**Information regarding the questionnaire sent on April 3, 2020 from the Special Rapporteur on the independence of judges and lawyers Mr. Diego Garcia-Sayan**

According to the Constitution of the Republic of Armenia adopted on December 6, 2015[[1]](#footnote-1) in the Republic of Armenia, justice shall be administered only by courts in compliance with the Constitution and laws. Any interference with the administration of justice shall be prohibited. The Constitutional Court, the Court of Cassation, courts of appeal, courts of first instance of general jurisdiction, as well as the Administrative Court shall operate in the Republic of Armenia. Other specialized courts may be established in the cases provided by law. Establishment of extraordinary courts shall be prohibited. The constitutional law “On Judicial Code” (hereinafter referred to as “Judicial Code”) was adopted on February 7, 2018[[2]](#footnote-2).

Constitutional justice shall be administered by the Constitutional Court, ensuring the supremacy of the Constitution in line with the Constitutional Law “On Constitutional Court” from January 17th, 2018[[3]](#footnote-3). Judges of the Constitutional Court shall be elected by the National Assembly for a term of twelve years, by at least three fifths of votes of the total number of Deputies. The Constitutional Court shall be composed of nine judges, of which three judges shall be elected upon recommendation of the President of the Republic, three judges upon recommendation of the Government, and three judges upon recommendation of the General Assembly of Judges. The General Assembly of Judges may nominate only judges. The same person may be elected as a judge of the Constitutional Court only once.

In order to guarantee the independence of courts and judges an independent state body the Supreme Judicial Council was established. According to the provisions of Chapter 7 of the Constitution of the Republic of Armenia, it is stipulated that justice in the Republic of Armenia is carried out only by the courts through a three-stage judicial system, and the Supreme Judicial Council ensures the unhindered exercise of this function.

On October 10, 2019 the Government of the Republic of Armenia adopted the “Legal and Judicial Reforms Strategy and its 2019-2023 Action Plans”[[4]](#footnote-4). The Strategy aims at improving and strengthening the independence, impartiality and effectiveness of the justice system through effective and reliable integrity and checking of property lawfulness of judges and prosecutors, as well as candidates for judges and prosecutors. A special accent has been put on increasing the court efficiency through promoting and advancing alternative dispute resolution mechanisms (mediation and arbitration). One of the main strategic directions of the Strategy is the ***introduction of grounds and procedures for subjecting judges and members of the Supreme Judicial Council to disciplinary liability in line with international standards.*** Clarity of the regulations of subjecting judges and members of the Supreme Judicial Council to disciplinary liability and their compliance with international standards are one of the essential tokens for ensuring their independence. The Judicial Code of the Republic of Armenia has essentially improved the regulations of disciplinary liability of judges, but there still were some significant shortcomings, which hindered the imposition of the disciplinary liability, according to its designated purpose. The strategy envisaged to clarify the rules of conduct of a judge and the grounds for subjecting him or her to disciplinary liability. In order to cover all the shortcomings in accordance with the activities envisaged by 2019-2020 Action Plan of the Legal and Judicial Reforms Strategy, the Law of the Republic of Armenia “On making amendments and supplements to the Constitutional Law on Judicial Code of the Republic of Armenia” and Law “On making amendments and supplements to the Constitutional Law on the Constitutional Court of the Republic of Armenia” were adopted in March 25, 2020. The following reforms have been made:

* + rules of conduct of judges and grounds for bringing them to disciplinary liability have been clarified;
  + all paragraphs emphasize that a disciplinary violation is a ground for liability only if it is committed intentionally or in gross negligence;
  + the institute of gross disciplinary violation has been excluded;
  + a clear list of rules of conduct has been provided in which violation (once), due to the circumstances of the violation and (or) consequences, is incompatible with the status of a judge or (periodically) discredits the judiciary;
  + types of disciplinary penalties have been expanded;
  + the procedure for bringing a judge to disciplinary liability has been improved.

*Disciplinary Liability*

**Chapter 9 of the Judicial Code of the Republic of Armenia** envisages a provision related to initiating disciplinary proceedings against judges. **Article 142 of the Judicial Code constitutional law** defines the grounds for imposing disciplinary proceedings against judges. Particularly:

1. Grounds for imposing disciplinary proceedings against judges shall be:
2. Intentional or grossly negligent violation of the provisions of substantive or procedural law while administering justice or exercising — as a court — other powers provided for by law;
3. violation of the rules of judicial conduct prescribed by this Code, committed with intent or gross negligence;
4. An act shall not be considered a disciplinary violation if, despite formally containing the grounds established by this Code for bringing a judge to disciplinary liability, conditioned by its less importance does not question judge's compliance with the status of a judge and, in its essence, cannot discredit the judicial authority.
5. Within the meaning of this Chapter, an act shall be considered to be committed intentionally if the judge obviously realised the unlawfulness of his or her conduct.
6. Within the meaning of this Chapter, an act shall be considered to be committed with gross negligence, if the judge did not realise the unlawfulness of his or her conduct, though he or she could and should have done it in that situation.

The following shall constitute *an essential disciplinary violation:*

1) a violation provided for in paragraph 1 of part 1 of this article, which resulted in a fundamental violation of human rights and (or) freedoms or discrediting the judicial authority, as stipulated by the Constitution or international treaties ratified by the Republic of Armenia;

2) the violation specified in paragraph 2 of part 1 of this article, which is manifested in violation of the judge's duties under paragraphs 1-4, 8 and 9, 11 and 12, 15 and 16 of part 1 of article 69, paragraphs 1-3, 7 and 8, 13 and 14 of part 2 of article 70 and is not compatible with the status of judges; conditioned by circumstances and (or) consequences of it.

3) the commission of a disciplinary violation by a judge who has two reprimands or one severe reprimand:

Reversing or amending a judicial act shall not serve itself as a ground for imposing disciplinary proceeding against the judge who has rendered that act.

Imposing administrative, civil, or other liability provided for by law, against a judge does not exclude the possibility of imposing disciplinary proceeding against the judge and terminating his or her powers, and vice versa.

Interpretation of the law or assessment of facts and proofs while administering justice and exercising — as a court — other powers provided for by law may not itself result in disciplinary proceeding.

Disciplinary action shall not be imposed against a judge in case of the absence of his or her guilt.

**Article 12 of the Law of the Republic of Armenia “On the Constitutional Court”** envisages that the following shall constitute an *essential disciplinary violation:*

(1) non-attendance at the sessions of the Constitutional Court by a judge of the Constitutional Court without a valid reason for three and more times within a year;

(2) recommitting a disciplinary violation by the judge of the Constitutional Court having two reprimands or one severe reprimand.

(3) intentional or gross violation of the rules of conduct provided for in paragraphs 1-4, 8 and 9, 11 and 12, 15 and 16 of part 1 of article 14 of this law, as well as paragraphs 1-3, 5-10 of part 2 of the same article, which, due to the circumstances and (or) the consequences that have arisen, is not compatible with the status of a judge.

3.1. For the purposes of this article an act is considered as committed with gross negligence, if the judge is not aware of unlawful nature of his behavior, although in this situation clearly could and was obliged to do it:

3.2. For the purposes of this article an act is considered as committed intentionally, if the judge realized the wrong nature of his conduct.

It should also be noted that the powers of a judge of the Constitutional Court shall be terminated if he or she has committed an essential disciplinary violation.

**Article 13 of the constitutional Law “On the Constitutional Court”** defines the grounds and procedure for imposing disciplinary liability on the judge of the Constitutional Court:

1. The grounds for imposing disciplinary liability on a judge of the Constitutional Court shall be the violation of the rules of conduct for the judges of the Constitutional Court prescribed by this Law. Article 14 of the Constitutional Law “On the Constitutional Court”defines the rules of conduct of a judge of the Constitutional Court.
2. The judge of the Constitutional Court shall be subjected to disciplinary liability by the Constitutional Court, as prescribed by Article 82 of this Law.
3. For the purpose of subjecting a judge of the Constitutional Court to disciplinary liability, proceedings may be instituted on the ground of violation of the rules of conduct prescribed by this Law, within a period of 3 months following their revelation, but not later than within 1 year upon the arising of that ground with the exception of violations provided for in paragraphs 15 and 16 of part 1 of article 14 of this Law. The proceedings of the violation of the above mentioned articles may be instituted within a period of 1 year following their revelation, but not later than within 3 years upon the arising of that ground.
4. Imposing administrative, civil, or other liability provided for by law on a judge of the Constitutional Court does not exclude the possibility of imposing disciplinary liability on him or her and terminating his or her powers, and vice versa.

According to **Article 145 of the Judicial Code of the Republic of Armenia** the following bodies shall be entitled to institute disciplinary proceedings against a judge:

(1) the Disciplinary and Ethics Commission of the General Assembly of Judges

(2) the authorised body (the Minister of Justice/ developing the policy of the government in the sphere of justice)

(3) Commission for the prevention of corruption in the cases provided for in paragraph 1.1 of this article:

(1.1) Disciplinary proceedings in connection with violation of the rules of conduct provided for in paragraphs 15 and 16 of part 1 of article 69 of this Code may be instituted only by the Commission on the prevention of corruption in cases and order envisaged by the present Code, with observance of the requirements established by the law of the Republic of Armenia “On the Commission on the Prevention of Corruption".

Pursuant to **Article 82 of the Law of the Republic of Armenia “On the Constitutional Court”** at least three judges of the Constitutional Court may submit an application in respect of the cases referred to in this Article, except for termination of powers on the grounds of a significant disciplinary violation, in which an application may be submitted by the National Assembly by a decision adopted by at least three-fifths of the total number of deputies, in accordance with the procedure envisaged by article 83 of this Law.

According to **Article 141 of the Judicial Code** of the Republic of Armenia (Imposing disciplinary proceeding against judges) disciplinary proceeding against judges may be imposed by the Supreme Judicial Council.

According to **Article 82 of the Law “On the Constitutional Court”** the Constitutional Court is entitled to impose sanctions against judges.

***Article 156.1 of the Judicial Code*** envisages the procedure of the appeal against the decision of the Supreme Judicial Council to bring a judge to disciplinary liability or to reject the request of bringing a judge to disciplinary liability. The appeal of the judge or the body that initiated disciplinary proceedings, respectively, is considered by the Supreme Judicial Council, if a substantial evidence or circumstance is revealed that the person who brought the appeal has not previously submitted due to circumstances beyond his control which could reasonably influence the decision. Immediately after receiving the complaint the Supreme Judicial Council sends the complaint to the other party, which can submit a response to the complaint to the Supreme Judicial Council within 10 days after receiving it. The Supreme Judicial Council considers the decision of bringing a judge to disciplinary liability or rejects the request of bringing a judge to disciplinary liability and makes decisions about them in writing procedures, except the cases when there is a necessity to consider the complaint at a session. The decision on holding a session shall be rendered. During the consideration of the complaint, the Supreme Judicial Council shall review the decision under appeal only within the limits of the grounds and justifications of the appeal. The appeal is reviewed and the decision is made within two months after the receipt of the appeal.

Pursuant to ***Article 157 of the Judicial Code of the Republic of Armenia***  the Supreme Judicial Council shall be entitled to revise its decision on the issue of imposing disciplinary proceeding against a judge on the basis of newly emerged or new circumstances. An application on revision of the decision of the Supreme Judicial Council may be submitted by the body having instituted disciplinary proceedings against the judge or by the judge against whom the decision on imposing disciplinary proceeding was rendered. The law clearly envisages the circumstances and the process of the revision as well.

The judge who has been subjected to disciplinary liability may apply to the Constitutional Court pursuant to part 8 of paragraph 1 of Article 169 of the Constitution of the Republic of Armenia, that is:  everyone — under a specific case where the final act of court is available, all judicial remedies have been exhausted, and he or she challenges the constitutionality of the relevant provision of a regulatory legal act applied against him or her upon this act, which has led to the violation of his or her basic rights and freedoms enshrined in Chapter 2 of the Constitution, taking into account also the interpretation of the respective provision in law enforcement practice.

**According to Article 149** **of the Judicial Code of the Republic of Armenia** *Disciplinary penalties applicable to judges are the following:* As a result of considering the issue of imposing disciplinary action against a judge, the Supreme Judicial Council may impose one of the following types of disciplinary penalties on the judge:

(1) warning;

(2) reprimand;

(3) severe reprimand;

3.1) prohibition on the inclusion in the list of candidates due for regular or special promotion list of judges for a term of one year;

3.2) dismissal from the position of the Chairman of the court or Chairman of the Chamber of the Court of Cassation

(4) imposed termination of powers on the ground of essential disciplinary violation.

The disciplinary penalty applied to a judge must be proportionate to the committed violation. When applying a disciplinary penalty, the Supreme Judicial Council shall take into account the nature and consequences of the violation, its intention or gross negligence, the personality of the judge, existing penalties and other noteworthy circumstances.

If the judge has not been held liable within two years following the date of having been imposed a severe reprimand or prohibition on the inclusion in the list of candidates due for regular or special promotion list of judges for a term of one year or the dismissal from the position of the Chairman of the court or Chairman of the Chamber of the Court of Cassation within one year following the date of having been imposed a reprimand or within six months following the date of having been imposed a warning, he or she shall be considered as having no disciplinary penalties.

**According to Article 82 of the Law of the Republic of Armenia “On the Constitutional Court”:**

In respect of the cases referred to in this case the Constitutional Court may impose on a judge one of the following types of disciplinary penalties:

(1) warning;

(2) reprimand;

(3) severe reprimand.

The disciplinary penalty imposed on a judge shall be proportionate to the committed violation. While imposing a disciplinary penalty, the Constitutional Court shall take into account the nature and consequences of the violation, the personal characteristics of the judge, intention and gross negligence, existing penalties, as well as other circumstances significant for the case. If no new disciplinary penalty has been imposed on a judge of the Constitutional Court within two years after the day of receiving a severe reprimand, within one year after the day of receiving a reprimand, within six months after the day of receiving a warning, it shall be considered that no disciplinary penalty has been imposed on him or her.

When rendering a decision in respect of the cases referred to in this Article, the Constitutional Court shall also assess the constitutionality of the law stipulating grounds for imposing disciplinary liability on the judge of the Constitutional Court and if the Court concludes that they contradict the Constitution, the Constitutional Court shall render the decision referred to in point 1 of part 9 of this Article.

It should also be mentioned thatcommitting an essential disciplinary violation serves as a ground for the termination of powers of the judge of Constitutional Court.

Since 2010 until today disciplinary proceedings have been initiated against 108 judges, 74 of them have been subjected to disciplinary liability and the mandates of 3 of them have been terminated.

***Civil and Criminal Liability***

According to **Article 164 of the Constitution of the Republic of Armenia** during the administration of justice, the judge shall be independent, impartial and act only in accordance with the Constitution and laws. The judge may not be held liable for the opinion expressed or judicial act rendered during administration of justice, except the cases when there are elements of crime or disciplinary violation. Criminal prosecution of a judge with respect to the exercise of his or her powers may be initiated only upon the consent of the Supreme Judicial Council. A judge may not be deprived of liberty, with respect to the exercise of his or her powers, without the consent of the Supreme Judicial Council, except the cases if he or she has been caught at the time of or immediately after committing a criminal offence. In this case, deprivation of liberty may not last more than seventy-two hours. The Chairperson of the Supreme Judicial Council shall be immediately notified of the deprivation of the liberty of a judge.

**Chapter 21 of Judicial Code** defines *within Supreme Judicial Council the consideration of and deciding on the issue of giving consent for instituting criminal prosecution against a judge or depriving him or her of liberty with respect to exercise of his or her powers*.

The Prosecutor General shall file a petition to the Supreme Judicial Council on the issue of giving consent for instituting criminal prosecution against a judge or depriving him or her of liberty with respect to the exercise of his or her powers. The Prosecutor General shall submit to the Supreme Judicial Council all the materials, attached to the petition, having served as a ground for the petition on giving consent for instituting criminal prosecution against a judge or depriving him or her of liberty. In case of receiving the petition of the Prosecutor General with the regard to the issue of giving consent for initiating criminal prosecution against a judge or depriving him or her of liberty, the Chairperson of the Supreme Judicial Council shall immediately convene a session of the Supreme Judicial Council.

**Article 9 of the Law of the Republic of Armenia “On the Constitutional Court**” defines that pursuant to part 2 of Article 164 of the Constitution, the judge of the Constitutional Court may not be held liable for the opinion expressed or judicial act rendered during administration of justice, except the cases when there are elements of crime or disciplinary violation.

According to part 3 of Article 164 of the Constitution of the Republic of Armenia, criminal prosecution of a judge of the Constitutional Court with respect to the exercise of his or her powers may be initiated only upon the consent of the Constitutional Court.

A judge of the Constitutional Court may not be deprived of liberty, with respect to the exercise of his or her powers, without the consent of the Constitutional Court, except when he or she has been caught at the time of or immediately after committing a criminal offence.

The institution of the criminal prosecution of a judge of the Constitutional Court and the prosecutorial control of the pre-trial criminal proceedings of the given case shall be conducted by the Prosecutor General.

**Article 84** of the Law of the Republic of Armenia “On the Constitutional Court” envisages the procedure of the examination of cases on giving consent for initiating criminal prosecution against a judge of the Constitutional Court or depriving him or her of liberty with respect to the exercise of his or her powers.

The trial of the cases referred to in this Article shall be carried out through oral procedure. The burden of proof in the cases referred to in this Article shall be borne by the applicant.

**Article 84.1** of the Law of the Republic of Armenia “On the Constitutional Court” defines the procedure of consideration of the issue of bringing a judge of the constitutional court to disciplinary liability depending on the criminal proceedings. According to the latter, the consideration of the issue of bringing a judge of the constitutional court to disciplinary liability shall be suspended if a criminal case has been initiated on the same facts and is resumed after the completion of criminal proceedings.

Since January 2010 until today criminal cases have been initiated against 7 judges, against 2 of whom there are indictments having entered into force, and the cases against the other 5 judges are in the process of investigation.

1. <https://www.arlis.am/DocumentView.aspx?docid=108723> [↑](#footnote-ref-1)
2. <http://translation-centre.am/pdf/Trans_ru/HH_Codes/HO-95-N_2018_100218_en.pdf> [↑](#footnote-ref-2)
3. <http://www.translation-centre.am/pdf/Trans_ru/HH_Orenq/2018_HO-42-N_29032019_en.pdf> [↑](#footnote-ref-3)
4. <http://www.moj.am/storage/uploads/Gov.25_09_2019_ENG.pdf> [↑](#footnote-ref-4)