



Protection of Rights
Without Borders NGO



Democracy
Development
Foundation

EXECUTIVE SUMMARY

MONITORING RESULTS OF THE DISCIPLINARY PROCEEDINGS AGAINST JUDGES IN ARMENIA JULY 2023 - AUGUST 2024

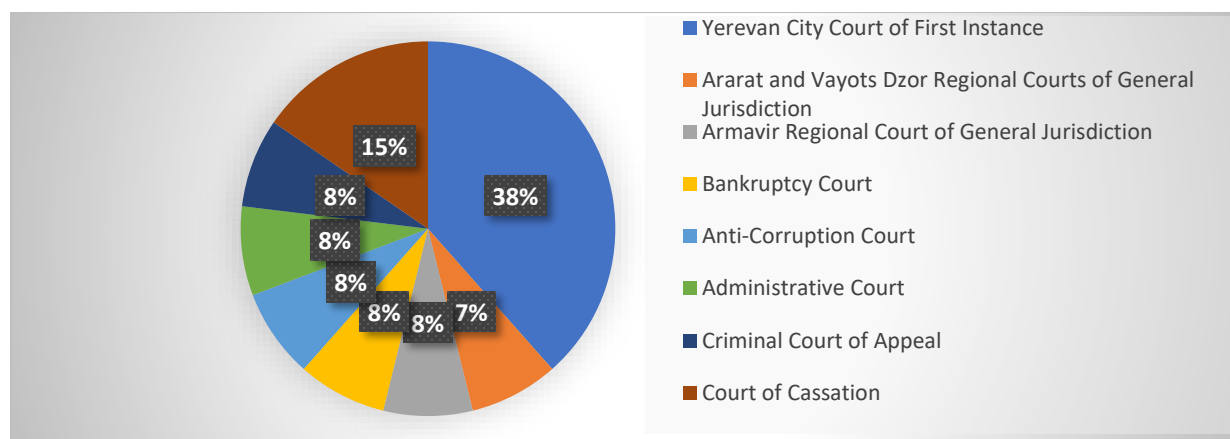


The NGO "Protection of Rights Without Borders" (PRWB) continued to monitor disciplinary proceedings against judges and analyze the decisions taken. PRWB has been monitoring such proceedings for years. The aim is two-fold. On the one hand, to ensure public oversight and promote accountability of the Supreme Judicial Council (hereinafter – the Council) and the bodies initiating disciplinary proceedings. On the other hand, to analyze the nature of violations committed by judges and their behavior.

This report presents an overview of the monitoring results and decisions made by the Council in relation to 12 proceedings (28 open sessions) held between July 2023 and August 2024. The proceedings related to 15 judges (8 male and 7 female judges), whereas one of the proceedings related to four judges.

Five of the proceedings were initiated against judges of the Yerevan City Court of First Instance. The judges involved in the other proceedings served in the Ararat and Vayots Dzor Regional Courts of General Jurisdiction, the Armavir Regional Court of General Jurisdiction, the Court of Bankruptcy, the Anti-Corruption Court, the Administrative Court, the Criminal Court of Appeal, and the Court of Cassation (the Civil Chamber and the Administrative Chambers), respectively.

Figure 1 . **Proceedings by courts.**



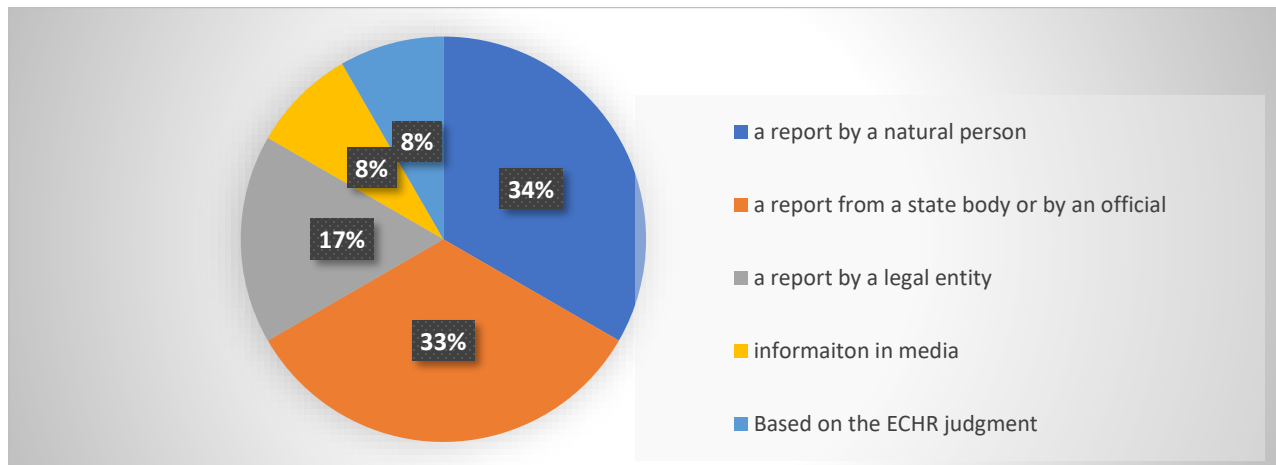
The overwhelming majority of the 12 proceedings (9 (75%)), were initiated by the Minister of Justice, and three others (25%) by the Ethics and Disciplinary Commission of the General Assembly of Judges. No disciplinary proceedings were initiated by the Corruption Prevention Commission in the reporting period.¹

The monitored proceedings were initiated on the following grounds:

¹ According to Article 145 of the Judicial Code, the following bodies have the right to initiate disciplinary proceedings against judges: the Ethics and Disciplinary Commission; the Authorised body (Minister of Justice) and the Commission for the Prevention of Corruption in certain cases.

- In four proceedings, the issue was reported by a natural person, including two filed by lawyers,
- In four proceedings, the issue was reported by local government body or official,
- In two proceedings, the issue was reported by a legal entity,
- One proceeding was initiated based on mass media publications,
- One proceeding was initiated by the competent body based on the ECHR judgement finding a violation of the international obligations undertaken by the Republic of Armenia.²

Figure 2. **Triggers for initiating proceedings.**



The 12 disciplinary proceedings were initiated in relation to the following violations:

- Six proceedings related to a violation of procedural law coupled with a violation of the code of conduct,
- Three proceedings related to a violation of the code of conduct,
- Two proceedings related to a violation of procedural law,
- In one proceeding, a violation of the norms of material and procedural law, coupled with a violation of the code of conduct.

²According to Article 146 of the Judicial Code, the triggers for initiating disciplinary proceedings are:

- 1) a report by a person, state or local government body or official;
- 2) publications in the mass media about disciplinary violations;
- 3) ex officio revelation of a violation by the competent body of an act that appears to contain elements of a disciplinary violation;
- 4) detection by the body instituting proceedings of an act containing prima facie elements of disciplinary violation, as a result of examination of an act rendered by an international court to which the Republic of Armenia is a party or by other international instance that establishes a violation of international obligations assumed by the Republic of Armenia in the field of human rights protection.
- 5) The issuance of a negative conclusion by the Corruption Prevention Commission based on the results of the regular integrity check, as defined in Article 73.1 of this Code.

As a result, in nine out of 12 cases (75%), the Council ruled to subject judges to disciplinary liability, while in three cases (25%) the motion to subject them to liability was rejected. In one case, four judges were subjected to disciplinary sanction. In four cases, the Council established a violation of the code of conduct by the judge, in three cases – a violation of the procedural code and the code of conduct, and two cases – a violation of the material and procedural law coupled with a violation of the code of conduct.

In two out of nine cases, the Council established a fact of a significant disciplinary violation committed by the judge.

The alleged violations initiated by the Minister of Justice were as follows:

- ❖ The court approved the adoption of the child by the applicants, who were not registered as persons wishing to adopt, therefore they were not eligible. Moreover, the child was not on the list of children eligible for adoption. The judge published the ruling on the judicial information system website (www.datalex.am), as a result of which its full text became available (violation of the secrecy of adoption).
- ❖ The judge recused himself in one case involving his relative, but not in another.
- ❖ The appeals court judge changed the defendant's preventive measure, deviating from the precedent decision of the Court of Cassation according to the prosecutor's office.
- ❖ The judge allegedly violated procedural deadlines in a number of cases, in particular, in one case he published the judgment and provided it to the parties with up to 1 year and 9 months delay. In addition, he provided 54 writs of execution with a delay of up to six months.
- ❖ The judge failed to publish the final judicial act within 15 days as provided by law. It was published more than a year and 11 months later.
- ❖ The judge failed to comply with procedural deadlines in various cases, with the longest delay of three years and five months.
- ❖ In the case of a former high-ranking official, the judge's actions resulted in a violation of the examination of the case within a reasonable time, as per the Minister of Justice.
- ❖ While granting a defendant (a former high-level official) a short leave of absence, the judge also touched upon issues that were beyond his authority, as per the Minister of Justice.

Proceedings initiated by the Ethics and Disciplinary Committee concerned the following issues:

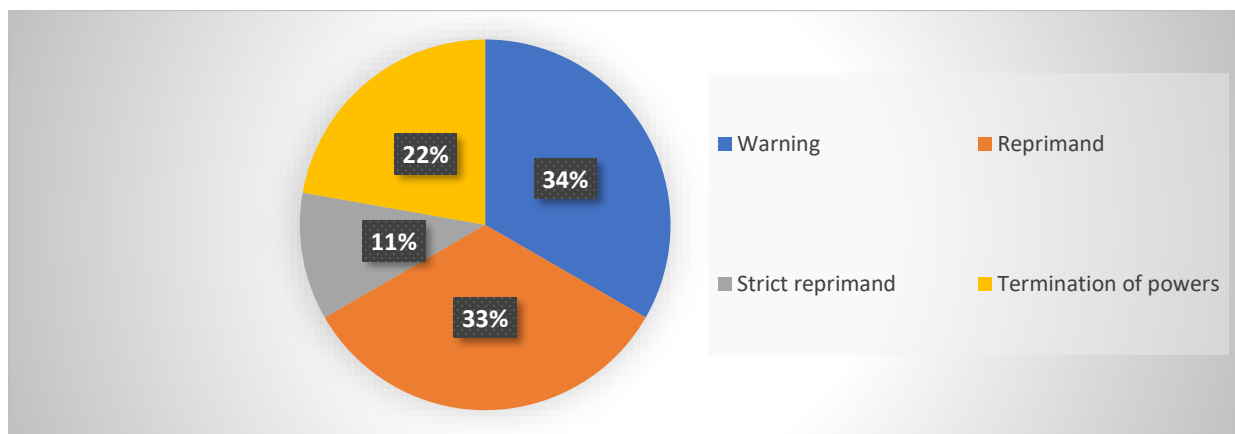
- ❖ The judge violated the requirement to examine and resolve the case within a reasonable time, which in turn led to the expiration of the statute of limitations for criminal liability. As a result, the criminal prosecution against the defendant was terminated and the criminal case was dismissed.
- ❖ The judge first rejected a claim, that decision was overturned by the Court of Appeal, but after accepting the claim for proceedings, it again dismissed the same civil case on the grounds that it was not subject to examination in civil proceedings. The Court of Appeal confirmed that the claim had already been rejected for the same reasons previously, and

the decision does not contain any justification or weighty argument for deviating from the legal positions expressed in the judicial act adopted by the higher court that entered into legal force.

- ❖ The judge chose the distance learning training course, but did not participate in the course almost at all and did not complete the self-assessment work.

In three of these proceedings, the Council issued a warning to the judges, in the other three proceedings a reprimand, and in one proceeding a strict reprimand were imposed. In two proceedings, the powers of two judges were terminated.

Figure 3. The measure of responsibility applied according to the proceedings.



The main issues identified as a result of monitoring are as follows:

- The concerns and issues revealed by the Organization in the framework of its previous monitoring have not been addressed, and recommendations have not been implemented.
- The closed-door nature of the stage of initiating proceedings is of concern, including applications submitted to bodies authorized to initiate proceedings, decisions made on them, including decisions not to initiate proceedings, to terminate initiated proceedings, and petitions submitted to the Council by these bodies.
- There is another concern regarding the initiation of proceedings, especially with regard to proceedings initiated by the Minister of Justice based on the study of the ECHR judgments. In particular, the criteria triggering the initiation of disciplinary proceedings based on violations of ECHR judicial acts are not clear.
- The practice of initiating proceedings based on violation of procedural deadlines continues to be a cause for concern. Although violations of procedural deadlines are truly problematic and unacceptable, at the same time, such violations highlight systemic problems of the workload of judges, which first of all require comprehensive measures, and not just the application of a punitive policy towards judges. This is particularly relevant given a lack of clarity on the approaches in assessing this aspect as the issue

of observing procedural deadlines and examining cases within reasonable time is one of the most serious challenges of the justice system of the Republic of Armenia.

- The analysis demonstrates that some of the issues invoked in the proceedings are more profound issues of law and practice, which require a comprehensive analysis and review of both the legislation and practice.
- The Council's qualification of the act, the justification of the form of guilt and the chosen measure of responsibility also remain problematic. The issue of the justification and proportionality of the choice of a specific type of disciplinary sanction for a violation committed by a judge continues to remain problematic, since the justifications presented in the decisions are insufficient or are absent altogether.
- Appeal of the decisions on subjecting judges to disciplinary liability also remains problematic, as an effective mechanism for appealing decisions on disciplinary liability has not yet been introduced.

Based on the issues raised, the following recommendations are proposed:

To the body initiating the proceedings:

- To ensure the publicity of the stage of initiating proceedings, including ensuing publishing information on the applications submitted to the bodies authorized to initiate disciplinary proceedings against judges and their decisions, while providing for mechanisms to protect judges' personal data.
- To develop a unified practice regarding the examination of an act adopted by the ECHR and proceedings initiated on the basis of the detection of an act containing elements of a prima facie disciplinary violation, ensuring the publicity of decisions made and excluding the selectiveness of disciplinary proceedings.

To the Supreme Judicial Council:

- To ensure in practice the proper justification of the decisions of the Supreme Judicial Council. In particular, to provide clear and sufficient reasoning and justifications regarding the qualification of the judge's act, the form of guilt or fault, as well as the proportionality of the type of disciplinary sanction applied.
- To ensure in practice that all decisions contain information about whether or not a judge was subjected to disciplinary sanction before.
- To ensure the livestream of all disciplinary proceedings heard by the Council.

To the Ministry of Justice and the National Assembly:

- To ensure in law the increase in the number of non-judge members in the Ethics and Disciplinary Commission of the General Assembly of Judges and the objective and transparent procedure for their selection.
- To provide for and introduce through legislation an effective mechanism for appealing judicial acts of the Supreme Judicial Council.