

LAW No 96/2016 ON THE STATUS OF JUDGES AND PROSECUTORS IN THE REPUBLIC OF ALBANIA

PART V DISCIPLINARY, CRIMINAL AND CIVIL LIABILITY CHAPTER I GENERAL PROVISIONS

Article 100 Principles of Disciplinary Proceedings

1. In exercising functions under this Part, the High Justice Inspector and the Councils must have regard to and aim at the appropriate balanced application of the following principles:

- a) The principle of a fair trial, including taking a decision within reasonable time;
- b) The principle of legality, both in the sense that the competent authority has the obligation to investigate where there are sufficient grounds to believe that a disciplinary misconduct has occurred, and in terms of the principle of “no punishment without law”;
- c) The principle of accusation in the sense that any state institution or any official must act ex officio and lodge a complaint if there is sufficient evidence to believe that a disciplinary misconduct has occurred;
- ç) The principle of equality before the law;
- d) The presumption of innocence;
- dh) The principle of doubt in favour of the magistrate subject to disciplinary proceedings;
- e) The principle of proportionality;
- ë) The principle of independence and impartiality of disciplinary authorities and of respect for the independence of magistrates;
- f) The principle of open justice;
- g) The principle of confidentiality and the right to privacy and protection of personal data.

2. In balancing the principle of open justice, the principle of confidentiality, the right to privacy, and protection of personal data, the High Justice Inspector and the Councils must have regard, in particular, to:

- a) The fact of guaranteeing that the integrity and reputation of magistrates is protected against unfounded allegations;
- b) The importance of informing the public on proven allegations in respect of the administration of justice.

Article 101

Disciplinary Misconducts and Performance Issue (Amended by Decision no. 34/2017 of the CC and Law no. 48/2019 Article 16)

- 1. A magistrate commits a disciplinary misconduct, intentionally or due to negligence when, he/she:
 - a) commits actions or omissions which constitute a failure to fulfil the duty, behaves unprofessionally or unethically during or outside of the exercise of the function, which discredit the position and the figure of the magistrate or damage the public trust in the judicial or prosecution system;

- b) while exercising the function disregards the law or facts manifestly caused intentionally or due to serious negligence or is blatantly professionally incompetent.
- 2. When determining if the action, omission or behaviour of the magistrate shall be considered as disciplinary misconduct or is only related with the professional activity, the following shall be taken into consideration:
 - a) the degree of negligence;
 - b) the frequency of the act or omission or behaviour;
 - c) the experience and position of the magistrate in the system;
 - ç) the damage or the possibility of causing damage or the degree of the consequences or damage that have come or may come from the action or omission; as well as
 - d) any situation which is beyond the magistrate's control and which may be related with the non-functioning of the judicial or prosecutorial system.

Article 102

Disciplinary Misconducts in Connection with the Exercise of the Function

1. **Disciplinary misconducts during the exercise of the function are, in particular, but not limited to the acts, omissions or behaviours of the magistrate, as follows:**
 - ç) unjustified or repetitive non- fulfilment of the investigative or judicial functions;
 - d) repeated delays or delays which cause serious consequences or unjustified procrastinations of the actions and/or procedural acts;
 - dh) the action, omission or behaviour of the magistrate, which create unfair benefits or damages to the parties of a trial or investigation procedure, in violation of the law;
 - e) Engagement of other persons in performing the duties assigned by law to the magistrate or delegation of the duties or activities related to the exercise of the function of the magistrate;
 - ë) Repeated and unjustified delay of the start of the hearing or procrastination of the investigations.
2. **Subject to provisions of letter “b”, paragraph 1 of Article 101 of this Law, the disciplinary misconducts during the exercise of function as a magistrate are, in particular, but not limited to the action, omission or behaviour of the magistrate, as follows:**
 - a) serious or repeated disregard of material and procedural legislation or erroneous implementation of the material and procedural legislation, when established by a higher court;**
 - b) apparent, distorted presentation of facts and circumstances in the issued acts;
 - c) issuance of unreasoned acts or acts containing in the reasoning only conclusions on the applicable law without presenting the circumstances of the fact, in all those cases where the law requires the issuance of the act in the reasoned form.

- ç) Issuance of acts whereby the descriptive and reasoning part provides circumstances that are openly contrary to the ordering part of the act or have no connection to it;
- d) taking deliberately unreasoned decisions, as a result of a personal interest or malice. dh) Repeated or serious infringement of the rules of solemnity and rules of conduct in relations with the parties, other subjects involved in the process, as well as with the chairperson, other magistrates and court administration staff.

CHAPTER II

INVESTIGATION PROCEEDINGS

Article 117

Statute of limitation

1. **The statute of limitation for disciplinary misconducts is five years. If a complaint, under Article 119 of this Law, is submitted 5 years after the time when the alleged misconduct has occurred, the High Justice Inspector shall not verify the complaint due to the statute of limitation.** If the High Justice Inspector receives information under Article 124 of this Law, 5 years after the time when the alleged misconduct has occurred, he or she shall not start investigations, due to the statute of limitation.
2. The limitation period shall start at the time the alleged misconduct has occurred.
3. The limitation period is extended up to one year, if the magistrate commits another misconduct of the same nature within the limitation period.
4. Notwithstanding provisions of paragraph 1 and 3 of this Article, the statute of limitation for disciplinary misconducts, which simultaneously constitute criminal offences, shall be calculated according to the provisions of the Criminal Code, provided that the statute of limitation in that Code is longer than 5 years.

LAW No 96/2016 ON THE STATUS OF JUDGES AND PROSECUTORS IN THE REPUBLIC OF ALBANIA

Article 101/1, “b”, is anticipated “while exercising the function disregards the law or facts manifestly caused intentionally or due to serious negligence or is blatantly professionally incompetent.

Article 102/2, is anticipated. Subject to provisions of letter “b”, paragraph 1 of Article 101 of this Law, the disciplinary misconducts during the exercise of function as a magistrate are, in particular, but not limited to the action, omission or behaviour of the magistrate, as follows:

a) serious or repeated disregard of material and procedural legislation or erroneous implementation of the material and procedural legislation, when established by a higher court;

b) apparent, distorted presentation of facts and circumstances in the issued acts;

c) issuance of unreasoned acts or acts containing in the reasoning only conclusions on the applicable law without presenting the circumstances of the fact, in all those cases where the law requires the issuance of the act in the reasoned form.

ç) Issuance of acts whereby the descriptive and reasoning part provides circumstances that are openly contrary to the ordering part of the act or have no connection to it;

d) taking deliberately unreasoned decisions, as a result of a personal interest or malice. dh) Repeated or serious infringement of the rules of solemnity and rules of conduct in relations with the parties, other subjects involved in the process, as well as with the chairperson, other magistrates and court administration staff.

Questions:

English.

1. In your countries do you have a concrete example of how it works a disciplinary process when is related with **disregard of material and procedural legislation by the judges during the exercise their function (adopted their decision) would you open a disciplinary process without waiting for a decision by Appeal Court or High/Cassation Court?**

French

1. **Dans vos pays, avez-vous un exemple concret de la façon dont fonctionne une procédure disciplinaire lorsqu'elle est liée au non-respect de la législation matérielle et procédurale par les juges pendant l'exercice de leur fonction (a adopté leur décision) ouvririez-vous une procédure disciplinaire sans attendre une décision de Cour d'Appel ou de Haute Cour de Cassation ?**

English.

2. In your legislation, the infringement of the material and procedural law by the judges during the exercise of their function, which constitutes a disciplinary violation, can be established mainly by the inspectorate or must be established first by the court of appeal or the Supreme Court?

French

2. **Dans votre législation, l'infraction grave au droit matériel et procédural, qui constitue une violation disciplinaire, peut être constatée principalement par l'inspection ou doit être constatée en premier lieu par une cour d'appel ou par la Court Suprême ?**

English

3. The principle of independence and impartiality in the framework of a due process of law makes the judge and prosecutor inviolable in terms of discipline for the decisions they make?

French

3. **Le principe d'indépendance et d'impartialité dans le cadre d'une procédure régulière rend le juge et le procureur inviolables en termes de discipline pour les décisions qu'ils prennent ?**