

RESPONSIBILITY OF THE JUDGES IN THE REPUBLIC OF NORTH MACEDONIA

Ass. Prof. Dr. Azam KÖRBAYRAM, – Angela Angeleska, LL.M, PhD Candidate

ABSTRACT

This paper aims to explain and analyze the responsibility of the judges, both of criminal-legal, disciplinary and civil-legal responsibility, which is associated with the performance of judicial duty, which implies conscientious performance of the function of adjudicating citizens disputes, exclusively on the basis of law. According to the theory of separation of powers, which has a significant role in the constitutional order of R. North Macedonia, in addition to the legislative and executive power, the third power, that is, the judicial power, is responsible for resolving disputes at the institutional level, also between citizens. Namely, this authority is realized by the verdicts and decisions of independent and the autonomy judges. The judge, while performing his official duty (independent and autonomy), acts as a body of state, not in his own name, but in the name and in the interest of the state and the citizens.

In the Republic of North Macedonia, for a long period of time, reforms in the judiciary have been continuously implemented, which from many are of essential nature. A few legal and institutional changes have been adopted which represent a solid basis for the successful implementation of the responsibility of judges, with the goal of establishing a fully independent judiciary, but things are quite complicated and difficult.

Keywords: Civil liability, Criminal responsibility, Disciplinary responsibility, Judicial system, Judicial council.

Azam KÖRBAYRAM

PhD, Assistant Professor,
International Vision
University, Faculty of Law

e-mail:

azam.korabayram@vision.edu.mk

ORCID:

0000-0002-4707-1880

Angela ANGELESKA

LL.M, PhD Candidate,
University “Ss Cyril and
Methodius”, Faculty of Law
“Iustinianus Primus”,

e-mail:

angelastojanoska93@gmail.com

ORCID:

0009-0007-2303-6566

UDK:

347.962.6(497.7)

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I. INTRODUCTION

The question of responsibility arises before every society because there is an obligation of the members of society to respect the rules of conduct that derive from traditional moral values and legal values. Therefore, the question of responsibility is a social, moral and legal category dealt with by sociologists, lawyers and even philosophers. The wide interest in responsibility is due to the fact that responsibility, in addition to being a legal category, is basically a sociological category from which all members of society are affected. This paper talks about the legal responsibility of judges which, in addition to being part of the general responsibility, in a broader sense is also part of the professional responsibility. We have the professional responsibility when a holder of a certain profession violates the obligations that arise for him in the procedure of providing professional services to his users. Within the professional responsibility are distinguished, Civil liability, Disciplinary liability, Criminal liability. The principles to be followed by judges presuppose that judges are responsible for their conduct, before appropriate institutions established to maintain judicial standards, which are independent and impartial, and are intended to complement, not deviate from, the existing laws and rules of conduct that judges must respect them. It is also extremely important for judges, individually and collectively, to respect and uphold the judicial function as a public trust and to strive to improve and maintain trust in the judicial system.

II. THE INSTITUT – RESPONSIBILITY OF JUDGES IN THE REPUBLIC OF NORTH MACEDONIA

The 1991 Constitution stipulates that judges will judge in accordance with the constitution, laws and international agreements (for example, such treaties ratified by the legislature include the Council of Europe's 1950 European Convention on Human Rights) (Svetomir, 2014, p. 386). From that point of view the consequence of the power and trust given to judges by society is the need for an instrument to hold judges accountable and even allow them to be removed from office in cases of misconduct so great as to justify such a measure (Azam & Delev, 2023). The need for careful recognition of such responsibility stems from the need to protect judicial independence and freedom from inadequate pressure. The independence of the judiciary should mean greater

responsibility for both the judge as an individual and the judiciary as a whole (1991, 2024, Article 98 and Amendment No. XXV). Therefore, in parallel with the process of strengthening the judiciary, the legal framework for the institute of responsibility of judges should be created and upgraded, which is obliged to ensure that citizens are protected from possible abuse by judges. Judges and courts should enjoy the full confidence of citizens. When a citizen goes to court for protection of a right, he expects a fair and lawful procedure. Only in this way, the judge will be up to the task entrusted to him, and the citizens will approach the courts and judges to protect their rights with full confidence in the court as an institution and the judge as a holder of the judicial office. Within the reform of the judiciary in the Republic of Macedonia, legal solutions are being incorporated that in the best and most successful way will try to ensure impartiality and legality in the actions of judges, and for that purpose to restore the trust that has been lost in the judiciary. The consequence of these goals is the establishment of the institute of responsibility of judges. The institute of responsibility of judges is established and regulated within the legal framework so that when the judge made a wrong choice, did not adhere to the letter of the law, a procedure for his responsibility can be conducted. The responsibility of the judge should be understood as a situation when the judge judged contrary to the law, with the intention to obtain illegal property gain for himself or for another or to harm someone else, i.e. intentional misapplication of the law.

A. THE BODY RESPONSIBLE FOR THE INSTITUTE OF RESPONSIBILITY OF JUDGES

In our legislation, the body competent for the institute of responsibility of judges is the Judicial Council of the Republic of North Macedonia, which consists of two thirds of the members elected judges by direct elections, and one third of the members are from prominent lawyers. The Judicial Council is established as a body that should determine and evaluate the level of expertise, diligence and work engagement and discipline of judges. The Judicial Council decides on the basis of all legally relevant facts and circumstances whether a decision will be made to initiate a procedure to determine the responsibility of the judge (Renata, Ristovska , & Hristovska, 2021, pp. 671-673). In this our system, the Ministry of Justice is the one that was obliged to submit to the

Judicial Council the required and necessary data related to the work of the specific judge, but not to impose anything on his work. The Minister of Justice is an ex-officio member of the Judicial Council, who has the right to vote together with the other members of the Judicial Council. In this case, such a decision creates legal presumptions for the direct influence of the executive on the responsibility of judges. Regarding the right of the judge to appeal against the decisions of the Judicial Council, it is fully implemented and exercised before a council established by the Supreme Court of the Republic of North Macedonia that decides on appeals and is formed for each specific case with judges from the Primary Court, the Court of Appeals and the Supreme Court of the Republic of Macedonia.

In the Republic of Macedonia since 2015, the Council for establishing facts and initiating a procedure for determining the responsibility of a judge was competent to act in the procedure for assessing the responsibility of judges for unprofessional and negligent work (Official Gazette of RM, no. 20 from 12.02.2015). But the Council for establishing facts and initiating a procedure for determining the responsibility of a judge was valid for very short time and ceased to be valid in 2017 (Official Gazette of RM, no. 20 /2015).

B. TYPES OF RESPONSIBILITY OF JUDGES IN THE REPUBLIC OF MACEDONIA

a) Responsibility for unprofessional and negligent performance of the judicial function

The determination of the unprofessionalism and negligence of the judge as a legal basis for determining his responsibility in the Republic of Macedonia is set by the Constitution of the Republic of Macedonia from 1991 and is elaborated in more detail by the Law on Courts (Law on Courts, Official Gazette of RM no. 58/2006) and the Rulebook on determining unprofessional and negligent work of judge (Adopted at a session of the Judicial Council held on 30.1.007, based on Article 58 paragraph 1 above. with Article 55 paragraph 8 of the Law on the Judicial Council of the Republic of Macedonia). Most of the cases from the practice of the Judicial Council, in which legal responsibility of the judge was exercised, and that resulted in his dismissal from the judicial office is due to determined unprofessional and negligent performance of the office. During 2020, requests were submitted to determine the responsibility for

judge or president of a court against 140 (one hundred and forty) judges, i.e. 58 requirements. Only 5 (five) judges terminated their judicial office due to unprofessional and negligent performance of the judicial function in 2020 (Judicial Council of the Republic of Northern Macedonia, Annual Report on the work of the Judicial Council of the Republic of Northern Macedonia for 2020, No. 03-708 / 1 dated 28.04.2021). The Law on courts precisely defined the actions that constitute unprofessional and negligent performance of the judicial function, especially in which cases the unsatisfactory expertise or negligence of the judge would affect the quality and timeliness of the work. However, in the legal solutions it is omitted to make a clear distinction between unprofessional and negligent performance of the function, i.e. no special responsibility of the judge is constituted due to unprofessionalism, and especially due to negligent handling of cases, which can be counted as shortcoming in the writing of the law.

b) Disciplinary responsibility of judges

Disciplinary responsibility of judges is a separate type of liability, separate from liability for unprofessional and negligent conduct and criminal liability. Like the other types of responsibility, disciplinary responsibility requires the fulfillment of general conditions without which such responsibility cannot be constituted, which are:

- It is a matter of a serious disciplinary violation,
- The violation is foreseen by law,
- The performed disciplinary act to make the judge unworthy to perform his / her
judicial function.

Our old Law on Courts from 1995 provides only for the most serious disciplinary violation for which a procedure is conducted in which only the measure of dismissal of a judge can be understood, but with the adoption of the Law on Courts from 2006, a distinction is made between more serious disciplinary violation. which initiates a procedure for dismissal of the judge and the ordinary disciplinary violation that initiates a procedure for imposing a disciplinary measure.

A novelty introduced by the Law on Courts of 2006 are the new types of disciplinary measures for established disciplinary violation of a judge, so the Council can impose one of the following disciplinary measures:

- written warning,
- public reprimand and
- reduction of the salary in the amount of 15% to 30% of the monthly salary of a judge for a period of one to six months.

In the practice in the Macedonian judiciary, it has been noticed that only a small number of proposals have been submitted for more serious disciplinary violations against the judge. Over time, by resolving a large number of cases, a practice will be created to determine and define the content of the cases that will be taken as more serious disciplinary violations. In our practice so far, there is a small number of cases in which a disciplinary procedure has been initiated for dismissal of a judge on the basis of disciplinary responsibility.

c) Criminal liability of judges

Of all the three types of liability of judges provided by the Constitution and laws, the most severe is criminal liability. Criminal liability as a type of legal liability has one basic characteristic according to which it occurs when a certain action of a circle of enforcement agents provided by law, in this case judges, is provided as a punishable action in the law. The judge as an individual is liable whenever he commits a crime according to the provisions of the Criminal Code, regardless of whether that crime caused harm to a person or not.

The criminal responsibility of a judge can be twofold: the judge is responsible as a citizen for all types of crimes committed and is responsible for a crime committed in connection with the performance of the judicial office (judges, 2012).

Prescribing a special crime committed by a judge was motivated by the fact that when a judge violates the provisions of the Constitution and laws and commits a crime, such a violation acquires a different character and has greater weight and is therefore a special specific form of abuse of office. The essence of the criminal responsibility of the judge is to perform the judicial service contrary to the law and contrary to the goals and interests of the citizens and the judicial service. Criminal liability can be found in different types, for example: arbitrariness, corruption, etc. And the crime is committed by; exploitation and abuse of official position, exceeding the limits of official authority, etc. In order to determine the responsibility of the judge, it is of special importance that

there is evidence that the criminal act was committed with the intention of the judge for himself or for another to obtain illegal property gain or to harm one of the parties in the court procedure.

C. PROCEDURE FOR ESTABLISHING FACTS ABOUT THE RESPONSIBILITY OF JUDGES AND DISMISSAL OF JUDGES

A procedure for establishing facts about the responsibility of a judge shall be initiated within six months from the day of knowing the committed violation, but not longer than three years from the day of committing the violation. The procedure is urgent and confidential, it is conducted without the presence of the public and with respect for the reputation and dignity of the judge or the president of the court, taking care of the personal data of the judge or the president of the court in accordance with the regulations for personal protection data.

The Constitution stipulates that a judge is dismissed: due to a serious disciplinary violation, which makes him / her unworthy to perform the judicial function prescribed by law, and due to unprofessional and negligent performance of the judicial function under conditions determined by law (Constitution of the Republic of Macedonia, Amendment XXVI on Article 99). The constitutionally guaranteed grounds for dismissal and the decision-making procedure for dismissal are further developed with the law on courts and law on judicial council. According to the Law on Courts, the decision to dismiss a judge is made by the Judicial Council, and on the day of dismissal the judge's right to a salary ceases (Article 74 of the Law on Courts).

After the session at which the decision to submit a request to the Judicial Council of the Republic of Macedonia for initiating a procedure for determining the responsibility of a judge is made, within 3 days that decision is submitted to the judge for which the procedure was conducted and the case with all documents and the decision is submitted to the Judicial Council of the Republic of Macedonia. The procedure for dismissal of judges begins with the initiation of the procedure. In case of unprofessional and negligent work, the deadline for initiating the procedure in our legislation has changed several times. According to the Law on the Republic Judicial Council, no deadline was set for initiating the procedure, according to the Law on the Judicial Council of the Republic of Macedonia it is prescribed that the procedure can be initiated within three months from the day of finding out the violation (relative obsolescence), but no longer than one year from the day of committing (absolute obsolescence).

D. OPINION OF THE VENICE COMMISSION ON THE REGULATIONS FOR DISMISSAL OF JUDGES

The Venice Commission, the highest European advisory body on legislation, assesses that the entire Macedonian legislation that refers to the part for determining the possible responsibility of judges, and on the basis of which they are punished or dismissed, is, to put it mildly, confusing and in the direction of legal solutions that can be understood more as intimidation of judges than as a guarantee of their independence (European Commission For Democracy Through Law (Venice Commission) Opinion On The Laws On The Disciplinary Liability And Evaluation Of Judges Of "The Former Yugoslav Republic Of Macedonia" Adopted by the Venice Commission at its 105th Plenary Session).

In the expertise, the Commission goes deep into the evaluation of the existing legal solutions and the proposed amendments. According to the Commission, in the existing legal provisions of the Law on the Judicial Council there is a dualism about the manner in which a judge can be dismissed, either under Articles 54 to 76 or by applying one of Articles 77-95 of the same law. These two grounds for dismissal produce two different procedures, in the first case it can end without dismissal, only with a disciplinary penalty, while the second ends only with dismissal. The existence of two parallel grounds for dismissal and two different procedures is very confusing, the Venice Commission said. Amendments to the Law on Courts remove this dualism, so that now only serious disciplinary offenses are proposed as a basis. These are welcome changes, the commission said, but noted that serious problems were being made with other amendments, calling it a "complex maze".

First, the draft amendments establish a very long list of circumstances that could lead to disciplinary action. The Venice Commission is concerned that many of the offenses listed in this list have become too general. For example, a judge may be punished "for a serious breach of relations in the Court", which is a general definition, the Commission specifies. Experts point out that such a general definition leaves room for voluntarism and "subjectivism", advising on much more precise sentences and definitions of things, which serve as a basis for dismissal of judges. Which means that there are still many aspects that need to be worked on to improve the accountability of judges in Republic of North Macedonia.

III. CONCLUSION

Judges "are responsible for the final decisions regarding the life, freedoms, rights, duties and property of citizens" (A recital of the basic principles of the United Nations echoing the Declaration and Articles 5 and 6 of the European Convention on Human Rights). Their responsibility and independence is not a prerogative or a privilege in their favor, but in favor of the rule of law and those who seek and expect justice. Due to the substantial significance of the judiciary, one of the key priorities is judiciary reform.

Reforms that need to be implemented constantly in the judiciary in North Macedonia can help in terms of accountability of judges. North Macedonia was one of the first countries of the region to initiate judicial reforms in 2005 as one of the crucial requirements on its path towards EU accession. The success of these reforms, though, has been questionable and often labeled as reforms without significant change. A certain progress has been achieved from all these reforms but, if we assess by the level of trust in the judiciary and, then the general perception is almost disappointing. For instance, in one of the most recent opinion polls administered by the International Republican Institute (IRI) from 2021, the trust in the judiciary is at staggering 3% and somewhat trust is at 21% which is the lowest among all institutions (Public Opinion Poll: Residents of North Macedonia, March 4 – April 6, 2021, Center for Insights in Survey Research, A project of the International Republican Institute, p. 45.) There is a common perception that all formal institutions and rules required by the EU have been put in place; however, the problem lies in the proper implementation and application of the reforms. Therefore, serious dilemmas are raised over the comprehensiveness and sustainability of judicial reforms and whether they are covering all necessary aspects.

The responsibility of judges in the Republic of North Macedonia must be raised to a higher level. A criticism that is often directed at the judiciary is the politicization of judges, i.e. their active commitment and participation in a political party. Judges have the right to their own views on political matters. They are not required to give up their right to opinion as citizens. However, they should avoid political activity that may create a perception of political prejudice or bias. The responsibility of judges is inevitably very important for stronger judiciary. Our opinion is that judges should do their duties without any favoritism, display of prejudice or bias. They should reach their decisions by not taking into consideration

anything which falls outside the application of the rules of law. As long as they are dealing with a case or could be required to do so, they should not consciously make any observations which could reasonably suggest some degree of pre-judgment of the resolution of the dispute, or which could influence the fairness of the proceedings. They should show the consideration due to all persons like parties, witnesses, counsel, and etc. with no distinction based on unlawful grounds or incompatible with the appropriate discharge of their functions. They should also ensure that their professional competence is evident in the discharge of their duties. They should also do their duties with respect for the principle of equal treatment of parties, by avoiding any bias and any discrimination, maintaining a balance between the parties, and ensuring that each receives a fair hearing. Also, we believe that the effectiveness of the judicial system requires that the judges maintain a high degree of professional competence through basic and further training, providing them with the appropriate qualifications.

According to our opinion that judges should be guided in their activities by principles of professional conduct. The kind of principles that can offer to the judge's guidelines on how to proceed and overcome the difficulties they are faced with as regards their independence and impartiality. The principles should be drawn up by the judges themselves and be totally separate from the judges' disciplinary system. I think that it is important in each and every country to establish a body that will advise the judges confronted with a problem related to professional ethics or other problems that they can have while doing their duties.

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