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# ENHANCING TRANSPARENCY OF DISCIPLINARY PROCEEDINGS AGAINST JUDGES AS A GUARANTEE OF THEIR INDEPENDENCE
# (SUMMARY)

2020

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The over-all objective of the research is to enhance transparency and accountability of the Disciplinary Commission thus contributing to the reduction of corruption risks at the initial stage of the disciplinary procedure against judges and strengthening independence of the Judiciary.

It is important to note that on 25 March 2020 extensive amendments have been introduced to the Judicial code of the RA for the implementation of the Strategy actions, including in the field of disciplinary procedures, composition of the disciplinary commission, grounds for disciplinary responsibility. However, no changes have been suggested for enhancing transparency of the Disciplinary commission's /Commission/ work, while most of the communications on initiating disciplinary proceedings against a particular judge are rejected by the Commission never reaching the Supreme Judicial Council. If we have at least some extent of transparency in the Supreme Judicial Council, disciplinary decisions and their grounds are accessible to the public, the Disciplinary Commission's work is carried out in total «secrecy», the rejections to initiate proceedings do not have form of decisions and never contain any substantiation.

Therefore, there are serious corruption risks at this stage which can be addressed only by enhancing transparency and public oversight over this body.

The situation has even worsened after adopting amendments to the Code on Administrative Violations in the second reading by the National Assembly on 25.03.2020, which provide for administrative liability for a person who has submitted a communication on initiating disciplinary proceedings against a judge to the Commission or the Minister of Justice, if he publicizes any information in respect of it.

Statistics shows that the vast majority of the communications submitted by lawyers never reach the Supreme judicial Council, the decisions of the Commission are not published on the official website of the Judiciary /www.court.am/, and are not provided upon request /referring to the secrecy of proceedings/. Statistical figures were received from the Judicial Department and the Ministry of Justice which have evidently proved the need for access to detailed information relating to the initial stage of disciplinary proceedings against judges. (According to the response of the Judicial Department, 167 reports were received in 2018,

296 in 2019, 114 in 2020, out of which 14 disciplinary proceedings were initiated in 2018, 31 in 2019 and 12 in 2020. According to the information provided by the Ministry of Justice: 435 reports were received in 2018, 627 in 2019, 292 in 2020, out of which 3 disciplinary proceedings were initiated in 2018, 31 in 2019 and 19 in 2020 /by 1 July/). So, the activities of the Commission as well as reasoning behind its decisions totally remain out of the public control. Meanwhile, corruption risks are much higher here comparing with the limited number of cases examined by the Council.

It is also worth mentioning that 2019-2023 Strategy for Judicial and Legal Reforms of the Republic of Armenia (hereinafter referred to as «Strategy») plays a central role in the process of implementation of EU-Armenia Comprehensive and Enhanced Partnership Agreement (CEPA). The CEPA implementation roadmap, approved by the Prime minister in June of 2019, highlights the Strategy as a tool of ensuring independence of the judiciary and enhancing public trust towards it (in the context of article 4). The Strategy, in its turn, assigns particular importance to the improvement of disciplinary procedures against judges for the sake of strengthening independence of the judiciary. At the same time, the Ad Hoc Report on the Right to a Fair Trial of the Human Rights Defender of the RA (2013) was used as a substantiation in the Strategy, whereas, the Report touched upon serious issues in the system of disciplinary proceedings, especially when they were successfully used as a tool of pressure against «unwanted» judges.

In order to substantiate the proposed reforms, the policy paper also focuses on international best practices in the field. Several legislations are analyzed in this context. For example, in **Ukraine**, issues related to bringing judges to disciplinary responsibility are regulated by the Law "On the Judiciary and the Status of Judges" and the Law "On the High Council of Justice"[1]. Notably, the Chamber's decisions to initiate or terminate disciplinary proceedings are publicly available and accessible on the High Judicial Council's website at this link: https://hcj.gov.ua/acts?fbclid=IwAR34mUnFFejD5XZ8OzqKx8DIqnnrQ19eZ9uibnRsmmZzuGd6zzfhbCDT4Ts. It is noteworthy that the legislation of Ukraine not only ensures the openness of disciplinary proceedings, but also guarantees the protection of the reputation of judges from unjustified complaints through a number of normative acts. Particularly, the Law of Ukraine on Judiciary and Status of Judges provides for a regulation which does not allow abusing the right for applying to the respective body to initiate disciplinary proceeding against the judge without sufficient grounds and with the aim to pressure on the judge pertaining to administration of justice through defining liability for the respective actors. For instance, a lawyer may be brought to disciplinary liability for filing a knowingly unjustified disciplinary complaint; a disciplinary case against a judge may not be opened based on a complaint which does not contain data on the availability of signs of a disciplinary offence of a judge as well as

[1] The Law of Ukraine on Judiciary and Status of Judges, https://www.legislationline.org/download/id/7029/file/Ukraine_law_judiciary_status_of_judges_2016_en.pdf, The Law of Ukraine on High Council of Justice, https://www.legislationline.org/download/id/7030/file/Ukraine_Law_on_high_council_of_justice_2017_en.pdf.

based on anonymous applications and notifications; in case there are circumstances which cast doubt on the existence or authenticity of a signature of a person who has filed a disciplinary complaint, a relevant body of the High Council of Justice shall have a right to invite such person to acknowledge the complaint; in case of repeated filing of obviously unjustified disciplinary complaints by a person, the High Council of Justice shall have a right to approve a decision on leaving all subsequent complaints from this person without consideration for one year (Article 178, points 4-8).

In **Lithuania**, as in the case of Ukraine, decisions are published. They must be published in a special section of the website of the National Court Administration within 10 days after their signing, without violating the requirements for the protection of state, official, commercial, professional secrets and secrets protected by other laws, and subject to other restrictions and prohibitions provided for by laws. Only the final parts of the decisions made by the Commission on Judicial Ethics and Discipline shall be published in closed proceedings. It should be emphasized that the Law does not reveal the real names of the persons mentioned in the decision if one is not the judge subjected to disciplinary liability: "If the decision made by the Commission refers to the names and surnames of natural persons, in its published versions, the names and surnames of natural persons shall be replaced with initials - with the initial letters of the names and surnames of natural persons, which shall be different from the real names and surnames of natural persons. This provision shall not apply to the names and surnames of judges to whom disciplinary proceedings have been institute"[2].

Both the decisions of the Commission and the decisions of the Honor Court shall be published on www.teismai.

The obligation to publish decisions to commence proceedings is also provided for in the **American system**, particularly with respect to United States appellate court judges, United States district court judges, bankruptcy judges, United States magistrate judges and federal claims court judges, international trade court and the Court of Appeals for the Federal Circuit[3].

[2] The Resolution on the Approval of the Regulations of the Judicial Ethics and Discipline Commission, adopted on 25 January 2019, https://www.teismai.lt/en/self-governance-of-courts/judicial-ethics-and-discipline-commission/about-commission/667.

[3] Judicial Conduct and Disability Act, https://www.law.cornell.edu/uscode/text/28/part-I/chapter-16?fbclid=IwAR2Wlg_xIxRiDIIIhPO8sJMoUGodxWSgE6saKMIxcFoexN1HTEgOjjZdA_c, Rules for Judicial Conduct and Judicial Disability Proceedings, https://www.law.cornell.edu/uscode/text/28/360.

The following conclusions have been derived from the conducted research:

- Substantiated assessment has been made, according to which, amendments to the Judicial Code adopted based on the 2019-2023 Strategy for Judicial and Legal Reforms of the Republic of Armenia (hereinafter referred to as «Strategy») had not addressed key issues relating to ensuring transparency of the work of Disciplinary Commission /Commission/;

- Statistics proves that the vast majority of the communications submitted by lawyers never reach the Supreme judicial Council, the decisions of the Commission are not published on the official website of the Judiciary /www.court.am/, and are not provided upon request /referring to the secrecy of proceedings/.

- Based on the analysis of international comparative practice a balanced model ensuring sufficient extent of publicity at the initial stage of disciplinary proceedings was proposed. In particular, it was recommended to make amendments in the Judicial Code of the RA to ensure transparency of the work of the disciplinary commission and public control over its activities through envisaging the requirement of publishing all the decisions of the Disciplinary Commission with the mandatory inclusion of the justification part. At the same time in case disciplinary proceedings are not initiated against the judge, for the sake of guaranteeing the protection of the judge's reputation there should be a possibility for not disclosing his/her identity in the decision. The same regulation should apply to the written positions (responses) of the Ministry of Justice alongside the requirement of the mandatory justification part.