

EUROPEAN HUMAN RIGHTS ADVOCACY CENTRE

**EHRAC****BULLETIN**

In partnership with

Memorial Human Rights Centre (MHRC) and Georgian Young Lawyers' Association (GYLA)



## The Dismissal of Judges in Georgia – the case of Judge Mariamidze

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Recently, the Georgian state authorities have been exerting increasing pressure upon judicial power, and representatives of the executive and legislative bodies have been intervening more and more in judicial activity; influencing the outcomes of cases and the execution of justice. There have also been instances of the unlawful removal of judges, and disciplinary proceedings initiated against judges being examined by bodies which are not fully independent of the state. Consequently, there are many violations of domestic law in the course of such disciplinary cases. A striking example is the case of Judge Mariamidze. Lawyers at the NGO, Article 42 of the Constitution, Lia Mukhashavria, Manana Kobakhidze, Ketevan Mekhuzla and Vanda Jijelava represented Judge Mariamidze before the domestic courts, and have now prepared an application to the European Court of Human Rights. Following the decision of the Disciplinary Collegium of the Disciplinary Council for the Common Courts' Judges of Georgia, delivered on 27 January 2005, Judge Mariamidze was dismissed from his position as a judge. The decision was unlawful as there were no legal grounds for the initiation of disciplinary proceedings against him. Judge Mariamidze appealed against the decision to the Disciplinary Council for the Common Courts' Judges of Georgia (the Disciplinary Council). However, the Disciplinary Council did not allow the complaint. Judge Mariamidze

then appealed to the Supreme Court of Georgia. The Disciplinary Council, and subsequently the Disciplinary Collegium of the Supreme Court refused the applications which Judge Mariamidze had filed, to allow him, amongst other things, to interrogate witnesses and examine the evidence. Pursuant to the Law on "The Disciplinary Responsibility and Disciplinary Litigation for the Common Courts' Judges of Georgia" the decision of the Disciplinary Council could only be appealed by way of a cassation appeal to the Disciplinary Collegium of the Supreme Court of Georgia. Therefore, the only authorised body, the Supreme Court of Georgia, could only examine the case on procedural issues and could not deliver a new decision. This law deprived Judge Mariamidze of his right to have his case heard before the court in line with the principles of justice and restricted his right to a fair trial as required by the European Convention. Appealing before the Supreme Court of Georgia for a reversal of the decision of the Disciplinary Council was not an effective measure for legal protection. A constitutional complaint was submitted to the Constitutional Court of Georgia, seeking the law on "the Disciplinary Responsibility and Disciplinary Litigation for the Common Courts' Judges of Georgia" to be found unconstitutional. The initiation of constitutional cases by Judge Mariamidze led to the enactment of a new law, according to which the Georgian parliament made the following amendments to the Georgian law on "The Disciplinary Responsibility and Disciplinary Litigation for the Common Courts' Judges of Georgia":

*The Disciplinary Council for the Common Courts' Judges and The Disciplinary Collegium of the Supreme Court of Georgia were abolished, and a new Disciplinary Chamber of the Supreme Court was created. This is to allow the examination of judges' disciplinary cases not by way of cessation, but by considering the factual circumstances relating to the legal grounds of each case. The Disciplinary Chamber has the right to take a final decision on each disciplinary case. Judicial amendments entered into force on March 15<sup>th</sup>, 2006.*

In the case of Judge Mariamidze the Court pronounced its final judgment on 26 December 2005 and notwithstanding the recent amendments to the

disciplinary law, Judge Mariamidze was unable to obtain redress in respect of his infringed rights before the national courts.

An application for submission to the European Court of Human Rights is now being prepared. The application is grounded on alleged violations of Articles 6, 13, and 14 of the European Convention. It will be argued that Judge Mariamidze has been the victim of a clear breach of Articles 6 and 13 as he was denied a fair trial and effective domestic remedies to have his rights redressed.

These restrictions of the Judge's rights occurred, on the one hand, because of the unlawful actions of the members of the Disciplinary Council and the Supreme Court of Georgia and, on the other hand, because of the application of the law on "the Disciplinary Responsibility and Disciplinary Litigation for the Common Courts' Judges of Georgia".

The structure and decision-making processes of the relevant disciplinary bodies (the Disciplinary Collegium, the Disciplinary Council and the Disciplinary Collegium of the Supreme Court) are not, we suggest, in compliance with international standards. As a result, the European Court is the only relevant and effective remedy for someone in his position.

