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Disciplinary Proceedings as a Preventive Mechanism for Ensuring the Right to a Fair Trial

Abstract

The existence of mechanisms for disciplinary proceedings against judges is important both to ensure the accountability of judges in a democratic society and to strengthen confidence in the judicial system.

To ensure the authority of the judiciary, the judge must recognize and follow the rules and standards of conduct necessary to protect the prestige of justice. Every action of a judge must be based on the rules of judicial ethics, and such behaviour, which violates the established standard and, in its essence, represents a possible disciplinary offense, must be evaluated by the body implementing disciplinary proceedings within the framework of disciplinary legislation.

On the other hand, disciplinary proceedings contribute to the understanding of the judge's behaviour in such a way as to ensure the use of disciplinary proceedings as a preventive mechanism, and the mentioned type of proceedings itself should not pose a threat to the fundamental values of independence and impartiality of the court. In addition, during the disciplinary proceedings, it should be ensured that the proceedings are conducted with proper quality and in a prescribed manner.

Keywords:

Court, judge, judicial ethics, justice, fair trial, disciplinary proceedings.

Introduction

Ensuring the enjoyment of the right to a fair trial and the potential for its realization holds a significant place in the justice system. The right to a fair trial is crucial for every citizen, providing them with the opportunity to benefit from the guarantees associated with this right. Furthermore, the right to a fair trial, coupled with the possibility of effectively utilizing mechanisms for the protection of rights, plays a pivotal role in safeguarding the rule of law and upholding the principles of justice.

The most effective method to prevent violations of judicial independence and the right to a fair trial is through a system of disciplinary proceedings. The smooth operation of this system is vital not only for responding appropriately in the event of violations but also for preventing future infractions.

The existence of these mechanisms, alongside the potential for their inefficient use, underscores the relevance of this study and highlights the significance of conducting research in this area.

This article delves into the importance of disciplinary proceedings within the framework of the right to a fair trial. It examines the perspectives of the European Court of Human Rights and the legislative measures in this area within Georgian law. To this end, the article explores various decisions and analyses practices related to the realization of the right to a fair trial in the context of disciplinary proceedings.

1. Essence and Importance of the Right to a Fair Trial

The right to a fair trial encompasses several fundamental principles, including the right to access the court, the independence and impartiality of the judiciary, and procedural requirements such as the equality of parties in adversarial proceedings, the right to public

proceedings and reasoned decisions, and the right to have cases heard within a reasonable time frame.

The legitimacy and importance of an individual's right to have their case considered in strict accordance with the right to a fair trial cannot be overstated. As such, all mechanisms that ensure the realization of this right are crucial, including the provision for disciplinary proceedings when necessary.¹

Primarily, the right to a fair trial signifies the ability to appeal and legally assess any decisions or actions taken by state authorities that could infringe upon human rights.² This underscores the intrinsic link between the right to a fair trial and the principle of the rule of law.

The Disciplinary Chamber of the Supreme Court of Georgia, in its decision No. 9-16 dated July 21, 2016, elucidated that "the principle of legality is foundational to the rule of law. This constitutional principle mandates that no one is permitted to undertake any action that contravenes legislative requirements." This statement reinforces the essential nature of the right to a fair trial within the framework of legal and judicial processes, highlighting its critical role in upholding the rule of law and ensuring justice.

Thus, the principle of legality underscores the significance of a fair trial as a fundamental component of human rights. The principle of a fair trial is enshrined not only in a country's domestic legislation but also in numerous international legal instruments, including Article 8³ of the American Convention on Human Rights, Article 6⁴ of the European Convention on Human Rights, and Article 14⁵ of the International Covenant on Civil and Political Rights, among others.

¹ Note On International Standards and Good Practice of Disciplinary Proceedings Against Judges, OSCE Office for Democratic Institutions and Human Rights, Warsaw, 2018, 16.

² Constitutional Court of Georgia 2006 December 15 №1/3/393,397 decision, II. §1.

³ The right to a fair trial) contains several relevant provisions regarding the role of Public Prosecutors in a trial. Article 8 (1) establishes: "every person, in determining any criminal charges brought against him or his / her rights and obligations of a civil, labor, financial or any other nature, shall have the right to consider his / her case within a reasonable period and with due guarantees Be competent, independent and impartial by the tribunal, which is pre-established based on the law".

⁴ "Every person, in determining the basis of his / her civil rights and obligations, or the merits of the criminal charges presented to him / her, shall be entitled to a fair and public hearing of his / her case within a reasonable period of time by an independent and impartial court established on the basis of law."

⁵ "All persons are equal before courts and tribunals. Each person has the right to judge each criminal charge brought against him / her, or to determine his / her rights and obligations in any civil process, to have his / her case fairly and publicly identified by a competent, independent and impartial court established on the basis of law".

Among these international statutes, the European Convention on Human Rights holds particular significance. Article 6 of this Convention safeguards the right to a fair trial, a right that stands at the core of the Convention's framework. The right to a fair trial is deemed crucial for the functioning of a democratic society. The primary safeguard of this article is the principle of the rule of law, which forms the foundation upon which society is built. Moreover, it embodies some of the shared traditions acknowledged in the preamble of the Convention, common to the nations that are signatories. Article 6 of the Convention is the provision most frequently invoked in cases brought before the European Court of Human Rights. For a matter to fall within the ambit of Article 6, there must be a dispute or a "contestation" over rights and obligations that are, at a minimum, acknowledged at the domestic level by the state legislation.⁶

The national protection of such a right is inseparable from the existence of an independent judiciary. Judicial independence, in essence, is integral to the right to a fair trial. This independence encompasses both the institutional and individual levels. Nonetheless, it is crucial to recognize that the independence granted to judges is ultimately for the protection of human rights.

2. The Role of Judicial Accountability and Disciplinary Proceedings in Ensuring Accountability

To safeguard the judiciary's independence and protect the right to a fair trial, it is essential that disciplinary proceedings and their provisions are defined with precision.⁷ Judges should not be held accountable for decisions they make based on their evaluation of evidence and their inner convictions. A democratic society demands a high standard of judicial independence, which must be concrete and legally guaranteed.

Article 63 of the Constitution of Georgia reinforces the independence of judges and their duty to adhere to the Constitution and the law. It also forbids any interference in a judge's activities or attempts to influence them, declaring such actions punishable by law. Additionally, this article ensures that judges cannot be compelled to report on their activities. Similarly, Article 8, paragraph 2 of the Organic Law on Common Courts of Georgia prohibits any influence on

⁶ A/HRC/11/41, [2009], §57; U.N. Doc. CCPR/C/OP/1, Larry James Pinkney v. Canada, Communication No. 27/1978, [1985], §34. Sunday Times v United Kingdom, [1979] ECtHR, §49.

⁷ Case C-719/19, European Commission v. Poland (ECLI:EU:C:2021:366), [2021], §6

judges, mandating that the legal proceedings must offer adequate legal and procedural safeguards.

As administrators of justice, judges should not only possess strong guarantees of independence but also uphold high standards of accountability to society. This balance between independence and accountability is crucial for maintaining public trust in the judicial system and ensuring the fair administration of justice.⁸

Plato, in his works, underscored the necessity for judges to be held accountable for overstepping their boundaries.⁹ Alongside the various forms of judicial responsibility,¹⁰ it is vital to cultivate a culture of accountable justice, which addresses both the individual accountability of judges and the collective responsibility of the judicial system to society.

Accountability is promoted through the transparency of judicial proceedings, wherein a judge provides a rationale for their decisions. This practice constitutes what is termed "explanatory accountability". Another aspect of accountability pertains directly to the conduct of judges, addressing the suitable form of response for misconduct, whether through disciplinary sanctions or criminal charges for certain actions, thereby establishing a form of "punitive accountability".¹¹

Despite the considerable level of public accountability required of judges, the European Court of Human Rights has stipulated that "a judge's decision cannot be subject to revision, except through the conventional appeal process," due to the imperative of judicial independence.¹²

Thus, in scenarios where oversight of a judge's decision's legality is impermissible,¹³ and accountability necessitates an appropriate reaction to a judge's actions within the framework of disciplinary proceedings, such proceedings serve as a crucial link between judicial independence and accountability. The protection of this balance is of paramount importance. If disciplinary proceedings are misused, they can pose a threat to judicial independence,

⁸ Shivaraj S Huchhanavar, Conceptualising Judicial Independence and Accountability from a Regulatory Perspective, 4 April 2023 - <https://www.idunn.no/doi/10.18261/olr.9.2.3>

⁹ Gasitashvili E., Zambakhidze T., Loria A., Meskishvili S.T.R., Kordzakhia Z., Moliterno J., Chubular T., Legal Ethics, Tbilisi, 2021, p. 577.

¹⁰ A judge may be charged with criminal, civil, administrative, as well as disciplinary liability.

¹¹ The position of the judiciary and its relation with the other powers of state in a modern Democracy, Consultative Council of European Judges (CCJE), Opinion №18, 2015, 9, 26.

¹² Oleksandr Volkov v. Ukraine, №21722/11, §80

¹³ Article 75¹⁰, paragraph 5 of the Organic Law on Common Courts of Georgia.

potentially becoming a means of exerting undue pressure on judges or discrediting them, thereby undermining the integrity of court decisions and serving as a destructive tool.

The Kyiv Recommendations are significant in the context of disciplinary proceedings, setting forth general standards for this type of legal process. These recommendations specify that disciplinary proceedings should be initiated based on professional misconduct characterized as "gross, unforgivable, and degrading to the judiciary's reputation."¹⁴ Such proceedings (*mutatis mutandis*) amount to "enhanced official oversight,"¹⁵ underscoring the importance of having well-defined types of disciplinary misconduct and corresponding sanctions.¹⁶ This aligns with the principle of legal certainty.

In the case of "Maestri v. Italy," the European Court of Human Rights elaborated that while the law cannot enumerate every possible instance of disciplinary misconduct explicitly, it is incumbent upon the legislature to define all norms relating to misconduct with the highest degree of precision possible.

Therefore, disciplinary liability serves as a response mechanism to disciplinary infractions committed by judges. The aim of these proceedings is to ensure judges properly fulfil their legislatively established functions, which are fundamental to the right to a fair trial. Disciplinary proceedings play a crucial role in maintaining and enforcing established rules and ethical standards, which are directly linked to the judiciary's accountability. Furthermore, this process is designed to address the actions of those who commit misconduct appropriately, as well as to deter others from committing similar infractions.

Thus, disciplinary proceedings serve as a deterrent, a means of exerting pressure on judges to prevent them from infringing upon the fundamental rights of individuals, causing irreparable harm to the interests of others or the judiciary itself. Fair and effective disciplinary proceedings are crucial for upholding professional conduct among judges, safeguarding the interests of justice, and ensuring that the judiciary remains free from private interests. Consequently, the objective of disciplinary proceedings is to promote and sustain a standard of behaviour that guarantees equitable and just treatment for all. The fulfilment of this aim is underpinned by the establishment, widespread adoption, and effective implementation of fair trial principles within the context of disciplinary proceedings.

¹⁴ ODIHR Max Planck Minerva Research Group on Judicial Independence, Kyiv, 23-25 June 2010, §25.

¹⁵ Gogiashvili G., *Judicial Law*, Second Edition, Tbilisi, 2020, p. 71.

¹⁶ The Inter-American Court of Human Rights clarified concerning to disciplinary penalties that it is a punitive mechanism that can have a significant impact on human rights, especially in the case of dismissal of a judge (*López Lone et al. v. Honduras*, [2015] ECtHR §257).

3. Principles of Realization of the Right to a Fair Trial in the Process of Disciplinary Proceedings

The realization of the right to a fair trial occupies a pivotal role in the execution of disciplinary proceedings. Foremost, the normative regulation of these proceedings is critical to precisely define and unequivocally establish violations. Achieving this necessitates the establishment of a correct and enforceable practice of fair disciplinary proceedings.

In the context of clearly articulated and meticulously detailed disciplinary violations, it's pertinent to highlight that the European Convention on Human Rights emphasises the principle of legal certainty and addresses the matter of statutes of limitations for legal actions. This is because, as stated by the court, statutes of limitations serve several crucial objectives. Specifically, they ensure legal certainty, shield potential defendants from outdated and undesired complaints, and alleviate the burden on courts from adjudicating cases based on events that transpired in the distant past, utilizing evidence that, presumably due to the passage of time, has diminished in reliability and cannot be regarded as comprehensive evidence.¹⁷

Article 6 of the European Convention on Human Rights, which safeguards the right to a fair hearing, stipulates that "Every person...shall...be entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." Following the jurisprudence of the European Court of Human Rights, throughout the entirety of disciplinary proceedings, all parties must be afforded equal opportunities.¹⁸ Moreover, the proceedings should not only adhere to the principles of identifying misconduct and delineating the process but also ensure that the judge is afforded specific rights and protections.

One foundational principle of a fair trial—the right to appeal—is also integral to the judges' rights and guarantees. According to Opinion No. 3 of the Consultative Council of European Judges (CCJE),¹⁹ disciplinary proceedings ought to be structured in such a way that decisions

¹⁷ Oleksandr Volkov v. Ukraine, №21722/11, §137.

¹⁸ Ibid, §87-91.

¹⁹ No. 3 conclusion of the Consultative Council of European Judges (CCJE) "on the principles and rules regulating the professional conduct of judges, particularly the norms of ethics, inappropriate behavior, and impartiality in office," Strasbourg, France, 19.11.2002.

made by the disciplinary body can be challenged in a court of law.²⁰ Typically, in the practice of European countries, this appellate body is either a higher court or the Supreme Court.²¹

Echoing this sentiment, the Constitutional Court of Georgia has stated, "The primary function of a legal state is the full realisation and adequate protection of human rights and freedoms. The right to a fair trial, serving as a barometer for the implementation of the principle of a legal state, encompasses the potential for judicial safeguarding of all protected interests." This underscores the essential nature of ensuring judicial recourse and protection within the framework of disciplinary proceedings, reinforcing the importance of such mechanisms in upholding the principles of justice and legality.²²

In alignment with Article 75⁵⁴, paragraph 1 of the Organic Law on Common Courts of Georgia, a judge is granted the right to appeal the decision made by the disciplinary panel. Such an appeal is directed to the Disciplinary Chamber of the Supreme Court of Georgia, offering judges a meaningful opportunity to exercise their right to a fair trial effectively.

The European Court of Human Rights evaluates the right to a fair trial within disciplinary proceedings against the backdrop of its established jurisprudence, focusing on the principles of an "independent and impartial tribunal" and a "tribunal established by law."²³ The Court interprets Article 6(1) of the Convention to encompass the necessity for an "independent and impartial tribunal". Regarding impartiality, the Court delineates two approaches: a subjective approach, which seeks to ascertain the personal bias or prejudice of a particular judge in a specific case and an objective approach. The objective approach scrutinises whether there exist any preconceived biases among the judges, particularly if they have previously participated in adjudicating the same case at a lower level.²⁴ This dual scrutiny ensures that disciplinary proceedings uphold the principles of fairness and impartiality, integral to the right to a fair trial.²⁵

Furthermore, in elaborating on the principle of a "tribunal established by law," the European Court of Human Rights clarifies that, as per its jurisprudence, the objective of the term

²⁰ No. 3 conclusion of the Consultative Council of European Judges (CCJE), §72.

²¹ Report of the OSCE Office for Democratic Institutions and Human Rights "Best Practices and International Standards for Disciplinary Proceedings of Judges," §47.

²² Public Defender against the Parliament of Georgia, decision of the Constitutional Court of Georgia No. 1/466.

²³ Guide on Article 6 of the European Convention on Human Rights - Right to a fair trial, Council of Europe/European Court of Human Rights, 2022 - https://www.echr.coe.int/documents/d/echr/guide_Art_6_eng

²⁴ Sturua v. Georgia №45729/05, §33.

²⁵ Ibid, §35.

"tribunal established by law" is to ensure that "the judiciary in a democratic society is not subject to the discretion of the executive power but is governed by law."²⁶ The term "established by law" encompasses not only the legal basis for the existence of a "tribunal" but also specifies the composition of the tribunal for each case.²⁷ These principles hold particular significance for disciplinary proceedings themselves, as the entity conducting disciplinary proceedings is regarded by the European Court of Human Rights as a "tribunal".²⁸ Hence, all conditions applied to courts under the right to a fair trial are also applicable to bodies conducting disciplinary proceedings.

The role of disciplinary proceedings within the context of the right to a fair trial raises intriguing questions. Given the principle of separation of powers, the judiciary plays a pivotal role in the democratic development of a state, with judicial independence being a cornerstone of such development.

Judicial independence is described as "a prerequisite for the rule of law [...] and a fundamental guarantee of a fair trial."²⁹ The responsibility of a judge entails rendering justice faithfully and impartially, free from any form of influence. This encapsulates the essence of independent judiciary: the freedom from external influences to safeguard citizens' rights, highlighting the intrinsic link between judicial independence, disciplinary proceedings, and the broader framework of a fair trial within a democratic society.

As previously highlighted, the rule of law, integral to the right to a fair trial, underscores the necessity for transparency and predictability in disciplinary proceedings. It is crucial that disciplinary proceedings not only serve as a guarantor of a fair trial but also adhere to and are constructed upon the principles of a fair trial themselves.

The European Court of Human Rights, along with the Constitutional Court of Georgia, has emphasized the significance of adhering to the principles of human rights and judicial determination. Furthermore, the procedures for disciplinary proceedings in Georgia, as outlined in the principles of the Organic Law on Common Courts of Georgia and through its practical application, underscore the importance and role of disciplinary proceedings.

²⁶ Oleksandr Volkov v. Ukraine, №21722/11, §150.

²⁷ Ibid, §151.

²⁸ Sturua v. Georgia №45729/05, §40.

²⁹ The final document of the Vienna meeting of representatives of the participating countries of the Conference on Security and Cooperation in Europe (CSCE), 1986, 1989; Copenhagen document of the CSCE conference in the field of human dimension, 1990; Paris charter for a new Europe, 1990; document of the Moscow meeting of the CSCE conference in the field of human dimension, 1991; MC.DOC/4/06.

Disciplinary proceedings, defined at a principled level, must offer the potential for effective legal remedies in practice due to their significance. In this context, it is noteworthy to mention that the statistical data and reports³⁰ proactively published by bodies overseeing disciplinary proceedings can indicate whether judges possess the authority and resources to utilize the legal protections afforded to them by law. This transparency is vital for ensuring the fairness of disciplinary proceedings.

The proactive publication of statistical data and reports by the entities responsible for disciplinary proceedings is crucial for analyzing the outcomes of these proceedings. Moreover, this published information plays a pivotal role in educating judges. Hence, these reports and decisions should act as a preventative mechanism, ensuring that judges are well-informed about the rulings in various cases and the corresponding appropriate responses, fostering an environment of accountability and adherence to the principles of a fair trial.

As previously indicated, the proactive dissemination of statistical data and reports by the entities responsible for disciplinary proceedings plays a crucial role in assessing the outcomes of these processes. Moreover, this information serves a significant function in educating judges. Consequently, the reports and decisions that are published should act as a preventive measure, ensuring that judges are well-informed about the judgments rendered in various cases and the corresponding appropriate actions to take.

The establishment of criteria for disciplinary liability enables judges to understand the standards of behaviour expected of them. Clearly defining what constitutes disciplinary misconduct serves as a fair warning to those who might not adhere to the established norms. This approach is designed to safeguard the rule of law and uphold the principles of a fair trial. The objective of disciplinary proceedings is to protect the judiciary from capricious actions and to anticipate the expected outcomes.

Therefore, the right to a fair trial is closely linked with disciplinary proceedings, both through the incorporation of fair trial principles within these processes and by the proceedings themselves, which aid in facilitating the realization of the right to a fair trial for the parties involved in litigation.

³⁰ The Independent Inspector's Office, which has the exclusive authority to initiate disciplinary proceedings against judges, processes and publishes statistical information on a quarterly basis and annually prepares an analysis of the conclusions and decisions of the High Council of Justice.

Conclusion

The investigation of disciplinary proceedings against judges represents a multifaceted and significantly relevant topic, one that holds considerable scientific interest. Understanding the nuances of disciplinary proceedings, the right to a fair trial, and the integration of this right within the disciplinary process can be challenging. However, the aim of this article was to underscore the topic's relevance and significance, laying the groundwork for future scholarly exploration. The current landscape indicates that a scarcity of academic research on disciplinary proceedings hampers our ability to assess their efficacy fully.

It is crucial to approach this issue with a correct understanding, given that the independence of judges - especially under the conditions of their lifetime appointment-necessitates a response to misconduct through predictable disciplinary proceedings. This approach forms a foundation not only for the integrity of the judicial system but also contributes to the overall well-being of society and the nation's advancement.

Disciplinary proceedings should avoid becoming a punitive tool against judges or a means to foster misconduct. Instead, their primary role ought to be the prevention of potential misdeeds and the deterrence of inappropriate behaviour. The cornerstone of fair, independent, impartial, objective, and effective disciplinary proceedings lies in adherence to the rule of law and the principles of a fair trial.

