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დამოუკიდებელი  
და გამჭვირვალე  
მართლმსაჯულებისთვის  
Coalition for  
an Independent and  
Transparent Judiciary

## The recent precedents set by the latest decisions of the Disciplinary Collegium and Chamber pose danger to judicial independence

The Coalition for an Independent and Transparent Judiciary responds to the May and July 2016 decisions of the Disciplinary Collegium and Disciplinary Chamber in the case of Judge Giorgi Sulakadze. The Coalition attempted to obtain additional information regarding this disciplinary case, and among others, reviewed and studied the [decisions](#) published on the web page of the Collegium. Based on this research, the Coalition considers the precedent set by these decisions as containing danger to judicial

independence.

The judge was disciplined for inadequately fulfilling his responsibilities, based on his interpretation of a legal norm. The substantiation for the decisions of the Collegium and the Chamber are based solely on the fact that, in the opinion of the Collegium and the Chamber, the judge interpreted the imperative norm of the law incorrectly. The decision does not point to any other circumstance that would prove that in interpreting the norm the judge was acting in bad faith or had other undue interest, was not impartial, or that his action caused undue damages to a party, etc. In this circumstance, considering interpretation of a norm as a disciplinary violation contradicts the law and the earlier practice established by the Disciplinary Collegium [1].

We would like to draw attention to the threats posed by such usage of judicial disciplinary mechanisms:

- Only a Court may exercise justice. Only an upper instance court may reverse the decision and interpretation of a norm by the lower instance court, and may change the decision made by a lower court. **This is the main guarantee for protecting the independence of judges and the judicial system in general.** Violation of this principle and any indication of the decision that should have been made by a judge, especially when done through disciplinary proceedings, is a threat to judicial independence.

- **Grave violation of law** as a ground for disciplinary liability was abolished in March 2012. Before that date, the legislation defined 'grave violation of law' in the following way: "violation of the Constitution of Georgia, International Treaties and Agreements signed by Georgia, and **imperative requirements set in the legislation of Georgia** that have caused (or can cause) significant damage to legitimate rights or public interests of a party to the process or any third party". Back in 2006, the Venice Commission found this provision problematic.[2] The disciplinary case described above revives the norm that was abolished. Although the Disciplinary Collegium used a different ground (inadequate fulfillment of obligations), it has essentially interpreted a judge's action as the violation of imperative requirements set

in the law and started proceedings against him.

- The current law says that “a legal error which is based on the internal conviction of a judge, is not a disciplinary violation and a judge should not be made liable for it”. Correspondingly, according to the current legislation, an interpretation of a law, including interpretation of imperative legal norms, does not represent a disciplinary violation and cannot become a basis for disciplinary liability. Neither the Disciplinary Collegium nor the Disciplinary Chamber have discussed and provided reasoning for why these circumstances have not precluded disciplinary liability of this particular judge.

For several years, the Coalition for an Independent and Transparent Judiciary has been calling for reform of the current system of judicial disciplinary liability. The existing legislation does not meet the standard of foreseeability. Judges do not know which actions can be regarded as violations that can trigger a liability. The disciplinary proceedings are not transparent enough. This negatively affects judicial independence and makes judges defenseless vis-à-vis the High Council of Justice.

We are urging the Committee working on the court system reform strategy, and the future Parliament, to urgently develop a judicial disciplinary liability system that will conform to international standards. The reform should aim to create a transparent, just and effective judicial liability system that will be balanced and will not be used for influencing judges.

*Disclaimer: Association of Law Firms of Georgia as a membership-based union of lawyers and law firms will develop a position on this issue after discussing the Decision by Disciplinary Collegium and prior to these discussions is not joining this Statement.*

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[1] Disciplinary Collegium of the Common Courts of Georgia decision on the case #1/04-12, April 12, 2013; Disciplinary Collegium of the Common Courts of Georgia decision on the case #1-01/11, August 2, 2012. The decisions are available on the

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web page of the Collegium (in Georgian).

[2] Venice Commission Opinion No. 408/2006, CDL-AD (2007) 009, paras. 12-22