

Last amendments - Law No. 191-XV of 08.05.2003

**LAW OF THE REPUBLIC OF MOLDOVA
ON THE DISCIPLINARY BOARD AND DISCIPLINARY LIABILITY
OF JUDGES**

Nr. 950-XIII of 19 of July 1996

M.O. 61-2/607 (1996)

Parliament adopts this Law

Chapter I

GENERAL PROVISIONS

Article 1. Disciplinary Board

(1) The Disciplinary Board shall be created under the supervision of the Superior Council of Magistracy to examine the cases related to the disciplinary liability of judges.

(2) The mandate of the Disciplinary Board shall be of 4 years. Member of the Disciplinary Board may perform his/her powers for at most two consecutive mandates.
(Art. 1 was amended by Law No. 191-XV of 08.05.2003, effective as of 31.05.03)

Article 2. Composition

(1) The Disciplinary Board shall be composed of 9 members: three judges of the Supreme Court of Justice, three judges of the appellate courts and three judges of the courts of law.

(2) Members of the Superior Council of Magistracy, Qualification Board, as well as the presidents and deputy presidents of the courts, shall not be elected in the Disciplinary Board.

(3) The president and deputy president of the Disciplinary Board shall be elected by open or secret vote within the first session of the Board, from among its members. The candidate who accumulated the majority of votes of the members attending the session shall be considered elected.

(Art. 2 was amended by Law No. 191-XV of 08.05.2003, effective as of 31.05.03)

(Art. 2 was completed by Law no. 1099-XV of 06.06.2002)

Article 3. Election of Members

(1) Members of the Disciplinary Board shall be elected by open or secret vote at the general assemblies of judges from the respective courts.

(2) Judges' assemblies for the election of members of the Disciplinary Board shall be deliberative if attended by the majority of judges from the respective court.

(3) The candidate who accumulated more than half of the votes of those present shall be considered elected in the composition of the Disciplinary Board.

(4) If the number of candidates who accumulated more than half of the votes is smaller than the needed one, supplementary elections shall be held.

(5) The result of elections shall be registered in the official minutes of the assembly, which shall be signed by the chairperson and the secretary of the assembly. The official minutes shall be submitted to the Superior Council of Magistracy, in a five-day term after the assembly.

Article 4. Completion

(1) If judge who was elected in the Disciplinary Board is removed from position before the end of his/her term of tenure, his/her membership shall automatically be withdrawn.

(2) Election of a member of the Disciplinary Board to replace the one whose membership was withdrawn shall be held within one-month term from the date of vacancy, as provided for by article 3.

(3) If a member of the Disciplinary Board withdraws within no more than six months left till the expiry of mandate, a new member shall not be elected to replace him/her.

Article 5. Information on the Activity

The Disciplinary Board shall submit annual reports on its activity to the Superior Council of Magistracy.

Article 6. Identity Card

The President of the Superior Council of Magistracy shall issue an identity card of a sample established by the Council to each member of the Disciplinary Board.

Chapter II

POWERS AND MANNER IN WHICH THE DISCIPLINARY BOARD OPERATES. DISCIPLINARY LIABILITY OF JUDGES

Article 7. Powers of the Disciplinary Board

The Disciplinary Board shall:

- a) Examine cases related to the disciplinary liability of judges;
- b) Solve cases related to premature repeal of the disciplinary punishment.

Article 8. The President's and Deputy President's Powers

(1) The president of the Disciplinary Board shall organize the work of the Board, administrate the activity of the secretariate of the Board, and assign the obligations to its members.

(2) In case of temporary absence of the president of the Disciplinary Board, his/her functions shall be performed by the deputy president or, as the case may be, by one of members of the Board.

Article 9. Grounds for Disciplinary Liability

(1) The judge may be subjected to disciplinary liability for:

- a) Serious violation of legislation while administrating justice;
- b) Serious violation, by judge's fault, of the reasonable period time for considering cases what consequently did lead to the violation of the individual to a fair trial;
- c) Violation of the secret of deliberation or confidentiality of secret proceedings;
- d) Violation of discipline of work;
- e) Public activity of political character;
- f) Violation of other provisions on the incompatibilities and interdictions concerning judges;
- g) Systematic violation or serious violation of the judges' Code of Ethics.

(2) The repeal or amendment of the judgement shall not entail liability if judge who rendered it did not break the law on purpose. Exceptions shall be the cases when judge broke the law by negligence, causing substantial material or moral damages to individuals.

(Art. 9 was completed by Law no. 1099-XV of 06.06.2002)

(Art.9 as amended by the Law no.373-XV of 19.07.200)

Article 10. The Right to Institute Disciplinary Proceedings

(1) Any member of the Superior Council of Magistracy shall be entitled to instituting disciplinary proceedings, ex officio or at the proposal of the presidents of the courts.

(2) The disciplinary proceedings against judges and judges-assistant of the Supreme Court of Justice, members of the Superior Council of Magistracy and members of the

Disciplinary Board, shall be instituted at the initiative of no less than three members of the Superior Council of Magistracy.

(Art. 10 was amended by Law No. 191-XV of 08.05.2003, effective as of 31.05.03)

(Art.10 as amended by the Law no.373-XV of 19.07.2001)

Article 11. Terms for Disciplinary Liability

Judge may be subject to disciplinary liability within six-month term from the date his/her when disciplinary deviation was established, except for the period of time in which judge was sick or on vacation, but not later than one year from the date when it was committed.

(Art.11 as amended by Law no.373-XV of 19.07.2001)

Article 12. Instituting Disciplinary Proceedings

(1) While instituting disciplinary proceedings, the person who institutes disciplinary proceedings or members of the personnel of Superior Council of Magistracy who have the respective responsibilities shall check beforehand the data on the grounds for holding judge liable and shall request him to provide written explanations.

(2) The person against whom disciplinary proceedings were instituted shall take knowledge of the disciplinary proceedings-related documents before their being sent for examination. He/she shall be entitled to providing explanations, presenting evidence and requesting additional verifications.

(Art. 12 was amended by Law No. 191-XV of 08.05.2003, effective as of 31.05.03)

(Art.12 as amended by Law no.373-XV of 19.07.2001)

Article 13. Revocation of Instituted Disciplinary Proceedings

(1) The disposition or the decision on the institution of disciplinary proceedings may be revoked, by the person who instituted the respective proceedings, before the Disciplinary Board examines the case.

(2) Judge concerned with the revoked disposition or decision on the institution of the disciplinary proceedings shall be entitled to request the examination of the case and the Disciplinary Board or, as the case may be, the Superior Council of Magistracy shall be obliged to solve it.

Article 14. Preparation of the File Records to Be Examined by the Disciplinary Board

(1) Before the case is examined, if necessary, supplementary verification of the grounds for holding judge as a subject to disciplinary liability shall be performed, a verification which is entrusted by the president of the Board to one of its members. If necessary, documents and supplementary materials shall be requested as well as the judicial files upon the examination of which judge broke the law.

(2) An empowered member of the Council shall perform the supplementary verification of the disciplinary case regarding the persons indicated under article 10, paragraph (2).

Article 15. Composition of the Disciplinary Board while Performing Disciplinary Proceedings

The Disciplinary Board shall examine the disciplinary cases in the composition of at least 2/3 of members.

Article 16. Terms for Examination of the Disciplinary Case

The disciplinary case shall be examined within one-month term from the date when it was forwarded to the Disciplinary Board or, as the case may be, to the Superior Council of Magistracy. This term shall not include the period of time in which judge was absent due to reasons provided for by article 11.

(Art.16 as amended by Law no.373-XV of 19.07.2001)

Article 17. Participants at the Disciplinary Proceedings

(1) The participation of judge who is subject to disciplinary liability in the examination of the disciplinary case shall be obligatory. If the judge's absence during this examination is unfounded, the Disciplinary Board shall be entitled to deciding the examination of the disciplinary case *in absentia*.

(2) The person who instituted disciplinary proceedings or his/her representative shall be entitled to participating in the examination of the case and to assist other judges.

Article 18. Examination of the Disciplinary Case

1) The chairperson of the session shall declare it open and read out the composition of the Disciplinary Board. Before starting examination of the case, judge shall have the right to recuse the members of the Board.

(2) The examination of the disciplinary case starts with the report of the chairperson of the session or of a member of the Board. The person who instituted the disciplinary proceedings or his/her representative shall have the right to express his/her own opinion. Hearing the judge's explanations shall be obligatory.

(3) During the hearing the judge who is being held liable shall have the right to formulate requests and give supplementary explanations at any moment. At the decision of the Board, the reports of other persons who were invited both at the initiative of judge or the Disciplinary Board shall be heard as well, documents may be read out and other materials may be studied both those from the file records or those submitted additionally.

(4) The disciplinary case shall be examined only within the limits of the charges presented in the disposition or decision on instituting disciplinary proceedings.

(5) The decision shall be adopted in the deliberation room.

Article 19. Decisions on the Disciplinary Cases

(1) The Disciplinary Board may rule:

- a) Application of a disciplinary sanction;
- b) Rejection of the proposal to apply a sanction and closing the disciplinary proceedings;
- c) Forwarding disciplinary proceedings-related materials to the Superior Council of Magistracy in order to institute proceedings to cease judge's powers.

(2) The Disciplinary Board may apply the following disciplinary sanctions:

- a) Reprimand;
- b) Reproof;
- c) Severe reproof;
- d) Proposal to remove judge from position.

(3) While applying the sanction, character of disciplinary deviations, their consequences and seriousness, personality of judge, degree of his/her fault and other circumstances, which require attention, shall be taken into account.

(4) The Disciplinary Board shall close the disciplinary proceedings based on the following:

- a) Lack of grounds for subjecting judge to disciplinary liability;
- b) Expiry of the terms for subjecting judge to disciplinary liability, as provided for by article 11;
- c) Inadequacy of application of the disciplinary sanctions in cases when the Board may find it sufficient just to examine the proceedings-related documents during the session.

Article 20. Adoption of Judgments

(1) The judgment on the disciplinary case shall be adopted by the vote of the majority of members of the Disciplinary Board who participate in examining the case. The judgement shall be issued in written and signed by the chairperson of the session and members of the Board.

(2) If a member has a dissenting opinion on the judgement of the Board, he/she shall provide it in written and sign it, and it shall be attached to the file records.

(3) The judgments on the disciplinary cases shall be rendered within the session of the Disciplinary Board. The dissenting opinions shall not be read out.

Article 21. Contents of the Judgment

The following shall be indicated in the judgement on the disciplinary case: name of the Board, its composition, date and place of case examination; surname, family name and function of judge subjected to disciplinary liability; surname, family name and function of the person who instituted the disciplinary proceedings; circumstances of the case; explanations provided by judge subjected to disciplinary liability and the data on the characteristics of judge's personality; reasons for the judgement that was adopted; mentioning the evidence; the disciplinary sanction applied or reasons to cease the disciplinary procedure; manner to appeal the judgement.

Article 22. Handing the Copy of the Judgment

The copy of the judgement on the disciplinary case shall be handed, within 3-day term from the date when it was adopted, to the parties who did not participate in examining the case. The copy of the judgement shall be attached, also, to the personal file of judge.

Article 23. Appealing the Decision of the Disciplinary Board

The judgment of the Disciplinary Board may be appealed by the judge concerned or by the person who instituted the disciplinary proceedings, with the Superior Council of Magistracy within 10 day-term from the date when it was adopted.

Article 24. The Repeal of the Disciplinary Sanction

(1) If during one year from the date of applying the disciplinary sanction, judge shall not be subject to a new disciplinary sanction, it shall be considered that he was not subjected to disciplinary sanctioning.

(2) Upon the proposal of the person who instituted the disciplinary proceedings, as well as at the initiative of the Disciplinary Board, which applied the disciplinary sanction, upon the expiry of 6 months from the date of applying the disciplinary sanctions, the Disciplinary Board may repeal it before the end of the term if judge who was sanctioned has not committed a new disciplinary deviation, has proved an irreproachable behavior and a conscientious attitude in performing his/her obligations.

(3) As long as the disciplinary sanction is effective, the person who was sanctioned shall not be subject to stimulation-related measures.

Chapter III

FINAL PROVISIONS

Article 25. Secretariate-related Work

(1) Employees of the personnel of the Superior Council of Magistracy shall perform the secretariate-related work of the Disciplinary Board.

(2) Official minutes of the sessions of the Disciplinary Board shall be kept and they shall include the following: date of the session, presence of members of the Disciplinary Board, as well as of other participants at hearings, agenda, brief summary of the pleadings, issues subjected to voting and the results of the vote. The official minutes shall be developed within 3 days, signed by the chairperson and counter-signed by the secretary.

Article 26. Ensuring the Activity of the Disciplinary Board

(1) To exercise its powers, the Disciplinary Board shall be entitled to requesting the necessary information from the presidents of the courts and other bodies.
(Par. (1) art.26 as amended by Law no.373-XV of 19.07.2001)

(2) The Disciplinary Board shall be entitled to requesting, as the case may be, the respective judicial files, as well.

(3) The Superior Council of Magistracy shall provide the Disciplinary Board with technical and material facilities to ensure the activity of the Disciplinary Board.

(4) The materials examined by the Disciplinary Board shall be submitted to the Superior Council of Magistracy.

Chapter IV

TRANSITORY PROVISIONS

Article I

This law shall go into effect on the date of its publication.

Article II

The Superior Council of Magistracy, within one-month term from the date when this law went into effect, shall create the Disciplinary Board under the provisions of articles 2 and 3.

Article III

The Government, within one-month term from the date when this law went into effect, shall draft and submit proposals to conform current legislation to this law, to Parliament

THE PRESIDENT OF PARLIAMENT

Petru LUCINSCHI