill or inadequate fulfillment of the duties of the judge;
- f) Disclosure of secrecy of judicial deliberation or professional secret;
- g) Hindering the activity of bodies (agencies) having disciplinary authority, or showing disrespect towards them;
- h) Violation of norms of judicial ethics;

3. Incorrect interpretation of the law, which is based on intimate conviction of the judge, shall not be deemed as disciplinary violation and no judge shall bear disciplinary liability for this action.

An application (complaint) against a judge's possible disciplinary misconduct can be addressed to the Secretary of the High Council of Justice. Within 2 months after filing the application, a complaint or other information about alleged commission of a disciplinary misconduct by a judge, the body or the official in charge of the disciplinary proceedings checks reasonableness of the application, complaint or the information.

Proceedings in a disciplinary case will be suspended if:

- a) the disciplinary case examination materials explicitly indicate a crime committed by a judge. In this situation, the disciplinary case material shall be submitted to an investigative body;
- b) any objective difficulty or obstacle (illness of a judge against whom the disciplinary prosecution is in progress, or other cases) has arisen during examination of a disciplinary case that makes it temporarily impossible to continue examination of the case. In this situation, a respective authorized body or official shall suspend the disciplinary proceeding by its decision. When the grounds for suspending the disciplinary proceeding have been eliminated, the respective authorized body or official shall be obliged to resume the proceedings.

Disciplinary Proceedings is terminated, if:

Through the pre-checking procedure, the authorised body evaluates validity of reasons to commence disciplinary proceedings.

A respective authorised body or an official shall make a decision to terminate a disciplinary proceeding against a judge, if:

- as a result of the examination of a disciplinary proceeding, the fact of committing disciplinary misconduct under this Law, or its culpable commission by a judge has not been proven;
- the time for instituting disciplinary proceedings against, or imposing disciplinary liability and penalties on a judge, has expired;
- criminal prosecution has been initiated against a judge based on materials submitted;
- there is a decision by the body (official) conducting disciplinary proceedings with respect to the same judge and on the same grounds;
- the judicial power of a judge has been terminated.

In case if the disciplinary proceeding is launched, Disciplinary Panel of Judges of Common Courts is the body dealing with the case. Three members of the Disciplinary Panel, including the Chair of the Panel, are judges of the common courts and the three other members are non- judges. Decisions of the Disciplinary Panel may be reviewed by challenging them before the Disciplinary Chamber of the Supreme Court of Georgia.

C. Disciplinary sanctions.

In Georgia, if a judge is found liable for one or more disciplinary offences several sanctions or measures, it is possible to impose:

- Notice;
- Reprimand;

- Severe reprimand;
- Removal of the Judge from office;
- Removal of the judge from the reserve list of the judges of the common courts.

The Disciplinary Panel can use the following measures of disciplinary effect in relation to a judge:

- send a private recommendation letter to the judge;
- dismiss a chair of a court, a first deputy or a deputy chair of a court or a chair of a judicial panel or chamber from the chairmanship office.

A decision of the Disciplinary Board may be revised by appealing it at the Disciplinary Chamber of the Supreme Court of Georgia.

D. Immunity and criminal and civil liability of judges

Judges enjoy personal immunity. No one has the right to arrest, detain, or bring criminal proceedings against a judge, search his/her apartment, car, workplace, or conduct a personal search without the consent of the Chairperson of the Supreme Court of Georgia, except when he/she is caught at the scene of crime, in which case the Chairperson of the Supreme Court of Georgia has to be immediately notified. Unless the Chairperson of the Supreme Court of Georgia gives his/her consent, the arrested or detained judge has to be immediately released (Art 87, Constitution of Georgia).

In case of judges and the Head of the Supreme Court and judges of the Constitutional Court, relevant consent has to be given by the Parliament and by the Constitutional Court respectively (Art 90, Constitution of Georgia; Art 15 Organic Law of Georgia on the Constitutional Court of Georgia).

The immunity enjoyed by judges is similar to immunity provided to Members of Parliament and Members of Constitutional Court (Art 52 and 88 of the Constitution of Georgia). Incorrect interpretation of the law based on a judge's personal interpretation shall not constitute disciplinary misconduct and disciplinary liability shall not be imposed (Art 2.3 Law of Georgia on Disciplinary Liability and Disciplinary Proceedings of Judges of Common Courts of Georgia). Such act is not a subject of criminal or civil liability either.

However, judge can be held responsible for common “white collar crimes” committed by public officers, such as bribery (Art 338 of Criminal Code), abuse of power (Art 332), excess of power (Art 333), participation in illegal entrepreneurial activity (Art 337), accepting illegal gift (Art 340), falsification of official records (Art 341), official negligence (Art 342).

Before July 2007, Criminal Code of Georgia contained an article called: “Rendering illegal judgment or other type of court ruling”. Even if this provision was rarely applied in practice, it made possible to prosecute a judge for any violation of law in the process of rendering the decision. In July 2007, this article was deleted from the criminal code, as part of government initiative to reinforce judicial independence.

When it comes to civil liability for official conduct, Art 207 of general Administrative Code and Art 1005 of Civil Code do make such a liability theoretically possible, though so far no judge has been held civilly responsible for damage brought by a civil action.

Other than special immunity rules envisaged by Art 87 of the Constitution of Georgia, judges are prosecuted and tried in accordance with regular procedural rules. They can also be sued in accordance with common civil procedure legislation.

A judge can be prosecuted by prosecutor's office and tried before a court of general jurisdiction.

Sanctions listed in relevant provisions of criminal code can be applied to judges.

E. Code of Ethics

Statutory obligation of judges are prescribed by the Constitution of Georgia, Organic Law on Common Courts, Civil, Criminal and Administrative procedural codes and other laws regulating the work of the judiciary.

Other principles determine that a judge has to be independent in his/her activity and has to comply with the Constitution and law only (Art 84.1 Constitution of Georgia), that the position of a judge shall be incompatible with any other occupation and remunerative activity, except for pedagogical and scientific ones (Art 86.3 Constitution of Georgia). Also, for a judge it is prohibited to be a member of a political party or participate in a political activity (Art 86.3 Constitution of Georgia).

Some other responsibilities of judges are also prescribed by the Organic Law on Common Courts, such as the obligation to take oath (Art 38), to observe official language of the proceedings (Art 10), not to abstain from voting (Art 11), etc.

In addition, a judge is a subject of the Law of Georgia on Conflict of Interest and Corruption in Public Service, violation of which also is one of the grounds for disciplinary proceeding against a judge.

Extensive obligations of Judges are set by the Judges Ethics Code. Code was adopted by the Conference of Judges of Georgia after an official submission by the High Council of Justice of Georgia.

The current Code was adopted in October 2007. It consists of 28 articles and regulates judicial conduct in details.

Among other duties enforced by the Code, a judge is required to behave in a manner to prevent damage to the prestige of the judiciary and to avoid any impropriety, both in and outside of the court (Art 4 Ethics Code of Judges).

Further on:

- judge shall neither publicly express any negative opinion or view regarding professionalism or personal attributes of other judges and colleagues, nor make any negative comments regarding judicial decisions made by other judges (Art 6 Ethics Code of Judges);
- judge shall keep independence and impartiality; promote public trust towards judiciary; refrain from ex parte communications;
- fulfil judicial obligations honestly and with due care; respect the court participants; ensure the order in the courtroom, equality of parties and prevent discrimination;
- respect the court support staff and supervise their fulfilment of professional ethics; avoid disclosure or usage the official information acquired during his tenure in to other persons rights; continuously raise the professionalism and qualification;
- refrain giving comments about case to the media, (unless they are technical or organisational) or comments detrimental to the impartial consideration of the case; avoid humiliating or outrageous or politically motivated public statements;

- avoid engagement into activities incompatible with the position of the judge; avoid affiliation into the groups requiring oath of loyalty or questioning the reputation of the judge;
- refrain from engagement into political activity or expression of political opinions in public; not to engage in strike.

The Code does not contain a list of principles similar to those listed in Ethical Codes of some other countries.

However, the principles set by different Articles of the Code are: independence, impartiality and integrity of the judiciary, an obligation to promote public confidence and trust in the judiciary and to protect reputation and authority of judges.

Judges Ethics Code is applicable to all judges.

Violation of the Ethics Code of Judges constitutes a disciplinary offense and can lead to a disciplinary liability (Art 2.2 Law of Georgia on Disciplinary Liability and Disciplinary Proceedings of Judges of Common Courts of Georgia).

Disciplinary penalties/measures are determined in the Law of Georgia on Disciplinary Liability and Disciplinary Proceedings of Judges of Common Courts of Georgia (Art 4). Disciplinary penalties/measures are delivered by the Disciplinary Board of Judges of Common Courts of Georgia/Disciplinary Chamber of the Supreme Court of Georgia.

There is no body or people to whom judges could refer in the dubious situations regarding application of the Code of Ethic.

III.1.5. Republic of Moldova

A. Judicial system

In the Republic of Moldova there are three levels of courts: 44 district/first instance courts, 4 courts of appeal and the Supreme Court. Also, the court system in this country includes one military court.

The key legislation in the Country regulating the judicial system and judges' accountability are: Law on the Judicial System (1995), Law on Status of Judges (1995), Law on National Institute of Justice (2006), Law on the Selection, Performance Appraisal and Career of Judges (2012), Law on declaration and control of income and property of public officials, judges, prosecutors and civil servants (2002), and Law on Disciplinary Liability of Judges (2014)

B. Disciplinary framework

Judges are subject to disciplinary proceedings and in the Republic of Moldova system of disciplinary accountability of judges is determined in the Law on Disciplinary Liability of Judges of 25.07.2014 (in force since 01.01.2015). Judges can be held disciplinary liable for committing a disciplinary offense under this Law. Violation of other normative acts constitutes a disciplinary offence only if the violation constitutes a disciplinary offence under Art 4 of this Law.

According to Law on disciplinary liability of judges, grounds for calling judges responsible for discipline offences are the following:

- a) failure to observe the duty to abstain when the judge knows or should know about existence of one of the circumstances provided by law for abstention, as well as making repeated and unjustified statements of abstention in the same case, which has the effect of delaying the consideration of the case;
- b) intentional application, or application with bad faith, or repeated negligence of legislation contrary to uniform judicial practice;
- c) judge's actions during the judicial procedure that prove to be of serious and obvious professional incompetence;
- d) interference in the judicial activity of another judge;
- e) illegal interventions or use of judge's position in relation with other authorities, institutions or officials to resolve some requests, demanding or accepting personal or others' interests, or to obtain unfair advantages;
- f) breach of the secrecy of deliberation or confidentiality of proceedings with such nature, as well as other confidential information of which s/he got acquainted while fulfilling the duties, under the law;
- g) breach, due to reasons obviously attributable to the judge, of the timelines for fulfilling the procedural actions, of the deadlines for drafting judgments and of delivering their copies to the trial participants;
- h) ungrounded absences from office, being late, or leaving the office without objective reasons if this affected the work of the court;
- i) breach of legislative imperative norms in the process of justice administration;
- j) non-fulfilment or delayed fulfilment, attributable to the judge, of a duty;
- k) undignified attitude in justice administration process towards colleagues, lawyers, experts, witnesses or other persons;
- l) violation of the provisions related to service incompatibilities and prohibitions concerning judges;
- m) committing an act with elements of a crime or offense, that was detrimental to the prestige of justice;
- n) obstruction, by whatever means, of the work carried out by inspector-judges
- o) use of inappropriate expressions in the judgments or in reasoning of judgments obviously contrary to legal rational, that may affect the prestige of justice or dignity of the position of judge;
- p) other actions affecting the honour or professional integrity or reputation of justice, committed in or outside of performance of duties.

There is also possibility to find disciplinary responsible presidents of courts, deputy presidents if they fail to fulfil their duties and in case when such behaviour effects the proper court activities.

Disciplinary procedure includes the following stages:

- filing notifications concerning the actions which may constitute disciplinary offences;
- verification of notifications by the Judicial Inspection;
- examination of notifications' admissibility for starting disciplinary procedure by the admissibility panel;
- examination of disciplinary cases by the Disciplinary Board;
- adoption of the decisions on the disciplinary cases.

The competent institution for establishing accountability of judges is the Disciplinary Board. The Disciplinary Board is an independent body which examines the disciplinary cases in respect to judges and applies disciplinary sanctions.

The Disciplinary Board:

- creates admissibility panels;
- examines the complaints regarding the rejection of the notification by the panel;
- examines cases concerning disciplinary responsibility of judges
- applies disciplinary sanctions to judges.

The Board's activity is regulated by the Law on Disciplinary Liability of Judges and the Regulation on Disciplinary Board' Activities, approved by the Superior Council of Magistracy.

According to the Law, the Disciplinary Board consists of 5 judges and 4 people representing the civil society. Membership of the Disciplinary Board is incompatible with membership of the Superior Council of Magistracy, the Board for selection and career of judges, the board for performance evaluation of judges, with the position of inspector-judge, as well as with the position of a court chairman or deputy chairman.

Members of the Disciplinary Board representing the civil society should have an irreproachable reputation, authority in the society, at least 7 years of experience in the field of law. The term of office of a member of the Disciplinary Board is 6 years. Board member cannot be elected or appointed for two consecutive terms.

The term of office of a member of the Disciplinary Board is extended de jure until the establishment of a Board with a new composition.

Members of the Disciplinary Board from among judges are elected by the General Assembly of Judges: 2 judges from the Supreme Court of Justice, 2 judges from the Courts of Appeal and 1 judge from the courts. The courts judges can be elected to the Disciplinary Board only if they have at least 6 years of work experience as a judge.

The General Assembly of Judges also elect 5 alternate members by observing the proportionality. Alternate members continue the term of office of the member of Disciplinary Board he/she is replacing.

Members of the Disciplinary Board from among civil society representatives, including four alternates, are appointed **by the Minister of Justice, being selected through public competition**. The competition is organised by a committee for selection of candidates which includes representatives appointed by the Superior Council of Magistracy. The numerical and nominal composition of the committee, its mode of functioning and criteria for selection of candidates are set out in the Regulation on the selection of members of the Disciplinary Board, approved by the Ministry of Justice, after consultation with the Superior Council of Magistracy.

In regard to the conditions which should be satisfied to deliver disciplinary sanction against a judge sanctions shall be applied to judges in office and **resigned judges** for the offences committed while holding the office.

Decisions of the Disciplinary Board Disciplinary Board decisions can be appealed in a system of two levels of appeal process.

First appeal can be lodged at the Superior Council of Magistracy, through the Board by people who have filed complaints, judicial inspection or the judge concerned in the decision within 15 days of receipt of the copy of the motivated decision.

After considering the appeals, the Superior Council of Magistrates decides on:

- upholding unchanged the decision of the Disciplinary Board;

- accepting the appeal and adopt a new decision. In this case the provisions relating to the examination procedure and content of the Disciplinary Board decision on the outcome of disciplinary case are applicable also for the Superior Council of Magistracy.

Decisions of the Superior Council of Magistracy adopted can be challenged by an applicant, judicial inspection or judge concerned in the decision, within 20 days from receipt of the reasoned decision to the Supreme Court of Justice. Requests for appeals are examined by a panel of five judges. Decisions of the Supreme Court of Justice are irrevocable and shall enter into force upon adoption.

C. Disciplinary sanctions

The disciplinary sanctions that can be applied are:

- warning;
- reprimand;
- reduction of salary;
- removal from office.

Additional disciplinary measure can be imposed on judges who act as chairmen or deputy chairmen of court. In addition to the sanctions specified, the sanction of removal from their position can be also applied.

Besides listed sanctions, according to Moldovan regulation, there are in fact additional sanctions that are applied to all judges who have been found liable for disciplinary violations.

This conclusion comes from analysing the Law stipulating that throughout the validity period of the disciplinary sanction, the judge cannot be transferred, appointed as court chairman or deputy chairman, or promoted to another court.

In case a disciplinary sanction applied to the resigned judge, s/he will be deprived of the single allowance for dismissal and the pension will be recalculated according to Law on the Status of Judge (1995.)

A judge, who is sanctioned with a removal from the position, cannot be elected or subsequently appointed for a period of 5 years in any position at the Superior Council of Magistracy and its subordinate bodies, and s/he cannot work at the National Institute of Justice, both at the administrative positions and as a trainer.

A judge removed from office of a court chairman or deputy chairman can request a promotion to a higher court or an appointment as court chairman or deputy chairman only after the expiry of 2 years from the date of application of the disciplinary sanction of removal from the office.

With regard to the conditions that should be satisfied to deliver disciplinary sanction against a judge sanctions shall be applied to judges in the office and **resigned judges** for the offences committed while holding the office.

D. Immunity for judges

It is possible to start a criminal process against a judge for committing a crime and this could start criminal proceedings under common law.

A judge can be subject to the criminal prosecution only by the Prosecutor General or the first Deputy on the basis of the Prosecutor General's order, with the consent of the Superior Council of

Magistracy, under the Criminal Procedure Code. This consent is not absolute as it is not necessary for initiating a criminal investigation for certain criminal offences like passive corruption, trading influence and illicit enrichment.

A judge cannot be detained, brought by force, arrested, and searched without a consent of the Superior Council of Magistracy. The SCM consent is not required in case of flagrant offenses.

In the civil procedure: a person who repaired the damage caused by another person entitled to a regress action against it in the amount of compensation paid to the injured person unless the law or contract provides otherwise.

The state has recourse against the person responsible official of the prosecution, prosecutor or court if their guilt is proven by a court decision.

In any case a judge cannot not be held liable for his/her opinions expressed while performing the judicial duties and for judgments s/he passed unless s/he is found guilty of criminal abuse by a final sentence.

E. Code of Ethics

Statutory obligations of judges are prescribed by the Constitution and Law on the Status of Judge and by-laws.

As stipulated in the Law on the Status of Judges, they are obliged:

- to be impartial;
- to ensure the defence of citizens' rights and liberties, their honour and dignity;
- to observe exactly legislative requirements related to justice administration and to ensure uniform interpretation and application of legislation ;
- to refrain from any acts, which may discredit the justice, compromise magistrates' honour and dignity, or to cast doubts on their objectivity;
- to comply with the Code of Judicial Ethics;
- to keep the secret of deliberation and information obtained within closed meetings, as well as the data of criminal prosecution;
- to declare acts of corruption and related actions, acts of corruption behaviour, which s/he learned while fulfilling his/her obligations;
- to submit the statement of income and property;
- to submit the declaration of personal interests;
- to verify their health conditions.

In addition, judges are obliged to inform in writing, the same day, the Superior Council of Magistracy about any communication or attempt to be influenced while examining cases by any of the trial participants or public officials.

According to the decision of Supreme Council of Magistracy (3 March 2015), working group was created to develop a new Code of Ethics of the judges. The draft was prepared with the participation of the judges of all instances, members of the Superior Council of Magistracy, members of the Training Centre, chief inspector of the Judicial Inspection and with the assistance of international experts.

The Code of Professional Ethics and Conduct was approved by the Decision of the General Assembly of Judges no. 8 on 11September, 2015. It is applicable to all judges.

The Code is a public document, which establishes a set of conduct principles and norms for judges, compliance with which is mandatory for judges in and off duty.

According to Art 2 of the Code Principles and rules of professional ethics and conduct, the principles of professional ethics and conduct for judges are: independence, impartiality, integrity, professionalism, fairness, collegiality, confidentiality and transparency following the path introduced in various international documents as e.g. Bangalore Principles. Code also serves as a source of information for judges and litigants.

Breaching the Code could be the subject of examination of the sessions of Superior Council of Magistracy.

There is no body or a person with adversarial role to assist and advise judges with problems related to professional conduct.

III.1.6. Ukraine

A. Judicial System

Ukraine has a four-tier system of courts, consisting of first-instance, appeal, three high specialised courts and the Supreme Court of Ukraine. Also, the Constitutional Court of Ukraine is a part of the judiciary. All courts in Ukraine are divided into three separate and autonomous jurisdictions (civil and criminal, administrative and commercial). Within each jurisdiction there are three levels: first-instance, appeal and cassation. The cassation level ends up with the corresponding high specialised court – the High Specialised Court of Ukraine on Civil and Criminal Matters, the High Administrative Court of Ukraine, the High Commercial Court of Ukraine. The litigation in Ukraine may not go further than the three high specialised courts that are the cassation courts.

The Supreme Court of Ukraine has limited powers; that includes a review of cases, if different jurisdictions interpreted the same legal provision differently, or re-opening of judicial proceedings following the judgment of the European Court of Human Rights.

The key legislation defining the powers and the functioning of the judiciary in Ukraine is the Constitution of Ukraine, the Law on Judiciary and Status of Judges, the Law On High Council of Justice and the procedure codes of Ukraine.

B. Discipline framework

A disciplinary proceeding against a judge is initiated within either the High Council of Justice (HCJ) or the High Qualification Commission of Judges of Ukraine (HQCJU). The High Council of Justice reviews cases of judges of the Supreme Court of Ukraine and of the three high specialised courts, while the High Qualification Commission of Judges of Ukraine with the cases of the judges of first-instance and appeal courts.

A decision of the High Qualification Commission of Judges of Ukraine may be appealed to the High Council of Justice or to the High Administrative Court of Ukraine. A decision of the High Council of Justice can be appealed at the High Administrative Court of Ukraine. A decision of the High Administrative Court of Ukraine can be reviewed further by the Administrative Chamber of the Supreme Court of Ukraine.

The grounds for subjecting a judge to the disciplinary liability are (Art 92 Law on the Judiciary and Status of Judge in Ukraine):

1) Intentional or caused by negligence:

- a) illegitimate denial of access to justice (including illegitimate refusal to accept a claim on the merits, an appeal, cassation claim, etc.) or other substantial procedural violations in the administration of justice that made it impossible for participants of a trial to exercise their procedural rights granted to them and perform procedural obligations, or caused violations of the rules of jurisdiction or admissibility of a case;
- b) failure to specify in the judgment of grounds for sustaining or rejection of parties' arguments on the merits;
- c) violation of principles of transparency and openness of the trial;
- d) violation of the principles of equality of all participants in a trial before the law and the court, contention principles of parties and freedom in provision to the court of their evidence and in proving their strength to the court;
- e) failure to protect the accused party's right to defence, obstructing rights of other participants in a trial;
- f) violation of the rules for challenge (self-disqualification);

2) unreasonable delay or failure to take action by a judge to consider an application, complaint or case within the time limits stipulated by law; delays in provision of a substantiated judgment; failure by the judge to provide a copy of the judgment for its entry in the Unified State Register of judgments;

3) systematic or gross single violation of judicial ethics rules that undermine the authority of justice, including the display of disrespect in the process of administration of justice towards other judges, lawyers, experts, witnesses and other participants in a trial;

4) intentional, or caused by obvious negligence, violation of human rights and fundamental freedoms permitted by the judge who participated in making the judgment;

5) disclosure by a judge of secrets protected by law, including secrecy of deliberations or information that became known to the judge during the hearing in camera;

6) judge's failure to notify bodies of judicial self-government or law-enforcement agencies of any cases of interference in the work of the judge related to the administration of justice, including being addressed by trial participants or other persons, such as persons authorized to perform state functions, regarding specific cases under consideration by the judge, if such address occurred in a manner different from those envisaged by procedural laws, within five days after they became aware of such a case;

7) failure to notify, or late notification of the Council of Judges of Ukraine of real or potential conflict of interest of the judge (except where a conflict of interest is regulated in the manner stipulated by the procedural law);

8) interference with the administration of justice by other judges;

9) failure to submit, or late submission for publication of the declaration of a person authorised to perform functions of the state or local self-government, in a manner stipulated by laws on prevention of corruption;

10) provision in the declaration of a person authorized to perform functions of the state or local self-government, of false information or intentional failure to provide information contemplated by law;

11) use of the status of a judge with the aim of gaining, by them or by any third party, of material or other benefits, if such offence does not contain elements of a crime or a criminal offence;

12) malpractice by a judge, including expenditures by the judge or members of his/her family in excess of incomes of the judge and his/her family; detection of a discrepancy between the judge's lifestyle and the declared profits;

- 13) failure to provide information, or deliberate provision of false information to a legitimate request by a member of the High Qualifications Commission of Judges of Ukraine and/ or member of the High Council of Justice;
- 14) declaring the judge guilty of a corruption offense or an offense related to corruption, in cases specified by law.

The Ukrainian legislation defines that a complaint that may result in the initiating of a disciplinary proceeding against a judge can be submitted by any person. Such a complaint is submitted either to the High Council of Justice or to the High Qualification Commission of Judges of Ukraine, depending of the level of court where the judge works. The decision on opening of a disciplinary proceeding is correspondingly taken by one of these institutions that also define the disciplinary sanction that could be applied towards the judge.

C. Disciplinary sanctions

The Law on the Judiciary and the Status of Judges defines the following disciplinary sanctions that can be used towards a Ukrainian judge:

- Rebuke;
- reprimand — with deprivation of the right to receive bonuses to salary of a judge for one month;
- strict reprimand — with deprivation of the right to receive bonuses to salary of a judge for three months;
- temporary (one to six months) suspension from the administration of justice with deprivation of the right to receive bonuses to salary and mandatory in-service training course at the National School of Judges of Ukraine as defined by the body that conducts disciplinary proceedings and subsequent qualification evaluation for confirmation of the judge's ability to administer justice in the relevant court;
- transfer of the judge to a lower-level court;
- conclusion on submitting a recommendation to the High Council of Justice to consider the issue of dismissal of the judge on grounds of violation of his/her oath.

As mentioned above, the bodies that are in charge to decide on disciplinary proceedings are the High Qualification Commission and the High Council for Judiciary.

The High Qualification Commission consists of eight judges, two representatives of academia, two representatives of the Bar, one representative of the Parliament (Verkhovna Rada) and one representative of court administration who is not a judge.

The High Council for Judiciary has 20 members, and each of following institutions appoints three members to it: Verkhovna Rada, President of the Republic, Assembly of Judges, Assembly of Lawyers, Assembly of Legal High Education Institutions, and 2 members are appointed by Assembly of prosecutors. Ex-officio members of the Council are the Chair of the Supreme Court of Ukraine, the Minister of Justice and the General Prosecutor.

Immunity of judges

Judges are enjoying same level of immunity as members of the parliament.

D. Code of Ethics

The Law of Ukraine on the Judiciary and Status of Judges establishes that the issues of ethics of judges are determined by the Code of Judicial Ethics, approved by the Congress of Judges of Ukraine

(Article 56). The Code, approved by the 11th Congress of Judges of Ukraine on 22 February 2013, contains a number of recommendations for the judicial conduct in their official capacity and outside of the office.

An important provision of the Law is the duty of a judge to follow the oath, which contains the standard of administration of justice by a judge according to the principles of fairness, legality and rule of law. At the same time, the text of the oath stresses that a judge must strictly follow ethical principles of conduct, which prohibit actions that discredit the judiciary and degrade the judicial authority (Art 54, 55 of the Law).

The new Code of Judicial Ethics emphasised that judges voluntarily assume more significant limitations to ethical conduct in course of administration of justice and in extrajudicial behaviour. Given the constitutional provisions on the grounds for dismissal, one of which is a violation of oath (Part 5 of Art126 Para 5 Constitution of Ukraine), it is relevant to determine the actual mechanism for bringing judges to liability for unethical action or inaction.

Professional ethics of judges is primarily based on universally recognised norms of morality. The latter is legally defined as a system of ethical norms, rules of behaviour that exist in a society and are based on traditional spiritual and cultural values, concepts of good, honour, dignity, social responsibility, conscience and justice.

The Law on the Rules of Ethical Conduct defines the rules governing the conduct of persons authorised to perform the functions of state or local government during the exercise of official duties and procedure for bringing them to liability for violation of such rules. This Law applies to all judges, people's assessors and jurors, members of the HQCJU, the HCJ and staff of the Secretariats thereof.

The rules are the legal basis for the codes or standards of ethical conduct and their violation entails disciplinary, administrative and criminal liability. The Law on the Judiciary and Status of Judges defines the following duties for judges:

- promptly, fairly and impartially consider and decide legal cases according to the law in compliance with the principles and rules of court procedure;
- follow the rules of judicial ethics;
- show respect for participants in a trial;
- follow the judicial oath;
- not disclose information that is confidential, protected by law, including the secret of deliberation room and closed sitting of the court;
- fulfil the requirements and adhere to restrictions established by the Law on the Principles of Preventing and Combating Corruption;
- submit annually, before April 1, a declaration of assets, income, expenses and financial obligations for the previous year in the form and manner established by law
- pass regular in-service training at the National School of Judges of Ukraine (for judges appointed for the first time once in a year, for judges appointed for permanent terms once in three years) (Art 54).

Rules regulating conduct outside of the service constitute a second group of judicial ethics. According to the Code of Judicial Ethics a judge shall make every effort to ensure that, in the opinion of reasonable, law-abiding and informed person, their behaviour is impeccable (Art 3). Such a broad formulation sets very high standards of out-of-service judicial conduct, which requires them to respect the basic moral imperatives prevalent in the society.

Section 3 of the Code (Articles 16-20) contains more specific rules of conduct for judges outside of service. It provides, in particular, that a judge:

- cannot be a member of political parties or trade unions, or take part in political activities, hold any other paid offices, perform *other remunerated work except for research*, teaching, or creative activities;
- can participate in social activities, public events, if they do not harm their status, authority of the court and cannot affect the administration of justice, but shall avoid relationships that may affect the independence and impartiality of judges;
- has to be aware of their property interests and take reasonable steps to be aware of property interests of their family;
- has to take into account that family, social or any other relationships, and interference by the public authorities may not influence the behaviour of a judge or judicial decision-making;
- can participate in social networks, on-line forums and other forms of Internet communication, but they may post and comment only that information that does not harm the authority of the judiciary and the court.

According to Article 83 of the Law on the Judiciary and Status of Judges **systematic or gross one-time violation of rules of judicial ethics**, which undermines the authority of justice is a ground for the disciplinary proceedings. This provision gives reasonable grounds to believe that any gross violation of the new Code of Judicial Conduct will result in disciplinary action against a judge. However, according to Article 4 of the Code, violation of the set rules cannot be regarded as the grounds for bringing judges to disciplinary liability and determining the degree of their guilt.

Analysis of the given provisions indicates that the current legislation does not clearly delineate which of the above violations constitute grounds for disciplinary action, and which for dismissal. Thus, it may result in double punishment of a judge.

Solution of these issues is within the competence of the HCJ and the HQCJU. According to Part 5 of Art 8 of the Law on the Judiciary and Status of Judges, on the basis of the results of disciplinary proceedings, the HQCJU can decide to send a recommendation to the HCJ to submit a motion for the removal of a judge if there are grounds for doing so. Hence, there is a need for separation of powers of the stated bodies.

Bearing this in mind, it could be concluded that a violation of the Code of Judicial Ethics can be a ground for bringing a judge to the disciplinary liability or constitutional liability if there is a simultaneous violation of procedural law or judicial duties established by the law.

The HQCJU and the HCJ shall assess the actions or inaction of a judge, taking into account a judge's intent and their impact. Negative consequences for human rights and fundamental freedoms of participants in the procedure as a result of their unethical conduct has to be the starting criterion for liability of judges.

Failure of a judge to observe ethical rules in and outside of service activity, if it is not related to the administration of justice and does not violate the rights and legitimate interests of third parties, cannot be considered a ground for bringing a judge to liability.

The HQCJU has developed a practice regarding ethical requirements for judicial candidates. According to Para 2 of Art 70 of the Law on the Judiciary and Status of Judges, the qualification examination of judges has to involve evaluation of the candidate's personal and moral qualities. It should be emphasised that during the procedure of selection the Commission conducts special inspection whether the applicant meets the established requirements and rejects those who do not meet high moral requirements advanced to the judge. It is not quite clear what criterion is used in exercising these powers.

The final clauses of one of the draft codes of judicial ethics assumed that to provide consulting assistance to judges as to correspondence of their judicial and private activities to the norms of judicial ethics an advisory body (the Commission on Judicial Ethics) has to be established at the Council of Judges of Ukraine. According to the Code, the members of the Commission on Judicial Ethics will be elected by the Council of Judges of Ukraine among the judges who have significant experience and are trusted and respected within the judicial community.

One of the main tasks of the Commission on Judicial Ethics will be the provision of advice on the choice of the alternative ethical conduct of a judge in certain circumstances. Violations of judicial ethics standards fall within the competence of the HQCJU and the HCJ, i.e. bodies that decide on bringing judges to disciplinary liability and constitutional liability.

IV. FINAL REMARKS (Issues for further attention)

On the basis of the submitted answers to the Questionnaire, discussions and interventions of the participants from the participating states during the Meeting, there are issues that need further consideration and what can be defined as main challenges and critical issues with regard to the disciplinary liability and ethics for the judiciary.

These issues are divided into two main topics: disciplinary responsibility and ethics codes and issues closely connected with these two.

Disciplinary responsibility

- A. Disciplinary responsibility for all judges should be the same whether this concerns the proceedings, rights to defence, body in power to decide on the issue of disciplinary accountability, possible legal consequences and regarding persons or bodies who have power to decide on the question of initiation the proceedings. This principle also applies to the bodies invested with authority to decide on the liability of judges. There should be one body responsible for conducting proceedings and delivering decisions.
- B. As a matter of disciplinary responsibility is as a matter of individual rights, deriving from the simple fact that sanctions can be imposed with regards to judges' salaries or their office, there should be a possibility for reviewing decisions at least before the Constitutional Court.
- C. Involvement of the executive power (i.e. President of the Republic) in the process of dismissal of a judge from the bench could eventually be a ground for controversy, if the executive power will establish a practice not to follow the proposals of the judicial authority, and this will undermine the authority of an independent judicial body and public trust in the judiciary.
- D. Establishing the disciplinary responsibility for judges on the bases that a higher court or ECtHR finds the decision false or improper, if extensively used or misused, is against principle that judges should not be called responsible for the opinion they expressed in the decision.
- E. Where one of disciplinary measures is a possibility to transferring a judge to another court, the court where judge is transferred is in a way "punished" because court and judges will have to work and cooperate with a judge who is punished for his/hers poor performance, regardless that the Recommendation 2010(12) in its principle 52 allows such kind of transfer (if it is subject to disciplinary sanction).
- F. When judges have a majority in the Council and members from rank of judges are elected by the judges themselves **it is questionable whether it is necessary to have ex-officio member in the person of the Chairman of the Supreme Court** or the Minister of Justice.
- G. It is not clear what the differences between notice, reprimand and severe reprimand and what are real gradations between such measures and in that respect, if these three basically same measures are necessary.
- H. In some systems there is no possibility to use some intermediate sanction between severe reprimand and removal from office, and in my opinion some kind of such measured should be introduced (fines, reduction of salaries etc.).

- I. Disciplinary offence defined as failure to apply uniform judicial practice is not necessary because it interferes in some parts in the liberty of judge to interpret the law and to have a freedom to do so. Without this freedom, judges of lower courts will never be in a position to create new case law and to develop the law in the country as they will be afraid to go beyond existing case law, even the circumstances and development of the society could dictate new approached to the law and its understanding.
- J. Absence form office should not be defined as disciplinary offence where it exists because judges should be persons of undisputable moral standards and with working ethic. They have their duties and obligations; their work is evaluated and measured as no other profession.
- K. General disciplinary measure which is applied regardless of the gravity of the offence sometimes defined as ban on any promotion, transfer or appointment whenever judge is found responsible seems to strict and does not leave to the authority space for individualization of measures in accordance of the seriousness of the offence.
- L. To general and abstract definitions of disciplinary offences could lead to legal uncertainty and to voluntary application (i.e. "breach of oath").
- M. More than one unique body with authority to establish facts, held the proceedings and decide on disciplinary responsibility of judges (or give the proposal of sanction to other authority) could be source of legal uncertainty and divergent case law.

Ethics Codes

- A. It must be pointed out that rules of judicial ethics, developed and approved by the judicial community bodies are an important guideline in professional and outside of the service judicial conduct. Compliance with the ethical requirements is an essential duty of a judge, dictated by their constitutional and legal status. Judicial Ethics, based on universal moral imperative, is an effective internal corporate mechanism to ensure judicial accountability to the society.
- B. Sources for strengthening the ethical standards of judicial profession depending on their degree of imperativeness can be divided into: (a) constitutional rules that govern the legal status of judges; (b) laws that determine the duties of a judge; (c) acts of the judicial community, which adopt codes of judicial ethics. International legal standards on judicial ethics, play an important role in practice of bodies responsible for bringing judges to liability.
- C. Violation of a code of ethics in the respectful countries is now the ground for bringing a judge to legal liability. But if we regard the code as an collection of standards and goals which should be reached, more than the collection of strict rules, then there should not be direct reflex of connecting between findings which lead to the conclusion that particular judge's behaviour is a breach of the ethics code and his/hers legal accountability (discipline, criminal or civil).
- D. There exist no bodies or persons, which could serve as an advisory body in ethical and deontological issues to judges, where judges could seek an advice and what will help in preventing conduct, which would be contrary to the principles of the code of ethics.

Annex I. List of participants

WORKING GROUP A – JUDICIAL ETHICS **7-8 DECEMBER**

List of Participants

Strasbourg, 30 December 2015

The meetings will be opened by:

- Ms Nino Gvenetadze, Chief Justice and Chairman of the High Council of Justice of Georgia
- Mr Christian Urse, Head of Office, Council of Europe Office in Tbilisi
- Peter Danis, Programme Manager, EU Delegation to Georgia

Chair

- Ms Sophio Gelashvili, Head of Unit, Legal Co-operation Division, Council of Europe

International expert/facilitator

- Mr Duro Sessa, Justice of the Supreme Court of Republic of Croatia

Members of the Regional Steering Committee for regional dialogue on judicial reform

- | | | |
|---|-----------------------|---|
| 1 | Mr Georgi Khachatryan | Director of the Judicial Projects Implementation Unit SA of the Ministry of Justice of Armenia (<i>also in WG B</i>) |
| 2 | Ms Irina Tsakadze | Head of the Legal Drafting Department of the Ministry of Justice of Georgia |
| 3 | Ms Shorena Gigauri | Deputy Head of Department of International Cooperation and Quality Management of the High Council of Justice of Georgia |
| 4 | Ms Tatiana Raducanu | Member of the Superior Council of Magistracy of the Republic of Moldova |
| 5 | Ms Oksana Marchenko | Judge of the Commercial Court of Kiev |
| 6 | Mr Oleksandr Sasevych | Judge of the District Administrative Court of Lvov |
| 7 | Ms Olena Ponomarenko | Head of the Secretariat of the High Qualification Commission of Judges of Ukraine |
| 8 | Ms Polina Kazakevych | Head of the International Cooperation department of the High Qualification Commission of Judges of Ukraine |

Additional participants

- Mr Kakha Tsikarishvili, Chief consultant, Bureau of Chief Justice, Supreme Court of Georgia
- Ms Lili Mskhiladze, Jjudge, Tbilisi City Court, Georgia
- Mr Ioseb Vardzelashvili, Head of Disciplinary Section in Criminal Cases, High Council of Justice of Georgia
- Ms Ketevan Bekauri, Member of Disciplinary Board, Georgia
- Ms Tea Jugheli, Member of Disciplinary Board, Georgia
- Mrs Haykuhi Harutyunyan, President of the NGO "Protection of rights without borders - Armenia
- Ms Araks Melkonyans, Project Coordinator, Apella Institute for Policy Analysis and Dialogue – Armenia
- Ms Eka Tsimakuridze, Project Co-ordinator, Georgian Young Lawyers' Association

Rapporteur

- Ms Rita Marascalchi, Project Co-ordinator, Legal Co-operation Division, Council of Europe

Annex II. Programme of the meeting

WORKING GROUP A – JUDICIAL ETHICS

7-8 DECEMBER PROGRAMME

Strasbourg, 30 November 2015

Topic to be examined:

Judicial ethics and disciplinary liability of judges, with focus on:

- Better understanding of the distinctions and interrelations between judicial ethics and disciplinary liability of judges
- Legal foundations of ethical standards
- Sanctions for breaches of ethical codes
- Grounds for disciplinary measures for judges

Items for discussion:

- Overview of relevant European and other international standards
- Overview of the situation in participating countries
- Identification of key challenges, possible solutions and ways in which a regional approach could contribute to tackling them

Monday 7 December 2015

14.00 – 14,15	<ul style="list-style-type: none"> • Opening / welcome addresses • Disciplinary accountability- grounds for responsibility, procedure , measures , - situation in participating judiciaries
14.15 – 15.45	
<i>15.45 – 16.00</i>	<i>Coffee Break</i>
16.00 – 17.00	<ul style="list-style-type: none"> • CoE Standards • Comments and discussion
17.00 - 17,30	

Tuesday 8 December 2015

09.00 – 10.15	<ul style="list-style-type: none"> • Code of Ethic – legal grounds , adoption, scope of implementation- situation in participating countries • CoE Standards
10.00 – 10.45	
<i>10.45 – 11.00</i>	<i>Coffee Break</i>
11.00 – 12.30	<ul style="list-style-type: none"> • Content of Codes of Ethic- procedure to establish breach of the Code of Ethic - consequences • Coe Standards
<i>12.30 – 14.00</i>	
<i>Lunch Break</i>	
14.00 – 15.45	<ul style="list-style-type: none"> • Relation between disciplinary accountability and breach of the Code of Ethic – situation in participating countries , discussion
<i>15.45 – 16.00</i>	
<i>Coffee Break</i>	
16.45 – 17.30	<ul style="list-style-type: none"> • Closing remarks • Conclusions and way forward

