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THE JUDICIAL SYSTEM PAST REFORMS AND FUTURE PERSPECTIVES

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MANAGEMENT
INSTITUTE
*Promoting Rule of Law
in Georgia (PROLoG)*

Judicial Accountability System



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"Third Wave" and major challenges

- Under the Third Wave of Judicial Reform some positive changes have made, however it does not fully address the existing challenges.
- Significant changes have made under the Third Wave include: defining deadlines for decision; Obligation to make a substantiated decision; Publicity of the process.
- The disciplinary proceedings initiated prior to the adoption of Third Wave shall be considered according to the previously applicable rule, which is problematic.
- The law does not define the goals and objectives of disciplinary proceedings.
- The threat of carrying out the parallel justice through the disciplinary proceedings.



Grounds for Disciplinary Proceedings

- The current grounds for judicial disciplinary proceedings do not meet the foreseeability requirements.
- Particularly important issue still remains imposition of disciplinary liability on a judge based on decisions made in the process administration of justice.



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Legal Error

- The recommendations of the Venice Commission on the "gross violation of law" made by judges.
- Current ground: Failure to perform or improper performance of the duties of the judge.
- Decision on case of Judge Giorgi Sulakadze in 2016.



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Legal Error Plus

- If the judge's action is contrary to the explicitly established legal provision which is clearly interpreted and there is no vagueness or a difference of opinion.
- The higher court reversed the judgment
- A judge's dishonesty, bias, lack of respect for human rights, or any other motive that is not related to administration of a judge's authority in good faith is clearly and convincingly established.



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Breach of judicial code of conduct

- The Law does not clearly define whether reference is made to the existing code of judicial ethics or it also includes so-called unwritten rules.
- Determining the general violations of ethical conduct as the basis for disciplinary proceedings is excessively broad and unforeseeable therefore.
- In the majority of countries, codes of ethics have only unofficial status and the breach of the ethical principles does not constitute direct grounds for disciplinary actions.
- Gross violations of the code of ethics which compromise the reputation of the court and undermine public confidence should be subject to disciplinary measures. However, it is important that such cases should be written foreseeable manner in the law.



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Decision Making Rule of the Council of Justice and Disciplinary Panel

- Legal requirement for two-thirds of the full composition of the Council for disciplinary decision may be excessive and impede the objectives of disciplinary proceedings due to the corporate interests of judges. The quorum issue is particularly important at the initial stage of the proceedings.
- In 2013-2016 only two cases were handed over to the Disciplinary Panel by Council of Justice. The number of complaints was 1039 in the same years.
- The Disciplinary Panel should make decisions by a majority of the full composition and not by a majority of members present at the sessions.



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The guarantees of institutional independence of Independent Inspector are not sufficient.

- the Inspector is appointed and removed by the High Council of Justice which makes the institute of the Inspector fully dependent on the Council.
- The Law provides for the general grounds for the discharge of the Inspector and does not expressly set out opportunity and rules of appealing decisions made by the Council.
- At the legislative level, for enhancement of guarantees for the Inspector's independence, the participation of the Conference of Judges and Parliament might be included in the election and appointment of Inspectors and the rule for discharge of inspectors should be revised.



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Other Important Issues

- The law should define rule for determining admissibility of the evidences in disciplinary proceedings.
- Criminal prosecution against a judge and the transfer of case files to the Prosecutor's Office by the HCoJ and the Disciplinary Panel should not constitute the grounds for termination and suspension of disciplinary proceedings.
- provisions of the Criminal Code of Georgia which are related to judicial liability when exercising official duties need to be improved.
- Decisions about lifting of the immunity of judges of district (city) courts and Courts of Appeals in criminal offences should be made by the High Council of Justice.
- The legislation should allow the application of proportionate disciplinary sanctions against a chairperson of the Court.



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