



Protection of Rights Without Borders



Open Society Foundation - Armenia

SUMMARY: THE PRACTICE OF DISCIPLINARY LIABILITY OF JUDGES

Proceedings examined in 2022



The disciplinary liability of judges is one of the most important institutes to ensure independence, efficiency and accountability of the judiciary, which should be carried out based on the principals of legality, non-interference to the judicial activities, respect to the independence of the judges and maintenance of their high reputation, exclusion of arbitrariness, proportionality of the disciplinary liability prescribed for the committed disciplinary violation.

The political changes that took place in the Republic of Armenia in 2018 promised systematic changes also in the judiciary of Armenia, including through the application of vetting toolkit, which, however, did not happen. Instead, during the last period the institute of the application of disciplinary proceedings against the judges by the executive branch of the Government and by the RA Minister of Justice, respectively was considered as a vetting toolkit. Following this, it was announced about the increase of the number of disciplinary proceedings instituted by the Minister of Justice, as well as engagement of resources in that regard¹.

Taking into consideration the necessity for public control over the proceedings of disciplinary liability of judges and the insurance of accountability of the bodies in charge of instituting the disciplinary proceedings, as well as the necessity to examine the nature of the violations by judges, the “Protection of Rights without Borders” non-governmental organization has been conducting monitoring on the procedure of disciplinary liability against the RA judges and the examination of the adopted decisions in this regard.

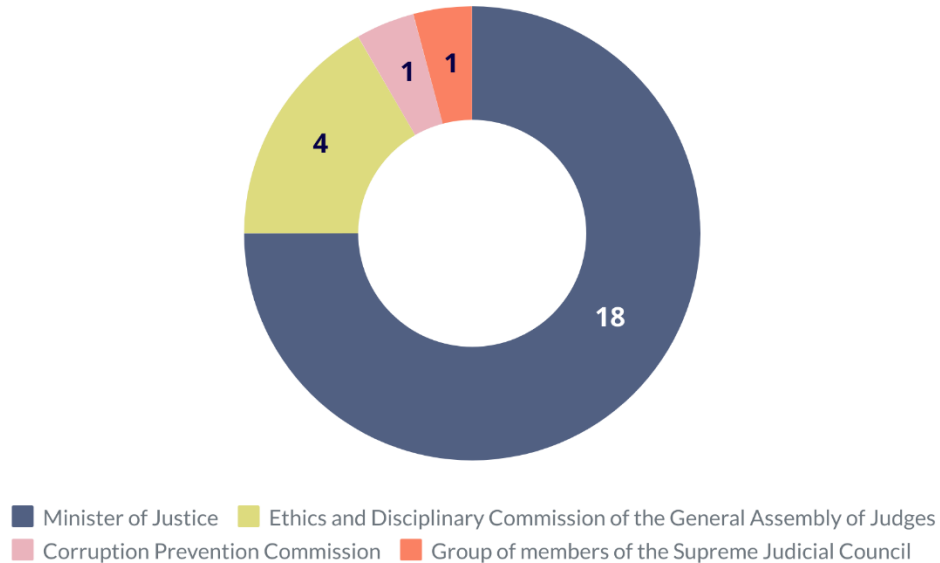
During 2022, the Supreme Judicial Council examined 24 proceedings, including 23 proceedings subjecting the judges and 1 proceeding subjecting the Member of Supreme Judicial Council to disciplinary liability, respectively.

The majority of the motions, 18 motions, on subjecting the judges to disciplinary liability was presented by the Minister of Justice, 4 motions were presented by the Ethics and Disciplinary Commission of the General Assembly of Judges, 1 motion by the Corruption Prevention Commission,

¹ Aravot, Karen Andreyan. “Very soon we will be able to have the first demonstrations of vetting during my office”. 30.09.2021p. <https://www.aravot.am/2021/09/30/1219121/>

respectively. The disciplinary proceedings against the member of the Supreme Judicial Council was instituted by the committee of the Supreme Judicial Council.

Proceedings examined by the Supreme Judicial Council during 2022 according to the bodies which filed the motion

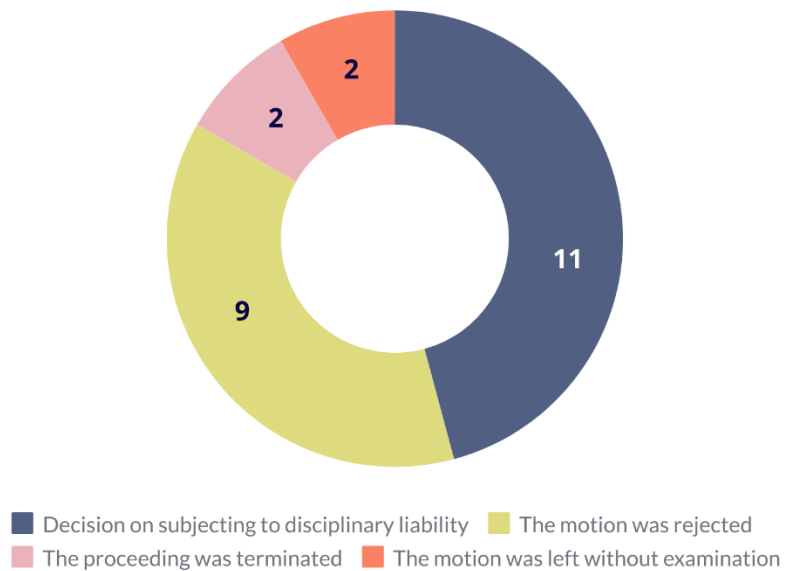


As a result of the examination, the motions to subject the judge to disciplinary liability by the Supreme Judicial Council was satisfied in 11 proceedings, by which the powers of 3 judges, including the member of the Supreme Judicial Council were terminated.

It should be noted, that by the adopted decisions of the Supreme Judicial Council 9 motions filed by the Minister of Justice out of 18 instituted proceedings were satisfied, 7 motions were rejected and 2 proceedings were left without examination. 1 motion out of 4 motions on disciplinary proceedings instituted by the Ethics and Disciplinary Commission of the General Assembly of Judges was satisfied, 2 motions were rejected and the proceeding of the examination of 1 motion was discontinued.

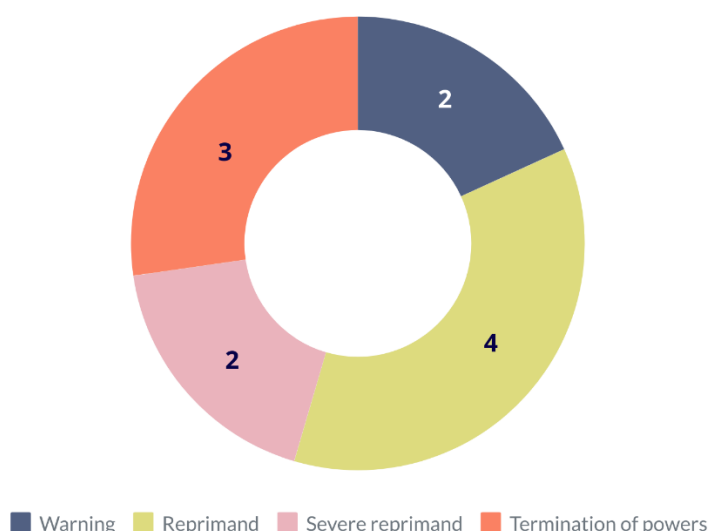
The proceeding of the examination of 1 motion filed by the Corruption Prevention Commission was discontinued. The motion on the disciplinary proceeding instituted by the committee of the Supreme Judicial Council was satisfied.

The proceedings examined by the Supreme Judicial Council in 2022 according to results



The following measures were applied in terms of subjecting the judges to disciplinary liability.

The penalty type applied against the judges by the decision on disciplinary liability



By

the outcomes of the examination of the monitored sittings and the adopted decisions, it is possible to raise the main problems regarding the application of disciplinary liability of judges and the adoption of decisions in this regard.

- In separate cases, the legality and the justification of the grounds of the instituted proceedings are not clear and sufficient, which raise a lot of questions in regard to the objective of the instituted disciplinary proceedings. This is evidenced by the fact that a number of motions filed by the Minister of Justice were rejected based on the ground of the lack of violation of right in the actions of the judge.
- Not all the decisions adopted by the Supreme Judicial Council are similarly grounded. Depending on the circumstances and the characteristics of the case, the decisions adopted by the Supreme Judicial Council were different. However, detailed examination and analysis of the circumstances that were on the ground of the violation were noticed by separate cases and in some other cases, despite the available statement of questions, the given justifications and analysis were not profound enough.

- In this context, it is important to highlight the characteristics and differences between the interpretation of the action of the judges in regard to the gross negligence and intent. The reasons and observations provided by the Supreme Judicial Council in separate decisions were not sufficient: exclusively legislative regulations were quoted by the decisions, however, under the circumstance of a concrete case, the justification rationale is not clear and insufficient.
- Such concern is especially relevant in cases of qualifying the disciplinary violations as essential and terminating the powers of the judge. This issue is more concerning conditioned by the circumstance, that an efficient mechanism for exercising the right to appeal the judicial act adopted by the Supreme Judicial Council is not envisaged by the legislation of the Republic of Armenia.
- By the observations addressed to the circumstance of backlog of the judges it is not clear in which cases the backlog is considered a mitigating circumstance of a disciplinary violation and impacts the liability measure. Particularly, if the backlog of the court in terms of the issues related to maintaining the judicial deadlines was not considered as a justification, in case of the failure by the judge to be aware of the legislative changes and therefore violating the right of the norm, the circumstance of the backlog was evaluated by the Supreme Judicial Council and was set on the ground of the selection of the mildest type of the disciplinary liability against the judge. The issue of the selection criteria of the liability measures by the Supreme Judicial Council continues to remain problematic. By the examined cases, the selection criteria and the justification of the applied liability measures are not sufficient and clear.

The main circumstance, which was pointed out as a justification of the certain measure imposed on the judge was the absence of a disciplinary penalty during the examination of disciplinary liability.

- Under the conditions of the failure to present sufficient justification on the disciplinary measure chosen by the Supreme Judicial Council, the issue of maintaining the principle of proportionality between the violation of the judge and the selected disciplinary liability is concerning.

- Although, according to the results of the monitoring, the examination of the disciplinary proceedings by the Supreme Judicial Council lasted mainly for one or two months, including by the termination of the preceding within a very short time period, cases were recorded, when the proceeding was essentially delayed by the Supreme Judicial Council, the time frame between the judicial sittings was groundless and was artificially prolonged resulting into discontinuation of the proceeding or leaving it without examination, thus exempting the judges from the disciplinary liability. Moreover, one of the cases related to the disciplinary proceeding against the judge in relation to the conduct of the judge in terms of subjecting the person to inhuman treatment approved by the judgment of the European Court of Human Rights. As result of the delay in the examination of the proceedings, the motion filed by the RA Minister of Justice on subjecting the judge to disciplinary liability was failed to be examined. The other case related to the incompliance detected based on the analysis of the declaration of the judge, in regard to which the proceeding was discontinued based on the age of the judge for expiration of the term of office.
- Although, according to the monitoring, the judges participated in the judicial sittings, presented their position and motions, it was recorded that in one of the cases, the examination was carried out during one judicial sitting without the participation of the judge concerned, when the representative filed a motion to postpone the judicial sitting.
- It was also recorded, that the final judicial acts adopted by the Supreme Judicial Council in two proceedings were not published at the relevant section of official webpage of the judiciary, which has an impact on the insurance of publication of the decisions adopted by the Supreme Judicial Council.

RECOMMENDATIONS

1. Ensure proper justification of the grounds for instituting a disciplinary liability against judges by the bodies in charge of instituting a proceeding and especially by the Minister of Justice.

2. Ensure in practice the proper justification of the decisions adopted by the Supreme Judicial Council, particularly present clear and sufficient justification and reasoning on the qualification of the actions by the judge, the type of the accusation against him, as well as on the type of the disciplinary measure applied against the judge.
3. In practice guarantee the establishment and the application of the uniform approach of the Supreme Judicial Council in terms of the backlog of judges.
4. Exclude in practice the artificial delays of the examination of the disciplinary liability proceedings leading to the release from the disciplinary liability.
5. Exclude in practice the institution of the disciplinary proceedings based on the approach and the interpretation of the legislation by a judge.
6. Exclude in practice the examination of the proceedings of disciplinary liability without the participation of the judge, guaranteeing the opportunity to ensure the proper exercise of the judge's right to be heard.
7. Ensure more clarified grounds of disciplinary liability at the legislative level and ensure their uniform interpretation in practice
8. Establish at the legislative level an efficient mechanism for appealing the judicial acts adopted by the Supreme Judicial Council.