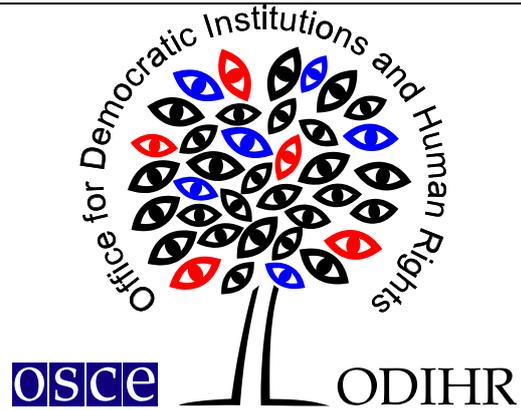


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OPINION

ON THE DRAFT LAW

OF THE REPUBLIC OF MOLDOVA

ON THE DISCIPLINARY RESPONSIBILITY OF JUDGES

Based on an unofficial English translation of the Draft Law

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I. INTRODUCTION

1. *On 27 November 2012, the Minister of Justice of the Republic of Moldova sent a letter to the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) requesting an expertise of the new Draft Law on the Disciplinary Responsibility of Judges.*
2. *In the letter, the Minister of Justice explained that the above Draft Law had been prepared in the context of the Justice Sector Reform Strategy for the years 2011-2016 and the corresponding Action Plan. The stated aim of the Draft Law was to enhance judicial accountability in Moldova, as foreseen in the “Specific Intervention Area 1.3.8.2” of the Action Plan.*
3. *This Opinion is provided in response to the Minister’s above-mentioned request, by virtue of OSCE/ODIHR’s mandate to, upon request, provide assistance to legislative reforms in OSCE participating States.*

II. SCOPE OF REVIEW

4. The scope of the Opinion covers only the above-mentioned Draft Law of the Republic of Moldova on the Disciplinary Responsibility of Judges (hereinafter, Draft Law), submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of all available framework legislation regulating judicial responsibility, in Moldova.
5. The Opinion raises key issues and indicates areas of concern. In the interests of concision, the Opinion focuses on problematic areas rather than on the positive aspects of the Draft Law. The ensuing recommendations for amendments are based on relevant international standards and OSCE commitments, as well as good practices.
6. This Opinion is based on an unofficial translation of the Draft Law. Errors from translation may result.
7. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to the Draft Law or related legislation that the OSCE/ODIHR may make in the future.

III. EXECUTIVE SUMMARY

8. The OSCE/ODIHR believes that the Draft Law is generally compliant with international standards and represents a commendable effort to enhance the concept of judicial responsibility in Moldova. At the same time, in order to further improve the Draft Law’s compliance with international standards, it is recommended as follows:

1. Key Recommendations

- A. To consider rephrasing Article 4(1)c of the Draft Law so as to prescribe, as grounds for disciplinary action, the *malicious* intentional deviation from uniform judicial practice, as well as the deviation caused by *gross negligence* [pars. 13-16];
- B. To consider introducing additional disciplinary sanctions in Article 7(1) of the Draft Law, with a view to ensuring genuine proportionality to the gravity of the misconduct [par. 23];
- C. To either provide that the transfer to other courts or administrative positions can constitute a disciplinary sanction, or reconsider the ban on such transfers during the period of validity of the disciplinary sanction [par. 24];
- D. To amend Article 16 of the Draft Law so that the Disciplinary Board member who requests exemption cannot be forced to sit on the Board [par. 27];
- E. To clarify, in Articles 33(1) and 36(4), the procedure for examining disciplinary cases in instances where the respective judge refuses to appear [par. 32];

2. Additional Recommendations

- F. In Article 4(1)b, to consider making reference to repeated and unjustified statements of abstention which caused *considerable* delay, as a ground for disciplinary liability [par. 12];
- G. To ensure that the ban on judges' political activity prescribed by Article 4(1)g shall not prevent them from exercising their freedom of association in general [pars. 18-19];
- H. To specify with greater clarity, in Article 4(1)k, which duties this provision is referring to when it speaks of the non-fulfilment or delayed fulfilment of duties constituting a ground for disciplinary liability [par. 20];
- I. To rephrase Article 4(1)p so as to limit disciplinary liability to cases where the repeated manifestly irrational reasoning of judgments indicates that the judge is incapable to perform his or her duties [par. 21];
- J. To outline whether the post of civil society representative on the Disciplinary Board is open to anyone or only to those persons who are affiliated with [registered] civil society organizations [par. 28];
- K. To clarify, in Articles 7(5) and 13(e), whether the Superior Council of Magistrates can take a decision to remove a judge from his or her post, or whether it may only make a proposal to that effect, and to which body such proposal shall be addressed [par. 29];
- L. To reconsider the rule from Articles 38(2) and 39(2)h which seems to permit recommendations for extraordinary evaluation even where there were no grounds to hold the judge disciplinarily liable [par. 33].

IV. ANALYSIS AND RECOMMENDATIONS

1. Preliminary Remarks

9. There are a series of key international documents which set a framework of international standards relating to the disciplinary responsibility, or liability, of judges. These documents include, amongst others, UN instruments,¹ Council of Europe recommendations,² judgments of the European Court of Human Rights³ (hereinafter, ECtHR), opinions of the Consultative Council of European Judges⁴ (hereinafter, CCJE), the European Charter on the Statute for Judges,⁵ a Guide developed by the International Commission of Jurists,⁶ as well as relevant OSCE commitments⁷ and the OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia.⁸
10. While these instruments prescribe numerous principles, there are three basic requirements which they set with respect to national laws governing the disciplinary responsibility of judges, namely: 1. that there be a clear definition of the acts or omissions which constitute disciplinary offences; 2. that the disciplinary sanctions be proportionate to the respective disciplinary offence; and 3. that the disciplinary proceedings be of an appropriate quality. It is from the perspective of these core principles that the subsequent review and analysis of the Draft Law is conducted.

2. Detailed Analysis of the Draft Law

2.1 Clear Definition of Disciplinary Offences

¹ UN Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

² Recommendation No. R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges (adopted by the Committee of Ministers on 13 October 1994 at the 518th meeting of the Ministers' Deputies), subsequently superseded by Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies).

³ See, e.g., *N. F. v. Italy*, ECtHR Judgment of 2 August 2001 (Application no. 37119/97).

⁴ Opinion no. 3 of the Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality.

⁵ European Charter on the Statute for Judges (Strasbourg, 8-10 July 1998), adopted by the European Association of Judges, published by the Council of Europe [DAJ/DOC (98)23].

⁶ International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: A Practitioner's Guide. ICJ, Geneva (Switzerland), 2007.

⁷ See, e.g., Moscow Document (1991), para. 19.2 (vii).

⁸ The OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010) were developed by a group of independent experts under the leadership of ODIHR and the Max Planck Institute for Comparative Public Law and International Law – Minerva Research Group on Judicial Independence. The Kyiv Recommendations are available at <http://www.osce.org/odihr/KyivRec>.

11. Article 4 of the Draft Law defines the acts and omissions which shall constitute a disciplinary offence. It does so by specifying no fewer than 17 distinct kinds of misconduct that shall give rise to disciplinary liability. Generally speaking, this approach to defining the grounds for disciplinary liability through specific enumeration, rather than through vague formulae of great generality, appears to be in line with international standards and good practice.⁹ In particular, it reflects the ECtHR standard of “foreseeability”, which requires that the conduct that will give rise to disciplinary action be defined with sufficient clarity, so as to enable the concerned person to foresee the consequences of his or her actions and thereupon regulate his or her conduct.¹⁰ It is positively noted that, in order to ensure that all possible cases of disciplinary offence are covered, the Draft Law also contains a more general, “catch-all”, provision under Article 4(1)i.
12. Article 4(1)b provides, as a ground for disciplinary offence, “the making [of] repeated and unjustified statements of abstention in the same case, which has the effect of delaying the consideration of the case”. This ground does not raise any concerns as long as the two qualifiers – “repeated and unjustified” (statements of abstention) – are always used in conjunction. In other words, it would be improper to discipline a judge over repeated, yet not unjustified, abstentions. Furthermore, the last part of the sentence, referring to the resulting delays in the consideration of the case, appears somewhat redundant given that all statements of abstention shall inevitably entail a delay in the proceedings. If the drafters wish to limit disciplinary liability in the respective instances, they might consider making reference to repeated and unjustified statements of abstention which cause *considerable* delay.
13. Article 4(1)c, prescribing disciplinary responsibility for the “intentional application of legislation contrary to uniform judicial practice, if this was found by a final decision”, is more controversial. It bears recalling in this context that the International Commission of Jurists has pointed out, with reference to the Concluding Observations of the UN Human Rights Committee, that “[j]udges cannot be removed or punished for *bona fide* errors or for disagreeing with a particular interpretation of the law”.¹¹ Also of relevance on this point is the Council of Europe Recommendation CM/Rec (2010) 12, which provides that “[t]he interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence”.¹²
14. The protection provided under Article 4(1)c of the Draft Law partly goes beyond the protection guaranteed by the Recommendation CM/Rec (2010) 12, in that only *intentional* deviation from uniform judicial practice shall constitute a disciplinary offence (which means that cases of *gross negligence* –

⁹ See the CCJE Opinion no. 3 (2002), paragraphs 63-65. See also the Council of Europe Recommendation No. R (94) 12, Principle VI.2.

¹⁰ See *N.F. v. Italy*, ECtHR Judgment of 2 August 2001 (Application no. 37119/97), paragraphs 29-30.

¹¹ International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: A Practitioner’s Guide. ICJ, Geneva, Switzerland, 2007, page 55.

¹² Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies), paragraph 66.

which might legitimately under the Recommendation trigger disciplinary sanctions – are excluded). One could argue that disregard of uniform judicial practice through *gross* negligence should be treated the same as intentional actions, as such extreme cases of negligence demonstrate the absence of due diligence in the exercise of a judge’s duties. At the same time, the term “intentional” is broader than the term “malice”, which – although not defined in the Explanatory Memorandum to the Recommendation – implies more than mere intent. Malice presupposes, additionally to the fact that the person acts on purpose, also the specific intent to inflict an injury. This is confirmed by paragraph 68 of the Recommendation, according to which cases of “malice” in the “interpretation of the law, assessment of facts or weighing of evidence”, may give rise even to criminal liability.

15. That said, it must be noted that in some countries the highest national court may issue interpretative resolutions (decisions) in order to guarantee the uniformity of judicial practice, with such decisions being legally binding on judges. In this context, it is reiterated that the use of such interpretive resolutions, while helping to ensure consistency of judicial practice, is questionable from the point of view of judicial independence of lower court judges (particularly in post-communist countries)¹³ and the separation of powers. Generally, the Draft Law should specify the term “uniform judicial practice” under Article 4(1)c of the Draft Law, and interpret it in such a manner that it does not conflict with judicial independence.
16. At the same time, it is recommended to narrow the scope of Article 4(1)c of the Draft Law, so that not every intentional deviation from uniform practice gives rise to disciplinary punishment. No disciplinary action should be taken when it is established by a final decision that the judge intentionally deviated from the “uniform judicial practice”, yet the element of malice, laid down in the Recommendation CM/Rec(2010)12CM, is absent. For this reason, to ensure compliance with this Recommendation, it is advised to prescribe that only the *malicious* intentional disregard of “uniform judicial practice” shall constitute a disciplinary offense. Furthermore, for the reasons outlined in the preceding paragraph, the drafters might wish to consider prescribing that also the repeated deviation from uniform practice caused by *gross negligence* shall give rise to disciplinary action.
17. In this context, on a distinct yet related note, it should be mentioned that in the course of judges’ performance evaluation, also the number of decisions overruled by appellate courts can be taken into consideration. This factor may thus sufficiently ensure that a “uniform judicial practice” shall be duly followed, potentially making redundant the application of disciplinary sanctions for cases of deviation from such practice (absent malice and gross negligence). The drafters should also be mindful of the fact that any court’s “uniform judicial practice” may have to change over time. This was also confirmed by the European Court of Human Rights (hereinafter, ECtHR), which has authoritatively stated, with regard to its own established case-law,

¹³ See the Venice Commission Report on the Independence of the Judicial System (2010), paragraph 70. See also the Venice Commission Opinion on the Cardinal Acts of the Judiciary [...] of Hungary (Opinion no. 683/2012, adopted on 12-13 October 2012), paragraph 52; and the OSCE/ODIHR Kyiv Recommendations, *op cit* footnote 5, par 35.

that “[w]hile it is in the interests of legal certainty, foreseeability and equality before the law that the Court should not depart, without good reason, from precedents laid down in previous cases, a failure by the Court to maintain a dynamic and evolutive approach would risk rendering it a bar to reform or improvement [...]. It is of crucial importance that the Convention is interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory [...]”.¹⁴ This aspect should also be taken into account, when amending Article 4(1)c as outlined in the preceding paragraph.

18. Under Article 4(1)g of the Draft Law, “conducting public political activities or expressing political opinion in the performance of duties” shall constitute judicial disciplinary misconduct. The second limb of the quoted provision raises no concern; refraining from expressing political opinion in the course of performing judicial duties is a recognized guarantee of the appearance of judicial independence and impartiality. As formulated by the European Charter on the Statute for Judges,¹⁵ “judges must refrain from any behavior, action or expression of a kind effectively to affect confidence in their impartiality and their independence”.¹⁶ Similarly, the UN Basic Principles provide that the members of the judiciary are like other citizens entitled to all freedoms, while adding that “in exercising such rights, judges shall always conduct themselves in such a manner as to preserve [...] the impartiality and independence of the judiciary”.¹⁷ Summarizing several international documents, the International Commission of Jurists recognized that judges enjoy the same freedoms as other individuals, but added that “in exercising these freedoms judges must be careful not to compromise their independence and impartiality”.¹⁸
19. The wording of Article 4(1)g might be interpreted as implying that conducting public political activities, even when not linked to the discharge of judicial duties, shall constitute a ground for disciplinary liability. Such a ban on judges’ political activities might be partly explained by the particular circumstances existing in new democracies. In many post-communist democracies, judges may not be members of political parties or engage in any other political activity.¹⁹ It should be noted, however, that the jurisprudence of the ECtHR indicates that with the passing of time a restriction that might have been justified in the past may become a disproportionate interference with fundamental rights.²⁰ It should therefore be weighed whether such a

¹⁴ See *Bayatyan v. Armenia*, ECtHR Grand Chamber Judgment of 7 July 2011 (Application no. 23459/03), paragraphs 98.

¹⁵ European Charter on the Statute for Judges (Strasbourg, 8-10 July 1998), adopted by the European Association of Judges, published by the Council of Europe [DAJ/DOC (98)23].

¹⁶ *Ibidem*, paragraph 4.3.

¹⁷ UN Basic Principles on the Independence of the Judiciary, paragraph 8.

¹⁸ International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: A Practitioner’s Guide. ICJ, Geneva, Switzerland (2007), p.39.

¹⁹ See, e.g., Article 40 par. 3 of the Constitution of Romania (1991, with subsequent amendments), which provides that “Judges of the Constitutional Court, the ombudsmen, magistrates, active members of the Armed Forces, police officers and other categories of civil servants, established by an organic law, shall not join political parties”.

²⁰ See *Vajnai v Hungary*, ECtHR Judgment of 8 October 2008 (Application no. 33629/06), paragraph 49, as well as the ECtHR Judgment in the case of *Sidabras and Džiautas v. Lithuania* (Application nos. 55480/00 and 59330/00), paragraph 49, and *Rainys and Gasparavičius v. Lithuania* (Application nos. 70665/01 and 74345/01), paragraph 36.

restriction continues to remain necessary in the particular circumstances of Moldova. More importantly, the ban on judges' political activity should not prevent them from exercising their freedom of association, in general. As stated in numerous international documents, judges should be free to form associations, which have the task of safeguarding their independence and protecting their interests.²¹

20. Under Article 4(1)k, the “non-fulfilment or delayed fulfilment, attributable to the judge, of a duty, without due reasons” shall constitute a ground for disciplinary liability. In the interests of foreseeability, it is recommended to specify, or prescribe with greater clarity, which types of duties this provision is referring to.
21. Article 4(1)p prescribes disciplinary liability for the “use of inappropriate expressions in the judgments or reasoning of judgments obviously contrary to legal rationale, that may affect the prestige of justice or dignity of the position of a judge”. This ground appears to be too broad and may run counter to the principles set forth in paragraph 66 of the CoE Recommendation CM/Rec (2010) 12, quoted in paragraph 13 above, and potentially limit judicial independence. Moreover, it bears recalling that the use of inappropriate expressions or the poor reasoning of judgments can also be addressed through the process of judges' performance evaluation. The contents of Article 4(1)p should thus be revisited, and either clarified, or removed.

B. Proportionality of Disciplinary Sanctions

22. Article 8 of the Draft Law expressly provides that “[d]isciplinary sanctions shall be applied proportionally to the seriousness of the disciplinary offense committed by the judge and his/her personal circumstances”. This is a commendable reflection of the principle of proportionality of disciplinary sanctions, which is also prescribed by Recommendation CM/Rec (2010) 12,²² and by the European Charter on the Statute for Judges.²³
23. That said, the list of disciplinary sanctions envisaged by the Draft Law is rather limited. Under Article 7, there are only three generic types of disciplinary sanctions that can be applied on judges, namely the warning, the reprimand, and the removal from judicial post (additionally, judges who act as chairmen or deputy chairmen of courts, may also face the sanction of removal from the office of court chairman or deputy chairman). As concerns the first two sanctions, they are relatively mild: both consist in a kind of rebuke that the judge shall receive in writing. The only substantial difference between them is that in the case of a warning, the negative consequences attached to the disciplinary sanction – such as exclusion from promotion²⁴ – cease to exist after the lapse of one year, whereas in the case of a reprimand, the period is of two years.²⁵ On the other hand, the third generic sanction, i.e. removal from

²¹ UN Basic Principles on the Independence of the Judiciary, paragraph 9; Recommendation CM/Rec (94) 12, principle IV; Recommendation CM/Rec(2010) 12, paragraph 25.

²² Recommendation CM/Rec(2010) 12, paragraph 69.

²³ European Charter on the Statute for Judges, paragraph 5.1.

²⁴ See Article 8(4) of the Draft Law.

²⁵ See Article 7(3),(4) in conjunction with Article 8(4) of the Draft Law.

judicial post, is the most severe disciplinary sanction. It might be difficult to ensure the proportionality of disciplinary sanctions, as mandated by international standards and by the Draft Law itself, if the disciplinary body will have the option to impose either one of the mildest sanctions, or the most severe disciplinary punishment, but does not dispose of any other types of sanctions that range in between the two. Therefore, it is recommended to consider introducing additional disciplinary sanctions in the text of the Draft Law, with a view to ensuring genuine proportionality to the gravity of the misconduct. In this regard, inspiration could be drawn from Recommendation CM/Rec(1994) 12, which contains a non-exhaustive list of disciplinary measures, such as withdrawal of cases from the judge; moving the judge to other judicial tasks within the court; economic sanctions such as a reduction in salary for a temporary period; and suspension.²⁶

24. Article 8(4) of the Draft Law provides that “[t]hroughout the validity period of the disciplinary sanction, the judge cannot be transferred or promoted to another court or to administrative positions”. While the ban on promotion is understandable, the prohibition on transfers to other courts or administrative positions is less clear. As the existing disciplinary sanctions under Article 7 of the Draft Law are limited to warning, reprimand and removal from judicial post, the transfer of a judge as a disciplinary sanction is currently not foreseen in the Draft Law. Recommendation CM/Rec(2010) 12 implies, however, that transfer to another judicial office may be possible as a form of disciplinary sanction.²⁷ It would thus be preferable if the transfer of a judge would either be foreseen as a permissible disciplinary sanction under the draft Law, or if the general ban on transfer during the validity period of disciplinary sanctions under Article 8(4) would be reconsidered. Otherwise, the Draft Law would create a situation where judges could not be transferred (for whichever reason), merely because a disciplinary sanction has been issued against them.

C. Quality of Disciplinary Proceedings

25. International standards prescribe that disciplinary proceedings against judges must meet certain qualitative criteria. Thus, the UN Basic Principles on the Independence of the Judiciary provide that “[a] charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge”.²⁸ Furthermore, “[a]ll disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct”,²⁹ and “[d]ecisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the

²⁶ Recommendation CM/Rec(1994) 12, Principle VI.1.

²⁷ CM/Rec(2010) 12, par 52 provides that “[a] judge should not receive a new appointment or be moved to another judicial office without consenting to it, *except in cases of disciplinary sanctions or reform of the organisation of the judicial system*” (emphasis added).

²⁸ UN Basic Principles on the Independence of the Judiciary, paragraph 17. See also the OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, paragraph 26.

²⁹ *Ibidem*, paragraph 19.

decisions of the highest court and those of the legislature in impeachment or similar proceedings”.³⁰ On the European level, Recommendation CM/Rec(2010) 12 mandates that disciplinary proceedings against judges “should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction.”³¹

26. It must be noted that although Council of Europe recommendations seem to suggest that the guarantees of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, ECHR) must be observed in disciplinary proceedings against judges, the European Court of Human Rights has made it clear that under certain conditions, employment disputes between the authorities and civil servants or judges may be excluded from the scope of Article 6(1) ECHR. However, in light of the criteria elaborated in the case *Vilho Eskelinen and Others v. Finland*,³² and bearing in mind that disciplinary proceedings may result in removal from judicial post, Article 6 ECHR applies under its “civil” head to the disciplinary proceedings in Moldova. This means that judges subjected to disciplinary proceedings are entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, and also that the implied fair trial rights, such as the equality of arms and the right to a reasoned judgment, have to be observed.
27. The Draft Law meets most of these requirements. The Disciplinary Board would in fact qualify as an independent tribunal for the purposes of Article 6 ECHR, while the rules on incompatibility, under Article 10 par. 2 of the Draft Law, and disqualification, under Article 16 of the Draft Law („recusal”), should adequately ensure its impartiality. However, under the same provision, it appears that if a member of the Disciplinary Board requests that he or she be exempted from sitting on the Board, stating that this may raise doubts as to his or her impartiality, then the final decision will be taken by the Disciplinary Board (by majority vote, in the absence of the member who had requested exemption).³³ Should the Board decide not to comply with the request, meaning that the member who had requested exemption will in the end sit on the Board and adjudicate on the case, then this may breach the “objective test” of impartiality, developed by the ECtHR.³⁴ Under this “objective test”, all Board members should offer sufficient guarantees to exclude any legitimate doubts in respect of their impartiality. If a member of the Board asks for exemption, but then must sit on the panel, then he or she may appear biased not only in the eyes of the judge subjected to disciplinary proceedings, but also in the eyes of an objective, reasonable third person. The ECtHR has made it clear that any judge (in this case, Board member) in respect of whom there is a legitimate reason to fear lack of impartiality, must withdraw.³⁵ For

³⁰ *Ibidem*, paragraph 20.

³¹ Recommendation CM/Rec(2010) 12, paragraph 69.

³² *Vilho Eskelinen and Others v. Finland*, ECtHR Judgment of 19 April 2007 (Application no. 63235/00), paragraphs 42-64.

³³ *Ibidem*.

³⁴ See *Fey v. Austria*, ECtHR Judgment of 24 February 1993 (Application no. 14396/88), paragraph 30.

³⁵ See *Piersack v. Belgium*, ECtHR Judgment of 1 October 1982 (Application no. 8692/79), paragraph 30, and *Hauschildt v. Denmark*, ECtHR Judgment of 24 May 1989 (Application no. 10486/83), paragraph 48.

that reason, it is recommended to amend Article 16 of the Draft Law so that the Board member who requests exemption cannot be forced to sit on the Board. Furthermore, in cases of repeated unsubstantiated exemption requests, similar disciplinary liability as foreseen under Art. 4(1)b, concerning „ordinary” court proceedings, could be considered.

28. Under Article 10(1) of the Draft Law, “The Disciplinary Board shall consist of 6 judges and 5 representatives of civil society”. It is commendable that the Disciplinary Board will include, besides a majority of judges, also civil society representatives; such composition should help ensure transparency, as well as community involvement in disciplinary proceedings, while also averting the risk of judicial corporatism.³⁶ It would be helpful to clarify whether the post of civil society representative on the Disciplinary Board is open to anyone or only to those persons who are affiliated with [registered] civil society organizations.
29. Article 13(e) provides that the Disciplinary Board “proposes to the Superior Council of Magistracy to apply sanctions of removal from office of the court chairman or deputy chairman and removal from the judge’s position”. This appears to imply that the Superior Council of Magistrates can take a decision to remove a judge from his or her post, which is different from what is stated under Article 7(5), which provides that the Council will only make the proposal for removal. It is recommended to clarify and remove any discrepancies between the two provisions, and to specify in Article 7(5) to which body proposals for removal shall be made.
30. Under Article 21(4), the notification of an alleged disciplinary offense may not be withdrawn. The rationale for this provision might be to prevent cases where those who report an offense are later induced through threats or promises to withdraw the report, thereby terminating the examination of the case. However, if a good-faith petitioner, after notification, learns that the allegation might be unsubstantiated, and is not permitted to withdraw it, then he or she might risk being prosecuted for defamation or libel. It is advised to take measures to prevent such cases. At the same time, one way to ensure that cases are not obstructed through withdrawals of complaints due to threats or other types of pressure could be to leave it up to the inspector-judge or the admissibility panel to decide whether verification should continue even though the complainant withdrew his or her case.
31. According to Article 23, the notification on actions that could constitute disciplinary offences must be filed with the secretariat of the Superior Council of Magistracy, which, after registering it, shall transfer it to the chief inspector-judge. The chief inspector-judge will then randomly assign the complaint to an inspector judge who will verify the notification, take all the steps necessary to check whether the alleged misconduct meets the elements of a disciplinary offence, including by asking for a written opinion of the judge concerned (Article 25(2)b of the Draft Law). Upon completion of the verification, the inspector-judge will present an informative note, describing the alleged misconduct and the evidence accumulated through the verification, along with his or her conclusions, to the Disciplinary Board (Article 28 of the

³⁶ See the OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, paragraph 9.

Draft Law). As such, the procedure outlined by the Draft Law leading to the initiation of disciplinary action is a rather formalized one, which is in keeping with the recommendations of the Consultative Council of European Judges. In particular, the CCJE has recommended that persons alleging that they have suffered from a judge's misconduct be allowed to lodge complaints, but that they should not themselves have a right to initiate disciplinary action, or insist upon its launching; furthermore, there should be a "filter" in the form of a specialized body, which would verify and either dismiss unfounded complaints brought by disappointed litigants, or, after obtaining the representation of the judge concerned and accumulating other substantiating information, pass the matter to the disciplinary authority.³⁷ It is commendable that the Draft Law meets these guidelines. It is also praiseworthy that while the Superior Council of Magistrates may file complaints, it does not investigate disciplinary cases, and also that the hearings of the Disciplinary Board shall be public as a rule.³⁸

32. Articles 33(1) and 36(4) of the Draft Law provide that disciplinary cases shall be examined with the mandatory participation of the judge concerned. While this is highly commendable, it remains unclear what can be done if the judge refuses to appear. It would be unreasonable to allow judges to obstruct disciplinary proceedings through repeated and/or unjustified absence. For that reason, repeated and unjustified absence in such cases could constitute an additional disciplinary offense, provided that Article 4(1)n of the Draft Law is supplemented accordingly.³⁹
33. Under Article 38(1), disciplinary proceedings may result in a finding of liability (and a sanction, if the statute of limitation has not expired) or in a „dismissal of disciplinary proceedings if there are no grounds for holding the judge disciplinary liable”. The latter, in effect, appears equivalent to an “acquittal”. From this perspective, it appears that Article 38(2) and Article 39(2)h, on extraordinary evaluation, raise concerns in relation to the presumption of innocence in so far as they seem to allow for the initiation of an extraordinary evaluation even when there were no grounds to hold the judge disciplinarily liable. While it is true that the presumption of innocence, as such, applies solely to criminal cases, it can also be construed as a general instruction addressed to authorities on how to treat citizens, and therefore be extended, albeit partially, also to disciplinary proceedings. Therefore, unless there are strong arguments in support of allowing recommendations for extraordinary evaluation in cases of dismissal of proceedings, it is advised to reconsider the respective provision(s).

[END OF TEXT]

³⁷ CCJE Opinion No. 3 (2002), paragraphs 67-68. See also the OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, paragraph 26.

³⁸ See Article 36(1) of the Draft Law, and paragraph 26 of the Kyiv Recommendations.

³⁹ It should be noted, however, that the problem will not be solved by this if the judge, subsequently, continues to refrain from appearing (which might eventually call for a ruling *in absentia*).

Annex 1: Draft Law on the Disciplinary Responsibility of Judges (unofficial translation)

Draft (version sent for public consultation on 22 November 2012, expected comments by 15.12.2012)

**Law
on disciplinary liability of judges**

Parliament adopts this organic law.

**CHAPTER I
GENERAL PROVISIONS**

Article 1. Scope of regulation

This law regulates the grounds for disciplinary liability, categories of disciplinary offenses of judges, disciplinary sanctions, stages of disciplinary proceedings, rights and obligations of institutions involved in disciplinary proceedings, examination procedure, adoption and appeal of decisions on disciplinary cases.

Article 2. Principles of procedure for examination of disciplinary cases of judges

Examination of disciplinary cases of judges is based on the following principles:

- a) fair procedure;
- b) independent verification of decisions on sanctions;
- c) disciplinary measures have to be applied by a special body and independence of its members;
- d) decisions taken by the special body have to be verified by a higher court;
- e) the right to defence of the judge concerned in disciplinary proceedings has to be guaranteed;
- f) proportionality of the sanction with committed offence.

Article 3. Grounds for disciplinary liability

Judges shall be held disciplinary liable for committing a disciplinary offense under this Law.

Article 4. Disciplinary offenses

- (1) The following constitute a disciplinary offense:
 - a) breach of the duty of impartiality;
 - b) failure to observe the duty for abstaining when the judge knows 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;
 - c) intentional application of legislation contrary to uniform judicial practice, if this was found by a final decision;
 - d) interference with the activity of another judge;

- e) abusive interventions or use of judge's position in relation with other authorities, institutions or officials to resolve some requests, demanding or accepting to resolve personal interests, interests of family members or relatives up to second degree, 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 a similar nature, which s/he has acquainted with in fulfilling the duties, with the exception of those of public interest under the law;
- g) conducting public political activities or expressing political opinions in the performance of duties;
- h) 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;
- i) breach of legislative imperative norms in the process of justice administration / delivery;
- j) violation of legal provisions on mandatory submission of income and property declaration and declaration of personal interests;
- k) non-fulfilment or delayed fulfilment, attributable to the judge, of a duty, without due reasons;
- l) undignified attitude in justice administration/delivery process towards colleagues, lawyers, experts, witnesses or other trial participants;
- m) violation of the provisions related to incompatibilities and prohibitions concerning judges;
- n) obstruction, by whatever means, of the work carried out by inspector-judges;
- o) participation, directly or through intermediaries, in pyramid games, in entrepreneurial activity, gambling or in investment systems where the transparency of funds is not ensured;
- p) use of inappropriate expressions in the judgments or reasoning of judgements obviously contrary to legal rational, that may affect the prestige of justice or dignity of the position of a judge;
- q) actions affecting the honour or professional integrity or reputation / prestige of justice, committed in performance of duties or outside it.

(2) A disciplinary offence committed by chairmen and deputy chairmen of courts is the failure to fulfil the tasks set out in Article 16/1 of the Law no. 514 of 6 July 1995 on judicial organization.

Article 5. The limitation period (statute for limitation) for disciplinary liability

(1) A judge may be held disciplinary liable within 2 years from the date of committing the disciplinary offense or the date when the committing of the disciplinary offence became known.

(2) If from a final decision of a national or international court it results that a judge has committed a disciplinary offense, the disciplinary sanction shall be applied within 1 year from the date when the national or international judgment became final.

(3) The limitation period for disciplinary liability is interrupted at the moment of issuing the decision on admissibility of the notification. After initiating disciplinary

proceedings a new term shall begin. Time elapsed before initiating the disciplinary proceedings is not included in the new term.

(4) The limitation period for disciplinary liability shall be suspended for the period during which the judge was sick or on leave. The term continues to run after the end of circumstances which led to the suspension. The suspended time is not included in the limitation period for disciplinary liability.

Article 6. Institutions involved in disciplinary proceedings

Disciplinary proceedings against judges take place involving the following institutions:

- a) Superior Council of Magistracy;
- b) Disciplinary Board;
- c) Judicial Inspection.

Article 7. Disciplinary sanctions

(1) The disciplinary sanctions that may be applied on judges are:

- a) warning;
- b) reprimand;
- c) removal from judge's position.

(2) For judges who act as chairmen or deputy chairmen of courts, in addition to the sanctions specified in para. (1), the sanction of removal from office of court chairman or deputy chairman can be also applied.

(3) Warning consists in warning a judge about the committed acts and the recommendation to observe in the future the legal provisions, as well as warning him/her that upon a new disciplinary offense s/he may be punished more harshly. The warning is issued in written form. The warning's validity period is 1 year.

(4) Reprimand consists in critics, expressed in writing, regarding the acts committed by the judge. The reprimand's validity period is 2 years.

(5) Removal from judge's position is the de jure termination of a judge's powers, upon the proposal of the Superior Council of Magistracy, as provided by law.

(6) Removal from the office of court chairman or deputy chairman shall be applied for disciplinary offenses set out in Art. 4 para. (2) of this Law and constitutes the termination of the term of office of a court chairman or deputy chairman, upon the proposal of the Superior Council of Magistracy, as provided by law.

Article 8. Conditions and consequences of disciplinary sanctions

(1) Disciplinary sanctions shall be applied proportionally with the seriousness of the disciplinary offense committed by the judge and his/her personal circumstances. Seriousness of the disciplinary offense is determined by the circumstances of committed acts, the consequences produced, both for the people involved in the judicial process in which the offense was committed and the consequences for the image and prestige of judiciary.

(2) Repeated commission of a disciplinary offence is a disciplinary offense that is committed during the validity period of a disciplinary sanction, regardless of the disciplinary offense committed. Repeated commission of disciplinary offence constitutes an aggravating circumstance and shall be taken in consideration when applying a new disciplinary sanction.

(3) If within the validity period of the disciplinary sanctions provided by Art. 7 par. (1) let. a) and b) and par. (6) the judge is not subjected to a new disciplinary sanction, it is considered that he was not subjected to a disciplinary sanction.

(4) Throughout the validity period of the disciplinary sanction, the judge cannot be transferred or promoted to another court or to administrative positions.

(5) The judge to whom the sanction of removal from judge's position was applied loses the status of magistrate provided by Art. 3 of Law no. 544 of 6 July 1995 on the Status of Judge and cannot be subsequently appointed in any position within the Superior Council of Magistracy and its subordinate bodies, as well as in the National Institute of Justice, both in administrative positions and as a trainer.

(5) A judge who was removed from the office of court chairman or deputy chairman may 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 time of application of the disciplinary sanction of removal from the office of court chairman or deputy chairman.

CHAPTER II DISCIPLINARY BOARD

Article 9. Disciplinary Board

(1) The Disciplinary Board is the body through which the Superior Council of Magistracy ensures the examination of disciplinary cases of judges and application of disciplinary sanctions.

(2) Disciplinary Board's activity is regulated by this Law and the Regulations on Disciplinary Board' activities, approved by the Superior Council of Magistracy.

Article 10. Disciplinary Board's composition and term of office

(1) The Disciplinary Board consists of 6 judges and 5 representatives of civil society.

(2) Membership in the Disciplinary Board is incompatible with membership in the Superior Council of Magistracy, in the Board for selection and career of judges, in 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.

(3) The term of office of a member of the Disciplinary Board is 6 years. Board members cannot be elected or appointed for two consecutive terms.

Article 11. Election of Disciplinary Board members

(1) Members of the Disciplinary Board from among judges shall be elected by the General Assembly of Judges, proportionally, as follows: 2 judges from the Supreme Court of Justice, 2 judges from the Courts of Appeal and 2 judges of the courts. The courts judges may be elected in the Disciplinary Board only if they have the work experience as a judge for at least 6 years.

(2) The General Assembly of Judges shall elect 3 alternate members by observing the proportionality as set out in para.(1). Alternate members continue the term of office of the member of Disciplinary Board under the occurrence of one of the situations referred to in Article 12 para. (3).

(3) Members of the Disciplinary Board from among civil society representatives shall be appointed as follows:

a) three members shall be appointed by the Superior Council of Magistracy, being selected through public competition, organized by the Council;

b) two members shall be appointed by the Minister of Justice, being selected through public competition, organized by the Ministry of Justice.

(4) Members of the Disciplinary Board from among civil society must have an impeccable reputation, enjoy authority in society and have experience of at least 5 years in the area of law. In order to verify these qualities, the CVs of candidates proposed for appointment shall be published on the website of the Superior Council of Magistracy and the Ministry of Justice 30 days before holding the competition. Appointment of members shall be preceded by a public hearing of candidates who have applied for the competition.

Article 12. Termination of a Disciplinary Board member's term of office

(1) Disciplinary Board member may be dismissed or his/her term of office may be revoked:

a) when the act became final which established the issuance/adoption by him/her of an administrative act or conclusion of a legal act in violation of legal provisions on conflict of interests;

b) in case of being in incompatibility, which is established by a final act establishing the incompatibility;

c) upon reasoned proposal of Disciplinary Board, in case of failure to fulfil without grounded reasons the member's duties set out under this law.

(2) The reasoned proposal for revoking the term of office or dismissal of a member of the Disciplinary Board shall be submitted to the body that appointed or elected that member in order to dismiss and replace him/her with another member.

(3) If a member of the Disciplinary Board is not able to perform his/her duties, the body that appointed him/her shall ensure, within 30 days, the appointment of a new board member for the remainder of the term.

(4) If a Disciplinary Board member withdraws in less than 6 months before the expiry of the term of office, then a new member shall not be appointed.

Article 13. Competence of the Disciplinary Board

Disciplinary Board:

a) appoints, through rotation, 3 members from its composition, to the admissibility panel;

b) examines the appeals on rejection of notifications by the admissibility panel;

c) examines the cases concerning disciplinary liability of judges;

d) applies disciplinary sanctions on judges in form of warning and reprimand;

e) proposes to the Superior Council of Magistracy to apply sanctions of removal from office of the court chairman or deputy chairman and removal from the judge's position.

Article 14. Chairman of the Disciplinary Board

(1) Disciplinary Board Chairman shall be elected by open vote, by a majority vote of Board members, at the first meeting of the Disciplinary Board.

(2) Disciplinary Board Chairman has the following functions:

a) to organize the Board's activities, assign duties among its members;

b) to distribute randomly the disciplinary cases;

c) to preside over Board meetings;

d) to convene Board meetings;

e) to sign decisions and minutes of Board meetings;

f) to resolve other issues related to Board activities.

(3) In case of vacancy of the Board Chairman position or his/her temporary absence, his/her functions shall be exercised by the eldest member of the Board.

Article 15. Rights and obligations of Disciplinary Board members

(1) Members of the Disciplinary Board are entitled to receive beforehand the materials submitted to the Board for examination and to study them.

(2) Members of the Disciplinary Board are obliged:

- a) to exercise their functions in accordance with law;
- b) upon a request of the Board Chairman, to prepare materials needed for the meeting;
- c) to vote for or against the issues included in the agenda of the meeting and to motivate his/her option;
- d) in case of disagreement with decision of the Board, to motivate his/her option;
- e) to observe the confidentiality of received documents and information, under the law;

f) Disciplinary Board members from among the civil society representatives are obliged to observe the restrictions specified in Article 8 para. (1) let. b) and c) and para. (3) of the Law on the Status of Judge.

(3) Judges members of Disciplinary Board shall preserve their salary at job place, but having a reduced workload depending on the tasks of their activity in the Disciplinary Board. Board members from among civil society representatives receive, for each attended meeting, an allowance equivalent to one twentieth (1/20) of the salary of a judge in the Supreme Court of Justice.

Article 16. Recusal and abstention of Disciplinary Board members

(1) Disciplinary Board member must state that s/he abstains from examining a disciplinary case where this may cause doubts about the objectivity and impartiality of his/her decisions. For the same reasons, a judge who is subject of ongoing disciplinary proceedings or a person who submitted the notification to the Superior Council of Magistracy may request recusal of a Disciplinary Board member.

(2) Recusal or abstention shall be justified and presented in writing prior to examination of the case by the Disciplinary Board.

(3) The decision on recusal or abstention shall be adopted by a majority vote of Disciplinary Board members present at the meeting and in absence of the member whose recusal or abstention is considered.

Article 17. Modus operandi of the Disciplinary Board

(1) The Disciplinary Board operates in plenary sessions and in meetings of the admissibility panel.

(2) The Board plenary meetings shall be convened as necessary. The date of the meeting shall be announced at least 7 days in advance.

(3) The admissibility panel of the Disciplinary Board shall be convened as needed, depending on the number of notifications, but not less than once a month.

(4) Disciplinary Board meetings are public, except when they are declared as closed under Art. 36 of this Law. These are deliberative if attended by at least 8 members of the Disciplinary Board.

(5) Meetings of the admissibility panel are closed. These are deliberative if attended by all those 3 panel members. If a panel member is unable to attend the meeting, the Chairman of the Disciplinary Board shall appoint an ad hoc member.

(6) The debates within the Disciplinary Board meetings and meetings of admissibility panel shall be recorded in meeting minutes and audio recorded. Audio recording of the meeting shall be attached to the minutes. The minutes shall be made within 3 working days, being signed by the presiding person and by the Disciplinary Board Secretary.

Article 18. Ensuring the Disciplinary Board activity

(1) The organizational and secretarial activity of the Disciplinary Board shall be ensured by the Superior Council of Magistracy.

(2) In the exercise of their duties, members of the Disciplinary Board are entitled to request from the judicial inspection all documents and information necessary for the examination of pending disciplinary case.

Article 19. Transparency of Disciplinary Board activity

(1) Disciplinary Board decisions shall be published on website of the Superior Council of Magistracy in the section devoted to Disciplinary Board within 3 days from the date of issuing the motivated decision.

(2) The Disciplinary Board shall present annually to the Supreme Court of Magistracy an activity report, which subsequently shall be published on its website.

CHAPTER III

Examination procedure of disciplinary cases

Article 20. Stages of disciplinary proceedings

Disciplinary procedure includes the following stages:

- a) filing notifications concerning the actions which may constitute disciplinary offences;
- b) verification of notifications;
- c) examination of notifications' admissibility for starting disciplinary cases by the admissibility panel;
- d) examination of disciplinary cases by the Disciplinary Board.

Section 1

The notification concerning **the actions which may constitute disciplinary offences of judges**

Article 21. The notification concerning the actions which may constitute disciplinary offences

(1) The notification regarding the actions which may constitute disciplinary offenses committed by judges can be filed by:

- a) any person;
- b) members of the Superior Council of Magistracy;

(2) Those stipulated under para. (1) may submit notifications concerning the actions which have become known to them in exercising their rights or duties or based on the information disseminated by media.

(3) If several notifications refer to the same offense and the same judge, the notifications are merged.

(4) Persons who have submitted a notification under this law may not require its revocation.

Article 22. The requirements on notification's form

The notification on judge's actions that may constitute disciplinary offences must include the following:

- a) identification data and contact information of the notification's author;
- b) name of the judge who is referred to in the notification;
- c) date and place where the actions described in notifications were committed;
- d) brief description of actions that would constitute disciplinary offences;
- e) indication, where appropriate, of evidences that confirm the alleged action or indication of persons who may support the information reported by the notification's author, if they exist at the time of filing the notification.

Section 2.

Verification of notifications concerning the actions that may constitute disciplinary offences

Article 23. Registration and distribution of notifications on actions that may constitute disciplinary offences

(1) The notification on actions that may constitute disciplinary offences shall be filed with the secretariat of the Supreme Council of Magistracy. The notification shall be registered and transmitted to the principal inspector-judge not later than in 3 working days from the receipt.

(2) The principal inspector-judge shall distribute, on random basis, the notifications to inspector-judges to verify them. If the inspector-judge, who was assigned with a notification is unable to continue its verification, the principal inspector-judge shall ensure the random distribution of the notification to another inspector-judge, who will continue the verification activity.

Article 24. Return of the notification concerning the actions that may constitute disciplinary office

(1) If the notification does not meet the requirements regarding its form set out in Article 22, the inspector-judge, within 5 business days from the day the notification was distributed for prior verification, shall return it back to the author indicating the established shortcomings and mentioning the right to file a new notification.

(2) The inspector-judge, who returned the notification, shall forward a copy of the return letter to the principal inspector-judge for information and statistics record.

Article 25. Verification of notification

(1) Verification of notification is a stage which identifies the judge's alleged actions and their consequences, the circumstances in which they were committed, as well as any other relevant data from which it is possible to conclude on the existence or nonexistence of elements of the disciplinary offence.

(2) The inspector-judge who was assigned a notification is obliged:

- a) to take all the steps necessary to verify the actions alleged by the author of the notification and determine the existence or non-existence of disciplinary offence' elements;
- b) to require the written opinion of the judge referred to in the notification regarding the invoked circumstances;

- c) to create a disciplinary case file that includes the notification on actions that may constitute disciplinary offence, as well as all materials and other evidence obtained within the verification stage.
- (3) In the process of verifying the notification, the inspector-judge is entitled:
- a) to make copies of the relevant documents, including from the case files at the examination of which the actions described in notification were allegedly committed;
 - b) to request other necessary information from court chairman and other judges of the court where the judge, referred in the notification, works, as well as from public authorities, persons with responsible positions or private persons;
 - c) to request, if necessary, verbal and written explanations from the person who submitted the notification, as well as other additional evidence related to the actions alleged in the notification;
 - d) to undertake other measures s/he deems necessary to demonstrate the existence or non-existence of disciplinary offence' elements in the actions indicated in the notification.

Article 26. Time period for verifying the notification

(1) Verification of notification shall be completed within 30 working days from the receipt of the notification by the judicial inspection.

(2) The principal inspector-judge may decide on extending the time period for verification by maximum 15 days when there are reasonable grounds justifying the extension.

Article 27. Rights and obligations of the judge referred to in the notification within verification stage

(1) The judge is entitled:

- a) to know the notification' contents;
- b) to present written and oral explanations;
- c) to present evidence showing or denying certain facts invoked in the notification or relevant for the notification;
- d) to be assisted by a lawyer.

(2) The judge is obliged:

- a) to refrain from hindering in any way the verification initiated by the inspector-judge;
- b) to refrain from contacting in person or through a representative the author of the notification, except in the presence of the inspector-judge.

Article 28. Outcome of notification's verification

(1) When verification is over, the inspector-judge shall prepare an information note on verification conclusions, which, together with the disciplinary case file, shall be presented within 3 working days to the admissibility panel of the Disciplinary Board.

(2) The information note on verification's outcomes includes:

- a) brief description of the facts alleged by the author of the notification;
- b) brief description of the evidence collected during the verification;
- c) conclusion about existence or non-existence of the disciplinary offence.

Section 3.

Admissibility examination of notifications to start disciplinary cases

Article 29. Admissibility Panel of the Disciplinary Board

(1) The admissibility panel of the Disciplinary Board verifies the admissibility of the notification on facts that may constitute disciplinary offenses committed by judges and decides on its admissibility or rejection.

(2) The admissibility panel consists of 3 members of the Disciplinary Board appointed through rotation by decision of Disciplinary Board once in three months.

(3) The schedule of the admissibility panel meetings and their organization are provided in the Regulation on Disciplinary Board.

Article 30. Admissibility examination of the notification

(1) The admissibility panel of the Disciplinary Board shall examine the information note and the disciplinary case file submitted by judicial inspection to determine the admissibility or inadmissibility of the notification. The procedure before the admissibility panel is written.

(2) The admissibility panel of the Disciplinary Board decides on:

a) admissibility of the notification and transmission of the disciplinary case for examination to the plenary of the Disciplinary Board;

b) inadmissibility of the notification.

(3) Decisions on admissibility or inadmissibility of notification shall be adopted by a majority vote of the panel members.

(4) Decision on admissibility of notification does not need to be motivated. The relevant decision, the case file and information note of the judicial inspection shall be submitted, within 3 working days, to the Disciplinary Board for examination.

(5) Decision on inadmissibility of the notification shall be mandatorily motivated by stating the circumstances under which the notification was rejected.

(6) The decisions of the admissibility panel shall be notified to the person who submitted the notification within 5 working days from the date of the adoption of the decision.

Article 31. Challenging the decision on admissibility of notification

(1) The decision of admissibility panel of the Disciplinary Board on inadmissibility of notification may be appealed with the Disciplinary Board within 15 working days from the date of communicating the decision. The date of communicating the decision is considered the date of its reception by the author of the notification.

(2) The Disciplinary Board, in case of challenging the decision on inadmissibility of notification, shall take one of the following solutions:

a) reject the appeal and uphold the decision of the admissibility panel;

b) accept the appeal and takeover the disciplinary case for examination.

(3) Decisions of Disciplinary Board adopted under paragraph (2) of this Article shall be final and irrevocable, shall not be subject to any appeal and shall enter into force upon adoption.

Section 4.

Case examination by the Disciplinary Board

Article 32. Case assignment

(1) After transmission to and registration of disciplinary case materials by the Disciplinary Board, the Board Chairman randomly assigns the disciplinary cases among Board members, who will be appointed as rapporteurs.

(2) Board member appointed as rapporteur, with the support of the Board's Secretariat, shall ensure:

- a) preparation of the case for examination at the Board meeting;
- b) summoning of the parties and other participants in the disciplinary case;
- c) drafting the Disciplinary Board decision.

Article 33. Participants in the disciplinary case

(1) The disciplinary case shall be examined with the mandatory participation of the judge concerned in disciplinary case. When examining the case the summoning of the person who filed the notification or his/her representative is mandatory.

(2) When examining the disciplinary case the judge may be represented or assisted by a lawyer. The judge's failure to attend the Disciplinary Board meeting examining the disciplinary case does not prevent its examination.

(3) The Disciplinary Board meeting may be attended by the inspector-judge who has verified the notification.

Article 34. Preparation of the case for examination by Disciplinary Board

(1) Member-rapporteur or any other member of the Disciplinary Board may request the inspector-judge to perform additional verifications and/or collection of documents or new evidence if the information in the case file is not complete.

(2) The judge referred in the disciplinary case is obligatory summoned by informing him about the date and venue of the meeting where the case will be examined, about the right to benefit of the services of a lawyer/representative, to get acquainted with the case file materials and to submit new evidence or to submit requests for collecting new evidence.

(3) The persons to be summoned to the Board meeting shall be those who submitted the notification and, where appropriate, their representatives. Members of Disciplinary Board may propose summoning at the Board meeting other persons relevant to the case.

Article 35. Timeline for examining the disciplinary case by the Disciplinary Board

The disciplinary case shall be examined by the Disciplinary Board within 30 working days from the date of issuing the decision on notification's admissibility. This period does not include the period during which the judge was on sick leave or vacation and the period of postponing the meeting, where it was postponed,

Article 36. Examination of disciplinary case in the Disciplinary Board

(1) The Disciplinary Board meetings are public, unless the Board decides otherwise, ex officio or upon the request of the judge, that the case be examined in closed session to prevent the disclosure of information in the interests of justice or when privacy protection is needed.

(2) The chairperson of the meeting announces its opening and reads the Disciplinary Board composition. Before the commencement of the case examination, the parties have the right to declare recusal to Board members, which shall be examined by the Board.

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(3) Examination of the disciplinary case begins with a report of the member-rapporteur. If necessary, the inspector-judge who has verified the notification may be heard.

(4) During the examination of the case by the Disciplinary Board, the hearing of the explanations of the judge or his/her representative is mandatory. During the meeting, the judge has the right to make requests at any time and to give further explanations. The Disciplinary Board may also decide to hear other people, invited both at the judge' proposal or at proposal of the Disciplinary Board, documents and other materials may be read/studied both from the file and additionally presented by participants in the disciplinary case.

(5) The disciplinary case is examined only within the limits of the accusation stated in the disciplinary case file.

Article 37. Deliberating and adopting the Disciplinary Board decision

(1) Decisions of the Disciplinary Board shall be taken in closed session. Deliberation is secret and is carried out immediately after the meeting at which the disciplinary case was examined.

(2) Decisions of the Disciplinary Board shall be adopted by a vote of at least 6 members of the Disciplinary Board.

(3) Member-rapporteur on the disciplinary case shall read the summary / deciding part of the decision. Within 20 days from the delivery of the decision's summary, the Disciplinary Board shall elaborate a reasoned decision. If a Board member has a dissenting opinion from the adopted decision, s/he shall present it in writing, indicating the reasons, and his/her the opinion is attached to the case file.

(4) Decisions shall be signed by the Chairman and members of the Disciplinary Board who attended the meeting. The Board decisions shall be published on the website of the Superior Council of Magistracy within 3 days from the date of elaborating the reasoned decision.

(5) The scanned copy of the decision shall be sent to participants in the disciplinary case within 3 days from the date of editing of the reasoned decision.

Article 38. Disciplinary Board decisions on the outcome of disciplinary proceedings examination

(1) The Disciplinary Board may decide on:

- a) finding the disciplinary offence and applying disciplinary sanctions according to the list provided for in Article 6.
- b) finding disciplinary offence and stopping disciplinary proceedings, where limitation period for disciplinary liability has expired;
- c) dismissal of disciplinary proceedings if there are no grounds for holding the judge disciplinary liable.

(2) The Disciplinary Board can additionally make a recommendation to the Board for evaluation performance to undertake an extraordinary evaluation of the judge if the circumstances and materials of the case demonstrate the need to evaluate the performance of the judge.

Article 39. Contents of the Disciplinary Board decision on the outcome of disciplinary case examination

(1) Decision of the Disciplinary Board in case of finding disciplinary offence must include:

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- a) surname and name of the judge concerned in the decision and the court where s/he works;
 - b) surname and name of the notification's author regarding the disciplinary offense; the number of the case file during the examination of which the disciplinary offense was committed;
 - c) date of committing the disciplinary offense;
 - d) description of the fact which constitutes disciplinary offence and its legal classification;
 - e) legal basis for applying the sanction or stopping the proceedings if the limitation period for holding judge disciplinary liable has expired;
 - f) sanction applied and the reasons behind its application;
 - g) the way of appeal, time limits and the institution for considering the appeal;
 - h) reasons behind the formulation of recommendation on extraordinary evaluation of the judge when such a recommendation was made;
 - i) names of Disciplinary Board members present at case examination, the adoption date of decision.
- (2) The decision of Disciplinary Board, in case of dismissal of disciplinary proceedings, has to include the following:
- a) surname and name of the judge concerned in the decision and the court where s/he works;
 - b) surname and name of the notification's author regarding the disciplinary offense;
 - c) number of the case file during the examination of which the action described in the notification was allegedly committed;
 - d) date of committing the act alleged in the notification;
 - e) description of the facts alleged in the notification and of the reasons of absence of the disciplinary offence in alleged facts;
 - f) description of evidence collected for the case file;
 - g) the way of appeal, time limits and the institution for considering the appeal;
 - h) reasons behind the formulation of recommendation on extraordinary evaluation of judge when such a recommendation was made;
 - i) names of Disciplinary Board members present at case examination;
 - j) the adoption date of decision.
- (3) Decision of the Disciplinary Board on the outcome of disciplinary proceedings examination shall be signed by the chairperson of the meeting and the secretary of the Disciplinary Board.

Article 40. Submitting the decision on applying the removal sanction

(1) The Disciplinary Board decisions on the proposal to remove from office a court chairman or deputy chairman or on the proposal to remove from judge's position shall be submitted to the Superior Council of Magistracy for examination within 3 working days from the time of editing the reasoned decision.

(2) Following the examination of the Disciplinary Board decision and the disciplinary case file, the Superior Council of Magistracy may adopt one of the following solutions:

- a) upholds the Disciplinary Board decision and submits the proposal to remove from the office of court chairman or deputy chairman or removal from judge position to the President or Parliament, as appropriate;

b) rejects Disciplinary Board decision and sends it to the Board to apply another sanction. In this case the provisions concerning the examination procedure and contents of the Disciplinary Board decision on outcome if disciplinary case examination are also applicable to the Superior Council of Magistracy.

Article 41. Challenging the decision of the Disciplinary Board

(1) Disciplinary Board decisions can be appealed to the Superior Council of Magistracy, through the Board, within 20 working days from the date of communicating the reasoned decision by the persons who filed the notification or by the judge concerned in decision.

(2) Appeals shall be examined within 30 days from the date of their registration in the Superior Council of Magistracy.

(3) Date, time and venue for examining the appeals shall be communicated to interested persons.

(4) After considering the appeals, the Supreme Council of Magistracy shall decide on:

- a) upholding unchanged the decision of the Disciplinary Board;
- b) accepting the appeal and sending the decision to the Disciplinary Board for re-examination.

**CHAPTER VI
FINAL PROVISIONS**

Article 42. Entry into force

This Law enters into force within three months from the date of publication, except for the provisions of articles that will be enforced when the term of office of the acting members of Disciplinary Board expires.

Article 43. Repeals

The Law no. 950 on the Disciplinary Board and Disciplinary Liability of Judges (republished in the Official Gazette) is repealed.

Article 44. Transitional provisions

Before the entry into force of this law, the Superior Council of Magistracy shall:

- a) adopt normative acts stipulated by this Law;
- b) bring its legislation into conformity with this Law.

Speaker of Parliament