

Certain Questions of the Judicial Liability in a Legal Historian Perspective

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The study focuses on the analysis of the judicial liability in the perspective of legal history from 1936 to 1954 in Hungary. During the indicated time period the disciplinary liability of the judges was regulated by the Act III of 1936. The forthcoming regulation reflecting the zeitgeist was Act XXII of 1948 introducing changes to liability of the judges. Subsequently the framework of the disciplinary proceedings was laid down by Act II of 1954 and the detailed rules was declared by the Council of Ministers of the Hungarian People's Republic decree 1.051/1954 (VI. 30.). Act III of 1936 and Act II of 1954 are the results of two political eras which are significantly different in content, and this study focuses on these differences.

Keywords: *judicial profession, liability of the judges, disciplinary liability of the judges, relocation of the judges*

The Judicial Liability observed in a historical approach means a special responsibility that can be interpreted in two dimensions. On the hand, the definition includes the liability of the employee status consisting of unique aspects that are beyond the official work since it involves expectations regarding the private life activities of the judges. On the other hand, it also incorporates a constitutional liability.¹ Within the framework of the rule of law, all these aspects are restricted by the inviolability of the judicial independence. It is worth approaching the question of the judicial independence from two perspective. One is the organizational independence of the courts and the other one is the “individual independence” of the judges.²

1 HANDÓ Tünde: A bírói felelősség és függetlenség. In: Majtényi László – Szabó Máté Dániel (ed.): *Mi fenyegeti a Köztársaságot?* Eötvös Károly Intézet, Budapest, 2009, (140.), and on the constitutional framework for the judiciary, see: Arató, Balázs: A tisztességes eljáráshoz fűződő jog, különös tekintettel a tisztességes igazságügyi szakértői eljárásra; in: Tóth J. Zoltán (ed.): *Az Abtv. 27. §-a szerinti alkotmányjogi panasz. Tanulmányok a „valódi” alkotmányjogi panasz alkotmánybírói gyakorlatáról*; Budapest, KRE-ÁJK; Patrocinium; 2023; p. 216.; pp. 9-30.

2 CSERVÁK Csaba: *A bírói függetlenség, különös tekintettel az Emberi Jogok Európai Bíróságának gyakorlatára és a testületi szervekre*. Manuscript, 2023.

The study focuses on the analysis of the judicial liability in the perspective of legal history from 1936 to 1954. During the indicated time period the disciplinary liability of the judges³ was regulated by the Act III of 1936. The forthcoming regulation reflecting the zeitgeist entered into force on 23rd of March in 1948. Namely it was the Act XXII of 1948 introducing changes to liability of the judges. Subsequently the framework of the disciplinary proceedings was laid down by Act II of 1954 and the detailed rules were declared by Council of Ministers of the Hungarian People's Republic decree 1.051/1954 (VI. 30.).

Disciplinary proceedings based on Act III of 1936

According to section 5 of the Act disciplinary offence is committed by:

“1. violating the performance of official duty by serious misconduct or wilful misconduct;

2. wilfully or negligently violating the authority of position (employment) by his lifestyle or behaviour.”

Act VIII of 1871 had priorly regulated the institution of misconduct in office since at that time there was no Criminal Code in force. Act III of 1936 did not include the misconduct in office since in the meantime Csemegei Code entered into force setting out the detailed rules of the criminal liability.⁴ The Act determined the following disciplinary sanctions: reprimand, financial penalties, loss of office.⁵ Furthermore, the relocation of the judges was possible too as a side consequence to serve the public interest. So if “the function of a person on duty at their current seat or current employment, and the court or authority where functioned so far cannot be aligned with the interest of the jurisdiction within the framework of the disciplinary liability – the Disciplinary Court, beside inflicting reprimand or financial penalties as disciplinary sanction or without finding disciplinary mis-

3 This study does not observe the liability of the arbiters. On the topic of arbitration see in detail: Boóc Ádám: Az arbiter fogalma a római jogban. *Magyar Jog*, 2020/4., (221-226.) On the topic of regulations on arbitrators in force see: Boóc Ádám: Észrevételek a választottbíró felelősségéhez. *Magyar Jog*, 2020/9., (535-543.); Boóc Ádám: Észrevételek a kereskedelmi választottbírói ítéletek érvénytelenítéséről a közrendbe ütközés okán a magyar jogban. *Jogtudományi Közlöny*, 2020/4., (167-173.); Boóc Ádám: Elméleti észrevételek a nemzetközi kereskedelmi választottbírói ítéletek érvénytelenítése vonatkozásában. *Jogtudományi Közlöny*, 2019/9., (367-372.).

4 BÓDINÉ BELIZNAI Kinga: A bírák és a bírósági tisztviselők felelősségének szabályozása (1936). *Küriai Döntések Bírósági Határozatok*, 2022/ 2. (305.).

5 Section 6 of Act III of 1936.

conduct, is entitled to relocate them by court decision [...] to another seat, court or authority.”⁶

Act III of 1936 declared the forensic audit to be mandatory during the disciplinary proceedings.⁷ According to the legal justification of the Act, the purpose of the forensic audit was revealing the factual situations of the disciplinary misconduct. Corresponding to this principle, to acquire evidence it positioned the supervisory authority in the same legal status as the judge leading criminal trials.⁸

Based on the observed archive documents so far, one can state in general that mostly those legal disputes stayed in the stage of the supervisory audit which were filed by barristers due to detrimental decisions, however these cases could not serve as a basis for the disciplinary proceedings. During these cases the barristers utilized the possibility of complaint as an “appeal” against the court decisions to support the interests of their clients. Most of the time, the Disciplinary Court rejected these pleas arguing that the judicial interpretation of the law shall not provide basis for finding disciplinary misconduct.⁹

Taking a look at the judicial practice, one may highlight that “The Disciplinary Court shall answer the question whether the conduct of complainant shall be considered as negligent or serious breach of official duties.”¹⁰ Furthermore: “the question of whether the court decision is correct on the merits falls outside of the scope of the disciplinary proceedings since the correctness of a thoroughly reasoned and obviously not malfeasant judicial decision shall not be the subject of overruling by disciplinary or supervisory proceedings.”¹¹

As it is elaborated above, the Act regulated two factual situations of the disciplinary misconduct. Therefore, the study presents a typical proceeding for both the breach of the official duty and the violation (threat) of the judicial authority through archive documents.¹²

6 Section 15 of Act III of 1936.

7 Section 32 of Act III of 1936. „Disciplinary proceedings are always preceded by a supervisory audit.”

8 Justification of Act III of 1936.

9 NAVRATIL Szonja: *A jogászai hivatásrendek története Magyarországon (1868/1869–1937)*. ELTE Eötvös Kiadó, Budapest, 2014, (131–132.); ANTAL Tamás: *Fejezetek a Szegei Ítéltábla történetéből III. A Szegei Királyi Ítéltábla története 1921–1938 között*. Országos Bírósági Hivatal. Budapest–Szeged, 2017, (42.).

10 Budapest City Archives (hereinafter BCA.) VII.1.b. 86. (1942), 6/1942. Zsöllei Kálmán.

11 BCA. VII.1.b. 86. (1943), 9/1943. Disciplinary case of Gémesi István, Sajó Lajos, vitéz Szent Iványi Ádám.

12 Conf. BÓDINÉ BELIZNAI Kinga: Történetek a bírói felelősség köréből. In: Gosztonyi

Dezső László the judge of the Royal Criminal Tribunal of Budapest was condemned to reprimand by the Royal Magistrate's Court of Budapest on 22nd of October in 1938.¹³ According to the factual situation, the accused was delayed in writing the judgement for 23 times and administered false data in the trial diary on the writing down the judgements. The reasons given by the disciplinary court were as follows: "It was established from these that the accused [...] had in many cases written his judgments [...] with a delay of one to two months and, in order to cover up this omission, had filled in the boxes in the trial diary indicating the date of writing the judgments with false information."¹⁴

The confession of the accused can be read in the report of the president of the Royal Tribunal of Budapest that clearly reveals the false reports diverting from the truth were submitted to the presidents on a monthly basis stating he had no judgements to be written beyond 15 days overdue.

"The accused – regarding the fact he missed to write the judgements with significant delay for 23 times, and in some cases with several months delay – neglected his official duty – however, the Disciplinary Court considered it as a disciplinary misconduct due to the fact that the accused indicated false data in the trial diary and in his reports submitted to the president of the Tribunal with the intention to hide the aforementioned delays, and by that consistently mislead the supervisory authority which conduct equals to the wilful breach of the official duty that is particularly unworthy of a judge."¹⁵

The accused appealed against the judgement, but the first instance of the judgement was upheld by the Royal Hungarian Curia on 25th of February in 1939.¹⁶

According to the following source, the Disciplinary Council of the Royal Court of Justice of Budapest found Lajos Spolarich, the vice-president of the Royal Central District Court of Budapest guilty based on the disciplinary offence defined in point 2 of section 5 of Act III of 1936, therefore inflicted reprimand on 27th of April in 1944.¹⁷

Gergely – Révész T Mihály (ed.): *Jogtörténeti parerga II: Ünnepi tanulmányok Mezey Barna 65. születésnapja tiszteletére*. Budapest, ELTE Eötvös Kiadó, 2018, (61-66.); HOMOKI-NAGY Mária: A bírói felelősség kérdéseinek megítélése a gyakorlatban. *Pro Publico Bono, Magyar Közigazgatás*, 2020/3. (221-222.).

13 BCA. VII.1.b. 84. (1938), 18/1938. Disciplinary case of László Dezső.

14 Ibid.

15 Ibid.

16 Ibid.

17 BCA. VII.1.b. 86. (1944), 2/1944. Disciplinary case of Spolarich Lajos.

The Disciplinary Court elaborated that: “A judge shall every time pay attention to present a good example to others, not to offend others without just cause and especially not to scandalize others by his acts carried out in his private life or during his social interactions. He shall keep his burst of emotions at bay even if it was due to a reasonable cause and to preserve the honour of his position he shall align with the norms and expectations of the society – particularly in the presence of ladies – in a way that the required gentleman attitude from him shall not raise any concern. An opposite behaviour threatens the honour of the judicial profession and may lead to the loss of the public confidence in the judge. [...] The conduct of the accused as outlined in the statement of facts – consisting of bursting into a flat of foreign ownership swinging a stick during night hours where group of ladies and gentleman was merrymaking, therefore labelled them with seriously offensive words and expressions then breaking the seat of a chair that is a movable property of foreign ownership considering his ownership – is of obvious scandalized behaviour that is unworthy of a judge and may cause the honour of his profession to be destabilised and raise concerns about his undisputed education.”¹⁸

The minor Disciplinary Council of the Royal Hungarian Curia upheld the judgement of the court of first instance in terms of finding the guilt and its qualification. However, considering the infliction of the sanction it revised the judgement based on section 46 of Act III of 1936 and ordered the accused to pay 300 pengo.

Changes in the disciplinary liability of the judges after 1945

“There is a need for lawyers, but for a new type of socialist lawyers. The main duty of the lawyer apparat is construing new legislation and applying it in alignment with the changed conditions.”¹⁹

From 1945 the independence of judiciary began to be abolished²⁰ that had a significant impact on the disciplinary liability of the judges. At that time the Act III of 1936 was still in force but practically it was less likely to be applied. As György Uttó said: “Its maintenance in force can be considered more of a formal legal fact”.²¹

18 Ibid.

19 „There is a need for new socialist lawyers.” Nyírségi Magyar Nép, 1949/56. sz. (2.).

20 See in detail: PERES Zsuzsanna: A bírói függetlenség felszámolása (1945-1989). *Küri-ai Döntések, Bírósági Határozatok*, 2023/5. sz. (952-965.).

21 Uttó György: Az igazságügyi alkalmazottakkal szembeni fegyelmi eljárás múltja, jele és jövője. *Magyar Jog*, 2011/11. sz. (584.).

The composition of the Disciplinary Court regulated by section 19 of Act III of 1936 was amended by section 1 of Decree 6.760/1945. ME. on the amendment of the organization of the Supreme Disciplinary Court²² whereas section 23 (Supreme Disciplinary Court) of the Act was abolished by section 2 of the Decree. It entered into force on 22nd of August in 1945.

Act XXII of 1948 temporally regulated the relocation of the judges and also included the retirement of the judges and state prosecutors.²³

According to the first section of the Act, "The Minister of Justice is entitled to relocate any of the judges under his supervision – without the consent of the certain judge – to another court."

As per the justification of the Act: "In time of significant organizational changes, the need to temporarily suspend the non-transferability of the judges has already arisen in the past. This need – considering the territorial changes and the aspects of the democratic transformation – still exists..."

The Minister of Justice was allowed to carry out relocations until 31st of December in 1949.²⁴ The judge who already turned 50 years old when he was informed about his relocation, was allowed to request retirement within 30 days from receiving the notice instead of undertaking the appointed position.²⁵ The judge who had not turned 50 years old when he received the notice of relocation and did not undertake the newly appointed position, shall be considered as if he renounced his public employment and need for care, and all claims based on duty.²⁶

Section 14-16 of statutory decree 46 of 1950 on the amendment of the authority and proceedings in respect of the judicial organization declared the regulation of disciplinary and supervisory power. The statutory decree laid down that "the disciplinary council of the county court has the jurisdiction to act at first instance in the disciplinary case of the president, vice-

22 "According to section 19 of Act III of 1936, the Supreme Disciplinary Tribunal shall consist of thirty-six members in addition to the President, namely the eighteen to eighteen most senior Presidents of Chambers or Judges of the Curia and the Administrative Court." Decree No. 6.760 M. E. 1945 of the Provisional National Government amending the organisation of the Supreme Disciplinary Court section 1. List of decrees, 1945, (635.).

23 BÓDINÉ BELIZNAI Kinga: A bírói függetlenség és garanciái (1848–1948). *Kúriai Döntések, Bírósági Határozatok*, 2023/5. sz., (946-948.); Bódiné Beliznai Kinga: A bírói feyelmi felelősség szabályozása 1945 után. In: Birher Nándor – Miskolczi-Bodnár Péter – Nagy Péter – Tóth J. Zoltán (szerk.): *Studia in honorem István Stipta*. Budapest, KRE ÁJK, 2022, (a továbbiakban: BÓDINÉ BELIZNAI 2022/a), (123-125.).

24 Section 1 point 4 of Act XXII of 1948 on the temporary regulation of the relocation of the judges and the retirement of the judges and state prosecutors.

25 Section 2 point 2 of Act XXII of 1948

26 Section 2 point 3 of Act XXII of 1948

president, and the judges of the district court. For the establishment of the disciplinary council and its proceedings, those regulations shall be applied that are in alignment with the regulation of the disciplinary council of the superior court laid down by Act III of 1936. The minor disciplinary council of the Supreme Court is assigned to act at second instance in these disciplinary cases.”²⁷

The Decree 107/1950 (IV. 15.) M. T. on the amendment of certain sections of Act III of 1936 amended the regulations of the suspension regarding the persons subjected to disciplinary proceedings.²⁸

The disciplinary offence as per Act II of 1954

According to section 53 point 1 of Act II of 1954, “the judge of the Hungarian People’s Republic shall be politically and morally irreproachable and shall at all times perform his official duties with honesty, vigilance and diligence.”

The Act determined the disciplinary misconduct²⁹ as it follows: “a judge who is negligent and irresponsible considering his duty, or breaches the discipline of his office, behaves in a unworthy manner of a judge of the People’s Republic of Hungary, or offends the authority of the people’s judiciary, commits disciplinary misconduct.”³⁰ The disciplinary sanctions³¹ were: notice of scold, reprimand, serious reprimand, and recall³² also belonged to this list.

The detailed rules of disciplinary proceedings were laid down in Resolution 1.051/1954 (VI. 30.) issued by the Council of Ministers of the Hungarian People’s Republic and signed by Imre Nagy. Whereas previously the Disciplinary Court attached to the Court of Magistrates decided disciplinary cases at the first instance, under the new rules the Disciplinary Council attached to the county or district courts acted as the first instance.³³ Unlike the Act III of 1936, the decision did not provide for a (compulsory) supervisory examination. The disciplinary meeting - also unlike before - was not held in public.³⁴

27 Section 14 point 1 of Statutory Decree 46 of 1950.

28 Magyar Közlöny, Minisztertanácsi és miniszteri rendeletek tára, 1950/64. sz. 1950. április 15., (552.).

29 BÓDINÉ BELIZNAI (2022/a), (127–129.).

30 Section 53 point 2 of Act II of 1954

31 Section 58 point 1 of Act II of 1954

32 Section 58 point 2 of Act II of 1954

33 Section 55 of Act II of 1954

34 Section 16 point 1 of No. 1.051/1954 (VI. 30.) order

In the disciplinary cases – within shorter period of time than previously – the decision had to be delivered within 4 weeks from the commencement of the proceedings.³⁵ The judge subjected to disciplinary proceedings was allowed to appeal, whereas the prosecutor was allowed to lodge a protest.³⁶

The significant differences between the legislations are presented below in the following chart:

Act III of 1936	Comparison aspects	Act II of 1954 and Decree 1.051/1954 (VI. 30.) by the Council of Ministers of the Hungarian People's Republic
1. breach of official duty 2. violation/threat of the honour of the judicial profession	Factual situation of the disciplinary misconduct	- breach of the discipline in office - violating the authority of the people's jurisdiction by unworthy behaviour
- reprimand - financial penalty - loss of office + relocation (side consequence)	Types of disciplinary sanctions	- notice of scold - reprimand - serious reprimand - recall
1. mandatory supervisory audit 2. (public) disciplinary trial 3. judgement	Disciplinary proceeding	1. finding the factual situation (by the judge appointed by the disciplinary council) 2. non-public trial 3. court order

Summary

Act III of 1936 and Act II of 1954 are the results of two political eras which are significantly different in content, and that main differences are mentioned above. To summarize, the regulations of the judicial profession,

³⁵ Section 19 point 1 of No. 1.051/1954 (VI. 30.) order

³⁶ Section 26 point 1 of No. 1.051/1954 (VI. 30.) order

more specifically the liability of the judges, were meant to preserve the authority and dignity of the jurisdiction, and to protect the interest of the legal services until 1945. At the same time, the legal system of disciplinary proceedings guaranteed a thorough investigation of the cases and the protection of the rights of the judge who was subject to the proceedings. On the contrary, the regime change after 1945, especially after 1948 utilized the official pragmatics in the field of jurisdiction to select the apparatus of the jurisdiction, and considered the disciplinary proceeding as a tool of the new socialist judges.

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