

DISCIPLINARY COMMITTEE OF JUDGES OF COMMON COURTS OF GEORGIA



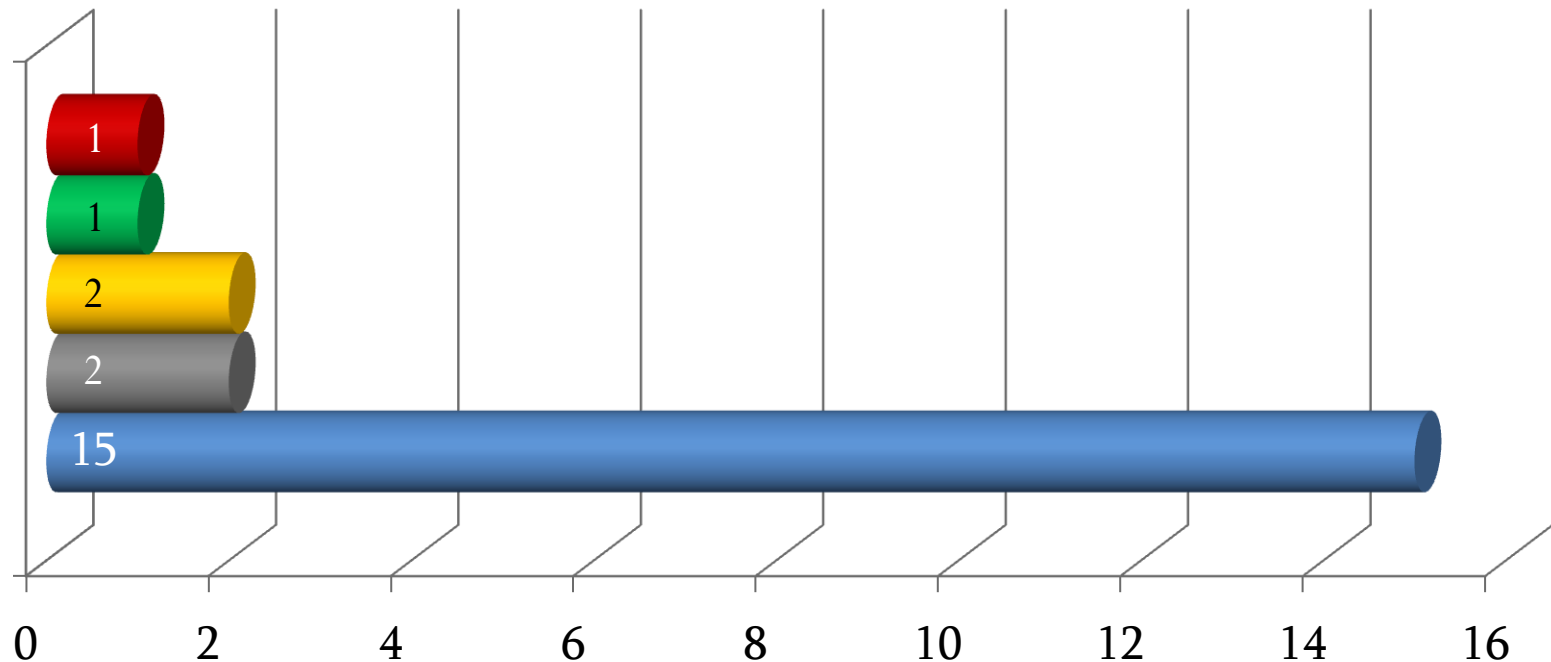
Results of judge opinion survey on case proceedings
against judges of common courts of Georgia

Judge opinion survey on Disciplinary case proceedings

The opinion survey was conducted upon the initiative of lay members of Disciplinary Committee of Common Courts. 19 judges took part in the survey, which responded to the questions according to preliminary questionnaire.

Which of the following problems do you think really characterizes the current disciplinary system:

- The delay of Disciplinary process;
- Lack of reasoning of decisions on disciplinary matters;
- Selective approach in processing the disciplinary cases;
- Lack of transparency of the disciplinary process;
- Lack of clarity of the grounds of disciplinary liability. Lack of clear detailed and exhaustive list of disciplinary offences.



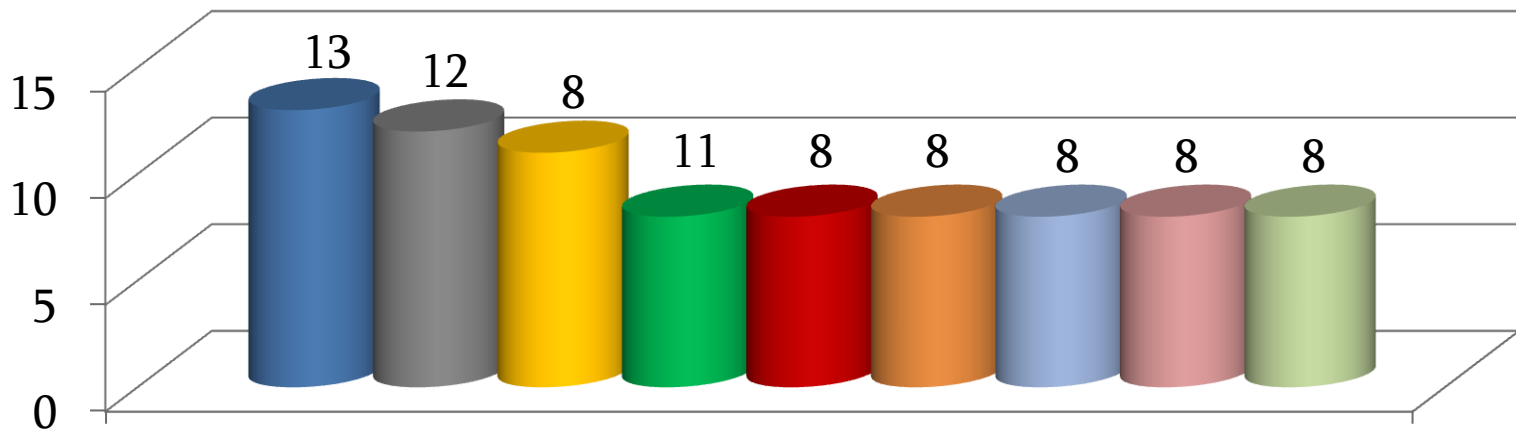
What is the real problem for the disciplinary proceedings?

Comments from individual respondents

- It is hard for me to answer, because I did not have to deal with disciplinary matters. The legislation in force does not reveal any problems;
- In specific cases any of the above mentioned problems may emerge. Though by the time of filling this questionnaire, I do not think any of them are widespread. I think the grounds of disciplinary liability are not vague; there are just general statements, which is in every law. The law can not stipulate every single case. The application of the law to the specific conduct is a working process – a subject matter of disciplinary dispute;

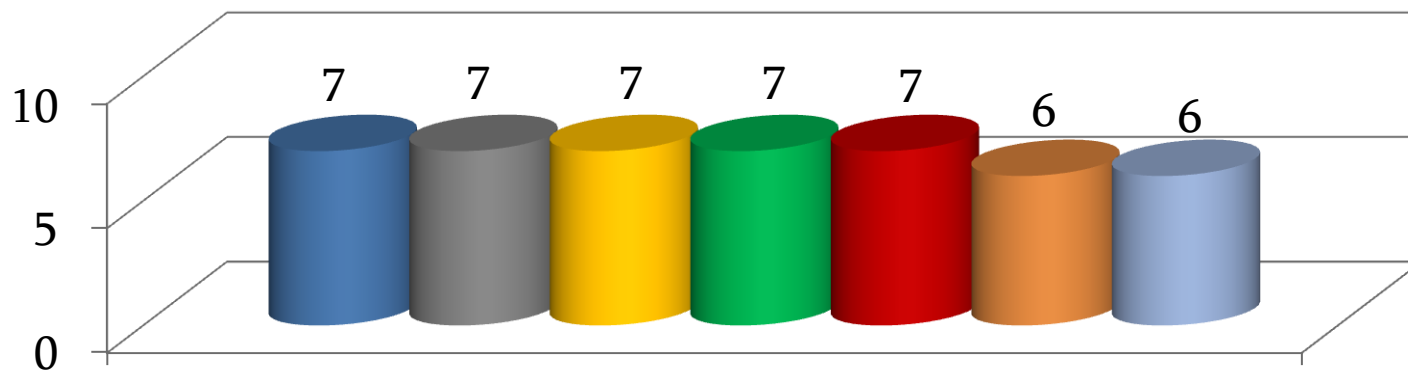
What disciplinary offences do you think can be added to the current list of violations?

- Membership of political party or any other political activity;
- Illegal communication with regard to the case under consideration. The preliminary agreement over court decision with somebody (which does not include collegial consultation on legal matters), giving account on a specific case, or asking such account;
- Membership of such organization, which is incompatible with the status of the judge and damages the reputation and authority of the court;
- Intentional discrimination of trial participant based on any ground;
- Interference into the work of another judge;
- The consideration of a case, in the outcome of which the judge has a financial interest;
- Public comments on the pending or disposed case prohibited by law and judicial ethics;
- The use of judicial office for obtaining unjustified advantage for oneself or other;
- Use of insulting, humiliating words or expressions in public speech, courtroom or court judgment;



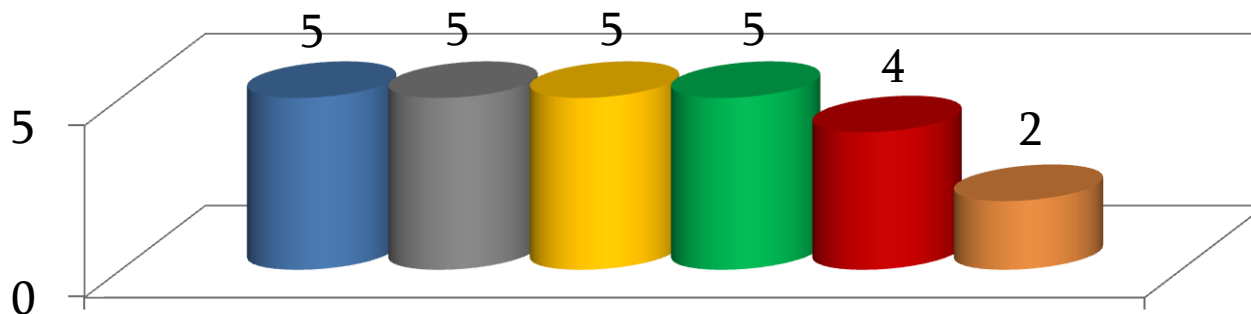
What disciplinary offences do you think can be added to the current list of violations?

- The fulfillment of other persons request or assignment, which in any form interferes with the independence of the judge;
- Disrespectful, degrading treatment towards colleagues, judicial personnel;
- Spending court resources for personal benefit;
- Public mentioning colleagues or court decisions in negative context, in a form which damages the prestige and reputation of justice or trust towards the courts;
- Any type of pressure or harassment of colleagues or court staff, which violates legal rights of the person, or is contrary to the moral principles, or damages the reputation of the court;
- Expression of political support or sympathy in public speeches or courtrooms;
- Absence from the work, lateness, or leaving without objective reasons, which resulted in serious hampering of court's work;



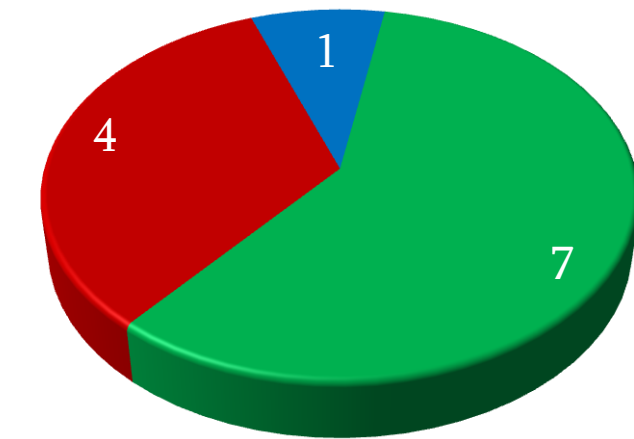
What disciplinary offences do you think can be added to the current list of violations?

- Establishing unsuitable relationship with parties of the case pending before the judge or their representatives which raises suspicion towards the independence and impartiality of the judge;
- Refusal of the judge to disqualify himself, when he was aware of legal grounds of disqualification;
- Providing intentionally false information in financial declarations;
- Providing intentionally false information in official applications or statements;
- Systematic lateness on trial sessions without valid excuse;
- Commission of unjustified conduct by the judge – grave and irreparable, or grave and repeated violation of imperative norms of procedural law, committed intentionally or with gross negligence, which substantially damaged the constitutional rights of the parties or public interest, and/or which damaged prestige and authority of the justice.



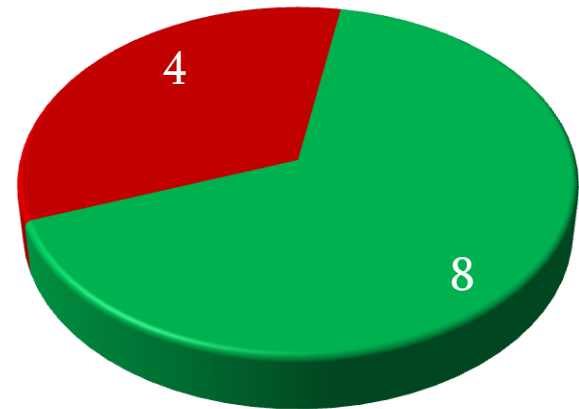
What disciplinary offences do you think can be added to the current list of violations?

1. The fulfillment of other persons request or assignment, which in any form interferes with the independence of the judge.



■ Agree
■ Disagree
■ Agree with different formulation

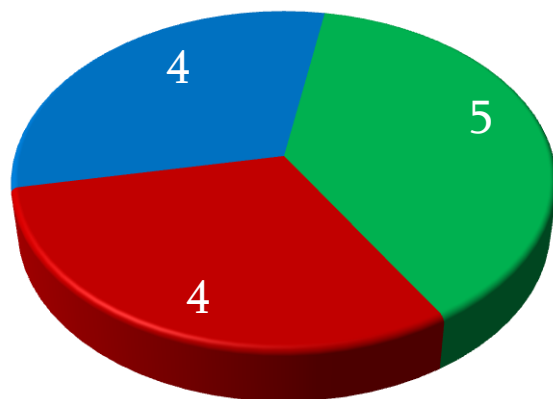
2. Intentional discrimination of trial participant based on any ground.



■ Agree
■ Disagree

What disciplinary offences do you think can be added to the current list of violations?

3. Establishing unsuitable relationship with parties of the case pending before the judge or their representatives which raises suspicion towards the independence and impartiality of the judge.

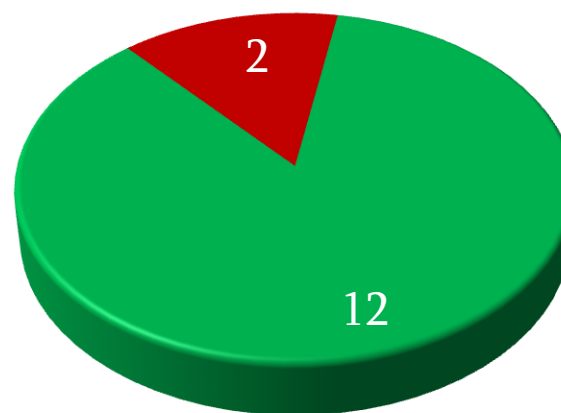


■ Agree

■ Disagree

■ Agree with different formulation

4. Illegal communication with regard to the case under consideration. The preliminary agreement over court decision with somebody (which does not include collegial consultation on legal matters), giving account on a specific case, or asking such account from a judge.

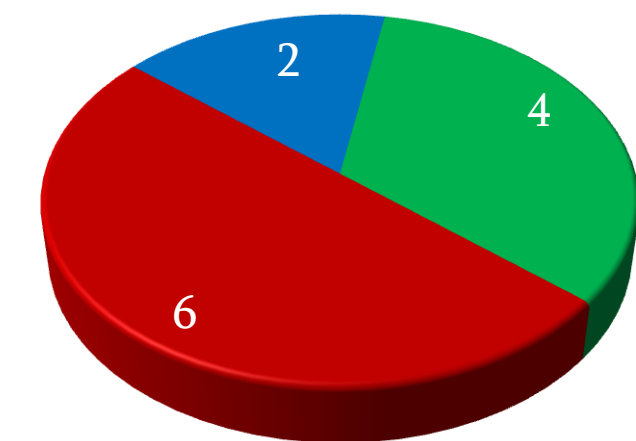


■ Agree

■ Disagree

What disciplinary offences do you think can be added to the current list of violations?

5. systematic lateness on trial sessions without valid excuse.

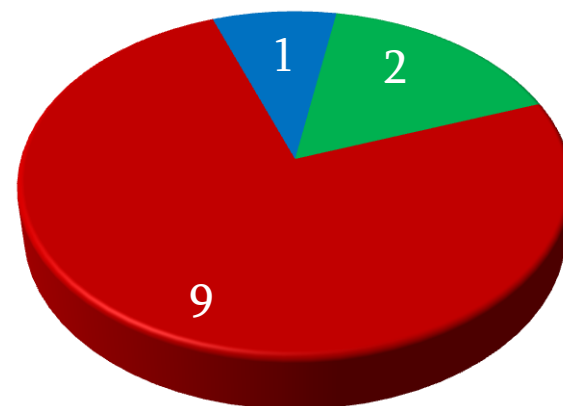


■ Agree

■ Disagree

■ Agree with different formulation

6. Commission of unjustified conduct by the judge – grave and irreparable, or grave and repeated violation of imperative norms of procedural law, committed intentionally or with gross negligence, which substantially damaged the constitutional rights of the parties or public interest, and/or which damaged prestige and authority of the justice.



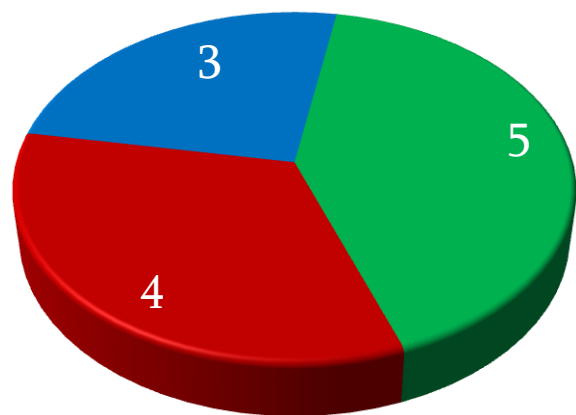
■ Agree

■ Disagree

■ Agree with different formulation

What disciplinary offences do you think can be added to the current list of violations?

7. The waiver of the judge to disqualify from the case, when he/she was aware of mandatory legal grounds of disqualification.

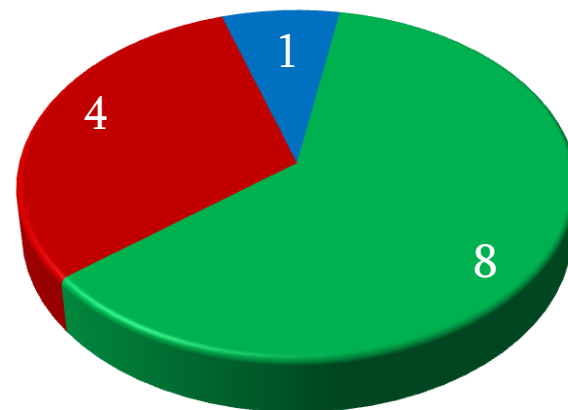


■ Agree

■ Disagree

■ Agree with different formulation

8. illegal interference in the activity of another judge.



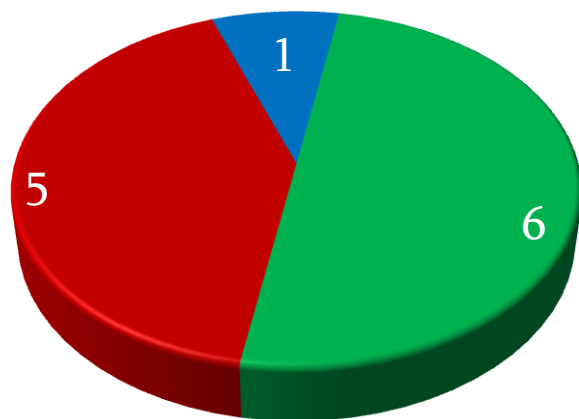
■ Agree

■ Disagree

■ Agree with different formulation

What disciplinary offences do you think can be added to the current list of violations?

9. systematic absence from the work, lateness, or leaving without objective reasons, which resulted in serious hampering of court's work.

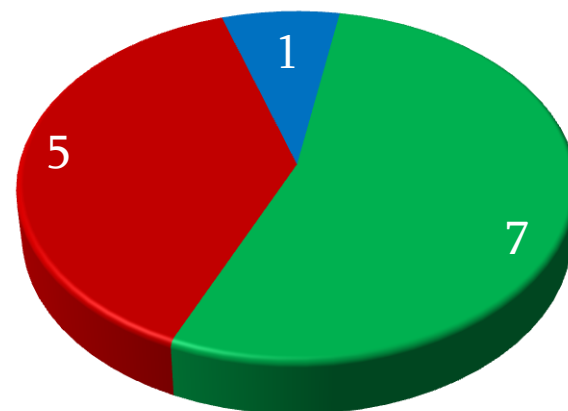


■ Agree

■ Disagree

■ Agree with different formulation

10. disrespectful, degrading treatment towards colleagues, judicial personnel.



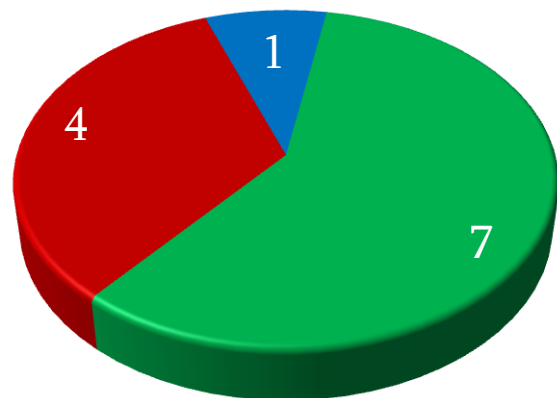
■ Agree

■ Disagree

■ Agree with different formulation

What disciplinary offences do you think can be added to the current list of violations?

11. Any type of pressure or harassment of colleagues or court staff, which violates legal rights of the person, or is contrary to the moral principles, or damages the reputation of the court.

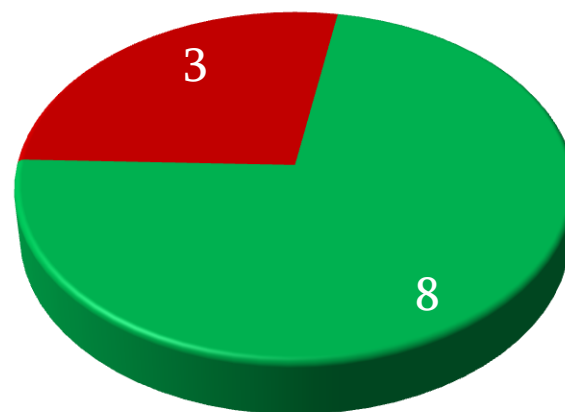


■ Agree

■ Disagree

■ aAgree with different formulation

12. The consideration of a case, in the outcome of which the judge has a financial interest.

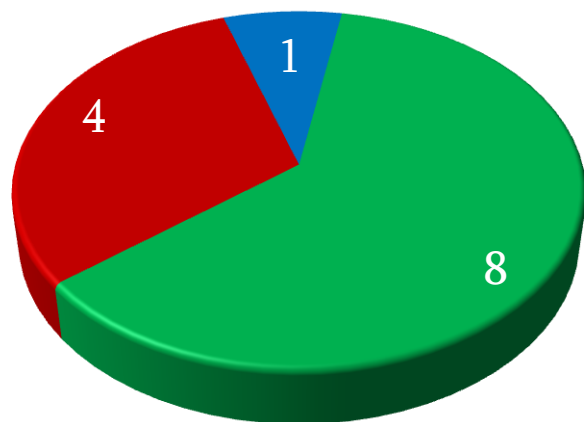


■ Agree

■ Disagree

What disciplinary offences do you think can be added to the current list of violations?

13. Public comments on the pending or disposed case prohibited by law and judicial ethics.

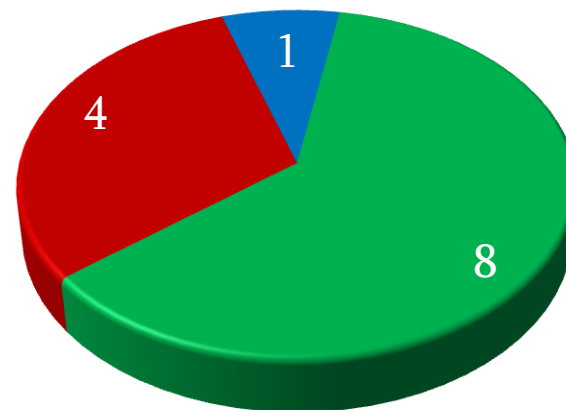


■ Agree

■ Disagree

■ Agree with different formulation

14. Use of insulting, humiliating words or expressions in public speech, courtroom or court judgment.



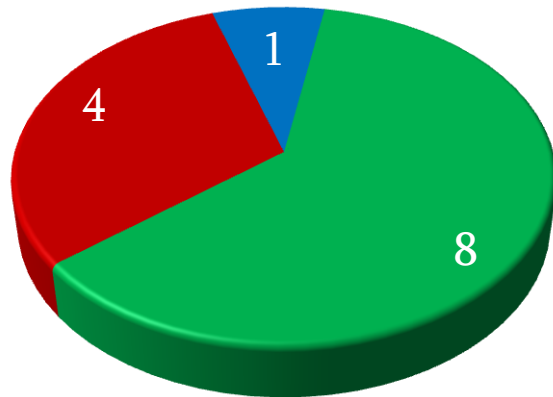
■ Agree

■ Disagree

■ Agree with different formulation

What disciplinary offences do you think can be added to the current list of violations?

15. the use of judicial office for obtaining unjustified advantage for oneself or other.

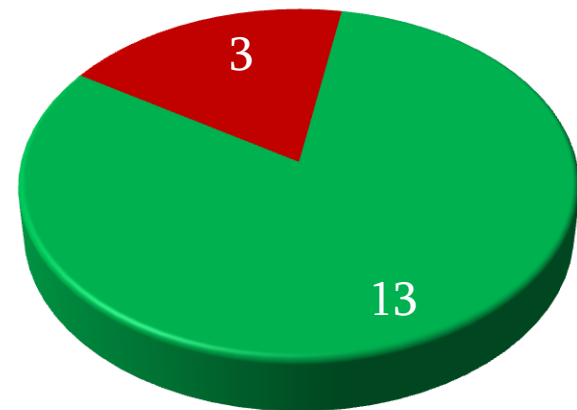


■ Agree

■ Disagree

■ Agree with different formulation

16. Membership of political party or any other political activity.

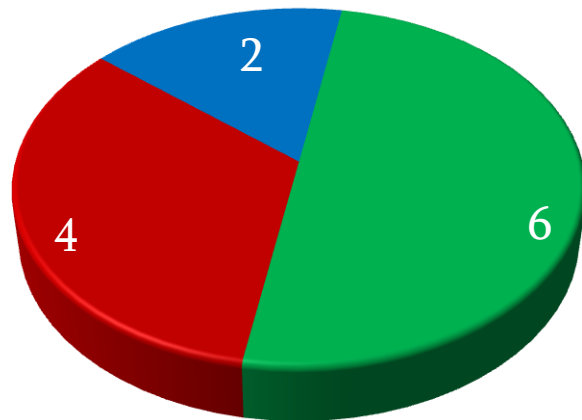


■ Agree

■ Disagree

What disciplinary offences do you think can be added to the current list of violations?

17. Expression of political support or sympathy in public speeches or courtrooms.

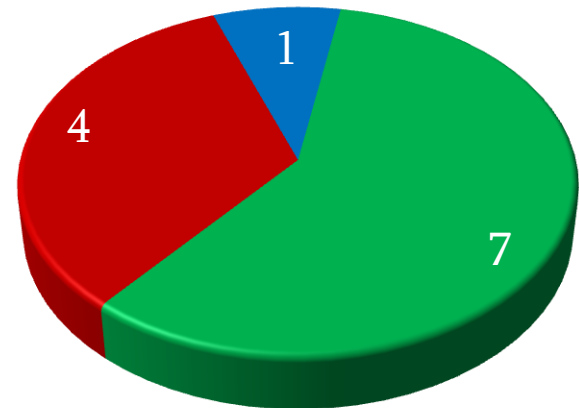


■ Agree

■ Disagree

■ Agree with different formulation

18. spending of court resources for personal use.



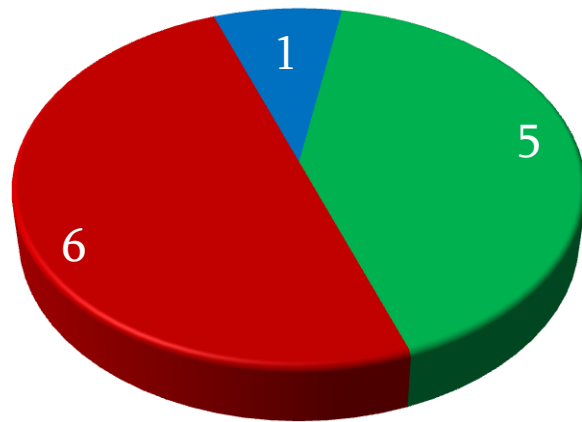
■ Agree

■ Disagree

■ Agree with different formulation

What disciplinary offences do you think can be added to the current list of violations?

19. providing intentionally false information in financial declarations.

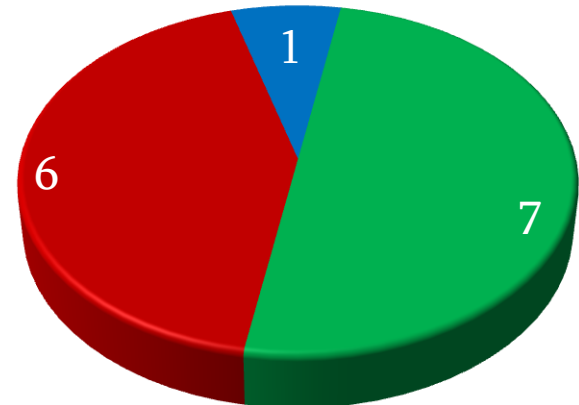


■ Agree

■ Disagree

■ Agree with different formulation

20. public mentioning colleagues or court decisions in negative context, in a form which damages the prestige and reputation of justice or trust towards the courts.



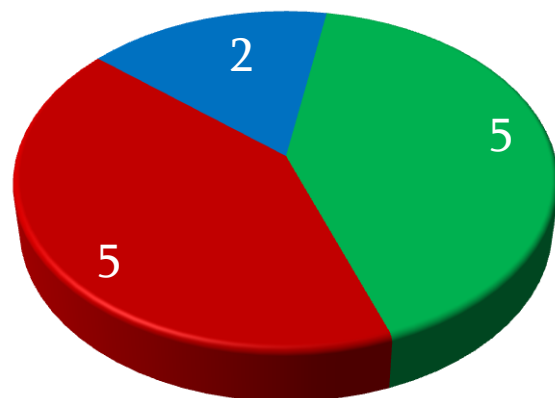
■ Agree

■ Disagree

■ Agree with different formulation

What disciplinary offences do you think can be added to the current list of violations?

21. providing intentionally false information in official applications or statements.

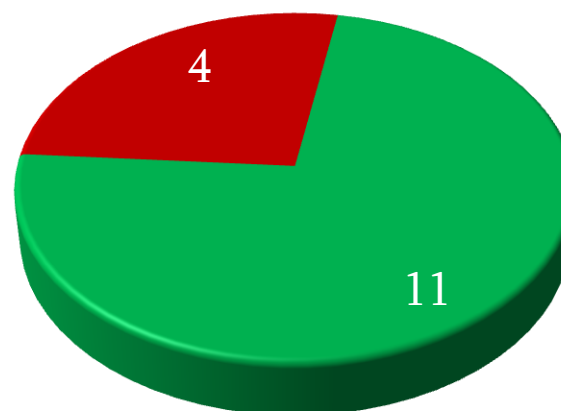


■ Agree

■ Disagree

■ Agree with different formulation

22. Membership of such organization, which is incompatible with the status of the judge and damages the reputation and authority of the court.



■ Agree

■ Disagree

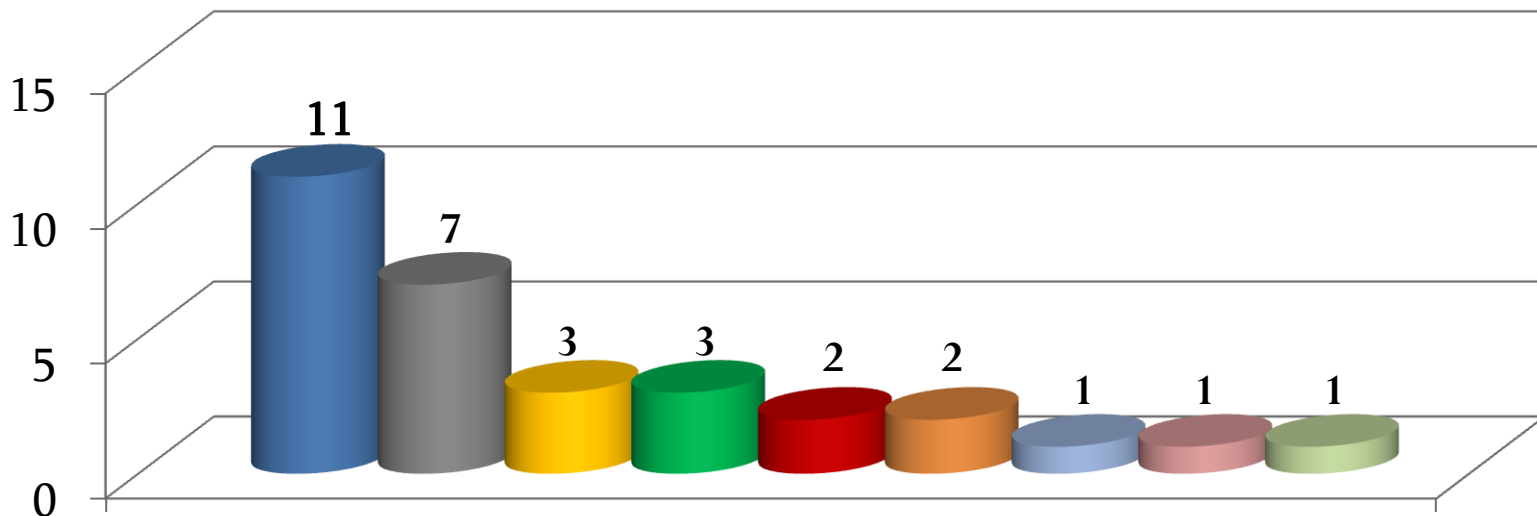
What disciplinary offences do you think can be added to the current list of violations?

Comments from individual respondents

- Above mentioned provisions are envisaged by the code of ethics and their violation causes judicial liability in any way;
- The given list specifies the cases, which are implied in the law. I believe any of these conducts can become ground of disciplinary liability today, if they take place. For example, the discrimination of party, systematic lateness at trial session, etc.;
- The given violations are factually covered by par. 2 of art. 2 of the law;
- I carefully read the above mentioned list, but I believe there is no ground add these offences to the current law, because any of these conducts are now covered by present law. Such and such violation can only be specified in the law when the research finds out that this conduct is widespread among judges. The substantial part of these violations are so distant from today's reality that they will never be practically carried out. At the same time, the proposed formulations are broad and enable an extensive interpretation, especially given the absence of specific research and the case law;
- Some of these conducts are envisaged by criminal law. The formulation of majority of them is vague and enable diverse interpretations, which make the judge dependent on disciplinary agency. Currently the judicial system is not facing the problem that it was facing in 2005, by the start of the reform (massive corruption and arbitrariness of some judges). A new problem which arose since 2005 was that the HCOJ could prosecute judges practically on any ground and therefore, HCOJ became the "director" of judges and judges felt themselves as vassals. The judge, at least their absolute majority were not afraid of prosecutors, or President or Minister of Justice, but their activity and their decisions could be influenced by the fear of punishment. Therefore, at the current stage of country's development the law should be liberal to a maximum extent towards judges and restrictive towards disciplinary bodies. The strict law shall not only limit judges, but also HCOJ in its decisions. I categorically disagree the liability of the judge for violation of labor discipline (lateness at work), because this shall make judges dependant on the administration.

Can a violation of law during handling of the case by the judge constitute a disciplinary violation and in which cases?

- In no case;
- If is committed intentionally;
- If is committed in bad faith/malice;
- If the judge intentionally violates the right to fair trial;
- If it is committed for the purpose of intentional distortion of justice;
- If the judge shows clear bias;
- If it reveals inexcusable ignorance of the law by the judge;
- If the judge did not perform an act mandated by law;
- If it harms the prestige and reputation of the judiciary.

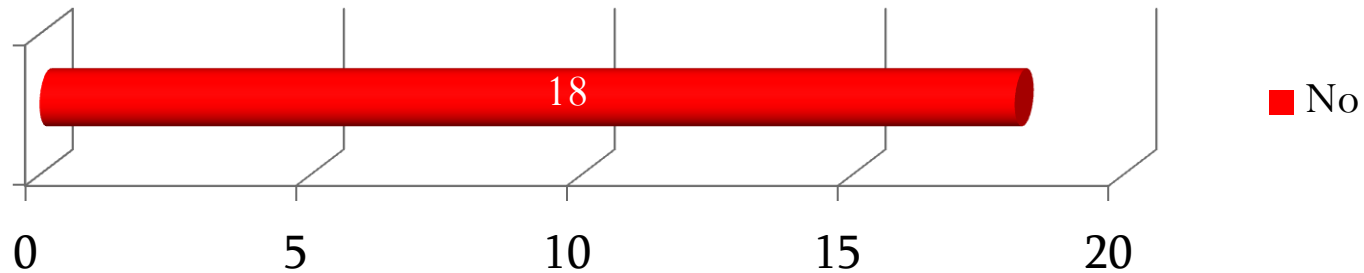


Can a violation of law during handling of the case by the judge constitute a disciplinary violation and in which cases?

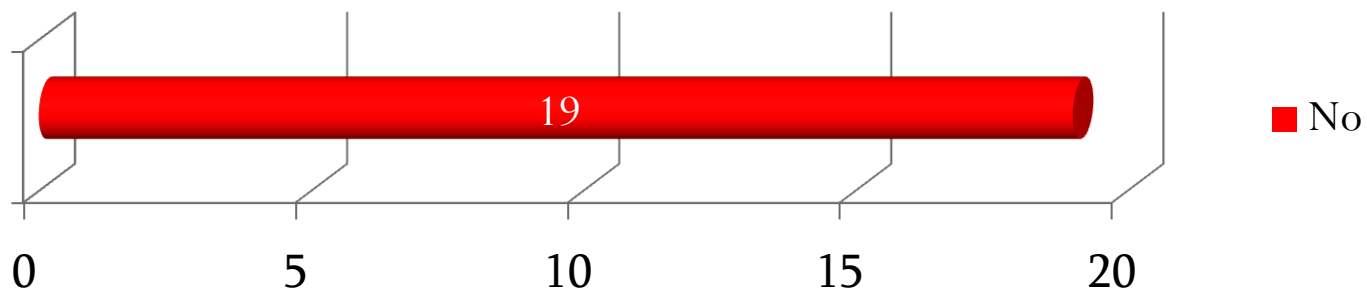
Comments from individual respondents

- The violation of the law by the judge, if it stems from the incorrect interpretation of the law (as the judge understands the law) can only become the subject of consideration by Higher Court while handling the appeal. This may not trigger disciplinary liability of the judge. In all other cases, the facts should be studied and evaluated and proper decision taken;
- I believe that the only determinant for the liability of the judge (in case of violation of the law) should be whether it is committed intentionally or not. All other components (including the results) should have less importance;
- On the one hand these grounds are quite logical. In reading them, someone might think, why not? If something like that happens, this should be envisaged by the law. But if we consider the operation of judicial instances and the role of each level of courts in the exercise of justice, I believe that the disciplinary body can not objectively establish any of these grounds. For example, the “absence of judicial reasoning”. Whether the judicial decision has a reasoning envisaged by law is also subject of judicial evaluation and disciplinary body may not objectively (and should not be empowered to) establish the reasoning of specific court decisions. It is known that judicial reasoning can always be improved. If there is a reasoning, there is always a way to prove the contrary. Therefore, it is impossible to apply the unified standard towards all judges. I would also like to say that the reversal of a court decision by superior court is not always of proof of incompetence of a judge. This is the process of exercise of justice and it can never be said that the superior court establishes the violation of the law by the judge. Even the decisions of the highest courts are a product of reasoning of all three instance of courts, disrespecting of whether the lower court judgment was confirmed or reversed;
- I categorical disagree, because only the court has the power to apply, interpret the law and the imposition of disciplinary liability for the interpretation of the law is unconstitutional. Evidently this does not imply the commission of the crime by the judge which was caused by violation of the law by the court – problems which the judicial independence did somehow have;.

Do you deem appropriate to add a new type of disciplinary sanction to the sanctions stipulated by law?



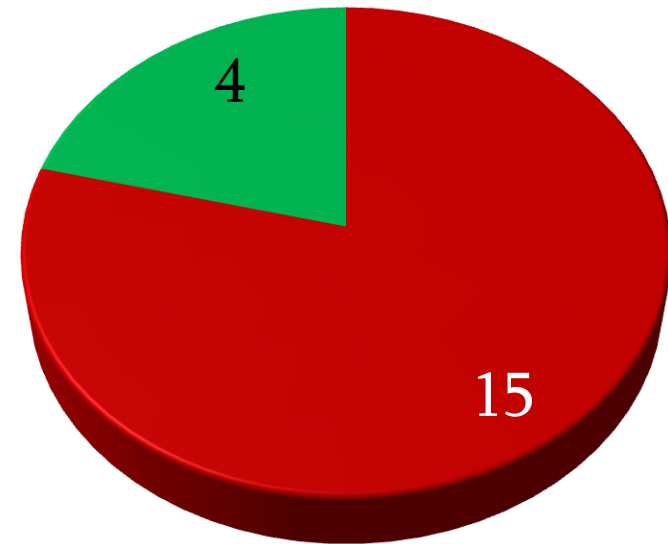
Do you believe that the disciplinary bodies should have the authority to suspend the judge before the termination of disciplinary proceedings?



By what standards of proof can the judge be found guilty of disciplinary offence?

■ Clear and convincing evidence;

■ Beyond reasonable doubt (if the evidence collected proves the commission of the offence beyond reasonable doubt).

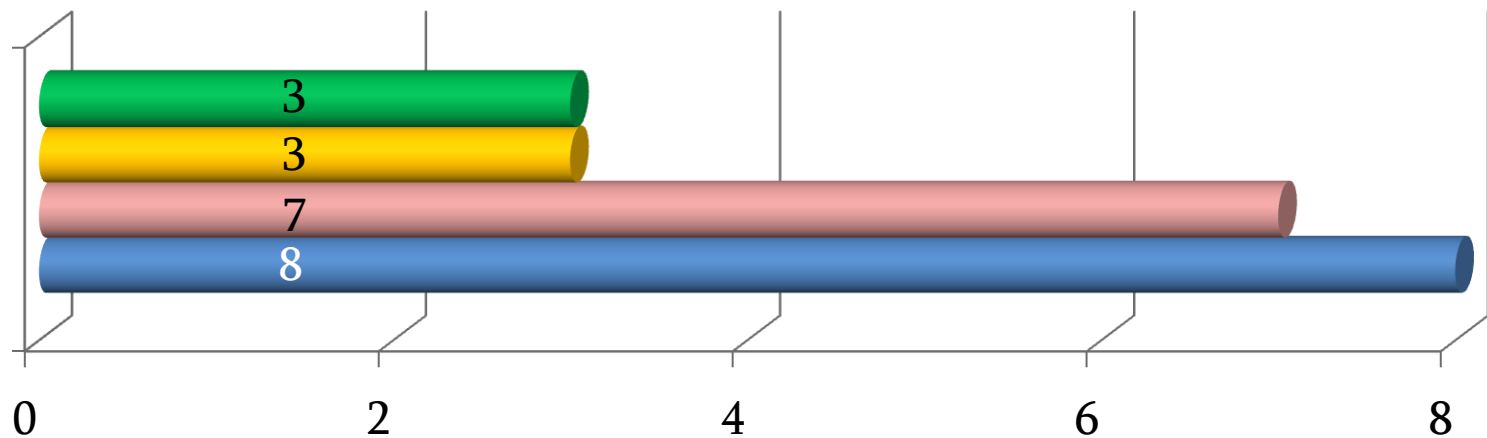


Comments from individual respondents

- Taking into account objective circumstances: for example, if such and such procedural action was not completed within the timeframe envisaged by law. In this case, the guilt of the judge depends on his workload. Specific circumstances should be checked on specific facts.

Who must perform preliminary examination/inquiry of probable disciplinary offence?

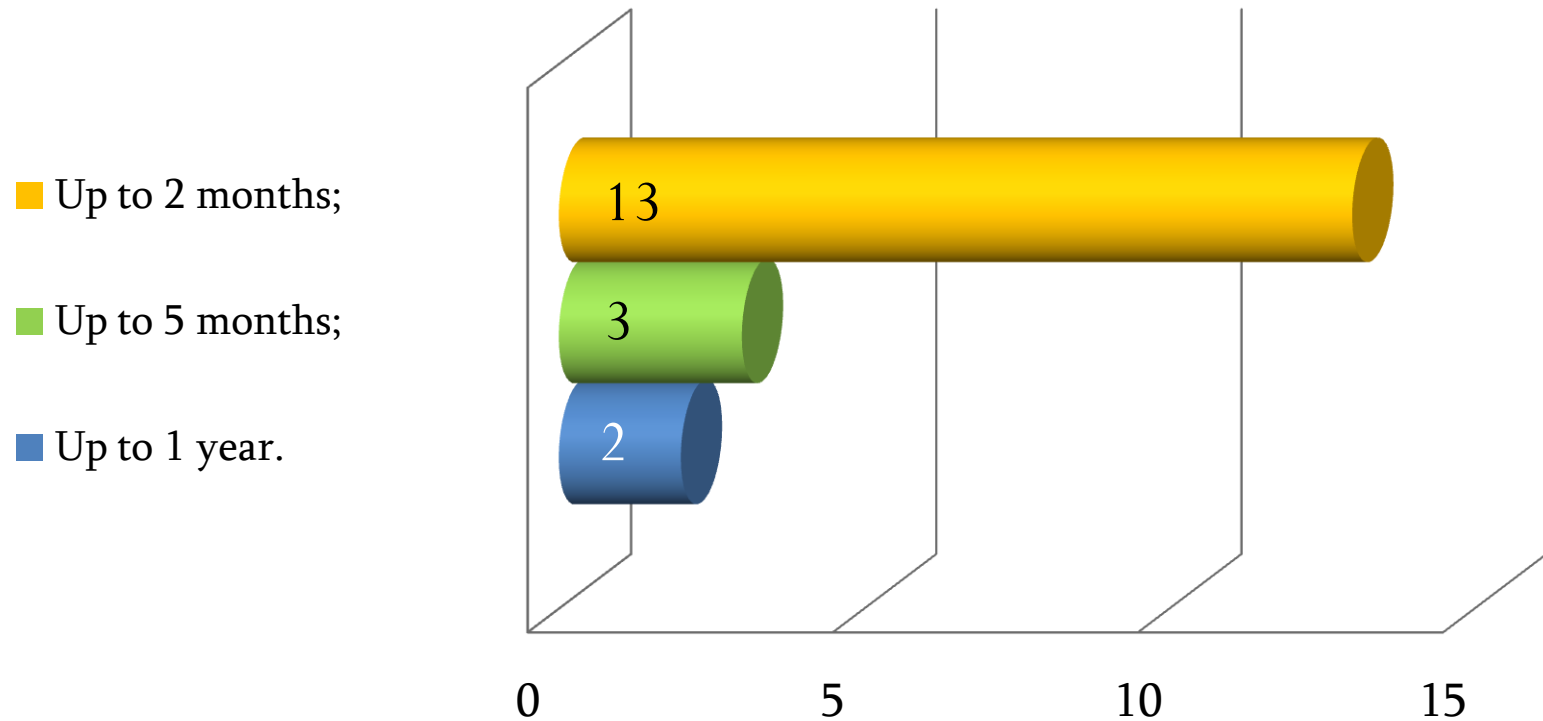
- Staff member of High Council of Justice;
- Member of High Council of Justice;
- High Council of Justice;
- A special unit existing in High Council of Justice exercising independent and impartial investigation/examination.



Comments from individual respondents

- For me, it is not of principle importance. All these entities can do it. It is important however to have all procedures and requirements stipulated by the law observed.

What should be the maximum time frame for the completion of preliminary examination/inquiry of the disciplinary case?

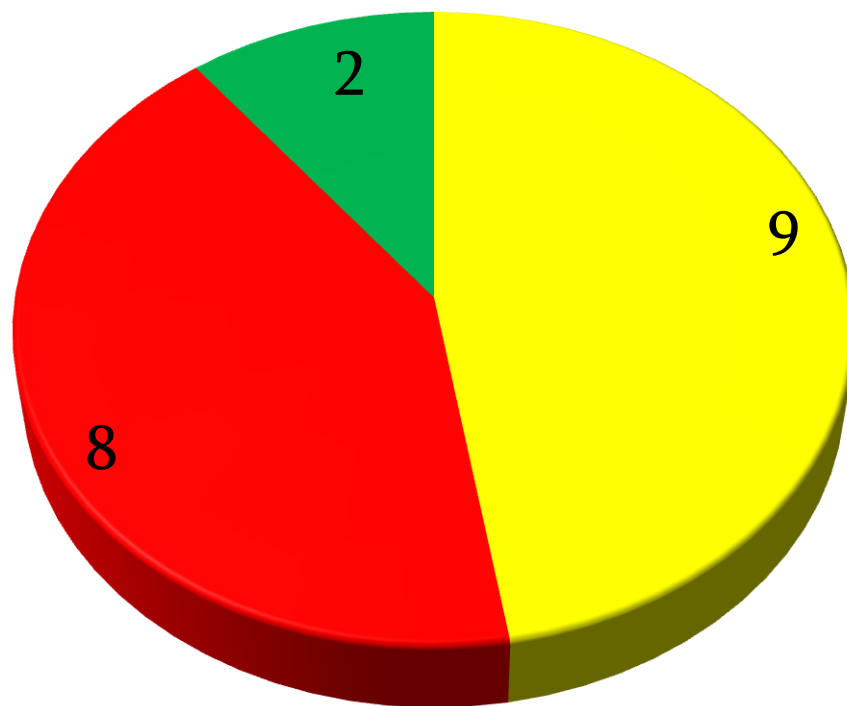


Comments from individual respondents

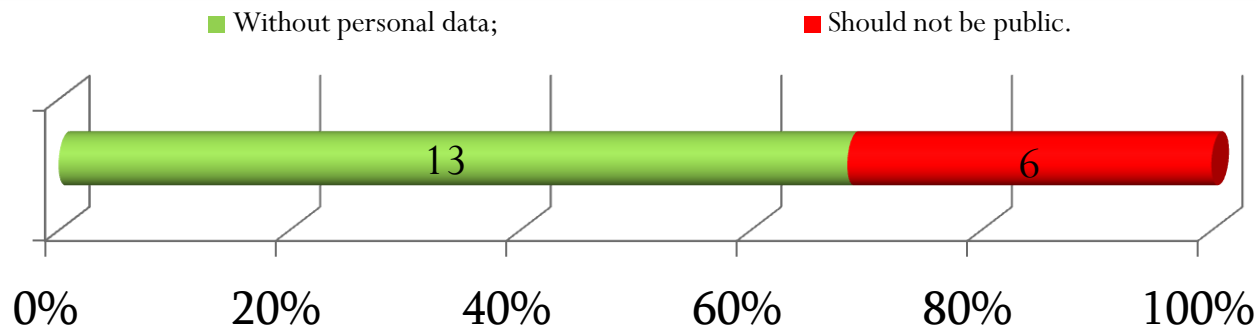
2-3 months probably. Sooner the better, I think when there are objective reasons, this timeframe can be extended.

Sessions of disciplinary committee and disciplinary Chamber should be:

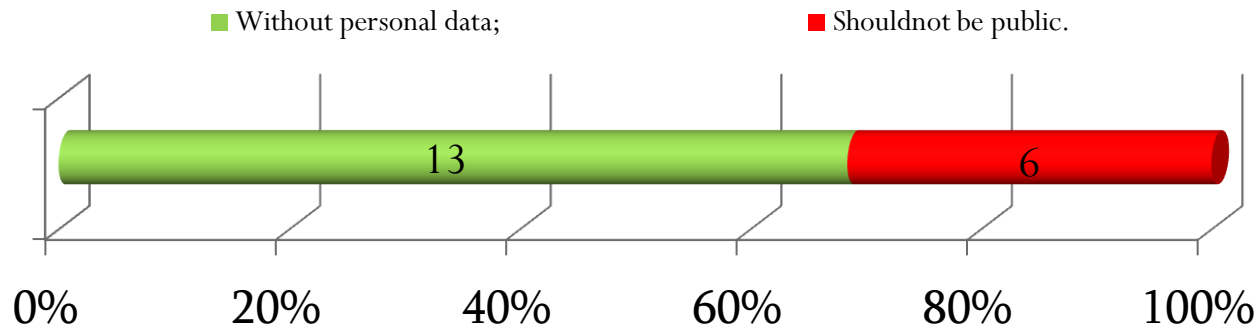
- Public only if requested by the judge;
- Cloesed;
- As a rule, public, but can be closed upon request of the judge.



Decision of High Council of Justice dropping disciplinary prosecution against a judge should be public:



The decisions of Disciplinary Committee and Disciplinary Chamber should be public:



What other problems do you see in the judicial disciplinary case proceedings and what improvements would you recommend?

Comments from individual respondents

- Disciplinary case proceedings should not serve to discredit the judge and create problems to judicial independent;
- It is difficult for me to answer, because I am not familiar with the practical problems;
- In the future I may propose my views about disciplinary proceedings;
- More trainings are necessary which shall contribute to the generalization of the case law and creation of specific list of offences;
- It is recommended to study experience of foreign countries in disciplinary proceedings;
- The disciplinary process against judge should only be started in case of violation of code of judicial conduct;
- The judge subjected to disciplinary proceedings should not feel dependant on disciplinary body. The procedure of providing written clarifications is humiliating for the judge. The clarification should be voluntary. If the judge does not want to defend himself this way, he/she may choose another method.

What information would you like to see on the website of Disciplinary Committee of Judges of Common Courts - <http://dcj.court.ge/>

Comments from individual respondents

- Novelties in disciplinary proceedings;
- It will be interesting to see foreign experience (case law) on this issue;
- The case law in advanced legal systems – what is deemed to be a disciplinary violation and what is not, who deals with these issues.

DISCIPLINARY COMMITTEE OF JUDGES OF COMMON COURTS OF GEORGIA



2014 year

საერთო სასამართლოების მოსამართლეთა სადისციპლინო კოლეგია



2014 წელი