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THE DISCIPLINARY LIABILITY OF JUDGES BETWEEN 1936 AND 1948 IN THE HUNGARIAN LEGISLATION

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ABSTRACT ■ The disciplinary liability of judges was initially regulated by Act VIII of 1871 which was in force until the 16th of January in 1936. During the period referred to in the title, disciplinary proceedings against judges were governed by Act III of 1936. The new law dealt with the disciplinary liability, transfer and retirement of royal magistrates and members of the royal prosecution service and the disciplinary liability of the royal court and royal prosecution service officials. In this study, I examine the rules of judicial disciplinary liability and disciplinary proceedings under the provisions of Act III of 1936. The final date of the analysis is 1948 since on the 23rd of March 1948 Act XXII came into force which brought new changes in the field of judges' liability reflecting the changing spirit of the times. I will present the practice of the implementation of the relevant law with the help of archival sources newly discovered in the Capital Archives of Budapest.

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

1. The disciplinary offence

Below, I review the normative changes that are relevant to the study.[2] Section 20 of Act VIII of 1871 defined the offence of disciplinary misconduct. Section 18(a) covered misconduct in office, while section 18(b) covered scandalous conduct.

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2 For more information on the main steps in the drafting of the article of 1936, see Kinga Bódiné Beliznai: A bírák és a bírósági tisztviselők felelősségének szabályozása [Rules on the liability of judges and court officials]. (1936). *Kúriai Döntések Bírósági Határozatok*. 2/2022. (hereinafter referred to as Bódiné Beliznai 2022.); Zsófia Patyi: A bírák fegyelmi felelősségének bő évszázados alakulása [The development of the disciplinary liability of judges over more than a century] 1868–1954. *Acta Universitatis Szegediensis. Forum: Publicationes Doctorandorum Juridicorum*. Szeged, 2016. Iss. 6., 156–160.

The new rules have removed the phrase "scandalous behaviour"[3]. The disciplinary offence under Section 5 of Act III of 1936 is committed by:

1. who negligently and seriously or intentionally violates his/her official duties;

2. who by his/her conduct or behaviour seriously damages or endangers the authority of his/her position (employment), whether intentionally or negligently.

Act VIII of 1871 also provided for the category of administrative offences, as there was no penal code in force at that time. However, Act III of 1936 no longer dealt with misconduct in office, as the Code of Criminal Procedure had come into force which laid down the detailed rules of criminal liability.[4]

According to Article 22 of Act VIII of 1871, the following types of punishment were to be applied in the case of disciplinary offences: censure, reprimand, fine and loss of office. Besides, Article 8 of Act III of 1936 provided the following types of punishment: censure, fine, and loss of office. Censure was removed from the new legislation because it was merged with the offence of reprimand due to the same moral content.[5]

The Act also regulated the possibility of transfer, which was previously regulated by a separate norm, Article 9 of Act VII of 1912 amending certain rules of judicial organisation and procedure. If it was found during disciplinary proceedings that the employment of the accused at the place where he had been employed was incompatible with the interests of justice, the disciplinary court could, in its judgment, order him to be transferred to another place of employment or another court.[6] The transfer could be ordered without a finding of a disciplinary offence.

3 According to the original text of the bill on the liability of judges and court officials, only the provision "whoever by his conduct becomes unworthy of respect and trust" would have been included in Article 20(b) of the Act (see: Assembly Papers, 1869, Vol, However, following a motion by Dániel Szakácsy, the provision was supplemented by the adjective "scandalous behaviour", which was adopted by the Chamber of Deputies without debate (Chamber of Deputies' Diaries, Vol. III, 16 October – 2 December 1869, 60th National Session, 28 October 1869. 118.). Boglárka Lilla Schlachta: *A bírák és bírósági hivatalnokok felelősségéről szóló 1871. évi VIII. tc. képviselőházi vitája* [Debate in the Chamber of Deputies on Act VIII of 1871 on the liability of judges and court officials]. In: Miskolczi-Bodnár Péter (ed.*): XXIII. Jogász Doktoranduszok Országos Konferenciája*. Károli Gáspár Református Egyetem, Állam- és Jogtudományi Kar, Budapest, 2022. 212.

4 Bódiné Beliznai 2022, 305.

5 Explanatory Memorandum to Act III of 1936 on the disciplinary liability, transfer and retirement of royal judges and members of the royal prosecutor's office, and the disciplinary liability of royal court and royal prosecutor's office officials. Laws of the Thousand Years (hereinafter referred to as the Explanatory Memorandum of Act III of 1936).

6 Article 15 of Act III of 1936.

2. Loss of office

In the following, I will present the disciplinary case of Albert Tomcsányi, a royal court judge in the Pest region, against whom the Royal Curia, as a disciplinary court, upheld the suspension imposed by the disciplinary court of first instance in its judgment on 25th of June in 1938. The first instance of the disciplinary court delivered its judgment on the 11th of March in 1938, against which both the accuser and the accused appealed. The prosecution was represented by Ferenc Finkey, Crown Prosecutor. The facts of the case are as follows:

"The accused was living in very unsettled financial circumstances, according to a written statement made in a lawsuit in 1929, which he declared to the authorities, and which he was ready to confirm by oath, he had debts exceeding 14,000 pengő. Amid these unsettled financial circumstances, Melánia Sendlein, a lawyer's clerk, – with whom he had a relationship at the end of 1925 or in 1926 that turned into a love affair according to the injured party – had disbursed a loan to him. He accepted loans of several hundred pence over years from Melania Sendlein, and from her family, although he knew their modest financial circumstances and the source of the loans which loans were obtained by the Sendleins from others, including their daughter, a dancer, and another dancer, and sometimes by pawning their linen and jewellery, and which loans were made in the belief that Melania Sendlein could be the wife of the incumbent."[7]

At the time the loans were taken, the accused began an affair with the divorced wife of a "general practitioner" – Mrs. Mesterházy – who worked as a midwife. He lived with the divorced woman, first in a private home and then in a "garni hotel" in Kőbánya, from whom he received 1,900 pence in 1934 for "treatment".

The partly simultaneous relationship with the two women "was the cause of scandalous scenes between the two women in the apartment of the debtor, and during the cohabitation, Mrs. Mesterházyné confronted the debtor twice, calling him a robber, a cheater, a scoundrel while the windows were open, and the noise could be heard in the street."[8]

In 1931 and 1932, the judge in the case received a loan of almost an "entire fortune", 2,400 pengő, from an elderly, sickly seamstress. In the absence of repayment, he was sued, defending himself in bad faith and denying the contents of the receipts he had written and signed himself.

The Curia, which ruled on the disciplinary case, "considers that the guilt of the accused can be established about the money loans that he took from individuals of modest social class, who were themselves dependent on the money

[7] BFL. VII. 1. b. 82. small box of disciplinary documents of the Court of Justice (1937), 10/1937, disciplinary case of Albert Tomcsányi, judge of the royal court of Pest.

[8] Ibid.

lent, or from one of the victims with whom he was more intimately acquainted as a man, and which loans he could not know when would be able to repay. In particular, his conduct in accepting loans under the terms of this confidential relationship was not manly, but in none of the cases in the indictment was his conduct befitting a judge, for the higher rank of his office requires of a judge, in both his official and private life, irreproachable gentlemanly conduct, and a judge must therefore be particularly vigilant to ensure that the trust and respect which his office commands are not undermined."[9]

The Royal Curia pointed out that:

"By his conduct and behaviour, the accused has deliberately and seriously undermined the authority of his position, and since this conduct of the accused constitutes the elements of the disciplinary offence, his disciplinary culpability must be established here too."[10]

In relation to the imposition of disciplinary sanctions, the Curia stated that "it is in the nature of disciplinary offences that they cannot be limited to certain, carefully selected, separable facts, but by their very nature they encompass the whole conduct of the individual concerned. Therefore, following the position taken by the court of first instance, the Minor Disciplinary Board of the Curia took as its object of assessment the whole of the conduct of the accused in the incidents in question and reviewed the totality of the interconnected acts of the accused throughout the whole course of the incidents. From such an assessment of the cases examined, the Curia also concluded that the conduct of the accused and the consequences thereof, taken as a whole, constituted a serious disciplinary offence which precluded the accused from remaining in the court and holding judicial office. The disciplinary court of first instance should therefore uphold the sentence of disqualification from holding office."[11]

The disciplinary court considered, as a special circumstance, that the claim of the accused for benefits from the state had already been granted by the court of first instance.

In addition, "the provision on the amount of the benefit claim had to be left in place because a substantial further reduction of the total benefit claim could plunge the already very financially hard-pressed debtor into a complete financial ruin."[12]

9 Ibid.
10 Ibid.
11 Ibid.
12 Ibid.

3. The new type of disciplinary procedure

3.1. The surveillance investigation

Act III of 1936 made it compulsory to conduct a judicial supervisory examination in the course of disciplinary proceedings.[13] Act VIII of 1871 did not yet provide details for a supervisory inquiry, but instead Chapter IV of Decree 4291 of 1891 I.M.E. on the Rules of Supervisory Procedure, issued on the Rules of Judicial Administration, was applied.[14] However, according to Article 28 of the Act, in the case of minor irregularities, the President could formally reprimand the members of the judiciary and court officials employed by the tribunal or within its territory. Under Article 29, the person concerned had to be asked to make a statement before being reprimanded. The reprimand was in writing and the party who was aggrieved by the reprimand could appeal to the disciplinary court. [15]

According to the explanatory memorandum of Act III of 1936, the purpose of the supervisory investigation was to reveal the facts of the disciplinary offence. In line with this principle, it gave the supervisory authority the same powers to obtain evidence as the investigating judge under the Code of Criminal Procedure.[16]

The mandatory supervisory inquiry has therefore created a new type of disciplinary procedure. In the framework of the supervisory inquiry, it was still possible to apply the measure provided by Decree No 4291/1891 I.M.E. against the complained judges.

An example of this is the supervisory proceedings against István Bodnár, President of the Royal District Court of Törökszentmiklós.[17] The successor of the Dévaványa Savings Bank R.T. filed a disciplinary complaint against the complainant on 3rd of June in 1943. According to the facts, in one real estate auction case, the complainant judge did not issue the orders for the auction of real estate to the Dévaványa Savings Bank R.T. as bailiff. Therefore, the bailiff

13 Article 32 of Act III of 1936 „Disciplinary proceedings shall always be preceded by a supervisory inquiry."

14 János Marschalkó: *A bírósági ügyvitel szabályai* [Rules for the administration of justice]. Az új büntető ügyvitel szabályaival kiegészített második kiadás. Budapest, Grill Károly, 1900. 58–76.

15 Kinga Bódiné Beliznai: A bírói felelősség szabályozása Magyarországon 1871-ben. [The regulation of judicial liability in Hungary in 1871] *Jogtörténeti Szemle*, 2/2019. 23.

16 Explanation of Act III of 1936.

17 BFL. VII. 1. b. 87. small box of disciplinary documents of the court of justice (1944-1945), 3/1944, disciplinary case of István Bodnár, president of the royal district court of Törökszentmiklós.

did not attend either the auction or the order hearing, as he was not aware of them. In the end, the creditor did not obtain satisfaction from the auction sale price. The complainant lodged a disciplinary complaint against the judge for his gross misconduct.

According to the complaint, if the complainant had been aware of the auction in time, he could have made an appropriate bid, in which case the auction price would have covered his claim. "In the absence of such an offer, however, the first mortgage creditor only made an offer to purchase up to the amount which the disciplinary tribunal, which was partly responsible for initiating the disciplinary proceedings against the complainant, – without deciding the question whether the complainant or his predecessor in title had suffered any damage, which is a matter for the compensation proceedings – was convinced that the omission was the consequence of the very fact […]. In substantive terms, the misconduct committed cannot be regarded as serious enough to give rise to a disciplinary offence, since a similar error can occur even in the most diligent work and the fact that the complainant was ill at the time of the first misconduct also reduces the seriousness of the misconduct committed, as can be seen from the complainant's unrebutted defence. Although it is an objectionable and erroneous procedure if, in a land register case, the judge acting in a subsequent action takes the list of persons to be notified automatically from the previous action, it is understandable if he does not establish the list of persons to be notified anew for each action: the fact that the complainant had not yet fully recovered from his illness at the time of the first omission is therefore of some significance. It should also be pointed out, however, that the cumulative nature of the omissions committed increases the seriousness of the misconduct of the complainant, which, in the opinion of the King's Chamber, can be adequately remedied using supervision. However, the disciplinary court did not rule on the question of whether the supervisory reprisal already imposed was sufficiently severe."[18]

In the decision on the presidential admonition, we read:

"As there is no evidence that the complainant's failure to act as district court president was intentional or due to gross negligence, given this, Article 5(1) of Act III of 1936, there can be no basis for a finding of disciplinary misconduct, and the disciplinary proceedings against the complainant should not be instituted. However, the complained President had infringed the procedural rules, by his omissions, laid down in the above-mentioned provisions of the law and his omission could not therefore be left without supervisory action. […] in the present case, […] because of the irregularities and omissions which appeared to

[18] Ibid.

be committed by him, he was to be reprimanded 'orally' under Article 86(5) of Decree 4291 of 1891 I.M.E. on the Rules of Supervisory Procedure, issued on the Rules of Judicial Administration, by not initiating disciplinary proceedings."[19]

Based on the documents examined so far, it can generally be said that in contrast to the case presented, there were more disputes in the supervisory investigation phase which were initiated by lawyers because of a decision which was unfavourable to them, but which could not be the basis for disciplinary proceedings. In these cases, the lawyers often used the complaint as an "appeal" against the decision of the judge in the interest of their clients. In most of these cases, the disciplinary court rejected such requests. Such decisions were usually justified by the disciplinary court because the judicial interpretation of the law could not serve as a basis for finding a disciplinary offence.[20]

From judicial practice, we can highlight that "The disciplinary tribunal must decide the question whether the conduct described by the complainant can be classified as intentional or negligent serious misconduct"[21], and that the determination of whether "[…] the decision of the disciplinary tribunal is correct on the merits is outside the scope of disciplinary proceedings."[22]

3.2. The substitute private prosecution

Article 27 of Act III of 1936 also regulated private prosecution. According to the explanatory memorandum of the statute, it regulates private prosecution in the form of substitute private prosecution, in the form in which the provisions of the Code of Criminal Procedure[23] and the disciplinary law are structured. In essence, the justification for the right of private prosecution was to ensure that the victim of a real injury is not left without a legal remedy. The law provided

[19] Ibid.

[20] Szonja Navratil: *A jogászi hivatásrendek története Magyarországon* [History of the legal professions in Hungary] *(1868/1869–1937)*. Budapest, ELTE Eötvös Kiadó, 2014. 131–132.; Tamás Antal: Fejezetek a Szegedi Ítélőtábla történetéből [Chapters from the history of the Szeged Court of Appeal] III. In: *A Szegedi Királyi Ítélőtábla története 1921–1938 között*. Országos Bírósági Hivatal. Budapest–Szeged, 2017. 42.

[21] The disciplinary case of Kálmán Zsöllei. BFL. VII.1.b. 86. small box of disciplinary documents of the court (1942), 6/1942.

[22] The disciplinary cases of István Gémesi, Lajos Sajó, and Ádám Szent-Iványi. BFL. VII.1.b. 86. small box of disciplinary documents of the court of justice (1943), 9/1943.

[23] Under Article 43 of Act XXXIII of 1896 on the Code of Criminal Procedure, the chief and the substitute private prosecutor shall exercise the rights of the public prosecutor's office in general in the representation of the prosecution, and under Article 99 the substitute private prosecutor may in all cases only file a motion for the ordering of an investigation.

for a right to make a supplementary private prosecution where the disciplinary offence constituted an individual offence.[24] An important measure of Act III of 1936 was the possibility of a substitute private prosecution, in which the disciplinary court looked for individual legal injury in all elements of the facts.

4. Changes in legislation 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."[25]

From 1945 the independence of the judiciary began to be abolished[26] which had a significant impact on the disciplinary liability of the judges. At that time 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".[27]

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 Court[28] whereas section 23 of the Act was abolished by section 2 of the Decree. It entered into force on the 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.[29]

[24] Explanation of Act III of 1936.

[25] „There is a need for new socialist lawyers." *Nyírségi Magyar Nép*, 56/1949/56. 2.

[26] See in detail: Zsuzsanna Peres: A bírói függetlenség felszámolása [Eliminating judicial independence] (1945-1989). *Kúriai Döntések, Bírósági Határozatok*, 5/2023. 952–965.

[27] György Uttó: Az igazságügyi alkalmazottakkal szembeni fegyelmi eljárás múltja, jelene és jövője [The past, present and future of disciplinary proceedings against judicial staff]. *Magyar Jog*, 11/2011. 584.

[28] "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.

[29] Kinga Bódiné Beliznai: A bírói függetlenség és garanciái [Judicial independence and its guarantees]. (1848–1948). *Kúriai Döntések, Bírósági Határozatok*, 5/2023. 946-948. p.; Kinga Bódiné Beliznai: A bírói fegyelmi felelősség szabályozása 1945 után [Regulation of judicial disciplinary liability after 1945]. In: Nándor Birher – Péter Miskolczi-Bodnár – Péter Nagy – Zoltán J. Tóth (eds.): *Studia in honorem István Stipta*. Budapest, KRE ÁJK, 2022. 123–125.

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 the 31st of December in 1949.[30] The judge who already turned 50 years old when he was informed about his relocation, was allowed to request retirement within 30 days of receiving the notice instead of undertaking the appointed position.[31] 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.[32]

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-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 a second instance in these disciplinary cases."[33]

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.[34]

Subsequently, the framework of the disciplinary proceedings was laid down by Act II of 1954 and the detailed rules were 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. This study focused on these differences.

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30 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.

31 Section 2 point 2 of Act XXII of 1948.

32 Section 2 point 3 of Act XXII of 1948.

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

34 Magyar Közlöny, Minisztertanácsi és miniszteri rendeletek tára, 64/1950. 552.

The content of the legal norms of the time and their application show that, to protect the authority of the judiciary, judges were subject to strict ethical rules during this period, and therefore these key participants in the administration of justice had to demonstrate exemplary behaviour that did not infringe upon the authority of the judiciary. On the contrary, the regime changes after 1945 and, especially, after 1948, utilized the official pragmatics in the field of jurisdiction to select the apparatuses of the jurisdiction and considered the disciplinary proceeding as a tool of the new socialist judges.

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