



ANNOTATED REVIEW Generalized

Practice of Adjudicating Disciplinary Cases
Against Judges by the High Council of Justice
and Its Disciplinary Bodies
(based on case files for 2017-2021)

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Introduction

In 2023, the Working Group of the High Council of Justice (hereinafter referred to as the HCJ) developed a document titled “Generalized Practice of Adjudicating Disciplinary Cases Against Judges by the HCJ and Its Disciplinary Bodies (based on case files for 2017-2021)” published on the official HCJ website (<https://hcj.gov.ua/sites/default/files/field/1012-3web.pdf>) based on the HCJ decision No. 1315/0/15-23, dated December 14, 2023.

The study was aimed at analyzing the exercise of the HCJ’s and its disciplinary bodies’ functions in the field of disciplinary liability of judges with a focus on disciplinary decisions against judges adopted by Disciplinary Chambers (hereinafter referred to as the DCs) and the HCJ throughout 2017 to August 2021 and taking into account the outcomes of their further appellate review.

Following the adjudication of disciplinary cases in 2017-2021, the DCs of the HCJ adopted 606 decisions to discipline 649 judges:

- in 2017 – 91 decisions related to 96 judges;
- in 2018 – 170 decisions related to 175 judges;
- in 2019 – 150 decisions related to 163 judges;
- in 2020 – 129 decisions related to 141 judges;
- in 2021 – 66 decisions related to 74 judges.

In 2017-2021, the Disciplinary Chambers of the High Council of Justice adopted 672 decisions to reject disciplinary action against judges and to close disciplinary cases.

Based on the outcomes of adjudication of disciplinary cases in 2017-2021, the Disciplinary Chambers of the High Council of Justice adopted decisions to discipline 649 judges and impose the following disciplinary sanctions on them:

- admonishment – imposed on 262 judges;
- reprimand with termination of the right to receive bonuses to judicial salary for one month:
 - imposed on 110 judges;
 - censure with a termination of the right to receive bonuses to judicial remuneration during three months – imposed on 77 judges; and
 - proposal to temporarily (from one to six months) suspend a judge from the administration of justice – with termination of the right to receive bonuses to judicial salary and compulsory referral of a judge to the National School of Judges of Ukraine to pass an ongoing training course determined by the body which conducts disciplinary proceedings against judges and further qualifications evaluation to confirm the capability of a judge to administer justice in a relevant court – imposed on 34 judges;
 - proposal to dismiss a judge from the office – imposed on 166 judges.

A disciplinary sanction in a form of a proposal to transfer a judge to a lower-level court was not imposed by the disciplinary bodies of the HCJ.

Review of the disciplinary practice of the High Council of Justice related to the grounds stipulated by part one of Article 106 of the Law of Ukraine “On the Judiciary and Status of Judges”:

Subitem «a» of Item 1 (*illegitimate denial of access to justice (including illegitimate refusal to accept a claim on the merits, an appeal, cassation claim, etc.) or other substantial violation of the norms of procedural law during the administration of justice which has made it impossible for the implementation by participants to the proceedings of procedural rights granted to them and fulfill procedural duties, or caused violation of rules regarding the jurisdiction or composition of court*)

When considering complaints against the actions of judges under Subitem “a”, the HCJ should distinguish between the substantial violations of the norms of procedural law leading to appellate and cassation review of a case, resulting in the revocation of a court decision, and substantial violations of procedural norms constituting elements of an offense as stipulated by Subitem “a”, in particular, substantial violation of the norms of procedural law during the administration of justice which: (a) has made it impossible for the implementation by participants to the proceedings of procedural rights granted to them and fulfill procedural duties, (b) caused violation of rules regarding the jurisdiction of court and (c) caused violation of rules regarding the composition of court.

An essential feature of the objective aspect of a disciplinary offence as stipulated by Subitem “a” is negative consequences of judicial actions resulting from such actions. These consequences of other substantial violations of the norms of procedural law during the administration of justice include:

1. the impossibility for the implementation by participants to the proceedings of procedural rights granted to them and fulfill procedural duties;
2. the violation of rules regarding the jurisdiction of court; and
3. the violation of rules regarding the composition of court.

Most often, the HCJ and its disciplinary bodies adopted decisions to discipline judges in cases involving:

- groundless recognition of a claim as unfiled and its rejection, closing proceedings in a case, considering applications to review a default judgement as unfiled and rejecting them; an investigating judge rejecting a complaint or refusing to open proceedings based on a complaint within his/her jurisdiction;
- groundless rejection of appellate complaints, refusals to open appellate proceedings;
- failure to notify / improper notification of individuals participating in a case of a court hearing and adopting a court decision in absentia;
- accepting for adjudication and adopting court decisions related to a complaint beyond the jurisdiction of an investigating judge; an investigating judge adopting a court decision not stipulated by the Criminal Procedure Code of Ukraine;
- addressing the issue related to the rights and responsibilities of an individual not

- involved in a case;
- violation of rules regarding the jurisdiction of court; and
- violation of rules regarding the composition of court.
- As a rule, decisions to refrain from disciplining judges were adopted in the following instances:
 - lack of the objective aspect of a disciplinary offence;
 - lack of the subjective aspect of a disciplinary offence;
 - judicial mistake;
 - ambiguity of interpretation of the provisions of a law;
 - preventing the restriction of the exercise of procedural rights, such as: filing a motion to a court again, seeking cassation review of a court decision, utilizing available remedies, reapplying to a court of appeals, and appealing against an appellate complaint on the merits; and expiration of the statute of limitations for imposing a disciplinary sanction.

In most cases where the grounds for disciplining a judge were only Subitem “a”, a disciplinary sanction in a form of an admonishment was imposed on judges.

- **Subitem “6” of Item 1** (*failure to specify in a court decision motives for sustaining or rejecting arguments of the parties on the merits of a dispute*)

The determination of the abovementioned grounds does not involve the evaluation of the reasoning of a court decision by the High Council of Justice and its disciplinary bodies. It only encompasses one aspect of reasoning—the presence of motives for accepting or rejecting the arguments of the parties to a case. In disciplinary proceedings, the appropriateness, admissibility, and completeness of reasoning are not evaluated, since such assessment entails considering circumstances and evidence in a case. This goes beyond the scope of disciplinary proceedings and into the realm of judicial review.

According to the practice of adopting decisions related to disciplining judges based on the abovementioned grounds, the High Council of Justice and its disciplinary bodies adhered to the requirements of procedural legislation concerning the substantiation and reasoning of court decisions. This involved considering the content of legal norms governing the procedure for adopting a court decision, ensuring the compliance with the requirements for reasoning, which was the subject of the relevant disciplinary case.

Most often, the HCJ and its disciplinary bodies adopted decisions to discipline a judge based on the abovementioned grounds in the following instances:

- failure to specify the motives for rejecting parties’ arguments in court decisions (particularly in cases related to administrative offenses, unemployment allowance disputes, granting permits for forced enforcement of foreign arbitration decisions, and monetary collections);
- lack of substantiation regarding the application of measures ensuring criminal proceedings;
- insufficient substantiation of arguments and motives leading the court to sustain a claim;

- court decisions merely outlining legal and regulatory provisions without including any motives or conclusions;
- decisions to arrest property made without the owner's presence and lacking substantiation;
- failure to adequately reflect the examination and evaluation of evidence and arguments presented by parties in a court decision;
- omission of motives for sustaining certain evidence while rejecting others related to the dispute's merits;
- failure to specify reasons for considering a court decision from another case, which a plaintiff provided as support;
- absence of a motivation section in the ruling of an investigating judge, specifying established circumstances and evidence;
- bias towards one party's stance without proper evaluation, and insufficient motives for rejecting the opposing party's stance;
- lack of reasoning in closing proceedings for administrative offenses; and
- absence of motivation in selecting the type of sanction in cases involving administrative liability.
- Judges were not disciplined in the following cases:
 - lack of the subjective aspect of an offence in a form of intention or negligence;
 - lack of the objective aspect of an offence;
 - judicial mistake; and
 - failure to specify motives and grounds for admitting and/or rejecting arguments of the parties in a decision not related to the consideration of a case on the merits.

In most disciplinary cases where judicial actions were classified only based on Subitem "b", a disciplinary sanction in a form of admonishment was imposed on judges.

Subitem "b" of Item 1 (*violation of the principles of publicity and openness of a trial*)

The HCJ and its disciplinary bodies adopted decisions to discipline a judge based on these grounds in the following instances:

- failure to notify a litigant of a court hearing and take necessary actions to ensure their participation via video-conference;
- considering a case within tight timelines, violating the procedure for notifying litigants of a court hearing;
- removing individuals who were not participants in a trial from the courtroom without justified grounds; and
- failure to notify litigants of the date, time, and place of announcing a court decision, as well as the date of writing the full text of the decision.
- Judges were not disciplined in the following cases:
 - establishing the lack of the subjective aspect of an offence;
 - establishing the lack of the objective aspect of an offence;
 - lack of specific directions in the law related to the sequence of judicial actions; and

- based on conclusive evidence, the fact that a judge committed a disciplinary offence was not proved; the guilt of a judge was not established 'beyond reasonable doubt'.

Subitem "r" of Item 1 (*violation of the principles of equality of all litigants before law and court, adversarial procedures between parties and freedom in providing court with their evidence and in proving their strength to the court*)

According to the disciplinary practice of the HCJ, the evaluation of judicial conduct that violates the principles of equality and adversarial procedures between parties can compete with the elements of a disciplinary offence stipulated by Subitem "a" – other substantial violations of the norms of procedural law during the administration of justice which that impede participants from exercising their procedural rights and fulfilling their procedural duties.

Most often, the HCJ and its disciplinary bodies adopted decisions to discipline judges in the following cases:

- failure to notify litigants of scheduled court hearing, sending procedural documents to incorrect addresses, and neglecting to send a copy of a ruling based on adjudication outcomes;
- consideration of cases within tight timelines, producing a full text of decision on the day it was adopted, favoring one of the parties during the issuance of the copy of a court decision;
- adjudicating a case in violation of jurisdictional rules, leading to its adjudication without the presence of a representative from the government authority responsible for fund recovery issues;
- unequal application of legal provisions during the consideration of issues related to the initiation of proceedings in case of a failure to provide evidence of payment of court fees, or neglecting to address a motion for exemption from paying said fees;
- allowing individuals with unconfirmed and unidentified powers to participate in a trial;
- repeatedly opposing the attempts of the accused person to exercise his/her right to present evidence;
- violating the plaintiff's right to participate in a case via their representative by forcibly removing said representative from the courtroom against their will; and
- rejecting a plaintiff's motion to familiarize themselves with an annex to the defendant's objections.
- Judges were not disciplined in the following cases:
 - establishing the lack of the objective aspect of an offence;
 - establishing the lack of the subjective aspect of an offence; and
 - judicial mistake.

In disciplinary cases where judicial actions were classified only under Subitem "r", a disciplinary sanction in a form of an admonishment was imposed on judges.

Subitem “r” of Item 1 (failure to ensure a right to protection for a defendant, interference with the exercise of the rights of other litigants)

The grounds for disciplinary liability stipulated by Subitem “r” are related not only to the violation of the rights of an individual during criminal proceedings, but also encompass interference with the exercise of the rights of other litigants in other types of court proceedings.

The HCJ and its disciplinary bodies adopted decisions to discipline judges in the following cases:

- violating the rules of recusal of a counsel, resulting in a failure to ensure the suspects’ right to defense;
 - conducting a preliminary court hearing in criminal proceedings, during which the period of a preventive measure was extended in the absence of defense counsels (selected defense counsels);
 - consideration of a case to bring an individual to administrative liability and impose an administrative sanction in a form of administrative arrest without the participation of a defense counsel; and
 - rejecting defense counsel’s participation in a court hearing.
- Judges were not disciplined in the following cases:
- establishing the lack of the subjective aspect of a disciplinary offence in judge’s actions; and
 - judicial mistake.

Based on the results of analysis, it was established that in a case where Subitem “r” was the only grounds for discipline liability, a disciplinary sanction in a form of an admonishment was imposed on a judge.

Subitem “d” of Item 1 (*violation of the rules for recusal (self-recusal)*)

In domestic legislation, the principle of impartiality of court is enshrined in the Law of Ukraine “On the Judiciary and Status of Judges” (Articles 1, 7 and 56) and provisions of procedural codes.

Impartiality as a requirement for a court means that the court adjudicating a case must be subjectively impartial, namely, none of its members should have any personal interests and bias.

Most often, the HCJ and its disciplinary bodies adopted decisions to discipline judges in the following cases:

- sustaining an application for self-recusal in the absence of legal grounds and with violations of the procedure for its consideration;
- sustaining an application for recusal/self-recusal in the absence of proper justification;
- failure to request self-recusal in the presence of the grounds stipulated by law;
- failure to consider an application for recusal; and
- selective self-recusal by a judge in certain cases.

- Judges were not disciplined in the following cases:
- establishing the lack of the objective aspect of an offence;
- establishing the lack of the subjective aspect of an offence; and
- judicial mistake.

In most disciplinary cases where judicial actions were classified only under Subitem “д”, a disciplinary sanction in a form of an admonishment was imposed on judges.

Item 2 (*unreasonable delay or failure to take actions on considering an application, complaints or case within a timeline established by law, delays in drafting a motivated court decision, untimely submission of a copy of court decision by a judge to be entered into a Unified State Registry of Court Decisions*)

When considering this type of cases, the HCJ and its disciplinary bodies have consistently stated that the mere violation of the timeline for adjudicating a case cannot serve as the basis for disciplinary action against judges. According to Item two of part one of Article 106 of the Law of Ukraine “On the Judiciary and Status of Judges,” disciplinary liability arises from unreasonable delay or failure to take actions on considering an application, complaints or case within a timeline established by law.

When addressing the issue related to the presence of grounds for disciplining a judge for delays in drafting a motivated court decision and/or untimely submission of a copy of court decision by a judge to be entered into a Unified State Registry of Court Decisions, the DCs and the HCJ also emphasize the necessity of establishing the unreasonableness of failing to meet the relevant timelines. They further clarify that mere violation of the timeline cannot solely warrant disciplinary action against judges.

When addressing the issue related to disciplining a judge under Item 2, one of the circumstances subject to evaluation by the HCJ was judicial caseload.

Most often, the HCJ and its disciplinary bodies adopted decisions to discipline judges in the following cases:

- unreasonable return of administrative offence protocol for revision;
- repeatedly postponing the consideration of cases on administrative offenses, leading to the expiration of the deadlines for bringing individuals to administrative liability;
- scheduling cases with significant intervals / repeatedly postponing the consideration of cases (especially due to a judge’s vacation leave, involvement in other cases, or scheduling court hearings on days off);
- failure to take measures to conduct preliminary proceedings, and consideration of a case beyond the timelines established by law;
- the timeline of court proceedings was influenced by the fact of inappropriate preparation of a case for consideration and a failure to address the abuse of procedural rights by litigants;
- groundless delay of resolving the issue of opening proceedings in a case;
- prolonged resolution of the issue of scheduling a preliminary court hearing in a

- criminal case; and
- delays in producing a reasoned court decision and/or untimely provision of a copy of a court decision to be entered in the Unified State Register of Court Decisions. Judges were not disciplined in the following cases:
 - establishing the lack of the objective aspect of an offence; and
 - establishing the lack of the subjective aspect of an offence in a form of intent or negligence.

In view of the provisions of Item 2, it can be concluded that an unreasonable delay is when a judge knowingly violates procedural timelines, takes / does not take procedural actions that affects the possibility of considering an application, complaint or case within the timeline established by law (this is a proof of guilt in a form of intent); a failure to take measures implies an unjustified failure to take actions stipulated by procedural law that were mandatory as per the law (the form of guilt does not influence the classification of judicial actions); delays in drafting a motivated court decision is a deliberate or resulting from negligence violation of established by procedural law timelines for producing a full text of a court decision by a judge; untimely submission of a copy of court decision by a judge to be entered into a Unified State Registry of Court Decisions can be defined as a deliberate or resulting from negligence violation by a judge of a timeline established by law for publishing the relevant court decision in an electronic form.

In most disciplinary cases where judicial actions were classified only under Item 2, a disciplinary sanction in a form of an admonishment was imposed on judges.

Item 3 (*conduct which disgraces a status of judge or undermines the authority of justice, in particular, on the issues of moral, integrity, incorruptibility, congruence of the lifestyle of a judge with his/her status, compliance with other norms of judicial ethics and standards of conduct which ensure public trust in court, manifestation of disrespect to other judges, lawyers, experts, witnesses or other litigants*)

In disciplinary cases where judicial actions were classified under Item 3, the HCJ and its disciplinary bodies referred to domestic and international acts establishing standards of judicial ethical conduct.

Upholding ethical norms and high standards of conduct refraining from misconduct in any activities related to judicial office is an essential part of judicial operations regardless of whether there will be any negative consequences of such conduct. A judge must realize that actions aimed at disgracing another individual cannot be considered impeccable in the eyes of a reasonable, law-abiding and informed observer. Disseminating negative evaluations regarding another judge in procedural documents inadvertently undermines the authority of justice, which further contradicts the rules of judicial ethics.

One of the problems arising during the classification of judicial actions under Item 3 is distinguishing between the relevant disciplinary offence and another offence – criminal or administrative (most often, these are corruption offences, violation of traffic rules resulting in serious consequences, taking judicial oath of another country).

A number of decisions to discipline judges emphasize that Disciplinary Chambers of the High Council of Justice have sole powers to establish the absence or presence of elements of a disciplinary offence in judicial actions.

Most often, the HCJ and its disciplinary bodies adopted decisions to discipline judges in the following cases:

- a judge was engaged in out-of-procedure communications with litigants;
- illegal conduct of a judge off the bench (disrespectful communications with patrol police officers, failure to comply with legal demands of police officers to stop a vehicle, driving a vehicle under influence by a judge);
- using judicial status to illegally obtain material benefits or other benefits;
- using the office of a chief judge in the interests of another individual (illegal and groundless revocation of an enforcement order);
- interference with the discretionary powers of a government authority;
- changing a court decision in the guise of correcting a typo;
- secret acquisition by a judge of someone else's property;
- long absence at work without serious reasons;
- disrespect for other judges and litigants;
- receiving a status of a judge of the Russian Federation or participation in a competition for the position of a judge of the Russian Federation; and
- failure to take actions to fulfill judicial duties and practicing law on the territory of the so-called "Luhansk People's Republic", receiving a status of a judge of terrorist organizations of "Donetsk People's Republic" and "Luhansk People's Republic."

Judges were not disciplined in the following cases:

- establishing the lack of the objective aspect of an offence;
- establishing the lack of the subjective aspect of an offence; and
- judicial mistake.

In adopting decisions and determining the type of a disciplinary sanction, the requirements of part four of Article 109 of the Law of Ukraine "On the Judiciary and Status of Judges" were taken into account, according to which disciplinary sanctions in a form of an admonishment, reprimand and censure are not imposed in case a judge commits an offence as stipulated by Item 3.

In most disciplinary cases where judicial actions were classified under Item 3, a disciplinary sanction in a form of a recommendation to dismiss a judge from the office was imposed.

Item 4 (*intentional or caused by gross negligence violation of human rights and fundamental freedoms or other gross violation of the law which caused essential negative consequences, by the judge who participated in delivering the court decision*)

The specifics of classifying an offence (violation of human rights and fundamental freedoms by the judge who participated in delivering the court decision) are related to its direct object – human rights and fundamental freedoms.

The violation of such rights and freedoms was established by the Disciplinary Chambers of the HCJ, usually in combination with the violation of the right to a fair trial (Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms).

The HCJ and disciplinary bodies classified as essential negative consequences the following:

- groundless deprivation of a person's right to ownership of inherited property and the need for him/her to take additional efforts to restore his/her violated rights;
- a ruling made by an investigating judge to impose an arrest on real estate led to negative consequences - the seizure of property by unknown individuals acting in the interests of the victim, the owner of which is a limited liability company;
- alienation of real estate assets rendered it impossible for the bank to execute foreclosure on the mortgaged property;
- blocking the operations of a state collegial body of judicial self-government (High Qualifications Commission of Judges of Ukraine) and halting the process of qualifications evaluation of judges; and
- registration of the right of ownership to the object of unauthorized construction, which has significantly violated the interests of the state and territorial community of a city in the field of city planning.

The following actions committed by a judge who participated in delivering the court decision were deemed as a violation of human rights and fundamental freedoms:

- groundless provision of a permit to search an individual's home, deemed as interference with the individual's right to the inviolability of the home;
- application of a preventive measure without establishing the presence of all legal grounds, leading to the violation of an individual's rights to freedom and personal inviolability;
- imposing an arrest on temporarily seized property after the established deadline for filing the relevant motion has elapsed; arresting real estate, movables, and monetary funds without providing corresponding justifications for the imposition of such measures;
- taking measures to secure a claim: related to the prohibition to take any actions that impeded economic activity; granting a permission to continue unauthorized construction, creating thus a threat to the residents of a neighboring building; suspending the license for the transportation of passengers by air transport, effectively halting economic activity;
- resolving issues concerning the rights of individuals not involved in court proceedings, including canceling an imposed arrest to enforce a decision and

- recognizing property ownership rights in favor of other individuals; and
- revoking a default judgment to dissolve marriage which entered into force after four years in view of the change of circumstances of the parties, thus violating the principle of legal certainty which involves the compliance with the res judicata principle;

Among other grave violations of law leading to essential negative consequences the Disciplinary Chambers in their practice identified the following:

- returning a prohibited dangerous fishing tool – an electric fishing rod – is contradictory to legal requirements (as it undermines the mere purpose of a legal regulation governing the turnover of objects of civil rights) and allowed further illegal fishing with prohibited tools;
- approving a settlement agreement that contradicted the law and infringed upon the rights of legal entities and individuals not party to the case resulted in the transfer of a significant amount of property (98 real estate facilities) from their ownership to the plaintiff through re-registration;
- prohibition to individuals who are members of a collegial body of judicial self-governance and to a collegial body of judicial self-governance to take any actions to conduct and/or continue the qualifications evaluation of judges before the decision comes into effect, which is deemed as a grave violation of the law by a judge since he/she blocked the operations of a state body of judicial self-governance and interfered with the discretion of a subject of government powers to conduct a qualifications evaluation of judges, which undermines the authority of justice. At the same time, these actions of the judge had essential negative consequences both for the High Qualifications Commission of Judges of Ukraine (hereinafter referred to as the HQCJ) the operations of which were suspended, and for judges the interviews with whom did not take place upon the adoption of a ruling to sustain a claim; and
- recognizing the right of ownership of multi-apartment building (unauthorized construction object) built with a grave violation of construction norms and a general plan of the city approved in the interests of a territorial community and taking into account state, public and private interests, when there was no any dispute between the parties, without the engagement of a body implementing the state policy in the field of state architectural and construction control and oversight in the case. This led to essential negative consequences – giving the defendant a possibility to register the right of ownership to the unauthorized three-section nine-floor building in Kyiv despite limitations permitting only four-floor constructions.

Judges were not disciplined in the following cases:

- establishing the lack of the objective aspect of an offence;
- establishing the lack of the subjective aspect of an offence in a form of an intent

or negligence;

- lack of a consistent case law on applying a certain legal norm; and
- individual understanding [by a judge] of provisions of procedural law.

In most cases where the grounds for disciplining a judge was only Item 4, a disciplinary sanction in a form of an admonishment was imposed on judges.

Item 5 (*disclosure of a secret which is protected by law, including a secret of deliberation room or information which became known to a judge during the consideration of a case at a closed court session*)

Disclosure of a legally protected secret, including that of the deliberation room, primarily occurs through active actions of a judge, whereby information safeguarded by law becomes known to the general public, whether in oral, written, or electronic form.

The analyzed practice of the disciplinary bodies of the HCJ contains only three cases against three judges opened under Item 5.

In the cases where judicial actions were initially classified as disclosure of a secret protected by law by a judge, decisions to discipline judges were not adopted.

Judges were not disciplined in the following cases:

- when disclosure of a secret which is protected by law took place as a result of the actions of a judicial assistant;
- lack of evidence of the disclosure of a secret of deliberation room; and
- lack of the objective aspect of the elements of a disciplinary offence.

Item 6 (*failure of a judge to inform the High Council of Justice and Prosecutor General about an interference into the activity of a judge on delivering justice, including about the requests of other litigants or other persons, including persons authorized to perform the functions of the state with regard to specific cases which are under consideration of a judge, if such application took place in any other way than provided for by procedural law within five days after he/she became aware of such interference*)

A judge is obliged to inform the High Council of Justice and Prosecutor General about an interference into the activity of a judge on delivering justice within five days after he/she became aware of such interference (part four of Article 48, Item 9 of part seven of Article 56 of the Law of Ukraine “On the Judiciary and Status of Judges”). Thus, the moment of the commission of a disciplinary offence by a judge is the sixth day from the moment the judge became aware or should have been aware of the interference with his/her judicial activities on delivering justice.

The analyzed practice of the HCJ and its disciplinary bodies includes only four cases opened under Item 6.

In a case where, following the outcome of adjudication by a disciplinary body, a decision to discipline a judge under Item 6 was made, the HCJ revoked such decision due to the lack of the elements of a disciplinary offence.

The DCs did not establish grounds for disciplining a judge in the following cases:

- lack of evidence of influence on a judge; and
- in the course of the consideration of a case no data on the commission of a disciplinary offence by a judge were established.

Item 7 (*failure to inform or untimely informing of the Council of Judges of Ukraine about an actual or potential conflict of interests of a judge (except cases when the conflict of interests is regulated within the procedure stipulated by procedural law)*)

In the event of an actual or potential conflict of interests (except cases when the conflict of interests is regulated within the procedure stipulated by procedural law), a judge shall notify the Council of Judges of Ukraine of the same in writing not later than on the next business day upon the emergence of such conflict of interest (part ten of Article 133 of the Law of Ukraine “On the Judiciary and Status of Judges”).

According to Item 6 of part eight of Article 133 of the Law of Ukraine “On the Judiciary and Status of Judges”, the Council of Judges of Ukraine exercises control over the compliance with legislation on the managing the conflict of interests in the activity of the judges, the Chairperson or members of the High Qualifications Commission of Judges of Ukraine, Head of the State Judicial Administration of Ukraine or his/her deputies; adopt decisions on the managing an actual or potential conflict of interest in the activity of the above persons (if such a conflict cannot be managed in the manner prescribed by procedural law).

In the period from 2017 to 2021, disciplinary cases under Item 7 were not opened and, thus, no consideration on the merits took place.

Item 8 (*interference into the process of administering justice by other judges*)

According to part three of Article 6 of the Law of Ukraine “On the Judiciary and Status of Judges”, interference with the administration of justice, influence on a court or judges in any manner, contempt of court or judges, collection, storage, use and dissemination of information orally, in writing or otherwise in order to discredit court or influence the impartiality of the court, calls to non-enforcement of court decisions must be prohibited and entail liability as stipulated by the law.

The analyzed practice of the HCJ and its disciplinary bodies includes seven cases opened under Item 8.

In two cases, judicial actions were classified as interference into the process of administering justice by other judges, based on the outcome of adjudication, and two decisions to discipline three judges were made.

The following actions of judges were deemed as a disciplinary offence:

- unlawful influence on judicial impartiality and interference into the process of administering justice by a judge through inducement and pressure; and

- taking actions to influence the outcome of adjudication of a case.
- In cases where judicial actions were initially classified under Item 8, the DCs did not establish the grounds for disciplining judges in following cases:
 - lack of the evidence of the commission of a disciplinary offence; and
 - lack of the fact of the commission of a disciplinary offence.
- For actions classified under Item 8, the following sanctions were applied to judges:
 - censure – with a termination of the right to receive bonuses to judicial remuneration during three months – imposed on two judges; and
 - recommendation to dismiss a judge from judicial office – imposed on one judge.

Item 9 (*non-submission or untimely submission of a declaration of a person authorized to perform the functions of the state or local self-governance within the procedure stipulated by law in the field of preventing corruption*)

Judicial obligations outlined in part seven of Article 56 of the Law of Ukraine “On the Judiciary and Status of Judges” include the submission of a declaration of a person authorized to perform the functions of the state or local self-governance.

In the event the National Agency for Corruption Prevention establishes a failure of a judge to submit a declaration, it must notify the High Council of Justice of such circumstances in writing (part three of Article 51-2 of the Law of Ukraine “On the Corruption Prevention”).

Item 9 includes another element of a disciplinary offence of a judge, in particular: the untimely submission of a declaration of a person authorized to perform the functions of the state or local self-governance. Under such circumstances, the National Agency for Corruption Prevention also draws a protocol.

The analyzed practice of the HCJ and its disciplinary bodies includes four cases opened under Item 9.

Based on the outcomes of adjudication of two cases, the DCs adopted decisions to discipline judges, in both cases the disciplinary offence was:

- the untimely submission of a declaration of a person authorized to perform the functions of the state or local self-governance within the procedure stipulated by law in the field of preventing corruption.

Disciplinary offences were committed by judges as a result of negligence.

When adjudicating disciplinary cases, the DCs evaluated the presence (absence) of circumstances that might have influenced the timely submission of a declaration of a person authorized to perform the functions of the state or local self-governance by judges and measures taken by judges to submit a declaration in a timely manner.

Based on the outcomes of adjudication of one case where judicial actions were initially classified under Item 9, a decision was adopted to refrain from disciplining a judge due to the absence of the subjective aspect of the disciplinary offense element.

Item 10 (including in a declaration of a person authorized to perform the functions of the state or local self-governance knowingly inaccurate information or deliberate omission of information stipulated by law)

Article 46 of the Law of Ukraine “On the Corruption Prevention” determines information indicated in a declaration of a person authorized to perform the functions of the state or local self-governance.

Systemic analysis of legislation demonstrates that the HCJ can perform the complete and comprehensive revealing the fact of judicial action having signs of a disciplinary offence as stipulated by Item 10 of part one or Article 106 of the Law of Ukraine “On the Judiciary and Status of Judges”, in coordination with the National Agency for Corruption Prevention. The National Agency for Corruption Prevention determines whether false information or the omission of required information in the declaration of a person authorized to perform state or local self-governance functions occurs based on the results of the declaration’s verification process.

Disciplinary Chambers adopted one decision to discipline a judge under Item 10. The following was deemed as a disciplinary offence:

- a deliberate failure to indicate information as stipulated by law in a declaration of a person authorized to perform the functions of the state or local self-governance.

In this case, the DC formulated the opinion that “the law does not envisage legal consequences for the annulment of a decision by a body that was a basis for submission to the High Council of Justice, even after disciplinary proceedings have been initiated based on this submission. The verbal interpretation of the law is fully consistent with the legal principles governing disciplinary proceedings against judges. According to these principles, a complaint against a judge’s disciplinary offense serves only as the basis for initiating disciplinary proceedings against that judge (part one of Article 43 of the Law of Ukraine “On the High Council of Justice”).

Also, according to part one of Article 46 of the Law of Ukraine “On the High Council of Justice,” the issue of opening a disciplinary case or refraining from opening a disciplinary case is addressed by the Disciplinary Chamber based on the conclusion of a rapporteur and supporting materials.

Hence, the legal meaning of a submission to the High Council of Justice as a body responsible, in particular, for ensuring the operations of the judiciary based on the principles of responsibility, accountability to the public, forming honest and highly professional corps of judges, is limited by the moment when the member of a Disciplinary Chamber who conducted a check makes a conclusion based on the results of such check. Otherwise, the different approach would have made public functions of the High Council of Justice dependent on the position of an applicant.

Following the review of six cases, where judicial actions were initially classified under Item 10, the Disciplinary Chamber made the decision to refrain from disciplining six judges due to the absence of the subjective aspect of a disciplinary offense.

Item 11 (*using a status of a judge with the aim of illegitimate receipt of material benefits or other benefits by him/her or third persons if such offence does not contain the signs of a crime or criminal offence*)

A judge does not have a right to use his/her official position in personal interests or in the interests of other individuals and should not allow others to do so (Article 2 of the Code of Judicial Ethics).

For instance, the DC, having classified judicial actions as using a status of a judge with the aim of illegitimate receipt of material benefits or other benefits by him/her or third persons, established that a judge approached another judge regarding the consideration of a case involving her and her husband as defendants, tried to help this judge to find grounds to reject the claim, encouraged to postpone its adjudication thus delaying it. This indicates that the judge, obviously, was interested in the positive outcome and took actions to obtain this result. The judge's actions were classified under Items 3, 8 and 11.

Part four of Article 109 of the Law of Ukraine "On the Judiciary and Status of Judges" envisages that disciplinary sanctions determined by Items 1-3 of part one of this Article are not imposed in a case when a judge has committed offences determined, in particular, by Item 11 paragraph one of Article 106 of this Law.

A disciplinary sanction in a form a censure – with a termination of the right to receive bonuses to judicial remuneration during three months was imposed on the judge. The DC considered that the application of such disciplinary sanction is proportionate to the disciplinary offence committed by the judge taking into account the nature of committed offences, intent in the judge's actions and her personality, in particular positive characteristics, and lack of disciplinary sanctions.

However, imposing a sanction in the form of a censure on the judge appears disproportionate given that the DC determined "offenses that did not contribute to maintaining public trust in the court." Furthermore, the DC noted that "upon reviewing the facts and circumstances established during the disciplinary proceedings, a reasonable observer could conclude that the judges' actions, aimed at favorably resolving certain issues during case adjudication for themselves and/or third parties, undermined the authority of justice".

In cases where judicial actions were initially classified under Item 11, the DC did not establish the grounds for disciplining judges in the following instances:

- lack of the objective aspect of a disciplinary offence; and
- lack of the evidence of illegitimate receipt of material benefits or other benefits.

Item 12 (*judicial misconduct including making expenditures by the judge or members of his/her family in excess of incomes of the judge and his/her family; finding an incongruence of the level of life of a judge with declared income; failure to certify the legality of the source of the property*)

The disciplinary bodies of the HCJ should consider that when proving the elements of a disciplinary offense under Item 12 in judicial actions, they have the right to utilize information

and documents provided by authorized entities in the field of corruption prevention (such as orders, protocols, regulations, statements, etc.), as well as information obtained independently by the HCJ during disciplinary proceedings (including data from open sources). Along with this, a judge is required to provide comprehensive explanations and documents to the disciplinary bodies of the HCJ to refute any suspicion of misconduct. Failure to fulfill this obligation by the judge, or the provision of unjustified, inaccurate, or insufficient evidence of his/her own property integrity should be interpreted in the judge's dis favor.

The analyzed practice of disciplinary bodies includes two cases opened under Item 12.

The DCs did not adopt decisions to discipline judges.

The ways of committing a disciplinary offence under Item 12 by a judge may vary: non-fulfillment of duties stipulated by the law on corruption prevention and law on the judiciary, concealing assets, evasion of declaring assets, documenting personal ownership rights and assets in the name of other family members, violating the rules of making bank transactions, etc.

Item 13 *(failure to provide information or providing knowingly inaccurate information following a legitimate request of a member of the High Qualifications Commission of Judges of Ukraine and/or member of the High Council of Justice including failure to comply with deadline for providing information set forth by law)*

According to part three of Article 31 of the Law of Ukraine "On the High Council of Justice", an individual who received a request by the High Council of Justice, its body, member of the HCJ or disciplinary inspector of the HCJ, is obliged, within ten calendar days after its receipt, to provide relevant information and/or documents (copies thereof). In case of receipt of a request to provide information about a submission to grant a consent to detention, custody or arrest of a judge, the information and documents must be provided immediately, but no more that within three days after the receipt of the request.

During the consideration of a disciplinary case, disciplinary bodies are obliged to establish the circumstances that influenced the failure to fulfill / untimely fulfillment of a relevant duty by a judge.

At the same time, it should be taken into account that to classify judicial actions as a failure to provide information or providing knowingly inaccurate information following a legitimate request of a member of the HCJ/HQCJ, the form of guilt does not matter. From a subjective perspective, a disciplinary offence classified as providing knowingly inaccurate information following a legitimate request of a member of the HCJ/HQCJ can be committed only deliberately.

Item 14 *(failure to pass advanced training at the National School of Judges of Ukraine upon a referral made by a body which conducts disciplinary proceedings with regard to judges or failure to pass further qualifications evaluation to confirm the capability of a judge to administer justice in a relevant court or failure to confirm the capability of a judge to*

administer justice in a relevant court based on results of such qualifications evaluation)

During the consideration of a disciplinary case, disciplinary bodies may check the compliance of the National School of Judges of Ukraine with the requirements of law when conducting advanced training for judges, and of the HQCJ – when conducting the procedure of qualifications evaluation to confirm the capability of a judge to administer justice in a relevant court.

The form of judge's guilt does not impact the classification of actions.

Item 15 (*finding a judge guilty of committing a corruption offence or offence related to corruption in cases stipulated by law*)

When applying Item 15, the disciplinary bodies of the HCJ should take into account that double liability of a judge, in particular the application of administrative and disciplinary sanctions for the commission of one and the same action, is contingent upon the societal threat posed by such an offense. The fact that the court decision in the case of an administrative offense has entered into legal force is an important factor. At the same time, the form of judge's guilt or closure of a case on administrative offence by a court due to the expiration of the timeline for initiating administrative liability proceedings does not conclusively determine the imposition of a disciplinary sanction.

The entry of a court decision into legal force serves as grounds for initiating disciplinary proceedings against a judge. Subsequently, considering the autonomy of disciplinary proceedings, a disciplinary body evaluates the matter of disciplining the judge and determining an appropriate disciplinary sanction.

The analyzed practice of the HCJ and its disciplinary bodies includes 6 cases opened under Item 15.

The grounds for the initial classification of judges' actions under Item 15 were finding them guilty of the commission of corruption-related offences:

- two judges – of the violation of the requirements for financial control (Article 172-6 of the Code of Ukraine on Administrative Offences);
- two judges – of the violation of the requirements for preventing and resolving the conflict of interests (Article 172-7 of the Code of Ukraine on Administrative Offences);
- one judge – of the violation of limitations related to combining their official duties with other types of activities (Article 172-4 of the Code of Ukraine on Administrative Offences); and
- one judge – of the violation of the established by law limitations related to receiving gifts (Article 172-5 of the Code of Ukraine on Administrative Offences).

Based on the outcomes of the adjudication of cases, the DC adopted five decisions to discipline five judges (one decision was later changed by the HCJ, whereby finding the lack of the elements of a disciplinary offence under Item 15) and one decision to refrain from disciplining one judge.

According to part four of Article 109 of the Law of Ukraine “On the Judiciary and Status of Judges”, when a judge is disciplined under the grounds stipulated by Item 15, a disciplinary sanction in a form of a temporary (from one to six months) suspension from the administration of justice or a more severe sanction must be imposed on the judge.

Item 16 *(non-submission or untimely submission of a declaration of family ties by a judge within a procedure determined by this Law)*

As per Article 61 of the Law of Ukraine “On the Judiciary and Status of Judges”, a judge is obliged to submit a declaration of family ties in a form determined by the High Qualifications Commission of Judges of Ukraine by filling it out on the official website of the Commission annually by February 1. Therefore, failure to submit the required declaration by this date can be considered as a commencement of a disciplinary offense by a judge.

The basis for initiating disciplinary proceedings under Item 16 is a disciplinary complaint filed according to the requirements stipulated by Article 107 of the Law of Ukraine “On the Judiciary and Status of Judges” (the law does not provide for a special procedure for initiating disciplinary proceedings against a judge on these grounds). A systemic analysis of legislation shows that the HCJ can carry out the complete and comprehensive finding of the fact of judge’s actions having signs of a disciplinary offence as stipulated by Item 16 in cooperation with the HQCJ, in particular to receive information in order to find the relevant fact.

To classify judge’s actions under this Item, a fact of a failure to submit / untimely submission of a declaration of family ties by the judge must be established. The form of guilt does not affect the classification.

Based on the limited precedent of the HCJ in handling disciplinary cases under Item 16, all factors affecting the timely submission of a judge’s declaration of family ties were thoroughly considered, and this played a decisive role in determining whether disciplinary action against the judge was warranted. The disciplinary bodies of the HCJ must assess the reasons for the failure to submit a declaration of family ties by a judge in a timely manner. If such failure was due to technical issues with the HQCJ website, lack of internet access caused by power outages, or other objective and unavoidable circumstances, it may be considered a mitigating factor that exempts the judge from liability. On the other hand, a failure to submit a declaration of family ties by a judge, even after the deadline (after the unavoidable circumstances), demonstrates the judge’s failure to comply with his/her obligation stipulated by the Law of Ukraine “On the Judiciary and Status of Judges”.

Item 17 *(submission of knowingly inaccurate (including incomplete) data in a declaration of family ties)*

Part two of Article 61 of the Law of Ukraine “On the Judiciary and Status of Judges” outlines which information must be indicated in a declaration of family ties of a judge.

In case of getting information, which may indicate the unreliability (including incompleteness) of data submitted by a judge in a declaration of family ties, the High

Qualifications Commission of Judges of Ukraine has to verify the mentioned declaration (part five of Article 61 of the Law of Ukraine “On the Judiciary and Status of Judges”).

Following the outcome of consideration of a case where a judge was disciplined, a DC established that the judge did not include in his declaration of family ties information about his ex-wife’s sister who worked at a trial court (the same as the judge) and held positions in court staff.

To classify a judge’s actions under this Item, it’s crucial to consider cases where information about the judge’s family ties was inaccurately or incompletely submitted not because of the judge’s fault, but due to their relatives’ failure to provide the relevant information. The HCJ’s disciplinary bodies should take this factor into account when assessing the judge’s actions under Item 17. Liability arises when circumstances indicate that a judge could not have been unaware of this information yet neglected to fully or partially disclose it.

Item 18 (*non-submission or untimely submission of a declaration of judicial integrity within a procedure determined by this Law*)

According to Article 62 of the Law of Ukraine “On the Judiciary and Status of Judges”, a judge is obliged to submit a declaration of integrity in a form determined by the High Qualifications Commission of Judges of Ukraine by filling it out on the official website of the Commission annually by February 1. Therefore, failure to submit the required declaration by this date can be considered as a commencement of a disciplinary offense by a judge.

Establishing the presence or lack of circumstances that influenced the timeliness of submission of a declaration of integrity by a judge is essential in addressing the issue of disciplining the judge on the abovementioned grounds. If this was due to technical issues with the HQCJ website, lack of internet access caused by power outages, or other objective and unavoidable circumstances, it may be considered a mitigating factor that exempts the judge from liability. At the same time, a failure to submit a declaration of integrity by a judge, even after the deadline (after the unavoidable circumstances), demonstrates the judge’s failure to comply with his/her obligation stipulated by the Law. Disciplinary bodies must establish whether the judge has taken all measures to submit the declaration in a timely manner.

Item 19 (*submission of knowingly inaccurate (including incomplete) statements in a declaration of judicial integrity*)

According to part two of Article 62 of the Law of Ukraine “On the Judiciary and Status of Judges”, the declaration of judicial integrity comprises a list of statements the truthfulness of which a judge must declare by confirming or not confirming them. The list of such statements is outlined in part three of Article 62 of this Law.

In cases, based on the outcomes of consideration of which it was decided to discipline judges, the following instances were deemed as a disciplinary offence:

- in Item 17 of the declaration of judicial integrity for 2015 a judge indicated a knowingly false statement according to which he did not adopt, either as a single

judge or as a member of a panel of judges, decisions provided for by Article 3 of the Law of Ukraine “On the Restoration of Trust in the Judiciary in Ukraine”;

- when filling in and submitting declarations of judicial integrity for 2016 and 2017, a judge, realizing that he has committed an action that could result in administrative liability, did not indicate this fact by confirming Item 22 of Section II of the relevant declarations.

In cases where a judge’s actions were initially classified under Item 19, the DC did not establish the grounds for disciplining the judge in the following instances:

- the lack of the fact of a disciplinary offence; and
- the lack of intent in judges’ actions when indicating inaccurate (incomplete) statements in a declaration of judicial integrity.

For the commission of a disciplinary offence as stipulated by Item 19, a disciplinary sanction in a form of an admonishment cannot be imposed on a judge (part three of Article 109 of the Law of Ukraine “On the Judiciary and Status of Judges”).

Based on the results of analysis of cases where judges’ actions were classified under Item 19, it was established that the DCs imposed the following disciplinary sanctions on judges:

- reprimand – with termination of the right to receive bonuses to judicial remuneration during one month (on one judge); and
- admonishment (on one judge).

Final remarks

During the review, it was established that the practice of the HCJ and its disciplinary bodies is mostly uniform. At the same time, the bodies conducting disciplinary proceedings should focus on the following:

1. when opening disciplinary cases, it is necessary to clearly indicate the circumstances giving grounds to initially classify a judge's actions under the relevant provision of part one of Article 106 of the Law of Ukraine "On the Judiciary and Status of Judges";
2. when determining classification (initial classification), priority should be given to applying the specific provision outlined in part one of Article 106 of the Law of Ukraine "On the Judiciary and Status of Judges," as it precisely defines the elements of a disciplinary offense. However, classification (initial classification) should avoid relying on the broader aspect of the offense that encompasses the elements outlined by the special provision;
3. when determining the presence of guilt in judge's actions as an element of a disciplinary offense, it's crucial to consider that guilt is a fundamental component of the offense. In cases where the form of guilt and/or the resulting negative consequences are explicitly defined by legal provisions, a disciplinary body should establish and delineate them in its decision. Assessing the form and degree of a judge's guilt is a pivotal step in classifying their actions, which directly influences the content of the disciplinary body's decision—both in terms of disciplining or refraining from disciplining a judge and in terms of selecting the appropriate disciplinary sanction;
4. when choosing the type of a disciplinary sanction, the DCs should clearly indicate the established mitigating and/or aggravating factors. At the same time, it should be taken into account that currently a disciplinary body is limited by the provisions of parts three and four of Article 109 of the Law of Ukraine "On the Judiciary and Status of Judges" related to choosing the type of a disciplinary sanction. However, the DCs' practice includes the instances of deviating from the mentioned legal provision. In justifying their decision to refrain from applying the types of disciplinary sanctions prescribed by law for the committed offense, the DCs referred the potential significant challenges in their practical implementation. They also noted the absence of grounds for imposing a more severe sanction, which, given the circumstances, could not be deemed as applied with a legitimate purpose and proportionality;
5. it is necessary to avoid value judgements that are not determined by the elements of the relevant disciplinary offence, since this does not facilitate the uniformity of disciplinary practice and distorts the options of possible classification of judges' actions stipulated by law;
6. dual classification of the same action by a judge should be avoided unless clear justifications for it exist. Substantial violations of procedural law during the

- administration of justice, which prevent participants' ability to exercise their procedural rights and fulfill their procedural duties (Subitem "a"), generally do not require additional classification under Item 4, even if they lead to negative consequences;
7. during the consideration of the issues related to the presence of the grounds for disciplining a judge under Subitem "a", it is necessary to take into account, in particular, that Item 4 is the broadest in terms of its content related to the actions that may be classified as a violation of the right to a trial, therefore, in the relevant instances it is advisable to apply Subitem "a". Besides, Subitems "b", "r", and "r" provide for the judicial liability for actions that impede the exercise of the rights of litigants, in particular: violation of the principles of publicity and openness of a trial, violation of the principles of equality of all litigants before law and court, adversarial procedures between parties and freedom in providing court with their evidence and in proving their strength to the court, and failure to ensure a right to protection for a defendant;
 8. when classifying a judges' actions under Subitem "b", it should be taken into account that within disciplinary proceedings it is unacceptable to assess a court decision rather than judge's actions during its adoption, or re-evaluate evidence, facts and evaluate the correctness and legality of the motives of the court during the adoption of a court decision;
 9. when classifying a judge's actions under Subitem "b", the content of the principles of publicity and openness of a trial stipulated by current procedural legislation should be taken into account, and actions provided for by this element of a disciplinary offence should be clearly delineated from other substantial violations of the norms of procedural law during the administration of justice;
 10. during the relevant disciplinary proceedings the abovementioned recommendations, in particular those related to Subitem "b", should be applied unless there are changes in legislation on disciplinary liability of judges providing that Subitem "r" is excluded from the grounds for disciplinary liability and the formulation of the elements of the offence stipulated by Subitem "r" is improved.
 11. during the classification of a judge's actions under Subitem "r", the content of the defendant's right to defense stipulated by procedural law, relevant case law of the European Court of Human Rights, the presence or lack of negative procedural consequences for the defendant resulting from the judge's actions should be taken into account. The form of the judge's guilt does not determine the classification of actions; rather, it is the establishment of the fact that is crucial;
 12. when addressing the issue of disciplining judges based on the grounds stipulated by Subitem "d", a disciplinary body is tasked with thoroughly assessing a judge's adherence to legal requirements for ensuring impartial case adjudication, as well as adherence to the established legal procedure for handling recusal (self-recusal). A judge's action in this context can be either deliberate or a result of negligence. Decisions that articulate clear and sustainable positions of the HCJ

and its disciplinary bodies under Subitem “д” lay a fundamental basis that should be consistently applied in classifying a judge’s actions under these grounds for disciplinary liability. Adopting the practice of referencing the consistent legal positions of a disciplinary body can positively influence overall disciplinary practices;

13. Criteria for assessing a judge’s compliance with procedural timelines for considering and rendering a court decision, within the context of the grounds for disciplinary liability outlined in Item 2, should be evaluated comprehensively, thoroughly analyzing the following factors: the content of a judge’s actions or inaction in terms of his/her official duties; provisions of current legislation governing procedural timelines and any changes to these timelines due to special or emergency circumstances in the state; case law of the European Court of Human Rights interpreting reasonable timelines for court proceedings; statistics regarding the number of cases adjudicated by a judge during the period analyzed by the HCJ and its disciplinary bodies, compared to the average number of cases adjudicated by judges of a relevant court/region for the same period, and officially approved by the highest bodies of judicial self-government standards of judicial caseload; objective circumstances of the operations of the judicial system during the analyzed period, in particular, quarantine limitations, limitations related to the legal regime of martial law, active combat actions in certain territories, etc.;
14. when classifying a judge’s actions under Item 3, a disciplinary body should be guided by both judicial duties stipulated by current legislation and the content of the Code of Judicial Ethics, and generally recognized international legal standards of judicial ethics. A disciplinary body should establish the following combination of circumstances: determine which standard of judicial ethics the judge’s action contradicts; assess whether specific norms of current legislation were violated alongside the standard of professional ethics; identify the negative consequences, particularly in terms of social impact, resulting from the judge’s actions; evaluate the form and degree of the judge’s guilt; and consider whether there were any aggravating or mitigating factors that could influence the type of disciplinary sanction imposed.;
15. a judge’s actions should be classified under Item 4, related to the intentional or caused by gross negligence violation of human rights and fundamental freedoms or other gross violation of the law which caused essential negative consequences, by the judge who participated in passing the court decision, if judge’s actions led to negative consequences which narrow, limit or violate a specific subjective right or rights of an individual provided for by the Constitution of Ukraine, current legislation or ensuing from the content of the Convention for the Protection of Human Rights and Fundamental Freedoms (with protocols). The violation of procedural norms by a judge is primarily encompassed by other elements of disciplinary offences, as stipulated by Article 106 of the Law of Ukraine “On the Judiciary and Status of Judges” and may be encompassed by Item 4 when there are the abovementioned

- negative consequences for an individual that are in a relationship of cause and effect with the judge's actions;
16. to classify a judge's actions under Item 5 it is necessary to establish the combination of the following circumstances: the fact of disclosure of a secret protected by law; a secret protected by law has become known to third parties as a result of judge's actions; information was not disclosed in another way previously;
 17. to classify a judge's actions under Item 6 it is necessary to establish the following: the occurrence of interference with the judge's actions concerning the administration of justice; the date on which the judge became aware of this interference; and whether the judge failed to notify the High Council of Justice and Prosecutor General of the interference, or if such notification was untimely;
 18. to classify a judge's actions under Item 7 it is necessary to establish the following: the fact of an actual or potential conflict of interests that is not subject to the regulation within the procedure established by procedural law; fact of a failure to notify / untimely notification of the Council of Judges of Ukraine of an actual / potential conflict of interests. The form of the judge's guilt according to the construction of the legal norm does not influence the classification of actions. However, during the consideration of a disciplinary case, disciplinary bodies must establish the circumstances that caused a failure to fulfill / untimely fulfillment of the relevant duty;
 19. to classify a judge's actions under Item 8 it is necessary to establish the fact of judge's interference into the process of administering justice by other judges (judge), which involves, in particular, providing directions related to the content of a court decision, and other forms of unlawful influence on the official duties of judges;
 20. to classify a judge's actions under Item 9 it is necessary to establish the fact of the non-submission or untimely submission of a declaration of a person authorized to perform the functions of the state or local self-governance. All circumstances that influenced the timeliness of the submission of a declaration of a person authorized to perform the functions of the state or local self-governance by a judge are subject to evaluation;
 21. to classify a judge's actions under Item 10 it is necessary to establish the fact of mentioning in a declaration of a person authorized to perform the functions of the state or local self-governance knowingly inaccurate information or deliberate omission of information stipulated by law. Since the terms "knowingly" and "deliberate" in the disposition of this norm of the law describe a subjective aspect of a disciplinary offence, the disciplinary bodies when adjudicating a disciplinary case should provide sufficient justification of the form of the judge's guilt; disciplinary liability of a judge under Item 10 arises only when there is an intent;
 22. to classify a judge's actions under Item 11 it is necessary to establish the combination of the following circumstances: the fact of using a status of a judge with the aim of illegitimate receipt of material benefits or other benefits by him/her or third parties;

- judge's offence does not contain the signs of a crime or criminal offence. According to the subjective aspect, this disciplinary offence is committed only deliberately;
23. to classify a judge's actions under Item 12 it is necessary to establish the fact of judicial misconduct, in particular: making expenditures by the judge or members of his/her family in excess of incomes of the judge and his/her family; finding an incongruence of the level of life of a judge with declared income; failure to certify the legality of the source of the property. A disciplinary body uses information obtained from special authorized entities in the field of corruption prevention;
 24. to classify a judge's actions under Item 13 it is necessary to establish the following: the fact of obtaining by a judge of a legitimate request of a member of the HCJ / HQCJ; the fact of a failure to provide information or providing knowingly inaccurate information following such a request, including a failure to comply with deadline for providing information set forth by law;
 25. to classify a judge's actions under Item 14 it is necessary to establish the presence of one of the facts: failure to pass advanced training at the National School of Judges of Ukraine upon a referral made by a Disciplinary Chamber of the HCJ; failure to pass further qualifications evaluation to confirm the capability of a judge to administer justice in a relevant court; failure to confirm the capability of a judge to administer justice in a relevant court based on results of such qualifications evaluation;
 26. to classify a judge's actions under Item 15 it is necessary to primarily establish the fact of the entry into force of a court decision finding a judge guilty of committing a corruption or corruption-related offence. The presence of the grounds for disciplining a judge is established by a disciplinary body taking into account the circumstances that should be considered when addressing the issue of disciplinary liability of a judge;
 27. to classify a judge's actions under Item 16 it is necessary to consider all circumstances influencing the timeliness and possibility of submitting a declaration of family ties by a judge, which will be decisive in addressing the issue of disciplining a judge;
 28. to classify a judge's actions under Item 17 it is necessary to establish the fact of submitting by a judge of knowingly inaccurate / incomplete information in a declaration of family ties. Since the lawmaker used the term "knowingly" in this legal provision, a disciplinary body must establish that a judge acted deliberately when submitting this information;
 29. to classify a judge's actions under Item 18 it is necessary to establish the fact of non-submission / untimely submission of a declaration of judicial integrity by a judge; the form of guilt does not influence the classification (a disciplinary offence can be committed both deliberately and as a result of negligence). When adjudicating a disciplinary case, disciplinary bodies must evaluate all circumstances influencing the timeliness of the submission of a declaration of judicial integrity;
 30. to classify a judge's actions under Item 19 it is necessary to establish the fact of submission of knowingly inaccurate (including incomplete) statements in

a declaration of judicial integrity. Disciplinary liability of a judge under Item 19 arises only when there is intent. The presence of intent can be demonstrated by circumstances showing that the judge was aware of certain facts the statements about which he/she should have declared.

Annotated review: Generalized Practice of Adjudicating Disciplinary Cases Against Judges by the High Council of Justice and Its Disciplinary Bodies (based on case files for 2017-2021) / Compiled by the Secretariat of the High Council of Justice / Kyiv, 2024 – 32 p.



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